

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

vs.

Case No. 17-5154

MEGAN MCMURRAN LAJARA,

Respondent.

_____ /

RECOMMENDED ORDER

The final hearing in this matter was conducted before J. Bruce Culpepper, Administrative Law Judge of the Division of Administrative Hearings, pursuant to sections 120.569, and 120.57(1), Florida Statutes (2017), on November 28, 2017, by video teleconference with sites in Tallahassee and Orlando, Florida.

APPEARANCES

For Petitioner: Whitney Rebecca Hays, Esquire
Anthony Brian Coniglio, Esquire
Department of Business
and Professional Regulation
2601 Blair Stone Road
Tallahassee, Florida 32399

For Respondent: Megan Lajara, pro se
855 Franklin Street
Altamonte Springs, Florida 32701

STATEMENT OF THE ISSUES

The issue in this matter is whether Respondent practiced veterinary medicine without a license; and, if so, what disciplinary action is appropriate.

PRELIMINARY STATEMENT

On January 25, 2017, Petitioner, Department of Business and Professional Regulation (the "Department"), issued an Administrative Complaint, charging Respondent, Megan McMurrin Lajara, with practicing veterinary medicine without a license.^{1/}

Respondent timely requested an administrative hearing to dispute the Department's allegations. On September 19, 2017, the Department referred this matter to the Division of Administrative Hearings ("DOAH"). The undersigned Administrative Law Judge ("ALJ") was assigned to conduct a chapter 120 evidentiary hearing.

The final hearing was held on November 28, 2017. At the final hearing, the Department presented the testimony of Elizabeth Henderson, Tony King, and Patricia Austin. The Department also presented the deposition testimony of Dr. Scott Richardson.^{2/} Department Exhibits 1 through 5 were admitted into evidence. Respondent testified on her own behalf. Respondent's Exhibits 1 and 2 were admitted into evidence.

A one-volume Transcript of the final hearing was filed at DOAH on December 27, 2017. At the close of the hearing, the

parties were advised of a ten-day timeframe after receipt of the hearing transcript to file post-hearing submittals. Both parties timely filed post-hearing submittals which were duly considered in preparing this Recommended Order.

FINDINGS OF FACT

1. The Department is the state agency charged with regulating the practice of veterinary medicine in Florida. See § 20.165(4)(a)13. and ch. 474, Fla. Stat. (2017).

2. The Department brings this action alleging that Respondent engaged in the unlicensed practice of veterinary medicine in violation of section 474.213(1)(i), Florida Statutes (2015).^{3/} The Department specifically charges that Respondent, who does not hold a license as a veterinarian, used certain procedures to treat several horses, which constituted "veterinary medicine" as the term is defined in section 474.202(9).

3. Respondent owns and operates Peak Performance Equine Dentistry. Respondent is not, nor has she ever been, licensed as a veterinarian in the State of Florida.

4. As part of her "equine dentistry" services, Respondent "floats" horses' teeth. "Floating" is the term used to describe filing or grinding down horses' teeth to prevent overgrowth. Unlike humans, horses' permanent teeth continue to grow throughout their lifetime. (Hence, the origin of the phrase "long in the tooth.") Because of the manner in which horses

chew, their teeth can develop sharp points and edges. Floating is the process of filing down those points to balance out or flatten the teeth. Floating helps horses masticate, as well as prevents tooth problems.

5. Florida law specifically allows non-veterinarians to manually float teeth, i.e., with a hand-held file or rasp. See § 474.203(5) (b), Fla. Stat. However, only licensed veterinarians, or persons immediately supervised by a veterinarian, may float teeth using power tools. See § 474.203(7), Fla. Stat. Floating teeth by hand is a labor-intensive and lengthy process. Using a power tool, on the other hand, allows the practitioner more control over the filing process, as well as reduces the time needed to treat the teeth.

6. On February 15, 2016, Tony King contacted Respondent to schedule an appointment for her to float the teeth of several of his horses. Mr. King learned of Respondent's services through her advertisement for "equine dentistry" on the internet.

7. On February 24, 2016, Respondent arrived at Mr. King's barn at approximately 10:00 a.m. Mr. King identified nine horses whose teeth needed to be floated. Seven of the horses belonged to Mr. King. The other two horses were boarding at his barn. (None of the horses were owned by Respondent.)

8. After unloading her equipment, Respondent proceeded to float the teeth of the first horse. She used a hand file and manually ground down the horse's teeth.

9. After Respondent floated the teeth of the first horse, she moved onto the second horse. Again, Respondent used a file and ground down the horse's teeth by hand. However, Respondent soon found that the second horse was more difficult to treat. It became quite agitated as she worked on its teeth. Therefore, Mr. King decided to place a "twitch" on the horse's nose. A "twitch" is a metal clamp that is strapped to the horse's nose to calm it down and keep it under control.

10. As Respondent continued floating, however, the horse suddenly reared up on its hind legs. When the horse descended, the twitch on its nose struck Mr. King on the left side of his face. Mr. King was knocked to the ground. He instinctively reached up to the wounded area. He felt that his eyeball had popped out of its socket and was resting on his cheek. (The eye was still attached to the optic nerve.) He impulsively shoved his eyeball back into the socket.

11. When Mr. King gathered his wits, he quickly realized that he needed medical attention. He urged Respondent to continue working on the horses. Then, despite his blurred vision in one eye, he drove himself to a nearby surgery center where his wife was working. At the center, an eye doctor examined Mr. King

and determined that his eye and vision issues would satisfactorily resolve themselves without treatment. (Mr. King did receive several stitches for a small cut under his left eye.) After his examination, Mr. King drove back to the barn returning approximately three hours later.

12. At the barn, Mr. King was unsettled by what he found. According to his (one) eye witness testimony, Respondent was still working on the horses. However, in his absence, Mr. King believed that Respondent had 1) used a power tool to float the teeth of several horses, 2) administered a sedative to up to five horses, and 3) was preparing to pull "wolf" teeth from several horses.

a. The Use of a Power Tool

13. Regarding the use of a power tool, Mr. King testified that after Respondent arrived at his barn, she unloaded several pieces of equipment from her car. In this equipment, Mr. King observed power tools and a sedation bag.

14. Upon returning to the barn after his trip to the eye center, Mr. King witnessed Respondent use an electric power tool to float the teeth of his horse, Warrior. Mr. King described the tool as having a motor and a head that Respondent applied to the horse's mouth. He also saw that the tool was plugged into a power outlet in the barn.

b. Sedation

15. Floating teeth, especially with a power tool, often includes sedating the horse. Sedation makes the horse more docile and reduces the risk of harm during the treatment. Under Florida law, administering medication and drugs is considered the practice of veterinary medicine. See § 474.202(9), Fla. Stat. An unlicensed person may sedate a horse only if they are under the immediate supervision of a licensed veterinarian. See § 474.203(7), Fla. Stat.

16. Mr. King testified that when he returned to the barn from the eye center, Warrior appeared to be heavily sedated. The horse was having difficulty keeping his head up on the rest. His ears were flat, and his nose hung down almost to the ground. Mr. King further noticed that at least four other horses showed signs of sedation in that they could not hold their heads up either. Mr. King also observed several plastic tubes or plungers on the ground which he believed were used to administer a gel-type sedative to the horses. Finally, Mr. King testified that Respondent, in fact, told him that she had sedated the horses.

17. Mr. King further attested that he directly witnessed Respondent administer a sedative to a paint mare. Mr. King remarked that he saw Respondent holding a small syringe with a needle. He then watched her poke the paint mare several times with the needle, searching for a vein, before she injected the

drug. Mr. King also relayed that Respondent commented that her needles were too small, as her mother had purchased the wrong size.

c. Removing "Wolf" Teeth

18. A horse's "wolf" teeth are deciduous premolars. (They are similar to human wisdom teeth.) Wolf teeth often interfere with the fit of a bit in a horse's mouth. Therefore, wolf teeth are frequently removed. Extracting wolf teeth, however, is not considered part of floating a horse's teeth. Instead, removing wolf teeth is a surgical procedure due to the fact that pulling teeth typically requires sedation, as well as the use of certain medical equipment. As such, removing wolf teeth cannot be performed by an unlicensed person, unless such person is under the immediate supervision of a veterinarian. See §§ 474.202(13) and 474.203(7), Fla. Stat.

19. Regarding Respondent's removal of "wolf" teeth, Mr. King testified that after he observed the gel tubes and the syringe, Respondent informed him that several horses needed their wolf teeth extracted. Mr. King watched as Respondent pulled the wolf teeth from three horses, including Warrior, Scout, and the paint mare. Mr. King expressed that Respondent appeared to have difficulty removing the wolf tooth from the paint mare, as it took a long time.

20. Within days after Respondent's visit to his barn, Mr. King noticed that several horses were having trouble chewing. Upon inspecting his horses, Mr. King found at least one tooth that still had a point, and other teeth that were rounded, instead of filed flat. Shortly thereafter, Mr. King sought the care of a veterinarian to fix the problems. Soon afterwards, Mr. King complained to the Department about Respondent's equine dentistry services.

21. Based on Mr. King's complaint, the Department charged Respondent with three counts of practicing veterinary medicine without a license, including:

a. floating teeth using a power tool, instead of by hand, in violation of sections 455.227(1)(q), 474.213(1)(i), and 474.202(13), Florida Statutes;

b. pulling "wolf" teeth in violation of sections 455.227(1)(q), 474.213(1)(i), and 474.202(13); and

c. sedating at least one horse in violation of sections 455.227(1)(q), 474.213(1)(i), and 474.202(9).

22. In response to the Department's allegations, Respondent flatly denied that she used a power tool to float the teeth of Mr. King's horses. Respondent testified that she floated all of the horses by hand with a file. Respondent also refuted Mr. King's testimony that she sedated any horses or pulled any wolf teeth.

23. Respondent further denied that she has ever used power tools in her business. Neither has she ever sedated horses or pulled their teeth. Respondent maintained that she floats teeth exclusively by hand and with hand tools.

24. Respondent also disputed key portions of Mr. King's account. Respondent testified that it was Mr. King who raised the option of sedating his horses. Despite his suggestion, Respondent contended that she refused to do so. Respondent further insinuated that the metal object Mr. King observed in her hand was a tool used to scrap tartar off of a horse's teeth. Finally, Respondent argued that she finished her floating treatment on all nine horses before Mr. King returned to the barn from the eye center. Therefore, he could not have watched her use a power tool, pull teeth, or sedate horses.

25. Notwithstanding Respondent's assertions, evidence presented at the final hearing established that Respondent is familiar with, and has received training in, the use of a power tool to float horses' teeth. In May 2015, Respondent attended an equine dentistry program in Virginia during which time she received training on how to float horse's teeth using both hand and rotary power tools. Shortly thereafter, she started her equine dentistry business in Florida. Several photographs of Respondent using a power tool on a horse are posted on her business's Facebook page.

26. Respondent acknowledged that the use of power tools and sedation, as well as the removal of wolf teeth, constitute the practice of veterinary medicine in Florida. Therefore, she could only perform these procedures and techniques under the immediate supervision of a veterinarian.

27. Unrelated to the issue of Respondent's use of a power tool and sedation, Respondent and Mr. King disputed whether Respondent received full payment for her equine dentistry services.

28. Respondent testified that after she floated the nine horses, she presented Mr. King with invoices for her work. At the final hearing, Respondent produced nine separate Equine Dental Records detailing the amount she charged, as well as the treatment she provided for each horse. Respondent testified that it is her routine practice to complete an Equine Dental Record while she works on a horse and provide a copy to the client.

29. Respondent relayed that her standard charge for floating services is \$75 per horse. The Equine Dental Records that she produced record that she billed Mr. King \$75 per horse (\$675 total) and for no other treatment. Therefore, Respondent asserts that her documents confirm that she only floated the nine horses' teeth and did not pull wolf teeth or administer sedation.

30. Respondent also stated that Mr. King only had \$500 in cash when she presented him with the invoices. Therefore, he

told her that he would mail her a check for the remainder. However, when she called Mr. King a week later to follow up on his payment, he refused to pay the rest of the bill. Instead, he demanded that she pay him \$500 to cover the medical cost of his eye injury.

31. At the final hearing, Respondent declared that Mr. King filed a false complaint against her in an effort to extort payment from her for his medical expenses. Respondent also pointed out that the amount she charged, as recorded on the Equine Dental Records she prepared, does not match the figure Mr. King recalled he paid her. Therefore, his memory of the event is not credible or reliable.

32. Mr. King remembered that Respondent charged him around \$600 for the floating procedure. But, he asserted that she charged him an additional amount for the sedation and the extraction of the wolf teeth. Mr. King stated that he paid Respondent the full amount of her services, in cash, on the date she treated his horses.

33. Mr. King denied that he ever received or saw the Equine Dental Records Respondent produced at the final hearing. Mr. King disputed Respondent's claim that she supplied him with a written bill, invoice, or receipt of any kind for her floating services.

34. Mr. King further denied that he demanded Respondent pay for his medical expenses. He represented that he owed nothing for his hospital visit because his wife worked at the facility.

35. The Department introduced the testimony of Patricia Austin in rebuttal.^{4/} Ms. Austin testified regarding a similar floating service she received from Respondent on her horse. Ms. Austin was acquainted with Respondent from boarding her horse at a barn where Respondent took lessons and occasionally cared for horses.

36. Ms. Austin testified that in May 2016, she hired Respondent to float the teeth of her horse, Sapphire. During the procedure, Ms. Austin observed Respondent use a power tool to file down Sapphire's teeth. Ms. Austin described the power tool as a long metal device with a grinder on the end. The tool was equipped with a power cord and was plugged in during the treatment.

37. Ms. Austin also witnessed Respondent sedate her horse. Ms. Austin watched as Respondent injected Sapphire with a needle. Following the injection, Ms. Austin relayed that Sapphire's head and ears began to droop, and she appeared sleepy.

38. Ms. Austin paid Respondent for her services in cash, half at the time of treatment and the other half two weeks later. Respondent did not provide Ms. Austin with an invoice or receipt.

Neither did Ms. Austin receive an Equine Dental Record from Respondent documenting her work on Sapphire.

39. Respondent denied that she ever floated the teeth of Sapphire or any other horse for Ms. Austin. Instead, Respondent asserts that she simply looked at Sapphire's teeth and determined that the horse did not need dental care.

40. The Department incurred \$288.47 in investigative costs associated with this matter.

41. Based on the competent substantial evidence produced at the final hearing, the clear and convincing evidence in the record establishes that Respondent engaged in the practice of veterinary medicine without a license. Accordingly, the Department met its burden of proving that Respondent should be disciplined for her unlicensed conduct.

CONCLUSIONS OF LAW

42. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569, 120.57(1), and 455.225(5), Florida Statutes (2017).

43. The Department brings this disciplinary action to sanction Respondent for her conduct on February 24, 2016. The Department alleges that Respondent practiced veterinary medicine without a license in violation of section 474.213(1)(i).

44. Persons desiring to practice veterinary medicine in Florida must obtain the appropriate professional license from the state. See ch. 474, Fla. Stat. The Department has jurisdiction over the unlicensed practice of veterinary medicine pursuant to sections 455.227(2) and 455.228. Section 455.201(2) directs that the Department shall regulate the professions and occupations so designated when:

(a) Their unregulated practice can harm or endanger the health, safety, and welfare of the public, and when the potential for such harm is recognizable and clearly outweighs any anticompetitive impact which may result from regulation.

(b) The public is not effectively protected by other means, including, but not limited to, other state statutes, local ordinances, or federal legislation.

(c) Less restrictive means of regulation are not available.

45. Section 474.213(1)(i) states that no person shall:

Practice veterinary medicine in this state, unless the person holds a valid, active license to practice veterinary medicine pursuant to this chapter.

46. Section 474.202(9) defines the "practice of veterinary medicine" to mean:

[D]iagnosing 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.

47. Section 474.202(13) defines "veterinary medicine" to include:

[W]ith respect to animals, surgery, acupuncture, obstetrics, dentistry, physical therapy, radiology, theriogenology, and other branches or specialties of veterinary medicine.

48. Notwithstanding the above, section 474.203 carves out several exemptions from chapter 474. Section 474.203(5) (b) specifically directs that chapter 474 does not apply to:

[A] person hired on a part-time or temporary basis, or as an independent contractor, by an owner to provide farriery and *manual hand floating of teeth on equines*. (emphasis added).

49. The Department's action to impose an administrative sanction on Respondent is penal in nature. Accordingly, the Department bears the burden of proving the grounds for disciplinary action by clear and convincing evidence. Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co., 670 So. 2d 932, 935 (Fla. 1996); see also Fla. Dep't of Child. & Fams. v. Davis Fam. Day Care Home, 160 So. 3d 854, 856 (Fla. 2015).

50. Clear and convincing evidence is a heightened standard that requires more proof than a "preponderance of the evidence" but less than "beyond and to the exclusion of a reasonable doubt." Clear and convincing evidence is defined as an intermediate burden of proof that:

[R]equires 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 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 a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

S. Fla. Water Mgmt. v. RLI Live Oak, LLC, 139 So. 3d 869, 872-73 (Fla. 2014) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)). "Although this standard of proof may be met where the evidence is in conflict . . . it seems to preclude evidence that is ambiguous." Westinghouse Elec. Corp. v. Shuler Bros., 590 So. 2d 986, 988 (Fla. 1991).

51. Based on the competent substantial evidence in the record, the Department proved, by clear and convincing evidence, that Respondent, on February 24, 2016: 1) floated the teeth of a horse with a power tool (not by hand); 2) practiced dentistry on several horses by pulling their wolf teeth; and 3) administered a drug to a horse. The testimony from the Department witnesses was explicit, precise, and lacked in confusion. As more specifically addressed below (even with only one good eye), Mr. King's recollection of Respondent's conduct in his barn was clear and unambiguous. Mr. King's statement was supported by Ms. Austin who relayed evidence of Respondent's similar actions prior to her conduct on February 24, 2016.

a. Respondent's Use of a Power Tool

52. The clear and convincing evidence establishes that Respondent used a power tool to float the teeth of a horse at Mr. King's barn. Mr. King unequivocally attested that he observed Respondent float the teeth of his horse, Warrior, with a power tool. Mr. King remembered significant and substantial details to support his narrative. Mr. King described the metal implement Respondent used to float Warrior's teeth. Mr. King capably depicted the manner and method Respondent used to operate the device. While testifying, Mr. King was not challenged or questioned in a manner that caused the undersigned to doubt his credibility or veracity.

53. Florida law allowed Respondent to manually float the teeth of the horses in Mr. King's barn. The exemption under section 474.203(5)(b), however, did not extend to the use of power tools. By using a power tool to float the teeth of Warrior, Respondent dispensed "treatment of whatever nature for the prevention, cure, or relief of . . . bodily injury." Such conduct constitutes the "practice of veterinary medicine" as the term is defined in section 474.202(9). Therefore, when Respondent decided to switch from her hand file to a power tool to float Warrior's teeth (without immediate supervision), she engaged in the practice of veterinary medicine without the required Florida license.

b. Removal of Wolf Teeth

54. The clear and convincing evidence also establishes that Respondent removed wolf teeth from several horses at Mr. King's barn. As with Respondent's use of a power tool, Mr. King emphatically declared that he witnessed Respondent pull wolf teeth from three horses. Mr. King's testimony included descriptive and substantive details. Mr. King comprehensively described Respondent's actions, including the moment when he was distressed at how vigorously Respondent worked at the paint mare's wolf tooth.

55. Under section 474.202(13), veterinary medicine specifically includes "dentistry." Extracting wolf teeth is considered a surgical procedure. Therefore, when Respondent pulled the wolf teeth from the horses in Mr. King's barn, she engaged in veterinary medicine within the definition of section 474.202(9). Consequently, Respondent violated section 474.213(1)(i) by practicing veterinary medicine (without the necessary supervision) without the required license.

c. Administering Sedation

56. Lastly, the clear and convincing evidence establishes that Respondent administered drugs (a sedative) to at least one horse in Mr. King's barn. Mr. King relayed how he watched Respondent unload a "sedative bag" from her car. Later, after he returned from the eye center, he noticed gel tubes/dispensers on

the ground. He also observed that his horses behaved as if sedated. Subsequently, and most significantly, he personally watched as Respondent injected a horse (the paint mare) with a syringe prior to pulling the horse's wolf tooth. Again, while testifying, Mr. King did not exhibit a reason for the undersigned to doubt his credibility or veracity.

57. Section 474.202(9) specifically states that the "practice of veterinary medicine" includes "prescribing, dispensing, or administering drugs, [or] medicine." The evidence introduced at the final hearing demonstrates that Respondent administered a sedative to a horse. Accordingly, by injecting a horse with a drug (without immediate supervision), Respondent engaged in the practice of veterinary medicine, without a license, in violation of section 474.213(1) (i).

58. Mr. King's statement was corroborated by Ms. Austin's testimony reporting her prior encounter with Respondent.^{5/} Ms. Austin described Respondent using the same plan and procedures (floating teeth with a power tool and sedating her horse) and operating with the same equipment (a metal device with a grinder/file on the end and a syringe with a needle) that Respondent employed in Mr. King's barn. Ms. Austin's testimony not only supports Mr. King's statement, thus strengthening his credibility, but belies Respondent's denial of the same.

59. Conversely, while Respondent steadfastly denied that she used a power tool, administered a drug, or extracted wolf teeth, her uncorroborated testimony was not sufficiently persuasive to create some "hesitancy" in finding that she engaged in the "practice of veterinary medicine" as defined in section 474.202(9). Neither did Respondent's denials overcome Mr. King's unwavering account of Respondent's actions and treatment of the horses in his barn on February 24, 2016.

60. Consequently, the testimony and evidence presented at the final hearing establishes, by clear and convincing evidence, that Respondent, without the required veterinary license:

1) floated a horse's teeth with a power tool; 2) practiced dentistry by pulling the wolf teeth of several horses; and 3) administered a drug to at least one horse. Therefore, the Department met its burden of proving that Respondent committed three separate violations of section 474.213(1)(i) in that she practiced veterinary medicine without a license.

61. Under section 455.227(1)(q), the Department is authorized to impose disciplinary sanctions for "[v]iolating any provision of this chapter, [or] the applicable professional practice act."

62. Regarding available sanctions, section 455.227(2) states that when the Department "finds any person guilty of the grounds set forth in [section 455.227(1)] or of any grounds set forth in

the applicable practice act, including conduct constituting a substantial violation of subsection (1) or a violation of the applicable practice act which occurred prior to obtaining a license," it may enter an order imposing one or more of the following penalties:

- (a) Refusal to certify, or to certify with restrictions, an application for a license.
- (b) Suspension or permanent revocation of a license.
- (c) Restriction of practice.
- (d) Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.
- (e) Issuance of a reprimand.
- (f) Placement of the licensee on probation for a period of time and subject to such conditions as the board, or the department when there is no board, may specify. Those conditions may include, but are not limited to, requiring the licensee to undergo treatment, attend continuing education courses, submit to be reexamined, work under the supervision of another licensee, or satisfy any terms which are reasonably tailored to the violations found.
- (g) Corrective action.

63. Based on the evidence in the record, the undersigned concludes that an administrative fine is the appropriate sanction against Respondent.

64. Pursuant to rulemaking authority under section 455.2273, disciplinary guidelines have been adopted to determine the

appropriate penalty the Department may impose. Florida Administrative Code Rule 61G18-30.001 sets forth those disciplinary guidelines. Rule 61G18-30.001(1)(a) addresses practicing veterinary medicine without holding an active license and provides that:

In the case of a non-veterinarian practicing veterinary medicine in the State of Florida the board shall request that the Department . . . impose an administrative fine from three thousand dollars (\$3,000.00) to five thousand dollars (\$5,000.00) for each count.

65. The facts in the record establish that Respondent committed three instances of unlicensed activity. Accordingly, the undersigned determines that an administrative fine in the amount of \$9,000 (\$3,000 for each violation) is appropriate under the circumstances.

66. In addition to an administrative fine, section 455.227(3)(a) states that the Department "may assess costs related to the investigation and prosecution of the case excluding costs associated with an attorney's time." The Department established that it expended \$288.47 in its investigation and prosecution of this matter. The undersigned concludes that this cost should also be assessed against Respondent.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Business and Professional Regulation enter a final order finding that Respondent, Megan McMurrin Lajara, violated section 474.213(1)(i) and impose an administrative fine in the amount of \$9,000 (\$3,000 for each separate violation), as well as assess costs in the amount of \$288.47.

DONE AND ENTERED this 31st day of January, 2018, in Tallahassee, Leon County, Florida.



J. BRUCE CULPEPPER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of January, 2018.

ENDNOTES

^{1/} On February 23, 2017, the Department issued an Amended Administrative Complaint, which alleged an additional count of unlicensed activity (pulling wolf teeth) against Respondent.

^{2/} Dr. Richardson's deposition was admitted into evidence as the deposition of an expert witness under Florida Rule of Civil Procedures 1.330(a)(3)(F).

^{3/} Unless otherwise stated, all statutory references are to the 2015 codification of the Florida Statutes.

^{4/} Ms. Austin's testimony is admitted under section 120.57(1)(d), which states that:

[S]imilar fact evidence of other violations, wrongs, or acts is admissible when relevant to prove a material fact in issue, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity.

Ms. Austin's testimony is relevant to Respondent's preparation, plan, and knowledge of the floating procedure she used to treat horses. Evidence of Respondent's prior treatment of Ms. Austin's horse is probative of Respondent's "state of mind" in that Respondent allegedly used the same "plan or pattern" to treat Mr. King's horses. See also § 90.404(2)(a), Fla. Stat.; and O'Flaherty-Lewis v. State, 42 Fla. L. Weekly 2331 (4th Dist. Ct. App. 2017) (citing Williams v. State, 110 So. 2d 654 (Fla. 1959)) ("The seminal case of Williams v. State approved the admission of other crimes to establish that, in committing the charged crime, the defendant followed a 'plan or pattern' that he had used on other occasions.").

^{5/} The Department did not charge Respondent with any misconduct in her treatment of Ms. Austin's horse. Accordingly, this matter and the discipline recommended only concerns Respondent's actions on February 24, 2016.

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.