

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION, BOARD)
OF VETERINARY MEDICINE,)
)
Petitioner,)
)
vs.) Case No. 10-2386PL
)
ROBIN L. CANNIZZARO, D.V.M.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case before J. D. Parrish, an Administrative Law Judge of the Division of Administrative Hearings, on July 13, 2010, by video teleconference at sites in Tampa and Tallahassee, Florida.

APPEARANCES

For Petitioner: Elizabeth F. Duffy, Esquire
Department of Business and
Professional Regulation
1940 North Monroe Street, Suite 42
Tallahassee, Florida 32399-2202

For Respondent: Bryan W. Reynolds, Esquire
Reynolds Stowell Parrino, P.A.
8700 Fourth Street, North
St. Petersburg, Florida 33702

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent, Robin L. Cannizzaro, D.V.M. (Respondent), committed the violations

alleged in the Administrative Complaint dated July 13, 2009, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

Petitioner, Department of Business and Professional Regulation (Petitioner or the Department), on behalf of the Board of Veterinary Medicine (the Board), filed a three-count Administrative Complaint against Respondent on July 13, 2009. Petitioner alleged Respondent violated provisions of Chapter 474, Florida Statutes (2009).¹ More specifically, Petitioner claimed Respondent violated Subsection 474.214(1)(r), Florida Statutes, by continuing restraint on a cat after 20 minutes of struggle to acquire a blood sample. Petitioner alleged this behavior violated the law and demonstrated incompetence or negligence by failing to practice medicine with the level of care, skill, and treatment that a reasonably-prudent veterinarian would recognize as acceptable under similar conditions and circumstances. Secondly, Petitioner averred Respondent violated Subsection 474.214(1)(y)3., Florida Statutes, by failing to properly annotate required information in the medical records for the subject cat. Finally, Petitioner maintained Respondent violated Subsection 474.214(1)(m), Florida Statutes, by overcharging for copies of records kept for the subject cat. Respondent timely challenged all factual allegations.

The case was forwarded to the Division of Administrative Hearings (DOAH) for formal proceedings on April 30, 2010. Thereafter, the case was scheduled for hearing on a date suggested by the parties, and the matter proceeded to hearing. At the hearing, Petitioner presented testimony from Diane Weigandt and Jerry Alan Greene, D.V.M. Petitioner's Exhibits 1 through 5 were received in evidence. Respondent testified on her own behalf and offered the testimony of Sidney Storozum, D.V.M., and Jennifer Truong.

A one-volume Transcript of the proceeding was filed with DOAH on August 17, 2010. Thereafter, the parties were afforded ten days within which to file their proposed recommended orders. Both parties timely filed proposed orders that have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is the state agency with the duty to regulate the practice of veterinary medicine in Florida pursuant to Chapters 455 and 474, Florida Statutes.

2. At all times material to the allegations of this case, Respondent was a licensed veterinarian in Florida fully authorized to practice veterinary medicine. Respondent has been licensed since 1991 and holds license number VM 5903.

3. At all times material to the allegations of this case, Respondent's address has been 26139 Halsey Road, Brooksville, Florida.

4. At all times material to the allegations of this case, Diane Weigandt was the owner of the cat known in this record as "Maddie." Maddie was a young cat, and Ms. Weigandt took her to Respondent's office on or about April 7, 2008. Ms. Weigandt wanted to have Maddie spayed, but another veterinarian had declined to do so because the preoperative blood work indicated an elevated liver enzyme (ALT). During the course of the visit with Respondent, it was determined that Maddie should have a blood draw to test, among other things, Maddie's ALT. It was expected that, if the enzyme were within or close to a normal range, Maddie could have the procedure.

5. Respondent decided a draw from Maddie's jugular vein was needed based upon the volume of the sample required to perform the tests. The selected site of the blood draw is not in dispute. The site of the draw did, however, cause Maddie to react uncooperatively.

6. In order to make the blood draw, Respondent determined that Maddie would have to be restrained. It is not uncommon for cats to resist this procedure. Most pets, in fact, are not cooperative with jugular blood draws. During the first attempt to draw the blood, Respondent's assistant held Maddie by the

scruff of her neck on her side with her legs pinned. This position did not contain the struggling feline.

7. As Maddie struggled to avoid the blood draw, Respondent made several attempts, using four different syringes, to acquire the sample. Approximately half-way through the procedure, Respondent's assistant taped Maddie's legs together so that they were further restrained. Between each attempt to draw blood, Maddie was afforded a break. "Break" meaning a brief intermission from the struggle that ensued each time Respondent attempted to draw blood.

8. After approximately 20 minutes, Respondent obtained a small sample, but Maddie collapsed at the end of the blood draw. Respondent quickly performed CPR and was able to revive Maddie and get her stabilized within a short period of time. At the conclusion of the visit, Respondent referred Ms. Weigandt to a specialist to deal with Maddie. Respondent advised Ms. Weigandt that another doctor needed to rule out a pulmonary or cardiac medical condition for Maddie's collapse. Had Maddie not appeared stable, Respondent would not have sent the cat on her way.

9. When Ms. Weigandt presented at the second veterinarian's office, Respondent faxed the results of the blood draw taken earlier to the second veterinarian. Ms. Weigandt was advised that another blood draw would be necessary as the

specimen from Respondent's office was compromised. It is not disputed that the second veterinarian advised Ms. Weigandt that Respondent's blood draw was inadequate for the purposes needed. Respondent acknowledged that the blood draw was hemolyzed, but averred that most of the tests were nevertheless valid.

10. The compromised blood draw could have resulted from a number of conditions. First, due to the numerous attempts to draw blood, a hematoma appeared at the draw site. A hematoma is a collection of blood outside the blood vessel, either in the subcutaneous tissue or in the muscle surrounding the vein. When blood is drawn through a hematoma, there can be a breakdown of the red blood cells. Additionally, myoglobin or muscle fluid from the muscle surrounding the vein may also contaminate the sample. Finally, if the draw is done after the animal has eaten (a non-fasting draw), the sample may be lipemic. Lipemic refers to fat appearing in the blood that will show up anywhere from two to six hours after eating. Any of the conditions noted can adversely affect a blood draw and leave the sample compromised. In the instant case, approximately half of the tests performed on Maddie's sample drawn by Respondent were deemed inaccurate or insufficient for medical purposes.

11. After consideration of the circumstances and effectiveness of Respondent's blood draw for Maddie, Ms. Weigandt challenged the credit card payment she made to

Respondent for the blood testing. Admitting no error in treatment or procedure, Respondent allowed the challenge and voluntarily withdrew the charge. Respondent believed this was a gesture of goodwill and not an admission of any wrong-doing.

12. Subsequently, Ms. Weigandt requested that Respondent provide her copies of Maddie's medical records. To that end, Respondent gave Ms. Weigandt the option of having the records faxed to her new veterinarian at no charge or picking up a copy of the records for which she would be expected to pay a fee. Ms. Weigandt chose the latter option, as she wanted to keep a personal copy of her pets' records.

13. As it turned out, Ms. Weigandt was, in effect, seeking the records for all of her pets/patients for whom Respondent had provided services. The seven pets' records were maintained under Ms. Weigandt's name and were copied and provided to the owner/client. Respondent charged Ms. Weigandt \$55.00 for 55 pages of records. The form verification of completeness executed by Respondent's assistant provided that the records for Maddie constituted 32 pages.

14. In this case, Respondent kept a file for Ms. Weigandt's pets based upon the owner's name and information. Within the single file, Respondent maintained pet data identified by pet name with treatment notes, medications, and other pertinent information. Respondent maintained the record

for the seven pets owned by Ms. Weigandt and kept notes for office visits, telephone consultations, and other matters identified by pet name.

15. Pertinent to this case, Respondent's notation for Maddie for the date of the blood draw indicated "WNL." The specifics of Maddie's temperature, heart rate or respiration were not stated. "WNL" is short-hand for "within normal limits." Data for Maddie's weight, considered a basic "vital," was not provided. Instead, Respondent's note provided, "seems undersized for age."

16. The process Respondent used to attempt a blood draw from Maddie's jugular vein is within the standard of care for such procedures. As to both the site of the draw and the restraint used to obtain a sample, Respondent's conduct was within a standard of care to be expected given the combative nature of the patient. In all likelihood, given the totality of the situation, Maddie experienced a vagal bradycardia that was quickly and appropriately addressed by Respondent. Maddie was resuscitated in an appropriate manner and stabilized before being released.

17. As to the medical records retained by Respondent, it is determined that such records did not contain the data and information expected and required by the standard in Florida.

Pertinent information concerning Maddie's pre-procedure condition was not noted.

18. Finally, as to the charges imposed for the copying of Maddie's medical record, it is determined that, pursuant to the rule, Respondent was allowed to charge \$26.75 for Maddie's record. Ms. Weigandt requested and obtained records for six other animals. Presumably, the \$55.00 charged for such records covered not fewer than 23 pages of records. Assuming Respondent was entitled to charge \$1.00 for each of those pages, Respondent would have been authorized to charge \$49.75 for the records.

CONCLUSIONS OF LAW

19. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto, pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes (2010).

20. As alleged by Petitioner, the Board seeks to impose penalties on Respondent that may include probation, suspension, revocation of license, and/or the imposition of an administrative fine. Accordingly, Petitioner bears the burden of proof in this cause to establish, by clear and convincing evidence, that Respondent committed the alleged violations of law. See Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Co., 670

So. 2d 932 (Fla. 1996), and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

21. "Clear and convincing evidence," as defined in Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 112, 116, n. 5 (Fla. 1st DCA 1989), 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 800 (Fla. 4th DCA 1983).

22. The Board may impose administrative sanctions against any licensee found to be in violation of law. That authority is found in Subsection 474.214(2), Florida Statutes. The acts constituting violations of law are enumerated and identified in Subsection 474.214(1), Florida Statutes. Pertinent to this case are the following alleged violations:

474.214 Disciplinary proceedings.--

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

* * *

(m) Fraud in the collection of fees from consumers or any person, agency, or organization paying fees to practitioners.

* * *

(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 and circumstances.

* * *

(y) Using the privilege of ordering, prescribing, or making available medicinal drugs or drugs as defined in chapter 465, or controlled substances as defined in chapter 893, for use other than for the specific treatment of animal patients for which there is a documented veterinarian/client/patient relationship. Pursuant thereto, the veterinarian shall:

1. Have sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal, which means that the veterinarian is personally acquainted with the keeping and caring of the animal and has recently seen the animal or has made medically appropriate and timely visits to the premises where the animal is kept.
2. Be available or provide for follow-up care and treatment in case of adverse reactions or failure of the regimen of therapy.
3. Maintain records which document patient visits, diagnosis, treatment, and other relevant information required under this chapter.

23. Florida Administrative Code Rule 61G18-18.002,

Maintenance of Medical Records, provides:

(1) 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.

(2) When a veterinarian is providing services to a client owning or leasing 10 or more animals of the same species at a location where the client keeps the animals, one medical record may be kept for the group of animals. This record must include the species and breed of the animals, and the approximate number of the animals in the group. However when one specific animal is treated, the record must include the identification, diagnosis, and treatment regime of the individual animals examined and treated at each visit to the location, as well as all other information required by this rule.

(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

(5) A veterinarian shall maintain confidentiality of all patient records in his/her possession or under his/her control. All patient records shall not be disclosed without the consent of the client. Appropriate disclosure may be made without such consent:

(a) in any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice by the party seeking such records to the client or his/her legal representative;

(b) when required by the Board's rules.

(6) A veterinarian shall, upon a written request, furnish, in a timely manner without delays for legal reviews, a true and correct copy of all of the patient records to the client, or to anyone designated by the

client. Such records release shall not be conditioned upon payment of a fee for services rendered, except for the reasonable cost of duplication.

(7) (a) Reasonable costs of duplication of written or typed documents or reports shall not be more than \$1.00 per page for the first 25 pages, and shall not be more than 25 cents per page for each page in excess of 25 pages.

(b) Reasonable costs of reproducing x-rays, and such other special kinds of records shall be the actual costs. The phrase "actual costs" means the cost of the material and supplies used to duplicate the record, as well as the labor costs and overhead costs associated with such duplication.

(8) It is understood that there may be several files in different locations. Sufficient cross indexes are to be maintained for prompt retrieval when required.

(9) Medical records may be maintained in an easily retrievable electronic data format; however, the licensee shall be responsible for providing an adequate backup system to assure data is not lost due to system failure. (Emphasis added)

24. Count One of the Administrative Complaint charged Respondent with violating Subsection 474.214(1)(r), Florida Statutes, by 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." In this case, Petitioner failed to establish by

clear and convincing evidence that Respondent breached the standard of care in the care and treatment of the cat, Maddie.

25. Given the volume of blood needed for the tests to be administered, Respondent chose an appropriate site for the blood draw. Pets, and cats in particular, dislike jugular blood draws. That Maddie resisted violently was typical. It is concluded that attempting to draw blood over the course of 20 minutes is not, of itself, a violation of the standard of care. Especially, when considered in the light of the facts that Maddie was afforded brief breaks, that Respondent changed syringes a few times, and that Maddie's owner, who was present the whole time, did not intercede to suggest that Respondent was abusing the animal. It was, at worse, an unpleasant and unsuccessful effort to obtain a valid blood sample, not a breach of the standard of care.

26. Count Two charged that Respondent's records did not document patient visits, diagnosis, treatment, and other relevant information required under the chapter in violation of Subsection 474.214(1)(y)3., Florida Statutes. The pertinent rule, as noted above, required Respondent to maintain medical records that were contemporaneously written and included the date of each service performed. Further, medical records are to contain the name of the owner, patient identification, record of any vaccinations administered, complaint or reason for provision

of services, history, physical examination, any present illness or injury noted, and a provisional diagnosis or health status determination.

27. In accordance with this rule, standard veterinary practice in Florida dictates that the term "physical examination" requires a recitation of pertinent physical information relative to the animal's status. The hand-written summary records maintained by Respondent do not reflect the required information. In contrast, the medical records of the second veterinarian, to whom Maddie presented on April 7, 2008, contain all the mandated information. Dr. Jerry Alan Greene's opinion (supported in fact by the actual records presented in this cause) has been deemed persuasive. Petitioner has established by clear and convincing evidence, and it is concluded, that Respondent failed to maintain records in accordance with the standards set forth in the administrative rule.

28. Finally, Petitioner alleged Respondent was guilty of fraud, "in the collection of fees from consumers or any person, agency, or organization paying fees to practitioners," in violation of Subsection 474.214(1)(m), Florida Statutes. The allegation of Count Three represented that since Respondent overcharged for the copies of Maddie's records (presumably in violation of the rule), such action constitutes "fraud" as set

forth in the statute. The term "fraud" generally suggests deceit or trickery perpetrated for a gain or unfair advantage. In this case, Respondent offered the alleged victim the option of having the records faxed to her new veterinarian at no charge or having the copies made and provided at a cost.

29. It cannot be concluded Respondent perpetrated a fraud regarding the cost imposed on Ms. Weigandt as the records tendered included pages that did not relate to Maddie. The miscalculation of the appropriate fee, when considered along with Respondent's offer of the records at no charge to Ms. Weigandt, does not constitute "fraud" as stated in the statute. At best, it was an over-payment of \$5.25. Given the fact that Respondent had already given Ms. Weigandt the benefit of not contesting the fee and charges for Maddie's blood draw, this challenged amount is inconsequential and likely inadvertent, not intentional.

30. Disciplinary guidelines set forth by rule imposed restrictions and limitations on the Board's discretion to administer penalties for violation of law. Florida Administrative Code Rule 61G18-30.001 provides that the usual penalty for a violation of Subsection 474.214(1)(y), Florida Statutes, is a penalty ranging from a reprimand up to one-year suspension followed by one-year probation and an administrative fine from \$2,000.00 to \$5,000.00. Further, aggravating and

mitigating circumstances may be considered by the Board in imposing a penalty for violation of law. The Board may deviate from the usual penalties and consider:

- (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.

31. In this case, Respondent has never been disciplined, did not violate the standard of care in treating Maddie, did not benefit from the infraction committed, did not pose a threat to the public or to Maddie, and did not violate the statute in the dispensing of drugs or providing other treatment of Maddie. Respondent's error was in record-keeping only. As it relates to this case, the penalty guideline is too severe. It is concluded a reprimand and the imposition of costs of the investigation for the violation is sufficient and a more appropriate penalty.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Veterinary Medicine enter a final order finding that Respondent failed to keep appropriate records as alleged in Count Two of the Administrative Complaint, imposing a penalty of reprimand and the costs of investigation, and dismissing all other counts of the Administrative Complaint as unfounded.

DONE AND ENTERED this 13th day of October, 2010, in
Tallahassee, Leon County, Florida.



J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of October, 2010.

ENDNOTE

^{1/} All references to Florida Statutes and the Florida
Administrative Code in this Recommended Order are to the 2009
version unless otherwise stated. The parties have not
represented any disagreement as to the pertinent law applicable
to this case.

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.