

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
BOARD OF VETERINARY MEDICINE,)
)
Petitioner,)
)
vs.) Case No. 98-4650
)
WILLIAM R. DUDLEY, D.V.M.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, Don W. Davis, an Administrative Law Judge of the Division of Administrative Hearings, held a formal hearing in the above-styled case on February 9, 1999, in Milton, Florida.

APPEARANCES

For Petitioner: Paul F. Kirsch, Esquire
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0792

For Respondent: William R. Dudley, Jr., D.V.M., pro se
613 Westwood Drive
Milton, Florida 32570

STATEMENT OF THE ISSUE

The issue for determination is whether Respondent, a licensed veterinarian, committed a violation of Section 474.214(1), Florida Statutes, as alleged in the Administrative

Complaint, and, if so, what disciplinary sanctions should be imposed against his license.

PRELIMINARY STATEMENT

On June 19, 1998, Petitioner issued an Administrative Complaint alleging that Respondent had violated laws regulating his professional activities as a veterinarian. The five-count Administrative Complaint charged Respondent with failing to have a quarantine area for storage of certain drugs in violation of Section 474.214(1)(bb), Florida Statutes; with being guilty of incompetent or negligent practice of veterinary medicine in violation of Section 474.214(1)(r), Florida Statutes; with practice of veterinary medicine at a location for which a valid premises permit had not been issued, a violation of Section 474.214(1)(w), Florida Statutes; with failure to keep appropriate, rule required records in violation of 474.214(1)(ee), Florida Statutes; and with failure to maintain records required by Chapter 474, Florida Statutes, or by other state or federal laws relating the storage, labeling, or other regulation of controlled substances.

Respondent requested a formal administrative hearing on charges in the Administrative Complaint. Subsequently, the matter was transferred to the Division of Administrative Hearings for conduct of a formal hearing pursuant to Section 120.57(1), Florida Statutes.

At the final hearing, Petitioner presented the testimony of five witnesses and offered four exhibits. Respondent presented

the testimony of one witness, himself. He offered one composite exhibit consisting of ten (10) photographs into evidence.

Count I of the Administrative Complaint was withdrawn by Petitioner in the course of the final hearing.

The transcript of the final hearing was filed with the Division of Administrative Hearings on March 8, 1999.

Proposed findings of fact submitted by the parties have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Respondent is William R. Dudley, a licensed veterinarian at all times pertinent to these proceedings, holding license number VM 0000626. Respondent's last known address is 613 Westwood Drive, Milton, Florida 32570.

2. Petitioner is the state agency charged with regulating the practice of veterinary medicine pursuant to Section 20.165, Florida Statutes; Section 455, Florida Statutes; and Section 474, Florida Statutes.

3. On or about January 5, 1998, Respondent performed declaw surgery on Aladdin, a Chocolate Point Siamese cat owned by Kim Hawkins. The surgery was performed on a fold-down table attached to the back of Respondent's pickup truck. The truck was outfitted as an agricultural veterinary vehicle.

4. Respondent administered a mixture of Ketaset and Acepromazine to the cat prior to surgery. No other medication

was administered to the animal for purpose of either analgesia or anesthesia.

5. The Ketaset and Acepromazine administered to the cat are both controlled substances. These drugs are not anesthetics and served only to immobilize the cat during the operation.

6. After the surgery, Kim Hawkins took the cat home. The animal's paws continued to bleed. On January 7, 1998, the cat was examined by another veterinarian, Dr. Yehia Ibrahim, who wanted to know "who had butchered the cat."

7. In a declaw procedure, the animal is first anesthetized and the cat's claw and the third phalanx of each toe are removed. Each toe has three phalanxes and a claw. While the procedure performed by Respondent involved only the animal's front paws, Respondent did not remove all of the third phalanx on several of the animal's toes, and removed the third and part or all of the second phalanx on the animal's other toes. Respondent removed part of the digital pad on most, if not all, of the toes on both of the cat's front claws.

8. As established by the evidence at final hearing, Respondent performed the declaw surgery in a negligent manner.

9. Respondent did not make or retain any medical record of the declaw procedure performed on the Hawkins' cat.

10. Respondent did not have a premise permit for his house or a mobile clinic.

11. Respondent also did not have a record which related to the storing, labeling, or administering of the controlled substances that he utilized during the declaw procedure on the Hawkins' cat.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter. Section 120.57(1), Florida Statutes.

13. Petitioner bears the burden of proof of the charges set forth in the Administrative Complaint in this case. Since a final determination of Respondent's culpability could result in imposition of discipline upon Respondent's license, the proof that Respondent has committed those violations must be clear and convincing. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). Petitioner has fulfilled this obligation with regard to Counts II, III, IV, and V of the Administrative Complaint.

14. The Florida Board of Veterinary Medicine is empowered by Section 474.214, Florida Statutes, to discipline Respondent and provides, in pertinent part, the following:

(1) The following acts shall constitute grounds for which the disciplinary actions in subsection (2) may be taken:

* * *

(r) Being guilty of incompetence or negligence by failing to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent veterinarian as being acceptable under similar conditions and circumstances.

* * *

(w) Practicing veterinary medicine at a location for which a valid premises permit has not been issued when required under s. 474.215.

* * *

(ee) Failing to keep contemporaneously written medical records as required by rule of the board.

* * *

(mm) Failing to maintain accurate records or reports as required by this chapter or by federal or state laws or rules pertaining to the storing, labeling, selling, dispensing, prescribing, and administering of controlled substances.

* * *

(2) When the board finds any applicant or veterinarian guilty of any of the grounds set forth in subsection (1), regardless of whether the violation occurred prior to licensure, it may enter an order imposing one or more of the following penalties:

- (a) Denial of certification for examination or licensure.
- (b) Revocation or suspension of a license.
- (c) Imposition of an administrative fine not to exceed \$1,000 for each count or separate offense.
- (d) Issuance of a reprimand.
- (e) Placement of the veterinarian on probation for a period of time and subject to such conditions as the board may specify, including requiring the veterinarian to attend continuing education courses or to work under the supervision of another veterinarian.
- (f) Restricting the authorized scope of practice.
- (g) Imposition of costs of the investigation and prosecution.

(h) Requiring the veterinarian to undergo remedial education.

15. Guidelines that are pertinent to imposition of penalty in this instance are set forth in Rule 61G18-30.001(4), Florida Administrative Code, and read as follows:

(4) . . . The Board shall consider as aggravating or mitigating factors the following:

- (a) The severity of the offense;
- (b) The danger to the public;
- (c) The number of repetitions of offenses;
- (d) The length of time since the violation;
- (e) The number of times the licensee has been previously disciplined by the Board;
- (f) The length of time licensee has practiced;
- (g) The actual damage, physical or otherwise, caused by the violation;
- (h) The deterrent effect of the penalty imposed;
- (i) The effect of the penalty on the licensee's livelihood;
- (j) Any effort of rehabilitation by the licensee;
- (k) The actual knowledge of the licensee pertaining to the violation;
- (l) Attempts by licensee to correct or stop violation or refusal by licensee to correct or stop violation;
- (m) Related violations against licensee in another state including findings of guilt or innocence, penalties imposed and penalties served;
- (n) Actual negligence of the licensee pertaining to any violation;
- (o) Penalties imposed for related offenses under subsections (1), (2) and (3) above;
- (p) Pecuniary benefit or self-gain enuring to licensee;
- (q) Any other relevant mitigating or aggravating factors under the circumstances.

16. While Respondent has committed violations which could result in a maximum fine of \$2,500, assessment of investigative

costs, a reprimand and one year of probation, factors in mitigation are Respondent's licensed status as a veterinarian in the State of Florida since 1960 with no other disciplinary action taken against his license.

RECOMMENDATION

Based on the foregoing and in accordance with Petitioner's penalty guidelines, it is hereby RECOMMENDED that a Final Order be entered finding Respondent guilty of the violations alleged in Counts II, III, IV, and V of the Administrative Complaint; imposing an administrative fine of \$1000; and placing Respondent on probation for one year upon reasonable terms and conditions to be established by the Board of Veterinary Medicine.

DONE AND ENTERED this 24th day of March, 1999, in
Tallahassee, Leon County, Florida.

DON W. DAVIS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
This 24th day of March, 1999.

COPIES FURNISHED:

Paul F. Kirsch, Esquire
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0792

William R. Dudley, Jr., D.V.M.
613 Westwood Drive
Milton, Florida 32570

Lynda L. Goodgame, General Counsel
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0792

John Currie, Executive Director
Board of Veterinary Medicine
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0792

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.