

DOCKET NO. 2005-06

IN THE MATTER OF § TEXAS STATE BOARD OF
THE LICENSE OF §
DARRELL KINNARD, D.V.M. § 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 Darrell Kinnard, D.V. M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on November 9, 2004. The Respondent attended with counsel. 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. On or around October 3, 2003, Joanna Kinnard, the daughter of Darrell Kinnard, D.V.M., Mabank Animal Hospital, Mabank, Texas, was employed by Mr. and Mrs. Wendell Thibodeaux, Garland, Texas. On October 3rd, Ms. Kinnard, with the consent of the Thibodeauxs, took their dogs "Maddy" and "Puppy" to the Mabank Animal Clinic for boarding. Sometime prior to October 13, 2003, Ms. Kinnard ceased to be employed by the Thibodeauxs.
2. On October 13th, the Thibodeauxs arrived at the Mabank Animal Hospital to pick up their dogs. Upon arrival, the clinic staff handed them a handwritten note for payment due, which listed "employee compensation for Joanna Kinnard," and "boarding services." Dr. Kinnard then presented the Thibodeauxs a bill for "Maddy" which was as follows:

10/13/03	BOARDING 20LBS OR LESS	12 [days]	\$360.00
10/13/03	BATH CANINE	1.00	<u>\$45.00</u>
	Patient subtotal		\$405.00

The bill for "Puppy" was identical, for a total due of \$810.00 for boarding and bathing. Under

Agreed Order 2005-06
Darrell Kinnard, D.V.M.

Dr. Kinnard's printed fee schedule, the bill for each dog should have been \$175.00 (12 days times \$12.50 per day plus \$25 for bath) for a total of \$350.00. No explanation was given for the increased fees. The bill also contained a "previous balance" of \$229.00 for a previous spay of "Maddy," for which the Thibodeauxs understood there would be no charge. Dr. Kinnard refused the Thibodeauxs' request for a detailed accounting of the fee and a copy of the consent form for the spay.

3. The Thibodeauxs offered to pay the standard fees for boarding, but Dr. Kinnard refused. He also refused to release the dogs until the bill was paid. In addition, he refused to provide information as to how the Thibodeauxs could file a complaint with the Board. There was no readily accessible written notice form containing complaint information in Dr. Kinnard's clinic.

4. Dr. Kinnard kept the dogs in his possession and refused to release them to the Thibodeauxs despite repeated demand letters from the Thibodeauxs and an Attorney General's opinion holding that a veterinarian must turn over possession of an animal to an owner upon demand even if the owner has not paid the fees due the veterinarian. The dogs remained in possession of Dr. Kinnard from October 3, 2003 until approximately February 3, 2004.

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 2, 3, and 4, Dr. Kinnard has violated Rule 573.26, HONESTY, INTEGRITY, AND FAIR DEALING, of the Board's Rules of Professional Conduct, by inflating his standard boarding charges without good cause; by refusing to return the clients' dogs upon demand; and by refusing to provide the client with a detailed accounting of the fees charged and a copy of the consent form for the spay upon request by the client.

3. Based on Finding of Fact 3, Dr. Kinnard has violated Rule 573.29, COMPLAINT INFORMATION AND NOTICE TO CLIENTS, which requires that a veterinarian provide in his clinic some form of written notification of how a complaint may be filed with the Board.

4. Based on Conclusions of Law 1 through 4, 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 ACTION. A person is subject to denial of a license or to disciplinary action under 801.401 if the person:

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

Agreed Order 2005-06
Darrell Kinnard, D.V.M.

conduct.

5. Based on Conclusions of Law 1 through 4, 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 Darrell Kinnard, D.V.M., be FORMALLY REPRIMANDED.

The Board further ORDERS that Darrell Kinnard, D.V.M., be assessed a CIVIL PENALTY of ONE THOUSAND DOLLARS (\$1000.00), due and payable within 45 days of the date of this Order. If Respondent fails to pay the civil penalty within 45 days of the date of this Order, Respondent's licenses shall be SUSPENDED until the civil penalty is paid.

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, 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.

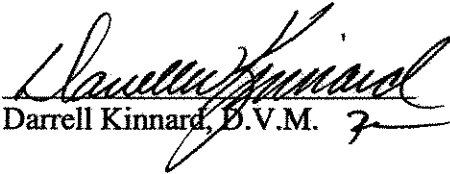
Agreed Order 2005-06
Darrell Kinnard, D.V.M.

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 was 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. 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.

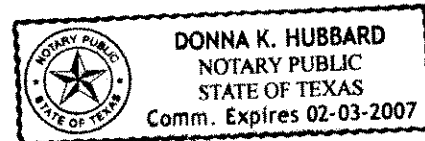
The effective date of this Agreed Order shall be the date it is adopted by the Board.

I, **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. *z*

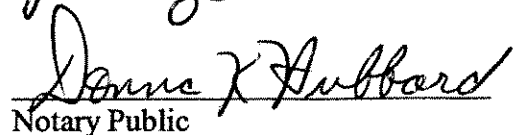
12-26-04
Date

STATE OF TEXAS §
COUNTY OF _____ §



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 4 day of January, 2005.


Notary Public



TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

RON ALLEN, EXECUTIVE DIRECTOR

GARY C. BRANTLEY, D.V.M., PRESIDENT
RICHARDSON, TEXAS

ROBERT L. LASTOVICA, D.V.M., VICE-PRESIDENT
FREDERICKSBURG, TEXAS

GUY W. JOHNSEN, D.V.M., SECRETARY
EL PASO, TEXAS

BUD E. ALLDREDGE JR., D.V.M., MEMBER
SWEETWATER, TEXAS

MARIO A. ESCOBAR, MEMBER
CRYSTAL CITY, TEXAS

J. LYNN LAWHON, D.V.M., MEMBER
ABILENE, TEXAS

PAUL MARTINEZ, MEMBER
SONORA, TEXAS

DEE A. PEDERSON, D.V.M., MEMBER
AUSTIN, TEXAS

DAWN E. REVELEY, MEMBER
BLANCO, TEXAS

December 21, 2004

RECEIVED
JAN 06 2005

Darrell Kinnard, D.V.M.
Mabank Animal Hospital
P.O. Box 427
Mabank, Texas 75147

TEXAS STATE BOARD OF
VETERINARY MEDICAL EXAMINERS

Re: Agreed Order 2005-06

Dear Dr. Kinnard:

I received your marked- up copy of the Order in this case. I have reviewed the findings you found objectionable and have deleted Finding of Fact 5 and Conclusion of Law 3 relating to refusal to release patient records and re-numbered the findings.

All other findings are amply supported by the record. I cannot recommend deletion or modification of any other parts of the Order. Enclosed is a copy of the Order with the original Finding of Fact 5 and Conclusion of Law 3 deleted.

I urge you to sign the Order as presented. **No other changes will be considered.** The only alternative is for the Board to file a case with the State Office of Administrative Hearings (SOAH) and proceed to a formal hearing (trial) before an administrative law judge. I am confident that, given the record we have, the Board will prevail in its case. Please let me know of your decision. If I do not hear from you by **January 14, 2005**, I will schedule a hearing before SOAH. You will be informed of the date, place, and time. You have the right to have an attorney represent you and present evidence and cross-examine witnesses. Once the judge issues a recommendation, the Board's staff will present to the Board of Directors the recommendation and an order imposing sanctions.

If you decide to sign the Order, please do not send a check for the civil penalty until after the Board acts on the Order on February 17, 2005 at its regular meeting.

Sincerely,


Lee H. Mathews
General Counsel

Agreed Order 2005-06
Darrell Kinnard, D.V.M.

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