

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

AND IN THE MATTER OF NOTICE OF HEARING REGARDING THE CONDUCT OF DR. WILLIAM SCOTT CLIFFORD, A MEMBER OF THE ALBERTA VETERINARY MEDICAL ASSOCIATION;

HEARING HELD IN PERSON
September 24-25, November 19, and December 16, 2019

DECISION OF THE HEARING TRIBUNAL

TAKE NOTICE that a Hearing Tribunal of the Alberta Veterinary Medical Association (“ABVMA”), properly constituted pursuant to section 9.4 of the *Veterinary Profession Act*, RSA 2000, c V-2 (the “Act”) convened a hearing on September 24-25, November 19, and December 16, 2019 regarding allegations of unprofessional conduct against Dr. William Scott Clifford (the “Member”) set out in a Notice of Hearing dated March 22, 2019.

FURTHER TAKE NOTICE that the Hearing Tribunal has made the decision set out below with respect to the allegations of unprofessional conduct noted above, and with respect to sanction pursuant to the Act.

ATTENDEES

The following individuals attended the hearing:

The Hearing Tribunal: Dr. Calvin Booker, Chair
Dr. Louis Kwantes
Dr. Randy Killeen
Mr. John DeJong
Mr. Matthew Woodley, independent legal counsel for the Hearing Tribunal

For the ABVMA: Dr. Phil Buote, Complaints Director
Ms. Karen Smith & Ms. Heather Frydenlund, legal counsel for the Complaints Director

For the Member: Dr. Scott Clifford (in person on September 24-25, 2019, by telephone on November 19 and December 16, 2019)
Mr. Eric Appelt, legal counsel for the Member

Witnesses: Dr. Phil Buote, Complaints Director
Dr. Tanya Marrazzo, Investigator
Dr. Andrew M. Haag, expert witness

EXHIBITS

The following exhibits were entered at the hearing:

- Exhibit 1: Notice of Hearing
- Exhibit 2: Notice to Attend
- Exhibit 3: Statutory Declaration regarding Service
- Exhibit 4: Investigation Report (subject to removal of inadmissible records)
- Exhibit 5: Report of the National Parole Board dated May 10, 2019
- Exhibit 6: Confidential Psychiatric Report for Dr. Scott Clifford by Dr. Lapido Omodunbi, undated
- Exhibit 7: Curriculum vitae of Dr. Andrew M. Haag
- Exhibit 8: Psychological Consultation Report by Dr. Andrew Haag, dated September 25, 2019

PRELIMINARY MATTERS

There were no objections to the composition of the Hearing Tribunal, nor its jurisdiction to proceed pursuant to the Act.

BACKGROUND

The Member was charged with a number of allegations of unprofessional conduct under the Act arising from convictions for criminal offences in February of 2015 and December of 2017. On January 19, 2018, the Member's license was suspended pending the investigation and hearing pursuant to section 33 of the Act. The Notice of Hearing (entered as Exhibit 1 to these proceedings) was issued by the Hearings Director of the ABVMA on September 26, 2018, setting the hearing of this matter for November 19, 2018. That date was adjourned to January 3, 2019. Upon the application of the Member, the hearing was adjourned until September 24-25, 2019, after the Member's expected release from incarceration arising from the convictions noted above and in order to allow the Member to obtain an expert psychiatric report. The reasons for the Hearing Tribunal's decision to adjourn the hearing were set out in an Interim Decision dated January 11, 2019.

On September 12, 2019, the Member applied for a further adjournment of the hearing, indicating that he had been unable to obtain the psychiatric report. That request for an adjournment was denied by the Hearing Tribunal in an Interim Decision dated September 20, 2019. The hearing therefore proceeded on September 24, 2019.

During that hearing, an issue of admissibility arose. Specifically, the Member objected to certain documents in the investigation report being admitted into evidence given their allegedly prejudicial effect.

In an interim decision delivered orally, the Hearing Tribunal directed that certain records in the investigation report were inadmissible. The Hearing Tribunal delivered reasons for that decision as follows:

This is an interim decision of the Hearing Tribunal in relation to an objection raised by counsel for Dr. Clifford to the admissibility of certain evidence adduced by the Complaints Director of the ABVMA. The Hearing Tribunal is providing an oral decision on this issue to ensure that the parties are able to provide additional and specific submissions on sanction based on the final evidentiary record. The Hearing Tribunal reserves the right to edit or supplement these reasons when it issues its written decision pursuant to section 42 of the Veterinary Profession Act.

During the evidence of Dr. Phil Buote, the Complaints Director, the Investigation Report dated July 27, 2018 by Dr. Tanya Marrazzo was entered as Exhibit "A" for identification. The Investigation Report was then entered formally as Exhibit 4 during the testimony of Dr. Marrazzo. The entering of Exhibit 4 was done on the basis that Dr. Clifford objected to certain aspects of the Investigation Report, and that submissions would be provided on that issue at the conclusion of the ABVMA's evidence.

Dr. Clifford objected to the admissibility of the following tabs in Exhibit 4: Tab 3, Tab 5, Tab 6(A), Tab 6(E)(II), Tab 6(G), Tab 6(I), Tab 6(K)(I) to (IV), Tab 6(L)(V), Tab 6(L)(VIII). Dr. Clifford's submissions were generally that much of the information in those tabs related to certain criminal charges that did not result in convictions in either of the criminal proceedings in British Columbia and Alberta, and that they were not relevant to the charges in the notice of hearing. He also stated that the probative value of the information in those tabs was outweighed by the prejudicial effect on the proceedings. Dr. Clifford submitted that it was not sufficient for the Hearing Tribunal to direct itself that the evidence would not be relied upon for the purposes of making a determination regarding unprofessional conduct, and that the specific tabs should be fully removed from Exhibit 4.

In response, counsel for the ABVMA approached the tabs on a categorical basis. She stated that the records relating to procedural or jurisdictional matters were clearly relevant to the issues before the Hearing Tribunal and must remain a part of Exhibit 4. In relation to those tabs which constituted a part of the investigator's file, legal counsel indicated that these were a part of the investigation process and were properly adduced in evidence. She made it clear, however, that the ABVMA was not relying on those records to establish the truth of their contents. Finally, in relation to transcripts from police interviews with witnesses and text messages allegedly sent by Dr. Clifford, she understood the basis for the objection but ultimately disagreed with it.

The Hearing Tribunal has the power pursuant to the VPA to make determinations regarding the admission of evidence into a professional disciplinary hearing. Section 40(5) of the VPA states:

(5) Evidence may be given before the Hearing Tribunal in any manner that it considers appropriate, and it is not bound by the rules of law respecting evidence applicable to judicial hearings.

While the Hearing Tribunal is not bound by the rules of evidence applicable to judicial hearings, the Hearing Tribunal must nevertheless be satisfied that proposed evidence is relevant to a material issue in the proceedings, and it must ultimately determine that the admission of the evidence is fair to the parties. The probative value of the evidence must outweigh any prejudicial effect on the

proceedings, and the Hearing Tribunal has the discretion to reject evidence which fails to satisfy those criteria.

In considering the objection raised by counsel for Dr. Clifford to the admissibility of the identified evidence, the Hearing Tribunal has considered these factors.

In relation to the records created by Dr. Marrazzo as part of her investigation, including her interview summaries at Tab 3, and the document entitled “areas of disagreement” at Tab 5, the Hearing Tribunal admits these documents into evidence. First, the Hearing Tribunal finds that these are relevant to the investigation that was carried out into Dr. Clifford’s conduct under the VPA. These records set out the work and findings of the investigator. Importantly, the Hearing Tribunal notes that counsel for the ABVMA has indicated that the Hearing Tribunal should not rely upon the statements from third parties as proof of the truth of their contents. The Hearing Tribunal finds that these records are relevant in relation to the work done by the Investigator, and any prejudicial effect is mitigated by the limited use to be made of the contents. For those reasons, the objection to these documents is rejected.

In relation to the newspaper article at Tab 6(G), the Hearing Tribunal notes that this document was referred to in Dr. Buote’s evidence as having been one of the first pieces of information that came to his attention relating to Dr. Clifford, and which caused him to look into the matter, ultimately resulting in a complaint pursuant to section 27.1 of the VPA. The newspaper article was not adduced to establish the truth of its contents, and the Hearing Tribunal will not rely upon the information contained in it for that purpose. The objection to the admission of this document is rejected given the very limited nature of its use.

In relation to the text messages allegedly sent by Dr. Clifford, found at Tab 6(I), and the police interview transcripts, found at Tab 6(K)(I)-(IV), the Hearing Tribunal has concluded that the objection to these documents is well-founded, and they will be removed from Exhibit 4. While the Hearing Tribunal accepts that the text messages and the interview transcripts may, broadly speaking, be relevant to a material issue (that is, the factual allegations underlying the criminal convictions), the Hearing Tribunal has concluded that the prejudicial effect of these records outweighs any probative value to the proceedings. Specifically, the text messages are alleged to have been sent by Dr. Clifford, but the recipient of those messages was not called to verify that allegation and was not subject to cross-examination. Further, the content of the messages, if considered by the Hearing Tribunal, would have an unduly prejudicial effect on the deliberations in light of their limited probative value. With respect to the transcripts of the police interviews, the Hearing Tribunal notes that these were created for a purpose other than an investigation pursuant to the VPA. There is no ability for counsel for Dr. Clifford to cross-examine on the statements made in them. Again, the prejudicial impact of this outweighs the limited probative value of the statements in light of all of the other evidence available to the Hearing Tribunal. For those reasons, the Hearing Tribunal directs that Tabs 6(I) and 6(K)(I)-(IV) be removed from Exhibit 4.

Finally, the Hearing Tribunal considered the July 21, 2017, March 16, 2018 and March 26, 2018 letters from the ABVMA to Dr. Clifford (Tabs 6(A), 6(L)(VIII) and 6(L)(V), respectively) and the Information dated April 12, 2017 (Tab 6(E)(II)). All of these records were objected to on the basis that they reference the 29 criminal charges which Dr. Clifford faced in Alberta. The Hearing Tribunal concludes that these documents are properly part of the record in these proceedings as they outline the process by which this matter was investigated in accordance with the provisions of the VPA. They are relevant to those issues, and the simple reference to the additional charges does not result in prejudice to Dr. Clifford. The Hearing Tribunal is alive to the fact that criminal charges cannot

bear on the ultimate findings of unprofessional conduct in this case. The Hearing Tribunal is able to consider these facts in their appropriate context. Therefore, the objection to these documents is rejected.

On September 25, following the delivery of the oral decision and before the commencement of the substantive hearing, counsel for the Member indicated that the Tab 6(J) (a CD with the audio recording) should also be removed from the Exhibit 4 for the same reasons as Tab 6(I) and Tab 6(K)(I-IV). Counsel for the Complaints Director agreed, so the Hearing Tribunal issued an order to remove Tab 6(J) from Exhibit 4.

UNPROFESSIONAL CONDUCT

The Member did not contest the fact that he had been convicted of the five criminal charges set out in the Notice of Hearing. Therefore, the factual basis for the allegations was proven. The contentious issue between the parties was whether those convictions amounted to unprofessional conduct under the Act.

Submissions of the Complaints Director

The Complaints Director suggests that the following definitions of unprofessional conduct in the Act are at issue here, and could ground a finding of unprofessional conduct based on the facts of this case:

- (i) displaying a lack of knowledge of or lack of skill or judgment in the practice of veterinary medicine;
- (ii) contravening this Act or the regulations (specifically section 16.1 which states: "Every registered veterinarian, registered veterinary technologist, permit holder, student and other member of the Association ... (b) shall serve clients, members of the public and fellow members of the profession with integrity); ...
- (x) conduct that harms the public while carrying on the practice of veterinary medicine;
- (xi) conduct that harms the integrity of the profession;

Counsel for the Complaints Director submits that the fact of the criminal convictions is sufficient to amount to unprofessional conduct, even where the conduct in question was not directly related to the member's professional matters. Counsel provided examples from cases where similar findings were made in other professional regulatory contexts. Counsel referred the Hearing Tribunal to *Law Society of Manitoba v Dolovich*, 2010 MBLS 11, *College of Physicians and Surgeons of Ontario v Rathe*, 2011 CarswellOnt 4163, *College of Nurses of Ontario v Phillips*, 2007 CarswellOnt 11802, *College of Nurses of Ontario v Tugwood*, 2010 CarswellOnt 18733, and *Erdmann v Institute of Chartered Accountants of Alberta*, 2013 ABCA 147.

Counsel noted that the crimes for which the Member was convicted were serious, active crimes dealing with violence and a disregard for the rules of society. She referred to *R v Clifford*, 2015 BCSC 875 at paragraph 32, where the Court described the Member's conduct as vengeful, malicious, insidious, and that it inflicted fear and trauma on his victims.

She also noted that the conduct in question here was not entirely divorced from the Member's professional context, and that there are connections in relation to professional relationships that existed with complainants in the criminal matter.

Submissions of the Member

Counsel for the Member, in response, stated that the criminal convictions related to purely private matters, unconnected with the Member's practice of veterinary medicine. He stated that the Member practiced veterinary medicine for 26 years without complaint or any findings of unprofessional conduct. He noted that Act contains no provision which specifically says that a criminal conviction represents unprofessional conduct, and that the Hearing Tribunal should view this as a specific legislative decision reflected in the Act, while it was taken in other professional regulatory legislation. He stated that the criminal convictions had no negative effect on his ability to practice veterinary medicine.

Counsel for the Member provided cases which, in his view, illustrate a requirement that the private conduct at issue must be considered more reprehensible due to the professional's status as a professional in order to amount to unprofessional conduct. Counsel referred the Hearing Tribunal to *Ratsoy v Registrar, Architectural Institute of British Columbia* (1980), 113 DLR (3d) 439, *In the Matter of the British Columbia College of Teachers*, 2013 BCSC 773, and *Marten v Disciplinary Committee of the Royal College of Veterinary Surgeons*, [1966] 1 QB 1 (CA).

The Member argued that criminal conduct that would be as morally blameworthy or reprehensible if conducted by a non-member as if conducted by a member cannot amount to unprofessional conduct. He says that this is the situation here, and the Member's status as a member of the ABVMA does nothing to make his convictions substantially more reprehensible than they would otherwise be. There is therefore no basis to find that the criminal convictions reflect unprofessional conduct under the Act.

Decision on Unprofessional Conduct

The Hearing Tribunal considered the submissions of the parties with respect to whether or not the Complaints Director has proven on a balance of probabilities that the allegations set out in the notice of hearing are unprofessional conduct as defined in the Act.

The Hearing Tribunal concluded that the criminal convictions at issue in this case are conduct which harms the integrity of the profession, and are therefore unprofessional conduct under the Act. The severity of the criminal convictions is an important factor, including the fact that one of the convictions represented a refusal by the Member to abide by mandatory conditions placed on him on interim release. This reflects a refusal to abide by applicable laws and specific conditions placed on the Member. Professionals, including members of the ABVMA, are properly held to a high standard, and are expected to act in accordance with the law. A refusal to do so, particularly given the serious nature of the conduct, harms the integrity of the profession. The Hearing Tribunal also notes that the convictions arising in Alberta were based on conduct against individuals who were clients of the Member. There is a connection between the criminal convictions and the Member's practice of veterinary medicine. This is not a case which can be properly characterized as being wholly "private" conduct.

The Hearing Tribunal finds that the cases referred to by counsel for the Member did not relate to findings of criminal conduct, which is an important factor in categorizing the supposedly "private" conduct.

While the Hearing Tribunal finds that the Member has engaged in conduct which harms the integrity of the profession, and which is therefore unprofessional conduct, it also finds that his conduct represents a failure by the Member to serve members of the public with integrity, which represents a violation of section 16.1 of the Regulation. His actions reflect a lack of integrity in his dealings with the public, which is unprofessional conduct. It is not necessary for the Hearing Tribunal to consider the other grounds of unprofessional conduct relied upon by the Complaints Director.

For all of those reasons and pursuant to section 40.1(1) of the Act, the Hearing Tribunal finds the Member guilty of unprofessional conduct on the counts set out in the notice of hearing.

SANCTION

Following the findings of unprofessional conduct, legal counsel for the Complaints Director began her evidence regarding an appropriate sanction. She called Dr. Andrew Haag to provide expert evidence in relation to the risks posed by the Member of reoffending and tendered an expert report (subsequently marked as Exhibit 8). Counsel for the Member raised an objection to the admissibility of the expert report as it had been delivered to him at the commencement of the proceedings on September 25, 2019. He indicated that this was unfair as it prevented him from reviewing the report, seeking instructions in relation to it and considering ways in which he might need to prepare for cross-examination of Dr. Haag.

In response, counsel for the Complaints Director noted that this issue had been caused by the Member. The Confidential Psychiatric Report from Dr. Lapido Omodunbi (Exhibit 6) had been provided to the Complaints Director on September 23, 2019, only a few days before the commencement of the adjourned hearing. She indicated that the Complaints Director had then

arranged for Dr. Haag to provide a report in response on very short notice and provided it to counsel for the Member as soon as it was available to them. Counsel for the Member maintained his objection.

The Hearing Tribunal directed that the Complaints Director should proceed with the evidence in chief from Dr. Haag, and that the cross-examination of Dr. Haag by counsel for the Member would be conducted on a subsequent date. Upon request from the Member, the Hearing Tribunal agreed to permit the Member to appear at the adjourned hearing by way of teleconference to avoid travel costs and complications arising from the Member's probation.

In his evidence in chief, legal counsel for the Complaint Director reviewed Dr. Haag's qualifications. Following a review of his curriculum vitae, counsel for the Complaints Director requested that Dr. Haag be qualified to provide opinion evidence with respect to a review of the assessment undertaking by Dr. Omodunbi (set out at Exhibit 6) and with respect to a risk assessment of the Member. No objection was raised by counsel for the Member, and the Hearing Tribunal accepted Dr. Haag's qualifications to provide such opinion evidence.

Dr. Haag reviewed the materials that were available to him in undertaking his review. He reviewed the information set out in his report. He indicated that he had not considered the police transcripts, audio recording, and text messages that had been removed from Exhibit 4 at the direction of the Hearing Tribunal, even though they were included in the version of Exhibit 4 he reviewed. He agreed that those materials were not appropriate for the purposes of his review, and he therefore did not consider them. Dr. Haag acknowledged that he did not interview the Member in preparing his report, and that it would have been preferable to do so. However, he indicated that the report from Dr. Omodunbi provided some of the information about the Member's current mental status. Dr. Haag indicated that his role was to undertake an assessment of risk in relation to the Member rather than provide an opinion on whether or not his conduct was unprofessional.

With respect to the Dr. Omodunbi report, he noted that the report did not set out any of Dr. Omodunbi's training or experience in preparing such a report. The report also did not identify whether it was meant to advocate on behalf of the Member or whether it was drafted with a view to providing an independent report to the Hearing Tribunal. He also noted that he had reviewed more information than Dr. Omodunbi did based on his report. Specifically, he noted that Dr. Omodunbi had not reviewed the Parole Board records and failed to address the issue of the Member's conduct while on conditional release and how that impacted the risk assessment. He also criticized the report's risk assessment and the lack of detail with respect to how the Historical Clinical Risk tool was scored. The report did not set out that scoring, which left unanswered questions with respect to how it was applied. He noted that Dr. Omodunbi reported that the Member was at low risk of self-harm, but that the tool was not designed to measure that particular risk. Further, he believed that it was necessary to assess the risk of domestic violence given the context as opposed to an assessment of risks of violence in general.

Dr. Haag confirmed that in his view the Member's criminal convictions related to assault and arson are properly characterized as violent behavior. In his report, Dr. Haag concluded that the Member was a moderate risk for both violence and domestic violence. He noted that the Parole Board had assessed the Member at high risk for domestic violence, and so his assessment on that issue is more favorable to the Member. Dr. Haag reviewed the assessment process and scoring for having come to those conclusions. He confirmed his opinion that there was some factual connection between the victims of the Member's crimes and his veterinary medical practice in relation to the formation of the relationship. He referred to this as indicating a "fusion between risk and that particular worksite" (transcript of evidence, page 26 line 4-5). He indicated that the primary risk going forward relates to the Member forming an intimate relationship which then "sourred". He noted that it was possible that such a relationship could form from interactions in the workplace. Finally, Dr. Haag noted that the statement attributed to the Member by Dr. Omodunbi that the Member had never been violent was directly contradicted by the information in the records. This demonstrated both some insight and a lack of insight on the part of the Member. Dr. Haag concluded by reviewing the protective factors in favour of the Member set out in his report.

The hearing was reconvened on November 19, 2019 for the purpose of allowing counsel for the Member to conduct his cross-examination of Dr. Haag. At the commencement of that date, however, counsel for the Complaints Director provided the Hearing Tribunal with submissions indicating that the Member's probation had been revoked and that a warrant had been issued for his arrest. Following receipt of submissions from the parties, the Hearing Tribunal issued an oral interim decision as follows:

The Hearing Tribunal reconvened this hearing in relation to Dr. Clifford which had been adjourned from September 24-25. Dr. Clifford had been given permission by the Hearing Tribunal to attend the continuation of the hearing by teleconference. At the commencement of the hearing, Dr. Clifford was connected by teleconference.

Prior to the commencement of the cross-examination of Dr. Haag, legal counsel for the Complaints Director advised the Hearing Tribunal of an issue that recently arose. A brief adjournment was granted to allow legal counsel for the Complaints Director to discuss the matter with legal counsel for Dr. Clifford.

Following the adjournment, legal counsel for the Complaints Director advised that a Canada-wide arrest warrant had been issued for Dr. Clifford as a result of a breach of his parole conditions. Legal counsel for the Complaints Director indicated that there was no detail available about the nature of the alleged breach at this stage. She provided an undertaking to provide that information to the Hearing Tribunal and to legal counsel for Dr. Clifford once it became available. Legal counsel for Dr. Clifford acknowledged the simple fact of the issuance of the arrest warrant and noted that Dr. Clifford was unaware of the existence of the warrant until he was advised this morning. Legal counsel for Dr. Clifford also indicated that, as a result of this information, Dr. Clifford was in touch with

his parole officer and was advised to immediately report to the parole officer. He indicated that it was clear that Dr. Clifford would not be in a position to call back in to the hearing as a result of this matter.

As a result, legal counsel for Dr. Clifford applied to adjourn the hearing. He stated that he put to Dr. Clifford the possibility of proceeding with the evidence of Dr. Haag and submissions on sanction in his absence, and of the costs associated with a further adjournment of the hearing. Dr. Clifford's firm instructions were that he wanted to attend the whole of the hearing by teleconference. Legal counsel stated that this was, in his view, a reasonable request given the fact that this issue arose this morning, that the consequences for Dr. Clifford as a result of the hearing were very serious, and that he should be able to participate in the hearing. Further, an adjournment would allow the facts of the arrest warrant to be clarified and put before the Hearing Tribunal.

Legal counsel for the Complaints Director opposed the application for an adjournment. She stated that this was, in essence, the fifth adjournment of the hearing. She stated that there are public safety concerns, and that at this stage those factors militate strongly towards proceeding with the hearing. She indicated that there is uncertainty in relation to what Dr. Clifford's circumstances would be in the future, and an adjourned date may be difficult to schedule if Dr. Clifford is incarcerated as a result of the arrest warrant.

In reply, counsel for Dr. Clifford noted section 36.1 of the VPA, which states:

36.1(1) The investigated person must appear, may be compelled to testify and may be represented by counsel at a hearing before the Hearing Tribunal.

The Hearing Tribunal has deliberated in relation to the request for an adjournment. The Hearing Tribunal has reluctantly concluded that an adjournment is required in the interests of fairness. It comes to this conclusion for the following reasons. First, it is clear that Dr. Clifford intended to participate in the hearing. He attended by teleconference this morning prior to being advised of the existence of the arrest warrant. Legal counsel for Dr. Clifford indicates that Dr. Clifford was not aware of this issue until he was advised this morning. The Hearing Tribunal accepts this representation, and while there are legitimate questions about the circumstances giving rise to the arrest warrant, it concludes that this is a matter which was not reasonably anticipated in advance of the hearing.

Second, there is an interest in having the member attend a hearing to ensure that he or she is able to provide instructions to legal counsel. In circumstances where Dr. Clifford clearly intended to do so, this ability should generally be preserved.

Third, while the Hearing Tribunal is cognizant of the reference to public safety concerns, it notes that Dr. Clifford remains suspended and the public interest in relation to the practice of veterinary medicine is preserved in the interim.

Fourth, legal counsel for the Complaints Director did not point to specific prejudice arising from the adjournment, although the Hearing Tribunal believes that this matter has

reached the point where the public interest in a timely resolution of complaints is an important factor.

For those reasons, the adjournment request is granted. However, the Hearing Tribunal does so on the following conditions. First, a date for the adjourned hearing must be set prior to the close of proceedings today. Dr. Clifford will need to make whatever arrangements are required in order to attend on the date selected. Second, the adjournment is preemptory on Dr. Clifford. The hearing will proceed on the adjourned date with the close of evidence and submissions from counsel.

The hearing was adjourned to December 16, 2019. On that date, the Member, who was incarcerated in relation to the alleged parole violation, attended by telephone from the Stony Mountain Institution. At the commencement of that hearing, counsel for the Complaints Director tendered further information in relation to the nature of the alleged breach of the Member's probation conditions, and details about charges arising from such alleged breach. The Member objected to the admission of those records on the basis that their prejudicial effect outweighed any probative value arising from them in the context of the hearing. He also noted that the Member was to be considered innocent of the charges unless he was found guilty following a trial. Following deliberations, the Hearing Tribunal refused the Complaints Director's request that those records be admitted in evidence due to their potential prejudicial effect and limited probative value for the issue of an appropriate sanction. It is possible that the Member will ultimately be acquitted of the charges and will be found to not have violated his parole conditions. It would therefore be inappropriate for the Hearing Tribunal to consider those matters. The Hearing Tribunal has therefore not considered the information in those records in deliberating on an appropriate sanction.

In cross-examination by legal counsel for the Member, Dr. Haag confirmed that he had not interviewed the Member in drafting his report, and that it would have provided additional value if he had been able to conduct a mental status examination. He also acknowledged that the accuracy of his report depended on the accuracy of the information that he had reviewed in drafting it. Dr. Haag indicated that it was possible to do a competent report without conducting an interview, although this depended in part on the question being asked in the report itself. He noted that he had attempted to incorporate the mental status exam conducted by Dr. Omodunbi in his report.

Dr. Haag acknowledged that there was no such thing as "no risk" in the assessment tools used, so the lowest category of risk appears as "low risk", and that the Member was given that scoring for several of the testing criteria. Dr. Haag reviewed the positive criteria in relation to the Member identified in his report, and the protective factors he had identified in his evidence in chief.

In re-examination, Dr. Haag testified that he had not extended an offer to the Member to participate in an interview.

Submissions on Sanction

The parties then provided submissions to the Hearing Tribunal on an appropriate sanction. Counsel for the Complaints Director indicated that the ABVMA was seeking the following orders pursuant to section 41.1 of the Act:

- 1) A reprimand (s 41.1(1)(b));
- 2) Cancellation of the registration and annual certificate of the Member (s 41.1(1)(h), with a condition that he not be permitted to reapply for 10 years;
- 3) A fine in the maximum amount of \$50,000.00 (s 41.1(1)(k));
- 4) Payment by the Member of the full costs of the investigation and hearing (s. 41.1(1)(j));
- 5) Directing publication of the findings of the Hearing Tribunal, including the Member's name.

Counsel for the Complaints Director stated that in considering an appropriate sanction, the Hearing Tribunal should consider: 1) the protection of the public; 2) deterrence (specific and general); 3) rehabilitation; 4) fairness having regard to the sanctions in similar cases; and 5) the maintenance of the integrity of the profession. She indicated that as a starting point, the Hearing Tribunal must consider the very serious nature of the conduct underlying the findings of unprofessional conduct and the fact that the Member's actions call into question his governability given his refusal to comply with laws and rules. She then reviewed the history of the adjournments in the case and the need on the part of the Complaints Director to respond on very short notice to expert evidence.

With respect to any differences in the findings of Dr. Haag and Dr. Omodunbi, legal counsel for the Complaints Director submitted that the Hearing Tribunal ought to prefer the evidence of Dr. Haag, and that Dr. Omodunbi's report should be given no weight. She noted that there was no information about Dr. Omodunbi's qualifications or experience, no indication that the facts set out in his report had been verified, and he was not called as a witness and therefore was not subject to cross-examination. Further, there is no indication why Dr. Omodunbi was not provided with certain records, including importantly the Parole Board materials. Moreover, there is no stated reason why Dr. Omodunbi relied on the Member's statement that he had never been violent when the facts directly contradicted that statement. On the other hand, Dr. Haag's evidence set out his credentials and the basis for his conclusions. He was called in order to respond to Dr. Omodunbi's report. She noted the conclusions reached by Dr. Haag in relation to risk, and to the connection with the Member's practice.

Legal counsel for the Complaints Director noted the timeline of events, and that the misconduct in this case stretched over a period of 10 years. She noted that both CN and AL were in some way involved in the Member's practice, and that he used information acquired in the context of his

practice in connection with the relationships which resulted in the criminal charges. The Member also issued a threat in relation to the use of drugs that he had access to as a result of his practice.

With respect to the protection of the public, legal counsel urged the Hearing Tribunal to review the Parole Board documents as the findings of unprofessional conduct relate to breaches of mandatory conditions on the Member. In her submission, this demonstrates a refusal to follow the rules of society. His actions were pre-mediated and his expression of remorse was directed at the relationship between him and his son rather than towards his victims. She notes that four out of five of the victims were linked in some way to his practice. The nature of his actions and the risks of reoffending mean that his license must be cancelled. She suggests that the Hearing Tribunal consider the question of whether or not the Member is a person who the Hearing Tribunal wants to have as a member of the profession. Legal counsel referred the Hearing Tribunal to various cases in which these factors were considered. Finally, the Hearing Tribunal was referred to *Jaswal v Medical Board (Nlfd.)*, 1996 CanLII 11630, in which the Court set out a series of considerations for professional regulatory bodies in considering an appropriate sanction.

In response, legal counsel for the Member stated that the consideration of sanction by the Hearing Tribunal was a serious matter as its decision would determine whether or not the Member was able to practice in his chosen profession. He noted that the Member treated this matter very seriously and had travelled from Manitoba to attend the hearing in September. He states that the Member acknowledges that a professional penalty is warranted, but that an appropriate remedy is not cancellation. Rather, he submitted that a lengthy suspension with rehabilitative requirements was appropriate, along with a reasonable portion of the costs. Legal counsel noted that section 41.1 of the Act sets out many options available to the Hearing Tribunal, and that the onus must rest on the Complaints Director to demonstrate that the requested sanctions were necessary. Based on those factors, legal counsel for the Member indicated that the Hearing Tribunal should order:

- 1) A reprimand (s 41.1(1)(b));
- 2) A 36-month suspension, with credit for the interim suspension, which would be reduced to a 24-month suspension if the Member completes approved courses (s 41.1(1)(g));
- 3) The payment of \$10,000.00 in costs over a period of 36 months (s. 41.1(1)(j)).

Legal counsel stated that these orders would achieve the goal of the protection of the public, and would communicate to members of the profession that serious missteps will not be tolerated by the profession. He stated that the sanction must reflect the gravity of the offence and that it would not be proportionate for the Hearing Tribunal to shut the door completely to the Member practicing in the future. With respect to remorse, legal counsel for the Member pointed to the May 2018 Parole Board decision and Dr. Omodunbi's report which demonstrates an expression of remorse by the Member. He stated that the Hearing Tribunal should consider the findings in

relation to “low risk” of violence, and Dr. Haag’s report should be given very little weight given the fact that he did not interview the Member. Legal counsel referred to cases which in his submission demonstrated that the sanction proposed by the Member is reasonable and proportionate.

With respect to the *Jaswal* factors, legal counsel noted that the Hearing Tribunal must focus on the specific findings of unprofessional conduct, not other allegations that had been made against the Member. Further, the records show an expression of remorse by the Member for his actions. He has an unblemished record prior to these findings, and the serious penalties which already accrued to the Member as a result of the criminal convictions militate towards a less harsh penalty in this context.

In relation to the costs request, he noted that parts of the results of the investigation were excluded from the hearing, and that costs associated with those aspects would not be appropriate. He stated that given the fact of the criminal convictions, the extensive investigation and investigation report was not truly necessary. He states that the Member cooperated and attended the proceedings when he could and that his limited financial circumstances should be considered.

Decision on Sanction

For the reasons that follow, the Hearing Tribunal issues the following orders pursuant to section 41.1 of the Act:

- 1) The Member is hereby reprimanded, and this decision shall serve as the formal reprimand;
- 2) The Member’s registration and annual permit is hereby cancelled;
- 3) The Member shall pay a fine in the amount of \$10,000.00, payable within 30 days of this decision or as otherwise agreed by the Complaints Director;
- 4) The Member shall pay 80 percent of the actual costs of the investigation and hearing, payable within 12 months of the date of this decision or as otherwise agreed by the Complaints Director;
- 5) The ABVMA shall publish or cause to be published a summary of this decision, which summary shall identify the Member by name, but shall not identify the names of any complainants or witnesses in the underlying criminal actions.

In considering an appropriate sanction, the Hearing Tribunal has considered the primacy of the need to ensure the protection of the public through effective self-governance. The very serious nature of the Member’s conduct resulting in criminal convictions are a major factor in the Hearing Tribunal’s decision, including the fact that the Member’s conduct represents a refusal by him to

comply with laws and with mandatory conditions agreed to by him. Further, the Hearing Tribunal believes that the most serious sanction is required in order to adequately ensure that members of the profession are aware that engaging in serious criminal conduct, particular where such conduct has a connection to a member's practice of veterinary medicine, will result in serious professional sanctions.

With respect to the expert evidence, the Hearing Tribunal agrees with the Complaints Director that the expert evidence submitted by the Member in the form of Dr. Omodunbi's report must be given little weight. This is an unavoidable conclusion given the fact that Dr. Omodunbi did not set out his qualifications, and it was not possible for the Hearing Tribunal to qualify him to provide opinion evidence. While the report was admitted by agreement, the lack of a formal qualification of his expertise results in a limited basis for his opinion evidence. More importantly, Dr. Omodunbi was not called to give oral evidence, and it was not possible for his evidence to be tested through cross-examination. Cross-examination is an essential process where there are inconsistent expert opinions on a material issue. To the extent that there are discrepancies between the evidence adduced from Dr. Haag and Dr. Omodunbi, the Hearing Tribunal prefers the evidence of Dr. Haag.

That evidence establishes that the Member presents risks for future acts of violence. While that risk is focused on domestic violence, the Member's history indicates that this has an impact on risks in relation to the potential for future practice. Further, it is clear that many of the victims of the Member's criminal conduct were associated in some way with his practice.

The Hearing Tribunal has considered the *Jaswal* factors in coming to its determination. Specifically:

- 1) *The nature and gravity of the proven allegations.* As indicated above, the misconduct at issue here is at the very serious end of the scale. The Member's conduct was egregious, was carried out in an intentional and pre-meditated manner, and resulted in significant trauma for his victims. It reflected not only serious, violent criminal conduct, but also reflects violations of mandatory conditions imposed on him. This is a serious aggravating factor.
- 2) *The age and experience of the offending member.* The Member is not a new member of the profession. He had practiced for many years, and it is clear that he should have known better than to engage in the proven misconduct. This is an aggravating factor.
- 3) *The previous character of the member.* The Member has no prior complaints, nor any findings of unprofessional conduct. This is a mitigating factor.
- 4) *The age and mental condition of the victim.* This factor does not directly apply, and is a neutral factor.

- 5) *The number of times the misconduct occurred.* There are six findings of unprofessional conduct, and as pointed out by the Complaints Director, the misconduct occurred over the course of a number of years. This was not a one-time event, but represents a course of conduct over time. This is a serious aggravating factor.
- 6) *The role of the member in acknowledging what occurred.* As pointed out by legal counsel for the Member, the record does indicate some limited expressions of regret by the Member. This is a mitigating factor.
- 7) *Other consequences.* It is very clear to the Hearing Tribunal that the Member has suffered serious consequences as a result of his actions. He has been convicted of several criminal offences and has been incarcerated. He was subject to an interim suspension and has apparently had to close his clinic. The ongoing consequences resulting from his criminal convictions are also serious. This is a mitigating factor.
- 8) *The impact of the misconduct on the victim.* The record demonstrates that the impact of the Member's conduct on the victims of the underlying criminal conduct was very serious and resulted in significant trauma. This is an aggravating factor.
- 9) *Mitigating or aggravating circumstances.* The Hearing Tribunal believes that mitigating and aggravating factors have been considered under the other *Jaswal* factors.
- 10) *Deterrence.* This factor weighs heavily in favour of a serious sanction. It is vital that the profession communicate to the Member that his conduct—even conduct which he has characterized as “private” conduct—will result in professional consequences. The Member's misconduct must be condemned by the profession in the strongest possible terms. Further, it is necessary that other members of the profession understand that similar behavior will have very serious professional consequences. Professionals must be held to a high standard, particularly in matters which touch on their professional lives.
- 11) *Public confidence in the integrity of the profession.* Again, this factor militated towards a serious sanction. The public must have confidence that serious misconduct which calls into question the integrity of the profession will be treated seriously by the ABVMA, and that unprofessional conduct of this type will result in serious sanctions. The need to maintain public confidence in the self-governance of veterinarians by veterinarians requires a serious sanction.
- 12) *Degree to which the conduct fell outside of the range of acceptable behavior.* For the reasons noted above, this conduct was unquestionably serious and fell far outside of the range of permitted conduct. This is an aggravating factor.
- 13) *Range of sentences in similar cases.* The Hearing Tribunal has considered the cases provided by the parties. Given the seriousness of the conduct at issue here, it finds that

those cases were of limited assistance. However, the Hearing Tribunal notes that the cases support a serious consequence.

However, the Hearing Tribunal does not believe that it is appropriate to impose a condition that the Member be prohibited from applying for membership for a period of 10 years. Given the Member's age, this would essentially result in a prohibition on practicing veterinary medicine for his working life. Determinations in relation to whether or not the Member is, in the future, fit for practice ought to be made by those statutory officers responsible for making such determinations. It would not be appropriate for the Hearing Tribunal to pre-judge those future determinations. The Hearing Tribunal notes that the Member has expressed a desire to practice and that possibility should not be foreclosed completely.

In relation to the payment of fines, the Hearing Tribunal considers that the total sum of \$10,000 in fines is proportionate given the serious sanction of cancellation. While the Complaints Director requested the maximum fine, the Hearing Tribunal is satisfied that the fine imposed will demonstrate the profession's opprobrium in relation to the conduct while not representing a disproportionate penalty having regard to the cancellation of the Member's membership.

With respect to costs, however, the Hearing Tribunal has concluded that the interests of justice required that the Member bear the majority of the costs relating to the investigation and hearing. First, there are six findings of unprofessional conduct and while the convictions speak for themselves, it was reasonable for the Complaints Director to appoint an investigator to conduct a full investigation. It is not unusual for certain aspects of an investigation to not result in evidence at a hearing. This does not mean that the investigation was not necessary.

The expenses involved in the hearing also resulted in part from the delays in proceeding which were requested by the Member. However, given that the Hearing Tribunal granted requests for adjournments, it finds that it would not be reasonable to require the Member to bear the full costs of the hearing. The Hearing Tribunal notes that the report of Dr. Omodunbi was received by the Complaints Director a very short time before the commencement of the adjourned hearing, which necessitated the rebuttal report and evidence from Dr. Haag.

While the Hearing Tribunal accepts that the ultimate proportion of costs is not based on mathematical precision, it has concluded that an appropriate apportionment of those costs for the Member to bear is 80 percent. The Hearing Tribunal acknowledges legal counsel for the Member's submission in relation to the Member's financial circumstances. While the Hearing Tribunal may be in a position to conclude that the Member has limited financial resources based on his incarceration and interim suspension, no evidence was adduced by the Member to specifically demonstrate an inability to pay. However, the Hearing Tribunal has considered this issue in determining that something less than full costs should be paid by the Member.

Finally, the Hearing Tribunal directs that a summary of this matter be published with the Member's name. This is necessary for the protection of the public, and to accomplish the objectives of general and specific deterrence.

For all of those reasons, the Hearing Tribunal imposes the orders set out on page 15, above.

THE HEARING TRIBUNAL



Dr. Calvin Booker, Chair



Authorized to sign for: **Louis Kwantes**



Authorized to sign for: **John DeJong**



Authorized to sign for: **Randy Killeen**

Appearances:

For the Complaints Director of ABVMA:

Karen Smith & Heather Frydenlund

Parlee McLaws LLP

For the Member:

Eric Appelt

McLennan Ross LLP