

BEFORE THE PROFESSIONAL CONDUCT COMMITTEE OF THE
ROYAL COLLEGE OF VETERINARY SURGEONS

RCVS

v

DR NEBOJSA PETROVIC MRCVS (Respondent)

DECISION OF THE DISCIPLINARY COMMITTEE ON FINDING OF FACTS

1. The Respondent appeared before the Committee in relation to nine charges concerning his involvement as Official Veterinarian (OV) in the testing, and subsequent exportation, of horses to Serbia.
2. Mr Collis represented the College. Dr Petrovic attended the hearing but was not legally represented.
3. At the outset of the hearing, Mr Collis applied to amend the charges by withdrawing Charge 4 due to clarification of evidence that the College had obtained clarification prior to the start of the hearing. Dr Petrovic did not object to the amendment. The Chairman announced that the amendment could be made and so Charge 4 was withdrawn before the hearing commenced.
4. The Charges were:

That, being registered in the Register of Veterinary Surgeons, and whilst in practice at Anglia Veterinary Services, Heron Croft, Soham, Ely, CB7 5WA, you:

1. On or around 8 November 2021, falsely represented to the Animal and Plant Health Agency (“APHA”) that the blood samples submitted on 8 November 2021 for the following horses originated from the same horse for which a sample had been provided on 1 November 2021:

- (a) Temple Lock;
- (b) Thomas Lanfiere;
- (c) No Nay Bella; and
- (d) Capla (or Copla) Fever.

2. On or around 12 November 2021, told APHA’s Veterinary Head of Border Control that you had checked the microchips and/or passports of the horses in relation to which you had submitted the blood samples on 8 November 2021, when you had not done so;

3. On or around 16 November 2021, signed Export Health Certificates (“EHCs”) for the following horses, in which it was stated that blood samples taken from these horses on 29 October 2021 had been submitted to the Veterinary Laboratories Agency laboratory, Weybridge, for testing for Leptospirosis, with a negative result, when in fact those samples had tested positive for Leptospirosis;

- (a) Temple Lock;
- (b) Thomas Lanfiere;
- (c) No Nay Bella; and
- (d) Capla (or Copla) Fever.

~~4. On or around 16 November 2021, signed the certificates set out in charges 3(a) to (d) above stating that the exporter of the horses was Tattersalls, Newmarket, when it was not; [withdrawn]~~

5. Failed to send to the Divisional Veterinary Manager at the Centre for International Trade, within seven days of signing, certified copies of the EHCs referred to in charge 3 above;

6. Between 12 November 2021 and 16 November 2021, failed to take sufficient steps to prevent horses named Temple Lock and/or Thomas Lanfiere and/or No Nay Bella and/or Capla (or Copla) Fever being exported to Serbia, when you had been informed that there were concerns and/or doubts about whether those horses had tested negative for Leptospirosis;

7. On or around 13 January 2022, told APHA officer SQ that you were satisfied that you had properly identified the horses for which you had submitted samples on 1 November 2021 and 8 November 2021, when you had not done so;

8. Your conduct:

(a) In relation to Charges 1 and/or 2 and/or 3 ~~and/or 4~~ and/or 7 above was misleading;

(b) In relation to Charges 1 and/or 2 and/or 3 ~~and/or 4~~ and/or 7 above was dishonest;

(c) In relation to Charges 1 and/or 2 and/or 3 ~~and/or 4~~ and/or 5 and/or 6 and/or 7 above risked undermining government procedures designed to promote animal health and/or international relations.

9. Between 22 February 2021 and 21 February 2022, you failed to have in place any or any adequate Professional Indemnity Insurance;

AND THAT in relation to the facts alleged above, either individually or in any combination, you have been guilty of disgraceful conduct in a professional respect.

Admissions

5. At the start of the hearing, Dr Petrovic admitted the following Charges:

Charge 1(a), 1(b), 1(c), 1(d), 2, 3(a), 3(b), 3(c), 3(d), 5, 7, 8(c) in respect of Charges 1, 2, 3, 5 and 7 and Charge 9.

6. Dr Petrovic denied the following Charges: Charge 6, Charge 8(a), Charge 8(b) and Charge 8(c) in relation to Charge 6 only.

Background

Sale of horses

7. On 23 – 26 October 2021, 18 horses were purchased at Tattersalls, Newmarket auction house including the four horses involved in this case (No Nay Bella, Capla¹ Fever, Thomas Lanfiere and Temple Lock) and a fifth horse called Regina George. This group of 18 horses were quarantined together at T Farm prior to export to Serbia.
8. There were four separate purchasers who all had registered Serbian-based addresses with Tattersalls.
9. GH of X Transport Limited was approached by the Respondent, and asked if he would be willing to transport horses that his (the Respondent's) Serbian clients would be buying at the sales. Mr H agreed to assist, and then met the Respondent's Serbian clients at the sale. Due to language barriers, Mr H was not able to speak to the Serbian clients, but it was agreed that the Respondent would be the "*link person*" in making the transport arrangements for the horses once all the tests and paperwork had been completed.
10. Mr H understood from the Respondent that three of the horses he would be transporting had been bought by a L Stud, and that a Mr VV, who had bought seven horses on his own account, would be acting as agent for the purchasers of the remaining eight horses. On 3 November 2021, the Respondent confirmed to Mr H the identity of the eighteen horses that were to be transported. The following day, the 4 November 2021, EH, Mr H's wife and co-Director, e-mailed APHA in relation to applications for Export Health Certificates ("EHCs").
11. The applications for EHCs submitted to APHA on 4 November 2021 all contained the following information:
 - The country of destination was stated to be Serbia;
 - The export date provided was 9 November 2021; and
 - The Respondent's name and contact details were provided as the OV who would be signing the export certificates and certifying the EHC requirements for export.

¹ The uncertainty as to whether the correct name of this horse is Capla or Copla Fever appears to originate from APHA's difficulty in reading the Respondent's handwriting. When Tattersalls were subsequently contacted by APHA, they confirmed that they had sold a horse by the name of Capla Fever.

12. On 8 November 2021, X Transport Limited received confirmation from APHA that these applications had been processed and sent onto the Respondent.

Analysis of First Samples

13. On 1 November 2021, APHA received a parcel which contained 18 separate blood samples, alongside a General Submission Form, dated 30 October 2021, and signed by the Respondent. This form confirmed that:

- The client's name was VV;
- The horses were being kept at "*T Farm, Ousden in Newmarket*";
- The samples had been taken on 29 October 2021;
- The reason for seeking testing was due to an intended exportation of the horses to Serbia on 7 November 2021; and
- Testing was sought for a number of Leptospira serovars, as well as Glanders and Equine Infectious Anaemia to comply with the requirements for import into Serbia.

14. Four of these samples were asserted to have originated from the four horses in question; No Nay Bella, Capla Fever, Thomas Lanfiere and Temple Lock. A fifth sample was said to have originated from the horse, Regina George.

15. On 5 November 2021, APHA Weybridge reported the test results for all 18 samples that they had received from the Respondent. Within those 18 samples, the following positive test results had been received:

<u>Horse</u>	<u>Component</u>	<u>Result</u>
Regina George	Australis	Positive @ 1/200
Capla Fever	Tarassovi	Positive @ 1/100
Temple Lock	Tarassovi	Positive @ 1/200
Thomas Lanfiere	Tarassovi	Positive @ 1/1600
No Nay Bella	Bataviae	Positive @ 1/200

16. The test results were sent to the Respondent by way of e-mail on 5 November 2021.

Analysis of Second Samples

17. On 8 November 2021, the Respondent attended the APHA Sample Reception at Weybridge personally, with five blood samples, and he completed a further General Submission Form, dated 8 November 2021.

18. This second General Submission Form contained the following information:

- The samples had been taken on 7 November 2021;
- The reasons provided for seeking testing were for exportation to Serbia on 10 November 2021;
- The five samples were said to have originated from the same five horses that had tested positive on 5 November 2021 along with the previous reference for the 1 November testing, and
- Testing was required for *Leptospira Interrogans*, with the particular serovars requested being the ones that the five horses had tested positive for on 5 November 2021.

19. The Respondent explained to the receptionist that he was submitting samples from the same five horses that had previously provided positive test results as he was unhappy with the original results.

20. The manager of the testing department attended the Sample Reception and spoke to the Respondent. The Respondent informed him that he (the Respondent) was surprised by the five positive test results from the first submission, and that he had brought samples in for re-testing. The manager attempted to reassure the Respondent as to the robustness of APHA's testing system and the controls that were in place, but confirmed that they would be happy to test the new blood samples that had been submitted.

21. Testing of the Second Samples took place on 9 November 2021. The results they obtained were as follows:

<u>Horse</u>	<u>Component</u>	<u>Result</u>
Regina George	Australis	Positive @ 1/200
Capla Fever	Tarassovi	Negative @ 1/100
Temple Lock	Tarassovi	Negative @ 1/100
Thomas Lanfiere	Tarassovi	Negative @ 1/100
No Nay Bella	Bataviae	Negative @ 1/100

Internal enquiry into accuracy of test results

22. The laboratory staff were surprised by differences between the two sets of results one week apart, and so discussed their findings with a Disease Consultant for Leptospirosis based at APHA Weybridge who advised that both the First and Second Samples should be re-tested in the following way:

- A re-test to be conducted of the original serum obtained from the First Samples;
- A fresh aliquot of serum to be obtained from the First Samples, and for this to be tested;
- A re-test to be conducted of the bloods obtained for testing from the Second Samples; and
- A fresh aliquot of serum to be obtained from the Second Samples, and for this to be tested.

23. This re-testing confirmed the results previously obtained, with the exception that the two aliquots obtained from the First Sample said to have originated from Capla Fever were testing as negative for tarassovi, with a trace observed at 1/100.

24. The Laboratory Services Department, Weybridge then carried out an audit of the test results that had been obtained. The audit report on 11 November 2021, confirmed that:

“Each submission was retested twice, once from the sample sub aliquots as provided for initial testing and once from sample re-aliquoted from the customer-supplied

blood tubes. There is good reproducibility seen in the retests for each submission, no evidence of any mix-up of samples as prepared for the first test of each submission.

All test worksheets were filled out completely with no absent information”

12 November 2021 contact with the Respondent

25. In the aftermath of the audit report, consideration was given to submitting the First and Second Samples for DNA testing by the APHA Veterinary Director, who requested that Dr Cristofaro (Veterinary Head of Border Control for APHA) speak to the Respondent in order to establish whether the Respondent could confirm that he had correctly identified the five horses when obtaining the Second Samples.

26. In the course of Dr Cristofaro’s first telephone call with the Respondent on 12 November 2021, the following information was exchanged:

- Dr Cristofaro informed the Respondent that the Second Samples had all tested negative, but that APHA were concerned as to how four out of five horses had gone from positive to negative and one horse (Thomas Lanfiere) could have gone from a high reading to testing negative in such a short period of time;
- The Respondent informed Dr Cristofaro that he thought that there had been a problem at the lab to have produced the high readings from the First Samples;
- Dr Cristofaro asked the Respondent if he was certain that the Second Samples that had been submitted for testing had been taken from the correct horses. The Respondent informed Dr Cristofaro that he had checked the microchips together with the passports for all five horses before submitting the Second Samples; and
- Dr Cristofaro informed the Respondent that the results of the tests of the Second Sample would be released to him, and that APHA would be arranging for DNA analysis of both the First and Second Samples from the five horses in question.

27. Following the call, Dr Cristofaro realised that she had given the Respondent incorrect information, as the Second Sample from Regina George had in fact tested positive. She was about to telephone the Respondent back, when he called her. During this second telephone call, it was apparent that he had been sent the test results from the Second Samples and he was calling to say that Regina George had in fact tested positive.

DNA test results

28. Following the call with the Respondent on 12 November 2021, APHA arranged for the First and Second Samples to be sent for DNA analysis to establish if there was a DNA match for each horse from which the samples had purportedly originated.

29. On 12 January 2022, APHA received the results of this DNA analysis. The results of this analysis were as follows:

- There was a DNA match between the First and Second Samples purporting to originate from Regina George;
- There was not a DNA match between the First and Second Samples purporting to originate from Capla Fever;
- There was not a DNA match between the First and Second Samples purporting to originate from Temple Lock. There was, however, a match between the Second Sample purporting to originate from Temple Lock and the First Sample purporting to originate from No Nay Bella;
- There was not a DNA match between the First and Second Samples purporting to originate from Thomas Lanfiere; and
- There was not a DNA match between the First and Second Samples purporting to originate from No Nay Bella. There was, however, a match between the First Sample purporting to originate from No Nay Bella and the Second Sample purporting to originate from Temple Lock.

30. The results therefore showed that, with the exception of Regina George, the Second Samples did not match to the same horse from which the First Samples had been obtained.

31. Following receipt of these results, a decision was made to submit the remaining thirteen samples that had been received on 1 November 2021 for DNA analysis:

- Of these it was not possible to obtain a DNA profile from five of the samples,
- There was no match between seven of the newly-submitted samples and the ten samples that were originally sent for analysis; and
- There was a match between the sample purporting to originate from Olimba and the Second Sample purporting to originate from Thomas Lanfiere.

Export of horses

32. Following receipt of the negative test results from the second samples, the Respondent agreed a departure date of 18 November 2021 and subsequently informed Mr H that Regina George would not be travelling to Serbia due to a positive test result.

33. On 18 November 2021, Mr H attended T Farm with two trailers and collected the seventeen horses. He was provided with a copy of the EHCs for these horses. These horse were transported to Serbia, via France, arriving in Serbia on 21 November 2021.

APHA investigation

34. As a result of the DNA analysis results received on 12 January 2022, APHA commenced a formal OV13 investigation into the Respondent. As part of this process, Dr Quinney, Veterinary Head of OV Regulatory Affairs telephoned the Respondent on 13 January 2022 to inform him of the results of the DNA analysis and that his OV authorisations were suspended pending further investigation.

35. In the course of this telephone call, Dr Quinney explained to the Respondent the results of the DNA analysis received on 12 January 2022, and asked him whether he was satisfied that he had properly identified the horses at both samplings. The Respondent confirmed that he had done so.

36. On 13 January 2022, Dr Quinney sent the Respondent confirmation that he had been suspended as an OV.

37. That same day, 13 January 2022, APHA sent an e-mail to the Respondent requesting copies of the Export Health Certificates (EHCs).

38. On 13 January 2022, the Respondent provided copies of the EHCs for No Nay Bella, Temple Lock, Thomas Lanfiere and Capla Fever. Each of these EHCs were signed by the Respondent, dated 16 November 2021 and included the following information:

- That the horses had been inspected by the Respondent on 16 November 2021 and he considered them to be fit to travel; and
- Samples obtained from the horses on 29 October 2021 had produced negative results for *Leptospira* antibodies.

39. On 14 January 2022, Dr Quinney sent the Respondent a letter confirming that APHA were investigating the matter.

40. On 14 January 2022, Dr Christofaro also sent to the Respondent a letter inviting him to attend an interview on 25 January 2022.

41. During the course of the interview on 25 January 2022 the Respondent provided the following information:

- He was a one-man practice;
- That the four horses in question had been exported to Serbia on 16 November 2021;
- The fact that the EHCs reported negative results for *Leptospira* antibodies from samples obtained on 29 October 2021 was a mistake on his part, as he was under a lot of stress and was tired;
- That when he takes blood samples for export purposes, he checks the horse's lot number, microchip number and passport;
- That he was confident that he had performed this correctly when he took the First Samples, but he acknowledged that taking the Second Samples was a "*rushed job*" and he did not check the ID of the horses against their microchip;
- He had obtained the Second Samples on a Sunday night and had personally taken them to Weybridge lab on the Monday morning;

- That when taking the Second Samples, he had the lot numbers for the five horses and took samples with the assistance of someone from the stables; the Respondent lifted up the rug of each horse and the stable worker confirmed that these were the horses that required re-testing. As a result, at the time, he was convinced he had identified the correct horses;
- He was under a lot of pressure to ensure that he got the samples to Weybridge on time for the export to proceed as planned, and he accepted that he had overloaded himself with work;
- The Respondent stated that he had nothing to do with the horses and did not own a share of them;
- He grew up in Serbia and likes to help people in Serbia obtain affordable horses, although he receives no financial reward for doing so;
- He had assessed the condition of the horses both times he had taken samples, and was present at the time of their loading;
- He confirmed that he was aware of the requirement to send a signed EHC within seven days; and
- The inclusion of a Serbian address on the second General Submission Form (as the current location of the horses) was a mistake on his part.

42. On 7 February 2022, an interview/meeting took place before an OV Review Panel, which the Respondent attended. The Respondent made the following comments on 7 February 2022:

- That the pandemic and Brexit had significantly added to his workload and affected his working conditions; that at around the time of this case he had to complete the paperwork for a large number of horses and that he was overwhelmed with work;
- He confirmed that he knew that the paperwork and processes had to be correct, and that he understood the legal obligations of his position;
- The conversation he had with Dr Christofaro on 12 November 2021 was put to him, and he confirmed that he had not checked the microchips of the horses when he obtained the Second Samples; he stated he trusted the stable to present the correct horses to him;

- The Respondent had accompanied the buyers of the horses at the sales when the horses were purchased, and that it was the buyers who had asked him to certify the exports;
- In terms of the incorrect date of 29 October 2021 being placed on the EHCs, he stated that he had prepared the paperwork in advance and then did not think to amend the date when he finalised the paperwork;
- He stated that there was no conflict between his role as a vet and his desire to assist people in Serbia; and
- When asked if he thought he should have prevented the horses from being exported, he stated that he could not believe the positive lab results and that *“...he really believed everything was okay”*

43. When these matters were referred to the attention of RCVS, the Respondent acknowledged that he did not have Professional Indemnity Insurance (“PII”) in place for the time of these actions in 2021.

Evidence called during the hearing

44. Dr Cristofaro and Dr Quinney gave live evidence on behalf of the College.

45. The Respondent gave evidence. He explained in detail how he had carried out the second samples. He said for the second samples he had identified the horses through lot numbers only using Mr E B, the stable manager to assist him. He said he had on the first samples checked the lot numbers against the horses’ microchips and passports but that he had not done so when carrying out the second samples.

46. The Respondent said he carried out the second samples late at night and that he had a handwritten list of only the lot numbers of the horses that he needed to retest. He said that he read out a number to Mr B who then found the horse through a process of elimination, checking each horse until the relevant lot number was found. The Respondent then placed the vials containing the samples individually into different pockets about his person. Upon returning to his car, after taking all five samples, he then said he remembered which vial was in each pocket and made handwritten notes in his diary to associate each sample to the corresponding lot number.

47. He said he did not use a microchip reader because the 'beep' noise close to the horse's head at that time of night could unsettle the horses. He explained that the horses had been kept in the quarantine loose-boxes for some time at this point and this was likely to make scanning for a microchip more dangerous. He also said he was in a hurry, Mr B viewed the lot numbers by torchlight and that he (the Respondent) was ultimately responsible for any errors in the taking of the second samples. He said he had not intended to deceive anyone. He said he now realised that he had been overly confident that he had correctly identified the horses at the time.
48. The Respondent said he did not have any financial or other beneficial interest in the export of the 18 horses.
49. He said at the time of the charges, he had found his work more difficult and stressful due to the changes brought in by Brexit and because of the pandemic.
50. In response to Committee questions the Respondent explained that the positive Leptospira test results obtained for five out of the eighteen horses that were due to be exported to Serbia could in fact, for economic reasons, jeopardise the entire consignment of 18 horses.
51. He said that he was concerned about the welfare of the horses and about any delay regarding their export. He was concerned about the horses being abandoned if they were not transported in a timely manner.
52. He said when he spoke to Dr Cristofaro he was sure that he had correctly identified the horses for both the first and second sampling.
53. He said when he spoke to Dr Quinney about the sampling he had told her he believed that the different results between the first and second samples could be explained for the horse with the high reading by contamination of that sample within the laboratory. For the other four samples he considered the antibody levels detected in the first samples to be borderline positive, the negative results in the second samples could therefore be explained. He agreed Dr Christofaro told him that APHA would send the samples for DNA testing at that time. He said he was not concerned by this and having received the negative results his focus was on arranging transport.
54. The Respondent accepted that his conduct had been misleading in respect of Charge 8(b) in relation to Charges 1, 2, 3 and 7.

55. The Respondent also called Mr E B as a witness, who broadly confirmed the Respondent's evidence to the Committee as to how the identification had been carried out by using the lot numbers. He confirmed that horses would be identified when in quarantine by lot numbers only, due to the fact they were on the farm for such a short period of time. When questioned Mr B could recall one instance where a horse had been abandoned at the farm previously.
56. Mr B also said that the horses may well react badly to the noise of a microchip reader if they were anxious about being injected.

Summary of the College's case

57. The College's case in relation to Charge 6, was that since the Respondent knew that there were concerns about the accuracy of the results he should not have participated in the exportation of the horses that occurred on or around 16 November 2021.
58. It was the College's case that the Respondent deliberately sought to mislead in relation to his conduct at Charges 1, 2, 3, and 7 and that as a result his actions were dishonest.
59. Mr Collis on behalf of the College submitted that given the concerns expressed by Dr Cristofaro about the test results and knowing that APHA were taking steps to ascertain if the two sets of samples had in fact originated from the same horses, the Respondent in his capacity as OV, should not have signed the EHCs which permitted the exportation of the horses to occur.
60. The College relied on the fact that the Respondent signed the EHCs for the four horses on 16 November 2021 and that at the time of signing he was aware of the concerns of APHA about the accuracy of the test results. He therefore should not have arranged for the export of the four horses that occurred on 16/18 November 2021 and/or signed the EHCs which permitted that export.
61. In relation to Charge 8(a), the College alleged the Respondent had been dishonest in relation to Charge 1 in that he had deliberately supplied samples (the second samples) that he knew had not originated from the same horses from which samples had been obtained for the first samples in order to obtain false or artificial negative test results, presumably with the intention of securing the swift export of the horses. The College relied on the fact that three of the samples in the second samples taken on 7 November 2021 would not have had the same lot number as the five horses that were to be re-tested.

62. In relation to Charges 2 and 7, Mr Collis relied on the fact that the Respondent had confirmed twice that he had properly identified the horses for the first and second samples and that he had not disclosed that he had not used a microchip reader on the second samples. He submitted that the Respondent's failure to use a microchip reader and to properly identify the horses on the second samples was due to the fact that he was deliberately selecting different horses to be tested in order to secure false or artificial negative test results. Mr Collis invited the Committee to reject the Respondent's explanation that the submission of samples from different horses was no more than an error. Mr Collis submitted that the fact that Regina George still tested positive on the second sample could be explained because that horse belonged to a different owner/exporter than the other four horses so the Respondent may well have faced different expectations/pressures as to the export date for Regina George.
63. In relation to Charge 2, Mr Collis submitted that the Respondent had deliberately provided information which he knew to be false or misleading, (in terms of his description to Dr Cristofaro on 12 November 2021 of how he had checked the identity of the five horses on 7 November through their microchips and passports), and was dishonest in doing so. Mr Collis submitted that the Respondent's assertions on that date were a deliberate attempt on his part to suggest that he had obtained the second samples in a manner in which APHA would expect, despite him knowing that was not the case.
64. In relation to Charge 3, Mr Collis invited the Committee to reject the Respondent's explanation that he made an error in signing the EHCs for the four horses on 16 November 2021 because he had filled out part of those forms prospectively because at the time that he had signed them he must have known that those horses had positive test results which he had received on 5 November 2021.
65. In relation to Charge 7, Mr Collis submitted that the comments made to Dr Quinney on the 13 January 2022 involved a deliberate provision of false information by the Respondent, designed to conceal his errors on 7 November 2021. The College relied on the fact that the Respondent did not volunteer in clear detail his description of how he said the second samples were obtained on 7 November 2021, which would have made it obvious that there was a risk that the horses had been incorrectly identified and would explain how the samples produced different test results, and that the DNA comparison for the four horses had revealed that the second samples did not match to the first samples.

66. The College accepted that the Respondent made comments on 25 January 2022 and 7 February 2022 which revealed how he had carried out the tests but it nevertheless asked the Committee to find dishonesty on the basis that he was dishonest at the times referred to in Charges 2 and 7.

Summary of the Respondent's case

67. Throughout his oral evidence, the Respondent stressed his overriding concern being the 'welfare of the animals' and that he wanted the horses exported at the earliest opportunity.

68. The Respondent submitted that he had never been dishonest or intended to deceive anyone. He submitted that he had no motivation to be dishonest. He submitted that all mistakes that he made were due to overwork and stress in part from the pressures he was facing at that time due to Brexit and the pandemic.

69. The Respondent submitted that he regretted professionally and personally the mistakes he had made and his over-confidence in the reliability of his method of identification on the second samples. He relied on the fact that he had not loaded or exported the horse Regina George which had tested positive for *Leptospira* for both samples. He also relied on the fact that he was not told by APHA to stop the export of the horses after the results of the second samples.

70. He said he had never been dishonest or intended to deceive anyone. He relied on the fact that he had told APHA on 25 January 2022 that he had not checked the microchips.

Committee's Decision and Reasons

71. The Committee considered with care all of the evidence relied on by both the College and Respondent together with the submissions made by Mr Collis and by the Respondent. It took into account the documents submitted by both parties.

72. The Committee understood that the burden of proof was on the College and that in order to find any fact proved the Committee had to be satisfied so that it was sure.

73. The Committee did not consider the fact that the Respondent had been suspended by APHA was evidence it could rely on to prove the facts of the case. It therefore disregarded that suspension in making its decision on the facts.

74. The Committee took into account the Respondent's good character when making its decisions and the references that the Respondent had provided.

75. The Committee found Charges 1(a), 1(b), 1(c), 1(d), 2, 3(a), 3(b), 3(c), 3(d), 5, 7, 8(c) in respect of Charges 1, 2, 3, 5 and 7 and Charge 9 proved on the basis of the admissions made.

Charge 6

76. The Committee noted the following evidence:

- Dr Cristofaro stated that she would not object to an OV sending horses for export if the OV was absolutely sure that the identity of the horses relating to both samples was accurate. She said she would use a microchip reader to identify the horses and that if she as an OV had no doubts about the identity of the horses on each sampling she would have sent the horses for export and signed the EHC certificates despite being told that APHA were about to conduct DNA analysis.
- Dr Quinney gave evidence and stated that when she spoke to the Respondent on the 13 January 2022, she had questioned him as to whether he was absolutely confident that the second samples were correctly attributed to the horses which had tested positive on the first occasion. She said that using 'lot numbers' as a means of identification was not a correct or accurate method by which to identify a horse for export certification and that a microchip reader should have been used.

77. The Committee carefully considered the methods by which the Respondent identified 18 horses for the first samples and the five horses for the second samples. It concluded that the Respondent's failure to use a microchip reader to identify the horses, whilst taking the second samples, and the method he used to identify the horses on the second sample and to record which sample came from which horse, was open to significant opportunities for errors to occur.

78. The Committee accepted that the Respondent had genuinely believed that on both the first and second samples he had taken the samples from the same horses even though it was now evident that he had not.

79. The Committee was not persuaded that the Respondent deliberately chose to substitute horses, for the second samples partly because he had submitted a sample for Regina

George which proved positive on both the first and second testing. Further the second sample from Temple Lock did in fact match the first sample from No Nay Bella albeit mislabelled on identification, which was revealed on the DNA analysis.

80. The Committee decided that the Respondent would have been under a duty to prevent the four horses being exported when they had tested negative for Leptospira at that point only if he believed at that time that he could have incorrectly identified the horses at the time of the second sample. Although the Respondent had been made aware that there were concerns about the results, Dr Cristofaro had stated that if she was sure that she had correctly identified the horses for both samples she would have allowed the horses to be exported. The Committee accepted that at that time, the Respondent genuinely believed he had correctly identified the horses.
81. The Committee was satisfied that between 12 and 16 November 2021, the Respondent still believed that he had correctly identified the horses on the second sampling. The Committee considered that it was significant that APHA had not given him any advice about steps he should take to prevent the export of the four horses when he spoke to them and they expressed concerns about the results.
82. Although the Respondent had not revealed to the APHA at that time how he had identified the horses for the second samples, the Committee concluded that, until he had been provided with the DNA sample results, he genuinely believed that he had properly identified the horses for the second samples. It therefore did not consider he had failed to take sufficient steps to prevent the export of those horses.
83. Although the Respondent would have known at that time that he had not identified the horses using a microchip reader, the Committee accepted that he believed that he had correctly identified the five horses for the second sample. The results of the DNA analysis, in that two horses had been correctly identified and resampled, albeit one of the second samples mislabelled, supported the Committee's view that this was a complete mix-up by the Respondent.
84. The Committee noted that the Respondent had taken appropriate action in relation to Regina George in that he had not allowed that horse to be exported. It therefore decided that the Respondent had not failed to take sufficient steps at that point in time to prevent the export of the four horses despite having been told about the concerns of APHA about the second samples.

85. The Committee therefore found Charge 6 not proved.

Charge 8(c) in relation to charge 6

86. It follows that since the Committee found Charge 6 not proved, it did not find Charge 8(c) proved.

Charge 8(a) for – Misleading in respect of Charges 1 and/or 2 and/or 3 and/or 7

87. The Committee noted that the Respondent admitted that his conduct was misleading in relation to these charges. It was therefore satisfied on the basis of his admissions that Charge 8(a) was proved in respect of Charges 1, 2, 3 and 7.

Charge 8(b) Dishonesty in respect of Charges 1 and/or 2 and/or 3 and/or 7

Charge 8(b) in relation to Charge 1

88. The Committee carefully examined the evidence on whether the Respondent had any motivation to be dishonest. It was satisfied that the Respondent had no financial or other benefit from the export of the 18 horses. It was not persuaded that he had deliberately manipulated the second samples to get negative test results particularly since the result of Regina George remained positive and because he had correctly identified two of the five horses albeit that one of the samples were mislabelled. It was also not persuaded that the Respondent had different pressures on him due to Regina George being owned by a different owner. The Committee found no evidence to support that proposition.

89. The Committee did not find that the Respondent had any motivation to be deliberately dishonest when submitting the second samples for testing. Although it noted that he had taken on more responsibility than would usually be expected of an OV, it was not satisfied that he was motivated to act dishonestly to substitute the second samples from horses which he knew would test negative. It accepted that he was keen to expedite the export of the horses principally because he was concerned about the welfare of the animals.

90. The Committee was therefore not satisfied so that it was sure that in relation to Charge 1 the Respondent had acted dishonestly. It accepted the Respondent's evidence that he

was responsible for the mistakes made in the sampling but it was not satisfied that the Respondent had acted deliberately or that he had acted dishonestly at the time.

91. The Committee therefore found Charge 8(b) in respect of Charge 1 not proved.

Charge 8(b) in relation to Charge 2

92. The Committee accepted the evidence of the Respondent supported by Mr B that the horses were identified only by lot numbers when held for a minimal period of time in the quarantine area of the farm. However, it did not consider, even in circumstances which both Mr Bryson and the Respondent had described, with the horses being 'fresh' about handling or being injected, or 'jumpy at that time of night', that identification by lot number was a sufficient method of identification for the purposes of taking a blood sample for export health certification.

93. The Committee considered that the Respondent should have used a microchip reader for the second samples to try to reduce any error in identification given the importance of providing correct information for certification. Mr B calling out each horse's lot number to the Respondent whose only method of identification of the five horses was the lot numbers handwritten on a piece of paper, in poor lighting conditions, was a method which was undoubtedly prone to errors. The description given by the Respondent as to how he then stored the vials in a number of places about his person, whilst completing the sampling for each horse, before writing the vial reference numbers in his diary back at the car, for the purpose of cross referencing them with the laboratory submission form, was in the Committee's opinion also prone to significant risk of mistakes being made.

94. Although the Committee noted that the guidance notes for the Serbian export authority did not specify a microchip reader was necessary to identify the horses, the Committee decided that an experienced OV, such as the Respondent, ought to have known that using a microchip reader was the correct method of properly identifying the horses in the United Kingdom for the purposes of sampling for certification. In any event, the guidance did not say that identification by reference to lot number was sufficient.

95. The Committee was satisfied so that it was sure, that the Respondent was dishonest in telling Dr Cristofaro on the 12 November 2021, that he had checked the microchips and/or passports for the second sample when he had not done so. The Committee did not accept the Respondent's explanation that because he had checked the microchips and passports

for the first sample, he therefore believed that this sufficed for the second sample when he knew that he had only checked the horses for the second sample against lot numbers. The Committee decided that since the Respondent knew that he had not checked the microchip or passport for the second samples he was dishonest in telling Dr Cristofaro that he had checked the horses by microchip and/or passport (relying on the fact that he had done so only at the first sampling, but not making that distinction clear to the APHA in their enquiry, which was specifically about identification on the second sampling).

96. The Committee therefore found his conduct to be dishonest as he did not reveal at all his method of identification at that time to APHA and he also confirmed that he had checked the horses' microchip and/or passport. The Committee found that the Respondent's failure to tell APHA must have been because he was purposefully withholding his questionable identification method. It found his failure to be open and transparent with APHA at that time as an OV was dishonest.

97. The Committee was further satisfied that objectively such conduct would be considered to be dishonest because withholding important information from the APHA and agreeing to inaccurate information was clearly dishonest conduct.

98. The Committee therefore found Charge 8(b) in relation to Charge 2 proved.

Charge 8(b) in relation to Charge 3

99. The Committee accepted the Respondent's evidence that he completed the EHCs for the 18 horses in one batch, inserting the date of 29 October 2021, even though these forms could not have been completed before he had received the positive results for the four horses.

100. The Committee noted that the Respondent certified the EHCs on or around 16 November 2021 stating that blood samples submitted on 29 October 2021 for Leptospira had a negative result when in fact for four of the horses exported that had only proved to be the case on the results of the second samples which he had received on 12 November 2021.

101. The Committee considered that the manner in which the Respondent described completion of the EHCs was poor practice and not in accordance with standards to be expected of an OV. The Committee found the incorrect information in the EHCs were

significant errors but it did not find sufficient evidence to support a dishonest intention by the Respondent.

102. The Committee therefore found Charge 8(b) in relation to Charge 3 was not proved.

Charge 8(b) in relation to Charge 7

103. The Committee decided that the Respondent's conduct in telling Dr Quinney on or around 13 January 2022, that he was satisfied that he had properly identified the horses for the second samples when he had not done so, in circumstances when he knew he had not identified them using a microchip reader and by lot number only, was dishonest. The Committee was persuaded that the Respondent had intended to deceive Dr Quinney because he would have known had he told her the process he used to identify the horses which he later explained to the Committee in evidence she would have realised that the horses were likely to have been misidentified.

104. The Committee also noted that the Respondent had good reason to be dishonest because he would have known that had he disclosed that he had only identified the horses by lot number then this could have affected his status as an OV.

105. The Committee was further satisfied that objectively the Respondent's conduct would also be considered to be dishonest because withholding important information from the APHA and agreeing to inaccurate information was clearly dishonest conduct.

106. The Committee therefore found Charge 8(b) in respect of Charge 7 proved.

107. The Committee therefore found the following facts proved:

- Charges 1(a), 1(b), 1(c), 1(d), 2, 3(a), 3(b), 3(c), 3(d), 5, 7
- Charge 8(a) in respect of Charges 1, 2, 3 and 7
- Charge 8(b) in respect of Charges 2 and 7
- Charges 8(c) in respect of Charges 1, 2, 3, 5 and 7
- Charge 9.

108. The Committee therefore found the following facts not proved:

- Charge 6
- Charge 8(b) in respect of Charges and 1 and 3.
- Charge 8(c) in respect of Charge 6.

Disciplinary Committee
29 April 2024