DOCKETED COMPLAINT NO. 1991-24

TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS

VS.

AMY MARIE RAINES, D.V.M.

TEXAS VETERINARY MEDICAL LICENSE NO. 6578
1991 RENEWAL CERTIFICATE NUMBER 1155

FINDINGS, CONCLUSIONS AND ORDERS OF THE BOARD

On the 30th day of January, 1992, the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS, being in regular meeting at the St. Anthony Hotel, 300 East Travis Street, San Antonio, Bexar County, Texas, such meeting being called for the purpose of considering the Proposal for Decision on the above numbered and entitled complaint as well as for consideration of other Board business. The above entitled and numbered complaint having been heard by David M. Grassbaugh, presiding hearings officer, on December 20, 1991, and said Defendant, KAREN D. HICKS, D.V.M., having been duly notified and the following members of the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS being present:

Dr. Guy A. Sheppard, President of San Angelo, TX
Dr. Larry M. Dubuisson, Secretary of Weslaco, TX
Ms. Olivia Eudaly, Member of Fort Worth, TX
Dr. Robert D. Lewis, Member – Recused of Elgin, TX
Dr. Mary E. Mainster, Member of San Antonio, TX
Dr. Alton F. Hopkins, Jr., Member of Dallas, TX

At the appointed hour, the President of the Board, DR. GUY A. SHEPPARD ordered the case to proceed at which time it was ascertained that Karen D. Hicks, D.V.M. was not present, nor represented by legal counsel.

The Board then reviewed a Proposal For A Decision prepared by David M. Grassbaugh, and the Plaintiff’s and Respondent’s responses, on the same day, January 30, 1992 all of the above members of said Board being present and participating with the exception of Robert Lewis, D.V.M. recused from voting since he served as Secretary of the Board in this case, makes the following findings to-wit:
FINDINGS OF FACT

Joseph J. Rizzo, an employee of the Board, swore a complaint against Dr. Raines on August 16, 1991. Robert D. Lewis, D.V.M., President of the Board, filed and docketed this complaint as No. 1991-23 on August 19, 1991. In short, it alleges that Dr. Raines misdiagnosed an impaction colic and failed to diagnose a severe restriction of the urethra, allowing a horse to suffer needlessly, in violation of rule of Professional Conduct 573.22 regarding Professional Standard of Humane Treatment, and The Texas Veterinary Licensing Act, V.A.T.S., Art. 8890, Sec. 14(a)(5). Notice of a hearing was given to Dr. Raines by mail December 4, 1991. (Board Exhibit 4)

Joseph J. Rizzo also swore a complaint against Dr. Hicks on August 16, 1991. Dr. Lewis filed and docketed this complaint as No. 1991-23 on August 19, 1991. Briefly, it alleges that Dr. Hicks also misdiagnosed, in violation of rule 573.22. In addition, it alleges she ordered unnecessary treatment, in violation of V.A.T.S. 8890, Section 14(a)(11), and charged for services not rendered, in violation of rule 573.26 regarding Honesty, Integrity, and Fair Dealing. Notice of a hearing was given to Dr. Hicks by mail on December 4, 1991. (Board Exhibit 3)

On December 20, 1991, all parties moved to consolidate the complaints for purposes of hearing. Since the complaints share issues of law and fact, and in order to avoid duplication of effort, the hearings officer granted the motion and ordered the consolidation, with the consolidated complaint assigned the Docket Complaint No. 1991-23. (Board Exhibits 1 & 2)

Dr. Raines waived her right to be represented by an attorney.

On the morning of January 14, 1991, Ms. Brenda McHaney called the Mesquite Veterinary Clinic, MC 31, Box 18, Midland, Texas. Dr. Raines, who worked there and who holds Texas Veterinary Medical License No. 6578, 1991 Renewal Certificate No. 1155, answered the call. Mc McHaney
asked for Dr. Hicks, the owner of the Mesquite Clinic, who had been recommended to her by a friend. Dr. Hicks holds Texas Veterinary Medical License No. 5389, 1991 Renewal Certificate No. 2004.

Dr. Raines began the examination of Dan. However, she asked Dr. Hicks for a second opinion. Then Dr. Hicks completed her examination of Dan, she recommended that Dan be treated for a mild impaction colic and have his sheath cleaned. Brenda McHaney assented to these suggestions. Dr. Hicks began to clean Dan’s sheath. However, Dr. Hicks was called away by a phone call. Dr. Hicks asked Dr. Raines to complete cleaning of the sheath. Dr. Raines started to clean the sheath. Dr. Raines believed she had finished the task before Dr. Hicks returned.

Since the veterinarians gave Dan a sedative to cause his penis to come out of the sheath, this procedure was a veterinary procedure and not a mere grooming procedure. Dr. Raines clearly understood that a bean needed to be searched for and removed if such a bean existed. She believed, however, that Dr. Hicks had already conducted this procedure.

Dr. Hicks believed that Dr. Raines would have removed a bean, if there was a bean to remove, because such a policy is the standard practice among veterinarians.

Brenda McHaney took her horse home and observed him. She found that he continued to have severe problems urinating. She mentioned this to her husband who demanded that she take Dan to a veterinarian who would bean him.

On January 15, 1991, Brenda McHaney took Dan to Jay Mac Tripp, D.V.M. and asked than Dan be beaned. Dr. Tripp examined Dan. He found that there was no evidence that Dan’s sheath had been cleaned. He also found that Dan’s bladder was distended and that Dan was in pain. The cause of these problems was a large bean which he found in Dan’s penis. This bean was preventing Dan from properly urinating. Dr. Tripp removed the bean and prescribed a diuretic for Dan. This treatment relieved Dan’s symptoms. The bean was not difficult to find and should
have been found by the average veterinarian. Beans are built up over weeks and months. A bean will not develop over night.

The average veterinarian should check a horse for beans when he or she cleans the sheath of a male hose. A failure to do so falls below the standard of care required of a veterinarian.

A bean can be a very serious problem for a horse. If a bean prevents a horse from being able to urinate this condition can cause death of the horse. In this case, however, no permanent damage was caused to Dan. Dr. Tripp removed the bean before serious problems occurred.

Doctors Hicks and Raines caused Dan to suffer due to their violation of the standards of professional conduct, by failing to exercise the same degree of care, skill and diligence in treating Dan that is used in similar circumstances by average members of the veterinary profession in good standing in their community, in that, they were doing a procedure which required that they search for a bean.

CONCLUSIONS OF LAW

A. LAW

The Texas Veterinary Licensing Act, V.A.T.S.. Article 8890, provides, in part:

Sec. 14(a)
"... the Board may revoke or suspend a license, impose a civil penalty, place a person whose license has been suspended on probation or reprimand a licensee... after notice and hearing as provided in Section 15 of this Act, or as provided by rules of the Board, if it finds that an applicant or licensee:
(5) has engaged in practices or conduct in connection with the practice of veterinary medicine which are violative of the standards of professional conduct as duly promulgated by the Board in accordance with law;
(11) has performed or prescribed unnecessary or unauthorized treatment;"

Sec. 15
"If the Board ... suspends or revokes a person’s license, or places on probation, reprimands, or assesses a civil penalty against a licensee, the ... licensee is entitled to a hearing before the Board. The proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, V.A.C.S.)"
The Rules of Professional Conduct, duly promulgated by the Board, state, in part:

573.22 PROFESSIONAL STANDARD OF HUMANE TREATMENT
Veterinarians shall exercise the same degree of humane care, skill, and diligence in treating patients as are ordinarily used in the same or similar circumstances by average members of the veterinary medical profession in good standing in the locality or community in which they practice or in similar communities.

The Administrative Procedure and Texas Register Act, Article 6252-13a, Tex. Rev. Civ. State, provides, in part:

Sec. 13.
(a) "In a contested case, all parties must be afforded an opportunity for a hearing after reasonable notice of not less than 10 days."

Sec. 14.
"... the rules of evidence as applied in non-jury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted ... if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs."

B. JURISDICTION AND BURDEN OF PROOF

Pursuant to Art. 8890, and Art. 6252-13a, Texas Revised Civil Statutes, Annotated, the Board of Veterinary Medical Examines has jurisdiction over this matter and the licensees, Dr. Hicks and Dr. Raines, (Board Exhibits 3 & 4)

The burden proof is on the movant to show by the preponderance of credible evidence that a licensee has violated the rules of professional conduct.

C. DISCUSSION

1. NO MISDIAGNOSIS OR UNAUTHORIZED TREATMENT

The fact that colic was a reasonable diagnosis is based, in part, on the testimony of Dr. Raines and Dr. Hicks at the hearing. Both Doctors were clear, plain spoken, direct, cooperative, forthcoming and knowledgeable throughout their testimony. There was no hint of reluctance or deception or concealment in their manner or their testimony. Both doctors observed and examined Dan on the day he was brought
to the clinic. Great weight is given their testimony both because of their first hand opportunities to observe Dan and the high degree of credibility they exhibited at the hearing.

In addition, the only other veterinarian to see Dan on January 14, 1991, Dr. Tindol, concurred strongly with the diagnosis and the treatment, which he administered.

Finally, Dr. Ward, who was called by the Board as an expert at the hearing, testified that if presented with symptoms and history Dan presented, she would have diagnosed and treated for mild colic.

All veterinarians agree that administering mineral oil was an appropriate treatment under the circumstances.

All testimony agreed that Ms. McHaney was present throughout the examination and treatment of Dan, and consented to the treatment.

Therefore, it must be concluded that Dr. Raines and Dr. Hicks met the standard of care required by Rule 573.22 in their diagnosis and treatment of Dan for impaction colic. They did not perform unnecessary or unauthorized treatment.

2. FAILURE TO DIAGNOSE

There is no dispute that no bean was removed from Dan while at the Mesquite Clinic. The issue is whether this was due to a want of care and diligence on the part of Dr. Raines and Dr. Hicks. As to each veterinarian, a lack of care and diligence was found.

Dr. Hicks and Raines both failed to check for and to find the large bean that Dan had on January 14, 1991. This failure shows a want of care and diligence that falls below the average standards of veterinary competence. The average veterinarian would have checked for a bean and found one in a case such as Dan’s on January 24, 1991, if the owner had asked that a horse be beaned.

Dr. Hicks found that Dan needed his sheath cleaned. She started to clean the sheath. However, since she was called away by a long distance call, Dr. Hicks asked Dr. Raines to finish cleaning the
Neither Dr. Hicks nor Dr. Raines checked Dan for a bean nor removed a bean. The average veterinarian will check a horse whose sheath is being cleaned for beans, and will remove a bean if found. The failure of Dr. Hicks and Dr. Raines to search for a remove the bean shows a lack of diligence and falls below the standard of care of an average veterinarian.

Because of the above noted neglect of Dr. Hicks and Dr. Raines, Dan was in pain and had a distended bladder on the next day. This condition could have had serious consequences, if Brenda McHaney had not taken Dan to another veterinarian and asked him to bean Dan. If Dan had been untreated he could have suffered serious injury and perhaps death. Both Dr. Hicks and Dr. Raines violated Rule 573.22

3. NO DISHONESTY

The bill lists a charge for beaning. (Board Exhibit 5) The chart does not list such a charge. (Board Exhibit 6) The bill was prepared by Dr. Tindol, who was new at the clinic.

The standard of Rule 573.26 is "honesty, integrity, and fair dealing to clients in time and services rendered". There was no evidence of any fraud, deception or dishonesty by Dr. Hicks or Dr. Raines presented at the hearing. Such acts require an malicious intent to deceive or to cheat that is absolutely lacking in this case. there was no evidence that the total of the bill was unreasonable, given an hour long examination and treatment.

When a complaint was received, prompt efforts toward rectifying the situation were made.

Therefore, there is no ground to take again against Dr. Hicks for violation of rule 573.26.

Dr. Hicks violated Article 8890, Sec.14(a)(5). She violated rule 573.22. She did not violate rule 573.26 nor Article 8890, Sec. 14(a)(11).
Dr. Raines violated Article 8890, Sec.14(a)(5) and Rule 572.22. Dr. Raines did not violate Article 8890, Sec.14(a)(11) nor Rule 573.26.

ORDERS

It is therefore ORDERED that License Number 6578 heretofore issued to AMY MARIE RAINES, D.V.M. by the Texas Board of Veterinary Medical Examiners be and the same is hereby OFFICIALLY REPRIMANDED.

It is further ORDERED that each Finding of Fact found herein is adopted as a Conclusion of Law, and each Conclusion of Law is adopted as a Finding of Fact.

The foregoing Findings and Orders of the Texas State Board of Veterinary Medical Examiners are ORDERED to be entered as the FINDINGS AND ORDERS of the Board, a quorum and a majority of the members of such Board being present and participating in such hearing, deliberations and decision, and such FINDINGS AND ORDERS are made on the 30th day January, 1992, in San Antonio, Bexar County, Texas.

As Executive Director of the Board I have been directed to prepare the Board's Findings and Orders in appropriate form and submit a copy of same to you.

Executed this 20th day of February, 1992.

BUDDY MATTHEWS, Executive Director
Texas State Board of Veterinary Medical Examiners
DOCKETED COMPLAINT NO. 1991-24

TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS

TEXAS VETERINARY MEDICAL LICENSE NO. 6578

VS.

1991 RENEWAL CERTIFICATE NUMBER 1155

AMY MARIE RAINES, D.V.M.

COMPLAINT AFFIDAVIT FORM

BEFORE ME, the undersigned authority, a Notary Public in and for Texas, on this day personally appeared JOSEPH J. RIZZO, who after being duly sworn, did depose and say:

On or about February 11, 1991, Joseph J. Rizzo, being an employee of the Texas Board of Veterinary Medical Examiners, did in the course of such employment, make certain investigations into the professional conduct of one AMY MARIE RAINES, D.V.M., Mesquite Veterinary Clinic, HC 31, Box 18, Midland, Midland County, Texas, Veterinary License Number 6578, 1991 Renewal Certificate Number 1155, a practitioner of veterinary medicine in the State of Texas. As an employee of the Texas Board of Veterinary Medical Examiners, I, Joseph J. Rizzo, do hereby present the following complaint against AMY MARIE RAINES, D.V.M., who is hereinafter called Respondent.

I.

On or about January 14, 1991, Ms. Brenda McHaney presented her quarter horse gelding, "Dan", to the Mesquite Veterinary Clinic with a request that an accumulation of dirt and penile smegma (bean) in the cul-de-sac in the glans penis be removed.

II.

Respondent examined the horse and diagnosed the horse as suffering from an impaction colic rather than a "bean" and the horse was treated accordingly and released from the clinic. No "bean" was located or removed.

III.

On or about January 15, 1991, Ms. McHaney took the horse to Jay M. Tripp, D.V.M. and requested the horse be examined for a possible "bean".

IV.

Upon digital examination, Dr. Tripp determined that a large "bean" approximately 1 1/4 to 1 1/2" long and 3/4" in diameter was causing severe restriction of the urethra, producing excessive urine retention and pain due to pressure. A tranquilizing agent was administered to the horse, to facilitate cleaning of the penis and sheath and removal of the "bean". A diuretic (furosemide) was dispensed to the owner to administer to "Dan" to "flush" the urinary tract, and the horse was released.
V.

By misdiagnosing the horse as suffering from impaction colic and subsequent failure to diagnose a severe restriction of the urethra due to a "bean", and therefore allowing the horse to suffer needlessly, Respondent has failed to exercise care, skill and diligence in treating the horse and therefore violated Rule of Professional Conduct 573.22 which states:

573.22 PROFESSIONAL STANDARD OF HUMANE TREATMENT
Veterinarians shall exercise the same degree of humane care, skill, and diligence in treating patients as are ordinarily used in the same or similar circumstances by average members of the veterinary medical profession in good standing in the locality or community in which they practice, or similar communities.

VI.

The Texas State Board of Veterinary Medical Examiners has grounds to take disciplinary action against Dr. Amy Marie Raines’ Veterinary License under the Texas Veterinary Licensing Act, V.A.T.S., Article 8890, (formerly Article 7465a) Sections 14(a) (5) which state:

Article 8890, Sec. 14(a)
". . . the Board may revoke or suspend a license, impose a civil penalty, place a person whose license has been suspended on probation, or reprimand a license . . . if it finds that an applicant or licensee:

. . . .

(5) has engaged in practices or conduct in connection with the practice of veterinary medicine which are violative of the standards of professional conduct as duly promulgated by the Board in accordance with law;"

The foregoing complaint is submitted to the Secretary of the Texas Board of Veterinary Medical Examiners on this the 14th day of August, 1991.

Further, Affiant sayeth not.

JUDY C. SMITH
Notary Public of Texas
My Commission Expires
SEPT. 13, 1993

JOSEPH J. RIZZO, Affiant

SUBSCRIBED and SWORN TO before me by the said JOSEPH J. RIZZO, this the 14th day of August, 1991.

JUDY C. SMITH
Notary Public in and for Texas
The foregoing Complaint is hereby filed and docketed with the Texas State Board of Veterinary Medical Examiners and styled Texas State Board of Veterinary Medical Examiners vs. Amy Marie Raines, D.V.M. under Docketed Number 1991-24, this the 19th day of August, 1991.

ROBERT D. LEWIS, D.V.M., President
Texas Board of Veterinary Medical Examiners