STATE OF MARYLAND
DEPARTMENT OF AGRICULTURE
BEFORE THE STATE BOARD OF VETERINARY MEDICAL EXAMINERS

IN THE MATTER OF THE COMPLAINT OF	*	
THE STATE BOARD OF VETERINARY MEDICAL	*	
EXAMINERS AGAINST	*	
GREGORY BURBELO, D.V.M.	*	DOCKET NO.: 97-008
LICENSE NO. 3655	*	

* * * * * * * * * * * * *

DECISION AND ORDER

The State Board of Veterinary Medical Examiners ("Board") is the State licensing authority that oversees the practice of veterinary medicine in Maryland. Under the Veterinary Practice Act, the Board may prescribe reasonable standards for the practice of veterinary medicine, including conduct and ethics. The Board also may discipline a veterinarian who it finds guilty of violating a law or regulation governing the practice of veterinary medicine in this State. More specifically, the Board may "suspend, or revoke [the veterinarian's] license, and censure or place [the veterinarian] on probation" (Md. Code Ann., Agric. Art. §2-310); and in lieu of, or in addition to, suspending a veterinarian's license, the Board may impose a civil penalty of not more than $5,000 (Md. Code Ann., Agric. Art., §2-310.1).

On August 26, 1999, Dr. Gregory Burbelo appeared before the Board to contest charges that he was deliberately cruel to an animal, a violation of Md. Agric. Code Ann. §2-310(9), and that he did not conduct himself in relation to the public, his colleagues and clients (patient-owners), so as to merit their full confidence and respect, a violation of COMAR 15.14.01.04. These charges were based on the following allegations:

(1) Dr. Burbelo performed an ovario-hysterectomy on a cat after being informed that the owner specifically had instructed another veterinarian to do so;

(2) Dr. Burbelo directed an employee to sign another veterinarian's name on the spay certificate when he had performed this surgery contrary to the owner's instructions;

(3) Dr. Burbelo slammed a cat's head several times against the steel surgical table in response to its aggressive actions, inflicting unnecessary suffering or pain upon the animal;

(4) Dr. Burbelo kicked a cat in response to its aggressive actions, inflicting unnecessary suffering or pain upon the animal; and

(5) Dr. Burbelo performed surgery on the cat before the ordered pre-surgical blood screening was completed.

These charges pertain to a gray, female, domestic short-hair feline named "Shazta," owned by Ms. Sharilynn Schaeffer. Pursuant to the Board's Rules of Procedure, Dr. Burbelo received a copy of the charges and subsequently, the amended charges, that the Board filed against him. Dr. Burbelo was informed of his right to counsel and retained Edward Gerstenfield, Esq. to represent him at the hearing.

Dr. Donald M. Carman, the Board's President, presided over the hearing. The following Board members also were in attendance: (1) Dr. Willard L. Hawkins; (2) Dr. Melvin D. Howard; (3) Dr. James R. McClellan; (4) Dr. John P. O'Mara; and (5) Mr. Iven J. Rathbone. Craig Nielsen, Assistant Attorney General, served as counsel to the Board.

Thomas F. Filbert, Assistant Attorney General, was the presenter of evidence.

DISCUSSION OF THE EVIDENCE

While much is in dispute in this case, the following matters are not in dispute or, at the very least, not contradicted. On July 11, 1996, at approximately 7:00 a.m., Stacey Miller, the assistant manager of the Carroll County Veterinary Clinic, and Nicole Clare, a kennel assistant, opened the clinic for business. Shortly thereafter, between 7:30 - 8:00 a.m., Ms. Schaeffer brought her cat, Shazta, to Dr. Burbelo's clinic for a scheduled ovario-hysterectomy. Ms. Schaeffer informed Ms. Miller that she wanted Dr. Tawnya Hopkins, a veterinarian employed at the clinic, to perform Shazta's surgery, opining that Dr. Burbelo had handled her cat too roughly during a prior office visit. Dr. Hopkins agreed to perform the surgery, having coincidently telephoned the clinic while Ms. Schaeffer was discussing this matter with Ms. Miller. Ms. Miller thereafter placed a note on Shazta's cage tag, indicating that Dr. Hopkins was to perform the surgery. Ms. Miller also made two separate entries in Shazta's treatment file indicating that Ms. Schaeffer wished her cat to be seen by Dr. Hopkins. Ms. Miller made these entries before Shazta's surgery - either that morning or on an earlier date, or perhaps, one entry on each date. Dr. Burbelo performed the ovario-hysterectomy on Shazta. Dr. Hopkins arrived at the clinic that morning at approximately 8:20 - 8:30 a.m. Someone at the clinic that morning, at approximately 8:32 a.m., ran a pre-anesthetic blood screen on Shazta. Ms. Schaeffer was charged for this test. Ms. Schaeffer was apprised of the day's events by Dr. Hopkins, became upset, and other than returning to the clinic shortly thereafter to have Shazta's sutures removed, never came back.

While Dr. Burbelo does not dispute that he performed the ovario-hysterectomy on Shazta, he testified that he did so not knowing of the owner's request. Dr. Burbelo noted that he did not see Ms. Miller's note on Shazta's cage tag, stating that it was not his custom to examine these

tags. Dr. Burbelo further noted that he did not see the two separate entries that Ms. Miller had placed in Shazta's treatment file, specifying Ms. Schaeffer's request that her cat be seen by Dr. Hopkins. Dr. Burbelo also testified that he performed Shazta's ovario-hysterectomy in the afternoon, the time that he customarily performs surgery. On this point, Dr. Burbelo added that he did not arrive at the clinic that day until after completing clinic business at a local bank; and he produced documentary evidence showing that such business had been transacted between approximately 10:00 a.m. and 11:00 a.m. that day. Dr. Burbelo testified that he did not recall who assisted him when he performed Shazta's surgery, other than noting that it would not have been Ms. Clare. Dr. Burbelo also testified that he did not abuse Shazta, and that he did not direct another employee to sign Dr. Hopkins's name to the spay certificate.

The testimony of Ms. Miller, Ms. Clare, and Dr. Hopkins differed sharply from Dr. Burbelo's testimony on these points. Ms. Miller testified that Dr. Burbelo arrived at the clinic shortly before 8:00 a.m., just minutes after Ms. Schaeffer had left the clinic. Ms. Miller indicated that Dr. Burbelo knew that Ms. Schaeffer did not want him to perform Shazta's surgery, testifying that Dr. Burbelo became irate after reading Shazta's cage tag, demanded an explanation, and when told, stated that he was "spaying the [expletive deleted] cat." Ms. Miller also testified that Dr. Burbelo instructed her to bring the cat to surgery, that she refused, and that Dr. Burbelo then had Nicole Clare perform this task. Ms. Miller further testified that Dr. Burbelo began surgery on Shazta at approximately 8:10 a.m. and that she observed Ms. Clare shortly thereafter, trembling; and that when she asked Ms. Clare if she was alright, Ms. Clare informed her that she had seen Dr. Burbelo kick Shazta. Finally, Ms. Miller testified that she observed Dr. Burbelo direct Ms. Robin Weinstein, who began working at the clinic that morning, to sign Dr. Hopkins's name to Shazta's spay certificate.

Ms. Clare likewise indicated that Dr. Burbelo had come to the clinic early that morning, testifying that Dr. Burbelo arrived shortly after she had arrived. Ms. Clare also testified that sometime thereafter, Dr. Burbelo, sounding aggravated, directed her to bring the Schaeffer cat to surgery, and that she complied with this request. Ms. Clare further testified that she thought Dr. Burbelo's request to be unusual because she had never assisted in surgery; and that when she pointed this out to Dr. Burbelo, he indicated that he would show her how to hold the cat. Ms. Clare additionally testified that Shazta scratched her and then Dr. Burbelo; and that Dr. Burbelo, in response, grabbed Shazta by the neck, forcibly slammed its head onto the steel surgical table at least three times, threw the cat to the floor, and kicked it against the wall, lifting the cat off the floor. Ms. Clare further testified that she was shocked by Dr. Burbelo's actions; that he was not restraining Shazta, but that he was cruel. Finally, Ms. Clare noted that she informed Stacey Miller of the incident shortly after its occurrence; and that she later apprised Dr. Hopkins of Dr. Burbelo's actions when Dr. Hopkins arrived at the clinic sometime after 8:00 a.m.

Dr. Hopkins' testimony is consistent with Ms. Miller's and Ms. Clare's. Dr. Hopkins testified that she was scheduled to begin work that morning at 8:00 a.m.; and that she called the clinic between 7:30 - 7:40 a.m. to indicate that she was running late. Dr. Hopkins further testified that she learned that Ms. Schaeffer was present at the clinic when she made her call; that

Ms. Schaeffer's cat, Shazta, was scheduled to have an ovario-hysterectomy that day; and that Ms. Schaeffer had requested that she perform Shazta's surgery. Dr. Hopkins also testified that she agreed to perform this surgery on Shazta. Dr. Hopkins additionally testified that when she arrived at the clinic, sometime between approximately 8:20 - 8:30 a.m., Dr. Burbelo already had completed or was nearing completion of this procedure. Dr. Hopkins further testified that Ms. Miller and Ms. Clare were upset over Dr. Burbelo's actions; that Ms. Miller told her that Dr. Burbelo, using inappropriate language, stated that he was going to spay the cat; that before Dr. Burbelo could perform this procedure, the cat became rambunctious, had gotten off the table, and that Ms. Clare had witnessed Dr. Burbelo kick the cat.

The Board finds the accounting of the day's events provided by Ms. Miller, Ms. Clare, and Dr. Hopkins more likely than the one offered by Dr. Burbelo. First, the Board finds that Dr. Burbelo performed Shazta's ovario-hysterectomy knowing that Ms. Schaeffer had specifically requested that Dr. Hopkins do so. The Board simply cannot conclude that Dr. Burbelo performed this procedure by accident; nor can the Board conclude that this surgery took place in the afternoon. To do so, the Board would have to find that Ms. Miller, Ms. Clare, and Dr. Hopkins have lied, or at the very least, are all mistaken. The Board also would have to find that Dr. Burbelo did not read Shazta's treatment record or Shazta's cage tag, or that someone other than Nicole Clare brought Shazta into surgery, and that person did not read Shazta's cage tag. In addition, if Dr. Burbelo performed this procedure in the afternoon accidently, as he testified, the Board would have to find that he was able to do so without Ms. Miller, Ms. Clare, or Dr. Hopkins being aware of it. The Board simply cannot draw these conclusions. While the evidence clearly points to the fact that Dr. Burbelo was away from the clinic between approximately 10:00 a.m. and 11:00 a.m. that day, this does not contradict the testimony of Dr. Hopkins, Ms. Miller, and Ms. Clare that he had performed Shazta's surgery earlier that morning.

Second, the Board finds that Dr. Burbelo slammed Shazta's head onto the surgical table and kicked the cat. In doing so, the Board has determined Ms. Clare's testimony to be particularly credible. Dr. Burbelo indicated that Ms. Clare's friendship with Ms. Miller might be reason enough for her to lie, offering no other explanation for her damaging testimony against him. The Board, however, finds Dr. Burbelo's explanation implausible. While Ms. Clare did note being friendly with Ms. Miller, the Board is hard-pressed to imagine that this friendship would cause Ms. Clare to perjure herself - particularly when, since leaving Dr. Burbelo's employment shortly after the incident, she has neither seen nor talked to Ms. Miller, nor any of her former coworkers since that time. Additionally, the Board finds that Ms. Clare had no animus toward Dr. Burbelo. Ms. Clare spoke highly of Dr. Burbelo. Ms. Clare testified that Dr. Burbelo treated her nicely; and that she was quite appreciative of the attention that he paid her after telling him of her interest in becoming a veterinarian. She further testified that she was shocked by his actions toward Shazta, that is, she was highly surprised by his behavior. Very simply, while some tension may have existed between Dr. Hopkins and Dr. Burbelo, and to a lesser extent, between Dr. Burbelo and Ms. Miller, the Board finds nothing to suggest any animus between Ms. Clare and Dr. Burbelo; and nothing to suggest that she would not testify truthfully in this matter.

Third, the Board finds that Dr. Burbelo performed Shazta's surgery without awaiting the results of the pre-anesthetic blood screen. While it is clear that the test was run at 8:32 a.m. that day, it is not clear who ran the test and who drew the blood. The Board attributes the inability of anyone to recall who performed these tasks mostly to the passage of time. No matter, the critical question is not who performed the test; instead, it is whether the test was run before or after Shazta's surgery. As noted earlier, the Board has found that Shazta's surgery occurred early that morning, at approximately 8:10 a.m. Given this finding, the Board must conclude that the pre-anesthetic blood screen was run after Dr. Burbelo had begun Shazta's surgery.

Finally, the Board concludes that Dr. Burbelo directed Robin Weinstein to sign Dr. Hopkins's name to Shazta's spay certificate, hoping to gloss over his actions that day. The Board notes that this was Ms. Weinstein's first day on the job; and that she was not present at the clinic earlier that morning when these events unfolded and, excepting Dr. Hopkins, Ms. Miller, and Ms. Clare, appears to have been the only other employee working at the clinic that day.

FINDINGS OF FACT

1. Dr. Burbelo is a licensed veterinary practitioner in this State and was at all times relevant to the charges filed against him in this matter;

2. Dr. Burbelo is the owner of the Carroll County Veterinary Clinic. In July 1996, Dr. Burbelo employed, among others, the following individuals at this clinic:

   a. Dr. Tawnya Hopkins, a licensed veterinary practitioner in this State;
   b. Ms. Caroline Tibbetts, a registered veterinary technician, who had managerial responsibilities at the clinic, assisted in surgeries, ran blood tests, and performed various sundry duties;
   c. Ms. Stacey Miller, who, like Ms. Tibbetts, had managerial responsibilities at the clinic, assisted in surgeries, ran blood tests, and performed various sundry duties;
   d. Ms. Nicole Clare, a high school student at the time, who was hired as a kennel assistant, and performed various sundry duties at the clinic; and
   e. Ms. Robin Weinstein, a receptionist, who began working at the clinic on July 11, 1996.

3. On or about July 11, 1996, at approximately 7:30 - 8:00 a.m., Ms. Sharilynn Schaeffer brought her cat, Shazta, to the Carroll County Veterinary Clinic for a scheduled ovario-hysterectomy. When Ms. Schaeffer arrived at the clinic that morning, Stacey Miller, who had opened the facility, was working the receptionist's desk and Nicole Clare was working in the kennel area. No other individuals had arrived yet at the clinic.

4. Explaining that she believed Dr. Burbelo had handled Shazta too roughly on a previous visit, Ms. Schaeffer stated to Ms. Miller that Dr. Burbelo was not to spay her cat, that she wanted Dr. Hopkins to perform the procedure. Coincidently, Dr. Hopkins, who was

scheduled to report to the clinic at 8:00 a.m., telephoned the clinic to indicate that she was running late. After being told of Ms. Schaeffer's request, Dr. Hopkins agreed to perform the procedure.

5. In response to Ms. Schaeffer's request, Ms. Miller noted on Shazta's cage tag that Dr. Hopkins was to perform the surgery. Before Shazta's surgery, Ms. Miller made similar entries on the cat's treatment record - either that morning or on an earlier date, or perhaps, one entry on each date.

6. At approximately 8:00 a.m., Dr. Burbelo arrived at the clinic. Shortly thereafter, Dr. Burbelo performed an ovario-hysterectomy on Shazta, knowing that the owner had requested that he not perform the surgery. More specifically, after arriving at the clinic that morning, Dr. Burbelo learned that Ms. Schaeffer had requested that Dr. Hopkins perform Shazta's surgery over him. Irate over the request, and the explanation given for it, Dr. Burbelo instructed Ms. Miller to bring Shazta to surgery. She refused. Dr. Burbelo then instructed Ms. Clare to bring the cat to surgery. Ms. Clare complied.

7. Before surgery, Shazta was rambunctious, scratching Ms. Clare first, and then Dr. Burbelo. Responding to the cat's aggressiveness, Dr. Burbelo, already angry over the events of the morning, slammed its head forcibly against the surgical table several times, threw it to the floor, and kicked the cat against the wall, elevating the cat off the floor. Dr. Burbelo's actions went beyond restraint; they were cruel, inflicting unnecessary suffering or pain upon the animal.

8. Following surgery, Dr. Burbelo directed an employee to sign Dr. Hopkins' name to the spay certificate.

9. Dr. Burbelo's clinic policy at that time was to afford a patient's owner the choice of whether or not to run a pre-anesthetic blood screen on an animal. Ms. Schaeffer was charged, and paid for, this service. Dr. Burbelo, however, anesthetized Shazta and performed surgery on the cat without awaiting the results of the pre-anesthetic blood screen.

10. After learning of the day's events, Ms. Schaeffer became upset, and other than returning to the clinic shortly thereafter to have Shazta's sutures removed, never came back.

CONCLUSIONS OF LAW

1. Dr. Burbelo performed an ovario-hysterectomy on a cat after being informed that the owner specifically had instructed another veterinarian to do so, a violation of COMAR 15.14.01.04;

2. Dr. Burbelo directed an employee to sign another veterinarian's name on the spay certificate when he had performed this surgery contrary to the owners instructions, a violation of COMAR 15.14.01.04;

3. Dr. Burbelo slammed a cat's head several times against the steel surgical table in response to its aggressive actions, inflicting unnecessary suffering or pain upon the animal, a violation of COMAR 15.14.01.04, and Agric. Art. § 2-310(9);

4. Dr. Burbelo kicked a cat in response to its aggressive actions, inflicting unnecessary suffering or pain upon the animal, a violation of COMAR 15.14.01.04, and Agric. Art. § 2-310(9); and

5. Dr. Burbelo performed surgery on the cat before the ordered pre-surgical blood screening was completed, a violation of COMAR 15.14.01.04.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 18th day of November, 1999, by the State Board of Veterinary Medical Examiners:

ORDERED that beginning December 1, 1999, Dr. Gregory Burbelo's license to practice veterinary medicine in this State be and is hereby suspended for a period of six months; but that all but two weeks of this suspension is stayed;

ORDERED that Dr. Gregory Burbelo pay a **CIVIL PENALTY** in the amount of One Thousand Seven Hundred Fifty Dollars ($1,750.00) within sixty (60) days from receipt of this Order (payable to the State Board of Veterinary Medical Examiners) for the violations hereinafter specified:

1. Two Hundred Fifty Dollars ($250) for performing an ovario-hysterectomy on a cat after being informed that the owner specifically had instructed another veterinarian to do so, a violation of COMAR 15.14.01.04;

2. Two Hundred Fifty Dollars ($250) for directing an employee to sign another veterinarian's name on the spay certificate when Dr. Burbelo had performed this surgery contrary to the owner's instructions, a violation of COMAR 15.14.01.04;

3. Five Hundred Dollars ($500) for kicking a cat in response to its aggressive actions, a violation of COMAR 15.14.01.04, and Agric. Art. § 2-310(9);

4. Five Hundred Dollars ($500) for slamming a cat's head several times against the

steel surgical table in response to its aggressive actions, a violation of COMAR 15.14.01.04, and Agric. Art. § 2-310(9); and

5. Two Hundred Fifty Dollars ($250) for performing surgery on the cat before the ordered pre-surgical blood screening was completed, a violation of COMAR 15.14.01.04;

ORDERED that Dr. Gregory Burbelo be and that he is hereby placed on **PROBATION** for a period of two (2) years beginning on the date that the Board executes this Order; and be it further

ORDERED that Dr. Gregory Burbelo is subject to the following **TERMS AND CONDITIONS OF PROBATION:**

(1) Dr. Burbelo shall obey all laws and regulations governing the practice of veterinary medicine in this State; and

(2) Dr. Burbelo shall pay the civil penalty that the Board imposed, as specified above.

11/18/97
Date

STATE BOARD OF VETERINARY MEDICAL EXAMINERS

Donald M. Carman, D.V.M.
President, State Board of Veterinary Medical Examiners
50 Harry S. Truman Parkway
Annapolis, MD 21401