

**DECISION AND SECTION 43 STATEMENT TO THE VETERINARY COUNCIL BY
THE COMPLAINTS ASSESSMENT COMMITTEE: CAC16-14**

Dr A

Complaint from the Ministry for Primary Industries (MPI)

Dr A	Veterinarian
B	Practice where Dr A is employed
Dr C	MPI staff member
Dr D	Veterinarian employed by MPI Verification Services
E, F and G	Three cows
Mr H	Farmer
Mr I	Director of transportation company
Mr J	Farm manager

Summary

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

Background

2. Dr A is a veterinarian at B.
3. In correspondence received on 10 May 2016, Dr C of MPI notified Council of information he had received from Dr D of Verification Services at MPI. This related to Dr A certifying cattle as being fit to transport and also provided information about the transportation arrangements which raised concerns for Dr D.
4. This notification was referred under s39 of the Act to a CAC to investigate.

Information considered

5. The CAC considered the following information.
 - Notification information received 10 May 2016 including:
 - an email from Dr D to Dr C sent 10 May 2016
 - an email from Dr C to the Registrar sent 10 May 2016
 - 12 photographs of cow E post mortem
 - an animal status declaration for 6 cows signed by Mr H, farmer, on 8 May 2016
 - transportation form from the transportation company, dated 8 May 2016

- Fitness of Livestock for Transport – Veterinary Declaration for cow E signed by Dr A and dated 6 May 2016
- Fitness of Livestock for Transport – Veterinary Declaration for cow F signed by Dr A and dated 6 May 2016
- Fitness of Livestock for Transport – Veterinary Declaration for cow G signed by Dr A and dated 6 May 2016
- previous email correspondence between Dr D and Dr A (12 February and 14 February 2013)
- a letter to the CAC from the Chair of the Veterinary Council referring the information under s39 of the Act
- a response from Dr A received 3 August 2016
- a copy of the New Zealand Veterinary Association (NZVA) Guidelines (20 March 2013) on Fitness of Livestock for Transport Including Veterinary Certification
- an updated Fitness of Livestock for Transport (for slaughter) Veterinary Declaration (blank) provided by Dr C (at the request of the CAC)
- NZVA Checklist for completing Fitness of Livestock for Transport (for slaughter) Veterinary Declaration
- email correspondence of 10 August 2016 between the Deputy Registrar (Standards) and Dr C about changes to the declaration form
- email of 12 August 2016 from Dr A responding to the CAC’s request for information
- letter of 17 August 2016 from Mr I, Director of the transportation company
- email of 25 August 2016 from Dr A (re body condition scoring)
- emails (23 and 24 August) between the Deputy Registrar (Standards) and Mr J (farm manager)
- email of 28 August 2016 from Mr H, farmer
- email of 5 September 2016 from Mr I
- email correspondence of 5 and 6 September 2016 between the Deputy Registrar (Standards) and Dr D clarifying what her concerns were with regard to cow F and cow G
- email correspondence of 12 September between the Deputy Registrar (Standards) and Dr D about the body condition of cow E
- excerpt from NZVA Policy and Guidelines for Fitness of Livestock for Transport including Veterinary Certification (minimum standard no 6 – Selecting and Accepting Animals for Transport)
- article by Dr Richard Wild – ‘Is it fit for transport?’ – published in Vetscript in February 2012.

Brief case summary

6. Dr C notified Council about concerns he had received from Dr D in relation to Dr A’s signing of fitness for transport certificates for cattle. Dr D’s correspondence referred to 3 cows that were transported (as part of a group of 6) from Mr H’s farm to the freezing works on Sunday 8 May 2016.
7. In her correspondence with Dr C, Dr D wrote that, on arrival at the works, one of the cows (E) *‘was down and unable to get up so was shot and dragged off the truck’*. She

wrote that senior yard supervisor at the freezing works was *'very angry about the whole scenario as he saw a downer cow that in his opinion should have never been transported. He assessed the animal as being a condition score well under 3'*.

8. The two other cows which had certificates were deemed (by the yard supervisor) to be fit to stand in the yards overnight and were priority slaughtered the next morning. Dr D wrote that *'AsureQuality reports that at post mortem cow G (lame right hindleg) has extensive superficial bruising over hind leg and down flank to forequarters'*. She also wrote that cow F had a *'reported fractured pelvis 8 months (sic) and at post-mortem AQ reports there was chronic damage with bone enlargement into the rectal cavity with lots of scar tissue. In her opinion, 'there would have been a significant amount of pain and suffering for this traumatic injury last spring' and she wrote that 'we can only hope there was some vet involvement at that time'*.
9. Dr D reported that she had performed a post mortem of cow E and found her to be pregnant (about 5 months gestation). She observed *'no body fat and very little fat around the heart, kidney and omentum'*. She wrote that she would describe her as *'being close to emaciation'*.
10. In his response, Dr A wrote that he was called to Mr H's farm on Friday 6 May where he examined cows E, F and G in a small holding yard adjacent to the yards. He wrote that *'this enabled me to walk amongst them & appraise their locomotion, condition, general health, demeanour, to enable me to make a decision on their fitness for transport.'* According to Dr A, he noted that cow E had been seen by a veterinarian of another practice 2½ months previously and had been diagnosed with a *'dilated intestine'*. However he considered she had not deteriorated any further. He wrote that *'From her appearance and behavior I concluded that she was not suffering from any acute condition and I decided not to perform an internal examination, as I considered this was unnecessary for me to determine her suitability to travel and would have caused her unnecessary discomfort. I assessed her BCS [Body Condition Score] at 3.75.'* He also wrote that *'The farm manager Mr J agreed with this assessment, and my discussions with the farm owner, Mr H subsequent to this has confirmed this'*. He also wrote that *'She was bright and alert, & definitely not a sick cow, although it was obvious that she was in sub optimal condition.'*
11. Regarding cow G, Dr A advised that she had a chronic lameness of 6 months' duration. Although he was not the treating veterinarian, he *'walked amongst her and saw her move comfortably within the yard and around the other cows without exhibiting any of the reactions [he] would expect from a cow in pain'*. He considered that as the lameness was of some duration, bruising would not be expected to be a feature, that it was more likely that she received some injuries in the transportation (eg if the transporter did not take the most direct route as instructed).
12. Of cow F, Dr A wrote that he *'had been involved in the treatment of this animal some 8 months prior.'* He reported that she had *'received appropriate and continued analgesia at the time of the injury 'involving many visits'*. On the day of certification he considered he had observed her *'carefully in good conditions for assessment and considered her fit to travel'*.

Issues raised in the complaint

13. Dr D was asked to specify her main concerns. She stated these as:
- the fact that cow E was 'down' and had to be shot on arrival at the freezing works. Her observations of its condition at post mortem caused her to question Dr A's assessment of its body score (and fitness to transport)
 - there was no indication that the three cows with certificates were to be priority slaughtered. These cows were transported to the freezing works on a Sunday without prior communication. Dr D noted that there is no processing at this plant on a Sunday. (Her concerns about cow F and G related to this fact as opposed to issues about their having been certified fit for transport.)
 - according to her, the truck took 3 hours to travel from Mr H's farm to the works however she advised that the shortest possible distance should have taken considerably less time than this.

Dr D was also concerned that:

- Dr A had used an 'old form' with no further instructions about priority slaughter for the animals on the certificate despite her having provided advice to him about the completion of forms in previous correspondence in February 2013
- cow G had superficial bruising over the hind leg and down the flank to the forequarters
- cow F had sustained a fractured pelvis 8 months earlier and the post-mortem reported chronic damage with bone enlargement in the rectal cavity with scar tissue.

The Code of Professional Conduct for Veterinarians

14. 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**.
15. The CAC also referred to the New Zealand Veterinary Association Guidelines for the Fitness of Livestock for Transport which have been endorsed by the Veterinary Council of New Zealand.

CAC considerations

16. The CAC asked Dr C when the new forms had been introduced and what changes had been made. He advised that work was done between NZVA and MPI in 2012 to align the NZVA and MPI guidelines/procedures around fitness for transport. Dr C also advised that there was *'a lot of promotion in Vetscript about the fitness for transport standards that NZVA and MPI had agreed'*. Dr C did not consider that Dr A's use of the old forms was the significant issue in this case.
17. Dr A advised that he was not aware that there were new transportation forms. He wrote that *'since at least 2013 [he has] regularly asked for feedback from the MPI vets when certifying animals'*. He noted that he has not always received feedback despite

having ticked the box and had *'never been advised by any MPI employee that [he] was using out of date forms'*.

18. Regarding the new forms, Dr A wrote that he has now studied the new certificate for any difference that might have affected his decisions or actions and the welfare of the animals. He wrote that *'the main difference is the fact that the form states that any animals being certified must be priority slaughtered. However, for whatever reason, the 2013 guidelines which I was (correctly) using do not mention this instruction for priority slaughter'*. He noted that *'the 2013 NZVA guidelines do say that the owner/person in charge of the animals is to advise his/her agent and the slaughter premises of the pending arrival of a certified animal before the animal is transported'*.
19. Dr A signed the fitness for transport certificates on Friday 6 May and the certificate was due to expire on 13 May. This meant that the animals could have been transported any time during the period between 6 and 13 May. The CAC accepts that Dr A was not aware that arrangements were made for the animals to be transported on a Sunday and therefore it is likely that a breakdown in communication between the farmer and the stock agent led to animals with certificates being transported on a Sunday.
20. Mr H confirmed that he had told the agent that there were cows with transport certificates and that he had offered to remove them from the truck as he appreciated that this may cause difficulties on a Sunday. He advised that the agent told him it *'should be ok'*. He also stated that the transport company was aware of the vet certificates but that he didn't tell them they had to travel by the shortest route. Mr H said he was not aware of this (he did however know they had to go to the closest works). However Dr A stated that he had told him *'that the animal should be taken to the nearest works and travel for the shortest possible time'*.
21. Mr H was asked, by the CAC, to reconfirm whether the agent was aware the cows would be arriving on a Sunday and whether Dr A was aware the animals would be transported on a Sunday. His response was *'The agent is the person booking them to the works so yes he did know they were coming on Sunday but Dr A would not have, as the certificate lasts a week and he wouldn't have known which day they were going.'*
22. The CAC contacted Mr I, the director of the transportation company. After reviewing the GPS information from the truck concerned he reported that the cows were picked up from the farm at 1.15pm and arrived at the freezing works at 3.50pm. He advised that the truck had collected other cattle along the way hence this was not the shortest possible route. He wrote that the driver *'did know that the cows had to be loaded on the bottom deck of the truck, but had no idea that there were instructions to take the shortest and quickest route to the delivery point, otherwise he would have loaded them last'*. Mr I wrote *'the drafter will normally tell me if there are any vet certificates for animals, in this case I didn't know of any'*.
23. The CAC noted the condition of cow E in the photographs provided and considered that these photographs did not provide sufficient information to enable it to assess the

body condition score of the cow. MPI were asked whether there was any further photographic evidence available (eg photos of pin bones and thorax) however Dr D advised there was none. She wrote *'we tried to take some photos to demonstrate condition score of the animal, however hanging up the animal's posture wasn't correct to make good representative photos. It did not reflect what the body condition was if the animal was standing up.'* She further added *'I would not like to comment on what the condition score was since I don't believe I have adequate evidence'.*

24. The CAC asked Dr A whether he was a formally accredited Body Condition scorer. His response was that while he was not formally accredited he did *'use the reference guide "Dairy NZ body condition scoring" when body condition scoring as well as using my significant experience in this area. I cannot be exact but I have been using this guide for approximately 10 years.'* He also cited some instances where he had been called on to provide BCS in the past three years. These included being used to assess BCS for an AgResearch feed trial in 2013 and assessing the BCS of around 80-100 cows during a dispute between two organisations in 2014.
25. The farm manager, Mr J, advised that he agreed with Dr A's assessment of cow E as *'she had walked 1.5kms down the farm the day before transportation with cows F and G. He wrote that 'none showed any sign of discomfort, pain or not managing to walk that distance'.* He also noted that they had no difficulty walking up the ramp to the truck. Mr J also confirmed that *'Mr H was talking to the [farm company] representative and he said fine truck them as we offered to pull them from the shipment and the representative instructed us to ship them (sic). The representative knew that the cows had a fitness for transport certificate before the cows left our farm'.*

CAC recommendations

26. That Dr A:
- start using the new Fitness of Livestock for Transport (for slaughter) Veterinary Declaration forms immediately
 - record the Body Condition Score of the cow on the declaration form especially when the reason the declaration is needed is because of poor body condition
 - retain copies of forms used after receiving this decision statement and send these to VCNZ by the end of March 2017.

CAC suggestion

27. That Dr A clearly communicate to farmers their responsibilities relating to certified animals being transported the shortest distance to the slaughter premises and the requirement for them to be priority slaughtered.

Decision

28. The CAC considers that this case can be closed and no further action¹ needs to be taken.

Reasons

The reasons for the CAC's decision are:

- from the information available to the CAC, there is no way of definitively assessing the body condition of the cows, particularly E, or whether the provision of a certificate of fitness to transport was appropriate in this case
- Dr A's use of 'old' forms would not appear to have impacted on the outcome for these animals
- the responsibility for communicating with the freezing works about the arrival of cows with certificates (and any necessary priority slaughter) did not lie with Dr A
- the certificates issued by Dr A were valid for one week and therefore he would not have been aware of when the transportation was to occur specifically.



27 October 2016

Dr Mark Simpson
Chair
Complaints Assessment Committee

Date

Learnings for the profession

The role of veterinarians in signing certificates of fitness to transport is viewed very seriously by MPI, the profession and the public. Vets must be familiar with the guidelines and ensure they adhere to these to ensure that animal welfare is not compromised.

¹ Pursuant to s43(1)(f) of the Act.

Appendix 1

Animal Welfare

Veterinarians have a special duty to protect animal welfare and alleviate animal suffering.

Understanding the Guiding Principle

- a. *Veterinarians are expected to use their training and knowledge for the benefit of society. Animal welfare is more than protecting animals from cruelty. It also relates to promoting their health and wellbeing. Because of their training veterinarians have expert knowledge on how to assess animal health and welfare, and how to optimise the care and management of animals. It follows that veterinarians have an over-riding professional duty to protect animals from unreasonable or unnecessary pain or distress.*

Professional Integrity

Veterinarians must act in a manner that promotes the public's trust and confidence in the profession.

Understanding the Guiding Statement

- a. *Public trust and confidence in the veterinary profession are vital pre-requisites if veterinarians are to carry out their expected roles and functions in society. Public perceptions about veterinarians are influenced by the actions of veterinarians as well as the standards of integrity and competence that veterinarians are held accountable to.*
 - b. *Registration as a veterinarian conveys certain rights and responsibilities but these will only last as long as the exercise of professional duties is carried out with appropriate diligence. Any loss of public confidence could result in removal of the profession's rights and a diminution of responsibilities.*
1. Veterinarians must display high standards of integrity and accountability and must not engage in fraud, misrepresentation or deception.

Understanding Section 1

- a. *Integrity means adherence to professional and ethical standards. It is a personal quality that is characterised by consistency of conduct, honesty and incorruptibility. As such, integrity is an essential and defining element of professionalism.*
- b. *Accountability is the professional obligation on veterinarians to be able to justify and be held responsible for their actions.*

- 2 Veterinarians must maintain the integrity of certification.

Understanding Section 2

- a. *Integrity of certification is central to the national interest, continuity of trading access, and public confidence in the profession. Any action by a veterinarian which contributes to bringing the integrity of veterinary certification into disrepute is considered very seriously by VCNZ. While this section of the Code refers mainly to written signed certificates, the principles apply equally to systems using electronic means of certification.*
- b. *Subject to the variations permitted by paragraph (e) below, the following basic principles apply to all forms of certification by veterinarians:*
- i. *It is unacceptable for veterinarians to sign certificates which they know or should have known are untrue, misleading, or inaccurate.*
 - ii. *Certifying veterinarians are personally responsible for their signature on a certificate and therefore must ensure they retain the sole and indisputable right to issue or to refuse to issue a certificate (unless instructed not to issue it by an appropriate authority).*
 - iii. *Certifying veterinarians must familiarise themselves with the form of certificate and any accompanying instructions, guidelines etc and consider carefully all the implications of issuing it bearing in mind the individual circumstances of each case.*
 - iv. *Certifying veterinarians must only attest to matters which:*
 - *Are within their current knowledge; or*
 - *Can readily be ascertained personally; or*
 - *Are the subject of a supporting document of attestation from another individual who does have personal knowledge of the matter in question and is officially recognised (e.g. Government appointed or accredited) as competent to provide such a supporting document or statement; or*
 - *Are supported by regularly updated advice provided by another veterinarian or an officially recognised person who has personal knowledge of the matters in question, and whose name and contact details are recorded on an electronic database accessible to the certifying veterinarian*
 - v. *Matters outside the current knowledge of the veterinarian, and not the subject of a supporting document but known to other persons (e.g. farmer, breeder, truck driver) should be the subject of a declaration by those persons only. The form of declaration may vary from a simple signed statement to a sworn affidavit depending on the significance of what is being certified. Care should be taken to ensure that the person supplying the supporting document has no real or perceived conflict of interest in the matter.*
 - vi. *Certifying veterinarians must only attest to compliance with law if they are familiar with the matters of law concerned; or the matters are set out on the certificate; or the designer of the certificate has provided clear guidance in relation to the law concerned.*
 - vii. *In the event of any real, possible or perceived conflict between their own interests (including those of their professional clients) and the interests of the person or organisation to whom the certificate is directed, the certifying veterinarian must not issue a certificate without:*
 - *Identifying the conflict, or possibility of conflict, to the person/s or organisation concerned*

- *Abiding by the decision on how this should be managed.*

Refer to the Explanatory Notes for section 3 of this part of the Code for further guidance on what to do in these situations.

- viii. *The animal(s) or products being certified must be clearly identifiable from the details on the certificate.*
 - ix. *The veterinarian must not sign and issue a blank or incompletely filled certificate form to be completed later by another party.*
 - x. *The veterinarian must complete the certificate with care and accuracy and in a manner and using a means which does not lend itself to alteration, or additions, by a second party after the certificate has been issued i.e. all required information must be entered before the certificate is signed.*
 - xi. *The certificate must bear not only the veterinarian's signature but also clearly identify their name, qualifications and address or organisation and (where appropriate) bear official or practice stamps. Veterinarians might also give consideration to using their unique VCNZ registration number on the certificate. This provides an easy means of identifying the certifying veterinarian and their contact details should this be required (via checking with VCNZ office staff -vet@vetcouncil.org.nz or 04 4739600).*
 - xii. *The certificate must bear the date on which the certificate was signed and issued (pre-dating and post-dating is not permissible) and (where appropriate) the time for which the certificate remains valid. The certificate should not attest to future events beyond the control of the veterinarian.*
 - xiii. *Only one original certificate must be issued. Where a copy or replacement is provided or retained it must be clearly marked COPY or DUPLICATE or REPLACEMENT as the case may be. Where practicable the veterinarian should ensure that the certificate being replaced is surrendered or withdrawn and either destroyed or clearly identified as to its revised status.*
 - xiv. *Where, after issuing a certificate, veterinarians become aware that the certificate should not have been issued or is no longer true, they must withdraw or cancel the certificate, identify the copies accordingly, and inform the affected parties of their action forthwith.*
- c. *Where veterinarians compile and complete their own form of certificate (or one compiled on their behalf) they must ensure that:*
- i. *The certificate is written in terms which are as simple and easy to understand (by a non-veterinarian) as possible and which are not capable of more than one interpretation.*
 - ii. *The certificate is written in the language(s) of which they have a thorough understanding. If a translation into another language is required it should be provided and certified by a professional translator and be attached to the veterinarian's original certificate.*
 - iii. *A copy must be retained and/or be accessible to the certifying veterinarian.*
 - iv. *Preferably, each certificate should be given a unique identifier to distinguish it from other certificates.*

- d. Veterinarians completing and signing a standardised form other than an official certificate:
- i. Must not add to, or alter, or delete parts of the certificate form unless the certificate indicates that it is permissible to do so.
 - ii. Must clarify any statements they do not fully understand or consider to be of questionable integrity and, where appropriate, should seek explanation from the form's designers and, if necessary, advice from VCNZ.
- e. Veterinarians issuing official assurances must first familiarise themselves with all regulatory requirements, instructions and guidelines pertaining to the particular category of official assurance being dealt with and:
- i. Ensure they have the necessary prior authority (e.g. appointment, accreditation, delegation) and knowledge before issuing any particular category of official assurances. (As a general rule only MPI-employed veterinarians are so authorised);
 - ii. Must not add to, or alter, or delete parts of the form of assurance provided unless given specific authority to do so;
 - iii. Should seek further advice from a MPI (or other Government) official with the appropriate authority and knowledge, if in doubt about issuing an official assurance.
 - iv. Subject to the qualifications set out in (v) and (vi) below, must adhere to the principles listed in paragraph (b) above;
 - v. Despite paragraph (b)(v) above may accept a supporting document of attestation signed by a person who is not an officially recognised individual provided that they, as the certifying veterinarian, are satisfied the person is in a position to sign the attestation accurately and honestly, and there is no reason to doubt the person's integrity; and
 - vi. May sign an official assurance which invites them to certify 'after due enquiry and to the best of my knowledge' (or similar phrasing) where satisfied as to the authenticity and validity of the document.
- f. In relation to paragraph (e) above it is important that veterinarians distinguish between official assurances explicitly requiring veterinary involvement, and official assurances not requiring veterinary involvement. As a result of international demand the scope of official assurances is now broad, covering: agriculture, horticulture, food, wine, and in recent years 'commercial' claims such as organics and halal. As such, veterinarians are involved in regulatory systems for products with no essential veterinary connection. Under these circumstances veterinarians should exercise their professional judgement soundly and apply the standards and principles of this Code as guidelines when operating in a non-veterinary official assurance environment.
- g. Personal responsibility for one's signature as described in paragraph (b) (ii) above does not preclude the use of electronic signatures. The conditions for use of electronic signatures (including the digitised image of one's actual signature) must include:

- i. Security and controls (system encryption, passwords, etc) of the hardware and software systems which are the repositories of the veterinarian's electronic identity.*
- ii. Controls sufficient to ensure that no one other than the veterinarian him/herself has access to their electronic identity. The individual veterinarian must ensure they do not compromise the integrity of an electronic system through, among other things, sharing passwords, or remaining logged in to a system while not in attendance, or having the computer they routinely use auto-remember passwords.*
- iii. Practising in accordance with the Electronic Transactions Act 2002, administered by the Ministry of Economic Development. To achieve this veterinarians engaged in providing certification or other formal correspondence solely through electronic means should familiarise themselves with the relevant provisions of this Act.*