

CAUSE NO. D-1-GN-14-000287

ELLEN JEFFERSON, D.V.M.,	§	IN THE DISTRICT COURT
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	250TH
	§	_____ JUDICIAL DISTRICT
TEXAS STATE BOARD OF	§	
VETERINARY MEDICAL	§	
EXAMINERS and NICOLE ORIA	§	
IN HER OFFICIAL CAPACITY	§	
AS EXECUTIVE DIRECTOR,	§	
	§	
<i>Defendants.</i>	§	TRAVIS COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION
FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

ELLEN JEFFERSON, D.V.M., Plaintiff herein, is the executive director of two Central Texas animal welfare groups that take temporary ownership of thousands of stray dogs and cats each year at the moment they are to be euthanized by their respective city animal shelters. The ultimate goal of San Antonio Pets Alive! (*SAPA!*) and Austin Pets Alive! (*APA!*) is to make each city a "no-kill" city by finding each and every rescued animal a permanent adoptive owner. As the Texas Occupations Code expressly provides, Dr. Jefferson's veterinary care and treatment of these animals as an employee of *SAPA!* and *APA!* is *exempt* from the Texas Board of Veterinary Medical Examiners' (the *Board's* or *TBVME's*) jurisdiction, *as the Board has itself acknowledged*. Unable to

persuade the Board in its informal complaint processes that the Legislature has statutorily limited its jurisdiction, Dr. Jefferson now faces administrative charges the Board has leveled against her arising directly from the work she has performed exclusively in her role as executive director and lead veterinarian of SAPA!. Dr. Jefferson, therefore, respectfully requests that the Court intercede and put a stop to the TBVME's *ultra vires* prosecution.

PARTIES AND PROCEDURE

1. Dr. Jefferson is a licensed Texas veterinarian employed as executive director and lead veterinarian of SAPA! and APA!, both of which are 501(c)(3) non-profit animal welfare organizations dedicated to “rescuing” lost, abandoned, and voluntarily relinquished pets in Austin and San Antonio. Dr. Jefferson intends to conduct discovery under Discovery Level 3. *See* TEX. R. CIV. P. 190.1 and 190.4.

2. TBVME is a Texas state agency and is made a party defendant pursuant to the statutory requirements of the Texas Uniform Declaratory Judgments Act (*UDJA*), Chapter 37, Texas Civil Practices and Remedies Code, §§37.003, 37.004. Like other state agencies, it derives its power and authority from statute. In the TBVME’s case, that statutory power and authority arises solely from the Veterinary Licensing Act, now codified as Chapter 801 of the Texas Occupations Code.

3. Nicole Oria is the Executive Director of the TBVME. She is sued in her official capacity as such and not personally.

4. Service may be made on the TBVME and Oria by serving them at the principal place of business of the TBVME, 333 Guadalupe Street, Tower III, Suite 810, Austin, Texas 78701.

5. Because injunctive relief is requested against a state agency, the Honorable Greg Abbott, Attorney General of Texas, will also be served per Local Rule 10.4. *See* TRAVIS CO. LOC. R. 10.4 (“Notice of any hearing to restrain agency action shall be provided to the Office of the Attorney General of Texas.”). General Abbott may be served at the Office of the Attorney General, Administrative Law Division, 300 West 15th Street, Austin, Texas 78701.

6. At least two statutes vest this Court with jurisdiction.¹ First, under the UDJA, Dr. Jefferson is entitled to the judicial declarations sought below with respect to the TBVME’s authority under the Texas Veterinary Licensing Act. *See infra* at ¶35. Second, the Court has jurisdiction to hear and determine applications for writs of injunction under TEX. CIV. PRAC. & REM. CODE §§ 65.011 and 65.021. *See infra* at ¶¶36-41.

7. Venue is proper in Travis County because all or part of the causes of action accrued in Travis County, *see* TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1).

¹The Court’s jurisdiction is not diminished by the pending TBVME administrative action. First, “when the issue is whether the agency is exercising authority beyond its statutorily conferred powers,” the pendency of an agency proceeding in no way bars an immediate action for declaratory relief. *Tex. Dep’t of Human Servs. v. ARA Living Centers of Tex., Inc.*, 833 S.W.2d 689, 692 (Tex. App.—Austin 1992, writ denied). Second, the doctrine of exhaustion of remedies “does not apply . . . when the agency’s jurisdiction is questioned” on persuasive grounds. *Southwestern Bell Tel. Co. v. Pub. Util. Comm’n*, 72 S.W.3d 23, 33 (Tex. App.—Austin 2001, pet. dismissed w.o.j.).

STATEMENT OF THE CASE

A. The Legal Framework for Animal Control in Texas

8. As noted above, the Veterinary Licensing Act, now codified in Chapter 801 of the Texas Occupations Code (the *Act*), establishes the TBVME and defines its jurisdiction. The Act neither speaks to animal control nor vests the TBVME with jurisdiction over the area.

9. Instead, the Texas Health & Safety Code commits animal control to local authorities—municipal officials or county commissioners—with oversight from the Texas Board of Health and Texas Department of Health, not TBVME. Chapter 823 of the Health & Safety Code addresses the regulation of “animal shelters” as part of that scheme. *See* TEX. HEALTH & SAFETY CODE ANN. §823.001, *et seq.*

10. In addition, the Health & Safety Code empowers municipalities and counties to “adopt ordinances or rules” that (a) require stray dogs and cats “be impounded for a period set by ordinance or rule,” and (b) provide for “a humane disposition” of the unclaimed strays “on the expiration of the required impoundment period.” TEX. HEALTH & SAFETY CODE ANN. § 826.033. Pertinent excerpts of the Health & Safety Code are compiled and attached hereto as **Exhibit A** and incorporated herein as if fully set forth.

11. A holding period such as that provided in the Texas Health & Safety Code is the national norm. *See* LILA MILLER AND STEPHEN ZAWISTOWSKI, SHELTER MEDICINE FOR VETERINARIANS AND STAFF at 63 (2d ed. 2013) (“Generally, for a governmental shelter that is under the auspices of the public entity charged with the management of ‘at

large’ or stray animals, there is a holding time, designated by state law or local ordinance, during which the shelter must maintain the animal . . . during which an owner may come in and identify the animal and claim him or her.”) (hereafter, *SHELTER MEDICINE*). Like many Texas cities, San Antonio has adopted a three-day holding period:

Impounded dogs and cats shall be kept for not fewer than three (3) days, excluding the day the animal is impounded and any days the animal care services facility is not opened, and shall be subject to adoption, rescue, foster or humanely euthanized at the discretion of the director thereafter.

SAN ANTONIO, TEXAS, CODE OF ORDINANCES part II, ch. 5, art. VII, § 5-158 (2010).

12. Under Texas law, pets, like other animals, are property.² To enable the disposition of unclaimed animals, state or local laws generally provide that ownership of unclaimed animals automatically transfers to the animal control authority after the expiration of the impoundment period. *See SHELTER MEDICINE* at 63 (“Oftentimes there is a statutorily designated number of days the animal is to be maintained before ownership transfers to the shelter and the shelter has full discretion as to the disposition of the animal.”).³ San Antonio is no exception; a City ordinance provides that:

²*See Heiligmann v. Rose*, 16 S.W. 931, 932 (Tex. 1891); *Kidd v. Reynolds*, 50 S.W. 600, 600 (Tex. Civ. App. 1899, writ dismissed); *Gulf C. & S. F. Ry. Co. v. Blake*, 95 S.W. 593, 593 (Tex. Civ. App. 1906, no writ); *Arrington v. Arrington*, 613 S.W.2d 565, 569 (Tex. App.—Fort Worth 1981, no writ); *Strickland v. Medlen*, 397 S.W.3d 184, 185-86 (Tex. 2013). But “[p]roperty in dogs is of an imperfect or qualified nature[, as] they may be subjected to peculiar and drastic police regulations by the state” *Nicchia v. People of State of N.Y.*, 254 U.S. 228, 230-31 (1920); *see also Sentell v. N.O. & C.R.R. Co.*, 166 U.S. 698 (1897) (“property in dogs is of an imperfect or qualified nature[, as dogs] stand . . . between animals *ferae naturae*, in which, until killed or subdued, there is no property, and domestic animals, in which the right of property is perfect and complete”)).

³This self-executing transfer of ownership is consistent with the summary disposition cities and counties are entitled to make under Texas law. *See Jenkins v. City of Waxahachie*, 392 S.W.2d 482, 484

Any animal not claimed by its owner within the above stated three (3) days *shall become the property of the city*, and shall be subject to adoption, rescue, foster or humanely euthanized at the discretion of the director. The selection of an animal for adoption or rescue during the reclamation period or thereafter shall not confer any ownership right or right of possession to the animal.

SAN ANTONIO, TEXAS, CODE OF ORDINANCES part II, ch. 5, art. VII, § 5-159(a) (2010) (emphasis added). Pertinent excerpts of San Antonio’s animal control ordinances are compiled as **Exhibit B** and incorporated herein as if fully set forth.

13. These ownership-transfer laws are a vital link between public and private shelters because “once ownership is established in the public shelter, the public shelter has the legal right to transfer ownership to a private shelter.” SHELTER MEDICINE at 64. Another vital link is the Health & Safety Code’s authorization of municipal and county “agreements with public or private entities to carry out” the task of animal control. TEX. HEALTH & SAFETY CODE ANN. § 826.016.

B. THE NO-KILL MOVEMENT IN CENTRAL TEXAS

14. In 2008, APA! began rescuing stray pets from Austin Animal Center. Then, in March 2010, the Austin City Council adopted a “no kill” ordinance. Austin Animal Center’s records reflect the turnaround its partnership with APA! and other organizations has produced:

(Tex. App.—Waco 1965, writ refused n.r.e.) (“Consistent with due process, a state . . . may make provision for the summary destruction of dogs . . . running at large . . . no matter how stringent in character or how summary the proceedings . . . notwithstanding the property of the owner is destroyed without notice or hearing in the execution of the law.” (emphasis added)).

Fiscal Year⁴	Pets Killed	Euthanasia Rate
2008	9,946	45%
2009	6,161	31%
2010	5,961	27%
2011	1,898	11%
2012	926	5%
2013	1375	7.4%

From a City that euthanized 14,000 animals in 2007, Austin surged to the forefront of the nation's no-kill movement with a live release rate of more than 90% after embarking in a partnership with APA!

15. In September 2011, the City of San Antonio Animal Care Services Department committed to increasing the City's live release rate. A major step in that effort was a contract under which SAPA! committed to rescue a minimum of 4,000 pets annually. In November 2012, that contract was renewed for up to three one-year terms. In furtherance of its duties under the City of San Antonio agreement, SAPA! has recruited more than 500 foster homes and more than 900 volunteers. San Antonio Animal Control's records reflect a turnaround mirroring Austin's success:

Fiscal Year⁵	Pets Killed	Euthanasia Rate
2011	19458	66.5%
2012	13559	38.4%
2013	6797	22.8%

⁴Fiscal year runs from October through September.

⁵Fiscal year also runs from October through September.

Thus, in a short time, San Antonio has demonstrated that it is well on the way to an over 90% live release rate.

C. Congratulations and Criticism for the No-Kill Movement

16. The success of Austin's and San Antonio's no-kill campaigns has not gone unnoticed. Both cities have been widely praised for their success. As the Executive Director of APA! and SAPA!, Dr. Jefferson has likewise drawn plaudits.

17. But every movement has its critics, and no-kill is no exception.

18. People for the Ethical Treatment of Animals (*PETA*), for example, unapologetically euthanizes thousands of pets annually out of the belief that man is dog's worst friend. *See, e.g.,* Amy Worden, *PETA Defends Shelter Kill Rate amid Criticism from Other Animal Groups* (quoting PETA's vice president for cruelty investigations, Daphna Nachminovitch: "The animals we take in and euthanize I don't worry about it," she said. "It's the dogs at the end of a chain who die a horrible death."), *available at* <http://www.philly.com/philly/blogs>.

D. The TBVME's Charges against Dr. Jefferson

19. After the three-day holding period provided in San Antonio Ordinances has expired, the City is vested with ownership of each animal (by operation of the transfer-of-ownership ordinance), and City employees schedule the dog or cat for euthanization. After it is euthanized, the dead pet is either incinerated on-site or dumped in a sanitary landfill. Under its agreement with the City, on the day the pets are slated to be euthanized, SAPA! selects qualifying dogs and cats from the to-be-killed list for

adoption, and the City transfers them to SAPA!. Only then does SAPA! take possession and ownership of the pets for the purpose of finding foster and adoptive homes for them.

20. SAPA!'s efforts to place these animals in permanent adoptive homes includes making them fit for adoption—through the administration of vaccinations, spaying and neutering, and other services—as well as arranging interim housing in a shelter or foster home until a match is found. When matched, the animal's adoptive home takes ownership of the animal from SAPA!.

21. This dispute arises out of the basic medical and housing services SAPA! provides. On December 27, 2013, the Board issued and mailed a Notice of Hearing (the *Notice*), setting an April 8 and 9, 2013, hearing before the State Office of Administrative Hearings (SOAH Docket No. 578-14-1546) on charges that Dr. Jefferson violated (a) the Veterinarian Licensing Act in Chapter 801 of the Texas Occupations Code, and (b) TBVME rules promulgated under its Chapter 801 rule-making authority. A true and correct copy of the Notice is attached hereto as **Exhibit C** and incorporated herein as if fully set forth.

22. The TBVME's charges stem from the rescue of a pregnant, three-year-old German Shepard mix in the fall of 2012. Rescued on the day she was slated for euthanasia, SAPA! placed the dog in foster care with Sheryl Meade, a Converse resident. Importantly, in her online foster application, Meade acknowledged and agreed that the dog was—and would remain—SAPA!'s property:

All the pets in the San Antonio Pets Alive! foster program *are the property of San Antonio Pets Alive!* and must be returned within 24 hours of request. I agree that I am fostering this pet for San Antonio Pets Alive! *and that I do not have any right of ownership over my foster animal.* I further agree that San Antonio Pets Alive's! rights in and to my foster pet are superior to mine. I agree to provide the Authorized Representative, or his/her designate access to my home and property to check on my foster pet, at any time while I am in possession of my foster pet.

Foster Application (emphasis added), *available at* <http://www.sanantoniopetsalive.org/foster/foster-application>. A screenshot of this portion of the online application is attached hereto as **Exhibit D** and incorporated herein as if fully set forth.

23. A week after Meade accepted the dog for foster care, the dog gave birth to five healthy puppies, all of which were later adopted, including one by Meade. In mid-November 2012, however, Meade noticed that the dog was apparently ill or injured. Over a three-day period, she exchanged e-mails and texts with SAPA!'s hotline volunteers who, in turn, contacted Dr. Jefferson for advice. As TBVME knows, the number of SAPA! and APA! foster caregivers and the wide area over which their homes are scattered make it impossible for Dr. Jefferson to provide on-site care to each animal SAPA! owns and places in foster care. For example, on November 12, 2012, the day the disputed dog initially exhibited difficulties, SAPA! had 737 animals in foster care in 307 homes.

24. Unfortunately, despite the efforts of Meade, the SAPA! volunteers, and Dr. Jefferson, the dog died the evening of the third day. Meade filed a complaint with TBVME (the *Complaint*), and the Notice is the result.

25. The TBVME's account of Dr. Jefferson's efforts is predictably partisan, and the Board would surely contest Dr. Jefferson's side of the story. But the Board cannot genuinely deny three inescapable facts: (1) the disputed dog would have been killed five weeks earlier but for SAPA!'s no-kill partnership with San Antonio Animal Services; (2) so, too, would the dog's five unborn puppies have perished before reaching the permanent homes they now enjoy (including Meade's home); and (3) if private shelter organizations, such as SAPA!, are held to answer to the TBVME for the veterinary care they provide to animals they own, rather than to their municipal and county no-kill partners, thousands of pets that can now expect to find permanent homes will instead find death by euthanasia.

E. The TBVME Lacks Jurisdiction, as the Board Itself Acknowledged the Same Week the Complainant Accepted Foster Responsibility for the Disputed Dog

26. The TBVME's motives for taking on no-kill partnerships for providing veterinary care to pets they own are unclear; perhaps the Board has aligned itself with PETA or a protectionist element of the veterinarian profession. What is clear, however, is that the TBVMA is ignoring a straightforward, long-standing limitation on its authority to regulate the provision of veterinary care.

27. The primary underpinning for the Board's charges is the allegation that Dr. Jefferson “did not have a VPCR”—veterinarian-patient-client relationship—with the disputed dog. Notice at 9 (repeating the allegation 5 times); *see also id.* at 7 (repeating it 4 times) and 8 (repeating the charge 3 times).

28. To be sure, the Veterinarian Licensing Act generally prohibits the “practice of veterinarian medicine, unless a veterinarian-patient-client relationship exists.” TEX. OCC. CODE ANN. § 801.351. But the term itself makes clear that a veterinarian-patient-client relationship involves the three participants in the *traditional veterinary setting*: the animal, the animal owner, and the veterinarian. *Id.* at § 801.351(a)(1) (“A veterinarian-client-patient relationship exists if the veterinarian . . . assumes responsibility for medical judgments regarding the health of an *animal* and a *client*, who is the *owner or other caretaker of the animal*, agrees to follow the *veterinarian's* instructions. . . .”).⁶

29. Where a veterinarian cares for his or her own animals or those of his or her employer, however, there is no veterinarian-patient-client relationship because there is no separate “client.” *Id.* Where a veterinarian cares for his or her employer’s animals, there are again two parties, not three, because the law deems the principal/owner and veterinarian/employee/agent to be one-and-the-same for most every purpose. Against

⁶The statute’s prerequisites for a VPCR are three-fold; the remaining two are: (a) the veterinarian must possess “sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the animal's medical condition,” and (b) the veterinarian must be “readily available to provide, or has provided, follow-up medical care in the event of an adverse reaction to, or a failure of, the regimen of therapy provided by the veterinarian.” TEX. OCC. CODE § 801.351(a)(1).

this backdrop, it is unsurprising that the Veterinary Licensing Act *categorically exempts* care in these settings from the Board's jurisdiction:

This chapter *does not apply* to . . . the treatment or care of an animal *in any manner* by the *owner of the animal*, an *employee of the owner*, or a designated caretaker of the animal, unless the ownership, employment, or designation is established with the intent to violate this chapter

TEX. OCC. CODE § 801.004(1) (emphasis added).

30. There is nothing nuanced about this exemption. The Model Act includes an owner-exemption, *see* AVMA MODEL VET. PRAC. ACT §6(9) (2013) (exempting care or treatment by “an owner of an animal and any of the owner's regular employees”), noting that the exemption “has been a common practice for states,” *id.*, cmt. to section 6; *see also* SHELTER MEDICINE at 65 (“[m]any, if not every state's practice act has [such] an exemption for owners of animals.”). Highlighted excerpts of the Model Act and commentary are compiled as **Exhibit E** and incorporated herein as if fully set forth.

31. As one text on shelter medicine explains, “[t]he owner exemption is pertinent because shelters own most of their animals.” SHELTER MEDICINE at 65. In SAPA!'s case, it owns *all* of the pets in its care—from San Antonio Animal Control's transfer to SAPA! until the pet is placed into adoption.

32. The TBVME itself acknowledges that Texas' owner-exemption applied to work such as that which Dr. Jefferson performs. Contemporaneously with the provision of the veterinary care Dr. Jefferson provided that gives rise to the Complaint and the

Board's Notice, indeed, the same week that SAPA! rescued the disputed dog from euthanasia, the Board published its Fall 2012 issue of *Board Notes*.

32. In the leadoff article, the Board confirmed that, *after* the standard three-day holding period, a veterinarian-client-patient relationship is *unnecessary* because such shelter veterinary care is *exempt* from the Veterinary Licensing Act:

After the time period for holding the animal has elapsed, usually three days and set by local ordinance, then the shelter may claim the animal is abandoned and the shelter is the owner. Under Texas law, an animal's owner or a caretaker designated by the owner can perform acts of veterinary medicine on the animal without involving a veterinarian and without concern for establishing a veterinarian-client-patient relationship, *because the owners and caretakers are exempt from the Veterinary Licensing Act*. Until that point, in order to perform veterinary services on that animal, including rabies vaccinations, a veterinarian must conduct an examination on that animal to establish a veterinarian-client-patient relationship.

Texas State Board of Veterinary Medical Examiners, *Board Notes* at 2 (Fall 2012) (emphasis added). Highlighted excerpts of this article make up **Exhibit F**, which is attached hereto and incorporated herein as if fully set forth.

REQUESTED RELIEF

A. Declaratory Judgment Under the Chapter 37, Texas Civil Practice and Remedies Code

34. The UDJA provides that a person whose rights are affected by a statute may have determined any question of construction or validity under the statute and may obtain a declaration of rights, status, or legal relations thereunder. TEX. CIV. PRAC. & REM. CODE ANN. § 37.004. The UDJA provides a waiver of sovereign immunity for

suits brought to construe statutes and for suits against officers of the State for taking actions that are beyond their statutory authority or are *ultra vires*. The Executive Director and the Board seek to enforce provisions of the Act against Dr. Jefferson in violation of TEX. OCC. CODE § 801.004(1). As applied by the Board in its investigation of the complaint and its prosecution of SOAH Docket No. 578-14-1546, the Board's actions under the Act interfere with or impair Dr. Jefferson's legal rights and privileges.

35. Dr. Jefferson, therefore, seeks declarations of the Court that, contrary to the terms of to TEX. OCC. CODE § 801.004(1):

(a) The Board is engaging or threatening to engage in *ultra vires* acts and acting outside the scope of its statutory authority in initiating and conducting an investigation into and enforcement action against Dr. Jefferson's alleged actions with regard to the pet at issue;

(b) The Executive Director is engaging or threatening to engage in *ultra vires* acts and acting outside the scope of her statutory authority in initiating and conducting an investigation into and enforcement action against Dr. Jefferson's alleged actions with regard to the pet at issue;

(c) Neither the Board nor the Executive Director may proceed with the investigation or Complaint proceeding being conducted pursuant to the Notice in SOAH Docket No. 578-14-1546; and

(d) The Board or the Executive Director on behalf of the Board is required to withdraw the Notice and dismiss SOAH Docket No. 578-14-1546.

B. Temporary and Permanent Injunctive Relief

36. Because the Board's pursuit of its investigation of the Complaint and SOAH Docket No. 578-14-1546 exceeds its authority under the Act, Dr. Jefferson will imminently suffer substantial and irreparable harm and incur substantial costs and the expenditure of significant resources, unless this Court imposes immediate relief prohibiting the further prosecution of the SOAH Docket No. 578-14-1546 contested case. Dr. Jefferson, therefore, seeks temporary and permanent injunctions prohibiting the Board from proceeding against Dr. Jefferson in SOAH Docket No. 578-14-1546 or any other investigation or proceeding based upon the facts made the basis of the Complaint or the Notice.

37. For the reasons stated in this petition, Dr. Jefferson possesses a probability of success on the merits after final hearing. Irreparable harm to the Dr. Jefferson is imminent. If the Dr. Jefferson is required to continue to participate in the SOAH Docket No. 578-14-1546 contested case, she will be subjected to extensive discovery, will be required to procure expert testimony and fact witnesses in support of the propriety of her actions under the Act, and will be required to prepare for and attend a hearing on the merits at SOAH. All such proceedings violate the express provisions of the Act with respect to the Dr. Jefferson. Dr. Jefferson will be harmed because she will be required to devote her resources to the defense of the contentions made the basis of the Notice in SOAH Docket No. 578-14-1546, rather than the pursuit of her appropriate interests as an

employee of SAPA!. These resources, both human and monetary, once expended, cannot be recovered.

38. In enacting TEX. OCC. CODE § 801.004(1), the Legislature assured Dr. Jefferson that, upon becoming an employee of SAPA!, she would not be subjected to the terms of the Act for any actions she took in the veterinary care or treatment of the pets owned by her employer during the term of her employment. Dr. Jefferson will be irreparably harmed, incurring the undue burden and expense of being required to participate in an unlawful hearing that expressly violates the Legislature's statutory assurances that enforcement proceedings are unauthorized and that contested case hearings such as that proposed in SOAH Docket No. 578-14-1546 will not be conducted. Dr. Jefferson will also be subjected to impermissible burdens, expense, and discovery in a proceeding that is unlawful and beyond the power of the Executive Director and the Board.

39. Dr. Jefferson has no adequate remedy by way of appeal because the SOAH proceedings cannot be undone once they are conducted. Merely holding or conducting the proceedings in SOAH Docket No. 578-14-1546 will adversely affect Dr. Jefferson's rights and privileges to be free from any investigation or enforcement action under the Act, because the Act expressly provides that it does not apply to veterinary care or treatment taken by an employee on behalf of the owner.

40. Because the TBVME and Oria are acting outside of their statutory authority, Dr. Jefferson is not required to exhaust her administrative remedies. Further,

Dr. Jefferson has repeatedly explained the defendants' lack of statutory authority to the Board and Noria without avail.

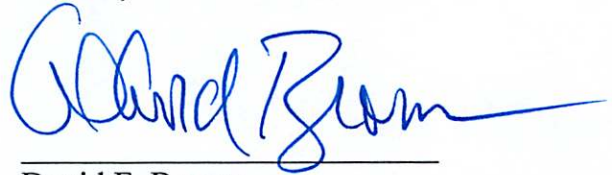
41. Upon final hearing and ruling, Dr. Jefferson respectfully requests that the Court permanently enjoin defendants from pursuing sanctions against Dr. Jefferson by means of the Notice or SOAH Docket No. 578-14-1546 or any further enforcement of the Act against Dr. Jefferson for actions that she takes with regard to pets owned by her employer, SAPA!.

PRAYER FOR RELIEF

Dr. Jefferson respectfully prays that this Court enter the temporary and permanent injunction relief sought in paragraphs 36-41 above, the declaratory judgments sought in paragraphs 34-35, plus attorneys' fees, costs of court, and such other and further relief to which the Court finds Dr. Jefferson entitled.

Respectfully submitted,

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VERIFICATION

STATE OF TEXAS

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§

COUNTY OF TRAVIS

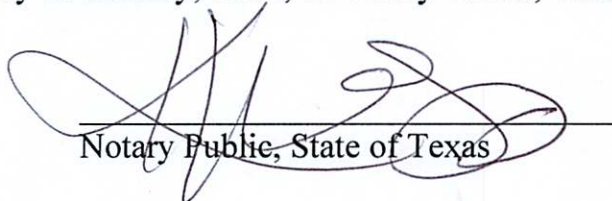
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BEFORE ME, the undersigned authority, personally appeared Ellen Jefferson, D.V.M., who stated upon oath that she has personal knowledge of the factual statements made in the foregoing Original Petition for Declaratory Judgment and Request for Temporary and Permanent Injunction, and that such facts are true and correct; and that absent a temporary injunction prohibiting the Board from pursuing a disciplinary proceeding against Dr. Jefferson pursuant to SOAH Docket No. 578-14-1546 or otherwise, she would suffer imminent and irreparable harm because Dr. Jefferson (1) would be subjected to a disciplinary proceeding concerning the veterinary treatment or care of a pet that were undertaken as an employee of the owner of the pet at issue in excess of the authority of the Board; (2) will be deprived time, revenue, and income, which in all likelihood cannot effectively be recovered and the loss of which will disrupt her ability to protect pets that will be euthanized and her ability to place those pets with new owners; and (3) will incur certain unrecoverable costs and expenses of defending herself from the improper application of the statutes governing the practice of veterinary medicine.


ELLEN JEFFERSON, DVM

SUBSCRIBED AND SWORN TO BEFORE ME, ELLEN JEFFERSON, the undersigned authority, on this, the 29th day of January, 2014, to certify which, witness my hand and seal of office.




Notary Public, State of Texas

1/29/2014 7:10:45 PM

Amalia Rodriguez-Mendoza
District Clerk
Travis County
D-1-GN-14-000287

EXHIBIT A

HEALTH AND SAFETY CODE

TITLE 10. HEALTH AND SAFETY OF ANIMALS

CHAPTER 823. ANIMAL SHELTERS

Sec. 823.001. DEFINITIONS. In this chapter:

- (1) "Animal shelter" means a facility that keeps or legally impounds stray, homeless, abandoned, or unwanted animals.
- (2) "Board" means the Texas Board of Health.
- (3) "Commissioner" means the commissioner of health.
- (4) "Department" means the Texas Department of Health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 823.002. EXEMPTION FOR CERTAIN COUNTIES, CLINICS, AND FACILITIES. This chapter does not apply to:

- (1) a county having a population of less than 75,000;
- (2) a veterinary medicine clinic; or
- (3) a livestock commission facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 280, eff. Sept. 1, 1991.

Sec. 823.003. STANDARDS FOR ANIMAL SHELTERS; CRIMINAL PENALTY.

(a) Each animal shelter operated in this state shall comply with the standards for:

- (1) housing and sanitation existing on September 1, 1982, and adopted under Chapter 826; and
- (2) animal control officer training adopted under Chapter 829.

(b) An animal shelter shall separate animals in its custody at all times by species, by sex (if known), and if the animals are not related to one another, by size.

(c) An animal shelter may not confine healthy animals with sick, injured, or diseased animals.

(d) Each person who operates an animal shelter shall employ a veterinarian at least once a year to inspect the shelter to determine whether it complies with the requirements of this chapter and Chapter 829. The veterinarian shall file copies of the veterinarian's report with the person operating the shelter and with the department on forms prescribed by the department.

(e) The board may require each person operating an animal shelter to keep records of the date and disposition of animals in its custody, to maintain the records on the business premises of the animal shelter, and to make the records available for inspection at reasonable times.

(f) A person commits an offense if the person substantially violates this section. An offense under this subsection is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [1331](#), Sec. 2, eff. September 1, 2007.

Sec. 823.005. ADVISORY COMMITTEE. (a) The governing body of a county or municipality in which an animal shelter is located shall appoint an advisory committee to assist in complying with the requirements of this chapter.

(b) The advisory committee must be composed of at least one licensed veterinarian, one county or municipal official, one person whose duties include the daily operation of an animal shelter, and one representative from an animal welfare organization.

(c) The advisory committee shall meet at least three times a year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 823.007. INJUNCTION. A court of competent jurisdiction may, on the petition of any person, prohibit by injunction the substantial violation of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 823.008. ENFORCEMENT BY COUNTY. (a) A county may enforce this chapter.

(b) This section does not authorize a county to establish standards for operating an animal shelter.

(c) A county may not enforce this chapter at an animal shelter operated by a municipality.

Added by Acts 2009, 81st Leg., R.S., Ch. [924](#), Sec. 1, eff. June 19, 2009.

Sec. 823.009. CIVIL PENALTY. (a) A person may not cause, suffer, allow, or permit a violation of this chapter or a rule adopted under this chapter.

(b) A person who violates this chapter or a rule adopted under this chapter shall be assessed a civil penalty. A civil penalty under this chapter may not be less than \$100 or more than \$500 for each violation and for each day of a continuing violation. This subsection does not apply at an animal shelter operated by a municipality.

(c) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted under this chapter, the county or municipality in which the violation occurs may institute a civil suit in district court for:

- (1) injunctive relief to restrain the person from continuing the violation or threat of violation;
- (2) the assessment and recovery of the civil penalty; or
- (3) both injunctive relief and the civil penalty.

(d) A bond is not required in an action brought under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. [924](#), Sec. 1, eff. June 19, 2009.

HEALTH AND SAFETY CODE

TITLE 10. HEALTH AND SAFETY OF ANIMALS

CHAPTER 826. RABIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 826.001. SHORT TITLE. This chapter may be cited as the Rabies Control Act of 1981.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.002. DEFINITIONS. In this chapter:

- (1) "Animal" means a warm-blooded animal.
- (2) "Board" means the Texas Board of Health.
- (3) "Cat" means *Felis catus*.
- (4) "Commissioner" means the commissioner of health.
- (5) "Department" means the Texas Department of Health.
- (6) "Dog" means *Canis familiaris*.
- (7) "Epizootic" means the occurrence in a given geographic area or population of cases of a disease clearly in excess of the expected frequency.
- (8) "Licensed veterinarian" means a veterinarian licensed to practice veterinary medicine in one or more of the 50 states.
- (9) "Quarantine" means strict confinement of an animal specified in an order of the board or its designee:
 - (A) on the private premises of the animal's owner or at a facility approved by the board or its designee; and
 - (B) under restraint by closed cage or paddock or in any other manner approved by board rule.
- (10) "Rabies" means an acute viral disease of man and animal affecting the central nervous system and usually transmitted by an animal bite.
- (11) "Stray" means roaming with no physical restraint beyond the premises of an animal's owner or keeper.
- (12) "Livestock" means an animal raised for human consumption or an equine animal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 1, eff. May 5, 1995.

SUBCHAPTER B. GENERAL POWERS AND DUTIES OF BOARD AND LOCAL GOVERNMENTS

Sec. 826.011. GENERAL POWERS AND DUTIES OF BOARD. (a) The board or its designee, with the cooperation of the governing bodies of counties and municipalities, shall administer the rabies control program established by this chapter.

(b) The board shall adopt rules necessary to effectively administer this chapter.

(c) The board or its designee may enter into contracts or agreements with public or private entities to carry out this chapter. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

(d) Subject to any limitations or conditions prescribed by the legislature, the board or its designee may seek, receive, and spend funds received through appropriations, grants, or donations from public or private sources for the rabies control program established by this chapter.

(e) The board or its designee may compile, analyze, publish, and distribute information relating to the control of rabies for the education of physicians, veterinarians, public health personnel, and the public.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.012. MINIMUM STANDARDS FOR RABIES CONTROL. This chapter and the rules adopted by the board under this chapter are the minimum standards for rabies control.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.013. COUNTIES AND MUNICIPALITIES MAY ADOPT CHAPTER. The governing body of a municipality or the commissioners court of a county may adopt this chapter and the standards adopted by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.014. COUNTIES MAY ADOPT ORDINANCES AND RULES. (a) The commissioners court of a county may adopt ordinances or rules that establish a local rabies control program in the county and set local standards that are compatible with and equal to or more stringent than the program established by this chapter and the rules adopted by the board.

(b) County ordinances or rules adopted under this section supersede this chapter and the rules of the board within that county so that dual enforcement will not occur.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.015. MUNICIPALITIES MAY ADOPT ORDINANCES OR RULES.

(a) The governing body of a municipality may adopt ordinances or rules that establish a local rabies control program in the municipality and set local standards that are compatible with and equal to or more stringent than:

(1) the ordinances or rules adopted by the county in which the municipality is located; and

(2) the program established by this chapter and the rules adopted by the board.

(b) Municipal ordinances or rules adopted under this section supersede ordinances or rules adopted by the county in which the municipality is located, this chapter, and the rules of the board within that municipality so that multiple enforcement will not occur.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.016. CONTRACTS. The governing body of a municipality and the commissioners court of a county may enter into contracts or agreements with public or private entities to carry out the activities required or authorized under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.017. DESIGNATION OF LOCAL RABIES CONTROL AUTHORITY.

(a) The commissioners court of each county and the governing body of each municipality shall designate an officer to act as the local rabies control authority for the purposes of this chapter.

(b) Except as restricted by board rule, the officer designated as the local rabies control authority may be the county health officer, municipal health officer, animal control officer, peace officer, or any entity that the commissioners court or governing body considers appropriate.

(c) Among other duties, the local rabies control authority shall enforce:

(1) this chapter and the board rules that comprise the minimum standards for rabies control;

(2) the ordinances or rules of the municipality or county that the local rabies control authority serves; and

(3) the rules adopted by the board under the area rabies quarantine provisions of Section 826.045.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 2, eff. May 5, 1995.

SUBCHAPTER C. RABIES VACCINATIONS

Sec. 826.021. VACCINATION OF DOGS AND CATS REQUIRED. (a) Except as otherwise provided by board rule, the owner of a dog or cat shall have the animal vaccinated against rabies by the time the animal is four months of age and at regular intervals thereafter as prescribed by board rule.

(b) A veterinarian who vaccinates a dog or cat against rabies shall issue to the animal's owner a vaccination certificate in a form that meets the minimum standards approved by the board.

(c) A county or municipality may not register or license an animal that has not been vaccinated in accordance with this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.0211. CONFIDENTIALITY OF CERTAIN INFORMATION IN RABIES VACCINATION CERTIFICATE; CRIMINAL PENALTY. (a) Information contained in a rabies vaccination certificate or in any record compiled from the information contained in one or more certificates that identifies or tends to identify an owner or an address, telephone number, or other personally identifying information of an owner of a vaccinated animal is confidential and not subject to disclosure under Chapter 552, Government Code. The information contained in the certificate or record may not include the social security number or the driver's license number of the owner of the vaccinated animal.

(b) The information may be disclosed only to a governmental entity or a person that, under a contract with a governmental entity, provides animal control services or animal registration services for the governmental entity for purposes related to the protection of public health and safety. A governmental entity or person that receives the information, including a county or municipality that registers dogs and cats under Subchapter D, must maintain the confidentiality of the information, may not disclose the information under Chapter 552, Government Code, and may not use the information for a purpose that does not directly relate to the protection of public health and safety.

(c) A person commits an offense if the person distributes information that is confidential under this section. An offense under this subsection is a misdemeanor punishable by:

- (1) a fine of not more than \$1,000;
- (2) confinement in the county jail for not more than 180 days; or
- (3) both the fine and confinement.

Added by Acts 1999, 76th Leg., ch. 1069, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. [1235](#), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. [686](#), Sec. 1, eff. June 15, 2007.

Sec. 826.022. VACCINATION; CRIMINAL PENALTY. (a) A person commits an offense if the person fails or refuses to have each dog or cat owned by the person vaccinated against rabies and the animal is required to be vaccinated under:

(1) Section 826.021 and board rules; or

(2) ordinances or rules adopted under this chapter by a county or municipality within whose jurisdiction the act occurs.

(b) An offense under this section is a Class C misdemeanor.

(c) If on the trial of an offense under this section the court finds that the person has been previously convicted of an offense under this section, the offense is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 3, eff. May 5, 1995.

Sec. 826.023. USE AND SALE OF RABIES VACCINE. (a) Rabies vaccine for animals may be administered only by or under the direct supervision of a veterinarian.

(b) A veterinarian may not administer or directly supervise the administration of rabies vaccine in this state unless the person is:

(1) licensed by the State Board of Veterinary Medical Examiners to practice veterinary medicine; or

(2) practicing veterinary medicine on an installation of the armed forces or National Guard.

(c) A person may not sell or distribute rabies vaccine for animals to any person except a licensed veterinarian or to a person working in a veterinary clinic who accepts the vaccine on behalf of the veterinarian.

(d) This section does not prohibit a pharmacy licensed by the Texas State Board of Pharmacy from supplying rabies vaccine for animals to a licensed veterinarian.

(e) This section does not prohibit a veterinarian licensed by the State Board of Veterinary Medical Examiners from selling or dispensing rabies vaccine to an individual with whom the veterinarian has a veterinarian-client-patient relationship as described by Chapter 801, Occupations Code, for the sole purpose of allowing that individual to administer the rabies vaccine to that individual's own livestock.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 5, eff. May 5, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 14.810, eff. Sept. 1, 2001.

Sec. 826.024. USE AND SALE OF RABIES VACCINE; CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) administers or attempts to administer rabies vaccine in a manner not authorized by Section 826.023;

(2) dispenses or attempts to dispense rabies vaccine in a manner not authorized by Section 826.023; or

(3) sells or distributes rabies vaccine for animals in violation of Section 826.023(c).

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.025. PROVISION OF VACCINE AND SERUM. (a) The department may provide vaccine and hyperimmune serum in accordance with board policies or procedures for the use and benefit of a person exposed, or suspected of having been exposed, to rabies.

(b) In accordance with board rules and eligibility standards, the department is entitled to be reimbursed by or on behalf of the person receiving the vaccine or serum for actual costs incurred in providing the vaccine or serum.

(c) At the written request of the department, the attorney general or the county or district attorney for the county in which the recipient of the vaccine or serum resides may bring suit or start other proceedings in the name of the state to collect the reimbursement owed the department for the vaccine or serum.

(d) A suit or other proceeding may be brought against:

(1) the recipient;

(2) the parent, guardian, or other person legally responsible for the support of the recipient; or

(3) a responsible third party.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. REGISTRATION AND RESTRAINT OF DOGS AND CATS

Sec. 826.031. REGISTRATION OF DOGS AND CATS BY LOCAL GOVERNMENTS. (a) The governing body of a municipality and the commissioners court of a county may adopt ordinances or rules under Section 826.014 or 826.015 requiring the registration of each dog and cat within the jurisdiction of the municipality or county.

(b) A dog or cat may not be subject to dual registration.

(c) The enforcing agency may collect a fee set by ordinance for the registration of each dog or cat and may retain the fees collected. The fees may be used only to help defray the cost of administering this chapter or the ordinances or rules of the enforcing agency within its jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.0311. CONFIDENTIALITY OF CERTAIN INFORMATION IN DOG AND CAT REGISTRY; CRIMINAL PENALTY. (a) Information that is contained in a municipal or county registry of dogs and cats under Section 826.031 that identifies or tends to identify the owner or an address, telephone number, or other personally identifying information of the owner of the registered dog or cat is confidential and not subject to disclosure under Chapter 552, Government Code. The information contained in the registry may not include the social security number or the driver's license number of the owner of the registered animal.

(b) The information may be disclosed only to a governmental entity or a person that, under a contract with a governmental entity, provides animal control services or animal registration services for the governmental entity for purposes related to the protection of public health and safety. A governmental entity or person that receives the information must maintain the confidentiality of the information, may not disclose the information under Chapter 552, Government Code, and may not use the information for a purpose that does not directly relate to the protection of public health and safety.

(c) A person commits an offense if the person distributes information that is confidential under this section. An offense under this subsection is a misdemeanor punishable by:

- (1) a fine of not more than \$1,000;
- (2) confinement in the county jail for not more than 180 days; or
- (3) both the fine and confinement.

Added by Acts 1999, 76th Leg., ch. 1069, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [686](#), Sec. 2, eff. June 15, 2007.

Sec. 826.032. REGISTRATION; CRIMINAL PENALTY. (a) A person commits an offense if:

(1) the person fails or refuses to register or present for registration a dog or cat owned by the person; and

(2) the animal is required to be registered under the ordinances or rules adopted under this chapter by a county or municipality within whose jurisdiction the act occurs.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.033. RESTRAINT, IMPOUNDMENT, AND DISPOSITION OF DOGS AND CATS. (a) The governing body of a municipality and the commissioners court of a county may adopt ordinances or rules under Section 826.014 or 826.015 to require that:

- (1) each dog or cat be restrained by its owner;

- (2) each stray dog or cat be declared a public nuisance;
 - (3) each unrestrained dog or cat be detained or impounded by the local rabies control authority or that officer's designee;
 - (4) each stray dog or cat be impounded for a period set by ordinance or rule; and
 - (5) a humane disposition be made of each unclaimed stray dog or cat on the expiration of the required impoundment period.
- (b) A jurisdiction may not be subject to dual restraint ordinances or rules.
- (c) The enforcing agency may adopt an ordinance setting a fee for the impoundment and board of a dog or cat during the impoundment period. The animal's owner must pay the fee before the animal may be released.
- (d) The enforcing agency shall deposit the fees collected in the treasury of the enforcing agency. The fees may be used only to help defray the cost of administering this chapter or the ordinances or rules of the enforcing agency within its jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 6, eff. May 5, 1995.

Sec. 826.034. RESTRAINT; CRIMINAL PENALTY. (a) A person commits an offense if:

- (1) the person fails or refuses to restrain a dog or cat owned by the person; and
 - (2) the animal is required to be restrained under the ordinances or rules adopted under this chapter by a county or municipality within whose jurisdiction the act occurs.
- (b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. REPORTS AND QUARANTINE

Sec. 826.041. REPORTS OF RABIES. (a) A person who knows of an animal bite or scratch to an individual that the person could reasonably foresee as capable of transmitting rabies, or who knows of an animal that the person suspects is rabid, shall report the incident or animal to the local rabies control authority of the county or municipality in which the person lives, in which the animal is located, or in which the exposure occurs.

- (b) The report must include:
- (1) the name and address of the victim and of the animal's owner, if known; and
 - (2) any other information that may help in locating the victim or animal.

(c) The local rabies control authority shall investigate a report filed under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 7, eff; May 5, 1995.

Sec. 826.042. QUARANTINE OF ANIMALS. (a) The board shall adopt rules governing the testing of quarantined animals and the procedure for and method of quarantine.

(b) The local rabies control authority or a veterinarian shall quarantine or test in accordance with board rules any animal that the local rabies control authority or veterinarian has probable cause to believe is rabid, may have been exposed to rabies, or may have exposed a person to rabies.

(c) An owner shall submit for quarantine an animal that:

(1) is reported to be rabid or to have exposed an individual to rabies; or

(2) the owner knows or suspects is rabid or has exposed an individual to rabies.

(d) The owner shall submit the animal to the local rabies control authority of the county or municipality in which the exposure occurs.

(e) A veterinarian shall quarantine an animal that:

(1) is in the possession of the veterinarian; and

(2) the veterinarian knows or suspects is rabid or has exposed an individual to rabies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 8, eff. May 5, 1995.

Sec. 826.043. RELEASE OR DISPOSITION OF QUARANTINED ANIMAL.

(a) If a veterinarian determines that a quarantined animal does not show the clinical signs of rabies, the veterinarian or local rabies control authority shall release the animal to its owner when the quarantine period ends if:

(1) the owner has an unexpired rabies vaccination certificate for the animal; or

(2) the animal is vaccinated against rabies by a licensed veterinarian at the owner's expense.

(b) If a veterinarian determines that a quarantined animal shows the clinical signs of rabies, the veterinarian or local rabies control authority shall humanely destroy the animal. If an animal dies or is destroyed while in quarantine, the veterinarian or local rabies control authority shall remove the head or brain of the animal and submit it to the nearest department laboratory for testing.

(c) The owner of an animal that is quarantined under this chapter shall pay to the veterinarian or local rabies control authority

the reasonable costs of the quarantine and disposition of the animal. The veterinarian or local rabies control authority may bring suit to collect those costs. The county in which the veterinarian is located may reimburse the veterinarian in a reasonable amount set by the county for the costs of the quarantine and disposition of an animal whose owner is unable to pay.

(d) The veterinarian or local rabies control authority may sell the animal and retain the proceeds or keep, grant, or destroy an animal if the owner or custodian does not take possession of the animal before the fourth day following the final day of the quarantine period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 9, eff. May 5, 1995.

Sec. 826.044. QUARANTINE; CRIMINAL PENALTY. (a) A person commits an offense if the person fails or refuses to quarantine or present for quarantine or testing an animal that:

(1) is required to be placed in quarantine or presented for testing under Section 826.042 and board rules; or

(2) is required to be placed in quarantine under ordinances or rules adopted under this chapter by a county or municipality within whose jurisdiction the act occurs.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.045. AREA RABIES QUARANTINE. (a) If rabies is known to exist in an area, the board or its designee may declare an area rabies quarantine to prevent or contain a rabies epizootic.

(b) On the declaration that a quarantine exists, the board shall:

(1) define the borders of the quarantine area; and

(2) adopt permanent or emergency rules.

(c) The rules adopted under Subsection (b)(2) may include conditions for the restraint of carnivorous animals and the transportation of carnivorous animals into and out of the quarantine area.

(d) The quarantine remains in effect until the 181st day after the date on which the last case of rabies is diagnosed in a dog, cat, or other animal species that caused the board or its designee to declare a quarantine, unless the board or its designee, by declaration, removes the quarantine before that date.

(e) While the quarantine is in effect, the rules adopted by the board supersede all other applicable ordinances or rules applying to the quarantine area and apply until the board or its designee removes the quarantine by declaration or until the rules expire or are revoked by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.046. VIOLATION OF AREA RABIES QUARANTINE; CRIMINAL PENALTY. (a) A person commits an offense if the person violates or attempts to violate a rule of the board adopted under Section 826.045 governing an area rabies quarantine.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.047. LIMITATION ON LIABILITY. A veterinarian performing duties under this chapter is not liable to the owner of an animal for the death of or injury to the animal except in a case of wilful misconduct or gross negligence.

Added by Acts 1995, 74th Leg., ch. 44, Sec. 11, eff. May 5, 1995.

Sec. 826.048. EXEMPTION FROM QUARANTINE REQUIREMENT FOR POLICE SERVICE ANIMALS. (a) In this section, "handler or rider" and "police service animal" have the meanings assigned by Section 38.151, Penal Code.

(b) A police service animal is exempt from the quarantine requirement of this subchapter if the animal bites a person while the animal is under routine veterinary care or while the animal is being used for law enforcement, corrections, prison or jail security, or investigative purposes. If after biting the person the animal exhibits any abnormal behavior, the law enforcement agency and the animal's handler or rider shall make the animal available within a reasonable time for testing by the local health authority.

Added by Acts 2001, 77th Leg., ch. 979, Sec. 2, eff. Sept. 1, 2001.

SUBCHAPTER F. QUARANTINE AND IMPOUNDMENT FACILITIES

Sec. 826.051. MINIMUM STANDARDS FOR QUARANTINE AND IMPOUNDMENT FACILITIES. (a) The board shall adopt rules governing the types of facilities that may be used to quarantine animals.

(b) The board by rule shall establish minimum standards for impoundment facilities and for the care of impounded animals.

(c) In accordance with board rules, a local rabies control authority may contract with one or more public or private entities to provide and operate a quarantine facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 12, eff. May 5, 1995.

Sec. 826.052. INSPECTIONS. An employee of the department, on the presentation of appropriate credentials to the local rabies control authority or the authority's designee, may conduct a reasonable inspection of a quarantine or impoundment facility at a reasonable hour to determine if the facility complies with:

(1) the minimum standards adopted by the board for those facilities; and

(2) the requirements for animal control officer training adopted under Chapter 829.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 13, eff. May 5, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [1331](#), Sec. 3, eff. September 1, 2007.

Sec. 826.053. HEARING. (a) A person aggrieved by an action of the department in amending, limiting, suspending, or revoking any approval required of the department by this chapter may request a hearing before the department.

(b) The department shall conduct the hearing held under this section in accordance with Chapter 2001, Government Code and the department's formal hearing rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 826.054. SUITS TO ENJOIN OPERATION OF QUARANTINE OR IMPOUNDMENT FACILITY. (a) At the request of the commissioner, the attorney general may bring suit in the name of the state to enjoin the operation of a quarantine or impoundment facility that fails to meet the minimum standards established by this chapter and board rules.

(b) The suit shall be brought in a district court in the county in which the facility is located.

(c) When a court issues an order to a facility to cease operation, the local rabies control authority shall remove all animals housed in the facility to a shelter approved by the department. The county or municipality within whose jurisdiction the facility is located shall pay the cost of relocating the animals to an approved shelter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 14, eff. May 5, 1995.

Sec. 826.055. QUARANTINE OR IMPOUNDMENT FACILITY; CRIMINAL PENALTY. (a) A person commits an offense if the person operates a facility for quarantined or impounded animals that fails to meet standards for approval established by:

- (1) board rules; or
- (2) ordinances or rules adopted under this chapter by a county or municipality.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

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Amalia Rodriguez-Mendoza
District Clerk
Travis County
D-1-GN-14-000287

EXHIBIT B

Sec. 5-158. Minimum time animals impounded; euthanasia

Impounded dogs and cats shall be kept for not fewer than three (3) days, excluding the day the animal is impounded and any days the animal care services facility is not opened, and shall be subject to adoption, rescue, foster or humanely euthanized at the discretion of the director thereafter. In the case of owned animals, the city may dispose of any unclaimed animal before this three-day period if the owner releases ownership of the animal to the city. If any impounded animal is determined by a licensed veterinarian or designee to be suffering from disease or injury such that the animal is in pain or is beyond reasonable medical help, the animal may be euthanized immediately. In such a case, holding times otherwise specified in this Code will not apply. Due to their immature immune system, any abandoned animal under four (4) months of age shall immediately become the property of the city, for humane disposition, and may be offered for adoption or humanely euthanized at the discretion of the director.

(Ord. No. 2010-06-17-0555, § 1, 6-17-10)

Sec. 5-159. Unclaimed animals.

(a) Any animal not claimed by its owner within the above stated three (3) days shall become the property of the city, and shall be subject to adoption, rescue, foster or humanely euthanized at the discretion of the director. The selection of an animal for adoption or rescue during the reclamation period or thereafter shall not confer any ownership right or right of possession to the animal.

(b) The director may sell unclaimed livestock found running free of restraint by public auction to the highest bidder for cash after notice of the auction is posted on a public bulletin board where other public notices are posted for the city.

(Ord. No. 2010-06-17-0555, § 1, 6-17-10)

1/29/2014 7:10:45 PM

Amalia Rodriguez-Mendoza

District Clerk

Travis County

D-1-GN-14-000287

EXHIBIT C

December 27, 2013

Ellen Jefferson, D.V.M.
c/o David Brown and David Bickham
Ewell, Bickham, and Brown LLP
111 Congress Ave., 28th Floor
Austin, Texas 78701

VIA REGULAR USPS MAIL AND LONE STAR OVERNIGHT # Z0482596

RE: SOAH Docket No. 578-14-1546; *Texas Board of Veterinary Medical Examiners, Petitioner v. Ellen Jefferson, D.V.M., Respondents*; Before the State Office of Administrative Hearings

NOTICE OF HEARING

Dear Dr. Jefferson:

The hearing in the above referenced matter is scheduled before the State Office of Administrative Hearings (SOAH) for **April 8 and 9, 2014, at 9:00 AM**, at 300 W. 15th St., 4th Floor, Austin, Texas 78701.

The legal authority under which the hearing will be held and to which the Court will be asked to take official notice is the following:

1 TEXAS ADMINISTRATIVE CODE (hereafter TAC), Chapter 155 (Rules of Procedure for the State Office of Administrative Hearings)

TEXAS GOVERNMENT CODE, CHAPTER 2001 (Administrative Procedures Act);

TEXAS OCCUPATIONS CODE, CHAPTER 801, the Texas Veterinary Licensing Act, including, but not limited to:

TEXAS OCCUPATIONS CODE §801.002 (Definitions);
TEXAS OCCUPATIONS CODE §801.151 (Board's rulemaking authority);
TEXAS OCCUPATIONS CODE §801.159 (Board duties regarding complaints);
TEXAS OCCUPATIONS CODE §801.201-206 (Complaint procedures);
TEXAS OCCUPATIONS CODE §801.207 (Public Record; Exception);
TEXAS OCCUPATIONS CODE §801.351 (Existence of Veterinarian-Client-Patient Relationship)
TEXAS OCCUPATIONS CODE §801.401 (Disciplinary powers of the Board);
TEXAS OCCUPATIONS CODE §801.402 (General grounds for disciplinary action);
TEXAS OCCUPATIONS CODE §801.407 (Right to hearing; schedule of sanctions); and
Texas Occupations Code §801.451-452 (Administrative Penalties).

22 TAC §§571-577 (Rules Pertaining to the Practice of Veterinary Medicine (“Board Rules”), including, but not limited to:

§573.4 (Adherence to Law);
§573.10 (Supervision of Non-Licensed Persons);
§573.11 (Responsibility of Unlicensed Employees);
§573.22 (Standard of Care);
§573.40 (Labeling of Medications Dispensed);
§573.41 (Use of Prescription Drugs);
§573.52 (Veterinary Patient Record Keeping);
§573.72 (Employment by Nonprofit or Municipal Corporation);
§573.80 (Definitions);
§§575.1 – 575.10 (Board Procedures Re: Contested Case Hearings);
§575.25 (Recommended Schedule of Sanctions);
§575.27-575.28 (Complaints – Receipt and Investigations);
§575.29 (Informal Conferences); and
§575.30 (Contested Case Hearing at SOAH).

The Texas Board of Veterinary Medical Examiners (“TBVME” or the “Board”) conducts investigations into allegations of violations of the Texas Veterinary Licensing Act (“the Act”) and Board Rules pursuant to sections 801.201-206 of the Act. A licensee is required to comply with the provisions of the Act and Board Rules. According to §801.402 of the Act, a person is subject to disciplinary action under §801.401 if the person:

- (4) engages in dishonest or illegal practices in, or connected with, the practice of veterinary medicine or the practice of equine dentistry;...
- (6) engages in practices or conduct that violates the board’s rules of professional conduct;...
- (16) commits gross malpractice or a pattern of acts that indicate consistent malpractice, negligence, or incompetence in the practice of veterinary medicine or the practice of equine dentistry.

TBVME asserts that Ellen Jefferson, D.V.M. (“Respondent”) violated the Board Rules, specifically §573.4, §573.22, §573.40, §573.41, and §573.52 thereby violating §801.402(6) of the Act (see Act provisions cited above).

Rule 573.4 of the 2012 Board Rules states:

No licensee shall commit any act that is in violation of the laws of the State of Texas, other states, or of the United States, if the act is connected with the licensee's professional practice, including, but not limited to, the acts enumerated in §575.50(e) of this title (relating to Criminal Convictions). A complaint, indictment, or conviction of a law violation is not necessary for the enforcement of this rule. Proof of the commission of the act while in the practice of, or under the guise of the practice of, either veterinary medicine or equine dentistry, is sufficient for action by the Board under this rule.

Rule 573.22 of the 2012 Board Rules states:

Licensees shall 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 members of the veterinary medical profession in good standing in the locality or community in which they practice, or in similar communities.

Rule 573.40 of the 2012 Board Rules states:

(a) A veterinarian shall affix labels to all unlabeled containers containing any medication dispensed and to all factory labeled containers that contain prescription (legend) drugs and/or controlled substances dispensed. The label must be affixed to the immediate container and include:

- (1) the veterinarian's name, address, and telephone number (including area code);
- (2) date of delivery or dispensing;
- (3) patient/client name (and address if drug is a controlled substance);
- (4) species of the animal;
- (5) name, strength, and quantity of the drug dispensed;
- (6) directions for use; and
- (7) cautionary statements as required by law, i.e. not for human consumption, poisonous, withdrawal periods, etc.

(b) If the immediate container is too small to be labeled, the small container shall be enclosed within another container large enough to be labeled.

Rule 573.41 of the 2012 Board Rules states:

(a) It is unprofessional conduct for a licensed veterinarian to prescribe, administer, dispense, deliver, or order delivered any prescription drug without first having established a veterinarian/client/patient relationship and determined that such prescription drug is therapeutically indicated for the health and/or well-being of the animal(s). Prescription drugs include all controlled substances in Schedules I - V and legend drugs which bear the federal legends, recognized as such by any law of the State of Texas or of the United States.

(b) It shall be unprofessional and a violation of the rules of professional conduct for a licensed veterinarian to prescribe, provide, obtain, order, administer, possess, dispense, give, or deliver to or for any person prescription drugs that are not necessary or required for the medical care of animals, or where the use or possession of such drugs would promote addiction thereto. Prescription drugs are defined in subsection (a) of this section.

Rule 573.52 of the 2012 Board Rules states:

- (a) Individual records shall be maintained at the veterinarian's place of business, shall be complete, contemporaneous and legible and shall include, but are not limited to:
- (10) differential diagnosis and/or treatment, if applicable;
 - (11) names, dosages, concentration, and routes of administration of each drug prescribed, administered and/or dispensed;

- (12) other details necessary to substantiate or document the examination, diagnosis, and treatment provided, and/or surgical procedure performed;...
- (15) any amendment, supplementation, change, or correction in a patient record not made contemporaneously with the act or observation noted by indicating the time and date of the amendment, supplementation, change or correction, and clearly indicating that there has been an amendment, supplementation, change, or correction.

FACTUAL BASIS

Respondent holds a license to practice veterinary medicine issued by TBVME. As a licensed veterinarian in the State of Texas, Respondent is required to comply with the Act and the Board Rules. On November 23, 2012, the Board received a complaint from Mrs. Sheryl Meade of Converse, Texas ("Mrs. Meade") concerning Respondent's care from October 8, 2012, through November 15, 2012, of a three-year old female German Shepherd mix named "Starlight."

On October 8, 2012, Mrs. Meade agreed to foster Starlight for the animal rescue organization in San Antonio, Texas named San Antonio Pets Alive. On October 15, 2012, Starlight gave birth to a litter of five puppies. Respondent is the founder, president, executive director, and lead veterinarian of San Antonio Pets Alive in San Antonio, Texas.

On November 12, 2012, Mrs. Meade noticed that Starlight was lethargic, appeared to have blood coming from her urethra, refused to eat, was trembling, and appeared to be in pain. Mrs. Meade first sent an email to the email address that San Antonio Pets Alive gave her as a foster to request veterinary care, fostermedical@sanantoniopetsalive.com. When Mrs. Meade received only an automated form email in response, she contacted the emergency number for San Antonio Pets Alive by text message that evening or same day, explaining Starlight's symptoms, requesting medication, and inquiring as to whether it was safe to let Starlight's puppies continue nursing. The emergency volunteer forwarded all of Mrs. Meade's messages to Respondent, who agreed with the volunteer by text on November 12, 2012 that the symptoms sounded like a urinary tract infection, and prescribed 200 mg of the antibiotic Amoxicillin twice a day for ten days. Respondent had not examined Starlight or met Mrs. Meade prior to issuing a diagnosis for Starlight and prescribing and dispensing medication. The only means of interaction between Respondent and the owner of Starlight between October 8, 2012, and November 15, 2012, was indirect via telephone or other electronic device.

The San Antonio Pets Alive volunteer covering the emergency number responded to Mrs. Meade via text that Mrs. Meade could come pick up medication for Starlight at the volunteer's house that night. The volunteer informed Mrs. Meade that the volunteer would not be available to see her in person, but would leave the medication for Starlight in a bucket on the porch of her house. Mrs. Meade retrieved the drugs for Starlight from the bucket on the volunteer's porch. The label for the bottle of Amoxicillin stated that it had been dispensed by Respondent even though Respondent had not performed an examination of Starlight to be able to make the determination that the Amoxicillin was necessary and required for the veterinary medical treatment of Starlight. However, the prescription label was also missing both Starlight's name and her species, which is required by Board Rule.

On November 14, 2012, Mrs. Meade did not see any noticeable improvement in Starlight's condition despite administering four doses of the medication over the course of 48 hours as directed by Respondent. Mrs. Meade then contacted the emergency telephone number again via text message to let San Antonio Pets Alive know that Starlight was not improving, and was still lethargic, in pain, and dripping blood from her urethra. Mrs. Meade sent a total of three text messages, and inquired how long it should take for the antibiotics to begin resolving the symptoms.

The San Antonio Pets Alive volunteer texted Respondent, "Mama dog w/uti is slightly btr but still lethargic. She has taken 4 amoxis so far[.] Foster is asking if we can gv her something for pain." Respondent responded by text message to the emergency volunteer, prescribing two tablets of Tramadol twice a day for three days. Then the emergency volunteer forwarded a message from Mrs. Meade, stating, "[S]he is still dripping blood. Not real heavily but when I put her on my lap I get blood smears on my pants." Respondent texted the emergency volunteer, "Is she in heat?" The volunteer responded that the dog had just had puppies. Respondent then texted the emergency volunteer, "Oh! That's normal. Unless there is a foul odor. Doesn't need antibiotics." In that response, Respondent is admitting that the Amoxicillin that she prescribed was not necessary or required for Starlight's veterinary medical treatment.

The emergency volunteer and Respondent continued to discuss by text message the fact that Starlight was still bleeding. The emergency volunteer pointed out that Starlight had not just given birth since the puppies were four weeks old. Respondent was undeterred in her belief that the bleeding was not a cause for serious concern, texting in response, "Prob in heat again then." The emergency volunteer reiterated, "She's been lethargic and eating less just this wk—still ok?" Respondent responded, "We can just continue the antibiotics since already started. Yes. If foul odor to blood occurs the[n] reassess," and reiterated the prescription for Tramadol. Respondent did not record the Tramadol prescription in her patient records for Starlight. Respondent did not examine Starlight before making a differential diagnosis of her condition, determining that continued treatment with the same antibiotic was appropriate, or prescribing Tramadol, an addictive drug that is frequently abused by humans.

The San Antonio Pets Alive volunteer manning the emergency number responded via text that she had "txted doctor." The volunteer later texted that "The doctor thinks it may not be a uti and she may just be in heat. But she says we shld finish the antibiotics and can add some pain meds for a couple days and see how she does. Let us know rt away if a foul odor is coming from blood or if she gets worse." The volunteer informed Mrs. Meade by text that "Volunteer in Selma will dispense pain meds for you." Mrs. Meade responded immediately, objecting, "Ok. But she seems lethargic. Is that a heat symptom?" The volunteer texted Respondent, "Foster is ?ing if the lethargy cld be a sign of heat since it is new," to which Respondent responded via text, "Possibly." The volunteer then responded to Mrs. Meade, "She said it can be." Again, no one from San Antonio Pets Alive suggested that Mrs. Meade have Starlight examined by a licensed veterinarian and Respondent did not examine Starlight before further diagnosing Starlight's medical ailments.

On November 15, 2012, the next day, Mrs. Meade again texted the San Antonio Pets Alive emergency number to let them know that Starlight still had no energy. In her three texts at 3:39 pm, Mrs. Meade described Starlight as a “limp little rag doll” and as “[i]listless.” In response, the volunteer manning the emergency line that day asked only if Starlight was eating or drinking. No one from San Antonio Pets Alive suggested that Mrs. Meade have Starlight examined by Respondent or any other licensed veterinarian.

At 4:27 p.m., the emergency volunteer texted Respondent: “That dog w/the maybe uti/in heat is still extremely lethargic. Foster said she was full of energy till this week and now is a rag doll. She is eating/drinking but foster is really worried. Sound like it might be anything else?” In response, Respondent texted the volunteer, “Definitely could be low calcium.” Respondent then recommended that Starlight be given calcium supplements. Respondent did not examine Starlight before recommending calcium supplements as a treatment for her reported lethargy or before diagnosing Starlight as having low calcium.

At 4:43 p.m., Mrs. Meade asked if there was anything she could feed Starlight to improve her condition. At 5:25 p.m., the volunteer manning the emergency line responded that “Dr. J said mama shld get all the wet and dry puppy food she wants. And you can add calcium tabs if you want.” Mrs. Meade immediately inquired “How much calcium?” but the emergency volunteer did not respond. The emergency volunteer asked Respondent by text, “How much calcium? In tab form,” but Respondent did not respond.

At 7:37 p.m., Mrs. Meade again texted the emergency telephone number for San Antonio Pets Alive, saying, “Something wrong. Her eyes are startin to bug I tried to sit her up but she flop over. She needs a vet,” and immediately thereafter, “I think she is dead.” An hour later, the emergency volunteer responded, “Sheryl, I am so sorry to hear about Starlight. Thank you so much for all you did for her.”

Despite Mrs. Meade’s repeated, consistent, and insistent attempts over three days to get Starlight the veterinary medical treatment she needed, Respondent never provided it. Respondent never performed an examination of Starlight to determine what medical ailment Starlight was suffering from. However, that did not deter Respondent from blindly prescribing Amoxicillin, Tramadol, and calcium supplements for Starlight’s veterinary medical problems. Moreover, Respondent did not change her treatment plan even when Mrs. Meade’s regular text messages describing Starlight’s symptoms over three days showed that Starlight was deteriorating rather than improving with the treatment Respondent had prescribed. Nevertheless, in her response to the Board, Respondent explained that it is her opinion that the treatment that Starlight received through this process with San Antonio Pets Alive was preferable to being euthanized as Respondent believes Starlight would have been if Starlight was left in the shelter.

The patient records for Starlight that Respondent submitted with her response to the Board contained two non-contemporaneous amendments dated November 28, 2012, and December 20, 2012, providing details of symptoms, diagnosis, and treatment. Both of these amendments were made after Respondent received a letter from the Board on or about November 27, 2012, informing her that the Board had received a complaint and opened an investigation regarding her treatment of Starlight. There was no indication in the patient

record for Starlight that these late entries were amendments, or were intended to supplement, change, or correct the record.

Additionally in her response to the Board, Respondent identified financial constraints as the reason that San Antonio Pets Alive does not take its animals to licensed veterinarians except in extreme emergencies, and explained that the animals that are housed in foster homes receive most of their veterinary care from volunteers and veterinary technicians who “possess some knowledge in veterinary medicine” to evaluate and treat as many cases as possible. San Antonio Pets Alive medical liaison volunteers also “receive and sign out for a kit that contains a small amount of basic medications like Amoxicillin and Tramadol when they are trained” so that the volunteers will have that medication when necessary. As Respondent stated in her letter to the Board: “These volunteers answer email from fosters around the clock, use their own phones for emergency calls, and text or call me with every case on which they are contacted,” all without Respondent or any other veterinarian ever examining the animal patient. In this way, Respondent explained, San Antonio Pets Alive avoids the costs associated with hiring sufficient licensed veterinarians to examine each animal and thereby establish the veterinarian-client-patient relationship (“VCPR”) necessary for a Texas-licensed veterinarian to legally practice veterinary medicine. Respondent noted that “our resources are quite limited in contrast to the large number of animals” that San Antonio Pets Alive takes in. Respondent explained the lack of examinations by a veterinarian for the animals in San Antonio Pets Alive is specifically intended to eliminate the costs of veterinary care from licensed veterinarians: “We treat over 5,500 animals per year and, because of our limited resources, this ‘triage’ communication system that exists between me and our volunteers is also necessary and critical.”

Respondent violated Board Rule 573.4 by dispensing Amoxicillin and Tramadol without a VCPR. Under Board Rule 573.4, veterinarians are required to comply with all laws that pertain to the practice of veterinary medicine. Under the Texas Health and Safety Code, a veterinarian is only allowed to dispense prescription medication to a particular patient unless the medication is dispensed for food production animals in an agricultural operation. As previously discussed, Respondent states to the Board that San Antonio Pets Alive medical liaison volunteers “receive and sign out for a kit that contains a small amount of basic medications like Amoxicillin and Tramadol when they are trained.” The fact that these volunteers receive these medications in this manner makes it patently obvious that a VCPR does not exist between Respondent or any other veterinarian and a particular patient because these volunteers receive these medications for use on animals that are unknown to the volunteers, Respondent, or San Antonio Pets Alive at the time the medication is received by the volunteer. Additionally, under the Texas Health and Safety Code, a veterinarian is only allowed to dispense prescription medication with a label that contains the name and species of the animal to whom the medication is prescribed. The label for the Amoxicillin that Respondent prescribed and dispensed for use on Starlight did not have Starlight’s name. Due to Respondent dispensing Amoxicillin and Tramadol to volunteers of San Antonio Pets Alive without a VCPR and without a label containing the name of the patient, as required by Texas Health and Safety Code §483.042, Respondent violated Board Rule 573.4.

Respondent violated Board Rule 573.22 by failing to provide the proper standard of care in treating Starlight. Under Board Rule 573.22, veterinarians must exercise the same degree or humane care, skill, and diligence in treating patients as are 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. In San Antonio, Texas and similar communities in Texas, the standard of care for diagnosing, prescribing, and dispensing drugs is to examine an animal before doing any of those actions. In San Antonio, Texas and similar communities in Texas, the standard of care for when a veterinarian receives information that the animal is not responding to the prescribed treatment is to examine the animal. Because Respondent failed to examine Starlight before diagnosing, prescribing, and dispensing drugs and because Respondent failed to examine Starlight despite repeatedly receiving information that Starlight was not responding to the prescribed treatment, Respondent did not provide the same degree of treatment as is ordinarily used by veterinarians in San Antonio, Texas or similar communities in Texas. Respondent thus violated the standard of care, and Board Rule 573.22.

Respondent violated Board Rule 573.40 by dispensing Amoxicillin and Tramadol without a patient name on the label for those drugs. Under Board Rule 573.40, all containers for all medication that is dispensed must contain a patient name. Respondent dispensed Amoxicillin and Tramadol without the patient name of Starlight affixed to the label. Respondent thus violated Board Rule 573.40.

Respondent violated Board Rule 573.41 by failing to establish a VCPR prior to prescribing, dispensing, delivering, or ordering delivered prescription drugs and by prescribing, dispensing, delivering, or ordering delivered prescription drugs that were not necessary or required for the medical care of Starlight. Under Board Rule 573.41 Respondent was required to establish a valid VCPR before prescribing Amoxicillin and Tramadol for Starlight and before dispensing Amoxicillin and Tramadol to Mrs. Meade for the use on Starlight. As discussed previously, Respondent did not have a valid VCPR with Starlight when she prescribed and dispensed Amoxicillin and Tramadol between November 12, 2012, and November 15, 2012. Respondent did not have a VCPR with a specific animal when she dispensed Amoxicillin and Tramadol to the other employees and volunteers of San Antonio Pets Alive who actually gave those two drugs to Mrs. Meade. Additionally, Respondent admitted that the Amoxicillin that she prescribed herself and dispensed through volunteers to Mrs. Meade was not necessary for the medical care of Starlight when she stated that due to the fact Starlight had just had puppies it was normal for Starlight to sporadically bleed from her urethra. Respondent thus violated Board Rule 573.41.

Respondent violated Board Rule 573.52 when she failed to keep proper records. The Board Rules provide that patient records shall include: patient's weight if required for diagnosis or treatment and the names, dosages, and routes of administration of drugs prescribed, administered and dispensed. Additionally, Board Rule 573.52 requires that "any amendment, supplementation, change, or correction in a patient record not made contemporaneously with the act or observation noted by indicating the time and date of the amendment, supplementation, change or correction, and clearly indicating that there has been an amendment, supplementation, change, or correction" be included in the record. Respondent's veterinary medical records for Starlight do not include the name, dosage, or route of administration for the Tramadol that Respondent prescribed and dispensed to Mrs. Meade for Starlight's medical treatment. Respondent's veterinary medical records are devoid of any notation that Respondent prescribed and dispensed Tramadol to Mrs. Meade for Starlight. Respondent's veterinary medical records do not list a weight for Starlight that

would be necessary for calculating the dosage of Amoxicillin and Tramadol that is appropriate for Starlight. Furthermore, Respondent included extra information on November 28, 2012, and December 20, 2012, to her veterinary medical record for Starlight without clearly indicating that this information was a supplementation or addition to the veterinary medical records. Respondent's failure to keep a patient record for Starlight in accordance with Board Rule 573.52 is a violation of Board Rule 573.52.

Respondent violated Section 801.402(4) of the Act because she diagnosed ailments, prescribed drugs, and dispensed drugs to Starlight when Respondent did not have a VCPR with Starlight. Section 801.351 of the Act requires that a VCPR exist between Starlight and Respondent before Respondent can practice veterinary medicine. Respondent is required to examine Starlight before she can practice veterinary medicine on Starlight because Respondent must have sufficient knowledge of Starlight to initiate at least a general or preliminary diagnosis of Starlight's medical condition which Respondent can only attain through a physical examination. Starlight was never examined by a veterinarian before Respondent practiced veterinary medicine on her through San Antonio Pets Alive. Thus, there was not a valid VCPR between Starlight and Respondent even though Respondent diagnosed ailments, prescribed drugs, and dispensed drugs. Section 483.042 of the Texas Health and Safety Code requires that a veterinarian only dispense drugs under a valid VCPR and that the veterinarian include a label on the container of medication that has the name of the patient. As already discussed, Respondent did not have a VCPR when she dispensed Tramadol and Amoxicillin to Mrs. Meade for Starlight and did not include a label with Starlight's name on it when those medications were dispensed. Therefore, Respondent violated Section 801.402(4) of the Act by committing a violation of Section 801.351 of the Occupations Code and by committing two violations of Section 483.042 of the Texas Health and Safety Code.

Respondent violated Section 801.402(16) of the Act by engaging in a pattern of acts that indicate consistent malpractice, negligence, or incompetence in the practice of veterinary medicine. Respondent represented to the Board that all the animals that are fostered by San Antonio Pets Alive are given veterinary care in the same process as Starlight received care and has engaged in this process with many animals. Therefore, Respondent relies on non-veterinarians to diagnose and treat veterinary medical ailments in all of the animals that San Antonio Pets Alive has fostered as well as she prescribes and dispenses medication without a valid VCPR between herself and those animals. By engaging in a pattern of acts that indicate consistent malpractice, negligence, or incompetence in the practice of veterinary medicine, Respondent violated Section 801.402(16) of the Act.

PENALTIES SOUGHT

According to Section 801.401 of the Act,

(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....

(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. The board shall specify the continuing education programs that the license holder may attend and the number of hours that the license holder must complete. A continuing education program specified by the board must be relevant to the violation committed by the license holder.

According to Section 801.451 of the Act,

The board may impose an administrative penalty on a person, including a corporation, organization, business trust, estate, trust, partnership, association, or other legal entity, who violates this chapter or a rule adopted or order issued under this chapter.

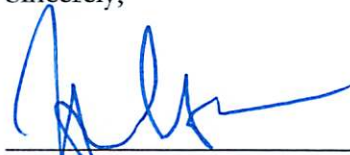
TBVME asserts that Respondent has violated the Veterinary Licensing Act by violating the Board Rules and the Act as cited above. Respondent previously violated the Board Rules and was sanctioned in Agreed Order 2008-24 and 2010-97 for committing those actions. Due to Respondent's previous violations of the Board Rules, Respondent's actions are automatically a Class B violation. Additionally, the severity and brazenness of Respondent's actions necessitate the level of sanctions that are attributed to Class B violations. Respondent has admitted to TBVME that it is the practice of San Antonio Pets Alive for Respondent to practice veterinary medicine without a VCPR. That means that Respondent's actions with regards to Starlight are not an isolated incident, but rather a continuous practice that needs to be addressed. Therefore, TBVME is seeking a formal reprimand, two year suspension of her license with all of that time probated, a \$2,000 administrative penalty, and three hours of continuing education in recordkeeping.

Respondent has the right to be present at the administrative hearing and to be represented by counsel. All parties may present evidence and argument to the Administrative Law Judge regarding the charges noted above and within the attachments to this notice.

RESPONDENT'S FAILURE TO APPEAR WILL NOT PREVENT THE ADMINISTRATIVE LAW JUDGE FROM PROPOSING A DECISION, OR THE TBVME BOARD FROM TAKING DISCIPLINARY ACTION AGAINST RESPONDENT IN THIS MATTER.

PURSUANT TO 1 TAC, SECTION 155.501, UPON FAILURE OF A PARTY TO APPEAR AT THE HEARING, THE FACTUAL ALLEGATIONS IN THE NOTICE WILL BE DEEMED ADMITTED AS TRUE, AND THE RELIEF SOUGHT IN THE NOTICE OF HEARING MAY BE GRANTED BY DEFAULT.

Sincerely,



JONATHAN CRABTREE

Texas Board of Veterinary
Medical Examiners

State Bar No: 24076331

333 Guadalupe, Ste. 3-810

Austin, TX 78701

Tel: (512) 305-7562

Fax: (512) 305-7556

1/29/2014 7:10:45 PM

Amalia Rodriguez-Mendoza
District Clerk
Travis County
D-1-GN-14-000287

EXHIBIT D

Edit Record

Close

San Antonio Pets Alive!

Foster Application, Agreement and Release

Questions about fostering? Email foster@sanantoniopetsalive.org
Problems with this form? Email webmaster@sanantoniopetsalive.org

Application Date * 08-Oct-2012 31 [dd-MMM-yyyy]

- ☐ Emailed.
- ☐ Added to website/forum and Yahoo group

Notes

First Name * Sheryl

Last Name * Meade

Address * 8531 Trumpet Circle

City * Converse

State * TX

Zip * 78109

Home Phone Number * 210-734-9860

Cell Phone Number 210-289-2555

Work Phone Number

Primary Email Address * balloonboss2gmail.com

Emergency Contact Name Ernie Shown

Emergency Contact Phone Number 210-289-4299

- What sort of Fostering are you able to do? *
- ☐ Foster-to-Adopt Only (foster this pet until "I" can adopt it)
- ☒ Foster only this dog(s)/cat(s) until it is

Skip the following 3 questions if you are not fostering dogs.

When you're home, dog will be (check all that apply)

- ☒ Inside
- ☒ Outside

When you're not home, dog will be (check all that apply)

- ☒ Inside
- ☐ Outside
- ☐ Crate

Do you have a fenced yard?

- ☒ Yes
- ☐ No

Skip the following question if you are not fostering a cat

Where will your cat be kept?

- ☐ Inside
- ☐ Outside

How many hours a day would your foster pet(s) be alone? *

- ☐ More than 9
- ☐ 4-8
- ☐ 2-3
- ☒ Less than 2

Can you provide the following for our foster? (Check all that apply)

- ☒ Food
- ☐ Litter
- ☒ Transportation
- ☐ Veterinary Care

Please list any requests that need to be considered

Do you object to a SAPA! Representative coming to your home to check on the pet while it's in your care? *

- ☐ Yes
- ☒ No

How did you hear about us?

Facebook

By agreeing to foster in partnership with San Antonio Pets Alive!, I agree to the following:

Pet's Health and Disposition

San Antonio Pets Alive! cannot guarantee the health or disposition of any foster animal. We do not have past records for these animals and there are some risks associated with taking in foster animals. Family pets will be current on all shots and foster pets will be kept isolated from family pets, for a minimum of 7 (10-14 for cats), days for the protection of all animals. I agree to be fully responsible for the safety and well being of the foster pet. I will provide a safe, loving, humane environment with adequate food water and shelter at all times. I will not declaw, crop ears, or crop tail of fostered pet. I will adhere to all state and local animal laws and all foster animals will wear a collar with identification. I will promptly notify San Antonio Pets Alive! of any signs of illness, behavioral issues or concerns, an inability to continue to foster, if the pet become lost, and/or if the pets bites someone.

Transfer of Animals

Animals cannot be transferred to the custody of another person, shelter, humane society, SPCA, or other entity without prior consent and permission of San Antonio Pets Alive! I agree to not place this pet in another home without the written or verbal authorization from SAPA!, whether it be temporary or permanent.

- ☐ adopted (by someone else)
- ☐ Foster for SAPA! on a regular basis

We often post pleas to Craigslist and Facebook to find foster homes for pets in immediate crisis. Are you responding to one of those pleas and are signing up to foster a specific pet?

I want to foster a specific pet *

☒ Yes

☐ No

If Yes, Pets ID# or Name

231395, 231426 & 231427

What is your type of residence? *

☒ Own Home

☐ Rent Home

☐ Rent Apartment

When is the best time to reach you? (choose all that apply) *

☒ 9AM-12PM

☒ 12PM-5PM

☒ 5PM-9PM

Do you have children in your household? *

☐ Yes

☒ No

If Yes, How Many? What Ages?

Is everyone in your household in agreement to foster? *

☒ Yes

☐ No

Will you be moving within the next 60 days? *

☐ Yes

☒ No

I am interested in fostering *

☒ Puppies

☐ Kittens

☐ Large Dogs

☒ Small Dogs

☐ Cats

SAPA! needs foster homes to care for **unweaned puppies and kittens**. This requires round-the-clock care as these types of fosters need to be bottle-fed every couple of hours. We will provide training.

I am signing up to foster unweaned puppies *

☐ Yes

☒ No

I am signing up to foster unweaned kittens *

☐ Yes

☒ No

Permanent Dogs in Home *

☒ Currently have dog(s)

☐ No dog(s) now, but

Return of Animals

All the pets in the San Antonio Pets Alive! foster program are the property of San Antonio Pets Alive! and must be returned within 24 hours of request. I agree that I am fostering this pet for San Antonio Pets Alive! and that I do not have any right of ownership over my foster animal. I further agree that San Antonio Pets Alive's! rights in and to my foster pet are superior to mine. I agree to provide the Authorized Representative, or his/her designate access to my home and property to check on my foster pet, at any time while I am in possession of my foster pet.

Personal or Property Damage and/or Injury

I agree that accidental animal bites or other injuries to humans and other animals do occur, and agree to hold harmless and indemnify, and protect San Antonio Pets Alive! from any claim or suit filed by someone as a result of such incident.

In addition, San Antonio Pets Alive! will not be responsible if animal should damage or destroy property belonging to Foster Caregiver, Foster Caregiver household, or others, or if the animal shall transfer any disease, internal or external parasites to other animals and people in Foster Caregivers household.

I understand that if I am approved for fostering, this declaration represents a legal contract between me as the foster home caregiver and San Antonio Pets Alive!. I understand that if I am approved to foster an animal, I must abide by this agreement and that this agreement applies to any and all animals that I foster with San Antonio Pets Alive!

Accuracy of Information

By signing below, I acknowledge that the information provided on this application is correct to the best of my knowledge. If at any time the information I have provided changes, I will provide the updated information to the San Antonio Pets Alive! Foster Care Program.

Type your first and last name in the box below to indicate your acceptance of these terms. This will act as your signature and indicates your agreement to be bound by these terms.

Signature (Type Name) *

Sheryl Meade

Drivers License Number

27984855

I am at least 18 years old

☒ Yes

PLEASE FILL OUT APPLICATION ONCE AND HIT SUBMIT ONCE

ATTENTION APPLICANT: After submitting your foster application please IMMEDIATELY check the primary email address that you provided.

☐ previously had dog(s)
☐ Never had a dog

Permanent Cats in Home *

☐ Currently have cat(s)
☐ No cat(s) now, but previously had cat(s)
☒ Never had a cat

How many of each dog/cat?

3 dogs

Foster Dog Experience *

☐ Currently have foster dog(s)
☐ Previously had foster dog(s)
☒ Never fostered a dog before

Foster Cat Experience *

☐ Currently have foster cat(s)
☐ Previously had foster cat(s)
☒ Never fostered a cat before

If you have pets, please list your vet

Kitty Hawk Animal Hospital

Your Veterinarian's Phone Number

210-658-3574

I agree that a representative of San Antonio Pets Alive! may contact my veterinarian to confirm the information provided herein regarding my pets and I consent to the release of such veterinary information by my veterinarian to San Antonio Pets Alive!.

Please explain any medical issues any pets in your household have

none

<input type="checkbox"/>	26-Sep-2012	false	false		Mason	Marisa	5PM-9PM
<input type="checkbox"/>	25-Sep-2012	false	false		Torretto	Russell	12PM-5PM
<input type="checkbox"/>	26-Sep-2012	false	false		debakey	cassandra	5PM-9PM
<input type="checkbox"/>	25-Sep-2012	false	false		Arredondo	Gaby	9AM-12PM, 12PM-5PM, 5PM-9PM
<input type="checkbox"/>	25-Sep-2012	false	false		Rivera	Bianca	9AM-12PM, 12PM-5PM, 5PM-9PM
<input type="checkbox"/>	25-Sep-2012	false	false		Lucero	Vickie	9AM-12PM, 12PM-5PM, 5PM-9PM

1/29/2014 7:10:45 PM

Amalia Rodriguez-Mendoza
District Clerk
Travis County
D-1-GN-14-000287

EXHIBIT E

MODEL VETERINARY PRACTICE ACT- JANUARY 2013¹

Section 6 – Exemptions

This Act shall not be construed to prohibit:

Any employee of the federal, state, or local government performing his or her official duties.

1. Any student who is enrolled:
 - a. in an accredited college of veterinary medicine performing duties or actions assigned by instructors or working under the direct supervision of a licensed veterinarian, or
 - b. in an accredited program of veterinary technology performing duties or actions other than diagnosis, prognosis, prescription, or surgery, as assigned by instructors or working under the direct supervision of a licensed veterinarian
2. Any person advising with respect to or performing acts that the Board has designated by rule as accepted livestock management practices.
3. Any person providing consultation to a licensed veterinarian in the State on the care and management of a patient.
4. Any licensed individual of a licensed or regulated profession within the State who is providing assistance requested by a veterinarian licensed in the State, acting with owner consent from the client, and acting under the supervision of the licensed veterinarian. The licensed veterinarian shall maintain responsibility for the veterinarian-client-patient relationship.
5. Any veterinarian employed by an accredited college of veterinary medicine providing assistance requested by a veterinarian licensed in the State, acting with owner consent from the client, and acting under the direct or indirect supervision of the licensed veterinarian. The licensed veterinarian shall maintain responsibility for the veterinarian-client-patient relationship.
6. Any pharmacist, merchant, or manufacturer selling at his or her regular place of business medicines, feed, appliances, or other products used in the prevention or treatment of animal diseases as permitted by law.
7. Any person lawfully engaged in the art or profession of farriery.
8. Subject to the State's [animal cruelty law(s)], an owner of an animal and any of the owner's regular employees caring for and treating the animal belonging to such owner, except where the ownership of the animal was transferred for purposes of circumventing this Act. Individuals must comply with all laws, rules and regulations relative to the use of medicines and biologics.
9. Any person who provides training for animals that does not include diagnosing or the prescribing or dispensing of any therapeutic agent.
10. Any instructor at an accredited college of veterinary medicine or accredited program in veterinary technology performing his or her regular functions or any person lecturing or giving instructions or demonstrations at an

¹ Model Veterinary Practice Act- January 2013, *available at* <https://www.avma.org/KB/Policies/Pages/Model-Veterinary-Practice-Act.aspx>.

accredited college of veterinary medicine or accredited program in veterinary technology or in connection with a veterinary or veterinary technology continuing education course or seminar.

11. Any person selling or applying pesticides, insecticides, or herbicides as permitted by law.
12. Any person engaging in scientific research involving animals conducted in accordance with federal, state, and local laws and regulations.
13. Any credentialed veterinary technician, veterinary technologist, or other employee of a licensed veterinarian performing lawful duties under the direction and supervision of such veterinarian who shall be responsible for the performance of the employee.
14. A veterinarian licensed or a veterinary technician credentialed in another state may practice in the State during an emergency or natural disaster within the scope and location of assigned veterinary medical duties of the response efforts without written examination or other qualification if:
 1. an official declaration of the disaster or emergency has been made by the Governor or the delegated State official; and
 2. an official invitation has been extended to the veterinarian or veterinary technician for a specified time by the authority that has jurisdiction for coordinating the animal/agricultural issues in the State during emergencies either within or outside the Emergency Management Assistance Compact (EMAC).
15. Any person who, without expectation of compensation, provides immediate veterinary care in the event of an emergency or accident situation.
16. Any person acting under the direct or indirect supervision of a licensed veterinarian to provide care to animals that are the property of an animal shelter when at least the following three conditions are met:
 0. the person is an employee of an animal shelter or its agencies; and
 1. the person is performing these tasks in compliance with a written protocol developed in consultation with a licensed veterinarian; and
 2. the person has received proper training.

Such persons shall not diagnose, prescribe or perform surgery.

17. Any person who lawfully provides care and rehabilitation of wildlife species under the supervision of a licensed veterinarian.

COMMENTARY TO SECTION 6—This section provides a list of carefully considered exemptions to the general rule outlined in Section 4 that it is unlawful to practice veterinary medicine without a valid license.

Subsection 1 exempts any federal, state, or local government employee performing his or her official duties. This exemption is intended to include full-time, temporary, or contract employees, particularly in the case of emergency outbreak events or disaster situations.

"Livestock management practices," in the context of subsection 3, refers to those cosmetic or surgical procedures currently considered essential and routine individual animal husbandry techniques necessary for management of groups of animals raised at various levels of confinement. As used in this MVPA, the term "livestock" includes cattle, horses, sheep, goats, swine, farm-raised cervidae and camilidae, and other species used in the production of fiber, meat, and milk products. State legislatures, as a part of the veterinary practice act, should identify, list, or describe

those factors the Board must or should consider in determining whether a particular procedure, technique, or endeavor is an accepted livestock management practice. Among the acts that a state may consider exempting by rule are nonsurgical methods of artificial insemination, dehorning, castration or emasculation of male animals, and tail docking, which are procedures that typically should be performed by persons working under the order of a veterinarian within a valid VCPR. State humane laws apply to farm and ranch personnel during the performance of and subsequent aftercare associated with these exempted procedures. It behooves the attending veterinarian to advocate on the animal's behalf to ensure that procedures are performed at the proper age to minimize pain and discomfort and that appropriate techniques are applied.

A licensed veterinarian may, in the best interest of the patient, and with the owner's consent, request assistance from either non-veterinarians licensed in a licensed or regulated profession in the state with specific expertise or veterinarians who are exempt from licensure by employment at an accredited college of veterinary medicine. Subsections 5 and 6 indicate that such licensed non-veterinarians and veterinarians employed at an accredited college of veterinary medicine may provide assistance only if the individual is acting under the supervision of a licensed veterinarian and the licensed veterinarian maintains responsibility for the VCPR. Acting outside these parameters constitutes the practice of veterinary medicine, and as such, may result in penalties specified within the act. Subsection 5 does not preclude a state from adopting oversight requirements applicable to non-veterinarian licensed professionals, such as referral by a veterinarian, obtaining a veterinarian's medical clearance prior to treatment, certification by an approved entity, continuing education relating to working on animals, and liability coverage.

It has been a common practice for states to allow an owner of an animal or any of that owner's regular employees to treat animals belonging to that owner. In subsection 9, the term "regular employee" is used to avoid circumvention of the intent of this exemption by individuals employed primarily to treat the owner's animals. Furthermore, this exemption should not apply to situations in which ownership of the animal is transferred to qualify for the exemption. Finally, language in subsection 9 indicates that regardless of the situation, no prescription drug or nonprescription drug intended for extralabel use can be administered, dispensed, or prescribed during the treatment of the animal unless a VCPR exists. This latter requirement reflects language embodied in federal regulation 21CFR530 (which implements the Animal Medicinal Drug Use Clarification Act [AMDUCA]). Classification of animal drugs and biologics as to prescription or over-the-counter is not the purview of the state practice act, but rather the purview of the United States Food and Drug Administration, the United States Department of Agriculture, and, in some cases, state law. Subsection 9 does not exempt the owner or his or her regular employee from compliance with the state's animal cruelty laws.

Subsection 14 is not intended to allow for diagnosing, prognosing, prescribing, or performing surgery by veterinary technicians, veterinary technologists or other employees of a licensed veterinarian.

Subsection 15 was added to exempt those who respond to disasters under a strict set of circumstances. This is written to exempt self-responders who have not been invited into the state through the proper channels. Adherence to an authoritative chain of command is necessary to protect out-of-state responders' credentials and to ensure a successful response to an incident. States may wish to provide details about what person(s) or agency(ies) can request assistance in animal or agricultural emergencies either within or outside the Emergency Management Compact (EMAC). Proper credentialing as established by the Incident Command System (ICS) through the National Incident Management System (NIMS) for the duties the out-of-state individuals are responding could be added.

Subsection 17 was expanded in 2012 to clearly outline the care of animals for which a shelter has taken possession. This exemption allows a shelter employee to perform tasks, such as vaccinations, prophylactic treatment of parasites, testing for infectious diseases and euthanasia, under supervision of a licensed veterinarian, when certain specific

conditions are met. In reference to veterinary care, including euthanasia, performed at animal shelters (subsection 17), the AVMA urges that each Board check with the United States Drug Enforcement Administration (DEA) to determine the current requirements governing use of DEA-regulated drugs in veterinary medicine. To be in compliance with DEA requirements, a Board may need to require that euthanasia be performed under the *direct* supervision of a licensed veterinarian or by a euthanasia technician licensed by the Board.

Subsection 18 was added to exempt those who lawfully provide care and rehabilitation to wildlife under the supervision of a veterinarian.

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Amalia Rodriguez-Mendoza
District Clerk
Travis County
D-1-GN-14-000287

EXHIBIT F



BOARD NOTES

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FROM THE EXECUTIVE DIRECTOR

Creation of Veterinarian-Client-Patient Relationships at Shelters

There has been much discussion of this topic at many of the veterinary meetings I have attended recently. The creation of a valid veterinarian-client-patient relationship is at the heart of the veterinary profession. So much so, it is set out clearly in the Veterinary Licensing Act, Chapter 801 of the Occupations Code, Section 801.351:

(a) A person may not practice veterinary medicine unless a veterinarian-client-patient relationship exists. A veterinarian-client-patient relationship exists if the veterinarian:

- (1) assumes responsibility for medical judgments regarding the health of an animal and a client, who is the owner or other caretaker of the animal, agrees to follow the veterinarian's instructions;
- (2) **possesses sufficient knowledge of the animal** to initiate at least a general or preliminary diagnosis of the animal's medical condition; and
- (3) is readily available to provide, or has provided, follow-up medical care in the event of an adverse reaction to, or failure of, the regimen of therapy provided by the veterinarian.

(b) **A veterinarian possesses sufficient knowledge of the animal for purposes of Subsection (a) (2) if the veterinarian has recently seen, or is personally acquainted with, the keeping and care of the animal by:**

- (1) **Examining the animal; or**
- (2) **Making medically appropriate and timely visits to the premises on which the animal is kept.**

(c) A veterinarian-client-patient relationship may not be established by telephone or electronic means.

Continued on page 2...

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The Board has always stated that an examination is required to establish a veterinarian-client-patient relationship. Section (b)(2) was placed within the statute for herd livestock management. The example contemplated by that language was a livestock feedlot where the veterinarian makes medically appropriate and timely visits to the premises on which the animal is kept. This subsection does not apply to shelters in the initial presentation of the animal at the shelter as the veterinarian had not previously made medically appropriate and timely visits to the premises on which the animal was kept prior to arriving at the shelter. In fact, the shelter veterinarian does not know where the premises was where the animal was kept. After the time period for holding the animal has elapsed, usually three days and set by local ordinance, then the shelter may claim the animal is abandoned and the shelter is the owner. Under Texas law, an animal's owner or a caretaker designated by the owner can perform acts of veterinary medicine on the animal without involving a veterinarian and without concern for establishing a veterinarian-client-patient relationship, because the owners and caretakers are exempt from the Veterinary Licensing Act. Until that point, in order to perform any veterinary services on that animal, including rabies vaccinations, a veterinarian must conduct an examination on that animal to establish a veterinarian-client-patient relationship.

The Board does not define an examination, but the Board's rule on maintaining the standard of care, Section 573.22, and the Board's rule on recordkeeping, Section 573.52, Title 22, Part 24 of the Texas Administrative Code, still apply. The examination must be sufficient to satisfy an average member of the local veterinary medical community that the animal is healthy enough for the prescribed treatment. A record of the examination and the information required under the recordkeeping rule to substantiate the examination is necessary no matter whether the animal is vaccinated at a shelter, a low-cost vaccination clinic or a private clinic.

The purpose of the examination, especially in the vaccination scenario, is to ensure the animal is not sick. If a vaccination is given to a sick animal, the vaccination may not be effective. This is extremely important with the rabies vaccination, in the control of zoonotic diseases.

Under Section 826.047 of the Health and Safety Code, a veterinarian performing duties under this chapter (Rabies) is not liable to the owner of an animal for the death of or injury to the animal except in the case of willful misconduct or gross negligence. This would apply in a civil suit for damages if the animal died when the veterinarian was performing duties as part of rabies vaccinations, registration, restraint and impoundment of animals. This does not address the problem of a veterinarian failing to uphold the Veterinary Licensing act and the Board's Rules of Professional Conduct by failing to establish a veterinarian-client-patient relationship prior to performing veterinary services on the animal, including vaccinating for rabies, by failing to uphold the standard of care by not examining an animal prior to treatment, or by failing to record details that substantiate the examination.

There has been no change to either the statute, any rules regarding this matter or the Board's interpretation of the Act or rules.