

FILED WITH THE BOARD OF  
VETERINARY MEDICAL EXAMINERS  
ON 10-8-96

STATE BOARD OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC  
SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF VETERINARY MEDICAL  
EXAMINERS  
DOCKET NO.

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IN THE MATTER OF THE SUSPENSION OR :  
REVOCATION OF THE LICENSE OF: :  
 : Administrative Action  
CLIFFORD GLADE, D.V.M. :  
 : FINAL DECISION AND ORDER  
LICENSED TO PRACTICE VETERINARY :  
MEDICINE IN THE STATE OF NEW JERSEY :  
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This matter was opened to the New Jersey State Board of Veterinary Medical Examiners ("Board") upon the filing of a complaint by Deborah T. Poritz, Attorney General of New Jersey, by Brenda Talbot Lewis, Deputy Attorney General. This complaint, filed May 24, 1995, alleged that Clifford Glade, D.V.M., engaged in professional misconduct in violation of N.J.S.A. 45:1-21(e); the use or employment of dishonesty, fraud, deception and misrepresentation contrary to N.J.S.A. 45:1-21(b); gross negligence, gross malpractice or gross incompetence in violation of the provisions of N.J.S.A. 45:1-21(c); and repeated acts of negligence, malpractice or incompetence contrary to N.J.S.A. 45:1-21(d). Specifically, the pleading alleged that Dr. Glade had engaged in professional misconduct and gross malpractice and negligence in that he improperly and incompletely spayed a two-year old female Maine Coon cat named Thelonia, owned by David C. Alexander. The respondent filed an answer to the complaint with the Board on July

21, 1995, in which he denied the allegations contained in the complaint and enumerated eight separate defenses.

A hearing was held in this matter on May 22, 1996. Deputy Attorney General Brenda Talbot Lewis appeared on behalf of the complainant. The respondent did not appear. Deputy Attorney General Lewis presented as a witness Audrey Weiner, Assistant Executive Director of the State Board of Veterinary Medical Examiners. Ms. Weiner testified that it was her duty, among other responsibilities, to notify respondents of hearing dates. She indicated that she had notified Dr. Glade of the hearing date via a correspondence dated April 19, 1996. Ms. Weiner identified the April 19th letter as an exhibit presented by Deputy Attorney General Lewis and said letter was admitted into evidence as P-1.

This notice advised Dr. Glade of the May 22, 1996, hearing date and further notified him that this was a peremptory date which would not be adjourned for any reason. Ms. Weiner further testified that the letter had been forwarded to Dr. Glade by both regular mail and certified mail, return receipt requested. She advised the Board that while the Board office did not receive the certified mail receipt, the regular mail, sent to the same address as the certified mail, had not been returned and, thus, was considered delivered. Ms. Weiner, therefore, maintained that proper service of the notice of the hearing date had been made on Dr. Glade. Deputy Attorney General Lewis moved that the Board enter a Default Judgment against the respondent since service had been properly made on Dr. Glade.

The Board conducted its deliberations in executive session on May 22, 1996, and announced its decision in public session on that

same date. The Board noted that N.J.A.C. 13:44-4.11 requires every licensee to notify the Board in writing of any change in his or her residential address, in addition to any change in his or her practice address, within thirty (30) days of such change and to inform the Board of an address where the licensee may be reached. No information concerning a change of address for Dr. Glade had been received recently. Therefore, the Board concluded that the respondent had been properly served and had sufficient notice of the hearing. Furthermore, the Board determined that Dr. Glade had failed to appear before it, and hence, was in default.

The Board notes that there is no statutory or regulatory requirement that requires a full hearing when a licensee has defaulted in a disciplinary proceeding. It is well settled that where no issue of material fact exists as to a violation of an administrative regulation, a plenary hearing is not mandated. In re Micro-Cable Communications Corporation, 176 N.J. Super. 197, 205 (App. Div. 1980). Similarly, in judicial proceedings where a defendant is in default, a hearing is not required. Rather, R. 4:43-2 leaves the determination whether to hold a hearing, and to what extent, as to the any of the plaintiff's allegations to the discretion of the judge. The mandates of the Administrative Procedure Act require that a licensee be given an "opportunity to for a hearing after reasonable notice" before an agency takes disciplinary action. See N.J.S.A. 52:14B-9(a) and 52:14B-11. The Board determined that Dr. Glade was given such notice and opportunity to be heard but failed to appear. Thusly, since he defaulted, no material fact was in issue. Therefore, the manner by which the Board accepted the proofs during the default hearing is

entirely discretionary. In re Micro-Cable Communications Corporation, supra, 176 N.J. Super. at 206-207.

Having found Dr. Glade in default, the Board directed the Deputy Attorney General to proceed with the hearing and address the allegations contained in the May 24, 1995, complaint. Deputy Attorney General Lewis presented the testimony of David C. Alexander. Mr. Alexander testified that he had taken other pets to Mountain Lakes Hospital for Animals, the respondent's office, for medical treatment in the past. He indicated that on or about August 28, 1991, he took his cat, Thelonia, to the Mountain Lakes Hospital for Animals for spaying, which included the removal of both right and left ovaries and both uterine horns and bodies. He testified that Dr. Glade was the only veterinarian in the office that saw Thelonia. Mr. Alexander further testified that while he made the arrangements through the receptionist, he believed Dr. Glade would perform the surgery. On or about August 28, 1991, surgery was performed on Thelonia. On or about August 29, 1991, the day after the surgery, Mr. Alexander testified that he brought Thelonia home. Approximately three (3) weeks later, Mr. Alexander brought Thelonia back to Dr. Glade for examination because, he maintained, she was experiencing problems with her recovery. Following surgery, Thelonia required additional treatment, including the administration of antibiotics.

Mr. Alexander further testified that in the Spring of 1992, Thelonia began to go into heat. He brought her to Dr. Glade for examination at that time. Dr. Glade, in or about April 1992, found a mass in Thelonia's abdomen. Subsequent to medical testing, the respondent diagnosed a kidney enlargement and recommended that the

kidney be removed. Dr. Glade did not perform any tests to determine if any ovarian tissue remained despite the owner's complaint of heat symptoms. Mr. Alexander testified that prior to this date he had not spoken to Dr. Glade concerning Thelonia's August 1991 spay. During the April 1992 examination, Mr. Alexander testified that Dr. Glade advised him that he was familiar with and remembered Thelonia. Dr. Glade then told Mr. Alexander that, prior to the initial spay surgery, Thelonia had only one ovary, indicating that her right side was normal but that there was no ovary on her left side. Mr. Alexander maintained that the respondent did not have any records when he related this information but rather that he remembered said information from memory.

On or about April 8, 1992, Dr. Glade operated and removed Thelonia's kidney. Mr. Alexander testified that the respondent advised him that this surgery would abate Thelonia's symptoms of heat. Further, he maintained that Dr. Glade did not mention or recommend performing exploratory surgery on Thelonia in order to determine why she still exhibited symptoms of heat. In or about June 1992, following the second surgery, Mr. Alexander testified that Thelonia exhibited signs of heat again. He contacted Dr. Glade and advised him of Thelonia's symptoms. Mr. Alexander maintained that the respondent indicated that her heat symptoms would go away.

On or about June 3, 1992, Mr. Alexander took Thelonia to Dr. Glade's office for overnight observation so that the respondent could observe her heat symptoms. He testified that he picked her up the next day and was advised by the respondent that Thelonia showed no signs of heat. On or about April 5, 1993, Thelonia was examined by

another veterinarian since her symptoms persisted. Mr. Alexander testified that the results of blood tests taken by this veterinarian indicated that Thelonia had an elevated estrogen level. Further, the complainant testified that this veterinarian opined that these results suggested that ovarian tissue was present in Thelonia. Mr. Alexander maintained that Dr. Glade never took any blood tests or samples from Thelonia subsequent to the initial spay surgery even though he complained to the respondent that Thelonia was in heat.

On or about April 7, 1992, according to the testimony of Mr. Alexander, exploratory surgery was performed on Thelonia. This surgery revealed an intact right ovary, uterine horn and uterine body which were removed. The complainant testified that Thelonia recovered from this surgery and has had exhibited no signs of heat thereafter.

The following exhibits were admitted into evidence during the testimony of Mr. Alexander:

- P-2 Treatment bill for services rendered to Cleo, a pet owned by David Alexander, dated May 24, 1990, at the Mountain Lakes Hospital for Animals.
- P-3 The transcript of the testimony of Clifford Glade, D.V.M., provided at a March 23, 1994, Investigative Inquiry held before the Board.
- P-4 Patient and Surgery/Anesthesia Log Records of Thelonia from the Mountain Lakes Animal Hospital (2 pages).
- P-5 The transcript of the testimony of Kim Slade, D.V.M., provided at an April 11, 1994, Investigative Inquiry held before the Board.

The Board considered the transcript of Dr. Glade's appearance before it on March 23, 1994, admitted into evidence as P-3. During this appearance, Dr. Glade testified that Thelonia's initial surgery had not been performed by him but by Dr. Kim Slade, another veterinarian

in his employ at that time. To support this contention, Dr. Glade referred to a copy of Thelonia's surgical log which appeared, at the time of his appearance before the Board and so noticed by the Board, to have been altered and written over in the area that identified the veterinarian who performed Thelonia's spay surgery. Despite numerous requests from the Board at his appearance and subsequently, the respondent never supplied the Board with the original surgical log records. The Board is taking judicial notice of its records and notices that these requested records were never received.

Dr. Glade, during his testimony, indicated that Dr. Slade's surgical technique was slower than that of his. The respondent further maintained that he had no recollection of the spay surgery but that he thought he may have helped restrain Thelonia for the anesthesia. Moreover, during his March 1994 testimony, Dr. Glade admitted that prior to Thelonia's second surgery, in which her kidney was removed and which he admitting performing, there were clear cut symptoms that indicated an ovary remained in her abdomen, specifically Thelonia exhibited symptoms of heat. However, Dr. Glade testified that, in his opinion, exploratory surgery into Thelonia's abdomen would have been life-threatening during the removal of her kidney, thus, he terminated the surgery and did not explore the possibility that the spay surgery had not been properly completed.

During her appearance before the Board on April 11, 1994, Kim Slade, D.V.M., testified that she did not perform the initial spay surgery on Thelonia. This operation was performed on a Wednesday and Dr. Slade testified that she seldom worked on that particular day of the week. Further, the doctor maintained that she did not normally

utilize the anesthesia listed in the surgical log because her surgical techniques, as Dr. Glade had also testified, were slower than those of Dr. Glade.

The Deputy Attorney General argued that Dr. Glade's failure to perform a complete spay surgery and remove the right ovary, uterine horn and uterine body, his failure to perform the appropriate testing on Thelonia subsequent to the surgery in order to determine whether ovarian tissue remained once she displayed heat symptoms, as well as his failure to perform exploratory surgery during the second surgery when she had been exhibiting symptoms of heat, constituted deviations from the standard of care expected of a veterinarian and, therefore, constituted professional misconduct pursuant to N.J.S.A. 45:1-21(e); gross negligence, gross malpractice or gross incompetence pursuant to N.J.S.A. 45:1-21(c); and repeated acts of negligence, malpractice or incompetence pursuant to N.J.S.A. 45:1-21(d). Specifically, she argued that a review of the entire record, including the submitted surgical record and the testimonies of Drs. Glade and Slade, indicated that Dr. Glade had performed the spay surgery in August 1991. This fact, argued the Deputy Attorney General, was supported by the testimony of Dr. Slade who maintained that she seldom worked on Wednesdays, the day of the week Thelonia's surgery was performed, and in her statement made against her interest, that she rarely used the type of anesthesia used on Thelonia because her surgery techniques were slower than those of Dr. Glade. The position that Dr. Slade did not perform Thelonia's initial spay surgery was further supported by her testimony that, to the best of her recollection, she did not perform said surgery.

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signs and symptoms of heat. Finally, Deputy Attorney General Lewis requested that the Board conclude that Dr. Glade's conduct of attempting to deny the responsibility for the incomplete surgery by alleging another veterinarian in his office had performed the surgery constituted dishonesty, misrepresentation, deception and false promise and pretense, in addition to professional misconduct, contrary to the mandates of N.J.S.A. 45:1-21(b) and N.J.S.A. 45:1-21(e), respectively. This fact, she argued, was further supported by the fact that despite numerous requests from the Board, Dr. Glade never provided the Board with the original surgical log relative to Thelonia's surgery to which he referred in his March 1994 testimony, but rather provided a copy of said log that appeared to be altered. As a result of these actions, the Deputy Attorney General requested that the Board revoke or suspend Dr. Glade's license to practice veterinary medicine in the State of New Jersey.

The Board conducted its deliberations of the record before it in Executive Session on May 22, 1996. The Board finds that Dr. Glade is licensed to practice veterinary medicine in the State of New Jersey and that he operated in offices known as Mountain Lakes Animal Hospital located in Mountain Lakes, New Jersey. The Board was not

convinced or persuaded by Dr. Glade's Investigative Inquiry testimony concerning Thelonia's initial spay surgery. Specifically, the Board concludes that the transcript of the respondent's testimony at the March 23, 1994, inquiry is admissible as competent and credible evidence pursuant to the mandates of Evidence Rule 803(b)(1). Biunno, Current N.J. Rules of Evidence. Evidence Rule 803(b)(1) provides for the admissibility, as an exception to the hearsay exclusionary rule, of any statement made by a person who is a party to an action if the statement is offered against him in that action. Biunno, Current N.J. Rules of Evidence, Comment 1 to N.J.R.E. 803(b)(1).

Furthermore, the Board concludes that the transcript of the testimony of Dr. Slade, taken at an Investigative Inquiry held on April 11, 1994, is admissible as competent and credible evidence pursuant to the provisions of Evidence Rule 803(c)(25). This rule authorizes the admissibility, also as an exception to the hearsay exclusionary rule, of statements which at the time of its making were so far contrary to the declarant's pecuniary, proprietary, or social interest so that a reasonable person in the declarant's position would not have made the statement unless the person believed it to be true.

Additionally, the Board concludes that the transcript of Dr. Slade's April 1994 testimony is admissible pursuant to the mandates of the New Jersey Supreme Court in In The Matter of the Registrant, C.A. \_\_\_ N.J. \_\_\_ (decided July 31, 1996). In this case involving the interpretation and application of eleven pieces of legislation collectively known as "Megan's Law," the Court held that hearsay that is reliable, even though not deemed sufficiently reliable to be admitted under the Rules of Evidence, should be admissible and

sufficient to allow the State to sustain its burden of presenting a prima facie case.

Thus, following its review of the entire record in evidence, the Board finds that Dr. Glade performed the August 1991 spay surgery. The Board found Dr. Slade's testimony that she did not work on Wednesdays, the day of week on which Thelonia was operated, that she did not use the type of anesthesia utilized on the cat since her surgical techniques were slower, and that, to the best of her recollection, she did not perform the initial spay operation, more credible than the testimony provided by Dr. Glade. Additionally, the complainant testified that he was led to believe that Dr. Glade would perform the initial surgery on Thelonia.

The Board further finds that Dr. Glade attempted to misrepresent and deceive the Board concerning the identity of the veterinarian who performed the initial spay surgery in violation of N.J.S.A. 45:1-21(e) and 45:1-21(b). The respondent testified that Dr. Slade performed the August 28, 1991, surgery. The Board observes that it requested that Dr. Glade provide it with the original surgical log relative to Thelonia's surgery several times, including during the March 1994 Inquiry. The Board finds that these records are in his control as the owner of the veterinary practice. To date the respondent has failed to provide the Board with said requested documents. The Board finds that, pursuant to the mandates of State of New Jersey v. Lillian Clawans, 38 N.J. 162 (1962), it can draw an adverse inference from Dr. Glade's failure to produce evidence in his control. Hence, the Board concludes that Dr. Glade failed to produce the requested surgical log within his control because the documents

would not support his position concerning the 1991 spay surgery. Thusly, the Board finds that Dr. Glade's conduct of attempting to deny the responsibility for the incomplete surgery by alleging another veterinarian in his office had performed the surgery constituted dishonesty, misrepresentation, deception and false promise and pretense, in addition to professional misconduct, contrary to the mandates of N.J.S.A. 45:1-21(b) and N.J.S.A. 45:1-21(e), respectively.

Further, the Board finds that the respondent performed the spay surgery improperly and negligently by failing to remove Thelonia's right ovary, uterine horn and uterine body. The record in this matter indicates that Thelonia was presented to Dr. Glade's office for spaying in August 1991. The submitted medical records further indicate that prior to the surgery there was no ovary on the left side and that the right side was normal. The Board concludes, based on the testimonies of the owner and Dr. Glade, that following the initial spay surgery Thelonia exhibited heat symptoms. The Board takes notice, as a result of its expertise in the field of veterinary medicine, that the exhibition of heat symptoms by Thelonia following the August 1991 spay surgery suggested that ovarian tissue remained. Additionally, the Board finds that on or about April 5, 1993, Thelonia was examined by another veterinarian since her heat symptoms continued. The owner testified that results of Thelonia's blood tests indicated an elevated estrogen level. The Board also takes notice as experts in the field of veterinary medicine that an elevated estrogen level further indicated that ovarian tissue remained. The Board finds that on or about April 7, 1992, exploratory surgery was performed on Thelonia and revealed an intact right ovary, uterine horn

and uterine body which were removed at that time. Therefore, the Board concludes that Dr. Glade's misconduct of performing an incomplete spay constitutes a deviation from the standard of care expected of a veterinarian. The Board, hence, finds that Dr. Glade's actions constitute professional misconduct, negligence and malpractice in violation of N.J.S.A. 45:1-21(e) and (c).

Finally, the Board has determined that the respondent engaged in repeated acts of negligence, malpractice or incompetence contrary to the provisions of N.J.S.A. 45:1-21(d). Specifically, the Board finds that the complainant brought Thelonia to Dr. Glade for examination in the Spring of 1992, subsequent to the spay surgery in August 1991, because she exhibited signs of heat. The Board concludes that the respondent was initially negligent when he failed to properly test Thelonia at this time following the initial surgery to determine whether ovarian tissue remained when she was presented for treatment in or about April 1992 with her owner complaining she exhibited symptoms of heat. Further, the Board concludes Dr. Glade was again negligent in April 1992 in failing to perform exploratory surgery on Thelonia during the second surgery when she exhibited clear signs of heat. Moreover, on or about June 3, 1992, the owner returned Thelonia to Dr. Glade's office for overnight observation again complaining that she displayed symptoms of heat. Dr. Glade did not perform any appropriate tests or request to perform exploratory surgery at this time in order to determine whether ovarian tissue existed given the owner's complaints. The Board finds this misconduct constitutes repeated acts of negligence and thus violates the provisions of N.J.S.A. 45:1-21(d) and (e).

Therefore, in accordance with the Board's findings herein and for other good cause shown,

IT IS ON THIS                      DAY OF SEPTEMBER 1996,  
HEREBY ORDERED THAT:

1. The license of Clifford Glade, D.V.M., to practice veterinary medicine in the State of New Jersey shall be and is hereby revoked immediately. He shall derive no financial remuneration directly or indirectly related to patient fees paid for veterinarian services rendered by other licensees for patients of his practice while his license is revoked. Additionally, Dr. Glade shall not be permitted to enter upon the premises of the veterinary facility or provide any consultation to other licensees rendering treatment to patients of the respondent. Finally, Dr. Glade shall not prescribe any controlled dangerous substances during his period of revocation.

2. Dr. Glade may petition the Board for reinstatement of his license no sooner than November 1, 1997. A personal appearance before the Board of Veterinary Medical Examiners shall be required at which time the burden will be on Dr. Glade to demonstrate that he is morally fit and professionally qualified to resume the responsibilities of a veterinarian.

3. Dr. Glade may have leave to reopen this matter as to the issue of service only, within thirty (30) days of the filing of this Order, in order to present evidence to the Board which indicates that notice of the May 22, 1996, hearing date was not properly served upon him.

STATE BOARD OF VETERINARY  
MEDICAL EXAMINERS

By: Ralph E. Werner  
Ralph E. Werner, V.M.D. *VMD*  
President