

DOCKET NO. 2004-13

IN THE MATTER OF § TEXAS STATE BOARD OF
THE LICENSE OF §
R. J. KELLY, D.V.M. § VETERINARY MEDICAL EXAMINERS

AGREED ORDER

On this the 17th day of June, 2004, came on to be considered by the Texas State Board of Veterinary Medical Examiners ("Board") the matter of the license of R. J. Kelly, D.V. M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on April 13, 2004. 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 September 10, 2002, Robin Maca presented "Bizi" to the Northwest Hills Pet Clinic, Austin, Texas, for examination of a limp that the dog had developed in her right front leg. Yvonna Ballard, D.V.M., examined the dog and noted lameness in the leg and swelling of the anterior carpus. Radiographs were taken and reviewed by Dr. Ballard and Dr. Kelly. Dr. Kelly applied a metasplint and bandage enclosing the entire leg. Instructions given to Ms. Maca upon discharge of the dog were to check the splint weekly and for the splint to stay in place for 2-3 weeks.
2. Ms. Maca became increasingly concerned about the "cast" on the dog's leg. She had begun to notice bad odors emanating from the splint. It appeared that the splint was too tight and the dog was becoming increasingly uncomfortable. On September 18, 2002, Ms. Maca took the dog to the clinic, where Marilyn Maltby, D.V.M., apparently inspected the splint and noted in the patient records, "Looks good."
3. During the next few days, the odor became more foul, and on September 23, 2002, Ms. Maca returned the dog to the clinic to have his teeth cleaned and to check a swelling on the dog's face.

The clinic discharged the dog without any notation in the records as to the condition of the leg and splint. The splint and bandage were never changed and re-applied by the clinic during the patient's visits to Dr. Kelly's clinic.

4. On September 30, 2002, Ms. Maca was able to see down into the cast and observed bone and blood. She immediately took "Bizi" to the Animal Emergency Clinic Northwest Austin. Erica Stremlau, D.V.M., examined the splint. She noticed soft tissue swelling and several pressure sores complicated by the splint. She also noticed a "foul-smelling discharge" in the bandage around the carpal region. Dr. Stremlau took radiographs, treated the wounds, applied new bandages, and advised Ms. Maca to have the leg looked at the next day by her regular veterinarian.

5. On October 1, 2002, Ms. Maca presented "Bizi" to Susan Culp, D.V.M., at the Griffith Small Animal Hospital, Austin, Texas. She changed the bandages and began hydrotherapy, and this continued on a regular basis for the rest of October in order to heal the pressure sores. Ms. Maca continued hydrotherapy treatments at home, and on January 24, 2003, the Macas reported to Dr. Culp that the leg wounds had healed completely. "Bizi" died on May 6, 2003 from metastatic cancer.

6. Based on Finding of Fact 3, the clinic's discharge of the dog on September 23, 2003, without any notation of the condition of the leg and splint, does 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 community in Austin, 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 3 and 6, 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:

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.

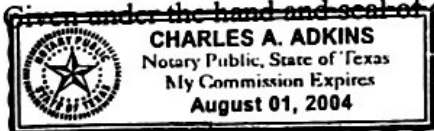
6/10/2004


Date

STATE OF TEXAS §
COUNTY OF TRAVIS §

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 10th day of JUNE, 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