DOCKETED COMPLAINT NO. 1988-32

TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS  

VS.  

JOSEPH M. SARMIENTO, D.V.M.  

TEXAS VETERINARY MEDICAL LICENSE NUMBER 6311  
1988 RENEWAL CERTIFICATE NUMBER 3863

FINDINGS, CONCLUSIONS AND ORDERS OF THE BOARD

On the 16th day of June, 1989, the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS, being in regular meeting at 1946 South IH 35, Austin, Travis County, Texas, such meeting being called for the purpose of hearing and considering the above numbered and entitled complaint as well as for consideration of other Board business, and the above entitled and numbered complaint having been previously scheduled for hearing and Defendant, the said JOSEPH M. SARMIENTO, D.V.M., having been duly notified and the following members of the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS being present to-wit:

Mr. Jim Humphrey, President  
Dr. Robert Lewis, Secretary  
Dr. W. L. "Dub" Anderson, Member  
Dr. Larry M. Dubuisson, Member  
Ms. Olivia Eudaly, Member  
Mr. Mike Levi, Member  
Dr. Mary Mainster, Member  
Dr. Edward Murray, Member

of Henrietta, TX
of Elgin, TX
of Addison, TX
of Weslaco, TX
of Fort Worth, TX
of Spicewood, TX
of San Antonio, TX
of Spur, TX

At the appointed hour, the President of the Board, MR. JIM F. HUMPHREY ordered the case to proceed at which time it was ascertained that Joseph M. Sarmiento, D.V.M. was not present, nor represented by legal counsel; the Board then proceeded to hear the evidence presented by the State, and on the same day, June 16, 1989, all of the above members of said Board being present and participating with the exception of the Secretary of the Board, makes the following findings to-wit:

FINDINGS OF FACT

I.  
Joseph M. Sarmiento, D.V.M. is a doctor of veterinary medicine, licensed to practice veterinary medicine in the State of Texas under License Number 6311, 1988 Renewal Certificate Number 3863.

II.  
Dr. Sarmiento received notice of this hearing on or about March 28, 1989.

III.  
Respondent did not shave the surgical site in preparation to perform a cesarean section on his client's heifer.

IV.  
Respondent failed to adequately close the surgical rent in the uterus of the client's heifer, after conclusion of a cesarean delivery.
CONCLUSIONS OF LAW

I.
By failing to adequately prepare, i.e., shaving the surgical site, prior to commencement of cesarean surgery on the client's heifer, the Respondent failed to exercise care, skill, and diligence in treating patients and therefore has violated Rule 11 of the rules of Professional Conduct which states:

Rule 11
Veterinarians shall exercise the same degree of 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.

II.
By failing to adequately close the surgical rent in the uterus following a cesarean delivery of a calf, Respondent failed to exercise care, skill and diligence in treating patients and therefore in violation of Rule 11 of the Rules of Professional Conduct which states:

Rule 11
Veterinarians shall exercise the same degree of care, skill, and diligence in treating patients as are ordinarily used in the same or similar circumstances by average member of the veterinary medical profession in good standing in the locality or community in which they practice, or in similar communities.

III.
The Texas State Board of Veterinary Medical Examiners has grounds to take disciplinary action against Respondent's veterinary license under the Texas Veterinary Licensing Act, Article 7465a, V.A.T.C.S., Section 14(e) which states in part:

Article 7465a, Section 14(e), Veterinary Licensing Act
"... the Board may revoke or suspend a license, place a person whose license has been suspended on probation or reprimand a licensee... if it finds that an applicant or licensee: (e) 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 the law."

ORDERS

It is therefore ORDERED that Veterinary License Number 6311, heretofore issued to JOSEPH M. SARMIENTO, D.V.M. by the Texas State Board of veterinary Medical Examiners be and the same is HEREBY SUSPENDED for a period of ten (10) years, all being probated except ninety (90) days, effective upon Dr. Sarmiento's return to Texas to practice veterinary medicine.
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 ______ day June, 1989, in Austin, Travis County, Texas.

The Secretary of the Board is hereby ordered to prepare the Board’s Findings and Orders in appropriate form and submit to the members of the Board for their signatures and to mail a copy of same to the Respondent at his last known address.

Executed this ______ day of June, 1989.

Jim T. Humphrey, President

Date

Fred K. Soifer, D.V.M., Vice-President

Date 6-16-1989

Robert D. Lewis, D.V.M., Secretary

Date

W. L. "Dub" Anderson, D.V.M., Member

Date 6-16-89

Larry M. Dubuisson, D.V.M., Member

Date 6/16/89

Olivia R. Eudaly, Member

Date 6-16-89

Mike Levi, Member

Date

Mary E. Mainster, D.V.M., Member

Date 6/16/89

Edward S. Murray, D.V.M., Member

Date
DOCKETED COMPLAINT NO. 1988-32
TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS
vs.
JOSEPH M. SARMIENTO, D.V.M.

TEXAS VETERINARY MEDICAL LICENSE NO. 6311
1988 RENEWAL CERTIFICATE NUMBER 3863

COMPLAINT AFFIDAVIT FORM

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

"I, MAX BLANTON, 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 DR. JOSEPH M. SARMIENTO, Comfort Veterinary Hospital, P. O. Box 128, Comfort, Kendall County, Texas, Texas Veterinary License Number 6311, 1988 Renewal Certificate Number 3863, a practitioner of veterinary medicine in the State of Texas. As an employee of the Texas Board of Veterinary Medical Examiners, I, MAX BLANTON, do hereby present the following complaint against JOSEPH M. SARMIENTO, D.V.M., who is hereinafter called Respondent.

I.

On Friday, October 9, 1987 at or about 4:20 p.m. the Respondent was contacted by Mr. Matt Hernandez, Ranch Manager for Sun Mountain Ranch, Boerne, Texas to assist in an emergency, that being delivering a calf. The veterinarian normally treating the animals was not available and Mr. Hernandez had been unsuccessful in numerous attempts to locate any other practitioners to assist with the delivery. Respondent met Mr. Hernandez at a local restaurant and accompanied him to the Sun Mountain Ranch owned by Dr. Lawrence E. Lamb. After examination of the cow and several attempts to "pull" the calf by rope, Respondent informed Mr. Hernandez that surgery would be necessary to deliver the calf. Respondent returned to his clinic to obtain the necessary surgical instruments to perform the surgery and arrived back at the ranch about 30 to 45 minutes later.

II.

Respondent sedated the cow with 50 mg. intramuscular injection of Rompun and administered approximately 10 ml of Lidocaine to obtain a
caudal epidural block. After several more attempts were made to "pull" the calf, Respondent recommended the cow be transported to a surgical facility and a cesarian section be performed to deliver the calf. Mr. Hernandez reiterated to the Respondent that there were no other veterinarians available and that he (Mr. Hernandez) has no means by which to transport the animal to surgical facilities. Respondent explained to Mr. Hernandez that adequate sanitary conditions did not exist at the ranch and that accessibility to the patient would be difficult. After discussion concerning the adverse conditions under which surgery would be attempted and lack of skilled assistance, Respondent agreed to continue. Respondent felt that since he had begun treatment of the cow, he was obligated to complete the procedures. The cow was "herded" to a hay shed which was the only facility available and at about 6:00 p.m. surgery commenced.

III.

Respondent again administered 50 mg. of Rompun IM for sedation and 60 ml Lidocaine Hc12% to achieve the inverted L-block. The area was scrubbed with three scrubs of isopropyl alcohol and three scrubs of a Betadine solution with the cow in sternal recumbency. A ventral incision of approximately 40 cm in length was made in the left side of the cow. The muscular tissues were parted at which time bloated blue intestines began to prolapse rapidly into the incision and expand. A stab incision was made in an effort to compress the intestinal track, and the incision was subsequently sutured. Exteriorization of the uterus was impossible and, with at least a portion of the uterus being devitalized, Respondent elected to disturb the tissue as little as possible and made a blind incision into the uterus. A live bull calf was lifted out through the abdominal cavity and primary incisions. After delivery, Respondent evacuated the flaccid uterus containing placental membranes. The inability to exteriorize the uterus required that the evacuation be done with little or no visibility.

IV.

Number 1 chromic gut in a continuous pattern was utilized to partially close the uterus. During the procedure, the cow shifted causing the
Respondent's foot to be wedged between the cow's back and a wire fence. Mr. Armando Friga, who was assisting, in an attempt to assist the Respondent, inadvertently spilled the surgical tray and placed his foot in the incision, making contact with the intestinal tract. Respondent cleaned the area with penicillin-soaked sterile gauze squares and informed Mr. Hernandez that due to this accident, the cow's prognosis was poor, and it was likely peritonitis would set in. The uterus was never completely closed.

V.

Unable to utilize the large cutting needles which were now contaminated, the Respondent was obliged to use #1 Vetafil and smaller cutting needles. After breaking three needles in attempts to close the skin via interlocking continuous pattern, Respondent elected to suture the skin via simple interrupted pattern in "gaps", every few inches, thereby obtaining some opposition and support for the muscular layer closure beneath. Confident the closure would hold for the night the Respondent explained to Mr. Hernandez the predicament concerning lack of adequate instruments and supplies to satisfactorily finish the suture line and informed him that he would return the following day to complete the suturing.

VI.

Before departing the ranch, Respondent doused the suture line heavily with liquid Depo-Penicillin and a Nitrodurazone paste was applied to the gaps left by the interrupted suture line. Two sulfa-urea uterine boluses were pushed through the cervix per vagina, after removing as much placenta as possible.

VII.

Both cow and calf were treated with injectable Depo-Penicillin, also 5 ml of Oxytocin was administered to the cow and approximately 50 ml of Iodine solution was used to treat the navel of the calf. After checking to determine the presence of an adequate amount of colostrum, Respondent advised Mr. Hernandez that the cow should be up in a few hours, enabling the calf to nurse, but to milk the cow if necessary and
provide colostrum directly to the calf if possible, in the interim. Respondent instructed Mr. Hernandez to contact him via his (Respondent's) pager should problems arise or the calf failed to nurse.

VIII.

The following day, Respondent arrived at the Sun Mountain Ranch between 1:00 and 1:30 p.m. Dr. Lamb, owner of the Ranch met Respondent at the entrance and informed Respondent that the practitioner normally treating the herd should arrive momentarily and that the Respondent’s services were no longer required. Having been refused admittance to the Ranch, Respondent departed the premises.

IX.

By failing to adequately prepare, i.e. shaving the surgical site, prior to commencement of the surgery, the Respondent failed to exercise care, skill, and diligence in treating patients and therefore has violated Rule 11 of the Rules of Professional Conduct which states:

Rule 11:
Veterinarians shall exercise the same degree of 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.

X.

By performing the cesarian-section under the poor conditions described in Paragraph II, Respondent failed to exercise professional standards of humane treatment and care and thereby violated Rule 18 of the Rules of Professional Conduct which states:

Rule 18:
A licensed veterinarian shall treat all animals entrusted to him by his clients in keeping with the professional standards of humane treatment and care.

XI.

By separating the large exterior muscles instead of transecting same, and thereby substantially reducing visibility of the uterus, Respondent exercised poor surgical technique and consequently violated Rule 11 of the Rules of Professional Conduct which states:
Rule 11:
Veterinarians shall exercise the same degree of 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.

XII.

By delivering the calf through the uterus and primary incisions into the abdominal cavity without packing, Respondent allowed uterine fluids and other contaminants to drain into the abdominal cavity, causing peritonitis and therefore violated Rule 11 of the Rules of Professional Conduct which states:

Rule 11:
Veterinarians shall exercise the same degree of 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.

XIII.

By opening the uterus with a blind incision, Respondent violated Rule 11 of the Rules of Professional Conduct which states:

Rule 11:
Veterinarians shall exercise the same degree of 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.

XIV.

By failing to adequately close the uterus and failure to remove the entire placenta, Respondent violated Rule 11 of the Rules of Professional Conduct which states:

Rule 11:
Veterinarians shall exercise the same degree of 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 Texas State Board of Veterinary Medical Examiners has grounds to take disciplinary action against Respondent's veterinary license under the Texas Veterinary Licensing Act, Article 7465a, V.A.T.C.S., Section 14 (c), and (e) which state in part:

"...the Board may revoke or suspend a license, place a person whose license has been suspended on probation or reprimand a licensee ... if it finds that an applicant or licensee: (c) has engaged in dishonest or illegal practices in or connected with the practice of veterinary medicine; or (e) 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 the law."

The foregoing complaint is submitted to the Secretary of the Texas Board of Veterinary Medical Examiners on this the 19th day of September, 1988.

Further, Affiant sayeth not.

MAX BLANTON, Chief Investigator

SUBSCRIBED and SWORN TO before me by the said MAX BLANTON this the 19th day of September, 1988.

JUDY C. SMITH
Notary Public
STATE OF TEXAS
My Comm. Exp. 9-13-89

JUDY C. SMITH, Notary in and for the State of 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. Joseph M. Sarmiento, D.V.M. under Docket Number 1988-32, this the 22nd day of September, 1988.

FRED K. SCHIFER, D.V.M., Secretary
Texas State Board of Veterinary Medical Examiners