Citation Issued: September 9, 2022
Citation Amended: June 16, 2023
CVBC File No. 19-045

IN THE MATTER OF THE *VETERINARIANS ACT*, S.B.C. 2010, c. 15

AND

IN THE MATTER OF
THE COLLEGE OF VETERINARIANS OF BRITISH COLUMBIA and a hearing before a DISCIPLINE PANEL of the COLLEGE DISCIPLINE COMMITTEE

AND

DR. PAVITAR BAJWA

Counsel for the Respondent	**Clea Parfitt**
Counsel for the College	**Allan Doolittle**
Panel Members	**Herman Van Ommen, KC, Chair** **Dr. Carsten Bandt** **Dr. Tatjana Mirkovic**
Date of Decision	**February 28, 2025**

Final Decision of the Hearing Panel on a Citation

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[1] The Respondent, Dr. Pavitar Bajwa is named in a Citation issued by the College of Veterinarians of British Columbia (the "College") on September 9, 2022 and amended June 16, 2023 alleging that he failed to obtain informed consent before administering general anesthetic and that he failed to comply with s. 245 of the College Bylaws and the College's *Professional Practice Standard: Companion Animal Medical Records* (the "Standard") in several respects.

[2] The Citation proceeded to a hearing over May 6, 7 and 9, and August 26 and 27, 2024 and following the hearing written submissions were exchanged the last of which was received on December 2, 2024.

[3] For the reasons that follow, the Panel has decided that Allegation 1 and several of the allegations in Allegation 2 have been proven.

1. Statutory Framework

[4] Section 61(1) of the Act states:

> 61 (1) On completion of a discipline hearing, the discipline committee may by order
> (a) dismiss the matter, or
> (b) make one or more of the following determinations:
> (i) the respondent has not complied with this Act, a regulation or a bylaw;
> (ii) the respondent has not complied with a standard, limit or condition imposed under this Act;
> (iii) the respondent has not complied with a term, condition or requirement imposed under section 3 (4) of the Labour Mobility Act;
> (iv) the respondent has committed professional misconduct or conduct unbecoming a registrant;
> (v) the respondent has incompetently practised veterinary medicine;
> (vi) the respondent suffers from a physical or mental ailment, an emotional disturbance or an addiction to alcohol or drugs that impairs the respondent's ability to practise veterinary medicine.

[5] The College is seeking a finding of a breach of the Act or Bylaw 245, a breach of the Standard, and/or professional misconduct.

2. Standard of Proof

[6] The College must prove the allegations in the Citation on a balance of probabilities. The evidence must be clear convincing and cogent. This proposition should require no authority. It is the standard used in the professional regulatory context. No recent authorities were provided by the Respondent to the contrary.

FH v. McDougall 2008 SCR 53
Kaminski v. Assoc. of Prof. Engineers 2010 BCSC 468

[7] The Respondent asserts that *R. v. Wigglesworth* [1987] 2 S.C.R. 541 supports his position that because a respondent may face a fine of up to $50,000.00 under the Veterinarians Act, SBC 2010, c15, which he says is a true penal consequence, the criminal standard of proof applies. This position has been rejected in *CVBC v. Chaudhry* (August 28, 2024) and *CVBC v. Salhotra*

(November 25, 2024) and is not supported by any recent authority in the professional regulatory context.

3. Professional Misconduct

[8] Professional misconduct is not defined in the Act. Case law establishes that professional misconduct is conduct which represents a "marked departure" from that expected of a competent registrant. Discipline bodies of professional regulators are given considerable latitude and deference in their interpretation of a profession's written and unwritten standards.

Law Society v. Martin 2005 LSBC 16
Re Chaudhry CVBC decision August 28, 2024

[9] The Respondent in his submissions states:

> We note that the College does not cite and is not relying on the other definition of professional misconduct, which is conduct that can reasonably be regarded as disgraceful, dishonourable or unbecoming of a member of the profession by other well-respected members of the profession.

[10] No authority was provided to show that this "other" definition is followed in any modern professional regulatory scheme. That "other" definition was expressly rejected in *Martin.*

4. Credibility

[11] The appropriate way to assess credibility and reliability is discussed in paragraph 25 of *Re Chaudhry* (August 28,2024). We will follow that approach.

[12] The College challenged the Respondent's credibility in several respects. In one line of questioning the Respondent was cross examined on his witness statement that was produced in response to a direction made at a prehearing conference pursuant to Bylaw s. 289.

[13] At the hearing the Respondent objected to being cross examined on this statement arguing that it was provided for the purpose of giving notice and could not be used to test his credibility. The objection was overruled and cross examination was permitted.

[14] In closing argument, the Respondent reasserted this objection. He argued that Bylaw 289 only requires a respondent to identify "witnesses" and provide a "witness statement". He says

that he is a respondent, a true party to the proceeding, not a witness. He concludes asserting that the panel "has no jurisdiction to order the creation of evidence by the respondent which can then be used against him at the hearing."

[15] Bylaw 282 defines "witness" as "any person, including…" Section 29 of the *Interpretation Act* RSBC 1996 c. 238 defines a "person" as "including a corporation, partnership, or party…" The Respondent is a witness when he gives evidence in this hearing.

[16] The Respondent's submissions ignore the context in which this hearing takes place. The Respondent is a member of a self-regulating profession. Self-regulation comes with the burden of acting in the public interest. One of the aspects of that burden is that members of the profession are required to cooperate in an investigation. Section 52 (3) of the Act spells that out. The Respondent does not have the right not to incriminate himself. In an investigation he must answer questions fully and completely even though his answers may incriminate himself.

[17] Bylaw 289 compels the Respondent to disclose his anticipated evidence in advance of the hearing. This is consistent with his duty to cooperate as a member of a self-regulating profession. To suggest that the statement is provided only for notice but cannot be cross examined on is inconsistent with Bylaw 290. If the witness statement was incomplete or misleading it would need to be reviewed in order to consider taking the steps permitted under that section.

5. Background

[18] An elderly couple (the "Complainants") owned a healthy 8 year old dog, a Japanese Chin-Chihuahua mix (the "Dog") On March 29, 2019 they brought her to the Respondent's hospital because of a cat scratch in her eye. After an initial examination the Respondent recommended that the dog be sedated so that he could perform a further examination of the eye and also clean her teeth. An estimate of costs was provided, and a consent form was signed by the Complainants, the details of which will be discussed later in these reasons.

[19] Sedation was administered and when the teeth cleaning commenced the Respondent testified that the dog was not sufficiently relaxed so a general anesthetic was required. Shortly after the general anesthetic was administered the dog's heart rate dropped and she later died.

[20] The Complainants complained to the College that day. The Complainants did not testify at the hearing because one of them had passed away and the other suffered serious health problems and was experiencing cognition problems because of old age.

[21] The College tendered an audio recording of an interview of the Complainants along with a transcript. During the hearing we ruled they were both admissible with the audio recording being authoritative where there were differences. The issue of what weight to give that evidence would be determined at the conclusion of the hearing. We deferred giving reasons at that time. They will be set out below.

[22] Informed consent is required before a veterinarian provides veterinary services. The Closing submissions disclose a fundamental disagreement about the law of informed consent in this case. The College submits that the Respondent was required to obtain informed consent for the administration of a general anesthetic. The Respondent submits that informed consent must be obtained for the procedure to be performed, in this case an eye examination and dental cleaning, not the specific steps by which the procedure i.e. a general anesthetic.

[23] We will deal with these two issues before reviewing the evidence in detail.

6. Hearsay Evidence

[24] The College tendered three documents that were objected to by the Respondent. The first was an email dated July 17, 2023 from the daughter of the Complainants to the College investigator advising that her parents were unable to participate in the upcoming hearing. The second was an affidavit of the Complainants' daughter sworn August 20, 2023 deposing that her mother had died and that her father had serious health issues and was suffering cognition problems due to his age. The third was an audio recording and transcript of an interview of the Complainants conducted by the College investigator on July 12, 2019.

[25] The rules of evidence in administrative tribunals are more flexible than in the courts. Typically, hearsay is admissible if it is logically probative and reliable.

[26] This discipline panel controls its own procedure including rulings on the admissibility of evidence. The *Administrative Tribunals Act*, SBC 2004, c. 45, s. 11(2)(c) empowers the College to enact rules "respecting receipt and disclosure of evidence". College Bylaw 284 (1) give a discipline panel the power to govern its own procedure.

[27] In *Cambie Hotel (Nanaimo) Ltd. V. British Columbia (General Manager Liquor Control and Licensing Branch),* 2006 BCCA 119 explained:

> [36] On the first ground of appeal, I agree with the appellant's submission that the chambers judge erred in holding that the hearsay evidence was inadmissible in the enforcement hearing. In administrative hearings, hearsay evidence that is logically probative and may fairly be regarded as reliable is admissible. What weight the hearsay evidence is to be given is a separate question.

[28] While the party tendering hearsay evidence in an administrative proceeding need not prove necessity it is helpful to know why the evidence is not being tendered in the usual fashion. In this case the College has shown why it is necessary. The Complainant's daughter provided an affidavit deposing that her mother had died and that her father was suffering from dementia. This evidence is of course hearsay but is clearly reliable. A daughter's observation about her father's mental acuity is permissible lay opinion. Cross examination on these hearsay statements would not assist because the fact they go to prove, namely that the Complainants were not available to testify, did not need to be proven in order to admit the audio recording and transcript of the interview of the Complainants.

[29] We will assess the weight to be given to the evidence in the interview when reviewing the evidence.

7. Informed Consent

[30] A fundamental difference between the parties on the issue of informed consent is whether the Respondent had to obtain informed consent before administering a general anesthetic as asserted by the College or whether he only had to obtain informed consent to an eye examination and dental cleaning not the specific steps by which those procedures would be carried out such as a general anesthetic.

[31] The College Bylaws s. 211 sets out the requirements for informed consent. It states:

> 211 (1) For the purposes of this section, "informed consent" means the process of communication between a registrant and a client that allows the client to understand the veterinary services the registrant proposes to provide to the patient, followed by the client's subsequent agreement to the provision of those services.

(2) Before providing veterinary services to a patient, a registrant must ensure that the client has provided informed consent to the proposed veterinary services.

(3) A registrant must ensure that the client giving consent is
(a) capable of making a decision about whether to give or refuse consent to the proposed veterinary service, and

(b) has the legal authority to give or refuse consent to provision of veterinary services to the patient.

(4) To be valid, a registrant must ensure that the client's informed consent:
(a) relates to the proposed veterinary service;
(b) was given voluntarily;
(c) was not obtained through misrepresentation or fraud.

(5) To obtain informed consent from a client for proposed veterinary services, a registrant must ensure that the client is provided with information a reasonable person would require to understand the proposed veterinary service.

(6) Without limiting the generality of subsection (5), the information provided to obtain informed consent must include information about:

a) the condition for which the veterinary services are proposed, including any differential diagnoses, and any presumed or definitive diagnosis;
(b) the general nature of the proposed veterinary services;
(c) the expected benefits of the proposed veterinary services;
(d) the risks or dangers and common side effects of the proposed veterinary services that a reasonable person would expect to be told about;
(e) reasonable alternative courses of action available. and the risks and benefits of each
(f) the potential consequences to the patient if the proposed veterinary service is refused by the client;
(g) whether non-veterinarian staff and or other veterinarians may be providing some or all of the veterinary services to the patient;
(h) the need for follow-up care, if it is likely to be required, and how such follow up care will be provided;
(i) an initial estimate of the cost of the veterinary services being proposed;
(j) the level of supervision that will be provided, including the level of supervision with respect to after hours care.

(7) A registrant must ensure that, before giving consent, the client had an opportunity to ask questions and receive answers about the proposed veterinary services.

> (8) A registrant must renew informed consent throughout the veterinarian-client patient relationship as may be required by a change in the patient's condition or the veterinary services to be provided.
>
> (9) After a client has given informed consent, the registrant must either document in the clinical record the process by which consent was sought and obtained from the client, or obtain written consent.
>
> (10) Informed consent may be in the form of written consent, oral consent or implied consent.

[32] The leading cases on informed consent in Canada are *Reibl v. Hughes*, [1980] 2 SCR 880 and *Hopp v. Lepp,* [1980] 2 SCR 192 (“Hopp"). In Hopp, the court described the process by which a medical professional must obtain informed consent as follows:

> In summary, the decided cases appear to indicate that, in obtaining the consent of a patient for the performance upon him of a surgical operation, a surgeon, generally, should answer any specific questions posed by the patient as to the risks involved and should, without being questioned, disclose to him the nature of the proposed operation, its gravity, any material risks and any special or unusual risks attendant upon the performance of the operation. However, having said that, it should be added that the scope of the duty of disclosure and whether or not it has been breached are matters which must be decided in relation to the circumstances of each particular case.

[33] The Respondent quoted an extract from Canadian Tort Law (5th ed. Linden A Butterworths 1993) as follows:

> *The courts do not require doctors to explain to their patients all the details of every procedure and all the things that can possible go wrong. If that were the case, our doctors would be discussing medicine all day rather than practicing it. The courts do not want doctors to confuse or frighten their patients or burden them with unnecessary data. There is no need, consequently to tell a patient about the ordinary risks associated with all surgery, since everyone is expected to know about them. Thus, just as one need not warn that a match will burn or that a knife will cut, because that would be redundant, a doctor need not disclose that, if an incision is made, there will normally be some bleeding, some pain and a scar will remain when the cut is healed. So too, it was once thought that everyone may be expected to know that in any surgical procedure there is a chance of infection, tetanus, gangrene and a possibility of death from anaesthetic.*

[34] Counsel did not refer us to the footnote to the last sentence of the passage quoted above which states:

> *Kenny v. Lockwood, [1932] O.R. 141 this decision may no longer be the law following Reibl. ….*

[35] She then submitted as follows:

> Based on these authorities, two questions must be asked to determine if informed consent is present: did the patient or owner consent to the procedure or procedures contemplated, here an eye examination and a dental cleaning; and, was the patient or owner advised of the material risks of those procedures. It is clear from these authorities that the required disclosure and consent relate to the *procedure as a whole*, not to the specific steps by which the procedure will be undertaken.

[36] With respect to the College Bylaws 211 she submitted that:

> This approach is mirrored in Bylaw s. 211 which talks about consent for "veterinary services". We say this bylaw must be read as consistent with the underlying common law of informed consent which relates to procedures as a whole. This is because the College has no authority to create a bylaw that sets aside the common law of informed consent.

[37] We do not agree that the common law is as described by the Respondent. It is also, in our view, open to the College to pass bylaws or standards that require a higher standard than prescribed by the common law.

[38] Bylaw 211 requires a registrant to obtain informed consent before providing "veterinary services." That term is not defined. The Bylaw requires the registrant to provide "information that a reasonable person would require to understand the proposed veterinary service." That information must include "the risks or dangers and common side effects of the proposed veterinary service…" and "reasonable alternative courses of action available, and the risks and benefits of each."

[39] Bylaw 211 is consistent with the law of informed consent as summarized in *Gilmore v. Love*, 2023 BCSC 1380 at paragraph 360.

> 34 *Reibl v. Hughes,* supra, indicates that the disclosure which must be made to a patient will often be more than that which the medical profession might consider appropriate to divulge. Although expert medical evidence on this issue is still relevant, it is no longer decisive in determining whether or not sufficient information was given to a patient to enable that patient to make an informed consent. <u>The test now focuses on what the patient would want to know.</u> [emphasis added.]

[40] Neither the common law nor Bylaw 211 support the proposition that informed consent was only required for the procedure i.e. an eye examination or dental cleaning and not the use of sedation or a general anesthetic. After reviewing the evidence, we will return to this point, that is, was the Respondent required in these circumstances to obtain informed consent before administering a general anesthetic and did he?

8. The Evidence

[41] The College called one witness that attended in person. Dr. Kavanaugh was an investigator at the College responsible for the investigation leading to the issuance of the Citation. She testified generally about the investigation and identified various documents that were admitted into evidence. She was one of the people who conducted the interview of the Complainants the recording and transcript of which was admitted.

[42] The Respondent spent a great deal of time cross examining Dr. Kavanaugh about the transcript. In particular, counsel sought admissions that certain questions were leading. The Panel had the entire interview available to it in both audio and written form. Whether Dr. Kavanaugh believed a question to be leading or not was of no value to us as we could determine the answer to that ourselves. In closing submissions, the Respondent argued that Dr. Kavanaugh's "questioning was intended to influence the [Complainants] to raise issues and concerns they had not previously thought of…"

[43] We find that Dr. Kavanaugh gave her evidence in a straightforward manner. The evidence she gave was virtually all contained in contemporaneous documents. There was no basis for the submission that she attempted to influence the Complainant's evidence.

[44] The Complainant's evidence is contained in the interview.

[45] The interview was conducted on July 12, 2019 only a few months after the events in question. Dr. Kavanaugh attended with another investigator, they both planned to ask questions in different areas. The Complainants attended along with their granddaughter.

[46] The Respondent asserts that there were numerous shortcomings in the interview such that it cannot be relied on. The interview did not take place at the College's offices which he says would have conveyed the gravity and importance of the information they were providing. We do not accept this. Dr. Kavanaugh testified that it was formal and serious; they had made a complaint

and the College investigators were attending at their home to interview them and record it. It is clear though that there was much less formality than would have been the case in a hearing.

[47] No form of oath was administered nor were the Complainants cautioned to tell the truth. The purpose of the interview, when conducted, was to obtain information to assist in the investigation of the complaint not to obtain evidence to be tendered at a hearing. It is a common feature of hearsay evidence that is not made under oath which will affect the weight given to it.

[48] The Complainants were not interviewed separately, and the granddaughter interjected at various times. The reason the granddaughter attended was that English was a second language for the Complainants and she was there to assist with language difficulties. She did go further at times reminding her grandparents of facts they had previously told her but were not remembering then. This again will affect the weight to be given to certain statements.

[49] The participants spoke over top of each other and answered questions put to another. This is a consequence of not interviewing them separately and will affect the weight to be given to their answers.

[50] The interviewers did not confine themselves to open ended questions. That is true but is not surprising in these circumstances. In an initial interview probing and directing a witness's attention to certain topics is common.

[51] The Respondent's arguments concerning the manner in which the interview was conducted have some validity. Any of the evidence taken from this interview must be weighed by comparing it to other admissible evidence for consistency. The weight to be given to it when contrary to other evidence will depend on the weight to be given to the contrary evidence.

[52] Some of the evidence from the interview is not in dispute.

[53] The Complainants attended the Respondent's hospital on March 19, 2019 with the Dog concerned about a cat scratch in her eye. After an initial examination the Respondent said he needed to administer a sedative to perform more tests on the eye and recommended that while under sedation a dental cleaning should be performed.

[54] The male Complainant signed an authorization form which contained a list of charges. A copy of the form does not appear to have been reviewed during the interview.

[55] The disputes in the evidence that are of importance concern a discussion about whether the dog had been fasted, whether blood tests were recommended and refused, and whether there was a discussion about and informed consent given to administration of a general anesthetic.

[56] In the interview both Complainants were definite that they were not asked about when the Dog had last eaten. They said the Dog had been given food at around 1 pm and when they left for the hospital around 4 pm they noted the food had been eaten. They knew they shouldn't feed him before surgery but they had no expectation that surgery would be performed that day.

[57] The Respondent says this timing is inconsistent with the time of their attendance at the hospital which he recalls as being around 2 to 3 pm. His records do not show a time of attendance. He says that he was told that the dog had last eaten three to four hours prior to them coming to the hospital. This information is not in any of his medical records.

[58] There is no discussion about whether blood tests were recommended in the interview.

[59] They did not recall if the Respondent said he was going to give the dog an anesthetic but knew that he was going to make the dog "sleepy".

[60] The Authorization form signed by the male Complainant was put in evidence. It lists a series of "Procedures" with a box beside each to be marked to convey approval. Included in that list is "Sedation" and "Anesthesia". Only the box beside "Sedation" is marked. In the typed medical records under the heading "Plan" the Respondent noted "Eye exam under sedation".

[61] In handwriting on the authorization form the Respondent listed various items he would provide and the price to be charged. The list was in shortform and explained by the Respondent to be "examination $20, sedation $80, eye examination $20, IV $50, injection $40, dental $90, and eye medication $30, total $330."

[62] The Authorization from contained a paragraph which stated in part "I have been advised that in the event that the treatment requires the use of anesthesia/sedation, there is a risk, even the risk of death."

[63] In direct examination the Respondent testified as follows:

> *928 Q All right. And at the end of your physical examination of [the Dog] what was your recommendation to the owners?*

A I recommended them exam under sedation.

943 Q Did you have a conversation with the owner about doing sedation?
A Yes.
944 Q And what do you recall about that?
A I think I written on the side of the [indiscernible] about IV sedation and then sedation was [indiscernible] and I explained like I think I be able to do the proper exam under sedation and I think also the dental I can do.

945 Q Okay. And did you tell them anything about the sedation itself?
A Yeah, sedation I told them I give him a needle.

946 Q And did you tell them anything else?
A I don't recall right now if I do gas mask.

948 Q And did you have any conversation with the owners about the consent form?
A Yes, I show them. This was a new consent form, and I told them anaesthesia or sedation, anaesthesia when you're doing the dental, death can happen, and that's clearly written there.

949 Q Sorry, I didn't catch that last part. Say it again? Sorry, say that again?
A It's very clearly written on the form risk of sedation and anaesthesia which can cause death.

[64] In cross examination the Respondent testified:

1296 Q Okay. This is page 7 of the medical record. Do you recognize this as the consent form signed by [the Male Complainant]Dr. Bajwa?
A Yes.

1297 Q You can see there there's two boxes: one for sedation and one for anesthesia?
A Two boxes, one for -- you're just saying anesthesia, sedation.

1298 Q No. At the top of the page it says "Authorization for Treatment (medical/surgical)." Do you see that?
A Yeah, I see that two. One is sedation and one is anesthesia. Yeah, I can see.

1299 Q And only the sedation box is ticked; correct?
A Yeah. So first plan was sedation.

1300 Q First plan was sedation. And that shows up, Dr. Bajwa, in your medical records, correct, that your plan was sedation? Let's go to page 10 of the medical record and about halfway down where it says "plan." You see where it says "plan," Dr. Bajwa?
A Yeah, "plan." So FDT test was done and negative. And then I said client agreed.

1301 Q So you will agree with me, Dr. Bajwa, that the client agreed to the plan, which was an eye exam under sedation; correct?
A Yes.

1302 Q And there is no mention of anesthesia here, is there?
A No mention of.

1338 Q So this is what your plan was with Mocha, correct: a dental --
A My plan was --

1339 Q Eye exam and dental under sedation is what you wrote; correct?
A That was my plan. That what expecting.

1340 Q And that plan changed when Mocha was not relaxed and you were worried she was going to bite your hand; correct?
A Yes.

1341 Q And so your plan changed from sedation to giving a general anesthetic; correct?
A Yes.

1342 Q And did you try to contact the clients to inform them you were going to give Mocha a general anesthetic?
A I told you earlier I think there was a very short time the way I was going to calm down the dog with masking and putting the tube in. I don't know if I did that or not. That's not my recall.

1343 Q So you can't recall if you contacted them to tell them?
A I can't.

[65] The Respondent's evidence makes it clear that he planned to use sedation only for the further eye examination and dental cleaning. The Authorization form he provided them only marked the box for Sedation even though there was one for Anesthesia. His handwritten price list only lists sedation although he did testify that anesthesia would be included in that price. His medical records show the plan was eye exam under sedation.

[66] The Respondent specifically testified in direct that he could not recall if he told them he would use a gas mask which is used to administer a general anesthetic. He did not testify that he discussed with them that he might have to use anesthesia if the dog did not relax and obtain their informed consent for anesthesia ahead of time should it be required. If he had he would not have to considered calling them when he realized the dog was not sufficiently relaxed for the dental cleaning with only sedation.

[67] Pointing to a clause in the Authorization form that states that there is a risk of death when using "anesthesia/sedation" is not sufficient without specifying which would be used. There is no evidence that the Respondent told the Complainants that he might use anesthesia.

[68] An informed consent to sedation does not include informed consent to anesthesia. The Respondent testified that they were different procedures and that there are greater risks when using anesthesia. Those greater risks need to be explained so that the client can decide which procedure to authorize. Giving consent to an eye examination or dental cleaning when either sedation or anesthesia might be used requires a veterinarian to explain the different risks.

[69] Given our findings with respect to the Respondent's evidence on informed consent to general anesthesia it is not necessary to decide whether there was a discussion about blood tests or fasting. There was simply no consent given for a general anesthetic. The Complainants evidence on informed consent is consistent with the Respondent's. It is clear from the Authorization for care (consent) form and the Respondent' testimony that informed consent was not sought or given for a general anesthetic.

[70] As the Respondent was required to obtain informed consent prior to the use of a general anesthetic and he failed to obtain consent at all this is a marked departure from the conduct

expected of a veterinarian in British Columbia. This is not a situation where the discussion and process of obtaining informed consent was flawed, there was no consent at all; there was no attempt to obtain an informed consent to the use of a general anesthetic.

9. Allegation 2

[71] Allegation 2 states:

> On or about March 29, 2019 you did not comply with the requirements of section 245 of the College bylaws and College's *Professional Practice Standard : Companion Animal Medical Records* in preparing [the Dog's] clinical records. [The Dog's] clinical records lack information that would allow for an effective review of [the Dog's] care and/or equip a subsequent veterinarian to take over her care, had that become necessary. In addition, or in the alternative, [the Dog's] clinical records contain inaccurate information. Particulars of this allegation include:
>
> a. You did not document that you obtained informed consent to administer general anesthetic to [the Dog];
> b. You did not document that you discussed pre-anesthetic fasting and blood work with the [Complainants] prior to anesthetizing [the Dog];
> c. You did not document that the [Complainants] declined pre-anesthetic blood work;
> d. You documented that [the Dog] was sedated when she was anesthetized;
> e. You did not record a change in [the Dog's] demeanor, which you later cited as justification for sedating [the Dog] to examine her eye;
> f. You did not document resuscitation efforts in sufficient detail, including failing to record chest compressions and ventilation administered to [the Dog]; and
> g. The handwritten portions of [the Dog's] clinical records are illegible, such that it is impossible to discern whether they are duplicative of the electronic records or contain additional relevant information.

[72] Bylaw 245 (the "Bylaws) states:

> Medical records
> 245 (l) In this section, "author" means the person who provided a service, and may include a registrant, a technician or any other person authorized by the registrant to provide that service, or the registrant who supervised the provision of the service.
>
> (2) A registrant must:

(a) create, maintain and keep current a medical record containing medical information for each patient;
(b) ensure that medical information in the medical record is
(i) written in English,
(ii) accurate, complete, appropriately detailed, comprehensible, and
(iii) properly organized;
(c) ensure the author of an entry in a medical record can be identified.

[73] The relevant sections of the Standard state:

1. General Principles of medical record keeping:
a. legibly written or typewritten.

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.

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

i. Consent for all surgical and dental treatments:

i. Written consent to the surgical or dental treatment signed by or on behalf of the owner of the animal, or
ii. A note that the owner of the animal or person on the owner's behalf (owner's agent) consented orally to the surgical or dental treatment, and the reason why the consent is not in writing, or
iii. A note that neither the owner nor the owner's agent was available to consent to the surgical or dental treatment and the reason why,

in the Registrant's opinion, it was medically necessary to conduct the surgical treatment.

10. General Issues Regarding Allegation 2

[74] As described in the Bylaw and Standard referred to above, veterinarians have a duty to create and maintain adequate medical records. Adequate medical records are essential to the health and well-being of every patient. An adequate record facilitates good patient care, provides for the effective transfer of files or review of patient care, and ensures there is a record of client communications.

[75] The Respondent argues that because the Dog died in this case there was no need to be concerned about whether the records provide for an effective transfer. This ignores the fact that records must also be sufficient to permit an effective review of the care and treatment of an animal. In addition, the requirements of the Bylaw and Standards are not dependent on the outcome.

[76] The Respondent argues that the records must be read “sympathetically.” No authority is provided for this proposition. We agree that when considering the adequacy of medical records we must consider the circumstances in which they are created. In addition, when interpreting the Bylaw and Standard we must consider the circumstances in which veterinarians in general operate.

[77] The Respondent argues that it is not open to the College to seek a finding that the Respondent breached a standard imposed under the Act.

[78] In the Citation the College seeks the following findings: “professional misconduct and/or breach of the Act or bylaws.” In Allegation 2 the Citation alleges a failure to comply with the Standard. In a motion dated July 20, 2023 the Respondent sought an order that the College identify “which sections of s. 61(1)(b) of the Act” that it would seek at the end of the hearing. The College in its Response identified subsections 61(1)(b)(i) [breach of the Act, regulation or bylaw], (ii) [breach of a standard], and (iv)[professional misconduct]. On the basis of the College’s Response the panel made no order on that point but it was clear that findings on all three grounds would potentially be sought.

[79] The Respondent argues that issue estoppel applies in this case. He says that he was subject to a significant inspection including his records in June 2022 and that the College had the opportunity to deal with any deficiencies in his record keeping practices at that time.

[80] No evidence of this inspection was provided. We do not know if the records relevant to this proceeding were reviewed. We do not know what conclusions were made or what happened as a result. There is a complete absence of any evidence on which a finding of issue estoppel could be made.

[81] The Respondent asserts that the particulars provided in Allegation 2 limit the findings this panel can make. This is contrary to the express wording of the Citation. It contains a general allegation:

> "[The Dog's] clinical records lack information that would allow for an effective review of [the Dog's] care and/or equip a subsequent veterinarian to take over her care, had that become necessary. In addition…."

[82] After that general allegation there are specific allegations which are contained in the particulars that are in addition to the general allegation. We will deal with the general allegation after the specific allegations.

11. Specific Allegations

Allegation 2(a) failure to document informed consent to general anesthetic

[83] Having found that the Respondent did not obtain informed consent to administer a general anesthetic it is appropriate that his records do not record that. This allegation is not proven.

Allegation 2(b) failure to document discussion regarding fasting and bloodwork

[84] The Respondent testified that he was told that the Dog had not eaten for three or four hours before being brought to him. This is contrary to the evidence of the Complainants but neither version is recorded. He also testified that he recommended blood work. There is no evidence from the Complainants on this point so his evidence is accepted. Neither of these facts are recorded in his medical records.

[85] The failure to record these client communications is a breach of the Standard s. 2 (g)(vii) and the Bylaw as without a record of those communications the medical records are not "complete" or "appropriately detailed."

[86] This allegation is proven.

Allegation 2(c) failure to document Complainant declined bloodwork

[87] The Respondent says this allegation is duplicative to 2(b). We do see a difference as 2(b) deals with his discussion about bloodwork generally and this allegation deals with making a record of the Complainant refusing the recommendation of bloodwork specifically.

[88] The Respondent's evidence was that the Complainant refused his offer to do bloodwork. As noted above there is no evidence from the Complainants on this point so we accept his evidence. This refusal is not recorded in the medical records.

[89] The failure to record this refusal is a breach of the Standard s. 2 (g)(vii) and the Bylaw as without a record of that refusal the medical records are not "complete" or "appropriately detailed."

[90] This allegation is proven.

Allegation 2(d) documented sedation when anesthetized

[91] It is common ground that sedation was first administered and then later a general anesthetic was added. The medical records show that an anesthetic was administered. The details of that administration are deficient but that is not what is alleged in this particular. The Authorization form only records consent to sedation but the allegation is not directed to that document alone.

[92] This allegation is not proven.

Allegation 2(e) failure to record a change in demeanour justifying sedation to examine the eye

[93] This Allegation is incorrectly framed. The Respondent's plan was always to sedate the Dog to perform a further eye exam. The Complainants consented to that plan. The change in demeanour referred to by the Respondent occurred after the eye examination when the dental

cleaning commenced. This was his reason for administering a general anesthetic. The College's closing Submissions proceed on a basis different than alleged in the Citation. In reply the College acknowledged that the particular ought to have referred to general anesthesia instead of sedation but made no application to amend.

[94] This allegation is not proven.

Allegation 2(f) did not record resuscitation efforts in sufficient detail

[95] The Respondent submits that we should limit this allegation to the failure to record chest compressions and ventilation. Allegation 2(f) alleges a failure to "document resuscitation efforts in sufficient detail" and then includes the failure to document chest compressions and ventilation. The allegation is not limited to those two examples of details that ought to have been included in his medical records.

[96] The medical records are deficient in several ways. The time of the arrest is not recorded. The rate of chest compressions is not recorded. The fact that ventilation was provided is not recorded. When the Isoflurane was stopped is not recorded. The length of time that CPR was administered is not recorded. The time of death is not recorded.

[97] All of these details are necessary to allow an effective review of the care provided to the Dog. Contrary to Bylaw 245 the records are not accurate, sufficiently detailed or complete. The medical records do not record "all medical and surgical treatments used … or performed" contrary to the Standard.

[98] This allegation is proven.

Allegation 2(g) handwritten records are illegible

[99] The handwritten portions of the medical records are approximately half a page. Dr. Kavanaugh the investigator testified that she was able to decipher the handwriting because she knew the context and facts of the file.

[100] In assessing whether the handwriting is sufficiently legible it is important to consider them in the context of rest of the medical records which are typed. By cross referencing the handwriting to the typed records most of the handwriting can be deciphered.

[101] This allegation is not proven.

12. General Allegations

[102] The general allegation is that the medical records "lack information that would allow for an effective review of [the Dog's] care and/or equip a subsequent veterinarian to take over care…"

[103] We will consider only information that was lacking that has not been considered above in regard to the specific allegations.

[104] In the typed records under the heading "Plan" he failed to record that a dental cleaning was planned. He failed to record the time of day of the visit or of any of the steps taken. He failed to record when the Dog attempted to vomit, how long that was after the general anesthetic was administered.

[105] Although the records show that sedation was first administered and then a general anesthetic was added, there is no documentation as to when and why that occurred. The Dog's change of demeanour which the Respondent testified was the reason for the change of treatment plan is not referred to in the medical records. This change in his treatment plan is a key factor in any review and the medical records are silent on this important point.

[106] This lack of information in the medical records prevents an effective review of his care and treatment of the Dog. The Respondent breached Bylaw 245 and the Standard by failing to include that information in the medical records.

[107] The College seeks a finding of professional misconduct in relation to Allegation 2 in addition to the findings of a breach of Bylaw 245 and the Standard. The lack of information in the medical records is fundamental on key points. The medical records would not permit an effective review of his care and treatment of the Dog.

[108] The College is unable to perform one of key mandates that is protecting the public interest when medical records are as deficient as these. The seriousness of these failings is such that his conduct is more than just a breach of the Bylaw and Standard, it is a marked departure from that expected of veterinarians in British Columbia.

13. Delay

[109] The Respondent, citing *Blencoe v British Columbia (Human Rights Commission*) 2000 SCC 44, submits that undue delay has occurred and that this proceeding ought to be stayed as a result.

[110] The Complaint was made in March 2019 and the Citation was issued September 2022. We do not have a proper record of the events between the complaint and the issuance of the Citation. We are all aware of the Covid epidemic that occurred in that time frame.

[111] The College did not adduce evidence to explain what occurred in that time frame and why it took that long to authorize the issuance of the Citation. Its position is that this panel can only consider delay after the issuance of the Citation. They refer to our decision on the preliminary motion in this case.

[112] We do not think our ruling goes that far. Our jurisdiction is limited to hearing the Citation, we do not have the jurisdiction to second guess decisions made by the Investigation Committee. However, where there is an issue of inordinate delay causing prejudice to a respondent we would need to consider the entire timeline starting at the complaint.

[113] We do not need to decide whether there was an inordinate delay in this case. In order for the Respondent to obtain the stay sought he must show both that there was an inordinate delay and that the delay caused serious prejudice.

[114] The Respondent says he has been prejudiced because the delay resulted in the Complainants being unavailable to testify in person and be subject to cross examination.

[115] This argument fails because on the key point of informed consent to the administration of a general anesthetic in Allegation 1 his evidence was accepted. He did not testify that he obtained informed consent to a general anesthetic. Cross examination of the Complainants would not have assisted him. Allegation 2 does not depend on evidence from the Complainants.

[116] The Respondent has not shown that admitting the evidence of the Complainants in the manner done caused him serious prejudice. As a result, he is not entitled to a stay.

14. Conclusion

[117] We have found that the Respondent committed professional misconduct as alleged in Allegation 1. We have found that the Respondent breached Bylaw 245 and the Standard in relation to Allegations 2 and sub allegations (b) (c) and (f). We have found that those breaches constitute professional misconduct.

[118] Pursuant to s. 61 (6) (b) (ii) of the Act, having made an orders under s. 61 of the Act, this Panel hereby notifies the Respondent that he has the right to appeal those orders to the Supreme Court pursuant to s. 64 of the Act.

[119] This Panel directs the College to publish this decision as provided for in s. 68 (1) (a) of the Act.

DATED this 28th day of February, 2025.

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

Carsten Bandt
Dr. Carsten Bandt

Tatjana Mirkovic
Dr. Tatjana Mirkovic