

**ROYAL COLLEGE OF VETERINARY SURGEONS**

**v**

**MR MARTHINUS RYK BOTES**

**FINDINGS**

- 1) Mr Botes appears before the Committee to answer the charge that:

“That being registered in the Register of Veterinary Surgeons and whilst in practice at Companion Care Veterinary Surgery, Unit 1B, East Kent Retail Park, Westwood Road, Broadstairs, Kent, between 20 April 2007 and 21 April 2007, you failed in your duties to Defor, a Yorkshire Terrier belonging to Carol Keeling and/or failed in your duties to Miss Keeling, more particularly in that:

- a) Having made the clinical decision that Defor required ongoing assessment and/or care, you failed to provide such ongoing assessment and/or care; and/or failed to ensure that Defor received such ongoing assessment and/ or care; and/or
- b) having told Miss Keeling that you would rely on overnight monitoring of Defor by means of a webcam, you failed to do so; and/or
- c) when you knew or ought to have known that the webcam referred to in (ii) above was not working, you failed to inform Miss Keeling of the same and/or failed to take any or any adequate steps to do so; and/or
- d) failed to make any or any adequate clinical notes in relation to Defor;

and that in respect of the above, whether individually or cumulatively, you are guilty of disgraceful conduct in a professional respect.”

- 2) In examining this case, the Committee has considered the charges against Mr Botes and Mr Louw separately and applied the appropriate standard of proof in each case, namely that it has to be sure before it finds any allegation of fact contained in the charges proven.
- 3) Mr Botes qualified as a veterinary surgeon from the University of Pretoria, South Africa in 1990. He came to the United Kingdom in 1998 to practise veterinary surgery. He is married with three children and has been granted British citizenship. He entered into a joint venture agreement with Companion Care opening practice premises in Broadstairs, Kent in March 2003. The practice occupies premises leased from Pets at Home. Although, the practice premises are self-contained there is no separate WC which is in the main part of the building and is alarmed at night. The practice employs three full-

time veterinary surgeons and one part-time locum, one qualified and three trainee veterinary nurses, four part-time receptionists and a practice administrator. Mr Louw was employed by the practice as a veterinary surgeon between September 2006 and May 2007.

- 4) The background to the case against Mr Botes is that on Friday, 20 April 2007, Defor was involved in a road traffic accident whilst out for a walk with Mrs Keeling. Defor was a two year old male Yorkshire Terrier belonging to her daughter, Ms Carol Keeling. Mrs Keeling and her other daughter, Ms Cassie Keeling, took Defor to Mr Botes' practice in Broadstairs where he was seen by Mr Botes. He had been seriously injured and was treated promptly at the practice where he was kept overnight. The practice premises are unstaffed out of hours. He was found dead in his kennel on the following morning by Mr Louw who was the veterinary surgeon on duty. He died of respiratory failure.
- 5) The case for the College is that Mr Botes failed in the duty he owed to Defor and Ms Keeling by breaking his promise to her that he would provide ongoing assessment and care and monitor Defor constantly by webcam from his home and visit the practice premises after they closed on the Friday evening. Further that when he knew that the webcam was not operational he did not inform Ms Keeling that it was not working. It is also alleged that he failed to make adequate clinical records at the time of his treatment of the dog. It is alleged that the sub-headings (i) to (iv) on the charge sheet individually or cumulatively amount to disgraceful conduct in a professional respect.
- 6) At the outset of the hearing Mr Edis QC, counsel on behalf of Mr Botes, admitted that Mr Botes failed to provide ongoing assessment to Defor but denied that he had failed to provide care. Although, Mr Edis QC maintains that there continues to be a distinction on the facts of this case that can properly be drawn between assessment and care he accepts that the distinction is essentially one without significance. In any event in the course of giving evidence Mr Botes admitted that he had failed to provide care for Defor overnight. Mr Botes admitted the other allegations set out in the charge against him.
- 7) Mr Edis QC made no submissions on whether the admitted facts constituted disgraceful conduct in a professional respect. However, he did make submissions on the oral and written evidence before the Committee which are relevant to the findings of the Committee on the narrative of events that occurred following the admission of Defor to Mr Botes's practice premises.
- 8) The Committee has carefully considered the evidence adduced before it. The College called Mrs Keeling and her two daughters, Ms Carol and Ms Cassie Keeling, and the practice Head Nurse, Mrs Lashmar to give evidence, and both Mr Botes and Mr Louw gave evidence. It has carefully considered the clinical records and correspondence with the College. It has also considered the provisions of the *RCVS Guide to Professional Conduct* (2006 edition) to which it has been referred.
- 9) In the course of the hearing the Committee has observed the obvious distress that Ms Carol Keeling continues to show as a result of the loss of her dog, Defor, over one year ago. The circumstances surrounding the death of Defor clearly caused and continue to cause considerable distress to Ms Keeling and other members of her family. However, the members of the Committee who are members of the veterinary profession consider

in their professional judgment that the loss of Defor that night was probably unavoidable in the absence of continuous monitoring which was likely to be impractical in general practice.

- 10) There is no major dispute as to the narrative of the events. After Mrs Keeling brought Defor into the practice premises Mr Botes immediately took Defor from Mrs Keeling into the preparation room at the premises. The treatment he undertook is not in dispute and was of a high standard. He administered a general anaesthetic and inserted a chest drain aspirating 100ml of blood which had collected around the dog's lung. An endotracheal tube was inserted by Mr Louw. The dog was put on a drip and medication was administered. Defor was x-rayed. There is a dispute between Mr Botes and Mr Louw on the extent and timing of his involvement. However, there is no dispute that during the course of the afternoon Mr Botes took primary responsibility for the care of the dog assisted at times by Mr Louw who was also seeing his own patients.
- 11) Mrs Keeling's other daughter, Ms Cassie Keeling, collected her sister Carol and brought her to the surgery. There is no dispute that the family, in particular Ms Carol Keeling, was very distressed. Ms Carol Keeling was taken to see her dog. Mr Botes told members of the Keeling family that their dog was seriously ill and would have to remain an in-patient for several days.
- 12) Ms Carol Keeling told Mr Botes that she wanted to stay with Defor overnight, as she did not want him to be left alone, but Mr Botes told her that this was not possible. She asked if she could take Defor home with her and pay to bring home any necessary equipment, but Mr Botes refused. He mentioned that Defor could be sent to Vets Now in Canterbury who offered an overnight service at the Barton Hospital but said that he did not recommend this. He had a previous concern about the quality of the service offered and, in any event, he had no contract with them.
- 13) The system in operation for animals kept at the practice premises overnight was that they would be checked at the end of the late shift and first thing the next morning. In more serious cases, the veterinary surgeon and veterinary nurse on call would arrange to come in at intervals throughout the night.
- 14) Mr Botes offered to set-up a webcam connected to his home computer so that he could monitor the dog overnight. There is an issue as to the extent of the offer which Mr Botes made on which conflicting evidence has been given. Ms Carol Keeling accepted the arrangement and the family left the premises. Later the same day Ms Cassie Keeling telephoned the practice from home to enquire about the dog's progress and to make further enquiries about the arrangements overnight. Initially, she spoke to Mrs Lashmar, Head Nurse, and then was transferred to Mr Botes who explained again that the webcam was connected through the computer and telephone line to his home and that he would therefore be able to watch Defor through the camera in the practice whilst he was at home. Ms Carol Keeling agreed to her dog remaining on the practice premises with these arrangements in place.
- 15) During the course of the afternoon, Mr Louw, who was on overnight call that week expressed his concern that the dog required constant monitoring and should be transferred to Vets Now which Mr Botes refused. There is an issue as to whether he also

offered to take the dog home with him or stay at the practice premises overnight. Mr Botes left the practice at about 6pm after he was satisfied that the dog was stable. The drip had been turned off. He did not set up the webcam before he left nor give any direction to Mr Louw about doing so. Mr Louw was at the premises until about 8pm. He saw patients until about 6pm but he did not see Mr Botes before he left.

- 16) He ascertained that Mr Botes had not connected the webcam before he had left and unsuccessfully attempted to set up it up before discovering that the port where the lead was to be inserted was broken. He attempted to contact Mr Botes by landline and by mobile telephone without success. He left two messages on Mr Botes's landline which Mr Botes did not receive until later the following day. He asked Mr Botes to contact him urgently because the webcam was not working. Apparently, Mr Botes lives in an area where the wireless access to mobile phones is intermittent and unbeknown to him his two-year-old child had removed the receiver from one of his landline telephones. Before he left Mr Louw was satisfied that the dog was in a stable condition. He said that he had considered taking Defor to Vets Now of his own accord or to his home but had decided against this course of action for respect of Mr Botes as his employer, and the fact that Mr Botes had made it clear that he could not make use of Vets Now.
- 17) Mr Louw came in about 7am on the Saturday morning because of his concern about looking after the dog and found that he had died during the night. He tried to contact Mr Botes again by telephone without success. He telephoned Ms Cassie Keeling at about 8.30am to let her know what had happened. Ms Carol Keeling and other members of her family went to the practice at approximately 10.00am that day when Mr Louw explained what had happened. Ms Carol Keeling asked Mr Louw to arrange an autopsy.
- 18) Mr Louw finally was able to discuss what happened with Mr Botes at about 3pm after he had spoken to Mrs Botes on her mobile telephone whilst she was out. Mr Botes made 3 attempts to speak to Mr Louw but he had been busy. Mr Louw told Mr Botes that the dog had died and that he had spoken to Ms Keeling. He asked Mr Botes to telephone the family. Mr Botes did not do so until the Monday morning. Miss Keeling taped the call and a transcript of that call has been produced. Mr Botes said that Mr Louw had been the on call emergency veterinary surgeon but that he, Mr Botes, had been due to monitor Defor via the webcam. He stated that in relation to the incident, "bottom line I was wrong" He maintained that Defor would have died in any event and that even if he had been with the dog 24 hours, minute by minute, he would not have been able to do anything more for him.
- 19) The autopsy concluded that the cause of death was likely to have been respiratory failure and that the significant pathological findings were consistent with traumatic injury.
- 20) About two weeks later Mrs Keeling and Ms Carol Keeling and her partner attended a meeting with Mr Botes and Mr Louw. There is an issue as to the extent to which Mr Botes took responsibility for what had taken place and whether he behaved in an appropriate manner by "smirking" or laughing at Ms Keeling's obvious distress. Mr Botes apologised and again admitted that the cameras had not been working on the Friday night. After members of the Keeling family had left, Mr Louw followed them to

their car. He told them that he was sorry that he had not been able to speak out at the meeting and members of the Keeling family believe that at that stage he told them that in his view Defor had a chance of survival had he been monitored.

- 21) As to what took place during the course of the afternoon the Committee has considered carefully the oral and written evidence before it. It has accepted the evidence given by Mr Botes that Mr Louw was present shortly after the chest drain was inserted into Defor and that Mr Louw inserted the endo-tracheal tube. In reaching this conclusion the Committee placed particular reliance on the written observations that Mr Louw sent to the College on 22 May 2007 which supported this sequence of events.
- 22) It is satisfied that Mr Botes did tell Ms Carol Keeling and members of her family that he would personally monitor the dog overnight with the aid of the webcam. It is not satisfied that the precise words he used were those given in evidence by members of the Keeling family but it is satisfied that he gave them the impression that he would constantly monitor the webcam which the Committee considers was wholly impractical. It is supported in this conclusion by Mr Louw's recollection of overhearing the conversation between Mr Botes and Ms Cassie Keeling as he passed by the room from where Mr Botes was speaking to her.
- 23) Mr Louw's evidence, which is accepted by the Committee, was that during the course of the afternoon he discussed with Mr Botes on at least one occasion the dog being taken to Vets Now in Canterbury. The Committee also accepts Mr Louw's evidence that he offered to take the dog home or to stay at the practice premises overnight. It accepts that Mr Botes was not prepared to agree to any of these courses of action and he told Mr Louw that he would take sole responsibility for the care of the dog overnight. It accepts Mr Louw's evidence that he was told by Mr Botes that he would monitor the dog overnight by webcam and visit the practice premises. In reaching that conclusion it rejects the account given in Mr Botes's written response to the College of 29 May 2007 where it is inconsistent with his oral evidence and where he sought to implicate Mr Louw in the care of Defor on the night in question.
- 24) Mr Botes gave evidence that he intended to set up the webcam before he left the practice premises at about 6pm but forgot to do so. Whilst the Committee expresses concern that he should not have done so when he had specifically promised members of the Keeling family, both at the premises and later on the telephone, that he would monitor the webcam, the Committee is not satisfied on the evidence that he did not intend to do so. The Committee finds that his omission to refer in his written response to the College to his failure to set up the webcam before he left the surgery is unhelpful. However, it has concluded that at the end of a busy week he probably forgot to set up the webcam before he left the practice premises. In this respect the Committee is assisted by the fact that he also failed to make appropriate entries into the clinical records at that time.
- 25) However, Mr Botes's admission that he failed to take any action when he became aware during that evening that he had not set up the webcam was conduct that fell far below the standard to be expected of a member of the veterinary profession and amounted to disgraceful conduct. There is no adequate explanation as to why he did not contact Mr Louw or the animal nurse on duty or attend the premises himself, or

indeed, contact Ms Keeling. Whilst the Committee accepts Mr Botes's evidence that his home telephone was off the hook from sometime on 20 April to the afternoon of 21 April 2007, the Committee has considerable concern that Mr Botes took no steps on the following morning to contact the practice to hand over the care of Defor to Mr Louw, or at the very least make enquiries about the dog's condition overnight. The fact that Mr Botes was building a wall does not excuse him from making contact where he knew that he had broken his promise to Ms Keeling. Again there is no adequate explanation as to why Mr Botes did not contact members of the Keeling family until Monday morning following the telephone conversation he had with Mr Louw on Saturday afternoon. Whilst he may have needed to gather his reserves to make the telephone call he had a professional duty to explain to his client why he had broken his promise to monitor Defor overnight.

- 26) Finally, the Committee does not accept that at the meeting that took place at the beginning of May 2007 between Mr Botes and Mr Louw and members of the Keeling family Mr Botes behaved inappropriately by smirking or laughing at the family's distress. The Committee has had the opportunity of observing Mr Botes in the witness box under pressure and has concluded that any impression to the family that he was not taking the loss of Defor seriously was the result of a nervous reaction on his part at a meeting which all who were present described as tense or fraught.
- 27) For the reasons set out above the Committee concludes that the facts admitted by Mr Botes amount to disgraceful conduct in a professional respect.

DISCIPLINARY COMMITTEE  
19 June 2008