

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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|--------------------------------|---|--------------------|
| DEPARTMENT OF BUSINESS AND |) | |
| PROFESSIONAL REGULATION, BOARD |) | |
| OF VETERINARY MEDICINE, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | Case No. 08-1606PL |
| |) | |
| THANDAVESHWAR MYSORE, D.V.M., |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case before Larry J. Sartin, an Administrative Law Judge of the Division of Administrative Hearings, on November 4, 2008, by video teleconference at sites in West Palm Beach and Tallahassee, Florida.

APPEARANCES

| | |
|-----------------|--|
| For Petitioner: | Elizabeth Duffy Assistant General Counsel Sherria Williams Qualified Representative Department of Business and Professional Regulation 1940 North Monroe Street Tallahassee, Florida 32399-2202 |
| For Respondent: | Martin McDonnell, Esquire Rutledge, Ecenia & Purnell, P.A. 215 South Monroe Street, Suite 420 Tallahassee, Florida 32301 |

STATEMENT OF THE ISSUES

The issues in this case are whether the Respondent, Thandaveshwar Mysore, D.V.M., committed the violations alleged in an Administrative Complaint, DPBR Case Number 2005-005136, filed by the Petitioner Department of Business and Professional Regulation on October 19, 2006, and, if so, the penalty that should be imposed.

PRELIMINARY STATEMENT

On October 19, 2006, a two-count Administrative Complaint was filed with the Department of Business and Professional Regulation in DPBR Case No. 2005-005136, alleging that Respondent had committed violations of Chapter 474, Florida Statutes (2004). In particular, Petitioner alleged that Respondent, a Florida licensed veterinarian had violated the following provisions of Florida law: Section 474.214(1)(r), Florida Statutes (2004)(Count One); and Section 474.214(1)(ee), Florida Statutes (2004)(Count Two).

On or about October 27, 2006, Respondent filed an Election of Rights Form requesting a formal hearing to contest the allegations of fact contained in the Administrative Complaint.

The Administrative Complaint and Respondent's request for hearing were filed with the Division of Administrative Hearings on April 1, 2008, with a request that the matter be assigned to

an administrative law judge. The request was designated DOAH Case number 08-1606PL and was assigned to the undersigned.

The final hearing of this matter was initially scheduled for June 5, 2008. The final hearing was subsequently continued, several times at the request of the parties. By Amended Order of Hearing by Video Teleconference entered October 28, 2008, the final hearing was scheduled for November 4, 2008.

At the commencement of the final hearing, the parties filed a Joint Prehearing Stipulation. The Joint Prehearing Stipulation contains certain "Admitted Facts." To the extent relevant, those facts have been included in this Recommended Order.

During the final hearing, Petitioner presented the testimony of Ted Brinkman, D.V.M., Rita Gruskin, and Jerry Alan Greene, D.V.M. Petitioner's Exhibits numbered 1 through 4 were admitted. Respondent testified in his own behalf and presented the testimony of Ricky Joe King and Alberta Finocio Cruz. Respondent's Exhibits numbered 1 and 2 were admitted. Respondent's Exhibit 1 was not filed. That exhibit, however, was described during the hearing to the extent relevant to this matter. Three Joint Exhibits were admitted.

A one-volume Transcript of the final hearing was filed with the Division of Administrative Hearings on November 26, 2008. By agreement of the parties, proposed recommended orders were to

be filed on or before December 29, 2008. A Notice of Filing Transcript was entered informing the parties of the filing of the Transcript and due date for proposed recommended orders.

Respondent filed Respondent, Thandaveshwar Mysore's Proposed Recommended Order on December 29, 2008. Petitioner filed Petitioner's Proposed Recommended Order on December 30, 2008. On January 6, 2009, Respondent filed a Motion to Strike Untimely Proposed Recommended Order. Other than arguing that "Petitioner had an opportunity to study Respondent's timely filed Proposed Recommended Order," Respondent has not suggested any prejudice caused by the late filing of Petitioner's Proposed Recommended Order. While Respondent is correct in asserting that Petitioner had an opportunity to review his proposed recommended order during the approximately 21 hours and 39 minutes that passed after Respondent's proposed recommended order was filed, a comparison of the two orders does not support the conclusion that Petitioner took advantage of this opportunity. Therefore, there being no showing of any prejudice to Respondent, the Motion is hereby denied. The proposed recommended orders have been fully considered in entering this Recommended Order.

All references to Florida Statutes and the Florida Administrative Code in this Recommended Order are to the 2004 version unless otherwise indicated.

FINDINGS OF FACT

A. The Parties.

1. Petitioner, the Department of Business and Professional Regulation (hereinafter referred to as the "Department"), is the state agency charged with the duty to regulate the practice of veterinary medicine in Florida pursuant to Chapters 455 and 474, Florida Statutes.

2. At the times material to this proceeding, Thandaveshwar Mysore, is and was a licensed Florida veterinarian, having been issued license number VM5191. Dr. Mysore has been licensed in Florida as a veterinarian for approximately 20 years.

3. At the times material to this proceeding, Dr. Mysore's address of record was 8904 North Military Trail, Palm Beach, Florida 33410.

4. Dr. Mysore obtained his veterinary degree in 1957. He taught veterinary medicine as an associate and assistant professor for approximately 19 years prior to moving to the United States. He has published more than 50 articles in veterinary journals.

5. At the times relevant to this matter, Dr. Mysore's practice was exclusively small animals, primarily dogs and cats. He has successfully performed thousands of spays on dogs and cats without incident.

B. Dr. Mysore's Treatment of Ricochet.

6. On October 13, 2004, Rita Gurskin took her nine-month old female dog "Ricochet" and three other animals to be spayed and/or neutered by Dr. Mysore.

7. Having examined Ricochet, Dr. Mysore sedated her pursuant to his normal protocol and performed a routine surgical spay. Ricky Joe King, who has assisted Dr. Mysore on a number of occasions, witnessed the procedure. The surgical area was cleaned by Dr. Mysore with Betadine and alcohol.

8. Mr. King has been present and assisted Dr. Mysore in between 70 to 100 spay procedures. He has some understanding of the need to ensure that a surgical area is free of debris, and, in particular, hair.

9. Both Dr. Mysore and Mr. King believed that the surgical area on Ricochet had been properly cleaned and prepared. Neither noticed any hair inside the incision in Ricochet at any time prior to or during closure of the incision.

10. Following the procedure, Ms. Gruskin came to Dr. Mysore's office to pick up Ricochet. While the testimony concerning Ricochet's condition at that time conflicted, the more convincing testimony was that of Ms. Gruskin. According to Ms. Gruskin, Ricochet was lethargic and had to be assisted out of the office.

11. While taking Ricochet to her vehicle Ms. Gruskin noticed what she believed was blood oozing from the incision. She pointed this out to Dr. Mysore, who assured her it was normal and told her not to worry about it.

C. Dr. Brinkman's Treatment of Ricochet.

12. Following the October 13th surgical procedure, Ricochet was lethargic and had little appetite. The incision was inflamed and oozed blood and puss. Concerned about Ricochet's condition, Ms. Gruskin took the dog to her regular veterinarian, Ted Brinkman, D.V.M., on October 15, 2004.

13. Dr. Brinkman examined Ricochet. Ricochet's temperature was 103.6F, she had an elevated white blood count, and the area around the incision area was swollen. Dr. Brinkman concluded that the incision would need to be repaired but that, because Ricochet's condition was not critical and she had only recently undergone the surgery, recommended that no surgery be performed on Ricochet at that time. Ms. Gruskin agreed and Dr. Brinkman began a treatment with antibiotics.

14. Ms. Gruskin returned to Dr. Brinkman's office with Ricochet on October 22, 2004. Ricochet's condition had not improved. Her white cell count had risen and the incision area was swollen and puffy. Dr. Brinkman recommended surgery, which Ms. Gruskin agreed to.

15. As Dr. Brinkman began to open the incision, he found that the skin on the sides of the incision was not healing edge to edge. The skin had rolled in on itself and Dr. Brinkman was able to pull the incision apart easily. This was a result of the incision not having been properly closed.

16. The area of the incision had swollen to the size of a grapefruit.

17. After opening the incision site, Dr. Brinkman found a "huge seroma of pussy infected nasty tissue." There was also a "huge strange looking nest of hair" which consisted of hundreds of loose hairs inside the incision. According to Dr. Brinkman, there was a dead space in Ricochet which was filled with serum, the area was infected and raw looking, and was "hamburger like."

18. Dr. Brinkman removed the mass of hair and the infected, necrotic tissue and closed the incision. On November 11, 2004, Dr. Brinkman's sutures were removed and Ricochet was discharged from Dr. Brinkman's care. Ricochet made an uneventful recovery from the surgery performed by Dr. Brinkman.

D. Ultimate Findings.

19. While no one witnessed precisely how the hairs found by Dr. Brinkman when he opened Ricochet's incision ended up inside Ricochet, the only logical conclusion that can be reached under the facts of this case is that the hairs were left in the

site when Dr. Mysore performed the spay on Ricochet on October 13, 2004, and, unnoticed by Dr. Mysore or Mr. King, left inside the surgery site when it was sutured. There simply is no other plausible explanation.

20. Admittedly, Dr. Mysore performed surgery on Ricochet. At the conclusion of that surgery, Dr. Mysore closed upon the surgery site. While neither Dr. Mysore nor Mr. King saw any hair in the open wound, Ricochet was covered with a drape which could have easily have blocked their view or they simply did not look closely. Just because they did not see the hair, does not mean that it was not there. Once the incision had been sutured by Dr. Mysore, the evidence failed to prove that the amount of hair found by Dr. Brinkman could have gotten into the surgery site in any other manner than by having been left in the site before the incision was sutured.

21. The foregoing findings are further supported by Dr. Greene's opinion testimony as to the likely circumstances under which the hairs could have gotten between Ricochet's abdominal muscles and skin.

22. It is also found that the tissue discovered by Dr. Brinkman inside the incision cavity was necrotic tissue and that it occurred as a direct result of the surgery performed by Dr. Mysore. This finding is based upon the opinion testimony of Dr. Greene, which was premised upon Dr. Brinkman's credible

description of the tissue he found inside Ricochet when he performed his surgical procedure.

23. The necrotic tissue found by Dr. Brinkman was caused by the presence of the hair left inside the incision by Dr. Mysore. Again, this is the only plausible explanation for the "hamburger like" tissue found by Dr. Brinkman.

E. Dr. Mysore's Medical Records.

24. Dr. Mysore failed to record the breed and species of Ricochet in the "heading" of the "Examination Records" he maintained on Ricochet. It was noted, however, that Ricochet was a "dog" in the body of those records.

25. Ricochet was also identified by species and breed (although not with consistency) in the Surgery Authorization form for Ricochet's surgery and on receipts of payment for services.

26. Dr. Mysore also failed to record Ricochet's temperature in his medical records. Although, if Ricochet's temperature had been within the normal range, his failure to record her temperature would not have caused any "damage per se," taking the temperature of an animal and recording it are a normal part of the required physical examination of the animal, which in turn is required to be included in an animal's medical records.

27. During Ricochet's surgery, she was administered the drugs Atropine and Acepromazine. Dr. Mysore noted in Ricochet's medical records that the drugs were given and recorded the amount given for both drugs combined (3cc's). Dr. Mysore did not describe in the medical records the amount of the individual dosages of the two drugs given to Ricochet.

28. Dr. Mysore has suggested that by using the Compendium of Veterinarian Products, which essentially lists drugs used by veterinarians and describes what is in the "package insert" for the drug, it can be determined how much Atropine was administered to Ricochet and that amount can then be subtracted from the total drugs given to determine the amount of Acepromazine. Although there are different strengths of Atropine, the dosage for any strength suggested for use on dogs is the same: 1 mL for each 20 lbs. of body weight. Therefore, knowing Ricochet's body weight (49 lbs.), it can be determined how much of the 3 cc injection of drugs was Atropine. This amount can then be subtracted from the total to determine the amount of Acepromazine administered.

29. The difficulty with Dr. Mysore's argument is two-fold. First, it cannot be determined from the medical records that Dr. Mysore even relied upon the Compendium. Without this information, there is no way to know to apply the calculation suggested by Dr. Mysore. Although many veterinarians rely upon

the information contained in the Compendium, not all do, and, therefore, there would be no reason to assume that Dr. Mysore did in this matter.

30. Secondly, although veterinarians may rely generally upon information contained in the Compendium, there is no requirement that a veterinarian strictly adhere to the suggested dosages information contained therein. Therefore, even it were assumed in this matter that Dr. Mysore referred to the suggested dosage for Atropine contained in the Compendium, it cannot be assumed that he followed the suggestion.

CONCLUSIONS OF LAW

A. Jurisdiction.

31. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2008).

B. The Burden and Standard of Proof.

32. In the Administrative Complaint, the Department seeks to impose penalties against Dr. Mysore, including suspension or revocation of his license and/or the imposition of an administrative fine. The Department, therefore, has the burden of proving the allegations of the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance, Division of Securities and Investor Protection v.

Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); and Nair v. Department of Business & Professional Regulation, 654 So. 2d 205, 207 (Fla. 1st DCA 1995).

33. In Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 112, 116, n. 5 (Fla. 1st DCA 1989), the court defined "clear and convincing evidence" 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 or 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).

C. The Charges Against Dr. Mysore.

34. Section 474.214(2), Florida Statutes, authorizes the Board of Veterinary Medicine (hereinafter referred to as the "Board"), to impose penalties ranging from the issuance of a letter of concern to revocation of a veterinarian's license to practice veterinary medicine in Florida if a licensee commits any of the acts specified in Section 474.214(1), Florida Statutes.

35. In the Administrative Complaint issued in this case, the Department has alleged that Dr. Mysore committed the offenses specified in Subsections 474.214(1)(r) and (ee), Florida Statutes.

D. Count One; Section 474.214(1)(r), Florida Statutes.

36. Section 474.214(1)(r), Florida Statutes, defines the following disciplinable offense:

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.

37. In paragraph 25 of the Administrative Complaint, the Department has alleged that Dr. Mysore committed the foregoing offence (hereinafter be referred to as the "Standard of Care") "by failing to adequately prepare 'Ricochet's' surgical site and improper control of necrotic tissue."

38. The only expert testimony as to whether Dr. Mysore violated the Standard of Care as alleged in the Administrative Complaint came from Dr. Greene. His opinion, that Dr. Mysore had violated the Standard of Care as alleged in the Administrative Complaint, was convincing and compelling. Whether his opinion that Dr. Mysore violated the Standard of Care by failing to adequately prepare Ricochet's surgical site should be credited hinges on whether the facts he relied upon

were proved clearly and convincingly. In particular, Dr. Greene's opinion hinges on whether the evidence proved clearly and convincingly that an extraordinary amount of loose hair was found inside Ricochet's incision and that the hair got there as a result of the surgery performed on October 13, 2004, by Dr. Mysore. Whether his opinion that Dr. Mysore violated the Standard of Care by failing to control necrotic tissue hinges on whether there was necrotic tissue and, if so, whether it was caused by hair left inside the incision.

39. As to the "hair" issue, the evidence proved clearly and convincingly that there was a large amount of loose hair inside Ricochet's incision. This finding is based upon the uncontroverted testimony of Dr. Brinkman.

40. While no one witnessed how the hair got inside the incision and despite the fact that Dr. Mysore and Mr. King did not see the hair in the incision, the only logical explanation is that the hair was left inside the incision during the surgery Dr. Mysore performed and was there when Dr. Mysore closed the incision.

41. Had Dr. Mysore adequately prepared and managed Ricochet's surgical site, the hair would not have ended up inside the incision. Again, it would defy logic to conclude that Dr. Mysore properly managed the surgical site in light of the amount of hair found inside the incision. Dr. Greene's

opinion that Dr. Mysore violated the Standard of Care by inadequate surgical site preparation is, therefore, supported by the facts he relied upon.

42. As to the necrotic tissue, the evidence supports a finding that there was necrotic tissue inside Ricochet's incision. It also follows that, had Dr. Mysore not left the large amount of hair inside the incision, the infection and resulting necrotic tissue found by Dr. Brinkman would not have occurred. While the allegation contained in the Administrative Complaint on this issue could have been written more clearly and precisely (as written, it suggests that after necrotic tissue developed, Dr. Mysore did not properly control it), it is concluded that Dr. Mysore was aware of what the allegation meant (that, by his failure to ensure that the surgical site was clear of hair, necrotic tissue developed).

43. Dr. Greene's opinion that Dr. Mysore violated the Standard of Care by inadequate necrotic tissue control is, therefore, supported by the facts he relied upon.

44. Based upon the foregoing, it is concluded that the Department proved clearly and convincingly that Dr. Mysore violated Section 474.214(1)(r), Florida Statutes, as alleged in Count One of the Administrative Complaint.

E. Count Two; Section 474.214(1)(ee), Florida Statutes.

45. Section 474.214(1)(ee), Florida Statutes, defines the following disciplinable offense: "Failing to keep contemporaneously written medical records as required by rule of the board."

46. In paragraph 28 of the Administrative Complaint, the Department has alleged that Dr. Mysore committed the foregoing offence "by failing to identify or describe the animal, failing to indicate its temperature, and failing to adequately record drug measurements."

47. The Board has established requirements for the maintenance of veterinary medical records in Florida Administrative Code Rule 61G18-18.002 (hereinafter referred to as the "Records Rule"). Generally, veterinary medical records are required to be maintained in Florida Administrative Code Rule 61G18-18.002(1), as follows:

There must be an individual medical record maintained on every patient examined or administered to by the veterinarian, except as provided in (2) below, for a period of not less than three years after date of last entry. The medical record shall contain all clinical information pertaining to the patient with sufficient information to justify the diagnosis or determination of health status and warrant any treatment recommended or administered.

48. The Records Rule goes on to require that the following more specific information be maintained in a veterinary medical record:

(3) Medical records shall be contemporaneously written and include the date of each service performed. They shall contain the following information:

Name of owner or 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 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

49. In its Administrative Complaint, the Department has alleged that Dr. Mysore failed to comply with the Records Rule by failing to record the breed and species of the animal, her temperature, and sufficient detail concerning medications provided her during surgery. In Petitioner's Proposed

Recommended Order, the Department has failed to suggest which particular section of Florida Administrative Code Rule 61G18-18.002(3) and/or (4) Dr. Mysore violated.

Breed and Species

50. Clearly, Dr. Mysore failed to record the breed and species of Ricochet in the "heading" of the "Examination Records" maintained on Ricochet by Dr. Mysore. It was noted, however, that Ricochet was a "dog" in the body of those records.

51. Ricochet was also identified by species and breed (although not consistently) in the Surgery Authorization form for Ricochet's surgery and on receipts of payment for services.

52. Even though Dr. Greene opined that, in light of the foregoing, Dr. Mysore's records were inadequate, no case law has been cited to support his conclusion. While the Records Rule requires that medical records are to contain "patient identification" information, the Records Rule is not precise enough to put a veterinarian on notice as to precisely where patient identification information must be maintained.

53. Based upon the foregoing, it is concluded that Dr. Mysore did not violate Section 474.214(1)(ee), Florida Statutes, by failing to identify or describe the animal.

Temperature

54. The Records Rule requires that veterinary medical records record information concerning any "[p]hysical

examination" of the animal. An appropriate physical examination would include the animal's temperature. Dr. Mysore failed to record Ricochet's temperature in his medical records.

55. Based upon the foregoing, it is concluded that Dr. Mysore violated Section 474.214(1)(ee), Florida Statutes, by failing to record Ricochet's temperature.

Medications

56. The Records Rule requires that medical records include information concerning "[d]rugs prescribed, administered, or dispensed." Dr. Mysore described the drugs give to Ricochet by name and total combined dosage dispensed. It cannot be determined from his medical records alone the amount of each drug given to Ricochet.

57. Although the Records Rule could be more precise what is required to properly describe "[d]rugs prescribed, administered, or dispensed," Dr. Greene opined that the Dr. Mysore should have described the amounts of each drug given to Ricochet and not a combined total. This opinion was not refuted by any other expert opinion.

58. While identifying the type of drugs administered to an animal is clearly crucial in ensuring the proper care of the animal, being aware of the amount of drug administered is just as crucial. Given the fact that Dr. Mysore did list the amounts of other drugs given and listed the combined dosage of the two

drugs in question, Dr. Mysore was aware that, as a veterinarian, he needed to list more than just the type of drug given. And while he may have personally have known how to calculate the amounts of the two drugs, no one else would be know from the records he produced.

59. Based upon the foregoing, it is concluded that Dr. Mysore violated Section 474.214(1)(ee), Florida Statutes, by failing to record separate amounts of the drugs Atropine and Acepromazine given to Ricochet.

F. The Appropriate Penalty.

60. In determining the appropriate punitive action to recommend to the Board in this case, it is necessary to consult the Board's "disciplinary guidelines," which impose restrictions and limitations on the exercise of the Board's disciplinary authority under Section 474.214, Florida Statutes. See Parrot Heads, Inc. v. Department of Business and Professional Regulation, 741 So. 2d 1231 (Fla. 5th DCA 1999).

61. The Board's guidelines for violations of Section 474.214, Florida Statutes, are set out in Florida Administrative Code Rule 61G18-30.001. As it relates to Dr. Mysore's violation of Section 474.214(1)(r), Florida Statutes, Florida Administrative Code Rule 61G18-30.001(2)(r), provides for a penalty range of "probation for a period of one year and a two thousand dollars (\$2,000.00) administrative fine."

62. As it relates to Dr. Mysore's violation of Section 474.214(1)(ee), Florida Statutes, Florida Administrative Code Rule 61G18-30.001(2)(ee), provides for a penalty of "issuance of a reprimand plus six months probation, a fine of one thousand five hundred dollars (\$1,500.00) and investigative costs."

63. The Department has requested penalties in this case consistent with these guidelines. The Department has not, however, considered the aggravating and mitigating circumstances provided for the Board's consideration pursuant to Florida Administrative Code Rule 61G18-30.001(4):

(4) Based upon consideration of aggravating or mitigating factors present in an individual case, the Board may deviate from the penalties recommended in subsections (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 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.

64. Taking into account the mitigating and aggravating circumstances as to the violation of Section 474.214(1)(r), Florida Statutes, it is concluded that the penalty guideline is appropriate in this case.

65. Taking into the mitigating and aggravating circumstances as to the violation of Section 474.214(1)(ee), Florida Statutes, it is concluded that the penalty guideline is too severe. In light of the fact that the Department has only proved two of the alleged record keeping violations and given the nature of those violations, it is concluded that a fine of \$500.00 and the costs of the investigation for this violations are more appropriate penalties.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board enter a final order finding that Thandaveshwar Mysore, D.V.M., committed the violations described in this Recommended Order, placing his

license to practice veterinary medicine on probation for a period of one year, and requiring that he pay a fine of \$2,500.00, and the costs of the investigation of this matter, within 30 days of the entry of the final order.

DONE AND ENTERED this 12th day of January, 2009, in Tallahassee, Leon County, Florida.



LARRY J. SARTIN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 12th day of January, 2009.

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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.