

4. Respondent signed two agreements with Lap of Love on February 1, 2012, and December 11, 2013.

5. The February 2012 agreement between Respondent and Lap of Love includes the following terms:

- a. Respondent "must answer at least 50% of all calls received between the hours of 8:00 a.m. to 6:00 p.m.;"
- b. Respondent "will physically visit or attend a minimum of 2 local pet-related events per year;"
- c. Respondent "will charge the clients fees according to the Fee Schedule established by Operator (Lap of Love)"
- d. Lap of Love will pay Respondent according to a compensation schedule created by Lap of Love;
- e. Lap of Love must approve all holiday and emergency fees; and
- f. Fees cannot be altered without Lap of Love approval;

6. The December 2013 agreement between Respondent and Lap of Love includes the following terms:

- a. Respondent must pay 44% of each closed "Appointment Fee" and 30% of closed "Other Fees;"
- b. Lap of Love "may designate maximum or minimum retail prices for the Products or Services you offer and sell" and Respondent agreed "to only sell the Products and Services or other items at the Business that we have previously approved for sale (i.e., the Products and Services) and no others;"
- c. Respondent "must attend as an exhibitor 3 pet events within the first 12 calendar months following the execution of this Agreement;"
- d. Respondent "must attend as an exhibitor 3 pet events during each successive 12 month period following the first anniversary date of this Agreement;"
- e. Respondent may only miss no more than 50% of calls in one month;
- f. Respondent must have at least 21 appointments during the first six full calendar months; and

- g. The agreement defined an appointment fee as the Gross Sales the veterinarian derived from performing an appointment (identified as euthanasia, consultation, hospice, re-check and body pick-up in Exhibit C of the agreement).

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 6, Respondent has violated Rule 573.37 BAN ON USE OF SOLICITORS, which states that a licensee shall not participate in arrangements which share the proceeds from professional services with individuals who may have been instrumental in her having been selected to perform the particular services.
3. Based on Conclusions of Law 1 through 2, Respondent has violated Section 801.402 (6) and (11) 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; ...

(11) pays or receives a kickback, rebate, bonus, or other remuneration for treating an animal or for referring a client to another provider of veterinary or equine dental services or goods.

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: (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.

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 ORDERS that Respondent must take and pass the Texas jurisprudence examination within 90 days from the date of this Agreed 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 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, HOLLY KIERNICKI, 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.

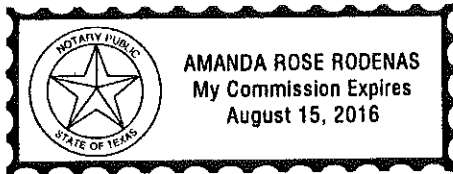
Holly Kiernicki, DVM
HOLLY KIERNICKI, D.V.M.

8-18-14
DATE

STATE OF TEXAS
COUNTY OF Cottman (H&S)
Denton

BEFORE ME, on this day, personally appeared HOLLY KIERNICKI, 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 18th day of August, 2014.



Amanda Rose Rodenas
Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 21 October, 2014.

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

Received
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Texas State Board
of Veterinary Medical Examiners