

DOCKET NO. 2003-23

IN THE MATTER OF

§ TEXAS STATE BOARD 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, an informal conference was held on May 13, 2003. The 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 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 his understanding of the alleged violations and the adequacy and sufficiency of the notice provided 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. On June 3, 2002, Ms. Traci G. Mullins, Houston, Texas presented her female Chihuahua "Phoebe" to Richard Fussell, D.V.M., Animal Hospital of Westheimer Village, Houston, Texas for heartworm treatment. Ms. Mullins was at the time a volunteer member of Chihuahua Rescue and Transport (CRT), and CRT used Dr. Fussell for heartworm treatments for rescued Chihuahuas. Previously, "Phoebe" had been seen by David Dolan, D.V.M., Spring, Texas who had administered an occult heartworm examination to the dog. The heartworm test was positive for heartworms.

2. Dr Fussell administered Immiticide to the dog for heartworms. Dr. Fussell apparently did not repeat the heartworm test that Dr. Dolan had previously administered. When Ms. Mullins arrived at the clinic late in the afternoon to pick up "Phoebe," the receptionist informed her that the dog was three weeks pregnant. Upon arriving at home, Ms. Mullins called her regular veterinarian, Dr. Julie McInnis, to discuss any adverse implications from administering Immiticide to a pregnant dog. Dr. McInnis called the manufacturer of Immiticide and was informed that the company had no clinical data on the side effects of using Immiticide on a pregnant dog, but that "Phoebe" would not likely spontaneously abort the pups, but a higher than normal rate of

stillborn pups had been reported. The manufacturer recommended against further treatment with Immiticide.

3. On June 7, 2002, Ms. Mullins took the dog to Dr. McInnis to repeat the heartworm testing using a SNAP test. The test was negative for heartworms. The test was repeated and the results were negative. This information was given to Dr. Dolan.

4. The patient record given to Ms. Mullins for "Phoebe" does not contain notations of the weight or temperature of the dog, nor does it contain a reference to Immiticide, routes of administration and strength. The patient record sent to the Board with Dr. Fussell's response to the complaint was substantially different than the one given to Ms. Mullins and does contain a reference to Immiticide.

#### 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 4, Respondent has violated Rule 573.52, PATIENT RECORD KEEPING, of the Board's Rules of Professional Conduct, which requires that various items concerning the diagnosis and treatment of a patient be kept in the patient's records.

3. Based on Finding of Fact 4 and Conclusions of Law 1 and 2, 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.

4. Based on Conclusions of Law 1 through 3, 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 a civil 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 Richard Fussell, D.V.M., be INFORMALLY REPRIMANDED.

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 is 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.

Docket No. 2003-23  
Richard Fussell, D.V.M.  
Page 4

I, RICHARD FUSSELL, 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.

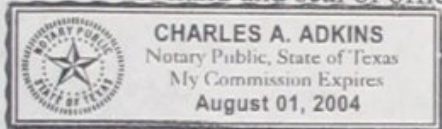
Richard Fussell  
Richard Fussell, D.V.M.

Aug. 5, 2003  
Date

STATE OF TEXAS §  
COUNTY OF WARRANTS §

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

Given under the hand and seal of office this 5th day of AUGUST, 2003.



Charles A. Adkins  
Notary Public

SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this the 12<sup>th</sup> day of June, 2003.

J. Lynn Lawhon  
J. Lynn Lawhon, D.V.M., President