Citation Authorized: May 11, 2023
Citation Issued: February 21, 2024
Citation Amended June 20, 2024
Citation Further Amended: August 15, 2024
CVBC File No. 21-104

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 a hearing before a DISCIPLINE PANEL of the COLLEGE DISCIPLINE COMMITTEE

AND

DR. PAVITAR BAJWA

Counsel for the Respondent	**C. Parfitt**
Counsel for the College	**E. Allan**
Panel Members	**C. Baird Ellan, KC, chair** **Dr. A. Cheung** **Dr. R. Gunvaldsen**
Date of Decision	**December 6, 2024**

RULING ON AN APPLICATION

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[1] The Citation in this matter alleges breaches of the Act, Bylaws and Standards of the College of Veterinarians of British Columbia (the "College" or "CVBC"). The discipline hearing is currently set to be heard by videoconference over five days, from February 3 – 7, 2025, having been adjourned from prior hearing dates of September 16 – 21, 2024.

[2] The Respondent filed an application on October 15, 2024, seeking partial or full dismissal of the Citation, particulars, and disclosure or production of certain documents. The bases for the applications are that (a) the Investigative Committee did not determine the content of the Citation;

(b) Schedule D of the Accreditation Standards is not enforceable against the Respondent as a non-designated registrant; (c) Professional Practice Standards published by the College are not enforceable against registrants as the subject of non-compliance under Section 61; and (d) further particulars and document disclosure are necessary to enable the Respondent to answer the Citation.

[3] For the following reasons, the Panel has decided that the Citation will not be dismissed or stayed; particulars will be ordered as set out in Part 8 below; and the application for disclosure is allowed.

1. Background

[4] Four pre-hearing conferences have been held in this matter between May and September 2024. The first was on May 17, 2024, where the September hearing dates were confirmed, and certain case management orders were made. The second pre-hearing conference was held on August 14 and 15, 2024, resulting in several further case management orders as well as a direction for amendment to the Citation pursuant to Section 248(1)(c) of the Bylaws. The Citation was amended accordingly and signed by the Registrar on September 10, 2024. The Citation as amended on September 10 will be referred to in this ruling as “the Citation”.

[5] A third pre-hearing conference was held on September 5, 2024, which resulted in an amendment to the Order made at the second pre-hearing conference and a further case management order. At that pre-hearing conference, the Respondent also raised concerns about a potential conflict of a panel member with the College’s expert witness.

[6] On September 10, 2024, Counsel for the College wrote to the Panel on behalf of both counsel advising that the College was arranging to have the panel member replaced, and seeking a consent adjournment of the hearing to January or February. The Panel granted the adjournment and convened for a fourth pre-hearing conference as a panel of two on September 16, 2024. At that pre-hearing conference, the Panel asked counsel to hold two alternate weeks for hearing, February 3 and 10, 2025, and directed that, “The last day for the Respondent to bring any pre-hearing applications shall be October 11, 2024.” The Order was filed in writing on October 15, 2024, after this application was filed by Respondent’s counsel.

[7] When filing this application on October 15, 2024 Counsel for the Respondent stated in her cover email:

> I note that this application was due October 11, 2024. As this was my fourth deadline between October 10 and 15, including a deadline which was not set until October 7, I was unable to provide this application until now. I request the Panel to accept the application despite its late delivery given that the hearing is not imminent and the application will further the efficient processing of the Complaint.

[8] Counsel did not apply prior to October 11 for an extension of the deadline set out in the fourth pre-hearing Order, nor raise the possibility of a preliminary application to strike the Citation or request particulars or further disclosure, at any of the four pre-hearing conferences. The four deadlines to which she refers in her email did not pertain to this matter, other than October 11.

[9] In relation to the issue of the missed application deadline, the College submissions state as follows:

> 2. The Respondent late-delivered this application on October 15, 2024, after selecting the deadline of October 11, 2024 to deliver any such application during the fourth pre-hearing conference of this matter on September 16, 2024. The College questions the utility of indulging preference due to counsel's apparently overwhelmingly busy schedule when those deadlines are not even complied with and are missed with an explanation of competing deadlines. This is an affront to the regulatory process and the College's attempts to have this complaint proceed in an efficient and orderly manner. The College seeks a direction that the Respondent strictly comply with deadlines that are set by this Panel in the future.

[10] In her Reply to the College submissions, counsel for the Respondent states as follows:

> VII. Deadlines
>
> 32. Counsel for [the Respondent] has on a continuing basis objected to the myriad deadlines counsel for the College want in place because of the difficulty in complying with such deadlines in the face of the continual addition of deadlines by the College to her already overfull schedule. The deadlines in relation to this application are a case in point. Although counsel for the Respondent has had major hearing obligations in the current period stretching back to the spring of this year, and although the College has already added a hearing and several rounds of submissions to this time period on several files, the College on this file was determined to add yet additional deadlines on very short notice to this period, and then complain when those deadlines were not met despite the admitted total lack of harm to the College, and despite the obvious efforts of counsel for [the Respondent] to comply, notwithstanding the harm to her other obligations.

> 33. The College's repeated negative commentary about counsel for [the Respondent] and attempts to use deadlines to gain advantage over the Respondent tends to denigrate counsel in the eyes of the Panel and is contributing to a contentious atmosphere that is clearly detrimental to [the Respondent]. This is improper and is not consistent with the fair hearing that this Panel is obliged to provide.
>
> 34. If the College wants to provide lengthy but undetailed citations, take very technical approaches to disclosure, and impose deadlines for every step, it is apparent that much longer lead times are clearly required for hearings. At this point it is counsel's view that less than 6 months from when we receive disclosure is insufficient, and we will be strongly advocating for this now as continual short time frames are leading to unfairness, including in relation to the repeated need to advocate for proper time, and the dissention this inevitably creates with College counsel and Panels. It is unfair to [the Respondent] and other [r]espondents to constantly place unreasonable demands on the counsel they have selected because of her knowledge of the College and its processes and their practices, and to be constantly suggesting that counsel is acting improperly somehow because her schedule is not endlessly elastic at the behest of the College.
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> 35. We will be relying on the compendious complaints of counsel about deadline issues to advocate for much longer lead times for hearings, as that is the clear solution.

[11] The Panel is compelled to say that Ms. Parfitt's foregoing complaints about actions of "the College" are misdirected. The deadlines imposed, in most cases, are imposed by panels of the Discipline Committee, not by the College or by counsel for the College. Speaking for the present Panel, those deadlines have been imposed pursuant to Section 283(2)(k) of the CVBC Bylaws, which permits a panel to "ensure the hearing will proceed in a timely and fair fashion." In most cases, pre-hearing conferences are set well in advance of the 15-day time frame provided for in the Bylaws, which assists in an orderly unfolding of all the pre-hearing issues that may arise, well in advance of the hearing date.

[12] When deadlines are imposed by a panel, it is generally after submissions by counsel and with due consideration of counsel's calendars as represented by them within the pre-hearing process. In the experience of this Panel, Ms. Parfitt's contributions in this respect tend to focus on her extensive workload and inability to adhere to deadlines within timeframes suggested by the panel. While reasonable accommodations are often made, panels also tend to resist permitting an unworkable schedule to dictate problematic delays in the pre-hearing process.

[13] The Panel specifically resists any suggestion that the "clear solution" is longer lead times for hearings. In situations where it appears a lawyer may have taken on a workload that makes it

difficult or impossible for her to comply with what a panel considers to be reasonable deadlines for a particular matter, or a reasonable "lead time" to hearing, as Ms. Parfitt submits, that becomes a matter between counsel and her client, and ultimately, perhaps, between counsel and the Law Society; particularly if, as in this matter, directed deadlines are permitted to pass completely unheeded.

[14] Counsel's decision as to how much work to undertake cannot thwart the requirement that disciplinary proceedings be completed in a timely fashion. Nor does the fact that counsel has accepted an unworkable number of cases provide her with impunity to ignore deadlines set out in panel orders. The Panel finds the tenor of Ms. Parfitt's submissions here bordering on offensive and unprofessional in their attempt to deflect onto the College or the Panel her inability to fulfill her duties to her clients. Certainly, at best, these submissions are of no assistance to Ms. Parfitt in providing an explanation for having let the October 11 deadline pass without any comment by her.

[15] There comes a time when overburdened counsel must divest themselves of some of their workload, rather than attempt to hold the process hostage to the demands of one individual's schedule. There are many competent practitioners in the sphere of disciplinary administrative law, and while choice of counsel is a factor to consider in matters relating to delay, it must yield when counsel's capacity to fulfill their duties to their clients within a reasonable timeframe becomes problematic.

[16] In relation to this application, acknowledging the Panel's overriding duty of fairness to Ms. Parfitt's client, the Panel observes firstly that the October 11 deadline was set with a view to providing a sufficient period within which to receive submissions and provide a response to any such applications within a reasonable period prior to the hearing date. Despite what the Panel perceives to be an alarming lack of deference to the clear terms of its direction, the passage of the deadline does not harm the ability of the Panel to provide a ruling sufficiently in advance of the scheduled hearing date. Secondly, in light of the view the Panel takes on the applications for particulars and disclosure, the Panel has determined that it is appropriate, in this matter, to disregard the conduct of counsel and accede to the brief extension of the deadline.

[17] As another preliminary issue, the College challenges the Respondent's use of attachments in the application for stay or dismissal that are not the subject of a sworn application. Given the views the Panel has reached about the merits of that aspect of the application, the

issue of whether those attachments are admissible on the application is academic. The Panel will however observe that, given the administrative nature of this proceeding, if a layer of process may be avoided without doing damage to the veracity of documents a party is seeking to rely upon, we see no reason to insist on the formality of an affidavit. The other party can of course object if they take issue with content or authenticity.

2. Citation and Legislative Context

[18] The Citation as amended alleges various kinds of non-compliance on the part of the Respondent. The full content of the Citation comprises four pages in length and not be set out here. The allegations cite the following specific provisions of the Act, Bylaws, and Standards of the College:

a. CVBC Professional Practice Standard: Veterinarian-Client-Patient Relationship ("VCPR");
b. Professional misconduct under Section 61(1)(b)(iv);
c. Section 204(2) and/or section 209(f) of CVBC Bylaws;
d. Schedule "D" of the Accreditation Standards;
e. Section 245(2)(b)(ii) of the CVBC Bylaws;
f. Professional Practice Standard Medical Record Keeping;
g. Professional Practice Standard: Companion Animal Medical Records;
h. Professional Practice Standard: Veterinary Dentistry (Companion Animals);
i. Section 52(3) of the Act;
j. Section 207(3) of the CVBC Bylaws; and
k. CVBC Professional Practice Standard: Registrant Cooperation During Investigations and Accreditations.

[19] The foregoing are all provisions which detail compliance standards contained in the *Act* or prescribed by the College in its bylaws or published standards. Their content is not at issue and they not be set out here verbatim. More will be said about their respective status as enforceable compliance requirements, in response to the Respondent's argument on that point, discussed below.

[20] The following additional provisions are either referred to in submissions or have relevance to the merits of the application.

Section 3(2)(f) of the *Act*:

(2) The objects of the college are as follows:

…

(f)to establish and employ registration, investigation and discipline practices that are transparent, objective, impartial and fair…

Section 17 of the *Act*:

17 The council may by bylaw do any of the following:
(a)establish standards for the practice of veterinary medicine by registrants;
(b)establish standards of professional ethics and professional conduct for registrants…

Section 51(2) of the *Act*:

(2) If all or part of a complaint is dismissed under subsection (1), the investigation committee must provide the council, the complainant and the registrant with a written report stating the nature of the complaint and the reasons for dismissal.

Sections 57(1) and (4) of the *Act*:

57 (1) After considering any information or records obtained during an inspection or investigation, including any information or records provided by the registrant, the investigation committee must do one of the following:
(a)subject to subsection (2), take no further action respecting a matter and, if the matter relates to a complaint, dismiss the complaint;
(b)direct the registrar to issue a citation under section 58 *[citation for discipline hearing]*;
(c)request a reprimand or remedial action by consent under section 66 (1) *[reprimand or remedial action by consent]*.
…
(4) If, under subsection (1) (a), the investigation committee takes no further action, it must
(a)provide the council and the registrant with a written report stating the nature of the matter and the reasons for taking no further action, and
(b)if the matter relates to a complaint, provide the complainant with the written report described in paragraph (a).

Section 58 of the *Act*:

58 (1) If directed by the investigation committee, the registrar must issue a citation that
(a)advises the registrant that the registrant is subject to an oral discipline hearing before the discipline committee,
(b)names the registrant as the respondent,
(c)describes the nature of the complaint or other matter that is to be the subject of the discipline hearing,
(d)specifies the date, time and place of the discipline hearing, and
(e)advises the respondent that the discipline committee is entitled to proceed with the discipline hearing in the respondent's absence.

(2)Not fewer than 30 days before the date of the discipline hearing, the registrar must deliver the citation to the respondent by personal service or registered mail.
(3)If the subject matter of a citation is a complaint, the registrar must notify the complainant in writing of the date, time and place of the discipline hearing not fewer than 14 days before the date of the hearing.

CVBC Bylaws Part 4, Section 207

Duty to the college

207(1) A registrant must at all times conduct him or herself in a manner that demonstrates understanding of, respect for and a readiness to be bound by the Act, the regulations and the bylaws.

(2) A registrant must be familiar with and adhere to procedures and rules as may be approved by the council.

(3) A registrant must respond promptly and appropriately to any communication from the college where a response is requested.

CVBC Bylaws Part 5, Section 288:

288(1) At the time a citation is issued pursuant to section 58 of the Act, or at least 30 days before a hearing is scheduled pursuant to section 59 of the Act, the college's legal counsel must disclose to the respondent registrant all relevant information in the possession of the investigation committee relating to the allegations set out in the citation.

(2) Subsection (1) does not apply to information that is protected by a recognized form of privilege.

3. Overview

[21] The Panel will proceed to review the Respondent's submissions here, noting that many of them are arguments that have been raised repeatedly by Ms. Parfitt and rejected by prior disciplinary panels. The Panel is indebted to counsel for the College's thorough and painstaking response to the Respondent's application, despite the repetitive history she has outlined in her submissions. In relation to the first three issues raised by the Respondent here, due to the repetitive nature of the issues raised and disposition by many prior panels and the view the Panel takes of them, the Panel does not find it necessary for the purposes of this ruling to summarize the College's substantive responses in depth, which for the most part the Panel finds accord fully with its own views, as will be seen.

4. Standard of Fairness

[22] Counsel for the Respondent submits at the outset that because of the potentially grave impact of disciplinary proceedings on a veterinarian's livelihood, a disciplinary panel has a duty to provide "very significant standards of procedural fairness." She also submits that because the members of a disciplinary panel are appointed by the College, which she says creates a "fundamental lack of independence," a panel must demonstrate "scrupulous" adherence to the principles of natural justice and fairness.

[23] The College in its Response takes firm issue with the unsupported assertion regarding the innate bias of the panel appointment process. The Panel's views accord with those of the College on this issue. The College additionally points to the decision of *CVBC v. Bajwa*[1] in support of a finding that there is no inherent bias in the appointment process.

[24] While the Panel agrees that, by virtue of Section 3(2)(f) of the *Act*, the principles of natural justice and fairness apply to discipline proceedings, it does not accept the Respondent's premises that that the appointment process demonstrates a lack of independence or that these principles apply any more stringently here than in any other administrative disciplinary process.

[25] Those are propositions that, as a statutory tribunal, the Panel is not competent to accept, strictly bound as it is to the statutory regime that governs its process. Moreover, these are arguments that, as the College points out, have been advanced by this counsel, and rejected by CVBC panels, many times before. The Panel declines to reiterate the sound reasoning employed by prior panels in relation to these issues, and finds this submission to be devoid of merit.

5. Role of the Investigative Committee

[26] The Respondent's argument with respect to the role of the Investigative Committee (IC) is stated as follows:

> 7. Reading the *Veterinarians Act* harmoniously and completely as is required, the body with the power to determine which allegations will be referred to hearing is the Investigation Committee. In passing a motion to formally refer a matter to hearing, the

[1] *CVBC v. Bajwa*, May 31, 2023

> Investigation Committee *must set out in its motion what the contents of the citation will be*. [Emphasis added.]

[27] Based on this premise, the Respondent submits not only that the IC is required to articulate the contents of the Citation within its internal motion referring the matter to hearing, but also that a Respondent has a right to disclosure of the full record of the IC's determination, without any redaction for privilege or privacy reasons. The submission as the Panel understands it is that communications between the IC and the registrar are not privileged or private and that because the College is bound by Section 3(2)(f) to be transparent, objective, impartial and fair, it must provide and/or facilitate an explication of the IC's processes in the context of the issuance of a citation.

[28] The error in this argument, in the view of the Panel, is the assumption that Section 3(2)(f) applies to actions of the College beyond its role in fulfilling the objects set out in the Section. It is clear from the wording of the section that it is the processes designed by the College, of registration, investigation and discipline, that must adhere to those principles. There is no additional obligation on the part of the College to demonstrate within the context of a discipline proceeding how or whether any of those processes operate fairly, and nothing in the *Act* permitting a discipline panel to make that inquiry.

[29] Relying on that assumption the Respondent goes on to submit:

> A [c]itation which is issued without formal directions from the Investigation Committee as to the contents of the [c]itation is not properly issued, and is a nullity. This Discipline Panel cannot conduct a hearing on the basis of a [c]itation that is a nullity. As a result, this Citation must be dismissed.

[30] No authority is cited for this bald assertion.

[31] The College takes issue with the capacity of the Panel to consider such preliminary objections to the Citation, and questions Ms. Parfitt's failure to include in her submissions any of numerous decisions that have dealt with this issue. The College points out that these prior decisions, cited in the College's submissions, have rejected the capacity of a panel to: 1) dismiss or stay a citation;[2] 2) reject a citation for failure of the investigative committee to specify or

[2] Kataria; Bajwa [Bracken]

authorize the allegations that should be included in it;[3] 3) review the investigative committee's decision to issue a citation;[4] 4) review the conduct of the investigator or the deliberations of the investigative committee[5]; and 5) order disclosure of the deliberations of the investigative committee[6].

[32] Ms. Parfitt was counsel in most if not all of the decisions cited. The College submits based on these authorities that "there is no jurisdiction for this Panel to summarily dismiss the Citation for any reason prior to conducting the hearing." The College also acknowledges that this Panel is not bound by the decisions of other panels and goes on to address the merits of the Respondent's submissions.

[33] The College's substantive submissions in relation to the panel's jurisdiction start with a review of the citation process and the statutory jurisdiction afforded a disciplinary panel under the *Act*, notably sections 58 and 59, and culminate in its submission, similar to the observations made by the numerous panels in the cited decisions, that the panel is a creature of statute whose authority does not extend beyond controlling its own process to an investigative function relating to the College's process that is not delineated in the legislative framework. In addition, the College submits, there are no requirements in relation to the content of a citation beyond those set out in Section 58; in particular, the citation's wording does not need to be dictated or determined by the IC beyond those requirements.

[34] The Panel agrees with the reasons of prior panels in this respect, and accepts the College's submissions that the Panel is without authority to inquire into, or require proof of the IC's process leading up to the issuance of the Citation. The Panel declines to conduct any further review of the Respondent's submissions or analysis of the issues, which it finds to be without merit. In the view of the Panel, this basis for advancing a stay or dismissal of the Citation must fail.

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[3] Chaudhry
[4] Chaudhry, op cit, paras. 42 and 48, Bajwa July 20 2023
[5] Kataria, paras. 24-27, 36-37
[6] Kataria, Supra

6. Schedule D to Accreditation Standards

[35] In relation to the application of Schedule D to Part 3 of the College Bylaws[7], the Respondent submits as follows:

> Enforcement of the standards in Part 3 is not delegated to the Investigation Committee through disciplinary hearings. It is beyond the jurisdiction of the IC to refer a complaint to hearing about a violation of bylaws which it is not empowered to enforce. This aspect of the citation is a nullity and must be struck.

[36] Appendix D was the subject of a ruling in the recent matter of *CVBC v. Salhotra*[8]. That panel observed that the Minutes of the CVBC Council dated June 2017 suggested that the Council was of the view that Schedule D was not enforceable against non-designated registrants, and the panel declined for that reason, in that case, to rest a finding on that provision. Apart from that observation, the panel in *Salhotra* concluded that similarly to the discussion below regarding standards of practice, Schedule D was a valid standard imposed under the *Act*, within the meaning of that term contained in Section 61(1)(b)(ii), and therefore enforceable against a registrant.

[37] The Citation in this matter, in paragraph 4, refers, in addition to Schedule D, to the "Professional Practice Standard Medical Record Keeping" published in December 2017, a provision which was not referred to in *Salhotra*. This Panel observes that the Synopsis on the first page of that Standard states as follows:

> Synopsis
>
> The CVBC Professional Practice Standard: Medical Records applies to all veterinarians and all record systems (e.g., electronic, paper or combination of both).
>
> A veterinarian meets the Professional Practice Standard: Medical Records when he/she:
>
> 1. Creates a record for each animal or group of animals where a Veterinarian-Client-Patient Relationship (VCPR) is established, that is compliant with
>
>   a. CVBC Bylaws, Part 4 – Ethics and Standards, Division 4.5 – Medical Records, s.243 to s. 247, and
>
>   *b. Schedule D – Accreditation Standards, Section 04 – Medical Records, S. 21 to s.38.* (Emphasis added.)

[7] https://www.cvbc.ca/wp-content/uploads/2020/03/Schedule-D-Accreditation-Standards.pdf

[8] *CVBC v. Salhotra*, No. 21-065(b), November 21, 2024 (amended November 25, 2024)

[38] It appears from the wording of the above provision that the concerns expressed by the Council in May 2017, and by the panel in *Salhotra*, about enforceability of these provisions of Schedule D against non-designated registrants, have been alleviated by their specific incorporation into the Medical Record Practice Standard in December 2017. More will be said about the status of practice standards themselves in the following section, but for these purposes, the Panel adopts the reasoning of the panel in *Salhotra* pertaining to Schedule D, with the exception of their reservations about its applicability to non-designated registrants.

7. Practice Standards as Compliance Requirements

[39] The Respondent's submission in relation to the application of the standards of practice specified in the Citation is as follows:

> 15. All that can be said about [those Standards of Practice] is that they are published on the College's website. This does not mean any of the three documents amounts to a "standard imposed under the [Veterinarians] Act" as meant by s. 61(1)(b)(ii) of the Act. Whether a document is or is not a "standard imposed under the Act" under s. 61(1)(b)(ii) is a question of statutory interpretation.
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> 16. We say a standard imposed under the Act is as described in s. 17 of the Act, which talks about standards of practice made by bylaw. If so, the publications cited by the College in the [C]itation are not "standards imposed under the Act" because they have not been passed as bylaws as required by s. 26 of the Act, which requires that bylaws be passed by the membership of the College.
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> 17. In saying this we are supported by s. 199 of the Bylaws which defines what a "standard of practice" is. Section 199 of the Bylaws provides: "standards of practice" means the standards set out in Divisions 4.3 to 4.7 of this Part [Part 4], or such other standards as may be approved pursuant to section 2(d) of Part 1. There is no section 2(d) in Part 1 of the Bylaws. This is an exhaustive definition.

[40] Counsel acknowledges that this argument was rejected in *CVBC v. Chaudhry*[9]. She also advanced the argument in the *Salhotra* matter, referred to above, and it was again rejected by that panel. This Panel accepts the reasoning of that panel; in particular, the following passages:

> [136] …Section 8 of the Act provides the Council with a general power to make bylaws, separately from those requiring registrant approval. Those general powers include making bylaws under Section 17, which permits the Council, by bylaw, to establish "standards for the practice of veterinary medicine" *and* "standards of professional ethics and professional

[9] Re *Chaudhry*, (20-105(b), Respondent's notice of motion dated June 27, 2023

> conduct" (emphasis added). Sections 207(1) and (2) in Part 4 of the Bylaws provide that registrants must comply not only with the Act, the regulations and the bylaws; but also "procedures and rules as may be *approved by the council*." Moreover, Section 207(2) requires registrants to "be familiar with and adhere to procedures and rules as may be *approved by the council*." (Emphases added).
>
> [137] It is not open to the Panel to question the Council's ability to provide itself the power to create procedures and rules, nor has that argument been articulated here. The *Act* and Bylaw provisions as written afford ample basis on which to find that registrants are required to adhere to all practice guidelines that are published on the CVBC website, provided that those provisions are contained in the *Act*, passed as bylaws, or approved by the Council.
>
> [138] Without delving into the underpinnings of approval for each such provision…, the Panel relies on the presumption of regularity to conclude that all provisions published on the website are "standards, limits or conditions imposed under" the *Act* and have either been passed as bylaws, where they are published as bylaws, or approved by the Council pursuant to its authority under the Bylaws, where they are published as standards. It may be that the nature of the provision has some bearing on the seriousness with which non-compliance should be viewed, but that is a question for the penalty phase.

[41] The Panel here further notes that the Medical Record Keeping Practice Standard and the Companion Animal Medical Records Practice Standard referred to in the Citation both specifically state at the outset, "This College publication describes a mandatory standard of practice. The Veterinarians Act in section 52 provides that a failure to comply with a standard may be investigated."

[42] Having now had this submission considered and rejected by three panels of the Discipline Committee, if the Respondent wishes to advance these arguments further, the Panel observes that they are more properly brought on a review or appeal from the panel decisions rather than repeated applications before successive panels. This argument pertaining to standards of practice does not vary with the facts of a citation, and three panels have now held it to be without merit.

8. Particulars

[43] In his request for particulars, the Respondent relies on the following case law:

> *Nicholson v. New Brunswick Institute of Chartered Accountants* (1993), 137 N.B.R. (2d) 222 (Q.B.) affd 147 N.B.R. (2d) 158 (C.A.) (p. 231):
>
> > . . . it seems well established that the rules of natural justice demand that where a professional body embarks upon an enquiry into a complaint of professional misconduct, the complaint referred for enquiry must clearly and precisely identify

> the nature of the conduct complained of, not only so that the person under investigation may prepare his own case and answer, but so that the investigating body may know precisely what it is enquiring into. (emphasis added)

[44] *Morris v. Royal College of Dental Surgeons of Ontario* (1999), 127 OA.C. 282 (S.C.J. (Div. Ct.)):

> The second charge is entirely devoid of particulars apart from confining the act or acts to the year 1997. While the College gave substantial disclosure of the documents on which it relied, it is not for the accused professional to search through the prosecution's documents to seek out conduct that might be going to be relied on. Particulars are required of the acts intended by the College to be alleged as constituting professional misconduct.

[45] The College relies on prior panel decisions, and cites the cases of *Violette v. New Brunswick Dental Society*, 2004 NBCA 1 and *Hesje v. Law Society of Saskatchewan*, 2015 SKCA 2, relied upon by prior panels, to argue that the standards for particularization in the administrative field are less stringent than for criminal charges, and that the Respondent's knowledge and level of expertise may be taken into account in considering whether the allegation provides sufficient information.

[46] The College points to the numerous CVBC authorities in which the Respondent's counsel has made similar applications for particulars which have been denied on the basis that the Citation provided sufficient information for the registrants to know the case they had to meet, given the information that they had available to them. The College reiterated the submissions it has made in those past cases, while acknowledging that they are not binding on this panel. Although the College has pointed to similarities between the cited cases and the applications made by the Respondent here, in the Panel's view, the sufficiency of the Citation must be considered based on its wording and the references contained in it, in the context of this particular case, rather than by reference to cases in which similar applications for particulars have previously been denied.

[47] The Panel observes that this is an area in which prior panel decisions may be of less assistance and the issue will vary with the focus and wording of the citation. The sufficiency of a citation is a fact-specific question, and, the Panel concludes, needs to be decided on a case-by-case basis. In this matter, that requires consideration of whether each paragraph challenged by the Respondent is sufficient to afford him with notice of what is being alleged. The Panel will add

that while the primary concern is the ability of the registrant to understand the allegations, it is also important for a panel to do so, including the chair, who generally has no expertise in the field.

[48] This is also an area in which less concern arises for the Panel from hearing the Respondent's late application, particularly given the College's late amendment of the Citation at the second pre-hearing conference.

[49] The Panel will therefore proceed to consider the Respondent's specific submissions in relation to the Citation, sequentially. In doing so, the Panel will specifically decline to review the redacted minutes of the IC that have been provided by the Respondent, given the Panel's views on the relevance of those deliberations. The fact that the Respondent has those minutes might assist him in interpreting the provisions of the Citation, but it is not the task of the Panel to use them to fill in missing information. It must be borne in mind that the discipline process starts with the issuance of a citation, and for the purposes of publication of the proceedings, it is of no assistance to rely on background information that cannot properly form part of the disciplinary record.

[50] The Panel recognizes that other cases have relied upon the College providing additional particulars separately from amendments to the Citation. In light of the history of this matter, the Panel's expressed reluctance to create relevance for materials it considers to be extraneous to the issues, and the need to avoid further argument about the subject matter of the Citation, we prefer to provide directions for amendment of the Citation rather than to direct the separate provision of additional information by the College. It may be that in another case the latter would be a more appropriate approach, and this ruling may perhaps in that respect be confined to its facts.

a. Paragraph 1

[51] Paragraph 1 of the Citation was amended on September 10, 2024 to add the words, "prescribed and/or" before "dispensed". The paragraph alleges that "contrary to the CVBC Professional Practice Standard: Veterinarian Client-Patient Relationship" and "when one or more exceptions did not apply", the Respondent "prescribed and/or dispensed one or more medications" to the animal.

[52] The Respondent submits that the allegation does not specify what the CVBC Professional Practice Standard required, which medication the College is talking about, or whether it plans to prove that [the Respondent] prescribed the medication or dispensed it.

[53] Considering this allegation against the wording of the specified Practice Standard and its accompanying Guide, the Panel agrees that it does not sufficiently particularize the nature of the alleged non-compliance. Presumably the wording is intended to convey that the Respondent failed to establish a Veterinarian-Client-Patient Relationship (referred to as a "VCPR"), as required by paragraph 1 of the Practice Expectations found on the second page of the Standard, before prescribing or dispensing medication to the subject animal.

[54] It seems reasonable that if that is the nature of the conduct alleged, it should be specified that way. Additionally, presumably the College is aware of what medication was prescribed or dispensed, and that could also properly be particularized. Finally, the Panel assumes in light of the amendment that the records do not disclose whether the Respondent prescribed or dispensed the medication, but if the College is aware of that, it should be particularized.

[55] The first paragraph of the Citation might be amended as set out below. This is framed as a suggestion at present, in case counsel have better suggested wording or the amendment does any unintended damage to the original intent of the allegation. Because the Panel is also directing particularization of other paragraphs of the Citation, and will invite the College to submit a draft, it will leave the final choice of wording to the College, provided that it includes the full extent of the available information.

1. On or about January 30, 2021, you prescribed and/or dispensed one or more medications, namely [name of medications] to [the animal] without first establishing a Veterinarian-Client-Patient Relationship ("VCPR"), in the absence of any of the specified Exceptions to the Requirement for a VCPR, contrary to CVBC Professional Practice Standard: Veterinarian-Client-Patient Relationship ("VCPR"), "Practice Expectations," paragraph 1.

b. Paragraph 2

[56] Paragraph 2 of the Citation reads:

> In or about February through April 2021, during the care and treatment of [the animal], you committed professional misconduct and/or breached section 204(2) and/or section 209(f) of CVBC Bylaws when you failed to appropriately consider physical exam findings,

> symptoms and/or responsiveness to medications on an ongoing basis and/or revise your testing, diagnosis/diagnoses and/or treatment(s) of [the animal] on an ongoing basis…

[57] The Respondent's complaint is that this "compound" allegation does not specify which exam findings, symptoms and responsiveness to medications the Respondent failed to consider; what testing, diagnoses and treatments he should have revised; and how.

[58] Considered in relation to the specified sections of the Bylaws, the allegation is that these actions or inactions fell short of the standard of competence expected of a registrant. Presumably the College has a theory in relation to the findings and symptoms, and the medications' effectiveness or ineffectiveness, that gives rise to an inference that certain additional tests, diagnoses and treatments should have been undertaken or provided. These allegations were formulated following a thorough investigation, as the Panel understands it. The review of the Respondent's conduct during the specified period has presumably given rise to certain conclusions on the part of the College about things that were overlooked by the Respondent that the College believes it can prove. It is not clear why the College would refrain from specifying those things.

[59] In the view of the Panel, paragraph 2 of the Citation should be amended to specify the findings, symptoms, and medications that should have been reviewed, and the actions that the College says should have been taken in response to a competent assessment of those. In the absence of such specificity, it is the view of the Panel that this paragraph is too vague to stand. The Panel will not suggest wording as it is not aware of the facts that the College will seek to prove, but the direction is that more specificity of the items alleged must be provided. Again, the Panel will invite the College to submit a draft for review by Respondent's Counsel and the Panel.

c. Paragraph 3

[60] Paragraph 3 of the Citation alleges professional misconduct and breaches of Sections 204(2) and 209(f) of the Bylaws, the standards of competence referred to above. The paragraph goes on to itemize 5 specific actions of non-compliance. The first of these, paragraph 3(a), alleges that the Respondent "prescribed and/or continued to prescribe one or more antibiotics to [the animal] which were unnecessary and/or inappropriate in the circumstances".

[61] The Respondent submits that this allegation does not clearly identify which antibiotics the Respondent is said to have prescribed and how they were unnecessary or inappropriate. Again, presumably after the investigation the College has arrived at a theory as to which of the antibiotics that were prescribed were unnecessary, which were inappropriate, and why. The Panel would expect this allegation to include the names of those drugs and some specificity about why they were unnecessary or inappropriate. The College will need to add these details in order to proceed with this paragraph.

d. Paragraph 3(b)

[62] Paragraph 3(b) alleges that the Respondent "prescribed Chor Palm at a dosage and/or frequency lower than recommended". The Respondent submits that this does not set out what the College expects to prove is the correct dosage and frequency and that this amounts to lack of proper notice of the College's claim. The Panel considers this allegation to contain sufficient information for the Respondent to understand the case he must meet, which is that a dosage higher than that which he prescribed was "recommended". Presumably this allegation is based on literature or expert opinion or other evidence, which will be the subject of disclosure, but the level of specificity sought by the Respondent need not be contained in the allegation.

e. Paragraph 3(c)

[63] The allegation in paragraph 3(c) of the Citation states that the Respondent "prescribed and/or dispensed Vetmedin at a dosage higher and/or lower than recommended". This wording was amended on September 10, 2024 to add "and/or dispensed" and "and/or lower". Unlike the allegation in 3b, given the amendment, this wording does not suggest that the College has a theory or evidence as to the correct dosage. Perhaps the allegation relates to two different points in time, but that is not clear. It is very unclear what the impugned conduct is, here, without a yardstick or point of reference to support the allegation that the medication was not the recommended dosage. The College will need to amend this paragraph to provide a sufficient case for the Respondent to meet.

f. Paragraph 3(d)

[64] Paragraph 3(d) alleges that the Respondent "prescribed, dispensed, refunded and/or re-prescribed and/or re dispensed benazepril without sufficient reasoning or justification for doing so". The Respondent submits that this wording does not set out what would have justified

prescribing benazepril. The Panel is of the view that the allegation is sufficient to convey to the Respondent that the College intends to prove that he did not have, or demonstrate, a sufficient foundation for prescribing the drug.

g. Paragraph 3(e)

[65] Paragraph 3(e) alleges that the Respondent performed dental cleaning under general anaesthesia without “diagnostic results of radiographs from a radiologist” and/or when the animal’s “condition did not reasonably support doing so.” The Respondent submits that the allegation does not specify what about the animal’s condition would suggest general anaesthesia was contraindicated. The Panel is of the view that the allegation specifies the absence of radiographs, which is a sufficiently specific allegation to permit the Respondent to answer it. However, the Panel agrees that with respect to the additional wording, the College must have a view regarding what was or was not reflected in the animal’s condition that detracted from a decision to administer general anaesthesia, and that if the College wishes to retain this portion of the wording, it should add specificity regarding what it will seek to prove about the animal’s condition.

h. Paragraph 4

[66] The preface to Paragraph 4 of the Citation alleges that the Respondent’s medical records pertaining to his care and treatment of the animal were deficient, and that their deficiency constituted professional misconduct as well as breaching several specified provisions of the Bylaws, identified as: “Schedule ‘D’ of the Accreditation Standards and/or section 245(2)(b)(ii) of the CVBC Bylaws, the Professional Practice Standard Medical Record Keeping, the Professional Practice Standard: Companion Animal Medical Records and/or the Professional Practice Standard: Veterinary Dentistry (Companion Animals).” Paragraph 4 goes on to specify in some detail a number of items that it alleges were missing from the records.

[67] The Respondent submits that the Citation does not specify the sections of each of the provisions that it alleges were breached, and cites the following additional concerns:

> 43. … Paragraph 4(a)(vi) [alleges that the Respondent] did not provide differential diagnoses for the abnormal lab results on February 3, 2021 and/or an ongoing cough on February 13 and/or April 9, 2021. The College does not specify what differential diagnoses it thinks should have been identified...

> 44. … Paragraph 4(a)(ix) [alleges that the Respondent] did not record in his records that medications were delivered to [the animal's] owners or called into a pharmacy out of province on one or more of February 13, February 24, March 3, and March 24, 2021. The College does not specify what medications it is talking about, or what it actually plans to prove…
>
> 45. Paragraph 4(a)(x) [alleges that the Respondent] did not record "sufficient examination findings and/or notes on radiographic findings on April 9, 2021". The College does not say what it would have considered "sufficient examination findings and/or notes on radiographic findings"…

[68] In relation to the requirement that the Citation specify the sections of the provisions on which it relies, the Panel finds that a cursory review of the provisions yields an easy answer to the question raised by the Respondent. While particularization of the precise passages in each provision the Colleges alleges to have been breached might be preferable, the Panel is not of the view that it is essential to enable the Respondent to understand the case he has to meet in relation to each of the specified standards.

[69] In relation to the additional concerns set out above, similarly to the issues considered the *Salhotra* matter referred to above, these concerns pertain to an allegation that the Respondent did not include certain items in his notes or medical records. Where the absence of information is alleged, in the Panel's view, the College does not need to go on to specify what information it believes should have been included. Presumably it will be leading evidence to show that no differential diagnoses were recorded; medications were delivered or called in but not recorded; and the records pertaining to radiographic findings were demonstrably deficient. If allegations beyond those are introduced by the College, the Respondent will have a right to object to an expansion of the scope of the Citation.

i. Paragraph 5

[70] Paragraph 5 of the Citation reads as follows:

> 5. You committed professional misconduct and/or breached section 52(3) of the Act, section 207(3) of the CVBC Bylaws and/or the CVBC Professional Practice Standard: Registrant Cooperation During Investigations and Accreditations when you failed to respond and/or cooperate with a CVBC investigation and/or failed to respond promptly and/or appropriately to one or more CVBC communications as follows:

[71] The paragraph goes on to specify nine communications and their dates. The Respondent submits that this wording does not specify "what portion of its publication was breached," and "specifically what was wrong" with the Respondent's responses.

[72] In relation to the "portion" of the publication, the Standard is admirable in its brevity and a review of it would easily demonstrate to the Respondent the provisions that he is alleged to have breached. Taken with the wording of the Citation it will be obvious that the allegation might pertain to any of the three paragraphs on the first page, depending on the nature of the communications sent by the College. Those will be within the knowledge of the Respondent, and properly the subject of disclosure, as will his responses, or any lack thereof, such that the necessary information is available to the Respondent to understand the case he must meet.

[73] The Respondent's submission in relation to paragraph 5 goes on:

> As [the Respondent] responded multiple times to communications from the College, and the College itself maintains multiple standard letters which it provides to [r]egistrants to prompt replies, the College must be required to provide particulars about how [the Respondent's] response fell below the standard that it applies to other registrants during investigations such that a breach of the standards arose, and such that the breach can be considered professional misconduct.

[74] The College takes issue with the suggestion that it must demonstrate how the Respondent's communications compares with those of other registrants, and the Panel agrees. The allegation is that the Respondent failed to respond "promptly and/or appropriately" to the specified communications. Presumably the evidence will consist of an absence of responses, or responses that the College will assert are inadequate, without reference to how others may have responded in different cases, which the Panel considers wholly irrelevant.

9. Disclosure

[75] The Respondent requests copies of two letters of advice, written by the IC to the Respondent in relation to past disciplinary matters. These are reportedly referred to in a "Supplemental Memorandum" that the College has provided to the Respondent as part of their disclosure. The College has resisted producing the letters on the basis that they are not relevant to the liability portion of the proceedings. The Respondent's position is that "the warnings in the letters may affect what the College tries to prove here" and that the Respondent is "entitled to

these letters now in determining how to respond" to the Citation, "not only at the penalty portion of the hearing."

[76] The College points to the framework of "relevance to the allegations" contained in Bylaw Section 288(1), refers to the seminal case of *R. v. Stinchcombe*, applied in the administrative sphere in the case of *101115379 Saskatchewan Ltd. v Saskatchewan (Financial and Consumer Affairs Authority)*, 2019 SKCA 31 [101115379]. In the latter case, the Court stated:

> [101] …the degree of disclosure required in administrative matters will depend on the context in which the issue arises. If the issue of disclosure arises in a proceeding that closely resembles judicial proceedings and the result of the hearing could significantly affect an individual's livelihood or result in significant consequences, the degree of disclosure as an element of procedural fairness will be high. In such circumstances, the principles enunciated in *Stinchcombe* may apply with any modification necessary to fit the proceeding or the statute involved. At the very least, the Stinchcombe principles provide guidance.

[77] The College acknowledges that *Stinchcombe* requires disclosure of "any material that has a reasonable possibility of being relevant to the ability of a defendant to make full answer and defence" and relies on numerous prior CVBC panel decisions in which disclosure was denied on the basis of relevance. The College goes on:

> 74. The Respondent has not even made an attempt to apply this law to the disclosure as sought. He needs to demonstrate the documents: (1) are relevant, as that term is defined at common law; and (2) were in the possession of the Investigation Committee as required by the Bylaw. He cannot demonstrate either.

[78] The College goes on to submit that the Respondent has not met the requirements of Section 288 in relation to disclosure because it has not shown that the letters were "in the possession of the IC *at the time when it was considering next steps*." [Emphasis added.]

[79] The Panel is of the view that this is too narrow an interpretation of Section 288, which requires only that the material be "in the possession of" the IC. The College argues that the Respondent must demonstrate possession before seeking disclosure, but the reference in the IC's Supplemental Memorandum suggests possession at some point. In any event, the College is in a far better position to ascertain whether these items are in the IC's possession at the time of the disclosure request. There would seem to be no disadvantage to having the College make that inquiry and produce the letters if it is able to obtain them.

[80] As far as relevance is concerned, we see no wisdom to withholding items that may become relevant on the penalty phase until after the liability phase has been completed. These were letters apparently sent to the Respondent, and as pointed out in his submissions, they may have some relevance, albeit perhaps marginal, to how he decides to proceed on the initial phase of the hearing. The Panel has no idea what kinds of misconduct these letters may outline, but if, for instance, they were similar to any of the numerous allegations the Respondent is facing here, they might arguably have relevance to his determination of strategy, even if they consist of aggravating circumstances and motivate him to consider alternative options.

[81] The Panel directs that the College produce the letters of advice dated September 1, 2022 and March 2, 2023 if it is able to obtain them from the Investigative Committee.

10. Conclusion

[82] The applications for stay and dismissal of the Citation are denied. The applications for particulars and disclosure are allowed as indicated. The Panel invites the College to submit a draft amended Citation for the Panel's approval. It would be preferable if this is able to be the subject of agreement between counsel before the Panel reviews it. Failing that, the Panel will convene a pre-hearing conference for the purpose of confirming the Citation amendments.

[83] The Panel also asks the College to report on the outcome of the disclosure direction either when the draft Citation is submitted or at the pre-hearing conference, if one is convened.

DATED at the City of Vancouver, in the Province of British Columbia, this 6th day of December, 2024.

Carol Baird Ellan

Carol Baird Ellan, KC
Chair of the Panel

Amy Cheung

Dr. Amy Cheung

Rayna Gunvaldsen

Dr. Rayna Gunvaldsen