

## SECTION 43 STATEMENT TO THE VETERINARY COUNCIL BY THE COMPLAINTS ASSESSMENT COMMITTEE: CAC16-10

Dr A

### Complaint from Ms B

Dr A	Veterinarian complained about
Ms B	Complainant
C	Clinic where Dr A works
Ms D	Practice manager at C
E	Clinic of the kitten's new owner

### Summary

1. A Complaints Assessment Committee (CAC) of the Veterinary Council of New Zealand (VCNZ) has investigated the above complaint. Under section 43 of the Veterinarians Act 2005 (the Act), the CAC has reached a decision as set out below.

### Background

2. Dr A is the Veterinary Director at C.
3. Ms B is a cat breeder. She complained that Dr A's clinic breached her privacy by responding to another clinic's request for the release of the notes of a kitten she had sold.
4. In a complaint received 12 April 2016, Ms B advised Council of her concerns about 'privacy issues' and that information was 'released to another vet without my knowledge or consent'. Ms B also said that the information that was sent related to the wrong kitten.
5. This matter was referred to a CAC to investigate under s40 of the Act.

### Information considered

6. The CAC considered the following information.
  - Complaint information from Ms B including:
    - an email to the VCNZ office of 2 March 2016
    - a completed notification form received 12 April 2016
    - emails between Ms B and C of 2 and 3 March 2016
    - copies of emails between Ms B and the owner of the kitten, dated 28 and 29 February and 1 March 2016
  - Emails between the Deputy Registrar (Standards) and Ms B, dated 14 and 15 April 2016
  - Letter of response from Dr A received 12 May 2016
  - A copy of the clinical notes provided to E, received 13 May 2016

- Emails between the Deputy Registrar (Standards) and Dr A dated 13, 17, 20 and 31 May, and 2 June
- Email of 13 June from Dr A, including a copy of the clinic's draft policy on providing notes to third parties
- Email from Ms B to the Deputy Registrar (Standards) dated 17 June 2016
- Emails between Dr A to the Deputy Registrar (Standards) dated 20 and 21 June 2016
- Letter of apology to Ms B from Ms D, Practice Manager at C, dated 23 June 2016

### **Brief case summary**

7. Ms B sold one of her kittens to a breeder in another town in January 2016. The day before the kitten was flown to the new owner, it was taken to C to check on a 'sore eye'. In view of the eye issue, Ms B offered to delay flying the kitten to the new owner, however the new owner advised Ms B to send the kitten as planned.
8. The new owner wanted to have the eye checked by her vet, E. When she made that appointment, it was suggested that *'it would be a good idea to get the history of the kitten from C.'* On 29 February, the new owner advised Ms B in an email that she had *'booked her into the veterinarian for Friday [4 March]'* and *'they are requesting her medical information from your [veterinarian]'*. Ms B told the new owner she would need to consent to the release of this information.
9. The records were sent from C to E on Monday 29 February 2016 (no consent had been sought from Ms B).
10. Ms B phoned E and was told they had already requested the history from C. Ms B then phoned C and spoke with Ms D, the Practice Manager, who told her that the records had already been sent. Ms B asked who had given the authorization for this to happen and says she was told that *'the breeder had given consent, not me, but the breeder [who had purchased the kitten].'*
11. Ms B says that she had *'no worry with [E] obtaining this history but I have a grave concern in that C at no time contacted me to ascertain if:*
  - *I had given consent to [E] to obtain the history or*
  - *I had given C consent to release the history.'*

Ms B was concerned that this was a breach of the Privacy Act 1993 and the Code of Professional Conduct. Ms B noted that this was the *'second time that this vet clinic has breached my privacy... and I am deeply concerned'*.
12. Ms B phoned C on 2 March 2016 and requested a copy of the history that was sent to E. On receiving this Ms B realised that the information that had been sent was not for the correct litter.
13. Dr A was asked to comment on the issues raised by Ms B. Dr A advised that the records were requested by E on 29 February 2016 (ahead of the scheduled appointment at E on 4 March). The Practice Manager, Ms D *'dealt with the request and was sufficiently assured that the records should be released for the following reasons:*
  1. *The kitten had an ocular disease that we had treated previously.*
  2. *The condition would warrant re-examination by the new Veterinary service provider.*

3. *The kitten was due to visit the new clinic soon, a timely release of the note was relevant.*
4. *It was relevant that the new Veterinarian had the benefit of reviewing previous treatment and diagnosis for this patient.*
5. *The E staff referred to the breeder, Ms B, by name and indicated she had consented to them acquiring the relevant notes for this kitten.'*

*For these reasons Ms D made a decision that the patient's welfare may have been negatively impacted by withholding the records.'*

14. Dr A said in his response that:
  - *the clinic 'regard[s] Animal welfare considerations to carry greater weight in decision making for the release of clinical notes to third party Veterinary Practices'*
  - *they were 'uncertain as to what breach to Ms Bs [sic] privacy has been made in this case. There is limited personal information on the notes'*
  - *the notes were provided to assist the new vet with diagnosis and treatment*
  - *'Both the new owner and new Veterinarian were already aware of the clients (Ms B) name prior to releasing the notes. No other private information was released.'*
15. Dr A apologised for the error in sending the wrong notes, and noted that the clinic apologised to Ms B at the time for that error. He noted that as a result of that error, the clinic has *'reviewed internal procedures, particularly around puppy and kitten litter identification'*. Dr A noted that the clinic *'will endeavour to be more accurate with litter identification and make it a matter of course to discuss litter identification with breeders prior to the release of relevant clinical notes to third parties.'*
16. The CAC asked Dr A for a copy of any clinic policies or protocols for handling the release of clinical notes. Dr A advised (in an email of 31 May 2016) that an *'interim policy'* was being worked on. He noted *'that on the VCNZ website that though some weight should be given to privacy issues there must be good reason to give greater weight to maintaining confidentiality when Veterinarians are considering whether to communicate technical information in their possession to those that need it in order to ensure the welfare of animals is concerned. In this case and in our opinion there was no good reason not to supply the clinical records'*.
17. The CAC provided Dr A's response to Ms B. Her reply of 17 June 2016 was that *'Todate[sic], I have not had an apology from Dr A or from Ms D and as this is the second time this has happened from C I think a written apology should be forthcoming from Dr A and Ms D.'*
18. A copy of Ms B's email was provided to Dr A on 20 June. Dr A replied on 21 June that *'Ms D erroneously sent incorrect information to a third party when records were requested by that third party. She did this in good faith believing that consent to do so existed. She has already apologised to Ms B for this mistake. This was done some time ago. I have no reason to apologise as I have not been involved in this matter in any way other than through necessity of CAC regulation.'*
19. On 23 June, the Deputy Registrar (Standards) was copied into an email enclosing a letter from Ms D to Ms B, saying *'I apologise for any errors made by myself, in regards to clinical records sent to E 29th February 2016. As per the conversation I had with you on 2<sup>nd</sup> march 2016, I am sorry that I didn't follow up with you however, as I explained, the clinic who rang told me they had your permission. There is a certain trust that is expected between vet clinics and I believed the information I was given to be correct.'* Ms D also explained that the clinic policy has been updated and that *'each*

*client will be contacted first before any clinical records can be sent to an outside organisation.'*

### **Issues raised in the complaint**

20. Ms B is concerned that the clinic breached her privacy. She did not give consent for her information to be released.
21. The Privacy Commission is the appropriate body to consider potential breaches of the Privacy Act 1993. However the CAC considered the issues that may have breached the Code of Professional Conduct for Veterinarians.
22. The wrong information was released by the clinic.
23. Ms B stated that she was seeking *'At the very least a written apology by the vet and his staff member'*.
24. Dr A explained the reasons the notes were given to E were:
  - *'We regard Animal welfare considerations to carry greater weight in decision making'*, and
  - *'In this case and in our opinion there was no good reason not to supply the clinical records.'*
25. The records were sent to E on Monday 29 February 2016. The new owner told Ms B (in an email on Monday 29 February) that she had *'booked her [the kitten] in... for Friday [4 March]'*.

### **The Code of Professional Conduct for Veterinarians**

26. The CAC referred to the requirements of the Code of Professional Conduct for Veterinarians (the Code). The sections of the Code which are relevant to this complaint are attached as Appendix 1.

### **CAC considerations**

27. It is not uncommon for veterinary practices to release clinical records to a second practice on receiving a request to do so. This is on the basis of the second practice having gained the permission of the client to request the records. This case was complicated because there were two owners involved. Ms B was a long time client of C and the request for records was coming from E. This should have raised questions as to how her consent had been gained. C should have contacted Ms B to check that she had in fact given her permission for the release of the requested clinical records.
28. The information was released to E on 29 February but the kitten was not being seen by them until 4 March. It is the CAC's opinion that there was no urgency around the release of this information and that therefore there was ample time for C to try and contact Ms B and obtain her consent to the release of the information. The CAC notes that no attempt was made to contact Ms B before the information was released.
29. The CAC noted that there was no personal information, about Ms B, released to E that they did not already have.

30. The CAC accepts that Dr A was not directly involved in the release of the information. However as the Veterinary Director and lead veterinarian of C the CAC consider that he is ultimately responsible for making sure that all veterinary and non-veterinary staff of C comply with the Code. The CAC is of the opinion that because of this responsibility it is not inappropriate for Ms B to expect an apology from him.

### **CAC suggestions**

31. That C produce a policy on the release of client details and records that involves checking that the requesting veterinary practice has the permission of the client prior to the release of the records and that if there is any doubt about what information is to be released the client is given a copy of the information to check prior to its release. The CAC notes that this has already been initiated by C.
32. That Dr A review his responsibilities with respect to the Code and his position as Veterinary Director of C

### **Decision**

33. The CAC considers that this case can be closed and no further action<sup>1</sup> needs to be taken.

### **Reasons**

34. C have shown some insight into the issues raised by starting to develop a policy on release of client information.
35. Ms D has given a written apology to Ms B.
36. While the CAC considers that areas of the Code have not been complied with, this non-compliance is not at a level that reaches the high threshold required for further action to be taken.



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Dr Mark Simpson  
Chair  
Complaints Assessment Committee

23 September 2016

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Date

### **Learnings for the profession**

Client information must be kept private, unless the client gives their consent to share that information or there is legal requirement to release it.

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<sup>1</sup> Pursuant to s43(1)(f) of the Act.

## Appendix 1

Relevant sections of Code of Professional Conduct for Veterinarians (the Code)

### Client Relationships

**Veterinarians must practise in a way that promotes effective communication, trust, meets confidentiality and consent requirements and recognises clients' right to choose**

1. Veterinarians must interact with clients in a way that promotes effective communication and trust. This includes:
  - b. Treating all client information and information related to the provision of veterinary services as the private information of the client except in circumstances where:
    - i. The client's consent has been given, or;
    - ii. Disclosure of the information is made in accordance with the principles set out under the Privacy Act 1993, or;
    - iii. There is a requirement for disclosure of information made under the Veterinarians Act 2005.

### Understanding Section 1

- c. *Confidentiality*
  - i. *There are longstanding ethical expectations that veterinarians will respect the privacy of their client's information collected and stored during the provision of veterinary services. Clients have the right to decide who should have access to this information and they trust that veterinarians will keep information pertaining to them, their animals, and their businesses confidential. Unless confidentiality is encouraged and maintained, clients may be less likely to provide important or relevant information in relation to their animals. This could lead to poorer healthcare outcomes for the animals concerned. Inappropriate disclosure by a veterinarian or their staff of a client's records may lead to adverse consequences affecting that individual's personal or business affairs.*
  - ii. *As well as the ethical obligations identified in this Code, there are statutory requirements under the Privacy Act 1993 ([www.privacy.org.nz/a-thumbnail-sketch-of-the-privacy-principles](http://www.privacy.org.nz/a-thumbnail-sketch-of-the-privacy-principles)) which govern how a person's personal information must be managed. Privacy principles 8 - 11 place restrictions on how organisations can use or disclose personal information.*
  - iv. *Sections 41 and 42 of the Veterinarians Act 2005 identify situations where veterinarians may be asked to provide information as part of a Complaints Assessment Committee investigation. Veterinarians (and any other person) must comply unless the requested information would be considered privileged in a court of law, or the provision of the information would create a breach of an obligation of secrecy imposed by an enactment other than the Official Information Act 1982 or the Privacy Act 1993.*



*veterinarians have an over-riding obligation to release copies of their records or relevant information from their records to the client's new veterinarian (with the client's consent) in order to protect animal welfare.*