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DOCKET NO. 2005-50

IN THE MATTER OF § TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS  
THE LICENSE OF §  
HAROLD WAGERS, 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 HAROLD WAGERS, 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 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 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 December 22, 2004, Judy Hooks, Baytown, Texas, presented her English bulldog "Lilly" to Harold Wagers, D.V.M., Crosby, Texas to have the dog's teeth cleaned. The dog had an existing mouth condition that needed surgery, and both teeth cleaning and surgery were scheduled together. Surgery was scheduled at around 3:00 p.m. Ms. Hooks called the clinic around 4:30 p.m., and was told that the dog had regurgitated food during the surgery but was recovering. Dr. Wagers noted that vomiting continued for a period during recovery. At the time of scheduling surgery, Dr. Wagers had instructed Ms. Hooks that the dog should be "NPO" before surgery.
2. At the time of clinic closing, "Lilly" was still recumbent. Without consulting with Ms. Hooks, Dr. Wagers decided to keep the dog overnight at the clinic, but no one was at the clinic to do after-hours monitoring. Sometime during the night, "Lilly" died. A necropsy noted that the probable cause of death was aspiration of gastric content.
3. Dr. Wagers failed 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 Crosby, Texas, or in similar communities, in the

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following particulars. The patient posed an elevated risk due to the vomiting that occurred during and after surgery. He was still recumbent. Antiemetics were not given post surgery. The dog was observed for less than two hours before the clinic closed. Dr. Wagers should have consulted with the owner about the need for continued monitoring, and given the owner the option of an after-hours facility or monitoring at home.

### 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 3, 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 3 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 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:

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Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that HAROLD WAGERS , 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 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.

I, **HAROLD WAGERS, 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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7-6-2005  
Date

STATE OF TEXAS §  
COUNTY OF HARRIS §

BEFORE ME, on this day, personally appeared HAROLD WAGERS, 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 6<sup>th</sup> day of July, 2005.



Sandi Martin  
Notary Public

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

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