

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

R E C E I V E D
DEC 31 2007

TEXAS STATE BOARD OF
VETERINARY MEDICAL EXAMINERS

AGREED ORDER

On this the 14th day of February, 2008, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of LuAnn Ervin, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on November 30, 2007. The Respondent was represented by counsel, Meredith Cawthorn. 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 her understanding of the alleged violations and the adequacy and sufficiency of the notice provided to her.

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. On December 25, 2006, Shirley Federwisch, of Waco, Texas, presented "Kornelius", a five year-old Pug dog to LuAnn Ervin, D.V.M., Waco, Texas, at the Animal Emergency Clinic of Waco (AECW) concerning multiple injuries sustained from being hit by a car. Dr. Ervin, later that day, diagnosed "Kornelius" as having suffered a broken pelvis, a bruised kidney, a bruised liver and one broken right rib. "Kornelius" remained hospitalized until December 29, 2006.
2. "Kornelius" was released to return back home. He was immobile and unable to lift himself to urinate or defecate. After a day or so, "Kornelius" refused to lay down to rest and attempted to sit. "Kornelius" dragged himself forward with his right foot. While the dog was at home, he refused to eat, rarely drank water and developed a rash on his abdomen from constant urination. On the evening of January 1, 2007, "Kornelius" was presented to AECW and by the client's understanding, hospitalized. AECW required Ms. Federwisch to sign a statement that she would

be financially responsible for any medical treatment required for "Kornelius" while he was at AECW. AECW staff stated the dog's condition was improving, that the dog was eating and that he was progressing in his physical therapy, which included "towel walking". On January 5, 2007, "Kornelius" was released to return home. Dr. Ervin dispensed a steroid to "Kornelius". The medical records state the steroid was dispensed on January 5th. During this period at AECW, "Kornelius" ran out of antibiotics and no other antibiotics were administered. The dog had not been bathed and was covered in feces when returned. The rash had not improved and his left side appeared collapsed as though all the blood circulation had ceased. The dog's urination and diarrhea was constant while at home. On January 8, 2007, "Kornelius" was returned to AECW by the client's understanding for further treatment and therapy. AECW staff informed Ms. Federwisch the dog was being administered "aqua therapy" and "towel walking" two to three times daily. On January 11, 2007, AECW staff called Ms. Federwisch to inform her that Dr. Ervin suspected "Kornelius" was experiencing kidney failure. Ms. Federwisch inquired about euthanizing the dog, but the staff member stated Dr. Ervin wanted to continue the "aqua therapy." On January 12, 2007, Ms. Federwisch went to AECW to pick up "Kornelius." Ms. Federwisch spoke with Ross, the office manager, regarding a referral to an orthopedic specialist. Ross left to inquire with Dr. Ervin regarding the referral. Ross returned and stated that Dr. Ervin recommended the dog remain hospitalized and continue the "aqua therapy." Ms. Federwisch stated she did not want the dog to remain hospitalized. Dr. Ervin did not charge for the week's stay. On January 13, 2007, AECW medical records note "Fractures in the pelvis region are obviously causing neuro problems. Has withdrawal."

3. On the same day, January 12, 2007, "Kornelius" was presented to Dr. Chad Ainsworth of the Lake Air Animal Hospital, Waco Texas, for a second opinion. Dr. Ainsworth examined the dog and noted azotemic breathing. Dr. Ainsworth informed Ms. Federwisch that the azotemic breathing was an indicator of kidney failure. Dr. Ainsworth recommended an additional blood panel and radiographs. Dr. Ainsworth diagnosed "Kornelius" with five broken ribs, his left hip was not aligned, the right hip was free moving and his lungs were severely bruised. The dog's kidney values were very high, which suggested kidney failure. Dr. Ainsworth noted free-standing fluid in the dog's abdomen and he suspected a ruptured bladder. Dr. Ainsworth performed exploratory surgery, which revealed the dog's bladder was severely damaged. Ms. Federwisch opted to have the dog euthanized.

4. The patient records by Dr. Ervin lack detail after the initial visit. The medical records do not note and/or do not accurately note dates, diagnostics, diagnosis or treatments, despite the ordering of a steroid prescription during the treatment of "Kornelius".

5. The Board requested medical records from Dr. Ervin regarding this complaint on March 2, 2007. On May 21, 2007, Dr. Ervin was again notified of the request for medical records as required by Board rules. Finally, in July of 2007, a TBVME Investigator went by AECW and obtained copies of the medical records for this matter. In July of 2007, a TBVME Investigator requested by phone message a written response regarding the complaint from Dr. Ervin. On July

16, 2007 a written response was requested by certified mail to Dr. Ervin. Upon retaining counsel in October, Dr. Ervin provided a written response dated October 30, 2007 on law office letterhead and signed by the attorney representing her, not Dr. Ervin.

6. Dr. Ervin's lack of thorough diagnosis and failure to appropriately examine "Kornelius" during his two extended stays in 2007 leading to a delay in euthanizing of "Kornelius" does not represent the same degree of humane care, skill, and diligence in treating patients as is ordinarily used in the same or similar circumstances by average members of the veterinary medical profession in good standing in Waco, Texas or similar communities. The lack of thorough diagnosis and failure to properly examine "Kornelius" during his two extended stays in 2007 by Dr. Ervin leading to a delay in euthanization caused "Kornelius" undue pain and discomfort.

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 Finding of Fact 1 through 3 and 6, Respondent has violated Rule 573.22, PROFESSIONAL STANDARD OF HUMANE TREATMENT, of the Board's Rules of Professional Conduct, which requires veterinarians to exercise the same degree of humane care, skill and diligence in treating patients as is 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 Findings of Facts 1 and 2, Respondent has violated Rule 573.10 SUPERVISION OF NON-LICENSED EMPLOYEES, of the Board's Rules of Professional Conduct.
4. Based on Finding of Facts 1, 2 and 4, Respondent Ervin has violated Rule 573.52 PATIENT RECORD KEEPING, of the Board's Rules of Professional Conduct.
5. Based on Findings of Fact 5, Respondent violated Rule 573.74 DUTY TO COOPERATE WITH BOARD, of the Board's Rules of Professional Conduct.
6. Based on Finding of Facts 1 through 6 and Conclusions of Law 1 through 5, Respondent has violated Section 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 practices or conduct that violates the board's rules of professional conduct.

7. Based on Conclusions of Law 1 through 6, 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:

- (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.

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

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that LuAnn Ervin, D.V.M., be FORMALLY REPRIMANDED.

The Board further ORDERS that Respondent pay, within 30 days of the date of this Order, an ADMINISTRATIVE PENALTY of TWO THOUSAND DOLLARS (\$2000.00). If Respondent fails to pay the administrative penalty within 30 days of the date of this Order, enforcement action will be taken.

The Board further ORDERS that:

- 1 Respondent shall abide by the Rules of Professional Conduct, the Texas Veterinary Licensing Act, and the laws of the State of Texas and 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 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 her understanding of the Agreed Order, the notice, and Findings of Fact and Conclusions of Law herein set forth herein, and agrees that she will 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 her right to a formal hearing and any right to seek judicial review of this Agreed Order. Respondent acknowledges that she had 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. NOTHING IN THIS ORDER SHALL BE DEEMED A WAIVER OF RESPONDENT'S RIGHTS UNDER STATUTE OR UNDER THE UNITED STATES OR TEXAS CONSTITUTIONS TO APPEAL AN ORDER OR ACTION OF THE BOARD SUBSEQUENT TO THIS AGREED ORDER EXCEPT AS RESPONDENT MAY HAVE OTHERWISE AGREED TO HEREIN. 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.

I, LUANN ERVIN, D.V.M., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND 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.

LuAnn Ervin DVM
LuAnn Ervin, D.V.M.

Date 12-27-07

STATE OF TEXAS §
COUNTY OF Mc Lennan §

BEFORE ME, on this day, personally appeared LUANN ERVIN, D.V.M., known to me as the person whose name is subscribed to the foregoing document, and acknowledged to me that She executed the same for the purposes stated therein.

Given under the hand and seal of office this 27th day of December, 2007.

Judy R. Richards
Notary Public



SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 14th day of February, 2008.

Dr. Pat Allen
Robert Lastovica, D.V.M., President
Patrick Allen, Dvm
Vice-President