

DOCKET NO. 2013-46

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

AGREED ORDER

On this the 16 day of July, 2013, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of Darrell Kinnard, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code, and Board Rule 575.29, an informal conference was held on January 9, 2013. Respondent attended the informal conference, and was represented by counsel, Donald Ferrill, D.V.M. 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. Respondent, Darrell Kinnard, D.V.M. of Mabank, Texas, holds Texas veterinary license 3595.
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. On May 26, 2010, Respondent entered into an Agreement for Pretrial Diversion with the United States Attorney as a result of Respondent having violated 7 U.S.C. §8313 by submitting

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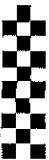
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falsified or misleading brucellosis vaccination records to the United States Department of Agriculture ("USDA").

4. The Agreement for Pretrial Diversion that Respondent signed stated, "you acknowledge it is your responsibility to ensure that the brucellosis vaccinations records you sign and submit to the [USDA] are accurate," "you acknowledge that brucellosis vaccination records submitted between January 2007 and March 2008 contained material misrepresentation in that the records reflected an incorrect expiration date for the vaccines used," and "you, as the federally accredited veterinarian charged with the responsibility for properly vaccinating cattle against brucellosis and accurately recording it, accept responsibility for the misrepresentations on the vaccination records."

5. According to the USDA's investigation findings, these actions by Respondent were violations of 9 CFR §§161.3(b), (d), (h), (i), and (j), by submitting brucellosis vaccination records that contained misrepresentations.

6. According to Respondent, the misstatements of the serial lot numbers and expiration dates on the brucellosis forms occurred due to clerical errors by his staff. Respondent also stated that he checked "reduced-dose" due to confusion caused by a statement from a veterinarian on staff with the Texas Animal Health Commission regarding the correct dosage for a new vaccine. Respondent stated that while he had submitted brucellosis vaccination records to the USDA with incorrect information, he had not made the misstatements with the intent to mislead or deceive, a mitigating circumstance.

7. In March 2008, Respondent failed to renew his Texas veterinary license in a timely manner and had an expired license from March 2, 2008 to March 21, 2008. Respondent also signed four vaccination records and submitted them to the USDA between March 2, 2008 and March 20, 2008, while his Texas veterinary license was in expired status.

8. On September 16, 2012, the Board sent a letter to Respondent, informing him:

The Board has received information that indicates that you entered into an Agreement for Pretrial Diversion with the United States Attorney in reference to an offense against the United States between January 2, 2007 and March 24, 2008. The information indicates that you submitted brucellosis vaccination records to the [USDA] that misrepresented the expiration dates for the vaccines. The information indicates that you have been a Federally accredited veterinarian since 1974 and, thus, accredited to vaccinate cattle against brucellosis and submit accurate records reflecting the vaccination. The information indicates that you have acknowledged that brucellosis vaccination records that you submitted between January 2007 and March 2008 contained material misrepresentations... Please provide a response to the Board within twenty-one (21) days. Please provide any information and/or documents that you wish the Board to consider in

reference to this matter. Please provide copies of all associated documents and copies of all health certificates that contain misrepresentations.

9. In response, Respondent sent a letter to the Board that the Board received on October 3, 2012, in which Respondent wrote:

To the best of my knowledge, all brucellosis vaccination records that I have submitted to the [USDA] have accurately reflected the expiration dates for the vaccines... To the best of my knowledge, between January 2007 and March 2008, I have never submitted any brucellosis vaccination records that contained material misrepresentations.

10. Respondent did not provide the board with any documents, including the brucellosis vaccination records that contained the incorrect serial lot numbers and expiration dates.

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 8, Respondent violated Rule of Professional Conduct 573.4, ADHERENCE TO LAW, by violating 9 CFR §§161.3(b), (d), (h), (i), and (j), and 7 U.S.C. §8313, by submitting brucellosis vaccination records with incorrect information to the USDA.

3. Based on Findings of Fact 1, 2 and 9, Respondent violated Section 801.303(a) of the Veterinary Licensing Act, Occupations Code, by practicing veterinary medicine with an expired license.

4. Based on Findings of Fact 1 through 8 and 10 through 12, Respondent violated Rule of Professional Conduct 573.75, DUTY TO COOPERATE WITH BOARD, by failing to fully cooperate with a Board investigation, by denying knowledge of facts that he had already acknowledged when he signed a pretrial diversion agreement, and by failing to provide the Board with requested documents.

5. Based on Findings of Fact 1 through 12 and Conclusions of Law 1 through 4, 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 dishonest or illegal practices in, or connected with, the practice of veterinary medicine or the practice of equine dentistry;...

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

6. Based on Conclusions of Law 1 through 5, 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.

7. Based on Conclusions of Law 1 through 5, 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 ORDERS that Respondent pay, within 45 days of the date of this Order, an ADMINISTRATIVE PENALTY of FIVE HUNDRED DOLLARS (\$500.00). If Respondent fails to pay the administrative penalty within 45 days of the date of this Order, Respondent's license may be suspended until the penalty is paid, and any payment by the Respondent to the Board to renew his license will be applied toward the payment of any administrative fee owed to the Board, and further enforcement action may be taken.

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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.

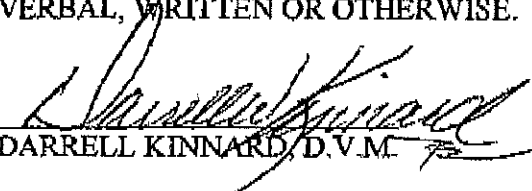
Respondent, by signing this Agreed Order, acknowledges his understanding of the Agreed Order, the notice, and Findings of Fact and Conclusions of Law set forth herein, and agrees that he will satisfactorily comply with the mandates of the Agreed Order in a timely manner or be subject to appropriate disciplinary 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 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, DARRELL KINNARD, 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.

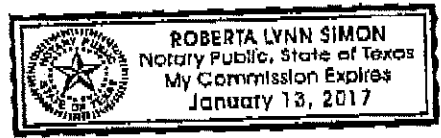

DARRELL KINNARD, D.V.M.

8-1-13
DATE

STATE OF TEXAS §
COUNTY OF Kaufman §

BEFORE ME, on this day, personally appeared Darrell Kinnard, 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 1 day of June, 2013



Roberta Lynn Simon
Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 16th July, 2013

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