

DISTRICT COURT OF SOUTH AUSTRALIA
(District Court Administrative and Disciplinary Division: Appeal Against the Veterinary Surgeons Board of
South Australia)

**MOONEY v THE VETERINARY SURGEONS BOARD OF
SOUTH AUSTRALIA**

[2011] SADC 128

Judgment of His Honour Judge Barrett

24 August 2011

**PROFESSIONS AND TRADES - MEDICAL AND RELATED PROFESSIONS -
OTHER FIELDS OF PRACTICE**

The practitioner appealed against a penalty of 5 years suspension imposed by the respondent in respect of a finding of unprofessional conduct. There were two complaints alleging a failure to comply with legislation and regulations relating to firearms, and the supply of and recording the use of therapeutic drugs. The appellant had three previous court appearances related to aspects of his practice and four previous findings of unprofessional conduct. The appellant was ordered to pay the Board's costs of \$15,000.

Held: Neither the suspension nor the costs order were excessive but there was a double counting of a period of three months. Suspension reduced by three months.

Controlled Substances Act 1984 ; *Veterinary Practice Act 2003* s 23, 62, s 66.; *Radiation Protection and Control Act 1982* , referred to.
Veterinary Surgeons Investigating Committee v Williamson No 2 [2005] NSWADT 112;
Veterinary Surgeons Investigating Committee v Lloyd [2004] NSWADT 208; *Veterinary Surgeons Investigating Committee v Gelderman* [2000] NSWADT 117; *Veterinary Surgeons Investigating Committee v Howe* [2002] NSWADT 191; *Craig v Medical Board of South Australia* (2001) 79 SASR 545; *NSW Bar Association v Evatt* (1968) 117 CLR 177; *Legal Practitioners Conduct Board v Kerin* [2006] SASC 393, considered.

Appellant: GRAEME JOHN MOONEY **Counsel: MS E NELSON QC - Solicitor: WALLMANS
LAWYERS**
Respondent: THE VETERINARY SURGEONS BOARD OF SOUTH AUSTRALIA **Counsel: MR M
STEVENS - Solicitor: CROWN SOLICITORS OFFICE**

Hearing Date/s: 17/06/2011

File No/s: DCADD-10-1581

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**MOONEY v THE VETERINARY SURGEONS BOARD OF SOUTH
AUSTRALIA
[2011] SADC 128**

Appeal

1 Dr Mooney appeals from a penalty imposed on him by the Veterinary Surgeons Board of South Australia on 15 July 2010. The penalty followed a decision of the Board made on 24 June 2010 that he was guilty of unprofessional conduct. The appellant does not appeal against the Board's finding of unprofessional conduct.

2 The findings of unprofessional conduct rest upon two complaints laid by the Registrar of the Board. The first is dated 4 June 2009 and relates to the circumstances of the euthanasia of a dog in July 2008. The second is dated 6 August 2009 and relates to the illegal supply of prescription drugs to a member of the public by the appellant in December 2006. The supply of drugs was the subject of a prosecution and conviction in the Magistrates Court for offences against the *Controlled Substances Act*. A magistrate sitting in Port Lincoln on 26 May 2009 imposed penalty and published his reasons.

Board's penalty

3 Pursuant to s 62(4)(f) of the *Veterinary Practice Act 2003*, the Board disqualified the appellant from being registered on the General Register of Practitioners for 5 years, such period including 6 months disqualification earlier suspended but brought into effect and a further 3 months imposed in the District Court. The Board precluded the appellant from applying for re-instatement to the Register for the same period. In addition, the Board ordered the appellant to pay the Registrar's costs and disbursements fixed at \$15,000.

Notice of appeal

4 The Notice of Appeal challenges both the order for disqualification and the costs order. Effectively it challenges the length of the disqualification and the quantum of the costs order.

5 I recite the grounds of appeal. To understand one aspect of the first particular in the Notice of Appeal it is relevant to note that the appellant was born on 3 August 1942. He is now 69 and was almost 68 at the time of the Board's penalty. It is appropriate to note at the outset that there is a mis-statement in the first particular. The mis-statement is italicised and I will explain it.

6 The grounds of appeal are stated thus:

1. That the penalty, in the circumstances of the case and on the evidence available, was manifestly excessive.

Particulars

- 1.1 *The Board expressly stated that it considered it inappropriate to impose deregistration, however proceeded to impose a penalty which had the same affect (sic) and,*
- 1.2 The Board failed to have proper and adequate regard to the:
 - 1.2.1 Fact that the appellant's veterinary practice is the only equine practice on the Eyre Peninsular; and,
 - 1.2.2 The consequence detrimental impact that the penalty has had/will have on both the community and the welfare of animals throughout the Eyre Peninsular
2. That the order for costs made in favour of the Registrar was manifestly excessive.

Particulars

- 2.1 The Board failed to have regard to the submission made on behalf of the appellant on the question of costs.
- 2.2 The Board failed to give adequate reasons for:
 - 2.2.1 The order for costs made in favour of the Registrar; and,
 - 2.2.2 The quantum thereof.
- 7 The appellant seeks the following orders:
 1. That the court amend or set aside the penalties order.
 2. That the court amend or set aside the order for costs made in favour of the Registrar of the Veterinary Surgeons Board of South Australia.
 3. That the respondent pay the appellant's costs of the appeal.

8 I explain the italicised mis-statement. The Board did not, as alleged in the particulars of the first ground, state that it considered it inappropriate to impose deregistration. It could not deregister the appellant. He was not then registered. The Board could only disqualify him from applying for registration. The Board certainly regarded disqualification as appropriate.

9 The Board said in its Reasons for Penalty¹:

Given Dr Mooney's history of complaints and findings against him by the Veterinary Surgeons Board of South Australia and also of convictions for breach of the legislation relevant to his practice as a veterinary surgeon, there are sufficient grounds to permanently disqualify Dr Mooney from registration as a veterinary surgeon pursuant to s 62(5)(a)(i) of the *Veterinary Practice Act*.

¹ Appeal Book page 246.

10 However it went on to say that it decided to give the appellant;

... one last opportunity to again practice as a veterinary surgeon, after serving this time a substantial period of suspension from practice².

Factual bases for penalty

11 The first step in determining the appropriateness of the penalty imposed by the Board is to examine the Board's findings of fact.

12 I will refer to the Board's two documents as the "unprofessional conduct reasons" and the "penalty reasons". In each document the two complaints of unprofessional conduct were considered together. The Board considered the two complaints together. There was no objection to the two complainants being heard together and there is no reason why they should not have been heard at the same time. It is nevertheless convenient for the purposes of the appeal to discuss the complaints separately. Each complaint alleges a single count of unprofessional conduct, but each relies on separate particulars.

13 I will deal with the complaints chronologically, although the facts giving rise to each are in reverse order.

Complaint laid on 4 June 2009

14 The first complaint alleging unprofessional conduct cites four grounds. Particulars are provided of each ground. Altogether they relate to the circumstances of the euthanasia of a dog. The appellant shot the dog on at the premises of the RSPCA in Port Lincoln on 11 July 2008.

15 He had been asked by the manager of the RSPCA shelter to euthanase the dog. It appears the dog was aggressive and could not be killed by administering a lethal injection. It is not suggested that shooting was an inappropriate method of euthanasia. It appears the appellant undertook the task pro bono. He shot the dog twice in the head with a point 22 calibre rifle. In contravention of the *Firearms Act* the rifle was not registered and the appellant was not licensed to possess any form of firearm. The appellant was never prosecuted for those breaches of the law. Chronologically, the first particular of unprofessional conduct found proved by the Board was the failure by the appellant to comply with the requirements of the *Firearms Act*. The appellant admitted those failures.

16 What happened after the dog was shot was the subject of the some dispute before the Board. I will not traverse the disputes but refer to those of the Board's findings which have not been challenged on appeal. The Board found that the dog was still alive after being shot. It was apparently unconscious, but still making some movements and noises. The Board found that the appellant did not ensure the dog was dead before he left the RSPCA Shelter. He did not check its

² Appeal Book page 247.

heartbeat with his stethoscope and he did not check its corneal reflex. The Board found the appellant had not taken reasonable steps to ensure that the dog was dead. As a consequence he had not taken reasonable steps to ensure that the dog did not suffer pain. There was discussion before the Board, and before me, about whether the dog had suffered "unimaginable pain" as a result of not being killed by the shooting. The Board found simply that the appellant had not taken reasonable steps to ensure that the dog had not suffered. Such pain was one of the possible consequences of its still being alive. Another possible consequence was that it was deeply unconscious and not able to feel pain. The appellant suggested there was an inconsistency in the Board's findings on this topic. I find no inconsistency. The above account is what the Board found proved.

17 The appellant and the manager moved the dog to the shelters freezer. It is not clear whether the freezer was turned on at the time.

18 About half an hour after the appellant had left the shelter the manager could still hear the dog making noises. She contacted the appellant's surgery. The appellant was not there. His nurse told the manager to bring the dog in to the surgery, which she did. The nurse telephoned the appellant. He advised her to administer an injection of Lethabarb, a drug whose possession and use is regulated under the *Controlled Substances Act*. The nurse administered the drug. The Board was unable to find precisely when the dog died. It accepted that the dog was still alive when the manager contacted the appellant's surgery. The time of death was the subject of dispute before the Board. The Board was unable to resolve that question. The RSPCA manager gave evidence before the Board. Neither the appellant nor his nurse did. The Board treated the nurse's written statement and the appellant's submissions from the bar table as unsworn evidence.

19 The appellant did not record, or cause to be recorded, the fact of the administration of the lethal drug in contravention of the *Controlled Substances Act*, the *Veterinary Board of South Australian Guidelines*, the *Code of Conduct and Professional Practice* as well as the South Australian Government's publication on the *Controlled Substances Act for Veterinary Surgeons*. The reason for the requirement to record the use of such drugs is plain. It is to minimise the misuse of such drugs.

20 The failure to record the administration of the drug occurred in July 2008. At that time the appellant had been prosecuted for the illegal supply of the prescription drugs the subject of the August 2009 complaint. Although he was not convicted and sentenced in the Port Lincoln Magistrates Court until 26 May 2009, the Magistrates Court complaint had been laid on 19 October 2007. The Board found that that should have alerted the appellant to the importance of compliance of the *Controlled Substance Act*.

21 The critical findings in respect to this complaint were:

1. The appellant had breached the *Firearms Act* by using an unregistered firearm and by being unlicensed to possess any firearm.
2. He had failed to ensure that the dog was dead after he shot it. He did not ensure that it did not suffer.
3. He had breached, inter alia, the *Controlled Substances Act* in failing to record the administration of the Lethabarb drug.

22 The Board found that any one of the these particulars amounted to unprofessional conduct.

Complaint laid on 6 August 2009

23 This second complaint alleging unprofessional conduct cites 2 grounds. Particulars are provided. The particulars relate to the convictions of the appellant in the Magistrates Court for breaches of the *Controlled Substances Act* committed in December 2006. The Board found that the convictions, and the facts underlying the charges, amounted to improper conduct.

24 The Board found that the appellant sold various prescription drugs to a horse trainer in Port Pirie. The drugs were 5 different types of anabolic steroids. The drugs can be used legitimately for the treatment of horses but they can also be misused for humans. The purposes of the regulation of the supply of the drugs under the *Controlled Substances Act* are starkly exemplified by the facts of the case, even though the appellant was not found to have foreseen the consequences. The trainer to whom the appellant sold the drugs did not use all of them himself. He sold or supplied some of the drugs to unspecified family and friends. He sold some of the drugs to an unspecified horse trainer in Victoria where, so it was said, the drugs were less readily available. Some of the drugs ended up in the hands of numerous unidentified persons for unverifiable purposes. While the Board did not find that the appellant foresaw these consequences, an obvious component of his unprofessionalism lies precisely in his dispensing the drugs by post without knowing where they might end up. The trainer was also charged with offences under the *Controlled Substances Act*. He was sentenced in the Port Pirie Magistrates Court on the 13 March 2007.

25 The appellant had acknowledged that he had sold such drugs to the trainer in Port Pirie on other occasions apart from those charged. This was therefore not an isolated offence. It is not known over what period he had been offending. He submitted to the Board that the practice of selling drugs, as he had done, was "rife" in the profession amongst veterinary surgeons. The Board told the appellant that it would not accept that submission unless the appellant called evidence to support it. The appellant called no such evidence.

26 Thus the factual bases for the finding of unprofessional conduct in relation to this complaint were the convictions in the Magistrates Court for breaches of the *Controlled Substances Act* and the facts underlying those breaches.

The appellant's antecedents

27 This was far from the first time that the appellant had been found guilty of unprofessional conduct. His history of appearances in court and before the Veterinary Surgeons Board suggests what the respondent submits is a flagrant disregard of statutory requirements applying to him and what I would describe as a display of continuing disrespect for the authority of the Board.

28 The list of antecedents placed before the Board³ was unsatisfactory. It left unclear when offending took place and when disciplinary proceedings resulted in penalties. Some of the gaps in that account are filled in in the sentencing remarks of His Honour Judge Tilmouth, delivered on 5 June 2009 as a result of the Registrar's appeal to this court from a dismissal by a differently constituted Board of a finding of unprofessional conduct. The present Board had before it His Honour's sentencing remarks and referred to them, but they were still forced, to an extent, to rely upon the unsatisfactory schedule put before them. I will shortly provide my own summary of the court and Board appearances. Before that I will discuss patterns of offending that emerged from the materials. I refer first to noncompliance with legislation.

29 In March 1989 the appellant was convicted in a Magistrates Court of being the owner of an x-ray machine without the machine being registered, contrary to the *Radiation Protection and Control Act 1982*⁴.

30 On 9 February 2004 he was convicted in the Magistrates Court at Port Lincoln of two similar offences and three further offences of operating an x-ray machine without being licensed. These offences were committed between December 2002 and March 2003. The appellant subsequently applied for a licence to operate an x-ray machine. Each time the application was refused. The first refusal was at some unspecified time after the above convictions in February 2004 and before 4 March 2005 when he made a later application. The later application was refused in June 2005 and reaffirmed on appeal in July 2005. In December 2005 the appellant purchased an x-ray machine and was reminded that he could not use it unless it was operated by a licensed person. It appears that the appellant had a locum, Doctor Forrest, who was licensed. Notwithstanding that fact, the appellant used his machine on 16 February 2006 while unlicensed. This use was the subject of the appeal before Judge Tilmouth. The Board had not found that conduct unprofessional. The Registrar appealed to the District Court. His Honour Judge Tilmouth upheld the appeal. This persistent flouting of legislation which applied to him is reminiscent of the appellant's breach of his

³ Appeal book p 155-157.

⁴ Supplementary appeal book p 8.

statutory obligations under the *Controlled Substances Act* and the *Firearms Act* in the present proceedings.

31 I refer to an isolated incident. In 1996 the appellant was convicted in what I take to be the Magistrates Court in the Northern Territory for providing veterinary treatment without being registered there to do so. He was fined.

32 I turn to instances of unprofessional care of animals. In 1999 the appellant pleaded guilty to unprofessional conduct in relation to the aftercare of four animals. He was fined \$1,000 and ordered to pay costs of \$6,000. Conditions were imposed on his licence. Those conditions involved the care of animals recovering from anaesthesia.

33 The appellant breached these conditions. Somewhere between March and July of 2001, the appellant discharged a cat ("Suzie") whilst the cat was still under the effects of anaesthetic. He did the same with the same client's dog ("Cobber") in August 2001. The Board found these acts proved and found that they breached the conditions imposed in 1999.

34 The appellant contested the allegations relating to the two animals. The evidence of the couple who were the applicant's clients was disputed. The Board said this of the appellant's evidence during the hearing.

Dr Mooney gave his evidence in a manner which clearly showed his distain for [client 1] and [client 2]. He was obviously resentful of the fact that he was before the Board and that the Board was scrutinising any aspect of his practice. He was often belligerent and overall his evidence was most unsatisfactory. Unless otherwise indicated we have not accepted his evidence.⁵

35 The Board said that it seemed that the appellant had "totally disregarded"⁶ the conditions imposed on him by the previous Board because, in his evidence, he said that he was satisfied that animals could be discharged in the condition that the dog was in.

36 In addition, the appellant had not paid the fine and costs within the time fixed by the Board which imposed the penalties on 6 February 2001. On 16 November 2004 the Board ordered the suspension of the appellant's registration for 6 months but it suspended the operation of that order for 2 years.

37 The appellant breached that order by using the x-ray machine without a licence to do so on 16 February 2006. That offending was the subject of the appeal by the Registrar against the dismissal by the Board of the complaint.

⁵ Appeal book p 190 [20].

⁶ Appeal book p 194 [94].

Judge Tilmouth's judgment was delivered on 5 June 2009⁷, and the penalty was imposed by His Honour on 26 June 2009⁸.

38 No action was taken by Judge Tilmouth about the breach of the earlier conditions. There was no application for him to do so. The Board in the present proceedings took into account the six months disqualification and the three months disqualification which Judge Tilmouth order for the February 2006 offending. I will return to the question of what account should properly be taken of the two periods of disqualification.

Summary of antecedents

1. March 1989 – convicted in Magistrates Court of x-ray offence.
2. 4 April 1996 – the appellant admitted 4 counts of unprofessional conduct. The penalty imposed was a 7 day refresher course on clinical skills and euthanasia and \$6,000 costs. It is unclear what particulars of unprofessional conduct were found proved⁹.
3. 29 June 1996 – convicted in Northern Territory Magistrates Court for practising while unregistered while in the Territory.
4. 6 February 2001 – the appellant pleaded guilty to unprofessional conduct relating to the after care of four animals. It appears these offences might have been committed in 1999. He received a reprimand, a fine of \$1,000 and was ordered to pay costs of \$6,000. Conditions were imposed on his licence¹⁰.
5. 9 February 2004 – the appellant was convicted in the Port Lincoln Magistrates Court of two offences of operating an unregistered x-ray machine and three further offences of operating the machine without being licensed¹¹. The appellant was fined \$2,500 plus court costs.
6. 16 November 2004 – the appellant had his registration suspended for six months but that order was suspended for 2 years. That was in relation to the treatment of the cat ("Susie") on 2 March 2001 and the dog ("Cobber") on 17 August 2001.
7. 22 June 2009 – Judge Tilmouth imposed penalty of 3 months suspension on the appeal from the Board's dismissal of a charge of unprofessional conduct on 16 February 2006 consisting of the x-ray offending.

⁷ [2009] SADC 62, Supplementary appeal book p 7.

⁸ [2009] SADC 69, Supplementary appeal book p 1.

⁹ Appeal Book p 155.

¹⁰ Appeal Book p 155.

¹¹ Supplementary Appeal Book p 8.

39 Given this lengthy history of unprofessional conduct, the present Board was amply justified in describing the appellant's background as "a disturbing history"¹². The Board was also justified in describing all the references tendered on behalf of the appellant as unhelpful. None of the other referees made any reference to, or acknowledgement of, the Registrar's complaints in the present matter, nor of the appellant's previous appearances before the Board.

Submissions made on appeal

40 Ms Nelson QC argued that the Board effectively imposed a penalty that had the consequence of removing Dr Mooney's opportunity to practice again as a vet. That penalty stood against a background where he had been unable to renew his registration from March 2009. The appellant was almost 68 at the time of the imposition of the Board's penalty. The penalty had the effect of preventing him from practicing at least until he was 72. Realistically Ms Nelson pointed out that he would not be able to practice until sometime after that because he would have to persuade the Board that he had met their conditions.

41 Dr Mooney appealed from the Board's substantive order – the one disqualifying him from being registered on the General Register for 5 years (and precluding him from applying for reinstatement of his registration for the same period) and the order that he pay the complainant's costs fixed at \$15,000.

42 Ms Nelson submitted that the Board had failed to have regard to the fact that the appellant was the only equine vet in Port Lincoln. In these circumstances the public had a substantial interest in the appellant being available to practise.

43 It is true the Board made no reference in its penalty reasons to the public interest in the appellant continuing to practise. That public interest may be greater in the country because of the difficulties experienced by clients seeking treatment for their horses.

44 It might have been preferable that that aspect of the public interest were acknowledged by the Board and weighed against the undoubted public interest in being protected from a veterinary surgeon who had repeatedly demonstrated that he does not take very seriously either statutory or regulatory obligations imposed on him or the role of the Board in disciplining practitioners.

45 It is also true that the Board's observation that "the alleged desirability of having more than one veterinary practice in Port Lincoln" does not sufficiently describe the reduction in equine services on the West Coast in the absence of Dr Mooney being able to practise. However it must be said that the extent of inconvenience and cost to the community by reason of Dr Mooney's inability to practise was never fully spelt out. The board, and the court, were told that there

¹² Appeal Book p 236.

are several registered racetracks on the West Coast and there are accordingly a number of horse trainers based there. But neither the Board nor the court was told what other equine veterinary services were provided before or after Dr Mooney became unable to practise in about March 2009. What alternative arrangements had clients been required to make and at what additional cost?

46 In any event, the Board would have been entitled to take the view that such inconvenience, and possibly cost, is outweighed in this case by the need to protect the public from a practitioner with the history of unprofessional conduct that the appellant has.

47 Ms Nelson QC drew attention to four New South Wales appeal decisions which she submitted indicate that the penalty imposed on Dr Mooney is excessive. It must be conceded that the penalties in each case were significantly less than the one imposed on Dr Mooney, but as Mr Stevens submitted, there were distinguishing features in each of the cases. I deal with both the submissions and the counter submission in respect of each of the cases.

48 In *Veterinary Surgeons Investigating Committee v Williamson No 2* [2005] NSWADT 112, a veterinary surgeon had sent drugs to a horse trainer in country New South Wales. His actions were described as “distance prescribing”. He was reprimanded and had conditions applied to his registration. He had had a previous finding of unprofessional conduct made against him based upon an appearance in the Magistrates Court for not labelling drugs he supplied. The court had discharged the practitioner without conviction and placed him on a bond. The court appearance was in 2000 and the finding of unprofessional conduct was in 2002. But in that case the practitioner had prescribed the particular medications for specified animals and he had obtained blood test results before advising the horse trainer on the medication to administer. Thus the facts were less serious than in the present case and the practitioner did not have as bad an antecedent record.

49 In the *Veterinary Surgeons Investigating Committee v Lloyd* [2004] NSWADT 208, the practitioner was suspended from practice for 9 months. The published decision in that case does not make it clear what conduct gave rise to that penalty. Ms Nelson QC submitted that the behaviour concerned three animals. It included early release of a dog from hospital care after surgery, the omission of thirteen particulars from a clinical record, the supply of poisons without instructions, the failure to carry out legislative provisions relating to the handling of restricted drugs, the failure to carry out professional procedures, the failure to keep a detailed record, instructing an unqualified person to administer a drug without examining a horse, a failure to discuss options, a failure to record the length of time of suffering of an animal and failure to carry out professional procedures and other breaches. Ms Nelson submitted in that case the veterinary surgeon had been the subject of five previous disciplinary orders. They included mistreatment of animals. Not having access to those details, because they do not

appear in the judgment, Mr Stevens observed if those were the particulars of unprofessional conduct, the practitioner was extremely lucky to have been given such lenient treatment. I agree.

50 In *Veterinary Surgeons Investigating Committee v Gelderman* [2000] NSWADT 117, the practitioner was suspended for 3 months. The practitioner admitted that his treatment in relation to three dogs was inadequate and amounted to unprofessional conduct. In addition there was a failure of record keeping in the case of one dog. The practitioner had two previous findings of unprofessional conduct which were similar in nature. However the tribunal noted that the practitioner had taken steps to improve his practice and he had indicated a preparedness to acknowledge his failures.

51 In *Veterinary Surgeons Investigating Committee v Howe* [2002] NSWADT 191, the practitioner was suspended for two years. The veterinary surgeon was charged with falsely certifying tests and concocting false laboratory reports. He had made false and misleading statements to the Investigating Committee. The tribunal found that he was not of good character. However he had never had any earlier complaint about unprofessional conduct.

52 While it must be acknowledged the practitioners in these cases were treated more leniently than Dr Mooney, it can also be seen that there are factors which distinguish each of those cases from the present one. None had the antecedent history that the appellant has. Further it must be said that comparing the facts of other cases is helpful only up to a point. Points of distinction between the current case and each of the others inevitably leads to the truism that every case must be determined on its own facts.

Discussion

53 In *Craig v Medical Board of South Australia* (2001) 79 SASR 545 Doyle CJ referred to the High Court decision of *New South Wales Bar Association v Evatt* (1968) 117 CLR 177 in which the court had said that the power of the court to discipline a legal practitioner is entirely protective, notwithstanding that the resulting orders may represent a deprivation to the individual practitioner.

54 His Honour then said;

[43] Apart from emphasising that the purpose of disciplinary proceedings is the protection of the public, and not punishment for wrongdoing, this passage makes the point that sometimes the protection of the public will require the making of an order with a greater adverse effect on the practitioner than might be warranted if punishment alone were the relevant consideration. The protection of the public did not permit mercy to be shown in that case.

55 With those considerations in mind I turn to the facts of the complaints separately. As I have indicated there were three aspects to the first complaint. The appellant showed a complete disregard for the provisions of the *Firearms*

Act by using an unregistered firearm to carry out the euthanasia. He knew he was unlicensed to possess any firearm. He has a not insignificant history of disregarding legislative requirements which regulate his practice. He was careless in failing to ensure that the dog was dead after he shot it. It was not dead. Whether or not the dog suffered pain as a consequence is not clear. What is clear is that the appellant did not ensure that it did not suffer pain. That carelessness had been seen in the past when the practitioner insisted he was not at fault in discharging animals too soon after anaesthesia. He failed to record the administration of a lethal drug in contravention of the *Controlled Substances Act*. He lacked insight into the purpose of the drugs legislation. His being charged with other breaches of the same Act did not deter him from disregarding the Act on this occasion.

56 In respect of the later complaint, the appellant was completely unrepentant about posting drugs to a trainer without prescribing them for a specific animal and, more seriously, without realising that the drugs might end up (as indeed they did end up) in the hands of unknown people for unknown purposes. The appellant's response to this particular of unprofessional conduct was to assert that the practice was rife in the profession. Far from belatedly recognising the risks to the public of his behaviour, he regarded himself as unlucky to be caught.

57 In the proceedings before the Board, the appellant evinced no sense of professional failing and gave no indication of steps he would take to demonstrate a greater awareness of his professional obligations¹³.

58 The Board had reason to regard as apposite remarks made by Gray J of a legal practitioner in *Legal Practitioners Conduct Board v Kerin* [2006] SASC 393. His Honour said¹⁴:

The circumstances, found proved by the Tribunal, demonstrate a disregard of the practitioner's professional obligations and a failure to meet those obligations. The material before this Court suggests that the practitioner's behaviour cannot be said to be behind him, isolated, and unlikely to recur.

59 The Board acknowledged that Gray J was speaking in the context of an application to strike the practitioner's name from the Roll of Practitioners. However the Board remarked that if such an application had been made in the present case, it would have given it serious consideration¹⁵.

60 As indicated earlier, the Board concluded that there were sufficient grounds to permanently disqualify Dr Mooney from registration as a veterinary surgeon pursuant to s 62(5)(a)(i) of the *Veterinary Practice Act*. With some force, Ms Nelson QC submitted that that is effectively what the Board has done. Dr Mooney will be at least 72 before he can reapply for registration.

¹³ Appeal book p 247.

¹⁴ [25].

¹⁵ Appeal book p 243.

61 In my view the Board would not have erred if it had made such an order. Towards the end of his career the appellant has continued to act unprofessionally. He has shown no sign that he appreciates the purposes of legal requirements applying to him in his practice. He has shown no sign of recognising the authority of the Board whose function is to discipline practitioners in the public interest.

62 It was therefore no error to extend what might appear to the appellant an illusory act of mercy by disqualifying him for 5 years. That period includes the 6 months suspension which was itself suspended by an earlier Board in November 2004. Of course the Board purported to include a further 3 months representing the suspension imposed by Judge Tilmouth. That was an error. The practitioner had actually served that suspension. The inclusion of the 3 months on top of the 6 months is a form of double counting. It might seem incongruous to allow the appeal merely to reduce the suspension by 3 months from 5 years to 4 years 9 months, when I have found that it would not have been an error if the Board had made the suspension permanent, but the inclusion of the 3 months was an error and should not be disregarded. In addition, to overlook the error would have at least the notional effect of increasing the penalty on an appeal taken by the practitioner. I would reduce the period of suspension from 5 years to 4 years 9 months.

Costs

63 I turn to the costs order. The Board gave no reasons for the costs order it made. There is no obligation on it to do so. The primary remedy for a party dissatisfied with the quantum of a costs order is to apply to have the order taxed by a Master (s 23(2) of *Veterinary Practice Act*). If the appellant wished to be supplied with reasons for the costs order he could have applied to the Board for a copy of reasons (s 66(4)).

64 Despite some facts alleged by the Registrar in the complaints not being proved against the appellant, a significant majority were proved and the undisputed facts were sufficient to make out the charge of unprofessional conduct. In addition the appellant caused significant delay in the proceedings before the Board. The Registrar's costs were thereby increased. I will not detail the delays or their causes, but I summarise them in this way. The first directions hearing was heard on 23 October 2009. Dr Mooney was unrepresented but said he would plead guilty. He wanted to get the matter disposed of as soon as possible. However, it soon became clear that he did not appreciate the seriousness of the allegations being made against him. The matter was adjourned then, and several more times, because Dr Mooney failed to get legal advice and failed to understand how the hearing would have to be conducted. He disputed various allegations without realising that they would have to be the subject of evidence. At times he said he would obtain legal representation but failed to do so. There were 5 sittings of the Board between October 2009 and May 2010. The Board's decision was published on 24 June 2010. Submissions on penalty were

made on 5 July 2010. In my view the appellant has asserted no error by the Board in making a costs order against him and no error in the quantum fixed.

Conclusion

65 I allow the appeal against the period of disqualification but only to correct the double counting of the 3 months. I reduce the disqualification period from 5 years to 4 years 9 months.

66 I dismiss the appeal from the costs order.