CVBC File No. 21-065(b)
Citation Authorized: June 15, 2023
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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. RAJAN SALHOTRA

Decision on Sanctions and Costs

Counsel for the Respondent Counsel for the College	Clea Parfitt Elizabeth Allan
Panel:	Carol Baird Ellan K.C., Chair Dr. Amy Cheung Dr. Teresa Cook
Decision Date	March 17, 2025

A. Overview & Outcome

[1] This is a decision as to sanctions and costs under Sections 61(2) and 63 of the *Veterinarians Act* for findings of inadequate record keeping in connection with the death of a nine-year-old French Bulldog while under the Respondent's care on June 29, 2021. CVBC Bylaw 298 requires that the Panel preserve certain privacy rights in relation to publicized reasons, and names have therefore been excluded from the body of this Decision.

[2] The Panel found that the Respondent veterinarian, a registrant of the College, failed to sufficiently document: 1) his treatment and/or monitoring of the animal in a five-hour period before it died; and 2) his communications with the owners afterward; resulting in breaches of Section 245(2)(b)(ii) of Part 4 of the CVBC Bylaws, Section 2(b) of the CVBC Professional Practice Standard: Medical Record Keeping, and Section(s) 2(g)(ii), (v), (vii) and/or (viii) of the CVBC Professional Practice Standard: Companion Animal Medical Records.

[3] The College seeks: 1) a reprimand under section 61(2)(a); 2) supplemental training or education programs beyond the Respondent's annual continuing professional development obligations, under Section 61(2)(b); 3) a fine of $2,500.00 under Section 61(2)(e); and d) costs in the amount of $47,000 under Section 63(2).

[4] The Respondent takes the position that: 1) no reprimand or fine are required; 2) training should be limited and not in addition to the usual continuing professional development requirements; and 3) costs should be "very limited."

[5] For the reasons that follow, the Panel makes the following orders:

1. Pursuant to Section 61(2)(a), the Respondent is reprimanded as follows:

   You are hereby reprimanded for failing to sufficiently document your treatment and monitoring of the subject animal in a five-hour period preceding his death, and your communications with his owners after his death, thereby breaching Section 245(2)(b)(ii) of Part 4 of the CVBC Bylaws, Section 2(b) of the CVBC Professional Practice Standard: Medical Record Keeping and Section(s) 2(g)(ii), (v), (vii) and/or (viii) of the CVBC Professional Practice Standard: Companion Animal Medical Records.

   Your non-compliance with these vital record-keeping provisions deprived the owners of reassurance in relation to the level of care that the subject animal received prior to his death, and reassurance as to the unavailability of an explanation of the cause of his death.

2. Pursuant to Section 61(2)(b), the Respondent is ordered to undertake the following remedial measures at his own expense within 90 days of delivery of a copy of this Decision by email to his Counsel:

   i. Complete and pass the CVBC Bylaw and Ethics course and exam; and

   ii. Complete the course, Medical Recordkeeping for Veterinarians (DRIP129-2024) Self Study (6 credits), https://www.vin.com/course/12206636

   The completion of these measures shall be in addition to the Respondent's annual continuing professional development requirements.

3. Pursuant to Section 63(2), the Respondent is ordered to pay costs and disbursements in the total amount of $29,465.31, within 90 days of delivery by email of a copy of this Decision to his Counsel.

B. Submissions as to Actions Under Section 61(2)

[6] The parties agree that a helpful framework for considering the appropriate sanction in a disciplinary matter may be found in *Law Society of British Columbia v. Dent*, 2016 LSBC 05, and the Panel adopts the headings provided in that decision. This framework was adopted in the recent decision of *CVBC v. Chaudhry*, No. 20-105(b), Ruling on Penalty and Costs, December 20, 2024 ("*Chaudhry*," hereafter).

[7] The Respondent has made the point that the Panel's findings in this matter relate to non-compliance rather than professional misconduct, and the Panel agrees. Section 61(1)(b) of the *Act* distinguishes between professional misconduct or conduct unbecoming a registrant, on the one hand, and non-compliance with the Act, Bylaws or standards, on the other. The College did not submit that these breaches constituted professional misconduct or unprofessional conduct, nor did it rely on Section 61(1)(b)(iv) of the *Act.* The Panel prefers therefore to refer to this matter as one of non-compliance or breach, rather than "misconduct," as appears in the *Dent* headings. For the same reason, we will adopt the term "sanction" as opposed to penalty as a reminder that the primary function of disciplinary proceedings in a professional regulatory scheme is regulate conduct and maintain standards, in furtherance of the College's public interest mandate, rather than punishment.

1. Nature, Gravity and Consequences of the Non-Compliance

[8] The two breaches found by the Panel relate to non-compliance with record-keeping standards set out in the CVBC Bylaws and published standards, and represent findings under Section 61(1)(b)(i) and (ii) of the *Act*. Specifically, they are breaches of the following (encompassed in the two allegations as set out above):

a. Section 245(2)(b)(ii) of Part 4 of the CVBC Bylaws [Ethics and Standards]: "(2) A registrant must: … (b) ensure that medical information in the medical record is … (ii) accurate, complete, appropriately detailed, comprehensible…"

b. Section 2(b) of the CVBC Professional Practice Standard: Medical Record Keeping: "A veterinarian meets the Professional Practice Standard: Medical Records when he/she: … 2. Ensures records: … b. provide an accurate, complete and up-to-date profile of the animal(s) to enable continuity of care."

c. Section(s) 2(g)(ii), (v), (vii) and/or (viii) of the CVBC Professional Practice Standard: Companion Animal Medical Records: "2. Specific requirements: g. For each physical and behavioural assessment: … ii. Physical examination findings or behavioural assessments, including both normal and abnormal findings… v. A written treatment plan that provides the level of detail necessary for a colleague to understand the direction of the case at the time of writing… (vii) The date and (approximate) time of each client communication, the name of the person communicated with, and a summary of the exchange… (viii) Any additional pertinent information."

[9] The Respondent submits that the breaches in this matter are "at the least serious end of conduct that a regulator might pursue" given that they relate only to the "number of times [the Respondent] recorded his stable normal findings over the time period," and "the detail he included of communications with the owner which were extremely strained and unproductive."

[10] Counsel for the Respondent further states:

> 14. … Knowing that [the Respondent] examined the dog and took vital signs about 3 times during the night, finding in each case that the signs were normal and the dog was stable, at most would only have added very modestly to what is evident from the records as they are. Similarly, knowing that certain comments were made to the owner but not understood by her or accepted by her would have added little to what is known from the records.

[11] As to the importance of records, the College refers to the following passage found at p. 10 of the case of *CVO v. Saini*, July 13, 2016, cited in the College's submissions on liability[1]:

> The public have the absolute right to receive exactly what was expected when a patient is presented to [a registrant] …They need to know that all patients are appropriately examined, monitored and treated during their stay at the veterinary facility, records are meticulously kept…pharmaceuticals and biologicals are appropriately prescribed and administered where indicated, on a case by case basis. The public and other Members of the veterinary profession, needs to be absolutely convinced that [the registrant], as reflected in his medical records, deeply cares, and has the skill set to care for all animals that are considered his patients, at all times respecting the standards of practice.

[1] https://www.cvo.org/investigations-and-hearings/discipline-orders/richard-bryson-efffe29878f6fd6e8ae025e4501f76a3

[12] The College also referred in its liability submissions to the case of *CVO v. Verma*, October 25, 2016, where the panel observed that:

> Proper medical records may have provided clarity about what medications were given and when diagnostics were performed. Proper documentation of discussions with the owners would have provided more insight into the member's knowledge and thought processes.

[13] In the *Chaudhry* decision, the panel made the following observations in relation to the importance of record keeping:

> [17] … 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.

[14] In that case, the panel described the breach of the record-keeping standards as "a serious breach because the shortcomings were so pervasive."

[15] The Panel accepts that the breaches here, in terms of the behaviour of the Respondent, are less serious than those considered in *Chaudhry*, which involved deficiencies in care, and in many of the cases cited, which deal with established misconduct. The circumstances here relate to a relatively short period of time during which the Respondent was monitoring but not treating the animal, and to a conversation that took place after the animal's death. The Respondent submits that the recording of those events was less crucial, viewed in the context of the Respondent's obligations to the client and the College. That observation relating to the gravity of the non-compliance leads naturally to a review of the third factor, its consequences.

[16] In relation to consequences of records deficiencies, the panel in *Chaudhry* stated:

> 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] The College submits, essentially, that the Complainant here was deprived of an explanation of the animal's death, and closure, because the Respondent's records were inadequate to provide that. The College also submits, in reliance on *Saini*, that a client is entitled to records that assure them that their pets are appropriately examined, monitored and treated, and that the registrant has the skills to care for them and maintain standards of practice.

[18] The Respondent counters with the submission that the Complainant herself never reviewed the records and it was not their inadequacy that caused the Respondent's inability to explain the animal's death; there was in fact no explanation, and the Complainant and her partner declined an autopsy. Respondent's Counsel submits, "Whether or not the owner was provided with a convincing description of how [the animal] was … examined, monitored and treated throughout the night and that he received appropriate care… was not a function of the records created by [the Respondent…]. It was a function of the fact that she never reviewed the records herself, and never asked anyone at [the Clinic] to review them with her either."

[19] The Panel is mindful of the Complainant's observation that she came to question the Respondent's credentials during their conversation after the animal's death. While there was no deficiency in his qualifications, the Complainant was apparently taken aback by the Respondent's inability to explain to her what had occurred with her pet.

[20] As pointed out in the College submissions, the Complainant explained her motivation in pursuing the complaint as follows: "I just wanted to know kind of a step by step as to what happened throughout the time that [the dog] was admitted to the time that he passed away, … to clarify, if [he] was, like, not breathing very well … therefore we decided to administer this, and then we waited and then, …he still wasn't doing well so then we decided to do this. It's just kind of like a series of steps of what they … did and why they did it … while [he] was in [the Respondent's] care. And at no point did [the Respondent] … nobody explained to us that series of events that happened while [the dog] was in that care, so I don't know what happened, like, during that duration."[2]

[21] The Complainant's failure to review the records does not negate the consequences of their deficiency. Had she chosen to review them she would have found no entries during the five-hour period preceding the animal being found unconscious. If the Respondent had made a contemporaneous record of the periodic checks he says he performed, he would have been able to respond to the Complainant's request for a "step by step" review, and it would have been reasonable for him both to walk the owners through the notes made during those checks, and to then record that he had done so.

[22] As noted in the Liability Decision, the Panel found the Respondent's evidence about when he had last seen the animal alive not to be credible, and there was no note at all within the relevant period to which he could point in order to reassure the owners, or even attempt to reassure them, that he had checked the animal not long before its collapse. The consequence of the absence of notes regarding the monitoring of the animal, therefore, was that the owners were deprived of an opportunity to be reassured, by the Respondent, that reasonable and regular checks had been made and recorded.

[23] Further, without any notes of the conversation the Respondent says he attempted to have with the owners, there is no indication of any effort on his part to walk them through those last hours of their pet's life. What was completely missing was an opportunity for them to be assured that the Respondent's level of care, supported by records, represented both appropriate monitoring and adherence to reasonable standards in relation to recording what was done. Or, as put in *Saini*, an indication that he "deeply cared".

[24] The Complainant's assertion that she hoped the disciplinary process would shed some light on the Respondent's inability to explain to her what happened is indicative of the reason that comprehensive notes would have been helpful to her. In the view of the Panel, the Respondent's inability to provide that step by step explanation was directly related to the absence of any notes during the five-hour period prior to the animal's death.

[25] The absence of the contemporaneous records also impeded the College's ability to review the Respondent's conduct, in assessing whether he adequately monitored the animal during the relevant time frame. While we note that the Respondent's Counsel takes issue with the Panel speculating about the Respondent's possible inattention to the animal during the relevant time frame[3], as noted in *Chaudhry*, one of the questions that must be asked in looking at consequences is whether the absence of records affects the College's ability to assess his conduct. In this case, that is a clear consequence of the absence of contemporaneous notations. In addition, the absence of any notation of the content of the post-death conversation, or even the presence of the owners in the Clinic, clearly adds to the inability of

[2] Transcript, Day 1, p. 36 l. 17 - p. 37 l. 14

[3] Respondent's Submission on Penalty and Costs, para. 11.

the College to assess not only the interaction with the owners, but the ability, or inability, of the Respondent to explain to them the events preceding the death.

[26] The Panel's observations regarding the possible reasons for the Respondent's lack of notes pertained to its findings on credibility in relation to his explanations for the state of the records, which findings were predominantly negative. The Panel concluded, in relation to both aspects of the Respondent's record keeping, that "the Respondent's use of an excuse for failing to comply suggests an understanding of the expectation but does not provide a reasonable explanation for failing to adhere to it."[4]

[27] While the Panel remains mindful that the subject-matter of the Citation is record-keeping and not inadequate care of the animal, if the Respondent's explanation for the insufficiency of his notes is rejected, as it was in this matter, it is open to the Panel to consider other explanations in assessing the consequences of the non-compliance. One of those consequences clearly was that the College was unable to assess whether the Respondent was appropriately attentive to the animal. That places the matter higher in terms of gravity.

2. Character and Professional Conduct Record

[28] The Respondent confirms the College's description of his biographical data, as follows[5]:

> 24. The Respondent was born on May 3, 1963, and is currently 61 years old. He trained at Punjab Agricultural University in India and started practising veterinary medicine in 1986. He initially became a registrant of the College on November 26, 2020, and prior to the Citation had no previous published disciplinary history.
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> 25. The Respondent was 58 years old and was not a new member of the profession at the time of the offences. Given that he had been practising veterinary medicine for more than 30 years, he would be considered to be a senior member of the profession (although a relatively new registrant of the College).

[29] The parties differ on whether the Respondent's age is a mitigating factor. Counsel for the Respondent states as follows:

> 23. We disagree that [the Respondent's] age is not a factor. The College's detailed publications regarding medical records are relatively new, reflecting the reality that record keeping standards are changing and becoming more stringent. New veterinarians will be trained on these standards. Long established professionals will have long-standing practices that need to change. Incorporation of change is a known risk with older professionals and that must be taken into account here. [The Respondent] was aware of the College's publications but was not aware of what the College believed those standards meant in his circumstances. He followed the practices in the hospital where he was working. Now that he is aware of the College's expectations, and that they differ from the expectations communicated to him at [the Clinic], he has advised that he will be directed by the College's expectations as set out in the decision.

[30] In its Reply, the College states:

> 14. …the College's publications are not relatively new, were not relatively new at the time of the offence and had been in force ever since the Respondent became a registrant. It is a surprising submission to make that the Respondent thought he had to follow the direction of the

[4] Liability Decision, paragraphs 184 and 205

[5] College Submissions on Penalty and Costs, p. 8

> hospital where he was working over the plain language of the College's requirements when the owner of that hospital readily acknowledged that the College's standards took precedent over the hospital's policies[6].

[31] The Respondent is neither elderly nor youthful, and in the view of the Panel his age is neither mitigating nor aggravating. As pointed out by the College, however, the Respondent's Counsel's comments about resistance to change and his "now" being aware of the College's expectations may reflect on other considerations such as acknowledgement of the breaches, the need for specific deterrence, and remediation. This will be discussed further under the appropriate headings below.

3. Acknowledgement of Non-Compliance and Remedial Action

[32] The College relies on *Chaudhry* in submitting that the Respondent has not acknowledged the breaches and that this is the absence of what might have been a powerful mitigating factor. College Counsel points to the Respondent's evidence at the hearing that he would not have changed anything about his record keeping despite having had a disciplinary hearing and being cross-examined for the better part of a day.[7] The College also points to several of the Respondent's submissions on liability as indicative of an absence of insight and acceptance of responsibility. The submissions with which the College takes issue may be summarized as: 1) disputing the applicability of College standards; 2) minimizing the importance of medical records; 3) suggesting that proceeding with allegations about record keeping is disproportionate, highly unusual, artificial, and discriminatory; 4) complaining of unfair treatment in comparison to other practitioners; and 5) suggesting that records standards should be lower because the animal died. These submissions of the College were made before the Respondent provided his penalty submissions and an Affidavit addressing his willingness to adhere to the findings of the Panel.

[33] Whatever might be said about the submissions made by the Respondent's Counsel on his behalf in relation to liability, we are of the view that they should not be considered in support of a finding that the Respondent does not acknowledge wrongdoing, after liability has been found. Decisions relating to litigation tactics and arguments to raise at the hearing are based on legal advice and the right to defend oneself against allegations of professional deficiencies, and no matter how tenuous or pernicious they may be, our view is that they ought not to be relied upon to draw conclusions about the Respondent's willingness to accept the eventual finding. As discussed below, however, they may be relevant to the assessment of costs.

[34] In the Respondent's Affidavit, he stated:

> I understand that the Panel directs that notations be made in the medical records of each physical examination and that these recordings be made as close to the time of the physical examination as possible. I also understand that the Panel directs that medical records should reflect what clients are told in communications with veterinarians, even where there is concern they may not have understood. I will implement these directions to the best of my ability going forward.

[35] The College in its Reply suggests that the Respondent's assertions that he will comply with the findings are not synonymous with an acknowledgement of wrongdoing or acceptance that he was in breach at the relevant time. College Counsel points out that the Respondent's Counsel has continued her

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[6] (see May 29, 2024, p. 31, l. 2 – p. 32, l. 4)
[7] Day 2, p. 140, l. 11 – 22

challenges to the merits of the decision, such as enforceability of College standards and reasonableness of the College decision to proceed.

[36] The following passages from the Respondent's submission may serve to illustrate the comments highlighted by the College:

> 26. That [the Respondent] has a more measured, scientific and practical view of what medical records can generally be and accomplish does not mean, in the least, that [the Respondent] did not appreciate the importance of the situation or his responsibility as a professional in monitoring an animal overnight, and creating records relating to that monitoring. He had a different understanding of what his professional responsibility required, one drawn from and shared by others at his hospital. The College Discipline Panel has now articulated a different approach, which he understands and will be directed by.
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> 27. It is easy as commentators after the fact for the College to articulate very high standards for medical records. This was an early case from this College setting medical records standards. Our submissions were intended to recommend caution and restraint in setting those standards, lest the creation of medical records become unduly burdensome and obstructive to the actual provision of careful and thorough treatment in busy practices by at times very overworked veterinarians.
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> 28. We have an ongoing disagreement with the College over whether it needs to be consistent in its regulation of medical records, including in relation to veterinarians involved in the same case. The College wants to work from its paper standards only, not the experience of its own staff about how records in the profession are, or the example of its own regulation in relation to this case and others. Looking at these other sources of guidance would in our submission be a legitimate and balanced way to consider what the content of the College's standards actually is in reality. Holding a different view than the College about how these disputes should be settled does not mean that [the Respondent] should be more heavily penalized in any way.
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> 29. We continue to submit that it is self-evident that the role of initial intake, assessment, diagnostics, treatment planning, communication with owners about the treatment plan and provision of treatment of a patient in distress is more complex and demanding and determinative of the patient's outcome than the role of monitoring a patient who has reached a stable state. This is simply to state the obvious. It is similarly obvious that the records obligations in respect of someone doing the former tasks will be much greater. Observing this reality does not mean that [the Respondent] should be penalized to a greater extent.
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> 30. It remains unclear to us why the College says that records created after an animal has died should be capable of supporting continuing care or collaboration in a medical team which they clearly will not need to do. Our observation of this limitation on the role such records will need to play is simply a matter of logic and does not mean that [the Respondent] does not take his obligations seriously, or should be subjected to a greater penalty. [Emphasis added].

[37] The College's says the following in its Reply to these submissions:

> 20. … In specific reply to paragraph 27, medical records are the foundation of careful and thorough treatment, not an obstacle to them, and the College has always been clear about its basic, minimum standards. The College does not seek to enforce a gold standard – it insists that its registrants provide the minimum acceptable standards, which was the purpose of this proceeding. In reply to paragraph 28, there can be no "disagreement" between registrants and the College about what is required for medical records – the College is the only authority on this issue. In reply to paragraphs 29 and 30, the Panel has expressly rejected that there is a different standard for intake and monitoring or that records are somehow less important after the animal has died (at paras. 175 – 188), and yet the Respondent continues to take this position. The

> Respondent himself has already given evidence that he does not think medical records are less important because an animal has died (May 1, 2024, p. 132, l. 19 – 25).

[38] The Panel notes that the panel in *Chaudhry* pointed to submissions made in relation to penalty in assessing the registrant's attitude toward the misconduct, finding it to be surprising that he continued to justify inadequate record keeping, which they considered raised doubt as to whether there would be a change of behaviour in the future. It should be noted that counsel for the registrant in the *Chaudhry* matter is Respondent's Counsel in this matter.

[39] This Panel agrees with the College and the panel in *Chaudhry* that records deficiencies need to be taken seriously, and an appropriate message to that effect needs to be included in the penalties imposed. Those penalties of course, also, need to be proportionate to penalties imposed in other similar cases, which is discussed below. Similarly to the panel in *Chaudhry*, we take issue with Respondent's Counsel apparent minimization of the importance of record keeping and challenges to the interpretation of the College's standards. The suggestions that the rules are vague or that overnight record keeping is different imply that these record keeping deficiencies are somehow less important, and that the Respondent shares that belief despite his statements in his Affidavit.

[40] This Panel nonetheless again feels a need to be cautious in reacting to Respondent's Counsel's philosophical differences with the College about how discipline matters should proceed or what arguments should or should not be made in relation to liability; even what may appear to be inflammatory remarks about the reasonableness of the liability findings. In large part, as we understand them, the portions of Respondent's Counsel's submissions on sanction with which the College takes issue were intended to respond to the College's initial submission that the Respondent's decisions as to how to defend himself be taken into account in relation to sanction.

[41] While these kinds of submissions arguably do a disservice to the client, caution must be used in concluding from them that he has failed, after a liability finding, to fully acknowledge the non-compliance; in particular, when he has stipulated that he has. Like the panel in *Chaudhry*, this Panel is "surprised" by the attitude toward its findings displayed in some of the lawyer's submissions, but we are prepared to presume that to be primarily the attitude of Counsel rather than that of the Respondent. In addition, these tactics will come to be fully considered in relation to the matter of costs. We do not consider them to provide a basis for a negative finding in relation to the Respondent's acknowledgement of responsibility.

[42] The Panel finds it necessary, however, to address Respondent's Counsel's comment that it is unclear why "*the College* says that records created after an animal has died should be capable of supporting continuing care."[emphasis added] This comment overlooks the Panel's finding that after-the-fact recording does not meet the standard. It is apparently necessary for us to observe again, for Counsel's benefit, as we did at paragraphs 177 and 178 of the Liability Decision, that a registrant charged with the care of an animal, adhering to what we have found to be the standard of maintaining *reasonably contemporaneous* records, would be unaware as he was doing so that the animal would ultimately not need continuing care.

[43] It is one thing to differ with internal decisions of the College as to what matters should proceed to citation; quite a different one to challenge a panel's conclusions of non-compliance. It must be observed that panels of the Discipline Committee are comprised of two veterinarians and one public member. The veterinarian members represent their colleagues in deciding on the interpretation and application of standards and whether non-compliance is established by the evidence on a disciplinary proceeding. At this stage of the matter, it is not open to a registrant to challenge whether the interpretation of standards

represents a professional consensus, or suggest that the Respondent's misinterpretation of them, if indeed that was established on the evidence, was reasonable. In any event, in this matter, the Panel rejected the Respondent's evidence that he believed he had complied with the standards. We accepted that he understood the standards but rejected his explanations for not having complied with them. It is not a case of confusion or vagueness as to whether more comprehensive notes were required to made, as Respondent's Counsel appears to be maintaining.

[44] One other area that has relevance to the Respondent's level of acknowledgement, and on which counsel differ significantly, is the availability of early resolutions of the allegations. While counsel address this question under the first heading, nature of the conduct, in the Panel's view early resolution, or lack thereof, is more relevant under this heading.

[45] On this point, the Respondent submits as follows:

> 9. In considering the issues of penalty and costs here, we ask the Panel to consider whether pursuing such issues to hearing, at a claimed expenditure by the College of almost $95,000 and at an expenditure of a further very significant amount by [the Respondent] in relation to his own legal fees and lost earnings, is proportionate and effective use of the College's limited resources to protect the public. Issues arising from the clarification of the College's published medical records standards could have been, and are often, the subject of formal warnings to registrants which are sent by the Investigation Committee when a complaint is closed. This is especially true, where, as here, the issues are being raised for the first time with a registrant who has a clean disciplinary record. These observations could also have been the subject of a Remedial Action by Consent and about education initiatives by the College. The College never asked [the Respondent] about his medical records in its investigation, and never pursued a Remedial Action by Consent regarding its view of the medical records issues. Because of their cost, hearings must be reserved for the most serious disciplinary issues. The issues and conclusions here can, in no way, be considered to be among the most serious issues which arise in veterinary medicine.
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> 10. We are concerned that there may be a temptation in this case to apply a more serious penalty and/or higher costs to justify the hearing that was held in this case over issues that could have been satisfactorily addressed in other ways. We say this would be inappropriate and unfair to [the Respondent], who has already shouldered the very great expense and anxiety of this hearing. In our submission, the costs and anxiety of the hearing which [the Respondent] has already undergone, as well as his acceptance of the Panel's directions, mean that nothing further in terms of penalty or costs is required to either correct [the Respondent]'s record-keeping practices in future, or to signal to the public and other registrants that the College takes medical records issues seriously.

[46] The College states as follows in its Reply:

> 10. … issues with medical record keeping, while important and justify a hearing if necessary, could be resolved by a Remedial Action by Consent ("RAC"), or a Consent Order, which processes are available under sections 66 and 67 of the Act. In further reply to [Respondent's] paragraph 9, while the content of the investigation is not before this Panel and so the College will not respond to that further, it is untrue that the investigation committee did not pursue a RAC. It did. It asked the Respondent to sign one, which included admissions about his deficient medical records. The Respondent responded that he did "not agree" that his medical records for [the animal] were not sufficient for a patient hospitalized for respiratory distress at an emergency clinic and did not sign the proposed RAC. Accordingly, given the importance of this point and on the direction of the Investigation Committee, this matter proceeded to a citation.

[47] Whatever might be said about the availability of an alternative resolution, the Panel observes that there is here the absence of an early acceptance of responsibility for the records deficiencies.

Acceptance after the fact carries less weight; in particular where, in the Panel's view, many of the challenges and defences raised were tenuous. It must be observed that far from a misinterpretation of the nature of records that were required of him, the Respondent's records were utterly devoid of any entries between the start of the Respondent's shift and the animal's lapse in consciousness five hours later. Viewed in those stark terms, the Respondent's decision not to accept the offered RAC becomes incomprehensible.

[48] This factor, of early resolution, has greater relevance to costs than to sanction, and will be considered further in that context. It suffices to say, in relation to sanction, that the absence of an early acknowledgement somewhat attenuates the Respondent's post-finding assertion that he will take the findings in this matter to heart in conducting his practice as he moves forward, or that he is now motivated to become more familiar with the published standards. However, both of those are concerns that can be addressed by remedial action. The Respondent has admittedly had no continuing education in relation to record keeping, which can be rectified.

[49] The matter of age raised in the Respondent's submission as discussed above, in our view also has some relevance to the need for remediation. Because it is also relevant to deterrence, and the concepts are intertwined, it is discussed further below.

3. Public Confidence in the Profession and Disciplinary Process

[50] It was accepted in *Chaudhry* that this third factor relates to general and specific deterrence as well as to decisions in similar cases. The College addresses these in its submissions by providing a survey of prior sanction decisions and pointing to the Respondent's continued deflection of responsibility in support of the need for specific deterrence. In addition, the College advances an argument in favour of the need for public confidence arising from the Complainant's motivations in bringing the complaint.

a. Outcomes in Similar Cases

[51] If it is not already apparent, the Panel finds the *Chaudhry* decision to be of great assistance, and it is clearly the most relevant precedent to the outcome in this matter. In considering the need for public confidence in the discipline process, there is a reasonable expectation of consistency in decision making, particularly among panels of the same institution.

[52] The other decisions cited by the College assist in providing a framework and some of the reasoning behind differing decisions. The College provides several consent settlements for context but submits they provide lesser guidance because they involve earlier acceptance of responsibility and often, completed steps toward remediation. Not surprisingly, the consent settlements also involve considerably lower costs, as discussed below.

[53] Two CVBC cases cited by the College involve outcomes after hearings in relation to deficient records: *Re Rana*, 2014 and *Re Harvey*, 2010. In *Harvey* there were additional, more serious allegations. Both resulted in sanctions like those sought by the College in this case, including additional training, reprimands; in *Harvey*, a fine of $10,000; and in both, costs. No analysis was provided in relation to the orders for costs, which were $5,000 in *Harvey*, and $11,268.26, in *Rana*. More will be said about comparative costs below.

[54] It suffices to say that the remainder of the cases cited by the College support the types of measures it proposes in this matter. Beyond that, the particular sanctions must be tailored to the circumstances of the case.

b. Public Confidence

[55] Respondent's Counsel questions the College's reference to the Complainant's motivation in relation to this factor, submitting that her primary concern was the lack of an explanation for her pet's death, which was not the subject of the allegations. This Panel has already observed that the absence of an explanation and a reassuring conversation appear to have stemmed directly from the deficiencies in the Respondent's records. The Complainant recognized by the time she testified that it was only record keeping that was at issue, and as we have observed, she hoped that the inquiry would shed some light on the Respondent's apparent inability to provide an explanation. In fact it did, in the sense that, while the cause of the animal's death remained unknown, it was shown that the Respondent's lack of satisfactory answers was related to his inability to point to contemporaneous records documenting the preceding hours, including when the animal had last been checked before it died. We therefore agree with the College that public confidence encompasses the potential effect on the Complainant of the outcome of the Panel's decision, and for that reason, her reasons for bringing the complaint are properly included in the factors to be considered under this heading.

c. General Deterrence

[56] As to general deterrence, the College points to the evidence that the Respondent's cumulative note-taking approach was consistent with the Clinic Owner's views in support of a need to provide a message to the profession. Respondent's Counsel submits that, "Where the application of standards in a particular situation is not clear, and the College is offering a clarification and corrective view, as here, punishment is likely not warranted or necessary." She goes on to submit that a disciplinary hearing and publication of the result is sufficient to achieve general deterrence without further penalty.

[57] In the Panel's view, general deterrence is more an overall goal of the disciplinary process than a specific factor in an individual case. Often, the imposition of sanctions consistent with those in other cases and publication of the result will assist in achieving that aim. In matters where there have been many such prior decisions, it is doubtful the application of a penalty beyond those imposed in similar cases would be dictated by a need for greater general deterrence, unless there were some evidence that the misconduct was becoming more prevalent and appeared to be undeterred by prior penalties.

[58] In this case, however, Respondent's Counsel submits that it is an early case in the process of enforcing record-keeping standards, and that the College was motivated to provide clarification and correction. In addition, as pointed out by the College, the Clinic Owner supported the Respondent's view of how the standards should be interpreted. These factors raise concerns about the extent to which the profession understands their responsibility to be familiar with the published standards created by their self-governing body, on their and the public's behalf. While, again, we exercise caution in relation to what may be intemperate submissions by his counsel, the arguments made on the Respondent's behalf here do nothing to dispel concern about whether registrants are sufficiently aware of the need for diligent record keeping, and perhaps underscore a need for greater general deterrence than might be the case if there were more precedents or demonstrated understanding of the need for diligence.

d. Specific Deterrence

[59] In relation to specific deterrence, our view is it is wrapped up in the questions of the Respondent's post-finding attitude to the breaches, on which we have already commented in a preliminary way, and his prior related conduct, of which there is none.

[60] While we have declined to attribute most of Respondent Counsel's challenges to the Liability Decision to the Respondent, we have lingering concerns about the extent to which he is motivated to

study and adhere to the records standards published by the College. In addition, the submission Respondent's Counsel has made in relation to age as a mitigating factor, discussed above, supports a conclusion that the Respondent may be in greater need of specific deterrence because of his resistance to change and professed reluctance to voluntarily familiarize himself with the written guidance contained on the website. It also supports a greater need for remediation than might otherwise be the case.

C. Appropriate Sanctions

1. Reprimand

[61] The Respondent resists a reprimand on two bases: 1) the Liability Decision has already served as a statement of disapproval of his conduct; and 2) the College's assertion that a formal recognition of "misconduct" is required is problematic, because neither professional misconduct nor unprofessional conduct has been alleged in this matter.

[62] We have already commented on the terminology and prefer that this matter be categorized as one of breach or non-compliance. There is nothing in the *Act* or the case law, however, suggesting that a reprimand is less applicable where the subject-matter is a breach of provisions as opposed to professional misconduct, or both a breach and misconduct. While the type of conduct is lower on the scale than some of the cases given that it involves only one type of non-compliance, there are two separate allegations, and the issue of whether a reprimand is required relates equally to the aspects of specific and general deterrence as it does to the gravity of the conduct.

[63] While as we have observed, the concerns expressed by the College pertaining to the Respondent's acceptance of the Liability Decision are alleviated to some extent by the Respondent's affidavit, we have concluded that there are lingering concerns about his level of acceptance, his understanding of his record-keeping obligations, and his motivation to educate himself. The Panel is also of the view that a sanction imposed after a hearing must provide some incentive to other registrants to take early responsibility for inevitable outcomes.

[64] As noted, perhaps our larger concern here is general deterrence. The comments of the Respondent in his submissions relating to penalty, minimizing the importance of record keeping and suggesting older registrants may be slower to adapt, are suggestive of a failure on the part of other practitioners, and particularly aging ones, to understand this "cornerstone of a good veterinary practice." We agree with the College's submission in this matter that there needs to be a clear message that medical records are a vital part of patient care and registrants are expected to be familiar with the published standards that pertain to them.

[65] A reprimand was imposed in *Chaudhry*, which we acknowledge involved more serious misconduct, described as "a marked departure from [the standard] expected of a veterinarian in British Columbia."[8] That registrant also received a suspension and an order to complete three courses of continuing education. Similarly to the Panel's view in this matter, the *Chaudhry* panel took issue with Respondent's Counsel's minimization of the respondent's record keeping deficiencies as a "different interpretation" of prevailing views as opposed to a failure to adhere to known standards.

[8] Chaudhry, at paragraph 35.

[66] We are also of the view that the sanction must be higher than what may have been available had there been a consent resolution, in order to encourage early resolution and discourage prolix proceedings. We are not privy to the offer that was made in the proposed RAC, but we presume it likely a reprimand would have been included, had the Respondent accepted his records were deficient at the outset. It is not reasonable to conclude that a reprimand is not necessary where he has resisted that admission through to the conclusion of a hearing.

[67] The Respondent will therefore be reprimanded in this matter as follows:

> You are hereby reprimanded for failing to sufficiently document your treatment and monitoring of the subject animal in a five-hour period preceding his death, and your communications with his owners after his death, thereby breaching Section 245(2)(b)(ii) of Part 4 of the CVBC Bylaws, Section 2(b) of the CVBC Professional Practice Standard: Medical Record Keeping and Section(s) 2(g)(ii), (v), (vii) and/or (viii) of the CVBC Professional Practice Standard: Companion Animal Medical Records.
>
> Your non-compliance with these vital record-keeping provisions deprived the owners of reassurance in relation to the level of care that the animal received prior to his death, and reassurance as to the unavailability of an explanation of the cause of his death.

2. Education Measures

[68] The College submits that the Respondent ought to attend two courses, the first being College Bylaw and Ethics seminar, including to take and pass the College Bylaw and Ethics Exam. The College submits that the Panel found the Respondent could not remember when he last reviewed the College's Bylaws and that he was noncompliant with the College's medical record-keeping bylaws and standards. The Respondent's Counsel differs with that assessment of the findings, stating that "it was clear the Respondent had reviewed the College's Bylaws and publications and was familiar with them."

[69] The Panel noted at paragraph 69 of the Liability Decision that, while the Respondent professed an understanding of College's bylaws and standards, and had reviewed them some time in 2024, he also said it had been a "long time" since he reviewed them, and, remarkably, that he had not reviewed them in preparation for the hearing.

[70] The Panel is of the view that this suggested measure is appropriate. Pursuant to Section 61(1)(b) the Respondent is ordered to complete the CVBC Bylaw and Ethics course and pass the CVBC Bylaw and Ethics Exam at his own expense within 90 days of delivery of this decision by email to his Counsel. The completion of this course is in addition to the Respondent's continuing education requirements.

[71] The College also seeks an order that the Respondent complete a specified RACE[9]-approved course in medical record keeping, which appears to be reasonably available online[10]: Medical Recordkeeping for Veterinarians (DRIP129-2024) Self Study (6 credits).

[72] For the same reasons as it finds that the prior measure is appropriate, the Panel finds that this measure is also appropriate and necessary. Pursuant to Section 61(1)(b), the Respondent is ordered to complete the following course at his own expense within 90 days of delivery of this Decision by email to his Counsel: Medical Recordkeeping for Veterinarians (DRIP129-2024) Self Study (6 credits),

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[9] The American Association of Veterinary State Boards' Registry of Approved Continuing Education, (www.aavsb.org/race/)

[10] https://www.vin.com/course/12206636

https://www.vin.com/course/12206636. The completion of this course is in addition to the Respondent's annual continuing education requirements.

3. Fine

[73] The Panel is of the view that the monetary sanction arising from the significant costs order that must be made in this matter, as discussed below, is such that no further monetary sanction is warranted. A fine in the range of that proposed by the College here would do little to serve the purposes of the *Act* beyond what the costs order and the other orders imposed here will achieve.

[74] The Panel notes that the two types of financial order, a fine under Section 61(2)(e) or costs under Section 63(1)(b), differ little in terms of the modes of enforcement, with the exception that costs may be recovered as a debt against the registrant. Both are subject to referral to the investigative committee and possible imposition of a 25% penalty or issuance of a citation.

D. Costs and Disbursements

1. General Observations

[75] The College has provided a survey of cases that, again, form a helpful framework and context for considering the application of section 63(2) in a matter such as this. Again, *Chaudhry* is the most relevant case, but we have looked particularly to the other recent cases outside the veterinarian sphere or beyond the province, to assess whether an award of costs in the range suggested by the College might be unduly punitive or might unfairly disincentivize future respondents from defending themselves against what they may perceive to be unfounded allegations. Given the emphasis in recent cases on an assessment of each party's contribution to the length and cost of a proceeding, the area is fraught with blameworthy language and ostensible finger pointing, which if allowed to proliferate, this Panel fears could have a detrimental effect on public confidence in the profession's frugal use of its limited resources. Those considerations, however, are beyond the scope of a single panel's mandate, and we offer them only as a preface to our reluctance to rubber stamp what at first glance may appear to be exorbitant expenses.

[76] In proceeding with this part of the analysis, we observe firstly that the *Veterinarians Act* and Bylaws cap costs awards at 50% of actual costs, legislatively restricting a *carte blanche* approach on the part of the College. Whatever the award that is made, the institution will bear a considerable portion of the expense it elects to assume when it decides to proceed to a discipline hearing in a particular case, even when successful. By the same token, the applicable cases cited before us provide considerable notice to a registrant of the potential cost of firstly, electing not to pursue an early resolution and secondly, pursuing all possible arguments at a hearing, regardless of their merits. As we noted above, clearly there will be some reliance on counsel in undertaking a costly gamble that a successful defence will be mounted, but we are satisfied based on the available case law that the potential price of defeat will not come as a surprise to a registrant.

[77] We have been referred to ten factors arising from James T. Casey, *Regulation of the Professions in Canada*, Chapter 14.4 for assessing a costs award, and we will touch on those, as they are applicable, in the next section. These factors were adopted in *Chaudhry* and will we do the same here. We have, however, combined some of the factors which in our view should logically be considered together.

2. Factors Relating to Costs and Disbursements

a. Applicable Legislative Provisions and Case Law

[78] The provisions relating to costs and disbursements are found in Section 63 of the *Act* and Section 302 of the Bylaws, both of which apply a cap of 50% of the "actual costs" of the relevant party. The provision of a cap distinguishes cases under the *Veterinarians Act* from those under regimes without a cap. Discounts of less than 50% of actual costs in such cases may illustrate the application of the Casey factors, but may not support a greater discount than that already provided in the *Act*. We also note that in *Chaudhry* the panel expressed the view that, despite the cap, 50% should not be the default position, and should be "reserved for the most complex cases involving very serious misconduct."[11]

[79] The cases provided by the College are ably summarized in its submissions set out at Appendix A to these reasons. The Panel accepts the College's conclusion that "these decisions demonstrate that costs claims and awards, of well into the five figures or even six figures, are not out of the ordinary in any given regime for a multi-day hearing involving several witnesses. They also establish the legal foundation under which increased costs may be awarded due to the Respondent's conduct of his or her defence."

b. Time and Expense of Investigation and Hearing and Parties' Conduct

[80] Under this heading we combine two of the Casey factors. In addition, it is our view that the issue of complexity, considered in *Chaudhry*, and implied in *Jinnah* (discussed below), should be included under this part of the analysis.

[81] In relation to the conduct of the parties, the College points to observations made by the Panel in the Liability Decision, paragraphs 124 to 130, pertaining to the conduct of Respondent's Counsel in bringing repeated applications that the Panel found unmeritorious. These comments were made in the context of a ruling regarding whether the Respondent would be permitted to call an employee of the College as a witness. The application was denied during the hearing and the reasons for that ruling were provided within the Liability Decision.

[82] The College also provided an affidavit from a College employee that describes a timeline of communications and exchanges with Respondent's Counsel that the College says added to the time spent by their counsel in relation to the discipline hearing. In particular, the College says the Respondent's Counsel could have engaged more effectively in prehearing discussions and complied with directions of the Panel in a timelier fashion. The College says as well that the Respondent's testimony was protracted because he was a difficult witness. The gist of the submission is that the overall approach of the Respondent and his Counsel to the conduct of the hearing more than doubled its length, from the two days originally set to four days.

[83] The Panel notes that the testimony of the Complainant and the Respondent was complete by mid-afternoon on the second day of hearing. The matter was then put over for the testimony of the Clinic Owner, who had been expected to testify on the second hearing date but was unexpectedly unavailable. His evidence was completed on the third hearing date, but as noted by the College and in the Liability Decision, his evidence added very little to the Respondent's case. The final or fourth date was scheduled (or retained) as a precaution, in case the Respondent's application to call the College employee was

[11] Chaudhry at paragraph 78.

granted. In light of the dismissal of the application, which was conveyed to counsel before the fourth date, the Panel and parties convened only briefly on that day to confirm a schedule for written submissions. The Panel therefore agrees with the comments of Respondent's Counsel that the amount of time spent on hearing evidence in this matter, while it spanned four separate dates, amounted to about one half day more than the two-day estimate originally set.

[84] It is clear, on the other hand, that considerable time was spent outside the hearing dates, by counsel and the Panel; in particular, the Chair, addressing repeated applications by the Respondent to achieve disclosure of and/or bring in what the Panel invariably determined to be extraneous evidence. None of these applications were allowed with the exception of the adjournment of the hearing to a third day to accommodate the Clinic Owner. In its reasons relating to the application to call the College employee, the Panel considered the manner in which Respondent's Counsel conducted herself: 1) in bringing repeated applications, often without reasonable notice; 2) in failing to comply with directions of the Panel made at the pre-hearing conferences; and 3) in raising arguments that had previously been dispensed with by other panels; and concluded that Counsel had "posed repeated obstacles to the expeditious and fair conduct of the hearing."[12]

[85] In her "General Commentary on the Hearing," Respondent's Counsel provides a response regarding the conduct of the proceeding which may be summarized as follows:

1. Some of the issues raised before the hearing were attributable to the College; notably, the removal of a panel member, and requests for disclosure, one of which was successful. The College replies that the Respondent was aware of the potential conflict before the College, and responded in a timely way by replacing the panel member.
2. The Respondent complied with the directions made at the pre-hearing conferences.
3. Independent counsel to the panel was appointed because of the conflict issue and should not have been necessary in light of the member's removal;
4. The difficulty with the panel composition led to a delay in a ruling allowing the Respondent's application for disclosure and necessitating a further application by the Respondent on the eve of the hearing, including an application to adjourn;
5. The application was dismissed by the Panel without affording the Respondent a right of reply;
6. A further application was necessitated by the College's leading evidence to include a timeframe that was outside the Citation; the Panel accepted that the Citation was restricted to the specified timeframe;
7. "The College and the Panel should not expect that responding veterinarians will see every issue as the College does. This is not unreasonable or evidence of uncooperativeness… That the Panel disagreed that this was necessary did not make our application in any way unreasonable or improper."[13]

[86] In addition, Respondent's Counsel submits that the vagueness of the College's standards required a challenge to the allegations:

> 71. …the case is the first time that the College has attempted to enforce its published policies and bylaws about medical record keeping in relation to overnight monitoring through a contested case. To the extent the College has been successful here in enforcing its more directive approach

[12] Liability Decision, paragraph 125.
[13] Paragraphs 82 & 84.

> to medical record keeping, this is a substantial benefit to the College in holding out to the profession as binding what it considers to be in the public interest in relation to medical record standards.

[87] Without going painstakingly through each of the applications and all the correspondence preceding the completion of the hearing, the Panel accepts that the Respondent had some limited or partial success on one or two of the applications, but the majority were dismissed. For the most part, the Panel was able to deal with them summarily (in the sense of timeliness) and they therefore caused no significant delays in completion of the hearing. However, as earlier stated, considerable additional professional time outside the hearing dates was required in order to address the barrage of materials and keep the hearing on track. In addition, those two or perhaps three areas in which the Respondent was successful had no bearing on the outcome and were arguably superfluous.

[88] The Panel was ultimately called upon to make three written rulings before the hearing date and one set of reasons after the second hearing date, as well as the ruling relating to the witness contained in the Liability Decision.

[89] In addition, in submissions on liability, Respondent's Counsel made challenges to the applicability of standards and terms of the Citation, characterized in the Decision as "Preliminary Arguments and Objections to the Allegations." Many of the arguments raised had again been the subject of rulings by prior panels dismissing them. Respondent's Counsel explains this as a tactical decision to preserve rights and "create a record," but with few exceptions the arguments were in any event, in the view of this Panel, tenuous and unlikely to succeed.

[90] In the end result, of the 67 pages devoted to the Liability Decision, 20 of them dealt with addressing such applications, and the Panel had already provided more than 20 pages of rulings, before that. We will here note that while there is a tendency to reduce the analysis to a cost per page of submissions or rulings, that is likely not a reliable analysis.

[91] The Panel notes that the panel in *Chaudhry*, in which Respondent's Counsel was also counsel for the registrant, commented:

> [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.

[92] The College estimates that the conduct of the Respondent doubled the time spent in hearing dates, and while as we have noted, the Panel differs with that assessment, it agrees that, had the hearing proceeded in an orderly fashion on the merits without a proliferation of challenges to the process, the Respondent would have a stronger argument for a reduction in costs. As it stands, in relation to time and expense caused to the Panel and College Counsel by the manner in which the matter proceeded, the College's conclusion that the approach taken by Respondent's Counsel's doubled the time spent appears to be apt.

[93] We pause to note here that, even under the approach taken in *Jinnah* (discussed below), which appears to be the most favourable approach to the Respondent, because there is no cap in the Alberta legislation, the factor of "conduct" incorporated there would arguably justify, in this case, attributing a portion of the College's costs to the Respondent. The question that arises in BC, therefore, is how conduct contributing to increased costs affects the 50% reduction already recognized in the legislation.

We are here mindful that in *Chaudhry*, the panel took the position that 50% should be reserved for the most complex of cases, and despite a similar approach by counsel in that case, applied a figure of 35%.

[94] Considered against that result, while this case was less complex than *Chaudhry*; and, absent the many process arguments, lower on the scale of complexity; our view is that complexity can perhaps cut both ways. A matter like this one that is relatively straightforward, and not particularly serious in relation to the outcome or potential sanctions, might militate in favour a decision on the part of the registrant to opt for an early resolution. Deciding to proceed to hearing in the face of a strong case might arguably justify a greater share of the expense of the proceeding. Conversely, while registrants found to have committed serious misconduct might be reasonably required to compensate for the natural costs of their transgressions, by the same token, they ought not to be discouraged from mounting a reasonable defence in light of potentially serious consequences, particularly if there are legitimate challenges to proof of the breach.

[95] While admitting lesser complexity, the College distinguishes the 35% award in *Chaudhry* on the basis that there was divided success in that case and the Respondent in this matter "manifestly complicated and protracted this relatively straightforward matter into a multi-day hearing."

[96] We note that in *Chaudhry*, where the analysis proceeded in a somewhat different order than we are undertaking here, the conclusion was that the *conduct of counsel* was not so egregious as to require an increase in the percentage of costs borne by the Respondent. As noted, they applied an overall rate of 35% after performing the reasonableness analysis we undertake in Part D. 3. below.

c. The Burden of Costs on the Profession

[97] As set out in Casey, the focus of a costs award is to ensure that a member found to have committed unprofessional conduct bears the costs of the process instead of the membership as a whole. Casey's view and that reflected in some of the cases is that "[b]earing 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."

[98] On behalf of the Respondent here it is submitted that, "The *Veterinarians Act* caps recoverable costs at 50% of actual costs ... Inherent in this statutory limitation is recognition of the idea that part of the costs of regulation legitimately belong to the regulator in its role of protecting the public interest."[14]

[99] This aspect of the Casey analysis was considered in some depth in the case referred to by Respondent's Counsel and considered in *Chaudhry*, that of *Jinnah v Alberta Dental Association and College*.[15] That case held that members of a profession regulated under the Alberta *Health Act* benefit from publicized disciplinary proceedings through (in summary) enhanced public good will, promotion of the profession, continuing education, and restricting competition. The Court concluded that costs should start at zero and move up in response to an analysis of four factors: seriousness, seriality, lack of cooperation, and hearing misconduct.

[14] Respondent Submissions on Sanction, paragraph 64.
[15] 2022 ABCA 336 (CanLII)

[100] Counsel have pointed out that the *Jinnah* case is under reconsideration, in a case that was set to be heard on March 7, 2025: *Charkhandeh v College of Dental Surgeons of Alberta*.[16] Reasons in that matter were not available at the time of this decision. All that can be said at the moment is that the state of the law in Alberta appears to be in flux, and it would be unsafe to rely on *Jinnah*, which is a significant departure from the Casey principles and prior case law relating to costs. Of course, it also deals with a different disciplinary regime in a different province under different legislation which, as previously pointed out, does not include a cap on costs.

[101] Having said that, as we have noted, even if the analysis advanced in *Jinnah* represented the law in BC, the last two factors, non-cooperation and hearing conduct, would likely operate in favour of the Respondent paying some of the costs in the present proceedings.

d. The Impact of the Cost Award on the Member

[102] The premise of this Casey factor is that costs are not intended to be punitive, a sentiment adopted by the panel in *Chaudhry*. We consider the Respondent's personal financial circumstances, a separate factor in Professor Casey's framework, to be intertwined with this factor.

[103] We have received no information about the impact of a costs award on the Respondent, although, as pointed out by the College, it was entirely open to him to lead evidence about that; in fact, the College invited it, in their submission:

> 94. The College has no information on this. The Respondent may wish to put in such evidence with his submissions, and if he does, the College will reply accordingly.[17]

[104] On this point, it was submitted on behalf of the Respondent, without supportive materials, that:

> 10. … the costs and anxiety of the hearing which [the Respondent] has already undergone, as well as his acceptance of the Panel's directions, mean that nothing further in terms of penalty or costs is required to either correct [his] record-keeping practices in future, or to signal to the public and other registrants that the College takes medical records issues seriously.
> …
> 72. … even if he does not pay costs to the College at all, [the Respondent] has incurred very substantial costs in relation to paying for his counsel, the time away from his practice, and in relation to the harm to his professional reputation.

[105] The College responded:

> 47. In reply …there is no evidence that the Respondent has incurred substantial, or any, costs in paying his counsel, the time away from his practice and any reputational harm, although he had every opportunity to bring this evidence.

[106] The Panel was initially concerned that awards in recent cases appear to be so significant that they would presumptively pose a financial hardship on registrants. However, in the face of the more recent BC cases in which significant awards have been made, which Respondent's Counsel acknowledges in her submissions, it is clear that the Respondent will have been aware of the state of the

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[16] 2024 ABCA 239; 2025 ABCA 24

[17] College Submissions, paragraph 94.

law and the potential cost of pursuing a hearing. We note the differing positions as to whether he had other options; however, it appears from the materials available to us that he was offered and declined a remedial action by consent (RAC). In addition, Section 67 of the *Act* permits a registrant, before or during a discipline hearing, to make a proposal to the College for a consent order. Several parts of the section specifically address the issue of reduced costs in the event of a settlement.

[107] Given the rejected settlement proposal, what appears to have been the ongoing option of resolving the matter in another fashion, and the absence of any suggestion that an awards costs in what appears to be the accepted range will cause the Respondent hardship, we assume it is a risk he has accepted.

e. Costs as Disincentive to Defending Allegations

[108] In *Jinnah*, which was decided in 2022, the Alberta Court of Appeal expressed the view that a costs award of $37,500 was "excessive for a hearing involving one allegation by a single patient unrelated to patient care on the low end of the seriousness scale."

[109] The Court added:

> These sums are so large that they, in effect, become the primary sanction. Costs are not supposed to be a sanction."[18]

[110] The Respondent submits as follows in relation to this concern:

> 63. We note the decisions cited by the College in this case, and the very large costs awards being made in them. Clearly, the risk of such enormous costs awards is a profound deterrent to professionals raising reasonable defences to allegations of unprofessional conduct. This is among the 10 factors identified by Professor Casey as cited by the College in whether a costs award should be made, and how large it should be.

[111] As indicated, the issue of disincentive to registrants from pursuing a defence to allegations brought by the College has caused the Panel some concern. It seems likely this concern underpinned the Court's approach in *Jinnah*. It is one thing for a registrant to knowingly assume the burden of a potentially significant costs award, as we conclude appears to have been done in this case. It is quite another for a registrant, who may be facing unjustified, tenuous, or serious misconduct allegations, to contemplate an alternate resolution simply because they do not have the wherewithal to assume the potential burden of their own and up to one-half of the College's costs. In such cases, the possible penalties pale in comparison to the potential costs award (perhaps short of cancellation of registration), and costs certainly become the primary sanction, assuming it is the registrant who will assume the burden of paying them.

[112] The function of this Panel, however, is to assess costs in accordance with the applicable principles, applied to the facts in this case, in line with applicable legislation and comparative case law. The overall issue of costs as a disincentive to defending allegations may be a question for reviewers of panel decisions, and may indeed figure into the review of the law that will occur in Alberta, but it does not play into the analysis this Panel is tasked to conduct.

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[18] Jinnah, paras. 123 & 124.

f. The Impact of Other Sanctions Imposed

[113] The impact of the sanctions imposed above is not significant financially, nor in terms of inconvenience or disruption of income, and we are of the view that it does not detract from the assessment of reasonable costs.

g. "Mixed Success"

[114] Both allegations were found proven so it cannot be said there was mixed success in this matter.[19]

h. Any Other Relevant Factors

[115] The Panel has lingering concerns about the extent to which the issue of failure to accept or propose an RAC should figure into the award of costs, for the same reasons as it has concerns about the disincentive of costs awards to registrants' ability to defend allegations against them. These questions are however wrapped up in the costs analysis currently dictated by the cases, which we are constrained to follow.

[116] Additionally, the Panel is mindful that the analysis of the extent to which the Respondent's choices in relation to conduct of the hearing are found to have contributed to the cost of the proceeding, he will be penalized by shouldering his share of the consequently amplified costs of the College [as well as his own]. Moreover, the issue of conduct is also a factor in assessing the reasonableness of the individual costs items claimed by the College which we perform below. In our view a panel needs to be wary of double counting in relation to defence tactics, and should import an assessment of overall fairness into the process. We are also reminded that in *Chaudhry*, despite similar conduct, the panel did not assess any additional costs for counsel's conduct.

i. Application of Casey Factors

[117] Recognizing that the law on the issue of costs in CVBC matters appears to be in a developing state, and acknowledging the Respondent's observation (and that implied in *Chaudhry*), essentially, that fairness of the process is a relevant consideration in deciding the percentage of the opposing party's costs that should be borne by the unsuccessful party, this Panel has reached the conclusion that the Respondent should bear 37.5% of the College's reasonable costs and disbursements. This finding is based on: 1) the finding in *Chaudhry* and the cases' relative complexity, coupled with our view that this straightforward matter could have concluded with about half as much time as that expended by the

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[19] While none of the Respondent's efforts to dismiss the allegations were successful, the Panel notes that it essentially demurred on a challenge to the applicability of Section 38 of CVBC Bylaws, Part 3, Schedule D – Accreditation Standards to a non-designated registrant (see paragraph 143). This did not affect the validity of the applicable allegation, which was also premised on non-compliance of other provisions of the Act and Bylaws, but it might be considered "unwasted" time in comparison with the myriad other arguments brought on the Respondent's behalf. The Panel observes, however, that the CVBC Professional Standard: Medical Record Keeping, published December 1, 2017, Section 1 b., rectified the problem identified by the Panel arising from the June 17, 2017 Minutes of the Council by specifically incorporating Sections 21 – 38 of Schedule D into the Standard for "all veterinarians." This removes any suggestion that Section 38 does not apply to the Respondent.

professionals involved; 2) acceptance that 50% is not the starting point but the cap builds in some of the Casey factors; 3) recognition of an underlying need for fairness to a registrant regardless of a panel's views of how his counsel may have conducted the matter differently; 4) avoidance of double counting given the need to also consider conduct in assessing reasonableness of costs; 5) acknowledgement that the law is evolving in this area; and 6) the unpredictability and additional time created by the lack of a tariff in the CVBC Bylaws, as discussed below.

3. Reasonableness of Costs

[118] As the Panel understands the recommended approach, it is first to assess the overall conduct that dictated the timing and direction of the hearing; and secondarily, to assess the reasonableness of the specific costs pertaining to each step in the journey.

[119] Having considered the relevant factors outlined in Casey as adopted in *Chaudhry*, and in light of the above observations, we turn to a review of the list of costs and disbursements provided by the College, in determining whether they appear to be reasonable. This is in line with the approach followed in *Chaudhry*. As we have noted, it entails some repetition of the analysis of the parties' conduct, but this appears to be necessary, in light of the lack of structure or an itemized tariff in the Bylaws. In addition, the comments above pertaining to the manner in which the proceeding unfolded are generalized, and in this part the parties have provided some detail regarding the reasonableness of the many steps taken in this matter.

[120] This seems an opportune time to observe that if there were a more detailed tariff in the CVBC Bylaws with specified times or amounts for various steps, rather than simply a repetition of the 50% cap, it might conceivably save many hours of scrutiny on the part of both counsel and panels in future proceedings, or at least permit counsel to arrive at agreed bills of costs.

a. Legal Fees

[121] The College seeks the costs of its outside legal representation under Bylaw 302(1)(b)(i), which totalled more than $57,000 prior to submissions relating to sanctions and costs. The College sought 50%, or $28,500. The College has discounted this claim to $54,463 in its Reply, having conceded that GST should not be included.

[122] Respondent's Counsel takes issue with a total of about 15 hours in preparation for pre-hearing conferences in January and March, and preparation of a witness statement. While issue is taken with excessive correspondence about questions raised by the Panel, for instance, whether the hearing would be virtual, the Panel observes that more correspondence may well have been necessary in light of counsel's failure to comply with deadlines directed in the pre-hearing Orders. These aspects of the College's costs appear to be reasonable.

[123] In relation to a third pre-hearing conference in April and the first two hearing dates, the total hours billed were approximately 30. It appears that these include responding to an application, preparation, and travel time, and again, for three separate events requiring varying degrees of preparation and follow-up, appears to be reasonable.

[124] Another almost 30 hours pertained to the period encompassing the two additional (shorter) hearing dates and in addition to attendance, included preparation time regarding the applications brought within that period. While Respondent's Counsel characterizes the necessary submissions as brief, the Panel observes that until the Clinic Owner appeared unexpectedly on the morning of May 29, 2024, both

the Panel and College Counsel believed they were preparing for a further adjournment application, and we have already commented on the length of the ruling pertaining to the College employee. None of the preparation for these events was attributable to decisions made by the College and the time billed appears reasonable.

[125] The time for preparation of submissions on liability also appear reasonable to the Panel and the Respondent does not take issue with these. The Panel sees no basis in the submissions for discounting the College's claim for legal fees beyond the exclusion of GST. The Panel notes that the College is forgoing the costs of preparation of its Reply, which it estimates at $2500. By the same token, the Panel's fees for the sanction phase of the proceedings will also not be included.

b. Disbursements

[126] Respondent's Counsel does not take issue with the cost of the inspector, service fees, case law searches, costs of the court reporter, or the costs of the Panel members other than to seek copies of the honorarium policies, which were provide by the College in Reply. She does take issue with the cost of transcript excerpts provided to the College, which she suggests need not be duplicated in light of the fact that the Panel receives a copy. This argument was raised and rejected in *Chaudhry*, and we agree that production of two copies of ordered transcripts, one for the panel and one for College Counsel, is reasonable, whatever may be the reasoning behind the court reporters' policy of charging for an additional copy. We would observe however that transcripts add considerably to the costs of the proceeding and perhaps caution should be exercised by panels in deciding whether they are in fact necessary in every case.

[127] Counsel also takes issue with the appointment of independent legal counsel to the Panel in this matter. The Panel observes that this was a decision made without consultation with the Respondent, and a development that, when it arose, was an unusual course of events, so not reasonably anticipated by the Respondent. Without getting into matters of privilege, the Respondent is right to observe that, to the extent that legal advice is provide by independent counsel to a panel, Section 59(9) requires that, "if advice is received, the nature of the advice must be communicated to the parties and the parties must be given an opportunity to respond."

[128] It may be that the appointment of independent counsel will become, or has become, routine in relation to discipline hearings, and some rules will likely need to be developed regarding the application of Section 59(9) and its interplay with the issue of costs. We have been careful in this decision not to "surprise" the Respondent in this award of costs, and our view is that in light of the way the appointment in this matter transpired, this portion of the costs, invaluable as the services were to the Panel, ought not to be included.

c. Conclusion

[129] The Panel's conclusion is therefore that of the costs sought by the College, a total of $54,263 in legal fees, $9,617.41 in disbursements (primarily transcripts); and $14,693.75 in professional services (costs of the panel); or $78,574.16 is reasonable.

[130] The total amount for costs and disbursements that the Respondent is required to pay, at 37.5%, is therefore $29,465.31. In the absence of submissions by the Respondent relating to time to pay, we assign a period of 90 days from the date on which Respondent's Counsel receives a copy of this Decision. We note that Section 304(5) provides a procedure for requesting an extension of time from the registrar.

E. Sections 61(6) and 68(5) of the Act and Section 298 of the Bylaws

[131] In addition to providing these written reasons, Section 61(6) requires the Panel to provide notice to the Respondent of his right to appeal this Decision pursuant to Section 64 of the Act. We do so by setting that section out here in entirety:

> **64** (1)Subject to subsection (2), an order of the discipline committee under section 61 *[action by discipline committee]* may be appealed by the respondent to the Supreme Court.
>
> (2)An appeal of an order made by the discipline committee must be commenced within 30 days after the date the order is received by the respondent by personal service or registered mail.
> (3)An appeal must be commenced by filing a petition in any registry of the Supreme Court.
> (4)The Supreme Court Civil Rules respecting petition proceedings, except Rule 18-3, apply to the appeal.
> (5)A petition commencing an appeal must, within 14 days of its filing in the court registry, be served on the college by serving it on the registrar.
> (6)If the appeal relates to a complaint, the college must provide notice of the appeal to the complainant within 14 days of being served with the petition.
> (7)Only the respondent and the college may be parties to the appeal.
> (8)On request of a respondent, and on payment by the respondent of any disbursements and expenses in connection with the request, the registrar must provide the respondent with copies of all or part, as requested, of the record of the proceeding before the discipline committee.
> (9)An appeal is a review on the record unless the court is satisfied that a new hearing or the admission of further evidence is necessary in the interests of justice.
> (10)On hearing an appeal, the court may
>
> (a)confirm, vary or reverse the order of the discipline committee,
> (b)refer the matter back to the discipline committee, with or without directions, or
> (c)make any other order the court considers appropriate in the circumstances.
>
> (11)If leave to appeal is granted by the Court of Appeal, a decision of the Supreme Court under subsection (10) may be appealed to the Court of Appeal.

[132] We will leave it to the parties to consider the extent to which this section applies to orders for costs made under Section 63 of the *Act*.

[133] Section 68 requires that the public be notified by posting a copy of this Decision on the College website and we hereby direct that the College take the necessary steps to do so.

Carol Baird Ellan
Carol Baird Ellan K.C., Chair

Amy Cheung
Dr. Amy Cheung

Teresa Cook
Dr. Teresa Cook