

STATE OF CONNECTICUT
CONNECTICUT BOARD OF VETERINARY MEDICINE

Milad Lawendy, D.V.M.
License No. 001258
Park Animal Hospital
17 Park Street
Norwalk, CT 06851

Petition No. 930713-47-015

MEMORANDUM OF DECISION

PROCEDURAL BACKGROUND:

The Department of Public Health ("Department") presented the Connecticut Board Of Veterinary Medicine ("Board") with a Statement of Charges brought against Milad Lawendy, D.V.M. ("Respondent") dated June 20, 1995. This Statement of Charges, along with the Notice of hearing, was sent to Respondent by certified mail, return receipt requested on August 9, 1995. The Notice of Hearing scheduled a hearing for October 11, 1995 and notified the parties that the hearing would be held before the Connecticut Board Of Veterinary Medicine (Department Exhibit 1).

On September 19, 1995, the Department requested a continuance of this hearing. On September 26, 1995 the request was granted. The parties were notified on November 19, 1995 that the hearing was continued to January 3, 1996.

On September 28, 1995, the parties were given notice by the Board of unsolicited documents received from J.A. LaCroix, D.V.M., a volunteer consultant for the Department.

On December 14, 1995, the Respondent filed an Answer. On this date he also filed a Motion to Dismiss based on the ex parte communication sent to the Board by Dr. LaCroix. On December 22, 1995, the Department submitted a Memorandum in Opposition to Respondent's Motion to Dismiss.

On December 14, 1995, the Respondent requested a continuance of the hearing scheduled for January 3, 1996. On December 20, 1995, the request was granted.

On February 26, 1996, the hearing was continued to April 17, 1996, when the hearing began.

On April 22, 1996, the parties were informed that the hearing was continued to July 17, 1996.

On July 11, 1996, the Respondent renewed his request for the dismissal of the charges based on the letter sent by Dr. LaCroix and the unavailability of the transcript of the testimony of Donald Hartrick, D.V.M., the Department's expert witness. On July 12, 1996, the Department submitted an objection to the Respondent's Motion for Dismissal.

On July 18, 1996, the parties were informed that the hearing was continued to July 31, 1996. On July 24, 1996, the Respondent requested a continuance, which was granted by the Board on July 26, 1996.

The Board subpoenaed the audio tapes and transcripts from the April 17, 1996 hearing, to be presented at an October 23, 1996 Board meeting, but they were never produced.

(Transcript 1/22/97, p. 13).

On December 3, 1996, the parties were notified that because the transcript and/or tapes of the hearing held on April 17, 1996 were not available, the testimony would be re-heard on January 22, 1997.

On January 22 and April 2, 1997, the Board held administrative hearings to adjudicate the Respondent's case. The Respondent appeared and was represented by Attorney Barbara Coughlan. The Department was represented by Attorney Roberta Swafford. Both the Department and the Respondent presented evidence and conducted cross-examination of witnesses.

At the January 22, 1997 hearing, the Board considered the Respondent's Motion to Dismiss, based on the ex parte communications of Dr. LaCroix and the lack of a transcript from the first hearing, and denied it.

The Department sent the Respondent a certified letter giving him an opportunity to attend a compliance conference scheduled on November 21, 1994. (Department Exhibit 3).

The Board conducted the hearing in accordance with Connecticut General Statutes Chapter 54 (the Uniform Administrative Procedure Act) and the Regulations of

Connecticut State Agencies § 19-2a-1. *et seq.* All Board members involved in this decision received copies of the entire record. All Board members involved in this decision attest that they have either heard the case or read the record in its entirety. This decision is based entirely on the record and the specialized professional knowledge of the Board in evaluating the evidence.

ALLEGATIONS AND ANSWER:

In Paragraph 1 of the Statement of Charges, the Department alleged that the Respondent is, and has been at all times referenced in the Statement of Charges, the holder of Connecticut veterinary medicine license number 001258. (Department Ex. 1). The Respondent admitted this allegation. (Respondent Ex. B).

In Paragraph 2 of the Statement of Charges, the Department alleged that on or about May 27, 1993, Reina Rave brought her dog, Kazu, to Respondent for veterinary care for injuries sustained after being hit by a car. (Department Ex. 1). The Respondent admitted this allegation. (Respondent Ex. B).

In Paragraph 3 of the Statement of Charges, the Department alleged that on or about May 29, 1993, Kazu was dehydrated and was provided fluid intravenously. (Department Ex. 1). The Respondent admitted that Kazu was provided fluid intravenously, but denied that Kazu was dehydrated. (Respondent Ex. B).

In Paragraph 4 of the Statement of Charges, the Department alleged that on or about May 29, 1993, Kazu was left unattended overnight. The Department further alleged that Kazu

pulled out his IV connection resulting in him becoming severely dehydrated and that Kazu subsequently died. (Department Ex. 1). The Respondent admitted that Kazu was left unattended overnight, claiming his improved condition had allowed him to be moved out of Intensive Care, but denied that Kazu had an IV connection which he pulled out; that Kazu became severely dehydrated; and that Kazu subsequently died. (Respondent Ex. B).

In Paragraph 5 of the Statement of Charges, the Department alleged that Respondent was unskillful in a number of ways during the night of May 29-30, 1993. (Department Ex. 1). In particular, he failed to ensure that Kazu was properly hydrated; failed to provide adequate and/or appropriate monitoring; failed to sedate Kazu; failed to provide Kazu with an Elizabethan collar; and/or failed to provide Kazu's owners with the alternative of a veterinary service that would provide continuous 24 hour monitoring. (Department Ex. 1). The Respondent denied these allegations. (Respondent Ex. B).

In Paragraph 6 of the Statement of Charges, the Department alleged that the above described facts constitute grounds for disciplinary action pursuant to Connecticut General Statutes §20-202(2). (Department Ex. 1). The Respondent denied this allegation. (Respondent Ex. B).

The Department requested that the Board, as authorized in §20-202, revoke or take any other action as authorized in §19a-17 against the veterinary medicine license of Milad Lawendy as it would deem appropriate and consistent with law. (Department Ex. 1).

FINDINGS OF FACT:

1. The Respondent is, and has been at all times referenced in the Statement of Charges, the holder of Connecticut veterinary medicine license number 001258. (Department Ex. 1 and Respondent Ex. C).

2. At approximately 8:00 a.m., on Thursday, May 27, 1993, Kazu, a French poodle owned by Reina and Mario Rave, was struck by a car. (Transcript 1/22/97, p. 56).

3. Mario Rave¹ brought Kazu to the Park Animal Hospital shortly after the accident. (Transcript 1/22/97, p. 56, Respondent Ex. C).

4. When he was brought to Park Animal Hospital, Kazu was bleeding profusely from the mouth. He was comatose and suffering from severe shock. The Respondent's records indicate that at the initial examination, Kazu had a temperature of 99.6 (a normal range for a dog Kazu's age would be between 100 and 102). The Respondent's records further indicate that at the initial examination, Kazu had a heart rate of 68 (a normal range for a dog Kazu's age would be between 60 and 120) and a pulse of 68 (the pulse should agree with the heart rate). Kazu had a respiration of 60 (evidence that Kazu was panting and excited) and pale mucous membranes (evidence that Kazu was in shock). There was right eye, left eye bilateral dilated pupils (evidence of bleeding or trauma in the eye). The Respondent's record does not indicate whether Kazu's eyes were responsive during testing. The

¹ The Statement of Charges indicate that Kazu was brought to the Respondent by Reina Rave. Although there is a variance between the pleading and the proof, it is not material and the Respondent was not prejudiced. Strimiska v. Yates, 158 Conn 179, 184 (1993).

Respondent's records indicate a mandibular symphyseal fracture, or fracture in the lower jaw between the incisor teeth. The Respondent indicated that he secured Kazu's fractured jaw with circular wire (although his records indicate that it was K-wire). (Department Ex. 4, and Transcript 4/2/97, pp. 13-15, 159).

5. The Respondent's records indicate that at the initial examination, Kazu had a capillary refill time of less than two seconds. This is a result that one would expect of a dog of Kazu's age and indicates that, but for the recent trauma, the circulatory system was working. (Department Ex. 4, and Transcript 4/2/97, p. 14).

6. The Respondent admitted that the record was not correct and the actual capillary refill time was about twenty seconds. (Transcript 4/2/97, p. 153).

7. The Respondent's records indicate that at the initial examination, Kazu had a hematocrit of 80. A normal value for a dog Kazu's age would be in the high 40's, and obtaining an extreme value of 80 would require a retesting and, if confirmed, extreme measures. (Department Ex. 4, and Transcript 4/2/97, p. 15).

8. The Respondent acknowledged that 80 was too high of a reading. (Transcript 4/2/97, pp. 155-156).

9. The Respondent's records do not reflect that the Respondent took any further tests for Kazu's hematocrit after the initial one taken on May 27th. (Department Ex. 4).

10. Ms. Rave went to the Park Animal Hospital on the afternoon of May 27th. She spoke to the Respondent's brother and was told that Kazu was in such a poor condition that she could not see him. (Transcript 1/22/97. p. 57).

11. The Respondent's records do not indicate the results of any monitoring of Kazu's condition throughout the rest of May 27th. (Department Ex. 4; Transcript 4/2/97, p. 21).

12. The Respondent's records indicate that at an examination conducted on May 28th, Kazu's status was found to be inappropriate, dazed, and confused. Kazu's temperature, pulse and heart rate had improved to a normal ranges. Kazu's respiration rate was 36, which was high but improved. Kazu's mucous membranes were bright red, and he was probably out of shock. Kazu was not bleeding from the mouth, and the symphyseal repair was intact. Kazu's eyes were still dilated, indicating that there continued to be severe head trauma. A neurological examination conducted on May 28th established, among other things, that Kazu was unable to stand or rise. Reflex responses were difficult to assess because of the head trauma. (Department Ex. 4, and Transcript 4/2/97, pp. 25-28).

13. The Respondent's records indicate that at the examination conducted on May 28th, Kazu's capillary refill time was less than three seconds, indicating that the circulation was a little slow. (Department Ex. 4, and Transcript 4/2/97. p. 27).

14. The Respondent admitted that the recording that the capillary refill time was less than three seconds was incorrect. (Transcript 4/2/97, p. 161).

15. The Respondent's records do not indicate the result of any monitoring of Kazu's condition throughout the rest of May 28th, except to note that Kazu had vomited digested blood at 11:00 p.m. There were no further tests of Kazu taken on that day, including, most significantly, a hematocrit reading. (Department Ex. 4).

16. Ms. Rave visited Kazu on Friday May 28 at approximately noon. Accompanying her were her husband and Beatriz Meza, her niece. (Transcript 1/22/97 pp. 61, 98).

17. Kazu was brought to the waiting room and placed on a towel, but he did not respond to his visitors. He appeared limp and unresponsive. He could not stand, and when this was attempted, his legs bent and he fell. (Transcript 1/22/97 pp. 63, 99).

18. The Respondent's records indicate that at the examination conducted on May 29th, Kazu's status was found to be more appropriate. Although he was able to stand, he was not yet able to walk any distance. Kazu's temperature and pulse were within the normal ranges. The heart rate was erroneously written as 36. Kazu's respiration rate continued to be 36, which was high. Kazu's mucous membranes were pink, and he was probably out of shock. (Department Ex. 4, and Transcript 4/2/97, pp. 26, 31-32).

19. On May 29th, Kazu was again seen by Mr. and Ms. Rave. Kazu was brought to them in the waiting room by the Respondent. Although the Respondent attempted to

stand Kazu up, he was unsuccessful. Kazu was dizzy and described by Ms. Rave as being like a "vegetable". (Transcript 1/22/97 pp. 68-69).

20. Kazu was seen by Beatriz Meza on Saturday, May 29, at approximately 11:00 a.m. The Respondent's brother brought her to the back of the hospital to see Kazu. (Transcript 1/22/97, pp. 100-101).

21. Ms. Meza saw no improvement in Kazu's condition. Kazu continued to be unresponsive and would not move his tail. (Transcript 1/22/97, pp. 101-102).

22. Ms. Rave called the hospital at 6:00 p.m. on May 29, 1993 and was told by the answering service that the hospital was closed and would not be opened until Sunday morning. (Transcript 1/22/97, p 72).

23. Ms. Rave called Ms. Meza, and they both went to the hospital at approximately 10:00 p.m. and stayed for several hours. They observed that the lights were out and that there were no cars in the parking lot. They knocked on the door, but no one responded. (Transcript 1/22/97, pp. 105-107).

24. Ms. Rave and Ms. Meza returned the next day at around 7:30 a.m. and again found no one to be in the hospital. They waited until 8:30 a.m. and called the Respondent from a nearby gas station. (Transcript 1/22/97, pp. 107-108).

25. The Respondent returned the call and indicated that he would come to the hospital. He arrived at 10:30 a.m. (Transcript 1/22/97, p. 13).
26. Ms. Rave and Ms. Meza were present at the hospital when the Respondent arrived and went into the hospital with him to observe Kazu. They found him in a cage shivering because of an open window. Kazu was soiled with urine, feces and vomit. (Transcript 1/22/97, pp. 81, 115).
27. The Respondent had advised Mr. Rave on May 27th that Kazu was in poor condition and would need care at the hospital for more than 24 hours. (Transcript 1/22/97, pp. 59-60).
28. Kazu's owners desired that Kazu be monitored 24 hours a day. (Transcript 1/22/97, p. 57).
29. The Respondent advertises that Park Animal Hospital provides 24-Hour Emergency Service. (Department Ex. 7).
30. The Respondent never advised Kazu's owners that Park Animal Hospital did not always provide continual 24 hour monitoring. (Transcript 1/22/97, p. 64).
31. The Respondent did not provide Kazu's owners with the alternative of a veterinary service that would provide continuous 24 hour monitoring.

32. Donald Hartrick, D.V.M., the Department's expert witness, opined and the Board finds that a dog with the injuries sustained by Kazu would require continuous monitoring until he was stable. (Transcript 4/2/97, p. 20).

33. The Respondent admits that he promised the Raves that Kazu would be monitored 24 hours a day until he stabilized. (Transcript 4/2/97, p. 97)

34. Maurycy Kuhn, D.V.M., the Respondent's expert, testified that when a dog receives head trauma, there should be monitoring for a minimum of 24-48 hours. (Transcript 1/22/97, p. 132).

35. Dr. Hartrick opined and the Board finds that an animal in Kazu's condition would be monitored initially on an hourly basis. (Transcript 4/2/97, p. 21).

36. Dr. Hartrick opined and the Board finds that based on the condition of Kazu, he continued to require constant monitoring through Friday, May 28th. (Transcript 4/2/97, p. 30).

37. Dr. Hartrick opined and the Board finds that based on the condition of Kazu, he continued to require monitoring the evening of May 29 to May 30th. (Transcript 4/2/97, p. 56).

38. Dr. Hartrick opined and the Board finds that the monitoring should have included any significant changes or, if there are no such changes, a note documenting that the status remained the same. (Transcript 4/2/97, pp. 24-25).

39. The Respondent's patient records do not establish what Kazu's hydration status was during his stay at Park Animal Hospital. (Department Ex. 4).

40. The Respondent's patient records provide no evidence that Kazu was monitored on a regular basis on Thursday, May 27th. (Transcript 4/2/97, p. 21).

41. The Respondent's patient records provide no evidence that Kazu was monitored the night of May 27-28. (Transcript 4/2/97, p. 25).

42. The Respondent's patient records provide no evidence that Kazu was monitored on Friday, May 28th. (Transcript 4/2/97, p. 30).

43. The Respondent's patient records provide no evidence that Kazu was monitored on Saturday, May 29th. (Department Ex. 4).

44. The Respondent admitted that Kazu was left unattended the night of May 29-30. (Respondent Ex. C).

45. On May 30, 1993, Ms. Rave and Ms. Meza removed Kazu from Park Animal Hospital and took him to Strawberry Hill Animal Hospital, where he was examined by Dr. Edward Kurose. (Transcript 1/22/97, pp. 82-83, 116-117).

46. Dr. Kurose found Kazu's condition to be serious. Kazu's pupils were not responding, he had no menace reflex, and severe ataxia or incoordination was noted. (Department Exhibit 5; Transcript 4/2/97, p. 37).

47. Dr. Kurose's records included the note "BAR" with the letter B circled. The Board notes for the record that these letters stand for the words "Bright, Alert and Responsive." The act of circling a letter is documentation that the animal did not exhibit the characteristic.

48. On June 1, 1993, after it was concluded that Kazu would not improve, Kazu was euthanized by Dr. Kurose. (Transcript 1/22/97 p. 85; Transcript 1/22/97, p. 85 Department Exhibit 5).

49. The Respondent has had the follow disciplinary actions taken against his license:
- a. Stayed suspension and two-year probation, pursuant to a Consent Order dated November 10, 1983;
 - b. Stayed suspension and one-year probation, pursuant to a Memorandum of Decision dated April 16, 1986;
 - c. Reprimand, pursuant to a Memorandum of Decision dated April 29, 1987; and
 - d. Revocation and civil penalty pursuant to a Memorandum of Decision dated June 1, 1988, with his license reinstated on September 18, 1992. (Department Ex. 2).

DISCUSSION AND CONCLUSIONS OF LAW:

§20-202 of the Connecticut General Statutes provides in pertinent part: "...[the Connecticut Board of Veterinary Medicine] ... may take any of the actions set forth in section 19a-17[with] ... 2) proof that the holder of such license or certificate has been unfit or incompetent or has been guilty of cruelty, unskillfulness or negligence towards animals and birds"

The Board finds that the Department bears the burden of proof by a preponderance of the evidence in this matter. Steadman v. Securities and Exchange Commission, 450 U.S. 91, 101 S. Ct. 999. reh'g denied, 451 U.S. 9333 (1981); Swiller v. Commissioner of Public Health, CV 950705601, Superior Court, J.D. Hartford/New Britain at Hartford, Memorandum filed October 10, 1995.

The Board relied on the testimony of Donald Hartrick, D.V.M., the Department's expert witness. It is noted that Dr. Hartrick has been in a practice dealing with small animals, since 1963. (Transcript 4/24/1997, p. 8). This can be contrasted with the experience of Maurycy Kuhn, D.V.M., the Respondent's expert who, after 6 1/2 years of practicing veterinary medicine, is no longer practicing, but rather is attending Duke University Business School in North Carolina.

The Board relied on the training and experience of its members when making its finding of facts and conclusions of law. Pet v. Department of Health Services, 228 Conn. 651, 667 (1994).

The Board notes that Ms. Rave and Ms. Meza appeared forthright when testifying, and there is no indication that they would personally gain as a consequence of their testimony. The Board finds their testimony credible. Further, the Board finds the testimony of Ms. Rave and Ms. Meza regarding the condition of Kazu throughout his stay at Park Animal Hospital convincing.

The Board does not find the Respondent credible. The Board notes that there were significant conflicts between the testimony and records of the Respondent. For example, the Respondent changed his testimony regarding the hematocrit finding. The Respondent was asked on several occasions by Board members about his recording a hematocrit of 80. When questioned by Dr. Lau, the Respondent replied: "I want to tell the truth to the Board on that because I don't remember. I don't remember. It's been five years." When asked a short time later by Dr. Gorra "So you're saying you did do [the hematocrit test] subsequent times?", the Respondent answered, "Definitely". When questioned about the subsequent findings, he answered: "I don't know. I think within the normal range of 40 or 50 or something like that." (Transcript 4/2/97, pp. 155, 166-167).

Particularly striking are the significant discrepancies between the Respondent's records and the observations of Ms. Rave and Ms. Meza. By May 29th, the Respondent's records indicate that Kazu's status was "more appropriate-able to stand, yet not able to walk any." (Department Ex. 4). Ms. Rave described Kazu as being like a "vegetable". (Transcript 1/22/97, p. 69). Ms. Meza saw no improvement and thought that he continued to be unresponsive. (Transcript 1/22/97, p. 101).

The Board finds that the Department sustained its burden of proof with regards to paragraphs 1 and 2 of the Statement of Charges. The Board finds that the Department sustained its burden of proof regarding paragraph 3, except for the claim that Kazu was dehydrated. Although there was insufficient evidence to determine Kazu's hydration status, the variance between the pleading and the proof was not material, and the Respondent was not prejudiced.

With respect to Paragraph 4 of the Statement of Charges, the Board finds that the Department sustained its burden of proof, by a preponderance of the evidence, that during his time at Park Animal Hospital, from May 27th through May 30th, Kazu was left unattended overnight. The patient record is devoid of any notation or documentation of Kazu being monitored during the overnight hours. The expert witnesses both agreed that there was a need for monitoring in cases involving trauma to the head. The Board finds that the credible evidence established that Kazu was in serious condition throughout his entire stay at the Park Animal Hospital and continued to require monitoring. The Board concludes that Kazu was not monitored during the evening hours. The failure to do this constituted unskillfulness or negligence towards an animal.

Part of monitoring an animal is taking follow-up tests where warranted. Kazu was tested upon admittance to Park Animal Hospital and found to have a Hematocrit of 80. The Respondent acknowledged that this was high. Even Dr. Kuhn indicated that it was not likely to go that high. (Transcript 1/22/97, p. 172). The Board concludes that this was an extremely unusual finding which demanded further inquiry. It was irresponsible for the

Respondent not to take further tests to verify the hematocrit reading, and this conduct constituted unskillfulness or negligence towards an animal.

The record is uncontested that Kazu was seriously injured when he was brought to the Park Animal Hospital. He had suffered from trauma to his head and required monitoring on an hourly basis. The Board finds that Kazu was not appropriately monitored.

Accordingly, the Respondent is guilty of unskillfulness or negligence towards an animal in violation of § 20-202(2) of the Connecticut General Statutes.

With respect to the other allegations in paragraph 4 of the Statement of Charges, the Board finds that the Department did not sustain its burden of proof that Kazu had pulled out his IV connection resulting in him becoming severely dehydrated or that this related to his subsequent death.

With respect to Paragraph 5 of the Statement of Charges, the Board finds that the Department sustained its burden of proof, by a preponderance of the evidence, as to the allegations that the Respondent failed to provide adequate and/or appropriate monitoring and the Respondent failed to provide Kazu's owners with the alternative of a veterinary service that would provide continuous 24 hour monitoring..

The evidence is uncontested that during the night of May 29-30, that Kazu was not monitored despite his condition. The Respondent had a continuing responsibility to monitor Kazu. Although the level of monitoring may not have been as intense as it was initially, there continued to be a need for a periodic review of his status through the night.

The Respondent did not provide this. Accordingly, the Respondent is guilty of unskillfulness or negligence towards an animal in violation of § 20-202(2) of the Connecticut General Statutes.

The evidence is also convincing that the Respondent promised that there would be 24 hours care until Kazu was stabilized. The evidence showed that Kazu did not reach the point of stability which would warrant the cessation of the monitoring. There is no evidence that the Respondent informed the owners of Kazu that he would no longer be providing the promised monitoring. Further, he did not advise them of the option of getting such service from another veterinarian, despite his knowledge that the owners desired such service. The burden is on the respondent to make sure that a client understands what services will be provided them. It is particularly important when a traumatic injury to a pet is involved. At such times it is not unusual to find owners emotionally upset, and it is important that the veterinarian explain to them the services that will be provided. Accordingly, the Respondent is guilty of unskillfulness or negligence towards an animal in violation of § 20-202(2) of the Connecticut General Statutes.

With respect to the other allegations in paragraph 5 of the Statement of Charges, the Board finds that the Department did not sustain its burden of proof.

The Board finds the level of monitoring provided Kazu was significantly below the minimally accepted level. In determining the appropriate sanction in this matter, the Board carefully considered the Respondent's history as a veterinarian in the State of

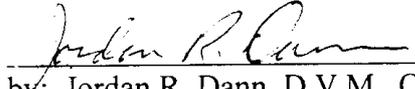
Connecticut. The Board notes that, prior to the allegations contained in this Statement of Charge, the Respondent has been found to have violated § 20-202(2) on four occasions. The most recent decision resulted in a revocation of his license in June 1988. His license was reinstated on September 18, 1992, and the conduct regarding Kazu occurred only eight months later.

ORDER:

Pursuant to the authority vested in it by § 19a-17 and § 20-202 of the Connecticut General Statutes, the Board hereby orders the license of Milad Lawendy to practice veterinary medicine be revoked effective forty-five (45) days from the date of the mailing of this decision to the Respondent, which date is noted below.

Connecticut Board of Veterinary Medicine

11-19-97
Date


by: Jordan R. Dann, D.V.M., Chairman