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CVBC File No. 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 a hearing before a DISCIPLINE PANEL of the COLLEGE DISCIPLINE COMMITTEE**

**AND**

**DR. JAVAID CHAUDHRY**

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| **Counsel for the Respondent** | **Clea Parfitt** |
| **Counsel for the College** | **Elizabeth Allan** |
| **Panel Members** | **Herman Van Ommen, KC, Chair**<br>**Dr. Al Runnells**<br>**Dr. Catharine Shankel** |
| **Date of Decision** | **December 20, 2024** |

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## RULING ON PENALTY AND COSTS

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[1] In Reasons issued on August 28, 2024, we found the Respondent committed two acts of professional misconduct in relation to his care and treatment of a young Doberman (the "Dog") and breached Bylaw 245 (2)(b)(ii), the *Professional Practice Standard: Medical Record Keeping* and the *Professional Practice Standard: Companion Animal Medical Records* by failing to keep adequate records.

[2] Having made those findings under Section 61(1)(b) of the *Veterinarians Act SBC 2010 c. 15* (the "Act") we are now required to consider what sanctions to impose under s. 61(2) of the Act and what costs, if any, to award the College under s. 63(2) of the Act.

[3] The College asks that the Respondent be:

a. reprimanded;
b. required to complete 6 hours of continuing education in addition to the normal requirements;
c. suspended for 2 months;
d. assessed costs in the amount of $74,000.00.

[4] The Respondent opposes any form of sanction.

## 1. General Principles

[5] Our authority to impose sanctions is set out in subsections 61(2) through (5) of the Act. Section 61(2) states as follows:

> (2) If a determination is made under subsection (1)(b), the discipline committee may by order do one or more of the following:
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> (a) reprimand the respondent;
> (b) impose limits or conditions on the practice of veterinary medicine by the respondent;
> (c) suspend the respondent's registration;
> (d) cancel the respondent's registration;
> (e) fine the respondent in an amount not exceeding the maximum fine established by bylaw under section 18 [bylaws regarding investigations and discipline hearings] and identify the date on or before which the fine must be paid to the college.

[6] We have a discretion to exercise when determining the appropriate sanction. Pursuant to s. 3 of the Act this Panel must act to protect the public interest which is the primary purpose of imposing sanctions and will guide the exercise of our discretion.

[7] In *Law Society of British Columbia v. Ogilvie* [1999] LSBC 172 ("Ogilvie") at para. 9 the panel stated:

> Given that the primary focus of the *Legal Profession Act* is the protection of the public interest, it follows that the sentencing process must ensure that the public is protected from acts of professional misconduct. Section 38 of the Act sets forth the range of penalties, from reprimand to disbarment, from which a panel must choose following a finding of misconduct. *In determining an appropriate penalty, the panel must consider what steps might be necessary to ensure that the public is protected, while also taking into account the risk of allowing the respondent to continue in practice.*

[8] In Ogilvie the panel listed 13 factors to consider in determining the appropriate sanction. In *Law Society of British Columbia v. Dent* [2016] LSBC 5 ("Dent") the panel suggested consolidating the 13 specific Ogilvie factors into 4 general categories. We find that approach useful.

[9] The four general categories were described in *Dent* at paragraphs 20-23 as follows:

> **Nature, gravity and consequences of conduct**
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> [20] This would cover the nature of the professional misconduct. Was it severe? Here are some of the aspects of severity: For how long and how many times did the misconduct occur? How did the conduct affect the victim? Did the lawyer obtain any financial gain from the misconduct? What were the consequences for the lawyer? Were there civil or criminal proceedings resulting from the conduct?
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> **Character and professional conduct record of the respondent**
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> [21] What is the age and experience of the respondent? What is the reputation of the respondent in the community in general and among his fellow lawyers? What is contained in the professional conduct record?
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> **Acknowledgement of the misconduct and remedial action**
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> [22] Does the respondent admit his or her misconduct? What steps, if any, has the respondent taken to prevent a reoccurrence? Did the respondent take any remedial action to correct the specific misconduct? Generally, can the respondent be rehabilitated? Are there other mitigating circumstances, such as mental health or addiction, and are they being dealt with by the respondent?
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> **Public Confidence in the Legal Profession Including Public Confidence in the Disciplinary Process**
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> [23] Is there sufficient specific or general deterrent value in the proposed disciplinary action? Generally, will the public have confidence that the proposed disciplinary action is sufficient to maintain the integrity of the legal profession? Specifically, will the public have confidence in the proposed disciplinary action compared to similar cases?

[10] The Respondent suggests the Panel ought to be guided by the principles set out in an academic article *(An Evidence-Based Tool for Regulatory Decision Making: The Regulatory decision Pathway, Kathleen A. Russell and Beth K. Radtke, Journal of Nursing Regulation, Vol. 5, Issue 2, July 2014).* This article, as described by the Respondent, "proposes disciplinary action

only for reckless behaviour, and bad intent." He has not provided any authority showing the use of this approach in a Canadian professional regulatory environment. The basic approach proposed in the article as described by the Respondent is inconsistent with Canadian jurisprudence concerning sanctions in a professional regulatory environment. We do not find it helpful or applicable.

## 2. Nature, Gravity and Consequences of Conduct

[11] Two findings of professional misconduct were made and are described in paras. 54-55 and 58-59 of our Reasons. Several findings of inadequate record keeping were made and are described in paras. 65-66, 71-81, 87, 91, and 95-96 of our Reasons.

[12] The College, noting that the two acts of professional misconduct occurred over a six-day period, submits those findings are serious. In relation to the inadequate record keeping, which occurred over the course of the treatment and hospitalization of the Dog, the College submits that that conduct is moderately serious.

[13] The Respondent says he managed a "difficult situation with a very sick dog and a client with considerable cost and other sensitivities with care and compassion." He notes also that there was no dishonesty, unethical conduct, conflict of interest or bad intentions.

[14] The antibiotic regimen administered by the Respondent was not supported by any accepted standard and his reasons for that regimen were not recorded in his records. Veterinarians need to follow accepted standards and, especially when departing from those standards record, clearly record their reasons for doing so. He failed in both respects.

[15] He also failed to discharge the Dog with an appropriate discharge plan.

[16] The consequences of his failures cannot be known with certainty. We do know that the Dog died shortly after being discharged and that the treatment the Respondent provided did not meet the standard expected. It is possible that the Dog would have died even with appropriate treatment but that is not known. The consequences of his inadequate record keeping are known. Neither the experts nor the Panel were able to understand the Respondent's thought processes for his care and treatment of the Dog. His records did not enable continuity of care for subsequent veterinarians either.

[17] We consider his failure to administer an appropriate antibiotics regimen and discharge the patient with an appropriate discharge plan serious because it was a marked departure from the standard expected, but in the spectrum of professional misconduct it would be moderately serious. We consider his breach of the record keeping standards a serious breach because the shortcomings were so pervasive. Keeping detailed accurate medical records is the cornerstone of a good veterinary practice. Failure to do so makes continuity of care impossible and impedes the College's ability to review a veterinarian's conduct.

## 3. Character and Professional Conduct Record

[18] The Respondent is 65 years old. He started practicing veterinary medicine in Pakistan in 1990. He became a registrant of the College in 2010. He had over 30 years of experience with almost 10 years of experience in this College at the time of the events. His age and experience are not a mitigating factor. With his background and experience he should have done better.

[19] He has no previous disciplinary record. This is a mitigating factor.

## 4. Acknowledgement of the Misconduct and Remedial Action

[20] The Respondent has not acknowledged any misconduct in this matter. This is not an aggravating factor but the absence of a very powerful mitigating factor. When a registrant acknowledges their misconduct and shows a willingness and intention to improve future conduct the sanctions imposed can be less severe because there is some assurance that their future behaviour will be guided by the lessons learned.

[21] During the hearing, even after the expert's reports had been reviewed and they had been cross examined, he still stated that he would not have done anything differently. Also, during the hearing, with respect to recordkeeping, despite being shown the specific requirements in the College's standards he insisted it was not necessary to record the information required by those standards.

[22] In his closing submissions on penalty the Respondent stated:

> It is not surprising that older practitioners who have practiced longer in a particular way may feel their approach is appropriate and may take some time to adapt their practices to a new approach, the utility of which may not be clear to them. Dr.

> Chaudhry clearly indicated in his evidence that some of the detail the College claimed it wants did not seem valuable or as important to him.

[23] This comment, made after the decision of this Panel, is surprising. Rather than stating that he would make sincere efforts in the future to comply with the record-keeping standards he continued to justify his inadequate record keeping. His view on the value of record-keeping standards casts doubt on whether there will be a change of behaviour in the future. This shows that there is a need for remedial sanctions to ensure that he does comply in the future.

[24] The Respondent points to a number of courses relevant to infectious diseases that he has taken since 2020. None relate to recordkeeping. He has not advised who provided the course, whether they were approved by the Registry of Approved Continuing Education ("RACE") and whether this was in addition to his required continuing education. We do not consider this evidence shows that there has already been sufficient remedial training.

### 5. Public Confidence in the Profession and Disciplinary Process

[25] This factor involves an assessment of the need for general and specific deterrence in the specific case and, to ensure fairness to the Respondent and predictability, a review of the range of sanctions for similar cases.

[26] General deterrence is always an important factor. The College and this disciplinary process are obliged to protect the public interest which requires showing that the public can have confidence that veterinary medicine is practiced in accordance with appropriate standards and that registrants who have not abided by those standards are disciplined. Other veterinarians seeing sanctions imposed will act accordingly.

[27] The College summed it up well as follows:

> 47. The College is not looking to make an example of the Respondent, but if there are other members of the profession who believe that they can deviate from consensus statements in the treatment of a disease without solid clinical justification, or there is not a need to record information as required by the College in medical records, the sanction should deter them from proceeding in this manner.

[28] The Respondent's submission that no penalty is warranted does not address the need for general deterrence in this case where there were two findings of professional misconduct and several breaches of record keeping standards. While a public finding of professional misconduct

does serve the need for general deterrence to some extent, it is not adequate on its own and does not adequately serve the public interest that some form of sanction be imposed for misconduct.

[29] We agree with the College that in this case there is a need for specific deterrence. The Respondent did not evaluate and treat an infectious disease in accordance with authoritative consensus statements available to him. He also failed to record his reasons for deviating from the recommended approach. He failed to record many items in his medical records disagreeing with standards published by the College that he was obliged to follow. He has not shown a willingness to change his behaviour in the future.

[30] Under the heading “Outcomes in Similar Cases” the College reviewed three cases from Ontario. They noted that there were no recent penalty decisions after a contested hearing in British Columbia and very few in Canada.

[31] The three cases they reviewed all proceeded on the basis of an admission of misconduct and a joint submission on penalty. All resulted in a reprimand, a two-month suspension and required further continuing education.

[32] The factual basis of those cases is different from this one, but all involve misconduct in the care and treatment of an animal and two involve inadequate record keeping. The Respondent submits that those three cases involve more serious misconduct than found here. We agree to a certain extent but because all three involve an admission of misconduct, which is a strong mitigating factor, the length of suspension imposed is informative and useful.

[33] The College also reviewed two contested cases that resulted in suspensions of three and five months. We do not rely on them except to note that they involve more serious misconduct and thus establish a length of suspension that would not be appropriate in this case.

[34] Having considered the general factors relevant to determining an appropriate sanction we will now review the specific sanctions sought by the College.

## 6. Reprimand

[35] The College seeks a reprimand, and the Respondent submits a reprimand is not appropriate given that he “simply evaluated the factors, and in particular the effect of kidney compromise on the dosing interval, other than the Panel would have.” This of course ignores the

fact that the Panel found his conduct was a marked departure from that expected of a veterinarian in British Columbia. It is much more than a difference of opinion.

[36] We find that a reprimand is appropriate and order that the Respondent be reprimanded as follows:

> The Respondent is reprimanded for his failure to appropriately treat an infectious disease and provide an appropriate discharge plan. He is also reprimanded for failing to keep adequate records in accordance with Bylaw 245(2)(b)(ii), the *Professional Practice Standard: Medical Record Keeping* and the *Professional Practice Standard: Companion Animal Medical Records.*

## 7. Suspension

[37] The College seeks a suspension of two months to commence ninety days after the date of our order or such other date approved by the College.

[38] The Respondent vigorously opposes a suspension of any length. He points to the fact that before the issuance of this Citation the College requested remedial action by consent pursuant to sections 57(1) and 66 of the Act. The Respondent refused and then the Citation was authorized. He notes that the College did not seek a suspension as part of the remedial action by consent. He suggests that by seeking a suspension now the College is seeking to punish him for exercising his right to require a full hearing.

[39] We do not agree. At this stage it is for the Panel to determine the appropriate penalty. Our discretion is not limited by the College's prior position.

[40] As well as the College submits that the factual basis of the matters has been more fully developed through the hearing process including the production of expert reports. We note that the proposed remedial action by consent only sought admissions with respect to inadequate record keeping not professional misconduct in the care and treatment of the Dog. That may have been considered to be an appropriate resolution then on that factual basis but the findings of professional misconduct require a different form of sanction. Further the proposed resolution included the Respondent's admission of wrongdoing, which as noted is a significant mitigating factor and is not present here.

[41] We will determine the appropriate sanction based on the evidence before us and the findings previously made by us.

[42] In his Affidavit provided for this hearing the Respondent deposed that a suspension of any length would be a significant hardship. He deposed that he doubted that he could find a locum to replace him during a suspension. Without a locum he would have to close his practice thus being unable to provide services to his two or three thousand clients. His staff would be unemployed, might find employment elsewhere, and not return. Many expenses of the practice would continue without income to pay them.

[43] We do not accept his assertion that a locum could not be found. Hardship is the known result of a suspension which is why it is not imposed except where clearly warranted.

[44] In *Re Lessing* (2013) LSBC 29 a review panel considered the purpose and effect of a suspension. They wrote as follows:

> [114] A suspension has a public protection component. During the period of suspension the member has to arrange for his files to be looked after by another lawyer. Of some significance, the member has to inform his clients that he has been suspended by the Law Society. This can have a significant impact upon his practice and the confidence that his clients have in him.
>
> [115] However, a suspension is also rehabilitative in nature. One of the rehabilitative purposes of a suspension is to give the member an opportunity to think over, undistracted, his practice and his relationship with the Law Society. This is not required in all cases. This, however, is one of those cases. The Respondent needs a period in the wilderness to contemplate these various matters.

[45] We consider that a short suspension of one month is required in this case. The suspension will commence ninety days after our decision is released unless the College agrees to another date. Ninety days ought to be adequate time to find a locum and he can seek additional time from the College if after reasonable and diligent efforts it takes longer.

[46] The findings made against him are moderately serious and of concern is his continued expressed view that the record keeping standards need not be followed. A one-month suspension is in the range of similar cases.

## 8. Continuing Education

[47] The College seeks an order that he complete six hours of continuing education, in addition to existing requirements. Such education is to be approved by the RACE and is to be comprised of three hours in the treatment of infectious diseases and three hours in medical record keeping. This continuing education is to be completed within six months of our decision.

[48] The Respondent is opposed to taking additional education. He has listed courses he says he has taken since 2020. There is not sufficient information given to determine whether they are satisfactory, and none concern medical record keeping. He submits that any specific continuing education imposed by this panel ought to be counted as part of his required continuing education and that he be given twelve months to complete them.

[49] We do not think six hours of continuing education is sufficient nor do we think the Respondent should be allowed to choose the courses he takes. We order that he take an additional twelve hours of continuing education. He must take the courses listed below:

> https://www.vin.com/course/12206636
> **Medical Recordkeeping for Veterinarians (DRIP129-2024)** ***Self Study***
> 6 credits
> https://veterinarypartner.vin.com/course/12223265
> **Fluid Therapy Update (DRIP101-2024)** ***Self Study***
> 1 credit
> https://www.vin.com/course/12206590
> **Acute Kidney Injury - Special Focus on Leptospirosis (DRIP126-2024)** ***Self Study***
> 1 credit

[50] He can choose the specific courses for the additional four hours, but they must be in the area of infectious disease or fluid therapy. All courses must be approved by RACE.

[51] The twelve hours of continuing education is in addition to that already required because the findings that we have made that show further education is needed. This component of the penalty is both rehabilitative and for the protection of the public. We will allow him nine months to complete this requirement.

## 9. Costs

[52] The College seeks an order that costs in the amount of $74,000.00 be assessed and paid within ninety days of this order. The Respondent submits that no costs should be awarded or at worst "a very limited costs award."

[53] Section 63 of the Act addresses costs that may be awarded by a panel. It states:

> 63 (1) If the discipline committee dismisses a matter under section 61 (1) (a) *[action by discipline committee]*, it may award costs to the respondent against the college, but only for legal representation for the purposes of
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> (a) the investigation under section 52 *[investigations]*, and
>
> (b) the discipline hearing.
>
> (2) If the discipline committee acts under section 61 (1) (b), it may award costs to the college against the respondent for any of the following:
>
> (a) the cost of the investigation and the discipline hearing;
>
> (b) the remuneration of persons engaged, on behalf of the college, in the investigation and discipline hearing, including members of the investigation committee, persons who conducted the investigation and members of the discipline committee;
>
> (c) legal representation for the purposes of
>
> (i) the investigation under section 52, and
>
> (ii) the discipline hearing.
>
> (3) An award of costs under subsection (1) or (2) (c) must
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> (a) be based on the tariff of costs established under section 18 (c) *[bylaws regarding investigations and discipline hearings]*, and
>
> (b) not exceed, in total, 50% of the actual costs to the respondent or the college, as applicable, for legal representation for the purposes of the investigation and discipline hearing.
>
> (4) An award of costs under subsection (2) (a) or (b) must
>
> (a) be based on the tariff of costs established under section 18 (d), and
>
> (b) not exceed, in total, 50% of the actual costs to the college for the matters set out in subsection (2) (a) and (b).
>
> (5) The amount of costs assessed against a respondent under subsection (2) may be recovered as a debt owing to the college and any amount collected is the property of the college.

[54] Under subsections 18(c) and (d) of the Act, the Council, may, by bylaw, establish:

> (c) for the purposes of section 63 (3) *[cost awards by discipline committee]*, the tariff of costs to indemnify respondents and the college, as the case may be, for the cost of legal representation for the purposes of
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> (i) investigations under sections 52 *[investigations]*, and

(ii) discipline hearings;

(d) for the purposes of section 63 (4), the tariff of costs to indemnify the college for the cost of the matters set out in section 63 (2) (a) and (b).

[55] Bylaw 302 states:

(1) The costs that the discipline panel can award pursuant to section 63 of the Act are as follows:

(a) if the panel dismisses a matter against a registrant pursuant to section 61(1)(a) of the Act, up to 50% of the costs of the registrant's legal representation during the investigation and subsequent discipline hearing as the discipline panel may determine is appropriate, but no other costs, and the panel may do so on a prorated basis;

(b) if the panel makes a determination against a registrant pursuant to section 61(1)(b) of the Act, up to 50% of the cost of the investigation and subsequent discipline hearing as the discipline panel may determine is appropriate, which include the following costs:

(i) the college's costs of legal representation,

(ii) the costs of other reasonable and necessary disbursement incurred for the purposes of the investigation or hearing, including disbursements incurred by legal counsel, and

(iii) the costs of other reasonable and necessary professional services contracted for the purposes of the investigation or hearing, including per diems paid to the members of the investigation committee or discipline committee.

(2) In making an order for an award of costs under section 63 of the Act, the discipline panel may receive written or oral submissions as to what costs should be applied.

## 10. Principles

[56] We have no jurisdiction to award costs except as set out in the Act and Bylaws. Costs are normally awarded to the successful party.

[57] The purpose of a costs award in professional regulatory proceedings is to require the person found to have misconducted themselves to bear the cost of the investigation and disciplinary process rather than the profession as a whole who have not committed misconduct. However, an award of costs is not to be punitive and must not create a barrier to a respondent raising reasonable defences. This is reflected in the Act and Bylaw 302 which limits the College's

ability to recover its costs of the investigation and hearing to 50% of its actual costs. This is the upper limit, not the default position.

[58] The Respondent suggests that the appropriate approach to take is that the profession as a whole ought to bear the costs on disciplinary proceedings in most cases. He refers to *Jinnah v. Alberta Dental Association and College, 2022 ABCA 336,* where at para. 136 the court stated:

> The imposition of all or a significant percentage of the costs of self regulation on the profession as a whole is fair because all members benefit from self-regulation. These advantages include the profession's ability to limit competition by restricting who may enter the profession and implementing other anti-competitive measures such as fee schedules and restrictions on advertising. These measures increase the income and status of the profession's members.

[59] This case has not been followed in British Columbia and is inconsistent with the prevailing jurisprudence as set out above. Significantly, the Respondent failed to disclose that *Jinnah* is being reconsidered by the Alberta Court of Appeal in *Charkhandeh v. College of Dental Surgeons of Alberta*, 2024 ABCA 239.

[60] We refer to the authoritative text of James T. Casey, *Regulation of the Professions in Canada* (2023). In section 14.4 he lists a number of factors to be considered in determining an appropriate award of costs:

1. Legislative provisions differ significantly with respect to the nature of the costs that may be awarded by a discipline committee so the specific provisions must be considered.
2. The amount of time and expenses associated with the investigation and hearing.
3. The focus of a cost award is to ensure that a member found to have committed unprofessional conduct bears the costs of the process as opposed to the membership as a whole. Bearing the burden of an award of costs reflects the consequences of being a member of a self-regulating profession and having engaged in unprofessional conduct.
4. There is a need to find an appropriate balance by considering the impact of the cost award on the member. Costs should not be punitive in nature.
5. Potential costs awards should not be so large as to prevent individuals from raising reasonable defences against allegations of unprofessional conduct.
6. The member's personal financial circumstances and the impact of a cost award. In appropriate cases consideration should be given to providing a time to pay the costs.

7. The impact of the other sanctions imposed should be considered as part of the context.
8. Whether there has been "mixed success" in that the member has successfully defended some of the allegations. In particular, it is appropriate to consider the relative seriousness of those which were successfully defended. It is also appropriate to consider what proportion of the cost was attributable to the allegations that were successfully defended.
9. The extent to which the conduct of each of the parties resulted in costs accumulating or conversely being saved.
10. Any other factors considered relevant given the particular circumstances of the case.

[61] We will first consider each of the components of costs the College seeks and then return to a global assessment of the costs that ought to be awarded.

## 11. Costs of Legal Representation

[62] The College seeks costs of its legal representation for the hearing under Bylaw 302 (1)(b)(i) in the amount of $57,000.00. Its total legal costs were more than $115,000.00 and thus the amount sought from the Respondent is less than 50% of its actual costs.

[63] The Respondent refers to *Roberts v. College of Dental Surgeons of British Columbia, 1999 BCCA 103,* where the BC Court of Appeal considered the issue of costs in professional regulation. It found that in general the reference to costs is a reference to party and party costs not solicitor and own clients costs, and to the rules of court regarding costs. The court also found that solicitor and client costs and solicitor and own client costs were not an appropriate basis for costs unless there had been very significant adverse conduct in the course of a matter which is not the case here.

[64] The statutory regime under which the Dentist College was operating at that time is quite different from the statutory provisions under which this case is being decided. Because the Act sets as an upper limit 50% of the "actual costs to the College" it is necessary to consider what is often referred to as "solicitor and own client costs". That however does not mean that the College is being awarded costs on a solicitor and own client basis, the statutory limit of 50% prohibits such an award.

[65] The Respondent says that ss. 18(c) and (d) of the Act authorize the College to establish a tariff for costs. He says that Bylaw 302 is not a tariff because it does not establish a fixed cost for particular steps in a proceeding. That is certainly a form of tariff that is commonly used but the College has taken a more general approach by allowing a range of costs "up to 50%". The Bylaw does not direct where in that range a cost award ought to be nor what factors ought to be considered in determining where in that range a costs award ought to be. There is in our view sufficient jurisprudence to guide our discretion.

[66] The Respondent says the absence of a tariff in the traditional sense means that no provision is made for considering issues such as complexity. We do consider that that is an appropriate consideration and will consider it. In addition, the total amount of legal costs from which 50% is calculated must be reasonable.

[67] The Respondent submits that the College must produce its legal accounts (thus waiving privilege) so that he can determine whether the costs claimed are reasonable. We do not agree. The College has provided evidence that its counsel charged $300.00 per hour. It has also provided the results of a survey of lawyers' hourly rates conducted by a private firm and the Canadian Bar Association BC Branch which shows that the midrange of rates for a lawyer of counsel's year of call was $450.00 per hour. The rate paid by the College to its counsel was substantially below market.

[68] The College also provided evidence of the total number of hours spent by its counsel on virtually a monthly basis from February 2023 to November 2024. That is sufficient information for the Respondent to determine the reasonableness of the fees. The Respondent knows enough of what College counsel was doing during each of the time periods to enable him to raise questions about the number of hours spent if they were thought to be excessive. On a global basis the Respondent knows how many hours were spent by his counsel defending this proceeding. If there was a significant variation that could also be raised.

[69] Included in the total hours claimed by the College are 10.5 hours spent by more junior lawyers who were charged out at the rate of $225.00 or $250.00. They have not identified who that lawyer is, their year of call or what they did. Those hours will not be considered as we cannot determine the reasonableness of the fee for those hours based on the information given.

[70] In addition, other lawyers assisted who were also charged out at $300.00 per hour. Those lawyers were also not identified nor was their year of call provided. From the summary provided we can determine that a total of 15.4 hours was claimed for them. We will not include those hours as we cannot determine the reasonableness of the fees for those hours either.

[71] We will only consider the hours spent by Ms. Allan, we calculate those, from the schedule provided, to be 315.3 hours for a total fee of $94,590 plus PST of $6,621.30 for a total of $101,211.30. We do not include GST paid because the College should be able to claim it as an input tax credit.

[72] In assessing the reasonableness of the fees, we consider the steps taken during this proceeding:

a) Issuance of the Citation which would involve a review of the file;
b) Four prehearing conferences May 25, June 15, August 21, and November 3, 2023: these all were substantive conferences involving directions for the conduct of the hearing and involved the preparation of agendas and making a record of the orders and directions made;
c) Two motions were dealt with, the first being a motion to adjourn and the second a very substantial motion by the Respondent to seek to dismiss the Citation, further particulars, and disclosure of documents. The Motion was dismissed by reasons of this Panel dated July 19, 2023. Extensive written submissions were made by both sides;
d) The hearing occupied 4 days in total on November 14, 15, 28, 29, 2023 and January 26, 2024. Both sides prepared fulsome written opening statements. The College called the complainant, a paralegal from the College to identify documents and in reply a witness to establish the timing of an event;
e) Two expert witness reports were submitted by the College the preparation of which would have involved counsel who would also have prepared those experts to give evidence and be cross examined;
f) An affidavit from a reply witness was tendered. The Respondent opposed the admission of that affidavit and if admitted insisted on in person cross examination. The cross examination failed to undermine the reply evidence in any way. This required an additional one-half day plus the time spent arguing about the admissibility of the reply evidence;
g) After the hearing extensive written submissions were exchanged. The College's submission was 83 pages, the Respondent's response was 53 pages, and the College's reply was 18 pages. Between January 2024 the end of the hearing, and June 2024 when the College's reply was submitted counsel spent 59.7 hours which in our view is reasonable and probably a very efficient use of time;

h) For this penalty hearing lengthy written submissions were again exchanged along with affidavits in support. The College's initial submissions were 41 pages, the Respondent's response was 26 pages, and the College's reply was 25 pages with further affidavit material. In September to November counsel charged for 41.3 hours, this did not include time spent reviewing the response submissions or preparing a reply. We consider the time (41.3 hours) spent on the penalty submissions to be reasonable.

[73] In assessing the reasonableness of the legal fees, we also consider the conduct of the parties. The Respondent's approach to his defence was shown at the first prehearing conference held on May 25, 2023. The Citation was issued on March 9, 2023, to counsel for the Respondent. The Citation set a hearing date of July 24-26, 2023. At the prehearing conference counsel advised that she was not available for those hearing dates because she had a vacation booked for those dates. She failed to disclose that scheduling conflict promptly, which was apparent when she received the Citation some months earlier. The hearing was subsequently adjourned. This lack of cooperation was shown throughout.

[74] Four prehearing conferences were held at which the Respondent opposed prehearing disclosure of documents and witness statements. The Respondent proceeded on the misguided view that this disciplinary hearing was quasi-criminal in nature and the Respondent could not and should not be required to disclose evidence in advance. This opposition to prehearing orders designed to ensure the hearing could be conducted efficiently added to the time needed to conduct not only the hearing but this proceeding generally.

[75] The College filed an affidavit of P Maessen appending correspondence between counsel during the course of this proceeding. These communications show a lamentable failure by Respondent's counsel to respond in a timely way or to engage in a constructive way to ensure this matter was handled efficiently. This approach clearly added to the time College counsel had to spend on this matter.

[76] The Respondent was entitled to oppose and bring forward reasonable defences but that can be done in a constructive manner which he did not do. He cannot now complain about the consequences of that approach. The legal fees incurred by the College were undoubtedly increased as a result of his conduct, but the legal fees were reasonable in the circumstances. This is not punishing him for his conduct but the natural consequence of it.

[77] Having decided that legal fees totaling $101,211.30 are reasonable we will now consider what proportion of those fees, up to a maximum of 50%, ought to be awarded. The factors we will consider are the complexity of the matter, whether there was divided success, and the conduct of the parties.

[78] We do not think that an award of 50% of the legal costs should be the default position where the College is successful. That level of an award should be reserved for the most complex cases involving very serious misconduct.

[79] In our view the issues raised by the Citation were moderately complex. There were four sub-allegations of professional misconduct in the care and treatment of the Dog. Expert evidence from two specialist veterinarians was required. There were seven sub-allegations of inadequate recordkeeping. We have characterized the professional misconduct as moderately serious and the inadequate record keeping as serious.

[80] In our view there was a degree of divided success. We did not find professional misconduct in relation to two of four sub-allegations. Because all four sub-allegations were intertwined the time spent at the hearing and in the preparation of expert reports would not have been significantly reduced had those two sub-allegations not been pursued.

[81] The Respondent submits that there must be a set off to reflect this divided success. We do not agree that a setoff is appropriate. A set-off would involve an award of costs in his favour. The Act only permits costs to be awarded to a respondent if a matter had been dismissed under s. 61(a) of the Act which did not occur. Divided success, when it occurs, can be taken into account when determining the appropriate proportion of legal costs to award. We find that there was a degree of divided success but in this case, it only justifies a slight reduction of the award of costs.

[82] We previously considered the conduct of the parties when determining the reasonableness of the total legal fees, we consider it here again because in addition to his conduct increasing the amount of legal fees it should also be considered when determining the proportion of fees he ought to bear. Although the conduct of his defence deserves criticism we do not find that it was so egregious that the proportion of legal costs awarded should be increased.

[83] After considering the complexity of this matter, divided success and conduct of the parties we find that an award of legal fees should be $35,000.00, being approximately 35% of the actual reasonable legal fees.

## 12. Disbursements

[84] The College seeks 50% of its disbursements totaling $24,026.26. The Respondent opposes the costs of the inspector of $2,446.74 and the cost of the court reporter and transcripts of $15,350.65. The other disbursements were not opposed and are reasonable.

[85] Bylaw 302 (1)(b)(ii) allows for the recovery of "reasonable and necessary" disbursements for the investigation. The College in the Affidavit of D. Light explained that an inspector was hired on a contract basis and that contractor had issued 14 invoices which included work on other files. D. Light reviewed those invoices and calculated the items attributable to this file, which is the amount claimed. The Respondent submits that he should be entitled to review the invoices to determine whether the time was appropriately allocated. We do not agree that he is entitled to see the invoices, but he is entitled to know the rate at which the inspector was paid, the amount of time the inspector spent and generally what the inspector did. We find the College has not proven that the fees paid to the inspector are reasonable even though on its face it is a relatively small amount.

[86] The Respondents primary opposition to the transcript costs is that one copy was ordered for outside counsel, and one was ordered for the panel. He suggests that they ought to have been shared. This is unreasonable and unfair to the court reporters who prohibit copying of their transcripts and provide additional copies of transcripts at a lower rate. The cost of the court reporter and two copies of the transcripts is reasonable and necessary. We allow disbursements of $15,350.65.

## 13. Other Professional Services

[87] The College claims 50% of panel costs of $10,490.83 under Bylaw 302 (1)(b)(iii). This sum is comprised of honorariums, mileage, parking and lunches for the panel. No breakdown of this amount was provided. The Respondent opposes, arguing that the College must show the basis of payments to panel members and provide proof of the panel's expenses. We agree, if the

College wishes to recover these costs from a respondent, the respondent is entitled to know what the panel members were paid, how those amounts were calculated and details of the expenses. The College in its reply submissions argued that the panel is aware of the details of these payments and can determine whether they are reasonable. This misses the point, which is that the Respondent is entitled to proof that those costs were reasonable. The College has not shown that these expenses are reasonable, and we do not allow them.

## 14. Costs Summary

[88] We have found that the proportion of legal fees that ought to be recovered is 35% and we see no reason to treat disbursements differently. Subject to further general considerations we would award costs to the College as follows $35,000.00 for legal fees and $5,372.73 for disbursements for a total of $40,372.73.

[89] Having arrived at a total figure we will now consider the Respondent's ability to pay and the impact of this cost award on him. The Respondent submits that the cost award sought by the College will have "a very significant negative effect on his financial security." This would be exacerbated by a suspension and the loss of income resulting from it. He has not provided any evidence of his income or assets such that we could determine whether a cost award of this magnitude would constitute an unfair hardship so that we could consider reducing it on that basis.

[90] A cost award must not be punitive and should not deter a respondent from raising reasonable defences. While this is a substantial cost award it does not represent what another respondent might have to pay. The amount of legal fees expended, and the resulting cost award was increased by the manner in which the defence was conducted in this case.

## 15. Conclusion

[91] The orders we make are:

a) The Respondent is reprimanded for his failure to appropriately treat an infectious disease and provide an appropriate discharge plan. He is also reprimanded for failing to keep adequate records in accordance with Bylaw 245(2)(b)(ii), the *Professional Practice Standard: Medical Record Keeping* and the *Professional Practice Standard: Companion Animal Medical Records.*

b) The Respondent be suspended for a period of one month starting within ninety days of this decision or such other date as may be agreed with the College.

c) The Respondent is required to take twelve hours of continuing education approved by RACE within nine months in addition to the normal requirement. Included in those twelve hours must be the following courses:
https://www.vin.com/course/12206636
**Medical Recordkeeping for Veterinarians (DRIP129-2024)** ***Self Study***
6 credits
https://veterinarypartner.vin.com/course/12223265
**Fluid Therapy Update (DRIP101-2024)** ***Self Study***
1 credit
https://www.vin.com/course/12206590
**Acute Kidney Injury - Special Focus on Leptospirosis (DRIP126-2024)** ***Self Study***
1 credit

d) The Respondent is to pay costs in the amount of $40,372.73 within ninety days of the date of this decision.

e) We direct the Registrar of the College to notify the public of the information set out in s. 68(2) of the Act.

f) The Respondent is notified that he has the right to appeal these orders to the Supreme Court of British Columbia pursuant to s. 64 of the Act.

**DATED** this 20th day of December, 2024.

Herman Van Ommen
Herman Van Ommen, K.C., Chair

Al Runnells
Dr. Al Runnells

Catharine Shankel
Dr. Catharine Shankel