

BEFORE THE PROFESSIONAL CONDUCT COMMITTEE OF THE
ROYAL COLLEGE OF VETERINARY SURGEONS

RCVS

v

DR NIKOLAY KIRILOV RADEV MRCVS (Respondent)

DECISION OF THE DISCIPLINARY COMMITTEE ON DISGRACEFUL CONDUCT

1. The Committee having found some facts in the Charge proved, next considered whether Dr Radev was guilty of disgraceful conduct in a professional respect. It heard submissions from both parties. Ms Hearnden provided her written submissions on behalf of the College, and Ms Sanderson provided hers on behalf of Dr Radev, both of which assisted the Committee in making its determination.

Submissions

2. Ms Hearnden submitted to the Committee that the decision on disgraceful conduct in a professional respect was a matter for the Committee's judgement, not involving a burden of proof. The Committee should take into account all the evidence, including the expert evidence, she said.
3. Ms Hearnden submitted that the Committee should have regard to the three limbs of the public interest and the Disciplinary Committee Guidance, updated in August 2020 (the Disciplinary Committee Sanctions Guidance for Veterinary Surgeons Cases) ("the Guidance"). She submitted that the Committee had to judge whether Dr Radev's conduct had been either below or far below the benchmark standard. Ms Hearnden submitted that this included both incompetence or even a singular incident of particularly grave negligence.
4. Dr Radev's failure to aspirate Brooke's abdomen amounted to negligence of a high degree, Ms Hearnden submitted. Two things should have pointed Dr Radev to the need to aspirate: the possibility of septic peritonitis and the presence of free fluid. She

submitted that Dr Radev said that he had recognised the possibility of septic peritonitis but this did not explain why he had not aspirated Brooke's abdomen in that knowledge.

5. Although Dr Radev might say that he had been influenced by Dr McGrotty, to effectively overlook septic peritonitis further, Ms Hearnden submitted, it was another matter to refuse to investigate once prompted. She reminded the Committee of Mrs Jackson's evidence that she had pointed out the concerns but Dr Radev had shrugged off the concerns.
6. Ms Hearnden submitted that, bearing in mind Mrs Jackson's evidence, Dr Radev had failed to take on clear and obvious signs. It was submitted that, even if Dr Radev had overlooked the signs, he should not ignore a fellow professional's warning.
7. With regard to the clinical records having been written two months after the event, Ms Hearnden submitted, Dr Radev had ignored the importance of the clinical record. Ms Hearnden said that the Committee should have in mind the three limbs of public interest and mark the failure as disgraceful conduct in a professional respect.
8. Ms Sanderson said that, relying on the agreement of the experts that the failure was not 'far below' the required standard, and her submission was that in respect of charge 1(b)(ii) the Committee should find this was not disgraceful conduct in a professional respect.
9. Considering the failure in charge 1(c)(ii), Ms Sanderson submitted that the experts agreed that this was not 'far below', unless the Committee accepted Mrs Jackson's evidence that she had suggested aspiration. In that case, she said, Dr Shield's evidence had been that this was 'far below' the standard. However, Ms Sanderson submitted, it would be necessary for the Committee to first be 'sure' of Mrs Jackson's evidence and that there were a number of factors which undermined Mrs Jackson's account.
10. Ms Sanderson submitted that, whilst it is important to listen to others, it had been Dr Hall's evidence that it was for the veterinary surgeon responsible to make a decision. She submitted that the Committee would be entitled to consider Dr Radev's conduct cumulatively, as a whole, but warned against 'double counting' or using one failing to aggravate another.

Legal Advice

11. The Legal Assessor advised the Committee that it should consider its findings of fact and decide whether these amounted to disgraceful conduct in a professional respect, which meant conduct which fell far short of the standards expected of a veterinary surgeon. He advised the Committee that it should have regard to the provisions of the College's Professional Code for Veterinary Surgeons ("the Code") and consider also the expert evidence received. Equivalence was recognised with 'serious professional misconduct' used elsewhere, which the courts had illustrated by various descriptors; however, the decision was for the Committee. Negligence of a serious degree might be sufficient, and consideration of the effect on the reputation of the profession as a whole was also relevant.
12. The Legal Assessor advised the Committee it should consider the individual findings of fact, but provided it exercised caution, could consider a course of conduct in an appropriate case. The Committee must produce reasons in summary form for its decision.

Committee's Decision

13. The Committee carefully considered its previous findings of fact, the evidence it had received and the parties' submissions. It accepted the legal advice of the Legal Assessor as to its task at this stage of the proceedings.
14. The Committee considered, in relation to its factual findings and, as set out in the Guidance, any aggravating or mitigating factors which had been present. It identified no particular aggravating factors from those listed in the Guidance which were not already an inherent part of the charges proved themselves. In terms of mitigating factors, the Committee noted that the case related to treatment of a single animal, Brooke. In addition, Dr Radev had made admissions to the charges found proved and had also admitted that some of that conduct in earlier correspondence with the College or in his witness statement.
15. The Committee considered that, in making a judgement on any failure to meet standards it should be careful to be mindful of the risks inherent in a judgement from the standpoint of having the benefit of hindsight. It had to try, so far as possible, to place itself in the position of Dr Radev, faced with Brooke as his patient, before any conclusion was reached about her condition and before the sad outcome.
16. The Committee noted in particular that there had been evidence that, shortly after the abdominal surgery, Brooke had appeared to be recovering before her condition had

later deteriorated. It noted that, the evidence included the concerns of other professionals at the surgery over the condition of Brooke, but, apart from the concern which Mrs Jackson said that she had raised, it appeared that the other witnesses had not raised their concerns directly with Dr Radev. The evidence suggested that Dr Radev had kept others away from Brooke; some of the witnesses regarded this with concern but the Committee also noted that this was explicable by Dr Radev's concerns to isolate Brooke due to the potential risks connected with Leptospirosis.

17. The Committee considered the submissions that if the evidence of Mrs Jackson was accepted, her suggestion to Dr Radev to aspirate Brooke's abdomen made a difference to whether his conduct fell 'below' or 'far below' the standard.
18. The Committee noted Dr Hall's evidence, that, regardless of that suggestion, Dr Radev's conduct had not been far below standard, because Dr Radev had been the veterinarian in charge of Brooke's treatment and had been entitled to make his own decision.
19. In Dr Shield's report and in her evidence, she stated that if Dr Radev had overlooked the possibility of septic peritonitis and then it was drawn to his attention and he ignored it, then his conduct was far below the standard. Dr Shield's opinion was that, in a dog which had undergone abdominal surgery and then became ill, it was difficult to see how the conclusion was not reached that this was septic peritonitis.
20. The Committee noted that the charges against Dr Radev concerned his failure to consider the possibility of septic peritonitis. They did not concern his failure to reach the correct, settled diagnosis. To this extent, the Committee considered that Dr Shield's criticism focused more on the failure to reach a correct diagnostic conclusion, and not on his failure to consider the possibility.
21. The Committee took into account that by the time Mrs Jackson says that she made her suggestion, Dr Radev had already discussed the case with Dr McGrotty, provided her with test results and taken a view from her as to the possible causes of Brooke's condition. Taking this into account, the Committee preferred the evidence of Dr Hall, that simply because another professional offers a suggestion, it is not incumbent on the veterinary surgeon to follow that suggestion, provided the clinician in charge has a justification for not responding to the suggestion.
22. The Committee decided that, whether or not Mrs Jackson had made the suggestion that Dr Radev should aspirate Brooke's abdomen did not affect its decision as to the seriousness of Dr Radev's conduct in the failure to aspirate.

23. The Committee had found in relation to charge 1(b)(ii) that Dr Radev, having recognised the presence of free fluid, had failed to take adequate and appropriate action, as he had admitted, due to a failure to aspirate Brooke's abdomen. In relation to charge 1(c)(ii), the Committee had found proved, also by admission, that Dr Radev had failed to take adequate and appropriate action with regard to the possibility of septic peritonitis by failing to aspirate Brooke's abdomen.
24. These charges, whilst addressing slightly different matters, on the basis which the Committee had found them proved, concerned the same issue of not aspirating Brooke's abdomen and the consequence which flowed from not having done so. The Committee was mindful to be wary of 'double counting' the failure over what had clearly been a continuous course of action and decision-making by Dr Radev.
25. The Committee considered that its findings in relation to paragraphs 1(b)(ii) and 1(c)(ii) engaged parts of the Code, in particular:

"1.3 Veterinary surgeons must provide veterinary care that is appropriate and adequate"

The Committee also noted that it is not every breach of the Code which will automatically result in a finding of disgraceful conduct in a professional respect. To make such a finding, the Committee must decide in its own judgement that the breach was sufficiently serious.

Charge 1(b)(ii)

26. The Committee noted the evidence of Dr McGrotty. It was clear that she had given detailed and careful consideration to the information which had been relayed to her by Dr Radev. This included her analysis of the blood tests and other data sent by Dr Radev. However, importantly, it appeared that Dr Radev had not informed Dr McGrotty about the ultrasound scan results and it was another limitation that Dr McGrotty could not have the benefit of having Brooke in front of her.
27. Attempting to put itself into the position of Dr Radev at the time, the Committee noted that although Brooke had attended the Longwell Green practice with a distended abdomen, the clinical notes recorded that the distension of Brooke's abdomen had increased only over time. Dr Radev had also had in mind that, following the surgery, it had appeared that Brooke had initially been recovering well. It considered that, as matters had progressed, Dr Radev had been overly ready to accept the advice he had received from Dr McGrotty and not sufficiently detached in his decision-making.

28. The Committee noted that Dr Radev had continued to treat Brooke appropriately in line with his differential diagnoses. Although it had been regarded with some suspicion, his attempts to keep Brooke in some isolation had accorded with the right approach to a case of possible Leptospirosis. Dr Norton had said in her evidence that he had laboured the necessary precautions he asked her to take, to the point of feeling patronised by him. The Committee also noted the other treatments that Dr Radev had appropriately provided to Brooke, such as ongoing antibiotics, aggressive fluid therapy and other support, were consistent with his differential diagnoses.
29. The Committee took into account that the expert witnesses agreed that septic peritonitis was a well-recognised consequence of intestinal surgery, particularly involving the large intestine. It also took into account their view that the obvious course, having recognised the presence of free fluid in the abdomen would have been to aspirate it and ascertain the nature of the fluid. The Committee had no doubt that, by his failure to aspirate, Dr Radev had fallen below the standard expected of a veterinary surgeon.
30. The failure to meet the required standard notwithstanding, the Committee bore in mind the principles set out in relation to 'misconduct' in *GMC v Calhaem [2007] EWHC 2606* to the effect that 'mere' negligence is not misconduct, but particularly serious negligence may be. The Committee considered that, taking into account all the circumstances, whilst the failing was below standard, it accepted Dr Hall's characterisation of this failing that it was not 'far below' the standard for Dr Radev to not have taken the adequate and appropriate action to aspirate Brooke's abdomen.

Charge 1(c)(ii)

31. The Committee considered Dr Radev's conduct with regard to having failed to act appropriately in response to the possibility of septic peritonitis. It considered that the same factors applied, in terms of assessing the seriousness of this failure, as applied to charge 1(b)(ii), especially bearing in mind the continuous course of action and decision-making.
32. The evidence of Mrs Jackson's suggestion had relevance to this charge also. However, for the same reasons to those set out above in relation to charge 1(b)(ii), the Committee accepted Dr Hall's evidence that Dr Radev had been able to turn away from the suggestion, whether or not made. In terms of seriousness, again the Committee did not accept that any suggestion from Mrs Jackson, made Dr Radev's conduct worse.

33. For similar reasons as in relation to charge 1(b)(ii), the Committee decided in relation to charge 1(c)(ii) that Dr Radev's conduct had fallen below, but not far below the standard.

Charge 2(i)

34. The Committee took into account that Dr Radev's clinical notes for 19-21 September 2021 had not been completed for a considerable time after the event. It had accepted that he had made handwritten notes at the time and used these to make the clinical notes on 24 November 2021. It was clear that the Code and its Supporting Guidance recognised that there would be circumstances in which retrospective notes may be made. It was also apparent that Dr Radev had addressed the Code when completing his retrospective notes. The Committee took into account that, although there was a period when the clinical notes were incomplete, there was no ongoing care of Brooke due to her sad demise, after 25 September 2021.

35. The Committee accepted the joint view of the expert witnesses, that Dr Radev's conduct fell below, but not far below, the required standard.

36. The Committee considered whether, taken as a whole, Dr Radev's conduct was far below the standard cumulatively. It noted that Dr Shield was of that opinion. However, only part of the Charge had been found proved against Dr Radev. Further, those facts found proved had, individually, not been found to be far below the standard. The Committee considered the failings in 1(b)(ii) with 1(c)(ii), as compared to 2(i) related to distinct aspects of his conduct, and it would be wrong to combine them in this way.

37. The Committee accepted the legal advice, and the Guidance, which sets out that disgraceful conduct in a professional respect is conduct which falls far below the expected standard. The Committee had not found Dr Radev's conduct to have fallen far below the standard.

38. The Committee decided that Dr Radev is not guilty of disgraceful conduct in a professional respect.