

ROYAL COLLEGE OF VETERINARY SURGEONS

INQUIRY RE:

JAMES DEAN GRACEY (Respondent)

**DECISION AND REASONS ON DISGRACEFUL CONDUCT IN A PROFESSIONAL
RESPECT**

1. The Committee found proved the following Charges: 1(i), 1(ii), 2(i), 2(ii), 3(i), 3(ii), 4(i), 5(a) in relation to Charges 1(i), 1(ii), 2(i), 2(ii), 3(i), 3(ii) and 4(i), 5(b) in relation to Charge 3(ii) and Charge 5(c) in relation to Charge 3(ii).

Summary of the College's submissions on Disgraceful Conduct

1. Ms Bruce, on behalf of the College submitted that individually and cumulatively the charges found proved amounted to disgraceful conduct in a professional respect.
2. In respect of Charges 1, 2 and 5, the College referred to 6.2 of the RCVS Code of Conduct for Veterinary Surgeons (the Code) which provides:

"Veterinary surgeons must certify facts and opinions honestly and with due care, taking into account the 10 Principles of Certification."

3. The Code's supporting guidance makes it clear how important this is:

21.3 Veterinary certification plays a significant role in the control of animal health and welfare, the continuity of European and international trade and the maintenance of public health. Veterinarians have a professional responsibility to ensure the integrity of veterinary certification. The simple act of signing their names on documents should be approached with care and accuracy.

21.4 Veterinarians must certify facts and opinions honestly and with due care, taking into account the 10 Principles of Certification set out below. They should not sign certificates which they know or ought to know are untrue, misleading or inaccurate. This applies equally to hand-written, printed and electronic certificates.

4. Ms Bruce emphasised that the 10 Principles of Certification makes clear (Principle 2) that *“Veterinarians should not issue a certificate that might raise questions about a possible conflict of interest”*. Further, that: *“veterinarians should not allow commercial or other pressures to compromise their impartiality”*.
5. Ms Bruce also drew the Committee’s attention to the fact that by the very nature of their professional status, veterinary surgeons are entrusted with particular powers and privileges in relation to certification. It is vital that they use that power responsibly and honestly. To abuse the privilege has a detrimental effect on animal welfare, public health and in turn public confidence in the profession.
6. The College submitted that the Respondent’s conduct undermined fundamental principles of the profession when he certified documents in circumstances where there was a conflict of interest and where concerns in relation to both animal welfare and the integrity of the food chain arose. The College notes that the Committee found that the Respondent lacked insight into his conduct in that his understanding of a conflict of interest was inadequate.
7. The College further submitted that in respect of Charge 3 and Charge 5, the Committee had found that the Respondent was dishonest when he certified that no treatment had been administered to an animal which he himself had injected with Marbanor and Ketapofen. The College submitted that dishonesty represents a breach of one of the fundamental tenets of the profession. The Code of Professional Conduct for Veterinary Surgeons provides that one of the five key principles that must be maintained by registrants is *“honesty and integrity”*. In addition, section 6.5 of the Code provides: *“Veterinary Surgeons must not engage in any activity or behaviour that would be likely to bring the profession into disrepute or undermine public confidence in the profession.”*
8. Ms Bruce also drew the Committee’s attention to the Disciplinary Committee’s Procedure Guidance (August 2020) (the DC Guidance) (paragraph 76) which provides: *“Proven dishonesty has been held to come at the top end of the spectrum of gravity of disgraceful conduct in a professional respect. In such cases, the gravity of the matter may flow from the possible consequences of the dishonesty as well as the dishonesty itself.”*
9. Finally, the College submitted that the Respondent’s conduct when considered either individually and/or cumulatively fell far below the standard expected of a reasonably competent veterinary surgeon in issues that lie at the heart of the veterinary surgery namely: full and accurate certification, impartiality and being alert to the dangers of conflict, maintenance of the integrity of the food chain and animal welfare and avoidance of suffering are paramount.

Summary of the Respondent’s submissions on Disgraceful Conduct

10. Mr Eissa KC’s submissions on behalf of the Respondent were made both in writing and orally. Mr Eissa KC confirmed that the Respondent conceded that in respect of Charge 3 and Charge 5, the Committee’s findings which included dishonesty would amount to serious professional misconduct or disgraceful conduct in a professional respect.

11. Mr Eissa KC submitted that in respect of Charges 1 and 2, the Committee's findings amounted to an honest error of judgment which had given rise to a potential as opposed to actual conflict of interest and that this did not amount to disgraceful conduct in a professional respect.
12. Mr Eissa KC also submitted that the Committee should take into account the following mitigating factors at Stage 2 in respect of Charges 1 and 2: no actual harm or any risk of harm to an animal or human, no financial gain, youth and inexperience, open and frank admissions (the Respondent had always admitted signing the documents and never sought to hide that the documents related to animals owned by his father), subsequent efforts to avoid repetition of such behaviour, subsequent efforts to remediate past misconduct (the Respondent had not repeated his error since the incident once he was made aware of the potential for conflict), significant lapse of time since the incidents. He also submitted that the Respondent had said he only ever included post-nominals at the request of an Official Veterinarian (OV) and that the lapse in judgment by the Respondent of including them was not an obvious error to another veterinary surgeon who gave evidence.
13. In respect of Charge 5 as it relates to Charges 1 and 2, Mr Eissa KC submitted 'that the limited nature and extent of the risk to procedures intended to promote public health and animal welfare is not so substantial as to justify a finding of disgraceful conduct in a professional respect'. He submitted that on the scale of gravity, these charges fell at the bottom of the scale.
14. In respect of Charge 4, Mr Eissa KC submitted that the conclusion of the Committee amounted to a finding that the Respondent made an honest error of clinical judgment in difficult circumstances and that this did not amount to disgraceful conduct in a professional respect. The fact that the Committee ultimately preferred the opinion of Professor Statham over Dr Sibley was indicative of the complexity of the situation with which the Respondent was confronted.
15. In respect of Charge 5, Mr Eissa KC submitted that the duration of travel, approximately 30 minutes is a material factor to the question of whether the Respondent's actions amounted to disgraceful conduct in a professional respect.
16. Finally, Mr Eissa KC clarified that the Respondent remains appointed as an OV.

The Committee's findings and reasons on Disgraceful Conduct in a Professional Respect.

17. The Committee took into account all the submissions made by Ms Bruce and Mr Eissa KC. It also took into consideration the advice of the Legal Assessor and the DC Guidance which required the Committee to take into account at this stage only mitigating factors which are relevant as to whether the facts found proved amount to disgraceful conduct in a professional respect. It noted that it should not take into account at this stage mitigating factors that amount to purely personal mitigation and which are not relevant to the circumstances of the charge. (paragraph 27).

18. The Committee further noted that the test for considering whether behaviour found proved amounts to disgraceful conduct in a professional respect is whether the conduct of the veterinary surgeon falls far short of that which is expected of a member of the veterinary profession. The DC Guidance states that this is conduct described as 'serious professional misconduct' (paragraph 23). The Committee had regard to the relevant provisions of the Code of Professional Conduct for Veterinary Surgeons and the Code's supporting guidance including the 10 Principles of Certification. Further the Committee took into account whether the Respondent's conduct would undermine public confidence in the veterinary profession or whether the conduct undermined the promotion and maintenance of proper professional standards and conduct in the profession. The Committee noted that paragraph 6.5 of the Code of Professional Conduct for Veterinary Surgeons and Supporting Guidance (the Code) prescribes that veterinary surgeons must not engage in any activity or behaviour likely to bring the profession into disrepute or undermine public confidence in the profession.
19. The Committee considered which aggravating and mitigating factors were relevant to its decision at this stage before deciding whether in its judgement the conduct amounted to disgraceful conduct in a professional respect. It reviewed those sections of the Code which it had already found were contravened or engaged: section 4, section 6, section 21 (paragraph 42, 48, 92 of its decision on findings of facts).
20. In the Committee's judgment the matters it had found proved amounted to disgraceful conduct in a professional respect, both individually and cumulatively.

Charge 3(i), 3(ii) and Charge 5(a), 5(b) and 5(c).

21. In respect of Charge 3(i) and 3(ii), the Committee noted the following factors which it considered aggravated the conduct it had found proved: that there was a risk to humans, there was the potential for financial gain for the Respondent's father (albeit the OV had taken this animal out of the food chain).
22. The Committee concluded that in respect of Charge 3 and Charge 5, the matters it had found proved fell far below the standard to be expected of a reasonably competent veterinary surgeon. The Committee had concluded the Respondent was dishonest when he had signed an Emergency Slaughter form and made the declaration set out at Charge 3(ii) that he had not administered any treatment to the cow when he had in fact administered Marbanor and Ketapofen within the previous seven days of signing the form. Both Professor Statham and Dr Sibley agreed that the Respondent's actions, enabling the carcass to go to the abattoir to potentially enter the food chain, when he knew that he had administered medication, was conduct which amounted to serious professional misconduct. In the Committee's view the Respondent was responsible for observing the correct withdrawal periods had been met. The Committee noted that the cow had not been transferred into the food chain because the OV at the abattoir had condemned the carcass as being unfit for human consumption because of the presence of septicaemia. Although fortuitous that the animal did not enter the food chain the Committee did not view this as mitigation of the Respondent's actions.

23. The fact the Respondent had written the word “none” on the Emergency Slaughter form when he had signed it on 6 April 2017 after he himself had administered medication on two occasions on the 31 March 2017 and 3 April 2017 was dishonest conduct. By not observing withdrawal periods which also related to the potential development of anti-microbial resistance in humans (as noted in the Committee’s reasons on its ‘Findings of Fact decision’ paragraph 118), the Committee considered this a factor which added to the gravity of the misconduct proved in Charges 3 and 5.

Charges 1(i), 1(ii), 2(i), 2(ii) and 5(a)

24. The Committee found no aggravating factors in respect of Charges 1 and 2.

25. The Committee noted the following mitigating factors in respect of these charges: there was no actual harm to an animal or risk of harm to an animal, there was no evidence of financial gain to the Respondent.

26. The Committee was not persuaded by Mr Eissa KC’s submissions in respect of two other mitigating factors: that the Respondent only included his postnominals at the request of an OV or in respect of Ruth La Fuente’s evidence in relation to conflict.

27. The Committee reviewed the evidence that had been given, and noted that the Respondent had given evidence that an OV had ‘said it would be helpful for them to know if the person who has seen [the animal] was a vet because they could understand there has been more of a clinical approach to seeing that animal from a keeper’s term.’¹ The Committee was therefore not persuaded that this was a mitigating factor because it had found that the Respondent when signing those forms should himself have appreciated that further details about him were necessary and required. This was particularly the case where there was a conflict of interest or potential conflict by so signing because the cows belonged to his father. Neither did the Committee consider that the view of another OV (Ruth LaFuente) was relevant or mitigated the position of the Respondent, because it was important for the Respondent himself as a veterinary surgeon to have considered and understood what was necessary when signing the forms and whether there was any actual conflict or potential conflict; by referring if needs to be to the 10 Principles of Certification.

28. The Committee found that the matters drawn to its attention as mitigating these charges of: youth and inexperience, being open and frank about signing the documents, subsequent efforts to avoid repetition of such behaviour, subsequent efforts to remediate past misconduct and the significant lapse of time since the incidents were all matters which were relevant to stage 3 and sanction but which were, according to the Disciplinary Guidance, matters of personal mitigation, not relevant at this stage of the proceedings.

29. The Committee’s findings on these charges meant there was a risk that the Respondent’s actions undermined procedures designed to promote public health and animal welfare. In the Committee’s judgment the signing of each form in the circumstances in which he did amounted to serious misconduct because the risks of doing so undermined the reputation of the profession, the integrity of the food chain and animal welfare.

¹ Day 6 page 845

30. The Committee noted that the Respondent's actions clearly contravened principle 2 and principle 6 of the Principles of Certification in the RCVS Code of Conduct relating to guidance clearly advising veterinary surgeons NOT to issue certificates that might raise questions of a possible conflict of interest and to ensure that the certificate includes not only their signature but also in clear lettering, their name, qualifications and address and (where appropriate their official or practice stamps). The Committee further noted that in Professor Statham's opinion such conduct fell far below the standard expected of a reasonably competent veterinary surgeon. In the Committee's judgment these two breaches of the ten principles of certification was sufficient to amount to disgraceful conduct in a professional respect particularly where it included an undeclared potential or actual conflict of interest combined with a failure to fully complete the form with the veterinary surgeon's required details.
31. The 10 Principles of Certification require veterinary surgeons to be open and transparent on such forms especially because they relate to both animal welfare and the integrity of the food chain. The Committee did not accept Mr Eissa KC's submission that these matters were 'not so substantial' as to justify a finding of disgraceful conduct in a professional respect. The Committee's judgment was that the contravention of the Principles of Certification together amounted to serious professional misconduct individually for Charge 1 and individually for Charge 2. It therefore did not agree with Mr Eissa KC that Charge 1 or Charge 2 fell at the bottom of the scale of gravity for these charges.

Charges 4(i) and 5(a)

32. The Committee had found that the animal was not fit to travel. It therefore found these charges were aggravated because there was a risk of harm to the animal by the Respondent's actions. Both experts had agreed that the animal would have been suffering and there was only disagreement between them on the extent of that suffering in relation to transporting the animal. Both experts agreed it was in the animal's best interest to have its suffering to be terminated on the farm.
33. The Committee concluded that there was evidence of a risk of the animal's suffering being aggravated due to being transported to the abattoir. Further it found that the Respondent's signing of a letter certifying the animal was fit to travel failed to prioritise the animal's welfare above all other factors.
34. The Committee was not persuaded that this was an 'honest error of judgment in difficult circumstances' because it considered that the pain and suffering the animal was in should have been easily recognised by a reasonably competent veterinary surgeon, especially one working largely in farm animal practice. In the Committee's judgment the Respondent's failure had resulted in a risk of unnecessary suffering to the animal.
35. The Committee took into account the journey time was short but it did not find that this amounted to a mitigating factor because the animal would have been suffering throughout the period of time that it was transported when it was not fit to be transported anyway. His decision to send the animal to slaughter without alleviation of its suffering, which could

have been promptly achieved by humane destruction or analgesia, was not adequately considered despite it being a primary duty for him to do so.

36. It therefore found that this conduct fell far below the standard to be expected and amounted to disgraceful conduct in a professional respect.
37. Finally, the Committee considered cumulatively all matters it had found proved. It concluded that the public relies on veterinary surgeons to be honest and transparent when completing and signing forms. There is a public interest in being able to trust the profession to uphold high standards of probity because veterinary surgeons play an important role in the promotion of animal health and welfare and associated human health. The Committee therefore concluded that cumulatively Charges 1, 2, 3 and 4 amounted to serious professional misconduct because the Respondent had failed to meet the necessary high standards of probity and transparency.
38. The Committee is satisfied that such conduct, when taken together, would be considered deplorable by other members of the profession. The Respondent's conduct on four occasions in respect of four animals and three conflicts of interest called into question his competence in relation to completing such forms. The Committee therefore concluded that altogether such conduct cumulatively amounted to disgraceful conduct in a professional respect because altogether it would seriously undermine the reputation of the profession and public confidence in the profession.

Errata

39. The Committee noted that it a typo on its previous decision required amending at paragraph 91 whereby BMR should be VMR.
40. The last sentence of paragraph 73, should be amended to read "There was no animal identification on Section B of Appendix B (Veterinary Surgeon's Declaration), so it would have had no value without forming part of the entirety of that form.

Disciplinary Committee
Friday 2 December 2022