

DOCKET NO. 2003-22

IN THE MATTER

§ TEXAS STATE BOARD OF

OF THE LICENSE OF

§

RICHARD FUSSELL, D.V.M.

§

VETERINARY MEDICAL EXAMINERS

AGREED ORDER

On this, the 12th day of June, 2003 came on to be considered by the Texas State Board of Veterinary Medical Examiners ("Board") the matter of the license of Richard Fussell, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, Respondent was invited to an informal conference held on May 13, 2003. Respondent waived his attendance. 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 compliance issues set out below. Respondent agrees to comply with the terms and conditions set forth in this Order. In waiving an adjudicative hearing, Respondent acknowledges his understanding of the alleged violations and the adequacy and sufficiency of the notice mailed to him.

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. During a Board investigation of Case No. 02-268 relating to a complaint filed against Richard Fussell, D.V.M., the investigator requested a response to the complaint from Dr. Fussell. Between June 28, 2002 and October 2, 2002, the investigator sent three letters to Dr. Fussell requesting his narrative response to the case.
2. On November 25, 2002, the Board sent certified letters to Dr. Fussell's clinic and home addresses requesting his response to Case No. 02-268 within seven days of receipt. The letters were received by Dr. Fussell; however, he did not respond.
3. On January 16, 2003, a Board investigator interviewed Dr. Fussell at his clinic and inquired about his failure to respond. Dr. Fussell admitted that he was negligent in failing to respond to the letters, and he was afraid that any written response would become public knowledge. Following the interview, Dr. Fussell did respond as requested by letter dated January 20, 2003.

4. Dr. Fussell's failure to respond to repeated requests from the Board resulted in unnecessary delays in the investigation of Case No. 02-268.

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 through 4, Dr. Fussell has violated RULE 573.74, DUTY TO COOPERATE WITH BOARD, of the Board's Rules of Professional Conduct, which requires a veterinarian to cooperate fully with any Board investigation and to respond within 21 days to requests for information concerning complaints.

3. Based on Conclusions of Law 1 and 2, Dr. Fussell 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.

4. Based on Conclusion of Law 3, Respondent may be disciplined in the manner set out in Section 801.401, DISCIPLINARY POWERS OF BOARD, of the Veterinary Licensing Act, Texas Occupations Code, which may include revocation or suspension of a license, probation of a person whose license has been suspended, a reprimand, or a civil penalty.

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

The Board ORDERS that Respondent pay within 45 days of the date of this Order, a CIVIL PENALTY of one thousand dollars (\$1000.00).

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.

Richard Fussell, D.V.M.
May 17, 2003
Page 3

3. Failure by Respondent to comply with the terms of this Agreed Order or with any other provision of the 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, Findings of Fact and Conclusions of Law herein set forth, 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 Order. Respondent acknowledges that he is entitled to be represented by an attorney of Respondent's choice at his expense. Respondent has voluntarily represented himself.

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 date of this Agreed Order shall be the date it is adopted by the Texas Board of Veterinary Medical Examiners.

I, RICHARD FUSSELL, 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.

Richard Fussell
Richard Fussell, D.V.M.

Aug. 5, 2003
DATE

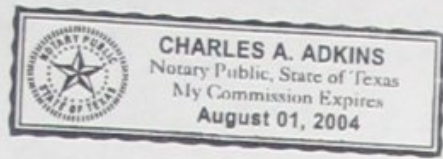
STATE OF TEXAS
COUNTY OF TARRANT

BEFORE ME, on this day, personally appeared Richard Fussell, D.V.M., known to me to be the person whose name is subscribed to the foregoing Agreed Order, and acknowledged to me that

Richard Fussell, D.V.M.
May 17, 2003
Page 4

he executed the same for the purposes stated therein.

Given under the hand and seal of office this 5 day of August, 2003



Charles A. Adkins
Notary Public

SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this the _____ day of _____, 2003

J. Lynn Lawhon
J. Lynn Lawhon, D.V.M.
President of the Board