

TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS
333 Guadalupe, Wm. P. Hobby Bldg. Room 225
Austin, Texas 78701

October 13, 2005

MINUTES

The Texas Board of Veterinary Medical Examiners met for a regularly scheduled meeting on Thursday, October 13, 2005 in Room, #2-225 of the William P. Hobby, Jr. Building, 333 Guadalupe, Austin, Travis County, Texas. Dr. Gary C. Brantley, President, called the meeting to order at 8:30 a.m. The following members were present:

DR. GARY C. BRANTLEY, President	of Richardson, Texas
DR. GUY W. JOHNSEN, Secretary	of El Paso, Texas
DR. DEE A. PEDERSON, Member	of Austin, Texas
DR. BUD E. ALLDREDGE, JR., Member	of Sweetwater, Texas
DR. PAT ALLEN, Member	of Lubbock, Texas
MR. MARIO A. ESCOBAR, Member	of Crystal City, Texas
MR. PAUL MARTINEZ, Member	of Sonora, Texas
MS. DAWN REVELEY, Member	of Blanco, Texas

Dr. Robert Lastovica was not present. Upon motion by Dr. Pederson, second, and an affirmative vote, Dr. Lastovica's absence was excused. Members of the staff attending included: RON ALLEN, Executive Director; JULIE BARKER, Executive Assistant; PETER HARTLINE, Chief Investigator; INA FRANZ, Director of Licensing; and LEE MATHEWS, General Counsel.

4923 Approval of Agenda. Upon motion by Dr. Pederson, second, and an affirmative vote, the agenda was approved.

4924 Approval of Minutes. Upon motion by Dr. Pederson, second, and an affirmative vote, the minutes of the February 17, 2005 meeting of the Board were approved with one change and signed.

4925 Citizen Comments. Dr. Brantley called for citizen comments. Ellis Gilliland addressed the Board regarding the Board's participation in activities relating to hurricanes Katrina and Rita.

4926 Agreed Order. The Board considered an Agreed Order in Docketed Case No. 2004-30, TSBVME v. Leonard A. King, Jr., D.V.M. Dr. Johnsen, as the Secretary in this case, was recused from voting. Dr. King was not present. Dr. King allegedly violated Rule 573.52, PATIENT RECORD KEEPING, by failing to maintain complete, accurate patient records; and Rule 573.25, AVOIDANCE OF GUARANTEED CURES, by assuring a client that a surgery was "successful" when the patient was suffering from extreme hypothermia and not communicating to the client the seriousness of the animal's condition. Disciplinary Action: Formal Reprimand. Upon motion by Ms. Reveley, second, and an affirmative vote, the Board approved the Agreed Order as presented.

4927 Agreed Order. The Board considered an Agreed Order in Docketed Case No. 2005-48, TSBVME v. Jennifer M. Russell, D.V.M. Dr. Johnsen, as the Secretary in this case, was recused from voting. Dr.

Russell was not present. Dr. Russell allegedly violated the provisions of the Veterinary Licensing Act, Chapter 801 of the Texas Occupations Code by performing an unauthorized procedure. Disciplinary Action: Informal Reprimand. Upon motion by Dr. Alldredge, second, and an affirmative vote, the Board approved the Agreed Order as presented.

4928 Agreed Order. The Board considered an Agreed Order in Docketed Case No. 2005-49, TSBVME v. Michael McCann, D.V.M. Dr. Johnsen, as the Secretary in this case, was recused from voting. Dr. McCann was not present. Dr. McCann allegedly violated Rule 573.22, PROFESSIONAL STANDARD OF HUMANE TREATMENT, by an unsubstantiated diagnosis of patient heart problems based on substandard radiographs. Disciplinary Action: Informal Reprimand. Upon motion by Dr. Pederson, second, and an affirmative vote, the Board approved the Agreed Order as presented.

4929 Agreed Order. The Board considered an Agreed Order in Docketed Case No. 2005-50, TSBVME v. Harold Wagers, D.V.M. Dr. Johnsen, as the Secretary in this case, was recused from voting. Dr. Wagers was not present. Dr. Wagers allegedly violated Rule 573.22, PROFESSIONAL STANDARD OF HUMANE TREATMENT, by failing to consult with a client about the need for continued monitoring for a patient who posed an elevated risk due to vomiting that occurred during and after surgery and by failing to give the client the option of an after-hours facility or monitoring at home. Disciplinary Action: Formal Reprimand. Upon motion by Dr. Allen, second, and an affirmative vote, the Board approved the Agreed Order as presented.

4930 Agreed Order. The Board considered an Agreed Order in Docketed Case No. 2005-51, TSBVME v. Abraham Siagi, D.V.M. Dr. Johnsen, as the Secretary in this case, was recused from voting. Dr. Siagi was not present. Dr. Siagi allegedly violated Rule 573.22, PROFESSIONAL STANDARD OF HUMANE TREATMENT, by failing to a) emphasize to a client the importance of a fecal examination in light of symptoms presented; b) examine the patient after receiving complaints of constipation; and c) find and diagnose masses in the animal's right hip and rectal area. Disciplinary Action: Formal Reprimand. Upon motion by Mr. Escobar, second, and an affirmative vote, the Board approved the Agreed Order as presented.

4931 Agreed Order. The Board considered an Agreed Order in Docketed Case No. 2005-52, TSBVME v. Riordan Hartzoge, D.V.M. Dr. Johnsen, as the Secretary in this case, was recused from voting. Dr. Hartzoge was not present. Dr. Hartzoge allegedly violated Rule 573.52, PATIENT RECORD KEEPING, by failing to maintain complete, accurate patient records. Disciplinary Action: Informal Reprimand. Upon motion by Dr. Pederson, second, and an affirmative vote, the Board approved the Agreed Order as presented.

4932 Agreed Order. The Board considered an Agreed Order in Docketed Case No. 2005-53, TSBVME v. Leon Freeman, D.V.M. Dr. Johnsen, as the Secretary in this case, was recused from voting. Dr. Freeman

was not present. Dr. Freeman allegedly violated Rule 573.22, PROFESSIONAL STANDARD OF HUMANE TREATMENT, by administering Rimadyl and Depo-Medrol concurrently when doing so was medically contraindicated due to possible serious adverse effects to the gastrointestinal tract of dogs; and Rule 573.52, PATIENT RECORD KEEPING, by failing to maintain complete, accurate patient records. Disciplinary Action: Formal Reprimand, an Administrative Penalty of Five Hundred dollars (\$500), payable within 45 days of the date of the Agreed Order and required to submit five patient records, of the Respondent's choosing, over a four-month period beginning the month after the date of the Agreed Order. Upon motion by Mr. Escobar, second, and an affirmative vote, the Board approved the Agreed Order as presented.

4933 Agreed Order. The Board considered an Agreed Order in Docketed Case No. 2005-54, TSBVME v. John R. Warren, D.V.M. Dr. Johnsen, as the Secretary in this case, was recused from voting. Dr. Warren was not present. Dr. Warren allegedly violated Rule 573.43, MISUSE OF DEA NARCOTICS REGISTRATION, by failing to possess a controlled substance registration from the Texas Department of Public Safety. Disciplinary Action: Pay an Administrative Penalty of Five Hundred dollars (\$500) within 45 days of the date of this Agreed Order. Upon motion by Mr. Martinez, second, and an affirmative vote, the Board approved the Agreed Order as presented.

4934 Agreed Order. The Board considered an Agreed Order in Docketed Case No. 2005-55, TSBVME v. Kendra D. Hearon, D.V.M. Dr. Johnsen, as the Secretary in this case, was recused from voting. Dr. Hearon was not present. Dr. Hearon allegedly violated Rule 573.43, MISUSE OF DEA NARCOTICS REGISTRATION, by failing to possess a controlled substance registration from the Texas Department of Public Safety. Disciplinary Action: Pay an Administrative Penalty of Five Hundred dollars (\$500) within 45 days of the date of this Agreed Order. Upon motion by Mr. Escobar, second, and an affirmative vote, the Board approved the Agreed Order as presented.

4935 Agreed Order. The Board considered an Agreed Order in Docketed Case No. 2005-56, TSBVME v. Stephanie Szabo, D.V.M. Dr. Johnsen, as the Secretary in this case, was recused from voting. Dr. Szabo was not present. Dr. Szabo allegedly violated Rule 573.43, MISUSE OF DEA NARCOTICS REGISTRATION, by failing to possess a controlled substance registration from the Texas Department of Public Safety. Disciplinary Action: Pay an Administrative Penalty of Five Hundred dollars (\$500) within 45 days of the date of this Agreed Order. Upon motion by Ms. Reveley, second, and an affirmative vote, the Board approved the Agreed Order as presented.

4936 Agreed Order. The Board considered an Agreed Order in Docketed Case No. 2005-57, TSBVME v. Jessica Pfohl, D.V.M. Dr. Johnsen, as the Secretary in this case, was recused from voting. Dr. Pfohl was not present. Dr. Pfohl allegedly violated Rule 573.43, MISUSE OF DEA NARCOTICS REGISTRATION, by failing to possess a controlled substance registration from the Texas Department of Public Safety.

Disciplinary Action: Pay an Administrative Penalty of Five Hundred dollars (\$500) within 45 days of the date of this Agreed Order. Upon motion by Mr. Martinez, second, and an affirmative vote, the Board approved the Agreed Order as presented.

4937 Agreed Order. The Board considered an Agreed Order in Docketed Case No. 2005-58, TSBVME v. Caeley Melmed, D.V.M. Dr. Johnsen, as the Secretary in this case, was recused from voting. Dr. Melmed was not present. Dr. Melmed allegedly violated Rule 573.43, MISUSE OF DEA NARCOTICS REGISTRATION, by failing to possess a controlled substance registration from the Texas Department of Public Safety. Disciplinary Action: Pay an Administrative Penalty of Five Hundred dollars (\$500) within 45 days of the date of this Agreed Order. Upon motion by Mr. Escobar, second, and an affirmative vote, the Board approved the Agreed Order as presented.

4938 Agreed Order. The Board considered an Agreed Order in Docketed Case No. 2005-59, TSBVME v. Kristina Levis, D.V.M. Dr. Johnsen, as the Secretary in this case, was recused from voting. Dr. Levis was not present. Dr. Levis allegedly violated Rule 573.43, MISUSE OF DEA NARCOTICS REGISTRATION, by failing to possess a controlled substance registration from the Texas Department of Public Safety. Disciplinary Action: Pay an Administrative Penalty of Five Hundred dollars (\$500) within 45 days of the date of this Agreed Order. Upon motion by Mr. Martinez, second, and an affirmative vote, the Board approved the Agreed Order as presented.

4939 Agreed Order. The Board considered an Agreed Order in Docketed Case No. 2005-60, TSBVME v. Belinda Andrews, D.V.M. Dr. Johnsen, as the Secretary in this case, was recused from voting. Dr. Andrews was not present. Dr. Andrews allegedly violated Rule 573.43, MISUSE OF DEA NARCOTICS REGISTRATION, by failing to possess a controlled substance registration from the Texas Department of Public Safety. Disciplinary Action: Pay an Administrative Penalty of Five Hundred dollars (\$500) within 45 days of the date of this Agreed Order. Upon motion by Dr. Pederson, second, and an affirmative vote, the Board approved the Agreed Order as presented.

4940 Agreed Order. The Board considered an Agreed Order in Docketed Case No. 2005-61, TSBVME v. Michael J. Atha, D.V.M. Dr. Johnsen, as the Secretary in this case, was recused from voting. Dr. Atha was not present. Dr. Atha allegedly violated Rule 573.43, MISUSE OF DEA NARCOTICS REGISTRATION, by failing to possess a controlled substance registration from the Texas Department of Public Safety. Dr. Atha practiced veterinary medicine in Texas without a DPS registration from November 15, 2001 through June 22, 2005. Disciplinary Action: Pay an Administrative Penalty of Two Thousand dollars (\$2,000) within 45 days of the date of this Agreed Order. Upon motion by Dr. Pederson, second, and an affirmative vote, the Board approved the Agreed Order as presented.

4941 Agreed Order. The Board considered an Agreed Order in Docketed Case No. 2005-62, TSBVME v. David R. Lacy, D.V.M. Dr. Johnsen, as the Secretary in this case, was recused from voting. Dr. Lacy was

not present. Dr. Lacy allegedly violated Rule 573.43, MISUSE OF DEA NARCOTICS REGISTRATION, by failing to possess a controlled substance registration from the Texas Department of Public Safety. Disciplinary Action: Pay an Administrative Penalty of Five Hundred dollars (\$500) within 45 days of the date of this Agreed Order. Upon motion by Dr. Pederson, second, and an affirmative vote, the Board approved the Agreed Order as presented.

4942 Voluntary Suspension Of License. The Board considered an Order in Docketed Case No. 2005-63, TSBVME v. Gary Lynn Carter, D.V.M. Dr. Johnsen, as the Secretary in this case, was recused from voting. Dr. Carter was not present. Dr. Carter was arrested on April 5, 2005 for public lewdness and possession of a controlled substance (methamphetamine) by the Grand Prairie Police Department, Grand Prairie Texas. He was referred to the Texas Peer Assistance Program for evaluation and treatment. On May 2, 2005, Dr. Carter entered an evaluation and rehabilitation program in Louisiana, but left the program against medical advice. Dr. Carter signed a Voluntary Suspension of License on June 10, 2005 and waived his right to an adjudicative hearing. Upon motion by Dr. Pederson, second, and an affirmative vote, the Board approved the Voluntary Suspension of License No. 9026, issued to Gary L. Carter, DVM.

4943 Revocation Of License. The Board considered an Order in Docketed Case No. 2006-01, TSBVME v. Stuart Dallas Hodges, D.V.M. Dr. Johnsen, as the Secretary in this case, was recused from voting. Dr. Hodges was not present. Dr. Hodges was convicted of production of child pornography involving the sexual exploitation of minors and the possession of child pornography involving the sexual exploitation of minors in the United States District Court of the Southern District of Texas on March 31, 2005. Based on Texas Attorney General Opinion No. GA-0064, a license holder's license is revoked by operation of law under Section 53.021 of the Occupations Code, upon the imprisonment of the license holder. Upon motion by Dr. Pederson, second, and an affirmative vote, the Board revoked License No. 8351, issued to Stuart Dallas Hodges, DVM.

4944 Waiver. Conrad Whitfield, DVM, applied for Texas licensure in March 2005. Dr. Whitfield was required to seek permission from the Board to take the State Board Examination as he had practiced veterinary medicine without a license in Texas and Oklahoma. Dr. Whitfield completed veterinary school in 1997 and at that time took the National Board Exam (NBE), the Clinical Competency Test (CCT) and the State Board Exam (SBE). While Dr. Whitfield passed the NBE, he failed the CCT. His SBE was left ungraded due to the failure. He later successfully completed the CCT in Kansas. Dr. Whitfield was present and spoke to the members. Upon motion by Dr. Alldredge, second, and an affirmative vote, the Board approved Dr. Whitfield's petition to take the State Board Examination with the following conditions: Dr. Whitfield may not have a provisional license; if he passes the SBE, his license status will be probationary for 3 years; work will perform under general supervision for 3 years from the date he is licensed; he and the

doctors who provide general supervision are required to file reports with the Board; and Dr. Whitfield is required to notify the Board of any changes in address and/or supervision.

4945 Waiver. Carlos Pereyra, DVM, appeared before the Board at the June 9, 2005 meeting to request a waiver of the foreign graduate requirements and the Clinical Competency Test (CCT). During the June meeting, the Board tabled Dr. Pereyra's request until the October meeting, requesting that staff obtain details of an examination taken by Dr. Pereyra to gain New York licensure as well as a review of Dr. Pereyra by his current employer, Banfield Corporation. Dr. Pereyra was present and spoke to the members. Upon motion by Dr. Johnsen, second, and an affirmative vote, the Board voted to waive both the foreign graduate requirements and the CCT requirement. Dr. Pereyra must take the SBE within one year of the date of the Board meeting. Vote: 5 – Ayes 3-Nays.

4946 Adopted Rules. The following changes to Board rules were proposed at the June 9, 2005 Board meeting and were considered for adoption:

Amendments:

577.15, Fee Schedule

No comments were received for 577.15. Based on actions taken by the last Legislature, which resulted in small modifications were made to the proposed fees.

571.3, Eligibility for Examination and Licensure

No comments were received for 571.3.

573.27, Complaints – Receipt, Investigation and Disposition

Comments were received on 573.27. Based on these comments, "During the investigation, the investigator shall interview the complainant" was added to the posted rule.

The above-entitled rules were posted in the *Texas Register* on July 1, 2005. Comments and changes are noted above. Upon motion by Dr. Alldredge, second, and an affirmative vote, the Board adopted the amendments as indicated.

4947 Proposed Rules. The Board considered the following proposed amendments to Board rules:

573.64, Continuing Education Requirements. The proposed amendment incorporates changes made to the Veterinary Licensing Act (VLA) by the 79th Legislature. The VLA was changed to require proof of course hours claimed, which may include certificates of completion; to allow the Board to require a licensee who does not complete the required number of CE hours in a given year to make up the missing hours in later years; and to allow the Board to require a licensee who has been disciplined to participate in a continuing education program as part of the disciplinary action. Upon motion by Mr. Escobar, second, and an affirmative vote, the Board directed staff to post the proposed preamble and amendment in the *Texas Register* in accordance with law.

573.66, Monitoring Licensees' Compliance with Article 8890. The proposed amendment includes new procedures for inspections by mail, in addition to the traditional on-site inspections. The amendment spells out the types of items that a licensee can expect to be asked to produce in an inspection. Upon motion by Mr. Escobar, second, and an affirmative vote, the Board directed staff to post the proposed preamble and amendment in the *Texas Register* in accordance with law.

571.18, Provisional Licensure. The proposed amendment is based on changes made to the VLA by the 79th Legislature, deleting the requirement that a person acquiring a provisional license must be sponsored by another veterinarian who will supervise the provisional licensee's practice during the term of the provisional license. Upon motion by Mr. Escobar, second, and an affirmative vote, the Board directed staff to post the proposed preamble and amendment in the *Texas Register* in accordance with law.

The Board considered the following proposed new rule:

573.76, Marking of Sterilized Animals. The 79th Legislature amended the Health and Safety Code to require that animals released for adoption from animal pounds, shelters, or humane organizations receive an identification marker in a manner authorized by the Board. The new section requires that sterilized dogs and cats released for adoption be identified by microchips or tattoos, or both. The section also requires all new owners of adopted animals that have been microchipped to provide sterilization information to the chip manufacturer's database. Tattoos must meet federal standards for tattooing as required by the Food and Drug Administration. Upon motion by Mr. Escobar, second, and an affirmative vote, the Board directed staff to post the proposed preamble and new rule in the *Texas Register* in accordance with law.

4948 Revised Sanctions. In past disciplinary actions for failure to possess a current controlled substances certificate from the Texas Department of Public Safety, the Board approved sanctions that included a formal reprimand, administrative penalty, and taking and passing the Board's Jurisprudence Examination. Board staff recommended changing the sanction to include only an administrative penalty of \$500 for each year a licensee did not possess a current certificate. Upon motion by Dr. Pederson, second, and an affirmative vote, the Board approved the change in sanctions.

4949 Authorization For Veterinarians Impacted By Hurricane Katrina. Members were asked to consider the adoption of Emergency Rule 571.19. The emergency rule allows the agency to issue Temporary Emergency License (TEL) to veterinarians impacted by Hurricane Katrina. Upon motion by Mr. Escobar, second, and an affirmative vote, the Board adopted Emergency Rule 571.19 and instructed staff to post the rule in the *Texas Register* in accordance with law.

4950 Authorization For Veterinarians Impacted By Hurricane Rita. Members were asked to consider the adoption of Emergency Rule 571.20. The emergency rule allows the agency to issue Temporary Emergency Licenses (TEL) to veterinarians impacted by Hurricane Rita those wishing to provide assistance to Texas veterinarians with rescue efforts. Upon motion by Mr. Escobar, second, and an affirmative vote,

the Board adopted Emergency Rule 571.20 and instructed staff to post the rule in the *Texas Register* in accordance with law.

4951 Vaccination Protocol. During the February 2003 Board meeting, the Board adopted the statement entitled “AN OPEN LETTER TO VETERINARIANS RE: VACCINATION PROTOCOLS,” encouraging veterinarians to stay informed of the latest developments in vaccines and vaccinations; communicate with clients the benefits and risks associated with the administration of any given vaccine; and seek the client’s consent to the vaccinations offered. Due to a rise in complaints being filed relating to vaccinations and lack of informed consent, the Board was asked to adopt an updated statement which encourages veterinarians to continue to stay informed of the latest developments, communicate with their clients regarding vaccinations and seek the client’s consent to the vaccinations offered. Upon motion by Dr. Johnsen, second, and an affirmative vote, the Board approved the issuance of a policy statement relating to vaccination protocols and instructed staff to include the statement in the next *Board Notes*.

4952 Continuing Education. Mr. Allen gave an overview of issues regarding continuing education documentation requirements. Board staff met with Ms. Meredith Whitten, Sunset Commission, regarding the legislative intent of the language added to the Veterinary Licensing Act in Section 801.308 of the Occupations Code. Continuing Education providers will be required to maintain a record of attendance and supply a certificate of attendance at the end of the program. Providers whose seminars have more than one course and who do not provide individual certificates of attendance for each course may utilize a pre-printed check off list containing a list of courses and their CE hour value. In addition, the Board will accept program brochures that contain a list of courses and their CE hour value which have classes attended marked by the veterinarian.

4953 Technological Solutions – Policy Statement. As part of Senate Bill 407, the agency’s Sunset Bill, The 79th Legislature included a requirement that the Board adopt a policy regarding the Board’s use of appropriate technological solutions to improve the Board’s ability to perform its functions, ensuring the public’s ability to interact with the Board on the Internet. Upon motion by Dr. Pederson, second, and an affirmative vote, the Board approved the Technological Solutions Policy Statement.

4954 Board Officer and Member Responsibilities. Mr. Allen gave an overview of the responsibilities of Board staff in relation to non-medical issue complaints. Board staff will propose agreed orders for those complaints not involving medical issues such as continuing education, patient record keeping and DEA/DPS certificates. If no agreement can be reached with the licensee, the complaint will be referred to the Board’s Enforcement Committee for an informal conference.

Complaints filed on or after September 1, 2005 involving medical issues will be reviewed by the Board Secretary and the previous Board Secretary. Those complaints referred to informal conference will be heard by the Enforcement committee, which is made up of the Board Secretary, the Vice President and a

public member.

4955 Appointment of Board Officers. Upon an a motion by Dr. Pederson, a second, and an affirmative vote, the members made the following appointments:

Vice President – Guy W. Johnsen, DVM

Secretary – Bud E. Alldredge, Jr., DVM

Based on new language added to the Veterinary Licensing Act by the 79th Legislature, the Governor will appoint the Board's president. Until such time as the appointment is made, Gary Brantley, DVM will continue as president.

4956 Appointment of Board Committees. Dr. Brantley made the following appointments to Board Committees:

Executive Disciplinary Committee – Robert Lastovica, DVM, Gary Brantley, DVM, Guy Johnsen, DVM, and Dawn Reveley

Enforcement Committee – Guy Johnsen, DVM and Bud Alldredge, Jr., DVM and one public member as designated

Rules Committee – Paul Martinez, Chair, Patrick Allen, and Dawn Reveley

4957 Executive Director's Report.

2005 License Renewals – As of August 31, 2005, 6921 licensees had renewed.

June 13, 2005 State Board Examination – 63 individuals were examined, 63 passed

August 8, 2005 State Board Examination – 36 individuals were examined, 35 passed

Status of FY2005 Operating Budget – Mr. Allen gave an overview of the status of the FY2005 operating budget.

Enforcement Report – As of August 31, 2005, the Board has received 290 complaints for FY2005 and resolved 333 complaints, with an average resolution time of 153 days.

Licensing and Examinations Report – As of August 31, 2005, the Board licenses 6921 veterinarians, the State Board Exam was administered to 303 applicants, the Provisional License Exam was administered to 25 applicants, and the Special License Exam was administered to 28 applicants.

Peer Assistance Report – As of August 31, 2005, 17 individuals were participating in the Peer Assistance program. Two of those individuals are under Board order to participate.

4958 Adjournment. There being no further business, the meeting was adjourned.

Approved:

Robert Lastovica, D.V.M.
President

Bud E. Alldredge, Jr., D.V.M.
Secretary