

or in privity with a party to the first adjudication. Silva v. Silva, 297 Mass. 217, 7 N.E. 2d 601 (1937). However, Massachusetts abandoned this doctrine in 1968. Homeowners Fed. Sav. & Loan Ass'n v. Northwestern Fire & Marine Ins. Co., 354 Mass. 448, 238 N.E.2d 55 (1968). That case involved a "defensive" use of collateral estoppel, that is the use of issue preclusion by a defendant who was not a party to the prior litigation.

In 1979, the United States Supreme Court approved the use of "offensive" collateral estoppel, that is, the use of issue preclusion by a plaintiff who had not been a party to the prior adjudication. Parklane Hosiery Co. v. Shore, 439 U.S. 322, 99 S.Ct 645, 58 L.Ed.2d 552 (1979). The Supreme Judicial Court endorsed this view in Aetna Cas. & Sur. Co. v. Niziolek, 395 Mass. 737, 481 N.E. 2d. 1356 (1985), noting that the doctrine of mutuality had become a 'dead letter,' Mass. at 741, N.E.2d at 1359.

In Aetna, a criminal conviction was held to preclude a defendant from claiming that he did not commit the crime. That situation is analogous to the case at bar. The defendant was found by the Board of Registration to be guilty of negligence and malpractice. Notice of Decision at 3. In light of Aetna, defendant's claim that the Board's decision should not have preclusive effect because the Board was acting for the general public is wrong.

Issue preclusion requires only that the party against whom it is asserted have been a party to the prior adjudication. Massachusetts Property Ins. v. Norrington, 395 Mass. 751, 753, 481 N.E. 2d 1364, 1366 (1985); Fidler v. E.M. Parker Co., 394 Mass. 534, 539 476 N.E.2d 595, 599 (1985). That party, and that party alone, must have been afforded a full and fair opportunity to litigate the issue. Parklane, 439 U.S. at 329, 99 S.Ct. at 650. E.g., Fidler, Mass. at 539, 476 N.E. 2d at 599, citing Montana v. U.S., 440 U.S. 147, 153-154 99 S.Ct 970, 973-974, 59 L.Ed. 210 (1979) and Allen v. McCurry, 449 U.S. 90, 94, 101 S.Ct. 411, 414, 66 L.Ed 2d 308 (1980).

In the instant case, the defendant, Dr. Lloyd, had a full and fair opportunity to litigate the issue of his negligence and malpractice before the Board and he had ample incentive to litigate it thoroughly.

In its October 19, 1983 letter to him (attached), the Board of Registration warned Dr. Lloyd that the hearing would "be held pursuant to the provisions of the Massachusetts General Laws, chapter 112, Sections 59,61, 62 and Chapter 30A, Sections 10,11." Id. He was ordered "to appear and show cause why the Board should not suspend or revoke your license to practice veterinary medicine in the Commonwealth ... for conduct reflecting unfavorabl(y) upon the practice of veterinary medicine and for malpractice and gross miscon-

duct." Id. He was advised he had the right "to be represented by counsel, to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify and to be heard on oral arguments." Id. The hearing was to be "conducted according to section 1.01, Formal Rules of Standard Adjudicatory Rules of Practice and Procedure." Id. He was represented by the same counsel who represents him before this Court. The hearing conducted by the Board took over seven hours, at which time Dr. Lloyd called witnesses, cross-examined adverse witnesses, and presented his evidence.

Nevertheless, the Board of Registration ruled that Dr. Lloyd had committed "negligence and malpractice." Notice of Decision at 3. He did not appeal this ruling. He is therefore estopped from relitigating the issues previously decided.

Dated: JANUARY 9, 1987 By their attorney,

Steven M. Wise

Steven M. Wise
Fraser & Wise, P.C.
896 Beacon Street
Suite 303
Boston, MA 02215
267-4455



The Commonwealth of Massachusetts
Board of Registration in Veterinary Medicine
Leverett Saltonstall Building, Government Center
100 Cambridge Street, Boston 02202

October 19, 1983

Donald W. Lloyd, D.V.M.
3362 North Main St.
Fall River, MA 02720

RE: Order to Show Cause in the Matter of
Donald W. Lloyd, D.V.M.

Dear Dr. Lloyd:

You are hereby notified that a formal adjudicatory hearing will be held pursuant to the provisions of the Massachusetts General Laws, Chapter 112, Sections 59, 61, 62, and Chapter 30A, Sections 10, 11, by and before the Board of Registration in Veterinary Medicine, on November 10, 1983, at 9:30 a.m., in Room 1523, 15th Floor, Leverett Saltonstall Building, 100 Cambridge Street, Boston, MA.

The hearing will be based upon a complaint filed by Mr. & Mrs. August V. Medeiros on or about May, 1983.

You are hereby ordered to appear and show cause why the Board should not suspend or revoke your license to practice veterinary medicine in the Commonwealth, pursuant to the Massachusetts General Laws, Chapter 112, Sections 59 and 61, for conduct reflecting unfavorable upon the practice of veterinary medicine, and for malpractice and gross misconduct, based upon the following allegations:

1. Failure to adequately prepare the patient for heart worm treatment.
2. Failure to supervise the post treatment of the patient.
3. The use of a drug as a filaricide and not as an adulticide.

Dr. Donald W. Lloyd

October 19, 1983

Page 2

You are further advised that you have the right to be represented by counsel, to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify and to be heard on oral arguments. You or your representative may examine any and all Board records relative to your case during normal business hours at the Board's office. The hearing will be conducted according to Section 1.01, Formal Rules of Standard Adjudicatory Rules of Practice and Procedure, which may be found at Mass. Reg. Issue No. 138, at 167 (1979), 801 C.M.R. 1.01.

If you wish to have a stenographer transcribe the hearing for inclusion in the official record, you should notify Ms. Michelina Martignetti, clerk to the Board, at least 48 hours prior to the hearing, and include the name of the proposed stenographer. If you wish the Board to arrange for a stenographer, you must notify Ms. Martignetti at least 7 days prior to the hearing. In either case, the transcript and stenographer's attendance fee shall be paid for by you, and you must provide the Board with a copy for inclusion in the record.

The Board will not grant a continuance of the hearing date except upon a showing of exceptional circumstances. Failure to appear at the hearing may result in judgment by default.

You are hereby requested to bring to the hearing any and all of your records, including radiographs, relating to these incidents.

You may direct any questions about the proceedings to Michelina Martignetti, clerk to the Board at 727-3076, or to George Belsky, counsel to the Board.

Very truly yours,

William Lloyd, D.V.M.
Chairman of the Board

WL/mnm