

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION, BOARD)
OF VETERINARY MEDICINE,)
)
Petitioner,)
)
vs.) Case No. 03-0609PL
)
ADEL N. ASSAD,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Administrative Law Judge Don W. Davis of the Division of Administrative Hearings held a formal hearing in the above-styled case on May 13, 2003, in Ocala, Florida.

APPEARANCES

For Petitioner: Charles F. Tunnickliff, Esquire
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0750

For Respondent: Thomas V. Infantino, Esquire
Infantino & Berman
Post Office Box 30
Winter Park, Florida 32792-0030

STATEMENT OF THE ISSUE

The issue in this case is whether Adel N. Assad, D.V.M. (Respondent), failed to comply with a lawful Final Order of the Florida Board of Veterinary Medicine (Board) previously entered

in a disciplinary hearing in violation of Section 474.214(1)(f), Florida Statutes. The Order required, among other things, that Respondent take a specific examination to determine his competency to practice.

PRELIMINARY STATEMENT

By Administrative Complaint filed on January 24, 2003, Respondent was charged by Petitioner with failure to comply with a lawful order of the Board, specifically that Respondent had failed to take an examination prepared by the National Board Examination Committee (NBEC) known as the NBEC special purpose examination in small animal medicine. The examination requirement was part of the terms of Respondent's Board-ordered probation.

Respondent disputed the allegations of the Administrative Complaint and requested formal administrative proceedings. The matter was transferred to the Division of Administrative Hearings (DOAH) by Petitioner on February 24, 2003.

By motion dated April 10, 2003, Petitioner requested that DOAH relinquish jurisdiction, claiming there was no dispute of material facts and that informal proceedings were appropriate. The motion was denied by Administrative Law Judge Charles Adams on May 5, 2003.

Petitioner filed an additional Motion to Relinquish Jurisdiction and presented that motion for argument at the

commencement of the final hearing. Ruling was reserved pending a consideration of the evidence, the parties proposed recommended orders, and the transcript. The motion is denied at this time.

At the final hearing, Petitioner presented the testimony of Linda Tinsley, an employee of the Board, and the deposition testimony of Dr. John R. Boyce, Executive Director of the National Board of Veterinary Medical Examiners (NBVME). Petitioner also presented eight exhibits.

Respondent testified in his own behalf and presented one composite exhibit.

A Transcript of the final hearing was filed on May 28, 2003. Respondent and Petitioner filed Proposed Recommended Orders, which have been reviewed in conjunction with the preparation of this Recommended Order and addressed to the extent possible.

FINDINGS OF FACT

1. At all times pertinent to this proceeding, Respondent was a licensed veterinarian, having been issued license number VM-2404 by the Board. Respondent has been practicing, subject to discipline at various times, in the State of Florida since October 1979.

2. On December 27, 2000, the Board issued a Final Order Approving Settlement Counter-stipulation (Order) requiring

Respondent to take and successfully complete the NBEC special purpose examination in small animal medicine.

3. The Order required Respondent to take and pass the NBEC special purpose examination within the first two years of his probation, or by December 27, 2002.

4. The NBEC special purpose examination was created and regulated by the NBEC, which was renamed the National Board of Veterinary Medical Examiners (NBVME) in July 2001.

5. The NBEC special purpose examination was thereafter renamed the NBVME species specific examination in small animal medicine in July 2001, in order to reflect the organization's name change and is currently administered under that name. It has not changed in substance or format since its creation in 1997 and is currently available in the original substance and format under the name "National Board of Veterinary Medical Examiners species specific examination in small animal medicine."

6. Respondent or any other Florida licensee required to take the NBVME species specific examination must contact the Board in order to request administration of the examination.

7. Any Florida licensee who directly contacts the NBVME to request the species specific examination or its current equivalent would be informed that he or she must contact the

Board to request the examination. The NBVME does not offer standard examinations directly to veterinarians.

8. Linda Tinsley is a government analyst employed by the Florida Department of Business and Professional Regulation. She is currently assigned to the Board where she serves as the liaison between the Board and the NBVME. Ms. Tinsley is responsible for coordinating the paperwork and procedures for requesting and purchasing the NBEC special purpose examination in small animal medicine or its current equivalent, the NBVME species specific examination in small animal medicine.

9. Ms. Tinsley is also responsible for receiving phone calls and correspondence from applicants and licensees submitted to the Board's office. In this capacity, she would be the person referred to if seeking or requesting administration on the NBVME species specific examination.

10. Respondent was reminded that he was required to take the NBEC special purpose examination in small animal medicine at the September 2002 meeting of the Board. At that meeting, Ms. Tinsley informed those in attendance, inclusive of Respondent, that a licensee must contact the Board's office in order to request the NBVME species specific examination.

11. Respondent never contacted the Board's office to request or to schedule the administration of the NBVME species specific examination. Consequently, he has not taken or passed

the NBVME species specific examination in small animal medicine, as required by the Order.

12. Respondent's disciplinary record, as established by past Final Orders of the Board documenting discipline imposed on his license, makes clear that Respondent presents a danger to the public in the practice of veterinary medicine. Respondent has previously been disciplined seven times by the Board.

CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding pursuant to Sections 120.57 and 120.569, Florida Statutes.

14. Pursuant to Section 474.214(2), Florida Statutes (1997), the Board 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), Florida Statutes. Specifically, Section 474.214(1)(f), Florida Statutes, provides for discipline of a licensee for "[v]iolating 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."

15. 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).

16. The Administrative Complaint charges Respondent with violating Section 474.214(1)(f), Florida Statutes, by failing to comply with a lawfully entered Final Order of the Board.

17. Petitioner has met its burden of proof and has shown clearly and convincingly that Respondent violated Section 474.214(1)(f), Florida Statutes. The Board entered a Final Order requiring that Respondent take and pass the NBEC special purpose examination in small animal medicine within two years of the date of the Order. Respondent failed to comply.

18. Rule 61G18-30.001(2)(f), Florida Administrative Code, provides, in a case absent aggravating factors, that the Board's normal penalty for failure to comply with a subpoena or disciplinary order of the Board shall consist of a period of suspension and a four thousand dollar (\$4,000.00) administrative fine.

19. Rule 61G18-30.001(4), Florida Administrative Code, provides that in cases containing mitigating or aggravating factors, that the Board may deviate from the usual penalty upon consideration of 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 licensee has practiced;
- (e) The actual damage, physical or otherwise, caused by the violation;
- (f) The deterrent affect of the penalty imposed;
- (g) The affect of the penalty upon the licensee's livelihood;
- (h) 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 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 relevant mitigating or aggravating factors under the circumstances.

20. Petitioner correctly asserts that aggravating circumstances present in this case, as evidenced by Respondent's disciplinary record and status as a danger to the public in the practice of veterinary medicine, justify the ultimate penalty of license revocation. Respondent was aware that he was required to take and pass the NBEC special purpose exam by December 27, 2002, because he was reminded of the fact at the Board's September 2002 meeting. Respondent refused to take the exam

within the specified time period and failed to even request the administration of the test through the Board.

RECOMMENDATION

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

RECOMMENDED that a final order be entered (a) finding the Respondent guilty of having violated the provisions of Section 474.214(1)(f), Florida Statutes, as alleged in the Administrative Complaint; and (b) in view of the aggravating circumstances in this case, the revocation of the Respondent's license to practice as a veterinarian in the State of Florida.

DONE AND ENTERED this 19th day of June, 2003, 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 19th day of June, 2003.

COPIES FURNISHED:

Thomas V. Infantino, Esquire
Infantino & Berman
Post Office Box 30
Winter Park, Florida 32790-0030

Charles F. Tunnickliff, Esquire
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0750

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

Hardy L. Roberts, III, General Counsel
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-2202

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.