

Summary of Discipline Committee Hearing



THE COLLEGE OF
VETERINARIANS
OF ONTARIO

DR. JONATHAN MITELMAN

Hearing Date: July 17-19, September 5, 6, 8, 25, 26, October 10, 11, 13, 2017

BRIEF SUMMARY OF ALLEGATIONS

The member was the owner of a companion animal clinic and an emergency hospital. The allegations against the member are extensive and varied. They include allegations of professional misconduct in relation to treatment and record keeping involving six animals and their owners.

In addition, there are allegations relating to the member's record keeping and record transfers; the member's failure to cooperate with the College's investigation; the member's misuse of online reviews; and his failure to make charitable donations in the name of his client's deceased pets, as was promised.

Summaries are listed below in connection with each animal.

Muffin

It is alleged that contrary to client instructions, Muffin was cremated as part of a group cremation. When the error was discovered, the client was given the cremains of another cat. It is also alleged the member charged the client for a private cremation.

Duffy

The dog was either dead or dying when he was taken to the clinic. It is alleged the member asked an auxiliary to place an IV catheter into one of the dog's front legs, after the dog had already died. When the auxiliary refused, the member taped the catheter to the outside of the deceased dog's leg.

Ricky

The member indicated to the client that the cat had ingested a foreign body and that it should be removed with a scope. The client chose to have the cat euthanized and paid for that procedure. Contrary to the client's instructions, Ricky was not euthanized but was adopted by a clinic staff member.

Duncan

The dog was taken to the clinic as a result of an internet advertisement stating the hospital was a 24/7 ICU animal hospital with Board-certified specialists available daily. But there were no Board-certified specialists available as advertised.

The member failed to sufficiently explain the pet's serious condition to the clients and failed to obtain proper authorization or consent to perform additional tests or charge fees in excess of the initial estimate.

As well, the member failed to provide the dog's regular veterinarian and/or his owners with the patient records in a timely manner.

Barney

A long-time client of the hospital requested the member perform the post mortem on Barney, but the post mortem was done by someone else. It is also alleged the member failed to create or maintain proper records with respect to Barney.

Georgie

The member failed to create or maintain proper records for Georgie. Further, the member hugged one of Georgie's owners without warning or consent.

Record Keeping

It is alleged the member failed to create or maintain proper records in respect of six patients. It is further alleged that in one case, the member falsified the records.

Record Transfers

It is alleged the member failed to transfer records on a timely basis in respect to six patients.

College Investigation

It is alleged the member failed to cooperate with the College investigation by failing to provide records on a timely basis and delaying the investigation.

ALLEGATIONS OF PROFESSIONAL MISCONDUCT

The allegations of professional misconduct are listed below in connection with each animal.

Muffin

- failed to maintain the standard of practice of the profession
- failed to fulfil the terms of an agreement with a client
- made a misrepresentation to a client
- charged a fee for an unperformed service
- knowingly submitting a false or misleading account or charge for professional services
- failed to dispose of an animal in accordance with the client's instructions
- failed to make or retain the records required
- falsified a record regarding professional services
- failed to direct or supervise, or inadequately directing or supervising, an auxiliary
- signed or issued a veterinary certificate, report or similar document that contains a statement that the member knows or ought to know is false, misleading or otherwise improper
- 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

Duffy

- failed to maintain the standard of practice of the profession
- provided, or attempted or offered to provide, services that are not reasonably useful or needed
- recommended, referred, ordered or requisitioned laboratory tests, technical procedures or professional services that are not reasonably useful or needed
- made a misrepresentation to a client
- charged a fee for an unperformed service

- knowingly submitted a false or misleading account or charge for professional services
- failed to make or retain the records required by the Regulation
- falsified a record regarding professional services
- signed or issued a veterinary certificate, report or similar document that contains a statement that the member knows or ought to know is false, misleading or otherwise improper
- 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

Ricky

- failed to maintain the standard of practice of the profession
- failed to fulfil the terms of an agreement with a client
- made a misrepresentation to a client
- charged a fee for an unperformed service
- failed to dispose of an animal in accordance with the client's instructions
- failed to make or retain the records required by the Regulation

Duncan

- failed to maintain the standard of practice of the profession
- made a misrepresentation to a client
- 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
- failed to provide within a reasonable time and without cause any certificate or report requested by a client or his or her agent in respect to an examination or treatment performed by the member
- made a misrepresentation to a client
- failed to direct or supervise, or inadequately directing or supervising, an auxiliary

Barney

- failed to maintain the standard of practice of the profession
- failed to fulfil the terms of an agreement with a client
- 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

Records Issues

- failed to maintain the standard of practice of the profession
- failed to provide within a reasonable time and without cause any certificate or report requested by a client in respect to an examination or treatment performed by the member
- failed to make or retain the records required

by this Regulation

- 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

Georgie

- failed to maintain the standard of practice of the profession
- 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

Charitable Donations

- made a misrepresentation to a client or prospective client
- 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

Online Reviews

- an act or omission inconsistent with the Act or the regulation
- failed to maintain the standard of practice of the profession
- made a misrepresentation to a client or prospective client
- 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

College Investigation

- an act or omission inconsistent with the Act or the regulation
- failed to maintain the standard of practice of the profession
- 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

DECISION

The member pleaded guilty with respect to some of the allegations and denied others.

PENALTY

- Reprimand
- The member's licence to practise veterinary medicine is suspended for 12 months
- A mentor will meet with the College and the member to review the case and determine the areas that need to be monitored and rehabilitated. The mentor will be assigned to the member for two years. The member and the mentor will meet quarterly and the mentor will report on the member's progress to the College. The member is responsible for the cost of the mentor. The mentor will have access to the member's medical records.
- For five years following the suspension:
 - The member shall advise the College and the mentor of new employers or workplaces
 - The member is restricted from being an owner, part-owner, or director of a

veterinary clinic. This restriction does not include ownership of a mobile veterinary facility.

- The member will pay costs to the College of \$85,000.

PANEL'S REASONING

Muffin

In reviewing the evidence, the panel found there was no euthanasia log submitted. No records from the cremation company were introduced. The only evidence of the alleged misconduct, was from the member's former technician who acknowledged she did not have good recall of the timing of the incident. Further, the panel had concerns her testimony may have been tainted by her termination from the clinic. The panel found there wasn't sufficient evidence to support the allegations against the member in relation to Muffin.

Duffy

After reviewing the testimony and evidence, the panel made no findings of professional misconduct against the member in relation to Duffy. While concerned about the quality of communication between the member and his auxiliaries, the panel was not persuaded the member engaged in misconduct.

Ricky

The member was the primary attending veterinarian for Ricky on the occasions he visited the clinic. The client signed a euthanasia request form twice and paid for the service but her wishes were not carried out. The member indicated he had assigned the euthanasia to another veterinarian and was not aware his employee had taken Ricky home. The panel concluded the member was responsible for the cat and he should have been aware of where the cat ended up and should have known the cat had not been euthanized as requested.

The member's diagnosis of a possible gastric foreign body was a reasonable diagnosis considering Ricky's presentation and history, and the radiographic images. This is supported by the initial report of the radiologist, which did not definitively rule out a foreign body, but rather concluded it could be a possibility. The member's diagnosis was plausible and not unreasonable. The panel was not satisfied on the evidence that the member's diagnosis was unreasonable.

The member admitted he did not euthanize the cat but did not admit to giving the cat to a staff member. The member did accept payment for euthanasia and cremation but did not perform those procedures. Based on this information, the panel finds the member engaged in professional misconduct.

Further, the Panel finds the member was ultimately responsible for the animal and for following through with the client's wishes. Given this responsibility, the panel finds the member engaged in professional misconduct.

Duncan

It is up to a veterinarian to ensure all the pertinent medical records are transferred to another veterinarian or clinic within two business days. While the member testified he believed Duncan's records had been transferred, there is no documentation to support this. The panel finds this conduct

amounts to professional misconduct.

The panel was not able to make a finding with respect to the member's online advertisements. The advertisements in question were not available for the panel's review.

The panel was satisfied the member failed to advise the client of the escalating costs of treatment for Duncan. The member knew or ought to have known, based on the records, that the client had placed a limit on how much money she would spend on Duncan's treatment. Any further treatment should have been discussed with the client but there was no evidence that such a discussion took place. The client did not understand the nature and the extent of the additional costs. The member did not fulfill his obligations to the client, as it related to the costs.

The panel found the member engaged in professional misconduct.

Barney

The client had clear expectations for Barney's post-mortem. These expectations were not directly communicated to the member, but records indicate they were noted by an auxiliary. There is no record to show the member performed the post-mortem examination of Barney, either alone or with assistance. There is no post-mortem report or note about the post-mortem in the patient record.

The panel does not accept the member took any part in the post-mortem. Even if he did, some sort of minimal involvement would not have fulfilled the promise made to the client that he do the post-mortem. As such, the member did not meet his responsibility. Further, the post-mortem examination is incomplete and lacking. The panel therefore finds the member engaged in professional misconduct.

Georgie

The panel finds there was likely physical contact between the client and the member. Whether the contact was in the form of a hug, as described by the client or a hand on her shoulder/back, as described by the member, the panel is satisfied the contact made the client uncomfortable.

The panel finds the member displayed poor judgment in his interaction with his client but is not satisfied that such contact would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional. Nor does the panel find that the contact resulted in a failure to maintain the standard of practice of the profession.

As such, the panel makes no findings with respect to the allegations related to Georgie.

Record Keeping

The panel appreciated that electronic medical records can appear confusing when printed and presented as paper copies, thereby losing any organizational structure provided by an electronic system. That notwithstanding, the panel found the records to be consistently sparse in detail and generally missing aspects of what is expected in the College's standards. In almost all cases there was no interpretation of laboratory results in the medical record or documentation of discussions of results with owners. The panel agreed with the expert witness that interpretation of laboratory results

and communication to the owner should be documented in the medical record.

While the panel appreciated the challenges of storing old records in multiple locations, it was struck by the apparent difficulty the member had retrieving certain records only to have located them very late in the process. Proper medical records should be kept in such a manner that another practitioner could understand the animal's condition and could effectively take over a case. The member's records were deficient. Another practitioner would have considerable difficulty effectively taking over and managing a case based on the medical records available.

The panel found the member failed to create or maintain proper records for his patients. The panel did not find the member was involved in falsifying records.

Record Transfers

The panel found there were chronic delays in the transmission of files from the member's clinic to other clinics. The evidence of the former employees was largely uncontested and revealed that the process the member set up for the transfer of files resulted in lengthy delays. The panel found the member delayed transmission of records to other clinics.

College Investigation

The panel is not satisfied the member failed to cooperate with the College investigation as the evidence does not support the allegation.

The panel recognizes that some delays were the result of changes of legal counsel. The panel also found that, given the volume of the information requests put forward by the College, consideration must be given to the fact these requests had to be fulfilled in addition to the normal workload of a small business that needs to continue its operation. Circumstances exist beyond the member's control, such as the death of his business partner, and the problems with document storage that arose out of his partner's habits.

The burden of proof rests on the College to prove the allegations in this case on a balance of probabilities. In reaching our decision, the panel scrutinized the evidence carefully, mindful of the serious impact our decision will have on the member and the public.

Penalty & Costs: The panel carefully considered the parties' submissions. Ultimately it determined the penalty order is appropriate to address the member's misconduct. The penalty takes into account the public safety and concerns regarding the member's practice. The penalty acts as specific deterrence for the member and more generally sends a message to the profession that this sort of conduct will not be tolerated.

The panel decided revocation would not be appropriate based on the evidence the member is a technically competent veterinarian and one who has served patients and clients well for several years. It would not be in the public interest to permanently remove him from the profession.