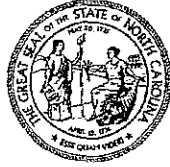


NORTH CAROLINA VETERINARY MEDICAL BOARD

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December 9, 2011

Ms. Kathy Hynes
106 Windsor Lane
Raeford, NC 28376

*Dismissal/No Probable Cause
Board Rule .0601(i)*

Re: File No. 2011012-1
Russell J. Tate, Sr., DVM
Robert W. Meinecke, DVM

Dear Ms. Hynes:

This letter explains the decision of the N.C. Veterinary Medical Board, following investigation, to dismiss your complaint against Dr. Russell J. Tate, Sr. and Dr. Robert W. Meinecke.

Board Investigative Procedure

Written complaints to the Veterinary Medical Board are investigated pursuant to the Veterinary Practice Act [North Carolina General Statute § 90-179 *et seq.*] and the Board Administrative Rules [21 NCAC 66.0101 *et seq.*]. Board Rule .0601, copy enclosed, governs the investigation. This complaint was originally assigned to the Board's Committee on Investigations No. 9, but then later assigned to Committee on Investigations No. 1, which reviewed the complaint, responses, replies, medical records and other relevant materials to determine whether there is probable cause that Dr. Robert W. Meinecke and Dr. Russell J. Tate, Sr. violated a veterinary medical statute or Board administrative rule.

The summaries below are not the Committee's findings but set forth the parties' allegations and contentions. The Committee's findings are in the decision portion of this letter.

Summary of Relevant Complaint Allegations – 4/15/2011

You complain about the care and treatment that Dr. Tate and Dr. Meinecke of Raeford Animal Clinic (the "Clinic") in Raeford provided to a Pit Bull Terrier named Smoke.

1611 JONES FRANKLIN ROAD, SUITE 106
RALEIGH, NORTH CAROLINA 27606

CONTACT
RUSS TATE JR
910-690-2528

[The Committee notes that you did not own Smoke. He was in the custody of Hoke County Animal Control and the Hoke County Animal Shelter (the "Shelter"). Animal Control had seized Smoke and charged his owner with neglect/cruelty. Shelter employees took Smoke to the Clinic on 3/11/11 and on 4/1. You indicate the dog was also known by the name "Ray."]

Dr. Tate saw Smoke on 3/11. You complain that:

Antibiotics were ordered but [there is] no documentation to support that. Panacur was ordered but appears the dose written was not accurate. No documentation noted to do further evaluation] such as blood work other than a heartworm test.

When Smoke returned to the Clinic on 4/1, Dr. Meinecke examined him. The medical records show Smoke had lost weight; had a temperature of 91.8°; was dehydrated and emaciated; and had been vomiting for several days. You complain that it took over an hour for Smoke to receive an IV, and it was over 15 minutes before anyone performed any blood tests. Smoke was put on a single blanket with one "small heat lamp" clamped to his kennel door. The dog died.

You allege that Dr. Meinecke and Dr. Tate neglected Smoke and failed to comply with the relevant standard of care.

Your Second Letter – 5/10/2011

Your second letter cites discrepancies in the Clinic's medical records. You received a copy of the records on 4/2, presumably from the Clinic. Sometime after that, a Hoke County Assistant-District Attorney informed you that her copy of the medical records differed from your copy. [The ADA was prosecuting Smoke's owner for the offense of cruelty to animals. The Clinic had given the ADA a copy of Smoke's medical records on 4/12, pursuant to a subpoena.] The medical records in the ADA's possession included the results of Smoke's fecal examination on 4/1. Your copy of the record from 4/2 does not include an entry for a fecal exam.

Another alleged discrepancy is that the Clinic records reflect that Smoke died on 4/2, whereas the Shelter's Outcome Summary Report gives the date of death as 4/1.

Response of Dr. Russell J. Tate, Sr. – 5/16/2011

Dr. Tate saw Smoke on 3/11. He writes in part:

Smoke was given a full examination and then treated for wounds caused by a restraint that had become embedded in his neck. The restraint/collar/chain had already been removed by shelter staff. I am fully confident that the treatment and care my staff and I provided fully met [the] reasonable standard of care.

This was the only time Dr. Tate examined the animal.

Dr. Tate does not believe that you have legal standing to bring this complaint because you are not Smoke's owner. You are not the Clinic's client, and therefore no veterinarian-client-patient relationship exists between the Clinic and you.

Dr. Tate and his staff appreciate your empathy and concern for Smoke.

Response of Dr. Robert W. Meinecke – 5/14/2011

On 4/1 Dr. Meinecke was working at the Clinic as a relief veterinarian. This day was a busy Friday. Every appointment time was filled, and there were even double bookings. Because the Shelter reported that Smoke was in a potentially life-threatening condition, Dr. Meinecke agreed to see him that day.

The Shelter owned and had legal custody of Smoke. A Shelter employee brought Smoke to the Clinic. During triage of the dog, you arrived demanding to see him. You informed the staff that you filed the initial complaint of suspected neglect, which led to Smoke's being confiscated from its former owner. You did not claim to be Smoke's owner.

Dr. Meinecke contends that you do not have legal standing to bring this complaint, as you were not the owner, and your connection to the dog is minimal. Such an expansion of the veterinarian-client-patient relationship to include complaints from a person in your situation could overwhelm the system. While he appreciates and shares your compassion and regrets that the dog did not survive, Dr. Meinecke is confident in the decisions he made and actions he undertook for Smoke, and he believes they exceeded the standard of care.

Your Replies – 6/2/2011

You assert in your replies of 6/02 that the Veterinary Practice Act does not prohibit a person who does not own the animal in question from making a complaint against the treating veterinarian. You allege that Dr. Tate did not give Smoke a full examination and thereby violated

the standard of care. You reiterate your contentions that Dr. Meinecke also did not comply with the relevant standard of care in his examination and treatment.

Dr. Tate's Further Response – 6/28/2011

Hoke County Animal Control brought Smoke to the Clinic on 3/11. Unfortunately, the dog was an animal abuse case. Animal Control employees told Dr. Tate what services he could provide. You were not present at this visit.

Although funds were an issue, Dr. Tate performed a full examination. Smoke's main issue was the wound in his neck from an embedded collar or chain. Dr. Tate clipped the wound and cleaned it with chlorhexidine solution. He prescribed amoxicillin 500 mg PO BID x 10 days 20# for any infection, and dispensed Panacur at 11 ml PO SID x 3 days for de-worming.

Blood was taken and sent out for a heartworm test. A heartworm positive result was received on 3/15, which was forwarded to the Shelter.

Dr. Tate did not see Smoke again.

Dr. Meinecke's Further Response – 6/13/2011

Dr. Meinecke saw Smoke on 4/1. The animal arrived at 1:50 p.m. with a history of anorexia, loss of balance and vomiting. He was heartworm positive. Although you contend that the dose of Panacur administered on 3/11 was "not accurate," Dr. Meinecke writes that it was a correct amount for treatment.

Smoke was "emaciated . . . with distended abdomen; dry, pallid mucus membranes; a temperature too low to register; heart rate of 84; and respiratory rate of 20." The abdominal distention was probably ascites related to the heartworm disease. Smoke "was responsive, but weak, ataxic and had decreased skin turgor."

Dr. Meinecke drew blood at 2:06 p.m. and received the results of a complete blood count and chemistry profile at 3:13 p.m. Smoke was put in a run with supplemental heat and an IV catheter. By 3:00 p.m. his temperature was 91.8°. Blood test results showed anemia, decreased albumin and calcium, and elevated BUN and WBC. Dr. Meinecke administered warmed Lactated Ringer's Solution intravenously; 1.1 ml injectable famotidine; 3 ml Cerenia; 8.5 ml Pet-tinic; and 1 gm sucralfate orally. By 3:40 p.m., Smoke's temperature was 92.9°, and although he remained markedly depressed, he was not vomiting.

The Clinic does not hospitalize critically-ill patients overnight but instead transports them to another facility in Southern Pines. Thus, at 5:00 p.m., Dr. Meinecke put Smoke (still on the IV) in the back of his vehicle, wrapped him in blankets, surrounded him with warm water bottles, and personally carried the dog to the Southern Pines' facility, where the dog was admitted.

Dr. Meinecke and his staff worked very hard to give Smoke a good deal of care in a short amount of time. Dr. Meinecke was disappointed but not surprised that the dog died. Smoke was probably in the end stages of heartworm disease. When he presented for treatment, there was little prospect of success.

Your Further Reply – 8/8/2011

You submitted a further reply by email, expressing your concerns about Smoke's treatment and the medical records. You question many points in Dr. Meinecke's second response.

Decision of Committee on Investigations No. 1

The three members of Committee on Investigations No. 1 reviewed and discussed the information associated with this complaint. The Committee finds and decides as follows:

1. The Committee in its discretion reviewed and decided this complaint. Nevertheless, Dr. Tate and Dr. Meinecke raise an important issue concerning whether you have sufficient legal standing to have your complaint considered, especially in light of the defined veterinarian-client-patient relationship. Although most valid complaints to this Board are submitted by owners of animals, in certain cases the Board elects through its Committees on Investigations to exercise discretionary review of complaints from persons outside that relationship. That discretion was employed in this case.

2. The Committee finds no basis for your complaint. There was no error by Dr. Tate or by Dr. Meinecke. Each veterinarian provided excellent medical care to Smoke. Their treatment protocols were good. The medicines, including amoxicillin and Panacur, were appropriate choices and prescribed in appropriate amounts. The veterinarians' diagnoses and treatment exceeded the minimum standard of care and they are to be commended, especially Dr. Meinecke, who, along with Clinic staff, made excellent efforts to save this dog. The Committee further commends Dr. Meinecke for transporting Smoke in his personal vehicle to the facility in Southern Pines for overnight hospitalization. It is unfortunate that Smoke died, but the medical records show that he was in very poor health, likely in the advanced stage of heartworm disease.

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3. Nor is your complaint well-founded about inconsistencies in different copies of the medical records. You obtained your copy on 4/2. The records were supplemented thereafter for completeness, primarily with the addition of the 4/1 fecal examination results. The test results would have been received some time after the initial record entry for 4/1 was made. Making medical records complete as soon as possible is always appropriate, particularly here when they were subpoenaed by the ADA for use in a criminal prosecution against Smoke's owner.

4. There was no error by either veterinarian on any remaining aspect of your complaint.

5. In summary, and for the foregoing reasons, the Committee finds no probable cause of violation either by Dr. Russell J. Tate or by Dr. Robert W. Meinecke on the issues presented. Upon findings of no probable cause of violation, and as required by Board Rule 21 NCAC 66.0601(i), all aspects of your complaint against both veterinarians are dismissed.

The Committee's findings and decision have been reported to and accepted by the Board. The investigation is concluded, and the file is closed.

Very truly yours,


George G. Hearn
Attorney for the Board

GGH/dbb
Enclosure

cc: Robert W. Meinecke, DVM
Russell J. Tate, Sr., DVM ✓
Matthew W. Skidmore, Esq. (Attorney for Dr. Tate)
Board Members
Thomas M. Mickey, Executive Director

NORTH CAROLINA ADMINISTRATIVE CODE

LICENSING - VETERINARY MEDICAL BOARD

T21:66 .0600

SECTION .0600 - ADMINISTRATIVE HEARINGS: PROCEDURES

21 NCAC 66 .0601 COMMITTEE ON INVESTIGATIONS

(a) Upon receipt of a charge alleging misconduct against a licensee or registrant of the Board, the Executive Director shall inform the accused party of the nature of the charges as filed with the Board.

(b) The accused party shall respond to the charges by filing a written answer with the Board within 20 days of the receipt of the notification of charges.

(c) The complaining party shall be provided with a copy of the accused party's answer and within 20 days from receipt thereof shall file a reply to the accused party's answer.

(d) The charges as filed with the Board, the answer and reply may be referred to the Committee on Investigations (here in after referred to as "Committee"). The Committee shall consist of three members of the Board, one of whom shall serve as chairman.

(e) The Committee shall investigate the complaint referred to it by the Board and as part of the investigation may:

(1) Assign the complaint to the Board's investigator who shall submit a written report to the Committee.

(2) Invite the complaining party and the accused party before the Committee to receive their oral statements, but neither party shall be compelled to attend.

(3) Conduct any other type of investigation as is deemed appropriate by the Committee.

(f) Upon the completion of the investigation, the Committee shall determine whether or not there is probable cause to believe that the accused party has violated any standard of misconduct which would justify a disciplinary hearing based upon the grounds as specified in Article 11 of Chapter 90 of the North Carolina General Statutes or this Chapter.

(g) If probable cause is found, the Committee shall direct the legal counsel for the Board to file a Notice of Hearing.

(h) If probable cause is found, but it is determined that a disciplinary hearing is not warranted, the Committee may issue a reprimand to the accused party. A statement of such reprimand shall be mailed to the accused party. Within 15 days after receipt of the reprimand, the accused party may refuse the reprimand and request that Notice of Hearing be issued pursuant to Chapter 150B of the North Carolina General Statutes or this Chapter. Such refusal and request shall be addressed to the Committee and filed with the Executive Director for the Board. The legal counsel for the Board shall thereafter prepare and file a Notice of Hearing. If the letter of reprimand is accepted, a record of the reprimand shall be maintained in the office of the Board.

(i) If no probable cause is found, the Committee shall dismiss the charges and prepare a statement of the reasons therefore which shall be mailed to the accused party and the complaining party.

(j) If no probable cause is found, but it is determined by the Committee that the conduct of the accused party is not in accord with accepted professional practice or may be the subject of

OVER

(21 NCAC 66.0601 COMMITTEE ON INVESTIGATIONS – Continued)

* * * *

discipline if continued or repeated, the Committee may issue a letter of caution to the accused party stating that the conduct, while not the basis for a disciplinary hearing, is not professionally acceptable or may be the basis for a disciplinary hearing if repeated. A record of such letter of caution shall be maintained in the office of the Board.

(k) A Board member who has served on the Committee is deemed disqualified to act as a presiding officer or member of the Board assigned to render a decision in any administrative disciplinary proceeding brought pursuant to a Notice of Hearing for which that member has sat in an investigative capacity as a member or chairman of the Committee.

(l) The Board may assess and recover against persons holding licenses, limited licenses, temporary permits, faculty certificates, Zoo veterinary certificates or any certificates of registration issued by the Board, costs incurred by the Board for the following expenses, respectively, that have been incurred by the Board in the investigation, prosecution, hearing or other administrative action in final decisions or orders where those persons are found to have violated the Veterinary Practice Act or Administrative Rules of the Board:

- (1) legal expenses, including reasonable attorney fees, incurred by the Board; and
- (2) witness fees and statutorily-allowed expenses for witnesses; and
- (3) direct costs of the Board in taking or obtaining of depositions of witnesses; and
- (4) costs incurred by reason of administrative or staff time of employees of the Board directly attributable to the action leading to the final decision or order.

The costs assessed may be assessed pursuant to final decision or orders entered with or without the consent of the person holding the respective license, registration permit or certificate; no costs referred to in this Paragraph shall be assessed against a person holding a respective license, permit registration or certificate for an investigation or action in the nature of disciplinary action other than a final decision or order of the Board, unless and except expressly consented to by said person in a Consent Order approved by the Board.

(m) A civil monetary penalty of up to five thousand dollars (\$5,000) for each violation of Article 11, G.S. 90 or Board rule may be imposed and collected from a person holding a license (the word "license" is as defined in G.S. 90-187.8(a)) upon a finding by the Board of the relevant factor or factors in G.S. 90-187.8(b)(1) through (6). With respect to this subsection, the phrase "violation of Article 11, G.S. 90 or Board rule" shall be deemed to mean Article 11, G.S. 90, the Veterinary Practice Act, or the rules of the Board, and shall include final decisions, orders, and consent orders, letters of reprimand and other permitted disciplinary actions, but it expressly excludes letters of caution issued by the Board.

History Note: Authority G.S. 90-185(3); 90-185(6);
 Eff. January 1, 1987;
 Amended Eff. May 1, 1996; May 1, 1989.