STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1795

In the Matter of William N. Dudley, D.V.M.,
License No. C0858.

Filed July 29, 2008
Affirmed
Schellhas, Judge

Minnesota Board of Veterinary Medicine
License No. C0858.

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Lori Swanson, Attorney General, Tiernee Murphy, Assistant Attorney General, 445 Minnesota Street, Bremer Tower, Suite 1400, St. Paul, MN 55101 (for respondent Minnesota Board of Veterinary Medicine)

Considered and decided by Hudson, Presiding Judge; Shumaker, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Relator asserts that respondent's decision to revoke his license to practice veterinary medicine was arbitrary and capricious and not supported by substantial evidence. Because we find that respondent's decision was supported by substantial evidence, we affirm.

FACTS

Relator William N. Dudley has been licensed to practice veterinary medicine since 1958. On September 16, 2005, respondent Minnesota Board of Veterinary Medicine initiated a disciplinary proceeding against relator alleging rules violations pertaining to relator's care of four animals. Respondent later amended its allegations to include complaints it had received concerning relator's care of three additional animals.

Respondent alleged that relator: (1) operated on a cat named Francie and used inadequate pain medication; (2) operated on a dog named Gage and mistakenly removed the dog's prostate, severed its urethra, failed to recognize that the monitoring equipment was malfunctioning, and the dog died; (3) spayed a cat named Sasha and did not keep records of the amount of medication administered; (4) declawed a cat named Guido, failed to provide adequate pain medication, and failed to remove a tourniquet from the cat's leg in a timely fashion, necessitating the amputation of the cat's leg; (5) performed a dental cleaning and tail amputation on a dog named Dewey and failed to provide post-surgical pain medication or antibiotics; (6) improperly treated a dog named Rocky for a broken leg; and (7) declawed a cat named Lucy and failed to provide adequate pain medication, antibiotics, or home-care instructions. In all cases, respondent alleged that relator's record-keeping practices were inadequate.

Upon respondent's motion, the administrative law judge (ALJ) granted partial summary disposition on several of respondent's allegations and found that relator failed to comply with three parts of a 2001 disciplinary order that had been imposed by respondent that required relator to: (1) comply with record-keeping requirements

established in Minn. R. 9100.0800, subp. 4 (2001); (2) comply with any written request for information from respondent within 30 days of the date of the request; and (3) obtain informed consent from clients before hospitalizing critically ill or injured animals overnight. The ALJ scheduled a hearing to consider respondent's remaining allegations against relator.

At the hearing, respondent introduced information that prior to 2005, relator had been the subject of four disciplinary orders pertaining to his record-keeping practices and care of animals. Relator objected to the admission of this evidence, arguing that because it pertained to incidents not at issue in the hearing, the evidence was unfairly prejudicial and lacking in probative value. Over relator's objection, the ALJ admitted the evidence for the limited purpose of demonstrating relator's familiarity with respondent and its policies and the concerns about relator's practice raised by respondent in the past. The ALJ allowed respondent to ask relator to verify his signature on the past disciplinary orders and the dates on which they were signed, but stated that it would be inappropriate to relitigate the underlying allegations because they had already been addressed by those orders.

Respondent called Stephen H. Levine, D.V.M., as an expert witness. Levine testified that relator's treatment of the animals at issue failed to comport with standards of practice in the veterinary field. The ALJ concluded that relator's failure to provide appropriate care to the animals violated Minn. Stat. 156.081, subd. 2(11) and (12) (2004), Minn. R. 9100.0700, subp. 1 (2003), and Minn. R. 9100.0800, subp. 1 (2003), each of which requires veterinarians to meet minimum standards of professional conduct. The

ALJ issued proposed findings of fact and conclusions of law and recommended that respondent take "appropriate disciplinary action" against relator. Respondent adopted several of the ALJ's proposed findings of fact and conclusions of law but rejected some findings of fact. For example, respondent determined that certain allegations were not proved by a preponderance of the evidence. Based on the adopted findings of fact and conclusions of law, respondent revoked relator's license.

D E C I S I O N

Respondent is a licensing agency that falls within the definition of "agency" under the Minnesota Administrative Procedure Act. Minn. Stat. § 14.02, subd. 2 (2006).

Respondent's Decision

In reviewing an agency decision in a contested case, this court may reverse the agency's decision if it is unsupported by substantial evidence, arbitrary and capricious, or affected by other errors of law. Minn. Stat. § 14.69 (2006). The party seeking reversal of the agency's decision has the burden of proving that the decision violated this standard. *Markwardt v. State, Water Res. Bd.*, 254 N.W.2d 371, 374 (Minn. 1977). The decision of an administrative agency is presumed correct. *St. Otto's Home v. Minn. Dep't of Human Servs.*, 437 N.W.2d 35, 39 (Minn. 1989).

Relator argues that respondent's decision to revoke his license was arbitrary, capricious, and not supported by substantial evidence. Substantial evidence is defined as: (1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; and (5) evidence considered in its entirety. *Cable Commc'ns Bd. v.*

Nor-West Cable Commc'ns P'ship, 356 N.W.2d 658, 668 (Minn. 1984). An agency ruling is arbitrary and capricious if "the agency relied on factors which the legislature had not intended it to consider," if it failed to consider an important aspect of the problem, if it explained the decision in a manner that is contrary to the evidence, or if the decision is "so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *In re Space Ctr. Transp.*, 444 N.W.2d 575, 581 (Minn. App. 1989), *review dismissed* (Minn. Oct. 9, 1989).

The guidelines under which respondent may revoke a veterinarian's license are established by the legislature and are generally set forth in the Minnesota Board of Veterinary Medicine Practice Act, Minn. Stat. §§ 156.001-156.15 (2004). Specifically, Minn. Stat. § 156.081 provides that respondent may revoke a license to practice veterinary medicine for "fraud, deception, or incompetence in the practice of veterinary medicine, including any departure from or failure to conform to the minimum standards of acceptable and prevailing practice without actual injury having to be established." Minn. Stat. § 156.081, subd. 2(11) (2004). Section 156.081 also provides that respondent may revoke a license for "engaging in unprofessional conduct as defined in rules adopted by the board or engaging in conduct which violates any statute or rule promulgated by the board or any board order." Minn. Stat. § 156.081, subd. 2(12) (2004). The Minnesota Rules provide that veterinarians may not "[fail] to meet the minimum standards of practice" or "[engage] in veterinary practice that is professionally incompetent," Minn. R. 9100.0700, subp. 1 A, C (2003), and that "[t]he delivery of veterinary care must be

provided in a competent and humane manner consistent with prevailing standards of practice," Minn. R. 9100.0800, subp. 1 (2003).

Relator argues that "incompetent" is not defined in the Practice Act and should be afforded its dictionary meaning. But section 156.081 includes, as an example of incompetence, "any departure from or failure to conform to the minimum standards of acceptable and prevailing practice without actual injury having to be established." Minn. Stat. § 156.081, subd. 2(11). Both the ALJ and respondent found that relator "departed from or failed to conform to the minimum standards of acceptable and prevailing medical practice" on several occasions. Such conduct qualifies as "incompetence" under section 156.081, therefore, relator's argument fails.

Relator also argues that because respondent has not promulgated rules on pain management in animals, it cannot enforce a minimum standard of care. But section 156.081 describes the applicable standards as those set by "acceptable and prevailing medical practice." *Id.*; *see also* Minn. R. 9100.0800, subp. 1 (defining the general minimum standards of practice as the "prevailing standards of practice" for the species of animal and the veterinarian's area of expertise). This standard is similar to the standard to which a veterinarian must conform in a malpractice action, i.e., that which is "recognized by the veterinary community." *Berres v. Anderson*, 561 N.W.2d 919, 924 (Minn. App. 1997), *review denied* (Minn. June 11, 1997); *see also Bekkemo v. Erickson*, 186 Minn. 108, 110, 112, 242 N.W. 617, 618, 619 (1932) (recognizing a veterinarian's "duty to exercise the ordinary care as established by the standards of veterinary medicine in his community"). Expert testimony is sufficient to establish this standard of care. *See*

Plutshack v. Univ. of Minn. Hosps., 316 N.W.2d 1, 5 (Minn. 1982) (requiring plaintiffs in a medical malpractice case "to introduce expert testimony demonstrating" the applicable standard of care); *Berres,* 561 N.W.2d at 924-25 (applying *Plutshack* to veterinary malpractice claims and holding that expert testimony created at least a question of fact as to whether a veterinarian had a duty to explain proper hygiene). Therefore, relator's argument fails here as well.

Relator further argues that respondent's decision to revoke his license was based in large part on his violation of record-keeping rules, implicitly arguing that failure to comply with record-keeping standards is not an adequate basis for revocation of a veterinarian's license. But aside from ignoring respondent's findings related directly to relator's care of animals, relator's argument ignores the ALJ's conclusion that relator's "failure to document accurately and completely in a standard format has complicated the review of the records and left a very confusing picture of what happened to the patients in his care." Moreover, while the ALJ conceded relator's point that all veterinarians make errors, the ALJ concluded that relator's "errors were compounded by poor charting of diagnosis and test results, treatment plan and treatment implementation." While relator appears to characterize his record-keeping problems as mere administrative issues, the ALJ's proposed findings reflect that relator's poor record-keeping constituted a serious deviation from the standards of his profession.

Respondent's order revoking relator's license is supported by substantial evidence set forth in respondent's findings of fact. Furthermore, respondent's conclusions of law and order are based on this substantial evidence and are grounded in the legislative

requirement of section 156.081, that veterinarians' conduct comply with minimum standards of acceptable practice. Minn. Stat. § 156.081, subd. 2(11). Therefore, respondent's revocation of relator's license is not arbitrary or capricious.

Admissibility of Prior Disciplinary Orders

Relator argues in his reply brief that respondent's argument on appeal is improper because respondent's brief contains references to incidents underlying respondent's past disciplinary actions against relator. Relator notes that evidence of these incidents was admitted over his objection by the ALJ at his hearing. But the ALJ is permitted to "admit all evidence which possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons" may rely. Minn. R. 1400.7300, subp. 1 (2003). "All evidence to be considered in the case, including all records and documents in the possession of the agency or a true and accurate photocopy, shall be offered and made a part of the record in the case." *Id*., subp. 2 (2003). In this case, the ALJ admitted evidence of the past disciplinary orders for the previously noted limited purpose for which the ALJ determined the evidence had probative value. Given the less restrictive rules of evidence applicable to administrative hearings, the ALJ did not abuse his discretion in admitting the evidence. *See Lee v. Lee*, 459 N.W.2d 365, 370 n.2 (Minn. App. 1990) (noting "the relaxed evidentiary rules of administrative proceedings"), *review denied* (Minn. Oct. 18, 1990).

Relator argues that respondent used its prior disciplinary actions to support further discipline, and that because respondent based its revocation of relator's license in part on these actions, its decision to revoke relator's license should be reversed. But in the order

revoking relator's license, respondent made only limited mention of these prior disciplinary actions. Respondent's findings of fact consist primarily of the allegations made in the current proceedings and litigated before the ALJ. The record shows that at most, the prior disciplinary orders were used to provide ancillary support for the ALJ's proposed findings of fact and conclusions of law and respondent's adopted findings and conclusions and order. We conclude that evidence of relator's prior disciplinary orders was not impermissibly used in these proceedings.

Affirmed.