

DOCKET NO. 2003-35

IN THE MATTER OF	§	TEXAS STATE BOARD OF
THE LICENSE OF	§	
RICHARD FUSSELL, D.V.M.	§	VETERINARY MEDICAL EXAMINERS

AGREED ORDER

On this the 16th day of October, 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 September 16, 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 August 10, 2002, Mr. Clint Merrell and his friend Amie, presented his 1 ½ year old cat "Sneaky" to Richard Fussell, D.V.M., Animal Hospital of Westheimer Village, Houston, Texas. Mr. Merrell noted that the cat had developed a fever and lost his appetite. In addition, the cat's stool was hard and pellet sized and he was urinating very little. The cat had also experienced a cough since he was a kitten. Mr. Merrell believed that "Sneaky" was allergic to smoke.
2. Dr. Fussell examined the cat and diagnosed a viral infection. Dr. Fussell said that he wanted to place the cat on IV fluid therapy and keep him at the clinic until August 12, 2002. On the morning of August 12, Mr. Merrell went to the clinic to check on "Sneaky." Dr. Fussell stated that the cat's energy level had improved but he was still not eating well. On August 13, Mr. Merrell and Amie again went to the clinic to see "Sneaky." Amie arrived at the clinic first and noticed that the cat was gasping for air and had brown fluid dripping from his nose. When questioned about the cat's condition, Dr. Fussell gave an evasive answer. Amie then went to the front of the clinic and asked the staff if she should take the cat to the emergency clinic. She was told that Dr. Fussell would take an x-ray of the cat, and by the time Mr. Merrell arrived at the

clinic, the x-ray had been taken. Mr. Merrell observed that the cat appeared to be in very bad shape and was barely breathing.

3. Dr. Fussell reported that the x-ray showed fluid on the cat's lungs and proposed drawing some of the fluid in a syringe whenever the cat's breathing improved. Dr. Fussell also reported that he had given the cat diuretics. Dr. Fussell then left for lunch, and "Sneaky" appeared to be getting worse. When Dr. Fussell returned, Mr. Merrell then demanded to have the cat so he could take him somewhere else for treatment. On the way out of the parking lot, Mr. Merrell saw that "Sneaky" had gone limp, and he quickly took the cat back to Dr. Fussell. Dr. Fussell placed a stethoscope on the cat and pronounced him dead.

4. Dr. Fussell's records indicate that "Sneaky" was first presented to Dr. Fussell on March 22, 2001 for wheezing and coughing. Dr. Fussell suspected that the cat had feline infectious peritonitis (FIP), but did no diagnostic work to confirm his tentative diagnosis. No FIP titer testing was done, and no bloodwork was performed during that visit or at the subsequent visit on August 10, 2002 (over a year later). No radiograph was taken until August 13, 2002, the day the cat died. If FIP had been confirmed, Dr. Fussell could have offered euthanasia as an option for the client. Dr. Fussell failed to adequately inform the client as to the condition of the cat.

5. The acts and/or failures to act by Dr. Fussell specified in paragraphs 1 through 4, and more specifically, his failure to adequately test and perform timely diagnostic work on a patient suspected of having FIP and communicate with the client concerning the condition of the cat and available treatment options, do 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 Houston, Texas or similar communities.

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 5, 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 Fact 1 through 5 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 OFFICALLY REPRIMANDED.

The Board further ORDERS that Respondent pay a CIVIL PENALTY of five hundred dollars (\$500.00) payable within 45 days of the date of this order.

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.

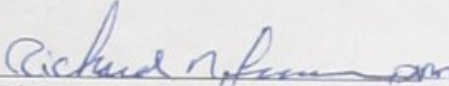
Respondent, by signing this Agreed Order, acknowledges his understanding of the Agreed Order, the notice, and Findings of Fact and Conclusions of Law set forth herein, and agrees that he will satisfactorily comply with the mandates of the Agreed Order in a timely manner or be subject to appropriate disciplinary 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 was not 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, 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, D.V.M.

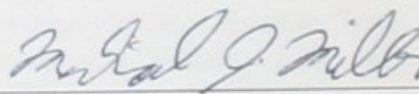
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STATE OF TEXAS §
COUNTY OF Harris §

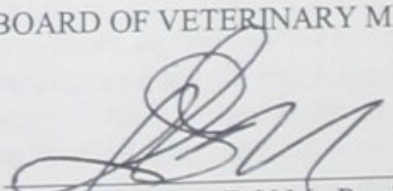
BEFORE ME, on this day, personally appeared RICHARD FUSSELL, D.V.M., known to me as the person whose name is subscribed to the foregoing document, and acknowledged to me that he executed the same for the purposes stated therein.

Given under the hand and seal of office this 10 day of October, 2003.




Notary Public

SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this the 16th day of October, 2003.


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