

BOARD OF VETERINARY MEDICAL EXAMINERS

Minutes

Date: January 30 -31, 2007

Time: 9:00 a.m., C.S.T.

Location: Tennessee Room
Ground Floor, Cordell Hull Building
425 Fifth Avenue North
Nashville, TN 37247

Members Present: Mary Welch, D.V.M., President
C. Maben Thompson, D.V.M., Vice-President
Tiffani D. Rogers, D.V.M.
Marie Gordon, Consumer Member
Janet Jones, L.V.M.T
James C. Lyons, D.V.M.

Members Absent: Thomas Edmonds, D.V.M., Secretary
Ron Wilson, D.V.M., Ex-officio Member
Robbie Bell, HRB Director, Ex-officio Member

Staff Present: Lisa Lampley, Board Director
Rita Buckner-Shelton, Board Administrator
Robert Taylor, D.V.M., Board Consultant/Inspector

Upon roll call and determination of a quorum being present, the Board meeting was called to order by Dr. Welch at 9:55 a.m.

Welcome to New Board Member

Dr. Welch welcomed Dr. Tiffani D. Rogers, DVM, to the Board. Dr. Rogers' term expires on July 31, 2011. Dr. Rogers is the replacement member for Dr. Leland Davis, DVM, whose term expired on July 31, 2006.

Conflict of Interest Policy

Ms. Lisa Lampley, Board Director, reviewed the conflict of interest policy and stated that a signed copy of the policy was included in each member's board book.

Approval of Minutes

After reviewing the minutes from the December 13, 2006 board meeting, Dr. Thompson motioned to approve the minutes as presented. Dr. Lyons seconded the motion. The motion carried.

Contested Case – Kevin H. Cox, DVM

Dr. Kevin H. Cox, DVM, was present and was represented by Ms. Carlyle Urello, Attorney. Ms. Brandi Bozarth, Assistant General Counsel, represented the State. The proceedings were presided over by Administrative Law Judge Ann M. Johnson. Pursuant to a request from the Respondent's attorney, Drs. Edmonds and Welch were recused from the hearing. Dr. Welch was present at the meeting and stated that she felt she could be fair and impartial in this matter; however, she did not want the issue of recusal to be potential grounds for an appeal of the board's decision in this matter. Dr. Edmonds had previously recused himself from the hearing and was not in attendance at the meeting. Dr. Maben Thompson chaired the hearing. Dr. Cox was charged with inappropriate prescribing practices in which no examinations of any animals were performed and no veterinarian-client-patient relationship existed prior to the prescribing of medications.

Pursuant to opening statements from both sides, the state presented testimony from Dr. Oscar Wilson, Jr., DVM, in which he testified that he filed the complaint in this matter because he believed that veterinary prescription drugs were being made readily available to dairy farmers by Dr. Cox with no valid veterinarian-client-patient relationship in existence. Dr. Wilson further testified regarding his discussions with clients of Dr. Cox and his personal interactions/discussions with Dr. Cox. He testified that Dr. Cox had stated to him that an examination of animals was not necessary and that one visit per year was sufficient to form a veterinarian-client-patient relationship. Mr. Charles Whitson, Investigator for Health Related Boards, presented testimony regarding his investigation and interviews with Dr. Cox. Mr. Whitson testified that Dr. Cox stated that he felt he had a valid veterinarian-client-patient relationship after an initial visit and subsequent yearly visit to a farm. Mr. Dwayne Mathis, Farm Manager, testified on behalf of the state regarding Dr. Cox's visit to the farm on which he oversees a beef operation. Mr. Mathis stated that the manager of the local Farmers' Coop business accompanied Dr. Cox on the visit. He stated that antibiotics and their use were discussed with Dr. Cox and that a pricelist of available medications was given to him. Mr. Mathis also stated that Dr. Cox did not look at any animals during this visit. Mr. Mathis testified that it was his understanding during this visit that he could now order drugs from Dr. Cox and that Dr. Cox would conduct yearly visits to the farm. He testified that he had no further contact with Dr. Cox after the visit other than the receipt of a pricelist via postal mail approximately three or four times thereafter. Dr. Ceciel F. Locklar, Jr., DVM, testified on behalf of the State as an expert witness in large animal veterinary medicine. Dr. Locklar testified that he had reviewed eighteen (18) client records submitted by Dr. Cox in which the client information was redacted. Dr. Locklar stated that the client records did not contain complete information and that in only five (5) of the eighteen (18) client records reviewed did he consider that a veterinarian-client-patient relationship existed. He further stated that the remaining records indicated that no physical examination of an animal was performed and/or the prescribed medications were not consistent with the documented examination. He expressed the opinion that there was not

enough control of the medications by Dr. Cox and that Dr. Cox could not physically provide for appropriate follow-up care. Dr. Locklar testified that it was his expert opinion that Dr. Cox did not meet the standard of care. Dr. Richard Buchanan, DVM, also provided expert testimony in large animal veterinary medicine on behalf of the State. Dr. Buchanan testified to his review of the same eighteen (18) records as reviewed by Dr. Locklar, DVM. Dr. Buchanan stated that the medical records did not contain complete information. He stated his findings after review of the records showed no evidence of any examination of animals being performed and/or no documentation of physical findings indicating why certain drugs were prescribed. Dr. Buchanan testified that in his expert opinion, in order to meet the required standard of care, a physical examination of an appropriate number of animals would have to be performed and that more than one visit to the farm would be needed to adequately diagnose and adequately formulate a therapeutic plan of treatment. It was his expert opinion that Dr. Cox did not meet the standard of care. Dr. Buchanan's testimony concluded the State's case.

The meeting was adjourned at 8:30 p.m.

January 31, 2007

The meeting was called to order by Judge Johnson at 9:10 a.m.

A motion to dismiss was made by Ms. Carlyle Urello on the grounds that the State had not met the required burden of proof in this matter. Dr. Rogers made a motion, seconded by Dr. Lyons, to deny the request. The motion carried.

Ms. Urello then presented testimony from Ms. Betty Woods, owner of a six-hundred head beef cattle operation. Ms. Woods stated that she had been introduced to Dr. Cox by the manager of the local Farmers Coop and that she knew Dr. Cox well. Ms. Woods testified that Dr. Cox had seen the cattle herd and visited her farm several times. She further testified that Dr. Cox was personally acquainted with the management and operation of the farm; that Dr. Cox had formulated a treatment plan and assumed responsibility for making medical judgments regarding the animals' health; and that Dr. Cox had provided instructions for follow-up care in case of an adverse reaction or no reaction to treatment. Ms. Woods stated that, prior to Dr. Cox, she had ordered prescription drugs from BCA Consulting Firm and that no veterinarian had been on the farm prior to her placing and receiving prescription drug orders from said consulting firm. Ms. Woods also testified that Dr. Cox did not charge a fee for his visits to the farm and that Dr. Cox had written new prescriptions without examining any animal. Testimony was then presented by Mr. Victor Yoder, dairy farm operator, in which Mr. Yoder stated that Dr. Cox had visited the farm, looking over the farm operation and herd, prior to the prescribing of medications. Mr. Yoder stated that he and Dr. Cox discussed various drugs and the use of drugs. He testified that Dr. Cox was personally acquainted with the keeping of the herd; that Dr. Cox was available for consultation and follow-up via telephone; and that Dr. Cox had assumed responsibility for making medical judgments about the animals' health and had formulated and discussed a treatment regimen. He stated that drugs purchased from Dr. Cox were always labeled, whereas, in the past, drugs with no labels had been purchased and received from other veterinarians. Mr. Yoder further testified that Dr. Cox had not examined any individual animals prior to prescribing medications and had not conducted another visit to the farm prior to writing a new prescription. Testimony was then provided by Ms. Amy Maness, owner of nine horses, in which she testified that Dr. Cox had visited her farm a number of times. She stated that Dr. Cox, upon her request,

had been to her farm to examine a sick animal. She stated that Dr. Cox performed tests and subsequently treated the animal with over-the-counter drugs. She testified that Dr. Cox was personally acquainted with the keeping and care of the animals and that Dr. Cox had assumed responsibility for making medical judgments regarding the animals' health and forming a regimen of therapy. She further testified that Dr. Cox routinely made telephone calls inquiring about the animals' health in general. Dr. Dale Sworts, DVM, on behalf of the Respondent, provided expert testimony in large animal veterinary medicine. Dr. Sworts testified to the review of eighteen (18) medical records submitted by Dr. Cox. Dr. Sworts stated that he could not make a judgment based only on the information contained in the medical records. He further stated that he had met with Dr. Cox for approximately three hours regarding the veterinary services provided to clients by Dr. Cox. Dr. Sworts testified that, in his expert opinion, an initial visit to the farm to observe and discuss the herd and any existing problems and a review of the current treatment plan constituted standard of care. He further testified that standard of care does not require a hands-on examination of an animal. He stated that it is a wide-spread practice that still meets standard of care for synchronizing drugs to be authorized without a visit to the farm and/or the examination of any animal. In his opinion, it is appropriate to prescribe medications without a physical examination of the animal and that the veterinarian's availability by telephone for follow-up care is all that is required. Dr. Sworts testified that it was his expert opinion, upon speaking with Dr. Cox and upon his review of the medical records submitted by Dr. Cox, that there was no unethical conduct by Dr. Cox and that the standard of care regarding a valid veterinarian-client-patient relationship had been met. Dr. Kevin Cox then testified on his own behalf regarding the veterinary services provided to clients. He stated that, as an employee of Tennessee Farmers Cooperative (TFC), his role is that of "consulting" veterinarian and that, as president of Coop Vet Health, a subsidiary of TFC, his role is that of "attending" veterinarian. He further stated that he is the sole authorizer of purchases made thru Coop Vet Health. Dr. Cox testified that he does not provide prescriptions/drugs to non-clients; prescriptions are only provided to clients with an existing proper veterinarian-client-patient relationship. Dr. Cox stated that a visit to the farm and an evaluation of the herd is the first step taken in establishing a proper veterinarian-client-patient relationship and that he assumes responsibility for making medical judgments regarding the health of the animals and forming a regimen of therapy. He stated that he has sufficient knowledge of the herd prior to his prescribing medications. He further stated that sufficient knowledge of the herd consisted of a good understanding of the farm management practices/operations; the level of expertise of the farm owner/manager; vaccine protocols used on the farm; and being personally acquainted with the keeping and care of the animals by timely visits to the farm. Dr. Cox testified that clients are instructed on how to contact him and that he is readily available for follow up care via telephone. Telephone numbers are included on the drug pricelist and on his business cards - both of which are provided to clients. Dr. Cox stated that the pricelist provided to clients includes common drugs used by farms and that all items included on the pricelist are not available to all clients. He stated that the pricelist is updated approximately every three months and mailed to existing clients and potential clients with whom prior contact has been made. He further stated that the pricelist is not mailed to random individuals. Dr. Cox stated that it is made clear to clients that he would not be providing ambulatory services and that Coop Vet Health was not designed for ambulatory practice. He stated that he covers a large territory; however, all locations can be reached within twenty-four (24) hours and that clients are instructed to contact a local veterinarian in emergency situations. He further stated that he does not have a written agreement with local veterinarians for the provision of emergency services nor does he have a list of local veterinarians for clients to

contact in emergency situations. Dr. Cox testified that his medical records are incomplete due to poor recordkeeping skills. He further testified that all prescriptions contained in the client record are written/typed at his instructions. He stated that “prn” means refill as needed and that he personally authorizes all refills for standing orders and that he is always aware of the use of any refill. He stated that no client has an actual prescription or access to a prescription. He stated that he does not release a prescription to be filled elsewhere. He stated that once a drug is prescribed, the drug will always appear on the list contained in the client record. He further stated that the amount of drugs used by the client and the use of refills by the client is monitored by him with this information always accessible to him by computer. Dr. Cox testified that he is a salaried employee and that there is little, if any, employee incentive for him to sell prescription drugs. He stated that he encourages the use of drugs with no holding times and that he does not recommend off-label drugs. He stated that all prescriptions include instructions for use and drug information and that this is discussed with the client. The testimony of Dr. Cox concluded the evidence to be presented in this case. Prior to the board’s deliberations, closing arguments were made by both sides.

Upon deliberation, the Board found that by his failure to appropriately document and perform a physical examination of any animal and his failure to insure availability for appropriate follow-up care Dr. Cox did not meet the standard of care; did not meet the required prerequisites to prescribing, selling, distributing, or dispensing animal drugs; and he did not establish a proper veterinarian-client-patient relationship. The Board, therefore, found him guilty of unprofessional or unethical conduct; and dispensing/prescribing, or otherwise distributing any controlled substance or any other drug not in the course of the accepted practice of veterinary medicine. A motion was made by Dr. Lyons, seconded by Dr. Rogers, to assess six (6) Type A civil penalties in the amount of \$1,000.00/each for a total amount of \$6,000.00 and to assess costs of the proceedings. The motion carried with Ms. Jones opposed. A request for reconsideration and reopening of discussion was then made by the State. The board moved to grant the request. Ms. Bozarth requested that the board place disciplinary action against Dr. Cox’s license to practice veterinary medicine in Tennessee in addition to the assessment of civil penalties and costs of the proceedings. Pursuant to a request from Ms. Urello, a motion was then made and seconded to reopen the proof in the case and allow Dr. Cox to make a statement to the board. The motion carried with Ms. Gordon and Dr. Thompson opposed. Dr. Cox stated that effective immediately, the business entitled Coop Vet Health would cease operations. He further stated that he hoped to continue in his employment as staff veterinarian for the Tennessee Farmers Cooperative; however, he would no longer be selling veterinary drugs. The Board thanked Dr. Cox for his statements and then proceeded with their deliberations. Dr. Lyons made a motion, seconded by Dr. Rogers, to place the license on probation for three (3) years with conditions: annual appearances before the board during period of probation; notification to the board within thirty (30) days of any change in employment; and must present twenty (20) client/patient records to the board for review if in private practice. The motion carried.

Adjournment

The meeting adjourned at 9:45 p.m.

Thomas Edmonds, DVM, Secretary

Date