

IN THE MATTER OF	§	TEXAS BOARD OF
THE LICENSE OF	§	VETERINARY
MICHAEL DOHERTY, D.V.M.	§	MEDICAL EXAMINERS

**Received**  
**SEP 24 2018**

**AGREED ORDER**

On this the 23rd day of October, 2018, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of Michael Doherty, D.V.M. ("Respondent"). Pursuant to Section 801.408 of the Texas Occupations Code, and Board Rule 575.29, an informal conference was held on June 28, 2016. Respondent attended the informal conference and was represented by counsel. The Board was represented at the conference by the Board's Enforcement Committee.

Respondent, without admitting the truth of the findings and conclusions set out in this Agreed Order, wishes to waive a formal adjudicative hearing and thereby informally dispose of the issues without a formal adjudication. Respondent agrees to comply with the terms and conditions set forth in this Order. In waiving an adjudicative hearing, Respondent acknowledges understanding the alleged violations and the adequacy and sufficiency of the notice provided.

Upon the recommendation of the Enforcement Committee and with Respondent's consent, the Board makes the following Findings of Fact and Conclusions of Law and enters this Agreed Order as set forth below.

**Findings of Fact**

1. Respondent, Michael Doherty, D.V.M. of New Braunfels, Texas, holds Texas veterinary license 4047.
2. The Board has jurisdiction over the subject matter and Respondent. Respondent received notice, which may be required by law and by the rules of the Board. All jurisdictional requirements have been satisfied under Tex. Occ. Code Ann. Title 4 ("Act"). By entering into this Agreed Order, Respondent waives any defect in the notice and any further right to notice and hearing under the Act; Tex. Gov't Code Ann. §§ 2001.051-.054; and the Rules of the Texas Board of Veterinary Medical Examiners ("Board Rules") (22 Tex. Admin. Code, Chapter 575).
3. On July 3, 2015, Patricia Ritter and her husband presented their 10 ½ year-old, female, Bouvier service dog, Myca, to Dr. Doherty at Creek View Veterinary Clinic ("the Clinic") for minor gastrointestinal distress. Dr. Doherty performed an exam and determined that on palpation,

Myca was tense and uncomfortable. The fecal was unremarkable. After radiographs were performed, Dr. Doherty determined that Myca might have swallowed a toy or a ball and recommended surgery. Preliminary bloodwork was done. That afternoon, fluids and gas anesthesia were administered, and surgery was started. A small object was removed from Myca's stomach, as well as a large tumor that was attached to Myca's spleen. Pathology results later revealed the tumor to be a hematoma.

4. On July 4, the day following the surgery, Dr. Doherty checked on Myca and called Ms. Ritter that morning and evening. Myca remained at the Clinic on July 5.

5. On the morning of July 6, Myca was depressed and had a temperature of 103. Dr. Doherty contacted Ms. Ritter and stated that he would like to continue keeping Myca at the Clinic for observation. Ms. Ritter determined that she would pick Myca up from the Clinic that afternoon. When she arrived, Dr. Doherty stated that he had just run bloodwork on Myca, which revealed a drop in her white blood cell count.

6. When Myca returned home, she began to howl in pain and vomited. Ms. Ritter contacted Dr. Doherty. Dr. Doherty advised Ms. Ritter to limit Myca's water intake to one cup at a time. Throughout the night, Myca continued to pant heavily and cry in pain. The next morning, July 7, Ms. Ritter contacted the clinic and was told that Dr. Doherty was busy and she would have to call back. Ms. Ritter called the clinic again at noon, and was told that Dr. Doherty had left the clinic.

7. Around 2:00 p.m., Myca's condition declined. At that time, Ms. Ritter took Myca to the Clinic where she was treated by Dr. Kristen DeCola. Dr. DeCola performed additional surgery. Myca was transferred to the Emergency Pet Center, but her bloodwork showed significant signs of kidney failure. The following day (July 8) Ms. Ritter made the decision to have Myca euthanized.

8. Dr. Doherty's records contain no details of the aftercare that he provided on July 4 and July 5.

9. Dr. Doherty's records include a temperature notation that was not made contemporaneously, and the records do not indicate that the notation was not contemporaneous with the observation.

### **Conclusions of Law**

1. Respondent is required to comply with the provisions of the Veterinary Licensing Act, Chapter 801, Texas Occupations Code, and with the Board's Rules.

2. Based on the above Findings of Fact, Respondent has violated Rule 573.22, PROFESSIONAL STANDARD OF CARE, of the Board's Rules of Professional Conduct, by

failing to take action or refer the patient on July 6 and, thus, failing to exercise the same degree of humane care, skill, and diligence in treating patients as are ordinarily used in the same or similar circumstances by average members of the veterinary medical profession in good standing in the locality or community in which they practice, or in similar communities.

3. Based on Finding of Fact 8, Respondent has violated Rule 573.52, VETERINARIAN PATIENT RECORD KEEPING, of the Board's Rules of Professional Conduct, by failing to make and maintain adequate records.

4. Based on Finding of Fact 9, Respondent has violated Rule 573.52, VETERINARIAN PATIENT RECORD KEEPING, of the Board's Rules of Professional Conduct, by failing to clearly indicate that an amendment to a patient's record was not made contemporaneously with the observation recorded.

5. Based on Findings of Fact 1 through 9 and Conclusions of Law 1 through 4, Respondent has violated Sections 801.402(6) of the Veterinary Licensing Act, Texas Occupations Code, and is subject to disciplinary action by the Board:

801.402. GENERAL GROUNDS FOR LICENSE DENIAL OR DISCIPLINARY ACTION. A person is subject to denial of a license or to disciplinary action under Section 801.401 if the person:

(6) engages in practice or conduct that violates the board's rules of professional conduct.

6. Based on Conclusions of Law 1 through 5, Respondent is subject to disciplinary action under Section 801.401 of the Veterinary Licensing Act, Texas Occupations Code:

801.401. DISCIPLINARY POWERS OF BOARD. (a) If an applicant or license holder is subject to denial of a license or to disciplinary action under Section 801.402, the Board may:

(a)

(1) refuse to examine an applicant or to issue or renew a license;

(2) revoke or suspend a license;

(3) place on probation a license holder or person whose license has been suspended;

(4) reprimand a license holder; or

(5) impose an administrative penalty.

(d) In addition to other disciplinary actions authorized by this subchapter, the board may require a license holder who violates this chapter to participate in a

continuing education program.

7. Based on the above Conclusions of Law, Respondent may be disciplined in the manner set out in Section 801.451, IMPOSITION OF ADMINISTRATIVE PENALTY, of the Veterinary Licensing Act, which authorizes an administrative penalty for violations of the Act and Board rules.

8. Based on the above Conclusions of Law, Respondent may be required to provide restitution to the client as set out in Section 801.408(e), INFORMAL PROCEEDINGS.

#### **Aggravating and Mitigating Factors**

In determining the appropriate sanction in this matter, the Board considered the following mitigating factor: Respondent instituted a new recordkeeping system at the facility.

NOW, THEREFORE, THE BOARD AND RESPONDENT AGREE AS FOLLOWS:

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Respondent receive an INFORMAL REPRIMAND.

The Board further ORDERS that Respondent pay restitution to Patricia Ritter in the amount of one hundred forty-nine dollars and twenty cents (\$149.20) for the cost of Dr. Doherty's care on July 6, 2015. Proof of restitution SHALL be provided to the Board no later than forty-five (45) days from the effective date of this Order.

The Board ORDERS that Respondent pay, within 45 days of the date the Board approves this Order, an ADMINISTRATIVE PENALTY of FIVE HUNDRED DOLLARS (\$500.00). If Respondent fails to pay the administrative penalty within 45 days of the date the Board approves this Order, which is the date this Order is signed by the Board, the Board may apply any payment to the Board to renew a license to pay any outstanding administrative fee owed to the Board.

In addition, the Board ORDERS that Respondent complete THREE (3) hours of continuing education in the area of recordkeeping, in addition to the seventeen required annually for renewal of Respondent's license to practice veterinary medicine, within one year of the date the Board approves this Order. Documentation of the completion of the continuing education penalty shall be received within thirty (30) days after one year of the date the Board approves this Order. If Respondent fails to provide documentation of completion within thirty (30) days of one year of the date the Board approves this Order, Respondent's license may be suspended until the continuing education penalty is completed and documentation is received by the Board.

The Board further ORDERS that:

1. Respondent shall abide by the Rules of Professional Conduct, the Texas Veterinary Licensing Act, the laws of the State of Texas, and the laws of the United States.

2. Respondent shall cooperate with the Board's attorneys, investigators, compliance officers and other employees and agents investigating Respondent's compliance with this Agreed Order.

3. Failure by Respondent to comply with the terms of this Agreed Order or with any other provisions of the Licensing Act or the Board Rules, may result in further disciplinary action.

Respondent, by signing this Agreed Order, acknowledges understanding the Agreed Order, the notice, and Findings of Fact and Conclusions of Law set forth herein, and agrees to satisfactorily comply with the mandates of the Agreed Order in a timely manner or be subject to appropriate disciplinary action by the Board.

Respondent, by signing this Agreed Order, waives the right to a formal hearing and any right to seek judicial review of this Agreed Order. Respondent acknowledges having understood the right to be represented by legal counsel in this matter.

**RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.**

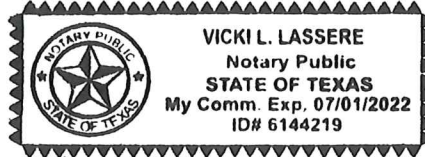
The effective date of this Agreed Order shall be the date it is adopted by the Board.

**Signature page follows.**

I, Michael Doherty, D.V.M., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING IT, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THAT THIS ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

Michael Doherty DVM  
MICHAEL DOHERTY, D.V.M.

9-12-18  
DATE



STATE OF TEXAS §  
COUNTY OF Comal §

BEFORE ME, on this day, personally appeared Michael Doherty, D.V.M., known to me as the person whose name is subscribed to the foregoing document, and acknowledged to me executing the same for the purposes stated therein.

Given under the hand and seal of office this 12<sup>th</sup> day of September, 2018.

Vicki L. Lassere  
Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 23rd of October, 2018.

Jessica Quillivan  
Jessica Quillivan, D.V.M., Board President