## Barks ‘n Bytes 2015 Articles (VDA South Africa)

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Published 2015-12-15

## Handing over

**(Article 389)**

The VDA often receives calls for requests on advice when a client moves from one veterinary practice to another. More often it is the client who requests a copy of the clinical notes, but sometimes the new veterinary practice will request the clinical records of the patient from the previous veterinary practice. Below are two examples of these situations and how they should be dealt with.

In the first case, Mr. X decided to take his animals to a new veterinary practice that had opened closer to his home rather than travelling the additional 5 or so kilometers to the practice he had used in the past. The veterinarian at the new practice, Dr A, telephoned his neighbouring practice to politely inform them that Mr X had changed practices. Dr A requested that Dr B provide him with the patient's records so he could refer to them in the event that Mr X's animals came in for treatment. Dr B refused and instead telephoned Mr X to ask why he had decided to change practices. Dr B was concerned that he had offended Mr X somehow and that this was the reason that Mr X had chosen to go to a new practice.

In the second case Mr Y had a dog with mange that was proving very difficult to treat successfully. Dr C inherited the patient as a referral and spent a lot of time and energy treating the animal. Mr Y's account escalated monthly and, without settling this account, Mr Y went to a different veterinary practice in a neighboring town. Dr D telephoned Dr C requesting the patient's records and advising him that the client had changed veterinary practices.

The general rule is that the clinical records belong to the veterinarian and the rule on confidentiality compels the veterinarian to first obtain the written permission of the pet owner in order to lawfully provide information to a third party (in these examples, the new practice).

It is certainly in the animal's best interest to share information between two treating veterinarians even if they are in "competition" with each other. Obtaining the pet owner's permission should not be a problem as the owner has decided to change practices in the first place, but you do need to first obtain their permission so that you protect yourself, should the pet owner later claim a breach of confidentiality.

In the second scenario above, Dr C could have requested the owner to come in and sign a letter authorizing the handing over of the records and at the same time he could have come to an agreement with the owner on the outstanding account.

If you find yourself in a similar position, we recommend that you do not hand over the raw records, but that you verbally provide the next veterinarian with whatever information is necessary, if the animal is currently ill. You can send copies of laboratory results and imaging to the next veterinarian.

If there is good reason, writing a report is another good way to provide the next veterinarian with all the information they need to continue treating the animal and also to fulfill your legal obligations under

supersession. This is especially so if your records contain personal remarks, such as “Mrs Jones is talkative and very demanding”.

Another reason that we recommend a summary of the clinical record is supplied is that a clinical record is not a final or complete document, it is only an aide to memory and is not intended as a forensic document, and it is usually written in short-hand which is only intelligible to the author, the veterinarian. It is highly probable that the owner or third party may misinterpret or not understand the contents of the record at all. In addition, the veterinarian has the legal right to supplement this record as new facts come to light or as the vet needs to add to the information.

You should also always ask for what purpose the record is sought – your summary would be different to a colleague who is providing a second opinion than it would be for a person suing the owner because their dog bit their child.

If you are requested by a Board to provide the clinical record because of a complaint by the owner, you may have to comply with their request if it is in terms of the Veterinary Act that governs your state, province or country, to supply them with your clinical records, and in this instance you do not have to get the permission of the owner.

The golden rule, before you supply records or reports, is to always obtain the written consent of the animal’s owner/caregiver.

Published 2015-12-09

## Homeopathy in the spotlight

**(Article 388)**

Last week, vetsurgeon.org published an article regarding the launch of two new campaigns which are calling on the veterinary profession to unite against the practice of veterinary homeopathy.

The article reports that both campaigns raise concerns about the ethics of veterinary surgeons using what the authors consider to be irrational, unscientific and ineffective remedies to treat ill animals or to replace conventional vaccinations.

Danny Chambers, MRCVS (Member of the Royal College of Veterinary Surgeons), has begun a petition which has reportedly gathered over 750 supportive signatures. This petition is calling for the complete ban on the prescription of homeopathic remedies by veterinary surgeons.

The other campaign, named “The Campaign For Rational Veterinary Medicine” was set up by a group of practitioners including the British Small Animal Veterinary Association (BSAVA) Past President, Mike Jessop, and is supported by VetSurgeon.org’s editor, Arlo Guthrie. Author, Professor Edzard Ernst, is also supporting the campaign which is asking the profession to unite around a call for the Royal College of Veterinary Surgeons to issue a public position statement that homeopathy is ineffective in animals. This will bring the issue in line with the National Health Service (NHS), the findings of the British government’s own review of homeopathy and the British Veterinary Association (BVA).

The campaign wants to see that veterinarians who practice homeopathy, have a consent form signed by pet owners. The form is to be prepared by the College and should state that the College’s views on homeopathy is that it is ineffective. It also asks that all advertising or promoting of homeopathy by veterinary surgeons is endorsed in terms of the Advertising Standards Authority regulations and they should carry a statement from the College.

The VDA is not taking sides and reminds members that, regardless of the treatment modality, statutory boards will require that veterinarians are able to explain their conduct as veterinarians, not necessarily as alternative medicine practitioners, by justifying their school of thought.

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Published 2015-12-09

## Shades of gray

**(Article 387)**

Dr A ran a very successful practice, employing three other veterinarians. The practice had become very popular as it pampered its clients and it would not be unusual for clients to have the veterinarians' cell phone numbers and for the veterinarians to attend to some of the clients after hours – even though it was not an after-hours clinic.

Some of the clients started to take advantage of Dr A's and his associates' goodwill and flexibility and started to disregard clinic policy on prescription renewal protocols.

Mrs X had been a loyal and regular client of Dr A's practice for many years. She and her only companion, "Snuggles" survived on her social security benefits every month and any expenses out of the ordinary were just too much for Mrs X to handle. Snuggles had been on an inexpensive prescription of phenobarbital for the treatment of epilepsy. When Mrs X went to fetch her script refill, she was told by the staff at Dr A's practice that since it was a year since Snuggles' last blood test, the dog would need to be tested again before more medication could be dispensed. Mrs X was not happy and believed that due to her financial hardships, she should be allowed to skip the testing and simply get her dog's medication as usual.

Dr A discussed this with Mrs X at length and said that if he did not test Snuggles, he feared that he would be acting negligently and that the medication could potentially harm Snuggles if he did not ascertain that the dog still required the medication and at what levels it was required. Dr A did offer Mrs X a discounted rate for the blood test but Mrs X still felt that this was not within her reach. Dr A told Mrs X that unfortunately his hands were tied as it was standard veterinary practice to monitor the status of a patient taking a controlled barbiturate. Mrs X left, without having obtained the medication for Snuggles.

Within a week of being without the medication, Snuggles experienced a grand mal seizure and fell off the stairs and injured her knee. Mrs X's nephew intervened and took Snuggles to his veterinarian and paid for the blood tests and Snuggles' prescription for phenobarbital was refilled.

The nephew, Mr X, was perturbed by the fact that Dr A had not taken further steps to assist his aunt in obtaining her pet's medication. He sent a letter of complaint to the Veterinary Board on behalf of his aunt.

The board examined the circumstances and found that Dr A had acted both professionally and within the expected standard of care of a reasonable veterinarian. The client's financial status was not grounds for a veterinarian to take short cuts in the care provided, as this could endanger the health of the patient.

Dr A received some criticism from the board for not exercising his judgment. It was noted that hard-and-fast rules don't always work and it was suggested that Dr A could have asked Mrs X to sign a waiver acknowledging the risks of not monitoring her epileptic dog's blood parameters; or that he could have made the blood testing affordable for this needy client as a humane gesture; or that he should have taken the previous normal test results into consideration and made a calculated exception.

However, it is impossible to predict whether the board would have accepted any of these actions as a defense if they had been offered as such. Therefore we recommend that caution be the better part of valor by meeting the minimum standard of professional conduct and following the prescribed rules.

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Published 2015-12-02

## Suicidal feelings

**(Article 386)**

Veterinarians who find themselves under severe stress sometimes experience suicidal thoughts and, unfortunately, some veterinarians have followed through, leaving behind shocked families, friends and co-workers.

The VDA interviewed Dr Peter Hatch, a Veterinary Psychology Counselor, who regularly consults with VDA members who are undergoing emotional upheaval, on the subject of suicide in order to shed some light on the factors surrounding suicidal feelings. We have published this article before, but consider it to be an important reminder for our members as well as vital information for new members – especially since we now start heading into the stressful end-of-year craziness.

In the following summarised interview, Dr Hatch offers us some perspective on the stress, helplessness and hopelessness that leads to suicide.

1. Could you give us a brief resume from your research experience of your findings with regard to stress suffered by veterinarians?

*My research was conducted over a period of 5 years and I used samples from 1947 cases from which to draw my conclusions. From this information, I am able to report that almost two thirds of (Australian) veterinarians suffer non-specific psychological distress and of these almost half are classified as suffering a chronic state of stress. The result of this chronic stress is burnout. Events that result in the stress reaction in one individual may have no effect on another; in other words, the relationship of stress and the event is unique to that individual. Stressors have been recorded in almost all facets of veterinary practice. This list includes technical stressors (arising from aspects of veterinary practice), patient stressors (arising from patients and their behavior), client stressors, and management stressors (other employees, equipment failure, control of workload and work schedules).*

2. Attempts at suicide and suicidal thoughts or feelings are usually symptoms indicating that a person isn't coping. Please provide your opinion on this.

*Chronic stress has been described as a precursor to depression. Depression is not only a sadness of mood but is characterized by beliefs about Life and the Self. These beliefs and thoughts include feelings of hopelessness, helplessness, worthlessness and a perception that expectations and life's goals will not be met.*

3. Why, in your opinion, do people attempt or commit suicide?

*I believe people commit suicide as a result of a defective self-defeating belief system, but in many cases there is a triggering event that overwhelms the individual, confirming the belief that life is valueless.*

4. Are suicidal people insane?

No. Suicidal individuals, due to the factors outlined above, find it difficult to reach out to others. Such individuals isolate themselves and in so doing this confirms their beliefs of hopelessness, helplessness and worthlessness which is frequently interpreted as “I am unlovable” and this is a permanent state. The belief is that their situation is “personal, global and permanent”.

5. Does talking about suicide encourage it?

*There is no evidence that talking about suicide encourages this behavior. Increasing awareness and understanding by others of the risks of suicide and describing and identifying suicidal behavior can act as a preventative, which may encourage the affected individual to seek help.*

6. What sort of incidents could contribute to someone feeling suicidal?

*Any event that confirms beliefs that are already hopeless, worthless, and helpless about the Self can give rise to these suicidal thoughts. Events that can give rise to these thoughts include financial problems, especially bankruptcy, relationship breakdown, client complaints - especially to a veterinary board and, in some cases, even unexpected outcomes of clinical cases. In reality, it is interpretation of the event and the personal meaning given to it that is the major factor.*

7. How would I know if someone I care about was contemplating suicide? Are there any signs or signals to look out for?

*There are many signals that may indicate suicidal thoughts. These signals include a change in communication from optimistic to pessimistic statements; withdrawing and isolating from friends and family; as well as sadness of mood. Frequently, however, changes in behavior are not observed as people have a habit of hiding their emotions as well as their thoughts about Self.*

8. How does suicide affect friends and family members?

*After the initial grief process for friends and family, unanswered questions remain. These questions involve them personally and include the questions, “why didn't I know”? “Could I have done something different”? “Did something I said or did contribute to the problem”? Frequently, there is a sense of guilt which may arise from the answers that an individual might give to his or her own questions. The effect of a person’s suicide on others is profound and prolonged.*

9. Who can veterinarians contact should they recognize these feelings?

*If you suspect a friend or family member is not coping, it is appropriate to gently broach them on the issue. If they are open to communication at this point, you can encourage them to seek professional help from an appropriately trained person. In some cases the best person for them to discuss the problem with would be a medical practitioner. However, the most effective treatment for depression is Cognitive Behavior Therapy as practiced by a counselor or psychologist.*

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## Discussing Ex Gratia Settlements

**(Article 385)**

*"Ex gratia"* means *"by favour"* and refers to a voluntary payment without acknowledging liability. An *ex gratia* payment is used where the giver recognizes that they may have been negligent and offers the offended party a monetary settlement that prevents a lengthy and expensive court battle. An *ex gratia* payment provides the injured party with compensation (usually less than they would have originally bargained for) and the 'negligent' party settles the case (usually for less than a Court may have awarded); a give and take settlement where each party is (hopefully) equally appeased.

In a nutshell, there is no "standard" *ex gratia* letter that they VDA can supply to our members without examining the reasons that the member may have for wanting such a thing. The reason is that each case has to be dealt with individually and an ex gratia letter is then drafted according to the individual facts of each matter. It would be impossible for one standard form to suit all cases.

A word of caution:

• An *ex gratia* letter is not designed to be used in each case in which accounts are written off.
• An *ex gratia* letter should only be used after careful consideration of all the facts involved in each individual case and certainly only after a serious attempt at resolving the dispute between the two parties has been made.
• In addition, an *ex gratia* settlement letter does not avert a client from proceeding to lodge a Veterinary Board complaint.

The VDA is the only organisation with the skills and experience to assist in mediating veterinary disputes. The VDA has the veterinary knowledge and experience that is essential in evaluating the facts where a client perceives unsatisfactory veterinary treatment. The VDA is also the only organisation with the legal expertise to be objective and thorough in investigating each and every individual case. During the ADR process, the VDA invites the pet owner to put their grievance in writing and then compares this to the veterinarian's version of events. In most cases, the VDA is able to provide the pet owner with a response that answers all their medical questions and explains the realities of veterinary practice and the legal requirements that the pet owner would have to meet in order to make a case. Where there has been some degree of negligence on the part of the veterinarian, the VDA is able to use the ADR process to offer the pet owner a mediated settlement which is, in most cases, the ultimate intent of the pet owner.

If you are a practice owner, be warned that to simply offer to waive your fees or write off a client's account because you think this may resolve any potential dispute may not necessarily be the end of an issue. Pet owners will very quickly realise that you are a soft target and may abuse your kind-hearted nature and you may just end up in financial straits.

If you are a locum or an assistant, working at a practice owned by a non-VDA principal, and the practice is in the (bad) habit of waiving bills just because an owner complains, we recommend that you do not get involved in this. In fact, we advise that you immediately refer any disputes relating to accounts to your employer, leaving the employer to deal with the matter. This is an issue between the practice owner and the client, as the client is a customer of the practice and is not your customer. The VDA would use this argument in your protection, in the event that a client attempts to implicate you for any reason.

In the event that a client has a complaint or grievance that involves your professional conduct, it would be in your best interests to request that they submit their complaint to you in writing. Immediately after this, you should contact your VDA consultant who will take over the case and enter into Alternate Dispute Resolution (ADR) with the client.

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Published 2015-11-25

## Keep your colleagues close….

**(Article 384)**

When a veterinarian requests a client to return their pet for follow-up treatments but the clients do not comply, it can unravel the entire treatment process and set the treatment up for failure. Often, these clients are quick to report the veterinarian to the Veterinary Boards, claiming a case of malpractice or negligence against the veterinarian. The boards are usually told a completely different version of what actually transpired, leaving the veterinarian to have to explain the actual version of events, as in the following case.

Mr X's dog was presented to Dr A's practice, with a red eye. Dr A diagnosed an eye infection and dispensed antibiotic eye-drops. He asked for the dog to be brought back for a check-up two weeks later. At that visit, the medication was repeated.

At the fourth visit, Dr A recommended a referral to a specialist.

The specialist diagnosed glaucoma. The specialist explained that the dog had lost its vision in that eye and that he would have to surgically remove the eye and replace it with a prosthesis. This came as a shock to Mr X, since he had believed that they were dealing with a common eye infection.
In his letter of complaint to the Veterinary Board, Mr X wanted to know why a "stronger medication" was not prescribed earlier in the course of treatment, and whether Dr A had made a correct diagnosis. In his letter, Mr X asked why Dr A had not referred the patient to a specialist sooner if he had not been sure. Mr X not only demanded his money back, but also compensation for future cost of treatment for his dog's eye.
Dr A consulted the VDA, and a replying affidavit was drafted.

Dr A stated that at the first examination of the dog, he had diagnosed a severe diffuse superficial keratitis of the right eye, caused by either a bacterial or viral infection. The intra-ocular pressure was normal. He prescribed antibiotic eye drops.

The patient was brought in again four days later and Dr A was satisfied with the progress. Dr A added an anti-inflammatory to the treatment. He asked for the dog to be returned in another four days, or earlier, if any deterioration was spotted. He also advised the owner of the risks of cortisone therapy.

The dog was instead returned 21 days later - a couple of weeks after the medication would have run out if administered correctly by Mr X. Dr A nevertheless noticed an improvement, despite the delay and lack of medication, and prescribed the same drugs again, with the same warnings as before, and advised them to return the dog on completion of the medication for re-examination.

The next time Mr X presented his dog was a full thirty days later. The whole appearance of the eye had changed dramatically, and now showed all the symptoms of glaucoma. The dog was immediately

referred for specialist care, but since it was late on a Friday afternoon, the soonest that the specialist could assist was on the following Monday.

The specialist concerned was approached for his opinion on the case. He confirmed that Dr A was entitled to have diagnosed superficial keratitis based on the symptoms presented. This may, on occasion, deteriorate into a deep interstitial keratitis, which in turn can result in a secondary anterior uveitis, leading to a secondary glaucoma. He also commented that the glaucoma could well be attributed to the rather long interval between the last two visits (in other words, contributory negligence by the owner!)

The board found that Dr A had acted reasonably and dismissed the complaint. In part, this case was successfully resolved because Dr A kept good notes on the symptoms and signs and results of tests. The supporting statement from the specialist was also invaluable in assisting Dr A defend his reputation.

You never know when you may need someone to help you, so it is advisable to maintain good collegial relationships. Good collegial relationships, good record keeping and a diligent approach to each case are your most important tools in fighting the inevitable complaints that will come your way. If all these elements are there when you contact the VDA to assist with your response, the VDA can almost always achieve a positive case outcome!

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Published 2015-11-18

## Veterinary Telemedicine

**(Article 384)**

In keeping up with trends and as websites and cellphone applications flourish and boom, the veterinary profession – not wanting to be left behind – wants to know if telemedicine is legal and a viable method of practising veterinary medicine.

In the United States, VIN recently published an article on telemedicine in which Dr Lance Roasa, who is a board member of the American Veterinary Medical Law Association, was asked by a service provider what fees should be charged for over-the-Internet examinations, and whether he, personally, would like to offer real-time remote veterinary care online.

Dr Roasa advised VIN that in the absence of clear guidelines and since the laws that govern veterinary practice varies in each state, it would be preferable to steer clear of telemedicine. "The risks far outweigh the benefits," he was quoted as saying.

In order to understand the risks, one needs to understand the underlying issues. The fundamental fact is that human patients can evaluate their own symptoms and can easily communicate these to a health provider; whereas animal patients cannot. In human medicine, there does not need to be a face-to-face physical examination in order to make a correct diagnosis and thereby provide the appropriate treatment. In fact, it would be fair to say that most human consultations take place without a full hands-on physical examination and in some cases, without a physical examination at all. Therefore, telemedicine for humans is beginning to become a popular form of treating patients.

In veterinary medicine, a veterinarian would not be able to obtain sufficient reliable information from an owner to be able to make a responsible diagnosis without a physical examination. This is why veterinary boards (and malpractice insurance companies) require a proper veterinarian-owner-patient relationship throughout the course of treatment, which can only be achieved by an initial hands-on physical examination of the patient followed by regular hands-on re-examination of the patient, as appropriate.

The VDA believes that the closest that veterinarians can come to the human telemedicine service under current law is a telemedicine referral service. The VDA is currently developing such a service for its members, in which general practitioner members will be able to contact specialist members 24/7 for advice and guidance with their treatments via the VDA's VDATS service. As long as the general practitioner physically examines the patient, it will be lawful for the specialist member to assist with the case. This service will be introduced as soon as the required software (currently under development) becomes available. For a modest fee, members will be able to register instantly and in real time in order to receive instant specialist assistance with their more difficult medical and surgical cases. By making full use of this service, VDA members will reduce their exposure to the possibility of misdiagnosis and improve the standard of their management of the case, thereby reducing the risk and severity of complaints and claims against them.

There is one caveat:  Certain US states require that only a veterinarian licensed in that State may give advice.  This antiquated approach is in conflict with modern society and state boards will need to abandon it.   When the time comes, the VDA will approach each of these states to obtain permission for VDA members licensed in that state to participate in VDATS.

In the meantime, the VDA strongly advises its members:

- Not to engage in making remote diagnoses or providing remote treatments to any animals under any circumstances anywhere in the world.
- Most definitely do not do so through any third party service provider.
- Do not do so, even if the owner is a regular, trusted client and well-known to you.

Your statutory body would not be pleased if you did do so and your indemnity provider will not cover you for claims arising from remote diagnosis and treatment.

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Published 2015-11-11

## Sort out your stress levels

**(Article 382)**

As we begin to enter the "silly season" and the end of the year rolls in, you can count on an increase in demand for after-hour services. There will also be an increase in crazy clients who will push your tolerance and patience to the limit - and beyond. We would like to remind our members that it is an important aspect of life to learn to manage your stress levels.

The simple realization that you're in control of your life is the foundation of stress management. Managing stress is all about taking charge: of your thoughts, emotions, schedule, and the way you deal with problems.

Until you accept responsibility for the role you play in creating or maintaining it, your stress level will remain outside your control.

There are many unhealthy ways of dealing with stress. These include smoking, drinking too much, overeating or under-eating, withdrawing yourself socially, using pills or drugs to relax, sleeping too much, procrastinating and taking your stress out on others – either physically or emotionally. These strategies may seem to temporarily reduce your stress, but in the long run will cause more harm than good.

Not all stress can be avoided, and it's not healthy to avoid a situation that needs to be addressed. But you may just be surprised by the number of stressors in your life that you can avoid.

Taking on more than you can handle will set your stress levels alight. Learning to say "no", whether in your personal or professional life, will certainly help to control your stress levels.

Take control of your environment and avoid spending time with people who make you feel stressed. By avoiding such people, you will no doubt also be avoiding topics of discussion that get you heated.

Analyze your schedule and distinguish the things that you must do, in comparison to the things that you should do. Eliminate tasks that do not necessarily have to be performed now.

Express your feelings instead of bottling them up. By speaking your mind in a respectful way you will be avoiding built-up resentment which would not resolve the situation.

Proper time management can vastly reduce your feelings of anxiety and stress. When you leave yourself with too little time to achieve all your goals for a particular day, you are bound to get yourself worked up and stressed out.

If you can't change the stressor in your life, you can adapt to the situation by changing your expectations and your attitude. Take perspective of what will matter in a month or a year and when you realize that

the situation is not worth getting upset over, shift your focus and energy onto something more constructive.

Remember that perfectionism is a major source of avoidable stress. Set reasonable standards for yourself and for others. Focus on positive issues rather than negative issues.

Accept the things you cannot change. You will need to realize that some sources of stress are unavoidable and not in your control. You cannot prevent or change things such as the death of a loved one, a serious illness or a national recession. Accept that these things may be difficult but that they cannot be helped or changed by you.

Exercise, eat healthily and make time for fun and relaxation and doing the things you love. One way of reducing your stress dramatically, is by doing something you enjoy every day. Look for the good in every situation and remember the saying "What doesn't kill us makes us stronger."

Don't get so caught up in the hustle and bustle of life that you forget to take care of your own needs. Nurturing yourself is a necessity, not a luxury.

There are many stress factors that you cannot avoid, and if you feel that stress is ruining your life, the VDA has a psychology counselor at your disposal. Dr Peter Hatch will be able to help and guide you and he can be contacted via e-mail at: peterhatch@clubtelco.com .

Source: http://www.helpguide.org/mental/stress_management_relief_coping.htm

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Published 2015-11-11

## Digital and Remote medicine on the rise.

**(Article 381)**

One of the new areas of development in the veterinary world (as it is in the human world) is digital medicine, and the use of computers and communication software and recordings for remote consultations that digital technology now makes available.

Dr A recently asked for the VDA's advice as he has been providing house-based behavior consultations and does not want to fall short on professional ethics and practice, not to mention insurance requirements.

Along with treatment waivers for off-label medicine and aggression release forms, Dr A has been making sure that all his VDA approved consent forms have been signed by each client.

Dr A is considering providing consultations via Skype for people in areas where they cannot get access to a Veterinary Behaviorist. The Skype consultations will provide Dr A with adequate information, along with the opportunity to see the setup of the house through Skype cameras, which will enable Dr A to advise on the implementation of behavioral management strategies.

The VDA gave Dr A the following advice:

- There must be a bona fide veterinarian - patient - owner relationship.
- Dr A must have examined the animal himself or be acting under referral from a veterinarian who has examined the animal.
- Dr A should save the video recordings of his consultations (together with consent forms and clinical notes).
- Dr A would need video recordings for every consultation and he would also need to get his clients to send him video recordings of the animal's progress. The goal is for Dr A to get as complete a video record of each animal he treats.
- Dr A must comply with the usual requirements for prescribing medications.

The VDA also recommends that our members install video equipment in their consulting rooms as well as voice recording software on their phone systems. We predict that this will become standard in the years to come. By having a complete video record of your consultations, you are putting yourself ahead of the game.

Digital video and voice recordings will make it that much more difficult for abusive and dishonest animal owners to make vexatious and fraudulent complaints against you, which are an intolerable attack on your professional integrity and reputation. Some pet owners use the free board complaint process as a guide to decide whether to institute a civil claim based on its merits.

Remote consultations based on the increasing power of digital technology is new ground for veterinary

boards, and it is impossible to predict how boards will view the use of new technologies.

The VDA pioneered the use of ADR in the veterinary profession and it has proven to be very successful in giving pet owners an opportunity to be heard, to give expression to their emotions regarding their pet, and giving the owner an answer on the medical and legal aspects which they will never obtain from a board complaint process. The ADR clause in the consent forms will assist the VDA in protecting our members - which is our main aim. The more video and other records and information you can provide to us, the better we can defend you.

Fortunately, access to video and storage of video has progressed to the level where it is now practical for our members to keep video recordings of their consultations. With the treatment of a sick animal, there is no substitute for a 'hands-on' examination of the animal. But with behavior therapy, 'hands-on' is less important after the primary examination as it is all about the animal's behavior and demeanor, which cannot easily be evaluated in a consulting room, and is best evaluated in the animal's home environment. Video records for remote consultations appear to be well suited for behavioral therapy.

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Published 2015-11-04

## A Travesty of Justice?

**(Article 380)**

More than half of the complaints that are investigated by the SAVC are frivolous, vexatious or groundless. Yet in many of these cases, the accused veterinarian is subjected to a long-drawn-out and extremely stressful period of months, and sometimes years, before the matter is finalised. We know of no other profession in which the regulatory body for that profession is willing to do this to its own members.

Some complaints are clearly and transparently dishonest, yet the SAVC refuses to dismiss them. The most recent SAVC case, DM1784: Dr Rene Mostert, was described in last week's newsletter, with the promise that we would bring you a breakdown of the legal aspects this week.

Here is a short summary of the circumstances that surrounded this matter. The complainant (who was an attorney and the owner of the dog), was away in Cape Town when the dog was presented to Dr Mostert in Pretoria by the attorney's sister-in-law and the domestic worker. The dog was boisterous, jumping and pulling at the lead and barking loudly and continuously. The sister-in-law was struggling to hold onto the Husky. At some point she went outside, then came back to the building entrance, put the dog into the car and left with the domestic worker. The complaint made to the SAVC was that Dr Mostert had "refused" to see the dog.

Three things immediately jump out here. 1: Vets make their livings from examining animals, therefore it does not seem credible that Dr Mostert refused to examine the dog. It is important to understand that, at the outset, regulatory bodies have to make a decision on the credibility (believability) of the version presented to them. At this point they could not have any idea about the actual veracity (truth) of the version that has been presented to them. Disputes are usually based on conflicting versions of events and regulatory bodies most times can never be certain that any of the versions they examine are actually the truth. So regulatory bodies are obliged to make their determinations of whether to prosecute or not based on the credibility of the versions they examine. In this case, it is immediately not credible that a veterinarian would turn away an examination. And on this basis alone, the Investigation Committee failed in the pre-screening of the complaint. This complaint should have been dismissed at the outset, due to a lack of credibility. This would be the Investigation Committee's first failure in this case.

2: Every person has the fundamental right of freedom of association. This is a fundamental human right contained in the Bill of Rights, which is part of the Constitution. The Constitution is the highest law in the land and veterinary law and most especially the subjective beliefs of the Investigation Committee can never take precedence over the Constitution. If your doctor does not want to see you then your doctor is perfectly entitled to refuse to see you (except, of course, in an emergency). So, while initially examining the complaint, the Investigation Committee should have considered that, if it were "true" that Dr Mostert had refused to see the dog, this would be her right to do so - and any such refusal can

never be construed as professional misconduct. If a person had complained to the Medical Council that her doctor had refused to see her, the medical board would have been obliged to inform the complainant that her doctor had the right to do so and they would have dismissed the complaint. So it should have gone with the SAVC. But it did not. As events unfolded, Dr Mostert was to be punished with two years of stress leading up to the tribunal; for the arbitrary letter from an irrational client whose complaint was taken as true at the outset, despite improbable circumstances. Circumstances that could also be looked upon, in the alternative, as a veterinarian acting completely within her rights. Investigation Committee failure number two.

3: If Dr Mostert really did refuse to examine the dog, why didn't the clients take the dog to another vet? They were in a big city with veterinary practices in abundance. Any reasonable owner, concerned for their pet, would have done so. Not asking this question of the owner or considering the lack of reasonableness in this set of circumstances, makes for Investigation Committee failure number three.

The factor that probably got the SAVC going down the wrong road in this case was that the dog died overnight. No-one has any idea why the dog died, since the complainant refused to have a post-mortem done. The owner did ask for stomach contents to be analysed for Aldicarb and other poisons, but these tests were negative. Without an established cause of death, no-one can say why the dog died and therefore no-one can say that the death was due to the animal not being examined the previous day. There are many possibilities for this dog's death: a car accident subsequent to the presentation to Dr Mostert, a gastric torsion – the list goes on. None of which points a finger at Dr Mostert. If nothing pointed a finger at Dr Mostert, the Investigation Committee was obliged to dismiss the case. Investigation Committee failure number four.

The charge against Dr Mostert was that she failed to examine the dog. The charge did not go on to allege a breach of any particular rule of professional conduct. This means that the charge of misconduct is incompetent, since it does not allege a transgression of a rule. You can only transgress a rule of practice if that rule exists and is proscribed in the legislation. Investigation Committee failure number five; Legal Director failure number one.

There was no credible evidence to refute Dr Mostert's affidavit in response to the complainant's allegations. The Investigation Committee can only lawfully order a hearing if there is sufficient evidence to provide a reasonable prospect of a conviction. If there is insufficient evidence to support a conviction, then setting a hearing becomes unlawful persecution. Investigation Committee failure number six.

The prosecutor called four witnesses: The complainant, the complainant's husband, the sister-in-law and the domestic worker. A prosecutor has the duty to interview the witnesses to determine whether they are credible and whether their evidence would provide him with a reasonable prospect of achieving a conviction. Neither the complainant nor her husband were present when the dog was brought to the practice, so had no personal knowledge of any of the circumstances surrounding the case. When examined, the complainant made the statement - under oath - that her version was based on the domestic worker's version. On examination, the sister-in-law admitted that she had been outdoors whilst at the practice and had no personal knowledge of what had been said between the domestic

worker and the practice's personnel. She did, however, concede that if this was her dog, she would not have taken the dog to the vet because it looked "normal". If the prosecutor cannot make a case, then he is obliged to withdraw the prosecution. SAVC Prosecutor failure number one.

The testimony of the domestic worker was the most damaging evidence to the prosecutor's case – and to the integrity of the Investigation Committee and the SAVC. Firstly, the domestic worker did not recognise Dr Mostert at the hearing, and pointed out one of the Tribunal members as being the person behind the reception desk that she had spoken to that day. The domestic worker had no idea about the contents of her own affidavit, had no memory of making the affidavit and clearly did not agree with its contents. It was obvious that the complainant (who, you will remember, was an attorney) had coerced the maid into signing an affidavit containing facts that were clearly not true. The four witnesses also proceeded to contradict one another about fundamental issues relating to the case. The case presented by the prosecutor was not just farcical but also grossly incompetent. SAVC Prosecutor failure number two.

The only fact that the prosecutor had to hang his case on was the apology that Dr Mostert had made to the husband of the complainant on the following day. Dr Mostert was an assistant at the practice and had been coerced by the practice owner into apologising to the husband. The husband had taken this to be an admission by Dr Mostert that the dog's death had been her fault. The practice owner pointed Dr Mostert to the SAVC policy made by Professor Sybrand van den Berg. Prof. van den Berg had stated in the SAVC News of June 2004 that "An apology at the right time can avoid conflict and an admission of guilt is not regarded as a weakness, but honourable." Apologies are naturally always interpreted by owners as an admission of guilt, especially those owners that are looking for someone to blame for the death of their animal, and Prof. van den Berg's advice to the profession demonstrates archaic and dangerous thinking and might be one of the worst SAVC policies ever directed to the profession.

The Investigation Committee consists of Dr Glen Carlisle, Dr Mark Verseput, Dr Riaan Mulder and Dr Mike Modisane. The tribunal consisted of Mr Derick Block, Dr Andre Killian, Dr Peter Kirchner and Dr Brigitte Wenhold. The prosecutor was Mr Theuns Moller. The legal director is Dinamarie Stoltz. In other words, 10 people had a role in the prosecution of Dr Mostert's case. In this case, the only person who visibly acted in any way competently was Dr Andre Killian. Dr Killian asked relevant and legally competent questions and clearly saw straight through the prosecution's case. The other two tribunal members asked irrelevant questions and clearly did not understand their proper role. The SAVC has a duty to ensure that tribunal members are suitable candidates and are properly trained to fulfil this very important role. SAVC failure number one.

The final outcome of the tribunal was that Dr Mostert was found not guilty. This brought an end to Dr Mostert's two-year living nightmare. Dr Mostert burst into tears at the end of the hearing and did not stop crying for a full 30 minutes. Clearly she had suffered severe mental stress and trauma over an extended period of time. All because an owner had made a false and vindictive complaint and the SAVC had processed the complaint without applying their minds and questioning it.

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## The Trial of Dr M

**(Article 379)**

Part One:

Alan Greenspan, the ex-Chairman of the Federal Reserve, has been attributed with saying “I know you think you understand what you thought I said but I'm not sure you realize that what you heard is not what I meant”.

This problem was particularly evident in an incident which resulted in a Tribunal held at the South African Veterinary Council.
The owners, Mr and Mrs X, were on holiday in Cape Town. Their domestic worker had noticed their Husky vomiting and kicking his legs. Mrs X's sister, Mrs Y, fetched the Husky and the domestic worker and drove to Mrs X’s veterinary facility. Dr M, the practice assistant, was on duty when the domestic worker and Mrs Y entered the waiting room.

Here is a description of what occurred, none of which is in dispute:

The Husky was boisterous, jumping and pulling at the lead, and barking so loudly and continuously that no-one’s voices could be heard above the noise. Apparently, the Husky was reacting to the presence of a kitten in a cage near the reception desk. The domestic worker sat down in the waiting room whilst Mrs Y struggled to hold onto the Husky. Very soon, Mrs Y took the dog outside the practice, leaving the domestic worker to explain what was wrong with the dog at the reception desk. Mrs Y then came back to the building entrance and fetched the domestic worker and the dog and drove them both home.

Unfortunately, the following morning, the Husky died. When Mrs X was informed of what had happened, she refused the offer of a full post mortem, but asked that stomach samples be analysed to establish if there was any poison, such as Aldicarb, that may have caused the death of her dog. The test results were negative.

Mrs X wrote a complaint to the Veterinary Council. The Council’s reaction was to charge Dr M with failing and/or omitting to examine the Husky. The charge was not worded in a way that alleged a breach of any particular Rule, nor did it establish that a veterinarian has some sort of legal duty to examine an animal that is not an emergency without the owner or agent taking this animal into the consulting room to be examined.

This charge does not make good sense because the raison d'etre of being a veterinarian is to examine animals that are presented to them. Why would any veterinarian send a dog away without examining it? The veterinarian would not be performing the job s/he was employed to do, nor would s/he be making any money for the practice so that they could earn their salary.

It took two years for the hearing to come before an SAVC Tribunal. The prosecutor called four witnesses: Mrs X, Mr X, Mrs Y and the domestic worker.

Under examination:

• Mrs X conceded that she was not present at either the house or the practice, and therefore had no direct or personal knowledge of what occurred or what was said. The information on which she had based her complaint had come from the domestic worker. (=Hearsay evidence).

• Mr X testified that Dr M spoke to him the following day (when he brought the Husky's body to the practice for the samples to be taken). Dr M had apologised for not examining the dog, acknowledged that the death was her fault, and made a statement that she "did not know what to do with them" when Mrs Y, the domestic worker and the dog arrived.

• Mrs Y stated that she told the veterinarian to speak to the maid to obtain a history. Mrs Y confirmed that she did not hear what was said by the veterinarian. Mrs Y also acknowledged that she was in a hurry because she had a plane to catch. Mrs Y acknowledged that if this was her dog, she would not have taken the dog to the vet because it looked "normal".

• The domestic worker did not recognise Dr M, although she was present in the room, and when questioned as to who she had spoken to, she instead pointed out one of the Tribunal members as the person behind the reception desk that she had spoken to that day. The domestic worker stated that the veterinarian had not stepped out from behind the reception desk; that the veterinarian did not want to help them and that the veterinarian had sent them away with some food. However, she also stated that the dog had been better that afternoon and had eaten some food; and that the vomiting and kicking legs had not recurred.

The cross-examination was most illuminating. When four witnesses are aligned against one accused person, one may assume that the prosecutor must have a strong case. However, the cross-examination showed that:

• Mrs X prepared the affidavit for the domestic worker,
• Mrs Y translated the domestic worker's version into English from Afrikaans,
• However, the domestic worker stated that she did not understand English, nor could she read and understand the affidavit that had been written for her.
• This testimony highlighted the contradictions and inconsistencies between the versions put by the four witnesses. The defence advocate made his objections very clear and the Chairman was moved to remark to the Tribunal that they had "got the point" about the lack of credibility of the domestic worker. The domestic worker was the only person who had been a witness to what happened to the dog at home and the domestic worker was the only person who could provide information on the medical history of the dog to Dr M.

Dr M testified that she had stood at the waiting room door and asked Mrs Y to come into the consulting room for an examination, but that Mrs Y had stated that the dog seemed "fine now". Dr M then stepped forward into the waiting room to get closer to the domestic worker and Mrs Y because the Husky was making so much noise that she could not be heard. At this point, Mrs Y told Dr M to speak to the domestic worker. The domestic worker described that the dog had vomited and had kicked his legs. Dr

M considered that this may indicate a seizure, but that one seizure was not necessarily an indication to provide immediate medication. Dr M considered that it would be better for the Husky to go home to calm down, because he might injure himself in the cage in his current uncontrollable mood. Dr M also decided that sedatives would be contra-indicated in these circumstances. Dr M stated that she went to the waiting room entrance and invited Mrs Y again to come in for a consultation, pointing in the direction of the consulting room. However, Mrs Y responded that "He seems fine, we will watch him".

Dr M stated that she told the domestic worker to phone the practice or the after-hours facility if any untoward signs occurred again, and Dr M handed the domestic worker a practice business card with her name and the telephone numbers printed on it. It was noted that this card was sent in by Mrs X as part of the evidence, which corroborated the veracity of Dr M's statement and that she had wanted these clients to follow up with her should anything untoward occur.

When questioned about the fact that Dr M had made an apology to Mr X the following day, Dr M stated that her employer, the practice owner, had instructed her to apologise. (Professor Sybrand van den Berg had made a policy in the SAVC News of June 2004 that "An apology at the right time can avoid conflict and an admission of guilt is not regarded as a weakness, but honourable.")
Dr M stated that her apology was not an admission of wrongdoing. She had made a hand gesture when speaking about "not knowing what to do with them" but the hand gesture and words stemmed from the desire to not cause a family rift by telling Mr X that Mrs Y had taken the dog away after twice being invited to come inside for a consultation.

The Tribunal spent some time in questioning the various witnesses and Dr M.
One member of this Tribunal, Dr Andre Killian, stood out as being attentive and insightful. His questions to witnesses were considered and to the point. It appeared that at least one of the other members of the Tribunal took the matter less seriously and seemed to be of the opinion that once a veterinarian stands before a Tribunal, it should be a cut-and-dried case of finding such a person guilty, or there would be no reason to have the hearing at all!
Since the members of SAVC Tribunals do not, as a matter of course, provide full reasons for their decisions upfront, it is impossible to understand on what basis this Tribunal made its decision. But we are happy to relate that the Tribunal found Dr M not guilty.

Next week, we will bring you a considered breakdown of the legal aspects of this Tribunal and what it means in terms of the standards of the current Disciplinary process in South Africa.

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Published 2015-10-21

## Cheap cuts

**(Article 378)**

Mr and Mrs X live in a different town to that in which Dr A's practice is situated. However they took their dog to Dr A for surgical castration, since they had found out that Dr A offered a low-cost operation. Dr A believes that performing inexpensive castrations is a community service, due to the fact that the dog may roam around, impregnating receptive bitches and causing litters of unwanted puppies to be born. Unfortunately, in this case there were complications and the dog suffered severe post-operative swelling. A second surgery was required and Dr B from a neighbouring specialist veterinary practice dropped in to assist with the surgery as a favour, but also as an educational demonstration for the vets at Dr A's practice.

Despite the two veterinarians best efforts, after the second surgery the dog suffered even more swelling and was unable to urinate. He was hospitalized and catheterized. Mr and Mrs X refused to pay for these services, so Dr A offered euthanasia, to which Mr and Mrs X consented . Mr and Mrs X complained to Dr A that they were unhappy about what the castration and additional surgery had cost them and mentioned that they wished they had never brought their dog in for the castration. Mr and Mrs X requested the body of their dog for burial purposes.

Dr A contacted the VDA for advice as, although the owners had only complained over the telephone, Dr A was worried that the verbal complaint would escalate into a written one to the Veterinary Board, especially since Mr and Mrs X had requested the body of their dead dog. The VDA advised Dr A to offer the owners a post-mortem to be conducted by an independent specialist. The VDA also advised Dr A that if the owners refused a post-mortem, it would be a good idea to ask their permission to take samples, such as biopsies, of the affected area and heart; but not to do anything without Mr and Mrs X's permission because if the owners took their dog's body home and found cuts and stitches where there shouldn't be any, this may incite them to lay a complaint against Dr A.
The VDA also advised Dr A to phone Dr B, who assisted in the second operation and request his report.

Dr A contacted Mr and Mrs X and discussed a post-mortem with them. They declined the offer and told Dr A that if he thought that the post-mortem would benefit other dogs in the future, Dr A was welcome to have a post-mortem done on their dog at his own expense. Mr and Mrs X said that they were not concerned about the outcome of a post-mortem as their dog was dead and could not be brought back.

Dr A had obtained consent for the original castration but not for the second operation (each procedure requires a different consent form to be signed by the owners). Dr A also did not obtain a full payment for the treatment of Mr and Mrs X's dog, but Mr and Mrs X threatened to "have a go" at Dr A if he made any attempt to recover more money from them.

Dr A felt that he did not want to challenge Mr and Mrs X any further and the dog's body was returned to them for burial.
Thankfully, they were not heard from again.

Member are reminded that it is best practice to charge the full fee on admittance of an animal for any surgery or procedure. This helps to eliminate the problem of opportunistic clients taking advantage of the fact that they have not paid the whole bill and giving themselves an illegitimate discount.

We also wish to remind our members that each procedure that is performed on an animal requires its own consent form; the first consent form signed does not necessarily supply a “blanket consent”.

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Published 2015-10-13

## Missing ashes - a matter of contractual law

**(Article 372)**

After Mrs X's dog was euthanized, Mrs X asked Dr A's veterinary practice to have her dog's body cremated and the ashes returned to her.

Mrs X called in to collect the ashes on the scheduled day, but when she arrived at the clinic she was informed that her dog's ashes were not there. Dr A undertook to find out what had happened to them. Mrs X seemed disappointed but pragmatic.

Dr A contacted the crematory and was informed that they had not received instructions for the return of these ashes.

When questioned, the kennel staff were adamant that the dog's body was sent with the correct information sheet and request for return of ashes attached. However, Dr A suspected that the kennel orderly in charge neglected to fill out the correct instruction form.

Dr A telephoned the VDA for advice.

The VDA informed Dr A that this matter boiled down to a breach of contract on Dr A's part. Dr A failed to perform the contract by not supplying the ashes to Mrs X as promised. This negated the contract; and Dr A should refund Mrs X's money. Dr A is not lawfully required to refund the money paid for euthanasia or cremation, as this was legitimately earned; Dr A only need refund the portion of money which was charged for the return of ashes.

There ought not to be any question of a board complaint as this was merely a contractual matter and there was no unprofessional conduct in a medical sense.
Dr A contacted Mrs X and explained the situation. She was irritated and upset as she did not receive what had been promised, but Dr A refunded Mrs X the money she had paid to have the ashes returned to her and so she was placated. Needless to say Dr A was very relieved that she did not react as badly as he had anticipated.

Although the above issue may seem simple enough to resolve, it often happens that veterinarians are unclear as to what their legal position is and this can cause unnecessary emotional distress for both the client and the veterinarian. The VDA is able to give sensible, coherent advice that will help to resolve whatever legal or management issue you may have - and we are very willing to assist!

Call our 24/7 helpline:

United States and Canada: 855 7575700
South Africa: 087 550 9000
Australia: 02 8355 9900
Hong Kong: 5808 5451
Or write to us at info@vetdefenceco.com.

Our new websites are also coming online and are filled with advice and guidance; members should log in to obtain their informative Handbooks under the MyVDA tab on these websites:

www.vda-america.org
www.vda-southafrica.org
www.vda-australia.org
www.vda-asia.org.

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## Medication for Humans does not have a Place in Animal Welfare Work!

**(Article 374)**

Dr A has been working at a privately-run welfare organization for some time. He opened an account at a wholesaler for drug supplies that were required to treat the animals at the welfare's clinic.

One morning, Dr A discovered that a parcel of human medication had arrived from the wholesaler and then - disappeared. (It became clear to Dr A that, in fact, there had been a string of human medications arriving that were not being put into the drug store for the animals at the clinic. The wholesaler that supplied these medications has two warehouses - one for veterinary medications and one for human medications. These arrive in separate parcels and in different deliveries and so had by-passed Dr A's usually vigilant care). When he delved deeper, Dr A learned that the parcels contained human antibiotics and different makes of schedule 5 anti-depressants. Dr A suspected that his practice manager may have been ordering the medications.

Dr A had only worked at the welfare organisation for 6 months and was already burned out. He had worked tirelessly, 7 days a week, but after many months without a break, and with too many patients to care for, he felt he was near the end of his tether.
Dr A contacted the wholesaler and requested that NO medication of any kind be supplied to the organization unless it was ordered by himself! The wholesalers said it would be too much administration for them to ensure that orders "only came from Dr A" and declined to guarantee this. (Obviously a sale to them, regardless of who made the order, would be better than no sales at all. This position, however, is not a legally correct one, and the wholesaler could get into trouble for knowingly supplying scheduled drugs to a lay person.)

Dr A was highly concerned, as a veterinary practice nearby had recently been inspected by the veterinary board inspectors. The inspectors had gone through all orders made, invoices, scheduled drug lists, records and patient records to verify the usage of the medication. As the person who opened the wholesale account, Dr A did not want to take the blame if these inspectors were to pay the animal welfare organization a visit and discover what had been going on, and so Dr A decided to resign from the welfare organization.

Dr A contacted the VDA in great fear and trepidation.

The VDA gave Dr A the following advice, which we urged Dr A to act upon immediately!

Close the account at the medicine wholesaler;
Contact the drug control authority to send an inspector to take control of all the medication on the premises;
Contact the national welfare society inspector to take control of the animals; in particular, the animals in

hospital that are currently being treated;
Resign with immediate effect; and not to enter into any discussions or arguments with the manager.
Make copies of clinical records. This could prove extremely difficult if the records are on paper; but easy if they are computerised. The clinical records are the property of the veterinarian who created them as well as the facility where they were created. Therefore there is joint control and making copies while leaving the originals at the facility provides both parties with proof against tampering.
There is a common principle that veterinarians may not order and dispense human medication for human beings. Veterinarians may not act as "pharmacists". The above points comply with the rules and regulations applicable in the jurisdiction where Dr A was domiciled, as well as with a veterinarian's ethical duty.

One of the other issues in this story is that no highly scheduled drug register was kept at the welfare organization. Such a drug register is a legal requirement for any place where scheduled drugs are administered and dispensed. It is worth noting that trying to create a drug register after the events have occurred is not a solution, as it will create more difficulties than it will solve, even if it proves possible to capture each and every item that was ordered, administered and dispensed. Of paramount importance is the fact that such a register would be created in hindsight so would probably be regarded as fraudulent.

This story has not yet been resolved, and we will bring you the conclusion as soon as we know what finally transpired.

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Published 2015-10-13

## All for nothing!

**(Article 373)**

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www.vda-southafrica.org

www.vda-australia.org

www.vda-asia.org.