

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF ST.-HYACINTHE

DISCIPLINARY COMMITTEE OF THE
ORDER OF VETERINARY PHYSICIANS OF
QUÉBEC

COMPLAINT NO. 25-95-382

DR. ANDRÉ SAUCIER, veterinary physician,
in the capacity of trustee of the Order of
Veterinary Physicians of Québec

COMPLAINANT

-VS-

DR. GILLES MELOCHE, veterinary physician,
338 Blvd. Cité des Jeunes, Saint-Clet, Québec,
J0P 1S0

RESPONDENT

DECISION AND SENTENCE

1. THE COMPLAINT

On or about 13 October 1995, the complainant brought the following complaint against the respondent.

INADEQUATE REGISTRATION OF CONTROLLED DRUGS

1. Between May 1993 and April 1995, from the Veterinary Hospital of the Cité enr., situated [throughout the document, "(sic)" has been inserted in this position because "situated" was spelled as appropriate to modify a feminine noun, whereas "hospital" is masculine] at 338 Blvd. Cité des Jeunes, Saint-Clet, Québec, J0P 1S0, the respondent acted as follows:
 - a. He acquired 69 bottles of Winstrol, an androgenic [the document says "angrogene," but it is almost certainly a typo for "androgene"; Winstrol is widely described as "androgenic"] anabolic steroid subject to the legal requirements applicable to controlled drogues under Schedule [or "Attachment"] G of the Law on Foods and Drugs (S.R.C. 1970, c. F-27);
 - b. Despite the obligation to keep a register justifying all sales of this product, about 27 sales of bottles remain without explanation, inscription in the register, or corresponding records;
 - c. He did not know how to oversee purchases or sales of Winstrol;

thus acting irresponsibly and without adequate oversight of medicines in his possession, contravening article 2.04 of the old Code of Medical Deontology as well as articles 3, 9, paragraphs 7 and 8, of the new Code of Medical Deontology, making himself subject to the sanctions contained in article 156 of the Code of Professions.

ROZON CASE

- 2–4. Between about 16 May and about 24 September 1994, from the Veterinary Hospital of the Cité enr., situated at 338 Blvd. Cité des Jeunes, Saint-Clet, Québec, J0P 1S0, the respondent, on (3) three occasions, sold without prescription anabolic steroids and other medicines requiring prescriptions to Messers. Mario and Marcel Rozon, thus contravening three (3) times article 1 of the Regulations on Medicines That Cannot Be Sold Except by Prescription by a Veterinary Physician and article 9, paragraph 8, of the Code of Veterinary Medical Deontology, making himself subject to the sanctions contained in article 156 of the Code of Professions;
- 5–7. At the same time and by the same means described in nos. 2–4, from the Veterinary Hospital of the Cité enr., situated at 338 Blvd. Cité des Jeunes, Saint-Clet, Québec, J0P 1S0, the respondent, failed to write a suitable veterinary prescription, thus contravening three (3) times article 4 of the Regulations on Prescriptions by Veterinary Physicians and making himself subject to the sanctions contained in article 156 of the Code of Professions;
8. Between 1993 and 1995, from the Veterinary Hospital of the Cité enr., situated at 338 Blvd. Cité des Jeunes, Saint-Clet, Québec, J0P 1S0, the respondent could not assemble a suitable file with regard to his clients Mario and Marcel Rozon, thus contravening article 2.02 of the Regulations on Maintenance of Files and Consulting Rooms by Veterinary Physicians and making himself subject to the sanctions contained in article 156 of the Code of Professions;

DEBLOIS CASE

- 9–16. Between 29 January and 22 September 1994, from the Veterinary Hospital of the Cité enr., situated at 338 Blvd. Cité des Jeunes, Saint-Clet, Québec, J0P 1S0, the respondent, on eight (8) occasions, sold without prescription anabolic steroids and other medicines requiring prescriptions to Mr. Jean-Louis Deblois, thus contravening eight (8) times article 1 of the Regulations on Medicines That Cannot Be Sold Except by Prescription by a Veterinary Physician and article 9, paragraph 8, of the Code of Veterinary Medical Deontology, making himself subject to the sanctions contained in article 156 of the Code of Professions;
- 17–24. At the same time and by the same means described in nos. [here "(sic)" has been inserted because the numbers are missing], from the Veterinary Hospital of the Cité enr., situated at 338 Blvd. Cité des Jeunes, Saint-Clet, Québec, J0P 1S0, the respondent, failed to write a suitable veterinary prescription, thus contravening eight

(8) times article 4 of the Regulations on Prescriptions by Veterinary Physicians and making himself subject to the sanctions contained in article 156 of the Code of Professions;

25. Between 1993 and 1995, from the Veterinary Hospital of the Cité enr., situated at 338 Blvd. Cité des Jeunes, Saint-Clet, Québec, J0P 1S0, the respondent could not assemble a suitable file with regard to his client Jean-Louis Deblois, thus contravening article 2.02 of the Regulations on Maintenance of Files and Consulting Rooms by Veterinary Physicians and making himself subject to the sanctions contained in article 156 of the Code of Professions;

The hearing of this complaint took place at St.-Hyacinthe on 2 November 1995. The respondent was present and was represented by an attorney.

2. THE PLEA OF GUILTY BY THE RESPONDENT

At the beginning of the hearing, the attorney for the respondent informed the committee that his client with to register a plea of guilty with regard to nos. 1b, 5–7, and 17–24. For his part, the attorney for the complainant advised us that he had no evidence to offer of the other accusations. Having assured ourselves that the respondent understood well the scope of his decision, we accepted his plea and declared him guilty of nos. 1b, 5–7, and 17–24 of the complaint.

3. REPRESENTATIONS ON SENTENCING

The attorney for the complainant, without making a specific suggestion, recommended that we impose a substantial fine on the respondent. For his part, the attorney for the respondent asked that we impose a minimum fine on his client because the medicines mentioned in the complaint had in all cases been sold to horse breeders and that they were always administered to the horses for which they were intended.

In the circumstances, we concluded that a fine of one thousand two hundred dollars (\$1200.00) for no. 1b, the most important because it constituted a violation of the Law on Foods and Drugs; a fine of eight hundred dollars (\$800) for no. 5 and reprimands for nos. 6 and 7; and a fine of eight hundred dollars (\$800) for no. 17 and reprimands for nos. 18–24 constituted just and appropriate punishment.

4. DECISION AND SENTENCE

FOR THE ABOVE-MENTIONED REASONS, THE DISCIPLINARY COMMITTEE:

DECLARES the respondent guilty of no. 1b, 5–7 inclusive, and 17–24 inclusive of the complaint brought against him;

CONDEMNS the respondent to the following punishments:

1. A fine of one thousand two hundred dollars (\$1200.00) for no. 1b;
2. A fine of eight hundred dollars (\$800) for no. 5;
3. A reprimands for each of nos. 6 and 7;
4. A fine of eight hundred dollars (\$800) for no. 17;
5. A reprimand for each of nos. 18–24;
6. The obligation to reimburse all expenses incurred in bringing the complaint, including those of registration.

THE COMMITTEE ACCORDS TO THE RESPONDENT A PERIOD OF SIX (6) MONTHS IN WHICH TO PAY THESE FINES AND EXPENSES.

Montréal, the 20 December 1995

ME CLAUDE CHAMPAGNE, president

DR. MAURICE DESROCHERS, veterinary physician

DR. CHRISTIANE GAGNON, veterinary physician

Sylvestre & Associates (Me Frédéric Sylvestre)
attorneys for the complainant

Me René Boucher
attorney for the respondent

["Me" is an honorific used for attorneys.]

CANADA

PROVINCE OF QUÉBEC

TRIBUNAL OF PROFESSIONS

COMPLAINT NO. 760-07-000001-930

15 December 1994

CORAM

Judge JACQUES BIRON, J.C.Q.

Judge GILLES POIRIER, J.C.Q.

Judge JACQUES DÉSORMEAU, J.C.Q.

DOCTEUR. GILLES MELOCHE
Respondent -- PARTY APPEALING

vs.
DOCTEUR ANDRÉ SAUCIER, in his capacity
as trustee of the Order of Veterinary Physicians
of Québec

Complainant -- RESPONDENT

JUDGMENT

Me René Boucher
La Maye, Moisan, Boucher, Gaudreau
Attorneys for the party appealing

Me Frédéric Sylvestre
Sylvestre & Associates
Attorneys for the respondent

Secretary of the Disciplinary Committee of the
Professional Order of Veterinary Physicians of Québec

[Translated 9 October 2003 by Anne B. Thistle.]

760-07-000001-930

On 12 October 1993, the Disciplinary Committee of the Order of Veterinary Physicians of Québec declared the party appealing guilty of the following three (3) counts:

"I, the undersigned, DR. ANDRÉ SAUCIER, veterinary physician regularly inscribed on the Panel [roll] of the Professional Corporation of Veterinary Physicians of Québec, in my capacity as a trustee of the aforesaid corporation and complainant, declare the following:

I am reasonably informed that DR. GILLES MELOCHE, veterinary physician and inscribed on the Panel of the Professional Corporation of Veterinary Physicians of Québec, contravened the Code of Deontology, and, in particular:

1. On or about 1 March 1993, from the Veterinary Hospital of the Cité enr., situated at 338 Blvd. Cité des Jeunes, Saint-Clet, Québec, the respondent did not give all the necessary care and precautions to the treatment of a dog named "Toby," belonging to Mrs. Danielle Lavoie and Mr. Alain Cloutier, after the aforementioned dog was violently struck, notably in that:
 - a. After having observed that the dog was breathing very rapidly, had dilated pupils, very pale mucosa, no trace of blood or external wound, was in a comatose state and a state of shock, as well as having internal hemorrhages of the abdomen, he did not begin fluid-therapy to maintain the animal's circulatory volume, even though that was necessary given the circumstances;
 - b. He injected only different quantities of Azium;
 - c. Even after the animal's owners insisted on installation of fluids as well as the taking of x-rays, given that the operation costs were unimportant in their view, he did not want to accede to their requests, affirming that it was not necessary, as the animal was out of danger;
 - d. It was only after several repeated requests by the animal's owners that the respondent took an x-ray of the abdomen, even though the clients requested that it be taken of the animal's entire body;
 - e. He continued to lavish care, even after having avowed to the clients that he was very tired, when it was about 2000 hours [8 p.m.];
 - f. Several times, he affirmed to the clients that it was only a question of a simple hemorrhage, perfectly controlled;
 - g. Even after the clients had insisted that the animal be monitored all night, even if that entailed transporting the animal to a clinic open 24 hours a day, he repeated that the animal was out of danger;

- h. He did not monitor the animal during the night, only placing the animal in the consultation room, as the cages were occupied at the time;
- i. He did not use the means necessary to prevent the massive hemothorax that led to the animal's death during the night;
- j. He did not act adequately, given the situation, when it appeared on autopsy that there was a massive hemothorax of four or five liters of coagulated blood in the thoracic cavity, as well as fractures of the right sixth, seventh, eighth, ninth, and tenth ribs with slight displacement, hemorrhage, tears in the pleura and ecchymoses in the corresponding subcutaneous tissues;

thus contravening article 5.01 of the Code of Deontology and making himself subject to the sanctions contained in article 156 of the Code of Professions.

- 2. On the same date and by the same means as those mentioned in the above counts, the respondent did not take into account the limits of his knowledge and of the means at his disposal, thus contravening article 3.01.01 of the Code of Deontology and making himself subject to the sanctions contained in article 156 of the Code of Professions.
 - a. The respondent did not carry out monitoring and make himself reasonably available in the circumstances, thus contravening article 3.03.01 of the Code of Deontology and making himself subject to the sanctions contained in article 156 of the Code of Professions.

The party appeals the declaration of guilt and of the sanction imposed/

THE FACTS

On 1 March 1993, Mrs. Danielle Lavoie, accompanied by Luc Lefèbre[,] presents herself at the clinic of Dr. Gilles Meloche with a dog answering to the name of Toby. The animal is breathing in accelerated fashion, his pupils are dilated and he is not bleeding.

After a summary examination, the party appealing diagnoses a state of shock and administers to the animal two injections of Azium; the animal's pulse demonstrates the absence of tachycardia, and an x-ray of the abdomen reveals the presence of a small quantity of liquid at that level. The party appealing decides to re-evaluate the situation the following morning and he leaves the animal in the waiting room. The animal dies in the night of the effects of a massive hemothorax.

The party appealing has formulated the grounds for his appeal in the form of questions, which are summarized as follows:

"Did the Disciplinary Committee err in fact and in law in finding the party appealing guilty of

- 1) not having given all the necessary care to the animal;
- 2) not having taken into account the limits of his knowledge and the means at his disposal;
- 3) not having shown reasonable availability and diligence in the exercise of his profession;

"Did the Disciplinary Committee err in fact and in law:

- 4) in authorizing the production of the complaint to the trustee cosigned by the owners of the animal;
- 5) in imposing on the party appealing multiple condemnations for the same infraction;
- 6) in recommending that the party appealing be required to take remedial training or a remedial course."

FIRST QUESTION

Did the Disciplinary Committee err in fact and in law in finding the party appealing guilty of not having given necessary care to the animal?

From the appealing party's own assertion, the animal was in a state of shock on arrival at the clinic. According to Dr. Pierre Grégoire Dubé, expert of the respondent, once this diagnosis was made, the rules of the art of veterinary medicine say that a summary examination of the animal should be made so as to proceed rapidly to fluid-therapy or installation of an intravenous catheter and administration of fluid; this first-stage treatment is intended to counteract the state of shock resulting from the disorganization of the cardiovascular system, which can cause the flow of blood to the vital organs to be diminished.

According to Dr. Dubé, the rules of the art of veterinary medicine say that, when faced with an animal in a state of shock, the veterinarian must proceed to thoracic and abdominal x-rays so as to determine the extent of damage. He notably emphasized the importance of a thoracic x-ray because of the presence at that level of the most important organs, namely the heart and the lungs. At the time, the party appealing chose not to administer fluid-therapy and not to proceed to a thoracic x-ray on the grounds of the normality of the filling of the capillaries and the cardiac rhythm.

According to the expert Dubé, the normality of the filling of the capillaries is not an infallible indicator of the absence of hemorrhage; on the other hand, a thoracic x-ray would have revealed the rib fractures and the subcutaneous ecchymoses as well as the hepatic lacerations indicating an important external trauma that is made clear in the necropsy report by Dr. Pierre Elis, veterinary physician and pathologist of the Faculty of Veterinary Medicine.

The committee retained the testimony of the expert. It had not been demonstrated that the exercise of this choice constituted a manifest error; the preference accorded by the committee for the testimony arises from his status as first-line hearer and with respect to the evidence, the committee is correct to write

It seems evident to us that the respondent did not proceed in conformity with the norms of the profession in the examination of the animal, basing his decisions notably on an x-ray that showed nothing conclusive and on a poorly done clinical examination.

The respondent should, following the scientific norms of the profession, as they were established by Dr. Dubé as well as by the published literature, have begun fluid-therapy, taken a thoracic x-ray of the animal so as to reveal the fractures and the thoracic hemorrhages, afterward have proceeded to a complete clinical examination and to all necessary and diagnostic x-ray photos.

The committee upholds count 1 of the complaint.

SECOND QUESTION

Did the Disciplinary Committee err in fact and in law in authorizing production of the complaint to the trustee cosigned by the owners of the animal?

The party appealing submits that the committee erred in law in permitting the production of the written complaint signed by the two owners of the animal and relating the above-described events; according to him, the discretion enjoyed by the committee in matters of administration of evidence is limited by the respect for the principles of natural justice, notably the right of cross-examination; it brings up in particular the fact that one of the signers was a witness to only part of the facts that are related therein.

In principle, the party appealing is correct. Written testimony intended to establish a fact is inadmissible as evidence, except under certain exceptions. At the same time, it is evident from the dossier that the party appealing suffered no prejudice resulting from the production of this document; in effect, the cosigners of the complaint testified and were released without any restriction on cross-examination by the attorney for the party appealing. In this, the party appealing benefited from a complete and entire defense and it is manifest that the document in question did not mar, under the circumstances, the legality of the proceedings.

THIRD QUESTION

Did the Disciplinary Committee err in fact and in law in imposing multiple condemnations for the same infraction?

As mentioned above, the party appealing was recognized as guilty of having contravened the dispositions of article 6.01 of the Code of Deontology of Veterinary Medicine, which stipulates:

The veterinary physician must give the necessary care to animals entrusted to his care by a client and he cannot lend or use these for ends other than those for which they were entrusted to him.

In addition, counts 2 and 4, of which the party appealing has also been recognized guilty by the committee, are based on articles 3.01.01 and 3.03.01 of the Code of Deontology of Veterinary Medicine of Québec, which read respectively as follows:

Article 3.01.01

Before accepting a mandate, the veterinary physician must take into account the limits of his knowledge as well as the means at his disposal

Article 3.03.01

The veterinary physician must demonstrate in the exercise of his profession reasonable availability and diligence.

The application of the rule forbidding multiple condemnations for commission of the same infraction require that one find in the evidence tight factual and legal links between the similar infractions.

Kienappie vs. R., 1 R.C.S., 729

Kenny vs. Dentist (1993) D.D.C.P. 214

1. The factual link

In kind, the factual link is clearly established: the similar infractions arose from the same operation, that is, the intervention of the party appealing on the animal in a single time period; they take their origins from the same cause.

2. The legal ink

The legal link between the similar infractions evident to the party appealing is not sufficient in itself to render applicable the rule invoked by the party appealing. The absence must be apparent, in relation to the general infraction, of supplementary or distinctive elements of the alleged infractions [that distinguish them] from the general infraction.

In kind, the fact of the veterinarian's not having taken into account the knowledge and means at his disposal, or the fact of his not having demonstrated reasonable availability and diligence do not constitute distinctive or supplementary elements [that distinguish them] from the general infraction committed, that is:

Negligence in having given the necessary care to the animal.

One finds in the denomination of the accusations, not distinctive or supplementary elements of the general obligation of the veterinarian in virtue of article 5.01 of the Code of Deontology, but rather the expression of a way or manner of committing the general infraction.

There is room to apply to counts 2 and 4 the rule forbidding multiple condemnations for the commission of the same infraction.

FOURTH QUESTION

"Did the Disciplinary Committee err in fact and in law in recommending that the party appealing be required to take remedial training or a remedial course?"

To recommend is not to sanction. The recommendation is in fact an invitation made to a moral person to act in such and such a way; it has no executive character and includes no punitive aspect, a character specific to a sanction. In kind, it is only in the eventuality that the Bureau, deciding to follow the recommendation, requires after a hearing that the professional take such training that the recommendation by the Disciplinary Committee takes on all its disciplinary character.

In consequence, the Tribunal of Professions does not have the jurisdiction to pronounce on this aspect of the Disciplinary Committee's decision.

Hornstein vs. Disciplinary Committee of the Order of Dentists and others (1988)
R.J.Q. 2526.

Mark (Mohammad) Seghatoleslami vs. Denturologists (1993) J.D.C.P. 227

THE SANCTION

The committee, while still underlining the objectively grave character of the infraction committed by the party appealing, has retained with reason that it is a question of a first infraction and the fine of \$500.00 imposed constitutes a just, suitable, and reasonable penalty.

FOR THESE REASONS, THE TRIBUNAL:

MODIFIES the decision rendered;

SUSTAINS the declaration of guilt pronounced on the first count and the sanction attached to it;

AQUITS the party appealing of counts 2 and 4;

QUASHES the sanctions pronounced with regard to counts 2 and 4;

ALL conditional on the guilty verdict's taking effect

WITH THE EXPENSES in this case provided.

Judge JACQUES BIRON, J.C.Q.

Judge GILLES POIRIER, J.C.Q.

Judge JACQUES DÉSORMEAU, J.C.Q.

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