

DOCKET NO. 2003-32

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

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TEXAS STATE BOARD OF
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 Thomas Hofstetter, D.V.M ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code, and Board Rule 575.27, an informal conference was held on August 18, 2003. The Respondent attended without counsel. 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 6, 2002, Ms. Vickie Bomer, Rockport, Texas, presented her Scotch terrier "Tully" to her veterinarian, Dana Mercer, D.V.M. Blood tests revealed elevated liver enzymes. Dr. Mercer placed the dog on IV's. On June 7, 2002, when the dog's condition worsened, Dr. Mercer suggested that Ms. Bomer take him to the Gulf Coast Veterinary Specialists (GCVS) in Houston, Texas. Ms. Bomer agreed and Dr. Mercer contacted GCVS and was told to take the dog to an emergency clinic on the lower level of the building that housed GCVS.
2. On June 7, 2002, the Bomers transported "Tully" to the Animal Emergency Clinic, a facility not affiliated with GCVS. The dog was examined by the attending veterinarian, Thomas Hofstetter, D.V.M. Dr. Hofstetter told the Bomers that he would take a radiograph and conduct blood work. After about an hour and fifteen minutes, Dr. Hofstetter showed the Bomers a syringe of liquid with a slight red tint and said that the dog's stomach was full of blood. Dr. Hofstetter then produced an x-ray which he claimed showed the presence of a huge tumor that extended from his liver to his spleen. He then said that there were several spots on and around the dog's liver and said that surgery would determine if the spots represented metastasis. Dr. Hofstetter then stated that the dog was "bleeding out" and that the dog needed a blood

transfusion. Although this information seemed contrary to the conclusions of Dr. Mercer that the dog's problems related to his liver, the Bomers agreed to leave the dog overnight and have the transfusion done.

3. Dr. Hofstetter's records for "Tully" noted the presence of elevated liver enzymes on Dr. Mercer's previous blood work and also noted from the radiology report that the liver appeared to be enlarged. The radiology report did not mention the presence of a tumor but noted the presence of an enlarged spleen. Dr. Hofstetter was unable to produce a copy of the radiograph at the informal hearing.

4. At 8:00 a.m. the next day (June 8, 2002), Dr. Hofstetter said that "Tully" was doing better. Dr. Hofstetter referred to the tumor as a huge blood tumor that could rupture at any time and kill "Tully." He further stated that he had seen "maybe" two spots of cancer for sure. The dog was then transported to GCVS where he was examined by Jennifer Garcia, D.V.M. The Bomers told Dr. Garcia about the dog's diagnosis by Dr. Hofstetter. Dr. Garcia then ordered an ultrasound which revealed that no tumor was present. Dr. Garcia said that the primary problem was an enlarged liver, which basically agreed with the diagnosis of Dr. Mercer.

5. "Tully's" treatment for hepatic disease continued at GCVS and then at Dr. Mercer's clinic, but "Tully" died on June 21, 2002.

6. The act and/or failures to act by Dr. Hofstetter specified in paragraphs 2 through 4, and more specifically, his diagnosis of a tumor in the patient that was later revealed to be non-existent; his failure to reveal to the client that the dog's primary problem related to liver disease; and his giving a transfusion to a patient who may not have needed it, 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 2 through 6, 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 2 through 6 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 Thomas Hofstetter, D.V.M., be OFFICALLY 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 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.

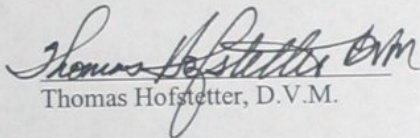
Respondent, by signing this Agreed Order, waives his right to a formal hearing and any right to

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, THOMAS HOFSTETTER, 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.


Thomas Hofstetter, D.V.M.

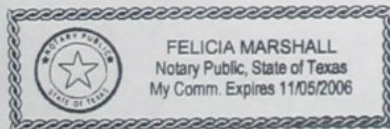
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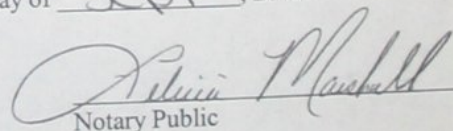
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STATE OF TEXAS §
COUNTY OF Harris §

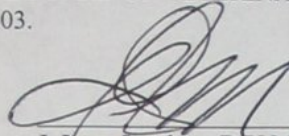
BEFORE ME, on this day, personally appeared THOMAS HOFSTETTER, D.V.M., known to me as the person whose name is subscribed to the foregoing document, and acknowledged to me that he executed the same for the purposes stated therein.

Given under the hand and seal of office this 22 day of Sept, 2003.




Notary Public

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

A handwritten signature in black ink, appearing to be 'J. Lynn Lawhon', written over a horizontal line.

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