DOCKET NO. 2007-07

IN THE MATTER OF § TEXAS STATE BOARD OF

THE LICENSE OF §

HERMAN SWANN, D.V.M. § VETERINARY MEDICAL EXAMINERS

AGREED ORDER

On this the 8th day of February, 2007 came on to be considered by the Texas State Board of Veterinary Medical Examiners ("Board") the matter of the license of HERMAN SWANN, D.V. M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on November 30, 2006. The Respondent attended with 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 May 12, 2006 the Board opened a complaint against Herman Swann, D.V.M., Richardson, Texas based on an arrest report submitted by the Garland Police Department, Garland, Texas. On May 1, 2006 two officers searched a parked car occupied by a Charles Sherman and Nichole Unruh. Ms. Unruh was a veterinary technician at the Plano-Arapaho Veterinary Clinic, Plano, Texas where Dr. Swann worked.
- 2. During a search of the vehicle, officers found a syringe containing bupivicaine, a painkiller. Officers also found several empty syringes and two vials containing naloxone hydrochloride and morphine, respectively. Two other drugs, dihydrocodienone and metaxalone, were also found, along with a crack pipe. The officers arrested Ms. Unruh. On May 1st, one of the officers contacted Dr. Swann concerning the origin of the bupivicaine. Dr. Swann reported that Ms. Unruh said she had a toothache and asked if he would be upset if she took a small amount of bupivicaine. Dr. Swann told her that he would not be upset if she took a small amount of bupivicaine. Dr. Swann professed no knowledge of the origin of the other drugs possessed by Ms. Unruh at the time of her arrest, except that hydrocodone tablets had been dispensed for Ms. Unruh's dog in the past for post-surgical pain and for tracheobronchitis.

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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. By authorizing an employee to take bupivicaine for a medical problem, Dr. Swann has violated Rule 573.60, PROHIBITION AGAINST TREATMENT OF HUMANS, which states that a veterinarian shall not provide care and treatment of humans, including dispensing prescription medication for personal use by a human.
- 3. Based on Conclusions of Law 1 through 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 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 HERMAN SWANN, 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.

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- 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.

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 2007-07 Herman Swann, D.V.M.

I, **HERMAN SWANN**, 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.

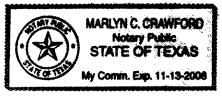
Jesman Swann, D.V.M.

12/18/06 Date

STATE OF TEXAS SCOUNTY OF DALLOS S

BEFORE ME, on this day, personally appeared HERMAN SWANN, 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 18 day of December 2006.



Marly Public Transform

SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL

EXAMINERS on this the 8th day of February, 2007.

Robert Lastovica, D.V.M., President