

DOCKET NO. 2015-173

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

Received

DEC 06 2016

Texas State Board of
Veterinary Medical Examiners

AGREED ORDER

On this the 8 day of December 2016 came to be considered by the Texas Board of Veterinary Medical Examiners (Board) the matter of the license of STEVEN GARNER, D.V.M. (Respondent). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.29, an informal conference was held on July 20, 2015. The Respondent appeared at the informal conference, and was represented by counsel, Mr. David Knight. 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. Respondent, STEVEN GARNER, D.V.M. of League City, Texas, holds Texas veterinary license 5371.
2. The Board has jurisdiction over the subject matter and Respondent. Respondent received notice, which may be required by law and by the rules of the Board. All jurisdictional requirements have been satisfied under Tex. Occ. Code Ann. Title 4 (Act). By entering into this Agreed Order, Respondent waives any defect in the notice and any further right to notice and hearing under the Act; Tex. Gov't Code Ann. §§ 2001.051-.054; and the Rules of the Texas Board of Veterinary Medical Examiners (Board Rules) (22 Tex. Admin. Code, Chapter 575).
3. Respondent owns and operates Safari Veterinary Care Center (the "Clinic") in League City, Texas.
4. On April 15, 2014, Mrs. Geraldine Derham presented her cat, Pokey, to Respondent at the Clinic for weakness. Respondent diagnosed an abdominal mass. Respondent discussed performing exploratory

surgery on Pokey and asked Mrs. Derham to sign an authorization form. Mrs. Derham left the Clinic to discuss the matter with her husband.

5. The Clinic contacted Mrs. Derham later that day, informing her that the blood tests determined that Pokey was severely anemic and that Respondent did not want to perform the surgery with Pokey in that condition, and that it would take one or two weeks before Pokey was healthy enough for surgery. Mrs. Derham and her husband decided to euthanize Pokey. Mrs. Derham returned to the Clinic and signed the euthanasia permission form. Mrs. Derham paid Respondent \$627 for Pokey's diagnosis and euthanasia. Mrs. Derham believed Pokey had been euthanized.

6. On April 17, 2014, Respondent performed exploratory surgery on Pokey and removed the abdominal mass, despite telling Mrs. Derham that Pokey's anemia meant she would not be healthy enough for surgery for at least a week. Respondent did not perform any additional diagnostics before performing the surgery. Respondent then gave Pokey to Lori Damian, a veterinary technician at the Clinic. Ms. Damian renamed the cat "Gem." The cat was diagnosed with lymphoma approximately three months later, and was euthanized by Respondent.

7. In his initial written response to the Board, Respondent stated that Mrs. Derham was in the process of moving to Florida when she brought Pokey to the Clinic. He stated that she told him she was literally moving that day and couldn't care for Pokey postoperatively. Respondent stated that Mrs. Derham agreed to let Respondent perform exploratory surgery and rehome Pokey if the procedure was successful, or euthanize Pokey if the surgery was unsuccessful. Dr. Garner provided the Board with a form signed by Ms. Derham that allegedly authorized the surgery and rehoming. Mrs. Derham told the Board that she never told the Respondent she was moving, nor has she actually moved.

8. During the informal conference on July 20, 2015, Respondent provided the Board with two affidavits from Lori Damian and Susan Mooney Garner, who works at the Clinic and is Respondent's wife. Ms. Damian stated that she was upset when Mrs. Derham chose to euthanize Pokey, so she told Respondent that Mrs. Derham had agreed to rehome Pokey. Ms. Damian told Mrs. Garner of the lie, and Mrs. Garner changed the medical records to indicate that surgery and rehoming had been authorized. Mrs. Garner stated that she did not tell Respondent of the lie because she did not want him to fire Ms. Damian. Mrs. Garner also stated that she did not tell Respondent, her husband, of the lie until after Respondent submitted his initial written response to the Board. Despite presenting these affidavits, Respondent maintained that he recalled a conversation with Mrs. Derham in which she authorized him to perform exploratory surgery and rehome Pokey if possible.

9. Respondent has been disciplined by the Board on three previous occasions. In 1990, Respondent was disciplined for violating Board Rule 573.22, PROFESSIONAL STANDARD OF CARE, by releasing a patient in a sedated condition, and Board Rule 573.52, VETERINARIAN PATIENT RECORD KEEPING, by failing to include required information in patient records. Respondent received a reprimand and a \$500 administrative penalty.

10. In 2014, Respondent was disciplined for violating Board Rule 573.10, SUPERVISION OF NON-LICENSED EMPLOYEES, which requires veterinarians to be directly responsible for all actions of non-licensed employees acting under the licensee's directions or authorization. Respondent received a formal reprimand and a \$1,000 administrative penalty.

11. Later in 2014, Respondent was disciplined for violating Board Rule 573.52, VETERINARIAN PATIENT RECORD KEEPING, by failing to include required information in patient records, and Board Rule 573.50, CONTROLLED SUBSTANCES RECORDS KEEPING FOR DRUGS ON HAND, by failing to record the accurate balance on hand for each controlled substance in his possession. Respondent received a formal reprimand, a \$1,500 administrative penalty, and was required to complete an additional 3 hours of continuing education in recordkeeping.

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 the above Findings of Fact, Respondent has violated Rule 573.27, HONESTY, INTEGRITY AND FAIR DEALING, of the Board's Rules of Professional Conduct, by failing to euthanize Pokey after agreeing to euthanize and charging the client for euthanasia, and by keeping Pokey alive and treating her without knowledge of or permission from the client. In accordance with Rule 573.11 RESPONSIBILITY FOR UNLICENSED EMPLOYEES, Respondent is responsible for any acts a non-veterinarian employee commits within the scope of the employee's employment.

3. Based on the above Findings of Fact, Respondent has violated Rule 573.21, DIRECT RESPONSIBILITY TO CLIENT, of the Board's Rules of Professional Conduct, by allowing non-licensed persons to interfere or intervene with his practice.

4. Based on the above Findings of Fact, Respondent has violated Rule 573.10, SUPERVISION OF NON-LICENSED EMPLOYEES, of the Board's Rules of Professional Conduct, by failing to properly supervise non-veterinarians performing delegated duties.

5. Based on the above Findings of Fact and Conclusions of Law, Respondent has violated Sections 801.402 (6) and (12) 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;...

(12) performs or prescribes unnecessary or unauthorized treatment.

6. Based on the above Conclusions of Law, 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.

.... (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.

7. Based on the above Conclusions of Law, Respondent may be disciplined in the manner set out in Section 801.451, IMPOSITION OF ADMINISTRATIVE PENALTY, of the Veterinary Licensing Act, which authorizes an administrative penalty for violations of the Act and Board rules.

8. Based on the above Conclusions of Law, Respondent may be disciplined in the manner set out in Section 801.408, INFORMAL PROCEEDINGS, of the Veterinary Licensing Act, which authorizes the Board to order the license holder to refund an amount not to exceed the amount a client paid to the license holder.

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 receive an FORMAL REPRIMAND.

The Board further ORDERS that the license of Respondent is SUSPENDED for TWO YEARS from the date the Board adopts this Order. However, the suspension is STAYED AFTER one week of active suspension from the date that the Board approves this Order.

The Board further ORDERS that Respondent pay, within forty-five (45) days of the date the Board approves this Order, an administrative penalty in the amount of ONE THOUSAND, FIVE HUNDRED DOLLARS (\$1,500.00). If Respondent fails to pay the administrative penalty within forty-five (45) days of the date the Board approves this Order, enforcement action will be taken. Further, if Respondent fails to pay the administrative penalty within 45 days of the date that the Board approves this Agreed Order, the Board may apply any payment to the Board to renew a license to pay any outstanding administrative fee owed to the Board.

The Board further ORDERS that Respondent pay, within forty-five (45) days of the date of the date the Board approves this Order, RESTITUTION of SIX HUNDRED AND TWENTY-SEVEN DOLLARS (\$627) to Mrs. Derham. If Respondent fails to pay the restitution within forty-five (45) days of the date of this Order, enforcement action will be taken.

In addition, the Board ORDERS that Respondent complete an additional THREE (3) hours of continuing education in ETHICS within one year of the date the Board approves this Order. Documentation of the completion of the continuing education penalty shall be received within forty-five (45) days after one year of the date the Board approves this Order. If Respondent fails to provide documentation of completion within forty-five (45) days of one year of the date the Board approves this Order, Respondent's license may be suspended until the continuing education penalty 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 Agreed 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 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. 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.

Signature page follows.

I, STEVEN GARNER, 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.

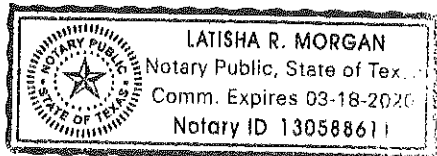
[Signature]
STEVEN GARNER, D.V.M.

11-15-2016
DATE

STATE OF TEXAS §
COUNTY OF Collin §

BEFORE ME, on this day, personally appeared STEVEN GARNER, 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 15 day of Nov, 2016.



[Signature]
Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 8 December, 2016

[Signature]
Roland Lenarduzzi, D.V.M., Board President