

DOCKET NO. 2005-47

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IN THE MATTER OF § TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS
THE LICENSE OF §
ROBERT J. RICCITELLO, D.V.M. § VETERINARY MEDICAL EXAMINERS

AGREED ORDER

On this the 9th day of June, 2005, came on to be considered by the Texas State Board of Veterinary Medical Examiners ("Board") the matter of the license of ROBERT J. RICCITELLO, D.V. M. ("Respondent") Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on May 6, 2005. 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.

HORSE ISSUE

Findings of Fact

1. On June 2, 2004, Mary Devereaux, Montgomery, Texas, called Robert Riccitello, D.V.M., Western Hills Veterinary Clinic (WHVC), Montgomery, Texas, about her mare "Rose" who had given birth to a colt, "Jetta," on May 10th. Dr. Riccitello went to the Devereaux residence and told Ms. Devereaux that the mare had colic. He also noted the presence of bed sores on the mare's hips and legs. He took the mare and colt back to his clinic for treatment. Dr. Riccitello reportedly performed surgery on several abscesses on "Rose's" skin, but did not secure permission for the surgery from Ms. Devereaux.
2. On or around June 9th, Ms. Devereaux went to the WHVC to pick up her horses, and found out at that time that the colt had died. No one ever called her to inform her of the colt's death. Heather Davenport, a clinic employee, told Ms. Devereaux that the colt had died from a lung disease. Ms. Davenport also told Ms. Devereaux that "Rose" should stay at the clinic awhile longer to treat an ear problem.

Agreed Order 2005-47
Robert J. Riccitello, D.V.M.

3. In August, Ms. Devereaux received a bill from Dr. Riccitello for \$981.00. She was also informed that the mare had also died. Ms. Devereaux attempted to call Dr. Riccitello to discuss the matter, and found out that Dr. Riccitello had entered a substance abuse program. (According to Sunny Riccitello, Dr. Riccitello's wife, Dr. Riccitello entered a peer assistance program on June 10, 2004, and did not return to his practice until October 1, 2004.)
4. When the mare's condition worsened while at the WHVC, Dr. Riccitello, who was absent from the clinic, discussed the situation with Sunny Riccitello, a non-veterinarian. He instructed her to administer 15cc dexamethasone, which she did. He did not suggest having another veterinarian examine the mare, and Sunny Riccitello did not contact Ms. Devereaux. At some point, Dr. Riccitello authorized Sunny Riccitello to euthanize the mare, which she did. The cost of the euthanasia was added to the bill presented to Ms. Devereaux.
5. While attending to the clinic in the absence of Dr. Riccitello, Sunny Riccitello admitted in a sworn statement that she performed, without veterinarian supervision, veterinary medical procedures such as heartworm tests, fecals, Coggins tests, vaccinations, antibiotics administration, and controlled substances administration. During most of the period from June 2, 2004 until the mare died around August 25, 2004, the horses were not under the care of a veterinarian.
6. The printed patient records for "Rose" and "Jetta" show that Dr. Riccitello made his visit to the Devereaux residence to see the horses on June 17, 2004, although Ms. Devereaux and Dr. Riccitello in their written statements say that Dr. Riccitello was called to the Devereaux residence on June 2nd. Handwritten patient records indicate that the farm call was on May 17th. The handwritten date for the wound care and abscess surgery was listed as June 1st. Details of the surgery, anesthesia, and circumstances of the death of the colt are incomplete.

Conclusions of Law

1. The unauthorized surgery and the euthanization of a patient without the consent of the client is a violation of Section 801.402 (12) of the Veterinary Licensing Act which prohibits the performance of unauthorized treatment of a patient by a veterinarian.
2. Based on the fact that the patients failed to receive any meaningful veterinary care during the time they were at the clinic, Dr. Riccitello has violated Rule 573.22 PROFESSIONAL STANDARD OF HUMANE TREATMENT, of the Board's Rules of Professional Conduct.
3. Based on the fact that the patients received veterinary care by a non-veterinarian who was not under the supervision of a veterinarian, Dr. Riccitello has violated Rule 573.10 SUPERVISION OF NON-LICENSED EMPLOYEES, and Rule 573.11 RESPONSIBILITY FOR UNLICENSED AND LICENSED EMPLOYEES of the Board's Rules of Professional Conduct.

Agreed Order 2005-47
Robert J. Riccitello, D.V.M.

4. Based on the incomplete and contradictory nature of the patient records, Dr. Riccitello has violated Rule 573.52 PATIENT RECORD KEEPING, of the Board's Rules of Professional Conduct.

5. Based on Conclusions of Law 2 through 4, Dr. Riccitello has violated Section 801.402 (6) of the Veterinary Licensing Act which prohibits practices or conduct that violates the Board's rules of professional conduct.

DEA REGISTRATION ISSUE

Findings of Fact

1. On December 14, 2004, the Board conducted a compliance inspection at the Western Hill Veterinary Clinic, Montgomery, Texas. During the inspection, the Board investigator determined that Robert Riccitello, D.V.M., did not possess a current controlled substance registration from the Texas Department of Public Safety (DPS). His last registration had expired on August 31, 2004. During the period June 10, 2004 until October 1, 2004, Dr. Riccitello was in a substance abuse rehabilitation program. DPS records indicate that the registration was renewed on December 15, 2004.

2. Dr. Riccitello did not offer any explanation of why he practiced veterinary medicine and dispensed controlled substances from October 1st until December 15th without a DPS registration.

Conclusions of Law

1. Based on Findings of Fact 1 and 2, Dr. Riccitello has violated Rule 573.43, MISUSE OF DEA NARCOTICS REGISTRATION, of the Board's Rules of Professional Conduct, which states that a licensee may not prescribe, dispense, deliver or order delivered, any controlled substance unless the licensee is currently registered with the federal Drug Enforcement Administration (DEA) and the DPS.

2. Based on Conclusion of Law 1, Dr. Riccitello has violated Section 801.402 (6) of the Veterinary Licensing Act which prohibits practices or conduct that violates the Board's rules of professional conduct.

CONTINUING EDUCATION ISSUE

Findings of Fact

1. On December 14, 2004, the Board conducted a compliance inspection at the Western Hill

Agreed Order 2005-47
Robert J. Riccitello, D.V.M.

Veterinary Clinic, Montgomery, Texas. Dr. Riccitello was asked to produce proof of continuing education for the years 2001, 2002, and 2003. On January 26, 2005, the Board received a statement from Dr. Riccitello that he was unable to locate any paper work for the years 2001, 2002, and 2003. However, on March 3rd, Dr. Riccitello was able to produce proof of continuing education for 2001 and 2003, but not for 2002.

2. Dr. Riccitello did not request a hardship extension for calendar year 2002 continuing education.
3. On April 13, 2005, the Board received a statement from Dr. Riccitello that he had not attended any CE courses in 2004, although he indicate on his license renewal form for 2005 that he had complied with the necessary CE requirements. Dr. Riccitello did not request a hardship extension for calendar year 2004 continuing education.

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, 2 and 3, Dr. Riccitello has violated Rule 573.64, CONTINUING EDUCATION REQUIREMENTS, which requires a veterinarian to annually acquire seventeen (17) hours of acceptable CE.
3. Based on Conclusions of Law 1 and 2, Dr. Riccitello has violated Section 801.402 (6) of the Veterinary Licensing Act which prohibits practices or conduct that violates the Board's rules of professional conduct.

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

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Robert J. Riccitello , D.V.M., be FORMALLY REPRIMANDED.

The Board further ORDERS that Respondent's license be suspended for a period of two (2) years from the date of this Order.

The Board further ORDERS that the license suspension be STAYED and Respondent be placed on PROBATION for the entire period of suspension.

The Board further ORDERS that Respondent be assessed a CIVIL PENALTY of One Thousand, Two Hundred and Fifty Dollars (\$1250), payable withing 45 days of the date of the Order, for violations of the continuing education requirements. If Respondent fails to pay the civil penalty

Agreed Order 2005-47
Robert J. Riccitello, D.V.M.

within 45 days of the date of this Order, Respondent's license shall be suspended until the civil penalty is paid.

The Board further ORDERS that Respondent take and pass the Board's jurisprudence examination within 45 days of the date of this Order, If Respondent fails to take and pass the jurisprudence examination within 45 days of the date of this Order, Respondent's license shall be suspended until Respondent does take and pass the examination. Respondent may not re-take the examination any more frequently than 10 working days from the date of his last sitting for the examination. Should Respondent engage in the practice of veterinary medicine when under suspension, he will be subject to immediate disciplinary action.

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 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.

Agreed Order 2005-47
Robert J. Riccitello, D.V.M.

I, **ROBERT J. RICCITELLO**, 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.

Robert J. Riccitello, D.V.M.
Robert J. Riccitello, D.V.M.

5/25/05
Date

STATE OF TEXAS §
COUNTY OF Montgomery §

BEFORE ME, on this day, personally appeared ROBERT RICCITELLO, 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 _____ day of _____, 200__.

Notary Public

SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this the 9th day of June, 2005.

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