

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND	)	
PROFESSIONAL REGULATION,	)	
BOARD OF VETERINARY MEDICINE,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case Nos. 02-4130PL
	)	02-4533PL
ADEL N. ASSAD, D.V.M.,	)	02-4830PL
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Pursuant to notice, a hearing in the above-styled cause was held before the duly-designated Administrative Law Judge of the Division of Administrative Hearings, Stephen F. Dean, on March 26-27, 2003, and April 9, 2003, in Ocala, Florida.

APPEARANCES

For Petitioner: Tiffany A. Short  
Charles F. Tunnickliff  
Assistant General Counsels  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-2202

For Respondent: Thomas V. Infantino, Esquire  
180 South Knowles Avenue, Suite 7  
Winter Park, Florida 32789

ISSUE

Whether disciplinary action should be taken against Respondent's license to practice veterinary medicine, license

number VM-2404, based on the violations of Section 474.214(1), Florida Statutes, as charged in three separate Administrative Complaints filed against Respondent.

PRELIMINARY STATEMENT

On February 20, 2002, Petitioner filed a two count Administrative Complaint, DBPR Case No. 2000-03098 (DOAH Case No. 02-4533PL), against Respondent alleging violations of Chapter 474, Florida Statutes. Count I of the Administrative Complaint charged Respondent with a violation of Section 474.214(1)(r), Florida Statutes: being guilty of incompetence or negligence by failing to practice veterinary 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. Count II of the Administrative Complaint charged Respondent with a violation of Section 474.214(1)(f), Florida Statutes: violating any provision of this chapter or Chapter 455, a rule of the board or department.

On October 4, 2002, Petitioner filed a four count Administrative Complaint, DBPR Case No. 2002-009926 (DOAH Case No. 02-4130PL), against Respondent. Count I of the Administrative Complaint charged Respondent with a violation of Section 474.214(1)(r), Florida Statutes: being guilty of incompetence or negligence by failing to practice veterinary

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. Count II of the Administrative Complaint charged Respondent with a violation of Section 474.214(1)(w), Florida Statutes: practicing veterinary medicine at a location for which a valid premises permit has not been issued when required under Section 474.215. Count III of the Administrative Complaint charged Respondent with a violation of Section 474.214(1)(ee), Florida Statutes: failing to keep contemporaneously written medical records as required by rule of the board. Count IV of the Administrative Complaint charged Respondent with a violation of Section 474.214(1)(v), Florida Statutes: operating or managing premises that do not comply with requirements established by rule of the board.

On November 8, 2002, Petitioner filed a three count Administrative Complaint, DBPR Case No. 2002-010701 (DOAH Case No. 02-4830PL), against Respondent. Count I charged Respondent with a violation of Section 474.214(1)(w), Florida Statutes: practicing veterinary medicine at a location for which a valid premises permit has not been issued when required under Section 474.215. Count II of the Administrative Complaint charged Respondent with a violation of Section 474.214(1)(r), Florida Statutes: 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. Count III charged Respondent with a violation of Section 474.214(1)(ee), Florida Statutes: failing to keep contemporaneously written medical records as required by rule of the board.

Respondent disputed the allegations contained in all three Administrative Complaints and petitioned for a formal administrative hearing involving disputed issues of material fact in each case. Consequently, the cases were referred to the Division of Administrative Hearings (DOAH) pursuant to Section 120.57(1), Florida Statutes. The cases were consolidated at the DOAH on January 13, 2003.

During the hearing, Petitioner presented the testimony of eleven witnesses: Sharon and James Leonard (owners of "Rudy"); Dr. Mark Erik Perreault, D.V.M., and subsequent treating veterinarian for Rudy; Teresa McCartney; Dr. Mark Hendon, D.V.M., and subsequent treating veterinarian for "Puffy"; Richard B. Ward (Investigator for the Department of Business and Professional Regulation); James Dispoto, Jr.; James N. Dispoto and Elaine Dispoto (owners of "Cinnamon"); Dr. Kathleen Fleck, D.V.M., and subsequent treating veterinarian for Cinnamon; and Dr. Jerry Alan Greene, D.V.M., as an expert witness. In addition, the deposition testimony

of Dr. K.C. Nayfield, D.V.M., as an expert witness, was received. Petitioner offered Exhibits numbered 1 through 8 which were accepted into evidence.

Respondent presented the testimony of one witness: Suzanne Assad, wife of Respondent. Respondent further testified on his own behalf in all matters. Respondent offered Exhibits numbered 1 through 5, which were accepted into evidence.

One exhibit was received and catalogued as Administrative Law Judge Exhibit One. In addition, judicial notice of Chapter 455, and Section 61G18, Florida Administrative Code, was taken and the parties given notice thereof at the hearing.

The parties submitted proposed recommended orders which were read and considered. All citations are to Florida Statutes (2000) unless otherwise indicated.

This Recommended order was delayed first by the preparation of the transcript and then by requests for extension of time to file proposed recommended orders.

#### FINDINGS OF FACT

1. At all times pertinent to the allegations in these cases, Respondent was a licensed veterinarian, having been issued license number VM-2404, by the Florida Board of Veterinary Medicine.

2. On March 18, 2000, Respondent performed a spay on

Rudy, a six-year-old cat owned by Sharon and James Leonard.

3. Respondent discharged Rudy to Sharon and James Leonard on March 18, 2000. On the following day, when Rudy was not feeling well, the family took Rudy to the emergency clinic where she was seen and treated by Dr. Mark Erik Perreault.

4. When seen by Dr. Perreault, Rudy was wobbly and disoriented, and had pale mucous membranes. In addition, Dr. Perreault observed hair sewn into Rudy's incision site. Because the cat was very tender, it was anesthetized, and a careful examination of the incision was made. That examination revealed the incision had been closed with very large suture material. Because of the cat's condition and his observations, Dr. Perreault recommended and received approval to re-open the incision, and conduct an exploratory operation.

5. This surgery revealed Respondent sutured Rudy's uterine stump leaving approximately one and a half inches of tissue below the suture. This amount of "stump" is excessive and leaves too much material to become necrotic. Respondent had closed the skin and body wall incisions with excessively large suture material. Respondent secured the body wall and skin incisions with only two throws (knots) in each closing suture.

6. Both Dr. Perreault and Dr. Jerry Alan Greene

testified regarding standard of care. It is below the standard of care to sew hair into an incision site or allow hair to become sewn into the incision site because it contaminates the surgical site. It is below the standard of care for veterinarians to use oversized suture material to close the incision site because an excessively large suture leads to excessive inflammation as the body absorbs the excessively large suture material. It is below the standard of care for veterinarians to secure the skin and body wall incisions with less than 5 to 6 throws on their sutures to ensure that the sutures do not loosen or become untied. The potential problems of not using enough throws are exacerbated by using larger suture material which is more likely to loosen. It is below the standard of care to leave an excessive amount of "stump" in the body cavity. An excess of necrotic tissue causes excessive inflammation.

7. Pertaining to Rudy, Respondent's records contain the notation, "0.6 Ket." Respondent testified that this indicated that he administered Ketaset.

8. Respondent's records do not indicate whether the administration was intravenously, intramuscularly, or subcutaneously. Respondent testified that he administered the Ketaset intramuscularly.

9. It was below the standard of care for Respondent to

fail to indicate the amount of medication administered, i.e., milligrams, cubic-centimeters, etc.; and to fail to indicate the method of administration.

10. Respondent is the owner of V.I.P. Baseline clinic, a veterinary establishment located at 505 Northeast Baseline Road, Ocala, Florida 34470.

11. On August 31, 2002, Teresa McCartney presented her male, white Maltese dog, Puffy, to Respondent at V.I.P. Baseline Pet Clinic for neutering.

12. Teresa McCartney owned no other male, white Maltese dogs.

13. Respondent performed a neuter on Puffy at V.I.P. Baseline Pet Clinic on August 31, 2002.

14. On August 31, 2002, V.I.P. Baseline Pet Clinic was not licensed to operate as a veterinary establishment by the State of Florida Board of Veterinary Medicine.

15. Teresa McCartney picked up Puffy from V.I.P. Baseline Pet Clinic on August 31, 2002.

16. Puffy bled for approximately four days after the neuter was performed.

17. On September 4, 2003, Teresa McCartney presented Puffy to Dr. Mark Hendon for treatment. Upon examination, Puffy was bleeding from the prepuce and from the site of the surgical incision. In addition, there was swelling



subcutaneously and intra-dermal hemorrhage and discoloration from the prepuce to the scrotum. The animal indicated pain upon palpation of the prepuce, the incision site, and the abdomen. Dr. Hendon presented the owner with two options: to do nothing or to perform exploratory surgery to determine the cause of the hemorrhage and bleeding.

18. The owner opted for exploratory surgery on Puffy, and Dr. Hendon anesthetized and prepared the animal for surgery. The sutures having been previously removed, upon gentle lateral pressure, the incision opened without further cutting. A blood clot was readily visible on the ventral surface of the penis, running longitudinally the length of the penis and incision area.

19. Dr. Hendon immediately went to the lateral margins of the surgical field, where the spermatic vessels and cord were ligated, and found devitalized and necrotic tissue on both sides of the surgical field which appeared to be abnormal. He explored those areas and debrided the ligated tissues, exposing the vessels and the spermatic cord which he ligated individually. He then proceeded to examine the penis.

20. Dr. Hendon found upon examination of the penis a deep incision into the penis which had cut the urethra, permitting urine to leak into the incision site, causing the tissue damage which he had debrided. Dr. Hendon had not used

a scalpel in the area of the penis prior to discovering the incised urethra in the area of the penis, and he could not have been the cause of the injury.

21. Dr. Hendon catheterized Puffy, and closed the incisions into the urethra and penis. Puffy recovered and was sent home the following day.

22. Drs. Hendon and Greene testified about the standard of care in this case. It is below the standard of care to incise the penis or urethra of a male dog during a neuter because neither the penis nor the urethra should be exposed to incision during a properly performed surgery.

23. Respondent's medical record for Puffy did not indicate the type of gas which was administered to Puffy or that Ace Promazine was administered to Puffy.

24. Respondent's anesthesia logs reflect the animal was administered Halothane and administered Ace Promazine, a tranquilizer.

25. Rule 61G18-18.002(4), Florida Administrative Code, requires that a patient's medical record contain an indication of the drugs administered to a patient.

26. On September 13, 2002, Department Inspector Richard Ward conducted an inspection of V.I.P. Baseline Pet Clinic.

27. The inspection revealed that Respondent failed to provide disposable towels.

28. It was further revealed that Respondent provided insufficient lights in the surgical area of the premises.

29. Finally it was revealed that Respondent did not have an operational sink in the examination area of the premises.

30. Rule 61G18-15.002(2)(a)4.c., Florida Administrative Code, requires that all veterinary establishments have sinks and disposable towels in the examination area.

31. Rule 61G18-15.002(2)(b)2.d., Florida Administrative Code, requires veterinary establishments that provide surgical services to provide surgical areas that are well lighted.

32. On September 4, 2002, Elaine Dispoto presented her male cat Cinnamon to Respondent at V.I.P. Baseline Pet Clinic, located at 505 Northeast Baseline Road, Ocala, Florida 34470.

33. On September 4, 2003, Respondent practiced veterinary medicine at V.I.P. Baseline Pet Clinic by providing veterinary medical services to Cinnamon.

34. On September 4, 2003, V.I.P. Baseline Clinic was not licensed by the State of Florida to operate as a veterinary establishment.

35. Cinnamon was presented to Respondent with complaints of vomiting and dilated eyes. The owner expressed concern that the animal had been poisoned.

36. Respondent apparently accepted that the animal had been poisoned, and formulated a plan of treatment, because he

gave the animal an IV and administered one cubic centimeter of atropine to the animal, a common antidote for organophosphate poisoning.

37. Respondent administered subcutaneously the IV's of Ringer's lactate to the cat.

38. The owners picked up Cinnamon from Respondent, having heard a television news report which was unfavorable about Respondent.

39. Respondent gave the cat to Mr. James Dispoto, who observed that the cat was not doing well, although Respondent indicated that the cat was doing better. Mr. Dispoto was sufficiently concerned about the status of the cat that he took the animal immediately to Ocala Veterinarian Hospital. There the cat was examined by Dr. Fleck.

40. Dr. Fleck found that Cinnamon was in extreme distress; lying on his side and non-responsive to stimuli. A cursory examination indicated that the animal was very dehydrated, approximately 10 percent, and passing yellow, mucousy diarrhea, uncontrollably. His pupils were pinpoint and non-responsive.

41. Upon calling Respondent, Respondent told Dr. Fleck that on the first day he had treated Cinnamon, he had given the cat atropine, dexamethasone, and lactated Ringer's subcutaneously. On the second day, he had given the cat

another injection of dexamethasone, penicillin, and lactated Ringer's subcutaneously.

42. Based upon her assessment of the animal, Dr. Fleck wanted to get some blood work to establish what kind of state the rest of the body was in and to start an IV. The owner's consented, and blood was drawn and an IV drip started of normal saline at 25 mils per hour. While the blood work was being started, the cat had a short seizure, and within five minutes, had another bad seizure, going into cardiac arrest and died.

43. A necropsy was performed which was unremarkable. The only significant findings were that the cat was dehydrated. There were indications the cat had received fluids along the ventral midline. The bowels were totally empty and there were no substances within the stomach, intestines, or colon. There was slight inflammation of the pancreas. Samples were taken of the pancreas, liver, kidney, and lung. Analysis of these samples was inconclusive. A cause of death could not be determined.

44. The clinical presentation was very indicative of organic phosphate poisoning. Organophosphates are the active ingredient in certain common insect and garden poisons. However, there were no findings that pin-pointed poisoning as a cause of death.

45. Dr. Greene testified concerning his examination of the files maintained on Cinnamon by Respondent. They reflected Respondent administered one cubic centimeter of atropine on the first day and another cubic centimeter on the second day. Dr. Greene's testimony about the administration of atropine is contradictory. He testified at one point that, based on the cat's weight, a proper dose would be about 2.5 cubic centimeters and Respondent did not give enough; however, his answer to a question on cross-examination later indicated that the amount of atropine given was more in line with what was administered.

46. Respondent faced a bad set of alternatives in treating Cinnamon. The cat presented with poisoning symptoms and suggestions of poisoning by the owners. He could run tests and try and determine exactly what was ailing the cat. However, if he did this without treating the possible poisoning, the cat might have died from the poison before he determined what was wrong with the cat. He could begin to treat the cat for poisoning based upon the owner's representations, and perhaps miss what the cat's problem was.

He cannot be faulted for treating the most potentially deadly possibility first.

47. It is noted that a full necropsy could not pinpoint the cause of the animal's problem(s). While Respondent may

have run additional tests, they would not have been any more revealing.

48. Atropine is the antidote for organophosphate poisoning and is helpful in controlling vomiting. It is clear from the file that Respondent's working diagnosis was poisoning. He treated the cat with the appropriate drug in approximately the correct dosage.

49. Dr. Greene testified that it was a deviation from the standard of care not to administer fluids intravenously to Cinnamon because an ill patient may not absorb fluids through subcutaneous injection. Based upon Dr. Fleck's discussion of the issues involved in administering fluids intravenously, it does not appear nearly so clear cut as Dr. Greene suggests, but is a matter of professional judgment.

50. Dr. Greene testified it was a deviation from the standard of care to administer lactated Ringer's solution to Cinnamon instead of sodium chloride or normal saline. Again, the choice of normal saline versus lactated Ringer's is one of professional judgment and not standard of care.

51. Dr. Greene opined that it was a deviation from the standard of care to administer only 300ml of fluids to Cinnamon because 300ml is an insufficient amount of fluids to treat for dehydration or to even sustain Cinnamon under the circumstances. Dr. Greene assumed that the all of the

hydration was via "IV." The testimony was that the cat did take some water orally; therefore, Dr. Green's predicate was flawed.

52. Respondent administered dexamethsone to Cinnamon.

53. Respondent failed to indicate that he administered dexamethasone in Cinnamon's record.

54. It is a deviation from the standard of care to fail to indicate the administration of dexamethasone in a patient's record.

55. Respondent administered penicillin to Cinnamon.

56. Respondent's records for Cinnamon indicate that he administered penicillin-streptomycin to Cinnamon.

57. Respondent's records for Cinnamon indicate that Respondent did not check on the animal frequently, which, given his condition and the multiple problems which the cat was suffering, was a failure to render the standard of care necessary.

#### CONCLUSIONS OF LAW

58. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding, pursuant to Sections 120.57.

59. Pursuant to Section 474.214(2), the Florida Board of Veterinary Medicine is empowered to revoke, suspend, or otherwise discipline the license of a licensee who is found



guilty of any of the grounds enumerated in Section 474.214(1).

60. Petitioner has the burden of proving by clear and convincing evidence the allegations against Respondent.

Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996). Evans Packing, supra, 550 So. 2d 112, 116, fn. 5, provides the following pertinent to the clear and convincing evidence standard:

That standard has been described as follows: [C]lear 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 issue. 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, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

61. In addition, the disciplinary action may only be based upon the offenses specifically alleged in the Administrative Complaint. See 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).

62. Section 474.214(2), Florida Statutes, authorizes Petitioner to discipline licensees or applicants in the State of Florida and provides, in pertinent part, as follows:

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: (a) denial of certification for examination or licensure, (b) revocation or suspension of a license, (c) imposition of an administrative fine not to exceed \$5,000 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.

63. Section 474.214(1), Florida Statutes, provides, in pertinent part, that the following acts constitute grounds for which the disciplinary actions in subsection (2) may be taken:

(f) Violating any provision of this chapter or chapter 455, a rule of the board or department, or a lawful order of the board or department previously entered in a disciplinary hearing, or failing to comply with a lawfully issued subpoena of the department.

(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 or circumstances.

(v) Failing to keep the equipment and premises of the business establishment in a clean and sanitary condition, having premises permit suspended or revoked pursuant to s. 474.215, or operating or managing premises that do not comply with requirements established by rule of the board.

(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.

64. Section 61G18-18.002, Florida Administrative Code, states in pertinent part that:

(1) There must be an individual medical record maintained on every patient examined or administered to by a veterinarian.

\* \* \*

(3) Medical records shall be contemporaneously written and include the date for each service performed. They shall contain the following information: name of owner agent; patient identification; record of any vaccinations administered; complaint or reason for provision of services; history; physical examination; any present illness or injury noted; provisional diagnosis or health status determination.

(4) In addition, medical records shall

contain the following information if these services are provided or occur during the examination or the treatment of an animal or animals: clinical laboratory reports; radiographs and their interpretation; consultation; treatment-medical, surgical; hospitalization, drugs prescribed, administered, or dispensed; tissue examination report, necropsy findings.

65. It is a deviation from Rule 61G18-15.002(2), Florida Administrative Code, for veterinary establishments to operate a facility without disposable towels, sufficient surgical lighting, or an operation sink in examination areas.

66. It is a deviation from Rule 61G18-18.002(4), Florida Administrative Code, to fail to indicate the administration of Ace Promazine or fail to indicate the type of "gas" administered to Puffy in Respondent's medical record for Puffy.

67. The Administrative Complaints charge Respondent with three violations of Section 474.214(1)(r), Florida Statutes, by failing to provide veterinary medical care to patients Rudy, Puffy, and Cinnamon with that level of care, skill, and treatment recognized as acceptable by reasonably prudent veterinarians under similar circumstances. The Administrative Complaints charge Respondent with two violations of Section 474.214(1)(ee) by failing to comply with Section 61G18-18.002(3) and (4), and two violations of Section 474.214(1)(w) by practicing veterinary medicine at a location for which a

valid premises permit has not been issued. Finally, Respondent was charged with a violation of 474.214(1)(f) by failing to comply with Section 61G18-18.002(3) and (4), Florida Administrative Code, and a violation of Section 474.214(1)(v) by operating a veterinary establishment which does not meet the requirements set forth in Section 474.215.

68. Petitioner has proved by clear and convincing evidence that Respondent violated Section 474.214(1)(r), Florida Statutes, by being guilty of incompetence or negligence in the treatment of Rudy by failing to practice medicine with that level of care, skill, or treatment which is recognized by a reasonably prudent veterinarian as being acceptable under similar conditions and circumstances. Respondent failed to properly prepare the surgical site on Rudy and failed to use proper suturing technique in closing Rudy's incision. Respondent used inappropriately large suture material to close Rudy's incision and left excessive necrotic tissue below the uterine suture on the uterine stump.

69. Petitioner has proven by clear and convincing evidence that Respondent violated Section 474.214(1)(f), by failing to keep contemporaneously written medical records on Rudy, as required by Rule 61G18-18.002(3) and (4), Florida Administrative Code. Respondent failed to indicate the method used to administer Ketamine to Rudy in his medical records.

70. Petitioner has proved by clear and convincing evidence that Respondent violated Section 474.214(1)(r), by being guilty of incompetence or negligence by failing to practice medicine with that level of care, skill, or treatment which is recognized by a reasonably prudent veterinarian as being acceptable under similar conditions or circumstances. Respondent negligently incised the penis and urethra of Puffy during a neuter procedure and failed to repair the negligent incision. Respondent sutured Puffy's incision with a poor suture line and excessively large suture material.

71. Petitioner has proven by clear and convincing evidence that Respondent violated Section 474.214(1)(w), by practicing veterinary medicine at a location for which a valid premises permit had not been issued. Respondent performed veterinary medical services on Puffy at VIP Baseline Pet Clinic when the clinic was not licensed as a veterinary establishment by the State of Florida.

72. Petitioner has proven by clear and convincing evidence that Respondent violated Section 474.214(1)(ee), by failing to keep contemporaneously written medical records, as required by rule of the board, by failing to comply with Rule 61G18-18.002(4), Florida Administrative Code. Respondent administered "gas" and Ace Promazine to Puffy without indicating so in Respondent's medical record for Puffy.

Respondent, further, failed to indicate the length of time which Puffy was under anesthesia in the medical record for Puffy.

73. Petitioner has proven by clear and convincing evidence that Respondent violated Section 474.214(1)(v), by operating and managing a veterinary establishment that that did not comply with requirements established by rule of the board. Respondent operated and managed V.I.P. Baseline Pet Clinic without: sufficient lighting in surgical areas, an operation sink in examination areas, and disposable towels in the clinic.

74. Petitioner has established by clear and convincing evidence that Respondent violated Section 474.214(1)(w), by practicing veterinary medicine at a location for which a valid premises permit has not been issued. Respondent performed veterinary medical services on Cinnamon at V.I.P. Baseline Pet Clinic, a location for which no veterinary establishment permit had been applied for or issued.

75. Petitioner has established by clear and convincing evidence that Respondent violated Section 474.214(1)(r), by being guilty of incompetence or negligence by failing to practice veterinary medicine with that level of care, skill, or treatment which is recognized by a reasonably prudent veterinarian as being acceptable under similar conditions or

circumstances. Respondent provided inadequate medical treatment to Cinnamon.

76. Petitioner has established by clear and convincing evidence that Respondent violated Section 474.214(1)(ee), by failing to keep contemporaneously written medical records, as required by rule of the board, by failing to comply with Section 61G18-18.002(3) and (4), Florida Administrative Code.

Respondent administered dexamethasone and Penicillin to Cinnamon without indicating such administration in Respondent's medical record for Cinnamon.

PENALTY

77. Section 474.214(2) provides:

(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 \$5,000 for each count or separate offense.

78. Rule 61G18-30.001, Florida Administrative Code, provides, in part, the following guidelines that are pertinent to this proceeding:



61G18-30.001 Disciplinary Guidelines.

(2) When the Board finds an applicant, licensee, or permittee whom it regulates under chapter 474, Florida Statutes, has committed any of the acts set forth in Section 474.214(1), Florida Statutes, it shall issue a Final Order imposing appropriate penalties which are set forth in 474.214(2), Florida Statutes, using the following disciplinary guidelines:

(f) The usual action of the Board shall be impose a penalty of one (1) year probation and a two thousand dollar (\$2000.00) administrative fine. In the case of a subpoena or disciplinary order, the usual action shall be to impose a period of suspension and a four thousand dollar (\$4000) administrative fine.

79. Rule 61G18-30.001, Florida Administrative Code, provides that:

(4) Based upon consideration of aggravating or mitigating factors present in an individual case, the Board may deviate from the penalties recommended in paragraphs (1),(2) and (3) above. The Board shall consider as aggravating or mitigating factors the following:

(a) The danger to the public;

(b) The length of time since the violation;

(c) The number of times the licensee has been previously disciplined by the Board;

(d) The length of time the licensee has practiced;

(e) The actual damage, physical or

otherwise, caused by the violations;

(f) The deterrent affect of the penalty imposed;

(g) The affect of the penalty upon the licensee's livelihood;

(h) The Any effort of rehabilitation by the licensee;

(i) The actual knowledge of the licensee pertaining to the violation;

(j) Attempts by licensee to correct or stop the violation or refusal by licensee to correct or stop violation.

(k) Related violations against licensee in another state including findings of guilt or innocence, penalties imposed and penalties served.

(l) Actual negligence of the licensee pertaining to any violation.;

(m) Penalties imposed for related offenses under subsections (1), (2) and (3) above.;

(n) Pecuniary benefit or self gain enuring to licensee;

(o) Any other mitigating or aggravating circumstances.

80. Petitioner argues the following aggravating circumstances are present in this case: (1) Respondent represents a danger to the public as evidenced by past final orders disciplining Respondent and entered into evidence at hearing; (2) Respondent has previously been disciplined seven times by the Florida Board of Veterinary Medicine; (3) Respondent has been practicing in the State of Florida since

October 1979 and should have been aware of the necessity to comply with the Laws and Rules governing the practice of Veterinary Medicine; (4) Respondent's actions cause actual and serious medical trauma to the patients involved; (5) Respondent had actual knowledge of the seriousness of the circumstances and yet failed to respond in an appropriate manner; (6) Respondent's conduct constitutes actual negligence which caused the violations charged; and (7) the penalty requested by Petitioner will have a significant deterrent effect on Respondent. The facts support the existence of all these factors but number (5) above, which is vague.

81. Section 474.214(2)(g) authorizes Petitioner to assess costs of investigation and prosecution, in addition to the penalties provided above. Petitioner has submitted an affidavit listing all costs related to investigation and prosecution of the administrative complaint in the amount of \$5,697.96.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law reached, it is

RECOMMENDED:

That the Board enter its final order:

1. Finding that Respondent violated the standard of care in treating Rudy, Puffy, and Cinnamon, contrary to Section

474.214(1)(r), and imposing an administrative fine upon Respondent of \$2,000 for each violation;

2. Finding that Respondent violated the requirement to keep adequate records with regard to Rudy, Puffy, and Cinnamon, contrary to Section 474.214(1)(ee), and imposing an administrative fine upon Respondent of \$1,000 for each violation;

3. Finding that Respondent violated the requirement to obtain a license for a premises, contrary to Rule 61G18-15.002(2), Florida Administrative Code, which is a violation of Section 474.214(1)(f), and imposing an administrative fine upon Respondent of \$2,000;

4. Finding that the record of Respondent's previous violations and the violations found above reflect that he is unqualified and unfit to practice veterinary medicine in the State of Florida, and revoking immediately his license, without leave to reapply;

5. Requiring Respondent to pay costs incurred in the investigation and prosecution of these cases in the amount \$5,697.96, plus the costs incurred at the final hearing; and

6. Opposing any effort by Respondent to practice veterinary medicine while an appeal in this case is taken.

DONE AND ENTERED this 14th day of October, 2003, in  
Tallahassee, Leon County, Florida.

S

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STEPHEN F. DEAN  
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 14th day of October, 2003.

COPIES FURNISHED:

Charles F. Tunnickliff, Esquire  
Tiffany A. Short, Esquire  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-2202

Thomas V. Infantino, Esquire  
180 South Knowles Avenue, Suite 7  
Winter Park, Florida 32789

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

Nancy Campiglia, General Counsel  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 2399-2202

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.