

STATE OF CONNECTICUT
CONNECTICUT BOARD OF VETERINARY MEDICINE

Cynthia Smith, D.V.M.

Petition No. 2001-0404-047-008

MEMORANDUM OF DECISION

Procedural Background

On November 29, 2002, the Department of Public Health ("the Department") presented the Connecticut Board of Veterinary Medicine ("the Board") with a Statement of Charges dated November 21, 2002, against Cynthia Smith, D.V.M. ("respondent"). Board Exh. 1. The Charges, along with the Notice of Hearing, was sent to respondent by certified mail, return receipt requested, and first class mail on November 30, 2002. The Notice of Hearing scheduled a hearing for February 19, 2003, and notified the parties that the hearing would be held before the Board. Dept. Exh. 1.

On January 22, 2003, respondent filed an Answer. Rt. Exh. A.

On January 29, 2003, the Board granted a request for continuance that had been requested by the Department. Board Exh. 1.

On April 30, 2003, the Board held an administrative hearing to adjudicate respondent's case. Respondent appeared *pro se*. The Department was represented by Attorney Ellen Shanley. During the hearing, the Department moved to amend paragraph 3 of the Statement of Charges ("the Charges"); the motion was granted; and, respondent orally answered the new allegation. Tr. pp. 11-12.

The Board conducted the hearing in accordance with Chapter 54 of the Connecticut General Statutes (the Uniform Administrative Procedure Act) and Conn. Agencies Regs. §§19a-9-1, et seq. All Board members involved in this decision received copies of the entire record and attest that they have either heard the case or read the record in its entirety. This decision is based entirely on the record.

Allegations

1. In Paragraph 1 of the Charges, the Department alleges that respondent is, and has been at all times referenced therein, the holder of Connecticut veterinarian license number 001794.
2. In Paragraph 2 of the Charges, the Department alleges that respondent provided care and treatment to Max, a dog owned by Pat Kaliszewski.
3. In Paragraph 3 of the Charges, the Department alleges that during 2000-2001, Ms. Kaliszewski reported to respondent that Max was experiencing lameness.
4. In Paragraph 4 of the Charges, the Department alleges that in providing such care and treatment to Max, respondent negligently and/or unskillfully failed to test for the symptoms presented.
5. In Paragraph 5 of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to Conn. Gen. Stat. §20-202(2).

Findings of Fact

1. Respondent of Putman, Connecticut, is and has been at all times referenced in the Charges, the holder of Connecticut veterinarian license number 001794. Rt. Exh. A.
2. On December 23, 2000, respondent provided care and treatment to Max, a Rottweiler mix male dog owned by Pat Kaliszewski. Max had a history of chronic bilateral cranial cruciate ligament ruptures, which had been repaired, and degenerative bone disease. Max presented with hind-end lameness. His differential diagnosis was traumatic injury and arthritis flare-up. Respondent prescribed the anti-inflammatory Rimadyl. Dept. Exh. 2; Tr. pp. 23, 52, 84.
3. On February 14, 2001, Max presented to respondent's office for radiographs. At that time, he had persistent hind-limb lameness, newly developed right forelimb lameness, diarrhea, and rectal bleeding. His physical examination also revealed that he could bear full weight on all limbs. Right forelimb palpation showed slight sensitivity to carpal flexion, and the rectal exam showed a right anal gland abscess. Respondent prescribed amoxicillin, metronidazole, and Rimadyl. Dept. Exh. 2; Rt. Exh. A; Tr. pp. 24, 89, 90, 91, 92, 93.
4. On February 14, 2001, the clinical assessment did not reveal crepitis or a displaced fracture. Dept. Exh. 2; Tr. p. 90.
5. On February 14, 2001, respondent performed a radiograph of Max's lateral view of his lower spine and pelvis. The radiograph was underdeveloped and failed to show good detail of the bone. Additionally, respondent failed to take a complete set of radiographs that viewed the entire limb. Tr. p. 29, 42, 43, 99-100.

6. On February 24, 2001, a phone report revealed that the owner had mistakenly started prednisone instead of Rimadyl. Respondent advised the owner to go back to Rimadyl. Dept. Exh. 2.
7. On March 1, 2001, respondent reexamined Max. He complained of lameness and a swollen shoulder, but was weight bearing on that limb and only slightly sensitive to palpation. Respondent mistakenly assumed that radiographs of the shoulder were included in the ones taken on February 14, 2001, and failed to take a radiograph at that time. Dept. Exh. 2; Tr. pp. 31, 32, 33, 71, 90, 107.
8. On March 1, 2001, respondent offered orthopedic consultation and her records were accurate. Tr. pp. 32, 107.
9. In providing such care and treatment to Max, respondent negligently and/or unskillfully failed to take adequate radiographs, review her prior records, treatment and diagnosis, and take subsequent radiographs. Tr. pp. 67, 68, 99-100.
10. Respondent was unskillful in performing the radiograph that she took. Tr. pp. 30-32.

Discussion and Conclusions of Law

Section 20-202 of the Connecticut General Statutes provides, in pertinent part, that the Connecticut Board of Veterinary Medicine “may take any of the actions set forth in §19a-17 for any of the following causes . . . (2) proof that the holder of such license or certificate has been unfit or incompetent or has been guilty of cruelty, unskillfulness or negligence toward animals and birds; . . .” The Department bears the burden of proving one or more of these causes by a preponderance of the evidence. *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*, 15 Conn. Law Rptr. No.16, 532 (January 29, 1996).

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

The Department met its burden of proof with regard to all of the Charges. Accordingly, respondent’s conduct in providing care and treatment to Max constitutes grounds for disciplinary action pursuant to Conn. Gen. Stat. §20-13c.

A preponderance of the evidence establishes that sometime during 2000 and 2001, respondent provided care to Max, a Rottweiler mix male dog. On February 23, 2000, Ms. Kaliszewski reported to respondent that Max was experiencing lameness. In providing such care, respondent performed a radiograph of the leg; however, because the radiograph was of such

poor quality and was limited to only the lower extremity, respondent was unable to make a correct diagnosis and failed to determine that Max suffered from osteosarcoma.

Respondent concedes that on February 24, 2001, she should have taken a more comprehensive radiograph and mistakenly assumed that she had already taken a full set of radiographs on February 14, 2001, and that such failure was due to the fact that she only saw Max for a period of two weeks. Respondent further concedes that she did not take any more radiographs because, at the time, respondent believed Max's problem was related to the upper limb or a spinal problem.

Respondent also contends that Ms. Kaliszewski was given the opportunity of having an orthopedic consultation, and that the dog was responding favorably, and she was unaware that it had a rapid worsening of symptoms until it underwent euthanasia.

The Board finds that respondent properly referred Max to a specialist. However, the Board also finds that because respondent's first set of radiographs were of such poor quality and were limited to only the lower extremity, they were in fact useless. Respondent also failed to review her records of prior treatment and diagnosis, and to take a comprehensive set of radiographs. Therefore, respondent negligently and unskillfully failed to test the symptoms presented by Max.

Order

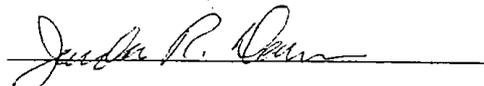
Based upon the record in this case, the above findings of fact and conclusions of law, and pursuant to the authority vested in it by Conn. Gen. Stat. §§ 19a-17(a) and 20-202, the Board orders the following in the case of Cynthia Smith, D.V.M., Petition number 2001-0404-047-008, veterinarian license number 001794:

Respondent's veterinarian license is hereby reprimanded.

Connecticut Board of Veterinary Medicine

NOVEMBER 12, 2003

Date



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