

**ROYAL COLLEGE OF VETERINARY SURGEONS**

**INQUIRY RE:**

**DR CRAIG MOSTERT MRCVS**

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**FULL DECISION OF THE COMMITTEE**

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Ms Nimi Bruce appeared on behalf of the Royal College of Veterinary Surgeons; Mr Philip Ahlquist appeared on behalf of Dr Mostert.

1. Dr Mostert appeared before the Disciplinary Committee (“the Committee”) to answer the following charges:

*That, being registered in the Register of Registered Veterinary Surgeons (“the Register”) maintained by the Royal College of Veterinary Surgeons (“RCVS”), you:*

1. *On 6 June 2017, in the United States District Court, Central District of California, United States of America, were convicted following a guilty plea of causing an act to be done in relation to entry of goods by means of false statements which may deprive the United States*

*of lawful duties, in violation of 18 USC 542, 2 (b), for which you were fined US\$ 5,000 and made subject to a US\$ 145,000 forfeiture order;*

*And that it is alleged that this conviction renders you unfit to practise veterinary surgery;*

*And/or*

2. *On or about 24 January 2020, in a written application for restoration to the Register, represented that you did not have any cautions or criminal convictions (including any absolute or conditional discharges or spent convictions) or any adverse findings against you, whether in the UK or overseas, and in relation to the said representation, your conduct was:*

*(i) dishonest; and/or*

*(ii) misleading;*

*And/or*

3. *On or about 28 April 2020, in an on-line registration application for your RCVS annual membership, represented that you did not have any cautions or criminal convictions (including any absolute or conditional discharges or spent convictions) or any adverse findings against you, whether in the UK or overseas; and in relation to the said representation, your conduct was:*

*(i) dishonest; and/or*

*(ii) misleading;*

4. *On or about 19 April 2021, in an on-line registration application for your RCVS annual membership, represented that you did not have any cautions or criminal convictions (including any absolute or conditional discharges or spent convictions) or any adverse findings against you, whether in the UK or overseas; and in relation to the said representation your conduct was:*

*(i) dishonest; and/or*

*(ii) misleading;*

*And that in relation to the matters set out at 2 and /or 3 and/or 4 above, whether individually or in combination, you are guilty of disgraceful conduct in a professional respect.*

#### Admissions

2. Dr Mostert had submitted a Statement of Admissions dated 7 March 2022. In accordance with that Statement, he admitted the fact of the conviction alleged at Charge 1 and further admitted that he had not disclosed the conviction on the applications referred to in Charges 2, 3 and 4. Dr Mostert denied that his failure to disclose the conviction on the forms referred to in those Charges was misleading or dishonest. He further denied that the conviction rendered him unfit to practise veterinary surgery or that he had been guilty of disgraceful conduct in a professional respect when he failed to disclose his conviction.
3. Following discussion with Counsel, and legal advice, the Committee agreed to hear all the evidence and submissions in relation to questions of fact and in relation to the effect of the conviction and to disgraceful conduct in a professional respect in one stage. When it retired, the Committee would first consider and resolve questions of fact and only then proceed to any further issues which it was necessary to resolve.

#### Background

4. Ms Bruce opened the case on behalf of the College. She referred the Committee to the agreed Inquiry Bundle which contained details of the conviction referred to in Charge 1 and the application forms referred to in the other Charges. The details included in those documents were consistent with the admissions made by Dr Mostert.

#### Evidence

5. The College adduced evidence through the witness statement of Ms Nicola South, Customer Experience Manager and Head of Registration at the Royal College of Veterinary Surgeons. Ms South outlined Dr Mostert's registration history, the procedures in relation to applications for restoration to the register and annual renewal and the forms referred to in Charges 2, 3 and 4. Her evidence was uncontentious.
6. The College also adduced oral evidence from Professor Lissa Griffin, Professor of Law at Pace University, New York. Professor Griffin is an expert in, among other things, criminal law and comparative criminal procedure. She explained the documentation relating to Dr Mostert's conviction in California.
7. Dr Mostert gave oral evidence to the Committee. He endorsed and supplemented the contents of his written witness statement, dated 11 March 2022. Dr Mostert had qualified as a veterinary surgeon, after completing an earlier university degree in Chemistry and Economics, in South Africa in June 1994. After some years working as an equine veterinary surgeon, he had established his own veterinary practice from the latter part of 2000 onwards. The practice proved to be successful and well-respected. In March 2008 he said that he had received an unsolicited communication from a Mr Sean Gerson who was based in the USA. Mr Gerson asked if he could supply him with tick and flea control products. He told him that his company had a licence to distribute these products in the USA. The products themselves were readily available as non-prescription medications in South Africa.
8. After consultation with his suppliers, Dr Mostert agreed to supply these products to Mr Gerson. He accepted that he understated the value of the packages which he was sending to the USA, at the request of Mr Gerson. Dr Mostert said he had been told that no duty was payable in any event and that a lower stated value would simplify the export process. He registered the undertaking in South Africa and paid tax which was due in that country. He said that, as far as he was concerned, it was an entirely legitimate business enterprise.

9. In 2017 Dr Mostert travelled to the USA with his young daughter and, on his arrival at the airport in New York, was arrested and taken into custody. He co-operated with the authorities and gave evidence against Mr Gerson. He pleaded guilty to the charge which led to his conviction in the USA after his attorney had arrived at a plea agreement with the prosecuting authorities. He was then able to return to South Africa without further delay. He had been away for some weeks. He described his experience in America as very frightening.
10. Dr Mostert accepted that he had been very naïve in becoming involved with the enterprise suggested to him by Mr Gerson but emphasised that he did not believe that he was becoming involved in anything other than a legitimate business enterprise.
11. Dr Mostert told the Committee that he came to complete his application for registration in the UK at a time of particular stress. He was busy facilitating the sale of the practice he had created in South Africa and was concerned by increasing violence and political volatility in the part of South Africa in which he and his family lived. In addition, the COVID pandemic was in its early stages. Looking back, and doing his best to reconstruct his thinking at the time, he said that he considered it likely that he had not disclosed the conviction because he had not considered it to be relevant to his veterinary practice. It had occurred in a country where he had never practised or sought to practise as a veterinary surgeon. He had never been convicted of any offence in South Africa. He now found it surprising that he had read the form for making an application for restoration to the Register in that way but that was the way in which he had understood the requirements of the form. He referred to the stress that he had been under when completing the form and thought he had not given the document the attention that it required.
12. Dr Mostert said that he had always disclosed his conviction when he understood that he was obliged to do so, for example, as part of his application for a Visa to work in the United Kingdom.

13. So far as the renewal applications were concerned, Dr Mostert said that he did not believe he gave the matter any further thought as he did not consider his conviction to be something that affected his registration. Between February 2020 and the middle of 2021 he was again under grave levels of stress due to issues in South Africa and , in particular, the development of the COVID pandemic there.
14. Dr Mostert emphasised that he was horrified when it was suggested that he had failed to disclose the conviction when obliged to do so as he considered himself to be a person of integrity. He wholeheartedly apologised for his mistake.
15. The Committee also read the witness statement of Michelle Mostert, Dr Mostert's wife. Her witness statement emphasised the prevalence of the various stressors to which Dr Mostert had referred.

#### Submissions and Legal Advice

16. In addition to her written Opening Note, Ms Bruce submitted that the wording on each of the application forms completed by Dr Mostert could not have been clearer and it was inconceivable that Dr Mostert, as an experienced veterinary surgeon used to dealing with documents, had not understood that he was required to disclose his conviction. The College's primary case was that Dr Mostert's conduct was dishonest but, if that was not established, she submitted that his conduct was misleading because of the very high degree of carelessness which the failure to disclose the conviction evidenced. Either finding would, in her submission, amount to disgraceful conduct in a professional respect.
17. In relation to the conviction itself, Ms Bruce submitted that it was such as to render Dr Mostert unfit to practise veterinary surgery because it was a serious conviction which evidenced very serious criminality over a period of years and which involved a substantial amount of money. She also relied upon a passage from the "Factual Basis" of the plea agreement filed with the

Court in California. The passage stated that *“On or about 1 February 2017 , Craig Mostert (hereinafter the Defendant) wilfully exported, and caused to be exported from South Africa to the United States, animal prescription drugs and flea and tick products that were inadmissible for entry into the United States, as they were foreign market, animal prescription drugs that did not have the required federal warning , “Caution: Federal Law restricts this drug to use by or on the order of a licensed veterinarian” and foreign market unregistered pesticide products”*. Ms Bruce submitted that the conviction therefore involved issues relating to the need to keep animals safe.

18. In his closing submissions, Mr Ahlquist emphasised certain points which appeared from the written skeleton argument he had prepared for the outset of the hearing. So far as the conviction was concerned, he reminded the Committee that Dr Mostert was convicted of falsely certifying the value of goods so that they were declared to be less valuable than they in fact were. There was no finding that Dr Mostert knew that they were animal prescription drugs in the USA. The conviction had, in his submission, nothing to do with the health and welfare of animals. Having regard to the circumstances in which the conviction had occurred, as explained by Dr Mostert, Mr Ahlquist invited the Committee to regard the conviction as having arisen as a result of Dr Mostert’s naiveté and as not being inconsistent with the practice of veterinary surgery.
19. In relation to the failure to declare the conviction in the forms referred to in Charges 2, 3 and 4, Mr Ahlquist submitted that, in reality, to find Dr Mostert guilty of dishonesty, the Committee would need to be sure that it was inconceivable that he had made the mistake which he said he had made. He submitted that it was by no means inconceivable that a veterinary surgeon reading the text, which appeared in the form dealing with an application for restoration to the Register, at a time of stress might conclude, albeit mistakenly, that the need to disclose convictions related only to those convictions which may affect registration.

The text read, “*Veterinary surgeons and those applying to be registered as veterinary surgeons, must disclose to the RCVS any caution or conviction, including absolute and conditional discharges and spent convictions, or adverse finding (including by another regulator or professional disciplinary proceedings) which may affect registration, whether in the UK or overseas (except for minor offences excluded from disclosure by the RCVS)*”. He added that once the initial mistake had been made, it was only natural that the same mistake would be perpetuated in the on-line forms for RCVS annual membership.

20. Mr Ahlquist further relied upon the fact that Dr Mostert had disclosed the existence of the conviction on his Visa application form when, in response to the question; “*Do you have any spent or unspent criminal convictions in any country (including traffic offences)?*” Dr Mostert had circled “*Yes*” and wrote “*USA pleaded guilty to understating value on parcels sent to USA –June 2017*”. Mr Ahlquist submitted that this was inconsistent with any suggestion that Dr Mostert was deliberately concealing the existence of the conviction.
21. Turning to the question of misleading conduct, Mr Ahlquist referred the Committee to *Felix v General Dental Council* [1960] AC 704 in support of his submission that carelessness was not sufficient to found an allegation of misleading conduct. In accordance with the principle established in that case, he submitted that there must be some element of moral turpitude or fraud or dishonesty to found such an allegation.
22. In relation to issues of fact, the Legal Assessor reminded the Committee of the burden and standard of proof and of the need to consider each charge separately. In relation to questions of dishonesty, he referred the Committee to the test set out in *Ivey v Genting Casinos* [2018] AC 391. In relation to the question of misleading conduct, he referred to *Felix* and advised that there must be an element of culpable fault sufficient, potentially, to lead to a conclusion of disgraceful conduct in a professional respect. Questions of degree were therefore of great importance when considering whether conduct should properly be categorised as misleading.

23. In relation to questions of judgment, the Committee was reminded that it would need to consider whether Dr Mostert's conviction affected the public interest. This included the need to maintain public confidence in the profession by upholding proper standards of conduct and behaviour for members of the profession. It was also advised to consider the issue of damage to the reputation of the profession. It would therefore need to include in its consideration of this issue such matters as the nature of the conviction, its seriousness, when and in what context it occurred and the circumstances in which Dr Mostert came to be convicted.
24. In assessing disgraceful conduct in a professional respect the Committee was reminded that the phrase connoted a falling "far short" of the standards to be expected of a veterinary surgeon.

#### The Committee's findings of fact

25. The Committee first considered whether the Registrant's conduct was dishonest when he failed to disclose his conviction when applying for restoration to the Register of Veterinary Surgeons. The Committee reminded itself that the burden was upon the College to satisfy the Committee so that it was sure that Dr Mostert's conduct was dishonest. In assessing dishonesty the Committee applied the test set out in *Ivey v Gettins Casinos Ltd*.
26. The Committee considered that the text on the form referred to by Mr Ahlquist in his submissions was clear. The text referred to by Mr Ahlquist was followed by the words "*For more information please see [www.rcvs.org.uk/convictions](http://www.rcvs.org.uk/convictions).*" Further, the Committee noted that the box which the registrant had ticked as applicable to him read as follows: "*I have no caution or conviction, including absolute and conditional discharges and spent convictions, or adverse finding (including by another regulator or professional disciplinary proceedings) in the UK or overseas*". In the Committee's judgment it was inconceivable that an experienced veterinary surgeon, such as Dr Mostert, making a declaration of this kind for the purposes of

restoration to the Register would not have understood that a serious conviction in the USA, dating from June 2017, was a conviction that he was obliged to disclose.

27. The Committee had regard to Dr Mostert's disclosure of his conviction for the purposes of his Visa application. The form in which this declaration was made appears to be dated 31 October 2021. On 28 October 2021 the RCVS had emailed Dr Mostert notifying him that it had learned of his conviction in California. The declaration on the Visa form was not therefore necessarily inconsistent with the failure to declare the conviction on the application for renewal of registration, as by the time Dr Mostert came to complete his application for a Visa he would have been aware that the existence of his conviction was known to the College.
28. Dr Mostert himself, in his evidence, struggled to explain how he could have misunderstood his obligation to disclose this conviction. At one point in his oral evidence he seemed to suggest that he had not properly read or understood the document. He confirmed that he had not read the accompanying guidance or contacted the College for advice. The form provided details of the way in which this could be done.
29. The Committee is sure that the obligation to declare a conviction of this sort was clearly stated and obvious and that Dr Mostert's failure to do so, in circumstances in which the conviction may have proved problematic in relation to his application for restoration, was deliberate and designed to conceal the existence of the conviction. An ordinary decent person would regard conduct of this kind as dishonest.
30. As the Committee has concluded that Dr Mostert's conduct was dishonest, it necessarily follows that it was also misleading. However, even in the absence of a finding of dishonesty, the Committee would have found the conduct to be misleading. A fundamental omission, in completing a document as important as this would, in the Committee's assessment, often be a matter carrying a degree of moral turpitude. Any veterinary surgeon would appreciate the importance of taking sufficient care to ensure that a document of this kind was completed

accurately in all important details and the presence or absence of previous convictions was plainly a very important matter in the context of an application for restoration to the Register.

31. The Committee therefore finds the factual elements of Charge 2 (i) and (ii) PROVED
32. The Committee next considered the question of dishonesty in relation to the failure to declare the conviction on Dr Mostert's application for annual renewal of his membership of the RCVS on or about 28 April 2020. The on-line annual renewal notice for 2020-21 required Dr Mostert to "Declare any Convictions". When he came to complete his annual renewal Dr Mostert, on the Committee's findings, knew that he had not declared a previous conviction. He remained under an obligation to disclose it but chose not to do so, in the Committee's judgment, for the same reason as he had chosen not to declare it on his application for restoration to the Register. The Committee finds his failure to declare this conviction on his annual renewal form to have been dishonest for the same reasons it has given in relation to Charge 2 (i)
33. The same reasons also apply to the issue of misleading conduct and the Committee repeats, in relation to this charge, the observations it has already made in relation to Charge 2 (ii).
34. The Committee therefore finds the factual elements of Charge 3 (i) and (ii) PROVED.
35. Identical considerations apply in relation to Dr Mostert's failure to declare his conviction on the annual renewal notice for 2021-22. On this notice the obligation was to "Declare any convictions, cautions and adverse findings". The Committee finds Dr Mostert's failure to declare his conviction on this form to be dishonest for the same reasons as those it has given in relation to Charges 2 (i) and 3 (i).
36. The same reasons apply to the issue of misleading conduct and the Committee repeats, in relation to this Charge, the observations it has already made in relation to Charge 2 (ii).
37. The Committee therefore finds the factual elements of Charge 4 (i) and (ii) PROVED.

The implications of Dr Mostert's conviction

38. The Committee went on to consider whether the conviction rendered Dr Mostert unfit to practise veterinary surgery.
39. The Committee noted that the conviction involved dishonesty in that the offence included the making of false statements in relation to the value of the goods which were being despatched to the USA. Honesty is a cardinal principle which underpins veterinary practice so that a conviction which involves dishonesty is always a serious matter. In the present case the seriousness is compounded by the fact that the conduct which led to the conviction extended over a number of years and involved substantial sums of money.
40. The Committee recognised that the conviction did not involve the treatment of animals and that it was more closely related to financial crime than to veterinary practice, albeit Dr Mostert's position as a veterinary surgeon provided the context in which these medications were procured. However, the Committee regarded a conviction for a serious offence involving dishonesty to engage the wider public interest in that public confidence in the profession and its reputation would be damaged if proper standards of conduct and behaviour were not upheld. The public would expect the regulator to take action in these circumstances.
41. Accordingly, the Committee finds that Charge 1 is PROVED, in its entirety.
42. The Committee has found Dr Mostert's failure to declare his conviction to have been dishonest. Mr Ahlquist accepted that a dishonest failure to declare a conviction must amount to disgraceful conduct in a professional respect and the Committee considers that this concession was correctly made. Such conduct plainly falls "*far short of that which is expected of the profession*" (Macleod v RCVS [2005] UKPC 88).
43. The Committee also considers that, even in the absence of dishonesty, a failure to recognise the obligation to disclose a recent and serious previous conviction when completing forms of

this nature would (absent extraordinary circumstances, which are difficult to envisage) be so marked that it too would have amounted to disgraceful conduct in a professional respect.

44. Accordingly, the Committee finds Charges 2, 3 and 4 PROVED, in their entirety.

45. The Committee will therefore proceed to the next stage of the hearing.

#### Sanction

46. Ms Bruce confirmed that Dr Mostert had not previously been the subject of any adverse regulatory findings.

47. Mr Ahlquist reminded the Committee that its function now was not to punish Dr Mostert. He also reminded the Committee that a finding of dishonesty did not necessarily lead to only one conclusion in terms of sanction. All the relevant circumstances had to be considered. He referred the Committee to the evidence in the bundle which, he submitted, showed the depth of Dr Mostert's commitment to animal health and welfare and to his high standing in the profession. This was bound to accentuate the impact of the Committee's findings. He also referred to the testimonial evidence in the bundle in support of his submission that the Charges which the Committee had found proved were out of character and not indicative of Dr Mostert's usual behaviour.

48. In terms of aggravating circumstances set out in the Sanctions Guidance, Mr Ahlquist accepted that the Committee, on its findings, was dealing with a case of dishonesty and that recklessness and premeditated misconduct were less serious types of misconduct than dishonesty. He also accepted that the case could involve consideration of whether Dr Mostert was in an increased position of trust and responsibility, that the misconduct was sustained over a period of time and that it involved a disregard of the role of the RCVS and the systems that regulate the profession.

49. In terms of mitigating factors, Mr Ahlquist submitted that the case did not involve any actual or risk of harm to an animal or human, that there had been no financial gain and that Dr Ahlquist had had a long and otherwise unblemished career. He submitted that a significant period of time had elapsed, that Dr Mostert had shown insight into the implication of his misconduct and produced a range of impressive testimonials.
50. Mr Ahlquist referred the Committee to the case of *Walker v RCVS* [2007] UKPC 64 in support of his submission that a nuanced approach needed to be taken to cases of dishonesty so as always to take into account the particular features of the case. In the present case he submitted that suspension was the proportionate sanction and that a direction for removal from the Register was neither necessary nor proportionate.
51. The Legal Adviser reminded the Committee of the need to observe the principles set out in the Sanctions Guidance. The purpose of sanction was not to punish but to arrive at a proportionate outcome, having regard to the content of the determination which the Committee had handed down in relation to the Charges. The sanction needed to be sufficient to satisfy the public interest but not to be more restrictive than was required to satisfy that interest.
52. The Committee considered the aggravating features of the case. Dr Mostert's conduct had been dishonest and there were also features of the case to which the descriptions "reckless" and "pre-meditated" could, in the opinion of the Committee, be applied. The purpose of the behaviour which led to his conviction was financial gain through the creation of a business enterprise and to facilitate that Dr Mostert falsely declared the value of goods. The extent of any financial gain was not known to the Committee but the business operated on the basis that false declarations were repeatedly made. As the plea agreement put it, "Defendant engaged in similar conduct on several different occasions between approximately 2008 and 2017". The Committee has not forgotten however that Dr Mostert's evidence in relation to

this aspect was that he was informed there was no duty payable and that the false declarations were made to facilitate export.

53. The Committee also took into account as aggravating features that Dr Mostert was an experienced veterinary surgeon, that his misconduct occurred over a period of time and that it involved direct communications with his regulator. While the Committee was prepared to accept that Dr Mostert had shown some insight into the significance of his misconduct, his insight, particularly into the impact this kind of conduct had upon public perception of the profession was, in the Committee's view, susceptible to some further development. Dr Mostert had expressed a considerable degree of remorse.
54. The Committee considered mitigating features to be that Dr Mostert had had a long and otherwise unblemished career and that he was clearly held in very high regard as a veterinary surgeon and member of his local community. The Committee had no difficulty in accepting the various testimonials and other evidence which supported this conclusion. However, the Committee noted that a number of testimonials in relation to Dr Mostert's integrity did not appear to have been written with full knowledge of the Charges and so were of more limited weight.
55. The Committee also recognised the very difficult circumstances in South Africa which Dr Mostert and his family faced at the time of his application for restoration; these were the product of the local political situation and the impact of the COVID pandemic.
56. The Committee considered sanction in ascending order. In so doing, it had regard to the principles contained in the Sanctions Guidance.
57. The Committee considered that this was much too serious a case in which to take no further action.
58. No useful purpose would be served by postponing judgment.

59. The case was too serious for a warning or reprimand to satisfy the public interest
60. The Committee moved on to consider suspension. It noted that “suspension may be appropriate where the misconduct is sufficiently serious to warrant more than a reprimand but not sufficiently serious to justify removal from the Register. Suspension has a deterrent effect and can be used to send a signal to the veterinary surgeon, the profession and the public about what is regarded as disgraceful conduct in a professional respect”.( Sanctions Guidance, paragraph 68)
61. In the present case the Committee was dealing with an offence of dishonesty, albeit that the dishonesty involved submitting false declarations of value in respect of medication when, according to Dr Mostert, he had thought that no duty was in any event payable. It also involved a false declaration to the College when Dr Mostert and his family were experiencing a number of difficulties. This false declaration was repeated on two further occasions. Dr Mostert appeared in his evidence to have justified the latter to himself on the basis that his conviction had nothing to do with veterinary practice and therefore with his applications for restoration and renewals: the Committee considered this view to be entirely misplaced. Individually and taken together, these are serious matters and Dr Mostert’s behaviour fell far short of that which the public would expect of a veterinary surgeon. On the other hand, Dr Mostert has had a long and distinguished career and has clearly achieved much from a veterinary and human perspective in South Africa.
62. The Committee has to determine whether a period of suspension would be sufficient to satisfy the public interest in view of the findings it has made. After careful consideration the Committee has concluded that in all the circumstances a lengthy period of suspension would properly reflect the gravity of the case and satisfy the public interest. In the Committee’s judgment a reasonable and fully informed member of the public would regard a lengthy

suspension as a proportionate sanction in this case. The Committee has decided that the appropriate period of suspension is one of 18 months.

63. In accordance with its usual practice the Committee also considered whether removal was the appropriate sanction. The Committee noted that removal was appropriate where this was the only means of protecting animals and the wider public interest. In the present case the Committee considered that it was most unlikely there would be any repetition of the misconduct evident in this case and also took into account the public interest in a competent and experienced veterinary surgeon being permitted to practise where that was appropriate. The Committee concluded that the wider public interest could be protected here by a lengthy period of suspension so that removal would be disproportionate.
64. The Committee therefore directs that Dr Mostert's registration be suspended for a period of 18 months.

Disciplinary Committee  
23 March 2022