## **DOCKET NO. 2006-26**

IN THE MATTER § TEXAS STATE BOARD OF

OF THE LICENSE OF §

RICHARD GAITHER, D.V.M. § VETERINARY MEDICAL EXAMINERS

AGREED ORDER

On this, the 14<sup>th</sup> day of June, 2007, came on to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of RICHARD GAITHER, D.V.M. ("Respondent"). Pursuant to Section 801.2056, Texas Occupations Code, a committee of the Board's staff met on March 29, 2006 to consider alleged violations of the Veterinary Licensing Act ("the Act") and the Board's rules by Respondent. The staff found probable violations and sent an agreed order to Respondent. He declined to sign the order and requested an informal conference before the Board's Enforcement Committee. Respondent and legal counsel met with the committee on June 16, 2006. The committee found that Respondent had violated the Act and Board rules.

Respondent, without admitting the truth of the findings and conclusions set out in this Agreed Order, wishes to dispose of the compliance issues set out below. Respondent agrees to comply with the terms and conditions set forth in this Order. Respondent acknowledges his understanding of the alleged violations and the adequacy and sufficiency of the notice mailed to him.

Upon the recommendation of the staff 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. The Board has jurisdiction over the subject matter and Respondent. Respondent has received all notice which may be required by law and by the Board's rules. All jurisdictional requirements have been satisfied.
- 2. As the result of a November 10, 2005 compliance inspection by mail, the Board determined that Richard Gaither, D.V.M., did not possess a current controlled substance registration from the Texas Department of Public Safety (DPS). Dr. Gaither, who works as a relief veterinarian, informed the Board that he was unaware he needed a DPS registration. Dr. Gaither was licensed in 1970 and subsequently served in the military. He retired from the military in 1998, reactivated his license, and has been engaged in primarily relief and volunteer veterinary work.
- 3. Dr. Gaither has never procured, purchased, or written a prescription for a controlled substance, but has administered or dispensed controlled substances on an infrequent basis. He

Agreed Order 2006-26 Richard Gaither, D.V.M. Page 2

has not had a DPS registration since 1998 when he retired from military duty and re-activated his license.

- 4. Counsel for Dr. Gaither presented an argument challenging the legality of the Board's collection of a fine for DPS registration violations. Dr. Gaither agreed to accept a \$500.00 fine if the Board would request an Attorney General's opinion on the legality of the Board's Rule 573.43 and the Attorney General would find that the rule is valid. The Board's legal counsel agreed to request an opinion and subsequently did so.
- 5. By opinion dated May 10, 2007, the Attorney General in Opinion GA-0547 held that the Board is authorized to adopt a rule that prohibits a Board licensee from dispensing any controlled substance unless the licensee is registered to do so with the Texas Department of Public Safety.

## **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 2 and 3, Respondent 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 he is currently registered with the DEA and the DPS.
- 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 2 and 3, Respondent may be disciplined in the manner set out in Section 801.451, IMPOSITION OF ADMINISTRATIVE PENALTY, of the Veterinary Licensing Act, which authorizes an administrative penalty for violations of the Act and Board rules.

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

The Board ORDERS that Respondent pay, within 45 days of the date of this Order, an ADMINISTRATIVE PENALTY of FIVE HUNDRED dollars (\$500.00). 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 penalty is paid.

Agreed Order 2006-26 Richard Gaither, D.V.M. Page 3

## 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 provision of the 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, Findings of Fact and Conclusions of Law herein set forth, 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 hearing and any right to seek judicial review of this Order. Respondent acknowledges that **he** is entitled to be represented by an attorney of Respondent's choice at his expense in any hearing **be**fore the Board.

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 date of this Agreed Order shall be the date it is adopted by the Texas Board of Veterinary Medical Examiners.

Agreed Order 2006-26 Richard Gaither, D.V.M. Page 4

I. RICHARD GAITHER, D.V.M., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT 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.

Richard Gaither, D.V.M.

DATE

STATE OF TEXAS COUNTY OF BEHAR

BEFORE ME, on this day, personally appeared Richard Gaither, D.V.M., known to me to be the person whose name is subscribed to the foregoing Agreed Order, and acknowledged to me that he executed the same for the purposes stated therein.

Given under the hand and seal of office this 2/5t day of Da

Notary Public STATE OF TEXAS

Notary Public

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

President of the Board