DOCKET NO. 2005-49

IN THE MATTER OF § TEXAS STATE BOARD OF

THE LICENSE OF §

MICHAEL MCCANN, D.V.M. § VETERINARY MEDICAL EXAMINERS

AGREED ORDER

On this the 13th day of October, 2005, came on to be considered by the Texas State Board of Veterinary Medical Examiners ("Board") the matter of the license of MICHAEL MCCANN, D.V. M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on June 10, 2005. The Respondent waived his appearance due to illness. 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 May 12, 2004, Shelly Lucas, Houston, Texas, presented her 10-year old dog "Logan" to Michael McCann, D.V.M., Lakeside Animal Clinic, Houston, Texas, because of the dog's persistent coughing. Dr. McCann ran a CBC and general health profile on "Logan." He diagnosed a lung infection and recommended a radiograph of the chest to check for a possible enlarged heart. Dr. McCann prescribed antibiotics and medication for the coughing.
- 2. Dr. McCann took a radiograph on May 14th. Dr. McCann reported to Ms. Lucas that the radiographs showed enlargement of the heart, enlargement of a heart valve (which did not appear to be functioning), and an infection in the dog's lungs. He recommended continuing with the antibiotic and cough medication, and starting Lasix for the lungs.
- 3. Ms. Lucas arrived at the clinic later in the day to pick up "Logan." Ms. Lucas observed the radiographs and noted that they were so dark the heart could barely be seen. Dr. McCann said that the radiographs showed a possible enlargement of the heart on one side, and with a

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stethoscope he could hear that a valve was not opening. Dr. McCann again urged Ms. Lucas to continue with the recommended medications and said that the dog was not a candidate for euthanasia at this time.

- 4. Because Ms. Lucas continued to worry about the poor quality of the radiographs she had seen, on May 21st, she scheduled "Logan" for a second opinion examination with Alex Fisher, Sr., D.V.M., Sugar Land, Texas. Dr. Fisher noted normal auscultation of the heart and no enlargement was seen. Radiographs taken by Dr. Fisher revealed chronic inflammatory lung changes possibly secondary to chronic bronchitis or parasitism (canine heartworm disease). Medications were started for inflammation, lung infection, parasites, and coughing.
- 5. In his response to the Board dated September 15, 2004, Dr. McCann stated:

I have come to accept my misjudgement in diagnosing Ms. Lucas' dog Logan. After much thought and deliberation, Ms. Lucas and I could not come to terms in understanding about Logan's physical condition. My diagnosis of possible valvular and /or cardiomyopathy...were at best overstated in my conversations with Ms. Lucas.

6. Based on paragraphs 1 through 5, Dr. McCann's unsubstantiated diagnosis of patient heart problems based on substandard radiographs, does 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 Houston, 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 6, 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 6 and Conclusion of Law 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 MICHAEL MCCANN, 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 represented by legal counsel in this matter.

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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, MICHAEL MCCANN, 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 OTHER WISE.

Michael McCann, D.V.M.

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BEFORE ME, on this day, personally appeared MICHAEL MCCANN, 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

day of

2005

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SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this the 13th day of October, 2005.

TRACEY METOYER VAUGHN
MY COMMISSION EXPIRES
May 21, 2007

DECEIVED
JUL 25 2005

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

TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS