

DOCKET NO. 2005-16

IN THE MATTER OF   §           TEXAS STATE BOARD OF  
THE LICENSE OF   §  
KIMBERLY KLEIN, D.V.M.   §           VETERINARY MEDICAL EXAMINERS

**AGREED ORDER**

On this the 17<sup>th</sup> 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 KIMBERLY KLEIN, D.V. M. (“Respondent”) Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on December 9, 2004. The Respondent appeared without 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 her understanding of the alleged violations and the adequacy and sufficiency of the notice provided to her.

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. Around 8:35 a.m. on May 10, 2004, Robert Martinez, San Antonio, Texas, presented his dog “Dietrich” to the Hooves & Paws Veterinary Clinic, Helotes, Texas, for a neuter procedure and teeth cleaning. Kimberly Klein, D.V.M., performed the procedures. Following the surgery, while the patient was still entubed, the dog apparently bit off part of the endotracheal tube. The severed tube section could not be immediately located, and thus Dr. Klein assumed that “Dietrich” had swallowed the bit-off tubing. Mr. Martinez was notified and he went to the clinic.
2. Dr. Klein attempted to induce vomiting by administering hydrogen peroxide by mouth and xylazine in the muscle. These attempts failed to induce vomiting. Dr. Klein then secured Mr. Martinez’s permission to perform a gastrotomy to look for the tubing piece. The surgery failed to reveal the missing tubing, and the abdomen was closed. Dr. Klein then decided to take a radiograph, and discovered the piece in the thoracic trachea. Dr. Klein secured an alligator forceps from a colleague and was able to retrieve the tubing from the trachea.
3. Mr. Martinez asked that patient records be transferred to his primary veterinarian, Michael

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Harrison, D.V.M. Mr. Martinez presented "Dietrich" to Dr. Harrison, who assumed care of the dog. Mr. Martinez reported that his dog remains in pain from the surgeries at Hooves & Paws, but is otherwise recovered.

4. Based on Findings of Fact 1 and 2, Dr. Klein's attempts to induce vomiting, thus putting the patient at risk for aspiration, before identifying through radiographs or endoscope the location of the object, and performing a gastrotomy when radiographs would have revealed that the object was not in the stomach, 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 Helotes, 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 Finding of Fact 4, 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 Finding of Fact 4 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 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;

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- (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 Kimberly Klein, D.V.M., be FORMALLY 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 her understanding of the Agreed Order, the notice, and Findings of Fact and Conclusions of Law herein set forth herein, and agrees that she 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 her right to a formal hearing and any right to seek judicial review of this Agreed Order. Respondent acknowledges that she is not 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.

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I, **KIMBERLY KLEIN**, 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.

  
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Kimberly Klein, D.V.M.

12-21-04  
\_\_\_\_\_  
Date

STATE OF TEXAS §  
COUNTY OF Baylor §

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

Given under the hand and seal of office this 21 day of Dec, 2004.



  
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Notary Public

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

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