



return him to the emergency clinic when his condition again worsened. The dog was too sick to return home until the next day.

3. On November 30<sup>th</sup>, Ms. Taylor-Flood telephoned Dr. Kelly. Dr. Kelly stated that he did not give "Spike" the Benadryl treatment prior to administering the rabies vaccine. Dr. Kelly told Ms. Taylor-Flood that he pretreated the dog with a steroid, dexamethasone, instead. However, in his response letter to the Board dated January 16, 2003, Dr. Kelly stated that he did pretreat the dog with Benedryl, and the hand-written patient record furnished with the letter notes that Dr. Kelly pretreated the dog with Benadryl, 20 mg, and dexamethasone. Some of the conversation between Dr. Kelly and Ms. Taylor-Flood was tape recorded and a transcript was prepared from the tape.

### **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 3, Dr. Kelly has violated Rule 573.22, PROFESSIONAL STANDARD OF HUMANE TREATMENT, of the Board's Rules of Professional Conduct, which states that veterinarians shall 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 Conclusions of Law 1 through 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 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 R. J. Kelly, D.V.M., be FORMALLY REPRIMANDED.

The Board further ORDERS that R. J. Kelly, D.V.M., be assessed a CIVIL PENALTY of ONE THOUSAND DOLLARS (\$1,000.00), 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 herein set forth, 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, R. J. KELLY, 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.

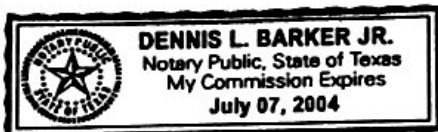
  
R. J. Kelly, D.V.M.

2-9-2004  
Date

STATE OF TEXAS §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, on this day, personally appeared R. J. Kelly, 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 9 day of FEBRUARY, 2004.



  
Notary Public

SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

  
Dee A. Pederson, D.V.M., President