



College of Veterinarians of British Columbia

Hearing Outcome

Published April 9, 2015

Registrant: Dr. Wayne Etherington

Hearing File Number: H12-05

CVBC File Numbers: 12-006-A, 12-044, 12-085, 10-071, 08-080, 13-005-A, 13-026, 13-049

Decision: CVBC Discipline Committee – February 10, 2015 (Decision on Verdict)

CVBC Discipline Committee – April 9, 2015 (Decision on Disposition)

Dr. Etherington did not attend the hearing or provide a written submission despite being given the opportunity to do so.

Background: Dr. Etherington was previously suspended by order of the CVBC pursuant to section 65(2) of the Veterinarians Act, pending the discipline hearing outcome. Failing to comply with this order, Dr. Etherington became the subject of a BC Supreme Court injunction restraining him from practicing veterinary medicine. On February 19, 2013 Dr. Etherington resigned. He remains a former registrant of the CVBC.

Findings:

i) File number 12-006-A

On reviewing the evidence, the Discipline Committee found that Dr. Etherington:

- a. contravened sections 26, 27, 29, and 30 of the Code of Ethics as well as sections 100 to 104 of the CVBC Marketing Rules by publishing an advertorial (the “Advertorial”) in a number of Lower Mainland newspapers from about January 1 to July 17, 2012 containing statements that (i) that were comparative and self-laudatory, putting down colleagues and impugning their integrity, (ii) could be interpreted as guarantees and (iii) inferred that Dr. Etherington had superior knowledge to other veterinarians;
- b. contravened sections 26, 27, 29, and 30 of the Code of Ethics as well as sections 100 and 104 of the CVBC Marketing Rules by sending an undated letter to other CVBC registrants containing similar objectionable contents to those contained in the Advertorial between October 29, 2011 to January 17, 2012; and,
- c. contravened section 102 of the Code of Ethics by publishing in February 2012 on the website of Clayton Animal Hospital Ltd. that he had a specialty in cruciate surgery, when he did not.

During the CVBC’s investigation into this matter between April 30 to June 11, 2012, the CVBC communicated with Dr. Etherington. The Discipline Committee found that Dr. Etherington’s

responses to the CVBC were inappropriate and disrespectful to the CVBC and its employees, as well as disparaging to a colleague, contrary to sections 14 and 26 of the Code of Ethics.

The Discipline Committee also found that Dr. Etherington's contraventions of the Code of Ethics and Marketing Rules amounted to professional misconduct as defined by the CVBC Bylaws and case authorities.

ii) File number 12-044

In June 2012, Dr. Etherington obtained an email address from a pet owner after providing treatment to her dog. Dr. Etherington subsequently emailed her with an invitation to meet him for coffee. Based on the evidence provided, the Discipline Committee found that Dr. Etherington had obtained her email address for an improper purpose and used it inappropriately. In doing so, Dr. Etherington's conduct amounted to unprofessional conduct as it brings the veterinary profession into disrepute.

During the CVBC's investigation from September to November 2012, the CVBC communicated with Dr. Etherington. Dr. Etherington provided responses which the Discipline Committee found to be inappropriate and disrespectful to the CVBC, as well as unnecessary and unresponsive to the complaint, contrary to section 14 of the Code of Ethics.

The Discipline Committee also found that both Dr. Etherington's boundary violation and his contravention of the Code of Ethics amounted to professional misconduct because they flowed directly from his activities as a veterinarian.

iii) File number 12-085

The CVBC investigated complaints about Dr. Etherington's improper behavior towards a client, the client's friend, and one of his own employees. The Discipline Committee found that the evidence provided by the three female complainants was credible and concluded that:

- a. in December 2012, Dr. Etherington inappropriately touched a client after treating her dog;
- b. in December 2012, Dr. Etherington exposed his genitals in the presence of the client's friend; and,
- c. in September or October 2012, Dr. Etherington used inappropriate language and acted improperly when he pinched one of his employees' buttocks.

The Discipline Committee found that Dr. Etherington committed serious boundary violations which amounted to professional misconduct. No employee, client, or person accompanying a client should be subjected to physical, sexual or verbal abuse or harassment by a veterinarian. Dr. Etherington's conduct was a serious breach of the ethical expectations of a veterinarian and brings the veterinary profession into disrepute. As such, Dr. Etherington's actions also amounted to unprofessional conduct.

iv) File number 10-071

Dr. Etherington provided anal gland treatment to a one-year-old Schnauzer from August to November 2010. After the initial treatment, the problem with the dog's anal glands recurred and

Dr. Etherington performed anal gland removal surgery. However, the dog remained incontinent and had to be euthanized soon thereafter.

The Discipline Committee accepted the totality of the evidence presented, including expert evidence, and found that Dr. Etherington:

- a. failed to perform an adequate pre-surgical assessment of the canine and failed to advise the pet owners that the surgery was an elective procedure, resulting in the performance of unjustified anal gland surgery. These failures demonstrated deficiency in the ability, skill, and knowledge of Dr. Etherington and amounted to incompetence;
- b. failed to discuss the risks of the surgical procedure (including euthanization) and treatment options with the pet owners, and therefore failed to obtain properly informed consent prior to performing surgery; and
- c. failed to prepare adequate medical records documenting any diagnosis, any anal gland pathology, and any discussion with the pet owners as to the risks and necessity of a surgical procedure in this case.

The Discipline Committee found Dr. Etherington's conduct amounted to professional misconduct as it fell below the standard expected and required by the CVBC of its registrants.

v) File number 08-080

In October 2011, Dr. Etherington undertook to complete a continuing education requirement. He was also given an extension of time to complete this requirement. However, because no evidence was provided at the hearing about the length of the extension or the date by which the undertaking was to be completed, the Discipline Committee declined to find that Dr. Etherington had breached his continuing education undertaking.

vi) File number 13-005-A

In January 2013, Dr. Etherington again sent an undated marketing letter to registrants of the CVBC. Similar to file 12-006-A, the Discipline Committee found that the letter contained comparative and self-laudatory statements that impugned the integrity of other registrants and that could be conceived of as a guarantee and a scientific claim contrary to sections 26, 27, 29, and 30 of the Code of Ethics, sections 100 to 104 of the CVBC Marketing Rules, and Sections 1, 12, and 14 of the CVBC Marketing Guidelines.

The Discipline Committee also accepted the evidence presented that Dr. Etherington used a business name on the letterhead of the undated letter that had not been approved by the CVBC as a practice facility, was not accredited, and had no designated member.

The Discipline Committee found Dr. Etherington's actions to be professional misconduct as his actions were either contraventions of the Code of Ethics and Marketing Rules or a violation of the CVBC's naming rules.

vii) File number 13-026

In February 2013, Dr. Etherington carried out an eye enucleation surgery on a 16 or 17 year old feline. Based on the evidence provided, the Discipline Committee found that Dr. Etherington did not perform proper eye enucleation surgery as he failed to remove all of the eyelid margins on both the upper and lower eyelids. The Discipline Committee accepted the expert evidence that: (1) it is not reasonable to leave behind grossly visible intact eyelid tissue when performing an enucleation; and (2) Dr. Etherington did not meet the standard of a reasonable and competent veterinarian when he performed the enucleation. Dr. Etherington demonstrated a clear lack of skill and ability, and he was therefore found to be incompetent.

viii) File number 13-049

Dr. Etherington obtained an email address from a recently separated client who had sought treatment for her dog with oral cancer. The Discipline Committee reviewed a series of emails sent from Dr. Etherington to the client from before July 2012 to November 2013, showing that Dr. Etherington was seeking a personal relationship with the client. In addition, the client provided evidence that Dr. Etherington touched her on more than one occasion.

The Discipline Committee accepted the evidence presented and found that Dr. Etherington sent emails to the client that were unwanted, unwelcome, and inappropriate between a professional and a client. The Discipline Committee noted that it is important for veterinarians to understand, appreciate, and respect the boundaries between themselves and their clients. Dr. Etherington breached those boundaries with the emails he sent.

The Discipline Committee found that Dr. Etherington also violated the boundaries of a professional and client relationship with the nature and frequency of intentional, unwanted, and inappropriate touching of his client in this case.

In addition, Dr. Etherington:

- a. failed to keep proper medical records in accordance with the CVBC bylaws, as evidenced by missing entries in the surgical and narcotic drug logs and,
- b. provided replies that were inappropriate, disrespectful, and unresponsive to communications from the CVBC.

The Discipline Committee noted that it is important that veterinarians understand their obligation to cooperate with the CVBC in responding to requests for information in a timely and appropriate manner. A timely response by a registrant is respectful of the CVBC, protects the privilege of self-regulation, and facilitates the work of the CVBC in protecting the public.

The Discipline Committee found that Dr. Etherington's conduct in this matter amounted to professional misconduct as it fell below the standard expected and required by the CVBC of its registrants. In addition, Dr. Etherington's conduct, which brings the veterinary profession into disrepute, amounted to unprofessional conduct.

Disposition: Dr. Etherington committed professional misconduct and unprofessional conduct and acted incompetently in relation to 20 charges. Consequently, the hearing panel (the “Panel”) considered the Veterinarians Act and the College Transitional Bylaw and ordered Dr. Etherington to pay to the CVBC:

- a. a fine of \$40,000 on or before December 3, 2015. Any application by Dr. Etherington to extend the time period to pay the fine must be brought before December 3, 2015; and,
- b. maximum costs in the amount of \$74,254.80. The Panel ordered Dr. Etherington to pay the maximum costs given the nature, gravity, and number of charges proved against Dr. Etherington, the impact of his conduct on those affected by it, his failure to respond with communications expected of a regulated professional, and the lack of any reasons offered by Dr. Etherington to reduce the amount of costs payable.

In imposing the fine above, the Panel reviewed case authorities and also considered that Dr. Etherington:

- did not admit the wrongful conduct and has no insight into his shortcomings;
- has not taken any steps to address his incompetency or serious boundary violations;
- has been very disrespectful of and to the CVBC; and,
- is ungovernable.

In determining the disposition of this case, the Panel noted that the gravity and nature of Dr. Etherington’s wrongful conduct justified a significant penalty, such as revocation of registration. As Dr. Etherington is not a CVBC registrant, this penalty was not available to the Panel. However, the Panel exercised its jurisdiction to make several non-binding recommendations to provide guidance to the Registration Committee should Dr. Etherington apply for registration with the CVBC, including that he be ineligible to apply for registration for at least 5 years.