

DOCKETED COMPLAINT NO. 1988-10 (Amended)

TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS		TEXAS VETERINARY MEDICAL LICENSE NO. 2194
vs.		1987 RENEWAL CERTIFICATE
ROBERT MALVERN HARBEN, D.V.M.		NUMBER 2299

FINDINGS, CONCLUSIONS AND ORDERS OF THE BOARD

On the 4th day of February, 1988, the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS, being in regular meeting at the Westin Hotel, El Paso El Paso County, Texas, such meeting being called for the purpose of hearing and considering the above numbered and entitled complaint as well as for consideration of other Board business, and the above entitled and numbered complaint having been previously scheduled for hearing and Defendant, the said ROBERT M. HARBEN, D.V.M., having been duly notified and the following members of the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS being present to-wit:

DR. W. L. "DUB" ANDERSON, President	of Addison, TX
MR. JIM F. HUMPHREY, Vice-President	of Henrietta, TX
DR. FRED K. SOIFER, Secretary	of Houston, TX
DR. LARRY M. DUBUISSON, Member	of Weslaco, TX
MRS. OLIVIA R. EUDALY, Member	of Crowley, TX
MR. MIKE LEVI, Member	of Spicewood, TX
DR. ROBERT D. LEWIS, Member	of Elgin, TX
DR. MARY E. MAINSTER, Member	of San Antonio, TX
DR. EDWARD S. MURRAY, Member	of Spur, TX

At 9:00 a.m., the appointed hour, the President of the Board, Dr. W. L. "Dub" Anderson ordered the case to proceed at which time it was ascertained that Robert M. Harben, D.V.M. was present in person and represented by Mr. Bob Armstrong; the Board then proceeded and on the same day, February 4, 1988, all of the above members of said Board being present and participating with the exception of the Secretary of the Board, makes the following findings to-wit:

FINDINGS OF FACT

I.

Robert M. Harben, D.V.M. is a doctor of veterinary medicine, licensed to practice veterinary medicine in the State of Texas under License Number 2194, 1987 Renewal Certificate Number 2299.

II.

Dr. Harben received notice of this hearing on or about January 19, 1988.

III.

The Respondent has failed to maintain, at his place of business, adequate drug records for RITALIN, aka Methylphenidate Hydrochloride, a Schedule II drug which was ordered on the following DEA Form 222:

<u>QUANTITY</u>	<u>STRENGTH</u>	<u>DATE OF ORDER</u>	<u>DATE SHIPPED</u>	<u>ORDER NO.</u>
1 x 100 tabs	20 mg.	Feb. 8, 1985	Feb. 8, 1985	R01605461
1 x 100 tabs	10 mg.	April 5, 1985	April 6, 1985	R01605464
1 x 100 tabs	20 mg.	May 17, 1986	Unknown	86006843
300 tablets				

IV.

Respondent has failed to maintain, at his place of business, adequate drug records on the following DEA Form 222 orders for NUMORPHAN, aka Oxymorphone Hydrochloride, a Schedule II drug:

<u>QUANTITY</u>	<u>STRENGTH</u>	<u>DATE OF ORDER</u>	<u>DATE OF SHIPMENT</u>	<u>ORDER NO.</u>
6 x 10 ml	1.5 mg.	Feb. 8, 1985	Feb. 8, 1985	R01605461
6 x 10 cc	1.5 mg	April 5, 1985	April 6, 1985	R01605464
5 x 10 cc	1.5 cc	Nov. 30, 1985	Nov. 30, 1985	R01605467
6 x 10 ml	1.5 mg	July 10, 1986	July 10, 1986	860068629
4 x 10 ml	1.6 mg.	Aug. 6, 1986	Unknown	860068630
6 x 10 cc	1.5 mg.	Aug. 39, 1986	Aug. 29, 1986	860068631
6 x 10 ml	1.5 mg.	Jan. 3, 1987	Jan. 3, 1987	860031670
4 x 6	5mg sup	June 16, 1985	June 16, 1985	R01605466
390 cc/ml & 24 suppositories				

V.

The Respondent has failed to maintain, at his place of business, adequate records for DILAUDID, aka Hydromorphone Hydrochloride, a Schedule II drug which was ordered on the following DEA Form 222:

<u>QUANTITY</u>	<u>STRENGTH</u>	<u>DATE OF ORDER</u>	<u>DATE SHIPPED</u>	<u>ORDER NO.</u>
1 x 100	4 mg.	May 17, 1986	Unknown	860068643

VI.

The Respondent failed to utilize Triplicate prescriptions when dispensing the controlled substances listed in Findings III, IV and V as required by Article 4476-15, V.A.C.S., the Texas Controlled Substances Act, Section 309.

VII.

The Respondent failed to maintain adequate patient records to substantiate use of the controlled substances described in Findings III, IV and V of this complaint.

CONCLUSIONS OF LAW

I.

The Respondent's failure to maintain records on the controlled substances listed in Findings III, IV and V constitutes a violation of Article 7465a, Section 7(b) of the Veterinary Practice Act which states:

Article 7465a, Section 7(b) - Veterinary Practice Act

The Board may require its licensees to maintain a record-keeping system for certain controlled substances prescribed by the Board that includes the quantities and date of purchase, quantities and date dispensed, quantities and date administered, balance on hand, the name and address of the client and patient receiving the drugs, and the reason for dispensing or administering the drugs to such patient. The records are subject to review by law enforcement agencies and by representatives of the Board. A failure to keep such records shall be grounds for revoking, cancelling, suspending, or probating the license of any practitioner of veterinary medicine.

II.

The Respondent's failure to maintain records at his place of business on the controlled substances listed in Findings III, IV and V constitutes a violation of Rule 30 of the Rules of Professional Conduct which states:

Rule No. 30

Texas veterinarians shall maintain at their place of business records of all drugs listed in Schedule II of 21 Code of Federal Regulation, Part 1300 to end, in their possession. These records shall be maintained for a minimum of five (5) years. The Board shall prescribe a form for keeping records of those Schedule II substances which shall contain the following information:

- A. Date of Acquisition
- B. Quantity Purchased
- C. Date Administered, Dispensed, or Prescribed
- D. Quantity Administered, Dispensed, or Prescribed
- E. Name of Client and Patient receiving Drug(s)
- F. Diagnosis
- G. Balance on Hand

III.

The Respondent's Failure to utilize Triplicate Prescriptions when dispensing or administering the controlled substances listed in Findings III, IV and V as required by Article 4476-15, V.A.C.S., the Controlled Substances Act, Section 309, constitutes a violation of the Veterinary Practice Act, Article 7465a, Section 14(c) which states:

Article 7465a, Section 14(c), Veterinary Licensing Act

" . . . the Board may revoke or suspend a license, place a person whose license has been suspended on probation or reprimand a licensee, . . . if it finds that an applicant or licensee:

(c) has engaged in dishonest or illegal practices in or connected with the practice of veterinary medicine.

IV.

The Respondent's failure to utilize Triplicate Prescriptions when dispensing or administering the controlled substances listed in Findings III, IV and V as required by Article 4476-15, V.A.C.S., the Controlled Substances Act, Section 309, constitutes a violation of the Rule 5 of the Rules of Professional Conduct states:

Rule 5

No veterinarian shall render any service of advice involving disloyalty to the law. A veterinarian must also observe and advise his client to observe the statute law.

V.

Dispensing or administering the Schedule II drugs listed in Findings III, IV and V without maintaining adequate patient records constitutes a violation of Rule 32, of the Rules of Professional Conduct which states:

Rule 32

Individual records will include, but are not limited to, identification of patient, patient history, including immunization records, dates of visits, x-rays, names and dosages of medications administered and/or dispensed, and other details as necessary to substantiate diagnosis and treatment.

Patient records shall be maintained for a period of three (3) years and are the responsibility and property of the employing veterinarian.

VI.

The Texas State Board of Veterinary Medical Examiners has grounds to take disciplinary action against Dr. Harben's veterinary license under the Texas Veterinary Licensing Act, Article 7465a, V.A.T.C.S., Section 7(b) and Sections 14(c) and (e) which state:

Article 7465a, Section 7(b), Veterinary Licensing Act

The Board may require its licensees to maintain a record-keeping system for certain controlled substances prescribed by the Board that includes the quantities and date of purchase, quantities and date dispensed, quantities and date administered, balance on hand, the name and address of the client and patient receiving the drugs, and the reason for dispensing or administering the drugs to such patient. The records are subject to review by law enforcement agencies and by representatives of the Board. A failure to keep such records shall be grounds for revoking, cancelling, suspending, or probating the license of any practitioner of veterinary medicine.

Article 7465a, Section 14(c) and (e), Veterinary Licensing Act

" . . . the Board may revoke or suspend a license, place a person whose license has been suspended on probation or reprimand a licensee, . . . if it finds that an applicant or licensee: (c) has engaged in dishonest or illegal practices in or connected with the practice of veterinary medicine; (e) has engaged in practices or conduct in connection with the practice of veterinary medicine which are violative of the standards of professional conduct as duly promulgated by the Board in accordance with the law."

ORDERS

Dr. Harben denies the allegations set forth in the complaint, but will not contest them in order to effect this settlement. Dr. Harben understands that by so stating, he is not admitting the truth of the allegations, but is merely agreeing that the Board may enter an order approving the Negotiated Settlement without the necessity of receiving evidence in support thereof. All parties agree that nothing herein contained is an admission of guilt and that the settlement is a means of resolving the disputes arising as a result of Docketed Complaint No. 1988-10. A majority of the Board voted to accept the Negotiated Settlement (attached) and Dr. Harben is to surrender his Controlled Substances Certificates (DEA & DPS) to be reinstated at the discretion of the Board. In addition, Dr. Harben is to take and pass the State Board Jurisprudence Examination prior to reinstatement of his Controlled Substances Certificates and pay a civil penalty of \$500.00. Further,

Dr. Harben is to obtain 15 hours of continuing education within one year of the Negotiated Settlement and abide by the laws and rules of the State of Texas as they pertain to the practice of veterinary medicine.

TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS
1946 South IH-35, Box 113
Austin, Texas 78745

DOCKET NUMBER 1988-10
ROBERT MALVERN HARBEN, D.V.M.
LICENSE NUMBER: ~~2191~~ 2191

NEGOTIATED SETTLEMENT

This negotiated settlement has been entered by agreement between Dr. Harben, his attorney Mr. Robert Armstrong, the Texas State Board of Veterinary Medical Examiners staff in concurrence with the Board Secretary. It is presented to the Board as a recommendation only. If the Board elects to reject or amend this negotiated settlement the defendant, Dr. Harben, will be granted a continuance at his option.

Dr. Harben denies the allegations set forth in the complaint but will not contest them in order to effect this settlement. He understands that by so stating, he is not admitting the truth of the allegations, but is merely agreeing that the Board may enter an order approving this negotiated settlement without the necessity of receiving evidence in support thereof. All parties agree that nothing here in contained is an admission of guilt and that this settlement is a means of resolving the disputes arising as a result of Docketed Complaint # 1988-10.

SUMMARY OF CHARGES:

Failure to maintain adequate records at his place of business for controlled substances and failure to utilize Triplicate Prescriptions when dispensing and/or administering Controlled Substances.

RECOMMENDED DISCIPLINARY ACTION:

1. Surrender Controlled Substances Certificates to be reinstated at the discretion of the Board.
2. Take and pass the State Board Jurisprudence Examination prior to reinstatement of Controlled Substances Certificates.
3. Pay a civil penalty of \$500.00.

CONDITIONS:

1. Obtain 15 hours of continuing education within one year of this Agreement.
2. Abide by the laws and rules of the State of Texas as they pertain to the practice of veterinary medicine.

Robert M. Harben
ROBERT MALVERN HARBEN, D.V.M.

Donald B. Wilson
Donald B. Wilson, Executive Director
TEXAS BOARD OF VETERINARY
MEDICAL EXAMINERS

R. Armstrong
Witness

DOCKETED COMPLAINT NO. 1988-10

TEXAS STATE BOARD OF VETERINARY | TEXAS VETERINARY MEDICAL
MEDICAL EXAMINERS | LICENSE NO. 2194
vs. | 1987 RENEWAL CERTIFICATE
ROBERT MALVERN HARBEN, D.V.M. | NUMBER 2299

COMPLAINT AFFIDAVIT FORM

BEFORE ME, the undersigned authority, a Notary Public in and for Texas, on this day personally appeared THOMAS CHESHIRE who after being duly sworn, did depose and say:

"I, THOMAS CHESHIRE being an employee of the Texas Board of Veterinary Medical Examiners, did in the course of such employment, make certain investigations into the professional conduct of one ROBERT M. HARBEN, D.V.M., 4100 Siete Leguas, El Paso, El Paso County, Texas, Texas Veterinary License Number 2194, 1987 Renewal Certificate Number 2299, a practitioner of veterinary medicine in the State of Texas. As an employee of the Texas Board of Veterinary Medical Examiners, I, THOMAS CHESHIRE, do hereby present the following complaint against ROBERT M. HARBEN, D.V.M., who is hereinafter called Respondent.

I.

Respondent has failed to maintain, at his place of business, adequate drug records for RITALIN, aka Methylphenidate Hydrochloride, a Schedule II drug which was ordered on the following DEA Form 222:

<u>QUANTITY</u>	<u>STRENGTH</u>	<u>DATE OF ORDER</u>	<u>DATE SHIPPED</u>	<u>ORDER NO.</u>
1 x 100 tabs	20 mg.	Feb. 8, 1985	Feb. 8, 1985	R01605461
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6 x 10 cc	1.5 mg	April 5, 1985	April 6, 1985	R01605464

<u>QUANTITY</u>	<u>STRENGTH</u>	<u>DATE OF ORDER</u>	<u>DATE OF SHIPMENT</u>	<u>ORDER NO.</u>
5 x 10 cc	1.5 cc	Nov. 30, 1985	Nov. 30, 1985	R01605467
6 x 10 ml	1.5 mg	July 10, 1986	July 10, 1986	860068629
4 x 10 ml	1.6 mg.	Aug. 6, 1986	Unknown	860068630
6 x 10 cc	1.5 mg.	Aug. 39, 1986	Aug. 29, 1986	860068631
6 x 10 ml	1.5 mg.	Jan. 3, 1987	Jan. 3, 1987	860031670
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390 cc/ml & 24 suppositories				

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Respondent has failed to maintain, at his place of business, adequate records for DILAUDID, aka Hydromorphone Hydrochloride, a Schedule II drug which was ordered on the following DEA Form 222:

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1 x 100	4 mg.	May 17, 1986	Unknown	860068643

IV.

Respondent failed to utilize Triplicate prescriptions when dispensing the controlled substances listed in Paragraphs I, II, and III as required by Article 4476-15, V.A.C.S., the Texas Controlled Substances Act, Section 309.

V.

Respondent failed to maintain adequate patient records to substantiate use of the controlled substances described in Paragraphs I, II, and III of this complaint.

VI.

Delete
Respondent dispensed and/or administered Schedule II drugs at Sunland Park or Ruidosa Downs Race Tracks in New Mexico. Respondent does not have a DEA Certificate with a registered address for either of these facilities as required by the Code of Federal Regulations, Part 1300, paragraph 1301.23(a)(b)(3).

VII.

Respondent's failure to maintain records on the controlled substances listed in Paragraphs I, II, and III constitutes a violation of Article 7465a, Section 7(b) of the Veterinary Practice Act which states:

Article 7465a, Section 7(b) - Veterinary Practice Act

The Board may require its licensees to maintain a record-keeping system for certain controlled substances prescribed by the Board that includes the quantities and date of purchase, quantities and date dispensed, quantities and date administered, balance on hand, the name and address of the client and patient receiving the drugs, and the reason for dispensing or administering the drugs to such patient. The records are subject to review by law enforcement agencies and by representatives of the Board. A failure to keep such records shall be grounds for revoking, cancelling, suspending, or probating the license of any practitioner of veterinary medicine.

VIII.

Respondent's failure to maintain records at his place of business on the controlled substances listed in Paragraphs I, II, and III constitutes a violation of Rule 30 of the Rules of Professional Conduct which states:

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- C. Date Administered, Dispensed, or Prescribed
- D. Quantity Administered, Dispensed, or Prescribed
- E. Name of Client and Patient receiving Drug(s)
- F. Diagnosis
- G. Balance on Hand

IX.

Failure to utilize Triplicate Prescriptions when dispensing or administering the controlled substances listed in Paragraphs I, II, and III as required by Article 4476-15, V.A.C.S., the Controlled Substances Act, Section 309, constitutes a violation of the Veterinary Practice Act, Article 7465a, Section 14(c) which states:

Article 7465a, Section 14(c), Veterinary Licensing Act

" . . . the Board may revoke or suspend a license, place a person whose license has been suspended on probation or reprimand a licensee, . . . if it finds that an applicant or licensee:

(c) has engaged in dishonest or illegal practices in or connected with the practice of veterinary medicine.

X.

Failure to utilize Triplicate Prescriptions when dispensing or administering the controlled substances listed in Paragraphs I, II, and III as required by Article 4476-15, V.A.C.S., the Controlled Substances Act, Section 309, constitutes a violation of the Rule 5 of the Rules of Professional Conduct states:

Rule 5

No veterinarian shall render any service of advice involving disloyalty to the law. A veterinarian must also observe and advise his client to observe the statute law.

XI.

Dispensing or administering the Schedule II drugs listed in Paragraphs I, II, and III without maintaining adequate patient records constitutes a violation of Rule 32, of the Rules of Professional Conduct which states:

Rule 32

Individual records will include, but are not limited to, identification of patient, patient history, including immunization records, dates of visits, x-rays, names and dosages of medications administered and/or dispensed, and other details as necessary to substantiate diagnosis and treatment.

Patient records shall be maintained for a period of three (3) years and are the responsibility and property of the employing veterinarian.

XII.

alike
Respondents failure to maintain a registered address with DEA for dispensing and/or administering Schedule II drugs in New Mexico is in violation of the Code of Federal Regulations, Foods and Drugs, Part 1301.23(a)(b)(3) and therefore in violation of Article 7465a, Veterinary Practice Act, Section 14(c) which states in part:

Article 7465a, Section 14(c), Veterinary Licensing Act

" . . . the Board may revoke or suspend a license, place a person whose license has been suspended on probation or reprimand a licensee, . . . if it finds that an applicant or licensee:

(c) has engaged in dishonest or illegal practices in or connected with the practice of veterinary medicine;

delete

XIII.

Respondents failure to maintain a registered address with DEA for dispensing and/or administering Schedule II drugs in New Mexico is in violation of the Code of Federal Regulations, Foods and Drugs, Part 1301.23(a)(b)(3) and therefore in violation of Rule 5 of the Rules of Professional Conduct which states:

Rule 5

No veterinarian shall render any service of advice involving disloyalty to the law. A veterinarian must also observe and advise his client to observe the statute law.

XIV.

The Texas State Board of Veterinary Medical Examiners has grounds to take disciplinary action against Dr. Harben's veterinary license under the Texas Veterinary Licensing Act, Article 7465a, V.A.T.C.S., Section 7(b) and Sections 14(c) and (e) which state:

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Article 7465a, Section 14(c) and (e), Veterinary Licensing Act

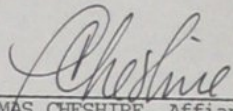
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(c) has engaged in dishonest or illegal practices in or connected with the practice of veterinary medicine;

(e) has engaged in practices or conduct in connection with the practice of veterinary medicine which are violative of the standards of professional conduct as duly promulgated by the Board in accordance with the law."

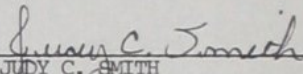
The foregoing complaint is submitted to the Secretary of the Texas Board of Veterinary Medical Examiners on this the 18th day of December, 1987.

Further, Affiant sayeth not.



THOMAS CHESHIRE, Affiant

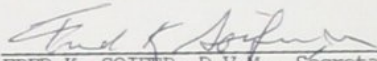
SUBSCRIBED and SWORN TO before me by the said THOMAS CHESHIRE, this the 18th day of December, 1987.



JUDY C. SMITH
Notary Public in and for Texas

My Commission Expires: September 13, 1989.

The foregoing Complaint is hereby filed and docketed with the Texas State Board of Veterinary Medical Examiners and styled Texas State Board of Veterinary Medical Examiners vs. ROBERT M. HARBEN, D.V.M. under Docket Number 1988-10, this the 21st day of December, 1987.



FRED K. SOIFER, D.V.M., Secretary
Texas State Board of Veterinary Medical
Examiners