

Summary of Discipline Committee Hearing



DR. JONATHAN MITELMAN

Hearing Date: March 11, 12 and 15, 2019

BRIEF SUMMARY OF ALLEGATIONS

This matter arose following an interaction between the member and one of his clients. The client was at the clinic to pick up her cat following spinal surgery. The client became upset to learn the cat was being discharged despite not having had a bowel movement for three days. The client used an expletive, threatened the member's associate that she would sue her if anything happened to the cat, and left the clinic in anger.

The client left without completing the normal patient discharge process. She did not receive a final patient progress report; she did not receive care instructions; she did not receive prescribed medications; and she did not make arrangements for the payment of her account.

A short time later, the member obtained the client's address from clinic records and went to her home where there was an altercation between the member and the client which resulted in injuries to both of them.

ALLEGATIONS OF PROFESSIONAL MISCONDUCT

- obtained and/or used the client's home address for purposes of attending at her home without her consent
- attended the client's home in part for purposes of collecting an outstanding balance
- offered or provided veterinary services at the client's home without consent or a request for such services
- engaged in a physical altercation with the client at her home
- abusing a client physically
- an act or omission relevant to the practice of veterinary medicine that, having regard to the circumstances, would be regarded by members as disgraceful, dishonourable or unprofessional
- conduct unbecoming a veterinarian
- contravening a law if the contravention is relevant to the member's suitability to practise veterinary medicine

DECISION

The member pleaded not guilty to the allegations. The panel made findings of professional misconduct against the member.

PENALTY

- Reprimand
- The member's licence to practise veterinary medicine is suspended for 3 months.
- The member is required to complete an anger management course.
- The member is required to meet with an anger management coach before and after completion of the course. The coach will provide a report to the College and the member.
- The member is required to complete a course on workplace ethics and boundaries.
- The member is required to complete a

course on privacy.

- The member will pay costs to the College of \$62,400.

PANEL'S REASONING

In reviewing the evidence, the panel found the member's decision to use his client's personal information as he did would reasonably be regarded by members of the profession as unprofessional. In addition, the panel found the member engaged in conduct unbecoming a veterinarian as there is no excuse for misusing a client's address, which is private information.

The member claimed he had no intention of collecting money from the client and his purpose in attending her home was to deliver medications. The panel noted none of the witnesses heard the member mention anything about delivering medications. Witnesses at the house, the clinic, and the television station the next day all heard him speak about the client stealing from him and being dishonest.

The panel agreed the member and the client were experiencing heightened levels of anxiety and anger at the time of their interaction at the client's home. Although the panel agreed the member's actions did not have the element of "moral failing" necessary to assess his actions as disgraceful, he ought to have known his confrontation with the client was unacceptable and unprofessional.

The panel was not satisfied the College proved the allegation that the member went to the client's home intending to provide treatment to her cat. The member said he was there to deliver medications and the panel found he was there in part to collect an outstanding balance. The panel finds that neither of these activities constitutes a veterinary service.

The photographic evidence confirmed both parties received physical injuries during the altercation. The panel accepted it was unlikely the incident was completely one-sided. However, a veterinarian should never become involved in a physical altercation with a client. The member was an active participant in the altercation, caused injuries, and clearly put himself in a situation he knew or ought to have known was likely to be tense. The panel agreed there is never justification for a veterinarian to become involved in a physical altercation with a client.

The College alleged the member contravened a law and that such contravention was relevant to his suitability to practise veterinary medicine. The College argued that in accessing the client's private information for the purposes of locating her home was a violation of the privacy laws found in the Personal Information Protection and Electronic Documents Act.

The panel concluded there was not sufficient evidence that the veterinarian-client-patient relationship had been terminated. There was no termination letter provided by either party and no witness testimony specifically referenced any request by the client to permanently sever the relationship. The panel was of the opinion that the member accessing

the client's personal information had therefore not contravened the law.

Reasons for decision on costs: The panel determined a cost award was appropriate based on the seriousness of the allegations and the College's success in proving the allegations.

The panel took into account it has authority to make an order requiring a member who is found guilty of professional misconduct to pay all or part of the College's legal expenses, the College's costs in investigating the matter and any costs associated with conducting a hearing. In this case, the panel noted that the College estimated its cost to be approximately \$104,000 and was requesting an order of two thirds of this amount or \$70,000. While the cost of prosecuting this case was substantial, in the panel's opinion it was neither unreasonable nor unjustified as argued by member's counsel.

The College's cost proposal was based on the frequently used two-thirds factor in recent decisions. The panel considered the appropriateness of this amount and took into account the member's additional costs for the rehabilitative aspects of the penalty. There was consensus by the panel members that a costs award of \$62,400 would be appropriate and reasonable. The panel reviewed the cases listed in the Book of Authorities presented by the College and considered the panel's decision regarding costs to be consistent with the amounts awarded in these cases.