

**STATE OF CONNECTICUT
CONNECTICUT BOARD OF VETERINARY MEDICINE**

Stephen Tobin, D.V.M.

Petition No. 2007-1031-047-024

MEMORANDUM OF DECISION

Procedural Background

On September 16, 2009, the Department of Public Health ("the Department") issued a Statement of Charges ("the Charges") against the veterinarian license of Stephen Tobin, D.V.M. ("respondent"). Bd. Exh. 1. The Charges, along with the Notice of Hearing, was sent to respondent by certified mail, return receipt requested on September 23, 2009. The Notice of Hearing notified the parties that the hearing would be held before the Connecticut Board of Veterinary Medicine ("the Board") on November 4, 2009. Bd. Exh. 1.

On September 29, 2009, respondent filed an Answer. Bd. Exh. 2. After one continuance, on June 23, 2010, a hearing was held before the Board. Respondent appeared *pro se*; the Department was represented by Attorney Ellen Shanley.

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

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 001935.
2. In paragraph 2 of the Charges, the Department alleges that during 2007, respondent provided care and treatment to Abigail, a puppy belonging to the Kuhanecks.
3. In paragraph 3 of the Charges, the Department alleges that during June 2007, Abigail was scheduled for an ovariohysterectomy by respondent.

4. In paragraph 4 of the Charges, the Department alleges that on or about June 12, 2007, respondent performed surgery on and provided post-surgical treatment to Abigail, and did not complete the ovariohysterectomy.
5. In paragraph 5 of the Charges, the Department alleges that respondent negligently and/or unskillfully provided care and treatment to Abigail by:
 - a. failing to adequately identify Abigail's anatomical features;
 - b. failing to implement an adequate anesthetic plan during surgery;
 - c. treating Abigail with an unassayed substance;
 - d. failing to keep adequate or accurate records; and/or
 - e. failing to provide adequate post-operative care and/or post-operative pain relief.
6. In paragraph 6 of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to § 20-202(2) of the Statutes.

Findings of Fact

1. Respondent is, and has been at all times referenced in the Charges, the holder of Connecticut veterinarian license number 001935. Bd. Exh. 2.
2. During 2007, respondent provided care and treatment to Abigail, a puppy belonging to the Kuhanecks. Bd. Exh. 2.
3. During June 2007, Abigail was scheduled for an ovariohysterectomy by respondent. Bd. Exh. 2.
4. On or about June 12, 2007, respondent performed surgery on and provided post-surgical treatment to Abigail. Respondent did not complete the ovariohysterectomy. Bd. Exh. 2; Tr. p. 28.
5. Respondent failed to adequately identify Abigail's umbilicus. This failure led to respondent unskillfully providing care and treatment. Dept. Exh. 1; Tr. pp. 47, 51-52, 103.
6. Respondent also failed to identify a mass in Abigail's abdomen, and was unable to find the ovaries or uterus. However, respondent's failure to identify a mass and inability to find the ovaries or uterus, were neither negligent nor unskillful. Dept. Exh. 1, pp. 2-3; Tr. pp. 15-16, 42, 52, 70, 104.
7. Respondent failed to implement an adequate anesthetic plan during surgery. Dept. Exh. 4; Tr. pp. 65-68, 79.

8. The evidence is insufficient to establish that respondent treated Abigail with an unassayed substance. Dept. Exhs. 1 and 4; Tr. pp. 90-95, 104-105, 127.
9. Respondent failed to keep adequate or accurate records. Dept. Exhs. 1 and 4; Tr. pp. 42, 51-52, 68-71, 86, 98, 100.
10. Respondent failed to provide adequate post-operative care and post-operative pain relief. Dept. Exh. 4; Tr. pp. 15-18, 71-72, 74, 77.

Discussion and Conclusions of Law

Section 20-202 of the Statutes provides, in pertinent part, that the Board “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 . . .”

The Department bears the burden of proof 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); *Goldstar Medical Services, Inc., et al. v. Department of Social Services*, 288 Conn. 790 (2008). The Board finds that the Department met its burden of proof with respect to the allegations in paragraphs 1 through and including 5b, 5d, and 6, but failed to meet its burden with respect to paragraph 5c.

Respondent admits the allegations in paragraphs 1 through and including 4 of the Charges that, during 2007, respondent was a licensed veterinarian responsible for the care and treatment of Abigail, and had scheduled an ovariohysterectomy on June 12, 2007. Respondent further admits that he did not complete the ovariohysterectomy.

With regard to the allegations contained in paragraph 5a of the Charges, the Department sustained its burden of proof. A preponderance of the evidence establishes that respondent was unable to identify Abigail's umbilicus, a necessary and basic skill for this type of surgery. Respondent testified that during surgery he observed a red spot that he believed was the umbilicus. Tr. pp. 47, 103. Respondent's inability to identify Abigail's umbilicus constitutes an unskillful provision of care and treatment by the respondent.

Respondent also failed to identify a mass he felt in Abigail's abdomen. He admitted that he could not identify a “very thick muscular cylindrical organ” that he found. Ms. Kuhaneck

testified that respondent told her that he thought he had found a mass or tumor, and that he was unable to find the ovaries or uterus. Tr. pp. 15-16, 42, 52, 70, 104. Respondent also immediately referred the case to a surgeon. Respondent's inability to identify a mass and locate the ovaries and uterus are neither negligent nor unskillful, and respondent acted appropriately by referring the case to a surgeon.

With regard to the allegations contained in paragraph 5b of the Charges, the Department sustained its burden of proof. The evidence establishes respondent failed to implement an adequate anesthetic plan during surgery, a course of action that was negligent as well as unskillful. As stated in the written opinion of Dr. Marrinan regarding respondent's surgery anesthetic plan, "the combination of domitor, torbugesic, and diazepam as an anesthetic and analgesic plan is below the standard of care that an 'average, reasonably prudent' veterinarian would provide for a large dog abdominal surgery" (Dept. Exh. 4). Dr. Marrinan also testified that the use of those anesthetics alone would be insufficient to properly and thoroughly examine the abdomen. Abigail had not been anesthetized at all, and thus should not have been subjected to surgery. Additionally, an IV catheter should have been in place in case other drugs had to be administered. Dept. Exh. 1; Tr. pp. 65-68.

With regard to paragraph 5c of the Charges, the Department failed to meet its burden of proof. The Board finds that respondent did not treat Abigail with an unassayed substance. Dr. Marrinan agreed with respondent that Yunnan Pai Yao is used to stop bleeding and improve the body's ability to clot. Dept. Exhs. 1 and 4; Tr. pp. 90-95, 104-105, 127.

With regard to paragraph 5d of the Charges, the Department established by a preponderance of the evidence that respondent negligently and unskillfully failed to keep adequate or accurate records in providing care and treatment to Abigail. As stated in the testimony of Dr. Marrinan, the medical record is meant to serve as a "guidepost" for both the recording veterinarian as well as any other veterinarian who may treat the animal (Tr. pp. 100), and that respondent's records were "wanting," particularly given what had transpired during surgery. Tr. pp. 69. Furthermore, at the hearing, respondent conceded that he should have written more in his records regarding Abigail's surgery. Tr. pp. 42, 51-52, 68-71. Therefore, the Department met its burden of proof with regard to the allegations contained in this paragraph.

With regard to the allegations in paragraph 5e of the Charges, the Department sustained its burden of proof. Dr. Marrinan testified that “post-operative instructions should be given to all patients who receive surgery,” and should include directions for medications and for contacting the veterinarian, descriptions of normal and abnormal findings, and information as to when follow-up will occur. Tr. pp. 71-72, 74. Post-operative instructions can be given orally, but must be charted. There was nothing present in respondent’s written medical record regarding post-operative care. Moreover, Ms. Kuhaneck testified that when Abby was discharged, respondent did not provide her with any written instructions or medications, and that no instructions were given regarding restrictions on Abby’s activities or what to do in the event of an emergency. Tr. pp. 15-18; Dept. Exh. 1.

Furthermore, respondent failed to assess Abigail’s pain properly, as there was no evidence of adequate pain relief. Dr. Marrinan testified that Abigail’s post-operative pain “was not addressed to the standards that the average veterinarian in 2007 would have used,” and thus failed to meet the standard of care. Tr. pp. 64, 77; Dept. Exh. 4. The pain medications used by respondent, Lidocaine and Arnica, were inadequate. As testified by Dr. Marrinan, Lidocaine is not a long-term pain medication, but only “produces a short term of anesthesia in the local area in which it is infused for up to two hours.” Tr. pp. 97. Respondent testified that Arnica’s effectiveness “lasts for an indefinite period of time,” but admitted that he had no way of assessing that timeframe since he discharged his patients soon after medicating them. Tr. pp. 109. The record was devoid of any indication that respondent assessed Abigail’s pain level.

Accordingly, the facts in this matter constitute grounds for disciplinary action pursuant to §20-202(2) of the General Statutes.

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 §§19a-17 and 20-202 of the Statutes, the Board orders the following in the case of Stephen Tobin, D.V.M., Petition number 2007-1031-047-024, who holds Connecticut veterinarian license number 001935:

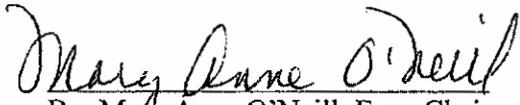
1. Respondent’s license shall be permanently restricted in that respondent is prohibited from performing surgery.

2. Respondent's license shall be placed on probation for a period of eighteen months under the following terms and conditions:
 - a. Respondent shall attend and successfully complete three classes, pre-approved by the Department, one in each of the following subject areas: medical records, pain management, and anesthesia. Within thirty days of the completion of such coursework, respondent shall provide the Department with proof, to the Department's satisfaction, of the successful completion of such courses.
 - b. If respondent provides proof to the satisfaction of the Department of completion of the required coursework in less than eighteen months, respondent may petition the Board to terminate the probation at an earlier date.
3. All reports, correspondence and/or other communication with the Department and/or the Board required pursuant to this Order shall be sent to:

Bonnie Pinkerton
Department of Public Health
410 Capitol Avenue, MS #12HSR
P.O. Box 340308
Hartford, Connecticut 06134-0308
4. Respondent shall be responsible for all costs associated with the satisfaction of the terms of this Memorandum of Decision.
5. This Order shall become effective upon the signature of the Board Chairperson.

Connecticut Board of Veterinary Medicine

8/25/2010
Date


By: Mary Anne O'Neill, Esq., Chairman

CERTIFICATION

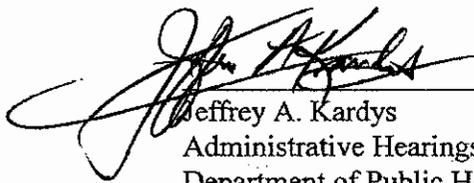
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 25th day of August 2010, by certified mail, return receipt requested, and first class mail to:

Stephen Tobin, DVM
26 Pleasant Street
Meriden, CT 06450

Certified Mail RRR #91 7108 2133 3932 0556 3023

and via email to:

Matthew Antonetti, Principal Attorney
Legal Office
Department of Public Health
410 Capitol Avenue, MS #12LEG
Hartford, CT 06134-0308



Jeffrey A. Kardys
Administrative Hearings Specialist/Board Liaison
Department of Public Health
Public Health Hearing Office

**STATE OF CONNECTICUT
CONNECTICUT BOARD OF VETERINARY MEDICINE**

April 14, 2011

Stephen Tobin, DVM
26 Pleasant Street
Meriden, CT 06450

**Via Email
and First Class Mail**

Matthew Antonetti, Principal Attorney
Legal Office
Department of Public Health
410 Capitol Avenue, MS #12LEG
PO Box 340380
Hartford, CT 06134-0308

Via Email

RE: Stephen Tobin, DVM - Petition No. 2007-1031-047-024

RULING ON REQUEST TO TERMINATE PROBATION

On August 25, 2010, the Connecticut Board of Veterinary Medicine (Board) issued a Memorandum of Decision (Decision) placing respondent's license on probation for a period of eighteen months and permanently restricting respondent from performing surgery.

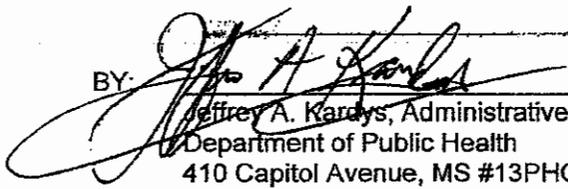
A condition of probation required respondent to attend and successfully complete three courses pertaining to medical records, pain management, and anesthesia. The decision allowed respondent to petition the Board to terminate the probation at an earlier date upon successful completion of the required coursework. On or about April 4, 2011, respondent provided documentation to the Department of Public Health demonstrating that he completed courses required to terminate the probation.

At its regularly scheduled meeting on April 13, 2011, the Board reviewed a request from respondent asking that the probation of his Veterinarian license No. 001935, be terminated. The Department of Public Health did not object to this request.

It was the unanimous decision of the Board that respondent's request to terminate the probation be **GRANTED** effective immediately.

The permanent restriction prohibiting respondent from performing surgery shall remain in effect.

FOR: CONNECTICUT BOARD OF VETERINARY MEDICINE

BY: 

Jeffrey A. Kardys, Administrative Hearings Specialist/Board Liaison
Department of Public Health
410 Capitol Avenue, MS #13PHO
PO Box 340308
Hartford, CT 06134-0308
Tel. (860) 509-7648 FAX (860) 509-7553

c: Michael J. Purcaro, Chief of Administration
Wendy Furniss, Branch Chief, Healthcare Systems
Jennifer Filippone, Section Chief, Practitioner Licensing and Investigations
Henry Salton, Assistant Attorney General
Ellen Shanley, Staff Attorney, Department of Public Health
Bonnie Pinkerton, RN, Nurse Consultant, Department of Public Health



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

April 14, 2011

Stephen Tobin, DVM
26 Pleasant Street
Meriden, CT 06450

Re: Petition No. 2007-1031-047-024
Memorandum of Decision
License No.001935

Dear Dr. Tobin:

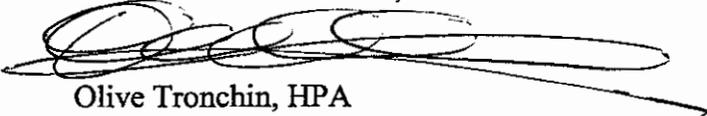
Please accept this letter as notice that you have satisfied the terms of your license effective April 13, 2011.

Pursuant to paragraph 1 of the Board's Order states you are permanently restricted from performing surgery.

Please be certain to retain this letter as documented proof that you have completed your license probation.

Thank you for your cooperation during this process.

Best of luck in the future,



Olive Tronchin, HPA
Practitioner Licensing and Investigations Section

✓cc: Jennifer Fillippone



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