

MANITOBA VETERINARY MEDICAL ASSOCIATION
INQUIRY PANEL

IN THE MATTER OF a hearing pursuant to sub-section 32(1) of the Veterinary Medical Act,
CCSM c. v30

AND IN THE MATTER OF a complaint against Dr. Wenchao Zheng

DECISION OF INQUIRY PANEL

Inquiry Panel Members:

- [REDACTED], Chair of the Inquiry Panel
- [REDACTED]
- [REDACTED]

PRESENT:

Counsel for the Inquiry Panel: Hafeez Khan
Counsel for the Appeals Committee: Robert D.J. Dawson; and
Shawn Eisler, Student at Law
Counsel for the Member: David Girard
Member: Dr. Wenchao Zheng

The Hearing

1. This matter regarding Dr. Wenchao Zheng (the “Member”) comes before this Inquiry Panel of the Peer Review Committee (the “Panel”) following the direction of the Appeals Committee that the peer review chairperson establish an inquiry panel under section 30(1) of *The Veterinary Medical Act* (“*Act*”). The referral to this Inquiry Panel was made on January 4, 2021.
2. The hearing of this matter commenced on April 19, 2021, and continued April 20, 2021, and April 21, 2021. Arguments on sanctions were heard separately on April 28, 2021. The entire hearing proceeded via videoconference.

Background

3. The underlying facts are detailed in the Agreed Statement of Facts (Exhibit 11). The Member is a licensed member of the Manitoba Veterinary Medical Association (the “Association”) and practices through the Animal Hospital of Manitoba, a veterinary hospital in the City of Winnipeg, Manitoba.
4. This matter involves his treatment of, and record-keeping, related to a dog named Jake (the “Patient”) who attended his practice on November 24, 2017, December 8, 2017, and again on June 19, 2018. The Patient suffered from skin and ear disease attributable from underlying allergies. The Member saw and treated the Patient on the dates stated above in this paragraph. [REDACTED], the Patient’s owner (the “Owner”), subsequently filed a complaint regarding the services provided by the Member, which subsequently led to this hearing.

Preliminary Matters

5. On January 13, 2021, the Member filed a request to extend the commencement of the hearing beyond the 60-day deadline from the date the matter was referred to the Panel, pursuant to section. 30(2) of the *Act*. On February 5, 2021, this Panel issued its order that the hearing of this matter commence no later than May 5, 2021.
6. Apart from the Member’s request to extend the commencement date of the hearing, which was granted, no other preliminary issues were raised by either party. There were no objections to conducting the hearing virtually or to the members of this Panel presiding over this matter. None of the Panel members identified a conflict of interest. There were no objections to Panel’s jurisdiction. The hearing proceeded virtually, with counsel for the parties, the Member, and all witnesses, appearing via videoconference.

Evidence

7. This Panel heard testimony from the following witnesses:
 - a. [REDACTED], the Owner of the Patient;
 - b. Dr. Wenchao Zheng, the Member;
 - c. [REDACTED], qualified at the hearing as an expert in the administration and selection of veterinary pharmacological medicine and in the communication and documentation skills of a veterinarian, including medical record keeping;
 - d. [REDACTED], qualified at the hearing as an expert in veterinary dermatology;
 - e. [REDACTED], a registered veterinary technologist at the Animal Hospital of Manitoba; and
 - f. [REDACTED] a veterinary office assistant at the Animal Hospital of Manitoba.

8. The following documents were tendered as exhibits at the hearing:
 - a) Exhibit 1 The Charges against the Dr. Wenchao Zheng;
 - b) Exhibit 2 Estimate from Animal Hospital of Manitoba, dated November 24, 2017;
 - c) Exhibit 3 Estimate from Animal Hospital of Manitoba, dated June 20, 2018;
 - d) Exhibit 4 Estimate from Animal Hospital of Manitoba, signed by [REDACTED] dated June 19, 2018;
 - e) Exhibit 5 Cheque for \$39.62 payable to [REDACTED], dated January 15, 2020;
 - f) Exhibit 6 Estimate from Animal Hospital of Manitoba with notes, dated June 19, 2018;
 - g) Exhibit 7 Expert Report of [REDACTED], dated March 4, 2021;
 - h) Exhibit 8 Medical Report of Animal Hospital of Manitoba, dated June 19, 2018;
 - i) Exhibit 9 Medical Report of Animal Hospital of Manitoba, dated November 24, 2017;
 - j) Exhibit 10 Letter from Dr. Wenchao Zheng, dated October 5, 2018;
 - k) Exhibit 11 Agreed Statement of Facts;

- l) Exhibit 12 Cover pages of letters to [REDACTED] for estimates of June 19, 2018, and June 20, 2018;
 - m) Exhibit 13 Letter from [REDACTED], undated;
 - n) Exhibit 14 Expert Report of [REDACTED], dated April 9, 2021; and
 - o) Exhibit 15 Document written by [REDACTED]
9. Both parties were provided with an opportunity to cross-examine and to re-examine witnesses. There were no objections to exhibits tendered by the parties.
10. At the conclusion of the hearing on the issue of liability on April 21, 2021, counsel for both parties presented arguments on behalf of their respective clients. Equally, on April 28, 2021, counsel for both parties presented arguments on what sanctions, if any, should be issued against the Member.
11. The evidence and arguments of counsel were taken into consideration by the Panel in coming to its decision. A review of the evidence is discussed below.

Charges and Plea

12. The specific charges against the Member are contained in The Charges against Dr. Wenchao Zheng (Exhibit 1). Those charges are as follows:
- a) (Charge 1) That the Member failed to make a note of any professional advice given regarding the animal as required by Section 2.13.1.12 of the Association's Practice Inspection and Practice Standards Guidelines, and thereby breached Rule 4-6-3 of General By-Law No. 1 of the Association.
 - b) (Charge 2) That the Member breached paragraph A.2 of the Code of Ethics of the Association, in failing to be competent to perform the veterinary services that he undertook on behalf of his client; namely, he
 - i. administered ampicillin, a short-acting injection, to an out-patient dog with a chronic condition, despite likely bacterial resistance in skin infections;
 - ii. administered gentamicin, a short-acting injection, to an outpatient dog with a chronic condition without pre-treatment testing or client counselling;

- iii. administered dexamethasone, a shortacting injection, while also administering Cytopoint to an out-patient dog with a chronic condition; and
 - iv. failed to prefer oral medications over injections in light of the Owner's financial concerns and the patient's chronic condition.
- c) (Charge 3) That the Member failed to obtain the agreement of the Owner to follow the Member's instructions, which is essential to the existence of the Veterinarian-Client-Patient relationship, and thereby breached Rule 4-6-2(a) of General By-Law No. 1 of the Association.
 - d) (Charge 4) That the Member failed to practise the art of veterinary medicine with integrity when he retained without refunding a duplicate payment of fees and charges for his veterinary services, and thereby breached Section A.1 of the Code of Ethics of the Association; in the alternative, the Member thereby breached Rule 4-4-3 of General By-Law No. 1 of the Association.
 - e) (Charge 5) That the Member failed, when requested by a client, to provide to that client a prescription instead of dispensing the prescription product, and thereby breached Rule 4-6-5 of the General By-Law No. 1 of the Association.
 - f) (General Charge) That the Member engaged in conduct that constitutes professional misconduct and displays a lack of knowledge of, or lack of skill or judgement in, the practice of veterinary medicine.

13. The Member pled not guilty to the charges made against him.

Decision and Reasons of the Panel

- 14. As agreed by both parties, the Prosecution bears the burden of proving its case on a "balance of probabilities."
- 15. Should the Panel make a finding listed under section 40 of the *Act*, a review and decision on the appropriate sanction(s) against the Member is triggered. The relevant provisions of section 40 of the *Act* provide:

Findings of inquiry panel

s. 40. If, at the conclusion of a hearing, the inquiry panel finds that the investigated member

(a) is guilty of professional misconduct; ...

(c) has contravened this Act or the by-laws or the code of ethics adopted under this Act; ...

(e) has displayed a lack of knowledge of or lack of skill or judgment in the practice of veterinary medicine; ...

it shall deal with the member in accordance with this Act.

16. The Charges allege breaches of specific Rules of General By-Law No. 1 of the Association, the Code of Ethics of the Association, and the Association's Practice Inspection and Practice Standards Guidelines. Those Rules, Codes and Guideline are provided below:

a) Rule 4-4-3 of General By-Law No. 1 of the Association:

No excess fees or charges

4-4-3 No member or veterinary corporation may charge a client a fee or charge that exceeds the fees and charges disclosed to the client pursuant to s. 4-4-1 of this by-law, except where the excess fee or charge is for a professional service that the member or veterinary corporation could not have reasonably foreseen when the disclosure of fees and charges was made.

b) Rule 4-6-2(a) of General By-Law No. 1 of the Association:

Existence of relationship

4-6-2 A VCPR arises when:

(a) a Practicing Veterinarian Member has assumed responsibility for making clinical judgements regarding the health of the animal(s) and the need for medical treatment, and the client has agreed to follow the member's instructions;

c) Rule 4-6-3 of General By-Law No. 1 of the Association:

Requirement to keep records

4-6-3 Where a VCPR exists, a Practicing Veterinarian Member must maintain medical records as prescribed by the Practice Inspection and Practice Standards Guidelines.

d) Rule 4-6-5 of the General By-Law no. 1 of the Association:

Provide prescription on request

4-6-5 Where a VCPR exists, the Practising Veterinarian Member must, upon request by the client, provide to a client a prescription instead of dispensing the prescription product.

e) Paragraph A.1 of the Code of Ethics of the Association:

A. RESPONSIBILITIES TO THE CLIENT

1. Each member shall practise the art of veterinary medicine with integrity.

Commentary:

- a) Integrity is a fundamental quality of any person who seeks to practise as a member of the veterinary profession.
- b) Dishonorable or questionable conduct on the part of the veterinarian reflects adversely to a greater or lesser degree upon the integrity of the profession as a whole.

f) paragraph A.2 of the Code of Ethics of the Association:

A. RESPONSIBILITIES TO THE CLIENT

2. Members have the responsibility of being competent to perform the veterinary services which they undertake on behalf of their clients.

Commentary:

- a) Competence goes beyond formal qualification of the veterinarian to practise veterinary medicine. It has to do with the sufficiency of the veterinarian's qualification to deal with the matter in question and includes knowledge and skill and the ability to use them effectively in the interest of the client.

g) Section 2.13.1.12 of the Association's Practice Inspection and Practice Standards Guidelines:

2.13 Medical Records

2.13.1.12 A note of any professional advice given regarding the animal and an indication of when and to whom the advice was given if other than the client.

17. With respect to each of the charges outlined in the Charges, dated January 24, 2021 (Exhibit 1), the Panel has made the following findings:

Charge 1. That the Member failed to make a note of any professional advice given regarding the animal as required by Section 2.13.1.12 of the Association's Practice Inspection and Practice Standards Guidelines, and thereby breached Rule 4-6-3 of General By-Law No. 1 of the Association.

18. The medical records and cost quotes related to this file were entered as exhibits 2, 3, 4, 6, 8, and 9.
19. The Panel heard evidence from [REDACTED], the expert witness presented by the prosecution. [REDACTED] opinion is that the medical records kept by the Member in relation to the file in question, lacked sufficient information regarding the diagnosis made, testing and treatment options available, a treatment plan in the event of treatment success or failure, follow up evaluations recommended, and medication dispensed.
20. The Panel makes the following observations regarding the medical records related to the Patient's June 19, 2018, admission:
 - a. Although the written estimate makes note of amendments made to the original estimate, no explanation is contained within the medical record or estimate to explain the rationale behind making these amendments;
 - b. While the written estimate contains the Owner's signature, the medical record contains no explanation as to whether or how informed consent was achieved;
 - c. The medical records lacked sufficient written rationale for treatment recommendations provided to the Owner; and
 - d. The evidence provided lacked sufficient written records of a medical plan discussed with the Owner, to address the Patient's ongoing medical needs.
21. The evidence is clear that the Member failed to make a note of any professional advice given regarding the animal as required by Section 2.13.1.12 of the Association's Practice Inspection and Practice Standards Guidelines, and that the Member thereby breached Rule 4-6-3 of General By-Law No. 1 of the Association.

22. The Inquiry accordingly finds the Member has contravened section 40(c) of the *Act*.

Charge 2. That the Member breached paragraph A.2 of the Code of Ethics of the Association, in failing to be competent to perform the veterinary services that he undertook on behalf of his client; namely:

(a) administered ampicillin, a short-acting injection, to an out-patient dog with a chronic condition, despite likely bacterial resistance in skin infections.

23. The Panel notes that both expert witnesses [REDACTED] and [REDACTED], stated that the use of injectable ampicillin antibiotics in this case was inappropriate, due to the high likelihood of antibiotic resistance to ampicillin for bacterial skin infections commonly affecting dogs. Furthermore, ampicillin does not penetrate well into the ear canal to treat any existing bacterial ear infection, nor is a single injection of ampicillin effective in managing infection.

24. Ampicillin was clearly the wrong treatment for the Patient.

25. Given the congruous evidence on this issue of both expert witnesses, the Panel finds that the Member failed to be competent to perform the veterinary services undertaken by administering ampicillin and accordingly contravened section 40(c) of the *Act*.

(b) administered gentamicin, a short-acting injection, to an out-patient dog with a chronic condition without pre-treatment testing or client counselling.

26. Similarly, both expert witnesses, [REDACTED] and [REDACTED], stated that the use of injectable gentamicin antibiotics in this case was inappropriate. Gentamicin should be reserved for treatment of bacterial skin infections deemed resistant to other antibiotics, based on results of culture and sensitivity testing.

27. In this case there is no record to indicate either basic skin scraping or ear swab cytology, nor culture and sensitivity testing, were performed to rationalize the appropriate use of antibiotics for the Patient.

28. Given the consistent evidence of both expert witnesses, the Panel finds that the Member failed to be competent in his performance of the veterinary services and accordingly contravened section 40(c) of the *Act*.

(c) administered dexamethasone, a short-acting injection, while also administering Cytopoint to an out-patient dog with a chronic condition.

29. ██████████ testified that the use of injectable dexamethasone, a steroid, as acceptable and reasonable in this case, to quickly control inflammation and pruritis for a period of up to 24-48 hours. ██████████ also testified that the concurrent use of injectable Cytopoint, a monoclonal antibody, as acceptable and reasonable in this case, to provide longer lasting control of pruritis, generally effective within 7-14 days and with effects lasting up to 35 days, with minimal risk of adverse side effects.
30. ██████████ testified that injectable dexamethasone can be used concurrently with Cytopoint, but he did not recommend doing so in this case. He recommended the use of oral and/or topical steroids as an alternate option.
31. Having considered the expert evidence on this issue, the Panel does not find that the Member is in contravention of the *Act* in administering dexamethasone while also administering Cytopoint to an out-patient dog with a medical condition.

(d) failed to prefer oral medications over injections in light of the Owner's financial concerns and the patient's chronic condition.

32. The Panel finds that, in light of financial constraints described by the Owner, reasonable options were available to effectively treat the Patient with oral medication to address his medical condition, within the Owner's noted budget constraints of \$300.00.
33. When questioned about whether alternate appropriate oral antibiotic medication would be more cost effective than Simplicef, the Member testified that he was not aware of the cost for other options. While this may be so, there is no indication that effort was made to research nor provide the Owner with alternate oral antibiotic options within the Owner's financial means.
34. Simplicef is a 3rd generation cephalosporin antibiotic. ██████████ testified that although this antibiotic would have likely been effective in treating a bacterial skin infection in this case, it is deemed inappropriate in light of the fact that 1st and 2nd generation cephalosporin antibiotics are largely considered effective against common bacterial skin infections, and due to concerns

that overuse and inappropriate use of Simplicef can lead to antibiotic resistance, and its use was not justified by way of any diagnostic testing such as skin scrape or ear swab cytology, or culture and sensitivity testing. [REDACTED] further testified that the use of a 1st generation oral cephalosporin such as cephalexin is considered appropriate for treating most bacterial skin infections in dogs and would have cost considerably less than Simplicef.

35. It was also [REDACTED] opinion that alternate antibiotics choices, such as clindamycin, amoxicillin-clavulanic acid, and cephalexin, were more appropriate in this case. Any of those drugs, if not readily available at the Member's veterinary clinic, could have been filled by a pharmacy of the Owner's choice if the Member had written a prescription for the Owner. This would have been less costly to the Owner than Simplicef.
36. The Panel finds that the use of injectable antibiotics was unnecessary in this case. If bacterial skin/ear infections were present, it is reasonable to assume these could have been successfully managed with topical and/or oral medication. At no point was any indication noted in writing or verbally that the Patient would not tolerate the administration of oral medication. Nor was there any indication that the Owner was given the option, nor declined the option, to treat the Patient's clinical symptoms of skin disease with topical treatment such as medicated shampoo.
37. With respect to the use of injectable Cytopoint, the Member testified that he chose to treat the Patient with injectable Cytopoint to control his clinical symptoms of pruritis and skin inflammation associated with suspect allergic skin disease. Although Cytopoint is considered an effective drug to control these symptoms and is largely considered safe with minimal risk for side effects, less expensive oral treatment options to manage these symptoms are available, including oral steroid medications such as prednisone, prednisolone, or dexamethasone.
38. Steroids may carry an increased risk of undesirable side effects compared to the use of Cytopoint, but if a client is educated about appropriate steroid use, the clinical signs associated with intolerance, and recommendations for assessing tolerance to steroid treatment such as diagnostic blood testing or urinalysis, an Owner can make an educated and informed decision on whether to consent to such treatment. Allergic skin diseases can be successfully managed with oral steroids as part of an effective treatment plan. There is no evidence that such an option was provided to the Owner as an alternative to Cytopoint.
39. Furthermore, oral non-steroid drugs commonly used to control allergic skin disease were not presented to the Owner as a treatment option. The Member stated that this type of drug, such as Apoquel, would have not cost any less in the end compared to Cytopoint for a similar duration of treatment. Had the Owner been given this option she may have been able to

purchase the drug incrementally, spreading her financial burden over a course of a month instead of having to pay in one lump sum.

40. The Panel finds that the Member failed to prefer oral medications over injections in light of the Owner's financial concerns and the Patient's chronic condition and accordingly contravened section 40(c) of the *Act*.

Charge 3. As a result of the facts and matters referred to above at para. 1, 2, and 5, you failed to obtain the agreement of the client to follow your instructions, which is essential to the existence of the Veterinarian-Client-Patient relationship, and you thereby breached Rule 4-6-2(a) of General By-Law No. 1 of the Association.

41. The evidence before this Panel is that the Owner refused to sign the original financial estimate provided for treatment of the Patient in the amount of \$766.15, then signed the amended estimate in the amount of \$424.66. The Member then proceeded with treatment with injectable medication and topical ear medication outlined in the amended estimate.
42. The Owner testified that she was not provided with sufficient explanation from employees at the Animal Hospital of Manitoba describing the rationale for treatment of the Patient as recommended on the estimate, that she was under duress due to her dog being ill and felt pressured to consent to treatment beyond her financial means, and therefore did not provide informed consent when she signed the financial estimate.
43. The medical records for the Patient lack information noting whether the Member and/or clinic employees discussed the treatment options with the Owner, recommendations for treatment, treatment rationale, or to what if any treatment options she consented to.
44. Based on the evidence before it, the Panel finds that the Member did not properly inform the Owner of the treatment options and that the Owner did not give informed consent to the treatment options.
45. The Panel finds that the Member breached Rule 4-6-2(a) of General By-Law No. 1 of the Association and thus has contravened section 40(c) of the *Act*.

Charge 4. That the Member failed to practise the art of veterinary medicine with integrity when he retained without refunding a duplicate payment of fees and charges for his veterinary services, and thereby breached Section A.1 of the Code of Ethics of the Association; in the alternative, the Member thereby breached Rule 4-4-3 of General By-Law No. 1 of the Association.

46. The prosecution advised in its closing arguments that it is not proceeding on Rule 4-4-3 of General By-Law No. 1 of the Association and that this argument no longer forms part of the charge. The Panel has therefore not decided on whether the Member breached that Rule.
47. On June 19, 2018, the Owner instigated a loan application for payment of the medical care provided to the Patient, after being given this option by the Animal Hospital of Manitoba. This application was made by the Owner.
48. Within 24 hours, however, the Owner then arranged for payment by alternate means and no longer required the loan she had applied for. The loan company, however, processed the loan application and submitted payment of medical expenses to the Animal Hospital of Manitoba, essentially providing the hospital with duplicate payment for services rendered.
49. Evidence provided by [REDACTED], an employee of the Animal Hospital of Manitoba, showed that the clinic did not notice email notification that the loan was approved, nor that the loan money was received, for several weeks after the loan application was submitted, due to staff being away on holidays, even though the email address used was regularly checked by other working employees.
50. The Owner was not issued a reimbursement from the clinic for this duplicate payment until the first week in August 2018, approximately 50 days after the Animal Hospital of Manitoba received duplicate payment. While waiting for reimbursement from the Animal Hospital of Manitoba, the Owner accumulated about \$39.00 in interest fees, which would not have occurred if she had been reimbursed in a timely fashion. Furthermore, the Animal Hospital of Manitoba issued a cheque over one year later to the Owner, as reimbursement for interest accrued, only after consultation with the Manitoba Veterinary Medical Association.
51. The Panel believes that reasonable steps could have been, but were not taken, by the Animal Hospital of Manitoba, to ensure that the Owner was reimbursed in a timelier fashion. This would have negated the interest fees accumulated. It is reasonable to assume that clinic staff, including the Member, would have been aware of the loan application being processed, and

should have monitored phone and/or electronic messages indicating the status of this loan, in a timely fashion.

52. Furthermore, the Panel believes that reasonable steps could have been, but were not taken, by the Animal Hospital of Manitoba, to ensure the Owner was reimbursed in a timelier fashion for interest fees accumulated due to their delay in processing her loan proceeds.
53. The Panel finds the Member to have breached section A.1 of the Code of Ethics of the Association and is in contravention of section 40(c) of the *Act*.

Charge 5. That the Member failed, when requested by a client, to provide to that client a prescription instead of dispensing the prescription product, and you thereby breached Rule 4-6-5 of the General By-Law No. 1 of the Association.

54. The evidence before the Panel indicates that:
- a) The Owner requested a written prescription from the Animal Hospital of Manitoba for the Patient after conducting her own research on purchasing similar drugs recommended to her by the Member. The Owner's research found that those drugs were available at a lower cost through a company she referred to as "Pet Smart". The Owner testified that she was refused a written prescription from the Member.
 - b) The Member conducted his own research that indicated "Pet Smart" could not fill the prescriptions for which the Owner was requesting a written prescription.
 - c) The Owner requested but was denied a written prescriptions by the Animal Hospital of Manitoba.
55. A valid client-patient-relationship ("VCPR") existed as defined by the Manitoba Veterinary Medical Association, between the Owner, the Patient and the Member. Therefore, the Member had a legal obligation to provide the Owner with a prescription instead of dispensing the prescription product. The Member failed to do so.
56. Even if the Member, based on his own research, had determined that the Owner could not have the desired prescriptions filled at the facility of the Owner's choice, he could reasonably have offered the Owner the findings of his research and provided her with the written prescription for her to source out alternate means of having the prescription filled.

57. The Panel finds that the Owner requested a prescription and that the Member refused to provide one to her. Accordingly, the Member breached Rule 4-6-5 of the General By-Law No. 1 of the Association and is in contravention of section 40(c) of the *Act*.

(General Charge) - Charge of Professional Misconduct

58. In their arguments at the conclusion of the hearing, both Mr. Dawson, on behalf of the Manitoba Veterinary Medical Association, and Mr. Girard, on behalf of the Member, addressed the definition of “Professional Misconduct”, and whether the Member’s actions met such a definition.
59. Both Mr. Dawson and Mr. Girard referred to the case of *Re Lazar and Association of Professional Engineers of the Province of Manitoba et al.* 1971 CanLII 1003 (MB QB) page 620, where the Court defines “professional misconduct” as follows:

“If it is shown that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency; then it is open to the General Medical Council to say that he has been guilty of ‘infamous conduct in a professional respect’.”

60. The provincial legislation under which veterinarians are governed does not specifically define “Professional Misconduct”. The literature defining and interpreting professional misconduct appears to describe a spirit of actions committed whereby an individual is aware of and consciously disregards an accepted standard of practice. It is unclear whether the intent of the Manitoba Veterinary Medical Association is to consider professional misconduct to be inclusive of, or be defined by one, of the criteria described in the above-mentioned Court decision. With the evidence provided at the time of the hearing, prior to hearing arguments for appropriate sanctions by Mr. Dawson and Mr. Girard, the Panel believed the Member did display poor communication, skill, and judgement regarding the case in question. At the time of coming to its decision, however, the Panel did not have evidence to support a finding that the Member consciously disregarded an accepted standard of veterinary practice. The Panel, in conclusion, did not have enough evidence to meet this inclusive definition of professional misconduct and finds the Member not guilty of professional misconduct.
61. This Panel wishes to note, however, that during the sanction hearing for this case, the Panel was made aware of nine prior adverse rulings involving the Member, one of which included a prior appeal hearing in 2002. Several of these cases had justified concerns similar to the facts in this hearing, including lack of effective client communication, lack of acceptable record keeping, unnecessary and/or inappropriate treatment, and failure to consider an owner’s financial limitations when recommending treatment options. As a result of these justified

complaints the Member was asked by the Peer Review Committee to communicate more clearly and accurately with clients, complete continuing education courses to develop his communication skills, complete continuing education courses for specific aspects of veterinary medicine in which he displayed poor judgement or skill such as feline internal medicine and liver disease, and practice veterinary medicine under the supervision of another veterinarian.

62. Had the Panel been aware of these previous offences, which in the opinion of the Panel demonstrated the repetitive practice of veterinary medicine by the Member below an accepted standard of practice as determined by his veterinary peers within the Peer Review Committee, despite attempted actions by the Manitoba Veterinary Medical Association to improve the quality of veterinary medicine the Member provides to the public, the Panel would have found the Member guilty of professional misconduct.

(General Charge) – Lack of knowledge, skill or judgment

63. Having reviewed the evidence in its totality, this Panel does find that the Member displayed significant lack of knowledge of, or lack of skill or judgement in, the practice of veterinary medicine, in contravention of section 40(e) of the *Act*.
64. This matter involved very common symptoms that regularly present in patients of a veterinarian, and furthermore the Member acknowledged he sees patients on a regular basis, with clinical signs like those presented by the Patient. It is reasonable to believe that the Member, in his day-to-day practice, would examine and treat patients owned by clients with a range of abilities to afford veterinary care, from being able to afford only basic care, to being able to afford a “gold standard” of care. As a result, the Member should have had the basic knowledge to provide his client with a range of treatment options to treat allergic skin/ear disease, including those within the Owner’s budgetary constraints.
65. The Member did not appropriately consider several alternate treatment options as reasonable in this case, including alternate antibiotic and allergy medications, claiming he did not know their general cost nor that they would be more affordable to the Owner.
66. The Member treated the Patient with single dose injectable antibiotic medication that was deemed unnecessary and inappropriate by expert witnesses. The Member treated the Patient with one-time use, of topical antibiotic including Otomax ear ointment on December 8, 2017, and injectable antibiotics on June 19, 2018. Such use of antibiotic medication poses a risk of developing antibiotic resistance and is generally accepted by the veterinary profession as an undesirable treatment practice in the best interest of both animal and public health.

Sanctions

67. Having found the Member in breach of sections 40(c) and 40(e) of the *Act*, the Panel must now determine what sanctions, if any, should be imposed on the Member.
68. Section 41(1) provides a list of orders available to the Panel:

Orders of inquiry panel

41(1)

If the inquiry panel makes any of the findings described in section 40, it may make any one or more of the following orders:

- (a) reprimand the member;
- (b) suspend the member's certificate of registration or licence, or both, for such period of time as the inquiry panel determines is appropriate;
- (c) suspend the member's certificate of registration or licence, or both, until the member has completed a specified course of studies or obtained supervised clinical experience to the satisfaction of any person or committee that the inquiry panel may determine;
- (d) suspend the member's certificate of registration or licence, or both, until the member has obtained treatment or counselling and has demonstrated that a disability, addiction or problem can be or has been overcome to the satisfaction of any person or committee that the inquiry panel may determine;
- (e) impose conditions on the member's entitlement to practise veterinary medicine, including conditions that the member;
 - (i) limit his or her practice;
 - (ii) practise under supervision;
 - (iii) not engage in sole practice;
 - (iv) permit periodic inspections of the member's practice;
 - (v) permit periodic audits of records;
 - (vi) report on specific matters to any person or committee that the inquiry panel may determine;

(vii) complete a particular course of studies or obtain supervised practical clinical experience to the satisfaction of any person or committee that the inquiry panel may determine; or

(viii) obtain treatment for a disability or addiction or undertake counselling until such time as the person can demonstrate that a disability, addiction or problem can be or has been overcome to the satisfaction of any person or committee that the inquiry panel may determine;

and may order the member to pay any cost arising from any such conditions;

(f) direct the member to waive money owed or refund money paid to him or her that, in the opinion of the inquiry panel, was unjustified for any reason;

(g) cancel one or both of the member's certificate of registration or licence.

69. Sections 42(1) and 42(2) of the *Act* further provide that costs and fines may also be ordered against the Member.

70. Section 42(1) provides:

Costs and fines

42(1) The inquiry panel may, in addition to or instead of dealing with the conduct of an investigated member in accordance with section 41, order that the investigated member pay to the association, within the time set by the order,

(a) all or part of the costs of the investigation and hearing;

(b) a fine not exceeding \$10,000.00;

(c) both the costs under clause (a) and the fine under clause (b).

71. Section 42(2) of the *Act* provides:

Nature of costs

42(2) The costs referred to in subsection (1) may include, but are not limited to,

(a) all disbursements incurred by the association, including

(i) fees and expenses for experts, investigators and auditors whose reports or attendances were reasonably necessary for the investigation or hearing,

(ii) travel costs and reasonable expenses of any witnesses required to appear at the hearing,

(iii) fees for retaining a reporter and preparing transcripts of the proceedings,

(iv) costs of service of documents, long distance telephone and facsimile charges, courier delivery charges and similar miscellaneous expenses,

(b) payments made to members of the peer review committee or investigators; and

(c) costs incurred by the association in providing counsel.

72. The Panel further notes that it may make recommendations as to publication of the decision. Section 44 of the *Act* provides

Publication of decision

44. Despite the fact that any proceeding or part of a proceeding before an inquiry panel may have been held in private, the association may, after the decision and any order has been served on the investigated member, publish the circumstances relevant to the findings and any order of the panel. If the panel makes an order against the member under section 41 or 42, the association may also publish the member's name.

73. There was no dispute among counsel on the criteria in the determination of sanctions.

74. The case of *Jaswal v. Medical Board (Nfld)* 1996 CanLII 11630 (NL SC) at paragraph 35, provides a non-exhaustive list of factors to consider when determining the appropriate sanctions:

From the cases cited, the following is a non-exhaustive list of factors that ought to have been considered:

1. the nature and gravity of the proven allegations
2. the age and experience of the offending physician

3. the previous character of the physician and in particular the presence or absence of any prior complaints or convictions
4. the age and mental condition of the offended patient
5. the number of times the offence was proven to have occurred
6. the role of the physician in acknowledging what had occurred
7. whether the offending physician had already suffered other serious financial or other penalties as a result of the allegations having been made
8. the impact of the incident on the offended patient
9. the presence or absence of any mitigating circumstances
10. the need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of medicine
11. the need to maintain the public's confidence in the integrity of the medical profession
12. the degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct
13. the range of sentence in other similar cases.

75. Both parties referenced the criteria listed in "The Regulation of Professions in Canada, Volume 2", by James T. Casey, QC.

76. At page 14.2 of that text, Casey writes:

A number of factors are taken into account in determining how the public might be best protected, including specific deterrence of the member from engaging in further misconduct, general deterrence of other members of the profession, rehabilitation of the offender, punishment of the offender, isolation of the offender, the denunciation by society of the conduct, the need to maintain the public's confidence in the integrity of a profession's ability to properly supervise the conduct of its members, and ensuring that the penalty imposed is not disparate with penalties imposed in other cases.

77. Further at page 14.2, Casey writes:

A number of mitigating factors may be considered in determining the proper penalty for an offence:

1. Attitude since the offence was committed. A less severe punishment may be imposed on an individual who genuinely recognizes that his or her conduct was wrong.
2. The age and inexperience of the offender.
3. Whether the misconduct is the individual's first offence. It has been suggested that the penalty of revocation should be reserved for repeat offenders and the most serious cases.
4. Whether the individual has pleaded guilty to the charge of professional misconduct...However, a refusal to admit guilt is not to be taken as justifying a higher penalty...
5. Whether restitution has been made by the offender.
6. The good character of the offender.
7. A long unblemished record of professional service.

78. This Panel has considered the arguments raised by the parties on the issue of the appropriate sanctions and reviewed the documents and authorities filed in support of those arguments. The Panel notes that both counsel for the Prosecution and counsel for the Member were generally in agreement with the authorities and criteria in determining the appropriate sanctions against the Member. Those arguments diverged, predictably, in what specific sanctions, or the severity of a specific sanction, should be ordered by this Panel.

79. In arriving to its decision on the appropriate sanctions to be ordered against the Member, the Panel notes that the the Member's disciplinary record shows a pattern of repetitive behaviour demonstrating the practice of a substandard quality of veterinary medicine. The Member's disciplinary record shows nine separate disciplinary matters dating back to February 11, 1999. Most of those matters involved complaints of a similar nature, such as failures to keep proper medical records or to properly diagnose or treat a patient.

80. Having read the materials, considered arguments from counsel, reviewed the criteria in determining sanctions and in consideration of the importance of both protection of the public,

the interest of animal health, and in maintaining the integrity of the profession, this Panel has determined that ordering sanctions against the Member are appropriate and necessary.

81. The Member has been practicing veterinary medicine for over 25 years. He is an experienced veterinarian, operating his own veterinary hospital. The complaints made against the Member are not new and he has been disciplined in other cases on facts similar to those of this matter. He has previously been cautioned, fined, received recommendations or orders relating to improving his record-keeping and the administration of medication, and has had costs ordered against him. Unfortunately, this Panel again found the Member guilty of very similar conduct.

82. The public traditionally holds veterinarians in high regard. To maintain the public's trust in the veterinary profession, it is essential to give a clear message that such behaviour is not acceptable; the Panel must provide such remedies to deter similar behaviour in the veterinary community by demonstrating that such actions are taken seriously by the Association.

Publication of the Member's name and Order

83. The Panel recommends that the Association publish the Member's name and Order, in such a way that is readily accessible to Manitoba's veterinary community.

84. The Panel does not interpret section 44 of the *Act* as giving it the power to make such an order, but only to make recommendations to the Association on publication. If the Panel is wrong in this regard, however, it accordingly orders that the Member's name and Order be published by the Association.

Requirement to undergo Continuing Education

85. The Panel Orders that the Member complete 8 hours of continuing education in each of the following topics, for a total of 32 hours:
 - i. pharmacology and antimicrobial stewardship, or rationale use of antimicrobials;
 - ii. appropriate drug use in the treatment of allergic skin disease;
 - iii. medical record keeping; and
 - iv. veterinary client communication.

86. Any continuing education that the Member intends to take to comply with this order must be pre-approved by the Association's registrar. The registrar must also be able to track and confirm that such continuing education was completed and comprehended by the Member.
87. The 32 hours of continuing education described above must be completed within six (6) months of the Order being served on the Member, and any costs associated with completing this continuing education are at the expense of the Member.
88. The continuing education listed above is to be acquired in addition to the yearly continuing education hours that all veterinarians in Manitoba are otherwise required to complete. At present, veterinarians are required to complete 30 hours of continuing education per year.
89. A non-exhaustive list of continuing education links and sites as examples of what the Panel would deem appropriate regarding continuing education for pharmacology, record keeping, and communication is attached to this decision.

Requirement for Direct Veterinary Supervision

90. The Member is ordered to practice veterinary medicine under the direct supervision of a veterinarian for a period of two years.
91. The Member shall have 60 days from the date this Order is filed, to make the necessary arrangements for a supervisor. After this 60-day period, the Member cannot continue or resume the practice of veterinary medicine without securing a supervisor. The Member cannot equally resume practice until he has completed two years of veterinary medicine under direct supervision, as defined at Rule 1-2 of the General By-Law No. 1 of the Association.
92. The proposed supervisor must be approved by the Association's Registrar prior to the commencement of the two-year period of direct supervision.
93. The supervising veterinarian must meet the following criteria:
 - a) They are a member with a current general license (as defined in the Association's legislation) to practice veterinary medicine in Manitoba as defined at Rule 1-1 of the General By-Law No. 1 of the Association and by section 15 of the *Act*;

- b) They have been actively practicing as a veterinarian with the equivalent of a general license to practice veterinary medicine, in North America, for at least eight years.
94. The supervising veterinarian must agree with the Association's Registrar, in advance of beginning their work term, to provide both verbal and written reports to the Association's Registrar every three months; including any concerns for lack of proficiency in practicing clinical veterinary medicine, medical record keeping, and client communication.
95. Any fees associated with securing a supervising veterinarian to meet the requirements above, shall be at the expense of the Member.

Practice Inspection Practice Standards ("PIPS") Inspections

96. The Panel orders that a PIPS inspector conduct random audits of the Member's medical record keeping no less than every three months, for the following three years after the Order is filed. Audits of the Member's medical record keeping must subsequently be conducted no less than every six months for the following two years.
97. The Panel directs the PIPS inspector to pay particular attention to notation of patient assessments, diagnostic, and treatment plans, including rationale for such, communications with owners about an animal's medical condition and treatment options, whether the owner agreed to or declined treatment and why, financial estimates and informed consent to treatment. In so doing the PIPS inspector is to ensure that the Member follows the relevant Association bylaws regarding record-keeping.
98. Any fees or costs associated with the periodic PIPS audits ordered by this Panel shall be the responsibility of the Member.

Refund to Owner

99. Alternate oral treatment options were reasonably available to effectively treat the Patient's symptoms instead of the injectable medication used by the Member to treat the Patient, but no evidence was shown that this was offered to the client for the Patient, which would have been within the Owner's budgetary constraints of \$300.00.
100. The Member is ordered to reimburse and pay to the Owner \$321.36. This is calculated by taking the total amount charged on June 19, 2018 (\$424.66), less the exam fee and applicable taxes (\$60 plus taxes of \$3.00, totaling \$63 dollars), less the costs for topical ear medication (\$35.98 plus taxes of \$4.32, totaling \$40.30).

Fine

- 101. The Member is ordered to pay a fine of \$2,000.00. This fine shall be paid within 60 days of the Order being served upon the Member.

- 102. This Panel notes there were repeated justified complaints against the Member dating back to 1999, for which corrective actions were taken by the Association. The record shows that corrective actions included continuing education, practicing under veterinary supervision, and cost recovery for an appeal hearing. Despite the numerous corrective actions, which were intended to improve the quality and standard of the Member's practice of veterinary medicine, the Member continued to practice in such a way that was deemed substandard by members of the public and the veterinary community.

Cost Recovery:

- 103. The Panel orders that the Member pay \$50,000.00 as a contribution to part of the costs of the investigation and hearing of this matter. This amount must be paid to the Association within 180 days of the Order being served upon the Member.

- 104. The Prosecution advised the Panel that, at the time of the hearing on sanctions, the costs associated with this matter was already approximately \$100,000.00. The Panel further notes that the Member was ordered costs in 2002 in the amount of \$8,000.00. Since 2002 the appeal hearing process has become much more formalized. This has resulted in considerable increased costs accumulated relative to legal, veterinary, and administrative fees. Given the circumstances of this matter, in particular the Member's prior record, the Member's repetitive pattern of similar breaches, and the significant costs in addressing the same issues, costs in the amount of \$50,000.00 are appropriate.

Dated this 14th day of July, 2021.

[Redacted Signature]

[Redacted Name], Chair

For a unanimous panel

LIST OF CONTINUING EDUCATION LINKS AND SITES

1. <https://www.vetmedteam.com/class.aspx?ci=787> -Veterinary Medicine: Medical Records, the Roadmap to Quality Care.
2. <https://cvo.org/Veterinary-Professionals/Quality-Practice/Learning-Modules.aspx> - Learning modules on medical record keeping, client communication, client consent and ethics.
3. <https://veterinarybootcampce.com> - Medical Records Boot Camp.
4. <https://www.animalandveterinarylaw.com/courses> - Continuing education regarding medical record keeping, ethics, client communication and consent.
5. <https://www.vetfolio.com> - a library of veterinary continuing education including courses on the prudent use of antimicrobials in small animal practice and pharmacologic management of allergic skin disease.