

ROYAL COLLEGE OF VETERINARY SURGEONS

INQUIRY RE:

JOHN GUNN MRCVS

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

1. The Committee has proceeded on the basis that conduct is disgraceful in a professional respect when it falls far short of that which is to be expected of a reasonably competent member of the profession. It declined to reach a conclusion where it was not so satisfied.
2. The Committee heard submissions from Mr Bradly and Mr Forde Q.C. on whether the facts the Committee had found proved amounted to disgraceful conduct in a professional respect or professional misconduct.
3. The Committee received written submissions from both Mr Bradly, on behalf of the College, and from Mr Forde Q.C. on behalf of the Respondent, as to the approach the Committee should take on the law in exercising its judgement in relation to disgraceful conduct.
4. There was agreement on the law as set out by the parties and the advice given by the legal assessor.
5. Set out below is a summary of the submissions made by Mr Bradly and Mr Forde Q.C.

The College's case

6. Mr Bradly, on behalf of the College, submitted that the conduct found proved by the Committee amounted to disgraceful conduct in a professional respect for each individual head of charge. Alternatively, he submitted that if the Committee did not find the conduct fell far below the standard to be expected but that if it fell below the standard to be expected, he invited the Committee to find that cumulatively the charges amounted to disgraceful conduct in a professional respect.

7. Mr Bradly relied on the opinion of Mr Maltman MRCVS who had set out in a written report and who had given evidence before the Committee that the conduct fell far below the standard to be expected of the ordinarily and reasonably competent veterinary surgeon in respect of each of the charges found proved.
8. Mr Bradly submitted that the charges found proved could not be seen as a single or isolated act of negligence. He asked the Committee to consider the length of time over which the charges found proved had occurred and the fact that they were to the detriment of Pippa's welfare. He submitted that the failure to communicate openly and adequately with Pippa's owners had resulted in them not understanding properly what was happening, and later, a lack of informed consent to the treatment administered. Mr Bradly submitted that this was a serious departure from the RCVS Code of Professional Conduct for Veterinary Surgeons (RCVS' Code).
9. Mr Bradly further submitted that the absence of clinical records during the period, after 11 January 2018, and the failure to provide a full history to Vets Now when Dr Gunn referred Pippa, also amounted to disgraceful conduct in a professional respect because those failures had the potential to put Pippa's welfare at risk.
10. Finally, Mr Bradly submitted that the conversations that Dr Gunn had with Vets Now resulted in Dr Gunn disclosing confidential information about BC and DE that was inaccurate. He submitted that not only was this a disclosure of confidential information about BC and DE's financial circumstances which was wrong, but that such information had been disclosed without their permission. This he submitted also amounted to disgraceful conduct in a professional respect.

The Respondent's case

11. Mr Forde Q.C. on behalf of Dr Gunn submitted that the conduct found proved did not amount to disgraceful conduct in a professional respect for each individual charge. Further, he submitted that even if the charges found proved were considered cumulatively they did not amount to disgraceful conduct in a professional respect. Mr Forde Q.C. cautioned the Committee against finding the charges cumulatively could amount to serious misconduct if the Committee found that individually they did not amount to serious misconduct. Mr Forde Q.C. relied upon the opinion of Mr Jessop to say that the conduct found proved either fell below or did not fall below the standard to be expected of a veterinary surgeon.
12. Mr Forde Q.C. asked the Committee to bear in mind that the charges covered a three week period and only related to a single animal. He submitted that the facts found proved related to a series of errors of judgment which was a position all professionals might find themselves in. Mr Forde Q.C. asked the Committee to take into account that Dr Gunn had sought to do the best for Pippa, in that he was determined to repair her wound. Mr Forde Q.C. submitted therefore that Dr Gunn's conduct could not be said in the circumstances to fall far below the standard to be expected of the reasonably competent veterinary surgeon.
13. Mr Forde Q.C. invited the Committee to consider Dr Gunn's failings alongside his previous good clinical history because it was important to consider his failings in that context. He submitted that although the Committee's findings indicated that Dr Gunn referred Pippa later than he should have done, this was not conduct which could be described as serious misconduct. Mr Forde Q.C. drew the Committee's attention to two testimonials in which Dr Gunn had behaved appropriately in referring dogs under his care, so the Committee could take into account that this was not Dr Gunn's usual practice.

14. Mr Forde Q.C. submitted that the Committee's findings on Dr Gunn's failures in communication did not amount to Dr Gunn deliberately not communicating with Pippa's owners. Such failures related to the adequacy of communication rather than the fact that there was no communication, and therefore, he submitted that mitigated matters. Further, in relation to informed consent, Mr Forde Q.C submitted that Dr Gunn's failings, as the Committee found them to be, was in persisting with the same treatment after he had consent to treat the wound; which was less serious than having had no consent at all.
15. Mr Forde Q.C. further submitted that failures in clinical record keeping rarely amount to serious misconduct and that the failures by Dr Gunn should be seen in that context, Further, the result of those failures did not cause Pippa any harm and Vets Now had sufficient information to treat her successfully. The absence of records did not affect the outcome of treatment for Pippa.
16. Finally, Mr Forde Q.C. submitted that the failures in Dr Gunn's communications with Vets Now about the financial position of BC and DE should also be viewed in context. Dr Gunn had by 9 February 2018 received a letter from BC and DE asking him to indemnify them for treatment and Dr Gunn had also received a call from the People's Dispensary for Sick Animals. Dr Gunn had communicated BC and DE's financial position because he was genuinely concerned about it and because he wanted to preserve his relationship with the referral practice for the benefit of future clients.

The Committee's decision

17. The Committee took account of all of the legal advice put before it by the College, the Respondent and the legal assessor before exercising its judgement. The Committee considered all of the oral and written submissions.
18. In deciding whether the facts proved in each head of charge, amounted to disgraceful conduct in a professional respect, the Committee considered whether there were any aggravating or mitigating factors relevant to the circumstances of each charge, in accordance with the Disciplinary Committee's Procedure Guidance (2013) paragraph 16.
19. The Committee exercised its judgement without applying the benefit of hindsight in relation to whether the charges amounted to disgraceful conduct in a professional respect. It further applied the standard of the ordinarily and reasonably competent veterinary surgeon in general practice when deciding whether Dr Gunn's conduct fell far short of that which is expected of a member of the veterinary profession. It also took into account all of the caselaw which the parties submitted and noted that for conduct to amount to professional misconduct or disgraceful conduct in a professional respect, the conduct had to be serious.
20. The Committee considered the evidence of Mr Maltman and Mr Jessop when deciding on whether each charge amounted to disgraceful conduct in a professional respect but it also exercised its own judgment having heard all the evidence. Its findings of fact referred to when the Committee had found a breach of the RCVS' Code. However, the breaches of the Code alone did not determine the Committee's findings on whether there was serious professional misconduct.
21. The Committee took account of the matters that Mr Forde Q.C. relied upon which mitigated the conduct but in the Committee's judgement the context and mitigating factors were insufficient for the Committee to find that there was no serious

misconduct. The Committee considered the testimonial evidence and Dr Gunn's previous good history but it did not consider that those matters were helpful in judging whether the behaviour it had found proved was sufficient to amount to serious professional misconduct.

22. The Committee considered each charge separately. It found serious professional misconduct and conduct which fell far below the standard to be expected in relation to the following charges when considered individually : charge 1, charge 2, charge 3, charge 4 and charge 6(b), 6(c), 6(d) and 6(e). It found the conduct to fall below the standard to be expected in relation to charge 6(a).

Charge 1

23. The Committee found the following aggravating factor:

- Pippa's suffering was prolonged because of the persistence of Dr Gunn in pursuing a single ineffective treatment approach.

24. The Committee found the following mitigating factors:

- Pippa was treated with pain relieving medication
- Dr Gunn's intention was to do the best he could for Pippa and to fix her wound
- Dr Gunn's was concerned for the welfare of Pippa.

25. The Committee noted that even though the conduct related to a single animal, the clinical failings persisted from 20 January 2018 until 2 February 2018. The Committee concluded that each time Dr Gunn operated on the wound, it was enlarged because he had (as he said) to debride the wound before attempting to close it. The Committee found there were six times that this surgical procedure occurred and this repetition would have caused Pippa more discomfort each time as well as reducing the overall likelihood of success. The Committee took into account that Dr Gunn had not intended to cause Pippa discomfort and that he had sought to try to repair her wound each time it broke down.

26. The Committee noted that Mr Jessop stated that the actions of Dr Gunn were possibly prolonged but did not fall below the standard of a reasonably competent small animal veterinary surgeon. Mr Maltman stated that Dr Gunn's failure to recognise infection in the wound, to recognise that Dr Gunn had left the scope of his competency when the wound broke down for a third time and because he did not significantly alter his approach during the period of Pippa's inpatient stay meant that his conduct fell far below the standard of the a reasonably competent veterinary surgeon.

27. The Committee preferred the opinion of Mr Maltman over Mr Jessop because in relation to charges 1(a), 1(b), 1(c) and 1(d), in the Committee's judgement, the conduct found proved, went to the heart of a veterinary surgeon's clinical practice. In the Committee's judgement, the failure to provide appropriate and adequate care to Pippa in the circumstances of in excess of seven surgical procedures, including closing the wound six times, fell far below the standard to be expected and therefore amounted to serious professional misconduct.

Charge 2.

28. The Committee found no aggravating or mitigating factors in relation to this charge. It noted that there was a breach of paragraph 2.4 of the RCVS' Code.
29. The Committee's decision on findings of fact set out that it was satisfied that the text communications by Dr Gunn were at times both inadequate and inaccurate. Further, Dr Gunn had also communicated inaccurate personal information to Vets Now about BC and DE's financial circumstances.
30. The Committee preferred the opinion of Mr Maltman who stated that Dr Gunn's use of text messages in these circumstances fell far below the standard to be expected of a reasonably competent veterinary surgeon because Dr Gunn not only failed to communicate adequately but he was also unable to ensure that BC and DE had understood what he was communicating to them. The Committee rejected Mr Jessop's opinion which was reliant on the texts being accurate.
31. The Committee found Charge 2(c) to be particularly serious and in its judgement it alone amounted to serious professional misconduct because BC and DE did not have explained to them the treatment proposed or carried out on Pippa after 16 February 2018. Dr Gunn failed to advise them about the risks of treatment and the prognosis of Pippa as the wound deteriorated.
32. The Committee was satisfied in relation to Dr Gunn's poor communication as set out in this charge that the particulars cumulatively fell far below the standard to be expected and therefore amounted to serious professional misconduct.

Charge 3

33. The Committee found no aggravating or mitigating factors in relation to this charge. The Committee noted that there was a breach of paragraph 11.1 of the RCVS' Code.
34. The Committee was satisfied that there was a persistent failure to obtain informed consent for Pippa for all the surgical procedures that took place after the first surgical procedure on 16 January 2018.
35. Mr Maltman stated that informed consent was fundamental to the practice of a veterinary surgeon and in this case Dr Gunn had persistently disregarded the need to obtain informed consent from BC and DE. The Committee accepted Mr Maltman's opinion that informed consent is fundamental to a veterinary surgeon's practice. Although the Committee accepted the absence of informed consent was for largely the same surgical procedure the Committee was not persuaded that this provided much mitigation because BC and DE had been particularly concerned about the risk to Pippa in having a general anaesthetic. The Committee noted that anaesthesia was not without risk. However, in Dr Gunn's favour, both experts had confirmed that the repeated anaesthesia for each individual surgical procedure would be no more risky than the last; but that was not known to Pippa's owners at the time.
36. The Committee's findings of fact had rejected Mr Jessop's opinion that the consent given when Pippa was readmitted on 16 January 2018 and the treatment given thereafter was a continuation of the same treatment and did not require continued consent to be given. The Committee was satisfied that the treatment administered required options, risks, prognoses and costs to have been discussed with Pippa's owners before each further surgical procedure and general anaesthetic; particularly because Dr Gunn was aware of BC and DE's concern about general anaesthesia.

37. The Committee noted that Mr Jessop had stated in oral evidence that if there was no evidence of discussion and no evidence of any acceptance of any treatment, Dr Gunn's conduct would fall far below the standard to be expected of a reasonably competent veterinary surgeon but if there was some consent of some form then it would fall below the standard to be expected and not amount to serious professional misconduct.
38. The Committee was not persuaded that the replies to texts by Pippa's owners could amount to informed consent in the circumstances. It preferred the opinion of Mr Maltman that there was a lack of informed consent which amounted to serious professional misconduct. In the Committee's judgement the initial consent was insufficient for the reasonably competent veterinary surgeon to rely upon for all subsequent procedures and anaesthetics it disagreed with Mr Jessop on that basis.
39. The Committee was therefore satisfied that the conduct set out in charge 3 fell far below the standard to be expected and therefore amounted to serious professional misconduct.

Charge 4

40. The Committee found no aggravating or mitigating factors in relation to this charge. The Committee noted that there was a breach of paragraph 2.5 of the RCVS' Code.
41. The Committee noted Mr Forde Q.C.'s submission that a failure to make a clinical record alone would rarely amount to serious professional misconduct. However, having determined as part of its findings of fact that the texts did not amount to a clinical record, because they were inaccurate and incomplete, the Committee found there to be serious professional misconduct. Other than the limited information that was in the text messages, there were no clinical records for eight surgical procedures under general anaesthetic and the absence of records from 16 January 2018 to 2 February 2018 was in the Committee's judgement serious.
42. The Committee preferred the opinion of Mr Maltman, that the complete absence of a clinical record included, but was not limited to, the failure to record the use of drugs and their dosages and all medical and surgical interventions and details of any nursing care or basic observations. This was conduct, which fell far below the standard to be expected of a reasonably competent veterinary surgeon. The Committee had found the text messages difficult to interpret and it had taken some considerable time in evidence to understand them. In its view the texts did not amount to a clear clinical record particularly because Dr Gunn had explained in evidence that when he had written morphine in texts he had not used morphine but had used buprenorphine (trade name vetergesic) and when he had written skin grafts these were not actually grafts as clinically understood. It had also been difficult to ascertain the precise number of general anaesthetics that Dr Gunn had carried out from the text messages.
43. The Committee was therefore not persuaded that the opinion of Mr Jessop was correct when he said that this conduct did not fall below the standard to be expected. Mr Jessop had based his opinion on the Committee finding that the text messages provided an accurate documentation of Pippa's care. The Committee was satisfied that the texts did not provide consistently full or accurate information which a clinical record would have done. Mr Jessop's opinion also relied on daily communication by text which the Committee had found was insufficient as a sole means of communication in these circumstances, and which it had also found was an insufficient substitute for a clinical record.

44. The Committee was therefore satisfied that the facts found proved in relation to charge 4, fell far below the standard to be expected and therefore amounted to serious professional misconduct.

Charge 6(a)

45. The Committee took into account that Dr Gunn had offered Vets Now the ability to speak to him at any time after Pippa's transfer and that Dr Gunn had provided Vets Now with sufficient information so that Pippa could be treated. The Committee was therefore not persuaded that the conduct found proved under charge 6(a) fell far below the standard to be expected and it therefore it did not amount to serious professional misconduct. It concluded that the conduct fell below the standard to be expected of a reasonably competent veterinary surgeon.
46. The Committee agreed with the opinion of Mr Maltman and disagreed with the opinion of Mr Jessop on this charge. It was not persuaded by Mr Jessop's opinion which stated that such conduct did not fall below the standard to be expected of a reasonably competent veterinary surgeon. The Committee noted that there was a potential risk to Pippa by Dr Gunn's failure to supply a complete history and in its judgement this was conduct that fell below the standard to be expected albeit not far below.
47. The Committee therefore found that facts found proved in relation to charge 6(a) fell below the standard to be expected but did not amount to serious professional misconduct.

Charge 6(b), 6(c), 6(d) and 6(e)

48. The Committee noted that the fact of this charge amounted to a breach of client trust and a breach of Dr Gunn's duty of confidentiality to his clients.
49. The Committee found Dr Gunn's failure to tell Vets Now that BC and DE had always paid his bills, including the bill for Pippa's treatment on 11 January 2018 for removal of the lipoma, was a significant omission. The Committee considered that it was grossly unfair for Dr Gunn to have omitted to tell Vets Now that he had not even issued a bill to BC and DE for the treatment between 16 February 2018 and 3 February 2018, when he had told Vets Now so much else about the finances of BC and DE. It noted that what Dr Gunn said about BC and DE's finances was also wrong; albeit that Dr Gunn had spoken in those terms because he believed that what he was saying was true. It found the conduct under charge 6 to be serious misconduct because it was inaccurate. It noted that the conversations had the potential to affect Pippa's treatment plan by Vets Now.
50. The Committee accepted the opinion of Mr Maltman who stated that in expressing his views to Vets Now about BC and DE's financial means his conduct fell far below the standard to be expected. The Committee rejected Mr Jessop's opinion in which he stated that this fell below the standard to be expected but not far below. The Committee also noted Mr Forde's submissions as to the context of these calls, including the letter of 6 February 2018 from BC and DE to Dr Gunn but it did not consider lent much weight in mitigating Dr Gunn's actions.

51. In the Committee's judgement even taking into account the circumstances as Dr Gunn believed them to be, speaking about BC and DE in such disparaging terms in three phone calls to another veterinary practice was in the Committee's judgement serious professional misconduct.
52. The Committee therefore decided that cumulatively the particulars found proved under Charge 6 fell far below the standard to be expected and therefore amounted to serious professional misconduct.

DISCIPLINARY COMMITTEE
8 NOVEMBER 2019