College of Veterinarians of British Columbia

Date of Decision: 2024-08-28

CVBC File: 20-105(b)

In the matter of the *Veterinarians Act,* S.B.C. 2010, c. 15

and

In the matter of

The College of Veterinarians of British Columbia

and

Dr. Javaid Chaudhry, Respondent

Before the Discipline Committee Panel:	Herman Van Ommen, K.C., Chair Dr. Al Runnells Dr. Catharine Shankel
Counsel for the College of Veterinarians of British Columbia:	Elizabeth Allan
Counsel for the Respondent:	Clea Parfitt

Final Decision of the Hearing Panel

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[1] The citation, which was issued to the Respondent on March 10, 2023, and amended on July 20, 2023 (the "Citation"), under the *Veterinarians Act*, S.B.C. 2010, c. 15 (the "Act"), sets out several allegations against the Respondent with respect to the

care, treatment and medical records of a dog named Dobey, which are summarized below. It is alleged that the Respondent:

(a) Failed to appropriately address the presentation of elevated liver enzymes;
(b) Failed in the prescription and administration of antibiotics related to the suspected diagnosis and treatment of Leptospirosis; and
(c) Maintained deficient records.

COMPLAINANT WAS A MINOR

[2] The Respondent asserts the Citation must be dismissed because the Complainant was a minor at the time he made the complaint. He refers to various provisions of the *Family Law Act* that define parental responsibilities which include starting proceedings relating to the child and advancing the child's legal and financial interests, (s.41) Section 40 states that only a guardian may have parental responsibilities. Although the *Infants Act* and the *Age of Majority Act* are referred to by title, none of the sections of those acts were referred to. The Respondent concludes from this that the Complainant's mother should have made the complaint instead of him and that a complaint made by a minor is not valid.

[3] The *Age of Majority Act* provides that a person under the age of 19 is a minor. The *Infants Act* specifies that certain contracts are unenforceable against a minor but also provides that even the contracts that are unenforceable against the minor can still be enforced by the minor.

[4] Section 50(1) of the *Veterinarians Act* says, "a person may make a complaint against a registrant". The *Interpretation Act* defines a minor as a "**person** under the age of majority" (emphasis added). Therefore a minor is a person who can make a complaint under the *Act*.

BURDEN AND STANDARD OF PROOF

[5] The Respondent submits that the applicable standard for these proceedings is the criminal standard of beyond a reasonable doubt because the College could potentially impose a fine of up to $50,000 which he says is a true penal consequence as described in *R. v. Wigglesworth.* In our view *Wigglesworth* does not support the Respondent's position. In fact, it makes it clear that imposing a fine in the context of an administrative scheme to protect the public is not a true penal consequence. The Respondent has provided no authorities where his interpretation of *Wigglesworth* has been applied in a professional regulatory setting.

[6] In *Wigglesworth* the Court had to determine what type of an "offence" would attract the protection of s. 11 of the *Charter* which includes the criminal standard of proof. The Court stated:

> In my opinion, a true penal consequence which would attract the application of s. 11 is imprisonment or a fine which by its magnitude would appear to be imposed for the purpose of redressing the wrong done to society at large rather than to the maintenance of internal discipline within the limited sphere of activity.

[7] However, the Court also stated:

> In my view, if a particular matter is of a public nature, intended to promote public order and welfare within a public sphere of activity, then that matter is the kind of matter which falls within s. 11. It falls within the section because of the kind of matter it is. This is to be distinguished from private, domestic or disciplinary matters which are regulatory, protective or corrective and which are primarily intended to maintain discipline, professional integrity and professional standards or to regulate conduct within a limited private sphere of activity:

And then further:

> First, the possibility of a fine may be fully consonant with the maintenance of discipline and order within a limited private sphere of activity and thus may not attract the application of s. 11. It is my view that if a body or an official has an unlimited power to fine, and if it does not afford the rights enumerated under s. 11, it cannot impose fines designed to redress the harm done to society at large. Instead, it is restricted to the power to

> impose fines in order to achieve the particular private purpose. One *indicium* of the purpose of a particular fine is how the body is to dispose of the fines that it collects. If, as in the case of proceedings under the *Royal Canadian Mounted Police Act*, the fines are not to form part of the Consolidated Revenue Fund but are to be used for the benefit of the Force, it is more likely that the fines are purely an internal or private matter of discipline.

[8] In this case any fine that might be imposed must be paid to the College and would not form part of the government's general revenue. We find nothing in the regulatory scheme set up under the *Veterinarians Act* to suggest that the true penal consequences could be imposed by a discipline panel.

[9] We find that the burden of proof is on the College to prove the allegations in the Citation on a balance of probabilities. The evidence must be sufficiently clear, convincing and cogent.

AVAILABLE FINDINGS

[10] On completion of a disciplinary hearing a panel may make one or more determinations as set out in s. 61 (1) (b) of the *Act*. In this case the relevant potential findings are: (a) not complying with a bylaw, (b) not complying with a standard, or (c) committing professional misconduct.

[11] The Citation does not specify which of the determinations under s. 61 (1) (b) will be sought. The Respondent by Notice of Motion dated June 27, 2023 sought an order from this panel to compel the College to specify which of the determinations available would be sought in relation to each count. The College in its Response dated July 11, 2023 confirmed that in relation to Count 1 it was seeking a finding of professional misconduct. This panel in its Reasons noted that the College had complied with the Respondent's request on that point and therefore did not have to deal with it further.

[12] At this hearing in its closing submissions on Count 1 the College, in addition to seeking a finding of professional misconduct, also sought a finding of a breach of Bylaw ss. 204 (2) or 209 (f). Having limited itself to seeking only a finding of professional

misconduct the College cannot without adding to the particulars previously provided seek additional findings at the conclusion of the hearing.

[13] The College's Response to the Notice of Motion in relation to Count 2 was that it would seek findings of:

(a) breach of Bylaw 245 (2) (b) (ii), and or

(b) breach of s. 2 (b) of the College's Professional Practice Standard: Medical Record Keeping ("*Medical Record Keeping Standard'*) and various breaches of the College's Professional Practice Standards: Companion Animal Medical Records (*"Companion Animal Standard")*.

[14] In addition to the findings set out above, the College in its closing submissions at this hearing, also sought a finding of a breach of s. 33 Schedule D of Part 3 of the Bylaws. Having limited itself to seeking the findings set out in its Response to the Notice of Motion the College cannot without adding to the particulars previously given seek additional findings at the conclusion of the hearing.

[15] The Respondent asserts that a breach of the *Medical Record Keeping Standard* and the *Companion Animal Standard* cannot support a finding under s. 61 (1) (b) (ii) which states " the respondent has not complied with a standard, limit or condition imposed under this Act."

[16] He refers to Section 17 of the *Act* which provides that the council "may by bylaw…establish standards… limits or conditions "for the practice of veterinary medicine".

[17] The Respondent says that the "standards, limits and conditions" referred to in s. 61 (1) (b) (ii) must be established by bylaw. It is common ground that the *Medical Record Keeping Standard* and the *Companion Animal Standard* are not part of the bylaws.

[18] We do not agree with the Respondent on this point. Section 17 is permissive, the council "**may** by bylaw… establish standards…" Sections 5 to 7 of the Act set out

matters for which bylaws **must** be made. Sections 8 to 19 set out matters for which bylaws **may** be made.

[19] Section 3 of the *Act* states that in carrying out its objects the college must protect the public interest. One of the objects of the College is to establish, monitor and enforce standards. Under the Act bylaws can only be passed if approved by a simple majority of the registrants. It makes no sense to impose on a regulatory body the duty to protect the public interest and then require it to obtain approval from a majority of registrants, who are entitled to vote in their self-interest, when establishing the standards of practice.

[20] If the Respondent's position were accepted all standards, limits and conditions would be bylaws. If a standard could only be established by bylaw it then becomes part of a bylaw. Section 61 and other provisions of the Act contemplate a breach of a bylaw but also a breach of a standard. Section 61 (1) (b) (ii) would be superfluous. If all standards had to be bylaws then there could not be a breach of a standard.

[21] Section 52 also contemplates breach of a bylaw and or noncompliance with a standard. Where different terms are used in legislation they are presumed to have different meanings. Standards are different than bylaws and can be established in a different manner.

[22] Professor Casey, a leading authority on the regulations of professionals in Canada, states the following in his text The Regulation of Professions in Canada, at Chapter 5, "The Right of Professional Organizations to Make Rules and Regulations":

> Professions regulate almost every aspect of their members' professional lives. Although specific rules are sometimes found in the legislation and regulations, more commonly a profession will have a set of non-legislated rules, procedures and codes of conduct.
>
> From the Supreme Court of Canada's decision in *Green* [*Green v. Law Society of Manitoba*, 2017 SCC 20], the British Columbia Court of Appeal's decision in *Sobeys West (B.C.)* [*Sobeys West Inc. v. College of Pharmacists of British Columbia*, 2016 BCCA 41, leave to appeal ref'd 2016 CarswellBC 1900, 2016 CarswellBC 1901, [2016] S.C.C.A. No. 116 (S.C.C.)], and the Alberta Court of Appeal's decision in *Sobeys West (Alta.)* [*Alberta College*

of Pharmacists v. Sobeys West Inc., 2017 ABCA 306] I distill the following principles to be applied in challenges to regulatory instruments such as bylaws, rules, standards, and policies:

1) Professional regulators are granted considerable latitude in adopting regulatory instruments based on their interpretation of the "public interest" in the context of the enabling statute [*Green v. Law Society of Manitoba*, 2017 SCC 20 at para. 24]. The Courts have long recognized that professional regulators have considerable expertise when it comes to deciding on the policies and procedures that govern the practice of their profession [*ibid* at para. 25].

2) The "public interest" to be advanced and protected by regulators extends to the maintenance of high ethical standards and professionalism [*Sobeys West Inc. v. College of Pharmacists of British Columbia*, 2016 BCCA 41, leave to appeal ref'd 2016 CarswellBC 1900, 2016 CarswellBC 1901, [2016] S.C.C.A. No. 116 (S.C.C.) at para. 56] Professional regulatory regimes are in place to maintain high standards of ethical conduct, competence and professionalism which is required to protect the public against unsafe and unethical professional services [*College of Traditional Chinese Medicine Practitioners and Acupuncturists of British Columbia v. Chik*, 2019 BCSC 1135].

3) In the professional regulatory context, the Supreme Court of Canada has reaffirmed the robustness of the principle of jurisdiction by necessary implication. Regulatory authority includes not only powers that are expressly granted by the legislation but also, by implication, all powers that are necessary for the accomplishment of the objects intended to be secured by the statutory regime created by the legislature [*Green v. Law Society of Manitoba*, 2017 SCC 20, at para. 42 quoting from *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4].

4) While the purpose, words, and scheme of the particular legislation in question must always be closely examined, the *Green* and the *Sobeys West* decisions generally support an expansive interpretation of a regulator's general authority to establish bylaws, rules, standards and policies that advance the statutory objectives.

[23] We find that the determinations available to us to consider are professional misconduct in relation to Count 1 and in relation to Count 2, breach of Bylaw 245 (2) (b) (ii), and breach of the *Medical Record Keeping Standard* and/or the *Companion Animal Standard.*

PROFESSIONAL MISCONDUCT

[24] Professional misconduct is not defined in the Act or Bylaws. Other professional regulatory bodies and the courts have previously considered the meaning of the term "professional misconduct". The most cited definition in British Columbia comes from the case of *Law Society v. Martin*, 2005 LSBC 16, at paragraph 140, where professional misconduct was described as a "marked departure from the standard expected of a competent [registrant]".

CREDIBILITY

[25] We accept the College's submissions on the appropriate way to assess credibility and reliability. Their submissions were as follows:

> 46. Where the evidence of the College's witnesses and the Respondent do not align, the Panel will need to consider and assess the credibility of the witnesses.
>
> 47. The leading case on the assessment of credibility, that is, an evaluation of the veracity of a witness, including when there are competing versions of events, is *Faryna v. Chorny*, (1952) 2 D.L.R. 354 (B.C.C.A.), where the Court held at paragraph 11:
>
> > In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.
>
> 48. More recently *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, applied *Faryna v. Chorny,* but in addition set out a helpful approach to the assessment of conflicting testimony at paragraphs 186 – 187:
>
> > [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides [citations omitted]. The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally [citations omitted]. Ultimately, the validity of the evidence

> depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).
>
> [187] It has been suggested that a methodology to adopt is to first consider the testimony of a witness on a 'stand alone' basis, followed by an analysis of whether the witness' story is inherently believable. Then, if the witness testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" [citations omitted]. I have found this approach useful.

49. The Panel will also need to consider the reliability of witnesses. The difference between credibility and reliability was set out by the Ontario Court of Appeal in the frequently-cited decision of *R. v. Morrissey*, 1995 CanLII 3498 (ON CA):

> Testimonial evidence can raise veracity and accuracy concerns. The former relate to the witness's sincerity, that is, his or her willingness to speak the truth as the witness believes it to be. The latter concerns relate to the actual accuracy of the witness's testimony. The accuracy of a witness's testimony involves considerations of the witness's ability to accurately observe, recall and recount the events in issue. When one is concerned with a witness's veracity, one speaks of the witness's credibility. When one is concerned with the accuracy of a witness's testimony, one speaks of the reliability of that testimony. Obviously a witness whose evidence on a point is not credible cannot give reliable evidence on that point. The evidence of a credible, that is, honest witness, may, however, still be unreliable.

THE HEARING

[26] The College called the Complainant as a witness. We found him to be both credible and reliable. He acknowledged he had a limited memory on some points and was direct and clear where he did have a specific memory.

[27] The College called staff member, Ms. Darcie Light, Senior Paralegal, Complaints to identify documents and describe the initial procedures at the College. The College also called two expert witnesses.

[28] Dr. Nina Gauthier, DVM, was qualified as an expert by the Panel in diagnosis and treatment in a small animal general and emergency veterinarian practice. She has a decade of experience as a general practitioner for small animals and was an emergency veterinarian for five years. Dr. Gauthier provided an expert report on the initial diagnosis and treatment of Dobey, as well as the diagnosis and treatment for Leptospirosis.

[29] Professor Scott Weese, DVM, DVSc, DACVIM, FCAHS, was qualified by the Panel as an expert on infectious diseases and antimicrobial therapy including the treatment of Leptospirosis. He is one of the country's leading experts on infectious diseases and antimicrobial treatment in animals. Professor Weese provided an expert report on the treatment of Leptospirosis.

[30] They both gave evidence in a thoughtful, helpful and impartial manner, as they are expected to do.

[31] The Respondent testified on his own behalf. The College in its closing submissions challenged his credibility. They argued that he claimed to have an independent recollection of certain specific matters that were absent from his medical records in circumstances that one would not expect a veterinarian to remember those sorts of details.

[32] We agree that the Respondent's evidence was self-serving in certain respects and do not accept his evidence when contradicted by the Complainant whose evidence we found more reliable.

[33] The College called a witness in reply to establish the time of a specific meeting. Given our view of the issues the timing of that meeting is not key but, in any event, we accept the evidence of the reply witness as to the timing of that meeting.

COUNT 1

[34] Count 1 of the Citation alleges: the Respondent failed to do one or more of the following:

(a) Appropriately address the presentation of elevated liver enzymes;

(b) Start Dobey on antibiotics immediately following a suspected diagnosis of Leptospirosis and/or waited until the following day to start Dobey on antibiotics;

(c) Continue the chosen antibiotic, Ampicillin, or another suitable antibiotic, for an appropriate frequency, dose and/or duration; and/or

(d) Prescribe Doxycycline, or another suitable antibiotic, for renal colonization following the course of Ampicillin.

[35] The Complainant was a senior in high school working at two part time jobs when he made his complaint on October 29, 2020. He had acquired Dobey, a Doberman puppy, in July 2020. He was about 4 months old at the time.

[36] In mid-October Dobey was becoming inactive, staying in bed for half of the day. This was out of character so he and his mother took him to a nearby veterinarian clinic. Dobey was examined at that clinic and blood work was performed. That clinic was closing so they took him to another nearby clinic, Terra Nova Village Veterinarian. The Respondent worked there and was on duty when they brought Dobey in on the evening of October 16, 2020.

[37] The results of the blood work were transmitted to the Respondent when he examined Dobey that evening.

A. Failed to appropriately address the presentation of elevated liver enzymes

[38] The Respondent's medical records state that he did see the lab results with the increased liver enzymes and discussed the results with the Complainant. The records do not indicate what was discussed. The medical records do list "Hepatic Inflammation, Gastroenteritis, Pancreatitis, Toxin Ingestion" as possible causes. Both expert witnesses agreed that not having Leptospirosis as a differential diagnosis at this time is not unreasonable.

[39] Given the Complainant's financial constraints on October 16, 2020 it is appropriate to have prioritized abdominal radiographs and hospitalization on IV fluids. When the client declined hospitalization, it is appropriate to have prescribed supportive/symptomatic medications.

[40] When the Complainant returned with Dobey the next day on October 17, 2020 it is clear from the record that the client still had financial concerns, therefore it was still appropriate to prioritize hospitalization with IV fluids and supportive medications. Even with the financial restrictions in this case the Respondent stated that he recommended further testing but this is not recorded in the medical record.

[41] When Dobey developed a yellowish tinge to his gums and mucous membranes on October 18, 2020 the Respondent added "Hepatitis, IMHA" to the list of differentials and recommended "Coombs test, repeat CBC/Chemistry, and Abdominal Ultrasound" be done. These are all appropriate tests to recommend with respect to jaundice. The Complainant declined ultrasound but agreed to more tests.

[42] Dr. Weese wrote "Here, in hindsight, the signs present at initial presentation (October 16) fit with Leptospirosis but were non-specific enough that a wide range of potential causes would be considered, with nothing pointing specifically towards Leptospirosis."

[43] Elevated liver enzymes are a non-specific finding and extensive further testing may be required to arrive at a diagnosis. We find that the Respondent's initial actions in response to elevated liver enzymes were reasonable.

B. Start Dobey on antibiotics immediately following a <u>suspected</u> diagnosis of Leptospirosis and/or waited until the following day to start Dobey on antibiotics

[44] The Respondent received a laboratory report at about 4:00 pm on October 19, 2020 that "Leptospirosis is suspected." He then requested a Leptospirosis IgM test. The positive test was reported at approximately 7:00 pm.

[45] The Respondent called the Complainant to come to the clinic to discuss the results. The Complainant came to the clinic at approximately 9:30 pm (or possibly as early as 9:00 pm) and after a discussion about referral to a specialist and recommendation to refer to another facility, the Complainant wanted him to continue to treat Dobey.

[46] At this time Dobey had been on Cefazolin at 25 mg/kg twice daily for 48 hours. The Respondent stated that he waited to start Ampicillin until after he talked to the Complainant which occurred late October 19, 2020.

[47] The Respondent waited until approximately 8:00 am on October 20, 2020 to start Ampicillin. The medical record is vague as to the time the Ampicillin was given. It may have been more than 12 hours after the diagnosis of Leptospirosis was confirmed.

[48] The Citation states the Respondent ought to have started Dobey on antibiotics "immediately following a suspected diagnosis of Leptospirosis." The incidence of Leptospirosis in Richmond at the time of this case was low. Not immediately prescribing an antibiotic targeted specifically towards Leptospirosis, prior to receiving the positive Leptospirosis result, does not constitute a marked departure from the level of care, skill, and knowledge expected of a competent practitioner.

[49] At any given moment, veterinarians may have many patients under their care and have a list of test results to review and communicate with clients. It may take time to carefully review results and investigate, communicate with owners, and instigate further recommendations. Although prompt treatment is always in the patient's best interest, not immediately starting a specific treatment for an uncommon condition, even once a diagnosis has been reached, does not constitute a marked departure from the standard of care.

C. Continue the chosen antibiotic, Ampicillin, or another suitable antibiotic, for an appropriate <u>frequency, dose and/or</u> duration

[50] The Respondent treated Dobey with both Ampicillin (at 20 mg/kg IV) and Cefazolin (at 25 mg/kg IV). He testified that each of the above drugs was given twice

daily and alternated every 6 hours although this is not supported by the medical records.

[51] Both Dr. Weese and Dr. Gauthier, as well as the available resources at the time of this case entered as evidence ("Cote's Clinical Veterinary Advisor for Dogs and Cats, the European Consensus Statement on Leptospirosis in Dogs and Cats, and the 2010 ACVIM Small Animal Consensus Statement on Leptospirosis: Diagnosis, Epidemiology, Treatment, and Prevention"), make consistent recommendations for the treatment of Leptospirosis in dogs.

[52] Doxycycline is not readily available as an IV formulation in BC, and therefore patients with gastrointestinal signs should be treated with Ampicillin 20 mg/kg IV q6 hrs, or 20-30 mg/kg IV q 6-8 hrs depending on the reference consulted. The Respondent treated Dobey with Ampicillin 20 mg/kg IV twice daily, which is insufficient. There is no rationale provided in the medical records for not adhering to the standard of care.

[53] As to use of two antibiotics alternating every six hours Dr. Weese stated as follows: "There is no information in the record about the timing of them. If they were given at the same time, absolutely not. If they were staggered, it's hard to say. Ampicillin going down and Cefazolin going up for each drug for a short period of time, that's certainly not how we would use antibiotics in any situation where we're using two drugs together".

[54] The administration of both antibiotics was not frequent enough. This may be due to impaired renal function of Dobey but there is no reference to this in the medical records. The Respondent testified that Ampicillin is considered the drug of choice for Leptospirosis and is his personal drug of choice and was part of his protocol in his experience before he came to Canada, but he felt "better coverage with Cefazolin". This reasoning is not recorded in the medical record.

[55] We find that the Respondent's antibiotic regimen in the treatment of Leptospirosis is a marked departure from that expected of a veterinarian.

D. Prescribe Doxycycline, or another suitable antibiotic, for renal colonization following the course of Ampicillin

[56] The standard of care in the treatment of Leptospirosis in dogs is Doxycycline 5 mg/kg PO q12h or 10 mg/kg PO q24h for 2 weeks to eliminate organisms from the renal tubules. Patients unable to take oral medications should be treated with an IV penicillin derivative while hospitalized as described above.

[57] The medical record indicates that Dobey was discharged on October 22nd with Clavaseptin (Amoxicillin/Clavulanic acid) 500mg (approximately 15 mg/kg) PO BID x 7 days. Although plain Amoxicillin would have been equally effective to Clavaseptin and have a lower risk of gastrointestinal side effects, the Panel accepts Clavaseptin as an effective *initial* treatment to administer at home in the face of inappetence and risk of gastrointestinal signs.

[58] However, the record states as a discharge plan “plan blood test + UA 15 days” and therefore there was no plan to recheck Dobey once the Clavaseptin was completed in 7 days or prescribe doxycycline for renal colonization following the Clavaseptin. Had Dobey survived, he would have been without treatment between days 7-15 after discharge.

[59] Without having a plan to reassess Dobey as soon as the Clavaseptin course was finished, discharging Dobey without prescribing doxycycline is a marked departure from that expected of a veterinarian.

FINDINGS COUNT 1

[60] We have found that in respect of sub-allegations (c) and (d) the Respondent failed to meet the appropriate standards in a marked way and committed professional misconduct.

COUNT 2

[61] Count 2 of the Citation alleges: that the Respondent's medical records of the care and treatment of a dog named Dobey were deficient and failed to adequately include one or more of the following:

(a) Weight on the date of each visit or assessment;

(b) Normal findings of temperature, pulse and respiration;

(c) Treatment plan(s) and/or treatment objective;

(d) Details on overnight care and monitoring;

(e) Whether and how Dobey's hydration was adequately managed, including but not limited to when water was offered and whether it was accepted, electrolyte status, fluid infusion rates, total volume of fluids administered and/or whether the dog was discharged in a hydrated state;

(f) Whether and how Dobey's nutritional needs were adequately managed, including type and quantity of food and/or method of delivery; and/or

(g) An accurate summary of the client communication upon discharge and/or other pertinent information, including that Dobey's discharge was against medical advice.

[62] The relevant requirements for medical records are:

(a) Bylaw 245(2)(b)(ii) which states:
Medical records
245 (2) A registrant must:
(b) ensure that the medical information in the record is
(ii) accurate, complete, appropriately detailed, comprehensible…

(b) *Professional Practice Standard: Medical Record Keeping 2.* Ensures records:
…
b. provide an accurate, complete and up-to-date profile of the animal(s) to enable continuity of care

(c) *Professional Practice Standard: Companion Animal Medical Records*
2. Specific requirements:
…

f. The animal's current weight (on the date of each visit or assessment)
g. For each physical and behavioural assessment:
…
ii. Physical examination findings or behaviour assessments, including both normal and abnormal findings.
…
v. A written treatment plan that provides the level of detail necessary for a colleague to understand the direction of the case at the time of writing;
…
vii. The date and (approximate) time of each client communication, the name of the person communicated with, and a summary of the exchange;
viii. Any additional pertinent information.

h. All medical and surgical treatments and procedures used, dispensed, prescribed, or performed by or at the direction of the Registrant, including the name (brand name if applicable or generic drug name), strength, dose, and quantity of any drugs.

[63] The *Guide to the Professional Practice Standard: Medical Records* provides helpful commentary as follows:

> A comprehensive medical record documents:
>
> - the client's description of the presenting problem(s) and reason for the visit,
> - the findings of the physical examination,
> - the results and interpretation of any diagnostic or laboratory tests,
> - problem lists and differential or definitive diagnoses,
> - a description of any treatment administered and/or procedures undertaken,
> - future treatment plans, and
> - any advice provided to the client.
>
> (p. 2)
>
> Minimum standards for a comprehensive and complete record would include, but are not limited to:

- The history documenting the presenting complaint and recent health status of the animal(s). A vaccination record is an important component of the history.
- An indication of which body systems were examined. Abbreviations such as PENAF or PE-NSF are not sufficient documentation unless a protocol detailing what is covered in the examination is referenced in the record.
- Information and reasoning on how the veterinarian arrived at a diagnosis should be recorded. Regular updates on differential diagnoses should be recorded until a definitive diagnosis is determined.
- Sufficient information demonstrating that the veterinarian has reviewed and interpreted data from diagnostic tests to confirm a diagnosis.
- Treatment plans describing recommendations for tests, drugs, treatments, surgical or medical procedures, referrals for specialized care and a follow-up schedule.
- Client communication and professional advice provided.

(pp 2-3)

A. Weight on the date of each visit or assessment

[64] Dobey's weight is recorded only once on his medical record during his first visit to Terra Nova Village Veterinarian on October 16, 2020. He was not weighed during his second visit and hospitalization from October 17-22, 2020. The Respondent testified that in his view it was not necessary to weigh a dog every day "for such a short stay" and "it would not change very much" and that "he could tell if the weight was changing.

[65] The Respondent's statement that "he could tell if the weight was decreasing" is not credible. Both experts agreed that they had to assume that medication was dosed correctly but could not discern that from the information provided. Dobey's weight would also have an impact on the volume of fluids he was receiving and the dosage of antibiotics.

[66] This is a breach of the requirement in the Companion Animal Standard s. 2 (f) that the weight be recorded on the date of each visit or assessment.

B. Normal findings of temperature, pulse and respiration

[67] There is never a recording of Dobey's temperature. The Respondent testified that he could "tell if an animal had a fever by touching the animal after 20 years of experience". In fact, during his examination on October 16, 2020 Dobey the Respondent testified that Dobey felt cold to him, but this was not recorded. Dr. Gauthier stated, "nobody is able to determine the actual temperature or if the animal is having a fever by touching the animal…There's no way to know, just like in humans, touching a patient, if they have a fever on not".

[68] Dobey's heart rate is recorded on the first day he was examined and only once in the five days he was hospitalized. Dobey's respiratory rate is never recorded. On October 16, 2020 the medical record states "Respiratory: Normal Lungs: Normal" and on October 17, 2020 it states "Lungs: Normal" then there is no further record of respiration for the duration of hospitalization.

[69] Notwithstanding the notations referred to above, the Respondent testified that he only records abnormal findings. He stated during testimony that it's not necessary to 'write a book every day'.

[70] The Respondent testified several times that there was a "white board" where additional monitoring information was recorded, but nowhere in the medical record is this information available.

[71] There is insufficient information in the medical record to assess Dobey's status and progress or allow another veterinarian to provide continuity of care. Counsel for the Respondent stated that another veterinarian could call and discuss Dobey with him; however, the day after Dobey was discharged the Complainant took Dobey to another facility because Terra Nova Village Veterinarian was closing and the attending veterinarian only had access to Dobey's faxed medical records, highlighting the need for comprehensive records.

[72] The College's *Companion Animal Standard* states in section 2, Specific Requirements (g)(ii): "For each physical and behavioural assessment…Physical

examination findings or behavioural assessments, including both normal and abnormal findings".

[73] The panel finds that Dobey's medical record was not complete, appropriately detailed or comprehensible without daily recording of Dobey's temperature, heart rate, or respiratory rate.

C. Treatment plans and/or treatment objectives

[74] There are no treatment plans and/or treatment objectives entered in Dobey's medical records. There is only the Respondent's testimony. When the diagnosis of Leptospirosis was made on October 19, 2020, there is no explanation in the medical record as to why the Respondent continued Cefazolin or why he did not follow the standard of care with respect to Ampicillin dosing. The rationale for the alternating administration of one antibiotic and then another is not recorded in the medical record.

[75] The Respondent testified that Cefazolin is "safe" and "broad spectrum" and said he was continuing to evaluate and treat for other conditions due to the possibility of a false positive Leptospirosis test. That is not explained in the medical record. With respect to the medicine prescribed to Dobey upon discharge he said that he intended to prescribe Doxycycline to Dobey when he returned in 15 days. There is no mention of this in the medical record.

[76] This is a breach of the *Companion Animal Standard* section 2 (g)(v). The panel finds that without treatment plans and objectives the medical records are not accurate, complete, appropriately detailed, or comprehensible.

D. Details on overnight care and monitoring

[77] While Dobey was hospitalized for 5 nights there are scant notes in the medical records. "Force feeding done with spoon and continued IV fluids overnight" "Dobey seemed a little better. Offered food but did not eat himself (sic) and force feeding done". It is not clear if this information is from the daytime care or the nighttime care. There are no notes in the medical record of the amount of food or the type of food. There is no

notation of the rate of fluids given or the total amount of fluids given in any time period. There is no recording of vomiting or diarrhea or urination in the overnight period. There is never a reassessment of hydration status.

[78] The medical records for Dobey's overnight care are very limited. The Respondent testified that his staff made notes (as noted above) on a "white board" that recorded additional details about monitoring and treatments, but none of this information is in the medical record. Although the Respondent testified that it was their normal process to record that information onto the permanent medical record, none of the "white board" information is included in any of Dobey's records. The Respondent stated that usually the first part of each day's medical record is from the night before but sometimes it is added at the end and "we know which is which". The panel is not able to distinguish daytime records from nighttime records.

[79] The panel finds that without this information the medical records are not accurate, complete, appropriately detailed, or comprehensible.

E. Whether and how Dobey's hydration was adequately managed, including but not limited to when water was offered and whether it was accepted, electrolyte status, fluid infusion rates, total volume of fluids administered and/or whether the dog was discharged in a hydrated state

[80] The medical records contain the information that on the day Dobey was hospitalized (October 17) he was started on "IV fluid LRS @SROI". We assume that this is 'Lactated Ringer's Solution' at the 'standard rate of infusion'. Different hospitals may have different standard rates of infusion and there is no notation of Terra Nova Village Veterinarian standards. The rest of the medical records only say 'continue IV fluids' (see below). There is no entry for the type of fluid or rate of fluid or total amount of fluid for any time period.

[81] The Respondent testified that Dobey's IV fluid rate was 10 ml/kg/hour for about 10 hours and then 8 ml/kg/hour for the rest of the first day and then 2 – 4 ml/kg/hour for the rest of the hospitalization. These rates are not recorded in the medical record. Additionally, this testimony is not credible as it directly contradicts the notation of SROI.

[82] On the first day of hospitalization the Respondent assessed Dobey as being 5% dehydrated, but there is never another assessment of hydration status.

[83] Laboratory tests were not conducted regularly enough to access electrolyte status. Laboratory tests were precluded by the owner's lack of funds and the Respondent repeated some laboratory tests on October 18, 2020 at no charge to the Complainant.

[84] The records for fluid therapy during hospitalization are vague; the records for October 18, 2020 (the second day of hospitalization) – "continued IV fluids (repeated 2 times) and "continued IV fluids overnight". October 19, 2020 "continued IV fluids" (repeated 4 times) and "continued to monitor and fluid therapy overnight" October 20, 2020 "continued IV fluids" (repeated 3 times) and "continued fluids overnight" October 21, 2020 "continued IV fluids" (only one time) and "continued IV fluids overnight" October 22, 2020 "continued IV fluids" (repeated 4 times) and "will continue fluid therapy" we assume until Dobey goes home that evening.

[85] There is no entry in the medical record if Dobey was ever offered water to drink or if he drank any water.

[86] The Respondent agreed that the rate of fluid given was not written down but refused to agree that someone viewing the record would know that was the rate and instead insisted that a reader would know that the dog was on IV fluids and may understand that it was a constant rate infusion. He agreed that he had no way of knowing what the fluid infusion rate was on any given day between October 19 and 22, 2020 and that on any given day it is not possible to know the total amount of fluids administered. He also agreed that the total volume administered for a dog in Dobey's condition "could have been mentioned" but that it was not "100 percent mandatory that we should write". He stated that there was always a bottle of water in the cage and every time a bottle was given it was written down, but it was not important how many times the bottle was filled. The medical record has no mention of a bottle of water.

[87] The panel finds that because of the lack of information concerning Dobey's hydration the medical records are not accurate, complete, appropriately detailed, or comprehensible.

F. Whether and how Dobey's nutritional needs were adequately managed, including type and quantity and/or method of delivery

[88] As noted above the Respondent testified that daily notes were entered on a "white board" of feeding (amount, what type of food and when and if force fed). None of this is found in the medical records.

[89] The medical records for October 18 (the second day of hospitalization) say "offered food but did not eat". For October 17 and 19, 2020 there is no entry for food or feeding. For October 20, 2020 "offered food but did not eat at his own, force feeding done with spoon". For October 21, 2020 "offered food but did not eat, force feeding done with spoon". For October 22, 2020 "offered food but did not eat himself" and "force feeding with a spoon".

[90] Nowhere is there listed the type of food or the amount force fed. The Respondent testified that soft food was used but this was not recorded. He agreed there was nothing in the medical record about how much food was offered to Dobey at any time, his evidence was that this was not "highly necessary" or "mandatory" to write it every day.

[91] The panel finds that because of the lack of information concerning Dobey's nutritional needs the medical records are not accurate, complete, appropriately detailed, or comprehensible.

G. An accurate summary of the client communication upon discharge and/or other pertinent information, including that Dobey's discharge was against medical advice

[92] The Respondent testified that Dobey was discharged against medical advice while the Complainant testified that the Respondent encouraged him to take Dobey

home. The Complainant testified that he “did not want to take Dobey home, he wanted Dobey to stay at Terra Nova Village Veterinarian but respected Dr. Chaudhry who said he could go home.” This is consistent with his letter of complaint in which he wrote “they sent him home Thursday night because they said he’ll most likely start eating at home. We weren’t sure, but we believed in the process, we believed in the doctor.”

[93] The medical record for October 22, 2020 (the day of discharge) records “Owner came in and visited. Discussed and updated the health condition and improvement” and “Owner wanted to take home Dobey the late evening. Until that time, we will continue fluid therapy.”

[94] The medical record does not state that the discharge was against medical advice or that ongoing hospitalization was recommended, nor did it include feeding instructions, or instructions on what to do if Dobey vomited, or instructions of fluids to give. The only discharge plan recorded was the medication dispensed and “Plan. Blood test + UA 15 days”.

[95] Clearly there was a discussion between the Complainant and the Respondent about the best course of action for Dobey (going home versus continued hospitalization), but the medical records do not record any of the discussion. We do not need to determine whose version of events is correct because the medical records do not adequately record either version.

[96] The panel finds that there was no accurate summary of the client communication upon discharge and/or other pertinent information.

FINDINGS COUNT 2

[97] With respect to all of the particulars of Count 2 we find the Respondent breached Bylaw 245 (2)(b)(ii) by failing to ensure the medical information in the medical record was accurate, complete, appropriately detailed, and comprehensible. He also breached *Professional Practice Standard: Medical Record Keeping* by failing to ensure the records provided an accurate, complete and up to date profile of the animal to enable continuity of care. Lastly, he also breached *Professional Practice Standard: Companion Animal Medical Records* as noted above.

CONCLUSION

[98] We have found that the Respondent committed professional misconduct in respect of sub-allegations (c) and (d) of Count 1. We have found that the Respondent breached Bylaw 245 (2)(b)(ii), the *Professional Practice Standard: Medical Record Keeping* and the *Professional Practice Standard: Companion Animal Medical Records* in respect of Count 2.

Dated this 28th day of August, 2024.

Herman Van Ommen

Herman Van Ommen, K.C., Chair

Al Runnells

Dr. Al Runnells

Catharine Shankel

Dr. Catharine Shankel