

DOCKET NO. 2012-105

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

AGREED ORDER

On this the 22 day of October, 2013, came to be considered by the Texas Board of Veterinary Medical Examiners (Board) the matter of the license of Shelby Key, D.V.M. (Respondent). Pursuant to Section 801.408, Texas Occupations Code, and Board Rule 575.29, an informal conference was held on July 23, 2012. Respondent attended the informal conference and was represented by counsel, Keith O'Connell. 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 her understanding of the alleged violations and the adequacy and sufficiency of the notice provided to her.

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, Shelby Key, D.V.M. of Kerrville, Texas, holds Texas veterinary License 10821.
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. In May and June 2010, Respondent served as Medical Director of the Freeman-Fritts Veterinary Clinic & Shelter ("Freeman-Fritts") in Kerrville, Texas. During that time,

Agreed Order 2012-105
Shelby Key, D.V.M.

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Page 1

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Respondent and Lawrence Koym, D.V.M. were the only veterinarians treating animals at Freeman-Fritts.

4. On May 20, 2010, a female Boston Terrier puppy named "Sassi" arrived at Freeman-Fritts, surrendered by her owners.

5. On May 25, 2010, the veterinary patient records for "Sassi" from Freeman-Fritts show that "Sassi" received a rabies vaccine. The records do not contain any details to substantiate that an examination of "Sassi" occurred prior to the administration of the vaccine.

6. The rabies vaccine certificate for the vaccine administered to "Sassi" on May 25, 2010 states that Respondent administered the vaccine, and the certificate bears Respondent's signature.

7. At the informal conference, Respondent stated that "Sassi" had been vaccinated by a veterinary technician in anticipation of a quick adoption without Respondent performing an examination.

8. On June 4, 2010, Gwendolyn Katzenburger adopted "Sassi" from the Freeman-Fritts Animal Shelter.

9. In her response to the Board, Respondent stated that she had not seen "Sassi" until after she was adopted by Ms. Katzenburger. The first time Respondent examined "Sassi" was at a post-adoption appointment on June 11, 2010, when Respondent administered a distemper vaccine to "Sassi".

10. On the afternoon of June 4, 2010, Ms. Katzenburger presented "Sassi" to Scott Chapman, D.V.M. at Town and Country Animal Hospital in Kerrville, Texas.

11. Upon auscultating "Sassi," Dr. Chapman diagnosed a very prominent heart murmur, indicating a significant hole in "Sassi's" heart.

12. On June 10, 2010, Ms. Katzenburger presented "Sassi" to the Veterinary Imaging Center of South Texas for an echocardiogram. Andrea Voges, D.V.M. performed the echocardiogram, and diagnosed a ventricular septal defect in "Sassi's" heart.

13. Under Rule of Professional Conduct 573.71, EMPLOYMENT BY NONPROFIT OR MUNICIPAL CORPORATIONS, a veterinarian employed by, or contracted to, nonprofit or municipal corporations shall be liable for any violations of the Act or rules occurring as a result of the practice of veterinary medicine or any veterinary services provided by the nonprofit or municipal corporation, including those occurring due to the acts or omissions of non-licensed employees of, or volunteers for, the nonprofit or municipal corporation.

14. Under Texas Health and Safety Code Section 826.023 a rabies vaccine must be administered by a veterinarian or under the direct supervision of a veterinarian.

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 Conclusions of Law 1 through 15, Respondent violated Rule of Professional Conduct 573.22, PROFESSIONAL STANDARD OF HUMANE TREATMENT, by failing to perform an examination of "Sassi" before a rabies vaccination.
3. Based on paragraphs 1 through 15, Respondent violated Rule of Professional Conduct 573.10, SUPERVISION OF NON-LICENSED EMPLOYEES, by allowing a veterinary technician to perform a diagnostic examination prior to administering vaccines.
4. Based on paragraphs 1 through 15, Respondent violated Rule of Professional Conduct 573.4, ADHERENCE TO LAW, which prohibits a veterinarian from violating the law in connection with the practice of veterinary medicine by failing to either administer or directly supervise the administration of a rabies vaccine in accordance with Texas Health and Safety Code Section 826.023.
5. Based on paragraphs 1 through 15, Respondent violated section 801.351 of the Veterinary Licensing Act, Occupations Code, which prohibits a veterinarian from practicing veterinary medicine without first establishing a veterinarian-client-patient relationship by examining the animal.
6. Based on Findings of Fact 1 through 15 and Conclusions of Law 1 through 5, Respondent has violated Sections 801.402 (4) and (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:...

(4) engages in...illegal practices in, or connected with, the practice of veterinary medicine...

(6) engages in practices or conduct that violates the board's rules of professional conduct.

7. Based on Conclusions of Law 1 through 6, 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: (a)

- (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.

8. Based on Conclusions of Law 1 through 6, 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.

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 a **FORMAL REPRIMAND**,

The Board further **ORDERS** that Respondent shall take and pass the Texas veterinary jurisprudence examination within 90 days from the date of this Agreed Order.

The Board further **ORDERS** that Respondent shall submit written protocol for veterinary treatment at Freeman-Fritts that provides for an examination of every animal by a veterinarian no more than one day prior to rabies vaccination and no more than one day prior to surgery.

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 her understanding of the Agreed Order, the notice, and Findings of Fact and Conclusions of Law set forth herein, and agrees that she 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 her right to a formal hearing and any right to seek judicial review of this Agreed Order. Respondent acknowledges that she 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.

I, SHELBY KEY, 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.

Shelby D.V.M.
SHELBY KEY, D.V.M.

9-25-13
DATE

STATE OF TEXAS §
COUNTY OF Kerr §

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

Given under the hand and seal of office this 25th day of Sept., 2013



Linda Dahlia Chavez
Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 22 October, 2013.

Bud E. Alldredge, Jr.
Bud E. Alldredge, Jr., D.V.M., President