

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE VETERINARY EXAMINING BOARD

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IN THE MATTER OF

DISCIPLINARY PROCEEDINGS AGAINST

DAVID MILLS, D.V.M.

ORDER ON REMAND

Respondent

LS9708281VET

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On April 28, 1999, the Veterinary Examining Board filed its Final Decision and Order in the above-captioned matter. The board adopted the Proposed Decision of the Administrative Law Judge in the matter, and thereby made the following Findings of Fact, Conclusions 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.

On May 27, 1999, respondent filed his petition for review of the board's Final Decision and Order in the Circuit Court for Manitowoc County, the Honorable Fred H. Hazlewood presiding. The court issued its Memorandum Decision in the matter on November 22, 2000. The court's findings included the following:

The [Veterinary Examining] Board's findings and order adopting the findings of the administrative law judge are affirmed with respect to the conclusions that the petitioner failed ". . . to perform a complete ovariohysterectomy . . ." on a dog, and made false statements to the Division of Enforcement. These factual conclusions are supported by substantial evidence in the record. The legal conclusion that this constitutes unprofessional conduct under sections VE 7.06(1) & (2) Wis. Adm. Code is obvious and also affirmed.

However, the Board's conclusion that the petitioner failed to maintain adequate records in violation of the requirement at VE 7.03(1) Wis. Adm. Code, and that he made false statements to the dog's first owner, Ms. Hurtienne, must be vacated. These findings are based on the deposition and written statement of Ms. Hurtienne that were admitted into evidence over the objection of the petitioner. This court concludes that the proponent of the deposition failed to establish reasonable notice was given of the taking of the deposition. Without such a showing, the deposition should not have been admitted at the hearing. (memorandum decision pp. 1-2)

The court ordered as follows:

Because the Board's decision may have been affected by the information presented in the Hurtienne deposition and her written statement, this case is remanded to the Board for further consideration of the sanctions and penalties. The Board is directed to exclude from their deliberations any information derived solely from the Hurtienne deposition or Exhibit 3, her written statement. (Memorandum Decision, p. 15)

The board considered the court's order remanding the matter at its meeting of January 24, 2001. Based upon the court's Order, Findings of Fact and Conclusions of Law set forth in the ALJ's Proposed Decision which were based upon evidence found in the Hurtienne deposition and Exhibit 3 were excised, and the board considered only the following Findings of Fact and Conclusions of Law, as excerpted from the ALJ's Proposed Decision.

#### 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.
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4. In fact, Dr. Mills removed only the two uterine horns and the left ovary. Dr. Mills did not remove the right ovary.
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7. 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.

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9. 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.

10. 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

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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 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.

It is well established that the objective of licensing discipline is the protection of the public by promoting the rehabilitation of the licensee and by deterring other licensees from engaging in similar misconduct. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1968).

The board concludes that the modified Findings of Fact and Conclusions of Law set forth above fully justify the discipline imposed by the board's April 28, 1999 Order. The rehabilitative objective militates for the remedial training set forth in the original Order, and is consistent with previous board actions in other cases involving similar negligent practice. That finding alone would not justify a period of suspension of the license, but there is more.

In both the licensure and disciplinary processes, the board and its licensees must perforce interact in a climate of mutual trust. The applicant for a license relies on the board to be fair and impartial in exercising its considerable discretion in making licensure decisions. The board relies on applicants to be truthful and forthcoming in the application process, for the licensing boards in this state simply do not have the resources to determine whether all representations made on an application are true. Falsification of an application, if discovered, is very often considered more serious than the underlying event that was the subject of the falsification.

So too, the board relies on its licensees to cooperate fully in the investigation of allegations of negligent practice or other misconduct, for misrepresentations made to the board interfere with and delay the board's ability to carry out its only reason for existing: the protection of the health, safety or welfare of the public. Accordingly, falsifications made to the board may well be considered more serious than the underlying conduct being investigated, and that is the case here. The board concludes that it is important that other licensees be reminded of the seriousness with which the board views such conduct, and deems a minimum suspension of 20 days to be appropriate in terms of accomplishing the deterrence objective.

NOW, THEREFORE, IT IS ORDERED that the Order set forth in the Proposed Decision in this matter dated March 5, 1999, as adopted by the board in its Final Decision and Order dated April 28, 1999, is hereby affirmed.

Dated this 30<sup>th</sup> day of January, 2001.

STATE OF WISCONSIN

VETERINARY EXAMINING BOARD

Diane Scott, D.V.M.

Chair