

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1813-94T5

IN THE MATTER OF SUSPENSION
~~OR REVOCATION OF LICENSE OF~~
SAMUEL RUBIN, D.V.M.
TO PRACTICE VETERINARY MEDICINE
IN THE STATE OF NEW JERSEY

Submitted: October 24, 1995 Decided: **NOV 14 1995**

Before Judges Dreier and A.M. Stein.

On appeal from a Final Decision of the
New Jersey Board of Veterinary Medical
Examiners.

Roy Baylinson, attorney for appellant
Samuel Rubin, D.V.M. (Mr. Baylinson,
on the brief).

Deborah T. Poritz, Attorney General,
attorney for respondent New Jersey
Board of Veterinary Medical Examiners
(Andrea M. Silkowitz, Assistant Attorney
General, of counsel; Brenda Talbot Lewis,
Deputy Attorney General, on the brief).

PER CURIAM

Petitioner, a veterinarian, appeals from a final order of
the New Jersey State Board of Veterinary Medical Examiners
suspending his license for one year but staying the suspension
and placing him on probation for that period. The probationary
period has now expired. The Board also imposed a \$5,000 fine,
broken down as follows: \$2,500 for failure to render emergency
services and abandonment of a cat, Billy; \$1,000 for improper

dosage of anesthesia; \$1,000 for failure to monitor the anesthetized animal; \$500 for failure to maintain accurate and complete medical records.

Petitioner raises five points on this appeal:

THE PROCESS WAS FUNDAMENTALLY UNFAIR AND VIOLATES EVERY DUE PROCESS CONCEPT.

THE BOARD ERRED IN FINDING THAT THE ADMINISTRATION OF 1.0 cc OF KETAMINE WITH ACEPROMAZINE INTRAMUSCULARLY TO A CAT OF BILLIE'S WEIGHT REPRESENTS A DEVIATION FROM THE STANDARD OF CARE.

THE BOARD ERRED IN DECIDING THAT APPELLANT FAILED TO RENDER EMERGENCY TREATMENT AND ABANDONED THE PATIENT.

THE BOARD ERRED IN FINDING THAT ADMINISTRATION OF ANESTHESIA FURTHER ENDANGERED BILLIE'S LIFE.

THE BOARD ERRED IN DETERMINING THAT APPELLANT'S RECORDS WERE IMPROPER AND THAT APPELLANT ENGAGED IN PROFESSIONAL MISCONDUCT.

Petitioner was requested to treat Billy for feline urological syndrome, and diagnosed a urinary tract obstruction, a painful and potentially life-threatening condition. He administered an anesthetic, ketamine, to prepare the cat for the insertion of a catheter, but then refused to continue the treatment.

The cat's owner had previously brought the animal to petitioner for treatment, and petitioner had always been paid. After administering the anesthetic, petitioner discovered that the owner had refused to fill out petitioner's payment forms which required disclosure of substantial private information

concerning ability to pay, employment and the like. The charge for the procedure was only \$30, and the owner rightfully took umbrage at petitioner's absolute requirements for the requested information before treatment would be completed. His refusal to provide the balance of the treatment without the information led the owner to take the animal to another veterinarian. An emergency clinic provided the needed services.

Petitioner contends that this case also raises the issue of a veterinarian's obligation to provide free emergency services. The issue was alluded to by the State in its answering brief and was responded to in petitioner's reply brief. As petitioner notes, the implication from the Board's opinion is that such services must be provided without compensation. Petitioner vigorously argues that while equivalent duties may be imposed upon attorneys, they are not imposed on physicians, dentists or other health care professionals, nor should they be imposed upon veterinarians. The applicable regulation, N.J.A.C. 13:44-2.10 states: "Veterinarians shall provide emergency care." This regulation could be read as merely requiring veterinarians not to close their practices to emergency cases, provided that payment was made for the services rendered. Alternatively, the statute could be read as requiring the emergency services to be provided regardless of an owner's ability to pay. After our review of the record, we find that we need not decide the issue in this case.

It is true that the animal's pain had been lessened by the anesthesia, but the Board had competent evidence before it

supporting its finding that the administration of the anesthesia compromised the animal's chances of recovery. The fact that the animal actually did recover is not, as contended by petitioner, evidence that there had been no emergency. But in view of the fact that petitioner was not asked to perform the services without compensation, and the fact that the owner never refused to pay petitioner, we find the question of whether services must be provided free of charge is not really presented in this case. Furthermore, petitioner's actions constituted the abandonment of the animal after treatment had commenced rather than a refusal to treat the animal.

We have only a single problem with the final decision and order of the Board. In petitioner's fifth point, he claims error in the imposition of the \$500 fine for failing to maintain proper records. He correctly notes that this offense had not been charged in the complaint, nor had he been given an opportunity to be heard on this issue. Due process considerations require that the adjudication of a violation on this point be reversed, and the \$500 penalty imposed be vacated.

With this one exception, we affirm the decision and order of the State Board of Veterinary Medical Examiners dated October 11, 1994, substantially for the reasons stated therein.

I hereby certify that the foregoing is a true copy of the original on file in my office.



Clerk