

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
BOARD OF VETERINARY MEDICINE,)
)
Petitioner,)
)
vs.)
) Case No. 01-2351PL
ACME GROOMING COMPANY,)
)
Respondent.)
_____)
—)

RECOMMENDED ORDER

Notice was provided and on August 21, 2001, a hearing was conducted pursuant to Sections 120.569 and 120.57(1), Florida Statutes. The hearing location was City Hall, 150 North Alachua Street, Lake City, Florida. The hearing was held before Charles C. Adams, Administrative Law Judge.

APPEARANCES

For Petitioner: Charles F. Tunnickliff, Esquire
Tiffany Short, Qualified Representative
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-2202

For Respondent: No appearance

STATEMENT OF THE ISSUE

Should Petitioner impose an administrative fine against Respondent, based upon the allegation that a person associated with Respondent, knowingly operated a veterinary establishment

or premises without a premise permit issued to Respondent? Sections 455.226(1)(q) and (2) and 474.213(1)(k), Florida Statutes.

PRELIMINARY STATEMENT

On December 15, 2000, Petitioner executed an administrative complaint against Respondent, Case No. 2000-05594, seeking to impose an administrative fine not to exceed \$5,000.00, in that a person affiliated with Respondent removed the claws from a kitten owned by Michael Burch, constituting the operation of a veterinary establishment or premises without the benefit of a premise permit. Respondent, in the person of Joan Susan Poole, who by the proof is alleged to have committed the offense, responded to the administrative complaint in behalf of the Respondent, by contesting the underlying factual allegations and requesting an evidentiary hearing pursuant to Section 120.57(1), Florida Statutes. This election to contest the case was made on January 5, 2001. On June 11, 2001, the case was forwarded to the Division of Administrative Hearings for the assignment of an Administrative Law Judge to conduct a contested fact hearing. The assignment was made and the hearing ensued.

To support its case, Petitioner presented the testimony of Michael Burch at hearing. Petitioner's Exhibit No. 1 was admitted. The admission of Petitioner's Exhibit No. 2 was

reserved pending entry of the recommended order. Petitioner's Exhibit No. 2 is admitted. Petitioner requested the opportunity to depose Douglas Hagler, D.V.M. post-hearing. That deposition was taken on August 31, 2001, and the transcript of the deposition was received on September 14, 2001, following the filing of the hearing transcript on September 13, 2001.

Tiffany Short was qualified to represent Petitioner's interests at hearing through inquiry made on the hearing date. Rule 28-106.106, Florida Administrative Code.

Petitioner timely filed a proposed recommended order which has been considered in preparing the recommended order. Respondent did not provide a post-hearing submission.

FINDINGS OF FACT

1. Acme Grooming Company conducts business at US Highway 27 and State Road 27, Fort White, Florida 32038. That business is conducted without the benefit of a license/premises permit issued by the Department of Business and Professional Regulation under Section 474.215, Florida Statutes. At a time relevant to the inquiry, Acme Grooming Company through a sign in the front of the business premises at the location described advertised the services of the business as the sale of pets and pet foods, as well as grooming.

2. Acme Grooming Company is the business of Joan Poole.

3. Sometime around June 14, 2000, Michael David Burch took a kitten, approximately two months old, to the Acme Grooming Company to have the kitten de-clawed. The kitten was attended by Ms. Joan Poole at the business premises for Acme Grooming Company in Fort White, Florida. Mr. Burch observed Ms. Poole hold the kitten under her right arm with her hand pressing out the claws of the kitten and once exposed the claws were cut off "at the stub," as opposed to trimming the claws with the clipping device used. A knife was sitting on a gas burner being heated. Ms. Poole took the knife and pressed it against the open wounds where the claws had been removed for purposes of cauterizing the claws. These activities met with Mr. Burch's opposition. Ms. Poole responded that this was the more humane way "to do it." This is taken to mean the way which Ms. Poole had in mind to de-claw the kitten. The de-clawing was allowed to proceed during which no medication was offered for pain or antibiotics provided for the use of the kitten, notwithstanding Mr. Burch's request that these items be provided. Ms. Poole responded that the cat would lick itself clean and would protect itself from any infection. Mr. Burch paid Ms. Poole \$35.00 for her efforts in dealing with the kitten.

4. A short time later the kitten was taken to be seen by Douglas Hagler, D.V.M., licensed to practice veterinary medicine in Florida. Dr. Hagler saw the kitten on June 14, 2000. In his testimony Dr. Hagler established that the cutting of the digits (de-clawing) in the manner perceived by Ms. Poole constituted the practice of veterinary medicine, in that it was the amputation of a body part, a procedure involving an incision and removal of a body part. Dr. Hagler was persuasive in his testimony that it was inappropriate to hold the kitten manually while Ms. Poole performed her acts in de-clawing. As Dr. Hagler described, the appropriate way to de-claw the kitten would have been to place the kitten under general anesthesia so that the kitten was not aware of the act of de-clawing.

5. At the time Dr. Hagler saw the kitten on June 14, 2001, the cat was trembling, appeared in distress and traumatized, and did not seem willing to walk or stand on its front feet. Exposed bone was observed in each digit and the hair around the wounds on the feet gave the appearance that the wounds had been cauterized with a hot instrument. The most appropriate method for closing the wounds would have been to use a dissolvable stitch. In some instances veterinarians would use a medical grade tissue adhesive-type glue to seal the wound.

6. Two days after seeing the kitten, Dr. Hagler drove to Fort White where the Acme Grooming Company has its premises. While in the vicinity Dr. Hagler used his cell phone and called the Acme Grooming Company and identified himself as a person who had a kitten. He explained that he understood that the kitten could be de-clawed at the company. The person he spoke to had a voice so distinctive as to be attributable to Ms. Poole, based upon a subsequent opportunity afforded Dr. Hagler to verify who Ms. Poole was through comparing her voice on that latter occasion to the voice while making the telephone call that has been described and being made aware of who she was on the latter date. Ms. Poole when describing the process for de-clawing the fictional kitten that Dr. Hagler referred to in the telephone call he made, said that the kitten would be restrained manually without the use of anesthesia, that the claws would be cut off and that a hot knife blade would be applied to the wounds for cauterization. Ms. Poole referred to the fact that the cat would not voluntarily allow the de-clawing and that was the reason that the cat had to be held down. Ms. Poole volunteered in her remarks that the method for de-clawing that would be done at the Acme Grooming Company was "more humane than a veterinarian doing it under anesthesia." According to Ms. Poole, the reasoning behind that statement was that when cats wake up

from anesthesia "that they just bang their head around and sometimes knock themselves out or knock their brains out." The fee Ms. Poole quoted to Dr. Hagler for removing the claws of the imaginary kitten was \$35.00, the same fee amount as was charged to Mr. Burch.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with Sections 120.569 and 120.57(1), Florida Statutes.

8. Petitioner has the burden to prove that Respondent committed the violations alleged in the administrative complaint. Department of Banking and Finance v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996). That proof must be by clear and convincing evidence.

9. In reference to this case, Section 455.227(1)(q), Florida Statutes, states:

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

* * *

(q) Violating any provision of this chapter, the applicable professional practice act, a rule of the department or the board, or a lawful order of the department or the board, or failing to comply with a lawfully issued subpoena of the department.

10. Pertinent to this case, the penalty requested is in accordance with Section 455.227(2), Florida Statutes, which states:

(2) When the board, or the department when there is no board, finds any person guilty of the grounds set forth in subsection (1) or of any grounds set forth in the applicable practice act, including conduct constituting a substantial violation of subsection (1) or a violation of the applicable practice act which occurred prior to obtaining a license, it may enter an order imposing one or more of the following penalties:

* * *

(d) Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.

11. The specific provision alleged to have been violated is in association with the statute regulating the practice of veterinary medicine where Section 474.213(1)(k), Florida Statutes, states the following:

Prohibitions; penalties.--

(1) No person shall:

* * *

(k) Knowingly operate a veterinary establishment or premises without having a premise permit issued under s. 474.215.

* * *

12. Joan Poole knowingly operated Acme Grooming Company

as a veterinary establishment or premises without having a premise permit issued under Section 474.215, Florida Statutes, when she removed the claws from the kitten owned by Michael Burch. This act was an action prohibited by Section 474.213(1)(k), Florida Statutes, thus constituting a violation of Section 455.227(1)(q), Florida Statutes, and subjecting Acme Grooming Company an administrative fine in accordance with Section 455.227(2)(d), Florida Statutes.

RECOMMENDATION

Upon consideration of the facts found and conclusions of law reached, it is

RECOMMENDED:

That Petitioner enter a final order imposing a \$1,000.00 administrative fine upon Respondent.

DONE AND ENTERED this 27th day of September, 2001, in Tallahassee, Leon County, Florida.

Hearings

CHARLES C. ADAMS
Administrative Law Judge
Division of Administrative
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Hearings

Filed with the Clerk of the
Division of Administrative
this 27th day of September, 2001.

COPIES FURNISHED:

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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.