

DOCKET NO. 2013-31

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

AGREED ORDER

On this the 25th day of MARCH, 2013 came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of Lynn D. Stucky, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code, and Board Rule 575.29, an informal conference was held on January 8, 2013. Respondent attended the informal conference and was represented by counsel, Susan Jordan. 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, Lynn D. Stucky, D.V.M. of Marshall, Texas, holds Texas veterinary license 5268.
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 December 13, 2010, the Board entered Agreed Order No. 2011-14 with Respondent, disciplining him for dispensing prescription drugs without first establishing a veterinarian-client-

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patient relationship. Respondent sold Comfortis, a flea control medication, to a local dog grooming business.

4. On July 15, 2010, investigators from the Board conducted a compliance inspection at the Animal Hospital on Milam Road ("Hospital"), which is owned and operated by Respondent.

5. During the inspection, the Board investigators observed large quantities of expired controlled substances in the Hospital's inventory.

6. After reviewing his inventory, Respondent determined that he had dispensed three types of expired controlled substances: Phenobarbital, Torbutrol and Ketamine.

7. Respondent acknowledged that it was medically improper to dispense expired Ketamine. Respondent stated that he failed to keep track of the expiration date for the Ketamine, and his controlled substance records indicate that he dispensed expired Ketamine for approximately 500 patients.

8. Respondent stated that he had been left with large quantities of Ketamine when Denton Animal Control, to which he used to sell a case of Ketamine at a time for the animal control officers to administer to animals, started acquiring its Ketamine from another source. Respondent stated that he had called the U.S. Drug Enforcement Administration ("DEA") to ensure that his providing Ketamine to Denton Animal Control was legal, but that DEA did not point out to him the need to establish a veterinarian-client-patient relationship. Dr. Stucky had approval from the Drug Enforcement Administration to provide Ketamine to the Shelter. He was the Veterinarian Representative on the Animal Shelter Advisory Board for the City of Denton. In that role, he provided assistance, education and euthanasia policy changes to the shelter. He consulted with and worked with the Denton Police Department Certified Control Officers who were responsible for euthanasia for shelter animals.

9. Respondent's controlled substance records for Torbutrol show that Respondent dispensed expired Torbutrol to approximately 119 patients.

10. Respondent's controlled substance records for Phenobarbital indicate that Respondent dispensed expired Phenobarbital to one patient on eight separate occasions.

11. When he realized the problem, Respondent informed his clients that he had administered expired drugs and offered a refund, a mitigating circumstance. Dr. Stucky appropriately disposed of the expired medications.

12. Respondent has since changed his drug inventory procedures to more closely monitor expiration dates of drugs, a mitigating circumstance. He also trained his staff, implemented a new written policy and installed new software to notify the office regarding upcoming 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 10, Respondent has violated Rule 573.22, PROFESSIONAL STANDARD OF HUMANE TREATMENT, of the Board's Rules of Professional Conduct, when he administered and dispensed expired controlled substances to patients, and thereby failed to exercise the same degree of humane care, skill and diligence in treating patients as are ordinarily used in the same or similar circumstance 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 Findings of Fact 1 through 8, Respondent violated Rule 573.41, USE OF PRESCRIPTION DRUGS, of the Board's Rules of Professional Conduct, when he sold cases of Ketamine to the Denton Animal Control without first having established a veterinarian-client-patient relationship with the animals to which the Ketamine was administered.
4. Based on Findings of Fact 1 through 8, Respondent violated §801.351 of the Veterinary Licensing Act, Occupations Code, by failing to establish a veterinarian-client-patient relationship before dispensing Ketamine to the Denton Animal Control.
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...illegal practices in, or connected with, the practice of veterinary medicine...

(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.

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:

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.

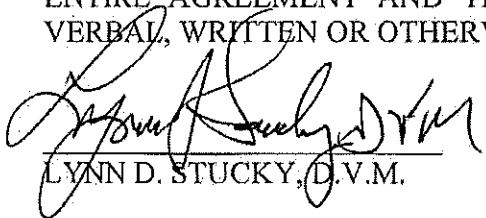
Respondent, by signing this Agreed Order, waives his right to a formal hearing and any right to

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, LYNN D. STUCKY, 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.

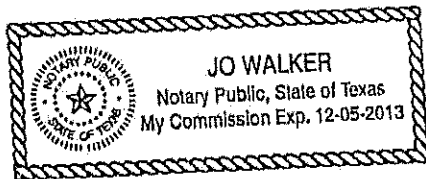

LYNN D. STUCKY, D.V.M.

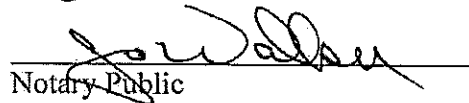
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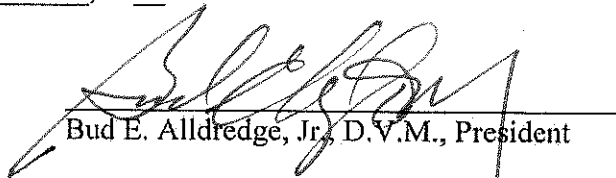
BEFORE ME, on this day, personally appeared Lynn D. Stucky, D.V.M., known to me as the person whose name is subscribed to the foregoing document, and acknowledged to me that he executed the same for the purposes stated therein.

Given under the hand and seal of office this 4th day of March, 2013




Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the _____, 20__.


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