

ROYAL COLLEGE OF VETERINARY SURGEONS

INQUIRY RE:

GERHARD H J SCHULZE ALLEN

**DECISION ON SANCTION IN RELATION
TO CHARGE 2**

Charge 2

1. On or about 3 December 2013, 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:

- (i) were dishonest;
- (ii) ought to have known that the representation was false; and/or

1. This matter has been remitted by the Judicial Committee of the Privy Council to this Committee for consideration of the appropriate sanction in relation to Charge 2 set out above, following Dr Schulze Allen's successful appeal in respect of Charges 1,3 and 4 that this Committee had found against him previously.

2. Background (*as identified by the Privy Council is set out in summary here*)

5. In 2010 Dr Schulze Allen first registered with the Royal College as a veterinary surgeon under section 2 of the Act. In 2011 his name was removed

from the register on non-payment of his annual renewal fee, apparently after he had left the UK to go to work in California.

6. On 25 September 2013, in the Superior Court of California, County of San Bernardino, Dr Schulze Allen pleaded guilty under a plea bargain and was convicted of "petty theft under \$50 without prior". His offence was stealing a package of superglue worth \$1.48. He was ordered to pay a fine of \$435, plus fees. This conviction forms the basis of the first charge.

7. By an application dated 3 December 2013 Dr Schulze Allen applied for restoration to the register of veterinary surgeons in the UK. One of the questions on the application form was: "Do you have any cautions or criminal convictions, including absolute and conditional discharges and spent convictions, or any adverse findings, including professional disciplinary proceedings against you, whether in the UK or overseas?" Dr Schulze Allen put a cross next to the word "No" beneath it. This representation is the basis of the second charge.

8. As part of the application process, Dr Schulze Allen also swore an affidavit dated 4 December 2013 in which he stated that "at no time have I ever been convicted of any criminal offense in the UK or elsewhere". This representation is the basis of the third charge.

9. On 10 December 2013 Dr Schulze Allen was restored to the register.

10. Early in 2016 Dr Schulze Allen worked for three weeks as a locum for Mr Peters, a veterinary surgeon in Horsham, West Sussex. Mr Peters took issue with Dr Schulze Allen's claimed remuneration and with the quality of his work. In February 2016 Mr Peters telephoned the Royal College, raising concerns about Dr Schulze Allen's performance, and informed it that his son had found a record that Dr Schulze Allen had received a conviction for petty theft.

11. The Preliminary Investigation Committee of the Council opened an investigation into Dr Schulze Allen. On 6 June 2016 they requested his written comments on the allegation that he had failed to disclose to the Royal College convictions or adverse findings for dishonesty. He replied by email the same day criticising what he said was the Royal College's failure correctly to interpret information provided to it in bad faith by third parties, and added: "I have no criminal record, what so ever". This is the basis of the fourth charge.

12. The Preliminary Investigation Committee made its own enquiries and obtained a record of Dr Schulze Allen's conviction from the Superior Court of California, County of San Bernardino. It formed the view that on 25 September 2013 Dr Schulze Allen had there been convicted of a criminal offence. In May 2017 it referred his case to the Committee.

13. The appeal in relation to the first, third and fourth charges revolves around whether Dr Schulze Allen was convicted of a "criminal" offence within the meaning of section 16(1)(a); whether in his affidavit sworn on 4 December 2013 he had been dishonest in denying that he had been convicted of a "criminal"

offence; and whether in his email dated 6 June 2016 he was dishonest in averring that he had no “criminal” record.

14. Dr Schulze Allen’s own position on this issue, at least in the early stages of the inquiry, was unclear. In emails to the Preliminary Investigation Committee dated 24 November 2016 and 2 and 24 May 2017 he referred to his having been convicted of a “misdemeanor”; indeed in the first email he accepted that he had been wrong to believe that he had no “criminal record or conviction”. But, by the time of the hearing on 12 September 2017, he was contending that, although he had a conviction, it was only for an “infraction”, a less serious type of offence than a “misdemeanor”. So, by that time, he was admitting that he had a conviction but not that he had been convicted of a “criminal” offence.

2.1. At Paragraph 20 the Privy Council referring to new evidence adduced by Dr Schulze Allen before it stated:

20. The most important piece of Dr Schulze Allen’s new evidence is a decision dated 16 July 2018 by Administrative Law Judge Adam L Berg, Office of Administrative Hearings, Veterinary Medical Board, Department of Consumer Affairs, State of California. He had heard Dr Schulze Allen’s appeal against the refusal by the Veterinary Medical Board in California of his application for a veterinarian licence (Case No 4602018000539). In his decision, Judge Berg stated that the question of whether in California an infraction is a crime is “open to interpretation”. He referred to section 16 of California’s Penal Code, which provides:

“Crimes and public offenses include:

1. Felonies;
2. Misdemeanors; and
3. Infractions.”

He also referred to the decision of the Californian Court of Appeal, Fourth District, in *People v Sava* (1987) 190 Cal App 3d 935 as “appellate authority for the proposition that infractions are not ‘crimes’”; and he concluded that Dr Schulze Allen “has at least a colorable argument that he has never been convicted of a criminal offense”.

2.2. The Board held that on the evidence that the Royal College had not discharged the burden of proving beyond reasonable doubt that Dr Schulze Allen was convicted of a criminal offence under Californian law. It therefore allowed the Appeal in part.

The Judgment at paragraph 42 states:

The Board therefore allows the appeal against the Committee’s conclusion on the first, third and fourth charges. But it dismisses the appeal against its conclusion in relation to the second charge, namely that in that regard Dr Schulze Allen had been guilty of disgraceful conduct in a professional respect. What is to be done about the sanction imposed on Dr Schulze Allen, namely of the removal of his name from the register? The Committee in part based their decision on sanction on the view that Dr Schulze Allen’s “dishonest conduct”

was “repeated ... on three separate occasions” and that the facts forming the basis of the third charge were “a clear attempt to deliberately misrepresent the fact that he had a conviction for a criminal offence”. But Dr Schulze Allen’s appeal is today allowed in respect of three of the four charges, including the third charge. If they had concluded that those three charges could not be upheld, the Committee might have imposed a less extreme sanction on Dr Schulze Allen than the removal of his name from the register. The Board therefore sets aside the sanction which the Committee imposed on him and remits to them the task of identifying the appropriate sanction in relation to the second charge.

3. At the outset of the hearing Mr Hare QC set out the background to the case.
4. Dr Schulze Allen was then given an opportunity to give evidence if he wished to do so. He declined to give evidence stating he would prefer to make submissions. He referred to his recent statement he sent to the College. He said that he was “deeply ashamed how he behaved 2 years ago”. Referring to his statement, he highlighted that he had viewed the RCVS request as an unjustified intrusion, and had reacted with false pride and with hubris. He stated that he has completed an accredited course of 22 hours on ‘Medical Ethics and Professionalism’ in California.
5. In final submissions Mr Hare QC invited the Committee to consider the nature and depth of Dr Schulze Allen’s insight. He submitted that Dr Schulze Allen’s statement to this Committee was at odds with other recent communications from him. Mr Hare QC stated that had Dr Schulze Allen given evidence he would have cross examined him on that statement. He also referred to Dr Schulze Allen’s correspondence to the Judicial Committee of the Privy Council in June 2019, where Dr Schulze Allen described the “Notice of Inquiry from 09 June 2017 obsolete”, and he wanted to “....demand Damages for Bad Faith Breach of Contract, or to allow to ask for indemnities on other, applicable grounds. Respondent enjoys Absolute Authority”.
6. Mr Hare QC identified aggravating and mitigating factors in the case and he reminded the Committee that findings of dishonesty against professionals are serious and case law dictates that a severe sanction rather than a lesser sanction would be appropriate where dishonesty has been made out.
7. Dr Schulze Allen submitted that a Reprimand would be the appropriate sanction. He stated that he had made a mistake and he was “sorry about that”. He stated that he was subject to “personal and vitriolic attacks”. He also referred to the fact that the matter has been going on for 2 years.
8. The Committee went on to consider what, if any, sanction to impose. It had regard to the Disciplinary Procedure Guidance on sanction provided by the College.
9. It took into account the submissions of both parties and it had regard to the advice of the Legal Assessor. The Committee took into account the testimonials provided by Dr

Schulze Allen which attest to his skills as a Veterinary Surgeon and the documentation confirming his participation at a Professional Ethics Course.

10. The Committee is aware that its role at this stage is not to be punitive although any sanction may have a punitive effect. It is part of the public interest not to permanently deprive the public of an otherwise competent practitioner.
11. The sanction which the Committee applies must be proportionate to the nature and extent of Dr Schulze Allen's conduct. The Committee must weigh the public interest against the interests of Dr Schulze Allen.
12. The Committee took into account aggravating and mitigating factors identified in this case.

The aggravating factors are:

- Dr Schulze Allen was dishonest to his regulator;
- In making a false declaration to his regulator he showed a wilful disregard of the regulatory role of the RCVS.

In mitigation the Committee noted the following:

- No harm to animals;
- Previous unblemished career;
- Single and isolated incident of dishonesty;
- His acceptance of wrong doing, albeit at a late stage;
- His developing insight.

13. The Committee remained concerned as to the extent of Dr Schulze Allen's insight. It accepts that in his witness statement he states "*I should have known that to mark the question regarding conviction with "No" in 2013 on the online application to the RCVS for restoration to the registry was disingenuous*". He goes on to say; "*My response to Mrs Crossley, was in excusable in its arrogance and repeated to be disingenuous.*". He also states; "*I repent my unprofessional conduct. I am contrite that I have failed RCVS*". However, in his submissions to the Committee he did appear to fully accept the Committee's finding that he had acted dishonestly. He said "*I had at no time had the feeling I was hiding anything*" he also stated that he made "*a mistake and I'm sorry about that*". In the context of these proceedings he refers to "*personal and vitriolic attacks*" and "*I did admit Charge 2*". Dr Schulze Allen did not admit Charge 2 when his hearing was originally before this Committee. However, the Committee accepts that he is no longer seeking to go behind that finding. Dr Schulze Allen's insight, in the Committee's view, is developing and he has a greater understanding now of the role of his regulator and the need to uphold proper professional standards.

14. The Committee first considered whether to take no further action. It concluded that such action would not be appropriate or proportionate given the seriousness of this Committee's finding that Dr Schulze Allen dishonestly represented to the College that he had no adverse findings against him when he knew that was not in fact true.
15. The Committee next considered whether a reprimand or warning would be an appropriate sanction. However, the Committee considered that such a sanction would not reflect the seriousness of the finding of dishonesty in this case and it would not maintain public confidence in the profession or uphold proper professional standards of conduct and behaviour. The Committee also considered that the finding of dishonesty was not at the lower end of the spectrum of seriousness. Further, there was no compelling evidence of significant insight or other evidence before this Committee that it could come to the conclusion that a reprimand in the circumstances of this case would be an appropriate and proportionate sanction.
16. The Committee next considered whether suspension from the Register would be appropriate. The Committee accepts that this is a single incident of dishonesty in an otherwise unblemished career and is unlikely to be repeated. The Committee also acknowledges that Dr Schulze Allen accepts albeit belatedly that he knew he should have disclosed the adverse finding to the RCVS.
17. The Committee considered that fellow professionals would not expect a Veterinary Surgeon to be dishonest in communications with his regulator. Further, members of the public would not expect a professional to behave in this way.
18. The Committee concluded that the appropriate and proportionate sanction is suspension from the Register for a period of three months. A period of three months reflects the seriousness of the charge. Such a sanction sends a clear message to Dr Schulze Allen, the profession and the public that behaving dishonestly towards the regulator is a serious matter. The Committee considered that removal from the register would be disproportionate given that this is a single incident and Dr Schulze Allen now accepts his wrongdoing.
19. Suspension from the Register for a period of three months will maintain public confidence in the profession and uphold proper professional standards of conduct and behaviour.
20. The Committee directs the Registrar to suspend Dr Schulze Allen's name from the Register for a period of three months.

DISCIPLINARY COMMITTEE
11 OCTOBER 2019