

DOCKET NO. 2007-24

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

**AGREED ORDER**

On this the 14th day of June, 2007, came on to be considered by the Texas State Board of Veterinary Medical Examiners ("Board") the matter of the license of LUANN ERVIN, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on February 9, 2007. 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 disciplinary issues set out below. 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. On May 15, 2005, Terri Little, McGregor, Texas, presented her cat "Smokey" to LuAnn Ervin, D.V.M., Waco, Texas because of injuries received when the cat was run over by a tractor or shredder. Upon examination, Dr. Ervin found extensive damage to the lateral thigh, left rear leg and femur (fractured). Also, the urethra was exposed and severed. Although pre-surgical radiographs were not taken, Dr. Ervin decided to amputate the left rear leg and perform a perineal urethrostomy.
2. Following surgery, Ms. Little transported "Smokey" to Mary Flori, D.V.M., for post-operative care and follow-up. Dr. Flori noted that the patient was not moving the remaining rear leg, was flaccid in the musculature of the rear end, and had no tail clamp. Dr. Flori suspected that the cat was paralyzed due to a spinal cord injury. Dr. Flori took radiographs which showed a vertebral fracture of lumbar vertebrae 4, caudal aspect, with a subsequent abnormality of the intervertebral foramen at L4-5. This confirmed her suspicion of spinal cord compression and subsequent paralysis. She also noted that the surgical area gave off an extremely bad odor and was draining purulent material. Dr. Flori hospitalized "Smokey" for an extended period to treat the open, draining wound and to see if the cat would regain any deep pain reflex or show any signs of neurologic improvement. The wound eventually healed but the cat never showed any

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neurologic improvement and was incontinent.

3. After the cat was released for home care, Ms. Little reported that after 12 weeks the cat still could only drag himself around and continued to be incontinent. This condition required constant attention and care. "Smokey" died in December 2005.

4. Prior to performing surgery on the patient, Dr. Ervin should have done a full assessment of the patient's condition. Such an assessment should include radiographs (two views), especially in an emergency trauma case such as this. Dr. Ervin failed to perform pre-surgical radiographs to determine the extent of injuries to the patient. Had the radiographs been taken, Dr. Ervin may have concluded that a spinal fracture was present and surgery on the leg would be meaningless. Based on these considerations, Dr. Ervin's care and treatment of the patient 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 Waco, 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 Findings of Fact 1 through 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 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

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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 an administrative 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 LUANN ERVIN , D.V.M., be FORMALLY REPRIMANDED.

The Board further ORDERS that Respondent pay an ADMINISTRATIVE PENALTY of \$1500.00 (One Thousand Five Hundred Dollars) , payable within 45 days of the date of this Order. If Respondent fails to pay the administrative penalty within 45 days of the date of this Order, Respondent's license shall be SUSPENDED until the administrative 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 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 had the right to be 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

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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, LUANN ERVIN, 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.

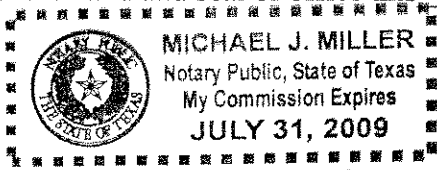
LuAnn Ervin, D.V.M.  
LuAnn Ervin, D.V.M.

5-31-07  
Date

STATE OF TEXAS §  
COUNTY OF McLennan §

BEFORE ME, on this day, personally appeared LUANN ERVIN, 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 31 day of May, 2007.



Notary without Bond

Michael J. Miller  
Notary Public

SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this the 14th day of June, 2007.

Robert Lastovica, D.V.M.  
Robert Lastovica, D.V.M., President