

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Katrina Sheryce Jackson, D.V.M., :  
Petitioner :  
 :  
v. : No. 315 C.D. 2008  
 : Submitted: June 20, 2008  
State Board of Veterinary Medicine, :  
Respondent :

BEFORE: HONORABLE DORIS A. SMITH-RIBNER, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

*OPINION NOT REPORTED*

MEMORANDUM OPINION  
BY JUDGE SMITH-RIBNER

FILED: August 14, 2008

Petitioner, Katrina S. Jackson, D.V.M., petitions for review of a final order of the State Board of Veterinary Medicine (Board) that imposed sanctions against Petitioner for violations of the Veterinary Medicine Practice Act (Act), Act of December 27, 1974, P.L. 995, *as amended*, 63 P.S. §§ 485.1 - 485.33. Petitioner argues that the Board abused its discretion in determining that Petitioner engaged in fraud, deception, misrepresentation, dishonesty or illegal practices and that the Board's finding that Petitioner failed to maintain proper medical records was not supported by substantial evidence.

On February 5, 2006, at approximately 11:00 p.m., Cynthia Gindhart presented her cat to Petitioner for treatment. The cat was treated by its regular veterinarian for urinary obstruction three days earlier, but on February 5 Gindhart noticed that her cat was lethargic, had decreased responses and had not urinated all day. Petitioner diagnosed the cat with urinary obstruction and discussed treatment options as well as euthanasia. Petitioner's medical records indicate that Gindhart decided not to pursue treatment "due to financial concerns and guarded prognosis

with no certainty that this will not be a recurring problem." Board Findings of Fact No. 15. Gindhart elected euthanasia and signed an authorization for cremation. She paid Petitioner \$65 for the office visit, \$39.50 for an electrolyte panel, \$18.50 for sedation, \$40 for euthanasia, \$55 for cremation and \$4 for medical waste.

After Gindhart and her daughter left the office, one of Petitioner's employees asked if there was anything that could be done to save the cat. The employee suggested calling another client, S. Guy, who had offered financial assistance to cats in the past, and Petitioner authorized the employee to make the call. Guy agreed to pay for the costs of treatment, and based on this commitment Petitioner planned to turn the cat over to Guy to find a good home for the cat if it recovered. Petitioner then commenced treating the cat in lieu of euthanasia.

Petitioner never asked Gindhart whether she would sign her cat over to Petitioner's practice (BCV – Bucks County Vets), never notified Gindhart that her cat had not been euthanized or was being treated and never obtained Gindhart's permission to continue with treatment. Despite these omissions, Petitioner treated the cat with IV and urinary catheters, antibiotics and phenoxybenzamine over five days, and she listed BCV as the cat's owner in place of Gindhart on the medical records. Following treatment, the cat was doing well and expected to recover. Thereafter, on February 10, 2006, one of Petitioner's former employees arrived at BCV with a police officer, and after speaking to the officer Petitioner agreed to return the cat. Gindhart retrieved it the same day. One or two days later Petitioner refunded Gindhart the money that she paid for euthanasia and cremation.

With these facts, the Board concluded that Petitioner violated Section 21(4) of the Act, 63 P.S. §485.21(4), which prohibits dishonest practices in or connected with the practice of veterinary medicine. The Board also concluded that Petitioner violated Section 21(11), 63 P.S. §485.21(11), which prohibits departure

from or failure to conform to the standards of acceptable and prevailing veterinary medical practice, and that Petitioner violated Section 21(24), 63 P.S. §485.21(24), as well as Section 27.1 of the Act, added by Section 2 of the Act of December 9, 2002, P.L. 1370, 63 P.S. §485.27a, which require veterinarians to keep certain records pertaining to animals receiving their services.

The Board sanctioned Petitioner for dishonesty and failure to maintain proper records but not for failure to conform to acceptable veterinary standards. Petitioner was assessed a \$2000 civil penalty (\$1000 per violation) and received a twelve-month suspension divided into twenty-one days of active suspension with the remainder stayed in favor of probation. The Court's review of the Board's order is limited to deciding whether a constitutional violation or an error of law has occurred or whether the necessary findings of fact are supported by substantial evidence. *Nelson v. State Board of Veterinary Medicine*, 938 A.2d 1163 (Pa. Cmwlth. 2007). Substantial evidence has been held to be such evidence that a reasonable mind might consider as adequate to support a conclusion. *Walsh v. Unemployment Compensation Board of Review*, 943 A.2d 363 (Pa. Cmwlth. 2008).

Petitioner first challenges the determination that she violated Section 21(4) of the Act, which prohibits "[f]raud, deception, misrepresentation, dishonest or illegal practices in or connected with the practice of veterinary medicine." She contends that the Board erred in finding her practices to be dishonest when she never intended to deceive Gindhart. Referring to the dictionary definitions of the words "fraud," "deceit" and "misrepresentation," the Board determined that Petitioner was not subject to discipline for fraud as she had no intent to defraud Gindhart; that by agreeing to euthanize the cat and accepting payment yet failing to honor the agreement Petitioner was guilty of deceit; that it would make no finding of whether Petitioner's conduct was illegal because the Board had no expertise in

criminal law; and that it would make no specific determination of whether Petitioner was guilty of misrepresentation. The Board found that by the ordinary dictionary definition, "dishonesty" is characterized by lack of truth, honesty or trustworthiness and does not require intent to deceive and that Petitioner at least was guilty of dishonesty and therefore subject to discipline under Section 21(4).

Petitioner bemoans the Board's order as a great miscarriage of justice, based upon the interpretation of words according to their dictionary meaning, but the Court stresses the provision in Section 1903(a) of the Statutory Construction Act of 1972, 1 Pa. C.S. §1903(a), that allows the construction of words according to their common and approved usage. She further cites her displeasure in euthanizing a young and highly salvageable cat and asserts that her actions were in the cat's best interests. Also, she relies on the facts that a third party became available and that the treatment decision was made at approximately two o'clock in the morning to justify her failure to immediately call Gindhart. The Board noted that Gindhart could have been called during standard business hours, but Petitioner chose not to do so. Based on the findings in this regard, the Court agrees with the Board that it did not err in determining that Petitioner engaged in dishonesty and consequently was subject to discipline under Section 21(4) of the Act.

Petitioner next argues that her practices did not violate Section 21(11) of the Act. She cites the Court's opinion in *Nelson v. State Board of Veterinary Medicine (Nelson I)*, 863 A.2d 129, 138 (Pa. Cmwlth. 2004), where it stated: "We believe, and hold, that subsection (11) prohibits an act or omission that results in negligent care of an animal." Petitioner maintains that the Board should not have found a violation of Section 21(11) because her conduct did not result in negligent care of Gindhart's cat. Citing, *inter alia*, *Batoff v. State Board of Psychology*, 561 Pa. 419, 750 A.2d 835 (2000), the Board invokes the collective expertise of its

members and its power to determine whether specific conduct violates statutory mandates. The Court recognizes the Board's expertise but at the same time follows the limits of its scope of review, *i.e.*, to determine whether the Board committed an error of law or made findings not supported by substantial evidence of record.

The Board addressed whether Petitioner departed from or failed to conform to the standards of acceptable and prevailing veterinary medical practice; however, the Board's determination in this regard did not relate to the negligent care of Gindhart's cat but rather to Petitioner's dishonesty in conducting her practice. While dishonesty is not acceptable in veterinary practice, it is addressed by Section 21(4) of the Act. Pursuant to this Court's decision in *Nelson I* Section 21(11) applies only when there has been an alleged act or omission that resulted in negligent care, and because Petitioner was not charged with negligent care the Board erred in finding a violation of Section 21(11), although no specific sanction was imposed. Further, the Court is unpersuaded by the assertion that "negligence" in the administrative arena connotes a "breach of duty" rather than an injury under tort law. The Board posits that Petitioner breached a duty to perform agreed upon services, and even though injury need not be shown she in fact caused injury to Gindhart's property interests through dishonesty and conversion of property.

Finally, the Board found that Petitioner violated Section 21(24) and Section 27.1 of the Act by failing to keep or cause to be kept a written record of all animals receiving veterinary services. Petitioner contends that the Board did not have substantial evidence to support the finding that she failed to maintain proper records. Her argument is that the substitution of her practice in place of Gindhart in the written records is rendered insignificant by the fact that the practice's computer program properly retained the owner's name and contact information at all relevant times, accessible by referencing chart number 15775, which appeared

accurately throughout the records. This number was linked through the computer to the name of the cat's owner and other identifying information.

Section 21(24) of the Act provides that the Board shall suspend or revoke a license or otherwise discipline a licensee who is found guilty of failing to maintain required medical records. Under Section 27.1 a veterinarian shall keep or cause to be kept a written record of all animals receiving veterinary services, and the minimum amount of information to be included in written or electronic records shall be established by the Board. The regulation at 49 Pa. Code §31.22 provides:

Veterinary medical records serve as a basis for planning patient care and as a means of communicating among members of the veterinary practice. The records furnish documentary evidence of the patient's illness, hospital care and treatment and serve as a basis for review, study and evaluation of the care and treatment rendered by the veterinarian. A veterinary medical record shall be kept in a problem-oriented or similar format that allows any veterinarian, by reading the record, to proceed with the care and treatment of the patient and allow[s] the Board or other agency to determine the advice and treatment recommended and performed....

(1) *Record required.* A veterinarian shall maintain a separate veterinary medical record for each patient, herd or group, as appropriate, which accurately, legibly and completely reflects the evaluation and treatment of the patient or patients. The veterinary medical record must identify the treating individual after each chart entry.

(2) *Identity of patient.* The veterinary medical record must include, at a minimum, the following information to identify the patient, herd or group:

(i) Client identification.

(ii) Appropriate patient identification....

Thus the relevant regulation requires veterinarians to maintain a separate record for each patient that "accurately, legibly and completely reflects the evaluation and treatment" provided and also to include, at a minimum, "client identification" so that the patient can be identified.

At the very least, Petitioner's records for the cat contained conflicting information, but there evidently is no dispute that they include client identification as well as listed BCV as the owner. The question is whether listing BCV as an owner in the written records while computer records listed Gindhart represented a violation of the requirement to maintain records to allow for the identification of a patient. The Board found that by Petitioner's admission the records incorrectly listed BCV as the owner, and it concluded, as a result, that Petitioner was subject to sanction. The Board presumed that as the records did not meet the required standards, a veterinarian entering Petitioner's practice would be unable to ascertain that Gindhart was the cat's true owner and hence could not proceed with treatment as the owner's consent would not be obtained. Based on this record, however, the Court is reluctant to determine that substantial evidence exists to support a finding that Petitioner failed to maintain records to properly identify the cat in violation of Section 21(24) of the Act. Because there is no claim that she failed to maintain records in connection with evaluation and treatment of the cat, the Court holds that the Board erred in finding a violation of Section 21(24) and imposing sanction.

Accordingly, the Court reverses the Board's order to the extent that it found a violation of Section 21(11) and Section 21(24) of the Act, and it affirms as to the Board's finding that Petitioner violated Section 21(4). The Board is correct in its observation that the Court may not substitute its discretion for that of the Board in determining appropriate sanctions, *see Slawek v. State Board of Medicine*, 526 Pa. 316, 586 A.2d 362 (1991); the Court however is not mandated to uphold

sanctions when it determines that the Board has erred in its adjudication. Because of its disposition, the Court orders a remand to the Board for modification of the sanction against Petitioner to be imposed solely for violation of Section 21(11).

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DORIS A. SMITH-RIBNER, Judge



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  :

No. 315 C.D. 2008

***ORDER***

AND NOW, this 14th day of August, 2008, the Court reverses in part and affirms in part the final order of the State Board of Veterinary Medicine and remands this matter for modification of the sanction it imposed.

Jurisdiction is relinquished.

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DORIS A. SMITH-RIBNER, Judge