

November 10, 2016

College of Veterinarians of Ontario  
2106 Gordon St.  
Guelph, ON  
N1L 1G6  
Attention: Jan Robinson – Registrar & CEO

Dear Madam Registrar:

**Re: Dr. James McCleary – Bucksburn Veterinary Hospital – Advertising.**

Thank you for your letter to Dr. McCleary, dated October 24, 2016 and received by his office on November 7, 2016. We have subsequently been provided a copy of the letter and the piece of advertising.

We note several concerning features of your letter.

Your letter states that you are acting on a 'concern' received by the College. We trust this was simply a misstatement and that in fact you are acting upon a complaint of a member. We look forward to your response on this issue.

We note that your letter makes allegation and draws a conclusion with respect to the position of the College;

The College considers referral/reward programs which put the onus on clients to solicit new clients to be conduct unbecoming and demeaning the integrity of the profession. Please be advised that any breaches of the Advertising regulations constitute professional misconduct and will require action on the part of the College.

Despite this, you did not include the provision under which Dr. McCleary is accused nor make reference to the operative section of the Regulation. I provide for your ease of reference the operative provision of the regulation with respect to advertising:

Please reply to address checked

**Goderich Office**  
144 Courthouse Square  
Suite 100  
Goderich, ON N7A 1M9  
P 519.524.5532  
F 519.524.8438

**Stratford Office**  
1 Ontario Street  
2<sup>nd</sup> Floor  
Stratford, ON N5A 3G7  
P 519.814.5532  
F 519.814.5533

**Kincardine Office**  
943 Queen Street  
Kincardine, ON  
N2Z 2Y8  
P 226.396.5532  
F 226.396.5533

36. A member may advertise the professional services he or she provides, and any ancillary services, if the information in the advertisement,

(f) could not reasonably be regarded by members as likely to demean the integrity or dignity of the profession or to bring the profession into disrepute. O. Reg. 233/15, s. 25.

The first issue is that the provision itself is arguably unenforceable. It purports to act as guardian of the 'members' objective view of whether an ad is likely to demean the integrity or dignity of the profession etc. Again, for your reference, the Object of your College, as set out in the Act is reproduced here:

The principal object of the College is to regulate the practice of veterinary medicine and to govern its members in accordance with this Act, the regulations and the by-laws **in order that the public interest may be served and protected**. [emphasis added]

You will note that nowhere is the College directed to serve and protect the 'member's interests', in fact quite the contrary. The role of the College is directed principally to the 'public interest', often to the prejudice of the members.

Based on the foregoing, we would submit that the provision relied upon in your letter is inoperative as *ultra vires*. However, if we were to accept the role of the College as arbiters of the member's objective view, your letter suggests that it is the College's view and not the objective view of the members that is considered in the determination. I provide the following quote from your letter:

The College considers referral/reward programs which put the onus on clients to solicit new clients to be conduct unbecoming and demeaning the integrity of the profession.

We cannot agree with this analysis. The determination is quite clearly intended to be based on the objective view of the members.

We move now to the impugned conduct. I attach with this letter a copy of the offending advertising. The ad offers a \$20 discount to new referrals and a \$20 discount to the referring client. In no way does this offer of a credit 'put the onus on clients to solicit new clients'. It offers an incentive for clients to refer new clients to the practice, and a similar credit to those newly referred clients. There is no onus to do so. The only, and certainly unreasonable interpretation that would support the conclusion drawn in your letter, is that the onus is created by some perceived financial duress borne out of the potential for a \$20 discount.



The final concern is that the letter states the matter, including this reply will be directed to the Executive Committee. As you know there are two possible committees charged with screening complaints for investigation. The Executive Committee is arguably engaged in more serious complaints involving investigations which are more complex or broad in scope. The fact that this 'concern' qualifies raises serious questions about procedural fairness.

We will conclude with Dr. McCleary's response to the 'concern' raised in your letter. The ad in question in no way approaches, let alone crosses the objective threshold necessary to make a determination that a member acting reasonably would regard the ad as likely to demean the integrity of the profession or to bring the profession into disrepute. Your further narrowing of the member's objective perspective to be one of 'onus' puts meeting the objective threshold further out of reach.

Should the College choose to proceed with this matter, we look forward to receipt of the letter of 'concern' and a response to the questions set out within this letter. Further we request confirmation of what Committee within the College screened this 'concern' prior to the preparation of your letter.

Thank you in advance for your attention to this matter.

Yours very truly,

therossfirm  
PROFESSIONAL CORPORATION

Per:



Quinn M. Ross

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QMR/tbm  
Encls.





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Oakville, ON L6H 7G5  
(905) 257-7777 • [bucksburnvethospital@gmail.com](mailto:bucksburnvethospital@gmail.com)  
**See Back of Card for Special Offer!**

Please help us spread the word about  
**Bucksburn Veterinary Hospital!**

Give this card to a friend and they can use it to receive a \$20 credit towards any of our products or services. In addition, we will also credit your account with \$20. It's our way of saying thanks!

\*valid for new clients only

\_\_\_\_\_  
Your Last Name                      Your Pet's Name



**Walk-ins Welcome!**

\*Except Thursdays\*

[www.bucksburnvethospital.com](http://www.bucksburnvethospital.com)

