IN THE MATTER OF \$ TEXAS STATE BOARD OF THE LICENSE OF \$ TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS DEC 1 0 2004 THE LICENSE OF VETERINARY MEDICAL EXAMINERS

AGREED ORDER

On this the 17th day of February, 2005, came on to be considered by the Texas State Board of Veterinary Medical Examiners ("Board") the matter of the license of JASON R. FOSKEY, D.V. M. ("Respondent") Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on November 10, 2004. The Respondent appeared without counsel. The Board was represented 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. On March 11, 2002, Ruth Pietuszka, Orange, Texas, presented her German shepherd "Mickey" to Jason R. Foskey, Foskey Veterinary Clinic, Orange, Texas, for limping in the left rear leg. Dr. Foskey diagnosed "Mickey" with osteoarthritis of the left and right coxofemoral joint. Dr. Foskey prescribed medication for the pain. Over the next few days, the dog continued to experience pain, and Ms. Pietuszka decided to take him to the Gulf Coast Specialist Center in Houston, Texas. At the Center, "Mickey" was found to have a left cranial cruciate ligament rupture. Surgery was performed on April 14, 2003.
- 2. On April 24th, Ms. Pietuszka presented her dog to Dr. Foskey because of acute swelling of the left stifle and lameness of the limb. Dr. Foskey strongly urged that "Mickey" be hospitalized. Dr. Foskey suspected an anaerobic infection because of the swelling and an elevated body temperature, and administered metronidazole for the infection. In determining the proper dosage of metronidazole, Dr. Foskey determined from Plumb's *Veterinary Drug Handbook* (Third edition) that the appropriate dosage is 25-50 mg/kg. Dr. Foskey decided to use the high end of the dosage. He determined the correct dosage to be 2300 mg twice a day, but his clinic had only

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unscored 500 mg tablets. He decided to prescribe five tablets twice daily (5000 mg total), slightly higher than the calculated dosage. Dr. Foskey also prescribed Baytril, which was changed to Zenequin upon sending "Mickey" home.

- 3. The dog was placed in the clinic's intensive care unit and monitored. No adverse effects were noted and the leg recovered. The dog was released on April 26th. On April 29th, Ms. Pietuszka telephoned Dr. Foskey and reported that "Mickey" was passing dark colored urine. Urinalysis revealed a trace of blood. Dr. Foskey elected to continue the dog on metronidazole and Zenequin because the dog was showing no other signs of being sick.
- 4. On May 3rd, Ms. Pietuszka reported to Dr. Foskey that "Mickey" was having seizures. Dr. Foskey performed blood work and determined that the dog was showing signs of metronidazole toxicity. The metronidazole was immediately discontinued. The dog remained in the clinic until May 5, 2003, when he was discharged with instructions to continue on Zenequin only. During subsequent conversations with Ms. Pietuszka, the metronidazole dosing was discussed, but Dr. Foskey was not sure Ms. Pietuszka understood the explanation.
- 5. Dr. Foskey's administration of a larger than recommended dosage of metronidazole and his failure to discontinue the medication on April 29th when the first adverse effects of the drug became evident, do not represent the same degree of humane care, skill, and diligence in treating patients as is ordinarily used in the same or similar circumstances by average members of the veterinary medical profession in good standing in Orange, Texas, or similar communities

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 5, Respondent has violated Rule 573.22, PROFESSIONAL STANDARD OF HUMANE TREATMENT, of the Board's Rules of Professional Conduct, which requires veterinarians to exercise the same degree of humane care, skill and diligence in treating patients as is ordinarily used in the same or similar circumstances 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 5 and Conclusions of Law 1 and 2, Respondent has violated Section 801.402 (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

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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.
- 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:

- (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 a civil penalty.

NOW, THEREFORE, THE BOARD AND RESPONDENT AGREE AS FOLLOWS:

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Jason R. Foskey, D.V.M., be INFORMALLY REPRIMANDED.

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 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 herein 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 is not represented

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by legal counsel in this matter.

MORTON D. KLINE
Notony Public. State of Texas
NA Commission Expires
October 08, 2005

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. NOTHING IN THIS ORDER SHALL BE DEEMED A WAIVER OF RESPONDENT'S RIGHTS UNDER STATUTE OR UNDER THE UNITED STATES OR TEXAS CONSTITUTIONS TO APPEAL AN ORDER OR ACTION OF THE BOARD SUBSEQUENT TO THIS AGREED ORDER EXCEPT AS RESPONDENT MAY HAVE OTHERWISE AGREED TO HEREIN. 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, JASON R. FOSKEY, 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.

- Joseph Jan	12-2-04
Jason R. Foskey, D.V.M.	Date
STATE OF TEXAS § COUNTY OF Orange §	
BEFORE ME, on this day, personally appeared J the person whose name is subscribed to the foreg executed the same for the purposes stated therein	oing document, and acknowledged to me that he
Given under the hand and seal of office this	_ day of _ 10 6 c, 200 _ 1

SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this the 17th day of February, 2005.

Gary C. Brantley, D.V.M., President