

INQUIRY RE:

DR SYLWIA MARIA KALISZ MRCVS

**COMMITTEE DECISION ON
FINDING OF FACT**

1. Sylwia Maria Kalisz (SK) is a veterinary surgeon who was working at the Buchanan Veterinary Group on 15 July 2020. The charges are particularised as follows:

That, being registered in the register of veterinary surgeons, and whilst in practice at the Buchanan Veterinary Group at 77 Princess Road, Urmston, Manchester, M41 5SQ (“the practice”), in relation to Stella, a Cocker Spaniel belonging to Mr RS and Ms LCS, you:

1. On 15 July 2020 in relation to your care of Stella:
 - a. failed to carry out a full clinical examination
 - b. failed adequately to interpret the results of an ultrasound examination and/or clinical examination;
 - c. failed adequately to interpret radiographs;
 - d. failed to ask for assistance to interpret the ultrasound images and/or radiographs referred to above;
 - e. proceeded to undertake an emergency Caesarean section when there was no urgent need for such surgery;

2. On 15 July 2020 in relation to informed consent:
 - a. failed to obtain informed consent from RS and/or LCS for an emergency Caesarean section;
 - b. during surgery on Stella, having found the uterus not to be gravid, continued to spay Stella without first speaking to RS and / or LCS

- yourself, and/or instructing another member of staff to do so on your behalf, to ensure that consent was still given for that spay;
- c. failed to obtain informed consent for an colotomy;
3. On 15 July 2020, in relation to an colotomy on Stella:
 - a. undertook the colotomy when there was insufficient clinical justification to do so;
 - b. undertook the colotomy without having adequately identified the relevant part of the intestine;
 - c. used Maxon 3 metric suture material when this was an inappropriately sized suture to use;
 - d. used an inappropriate suture method;
 - e. failed to providing or arrange for overnight in-patient care for Stella following the colotomy;
 4. On 15 July 2020, when Stella was discharged to RS and LCS, failed to inform them:
 - a. of the colotomy procedure you had carried out;
 - b. of the potential risks following the colotomy;
 - c. of the aftercare Stella required;
 - d. that in-patient overnight care was indicated for Stella;
 5. On 17 July 2020, when Stella was re-presented at the practice:
 - a. failed to identify and/or take sufficient steps with regards to the possibility of complications resulting from the colotomy;
 - b. failed to undertake a full clinical examination;
 - c. failed to undertake blood tests;
 - d. failed to provide intravenous fluid therapy;
 - e. failed to carry out any imaging;
 - f. failed to undertake an adequate assessment of pain;
 - g. failed to admit Stella for hospitalisation and/or further investigations, or alternatively arrange for Stella to be brought to the practice later that same day;
 - h. following telephone calls from RS and/or LCS on 17 July 2020 after Stella had been taken home from the practice earlier on that date, failed to ask them to bring Stella back to the practice;
 6. On 18 July 2020, following two telephone calls from RS and/or LCS on 18 July 2020, failed to obtain sufficient information from them and/or ask them to bring Stella back to the practice;

7. On 18 July 2020, once Stella was re-presented to the practice, failed to:
 - a. identify and/or take sufficient steps with regards to the possibility of complications resulting from the colotomy;
 - b. undertake a full clinical examination;
 - c. undertake blood tests;
 - d. undertake abdominocentesis;
 - e. provide intravenous fluid therapy;
 - f. carry out any imaging;
 - g. admit Stella for hospitalisation and/or further investigations;
 - h. on discharging Stella, inform RS and/or LCS on how to contact an emergency veterinary surgeon should there be a deterioration in her condition;
 - i. provide the out of hours veterinary surgery with a full history for Stella;

8. Between 15 July and 18 July 2020:
 - a. failed to make any reference to the colotomy in clinical records for 15 July 2020 and /or 17 July 2020 and/or 18 July 2020;
 - b. stated that the surgery you carried out on 15 July 2020 had been uneventful;
 - c. between 16 July 2020 and 18 July 2020, failed to tell RS and/or LCS about the colotomy;
 - d. during a telephone call with your clinical director on 15 July 2020, following the surgery, failed to inform her of the colotomy;

9. Your conduct in relation to 4a and/or 8 above was:
 - a. dishonest and/or
 - b. misleading;

AND it is alleged that in relation to the above matters, whether individually or in any combination, you are guilty of disgraceful conduct in a professional respect.

2. SK admitted the following charges: 1b, 1e, 2c, 3a, 3b, 3c, 4a, 4b, 4c, 5b, 5c, 5d, 5e, 5g (in the alternative), 5h, 6, 7a, 7b, 7c, 7d, 7e, 7f, 7g, 7h, 7i, 8a, 8b, 8c and 9b.

3. The College at the close of their case withdrew charges: 1d, 3d and 3e.

4. The remaining charges were denied.

5. The witnesses, and their respective involvement in the matters in question, are as follows:
 - Ryan Standish (RS). Owner. Gives evidence of Stella's presentation, and the interactions he had with SK.
 - Lindsay Curtis-Standish (LCS). Owner. As above.
 - Jenna Blackburn MRCVS (JB). One year qualified veterinary surgeon at the time. Conducted ultrasound on 12 June 2020. Gave second opinion during ultrasound on 15 July 2020. Assisted in surgery on 15 July 2020.
 - Aliasha Joan Maree Tait RVN (AT). Assisted with ultrasound scan on 12 June 2020. Attended ultrasound scan, X-ray, and part of the surgery, on 15 July 2020. Handed Stella over at discharge on 15 July 2020.
 - Amelia (Amy) Sarah Owen RVN (AO). Present during ultrasound scan and X-ray on 15 July 2020. Accompanied SK to speak to owner with findings. Present throughout the surgery. After the surgery, sat with SK whilst she called the owners.
 - Kelly Anne Dos Santos Costa RVN (KC). Conducted post-op check on 17 July 2020 and consulted with SK.
 - Katie Hollingworth MRCVS (KH). PetMedic vet. Operated on Stella on 19 July 2020, and discovered the hole in Stella's colon.
 - Charlotte Dobson MRCVS (CD). Clinical Director at Buchanans. SK called CD shortly after the surgery on 15 July 2020. CD interviewed SK on 30 July 2020 about the case.
 - Louise Woodhall MRCVS (LW). Senior vet at Buchanans. Attended interview with SK on 30 July 2020. Previously consulted during operation with SK on 11 April 2020 during which foreign body removed from small intestine of a Labrador.
 - College's expert: Julian Hoad MRCVS (JH)

- Registrant's expert: Charles Williams MRCVS (CW)
- Registrant (SK)
- Character witnesses

BACKGROUND

6. SK graduated from Warsaw University in 2017 with no practical surgical experience. She gained no surgical experience in the first year in Poland post degree. Having worked in various small animal veterinary practices in Warsaw for around a year, she registered with the Royal College of Veterinary Surgeons (RCVS) and took up a position on a new graduate programme with the CVS Group (Bucanans) in England. As part of this scheme in April 2018, SK began working at the Buchanan Vet Group (owned by CVS), with branches in the Manchester area, namely Irlam, Monton and Urmston. She gained limited surgical experience in the first 12 months. She had three years' post qualification experience by the time of the events in question.
7. SK finished CVS's new graduate programme early, enabling her to embark on a Certificate in Small Animal Surgery (CertSAS) in September 2019. SK had completed two foundation modules and the core surgery module by the time of the events in July 2020.
8. It was during SK's employment at the Buchanan Vet Group that the events that are subject to the charges took place. All of the above charges relate to SK's care of a 10-month-old Cocker Spaniel named Stella, belonging to RS and LCS.
9. SK gave evidence that her workplace was at times understaffed and busy and that she had received limited on-the-job surgical training. Further, there were some additional pressures caused by COVID-19 restrictions and her own personal circumstances.
10. There was some dispute about how busy the practice was at the time of the events in question. CD described July 2020 (in general) as a "crazy busy time for Bucanans." CD also said that "Wednesday 15 July 2020 was the only day when we were perhaps slightly short-staffed, and an extra nurse would ideally have been working". It was clear from the staff rota for that week which was included by CD in her

written evidence that SK was the most senior vet on duty in the branch that day.

11. SK first encountered Stella when RS brought her to the Urmston branch on the morning of Wednesday 15 July. Stella had previously been given a positive pregnancy diagnosis following ultrasound examination on 12 June 2020 by a veterinary colleague, JB. RS and LCS were expecting Stella to give birth on or around 9 July 2020 based on the known date of the unplanned mating. From the outset the owners had never intended to breed from Stella.
12. In the days between Stella's predicted due date and 15 July when RS brought her to the surgery, Stella's owners had made telephone calls to the Buchanan Vet Group to seek advice about their concern that Stella was showing no signs of going into labour.
13. By 15 July Stella was six days past her due date and RS took her back to Buchanans, where he met SK, for the first time. SK had read the notes of the previous visits. RS told her that Stella was overdue and that she had been previously diagnosed as carrying between three and six puppies. However, when SK saw Stella outside the practice, she told RS that, in her opinion Stella did not look pregnant. SK recommended a further ultrasound which was agreed by RS.
14. SK performed an ultrasound with the help of one of the practice nurses AO. SK's evidence was that she saw a structure resembling an inadequately developed foetus with a heart rate of 120 bpm. As the scan was unclear SK asked JB for her opinion. JB agreed with SK's interpretation. SK then took a radiograph but could see no evidence of foetal spinal development; she assumed that the foetuses must be undeveloped or reabsorbing.
15. SK went back out to update RS. She told him that it was unlikely that the puppies were alive and recommended an emergency Caesarean section to remove the puppies or whatever remained of them.
16. RS was confused by what SK told him and asked for time to speak to LCS who then took a second opinion from another veterinary practice. Following this RS agreed to proceed with the Caesarean and

that Stella should be spayed during the course of the surgery. The estimated cost of this was agreed and RS signed a consent form for the two procedures to take place.

17. SK started the surgery and having opened the abdomen found no sign of pregnancy and the uterus appeared normal for a non-pregnant 10-month-old bitch. SK was confused by the findings. She felt panicked and shocked and wanted a second opinion. SK asked JB for assistance. While waiting for JB, SK proceeded to perform the spay.
18. Both SK and JB checked the abdomen again- they palpated the intestine and felt a sharp linear object three or four centimetres in length. SK was concerned that this might be fragments of ingested puppy skeletons, having heard of bitches occasionally eating their puppies after giving birth. SK was also concerned that the objects might perforate Stella's intestine. Whilst JB held the intestine, SK made an incision and the object, which was a piece of wood entangled with some grass, was removed.
19. Unfortunately, the piece of wood was not in the small intestine, but in the colon, which neither SK nor JB was aware of at the time
20. Subsequently, SK called CD to discuss how best to approach the owner as she was worried about there being no pregnancy and the subject of appropriate charging.
21. SK updated RS, in the presence of AO on the outcome of the surgery. The enterotomy was not mentioned.
22. Having appeared to have recovered well Stella was discharged at 5:41pm by AT.
23. The owners brought Stella into the practice for her post operative check at 9:00am on 17 July 2020. KS was concerned by pyrexia and asked SK to examine Stella. Having medicated Stella, she was discharged to the owners with advice to ring that evening with a progress report. At 12:30 they rang reporting drowsiness and again at 5:45 pm stating that she was still quiet, and they were advised to continue with hand feeding and offering water and to ring in the

morning. At both phone calls the owners were offered to bring Stella in for further assessment.

24. The following day, 18 July 2020, after two phone calls from the owners providing updates, Stella was brought into the practice for further assessment following which she was discharged back to the owners.
25. On 19 July 2020, Stella's condition deteriorated and LCS contacted the out of hours vet (PetMedics). Stella was admitted and later that day underwent five hours of surgery for peritonitis.
26. On 20 July 2020, Buchanans were contacted informing them that Stella had sadly died at 4:00 am that day.

Expert Evidence

27. The Committee was satisfied that both experts had sufficient experience and had complied with the duties of an expert as set out fully in Civil Procedure Rules 35.3.

Legal framework

28. It is for the RCVS to prove its case against SK. The standard of proof is the criminal standard so that to find a fact proved, the Committee must be satisfied so as to be sure regarding the alleged facts.
29. SK has given evidence and her testimony is therefore an important part of the evidence in the case. By giving evidence, however, she is not taking on a burden of proof. There is no burden on her to prove that what she says is accurate and true. Where there is a factual issue between her evidence and that of the College, the burden of proof remains on the College and that means they have to disprove her evidence to the criminal standard.
30. In considering SK's evidence, the Committee must bear in mind that she is a person of good character and has provided a large number of positive references. Several of the witnesses called by the College have also spoken highly of her character and ability. Good character is not, of course, an automatic passport to being believed, but it is a factor

for the Committee to bear in mind both in considering SK's credibility as a witness and in deciding whether it is likely that she would behave in the way alleged.

31. The legal test for dishonesty is that set out in *Ivey v Genting Casinos (UK) Ltd* [2018] AC 391 at [74]:

“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

32. The College submitted that, based on her (subjective) state of knowledge, SK could not have failed to be alerted to the possibility of abdominal infection arising from the enterotomy, or alternatively that she was wilfully blind as to that possibility. It further submitted that she deliberately sought to conceal this from the owners in a misguided attempt to protect herself, which ordinary decent people would judge to be dishonest.
33. SK admitted that her conduct in this respect was misleading. But she denied that it was dishonest. Again, the Committee's determination should depend upon an assessment of SK's state of mind, based upon the evidence as a whole, inferences drawn from the surrounding circumstances and her own evidence and explanations. It remained for the College to prove that she was acting dishonestly; there is no burden on her to prove that she was not dishonest, so, unless the College satisfied the Committee to the criminal standard that she did deliberately and knowingly conceal what had occurred, dishonesty will not be proved.

Decision on the facts

34. The Committee accepted that all the admitted facts were proved by way of admission. They then went on to consider those facts that had not been admitted.
35. The Committee considered all of the evidence before it including the written and oral evidence from all witnesses, including both Expert Witnesses.
1. On 15 July 2020 in relation to your care of Stella:
 - a. failed to carry out a full clinical examination;
36. The College's Expert Witness suggested that there were some essential parameters missing from the written record of the clinical examination on the day, in particular vaginal examination and abdominal palpation. Further some of the elements of a clinical examination such as observation of mucus membrane colour, capillary refill time, hydration status and the performance of chest auscultation were questioned by the College, due to their absence from the written evidence.
37. Cross examination of SK established that she had conducted each of the above mentioned elements of physical examination, in particular she had carried out abdominal palpation of Stella (during which she was unable to feel any puppies) and further had carried out an internal examination to check the cervix. This along with the written clinical records from the day in question satisfied the committee that SK had carried out a full clinical examination. SK went on to perform an ultrasound scan of the patient, followed by a radiograph as part of her clinical examination, assessment and decision-making process.
38. There was insufficient evidence to satisfy the Committee, so that it is sure, that SK did not carry out a full clinical examination pertinent to the presentation and clinical history of Stella.
39. Accordingly, the Committee found that this charge was not proved.
- c. failed adequately to interpret radiographs;
40. SK conducted a radiographic examination and discovered that no puppies were to be seen in Stella's womb, noting that there was no

evidence of calcified skeletal development. This was a very surprising result, as up to six puppies had been seen there a few weeks earlier, when JB carried out an ultrasound examination, but SK's interpretation was that there were no puppies present. This interpretation was correct and was confirmed by subsequent events. Although her conclusions on the basis of the clinical evidence found on the day as a whole were flawed, her interpretation of the X-ray was adequate.

41. Accordingly, this charge was found not proved.

2. On 15 July 2020 in relation to informed consent:

a. failed to obtain informed consent from RS and/or LCS for an emergency Caesarean section;

42. SK spoke to Stella's owner about the need for a Caesarean section. She said that she had told him about the possible complications of bleeding and anaesthesia and the need to ensure that there were no remains of puppies which needed to be removed to avoid the risk of infection. Following discussion and the opportunity to seek a second opinion, RS signed a consent form agreeing to a Caesarean. The Committee considered the fact that the Caesarean section did not proceed to completion as expected, did not invalidate the informed consent already given. SK in her oral evidence described the areas of risk that she had covered with RS. The College provided insufficient evidence that SK did not fully explain the risks of the surgery and the Committee found they had not proved the allegation.

43. Accordingly, the Committee found this charge not proved.

b. during surgery on Stella, having found the uterus not to be gravid, continued to spay Stella without first speaking to RS and / or LCS yourself, and/or instructing another member of staff to do so on your behalf, to ensure that consent was still given for that spay;

44. RS had signed the form giving consent to the spay operation as well as the Caesarean and acknowledged upon questioning that Stella would be neutered as part of the operation. Once the procedure was underway, it became clear that there was no need for the Caesarean; but having regard to the fact that RS had made it clear that he and his wife wanted Stella to "be neutered" and that it would not be in Stella's interest to subject her to a further operation at a later date, SK continued with the spay in accordance with the owners' wishes.

Following the operation there was no objection taken about this decision, indeed RS appeared relieved that the spay had taken place. It is not clear that the circumstances had sufficiently changed that would require a new consent for the spay, or that if it had been sought it would not have been given. It was in the interest of the welfare of the dog not to require a second abdominal operation at a later date. The Committee concluded that, in all the circumstances, there was insufficient evidence to prove this allegation beyond reasonable doubt.

45. Accordingly, this charge is found not proved.

4. On 15 July 2020, when Stella was discharged to RS and LCS, failed to inform them:

d. that in-patient overnight care was indicated for Stella;

46. The Committee took into consideration the opinion of both experts and although some veterinary surgeons would routinely see overnight hospitalisation as indicated post enterotomy, a reasonable body of veterinary surgeons would not consider this indicated in the circumstance of a good recovery. It was noted that the procedure was completed in the morning and the dog was discharged some five hours later. There was therefore no necessity and consequently no duty to inform the owners that hospitalisation was indicated.

47. Accordingly, this charge is found not proved.

48. On 17 July 2020 when Stella was re-presented at the practice:

a. Failed to identify and/or take sufficient steps with regards to the possibility of complications resulting from the colotomy;

49. The Registrant submitted that this charge was a duplication of the sub-charges and should have been the header for the sub-charges b-f which follow it. The College did not seek to argue against this submission. The Committee took the view that it would have been appropriate to draft the charges in that way. The Committee found 5a proved on the basis of the admitted allegations set out in 5 b, c, d and e, but recognised that it represented a duplication of those findings.

50. Accordingly, the Committee found 5 a proved.

5f. Failed to undertake an adequate assessment of pain;

51. In her written testimony SK confirmed that Stella was comfortable on abdominal palpation, a test which helps to assess abdominal pain. This assessment was corroborated by KC. SK administered two different types of analgesia by injection a non-steroidal anti-inflammatory drug, Meloxid, an opioid, Buprecaire and additionally sent Stella home with oral Pardale, on the basis of the assessment made of her condition. The Committee concluded that she had undertaken an adequate assessment of pain.

52. Accordingly, the Committee found the charge not proved.

8. Between 15 July and 18 July 2020

c. during a telephone call with your clinical director on 15 July 2020, following surgery, failed to inform her of the colotomy.

53. The Committee noted that in its submission the College agreed that SK was not under a duty to formally inform the Clinical Director.

54. SK telephoned her Clinical Director, who was not working, in order to discuss the misdiagnosis of the pregnancy of Stella. That was the focus of her conversation and in her mind the enterotomy had no connection with the conversation. She was seeking advice on how to approach the owners in explaining the sequence of events, confusing clinical signs, misdiagnosis and the absence of puppies. In addition, she wanted to ensure that the client would be charged appropriately. In these circumstances, the Committee found that there was no duty to discuss the enterotomy with her Clinical Director during that conversation.

55. Accordingly, the Committee found this charge was not proved.

9. Your conduct in relation to 4a and/or 8 above was:

a. Dishonest.

56. The College alleged that SK was aware that a colotomy had been carried out and deliberately concealed this by not mentioning it in the notes and failed to tell the owners about it. SK's case was that she did not know that this aspect of the procedure involved the colon as she, and those assisting her, thought that the object was removed from the

small intestine. JB gave evidence that she too was not aware that the incision was into the colon.

57. SK admitted that she did not mention this aspect of the procedure to the clients. The reason for this was that her focus was heavily on the Caesarean, the absence of any puppies, the spay, and the very unexpected nature of the whole process, particularly bearing in mind that, according to JB and AT, who were present at times during the surgery, three to six puppies had been seen in the ultrasound scan performed some weeks earlier. She was also very concerned about the reaction of the clients to the complete absence of any signs of puppies and had telephoned CD to ask her advice as to how she should handle the conversation. The discovery of a foreign body in what she understood was the small intestine had at the time no bearing, for her, on the main aspects of the operation and the unexpected results and was therefore not in her mind at the time of these conversations nor when she completed the clinical records.

58. There was no evidence that SK asked her colleagues not to speak about the colotomy. In fact, the witnesses confirmed that she had never made any such request.

59. In order to prove beyond reasonable doubt that SK acted dishonestly, the College would have had to prove that she deliberately maintained silence about the colotomy.

60. The Committee accepted SK's evidence that she did not know at the time the incision was made into the colon and did not pay due regard to the risks associated with it.

61. Looking at SK's behaviour and state of mind at that time the Committee took into account:

- previous good character, as evidenced by positive character testimonials, including from colleagues from that time;
- prompt disclosure at the meeting on 30 July 2020, prior to knowing about Stella's death;
- high possibility of being found out if this had been a dishonest concealment;
- not asking anyone to conceal the enterotomy;

- not obstructing communication between the clients and other staff members of the surgery, e.g., she didn't interfere with AT discharging Stella by herself on 15 July 2020;
- nothing to gain;
- asked for her post operative conversation with the owners to be witnessed by a colleague;
- nothing in her conduct and demeanour to suggest that she would willingly allow an animal under her care to suffer and/or die.

62. The Committee could not be satisfied so that they were sure that SK's conduct was dishonest.

63. That being the case, the Committee found charge 9a not proved.

Disciplinary Committee
18 October 2023