

moved himself away from the kennel wall and changed position. Respondent left the clinic to run an errand and returned approximately 30-40 minutes later. "Smokie" was not observed during this time.

3. When he returned to the clinic approximately 30-40 minutes later, Respondent observed that "Smokey" had changed position again. He returned to the kennel a few minutes later and discovered that "Smokie" was not breathing and had expired. He found no evidence of hemorrhage, vomiting or aspiration, and could not make a determination of the cause of death. "Smokie's" remains were cremated. Respondent did not charge for the original surgery or cremation.

4. Dr. Ferguson's failure to properly monitor "Smokie" during his post-operation recovery 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 Houston, Texas, or similar communities, and constitutes a violation of **Rule of Professional Conduct §573.22, PROFESSIONAL STANDARD OF HUMANE TREATMENT**. Respondent's failure to properly monitor "Smokey" during his recovery from anesthesia contributed to his premature death.

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 Findings of Fact 1-4, 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 Finding of Fact 1-4 and Conclusions of Law 1-2, Respondent has violated §801.402(6) of the Act, 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 §801.401 if the person:

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

5. Based on Conclusions of Law 1-3, Respondent is subject to disciplinary action under

§801.401 of the Act:

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 §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.

...
(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.

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 be INFORMALLY REPRIMANDED.

In addition, the Board ORDERS Respondent to complete an additional three (3) hours of continuing education (CE) in the field of anesthesiology by the end of calendar year 2009. Documentation of completion of the CE shall be received by January 30, 2010. If Respondent fails to provide said documentation within 30 days of January 30, 2010, Respondent's license shall be suspended until the CE 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, 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 his understanding of the Agreed Order, the notice, and Findings of Fact and Conclusions of Law herein set forth herein, and agrees that he 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 his right to a formal hearing and any right to seek judicial review of this Agreed Order. Respondent acknowledges that he 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 THIS IS A FINAL ORDER.

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

I, FRED FERGUSSON, 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.

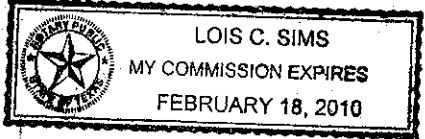
Fred Fergusson, D.V.M.
Fred Fergusson, D.V.M.

3/9/09
Date

STATE OF TEXAS §
COUNTY OF Tarrant §

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

Given under the hand and seal of office this 9 day of March, 2009.



[Signature]
Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 11th day of June, 2009.

[Signature] B.V.M.
President