



**DECISION AND SECTION 43 STATEMENT TO THE VETERINARY COUNCIL
BY THE COMPLAINTS ASSESSMENT COMMITTEE: CAC17-08**

Dr Oscar

Complaint from Mr and Mrs Sierra

Introduction

1. A Complaints Assessment Committee (CAC) of the Veterinary Council of New Zealand (VCNZ) has investigated a complaint about Dr Oscar. The CAC has concluded that it will be taking no further action in relation to Dr Oscar for the reasons set out below.

Summary of complaint

2. Dr Oscar works as a small animal veterinarian.
3. Mr and Mrs Sierra's 3 year old bitch, Delta, went into early stage labour in the evening of 27 June 2017. According to Mrs Sierra, Delta laboured through the day on 28 June. As she never progressed to having contractions Mrs Sierra was concerned about uterine inertia. (She was alerted to this condition by a breeder on a Facebook page.)
4. Mrs Sierra phoned the clinic where Dr Oscar works at 10.54pm on 28 June, leaving a message with the after hours service. The on-call veterinarian, Dr Alfa, phoned her back within 10 minutes and arranged to meet her at the practice. Following an internal examination and scan of Delta, Dr Alfa considered that an emergency caesarean section was not required and, given the limitations of overnight staffing, was not recommended. Mrs Sierra alleged that Dr Alfa had told her that Delta was fully dilated however Dr Alfa refutes this.
5. With the options having been outlined by Dr Alfa, Mrs Sierra chose to take Delta home and wait for the labour to progress. Dr Alfa told her she should call back if she had any concerns during the night, and that she should call Dr Alfa at the clinic at 8.30am the following morning so a plan could be formulated. The Sierras have laid a separate complaint about Dr Alfa in relation to this consultation.
6. On the morning of 29 June, Mrs Sierra phoned the clinic at 7.50am. This diverted to the after hours message service and she was told to phone back at 8.00am when the clinic opened. She did this, telling the receptionist that she had been in overnight with Delta and that she now believed it was an emergency. (The receptionist reported that Mrs Sierra had called to '*book a caesarean in for that very same day*').
7. Mrs Sierra was told to bring Delta in and, on arrival, was asked to wait in the waiting room. She reported that '*Delta then lost some blood onto the floor*'. She and Delta were taken into a consult room where a vet nurse talked with her about the surgery, outlining the costs and the risks. Mrs Sierra signed a consent form for the surgery.

8. Another vet nurse then came and put a line in Delta's left front leg. She put a muzzle on Delta first however Mrs Sierra took this off her once the line was in. Mrs Sierra wrote that she told the vet nurse that she was worried about Delta and the vet nurse told her that Dr Oscar is very experienced in this surgery and '*knows what he is doing*'. According to Mrs Sierra the vet nurse told her there would be four people in the room (Dr Oscar and three vet nurses).
9. At approximately 9.20am Dr Oscar spoke with Mrs Sierra about the surgery. Mrs Sierra wrote that Dr Oscar '*said that the surgery is quite serious as [Delta] is heavily pregnant and we don't know the due dates – that some could be older than others*'. Mrs Sierra responded that they knew exactly when Delta was mated, and that an x-ray the previous weekend had shown 9, maybe 10, puppies. She explained that she had brought Delta in at 1am and she was fully dilated. Mrs Sierra wrote that Dr Oscar told her that he had consults booked and that surgery would '*probably be around 10.20am*'.
10. Mr and Mrs Sierra returned to the clinic at 12 noon when they had an appointment for their other bitch. At approximately 1.10pm a vet nurse came and got them to take them to see Delta. Mrs Sierra wrote that there were four puppies in with Delta, one of whom '*wouldn't stop screaming*'. They sat with Delta trying to get the puppies to feed before asking the vet nurse what was happening with the other puppies. The vet nurse went out to check, returning at 1.24pm, according to Mrs Sierra, with '*another person carrying a towel with five dead puppies in it*'.
11. Mrs Sierra asked the vet nurse what had happened (that led to five of the nine puppies dying) and wrote that she was told that '*there was a dead puppy blocking the exit and once this one was out they put it with Delta*'. She then asked when they would be able to take Delta home and was told '*around 3.30pm*' as they needed time to get the boys suckling. The Sierras then left the clinic (approximately 2.15pm) and were told that they would be called at about 3.30pm.
12. The Sierras returned home and received a phone call at 3pm. Mrs Sierra assumed that it was the clinic calling to tell her to come and pick up Delta however it was a member of the reception staff calling to discuss payment. Mrs Sierra wrote that the caller said '*the girls told me you will have trouble paying for the surgery; we can help you set up a payment plan*'. She alleged that she was told that '*it*' (Delta) couldn't go home until the bill was paid in full or a payment plan established.
13. This call was followed by another from a vet nurse at 3.21pm telling Mrs Sierra that Delta was ready to be collected. Mrs Sierra wrote that she went straight to the clinic, arriving at 4pm and paid the bill before collecting Delta.
14. As Dr Oscar had left immediately after surgery (for personal reasons) and hadn't returned by this stage, a vet nurse spoke with Mrs Sierra about Delta's ongoing medication. As she left, the nurse asked them if they wanted the dead puppies. They replied that they did.
15. Before leaving the clinic, Mrs Sierra purchased some milk powder and feeding bottles. (At this point they were advised that the afterbirths hadn't been saved for Delta.) Mrs Sierra reported that she was given no post surgery instruction sheets.
16. The following morning Dr Oscar phoned Mrs Sierra and left a message on her voice mail. He expressed sympathy for the death of five puppies and invited her to call him to discuss how things were going with Delta and the remaining puppies.

17. Mr and Mrs Sierra decided to go to the clinic to see Dr Oscar. They took the dead puppies with them. They were hoping to have blood samples taken so that a toxicity report could be run *'to see if Delta had been overdosed with anesthetic which in turn compromised the puppies (sic) survival rate'*. Mrs Sierra had been told by other breeders that it is very unusual that full term puppies born alive via C-section don't survive. (The Sierras initially tried to have this testing done at a different clinic but were directed to the clinic where the surgery was performed, as this was not something the other clinic could undertake.)
18. On arrival at the clinic they were taken into a consult room where, according to Mrs Sierra, Dr Oscar told them:
- he had left straight away after the operation for personal reasons (and told them the nature of those reasons)
 - he was surprised to find so many puppies had died, that *'this loss is the biggest loss he has ever had from doing a c-section'*, and that he couldn't answer why the girls died and not the boys
 - all the pups were born alive with heartbeats. Mrs Sierra questioned the information she had been given that there was a dead pup blocking the exit however Dr Oscar *'didn't know anything about this'*
 - that there were 6 vet nurses assisting as the puppies were born and that they had worked on the pups for over two and a half hours. (Mrs Sierra wrote that she had been told that there were going to be 4 people in the room and so queried *'who was lying?'*)

Dr Oscar spoke with the Sierras about what the vet nurses had done once the pups were born. Mrs Sierra noted that Dr Oscar hadn't been present at that time.

19. Mrs Sierra wrote that Dr Oscar then *'went on to tell me that Dr Alfa had advised him this morning that she had told [Mrs Sierra] that Delta was only 3cm dilated, so it's only a matter of time'*. Mrs Sierra considered that this was *'outright lies'* as she maintained she had been told that Delta was fully dilated at that time.
20. Dr Oscar was willing to arrange for the toxicity testing however he advised the Sierras that it may be costly and the blood would need to be sent away. He told them that, as it had been 24 hours since the puppies' death, *'blood gasses would have dissipated a lot and the test would not be accurate'*. The Sierras elected not to have testing done.
21. Mrs Sierra wrote that she considered that the female puppies had died *'from having been neglected due to staff shortage (and the vet leaving for a personal funeral) and weren't helped quickly enough'*.
22. She also raised concerns about:
- staff interactions (eg the *'young vet nurse that talked over the quote and the risks and told her that Delta could die'* and the member of reception staff who spoke with her about payment options)
 - what she considered to be differing stories about what *'went on'* with the caesarean and *'how many people were helping'* and *'whether or not a pup was obstructing the birth canal'* and *'whether or not all the pups were born alive or dead'*
 - lack of communication from Dr Oscar about the pups dying and the lack of written discharge notes
 - the combined effects of sedation and anaesthetic
 - the use of diazepam. Mrs Sierra wrote *'I am aware that one of the cautions with diazepam is that it should never be given to pregnant or lactating bitches'*

- a vet nurse saying that the practice was understaffed and a stressful place to work.

The CAC's investigation

23. The CAC viewed the clinical records and Dr Oscar's response. The CAC also received comments from:
- the receptionist who spoke with Mrs Sierra on the morning of 29 June when she phoned to 'book in a caesarean'
 - the receptionist who phoned Mrs Sierra on the afternoon of 30 June to discuss payment of the bill
 - the customer services manager at the clinic, who spoke with Mrs Sierra about her concerns about the charges, assisted her with 'puppy feeding needs' and explained who she could contact if she wished to make a complaint
 - the receptionist at the clinic where the Sierras enquired about toxicity testing
 - two registered vet nurses who assisted with reviving the puppies
 - the registered vet nurse who initially spoke with Mrs Sierra prior to the caesarean, assisted with the placing of the catheter and then helped with reviving the puppies
 - the registered vet nurse who spoke with Mrs Sierra before the operation, placed Delta's catheter, assisted with the recovery of the puppies and spoke with Mrs Sierra at the time of Delta's discharge
 - the veterinarian who took over from Dr Alfa in guiding the nurses as they took care of the pups.
24. The vet's response and the supplementary information set out above were forwarded to Mr and Mrs Sierra for comment and these comments were considered by the CAC in reaching its decision.

Veterinarian's response

25. Dr Oscar provided a general response to the complaint along with answers to specific questions from the CAC.
26. He wrote that he was informed around 8.30am on 29 June that Mrs Sierra had phoned and requested a caesarean. It was a busy morning and Dr Oscar had consults booked until 10am but Mrs Sierra was told to bring Delta in and they would try to fit surgery in as soon as possible. Dr Oscar noted specifically that *'it was Mrs Sierra who requested the caesarean and not the clinic'*.
27. After Mrs Sierra had been taken through the admittance process (by two vet nurses) and signed the consent form, Dr Oscar spoke with Mrs Sierra about Delta's situation. He wrote that she told him that *'Delta was due to whelp on the 29th June and that she had been restless for three days and that they were very tired and over it and just wanted it sorted'*. Dr Oscar discussed the risks associated with caesareans (to both the bitch and puppies) and *'indicated that we could not guarantee live puppies'*. Dr Oscar wrote that Mrs Sierra indicated that she accepted the risks and wanted to proceed with a caesarean.
28. Dr Oscar wrote that *'Delta's cervix was fully dilated and a pup was partly presented when examined on the morning of 29th*. However during the time he was in the consult room, Delta showed no sign of contractions. There was a small amount of blood and mucous around the vulva.
29. Dr Oscar described Delta as *'quite a nervy'* dog and there were concerns of her being a *'fear biter'*. Staff had some difficulty enticing her safely from the cage and she had to be muzzled to

anaesthetise. Dr Oscar *'made the decision to administer diazepam as a pre-med (0.88ml iv) in the hope this would reduce the volume of Aquafol given to anaesthetise Delta.'*

30. In response to the concerns raised about the number of staff available to assist, Dr Oscar wrote that a vet technician *'acted as anaesthetist while I performed surgery. Up to 5 nurses plus a nurse trainee were available to tend the pups as they were delivered. We had two vets available to assist with the pups if the nurses had any concerns. We had available free flow oxygen (including an oxygen incubator), heat pads and hot water gloves, a suction bulb plus resuscitation medications. Heart function was determined by Doppler in the pups that failed to survive.'*
31. Dr Oscar responded to Mrs Sierra's concerns about his choice of diazepam for Delta. He referred to Fossum in 'Small Animal Surgery' (3rd edition), in which, he reported, it says that *'diazepam/propofol are advocated for caesarean section'*. He wrote that the dose rates used on Delta were half those advocated in Fossum and were calculated for Delta prior to surgery in case of emergency. He advised that Delta was anaesthetised at 10.45am and surgery concluded at 12.08pm.
32. Dr Oscar described the caesarean, noting that each pup was removed fully encased in its membranes. These were opened and removed around the head and body of the pup to expose the umbilicus. He wrote of being *'struck by how large the pups were'*. Once surgery was complete, Delta was left in the care of the nurses and made an uneventful recovery.
33. After completing surgery, Dr Oscar gave full instructions to staff on Delta's post-operative medications before leaving the clinic for personal reasons. (There were vets available to assist if any post-operative issues arose.) He returned to the clinic just before 5pm, going straight into another consultation, and didn't find out until the following day that the five female pups had died.
34. On 30 June, Dr Oscar was advised that the Sierras had arrived at the clinic to speak with him about the previous day's events. In his response to the CAC, Dr Oscar wrote that he went through the surgery with them, and answered their specific questions. He told them that:
 - he had used diazepam on Delta because she was very anxious. He explained that this is not a drug that he normally uses for caesareans but that *'there are a number of caesarean anaesthetic protocols that include Diazepam'*
 - he could not verify that all pups were alive at the time of delivery but that he had no reason to believe they were not alive
 - he did not check individual pups over before or after removal from Delta as he was more concerned that the pups be taken as quickly as possible and revived by the nurses
 - none of the pups had been stuck in the birth canal.

Dr Oscar told the Sierras that he had had to leave the clinic immediately after the surgery and apologised for not having been able to speak with them before he left.

35. Dr Oscar wrote that he discussed the Sierra's request for a toxicity report with them (to determine if the pups had been overdosed on anaesthetic agents) and advised them that he was *'not fully certain'* if it could be done but suspected it was possible. He indicated that the 24hr time frame since the puppies' death could affect laboratory findings. (He also noted that it would be unusual for some pups to be overdosed but not all, especially given that they were all similar sizes.) In response to their question about whether a post mortem could provide answers, he said that *'decay would already have set in and may limit the amount of useful information provided by a post mortem'*.

36. As the Sierras had Delta and the surviving pups with them in the car, Dr Oscar asked to check them over. He noted that Delta was clinically normal, was feeding the pups well and had no vaginal discharge or signs of mastitis. The surgical wound looked very healthy with no sign of inflammation. The pups all appeared healthy and active. Dr Oscar's understanding was that, *'by the time the Sierras left the consult room they appeared accepting of the information [he] had given them'*.
37. Dr Oscar wrote that, as he had left the clinic quickly following the surgery, he was not available to complete the information sheets that normally accompany animals post surgery. He acknowledged that the nurses don't usually prepare these sheets and are unfamiliar with how to do so. He confirmed however that the Sierras were informed that Delta had intradermal dissolving sutures and all post op medications had dose instructions attached. He planned to contact the Sierras on his return to the clinic and did so on 30 June after being updated by the staff.

The Code of Professional Conduct for Veterinarians

38. The CAC referred to the requirements of the Code of Professional Conduct for Veterinarians (the Code). The following sections of the Code are relevant to this complaint.

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:
 - a. listening to clients, respecting their views, responding to their concerns and preferences and treating them with courtesy;
 - b. not exploiting a client's lack of veterinary knowledge

Understanding Section 1

Trust is essential to a positive client-veterinarian relationship. Clients trust that veterinarians are competent and honest. Veterinarians' knowledge and training allows them to potentially influence clients' decisions. Because of this, veterinarians have a greater responsibility to be trustworthy. Veterinarians must not abuse this position or exploit a client's relative lack of knowledge by encouraging them to undertake veterinary treatment or make healthcare decisions that are not in their or their animals' best interest.

- a. *Communication*
 - i. *Veterinarians must be able to communicate effectively with clients. This includes:*
 - a. *listening to clients and identifying their concerns*
 - b. *finding out from clients what their veterinary needs and expectations are*
 - c. *explaining treatment choices and options in a way clients can understand*
 - ii. *Most of VCNZ's expectations around the quality of veterinarians' communications with clients are set out in its [Policy Document Competency Standards and Performance Indicators for Veterinarians](#). This section of the Code focuses on the ethical aspects of communication including consent issues and the confidentiality of information.*

Veterinary Services

Veterinarians must strive to provide a high standard of veterinary practice.

2. Veterinarians must recognise when either their competence or the resources available to them place limits on their ability to perform to an acceptable standard. All reasonable steps must be taken to avoid exceeding those limits.

Understanding Section 2

- a. *VCNZ considers that a competent veterinarian is one who applies knowledge, skills, attitudes, communication and judgement to the delivery of appropriate veterinary services in accordance with their field of veterinary practice.*
 - b. *Veterinarians should be familiar with and comply with VCNZ's [competency standards and performance indicators for veterinarians](#).*
9. Veterinarians must make provision for the care of animals currently receiving in- patient treatment. This must be at a level appropriate to the clinical problem being managed and must be communicated to the client.

Understanding Section 9

- a. *In-patients are those animals remaining in the veterinary clinic for the purposes of treatment.*
- b. *Veterinarians have an ongoing ethical responsibility to their patients receiving in-patient care. This responsibility extends outside normal business hours.*
- c. *As well as ethical responsibilities, veterinarians have legal obligations as the person in charge (as defined in the [Animal Welfare Act 1999](#)) of their inpatients. More specifically sections 10 and 11 of the Animal Welfare Act 1999 set out those requirements.*
- d. *Veterinarians must make proper provision to manage their in-patients appropriately for the clinical condition being treated.*
- e. *The owners of in-patients must be informed of the level of supervision and clinical management the in-patients will be receiving out of normal business hours.*

Professional Relationships

Veterinarians must interact with colleagues honestly, with respect and in a way that fosters good relationships and communication

5. Veterinarians must ensure that veterinary colleagues within the practice are appropriately supported, particularly those who are newly registered or inexperienced.

Understanding Section 5

- a. *Newly registered or inexperienced veterinarians may not have had the opportunity to fully develop their skills. All veterinarians in the practice must ensure that inexperienced practitioners are appropriately supervised and supported at all times.*
- b. *Regular practice meetings, seminars and performance feedback/review meetings together with formal induction of new employees helps ensure that practice values are adopted and professional standards are maintained.*
- c. *When a veterinarian is subject to Council's competence and/or health processes, their employer is expected to provide them with appropriate support. This includes cooperating with all reasonable Council requests that allow the assessment of the veterinarian and where necessary reassessment or monitoring.*
- d. *When veterinarians start working at a practice, the relationship and accountabilities should be clearly defined and agreed, in a robust and fair contract or employment agreement. Failure to do so can lead to difficulties and disputes.*

CAC considerations

39. While the CAC notes the complainants' concerns about payment options and issues, these are outside of the Veterinary Council's jurisdiction and so no action will be taken on this by the CAC.
40. The anaesthetic protocol for a caesarean section presents challenges, as the needs and risks of the pregnant patient and the unborn pups have to be balanced. The CAC recognises diazepam can be part of such a protocol and is referenced as such in several veterinary texts. The CAC also recognises that the dose of diazepam used by Dr Oscar is at the low end of stated dose rates. Therefore the CAC doesn't agree with the allegation that diazepam should never be used in a pregnant bitch.
41. After examining the evidence, including vet nurse statements, the CAC is satisfied that adequate numbers of qualified or experienced nursing and veterinary staff were available and helped provide supportive care for the large number of puppies delivered by caesarean section.
42. The CAC is satisfied that Dr Oscar's non-attendance immediately after his completion of the surgery had no negative impact on the post-partum survival rates of the puppies. The information available confirms that there were additional veterinarians available to be called upon if needed and that there is no evidence to support the allegation that the female puppies had died *'from having been neglected due to staff shortages'*.
43. Dr Oscar acknowledged that he didn't provide an immediate explanation to the Sierras about what happened, or written discharge instructions. The CAC considers that this falls short of what is expected in the Veterinary Code of Professional Conduct but falls below the threshold for further action to be taken. The CAC accepts that Dr Oscar's personal circumstances impacted on his normal attention to such matters. However, it is satisfied that he provided a suitably qualified nurse to discuss discharge instructions with the Sierras in his absence. It also notes that Dr Oscar attempted to contact Mr and Mrs Sierra the following day.
44. The CAC acknowledges Mr and Mrs Sierra's perception that they were receiving different stories from different staff members. However the evidence examined doesn't show any deliberate attempt to mislead the Sierras and the miscommunication has been addressed in the above paragraph.

Competence and health

45. The CAC found no concerns during its investigation of this matter about Dr Oscar's competence or his health. There is therefore no need to make any recommendations to VCNZ in this regard.

CAC suggestion

46. The CAC suggests that Dr Oscar adheres to his normal practice in providing adequate verbal and written discharge instructions to clients.

Decision

47. Based on the considerations set out above, the CAC considers that this case can be closed and no further action needs to be taken.



15 September 2017

Dr Philip Watson
Chair
Complaints Assessment Committee

Date

Learnings for the Profession

A timely, clear, and consistent written as well as verbal communication is recommended when relaying to the client what has happened during the provision of veterinary medical and surgical care to a patient. This is even more important when a less than ideal outcome is experienced by the client.