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STATE OF WISCONSIN
BEFORE THE VETERINARY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

DAVID MILLS, D.V.M.,
RESPONDENT.

FINAL DECISION AND ORDER
LS9708281VET

The State of Wisconsin, Veterinary Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Veterinary Examining Board.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 28th day of April, 1999.

Diane Scott, D.V.M.

STATE OF WISCONSIN
BEFORE THE VETERINARY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

DAVID MILLS, D.V.M.,
RESPONDENT.

PROPOSED DECISION
[Case No. LS 9708281 VET]

The parties to this proceeding for the purposes of sec. 227.53, Stats., are:

David Mills, D.V.M.
6506 North Avenue
Cleveland, WI 53015

State of Wisconsin
Veterinary Examining Board
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

State of Wisconsin
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

A hearing was held in the above-captioned matter on December 16, 1997. The respondent, Dr. David Mills, appeared personally and without an attorney. The complainant appeared by Attorney James E. Polewski. A transcript of the hearing was prepared and filed on January 15, 1998.

On the basis of the entire record herein, the administrative law judge recommends that the Veterinary Examining Board adopt as its final decision in this proceeding, the following Findings of Fact, Conclusion of Law, and Order.

FINDINGS OF FACT

1. David Mills, D.V.M., the respondent herein, was born on February 17, 1948, and is licensed to practice veterinary medicine in the state of Wisconsin pursuant to license number 1399. Dr. Mills practices at 6506 North Avenue, Cleveland, Wisconsin 53015.
2. On or about January 25, 1991, Dr. Mills attempted to perform an ovariohysterectomy on Sable, a one year old black Labrador retriever, owned by Scott and Pam Hurtienne. An ovariohysterectomy involves the excision of both ovaries and the uterus.
3. Following the surgery, Dr. Mills informed the dog's owners that the surgery had been uneventful, and completed successfully, with the exception that he had found a cyst on one of the ovaries, which he removed. He assured the owner's that the cyst was not cancerous and everything was fine.
4. The Hurtienne's were of the understanding that Dr. Mills had performed a complete ovariohysterectomy. In fact, Dr. Mills removed only the two uterine horns and the left ovary. Dr. Mills did not remove the right ovary.
5. Dr. Mills does not have his records regarding the history, physical examination findings and treatment details regarding Sable. However, Dr. Mills' kennel card of the spay reads "1/25/91 Spayed. - (Cyst on 1 ovary). No complications," and a chronological billing sheet states "1/25/91 Spay Surgery \$65.00".
6. Approximately six months later, Sable began bleeding in a manner typical of estrus.
7. Sable continued to show signs of estrus at six month intervals. The owners returned Sable to Dr. Mills in June or July, 1993 for investigation and correction of the apparently incomplete spay.
8. During the 1993 operation, although Dr. Mills made a second incision in the midline of Sable's abdomen, he did not remove the remaining ovary.
9. Dr. Mills did not make any record of the second spay attempt, and refused to speak with the owners about the operation. When Mr. and Mrs. Hurtienne went to pick up Sable after the 1993 operation, Dr. Mills was not present. They were given the dog by a 10-13 year old girl at the clinic. Nevertheless, the owners had no reason to believe that Dr. Mills had not completed the ovariohysterectomy.
10. Sable showed signs of estrus again in November or December, 1993. Soon thereafter the Hurtiennes sold Sable to Mr. and Mrs. Chiples.
11. In the fall of 1994 and the spring of 1995, Sable again showed signs of estrus.
12. On April 19, 1995, Dr. Patricia Connors-Scherer, D.V.M., performed exploratory surgery on Sable. She discovered two healed midline incisions, and the complete right ovary with approximately 1" of uterine body attached.
13. On December 12, 1995, Dr. Mills told Celina Kobs, an investigator for the Division of Enforcement, that he

remembered the Sable spay because it was a messy hysterectomy case. Dr. Mills told Investigator Kobs that the dog was "full of tumors."

14. Dr. Mills' records of his treatment of Sable provided to the Division of Enforcement, and represented by Dr. Mills to be complete, do not contain any indication of any pathology study or report of tumors removed from Sable by Dr. Mills. During the December 12, 1995, interview with the DOE investigator, Dr. Mills denied having any further treatment records for Sable beyond a chronological billing summary for the Hurtiennes and a single index card containing 10 lines of handwritten notes, which include the notations set forth above in paragraph 5.

15. On or about December 29, 1995, Dr. Mills wrote to the Division of Enforcement about his treatment of Sable. In the handwritten letter, Dr. Mills claimed that he recalled the spay of Sable because of "abnormalities I found when I performed the procedure. Large cystic (tumor?) ovaries were present with numerous adhesions of the uterine horns and ovaries." Dr. Mills went on to state that he informed the Hurtiennes that "I may not have removed all the ovarian tissue due to the size + adhesions that were present and of the possible problems in the future."

CONCLUSIONS OF LAW

1. The Veterinary Examining Board has jurisdiction in this proceeding pursuant to Ch. 453, Stats.
2. Dr. Mills' failure to perform a complete ovariohysterectomy on Sable constitutes conduct which evidences a lack of knowledge or ability to apply professional principles or skills, and is unprofessional conduct pursuant to sec. VE 7.06 (1), Wis. Adm. Code.
3. Dr. Mills' false statements to the animal's owners and the Division of Enforcement regarding his treatment of Sable constitutes deception in the practice of veterinary medicine, and is unprofessional conduct pursuant to sec. VE 7.06 (2), Wis. Adm. Code.
4. Dr. Mills' failure to maintain accurate history, physical examination findings, and treatment details regarding Sable constitutes a violation of sec. VE 7.03 (1), Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of the respondent, David Mills, D.V.M., to practice veterinary medicine is indefinitely suspended for a period of not less than 20 days, or until he complies with the remedial education requirement herein, whichever is later.

FURTHERMORE, IT IS ORDERED that the suspension shall not be lifted until Dr. Mills has provided the board with sufficient evidence that he has participated in and successfully completed a course in conducting ovariohysterectomies on animals, provided through the University of Wisconsin School of Veterinary Medicine, an established clinic, or another facility approved by the board. The course shall consist of clinical and, if necessary, classroom or home study. A description of the course content and parameters shall be submitted to the Veterinary Examining Board, or its designee, for approval prior to commencement of the program. Dr. Mills shall permit the person(s) conducting the program to provide a written evaluation of his participation in and successful completion of the course. All costs of the program shall be the responsibility of Dr. Mills.

FURTHERMORE, IT IS ORDERED that the assessable costs of this proceeding be imposed upon Dr. Mills, pursuant to sec. 440.22, Wis. Stats.

OPINION

This case has its genesis in the fact that Dr. Mills did not perform the requested complete ovariohysterectomy on Sable in January, 1991. He did not remove one of the ovaries. From that flows the charges of incompetent practice, deception of both the dog's owners and the Division of Enforcement, and inadequate record keeping.

The initial allegation is that Dr. Mills' failure to perform a complete ovariohysterectomy on Sable constitutes unprofessional conduct under sec. VE 7.06 (1), Wis. Adm. Code. This issue must be determined through first examining Dr. Mills' explanations for not performing an ovariohysterectomy on Sable.

The first apparent defense of Dr. Mills was that Sable was "full of tumors". The investigator from the Division of Enforcement, Celina Kobs, testified respecting the initial contact with Dr. Mills at his clinic as follows, in part:

Q. I want to return to your conversation with Dr. Mills on December 12, 1995. When you talked to Dr. Mills about his treatment of Sable, did he remember the dog?

A. He appeared to. He did have some comments about the condition of the dog.

Q. What did he say about the condition of the dog?

A. I remember him saying something to the effect that it was a messy spay and that the dog was full

of tumors. (Transcript, pp. 19-20).

LAW JUDGE: Did he use the word "adhesions," to your recollection, or "tumors"?

THE WITNESS: He used the word "tumors". (Transcript, p. 25).

Dr. Mills claimed that he used the word "adhesions", rather than "tumors" when discussing this matter with Ms. Kobs in December, 1995 on this matter. In my opinion, Ms. Kobs' recollection is likely more accurate. First, anyone's use of the word "tumor" in a conversation such as this is memorable. That's a matter of human experience and common sense, because the connotation immediately perceived is cancer. Second, I fail to see any reason or motive for Ms. Kobs to testify falsely here. Dr. Mills does have a motive, in that he needs to justify why an ovariohysterectomy was not performed. One logical reason would be due to the area being "full of tumors", which would suggest that euthanasia rather than an ovariohysterectomy should be performed, and that a spay was not necessary in light of the dog's inevitable and imminent death.

Although it is established, in my opinion, that the first defense proffered by Dr. Mills involved Sable's being "full of tumors", that obviously could not be the reason. Dr. Mills later recanted this approach at hearing, stating:

"As far as the surgical site itself, there was no tumors ever present in that animal. If there was a tumor present in that animal, he wouldn't be alive today. If I said 'full of tumors', which I did not say, I would have handled it entirely different. I would have recommended euthanasia at that point, because an animal that's full of tumors would never recover, never recover. It would be best to euthanize it at that point. I would have tried to find the owner, even though she would have been difficult to find, and recommended euthanasia, or talk to her about it. So, there was no tumors in that animal, and that is obvious because if there was tumors, the animal wouldn't be alive today." (Transcript, pp. 132-133).

Accordingly, it is established that Dr. Mills' failure to complete an ovariohysterectomy was not due to the fact that Sable was "full of tumors". Dr. Mills statement to Ms. Kobs was a false statement intended to deceive the Division of Enforcement, and violated sec. VE 7.06 (2), Wis. Adm. Code.

A little more than two weeks after his meeting with Ms. Kobs, Dr. Mills provided DOE with a written explanation of his position dated December 29, 1995. (Exhibit 2). In that document Dr. Mills does not totally abandon a "tumor-connection", but he does offer the following explanation:

". . . I do recall that particular surgery for two reasons: Mrs. Hurtinne was our neighbor and had a handicap; and the abnormalities I found when I performed the procedure, large cystic (tumor?) ovaries were present with numerous adhesions of the uterine horns + ovaries. I have only had one similar one since. I explained at length to the Hurtinnes that I may not have removed all the ovarian tissue due to the size + adhesions that were present and of the possible problems in the future." (Emphasis in exhibit).

The above explanation does not have the ring of truth either. First, Dr. Mills indicates that he "may not have removed all the ovarian tissue". This is not a case involving whether "some" ovarian tissue remained; but rather, one in which an entire ovary was left. Second, Dr. Mills' account is at odds with how Ms. Hurtienne recalls the post-operative discussion. She testified, via deposition, as follows:

Q. When did you pick Sable up from the clinic?

A. I'm not quite sure, it could have been a day or two after her spaying, when I took her in.

Q. Did you talk to Dr. Mills when you picked her up?

A. On the phone, yes.

Q. You didn't see Dr. Mills in person?

A. Not that I remember.

Q. Why did you talk to Dr. Mills on the phone?

A. Just to let me know that in a couple hours we could come and pick Sable up and that surgery went fine. He did notice one cyst the size of a half dollar, he removed it and he said he did some more exploratory surgery to make sure she wasn't full of cancer or anything, and he said it came all back negative and she was fine and she could go home.

Q. Did he say where he removed the tumor from? I'm sorry, I misspoke, did he say where he removed the cyst from?

A. From her ovary, if I remember right. I don't know which one though.

Q. Did he tell you that there was any difficulty with the surgery?

A. No.

Q. You mentioned that he said that it all came back negative. Did you -- Is that sort of the substance of what he told you?

A. Yeah, he -- That's what he said, he said he did exploratory and said she was fine.

Q. What sort of exploratory surgery did he do, do you know?

A. That I don't know. He just told me he went in and explored around a little bit to make sure she didn't have any other cysts or anything anywhere else or that she had maybe cancer because of that one cyst.

Q. Did Dr. Mills reassure you that there was no cancer?

A. Yeah, he told me she was fine.

Q. Did he tell you how he determined that?

A. No. (Transcript, p. 45-46)

Ms. Hurtienne's testimony indicates that Dr. Mills told her that the surgery went well and that the only remarkable occurrence was that of a non-cancerous cyst found on, and removed from one of the ovaries. According to Ms. Hurtienne, there was no discussion of the possibility that Dr. Mills had not been able to remove all of the ovarian tissue due to the size of adhesions, or of "possible problems" in the future. From the post-operative discussion as described by Ms. Hurtienne, the average individual would make the logical assumption that a complete ovariectomy had been successfully completed by Dr. Mills. That, of course, was not the case. Dr. Mills, at the very least through omission, made a false statement to Ms. Hurtienne respecting the services performed for Sable.

Ms. Hurtienne's recollection of her discussion with Dr. Mills is accepted, as opposed to his, not only because it is seen as more likely to have occurred, but because Dr. Mills' story regarding the initial surgery changed again at the hearing.

Having abandoned the "full of tumors" defense, and opposed to his written explanation to the DOE, he now admitted that an entire ovary had been left in Sable (as opposed to simply ovarian tissue), and for the first time claimed that the Hurtiennes reported that Sable had significant blood loss prior to presenting for the operation which amounted to a life-threatening situation for the dog. However, Ms. Hurtienne denies significant bleeding in Sable as being a basis for bringing Sable to Dr. Mills. Simply stated, she merely wanted Sable to receive a routine spay.

Q. When you took Sable in to Dr. Mills, was there anything unusual about her condition when you went to the clinic?

A. No, just a normal spaying, that's all we went in for.

Q. Was she bleeding at the time?

A. Before we took her in?

Q. Yes.

A. No.

Q. Had she been bleeding in the week previous?

A. No.

Q. Did you talk to Dr. Mills when you took Sable in that first time for the spay?

A. I don't remember if it was him or his wife that took her.

Q. When you dropped Sable off for the spay operation, did you tell whoever took the dog from you that she had been ill?

A. No.

Q. Had she been ill?

A. No.

Q. Had she been behaving at all strange?

A. No.

Q. Was there anything about her health or condition that gave you any concern?

A. No. (Transcript, pp. 44-45)

I accept the testimony of Ms. Hurtienne that Sable was presented to Dr. Mills for the performance of a routine spay, and not for any pre-existing medical conditions.

Respecting the initial surgery itself, at the hearing Dr. Mills expanded upon his findings in performing the operation on Sable:

"On entering the abdominal cavity, we found two things that were right there. We found an enlarged right ovary, which I'll call cystic, that was adhered with fibrinous adhesions to the surrounding organs. I think the kidney was involved, and all the surrounding structures. We also found two engorged uterine horns, engorged with blood. They were really full. They were like little balloons with some seepage. We found a left ovary that was moderately enlarged but nothing to really talk about. I've seen that size before. It wasn't too bad, so we weren't really concerned about that. Okay.

"What we did after a period of -- I don't know the exact time. It would be on my permanent record. We dissected out the adhesions on the two horns. We were able to dissect out the left ovary. We had hemorrhaging, because any time you remove adhesions, as we'll talk about here and -- when I get to the veterinary pathology part, you will have hemorrhaging. So we had additional hemorrhaging. So what I did was I removed the left ovary, two uterine horns. And I came to start to think about removing that severely adhered enlarged right ovary. I used my medical judgment, and it was a life-threatening situation, I ligated off the vessel and left that ovary intact and closed the animal." (Transcript, 128-129).

Dr. Kenneth Lambrecht, complainant's expert, testified that Dr. Mills failure to remove an ovary was not competent practice. He testified, in part, as follows:

Q. In Dr. Mills' deposition, do you recall a discussion of a cystic ovary?

A. I do.

Q. Is this another form of complication in doing a spay?

A. It has not been common in my experience to run into cystic ovaries in dogs.

Q. Approximately how many animals do you spay a year?

A. Three to four hundred.

Q. Approximately how many times have you run into a cystic ovary in a dog?

A. Not one that I have diagnosed through histopathology. And visually, it's not something we commonly run into.

Q. Can you tell a cystic ovary by looking at it?

A. The cystic ovaries that I'm familiar with in cats, we see them fairly commonly. And I did mixed animal practice for awhile and cystic ovaries are quite common in cows. But in dogs -- so yes, usually you can tell in those two species. In dogs, it's just not a common situation that I could identify as a cystic ovary.

Q. If a minimally competent veterinarian found a cystic ovary, what is the response to finding a cystic ovary on a spay? Do you leave it in?

A. No. It would be -- if the intent was to perform a complete ovariohysterectomy, that would remove -- would -- and involve removing both ovaries and both uterine horns.

Q. Does it matter if one ovary is cystic or has a cyst?

A. It would be -- if it was diagnosed definitively as a cyst by histopathology, it could have some hormonal ramifications for the animal. But, again, if your intent is to spay them and stop all cycling of the ovaries, removing it is going to solve that.

Q. Is it fair for me to summarize your testimony here as saying that if you are going to do a spay, and you find a cystic ovary, you remove it because that's what you're doing in the first place?

A. That's correct.

Q. And if it's cystic, it's just another reason to take it out?

A. Yes.

Q. There's no reason to leave a cystic ovary in place?

A. None whatsoever. (Transcript, pp. 75-77)

Neither does Dr. Mills' story match the physical evidence found by Dr. Patricia Connors-Scherer when she subsequently operated upon the dog in 1995, at the request of Sable's new owner. She did not find any evidence that the remaining ovary had been ligated, contrary to Dr. Mills' testimony. Nor did she find any evidence of adhesions connecting the remaining ovary with a kidney or surrounding structures. She did find two scar marks which is consistent with the state's and Ms. Hurtienne's position that Dr. Mills operated twice on the dog, contrary to Dr. Mills' testimony. Dr. Connors-Scherer testified by deposition as follows:

Q. When you did the operation on Sable on April 19th, 1995, how did you begin?

A. We clipped and prepped, found that there was what looked like two scar marks on the ventral abdominal wall.

Q. What did you do after you found the two scar marks?

A. Cut into the abdomen, found adhesions of the omentum to the body wall. Broke the adhesions down and proceeded to explore for evidence of ovarian tissue.

Q. Would you describe what sort of adhesions you found and what the omentum is?

A. The omentum is a thin layer of tissue that lies over the top of the intestine. It wouldn't be uncommon for the omentum to secure itself or adhere to an incision area.

Q. When you went in to the abdominal cavity, did you find any ovarian tissue?

A. Yes, I did.

Q. Where did you find the ovarian tissue?

A. Do you need lefts and rights? When I went into the abdomen, on the right side, on Sable's right side there was a full ovary and a one inch segment of uterine horn.

Q. Was there anything on the left side?

A. On the left side there were two small masses which I removed. I was not sure whether they would have contained ovarian tissue or not. The histopathology report supports that that was simply catgut suture and scar tissue.

Q. On the left side?

A. On the left side. So that was clear of ovarian tissue.

Q. On the right side can you describe the ovarian tissue that you found?

A. The ovary was a full complete ovary. It still had it's full blood supply. There didn't appear to be any signs of ligatures or interruption of the blood supply.

Q. Were there any adhesions between the ovary and any surrounding organs?

A. There were no adhesions between the ovary and surrounding organs. (Transcript, pp. 33-34).

With respect to Dr. Connors-Scherer's finding of a lack of adhesions, Dr. Mills cites to a learned treatise for the proposition that they may simply have liquefied and disappeared over time. Dr. Mills cites Veterinary Pathology,

Smith and Jones, p. 54 (Exhibit 10), as follows:

As to the ultimate fate of fibrin, there are two possibilities. The fibrin may be completely liquefied through natural autolysis and the liquefying enzymes of leukocytes.

However, he does not cite the second possibility set forth by Smith and Jones which is obviously the more likely of the two "possible" fates of fibrin, especially when the adhesions are of the extent claimed by Dr. Mills respecting Sable:

On the other hand, the mere presence of fibrin appears to act as a stimulus for the proliferation of nearby fibroblasts, with the result that the latter grow into it and in the course of some days the fibrin has disappeared and fibrous connective tissue has taken its place, a process which is called organization. Thrombi are thus made permanent, as is also the solidification of the pulmonary alveoli.

Accordingly, Smith and Jones would suggest that adhesions, especially the extent to which they were apparently found in Sable by Dr. Mills, are more likely transformed into a more permanent structure than to simply liquefy and disappear.

The view that adhesions tend to become permanent features is consistent, as well, with the testimony of Dr. Kenneth Lambrecht (Transcript, p. 74):

Q. Suppose a veterinarian found adhesions or suspected adhesions, could he just -- he or she just wait for the adhesions to go away?

A. Generally, they -- adhesions are there because it's a form of scar, scarring. It's more of a permanent fixture.

Q. In your education, training and experience, does time dissolve adhesions?

A. Not in my experience and training.

Q. Can adhesions be dissolved or dissipated through the use of antibiotic therapy?

A. Not to my knowledge.

Furthermore, Dr. Lambrecht testified that the mere presence of adhesions does not prohibit the removal of an ovary. He testified (Trans., p. 73):

Q. Would adhesions present a problem for a competent vet in removing the ovary?

A. I have not encountered any that encumbered by ability to perform a spay. And generally I would not think that they would.

Q. Once an animal has adhesions, how does the veterinarian get rid of adhesions?

A. You usually don't worry about adhesions until you encounter them. You can't really predict and you don't know how the body is going to heal. So adhesions are usually a minor -- a minor detail that, again, to get to the organ or to get your biopsy for histopathology, you simply work around them.

The evidence that Dr. Mills incompetently performed a spay upon Sable is compelling. It is compounded by the fact that Ms. Hurtienne returned Sable to Dr. Mills in 1993 to complete the procedure, but he failed to do so. Dr. Mills claims he did not perform a second procedure on Sable. However, there were two incision scars on Sable at the time Dr. Connors-Scherer saw the dog. The existence of a second incision scar is puzzling and troubling. The record suggests that Dr. Mills' previous position had been both incisions were made by him during the first operation in January, 1991. However, the testimony suggests there would be no reason to make two incisions during one procedure. (Trans., p. 77). That plus the testimony of Mrs. Hurtienne indicates that two separate procedures were undertaken.

The question thus becomes why Dr. Mills did not remove the ovary on his second "attempt" in 1993? The state suggests that Dr. Mills was so angry with Ms. Hurtienne, that he simply opened and closed. Perhaps, Dr. Mills went in simply to see whether he had made a previous mistake by failing to remove an ovary, with no intention of removing it if he had and simply washing his hands of the matter. Either way, it does not speak well of Dr. Mills' competence.

Finally, there is the issue of Dr. Mills' failure to keep the records required under sec. VE 7.03 (1), Wis. Adm. Code. Dr. Mills testified that he could not locate his treatment records of Sable; that he had made one or two copies and had sent one to Ms. Hurtienne at her request. He indicated he sent the records to a prior address, as she did not provide him with her current one. Ms. Hurtienne testified she did not receive a copy, despite calling Dr. Mills several times. In any event, it is essentially conceded that Dr. Mills failed to maintain an accurate history, physical examination findings, and treatment details respecting Sable.

The one record Dr. Mills now finds, is ostensibly the billing statement for the "partial spay" of Sable. (Exhibit 7). The billing, dated 1/25/91 for \$65.00, is purportedly the bill given to the Hurtiennes after the initial spay. It states in material part:

"Partial spay (\$99.00)
Enlarged cystic R.O.-Numerous
adhesions (sic) to surrounding organs
Sable serverly (sic) anemic due to
preoperative blood lost. Due to possible
life threatening situation left
ovary intact. Removed other structures
Will discuss possible problems with
owner."

Strangely, Dr. Mills did not find or give this billing to the DOE Investigator upon her visit. Clearly, if he had it at the time of Kobs' visit, it would have been in his interest to provide it at that time, since it would be evidence consistent with his statement of telling Hurtienne that he only performed a "partial spay". In fact, the DOE investigator did not receive this document until a few days prior to the evidentiary hearing. (Transcript, pp. 152-153). It is extremely disconcerting that the only records Dr. Mills can find appear to vindicate his position by alluding to a "partial" spay having been performed on January 25, 1991. (Exhibit 7). No credibility is given to that exhibit.

In conclusion regarding the facts of this case, it appears that when first confronted by the DOE investigator at his office, on a busy day, Dr. Mills indicated that Sable had been full of tumors and that he had no records regarding the history or treatment of the dog. Perhaps he provided that story out of irritation with having been confronted late in the day by Ms. Kobs. Later, he came up with a different story, one which explained his leaving in one ovary due to a life threatening situation created by numerous adhesions, the uterine horns being gorged with blood, and the dog having lost too much blood to risk removing the second ovary, which he simply ligated. The problem is, neither the story he told DOE, nor the one he testified to at hearing having any ring of truth.

It is found that Dr. Mills failure to perform a complete ovariohysterectomy on Sable constitutes conduct which evidences a lack of knowledge or ability to apply professional principles or skills, and is unprofessional conduct pursuant to sec. VE. 7.06 (1) Wis. Adm. Code. It is further found that his false statement to the animal's owners and DOE regarding his treatment of Sable constitutes deception in the practice of veterinary medicine, and is unprofessional conduct pursuant to sec. VE. 7.06 (2), Wis. Adm. Code. Finally, it is found that Dr. Mills' failure to maintain an accurate history, physical examination findings, and treatment details regarding Sable constitutes a violation of sec. VE 7.03 (1), Wis. Adm. Code.

The final issue to be addressed is the appropriate discipline, if any, to be imposed against Dr. Mills' licensed to practice veterinary medicine. In determining this issue, it must be noted that the interrelated purposes for applying disciplinary measures are: 1) to promote the rehabilitation of the licensee, 2) to protect the public, and 3) to deter other licensees from engaging in similar misconduct. *State v. Aldrich*, 71 Wis.2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. MacIntyre*, 41 Wis.2d 481, 485 (1969).

The state recommends the imposition of an indefinite suspension of not less than 20 days, until Dr. Mills completes remedial education. The recommendation appears to be appropriate under the circumstances presented in this case, as well as consistent with the purposes for which discipline is imposed. If one accepts the reasoning providing by Dr. Mills for the procedures undertaken in the Sable ovariohysterectomy, the expert testimony clearly suggests that he is in need of remedial education in the area. The order so provides.

Furthermore, the order provides for a suspension. A suspension is warranted in light of Dr. Mills' failure to maintain the treatment records regarding Sable, as well as his false statements made to Sable's owners and to DOE representatives. The board must deter other licensees from engaging in similar conduct. A suspension would not have been warranted had Dr. Mills acknowledged his failure to perform a complete ovariohysterectomy on Sable's initial presentation, and corrected the situation in the second procedure. This was not the case here. Rather, he engaged in intentional deception in an attempt to hide the true facts of this case. A suspension is necessary under these circumstances.

Dated this 5th day of March, 1999.

Respectfully submitted,

Donald R. Rittel

Administrative Law Judge

