



# TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

BUD E. ALLDREDGE, JR., D.V.M.  
PRESIDENT

DEWEY E. HELMCAMP III, J.D.  
EXECUTIVE DIRECTOR

October 21, 2011

Nettie Dunn

[REDACTED]  
Angleton, Texas 77515

Re: Case No. 11-186; Docket No. 2011-74  
Gary Brackeen, D.V.M.

Dear Ms. Dunn:

This letter is formal notification that the Board of Veterinary Medical Examiners has completed its action on your complaint and we have closed this case due to Board Order. A copy of the Agreed Order for Docket No. 2011-74 is included for your reference.

Sincerely yours,

A handwritten signature in cursive script that reads "D. Barker".

Deborah Barker  
Legal Assistant

Enclosures: Agreed Order

DOCKET NO. 2011-74

IN THE MATTER OF	§	TEXAS BOARD OF
THE LICENSE OF	§	VETERINARY
GARY W. BRACKEEN, D.V.M.	§	MEDICAL EXAMINERS

**AGREED ORDER**

On this the 18 day of Oct, 2011, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of Gary W. Brackeen, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rules 573.22 and 573.52, an informal conference was held on June 27, 2011. The Respondent was not represented by 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. Respondent, Gary W. Brackeen, D.V.M. of Angleton, Texas, holds Texas veterinary License 3862.
2. The Board has jurisdiction over the subject matter and Respondent. Respondent received notice, which may be required by law and by the rules of the Board. All jurisdictional requirements have been satisfied under Tex. Occ. Code Ann. Title 4 (Act). By entering into this Agreed Order, Respondent waives any defect in the notice and any further right to notice and hearing under the Act; Tex. Gov't Code Ann. §§ 2001.051-.054; and the Rules of the Texas Board of Veterinary Medical Examiners (Board Rules) (22 Tex. Admin. Code, Chapter 575).

3. On January 14, 2011, Nettie Dunn presented her seven year-old male Chihuahua, "Spanky," to Respondent of Anchor Road Veterinary Clinic ("ARVC") in Angleton, Texas for skin allergy treatment and to examine a knot located on his abdomen above his left thigh.
4. Respondent examined "Spanky" and determined that the knot was likely a benign fatty tumor. Jessica Orr, Respondent's veterinary technician, explained to Ms. Dunn that Respondent would perform surgery to remove the fatty tumor.
5. On January 17, 2011, Ms. Dunn again presented "Spanky," to Respondent at ARVC for surgery to remove the suspected fatty tumor. Respondent performed surgery on "Spanky" to remove the benign fatty tumor, and Ms. Orr assisted him in the surgery. Dr. Brakeen did not do any presurgical blood work. The surgery was uneventful, but when Respondent completed removing the fatty tumor, he disposed of the tissue in the trash without obtaining a sample of it. Respondent left gauze with iodine in the removal site to help cauterize the wound. Respondent did not administer intravenous fluids to "Spanky" either during or after surgery. Respondent sent "Spanky" home that afternoon with Ms. Dunn's daughter, and prescribed antibiotics for "Spanky."
6. When Ms. Dunn got home from work, she saw that the gauze sticking out of "Spanky's" wound was dripping blood. By 9:30 pm, "Spanky" was bleeding quite a bit, and seemed painful when moved.
7. That same evening, Ms. Dunn brought "Spanky" back to the ARVC. Respondent gave "Spanky" a cursory examination without touching him, and told Ms. Dunn to take Spanky back home because "Spanky's" bleeding was not significant. Respondent did not perform blood work on "Spanky" or administer intravenous fluids.
8. The next morning, on January 18, 2011, Ms. Dunn called to make an appointment for "Spanky" to have his staples removed. She told Desiree Chapa, a veterinary technician at ARVC, that "Spanky" was still not feeling good, and would not get up—he was only drinking water when they held the bowl for him and urinated wherever they set him as if he could not hold his bladder. Ms. Chapa made an appointment for "Spanky" to come back in to ARVC on January 21, 2011.
9. Over the next day, "Spanky" continued to deteriorate. He refused to drink and could not walk.
10. At 4:30 am on January 20, 2011, Ms. Dunn called Respondent and told him that she did not think "Spanky" would make it much longer. Respondent told her he would not have anyone to help him until 7:00 am, and asked her to bring "Spanky" in then.
11. At 7:00 am on January 20, 2011, Ms. Dunn again presented "Spanky" at ARVC. When Ms. Dunn brought "Spanky" in, Respondent stated, "You know he is full of cancer." The

statement surprised Ms. Dunn because she had previously been informed by Ms. Orr that the tumor removed was benign.

12. Ms. Chapa was the veterinary technician on duty when Ms. Dunn presented "Spanky" to Respondent on January 20, 2011. She also observed that the dog did not appear well, although neither Ms. Chapa nor Ms. Orr saw blood coming from "Spanky's" suture site.

13. Respondent told Ms. Chapa to place "Spanky" in a cage for observation. When Ms. Chapa suggested that "Spanky" be administered fluids, Respondent stated that "Spanky" was only there for observation. Respondent did not examine "Spanky," administer fluids, or perform blood work on "Spanky." "Spanky" died by 10:00 am that morning. Respondent did not offer a necropsy.

14. Respondent's failure to perform blood work on "Spanky" prior to surgery on January 17, 2011, to administer intravenous fluids during or after surgery, to send the tumor tissue he removed from "Spanky" for further testing, as well as Respondent's failure to examine, perform blood work on, or administer fluids to "Spanky" when "Spanky" was presented to Respondent for surgical complications on January 20, 2011, do not represent the same degree of humane care, skill, and diligence in treating patients as are ordinarily used in the same or similar circumstances by average member of the veterinary medical profession in good standing in the locality or community in which they practice, or in similar communities.

15. Both Ms. Orr and Ms. Chapa noted that Respondent's health has been declining, and that he no longer has the energy to perform examinations or treatment for most animals that are presented to ARVC—he only examines the animals that are seriously ill. For routine ailments, Ms. Orr and Ms. Chapa both examine and treat the animals without input from Respondent.

16. Both Dr. Brakeen and Ms. Chapa confirmed that Ms. Chapa conducts post-operative suturing and surgically removes ear hematomas despite the fact that she is neither a registered veterinary technician nor licensed to practice veterinary medicine. Respondent stated that he understood he only needed to be present on the premises, and did not need to examine each animal presented to ARVC. Respondent stated that he has offered Ms. Chapa the opportunity to perform a spay surgery herself, but she declined the opportunity.

17. Respondent's patient records for "Spanky" are incomplete. Respondent failed to record any information regarding his examination of "Spanky" and differential diagnosis of the fatty tumor on January 14, 2011. He failed to record a weight or temperature for "Spanky" on January 17, 2011, the date of surgery, and failed to make any record at all of his examinations and/or treatment of "Spanky" on the evening of January 17, 2011 and on January 20, 2011.

18. When Board Investigator Dennis Barker interviewed Respondent regarding this investigation on June 10, 2011, Respondent admitted to Investigator Barker that he has self-administered Lasix, Amoxicillin and Methocarbamol.

### 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 the Findings of Fact above, 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 are ordinarily used in the same or similar circumstances by average member of the veterinary medical profession in good standing in the locality or community in which they practice, or in similar communities.
3. Based on Findings of Fact 15 and 16, Respondent has violated Rule 573.10, SUPERVISION OF NON-LICENSED EMPLOYEES, of the Board's Rules of Professional Conduct, which requires a veterinarian to properly supervise his non-licensed employees, and prohibits non-licensed employees who are not registered veterinary technicians from performing surgery, prescribing drugs, diagnosing animal diseases and conditions, and from performing suturing or inducing anesthesia without immediate supervision by a veterinarian.
4. Based on Finding of Fact 17, Respondent has violated Rule 573.52, PATIENT RECORD KEEPING, of the Board's Rules of Professional Conduct, which requires that a veterinarian maintain records complete with identification of the patient, including name, species, breed, age, sex and description, patient history, and the names, dosages, concentration and routes of administration of each drug prescribed, administered and/or dispensed.
5. Based on Finding of Fact 18, Respondent has violated Rule 573.60, PROHIBITION AGAINST TREATING HUMANS, of the Board's Rules of Professional Conduct, which prohibits veterinarians from providing care and treatment to humans, including dispensing prescription drugs for personal use by a human.
6. Based on Finding of Fact 18, Respondent has violated Rule 573.4, ADHERENCE TO THE LAW, of the Board's Rules of Professional Conduct, by violating TEX. OCC. CODE §§ 558.001(a) and (c), which prohibit a person without a pharmacy license from acting as a pharmacist by filling a prescription from a medical doctor.
7. Based on Findings of Fact 1 through 18 and Conclusions of Law 1 through 6, 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.

8. Based on Conclusions of Law 1 through 7, 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: (a)

- (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.

.... (d) In addition to other disciplinary actions authorized by this subchapter, the board may require a license holder who violates this chapter to participate in a continuing education program.

9. Based on Conclusions of Law 1 through 8, the Board may order the license holder to refund an amount not to exceed the amount a client paid to the license holder instead of or in addition to imposing an administrative penalty, under Section 801.408 of the Veterinary Licensing Act, Texas Occupations Code.

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

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Respondent be FORMALLY REPRIMANDED.

The Board further ORDERS that Respondent shall submit to an evaluation by a mental health provider selected and approved by the Board's Peer Assistance Program Coordinator. Respondent shall pay any and all costs associated with the evaluation.

The Board further ORDERS that the license of Respondent is SUSPENDED for two years. Beginning on the first day after Respondent submits to an evaluation by the Peer Assistance Program Coordinator as described above, the suspension will be STAYED and Respondent

placed on PROBATION. If Respondent submits to an evaluation by the Peer Assistance Program Coordinator prior to the effective date of this Order, the entire suspension will be STAYED and Respondent placed on PROBATION beginning on the effective date of this Agreed Order.

The Board further ORDERS that within 30 days of the date of this Order Respondent pay to the client RESTITUTION of ONE HUNDRED NINETY FIVE DOLLARS (\$195.00). If Respondent fails to either pay the restitution or send notification to the client of cancellation of the account payable, whichever is applicable, within 30 days of the date of this Agreed Order, enforcement action will be taken.

The Board ORDERS that Respondent pay, within 45 days of the date of this Order, an ADMINISTRATIVE PENALTY of FIVE HUNDRED (\$500.00). If Respondent fails to pay the administrative penalty within 45 days of the date of this Agreed Order, Respondent's license may be suspended until the penalty is paid.

In addition, the Board ORDERS that Respondent complete an additional SEVENTEEN (17) hours of continuing education in the following subjects: SIX (6) hours in anesthesia, FOUR (4) hours in oncology, FOUR (4) hours in surgery, THREE (3) hours in recordkeeping, with all SEVENTEEN (17) hours to be completed within one year of the date of this order. Documentation of the completion of the continuing education penalty shall be received by thirty (30) days following the end of the period to receive the continuing education required for this Order. If Respondent fails to provide documentation of completion within forty-five (45) days from the end of the period to receive the continuing education, Respondent's license shall be suspended until the continuing education penalty is completed and documentation is received by the Board.

The Board further ORDERS that Respondent shall take the Texas veterinary jurisprudence examination within one year from the date of this Agreed Order.

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 Agreed 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 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 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 ORDER. 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, GARY W. BRACKEEN, 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.

Gary W. Brackeen DVM  
GARY W. BRACKEEN, D.V.M.

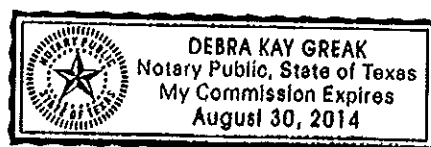
8-1-11  
Date

STATE OF TEXAS §  
COUNTY OF Maricopa §

BEFORE ME, on this day, personally appeared Gary W. Brackeen, 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 1st day of August, 2011.

Debra Kay Greak  
Notary Public

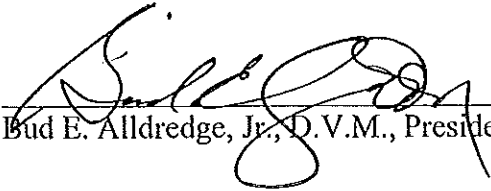


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Gary W. Brackeen, D.V.M.

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AUG 03 2011  
TEXAS STATE BOARD OF  
VETERINARY MEDICAL EXAMINERS



SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL  
EXAMINERS on this the 18<sup>th</sup> of Oct, 2011.

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