

ROYAL COLLEGE OF VETERINARY SURGEONS

INQUIRY

RE:

[REDACTED] RVN

**DECISION ON PROCEEDING IN ABSENCE
AND FINDING OF FACTS**

Proceeding in Absence

1. At the outset of the hearing Ms Curtis, on behalf of the College invited the Committee to proceed in the Respondent's absence. She referred to her written submissions on service of the Notice of Inquiry, proceeding in absence, and a bundle of documents in support of the application to proceed in absence.
2. Ms Curtis first submitted that there had been good service of the Notice of Inquiry.
3. Ms Curtis next submitted that it was in the interests of justice for the Committee to proceed in the Respondent's absence. Ms Curtis referred to the cases of Adeogba –v- General Medical Council (2016) EWCA Civ 162 and R v Jones (Anthony) (2002) 2 WLR 52. Ms Curtis referred to communication between the College and the Respondent. Ms Curtis told the Committee that on 1 March 2022 the Inquiry Bundle and Unused Material Bundle was served on the Respondent.
4. On 2 March 2022 the Veterinary Defence Society (VDS) confirmed that they were assisting (although not representing) the Respondent, and confirmed that she had consented to the College sending them relevant documents. On the

same day, the College's solicitors sent a letter to the VDS enclosing the bundles.

5. On 10 March 2022 the VDS emailed the College to say:

“ [REDACTED] is not in a position to attend the hearing due to [REDACTED] health and [REDACTED] is unrepresented although the Society is assisting [REDACTED] by way of pastoral support. We hope to be in a position to provide a witness statement together with an up to date copy of [REDACTED] medical records which hopefully will assist the Committee.”

6. On 21 March 2022, the VDS emailed the College's solicitors attaching a letter written by the Respondent dated 18 March 2022. In the letter [REDACTED] indicated that [REDACTED] did not propose to attend the hearing, [REDACTED] did not ask for an adjournment, and indicated that [REDACTED] understood the hearing would go ahead in [REDACTED] absence.

7. Ms Curtis submitted that the respondent had voluntarily waived [REDACTED] right to attend, and that it was in the interests of justice to proceed.

8. The Committee accepted the advice of the Legal Assessor.

9. The Committee took account of the evidence before it that the Notice of Inquiry, dated 10 January 2022 was sent by special delivery and email. The Committee decided service of the Notice of Inquiry complied with Rule 5 of the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules (2004) (the Rules) so that good service was effected.

10. The Committee accepted the advice of the Legal Assessor who referred to R v Jones and Adeogba.

11. The Committee took the view that that the Respondent, who was being assisted by the VDS, had clearly indicated in [REDACTED] letter dated 18 March 2022 that [REDACTED] did not intend to attend the hearing. Further, in that letter, there is no request for an adjournment. The Respondent did not attend the Case Management Conference hearing in this case.

12. The Committee took into account that the Respondent had not asked for any postponement of the proceedings. The Committee decided in any event that in the circumstances, a postponement was unlikely to secure [REDACTED] attendance in the future.
13. The Committee took into account the potential disadvantage to the Respondent in proceeding in [REDACTED] absence, particularly where [REDACTED] is not represented, but took the view that in the circumstances, [REDACTED] had voluntarily waived [REDACTED] right to attend. The Committee also took into account the public interest in proceeding expeditiously with the hearing, in light of the age of the charges, as well as the fact that a number of witnesses have been secured to give evidence. In all the circumstances, the Committee was satisfied that it was fair, and in the interests of justice to proceed in the Respondent's absence in accordance with Rule 10.4 of the Rules.

Hearing Matters in private

14. Ms Curtis applied for any reference to the Respondent's health to be in private.
15. The Committee accepted the advice of the Legal Assessor and decided that any reference which may be made to details of the Respondent's health should be heard in private in order to protect the private life of the Respondent and that this would be in the interests of justice, pursuant to Rule 21.2 of the Rules.

The Charges

THAT, being registered in the Register of Veterinary Nurses and whilst in practice at the [REDACTED], ("the practice"), you:

1. Between 1 January 2017 and 31 May 2018:
 - (a) Took Midazolam (Hypnovel), a Prescription only Medicine and a Controlled Drug of Class C Schedule 3, from the practice's stocks, other than for legitimate veterinary purposes (particularised in the attached Schedule);
 - (b) Your conduct in relation to 1(a) above was dishonest;

2. Between 1 January 2017 and 31 May 2018:

(a) Took Promethazine hydrochloride (Phenergan), a Prescription Only Medicine, from the practice's stocks other than for legitimate veterinary purposes (particularised in the attached Schedule);

(b) Your conduct in relation to 2(a) above was dishonest;

3. Between 1 January 2018 and 31 May 2018:

(a) Made entries in clinical records for your animal, Teddy Ruxpin Theodore Roosevelt and/or your mother's animal, Snowball, suggesting that medication was required for Teddy and/or Snowball, when the said medication was instead taken for purposes other than legitimate veterinary use (particularised in the attached Schedule);

(b) Your conduct in relation to 3(a) above was dishonest;

4. Between 1 January 2018 and 31 May 2018, at the [REDACTED] of the practice:

(a) drew up medication taken from the practice into a syringe for the purposes of self-administration (particularised in the attached Schedule);

(b) Your conduct in relation to 4(a) above was dishonest;

5. (a) On or around 14 May 2018, created a document purporting to be a prescription, for the purposes of obtaining Promethazine hydrochloride (Phenargen) by falsely indicating that the said medication was for your dog Teddy Ruxpin Theodore Roosevelt when it was not for that dog;

(b) Your conduct in relation to 5(a) above was dishonest;

AND THAT, in relation to the matters set out above, whether individually or in any combination, you are guilty of disgraceful conduct in a professional respect.

**SCHEDULE TO
CHARGES**

1. Midazolam (Hypnovel) (charge 1)

Date	No. of boxes	Total no. of vials - 10mg/2ml per vial (10 per box)
1 November 2017 to 31 May 2018	Approximately 15	Approximately 150

2. Promethazine hydrochloride (Phenergan) (charge 2):

	Date	Quantity
(i)	2017	27 ampoules
(ii)	2018	60 ampoules
(iii)	2018	1 Elixir bottles
(iv)	2018	112 tablets

3. Clinical Records (Charge 3)

	Date	Record made
(i)	2 February 2018	1ml Midazolam (hypnovel) 10mg 2ml and/or 0.2ml Butador (Butorphanol Tartrate) a Prescription only Medicine (Veterinary) 10ml ampoules
(ii)	29 March 2018	2 x Phenergan Elixir
(iii)	14 May 2018	Phenergan ampoules 10 x 1ml

4. Drew up medication taken from the practice into a syringe (Charge 4):

	Date	Medication
(i)	Early 2018	Midazolam (Hypnovel)
(ii)	Early 2018	unknown medication which you injected into your hand whilst still in the prep room
(iii)	10 May 2018 at approximately 13:13	Butorphanol, a Prescription Only Medicine (Veterinary)
(iv)	10 May 2018 at approximately 15:57	Butorphanol, a Prescription Only Medicine (Veterinary)
(v)	10 May 2018 at approximately 16:40	Unknown medication
(vi)	10 May 2018 at approximately 17:25	Unknown medication
(vii)	12 May 2018 at approximately 08:32	Butorphanol
(viii)	12 May 2018 at approximately 08:32	Unknown liquid medication from a vial
(ix)	12 May 2018 at approximately 12:03	Butorphanol
(x)	14 May 2018 at approximately 08:32	Butorphanol

Background

16. The Respondent is a Registered Veterinary Nurse (RVN). At the time of the events set out in the Charges, the Respondent was employed as an RVN by the [REDACTED] (“the practice”). [REDACTED] worked three days a

week. The practice had two branches: one in [REDACTED] and the other in [REDACTED]. The Respondent was based primarily at the [REDACTED] surgery, but would work at the [REDACTED] branch as and when required.

17. It is alleged that the Respondent was dishonest in respect of a number of actions which [REDACTED] took in order to obtain medicines. The medicines alleged to have been taken by the Respondent were Midazolam (Hypnovel), Promethazine hydrochloride (Phenergan) and Butorphanol (Butador).

Decision on the Facts

18. The College called a number of witnesses to oral evidence:

- i. AJO, one of two principal veterinary surgeons at the practice;
- ii. RH, RVN employed at the practice;
- iii. RO, veterinary surgeon at the practice;
- iv. NP, receptionist at the practice;
- v. LP, receptionist at the practice;
- vi. BW, Pharmacy Manager of [REDACTED];
- vii. KB, administrator at the practice;
- viii. MP, at the time of the incidents, a Director of [REDACTED] Veterinary Clinic Ltd and at the time of giving evidence, employed at the practice as a consultant;
- ix. PC O'Reilly;
- x. PC Medhurst;
- xi. PC Edwards.

Decision on admission of hearsay in the form of a witness statement

19. At the close of the live evidence, Ms Curtis applied for a witness statement from MO, a receptionist at the practice, to be admitted as hearsay evidence.

Ms Curtis provided the Committee with a bundle of documents to demonstrate the efforts which the RCVS had taken to secure her attendance as a witness since October 2021 but had been unsuccessful in doing so. Ms Curtis referred to [REDACTED] made the RCVS aware of in the email correspondence.

20. Ms Curtis reminded the Committee that the Respondent had been served with MO's witness statement along with the rest of the Inquiry Bundle, although [REDACTED] had not been specifically informed that the College would apply to have the witness statement admitted into evidence in MO's absence.

21. Ms Curtis referred to Rule 23.1 of the Rules, submitting that it is quite a broad provision, and also submitted that it should be relevant, fair and in the interests of justice for the witness statement to be admitted. Ms Curtis submitted that that there was no indication that she was a reluctant witness or wished to withdraw her witness statement. Ms Curtis also submitted that it was relevant that evidence was in the form of a formal witness statement produced for the purpose of these proceedings, with a formal declaration of truth. In addition, she submitted that the witness statement provided relevant evidence but also provided the only evidence for two sub-charges, namely (i) (and (ii) of the Schedule to Charge 4 and therefore was crucial in respect of them. Further, the evidence she gave was consistent with other evidence before the Committee. Ms Curtis submitted that the Respondent has not in any of [REDACTED] communications specifically stated that [REDACTED] disputes the evidence of MO.

22. The Committee accepted the advice of the Legal Assessor who referred to the cases of *NMC v Ogbonna* [2010] EWCA Civ 1216 and *Thorneycroft v NMC* [2014] EWHC 1565.

23. Following the Legal Assessor's advice that, on the basis of *Thorneycroft*, the Committee could see MO's witness statement before making its decision, this was made available to the Committee during its deliberations on whether to admit the witness statement.

24. The Committee considered that the evidence in MO's witness statement was relevant and constituted the only evidence in respect of sub-charges (i) and (ii) in the Schedule to Charge 4.

25. The Committee then considered whether it was fair to admit the statement as hearsay. The Committee first considered the steps taken by the RCVS to secure MO's attendance. Several emails had been sent to MO between October 2021 and February 2022, which included information that a witness summons would be sent to her. There had been a telephone call to her on 25 October 2021 [REDACTED] reiterated in an email from MO on 29 October 2021. Despite further attempts to contact MO, by email and telephone, she had not replied. In all the circumstances, the Committee decided that the steps taken by the RCVS been reasonable.
26. The Committee also concluded that there was no indication that MO wished to retract her statement.
27. The Committee then considered the fact that the witness statement was signed and dated, and made with a declaration of truth, in the knowledge that it was produced for these proceedings. There was nothing to suggest that there was any malice towards the Respondent, and although there was reference to some friction with the Respondent, this was described by MO as a consequence of events related to the charges, rather than as a pre-existing aspect of their relationship. The Committee took into account that while the Respondent had indicated in [REDACTED] written communications that in general there were aspects of the witness statements [REDACTED] did not agree with, the Respondent had not specifically stated that [REDACTED] disputed any matter in MO's witness statement.
28. In all the circumstances, the Committee concluded that it was fair and in the interests of justice to admit MO's witness statement as hearsay evidence.
29. The weight to be given to it, in the absence of MO who could not be asked any questions, was a matter to be decided by the Committee in due course when deciding on the facts.

Submissions and other evidence

30. The Committee took into account Ms Curtis' written Opening Submissions on the Facts, the College's bundle of documentary evidence and an evidence

matrix produced for the assistance of the Committee, as well as her submissions on facts.

31. With regard to evidence from the Respondent, the College's bundle included a number of communications from the Respondent to the RCVS which the Committee took into account, including a letter from the Respondent to the Committee dated 18 March 2022. The Respondent also requested, through the VDS, that the Committee read medical records submitted by [REDACTED], prior to the Committee coming to its decision on facts. The Committee read those records before retiring to deliberate on the facts.

32. The Committee accepted the advice of the Legal Assessor who referred to the authorities of *Lawrance v GMC* [2015] EWHC 586; *Ivey v Genting* [2017] UKSC 67; *Lavis v NMC* [2014] EWHC 4083.

33. In coming to its decision on facts the Committee had regard to all the evidence both oral and documentary.

34. The Committee was advised that the burden of proof rests entirely on the College to prove its case and there was no burden on the Respondent to prove anything. The standard of proof to be applied when considering whether the charges are made out is that the Committee must be sure. In addition, as advised by the Legal Assessor, the Committee took the approach, that while there are similarities between several charges, including a number of dishonesty charges, the Committee must proceed to examine the evidence in respect of each charge separately, and make decisions about each charge separately, applying the standard of proof. However, this did not preclude it from taking into account the totality of the evidence before it in coming to its decisions.

Decision on the Interpretation of the Charges

35. During the Committee's deliberations, an issue arose as to how to deal with the information in the Schedules, and in particular two issues:
 - i. whether a finding by the Committee in respect of all items listed in the Schedule of a Charge was necessary to find that Charge proved;

- ii. whether the Committee was required to find the total amount of medicines proved as set out in the Schedules in order to find the Charge proved.

36. The Committee reconvened in open session to hear further submissions and Legal Advice.

37. Ms Curtis submitted that it was clear that the Committee did not need to find all the sub-particulars in a Schedule to find the Charge, to which that Schedule related, proved. In other words, to find only one item in the Schedule proved was sufficient. Ms Curtis further submitted that the Committee was not required to make findings in respect of the total amount of medicines set out in the Schedules, to find the Charges proved, and submitted that it could find less than the total amounts alleged, as long as those findings in respect of the amounts were by a majority decision of the Committee. Finding a different amount did not make it a different charge. Ms Curtis reminded the Committee that it was not open to the Committee to find more than the amounts alleged in the Schedule. Ms Curtis relied on extracts from *Archbold: Criminal Pleading, Evidence and Practice* which she submitted was of important value to the Committee.

38. The Legal Assessor advised that the principles set out in Archbold were persuasive, and when deciding on its approach, the Committee should bear in mind the principle that the Charges should be given their ordinary and natural meaning, and that the Committee should take into account the reasonable expectation of a Respondent in understanding what the meaning of the charges.

39. The Committee accepted the advice of the Legal Assessor and decided that in order to find a Charge proved, it was not necessary to find proved every item listed in a Schedule related to the Charge. In addition, the Committee decided that it was open to it to make findings relating to amounts of medicines which were less than the amounts charged, the amounts charged not being the particulars of the core charge (the part of the charge which excluded the Schedule). It was of course necessary to find proved all elements of the core charge, to find that charge proved.

Charge 1(a)

40. The Committee took into account the evidence regarding Midazolam, including that of AJO, and was satisfied that it is a prescription only medicine and a Controlled Drug (CD) of Class 3, schedule 2.
41. The evidence of AJO was that he conducted an audit of orders and stock. The Committee considered the documentary evidence, his oral evidence and concluded that he had carried out a balanced and credible audit. While there was no conclusive trail of wastage or legitimate use the Committee also considered that he demonstrated a measured approach. For example he factored in some wastage of the Midazolam, and made conservative estimates.
42. AJO identified four orders of Midazolam completed in the Respondent's handwriting, namely 4 boxes (40 vials) on 19 November 2017, 3 boxes (30 vials) on 19 December 2017, 4 boxes (40 vials) on 17 January 2018, and 4 boxes (40 vials) on 31 January 2018, a total of 15 boxes (150 vials). Having examined the orders which he identified were completed in the Respondent's handwriting and having examined clinical records his supplemental witness statement set out his conclusion that there were 15 boxes of midazolam (containing 150 vials) missing.
43. AJO's evidence was that the practice did not ordinarily use much Midazolam, and 1 box (10 vials) would typically last 1-3 months. There would therefore normally be no need to order more than 1 box at a time. The Committee also took into account AJO's evidence that quantities being ordered increased significantly between 2017 and 2018 when the Respondent [REDACTED] was ordering the Midazolam. When the Respondent was ordering Midazolam, as was evident to AJO in [REDACTED] handwriting, [REDACTED] ordered 4 boxes on 3 occasions and 3 boxes on 1 occasion, as set out above, totalling 15 boxes. His evidence was that other staff placed orders at the same time but usually 1 box per order, and 4 boxes at a time would mean that far more was being ordered than was needed by the practice.
44. The Committee also considered the evidence of NP which was that the Respondent had asked her to order four boxes of Midazolam, and the Committee had before it in evidence the CD Requisition Form ordering that amount dated 17 May 2018. The Committee also took into account the evidence of RH which was that at least two of the boxes ordered on 17 May 2018, delivered on 18 May 2018, had gone missing when RH checked the CD cabinet on 19 May 2018. AJO's evidence was that the 4 boxes were not found in the stock.

45. The Committee also took into account the evidence of the Respondent's admissions to police in May 2018 that [REDACTED] had taken Midazolam from the practice for personal use "just to stop thinking about all the bad stuff". On 25 May 2018 [REDACTED] was interviewed by the police under caution and admitted to taking six or seven vials of medicine which [REDACTED] described as "diazepam basically". The Respondent accepted a police Caution for stealing diazepam from [REDACTED] employer. The Respondent in a letter dated 18 September 2018 to the RCVS explained that although the Caution stated Diazepam, [REDACTED] clarified that [REDACTED] took Midazolam from the practice, however the police did not know what that was so [REDACTED] explained it was like Diazepam. As an aside, the Committee noted that the police subsequently withdrew the Caution on the basis that a prosecution was intended, although this did not in fact take place. Nevertheless the Committee considered the Respondent's responses to the police and acceptance of the Caution as part of the evidence.

46. In considering all of the evidence before it, the Committee decided that it could draw a reasonable inference so that the Committee could be sure, that the Respondent took approximately the 15 boxes of Midazolam which were unaccounted for, from the practice's stocks, for purposes other than legitimate veterinary use.

47. The Committee therefore found this Charge proved with regard to approximately 15 boxes (approximately 150 vials).

Charge 1(b)

48. The Committee took into account that Midazolam was a Controlled Drug. As an RVN, the Committee was sure that the Respondent knew [REDACTED] was not entitled to take it for the purposes of self-administration, as [REDACTED] admitted to the police. [REDACTED] accepted to the police, in [REDACTED] acceptance of the Caution for theft, and in [REDACTED] communications to the RCVS that [REDACTED] was wrong to do so. The Committee was satisfied so that it was sure that [REDACTED] took the Midazolam knowing that [REDACTED] was not entitled to it, and that it should only have been used for legitimate veterinary purposes, which according to its findings in Charge 1(a), it was not. The Committee then considered whether on the basis of the Respondent's state of mind at the time, [REDACTED] actions were honest or dishonest by way of application of the objective standards of ordinary decent people. In considering this question, the Committee was sure that [REDACTED] actions would be viewed as dishonest, in light of [REDACTED] motivation and intentions as set out above.

49. The Committee therefore found this Charge proved.

Charge 2(a)(i)-(iv)

50. The Committee considered evidence regarding Phenergan, including that of AJO, and was satisfied that it is a prescription only medicine for animals. AJO's audit of stock identified the practice's orders and use of Phenergan. The Committee considered the documentary evidence, his oral evidence and concluded that he had carried out a balanced and credible audit. While there was no conclusive trail of wastage or legitimate use, the Committee took into account AJO's evidence that the practice had almost ceased usage in 2017 – 2018. Prior to that period, there had been a supply issue which meant that Phenergan could not be obtained, and the practice had switched to alternative medicines and did not switch back to Phenergan again. However his evidence was that the wholesalers' record shows significant quantities of Phenergan were purchased in 2017-2018. Apart from the legitimate usage of 3 ampoules in 2017, there was no legitimate use after 2017, and the only records of Phenergan outgoing are on Respondent's account for the Elixir formulation in March and May 2018.

51. Further, AJO calculated that there were 27 ampoules of Phenergan missing in 2017, 60 ampoules missing in 2018, 1 Phenergan Elixir bottle missing in 2018 and 112 tablets of Phenergan missing in 2018.

52. By way of other evidence which the Committee considered was relevant to this Charge, was the evidence of LP, who stated that when she was at [REDACTED] Pharmacy on 21 May 2018, which was used by the practice to obtain some medicines, [REDACTED] was asked if the practice still wanted them to order Phenergan. LP's evidence was that she knew the Respondent's mother's dogs were given Phenergan to calm them down, and therefore she suspected it was the Respondent who had ordered it from the pharmacy. She texted the Respondent asking [REDACTED] still needed it to which the Respondent answered:

"Yes please I'll collect it when I am back at work".

53. This indicated that ■■■ had placed an order for it, wished to collect it, and was supportive evidence of the audit's findings against the Respondent. This was particularly the case where the evidence of AJO was that the prescription was created by the Respondent for ■■■ dog Teddy on 14 May 2018 for Phenergan and according to his knowledge, the dog had died in October 2017. Further, the Respondent, when interviewed by the police under caution on 10 July 2018 confirmed that Teddy was dead at the date of the prescription.

54. The Committee also took into account, alongside all of the evidence as set out above, its findings in respect of Charge 1(a) in relation to the taking of Midazolam and her admissions to the police that ■■■ took it for personal use.

55. In considering all of the evidence before it, the Committee was satisfied that it could draw a reasonable inference, so that it was sure, that the Respondent took approximately (although not more than) the amounts set out in (i) , (ii) and (iv) of the Schedule, as well as 1 Elixir bottle (iii), from the practice's stocks, for purposes other than legitimate veterinary use.

56. The Committee therefore found this Charge proved.

Charge 2(b)

57. The Committee took into account that the Respondent took the Phenergan which was a prescription only medicine. As an RVN, the Committee was sure that ■■■ knew ■■■ was not entitled to take it and that it should only have been used for legitimate veterinary purposes, which, according to its findings in Charge 2(a), it was not. The Committee then considered whether on the basis of the Respondent's state of mind at the time, ■■■ actions were honest or dishonest by way of application of the objective standards of ordinary decent people. In considering this question, the Committee was sure that ■■■ actions in Charge 2(i) – (iv) would be viewed as dishonest, in light of her state of knowledge as set out above.

Charge 3(a)(i)

58. With regard to the Respondent's dog Teddy, the evidence of AJO was that Teddy had died in October 2017, and he referred to a Facebook post by the Respondent on 11 October 2017 stating that [REDACTED] had to put [REDACTED] dogs to sleep the week before. Further, the Respondent, when interviewed by the police under caution on 10 July 2018 confirmed that Teddy was dead at time of the prescription for him dated 14 May 2018 which [REDACTED] admitted she had created.

59. The Committee took into account the Respondent's account at the practice which set out under [REDACTED] initials on 1 February 2018, that 1 ml Midazolam 10mg 2ml and 0.2ml Butador 10ml was obtained for Teddy for which [REDACTED] was charged £12.63.

60. The Committee concluded that on the basis of the evidence, that the Respondent made this entry for Teddy suggesting that the medication was required for him at a time when Teddy was dead. On this basis, the Committee was sure that the medication was taken for purposes other than legitimate veterinary use.

61. The Committee therefore found this Charge proved.

Charge 3(a)(ii)

62. The Committee considered the evidence that there was also an entry in the Respondent's account on 29 March 2018 for 2 bottles of Phenergan Elixir and a corresponding document dated 29 March 2018, which was an invoice for 2 bottles of Phenergan Elixir for the Respondent's dog, "Snowball".

63. The Committee considered the entry in the Respondent's account for 29 March 2018 and noted that it was made under the initials of RE, and that this was different to other entries in the account where the Respondent's initials appear in an entry. In addition, there is a reference in the entry to the 2 Phenergan Elixir being "agreed by MP". This also distinguished it from other entries in the account under the initials of the Respondent. The evidence of MP was that RE had been a receptionist the practice for a time. While there was no evidence before the Committee that [REDACTED] was working in the practice on the date in question, or that [REDACTED] did make the entry herself, the Committee could not be sure that this entry was made by the Respondent, in light of the

fact that it was made under the initials RE, and not those of the Respondent, which ■■■ used on numerous other occasions in her account.

64. The Committee therefore found this Charge not proved.

Charge 3(a)(iii)

65. The Committee took into account that there is an entry in the Respondent's account under ■■■ initials on 14 May 2018 for 10 x 1ml Phenergan ampoules for ■■■ dog. As already set out above, Teddy had died by this date, according to the evidence of AJO, and indeed confirmed by the Respondent ■■■ to police in ■■■ interview on 10 July 2018.

66. The Committee concluded that on the basis of the evidence, that the Respondent made this entry for Teddy suggesting that the medication was required for him at a time when Teddy was dead. On this basis, the Committee was sure that the medication was taken for purposes other than legitimate veterinary use.

67. The Committee therefore found this Charge proved.

Charge 3(b) in respect of Charge 3a(i) and (iii)

68. The Committee considered it appropriate to consider these matters together, on the basis that the findings in relation to Charge 3a(i) and (iii) both relate to making entries suggesting that medication was required for Teddy, when Teddy was dead at the time, and that the evidence in relation to both Charge 3(a)(i) and (iii) was the same.

69. Midazolam is a controlled drug (Charge 3(a)(i)), and Butador (Charge 3(a)(i)) and Phenergan (Charge 3(a)(iii)) are prescription only. As an RVN, the

Committee was sure that the Respondent knew [REDACTED] could not make entries in records suggesting that the medication was required for Teddy when he was dead, and that medication should only have been taken for legitimate veterinary purposes, which, according to the findings in Charge 3(a)(i) and (iii), it was not. The Committee then considered whether on the basis of the Respondent's state of mind at the time, [REDACTED] actions were honest or dishonest by way of application of the objective standards of ordinary decent people. In considering this question, the Committee was sure that [REDACTED] actions in Charge 3a(i) and (iii) would be viewed as dishonest, in light of her state of knowledge as set out above.

70. The Committee therefore found this Charge proved.

Charge 4(a)(i) and (ii)

71. The evidence for this Charge was contained in the witness statement of MO, a receptionist. The Committee decided to give this hearsay evidence weight. It was signed and dated with a formal statement of truth. There was no suggestion from the Respondent or any other source of evidence that MO had any reason to misrepresent matters. While there was evidence of some strained relations between MO and the Respondent this was, according to MO as a result of matters related to some of the Charges rather than a pre-existing animosity. Further the witness statement contained a significant amount of detail in a number of respects which gave it credibility.

Charge 4(a)(i)

72. The Committee took into account that the evidence of MO that in early 2018 she was in the prep room of the [REDACTED] branch of the practice, when she saw the Respondent draw up Midazolam into a syringe, put the syringe in [REDACTED] pocket, and went upstairs. MO states that she knew it was Midazolam because the Respondent left the vial on the work surface.

73. The Committee considered this carefully. It noted the circumstances, namely that the syringe was in the Respondent's pocket, and it was AJO's evidence that it was unusual to put a loaded syringe in a pocket. It also noted AJO's evidence that no animals were present upstairs. However, despite that evidence, the Committee was not satisfied so that it was sure that [REDACTED] drew up

the medication for the purposes of self-administration on this occasion, in the absence of further evidence. This was on the basis that as an RVN [REDACTED] would withdraw medication into a syringe as a regular occurrence at the practice, as confirmed by AJO. The Committee also had no evidence about what happened after the Respondent went upstairs.

74. The Committee therefore found this Charge not proved.

Charge 4(a)(ii)

75. The evidence of MO was that at around early 2018 MO went into the prep room and saw the Respondent standing in front of the work bench to her left. [REDACTED] had a needle and syringe in the back of [REDACTED] hand. As soon as [REDACTED] saw MO the Respondent pulled the needle out and MO remembered seeing blood come out of [REDACTED] hand. The Committee considered that this account was detailed in a number of respects and therefore the Committee considered it credible and reliable.

76. The Committee considered that there could be no reasonable explanation other than the Respondent had drawn up unknown medication from the practice into a syringe for the purpose of self-administration while in the prep room, and was therefore sure that this had occurred.

77. The Committee therefore found this Charge proved.

Charge 4a(iii)-(x)

78. The Committee viewed CCTV evidence of the prep room in the [REDACTED] branch which showed the Respondent entering and carrying out various actions in relation to drawing up medication into syringes. The Committee took into account AJO's commentary on the footage but bore in mind that he was giving evidence of what he saw was happening, and that while he may be of assistance as to details of matters seen in the footage, it was for the Committee to assess the footage and draw its own conclusions as to what was shown. The Committee also took into account that it was part of the role of the Respondent to draw up medication into a syringe and regularly throughout the

day. The Committee took into account AJO's evidence that no animals were kept upstairs, and that it was not usual to put a syringe in a pocket.

79. The Committee also took into account its findings on the Respondent taking Midazolam and Phenergan in Charges 1 and 2, as well its finding in respect of Charge 4(ii). The Committee also took into account the evidence of RH which was that the Respondent admitted taking Midazolam as well as injecting it. However, the Committee considered the evidence in respect of each Charge separately, and made separate decisions accordingly.

Charge 4a(iii)

80. The Committee considered the CCTV footage, as well as AJO's evidence about it which was that it showed the Respondent drawing up Butorphanol into a syringe. The Committee saw that the Respondent put the syringe in [REDACTED] pocket and went upstairs. The Committee was not satisfied so that it was sure that [REDACTED] did so for the purpose of self-administration in the absence of further evidence.

81. The Committee therefore found this Charge not proved.

Charge 4a(iv)

82. The Committee considered the CCTV evidence, and AJO's evidence about it which was that it showed the Respondent drawing up Butorphanol into a syringe. The Committee noted AJO's evidence that the bottle of Butorphanol was taken to where [REDACTED] bag was situated. The Committee noted that the bag was not in fact visible, although AJO's evidence was that he knew it was there because that was the location [REDACTED] usually put it. The Committee also took into account his evidence that the Respondent put the syringe and needle in the sharps bin, although the Committee was not satisfied that the footage showed this.

83. The Committee was not satisfied so that it was sure that [REDACTED] did so for the purpose of self- administration in the absence of further evidence.

84. The Committee therefore found this Charge not proved.

Charge 4a(v)

85. The Committee considered the CCTV footage, as well as AJO's evidence about it which was that it showed the Respondent taking a syringe and unwrapping it, putting it in [REDACTED] pocket, going to [REDACTED] bag, and withdrawing the syringe from [REDACTED] pocket and standing by [REDACTED] bag standing by [REDACTED] bag motionless but what [REDACTED] was doing was not visible to the camera, and then [REDACTED] put the syringe in [REDACTED] pocket.

86. The Committee concluded that it was not clear what the Respondent was doing.

87. The Committee therefore found this Charge not proved.

Charge 4a(vi)

88. The Committee considered the CCTV footage, as well as AJO's evidence about it which was it that showed the Respondent taking a syringe and unwrapping it, putting it in [REDACTED] pocket, going to [REDACTED] bag, and withdrawing the syringe from [REDACTED] pocket. The Respondent is shown with [REDACTED] back to the camera motionless.

89. The Committee concluded that it was not clear what the Respondent was doing.

90. The Committee therefore found this Charge not proved.

Charge 4a(vii)

91. The Committee considered the CCTV footage as well as AJO's evidence. The Committee considered that the Respondent is shown to have drawn Butorphanol into a syringe. The Committee considered it significant that it was 8.32am, a time when, as confirmed by AJO, there were no clients in building, as they arrive at approximately 9am and that there were no animals kept overnight. The Committee considered that there was no clinical reason to draw up the medicine into the syringe at this time, and no reasonable alternative explanation. On the basis of the evidence the Committee was sure that this was for the purpose of self- administration.

92. The Committee therefore found this Charge proved.

Charge 4a(viii)

93. The CCTV footage in respect of this Charge is the same as in relation to Charge 4a(vii) as it relates to the same time, and the same series of actions. However, in addition to the drawing of Butorphanol into a syringe, the CCTV evidence shows that the Respondent also withdraws liquid from a vial. AJO was not sure what medication it was. Once again, the Committee considered it significant that it was 8.32am, a time when, as confirmed by AJO, there were no clients in building, as they arrive at approximately 9am and that there were no animals kept overnight. The Committee considered that there was no clinical reason to draw up the medicine into the syringe at this time, and no reasonable alternative explanation. On the basis of the evidence the Committee was sure that this was for the purpose of self- administration.

94. The Committee therefore found this Charge proved.

Charge 4a(ix)

95. The Committee considered the CCTV footage, as well as AJO's evidence. The Committee considered that the Respondent is shown to have drawn up Butorphanol into a syringe. The Committee considered that the footage was clear that the Respondent placed the syringe in ■■■ bag which was visible to

the camera, and ■ then picked up ■ bag and left the prep room. The evidence of AJO was that at the time in question, namely not long after midday, surgery would have finished for the day. The Committee concluded that by placing the syringe in ■ bag at the time when surgery had ended for the day, there was no reasonable alternative explanation other than the Respondent drew up the Butorphanol into a syringe for the purposes of self-administration and was therefore satisfied of this so that it was sure.

96. The Committee therefore found this Charge proved.

Charge 4a(x)

97. The Committee considered the CCTV footage, as well as AJO's evidence. The Committee considered that the Respondent is shown to have drawn up Butorphanol into a syringe. The Committee considered it significant that it was 8.32am, a time when, as confirmed by AJO, there were no patients in the building, as they arrive at approximately 9am, and that there were no animals kept overnight. The Committee considered that there was no clinical reason to draw up the medicine into the syringe at this time, and no reasonable alternative explanation. On the basis of the evidence the Committee was sure that this was for the purpose of self-administration.

98. The Committee therefore found this Charge proved.

Charge 4(b) in respect of Charge 4(a) (ii), (vii), (viii), (ix), (x)

99. The Committee was sure that, as an RVN, in taking the medication for purposes of self-administration, and without the consent of the practice, ■ knew that ■ was not entitled to it. The Committee then considered whether on the basis of the Respondent's state of mind at the time, ■ actions were honest or dishonest by way of application of the objective standards of ordinary decent people. In considering this question, the Committee was sure that ■ actions in Charge 4(a) (ii), (vii), (viii), (ix), (x) would be viewed as dishonest, in light of ■ state of knowledge as set out above.

100. The Committee therefore found this Charge proved.

Charge 5(a)

101. The Committee took into account the evidence in the clinical records of Teddy that the prescription was generated by an entry under the initials of the Respondent on 14 May 2018 for Phenergan. AJO explained that the original prescription was no longer available, however he exhibited a copy which was printed off the practice's system on 25 May 2018 which is why the document bears that date rather than the date it was generated, namely 14 May 2018. The document bears the Respondent's name.

102. The Committee took into account the evidence of AJO that Teddy had died in October 2017, as well as the Respondent's admission to the police when interviewed on 10 July 2018 that [REDACTED] had created this prescription, and that Teddy was dead by 14 May 2018.

103. On the basis of the evidence, the Committee was sure that on or around 14 May 2018 the Respondent created a document purporting to be a prescription for the purposes of obtaining Phenergan by falsely indicating that it was for Teddy.

104. The Committee therefore found this Charge proved.

Charge 5(b)

105. The Committee was sure that the Respondent in falsely indicating that the Phenergan was for Teddy by creating a document purporting to be a prescription, knew that [REDACTED] was giving false information, and intended to mislead the practice. The Committee was sure that [REDACTED] acted in this way in order to obtain the Phenergan for [REDACTED] when [REDACTED] knew that [REDACTED] was not entitled to it. The Committee then considered whether on the basis of the Respondent's state of mind at the time, [REDACTED] actions were honest or dishonest by way of application of the objective standards of ordinary decent people. In considering this question, the Committee was sure that [REDACTED] actions in Charge would be viewed as dishonest, in light of [REDACTED] state of motivation and intentions in seeking to obtain the Phenergan for [REDACTED]

106. The Committee therefore found this Charge proved.

Disciplinary Committee
31 March 2022