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STATE OF WISCONSIN
BEFORE THE VETERINARY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

KENNETH J. MARTINSEK, D.V.M., :
RESPONDENT. :

FINAL DECISION AND ORDER
LS04062413VET

Division of Enforcement
01 VET 4

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

Kenneth J. Martinsek, D.V.M.
4634 W. State St.
Milwaukee, WI 53208

Wisconsin Veterinary Examining Board
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Wisconsin Veterinary Examining Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent Kenneth J. Martinsek, D.V.M., whose date of birth is August 16, 1937, is licensed and currently registered to practice veterinary medicine in the State of Wisconsin under license #775 which was granted on January 1, 1962. Respondent's latest address on file with the Department of Regulation and Licensing is 4634 W. State Street, Milwaukee, WI 53208
2. On or about November 27, 2000, an eight-year-old female Shetland sheepdog named Sophie was transferred from the Animal Emergency Center, a 24-hour monitoring facility, to State Street Dog & Cat Hospital with a diagnosis of pyometra. Sophie was obese, arthritic, had a creatine level of 7.41, was vomiting, had diarrhea, and had compromised kidney function. Records show that Respondent performed an ovariohysterectomy, and gave Sophie 1 cc Polyflex, continued 1000 cc of plasmalyte, and 1000 cc Lactated Ringers solution Sub Q. No blood tests or any other lab work was done after the surgery. Sophie was kept overnight.
3. On November 28, 2000, Sophie was alert, but refused food and water, and would not stand or move. Records show that Respondent gave Sophie 1000 cc lactated Ringers solution Sub Q and ampicillin BID. Respondent normally discharges animals one day after an ovariohysterectomy, but due to Sophie's condition, Sophie was kept overnight a second night.
4. On November 29, 2000, Sophie did not move and refused food and water. Records show that Respondent gave Sophie 500 cc Lactated Ringers Sub Q, continued on ampicillin, and gave 1 cc of B complex vitamins. Sophie's owner visited Sophie, but there was no response from Sophie. Sophie's urine was normal and her vital signs were normal. Sophie was kept overnight a third night.
5. Sophie died later that night while she was unattended and not being monitored. Her death was not discovered until the next morning.

6. On November 30, 2000, Sophie's owners were contacted and informed that Sophie had died the night before.

7. Sophie's owners claim that they believed that the Respondent's State Street Dog & Cat Hospital offered 24-hour monitoring because it was a hospital and on three separate occasions the Respondent kept Sophie overnight at the clinic. Sophie was left unattended and not monitored from closing at 6:00 p.m. until 8:30 a.m. the next morning every night she was at Respondent's clinic.

8. The patient records do not contain a description of the surgery, a record of the comments made to Sophie's owner, a record of lab testing done, nor any record of any blood testing done.

CONCLUSIONS OF LAW

1. The Wisconsin Veterinary Examining Board has jurisdiction in this proceeding pursuant to Wis. Stats. Sec. 453.07.

2. The Wisconsin Veterinary Examining Board has the authority to resolve this proceeding by Stipulation without an evidentiary hearing pursuant to Wis. Stats. Sec. 227.44(5).

3. Respondent's conduct of failing to offer to perform adequate lab testing when Sophie's condition did not improve after the ovariohysterectomy constituted unprofessional conduct pursuant to Wis. Adm. Code sec. VE 7.06(1) and is actionable pursuant to Wis. Stat. § 453.07(2) and Wis. Adm. Code sec. VE 7.07.

4. Respondent's conduct of failing to try an alternative antibiotic when Sophie's condition did not improve after the ovariohysterectomy constituted unprofessional conduct pursuant to Wis. Adm. Code sec. VE 7.06(1) and is actionable pursuant to Wis. Stat. § 453.07(2) and Wis. Adm. Code sec. VE 7.07.

5. Respondent's conduct of failing to adequately monitor Sophie's condition or to suggest that the owner transfer the animal to a facility that could provide adequate monitoring constituted unprofessional conduct pursuant to Wis. Adm. Code sec. VE 7.06(1) and is actionable pursuant to Wis. Stat. § 453.07(2) and Wis. Adm. Code sec. VE 7.07.

6. Respondent's conduct of failing to maintain appropriate patient records constituted a violation of Wis. Adm. Code sec. VE 7.03 and is actionable under Wis. Adm. Code sec. VE 7.06(15), Wis. Stat. § 453.07(2) and Wis. Adm. Code sec. VE 7.07.

ORDER

THEREFORE, IT IS ORDERED:

1. The Stipulation of the parties is approved.

2. Respondent shall, within six months of the date of this order, participate and satisfactorily complete at least eight hours of continuing EDUCATION in each of the following three areas, as set out in more detail below:

- (a) Post surgical care and monitoring;
- (b) Pharmacology; and
- (c) Small animal diagnostic critical care.

In addition, within six months of the date of this Order Respondent shall participate in and satisfactorily complete a course in the maintenance of appropriate veterinary records, which is offered through the University of Wisconsin School of Veterinary Medicine.

With regard to the post surgical care and monitoring, pharmacology and small animal courses, Respondent shall be responsible for locating courses satisfactory to the Wisconsin Veterinary Examining Board or its designee and for obtaining the required pre-approval of the courses from the Wisconsin Veterinary Examining Board prior to taking the courses. Respondent shall provide a description of the course content to the Department Monitor prior to commencement of the program. The Board may reject in whole or in part any educational opportunity which is nominated by Respondent when, in the Board's judgment, the syllabus or description of the course or other educational opportunity is insufficient to fulfill the purpose for which Respondent nominates it by reason of the educational opportunity's scope, content, method of instruction, or degree of participation required of students. If the Board approves an educational opportunity in fulfillment of less than the entire purpose for which Respondent nominates it, Respondent may either accept the Board's limited approval, or forego the

opportunity entirely and select another course.

In the event that Respondent is unable to locate an appropriate educational opportunity, the educational programs alternatively may be developed and conducted by a qualified veterinarian. The educational programs shall consist of approved readings and personal instruction requiring Respondent to meet with the veterinarian conducting the program to discuss the results of the reading. At the conclusion of each program, the veterinarian conducting the program shall examine Respondent's knowledge of the subject area and shall certify to the Board that the Respondent understands the assigned readings. The names of the veterinarian(s) conducting the educational program and a description of the program, and a summary of the required readings shall be submitted to the Veterinary Examining Board, or its designee, for pre-approval prior to the commencement of the program. The veterinarian conducting the educational program shall have no business or social relationship with Respondent.

3. Respondent shall be responsible for all of the costs of attending the educational programs.

4. Within 60 days after the courses are concluded, Dr. Martinsek will file with the Wisconsin Veterinary Examining Board certifications from the sponsoring organization or letters from the participating veterinarian confirming his attendance at the required courses and his personal written affidavit that he has attended each course in its entirety.

5. All certifications, affidavits, reports or other documents required to be filed with the Wisconsin Veterinary Examining Board be filed with:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
1400 E. Washington Ave.
Madison, WI 53708

All certifications, affidavits, reports or other documents required to be filed with the Wisconsin Veterinary Examining Board will be deemed filed with the Veterinary Examining Board upon receipt by the Department Monitor.

6. Respondent shall pay COSTS in the amount of \$1,052.46. Payment shall be submitted within sixty (60) days from the date of this order. Payment shall be made by certified check or money order, payable to the Wisconsin Department of Regulation and Licensing and sent to: Department Monitor, Division of Enforcement, Dept. of Regulation & Licensing, P. O. Box 8935, Madison, WI 53708-8935

7. Respondent will appear before the Wisconsin Veterinary Examining Board, if an appearance is requested by the Board, at the conclusion of the education program to establish that he has complied with all of the terms of this Final Decision and Order.

Dated at Madison, Wisconsin, this 23rd day of June, 2004.

WISCONSIN VETERINARY EXAMINING BOARD

Larry Mahr
A Member of the Board