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STATE OF WISCONSIN
BEFORE THE VETERINARY EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :
 :
GARY N. SMRSTICK, D.V.M., : FINAL DECISION AND ORDER
RESPONDENT. : ORDER 0000 873

[Division of Enforcement Case #'s 09 VET 027 and 10 VET 033]

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Gary N. Smrstick, D.V.M.
6832 Richfield Drive
Arpin, WI 54410

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

Veterinary Examining Board
Department of Regulation & Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

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

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

FINDINGS OF FACT

1. Gary N. Smrstick, D.V.M., Respondent, (d/o/b March 23, 1945), is currently licensed to practice veterinary medicine in the State of Wisconsin (license # 6099-50). This license was first granted on August 20, 2007.

2. Respondent's most recent address on file with the Veterinary Examining Board is 6832 Richfield Drive, Arpin, Wisconsin, 54410.

3. At all times relevant to this case, Respondent worked as a veterinarian at the Clark County Humane Society (CCHS) for its FixaPet program. FixaPet is a low-cost spay and neuter program for cats and dogs in Wisconsin.

4. Respondent was previously disciplined in the State of Texas in March 2003, which resulted in a reprimand and a thirty (30) day suspension of Respondent's license for the following violations:

- a. Compounding Drugs, by failing to compound the solution used to anesthetize his patients (Texas Adm. Code § 573.44);
- b. Patient Record Keeping, by failing to maintain individual patient records for a patient (Texas Adm. Code § 573.52);
- c. Controlled Substances Records Keeping for Drugs on Hand, by failing to maintain proper controlled substances records (Texas Adm. Code § 573.61);
- d. Minimum Security for Controlled Substances, by failing to be knowledgeable of and be responsible for the security of controlled substances used in his practice (Texas Adm. Code § 573.61); and
- e. Duty to Cooperate with Board, by failing to respond to several requests from the Board for information on the case (Texas Adm. Code § 573.74).

5. Respondent was also previously disciplined in the State of Texas in November 2003 for violating Texas Adm. Code § 573.62, Violation of Board Order/Negotiated Settlements, by performing surgery during his thirty day license suspension. This violation resulted in a reprimand and his license suspension for one year.

Case No. 09 VET 027

6. Between January 13, 2009 and June 11, 2009, veterinarian Dr. D, treated five different animals presenting with post-surgical complications arising from spaying and neutering procedures performed by the Respondent through the CCHS FixaPet Program.

7. On May 4, 2009, veterinarian Dr. K also treated two animals presenting with post-surgical complications arising from spaying and neutering procedures performed by the Respondent the CCHS FixaPet Program.

8. Respondent's surgical processes, including disinfectant protocols and suturing techniques, were a contributing cause of these post-surgical complications. A minimally competent veterinarian would ensure the use of proper disinfectant protocols and suturing

techniques to minimize the occurrence of post-surgical complications secondary to spaying and neutering surgeries.

9. Respondent's medical records fail to sufficiently document a complete physical examination. The medical records also fail to sufficiently document discussions with the owner concerning diagnostic or treatment options. The deficiencies in the medical records compromised patient animal continuity of care at CCHS in its administration of the FixaPet Program.

10. Between 2009 and the present, CCHS's website states that "Dr. Gary Smrstick is rated as the third-ranked Spay/Neuter Surgeon in the country. He has performed over 250,000 surgeries in his career. His work is amazing to watch!"

11. There is no published, accepted professional, statistical or recognized basis to support the advertised representations of Respondent's professional ranking.

Case No. 10 VET 033

12. During the investigation of Division of Enforcement Case No. 09 VET 027, the Department became aware of an additional complaint involving the Respondent and his veterinary procedures.

13. Between December of 2008 and June of 2010, RM, a former employee of CCHS, reported that in the majority of his spaying and neutering surgeries through the CCHS FixaPet Program, Respondent failed to obtain informed consent from clients prior to performing surgical procedures.

14. A minimally competent veterinarian is responsible for obtaining informed consent from a client prior to performing treatment on a patient animal to explain the standard of care, options and associated risks and benefits of the recommended treatment.

15. RM also reported that in this same time period, Respondent allowed heartworm medication to be dispensed to clients with whom he had not established a valid veterinarian-client-patient relationship and without a prescription.

16. A minimally competent veterinarian is responsible for establishing a valid relationship with a patient or client prior to prescribing or administering medication to an animal patient. A valid veterinarian-client-patient relationship is established when the veterinarian meets and examines the animal patient and then consults with the client concerning the veterinarian's findings and recommendations for treatment.

17. RM also reported that during this same time period, Respondent was the sole, licensed veterinarian at CCHS. At that time there were no certified veterinary technicians employed by CCHS. Respondent allowed unlicensed employees of CCHS to administer and anesthesia and monitor patients prior to, during and after surgery.

18. A minimally competent veterinarian would not allow an unlicensed employee to administer the anesthesia and monitor a patient prior to, during or after a surgical procedure.

19. RM also reported that during this same time period, Respondent would arrive to the clinic shortly before his surgeries were scheduled. Respondent would then leave the clinic shortly after the surgery was performed. Unlicensed employees would administer sedation and pre-surgery medication to patients and observe clinical findings while Respondent was off-premises. Respondent delegated these responsibilities to unlicensed employees.

20. A minimally competent veterinarian would not delegate responsibility of administering sedation and pre-surgery medications to a patient and observation of clinical findings to an unlicensed employee

21. During Respondent's examination and treatment of patients, both pre-surgery, during surgery and post-surgery, vital statistics were monitored only if the patient exhibited symptoms of pain or anxiety or evidenced difficulty in movement or ability to walk.

22. A minimally competent veterinarian would be present to monitor an animal patient prior to surgery, during and after surgery, to include the monitoring of heart rate and pulse quality, airway patency, respiratory rate, character, signs of pain and/or anxiety, body temperature, neurological status, movement and ability to walk.

CONCLUSIONS OF LAW

1. The Wisconsin Veterinarian Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 453.07, and is authorized to enter into the attached Stipulation and Order, pursuant to Wis. Stat. § 227.44(5).

2. Respondent's failure to maintain appropriate patient records constitutes a violation of Wis. Admin. Code § VE 7.03 and is actionable under Wis. Admin. Code § VE 7.06(15).

3. Respondent's website advertising is a violation of Wis. Admin. Code § VE 7.06(5).

4. Respondent's failure to obtain informed consent with clients including discussion of treatment risks and benefits is a violation of Wis. Admin. Code § VE 7.06(23).

5. Respondent's delegation of veterinarian practice responsibilities is a violation of Wis. Admin. Code § VE 7.02(4) and 7.02(6).

6. Respondent's failure to establish a valid veterinarian-client-patient relationship before selling prescription medication is a violation of Wis. Admin. Code § VE 7.06(10).

7. Respondent's conduct above evidences a lack of knowledge or ability to apply professional principles or skills in the practice of veterinary medicine in violation of Wis. Admin. Code § VE 7.06(1).

ORDER

NOW, THEREFORE, IT IS ORDERED that the Stipulation of the parties is hereby accepted.

IT IS FURTHER ORDERED that:

1. Gary N. Smrstick, D.V.M. (license # 6099-50), is hereby REPRIMANDED by the Wisconsin Veterinary Examining Board

2. Respondent's license to practice veterinary medicine in the State of Wisconsin is LIMITED to require that, within nine (9) months of the date of this Order, Respondent shall locate, and successfully complete a minimum of one (1) credit of continuing education in record keeping for veterinary medical practice; one (1) credit of continuing education in veterinarian antibiotics; four (4) credits of continuing education in surgical monitoring with two of those credits focused on fluid therapy; two (2) credits of continuing education in veterinary pain management; with all credits obtained through the Wisconsin Veterinary Medicine Association or a Wisconsin Veterinary School. The courses attended in satisfaction of this requirement shall NOT be used to satisfy the statutory continuing education requirements for licensure.

3. Respondent shall within ninety (90) days of the date of this Order, submit evidence of Respondent's employer's compliance with the Animal Welfare Act, 2009 Wisconsin Act 90.

4. Respondent's license to practice veterinary medicine in the State of Wisconsin is further LIMITED to require that, within sixty (60) days of the date of this Order Respondent shall obtain and provide a report to the Department Monitor in paragraph 5 below, a surgical competency assessment by an independent veterinarian licensed in Wisconsin, who shall observe Respondent's surgical techniques in no less than two (2) surgeries. This assessment shall report the nature of the surgeries, clinical observations of the Respondent's performance and an opinion of the Respondent's surgical competency in veterinarian practice. The observing veterinarian shall not be a friend or professional acquaintance of the Respondent and the Respondent shall obtain pre-approval of the observing veterinarian prior to the observation.

5. Respondent is responsible for locating the course(s) required under this Order, for providing adequate course descriptions to the Department Monitor, and for obtaining pre-approval of the courses from the Wisconsin Veterinary Examining Board, or its designee, prior to commencement of the programs. For the purposes of this Order, the Board's designee is:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935

Madison, WI 53708-8935
Telephone (608) 267-3817
Fax (608) 266-2264

6. Within thirty (30) days following the successful completion of the courses identified in paragraph 2 above, Respondent shall file with the Department Monitor above, certifications from the sponsoring organization(s) verifying his attendance at the required courses.

7. All costs of the educational programs shall be the responsibility of the Respondent.

8. Upon successful completion of the educational programs, submission and approval of the educational records, submission and approval the surgical competency assessment, evidence of compliance with 2009 WI Act 90 and payment of the costs set forth below, Respondent's license to practice veterinary medicine shall be restored to unlimited status.

9. Respondent shall, within one hundred and eighty (180) days from the date of this Order, pay costs of this proceeding in the amount of TWO THOUSAND DOLLARS (\$2,000.00). Payment shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935
Telephone (608) 267-3817
Fax (608) 266-2264

10. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent fails to timely comply with the terms as set forth above, the Respondent's license (# 6099-50) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms as set forth above.

11. This Order is effective on the date of its signing.

Wisconsin Veterinary Examining Board

By: Robert Spencer
A Member of the Board

5/25/2011
Date