

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH ¹
BUREAU OF HEALTH SYSTEM REGULATION
DIVISION OF MEDICAL QUALITY ASSURANCE

Adel Saleh, D.V.M.
License No. 001266
33 Elm Street
West Haven, CT 06516

Petition No. 920805-47-022

001220

MEMORANDUM OF DECISION

PROCEDURAL BACKGROUND:

The Department of Health Services (Department) presented the Connecticut Board of Veterinary Medicine (Board) with a Statement Charges brought against Adel Saleh, D.V.M. (Respondent), dated January 25, 1994. (Department Exhibit 1). The Statement of Charges alleged in two counts that the Respondent violated Connecticut General Statutes §20-202(2).

Prior to the initiation of these charges, the Department gave the Respondent the opportunity to attend a compliance conference to show compliance with all lawful requirements for the retention of his license. (Department Exhibit 3). The compliance conference was held on July 7, 1993. (Department Exhibit 3).

1/ Previously, this agency was known as the Department of Health Services. Effective July 1, 1993, the Department of Health Services merged with the Connecticut Alcohol and Drug Abuse Commission to form the new Department of Public Health and Addiction Services. Public Act No. 93-381. Effective July 1, 1995, the Department changed its name to the Department of Public Health. Public Act No. 93-381.

The Respondent filed an Answer to the Statement of Charges and included in his answer a request for a more definite statement. (Department Exhibit 4).

On May 18, 1994, the Board held an administrative hearing. The Board members present included Jordan R. Dann, D.V.M., Chairperson, Ferris G. Gorra, D.V.M., Richard E. Lau, D.V.M. and John C. Gogliettino. The Respondent appeared pro se. Roberta Swafford, Esq. represented the Department. Both the Department and the Respondent presented evidence and were given the opportunity to cross-examine witnesses.

The Board rejected the Respondent's request for a more definite statement, finding the Statement of Charges to be in compliance with Connecticut General Statutes §4-177(b). (Transcript 5/18/94 p. 92; Board Exhibit 2).

The Board conducted the hearing in accordance with Connecticut General Statutes Chapter 54 and the Regulations of Connecticut State Agencies §19-2a-1, et seq. All members of the Board involved in this decision attest that they have either heard the case or read the record in its entirety. The decision is based entirely on the record and the specialized professional knowledge of the Board in evaluating the evidence.

FINDINGS OF FACT:

1. The Respondent is, and has been at all times referenced in the Statement of Charges, the holder of Connecticut veterinarian license number 001266. (Department Exhibit 2).

2. The Respondent practices at Angel Animal Hospital located at 333 Elm Street in West Haven, Connecticut. (Transcript 5/18/94 p. 27; Respondent Exhibits A and B).

3. The Department served the Notice of Hearing and Statement of Charges on the Respondent by certified mail, return receipt requested. Although the Department did not offer the green return card as proof of such mailing, the Respondent specifically admitted receiving the Notice of Hearing and the Statement of Charges and did not contest service. (Transcript 5/18/94 pp. 6-7).

With Regard to the First Count:

4. On or about June 24, 1992, Susan F. O'Connor's cat Bart, an orange and white male, was found in her back yard by her husband with symptoms of labored breathing, darting eyes and lame hind legs. (Transcript 5/18/94 pp. 27, 29).

5. On that same date, Bart was taken to the Respondent's veterinary hospital by Mrs. O'Connor's girlfriend, Cathy McKay. Mrs. O'Connor was not able to take Bart to the veterinary hospital herself, because she was working and her husband was home watching their three children. (Transcript 5/18/94 pp. 27, 51-52).

6. Mrs. O'Connor placed a call to the Respondent's veterinary hospital at 10:00 p.m., but was unable to speak to the Respondent at that time. She called again at 12:00 a.m. and spoke to the Respondent, whereupon the Respondent informed Mrs. O'Connor that he had placed the cat on IV, and that the cat appeared to be doing better. Additionally, the Respondent informed Mrs. O'Connor that he wanted to take a radiograph of Bart, to which she consented. (Transcript 5/18/94 p. 29).

7. The Respondent treated Bart on June 24, 1992 for shock, a concussion, lame hind legs, nystagmus and mild dyspnea by prescribing Amoxicillin, Prednisone, Dexamethasone, vitamin K and IV solutions. The Respondent also testified he took a radiograph of Bart. By June 25, 1992, the Respondent believed that Bart appeared to be 80% normal and authorized his discharge later that day. (Transcript 5/18/94 p. 138; Respondent Exhibit A).

8. Mrs. O'Connor spoke to the Respondent at approximately 4:00 p.m. on June 25, 1992, at which time the Respondent informed her that he had radiographed Bart and had found no internal damage. Also, the Respondent testified that Bart's eyes were normal and he appeared better. The Respondent further opined to Mrs. O'Connor that the cat appeared to have suffered some type of head trauma and may have fallen from a tree. (Transcript 5/18/94 pp. 29-30).

9. On June 25, 1992, sometime around 5:00 p.m., Mrs. O'Connor's husband picked up Bart from the Respondent's veterinary hospital. Upon discharging Bart, the Respondent advised keeping him indoors for a week and giving him Amoxicillin. Mrs. O'Connor testified that she followed these instructions. (Transcript 5/18/94 pp. 30-31).

10. When Bart arrived home that evening, he was still displaying labored breathing. Otherwise, Mrs. O'Connor testified Bart appeared much better and was actually crying for food. (Transcript 5/18/94 p. 32).

11. Over the course of the next couple of weeks, Bart's activities were very limited and slowly his condition deteriorated. Throughout this period, Bart's breathing remained labored. (Transcript 5/18/94 pp. 33-36).

12. On or about July 15, 1992, Mrs. O'Connor took Bart to another veterinary doctor, Dr. K. Paul Rumble, for a subsequent examination. Dr. Rumble graduated from Ontario Veterinary College in 1969 and operates Pond Point Animal Hospital, located in Milford, CT, which specializes in small animal medicine. (Transcript 5/18/94 pp. 36, 64-65).

13. Bart came to Dr. Rumble in a near comatose condition. After performing a physical examination and taking a radiograph of Bart, Dr. Rumble determined that Bart was suffering from three broken ribs and a herniated diaphragm, and that his liver had shifted. Dr. Rumble advised Mrs. O'Connor he could operate to try and repair the damage, but given Bart's condition he was concerned about the likelihood of success. Accordingly, after consulting with Dr. Rumble, the O'Connors decided to euthanize Bart. (Transcript 5/18/94 p. 38, Department Exhibit 10).

14. Dr. Rumble, at Mrs. O'Connor's request, performed an autopsy of Bart. Dr. Rumble confirmed that Bart suffered from a torn diaphragm, that 50% of the lung tissue was atelectatic and the thorax was filled with a straw colored solution. The straw colored solution in the thoracic cavity suggested some hemorrhaging had occurred in the chest. Significantly, Dr. Rumble also noticed

that the atelectatic tissue in the lung was very dark in color, indicating that this condition had been present for a period of time. These findings were documented in Dr. Rumple's hospital report. (Transcript 5/18/94 pp. 38-39, 70, 74-75; Department Exhibit 11).

15. The evidence did not support a finding that Bart had been injured subsequent to seeing the Respondent. Mrs. O'Connor indicated Bart's decline was slow and gradual, and that he did not move much when he was let outside two weeks after seeing the Respondent. (Transcript 5/18/94 pp. 40, 50).
16. As a result of Dr. Rumple's findings, Mrs. O'Connor filed a complaint with the Department against the Respondent. On July 29, 1992, Mrs. O'Connor prepared a two page affidavit detailing her account of her cat's treatment by the Respondent and his condition after treatment. Mrs. O'Connor also called the Respondent and asked for reimbursement for the \$165.00 payment she had made. (Transcript 5/18/94 p. 41; Department Exhibit 5).
17. After Bart was euthanized and autopsied, his body was cremated. (Transcript 5/18/94 pp. 53, 76).
18. The evidence indicates, through Dr. Rumple's testimony, that Bart's symptoms were consistent with a finding of

- broken ribs and a diaphragmatic hernia. Dr. Rumple testified that it would have been medically necessary to take radiographs based on the symptoms Bart was presenting. (Transcript 5/18/94 pp. 76-78).
19. The evidence supports a finding that Bart could have lived for three weeks with his injuries. Although Dr. Rumple testified that it was possible that Bart could have suffered two separate traumas, he felt it was unlikely based on his findings and Mrs. O'Connor's description of Bart's gradual decline. (Transcript 5/18/94 p. 90).
20. Maxine Legeyt Borghesi, D.V.M. was qualified without objection as an expert on behalf of the Department. (Transcript 5/18/94 pp. 98-101)
21. Dr. Borghesi reviewed the records related to Bart, including all the applicable radiographs. (Respondent Exhibit A). Dr. Borghesi was of the opinion that Bart suffered from nystagmus, dyspnea and lame hind legs. Dr. Borghesi testified that the administration of steroids, antibiotics and IV fluids was consistent with the symptomatology. However, with respect to the administration of Vitamin K, Dr. Borghesi stated it was typically only given in a case of rat poisoning. (Transcript 5/18/94 pp. 102-105).

22. The evidence supports a finding that objective diagnostic tests are needed to confirm a diagnosis of a herniated diaphragm. Dr. Borghesi testified in that regard and also indicated that broken ribs are typically left to heal themselves, but that herniated diaphragms can only be repaired by surgical intervention. The Board finds, based on Dr. Borghesi's testimony, that Bart's symptoms were consistent with fractured ribs and diaphragmatic hernia. Dr. Borghesi specifically commented that Bart's symptoms "were consistent with some sort of trauma, being that he was showing signs of thoracic impairment, which means chest impairment, movement of air through his lungs". (Transcript 5/18/94 pp. 98-109, 124-125).
23. The Respondent failed to offer evidence to explain the disparities offered by the Department's witnesses with respect to his course of treatment and final diagnosis. The Respondent's attempt to argue that Mrs. O'Connor had switched cats was not credible in light of Mrs. Connor's and Dr. Rumble's testimony and the Respondent's own testimony that he had never had a problem in his prior dealings with Dr. Rumble. (Transcript 5/18/94 pp. 142-145).
24. Accordingly, the Board finds that the Respondent failed to properly diagnose and treat Bart for severe thoracic trauma and diaphragmatic hernia, and that such action

subjects the Respondent to disciplinary action pursuant to Connecticut General Statutes §20-202(2).

With Regard to the Second Count:

25. With respect to charges in the Second Count, on or about August 12, 1992, the Department corresponded with the Respondent requesting copies of all his records concerning his treatment of Bart. (Transcript 5/18/94 p. 56; Department Exhibit 6). Subsequent to receiving the Respondent's response, the Department re-contacted the Respondent and made further inquiries about the Respondent's radiograph of Bart. (Transcript 5/18/94 p. 59; Department Exhibit 8). The Respondent replied in writing stating that the radiograph he submitted was the only radiograph he had of Bart. (Transcript 5/18/94 p. 60; Department Exhibit 5).

26. The Board finds that the radiograph submitted by the Respondent depicted a lateral projection of a cat's chest and abdomen. Dr. Borghesi testified that the Respondent's radiograph depicted a cat exhibiting calcified ribs, no rib fractures and no sign of internal bleeding or diaphragmatic hernia. (Transcript 5/18/94 pp. 98-109; Department Exhibit 7).

27. Dr. Borghesi also examined Dr. Rumple's hospital records (Department Exhibit 11) and his subsequent X-ray of Bart (Department Exhibit 10). The Board finds that Dr. Rumple's radiograph evidenced that Bart was suffering from three broken ribs, damaged lung tissue and a herniated diaphragm. Dr. Borghesi testified that the cat evidenced in Dr. Rumple's radiograph (Department Exhibit 10) appeared to be a different cat from the one depicted in the Respondent's radiograph (Department Exhibit 7). First, Dr. Borghesi found that the Respondent's radiograph referenced a cat with smaller ribs than the cat portrayed in Dr. Rumple's radiograph. Second, the Respondent's radiograph did not evidence a cat with a bony projection in thoracic vertebra number 8, as referenced in Dr. Rumple's radiograph. Finally, Dr. Borghesi testified that the Respondent's radiograph evidenced some bony bridging in the T-12 through T-13 region, which was not evidenced in Dr. Rumple's radiograph. (Transcript 5/18/94 pp. 109-18).
28. The Board finds that if the Respondent failed to take radiographs of Bart, given his symptoms, it would have been a breach of his standard of care. The Board also finds that if the Respondent caused the wrong cat to be radiographed, this would also have been a breach of his standard of care. (Transcript 5/18/94 pp 125-126).

29. The Respondent testified that he had no idea how to explain the disparities between the various radiographs, other than to suggest that Dr. Rumble had radiographed a different cat. In light of the Department's evidence, the Board finds that the Respondent's claim is not credible and unsupported by the record. (Transcript 5/18/94 pp. 142-145).
30. Accordingly, the Board finds that the Respondent failed to take radiographs of Bart even though it was medically necessary, in violation of Connecticut General Statutes §20-202(2).

DISCUSSION AND CONCLUSIONS OF LAW:

Connecticut General Statutes §20-202(2) provides in pertinent part:

After notice and opportunity for hearing as provided in the regulations established by the commissioner of public health and addictions services, said board may take any of the actions set forth in section 19a-17 for any of the following causes: ... (2) proof that the holder of such license or certificate has become unfit or incompetent or has been guilty of cruelty, unskillfulness or gross negligence towards animals and birds. . . .

In paragraphs 2 and 3 of the First Count, the Department alleged that the Respondent failed to properly diagnose and/or treat Bart for severe thoracic trauma and diaphragmatic hernia on or about June 24, 1992 and that such condition constitutes grounds for disciplinary action pursuant to Connecticut General Statutes §20-202(2).

In Paragraphs 5 and 6 of the Second Count, the Department alleged that the Respondent negligently or intentionally (a) failed to take radiographs of Bart even though it was medically necessary; (b) took radiographs of the wrong cat; and/or (c) placed the radiographs of another cat in Bart's records and identified them as Bart's radiographs, and that such conduct constitutes a violation of Connecticut General Statutes §20-202(2).

The Department sustained its burden with respect to the First Count. The Department presented sufficient credible evidence to establish Paragraph 2 of the First Count. Indeed, the evidence submitted by the Department established that Bart presented symptoms of shock, thoracic trauma, diaphragmatic hernia and a concussion.

Although the potential for a second injury subsequent to the Respondent's initial exam existed, the Board finds Mrs. O'Connor's testimony credible and that Bart's regression after June 24, 1992, was gradual and consistent with an untreated thoracic injury. Indeed, both of the Department's medical experts testified that it was not impossible for a cat to live, albeit in real discomfort, for an extended period of time. (Transcript 5/18/94 pp. 78-79, 126).

The relevant record reflects that the Respondent did administer steroid, antibiotic and IV solutions to treat Bart's shock and

trauma. However, the Respondent failed to diagnose the severe thoracic trauma. Additionally, the administration of the vitamin K shot, in the face of the symptomology presented, was improper. (Transcript 5/18/94 pp. 38-39, 70, 74-75). Accordingly, the Board finds that the Respondent violated Connecticut General Statute §20-202(2).

With respect to the Second count, the Board's finding that the Respondent failed to take radiographs of Bart even though it was medically appropriate is supported by Dr. Borghesi's testimony. Specifically, Dr. Borghesi testified that the Respondent's radiograph differed significantly from the radiograph taken by Dr. Rumpel and that, indeed, two different cats were referenced in the radiographs. (Transcript 5/18/94 pp. 109-118). The Department sustained its burden with respect to the Second Count and accordingly, the Board concludes that the Respondent's action was in violation of Connecticut General Statute §20-202(2).

However, the Board cannot determine from the evidence submitted whether the Respondent took radiographs of another cat instead of Bart and/or placed the radiographs of another cat in Bart's records and identified them as Bart's radiographs. The Board notes for the record that there have been no previous complaints filed against the Respondent. As there was no evidence submitted by the Department indicating possible reasons for misdiagnosis or misrepresentation, the Board

prefers to assume the Respondent's action was the result of an error, not necessarily intentional.

ORDER:

Pursuant to the authority vested in it by Connecticut General Statutes §19a-17 and §20-202(2), the Board orders the following in this case against Adel Saleh, D.V.M., Petition No.

920805-47-022, Veterinarian license No. 001266:

1. The Respondent is placed on probation for six (6) months under the following terms and conditions:
 - a. The Respondent shall take eighteen (18) hours of continuing education in general veterinary practice and, if available, office management courses related to the practice of veterinary medicine during the six month probationary period.
 - b. The Respondent shall submit at his own expense ten (10) complete radiographic cases over the six (6) month period to Dr. Gorra. The Respondent should refer to the American Animal Hospital Association guidelines when preparing such cases for review. Cases submitted shall include all hospital records and radiographic images and shall be sent to:

Bonnie Pinkerton, Nurse Consultant
Department of Public Health
150 Washington Street
Hartford, CT 06106

2. Dr. Gorra shall submit two (2) quarterly reports to the Department and the Board detailing the appropriateness of the Respondent's relevant treatment and diagnosis.

3. Any deviation by Respondent from the terms and conditions of this decision shall constitute a violation, and may result in the summary suspension of his license as referenced in the following procedure:
 - a. That Respondent will be notified in writing that the term(s) of probation have been violated provided no prior written consent for deviation from the term(s) had been granted by the Board;

 - b. That said notification shall include the act(s) or omission(s) which violate the probation;

- c. That Respondent will be allowed fifteen (15) days to demonstrate to the Department that he was in compliance with the terms of probation, or to cure the violation of the terms of probation;
- d. That if Respondent does not demonstrate compliance or cure the violation by the limited fifteen (15) day date certain contained in the notification of violation to the satisfaction of the Department, his license shall be revoked unless he requests a hearing as provided below;
- e. Respondent must initiate said hearing through a written request by certified mail to the Department within fifteen (15) days from notification of violation of probation;
- f. Respondent shall be entitled to a hearing before the Board if he requests the same in a timely fashion;
- g. Evidence presented to the Board by either the Department or Respondent at said hearing shall be limited to the alleged violation(s) of the term(s) of probation.

4. This decision shall be considered a letter of reprimand.
5. This Order shall become effective thirty (30) days from the date of the Chairperson's signature on this Memorandum of Decision, which is February 23, 1996.

Connecticut Board of Veterinary Medicine

1/24/96
Date

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



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

September 27, 1996

Dr. Adel Saleh
33 Elm Street
West Haven, Connecticut 06516

Re: Memorandum of Decision
Petition No. 920805-47-022
License No. 001266
S.S.N. [REDACTED]
D.O.B. [REDACTED]

Dear Dr. Saleh:

Please accept this letter as notice that you have successfully completed the terms of your license probation, effective the date of this letter.

Notice will be sent to our License and Registration section to remove any restrictions from your license related to this Memorandum of Decision.

Thank you for your cooperation during this process.

Very truly yours,

Bonnie Pinkerton
Nurse Consultant
Legal Office

cc: Debra Tomassone



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