

IN THE MATTER OF THE VETERINARY PROFESSION ACT, RSA 2000, c. V-2,
AS AMENDED (VPA);

AND IN THE MATTER OF A HEARING INTO THE CONDUCT
OF DR. JUN YANG, A MEMBER OF THE ALBERTA VETERINARY MEDICAL ASSOCIATION (ABVMA);

AND IN THE MATTER OF A PROFESSIONAL CONDUCT HEARING REGARDING THE CONDUCT OF
DR. JUN YANG HELD VIRTUALLY DUE TO THE COVID 19 PANDEMIC;

AND IN THE MATTER OF A COMPLAINT BY THE ABVMA COMPLAINTS DIRECTOR
IN ACCORDANCE WITH SECTION 27.1 OF THE VPA

**HEARING TRIBUNAL DECISION ON SANCTION
DATED MARCH 31, 2021**

TAKE NOTICE THAT:

- A. A hearing was held on December 2-3, 2020 with respect to allegations of unprofessional conduct against Dr. Jun Yang (the “Member”), following which the Hearing Tribunal rendered a decision dated January 6, 2021 (the “January 6, 2021 Decision”).
- B. The January 6, 2020 Decision requested a further virtual hearing to receive submissions on the issues of sanction, costs, and publication.
- C. The Hearing Tribunal has made the decision set out below with respect to sanction, costs, and publication.

Sanction Hearing Date: March 22, 2021 (via WebEx)

Sanction Decision Date: March 31, 2021

Hearing Tribunal: Dr. Grady Barton (Chair)
Dr. John Scholten
Dr. Dagmar Schouten

Appearances: Complaints Director’s Counsel – Karen Smith, QC and Nancy Tran
Dr. Jun Yang – did not appear and was not represented
Hearing Tribunal’s Counsel – Joseph Rosselli, QC

I. INTRODUCTION AND PROCEDURAL MATTERS

A. Background and prior findings

[1] Reference is made to the January 6, 2020 Decision in this matter. It addressed findings from the hearing of 8 allegations of unprofessional conduct against the Member, which arose from the discovery and investigation of 39 dead sheep on the Member's property.

[2] As set forth in the January 6, 2020 Decision, the Hearing Tribunal concluded as follows with respect to the 8 allegations:

Allegations 1, 2, 4 and 5 are proven and as such constitute unprofessional conduct pursuant to the following sections of the VPA:

- *s. 1(n.1)(i), as the Member's conduct displayed a lack of knowledge, skill, and judgment in the practice of veterinary medicine;*
- *s.1(n.1)(ii), as the Member's conduct contravened section 16.1 of the VPA General Regulation, namely the following sections: 16.1 (a) for failing to be dedicated to the relief of suffering of animals; and 16.1(g) for failing to be merciful and humane, preventing needless suffering among animals.*

Allegation 3 against the Member was not proven.

Allegations 6 and 7 were proven and as such constitute unprofessional conduct pursuant to the following sections of the VPA:

- *s.1(n.1)(ii), as the Member's conduct contravened section 16.1 of the VPA General Regulation, namely section 16.1 (h) for failing to assist in maintaining the integrity of the profession and participate in the activities of the profession;*
- *s. 1(n.1)(vi)(B), as the Member failed or refused to comply with a request of or to co-operate with an investigator; and*
- *s.1(n.1)(xi), as the Member's conduct harmed the integrity of the profession.*

Allegation 8 is proven and as such constitutes unprofessional conduct pursuant to the following sections of the VPA:

- *s.1(n.1)(ii), as the Member's conduct contravened section 16.1 of the VPA General Regulation, namely section 16.1 (h) for failing to assist in maintaining the integrity of the profession; and s.1(n.1)(xi), as the Member's conduct harmed the integrity of the profession.*

[3] The Hearing Tribunal also directed that a half-day hearing via video conference be held to receive submissions on the issues of sanction, costs, and publication, which proceeded on March 22, 2021. This decision arises from the March 22, 2021 hearing.

B. Member's failure to participate

[4] The Member had expressly refused to participate further prior to the conclusion of the hearing held on December 2-3, 2020.

[5] On March 22, 2021, the Hearing Tribunal was advised that the Member had been provided a copy of the January 6, 2021 Decision, notice of the hearing on March 22, 2021, and electronic invites to the video conference on March 22, 2021. He was also provided advance notice of the written material the Complaints Director would be relying on during the March 22, 2021 hearing. The Member did not respond to any of the above.

[6] Neither the Member nor anyone on his behalf appeared at the hearing on March 22, 2021.

[7] The Hearing Tribunal was satisfied that the Member received sufficient notice of the hearing on March 22, 2021 and directed that it proceed in the Member's absence.

II. SUBMISSIONS

[8] Counsel for the Complaints Director requested the following sanctions and related orders:

(a) a reprimand;

(b) maintain cancellation of the Member's registration for a minimum of 10 years;

(c) payment of fines totalling \$50,000, broken down as follows:

- three fines of \$10,000 each with respect to Allegations 1, 2, and 4 related to animal welfare;
- \$5,000 with respect to Allegation 5 related to animal welfare;
- \$2,500 for failing to respond to an ABVMA investigator;
- \$2,500 for failing to make himself available for an interview with an ABVMA investigator, and
- \$10,000 for failing to demonstrate leadership regarding animal welfare.

(e) payment of costs of the investigation and hearing to a maximum of \$70,000;

(e) all fines and costs to be paid within 6 months and before any re-application for registration;

(f) publication of the Hearing Tribunal's orders on a "with names" basis.

[9] In support of the above specific requests, counsel for the Complaints Director referred to the objectives of protection of the public, deterrence, rehabilitation, fairness, and integrity of the profession. Counsel also referred to case law, including the court decisions in *Jaswal v. Newfoundland (Medical Board)*, 1996 Carswell Nfld 32 and *Adams v Law Society of Alberta*, 2000 ABCA 240.

[10] Counsel for the Complaints Director also made reference to other ABVMA disciplinary decisions including those involving the Member.

III. DECISION ON SANCTION

A. Application of principles and factors

[11] Section 41.1(1) of the VPA permits a Hearing Tribunal to make a wide range of orders after finding that the conduct of an investigated person constitutes unprofessional conduct.

[12] The importance of sanctioning by a professional disciplinary body and the expectations in this regard were noted by the Alberta Court of Appeal in *Adams* as follows (at paragraph 6):

Self-regulation is based on the legitimate expectation of both the government and public that those members of a profession who are found guilty of conduct deserving of sanction will be regulated – and disciplined – on an administrative law basis by the profession's statutorily prescribed regulatory bodies.... A professional misconduct hearing involves not only the individual and all the factors that relate to that individual, both favourably and unfavourably, but also the effect of the individual's misconduct on both the individual client and generally on the profession in question. This public dimension is of critical significance to the mandate of professional disciplinary bodies.

[13] There are a number of factors that may be considered when determining appropriate sanctions in the professional regulation context, as set out in the *Jaswal* court decision (“Jaswal Factors”).

[14] With respect to severity of sanctions, the Alberta Court of Appeal also stated in *Adams* (at paragraph 27):

As stated earlier, we do not accept the proposition still often invoked in criminal cases, that the most serious disciplinary sanction, disbarment, should be reserved for the most serious misconduct by the most serious offender.

[15] The *Jaswal* Factors, insofar as they are applicable to the Member and this case, have been considered and the Hearing Tribunal finds as follows:

(1) The nature and gravity of the proven allegations.

The unprofessional conduct allegations that were proven are serious, grave, and fundamental to the profession. They relate to the distress, suffering, and death of at least 39 animals that were in the Member’s care, the duties and obligations to cooperate in the course of an investigation, and the integrity of the profession.

(2) The age and experience of the Member.

The Member has been a registered veterinarian with the ABVMA since 2007. The Member was therefore experienced and expected to know the harm his conduct would cause to the animals in his care, the importance of cooperating with the investigation, and the importance of maintaining the integrity of the profession.

(3) The previous character of the Member and in particular the presence or absence of any prior complaints or convictions.

There were two other ABVMA complaint hearings against the Member, both resulting in findings of unprofessional conduct. The Member was also previously convicted under the *Criminal Code of Canada* and *Animal Protection Act* related to his mistreatment of animals.

All of these other proceedings related to conduct in 2016 and 2017, shortly before the conduct in 2018 giving rise to this matter. The prior findings and convictions include:

- conviction under the *Criminal Code of Canada* for willfully permitting unnecessary pain and suffering to two canines by choking, punching, kicking and striking them with a cow bone;

- conviction under the *Animal Protection Act* for causing two canines to be in distress, failing to ensure they had adequate food and water, and failing to ensure they had adequate shelter, ventilation and space;
- failing to provide for cats resident in the Member's clinic;
- abusing and/or failing to provide for a clinic border collie;
- failing to properly dispose of biomedical waste;
- billing for procedures that were not performed;
- engaging in sexual misconduct with a former employee; and
- failing to provide x-ray dosimeters for every employee.

The above-noted convictions and findings of unprofessional conduct are serious, numerous, wide-ranging in nature, and are relevant to sanctioning for the allegations proven in this matter. They demonstrate a pattern of unprofessional and illegal conduct, and bad moral character.

(4) The age and mental condition of the victims.

The animals at issue in this case were owned, under the care, and dependent on the Member for their well-being. At least 39 of them died due to the Member depriving them of adequate food, water, and veterinary care. The animals would have been in distress and had suffered.

(5) The number of times the offence was proven to have occurred.

The Member's acts and omissions giving rise to the proven allegations were continuous and repeated. In particular, the harm caused to the animals would have been a result of an ongoing pattern of neglect and disregard for their welfare. At least 39 animals were affected and died.

(6) The role of the Member in acknowledging what had occurred.

To the extent that the Member participated in the hearing of this matter, he did so in an unprofessional, uncooperative, and disrespectful manner. He never participated in the investigation and never provided an explanation to the allegations against him at the hearing. He announced part way through the proceedings that he refused to participate further.

(7) Whether the Member had already suffered other serious financial or other penalties as a result of the allegations having been made.

The Hearing Tribunal is not aware of any consequences the Member may have already suffered related to the allegations against him in this matter.

(8) The impact of the incident on the victims.

As already noted, the Member's conduct towards the animals was prolonged and resulted in the distress, suffering, and death of at least 39 of them. The impact of the Member's conduct on the integrity of the profession is serious.

(9) The presence or absence of any mitigating circumstances.

The Hearing Tribunal is not aware 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 the profession.

The Member's conduct is such that it must be condemned as unacceptable and deterred as strongly as possible in order to prevent reoccurrence by the Member or anyone else. This relates to both his treatment of the animals in his care and his failure to cooperate in the investigation.

(11) The need to maintain the public's confidence in the integrity of the profession.

The Member's mistreatment of animals goes to the core of the profession. Co-operation with an investigation is also integral to the self-governance of the profession. Public confidence in the integrity of the profession requires a serious sanction.

(12) The degree to which the offensive conduct falls outside the range of permitted conduct.

As noted above, the Member's conduct falls outside the range of what would be regarded as acceptable.

(13) The range of sentences in other similar cases.

The Hearing Tribunal considered the sanctions ordered in other decisions involving ABVMA members and concludes that those decisions would support significant and serious sanctions in this case.

B. Conclusion

[16] The Member's conduct warrants the strongest rebuke. His actions are antithetical to the core principles of being a veterinarian. He caused numerous animals to be in distress, suffer, and die.

[17] The Member's conduct throughout the investigation and these proceedings also demonstrated a deliberate disregard of his professional duties and responsibilities.

[18] The Member's conduct has harmed the integrity of the profession.

[19] Serious and significant sanctions are required to deter such conduct, protect the public, and maintain the integrity of the profession.

[20] For all of the reasons noted above, the Hearing Tribunal concludes that the Member's conduct warrants cancellation of the Member's ABVMA registration for a considerable amount of time, significant fines for all grounds of unprofessional conduct found against him, and payment of the costs of the investigation and proceedings in this matter.

IV. ORDERS

[21] The Hearing Tribunal therefore orders as follows:

- (a) a reprimand;
- (b) maintaining the cancellation of the Member's registration for a minimum of 10 years;
- (c) payment of fines totalling \$50,000, broken down as follows:
 - three fines of \$10,000 each with respect to Allegations 1, 2, and 4, related to animal welfare;
 - \$5,000 with respect to Allegation 5, related to animal welfare;
 - \$2,500 with respect to Allegation 6, for failing to respond to an ABVMA investigator;
 - \$2,500 with respect to Allegation 7, for failing to make himself available for an interview with an ABVMA investigator, and
 - \$10,000 with respect to Allegation 8 for failing to demonstrate leadership regarding animal welfare;
- (d) payment of costs of the investigation and hearings to a maximum of \$70,000;
- (e) all fines to be paid within 6 months and in any event before any re-application for registration;

(f) all costs to be paid within 6 months and in any event before any re-application for registration; and

(g) publication of the Hearing Tribunal's decisions and orders in this matter on a "with names" basis.

THE HEARING TRIBUNAL

Dr. Grady Barton, Chair

Authorized to sign for Dr. John Scholten

Authorized to sign for Dr. Dagmar Schouten