

SOAH No. 578-16-0462

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| TEXAS BOARD OF VETERINARY | § | BEFORE THE STATE OFFICE |
| MEDICAL EXAMINERS | § | |
| v. | § | OF |
| KRISTEN E. LINDSEY, D.V.M. | § | ADMINISTRATIVE HEARINGS |

FORMAL COMPLAINT

COMES NOW, the Texas Board of Veterinary Medical Examiners (“TBVME” or “the Board”), Petitioner, by and through its attorney of record, Michelle Griffin, Staff Attorney, and files this Formal Complaint against Kristen E. Lindsey, D.V.M., Respondent, based on her violations of Section 801.402(4) and 801.402(6) of the Texas Veterinary Licensing Act and Board Rule 573.4, and would show the following:

I. Factual Background

Respondent is a Texas veterinarian and holds Texas Veterinary License No. 12622, issued by the Board on June 25, 2012, which was in full force and effect at all times material and relevant to this Formal Complaint. Respondent was employed by Washington Animal Clinic in Brenham, Texas, at the time of the events that are the subject of this complaint.

On or about April 15, 2015, Respondent shot an orange, male cat through the head using a bow and arrow. Respondent shared a photograph of herself with the cat on her Facebook webpage. The photograph showed Respondent smiling and holding the up the arrow with the cat’s body dangling from the arrow shaft. The arrow appears to have entered through the cat’s forehead, possibly through an eye or between his eyes, and exited through the back of the cat’s skull, slightly below his ears. Respondent appears to be wearing archery gloves. Respondent captioned the photo as follows:

“My first bow kill [cat emoticon] lol. The only good feral tomcat is one with an arrow through it’s head! Vet of the year award... gladly accepted [crying/laughing emoticon]”

Several people wrote comments on the photograph. Respondent responded to one comment with the statement “and no I did not lose my job. Lol. Pssh. Like someone would get rid of me. I’m awesome!” Respondent’s mother, Becky Lindsey, wrote comments that stated “She was practicing in the yard. Jack and I were watching and saw it all go down!” and “I took the picture!” Jack Lindsey is Respondent’s father. Respondent’s photograph was shared on numerous social media websites, and the story was reported on several news outlets. Respondent’s employment at Washington Animal Clinic was terminated approximately two days after she shared the photograph.

Bill and Claire Johnson lived across the street from Respondent’s home at the time of the incident. Mr. and Mrs. Johnson owned an orange, male cat, named Tiger. Tiger was previously owned by the Johnson’s next-door neighbors, who had kept Tiger in the neighborhood for approximately seven years. When Tiger’s previous owners moved away from the neighborhood, they gave Tiger to the Johnsons. Tiger was a patient at Washington Animal Clinic, where Respondent was employed.

Amy Hemsell often provided pet sitting services for Tiger’s previous owners and for the Johnsons. The Johnsons were out of town when Respondent shared the photograph to her Facebook webpage, and Tiger was being cared for by Ms. Hemsell. Neither Ms. Hemsell nor the Johnsons have seen Tiger since Respondent shared the photograph. Both Ms. Hemsell and the Johnsons identified the orange cat in the photograph as Tiger, based on Tiger’s distinctive markings.

II. Procedural History

As of October 1, 2015, the Board has received over 700 formal complaints against Respondent, as well as written comments from all 50 states and 77 countries, and over 27,000 emails regarding Respondent’s actions.

The Austin County District Attorney presented their investigation of Respondent for animal cruelty to the Austin County Grand Jury on June 24, 2015. The Grand Jury declined to indict Respondent.

Pursuant to Section 801.408, Texas Occupations Code, and Board Rule 575.29, an informal conference was held before the Board’s Enforcement Committee on August 28, 2015. Respondent, through her attorney of record, Brian Bishop, waived her appearance at the informal conference.

After reviewing the facts and evidence presented, the Enforcement Committee found violations of the Veterinary Licensing Act and Board's Rules.

III. Alleged Violations

Under Section 801.402(4) of the Veterinary Licensing Act, a person is subject to disciplinary action by the Board if the person engages in dishonest or illegal practices in, or connected with, the practice of veterinary medicine. Under Section 801.402(6) of the Veterinary Licensing Act, a person is subject to disciplinary action by the Board if the person engages in practices or conduct that violates the board's rules of professional conduct.

Board Rule 573.4 states that 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 Section 575.50 of the Board's Rules (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 veterinary medicine is sufficient for action by the Board.

Under Section 42.092(b)(1) of the Texas Penal Code, a person commits the offense of cruelty to non-livestock animals if the person intentionally, knowingly, or recklessly kills or causes serious bodily injury to an animal in a cruel manner. Under Section 42.092(b)(2) of the Texas Penal Code, a person commits the offense of cruelty to non-livestock animals if the person intentionally, knowingly, or recklessly kills or causes serious bodily injury to an animal without the owner's effective consent. "Cruel manner" includes a manner that causes or permits unjustified or unwarranted pain or suffering. "Animal" means a domesticated living creature, including any stray or feral cat. Respondent intentionally, knowingly, or recklessly killed or caused serious bodily injury to Tiger in a cruel manner without the Johnson's effective consent. Therefore, Respondent committed animal cruelty.

Section 575.50 of the Board's Rules states that the crime of animal cruelty is related to and connected with the practice of veterinary medicine. This Rule also states that the Board shall, in determining whether a criminal conviction directly relates to the duties and responsibilities of a licensee, consider the factors listed in the Occupations Code §53.022.

Although Section 53.022 of the Occupations Code relates to criminal *convictions*, it offers

significant guidance. The statute provides four factors that a licensing authority must consider in determining whether a criminal conviction directly relates to an occupation. The factors are:

1. the nature and seriousness of the crime;
2. the relationship of the crime to the purposes for requiring a license to engage in the occupation;
3. the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
4. the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

Animal cruelty under Sections 42.092(b)(1) or (2) is, at a minimum, a state jail felony, and thus is a serious crime. Veterinarians occupy positions of public trust, and a veterinary license assures the public that a licensee is fit to hold that position. Veterinarians are frequently left alone with their vulnerable patients, and are entrusted to perform dangerous and potentially painful procedures. Thus, a veterinary license offers a unique opportunity to commit animal cruelty. Furthermore, the commission of animal cruelty is directly at odds with the ability, capacity, and fitness to perform the duties and responsibilities of the practice of veterinary medicine. Additionally, Respondent documented her actions and presented them to the public as the actions of an exemplary veterinarian, deserving of a “Vet of the Year Award.” For these reasons, Respondent’s actions are connected with her professional practice and were committed under the guise of the practice of veterinary medicine.

Based on the above, Respondent has violated Sections 801.402(4) and 801.402(6) of the Veterinary Licensing Act and Board Rule 573.4.

IV. Penalties Sought

Under Section 801.401 of the Veterinary Licensing Act, if a license holder is subject to disciplinary action under Section 801.402, the Board may revoke or suspend a license.

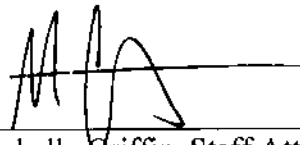
Board Rule 575.25 sets out the Board’s Recommended Schedule of Sanctions. Licensees considered as presenting imminent peril to the public will be considered Class A violators. Class A violations include engaging in practices which are violative of the Board’s Rules of Professional

Conduct. Therefore, Respondent's violations are Class A violations. The maximum penalties for Class A violations include revocation of a license.

Board Rule 575.25 further states that in assessing sanctions or penalties, consideration shall be given the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public; the economic harm to property or the environment caused by the violation; history of previous violations; what is necessary to deter future violations; and any other matters that justice may require.

Animal cruelty is an exceptionally serious violation for a licensed veterinarian. The public relies on veterinarians to use their knowledge and skills to prevent and alleviate pain and suffering wherever possible. Thus, compassion and careful judgment are essential to the practice of veterinary medicine. Respondent's actions demonstrated callous indifference to animal pain and suffering. Furthermore, Respondent made a severe error in judgment by posting the photograph to her Facebook website and boasting about the killing. Respondent's lack of empathy and discretion pose serious hazards to the health and safety of her patients. There is no sanction, short of revocation, that the Board can impose that would sufficiently protect the public from Respondent's poor professional character. Therefore, the Board is seeking revocation of Respondent's veterinary license.

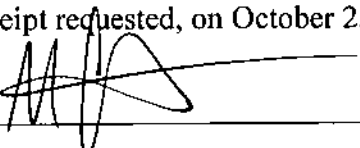
Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that I delivered a copy of Petitioner's Formal Complaint to Respondent, through her attorney of record, via certified mail, return receipt requested, on October 2, 2015.



Michelle Griffin