

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION, BOARD)
OF VETERINARY MEDICINE,)
)
Petitioner,)
)
vs.) Case No. 01-4666PL
)
AIME PATRICK GAUVIN, D.V.M.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a hearing was held before the Division of Administrative Hearings by its duly-designated Administrative Law Judge, Diane Cleavinger, on May 6, 2002, in Gainesville, Florida.

APPEARANCES

For Petitioner: Tiffany A. Short, Esquire
Department of Business and
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Tallahassee, Florida 32399-2202

Charles F. Tunnicliff, Esquire
Department of Business and
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For Respondent: C. Robert Edewaard, Esquire
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STATEMENT OF THE ISSUE

Whether Respondent's veterinary license should be disciplined.

PRELIMINARY STATEMENT

Petitioner filed a seven-count Administrative Complaint against Respondent, Aime Patrick Gauvin, III, DVM, on April 5, 2001. Six of the seven counts were dismissed by Petitioner. The remaining count alleged that Respondent violated Section 474.214(1)(ee), Florida Statutes, by failing to keep contemporaneous veterinary records. On May 17, 2001, Respondent filed an Election of Rights Form with the Department of Business and Professional Regulation requesting an informal hearing. On November 19, 2001, Respondent filed an amended Election of Rights Form with the Department changing his election and requesting a formal administrative hearing. The case was forwarded to the Division of Administrative Hearings (DOAH).

At the hearing, Petitioner presented the testimony of two witnesses and offered three exhibits into evidence. Respondent testified in his own behalf and presented the testimony of two additional witnesses. Respondent also offered five exhibits into evidence.

After the hearing, the parties submitted Proposed Recommended Orders on July 24, 2002.

FINDINGS OF FACT

1. At all times pertinent to this proceeding, Respondent was a licensed doctor of veterinary medicine, having been issued License No. VM 0003845 by the Board of Veterinary Medicine on July 1, 1985. During his career, Respondent has taught at the University of Florida veterinary school, developed patents in the field of veterinary medicine, performed research in the veterinary field, and become certified in veterinary laser surgery. Because he does research and because his wife/veterinary partner frequently provides follow-up care, Respondent is a meticulous record keeper.

2. Precious was a grossly obese, 11-year-old, female English bulldog. She was owned by the Salters and had been previously treated by the Respondent. In fact, the Salters were friends of some of the clinic's staff who treated her.

3. On July 7, 1999, the Salters brought Precious to Respondent for emergency treatment. Precious was experiencing respiratory distress and had cyanotic mucous membranes indicating a lack of oxygen. Her condition was growing worse and life-threatening. Because of the emergency nature of Precious' condition, Respondent immediately began a physical examination of the dog to determine what was causing her inability to breath properly.

4. At the same time, Respondent began a series of notes on Precious' record of treatment and examination. The notes contained in the record of treatment and examination are clearly preliminary and hurried. Some of the writing is that of other clinic staff. Most of the writing is Respondent's. The notes are consistent with the frenetic nature of the emergency. They included a checklist of various possible tests and treatments to be performed by Respondent or clinic staff, general impressions of the dogs physical condition, and possible medical causes to be ruled in or out (that is, tonsillar lymph nodes, soft palette resection, and tonsillectomy). The record, while lacking some information, does contain sufficient information to reflect Precious' condition, diagnosis, and course of treatment.

5. Throughout the time Precious was at the clinic, the clinic staff or Respondent performed the various tests and treatments listed in the record of treatment. As each task was completed the task was checked off the checklist and results filled in, if possible. If it was not possible to fill in the results on the record of treatment, results would be noted by another method such as medical reports, logs, or note cards.

6. In fact, Respondent makes notes regarding treatment, results, etc., of a particular animal on index cards because the larger, more formal veterinary record of an animal is often not carried around to the different places where an animal may be

located in the clinic. The index cards are small and can be carried in Respondent's shirt pocket. Use of the cards was the record keeping procedure taught to him while in veterinary school at the University of Florida and is his primary contemporaneous record for an animal. Information on the note cards would later be recorded in an animal's permanent file. Respondent followed this process with Precious. However, Respondent's note cards for Precious are missing.

7. Respondent's entries in Precious' medical record reflect some of the measures that were taken to save Precious' life. One such measure was to place Precious on an IV of lactated ringer solution (LRS in the record of treatment). However, no amount of solution was listed because when the note was made, placement of the IV was a task to be done, and the amount of solution would have been initially recorded on the index cards for Precious once treatment was complete for later entry in Precious' permanent record. Indeed the amount of solution was written on Respondent's note cards for Precious.

8. The physical examination of Precious revealed that she had aspirated part of her mouth tissue in the epiglottis pharyngeal area of her mouth. The loose tissue appeared to be scar tissue from a previous operation or a tumor. Such loose tissue is not uncommon in English bulldogs and was exacerbated in Precious due to her obesity. Because the tissue was blocking

her airway, Precious was put under anesthesia for placement of an intratracheal tube to open an airway, to complete a non-invasive ultrasound examination and to begin preparation for removal of the loose tissue.

9. Information on the type and amount of anesthesia was kept in the controlled substances medication list and a missing anesthesia log for heart and respiration, as well as the missing index cards kept by Respondent.

10. After placement of the tube inside Precious' airway, her condition began to improve. However, she was still in a very critical, life-threatening condition.

11. At 2:00 p.m. Precious went into cardiac arrest. Epinephrine and Doxapram, medications used to control cardiac arrest, were administered and cardio-pulmonary resuscitation was performed. The amounts of the Epinephrine and Doxapram were not recorded in the record of treatment but were recorded on the missing note cards. Precious recovered from her cardiac arrest and was somewhat responsive to external stimuli. However, she was not aware of her surroundings and had dilated pupils. She did not recover from the coma and, subsequently, was euthanized with the owners permission. Again the amount of euthanasia solution was written on the Respondent's index cards.

12. Because of the monitoring Precious required during the day and the other requirements of other patients at the clinic,

Respondent placed Precious' permanent veterinary record and his index card notes on his desk so that he could permanently record the information in Precious' permanent file. Respondent could not finalize Precious' record until two days later because of the work load at the clinic. However, when Respondent went to finalize the record, he discovered that Precious' veterinary record, along with his index card notes and various logs and reports regarding Precious, had been stolen from his office. The office and premises were thoroughly searched by Respondent, his wife, and clinic staff. No records were found.

13. Approximately three weeks later, part of the veterinary record reappeared at the clinic. However, it was apparent that some records in the recovered file were altered or were missing. The 3 x 5 index cards of Respondent's notes were missing. The dog owner's standard consent form for procedures on July 7, 1999, was missing and the original anesthesia log was missing. The anesthesia log, which was returned with the file, was prepared by another person who did not perform clinical tasks at the clinic. The log did not contain entries for heart and respiration which had been made by either Respondent or his assistant, Ric Berlinski. For unknown reasons a false log had been substituted for the original log by whoever had taken or had the file during its absence from the clinic.

14. Respondent reasonably did not trust his memory to complete the veterinary records on Precious. Respondent made a decision not to change the recovered records in any manner lest he be accused of altering the records knowing that other parties may have copied the records in addition to removing and altering certain records. He felt not adding to the records was reasonable since there was no future need for the records to treat the deceased animal, the record would not be used in any research and had no educational purpose. In fact, neither the statute nor rules of the Board contain any guidance on the action a veterinarian should take under circumstances where a veterinarian, through no fault of his own such as theft, fire or disaster, is prevented from completing or maintaining an animal's veterinarian record.

15. In response to the Salters' complaint in regard to Precious' treatment, Respondent was requested to provide Richard Ward, the investigator for the Department of Business and Professional Regulation, with records relating to Respondent's treatment of Precious.

16. Respondent failed to inform Mr. Ward that Respondent believed the records had been tampered with or that he believed the medical records had been stolen. Respondent also failed to provide Mr. Ward with the controlled substance log containing the entries relating to the treatment of Precious because he did

not ask for it. At the time, given the complaint, Respondent did not wish to and did not think it prudent to speak with the Department's investigator absent the advice of legal counsel. Therefore, he did not tell the investigator about the problems with the record. Respondent did not mislead the investigator and did not violate any statute or rule of the Board.

CONCLUSIONS OF LAW

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

18. Petitioner, through the Board of Veterinary Medicine, is the state agency charged with regulating the practice of veterinary medicine.

19. The Florida Board of Veterinary Medicine is empowered to impose discipline on a licensed doctor of veterinary medicine who is found guilty of any of the grounds enumerated in Sections 455.225 and 474.214, Florida Statutes, or the rules promulgated thereunder.

20. Petitioner has the burden of proof in a licensure disciplinary proceeding to establish by clear and convincing evidence the allegations contained in the Administrative Complaint made against Respondent. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Evans Packing Company vs. Department of Agriculture and Consumer Services, 550 So. 2d 112 (Fla. 1st DCA

1989); Sternberg v. Department of Professional Regulation, Board of Medical Examiners, 465 So. 2d 1324, 1325 (Fla. 1st DCA 1985); Kinney v. Department of State, 501 So. 2d 129, 133 (Fla. 5th DCA 1987); Hunter v. Department of Professional Regulation, 458 So. 2d 842, 844 (Fla. 2d DCA 1984). Evans Packing, 550 So. 2d at 116, note 5, provides the following description pertinent to the clear and convincing evidence standard:

That standard has been described as follows: clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the evidence must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issues. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief of [sic] conviction, without hesitancy, as to the truth of the allegations sought to be established. Slomowitz v. Walker, _____ So. 2d 797, 800 (Fla. 4th DCA 1983).

21. Section 474.214(1)(ee), Florida Statutes, requires a veterinarian to keep contemporaneously written veterinarian medical records. Rule 61G18-18.002, Florida Administrative Code, requires that veterinarian medical records be kept for three years from the date of last treatment and contain clinical information pertaining to the patient with sufficient information to justify the diagnosis or determination of her health status and warrant any treatment recommended or administered. The rule does not establish the form or format of

the records to be kept. There is no rule which covers records which are lost, stolen or destroyed.

22. In this case, the evidence demonstrated that Respondent kept contemporaneous, written veterinarian records when he wrote treatment information on Precious' record of treatment and examination on 3 x 5 cards. While incomplete in minute detail, the record as a whole does contain sufficient clinical information to justify the presenting complaint of Precious, determination of health status, and course of treatment. Moreover, since this dog was deceased, there was no present need for more complete information to ensure proper future treatment. These records have been and continue to be maintained by Respondent. Therefore, Respondent, under these very unusual circumstances, is not guilty of failing to keep contemporaneous veterinarian medical records.

RECOMMENDATION

Base on the foregoing Findings of Facts and Conclusions of Law, it is

RECOMMENDED:

That Petitioner enter a final order finding Respondent not guilty and dismissing the Administrative Complaint.

DONE AND ENTERED this 4th day of September, 2002, in
Tallahassee, Leon County, Florida.

DIANE CLEAVINGER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of September, 2002.

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.