

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, BOARD )  
OF VETERINARY MEDICINE, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 13-0100PL  
 )  
TED OROSKI, D.V.M., )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

On March 26, 2013, a duly-noticed hearing was conducted by video teleconferencing with sites in Tallahassee and Gainesville, Florida. Lisa Shearer Nelson, an administrative law judge assigned by the Division of Administrative Hearings, presided over the hearing.

APPEARANCES

For Petitioner: Cristin Erica White, Esquire  
Elizabeth Fletcher Henderson, Esquire  
Department of Business and  
Professional Regulation  
1940 North Monroe Street, Suite 42  
Tallahassee, Florida 32399-2202

For Respondent: Ted Oroski, D.V.M., pro se  
Post Office Box 454  
Ocala, Florida 34478

STATEMENT OF THE ISSUE

The issue to be determined is whether Respondent, Ted Oroski, D.V.M., violated section 474.214(1)(r) and (ee), Florida Statutes (2009), and Florida Administrative Code Rule 61G19-18.002(3), as charged in the Amended Administrative Complaint with respect to his care and treatment of two horses named "Mattie" and "Coosa." If Respondent is found guilty of the violations charged, it must be determined what penalty should be recommended to the Board of Veterinary Medicine.

PRELIMINARY STATEMENT

On March 23, 2011, a probable cause panel of the Board of Veterinary Medicine found probable cause to bring disciplinary proceedings against Respondent, Ted Oroski, D.V.M. On April 28, 2011, Respondent filed an Election of Rights form disputing the allegations in the Administrative Complaint and requested a hearing pursuant to section 120.57(1), Florida Statutes. On January 8, 2013, the Department of Business and Professional Regulation (Department) filed an Amended Administrative Complaint against Respondent, alleging that he violated section 474.214(1)(r) and (ee), and rule 61G19-18.002(3), with respect to his care and treatment of two horses named "Mattie" and "Coosa." On January 9, 2013, the matter was referred to the Division of Administrative Hearings for the assignment of an administrative law judge.

The case was scheduled for a hearing to be conducted on March 26, 2013, and the hearing was conducted as scheduled. Official recognition was taken of the contents of chapters 455 and 474, Florida Statutes (2009); Florida Administrative Code Rule 61G18-18.002 as it existed on March 23, 2011; and Respondent's disciplinary history as reflected in Petitioner's proposed Exhibit 10.

Petitioner presented the testimony of Jodi McDermott, Ben Schachter, D.V.M., and Lisa Sinclair, D.V.M. Petitioner's Exhibits 3-5, 9, and 12 were admitted into evidence. Respondent testified on his own behalf, but did not present any other witnesses or submit any exhibits.

The Transcript of the proceeding was filed with the Division on April 11, 2013, and Petitioner timely filed a Proposed Recommended Order on April 22, 2013. At the time of the filing of this Recommended Order, Respondent has not filed a post-hearing submission. All references to the Florida Statutes are to the 2009 codification unless otherwise indicated.

#### FINDINGS OF FACT

1. The Department of Business and Professional Regulation and the Board of Veterinary Medicine are the state agencies charged with the licensing and regulation of the practice of veterinary medicine pursuant to section 20.165 and chapters 455 and 474, Florida Statutes.

2. Respondent's address of record is Post Office Box 454, Ocala, Florida 34478.

3. Respondent, Ted Oroski, D.V.M., is and has been at all times relevant to these proceedings, a licensed veterinarian in Florida, having been issued license number VM 4239.

4. Respondent has a disciplinary history with the Board of Veterinary Medicine. On April 2, 2010, the Board entered a Final Order against Respondent after Respondent failed to file a response to the Administrative Complaint in DBPR Case No. 2009-11330, filed August 24, 2009. As a result, the Board's Final Order adopted the Findings of Fact and Conclusions of Law alleged in the Administrative Complaint and found Respondent to be guilty of violating section 474.214(1)(cc), by failing to keep contemporaneously written medical records; section 474.214(1)(o), by committing fraud, deceit, negligence, incompetency, or misconduct in or related to the practice of veterinary medicine, and section 474.214(1)(f), by failing to furnish copies of all reports and records relating to the treatment or examination of a patient. The Board imposed a fine of \$5,500 and costs of \$248.36, to be paid within one year of the Final Order, and non-reporting probation for a period of two years and six months. The Board has granted four extensions of time, up to and including December 12, 2012, for the payment of the fine.

5. Respondent worked as the veterinarian caring for Jody McDermott's horses for several years. Ms. McDermott owned several horses, including approximately six mares, and used the horses for breeding purposes. The allegations in this case address the care and treatment given, and the adequacy of medical records kept, for a mare name Coosa and a foal named Mattie. The foal is also identified in the records as "Ritzy '09," because she was foaled by the mare Ritzy in 2009. Because most of the records refer to the foal as Ritzy '09, she will be so identified for the purposes of this Recommended Order.

Ritzy '09

6. The record does not indicate when Ritzy '09 was born, although it appears that she was born in January 2009. The records provided for Ritzy '09 which purport to be medical records do not appear to be medical records at all. Instead, the records are more along the lines of invoices which sometimes describe the nature of treatment given, and sometimes do not.

7. For example, on January 30, 2009, it appears from the records provided as Petitioner's Exhibit 4 that Respondent performed an eyelid exam, and diagnosed an entropion left eyelid. The note for January 30, 2009, states in its entirety:

Ritzy 09	Eye lid exam	10--
	Entropion L eyelid	40--
	TAB med.	
	No ulceration	

8. This notation does not contain a medical history or presenting complaint from the owner, but does show results of the exam along with a treatment plan.

9. An entropion is a condition where the eyelid is turned in and can rub or abrade the cornea, and has to be corrected surgically.

10. On February 2, 2009, Respondent performed the surgery to correct the foal's eyelid problem. The notation for this day states:

Ritzzy '09	Anesthesia	40--
	Entropion [?] <sup>x1</sup>	
	TAB oint.	60--

- BAR
- Ropen/Ketamine
- 4 sutures lower lid l
- medicate eye
- no ulceration noted

11. According to Dr. Schachter, an expert for the Department, BAR is a term meaning the foal is otherwise normal. In his opinion, this particular record was adequate for a medical record.

12. On April 21, 2009, Respondent examined Ritzzy '09. The notes for this visit state the following:

BAR  
TPR - WNL  
Mild throat latch  
    Swelling  
No nasal discharge  
Advised possible  
    Allergic rxn/

tympany / possible  
strangles  
Observe for several days

13. Ms. McDermott testified that Respondent gave her some antihistamine powder to give the foal; however, no notation regarding dispensing of antihistamine is included in the records for this horse. The record also did not include any indication of the foal's age or history, or the nature of the presenting complaint.

14. Respondent saw the foal again on April 29, 2009, and noted that Ritzy '09 had increased throat latch swelling, no discharge and was nursing normally. The note for April 29, 2009, states in part, "Referred to EMC for scope and workup."

15. EMCO is the Equine Medical Center of Ocala. Ms. McDermott denied that Respondent referred Ritzy '09 to EMCO on April 29, and testified that she took Ritzy '09 and her mother, Ritzy, to EMCO after she went out to feed the foal and blood was running out her nose.

16. The medical records for EMCO with respect to Ritzy '09 include an entry for April 29, 2009, indicating that the foal was referred to EMCO for evaluation of a progressive swelling in the throat latch region with intermittent increased airway sounds. Samples for lab work were collected that same day. The more persuasive evidence indicates that Respondent referred Ritzy '09 on April 29, 2009, and it is so found.

17. Ritzy '09 was treated successfully at EMCO. Respondent did not provide further care to the foal after the April 29, 2009, referral.

18. As a whole, the documents produced with respect to Respondent's care and treatment of Ritzy '09 do not comply with the requirements for medical records contained in rule 61G18-18.002. The records do not contain the name of the owner or agent; do not provide adequate patient identification; provide no record of vaccinations administered; and often do not provide an initial complaint or reason for provision of services.

19. However, no credible evidence was provided to indicate that Respondent's care and treatment was incompetent or below that level of care, skill, and treatment recognized by a reasonably prudent veterinarian as being acceptable under similar conditions and circumstances.

Coosa

20. One of the mares that Ms. McDermott owned, and for which she sought care from Respondent, was a mare named Coosa. Ms. McDermott obtained Coosa in or about 2007. The care and treatment at issue in this case was rendered from May 2009 through April 2010.

21. The records related to Coosa's care and treatment are sparse. As was the case with Ritzy '09, the records are more like invoices which sometimes describe the nature of treatment



given, and sometimes do not. Moreover, the records include charges for services provided for more than one animal, and sometimes exclude the identity of the animal receiving services.

22. The records for May 7, 2009, indicate that Coosa received an Oxytocin injection and an unidentified dosage of Domperidone. Oxytocin is a hormone given to a mare post-foaling to get the uterus to contract and help the mare to lose her after-birth. Domperidone is a drug that is, according Dr. Schachter, not approved for horses. The records do not provide a reason for administration of the drug.

23. The records for this date lack a history and reason for the visit. No results of the exam are listed and there is no treatment plan, no signalment for the animal, no dosage for the drugs given, and no diagnosis.

24. On May 30, 2009, Respondent performed an ovarian examination on Coosa. While the medical records include reference to an ovarian examination and examination by vaginal speculum, no presenting complaint, no history, no diagnosis, and no treatment plan are included.

25. On June 2, 2009, Respondent artificially inseminated Coosa and gave her an HCG injection. The medical record entry, in its entirety, lists a farm call, AI, and HCG inj., with charges associated for each. The purpose of the HCG injection is to induce ovulation. The record, however, does not show a

presenting complaint, the identity of the owner, a diagnosis, a treatment plan, or the health status of the animal.

26. On June 18, 2009, Respondent performed a pregnancy palpation, and the notes indicate that the palpation was positive for pregnancy. No other information other than a "farm call" charge was listed for this visit. There is no signalment for the animal, no history, no clinical assessment other than the positive pregnancy test, and no plan for follow-up.

27. The gestational period for a mare is approximately 354 days. A veterinarian can usually diagnose a pregnancy two and a half weeks after artificial insemination. The June 18 examination was 16 days after insemination. At this point in a pregnancy, it is customary to check for a twin pregnancy because a horse cannot efficiently support more than one foal per pregnancy. Because it is difficult to palpate for twin pregnancy at this point, rectal ultrasound normally would be used. No ultrasound was performed at this point in the pregnancy. However, while the evidence demonstrated that ultrasound would be normal practice, the Department did not establish that failure to perform an ultrasound would be below the appropriate standard of care.

28. On September 9, 2009, Respondent's records show that an ultrasound was performed on Coosa, as well as four other horses. However, Ms. McDermott did not receive any copies of

the ultrasound films, and none are in the medical records. Respondent testified that there were no ultrasound films because his ultrasound machine had an element that was burned out for two to three months. He gave no explanation as to why the machine was not repaired in a timely manner.

29. The September 9, 2009, note also stated that Coosa was given Dectomax, but no dosage was indicated. Dectomax is an injectable de-wormer approved and licensed for use with cattle. Its use by injection has been discontinued by the Food and Drug Administration and Dr. Schachter testified that it has been withdrawn from the market for use with horses for several years. He knew of no studies that show its safety for use with pregnant horses. However, as with the failure to perform an ultrasound early in the pregnancy, Dr. Schachter and Dr. Sinclair were not asked and did not give an opinion indicating that the provision of Dectomax constituted a violation of the appropriate standard of care.

30. The note for September 9, 2009, also indicates that 100 gr. of Bute powder was provided. Bute refers to Butazolidin, an anti-inflammatory drug. However, the note does not indicate which horse or horses were to receive the drug, or the symptoms the drug was intended to address.

31. The note for September 9, 2009, also provides no information with respect to the progress of Coosa's pregnancy;

no reason stated for the provision of services; no history; no physical examination other than the ultrasound; no present illness or injury; and no provisional diagnosis or health status determination other than the positive ultrasound note with no copy of the films.

32. On October 9, 2009, Respondent performed a soundness examination to check for lameness and administered 100 cc's of Banamine.

33. There are two separate invoices/records for October 9, 2009. Both reference a farm call, a soundness exam, 100cc of Banamine, TAB ointment, and the charges associated with these services. However, one copy of the record includes a notation at the bottom for SAV-A Hoof solution, which is circled. On the second record, the notation for SAV-A Hoof solution is written over the TAB ointment. Below those notations, the record reads,

White line dx  
With soft soles  
11/U lame BF  
Bute ± Banamine  
Next several days

34. Ms. McDermott received only the first version of the notes for October 9, 2009. The first version does not include a history or presenting complaint, physical examination, diagnosis, or treatment plan. The second version includes information related to the examination and a treatment plan, but no history or presenting complaint. Neither note contains information regarding

the status of Coosa's pregnancy, or her condition with respect to the pregnancy. At no point in the records for Coosa does it indicate when she was expected to foal.

35. There are no records for this pregnant mare from October 9, 2009, to March 11, 2010, a period of five months. The only note related to Coosa on March 11, 2010, simply indicates that she palpated as pregnant on that date. The note gives no further information.

36. On March 31, 2010, Coosa received another injection of Dectomax. The note for that day contains no other information, such as any complaint or reason for provision of services, history, physical examination, present injury or illness, or provisional diagnosis, health status determination or treatment plan. Nothing related to her pregnancy is included.

37. On April 26, 2010, Respondent made a farm call and gave Coosa a Bute injection and a Ketofen injection. Both drugs presumably would have been provided to make the horse more comfortable.

38. There are two copies of the note for April 26, 2010. No other information was provided in the first copy of the note for that day other than the provision of Bute and Ketofen. A second copy of the note adds a notation at the end that reads, "ll/v lame BF; trimmed 2-3 days ago; all horses sore footed." However,

neither record contains a history, complaint, physical exam, the status of her pregnancy, a diagnosis, or a treatment plan.

39. On April 27, 2010, Respondent fit Coosa for E/Z boots and gave her injections for Bute and Ketofen. No other information is provided in the records. Once again, there is no identification of the owner, no history, no presenting complaint, no physical examination findings, no notes regarding the pregnancy or the status of the horse, no diagnosis, and no treatment plan.

40. There are two different notes for April 28, 2010. The first indicates that Respondent performed a soundness examination on Coosa, adjusted the EZ boots, and gave her Bute and Ketofen. The note also states that the "mare very sore; recurrence of founder." It does not indicate when founder was initially diagnosed, and does not refer to her pregnancy.

41. A second note for April 28, 2010, indicates that Respondent gave injections of Bute and an antihistamine, and also ordered an estrone sulfate test and blood chemistry.

42. A final note for April 29, 2010, indicates that injections of Bute and an antihistamine were given to Coosa. At this point, Ms. McDermott was dissatisfied with the services she was receiving from Respondent with respect to both Coosa and Ritzy '09, and terminated his services.

43. An estrone sulfate is a lab test to check for fetal membrane to see if the mare is still pregnant. While the note

reflects that the lab tests were ordered, no lab results are contained in Respondent's records for Coosa. Respondent admitted he typically did not pick up lab results, and would simply get them over the telephone, and most likely did not receive the results until after he treated Coosa that day. Respondent testified that he relayed to Ms. McDermott the results of the tests, which indicated that Coosa was no longer pregnant, sometime that evening.

44. Ms. McDermott sought the services of another veterinarian for Coosa, but ultimately she died prior to the time her foal would have been due. There are no records with respect to her death because at that time, she was no longer under Respondent's care. The veterinarian who assumed Coosa's care did not testify.

45. As a whole, the documents produced with respect to Respondent's care and treatment of Coosa do not comply with the requirements for medical records contained in Florida Administrative Code Rule 61G18-18.002. The records do not contain the name of the owner or agent; do not provide adequate patient identification; provide no record of vaccinations administered; do not provide adequate documentation of the course of her pregnancy, and often do not provide an initial complaint or reason for provision of services.

46. Respondent was convinced that the recurrence of founder for this mare was due to her obesity, and felt she was metabolically challenged. He was trying to get her to the point of foaling because, according to Respondent, usually sore-footed horses tend to improve after giving birth. He also stated that he provided no further records related to the pregnancy because there were no problems: she was gaining weight, not showing any signs of losing the foal, had no evidence of a bag and no vaginal discharge, and appeared to be heavy in foal. None of these observations, including his conclusions that she was obese and metabolically challenged, appear anywhere in her records.

47. However, no credible evidence was provided to indicate that Respondent's care and treatment with respect to Coosa was incompetent or below that level of care, skill, and treatment recognized by a reasonably prudent veterinarian as being acceptable under similar conditions and circumstances. While one might infer that Respondent's care was sloppy and perhaps inattentive, no testimony was presented to establish the standard of care for the treatment of a pregnant horse or for the treatment of founder.

#### CONCLUSIONS OF LAW

48. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this



action in accordance with sections 120.569 and 120.57(1), Florida Statutes (2012).

49. This disciplinary action by Petitioner is a penal proceeding in which Petitioner seeks to suspend or revoke Respondent's license as a veterinarian. Petitioner bears the burden of proof to demonstrate the allegations in the Amended Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

50. As stated by the Florida Supreme Court:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

51. Count I of the Amended Administrative Complaint in this case charges Respondent with violating section 474.214(1)(r), "in one or more of the following ways:

- a. Failed to accurately diagnose Mattie in March or April, 2010.
- b. Failed to accurately diagnose Coosa with laminitis.

- c. Failed to properly treat Coosa's laminitis.
- d. Failed to provide McDermott with Coosa's blood work results.
- e. Failed to provide McDermott with Coosa's and the foal's medical records.
- f. Failed to keep any medical records about regarding [sic] Mattie.

52. The Department has not established a violation of section 474.214(1)(r) by clear and convincing evidence. Where, as here, a professional standard of conduct is alleged to have been breached, the Department is obligated to present evidence of both the standard and the breach of that standard. Purvis v. Dep't of Prof'l Reg., 461 So. 2d 134 (Fla. 1st DCA 1984). With respect to both Coosa and Ritzy '09, the Department presented evidence of woefully deficient records, which will be discussed below; it did not present evidence regarding what the prevailing standards of practice require with respect to the care and treatment of a pregnant mare; the diagnosis and treatment of laminitis; or the diagnosis and treatment of guttural tympany. Without this evidence, a deviation from the unproven standard cannot be established. Further, the evidence demonstrated that Respondent did in fact diagnose both Ritzy '09's guttural tympany and Coosa's founder. The standard by which to evaluate his treatment for the horses simply has not been proven.

53. Moreover, the Amended Administrative Complaint seeks to

charge a violation of section 474.214(1)(r) by demonstrating that Respondent failed to provide McDermott with Coosa and Ritzzy '09's medical records. Section 474.202(9) defines the practice of veterinary medicine as:

diagnosing the medical condition of animals and prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease thereof; performing any manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of animals; or representing oneself by the use of titles or words, or undertaking, offering, or holding oneself out, as performing any of these functions. The term includes the determination of the health, fitness, or soundness of an animal.

54. In disciplinary proceedings, the statutes and rules for which a violation is alleged must be strictly construed in favor of Respondent. Elmariah v. Dep't of Prof'l Reg., 574 So. 2d 164 (Fla. 1st DCA 1990); Taylor v. Dep't of Prof'l Reg., 534 So. 2d 782, 784 (Fla. 1st DCA 1988). In Elmariah, a physician was charged with and disciplined for fraud in the practice of medicine for providing fraudulent information on an application for hospital privileges. The First District reversed the Final Order, holding that the Legislature defined the practice of medicine as "the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition." § 458.305(3), Fla. Stat. Because

submitting an application, however, false, was not "diagnosis, treatment, operation or prescription," and the statute was required to be construed in favor of the licensee, no discipline for fraud in the practice of medicine could be imposed.

55. The same can be said here. Failing or refusing to provide test results or medical records would be a violation of section 474.2165, and thus a violation of section 474.214(1)(f). However, Respondent was not charged with violating section 474.214(1)(f), and can only be disciplined for those violations actually charged in the Administrative Complaint. Trevisani v. Dep't of Health, 908 So. 2d 1108 (Fla. 1st DCA 2005); Ghani v. Dep't of Health, 714 So. 2d 1113 (Fla. 1st DCA 1998); and Willner v. Dep't of Prof. Reg., 563 So. 2d 805 (Fla. 1st DCA 1990). Count I of the Amended Administrative Complaint should be dismissed.

56. The same cannot be said for Count II. The Amended Administrative Complaint charges a violation of section 474.214(1)(ee), Florida Statutes, which provides in pertinent part:

**474.214 Disciplinary proceedings.--**

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

\* \* \*

(ee) Failing to keep contemporaneously written medical records as required by rule of the board.

57. At the time of the conduct alleged in this case, Florida Administrative Code Rule 61G18-18.002 provides in pertinent part:

**61G18-18.002 Maintenance of Medical Records.**

(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

58. The Amended Administrative Complaint alleges that Respondent failed to keep adequate medical records by failing to keep records of the horses' patient history; identifying information for either horse, such as color, breed, or sex; results from physical examinations; name of drugs administered to the horses; the amount of drugs administered; the concentration of drugs administered; the results of blood work performed on Coosa; and the results of blood work performed on Mattie (or Ritzy '09).

59. Count II has been proven by clear and convincing evidence. It is unclear how many animals of Ms. McDermott's were

under Respondent's care, although there was a minimum of six mares. It is clear that whether Respondent was caring for six animals or 60, the requirements of rule 61G18-18.002 were not met. Count II has been proven by clear and convincing evidence.

60. The Board of Veterinary Medicine has adopted Disciplinary Guidelines that provide notice of the range of penalties most likely to be imposed for violations of chapter 474 and the rules adopted to implement chapter 474. Fla. Admin. Code R. 61G18-30.001. For a violation of section 474.214(1)(ee), the guideline penalty range in the version of rule 61G18-30.001 in effect at the time of the conduct in this case<sup>1/</sup> is six months of probation and a reprimand and administrative fine of \$1,500, plus costs.

61. The Board may also consider aggravating or mitigating factors in determining the appropriate penalty. Among those factors are the length of time since the violation; the number of times the licensee has been disciplined previously; the damage caused by the violation; the deterrent effect of the penalty and its effect on the licensee's livelihood; any effort at rehabilitation; and attempts to correct or stop the violation. Fla. Admin. Code R. 61G18-30.001(4).

62. Here, Respondent has been disciplined previously for the same violation. His records were not only deficient, they were abysmal. The records were so bad that it is difficult to

know whether the care and treatment of the animals under his care was adequate, or which animals were treated. Despite his prior discipline, Respondent clearly made no effort to address the deficiencies in his recordkeeping. An increase in penalty is appropriate in order create an incentive for Respondent to comply with the requirements of section 474.214(1)(ee) and the rule 61G18-18.001.

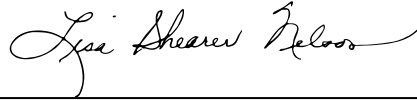
63. The Department has identified a specific amount for costs in its Proposed Recommended Order. However, no evidence was presented at hearing regarding the appropriate amount of costs. Therefore, there is no competent, substantial evidence upon which to base a costs award.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Veterinary Medicine enter a Final Order finding Respondent guilty of violating section 474.214(1)(ee), Florida Statutes (2009); imposing a reprimand; imposing an administrative fine of \$3,000; and imposing a period of two years of probation.



DONE AND ENTERED this 16th day of May, 2013, in Tallahassee,  
Leon County, Florida.



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LISA SHEARER NELSON  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
This 16th day of May, 2013.

ENDNOTE

<sup>1/</sup> The Department cited to the current version of the guidelines which provides separate penalty ranges for the first and second offenses. The rule in effect at the time of the conduct at issue did not provide this differentiation.

COPIES FURNISHED:

C. Erica White, Esquire  
Department of Business  
and Professional Regulation  
Suite 42  
1940 North Monroe Street  
Tallahassee, Florida 32399

Ted Oroski, D.V.M.  
Post Office Box 454  
Ocala, Florida 34478

Juanita Chastain, Executive Director  
Board of Veterinary Medicine  
Department of Business  
and Professional Regulation  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399

J. Layne Smith, General Counsel  
Department of Business  
and Professional Regulation  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399

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.