

**ROYAL COLLEGE OF VETERINARY SURGEONS**

**INQUIRY RE:**

**MARK KOMBERT MRCVS**

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**DECISION ON SANCTION**

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1. The Committee has heard submissions on sanction from the College pursuant to the provisions of The Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee)(Procedure and Evidence) Rules 2004, at 18.1, which provide:

*“18.1 In a conduct or conviction case, where the respondent has admitted the charge or the Committee has found that the charge has been established –*

*(a) the solicitor may address the Committee, and may adduce evidence and make submissions as to the character and previous history of the respondent;*

*(b) The respondent may then address the Committee and may adduce evidence and make submissions, by way of mitigation;*

*(c) if the respondent does not attend the inquiry, the Committee shall take into consideration any written plea in mitigation submitted by the respondent.”*

2. The College adduced evidence and made written submissions, and provided a submissions bundle. The material on which it relies has been sent to the Respondent. The College’s submissions are as follows.
3. The Respondent had been asked on a number of occasions whether there are any documents he wished to provide to the Committee:

- 21 November 2019 letter from College’s solicitors
- 29 November 2019 email from College’s solicitors; reply: “I have no additional documents for the Committee to consider”
- 3 December 2019 email from the College’s solicitors asking whether there were *“any further documents you wish the Committee to consider in mitigation if the sanction stage of proceedings is reached. This could include, for example, documents from any medical practitioners, counsellors, Vetlife etc or anything else relating to your personal circumstances.”* Reply: *“I do not have any additional documents to submit regarding my case.”*
- 13 December 2019, sanction bundle sent to Respondent (inviting him to make any comments or objections; reply: no objections or comments); again asked whether he would like to submit mitigation documents, but declined.

4. The College submitted that the Committee may wish to have regard to any mitigating factors in paragraph 27 of the Procedure Guidance that it considers might apply, including *“(h) open and frank admissions at an early stage”*. The College submits that the Committee may find it difficult to establish any other mitigating factors, including, for example, health problems or any insight, in the absence of any submissions or other documents from the Respondent.

5. The College invited the Committee to consider the aggravating factors as set out in the submissions on disgraceful conduct, namely:

*“b. risk of harm to an animal (as drugs were self-administered whilst he was on duty)*

*c. dishonesty*

*e. premeditated misconduct*

*g. breach of [...] trust*

*k. misconduct sustained or repeated over a period of time.”*

6. The College also reminded the Committee that with regards to dishonesty, the Procedure Guidance notes:

*“Proven dishonesty has been held to come at the top end of the spectrum of gravity of disgraceful conduct in a professional respect.”*

7. The College also invited the Committee to take into account further aggravating factors (paragraph 25 of the Procedure Guidance) relevant to this stage of proceedings, namely:

*“o. previous convictions; and*

*q. Previous findings of another regulator or similar body.”*

8. The Respondent has three previous matters recorded against him in the United States of America:

**24 March 2010** Colorado State Board of Veterinary Medicine: letter of admonition, following a finding that respondent had practised when licence had expired

**15 July 2013** Colorado State Board of Veterinary Medicine: Stipulation Order involving an agreement to relinquish licence permanently in that state, following allegations that the respondent, whilst in practice at a veterinary hospital, took controlled substances Diazepam and Buprenorphine from the veterinary practice and self-administered the drugs. The Stipulation Order appears to be a mutual agreement for relinquishment of registration, without any finding having been made against the respondent in relation to the charge itself (he denied the charge).

**6 June 2017** Conviction in New York State for obtaining a controlled drug (buprenorphine) by deception. Sentenced to three years' supervised probation.

9. On 5 December 2019, the College was contacted by Ms Dianne Norris, a Probation Officer employed by Putnam County Probation in New York, who explained that the Respondent had been in breach of a Probation Order in that state, and had absconded. The College asked her for a statement, which she provided, dated 12 December 2019. She explains that the offence which led to the Respondent's conviction and probation order in New York State took place on 20 August 2016. She explains that the offence was:

*“At or about 2pm ... did wilfully obtain buprenorphine, a controlled substance, by deceiving veterinary technician [MM] to administer buprenorphine to a patient in order to have access to the medication to commit the crime of petty larceny.”*

10. Buprenorphine is an opioid.
11. Ms Norris explains that on 29 November 2016, the Respondent was arrested in relation to this matter, that on 6 June 2017, he pleaded guilty to and was convicted of the offence, and that on 1 August 2017 he was sentenced to three years' supervised Probation.
12. Ms Norris has produced witness statements dealing with the facts underlying the offence for which he received probation. The statements are from a veterinarian and veterinary technician, MM, at a practice in New York. The technician describes how the respondent, when on duty at the practice on 20 August 2016, asked her to obtain Buprenorphine from the locked drug box, as she was the only one with the key. MM describes how she later saw the respondent draw what appeared to be Buprenorphine into a syringe and then disappear into a bathroom for about ten minutes, before re-appearing with his hands shaking. MM states that when she went into the bathroom afterwards, she discovered an empty syringe wrapper. A check on 22 August 2016 by the veterinarian who owned the practice, found that Buprenorphine (approximately 11.5ml) was missing.
13. It appears that the Respondent admitted the theft to police officers when arrested and interviewed on 29 November 2016.
14. Ms Norris explains that there were a number of conditions attached to the probation order, and that she was responsible for supervising the respondent as part of his probation, including meeting him, dealing with his work place, and arranging for him to be tested for controlled substances. It was a condition of his probation that he attend at Ms Norris' office every week, and at first he did so.
15. Ms Norris further explains that the Respondent breached his probation on numerous occasions, including breaches by reason of testing positive for benzodiazepine when not prescribed. The breaches took place from November 2017 to June 2018. As a result of the breaches, Ms Norris at first told the Respondent that he should increase his attendance at support groups, and then, as the breaches continued, she directed that he should attend an inpatient treatment programme. He was approved as part of the programme, and was due to attend for 28 days from 13 July 2018. He failed to attend, however, and did not respond to outreach contact. Ms Norris has had no further contact with him since he was due to start the programme.

16. On 13 August 2018 a warrant was issued for the Respondent's arrest, as a result of the breaches of probation. A second warrant was issued as a result of a controlled drug being found at his home on 9 May 2018. He had been required to attend court in relation to this but had failed to do so, leading to the second warrant. Ms Norris explains that as the warrants refer to misdemeanours (rather than felonies) they apply only in New York State.
17. Ms Norris established that the Respondent had left the USA in the summer/autumn of 2018. She checked the internet periodically and found that he appeared to be in the United Kingdom. A more recent internet search led her to discover that the Respondent was due to appear before this Committee, and she therefore contacted the College.
18. The College invited the Committee to have regard to the "Outcomes and Sanctions" section of its Procedure Guidance. It is a matter for the Committee, but it may consider that in this case paragraphs 50 to 53 are of particular relevance.

#### **Decision of the Disciplinary Committee on Sanction**

19. The Committee must have in mind that the primary purpose of sanctions is not to punish but to protect the welfare of animals, maintain public confidence in the profession and declare and uphold proper standards of conduct. The sanction which it applies must be proportionate to the nature and extent of the conduct, and the Committee must weigh the public interest with the interests of the Respondent.
20. The Respondent has been asked on a number of occasions whether he wishes to provide any documents or other evidence to the Committee. He has consistently declined to do so.
21. The Committee has considered whether there are any mitigating factors that apply in this case. The Committee considers that the Respondent should be given credit for the fact that he has consistently admitted the charges in this case, and confirmed that he accepts and agrees with the evidence submitted to the Committee in the Inquiry Bundle, and other documents provided to him. The Committee does not accept the College's submission that a mitigating factor might include "*open and frank admissions at an early stage*". The Committee considers that the Respondent made only guarded admissions to the Police during interview, and only gave a frank admission as to his conduct at the Restorative Justice meeting.

22. The Committee agrees with the list of aggravating factors in the College's submission on sanction. The Committee considers that one of the most serious aggravating factors was the risk of harm to an animal, as drugs were self-administered whilst he was on duty, and the Respondent admitted that he was not in a fit state to practise.
23. The College invited the Committee to take into account further aggravating factors relevant to this stage of the proceedings, including "*q. Previous findings of another regulator or similar body*". The Committee was provided with a Sanctions Bundle which contained evidence of previous matters recorded against the Respondent in the United States of America. The Committee has placed considerable importance upon the fact that the Respondent was sentenced to three years supervised probation in New York State for obtaining a controlled drug (buprenorphine) by deception, as described in paragraphs 9-13 above.
24. The Committee has considered the witness statement of Ms Dianne Norris, a probation officer employed by Putnam County Probation in New York, who was responsible for supervising the Respondent as part of his probation. Ms Norris explained that the Respondent breached his probation on numerous occasions, which took place from November 2017 to 2018 as set out in paragraph 15 above. As a result of the breaches, Ms Norris required the Respondent to increase his attendance at support groups, and later to attend an inpatient treatment program for 28 days from 13 July 2018. He failed to attend.
25. Ms Norris explained that warrants were issued for the Respondent's arrest as described in paragraph 16 above.
26. The Committee noted that the conduct of the Respondent in relation to obtaining controlled drugs from his employers for his own use while in the United States of America was similar to his conduct at Well Pets Animal Hospital, Clevedon, the subject of the charges.
27. The Committee first considered whether it would be appropriate to postpone judgement or to take no further action in this case. It decided not to do so, because of the seriousness of the charges. The Committee went on to consider whether it would be appropriate to reprimand and/or warn the respondent as to his future conduct, or whether to direct that the respondent's registration be suspended. The Committee concluded, that having regard to the seriousness of the charges in this case, neither sanction would be sufficient to protect the welfare of animals, maintain

public confidence in the profession or to declare and uphold proper standards of conduct.

28. The Committee has considered, in particular, paragraphs 50-53 of the Disciplinary Committee Procedure Guidance. Paragraph 53 states that removal from the register may be appropriate where behaviour is fundamentally incompatible with being a veterinary surgeon. Such cases may involve serious departure from professional standards as set out in the RCVS Code of Professional Conduct for Veterinary Surgeons; causing a risk of serious harm to animals; cases where there is a breach of trust; and cases involving dishonesty. All of the factors are present in this case.
29. Veterinary surgeons' access to controlled drugs is predicated on their professional integrity and honesty, and administrations of medicines must be done so responsibly.
30. The Respondent has failed to uphold the requisite standards to be expected of him on multiple occasions. The Committee considers that the only sanction that is sufficient to protect the welfare of animals, maintain public confidence in the profession and declare and uphold proper standards of conduct is one of erasure.
31. The Committee concludes, therefore, that the Respondent is unfit to practise as a Veterinary Surgeon and instructs the Registrar to remove his name from the Register of Veterinary Surgeons.

## **DISCIPLINARY COMMITTEE**

**16 DECEMBER 2019**