STATE OF CONNECTICUT
CONNECTICUT BOARD OF VETERINARY MEDICINE

Jane M. Lewis, D.V.M.
License No. 002803

Petition No. 2005-0714-047-018

MEMORANDUM OF DECISION

Procedural Background

On January 7, 2008, the Department of Public Health ("the Department") issued a Statement of Charges ("the Charges") against the veterinarian license of Jane M. Lewis, D.V.M. ("respondent"). Bd. Exh. 1. The Charges, along with the Notice of Hearing, were sent to respondent by certified mail, return receipt requested. The Notice of Hearing notified the parties that a hearing would be held before the Connecticut Board of Veterinary Medicine ("the Board") on January 30, 2008. Bd. Exh. 1. On or about January 16, 2008, respondent filed a request for a postponement of the hearing. Bd. Exh. 2. On or about January 17, 2008, the Department filed an objection to respondent's request for a postponement. Bd. Exh. 2. On January 17, 2008, the Board denied respondent's request for a postponement of the hearing. Bd. Exh. 2.

On January 30, 2008, respondent filed an Answer to the Charges.[1] Resp. Exh. 1.

On January 30, 2008, a hearing was held before the Board. Respondent did not appear and was not represented by an attorney; Attorney Ellen Shanley represented the Department.

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 §§19a-9-1 *et seq*. All Board members received copies of the entire record and attest that they 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.

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[1] Respondent's written statement, dated January 15, 2008, and submitted with respondent's request for a postponement of the hearing, was accepted as the Answer to the Charges. Resp. 1; Tr. pp. 14-15.

Allegations

1. In paragraph 1 of the Charges, the Department alleges that Jane M. Lewis of Winsted, Connecticut (hereinafter "respondent") is, and has been at all times referenced in this Statement of Charges, the holder of Connecticut veterinarian license number 002803.

2. In paragraph 2 of the Charges, the Department alleges that on or about May 31, 2005, Karen Bonicki found an injured cat. She contacted Waterbury Animal Control Services (hereinafter "Animal Control"), and was instructed to take the cat to the Mattatuck Animal Hospital (hereinafter "Hospital"). Ms. Bonicki took the injured cat to the Hospital.

3. In paragraph 3 of the Charges, the Department alleges that respondent practiced as a veterinarian at the Hospital at all relevant times. Respondent became responsible for the care and treatment of the cat.

4. In paragraph 4 of the Charges, the Department alleges that on the same day, Ms. Bonicki contacted the hospital to check on the cat's well being, and was informed that no x-rays of the cat would be taken until the cat's owner was located.

5. In paragraph 5 of the Charges, the Department alleges that on or about May 31, 2005 - June 1,2005, Ms. Bonicki contacted the Hospital, offering to pay for the x-rays and requesting that x-rays of the cat be performed. Ms. Bonicki was told that she should seek custody of the cat through Animal Control. Ms. Bonicki began to make arrangements for the adoption of the cat, and its care and treatment.

6. In paragraph 6 of the Charges, the Department alleges that respondent, acting at the direction of Animal Control, euthanized the cat. Subsequently, Ms. Bonicki was in contact with the Hospital to check on the cat's condition. Respondent instructed hospital staff to inform Ms. Bonicki that the cat's owners had picked up the cat.

7. In paragraph 7 of the Charges, the Department alleges that in providing care and treatment to the cat, respondent failed to keep adequate or accurate records.

8. In paragraph 8 of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut §20-202 including but not limited to:

    a. §20-202(2); and/or,
    b. §20-202(5).

Findings of Fact

1. Respondent is, and has been at all times referenced in the Charges, the holder of Connecticut veterinarian license number 002803.

2. On May 31, 2005, Karen Bonicki found an injured black cat ("the cat") on the side of a road in Waterbury. Ms. Bonicki contacted Waterbury Animal Control Services ("Animal Control") and was instructed to take the cat to the Mattatuck Animal Hospital ("Hospital"), which she did. Dept. Exh. 2; Tr. pp. 16-17.

3. At all relevant times, respondent practiced as a veterinarian at the Hospital and was responsible for the care and treatment of the cat. Resp. Exh. 1.

4. On May 31, 2005, respondent examined the cat and determined it suffered from a fractured hind leg and could not support its weight on the other three limbs. Resp. Exh. 1.

5. Animal Control gave authority to the Hospital to euthanize the cat if necessary. Resp. Exh.1; Dept. Exh. 2; Tr. p. 21.

6. On May 31, 2005, after Ms. Bonicki left the cat at the Hospital, she called the Hospital, and also later appeared at the Hospital, to inquire about the cat. Ms. Bonicki was informed that the cat was stable and that no x-rays of the cat would be taken until the cat's owner was located. Later that evening, Ms. Bonicki called the Hospital again and spoke with respondent. Resp. Exh. 1; Tr. pp. 17-19.

7. On or about May 31, 2005, or June 1, 2005, Ms. Bonicki contacted the Hospital and offered to pay for the x-rays and requested that x-rays of the cat be performed. She was told that she should seek custody of the cat through Animal Control. Ms. Bonicki began to make arrangements for the adoption of the cat, and its care and treatment. Resp. Exh. 1; Tr. pp. 17-20, 24-25.

8. On or about May 31, 2005, and June 1, 2005, Ms. Bonicki began to make arrangements for the adoption of the cat, and its care and treatment. She contacted an organization that pays for medical expenses for stray animals, and organizations that arrange for adoptions of cats. Ms. Bonicki also tried to find the cat's owner by posting signs and putting an ad in the local newspaper. Tr. pp. 19-21.

9. On June 1, 2005, respondent, acting at the direction of Animal Control, euthanized the cat. Resp. Exh. 1; Dept. Exh. 2.

10. On June 1, 2005, respondent told staff that if Ms. Bonicki called after the cat was euthanized, she should be told that the cat's owner had picked up the cat and taken it to its regular veterinarian. Resp. Exh. 1.

11. On June 1, 2005, after the cat was euthanized, Ms. Bonicki called the Hospital to inquire about the cat. A Hospital staff person told Ms. Bonicki that the cat's owner had picked up the cat. Resp. Exh. 1; Tr. p. 21.

12. On June 1, 2005, respondent deceived the public by instructing her staff to inform Ms. Bonicki that the cat had been picked up by its owner when, in fact, the cat had been euthanized. Dept. Exh. 3; Resp. Exh. 1.

13. Respondent did not enter or oversee any data entered in the Hospital's medical record regarding the cat. Dept. Exh. 2; Resp. Exh. 1.

14. In providing care and treatment to the cat, respondent failed to keep adequate records. Dept. Exh. 2 and 3.

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 . . . has become unfit or incompetent or has been guilty of cruelty, unskillfulness or negligence towards animals and birds . . . [or] (5) the publication or circulation of any statement of a character tending to deceive or mislead the public. . . .

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. 933 (1981); *Swiller v. Comm'r of Public Health*, No. CV970573367, Superior Court, J.D. Hartford/New Britain at Hartford, February 19, 1998.

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*, 228 Conn. 651, 667 (1994).

The Department alleges in the Charges that respondent's veterinary license is subject to disciplinary action pursuant to § 19a-17 of the General Statutes for the following reasons: (a) respondent instructed her staff to lie to Ms. Bonicki by telling her that the cat's owner had picked up the cat; and (b) in providing care and treatment to the cat, respondent failed to keep adequate or accurate records. In support of its case, the Department called Ms. Bonicki as a witness, and offered the cat's medical record and the written opinion of Diana J. Lafer, DVM, as exhibits. Respondent was not present for the hearing, but submitted a signed statement (Resp. Exh. 1) in support of her case.

In her written statement, respondent admits the allegations in paragraphs 1, 3, 4, and 6 of the Charges. Respondent admits that Ms. Bonicki brought the cat to the Hospital, that respondent was the veterinarian responsible for the care and treatment of the cat, and that Ms. Bonicki offered to pay for x-rays of the cat. Respondent also admits to lying to Ms. Bonicki. In her statement, respondent admits that she told the staff "to tell [Ms. Bonicki] that the cat's owner had showed [sic] up and taken the cat to her regular veterinarian." Respondent further admits: "Yes, I instructed the staff to lie to this woman" (Resp. Exh. 1, p.3). Respondent mislead Ms. Bonicki by instructing the staff to tell her that the cat was picked up by its owner when, in fact, the unclaimed injured cat had been euthanized. It is unethical for any veterinarian, regarding the practice of veterinarian medicine, to willingly deceive of mislead the public, or to instruct another to deceive or mislead the public. Respondent's lie to Ms. Bonicki is a violation of § 20-202(5) of the General Statutes.

A preponderance of the evidence establishes the allegations set forth in paragraph 2 of the Charges. Ms. Bonicki testified that she found an injured cat, that she contacted Animal Control and was instructed to take the cat to the Hospital, and that she took the cat to the Hospital. Tr. pp. 16-17.

A preponderance of the evidence establishes the allegations set forth in paragraph 5 of the Charges. Respondent admits that Ms. Bonicki offered to pay for x-rays and requested that x-rays be performed. Resp. Exh. 1. Ms. Bonicki testified that the Hospital told her that she should seek custody of the cat through Animal Control, and that she began to make arrangement for the adoption of the cat, and its care and treatment. Tr. pp. 19-25.

Regarding paragraph 7 of the Charges, the Department established, by a preponderance of the evidence, that respondent failed to keep adequate records in providing care and treatment to the cat. The Department failed, however, to meet its burden of proving that respondent failed to keep accurate records in providing care and treatment to the cat. Respondent submitted the following in her statement:

> In fact, the Waterbury dog pound record is the only record at [the] Hospital that I have never personally recorded data into. . . . Review of dog pound records and day sheets was handled by my employer, so I would not have been aware if there was any information that was omitted from a dog pound

> case. Even though I realize the medical records of patients seen by me are supposed to be my responsibility, I never felt it was my place to tell my employer or the city that they should change their record keeping system, nor would any suggestions for change have been welcomed. . . .

(Resp. Exh. 1, p. 2). The standard of care requires that the veterinarian who is responsible of the care and treatment of an animal is also responsible for the medical record regarding the animal in his or her care. Respondent took no responsibility, whatsoever, for what was entered in the Hospital's records regarding the cat. Respondent breached the standard of care. As stated in the written opinion of Dr. Lafer regarding the medical record of the cat at issue, "[t]he records are deficient in many areas" (Dept. Exh. 3). The standard of care requires that the medical record include, but not be limited to, the following: subjective assessment, objective assessment, evaluation, plan of care, and treatment administered. The cat's medical records fail to meet the standard of care. Respondent's failure to keep adequate records for the cat is a violation of § 20-202(2) of the General Statutes.

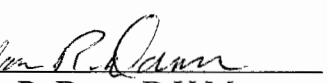
Regarding paragraph 8 of the Charges, the Department established, by a preponderance of the evidence, that the facts in this matter constitute grounds for disciplinary action pursuant to §§ 20-202(2) and 20-202(5) of the General Statutes.

Order

Based upon the record in this case, the above findings of fact and the conclusions of law, and pursuant to the authority vested in it by §§19a-17 and 20-202 of the General Statutes, the Board orders that Connecticut veterinarian license number 002803 held by Jane L. Lewis, be reprimanded.

Connecticut Board of Veterinary Medicine

May 21, 2008
Date


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

CERTIFICATION

I hereby certify that, pursuant to Connecticut General Statutes §4-180(c), a copy of the foregoing Memorandum of Decision was sent this 21st day of May 2008, by certified mail, return receipt requested, to:

Jane M. Lewis, DVM
28 Maple Street
Winsted, CT 06098

Certified Mail RRR #9171082133393205554984

and by Inter-Departmental Mail to:

Stanley K. Peck, Section Chief
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