

DOCKETED COMPLAINT NO. 1991-04

TEXAS STATE BOARD OF VETERINARY	()	TEXAS VETERINARY MEDICAL
MEDICAL EXAMINERS	()	LICENSE NO. 5509
vs.	()	1990 RENEWAL CERTIFICATE
DAN ROBERT KIRBY, D.V.M.	()	NUMBER 1159

FINDINGS, CONCLUSIONS AND ORDERS OF THE BOARD

On the 6th day of October, 1990, the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS, being in regular meeting at the Wyndham Hotel, 4140 Governor's Row, Austin, Travis County, Texas, such meeting being called for the purpose of hearing and considering the above numbered and entitled complaint as well as for consideration of other Board business, and the above entitled and numbered complaint having been previously scheduled for hearing and Defendant, the said DAN R. KIRBY, D.V.M., having been duly notified and the following members of the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS being present to-wit:

Dr. Fred K. Soifer, President	of Houston, TX
Dr. Robert D. Lewis, Vice President	of Elgin, TX
Dr. Mary E. Mainster, Secretary	of San Antonio, TX
Dr. Larry M. Dubuisson, Member	of Weslaco, TX
Ms. Olivia Eudaly, Member	of Fort Worth, TX
Dr. Alton F. Hopkins, Jr., Member	of Dallas, TX
Mr. Mike Levi, Member	of Spicewood TX
Dr. Guy A. Sheppard, Member	of San Angelo, TX
Mr. Clark S. Willingham, Member	of Dallas, TX

At the appointed hour, the President of the Board, DR. FRED K. SOIFER ordered the case to proceed at which time it was ascertained that DAN R. KIRBY, D.V.M. was present, and represented by Mr. Peter Susca, legal counsel; the Board then proceeded to hear the evidence presented by the State, and on the same day, October 6, 1990 all of the above members of said Board being present and participating with the exception of the Secretary of the Board, makes the following findings to-wit:

FINDINGS OF FACT

I.

DAN R. KIRBY, D.V.M. is a doctor of veterinary medicine, licensed to practice veterinary medicine in the State of Texas under License Number 5509, and 1990 Renewal Certificate Number 1159.

II.

Dr. Kirby received notice of this hearing on or about September 13, 1990.

III.

Respondent signed affidavits stating that he had no knowledge of a technician, Kenneth Harvey, an employee at the Pigott Animal Hospital performing any surgeries and denied observing any illegal practice of veterinary medicine at the Pigott Animal Hospital at any time or on any date. After the above dates, the Board staff secured evidence

indicating that the Respondent had full knowledge of the illegal activity when he signed the affidavits.

CONCLUSIONS OF LAW

I.

By deliberately and intentionally misrepresenting and concealing material facts in an official investigation, and by doing so, deceiving and betraying the public, Respondent has violated Rules 573.3, 573.5 and 573.7 of the Rules of Professional Conduct and the Texas Veterinary Licensing Act, V.A.T.S., Article 8890, (formerly Article 7465a) Section 14(a)(3) and (5) which state:

573.3 EXPOSURE OF CORRUPT OR DISHONEST CONDUCT

Veterinarians shall expose without fear of favor before the proper tribunal or the State Board of Veterinary Medical Examiners corrupt or dishonest conduct in the profession.

573.5 AVOIDANCE OF CORRUPTION OF OTHERS

A veterinarian shall not render any service or advice directed towards the corruption of any person or persons exercising a public office or private trust, or deception, or betrayal of the public.

573.7 NO ABUSE OF POSITION OR TRUST

Any veterinarian who uses present or past position, or office of trust, deliberately to create an individual professional advantage, or to coerce, or to deceive the public shall be in violation of the rules of professional conduct.

Article 8890, Sec. 14(a)

". . . the Board may revoke or suspend a license, impose a civil penalty, place a person whose license has been suspended on probation, or reprimand a license . . . if it finds that . . . a licensee:

(3) has engaged in dishonest or illegal practices in or connected with the practice of veterinary medicine;

(5) has engaged in practices or conduct in connection with the practice of veterinary medicine which are violative of the standards of professional conduct as duly promulgated by the Board in accordance with law;

II.

The Texas State Board of Veterinary Medical Examiners has grounds to take disciplinary action against Dr. Dan R. Kirby's Veterinary License under the Texas Veterinary Licensing Act, V.A.T.S., Article 8890, (formerly Article 7465a) Section 14(a)(3) and (5) which state:

Article 8890, Sec. 14(a)

". . . the Board may revoke or suspend a license, impose a civil penalty, place a person whose license has been suspended on probation, or reprimand a license . . . if it finds that . . . a licensee:

(3) has engaged in dishonest or illegal practices in or connected with the practice of veterinary medicine;

(5) has engaged in practices or conduct in connection with the practice of veterinary medicine which are violative of the standards of professional conduct as duly promulgated by the Board in accordance with law;

ORDERS

It is therefore ORDERED that DAN ROBERT KIRBY, D.V.M., issued License Number 5509 by the Texas Board of Veterinary Medical Examiners, be Officially Reprimanded and assessed a \$500.00 Civil Penalty.

Chadwick Bond
222-6000

The foregoing Findings and Orders of the Texas State Board of Veterinary Medical Examiners are ORDERED to be entered as the FINDINGS AND ORDERS of the Board, a quorum and a majority of the members of such Board being present and participating in such hearing, deliberations and decision, and such FINDINGS AND ORDERS are made on the 6th day October, 1990, in Austin, Travis County, Texas.

The Secretary of the Board is hereby ordered to prepare the Board's Findings and Orders in appropriate form and submit to the members of the Board for their signatures and to mail a copy of same to the Respondent at his last known address.

Executed this 6th day of October, 1990.

Fred K. Scifer, D.V.M.
Fred K. Scifer, D.V.M., President

10/6/90
Date

Robert D. Lewis, D.V.M.
Robert D. Lewis, D.V.M., Vice-President

10-6-90
Date

Mary E. Mainster, D.V.M.
Mary E. Mainster, D.V.M., Secretary

10/6/90
Date

Larry M. Dubuison, D.V.M.
Larry M. Dubuison, D.V.M., Member

10/6/90
Date

Mrs. Olivia R. Eudaly
Mrs. Olivia R. Eudaly, Member

10-5-90
Date

Alton F. Hopkins, Jr., D.V.M.
Alton F. Hopkins, Jr., D.V.M., Member

10-6-90
Date

Mr. Mike Levi
Mr. Mike Levi, Member

10/6/90
Date

Guy A. Sheppard, D.V.M.
Guy A. Sheppard, D.V.M., Member

10-6-90
Date

Mr. Clark S. Willingham
Mr. Clark S. Willingham, Member

10/6/90
Date

DOCKETED COMPLAINT NO. 1991-04

TEXAS STATE BOARD OF VETERINARY	()	TEXAS VETERINARY MEDICAL
MEDICAL EXAMINERS	()	LICENSE NO. 5509
vs.	()	1990 RENEWAL CERTIFICATE
DAN ROBERT KIRBY, D.V.M.	()	NUMBER 1159

COMPLAINT AFFIDAVIT FORM

BEFORE ME, the undersigned authority, a Notary Public in and for Texas, on this day personally appeared JOSEPH J. RIZZO, who after being duly sworn, did depose and say:

On or about June 13, 1989, Joseph J. Rizzo, being an employee of the Texas Board of Veterinary Medical Examiners, did in the course of such employment, make certain investigations into the professional conduct of one DAN ROBERT KIRBY, D.V.M., Pigott Animal Hospital, 2810 West Loop 410 South, San Antonio, Bexar County, Texas, Veterinary License Number 5509, 1990 Renewal Certificate Number 1159, a practitioner of veterinary medicine in the State of Texas. As an employee of the Texas Board of Veterinary Medical Examiners, I, Joseph J. Rizzo, do hereby present the following complaint against DAN ROBERT KIRBY, D.V.M., who is hereinafter called Respondent.

I.

Respondent signed sworn affidavits on March 1, 1990 and on April 25, 1990, stating that he had no knowledge of a technician, Kenneth Harvey, an employee at the Pigott Animal Hospital performing any surgeries and denied observing any illegal practice of veterinary medicine at the Pigott Animal hospital at any time or on any date. After the above dates, the Board staff secured evidence indicating that the Respondent had full knowledge of the illegal activity when he signed the affidavits.

II.

By deliberately and intentionally misrepresenting and concealing material facts in an official investigation, and by doing so, deceiving and betraying the public, Respondent has violated Rules 573.3, 573.5 and 573.7 of the Rules of Professional Conduct and the Texas Veterinary Licensing Act, V.A.T.S., Article 8890, (formerly Article 7465a) Section 14(a)(3) and (5) which state:

573.3 EXPOSURE OF CORRUPT OR DISHONEST CONDUCT

Veterinarians shall expose without fear of favor before the proper tribunal or the State Board of Veterinary Medical Examiners corrupt or dishonest conduct in the profession.

573.5 AVOIDANCE OF CORRUPTION OF OTHERS

A veterinarian shall not render any service or advice directed towards the corruption of any person or persons exercising a public office or private trust, or deception, or betrayal of the public.

573.7 NO ABUSE OF POSITION OR TRUST

Any veterinarian who uses present or past position, or office of

trust, deliberately to create an individual professional advantage, or to coerce, or to deceive the public shall be in violation of the rules of professional conduct.

Article 8890, Sec. 14(a)

". . . the Board may revoke or suspend a license, impose a civil penalty, place a person whose license has been suspended on probation, or reprimand a license . . . if it finds that . . . a licensee:

(3) has engaged in dishonest or illegal practices in or connected with the practice of veterinary medicine;

(5) has engaged in practices or conduct in connection with the practice of veterinary medicine which are violative of the standards of professional conduct as duly promulgated by the Board in accordance with law;

III.

The Texas State Board of Veterinary Medical Examiners has grounds to take disciplinary action against Dr. Dan R. Kirby's Veterinary License under the Texas Veterinary Licensing Act, V.A.T.S., Article 8890, (formerly Article 7465a) Section 14(a)(3) and (5) which state:

Article 8890, Sec. 14(a)

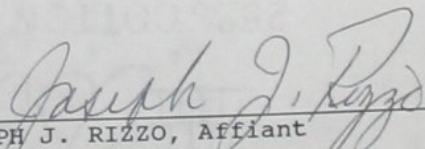
". . . the Board may revoke or suspend a license, impose a civil penalty, place a person whose license has been suspended on probation, or reprimand a license . . . if it finds that . . . a licensee:

(3) has engaged in dishonest or illegal practices in or connected with the practice of veterinary medicine;

(5) has engaged in practices or conduct in connection with the practice of veterinary medicine which are violative of the standards of professional conduct as duly promulgated by the Board in accordance with law;

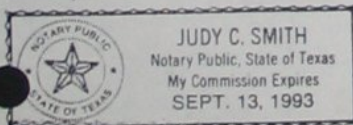
The foregoing complaint is submitted to the Secretary of the Texas Board of Veterinary Medical Examiners on this the 4th day of September, 1990.

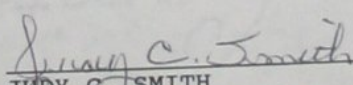
Further, Affiant sayeth not.



JOSEPH J. RIZZO, Affiant

SUBSCRIBED and SWORN TO before me by the said JOSEPH J. RIZZO, this the 4th day of September, 1990.





JUDY C. SMITH
Notary Public in and for Texas

My Commission Expires: September 13, 1993

The foregoing Complaint is hereby filed and docketed with the Texas State Board of Veterinary Medical Examiners and styled Texas State Board of Veterinary Medical Examiners vs. DAN ROBERT KIRBY, D.V.M. under Docketed Number 1991-04, this the 7th day of September, 1990.

Mary E. Mainster, DVM
MARY E. MAINSTER, D.V.M., Secretary
Texas Board of Veterinary Medical Examiners