Barks ‘n Bytes 2016 Articles (VDA South Africa)

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Published 2016-12-21

Defend your reputation!

(Article 447)

Dr A was presented one evening with an overweight, panting dog which was reluctant to move. The dog was found to have otitis externa, moderate spinal pain and a weak right hind leg.

Dr A considered tick paralysis as a possible diagnosis and discussed this with the pet owner, Mr X, who said that the dog had not been treated with a tick prevention product. Dr A performed a thorough search and, after having found no ticks, suggested to Mr X that the dog required tick prevention medication as well as further searching for ticks to be performed by the owner at home. The dog was not showing clinical signs of tick paralysis as he was still eating well and was not vomiting or showing any of the normal signs associated with tick paralysis.

Two days later, Mr X rushed his now recumbent dog to his usual veterinarian (Dr C) who immediately discovered an engorged tick.

Mr X telephoned Dr A's practice the next day and complained to Dr B (the practice owner) that Dr A had not found the tick. Dr B said that he would investigate and call Mr X back.

Dr B then telephoned Dr C who said that the dog had recovered and that he had not made any detrimental remarks about Dr A's treatment when the owner had complained but had said that the tick may not have been engorged when Dr A had examined the dog, making the tick much harder to detect.

Mr X then sent a letter of complaint to Dr B regarding Dr A's conduct and demanded a full refund of the consultation fee that Dr A had charged him. He described Dr A's veterinary work as "sloppy".

Dr B contacted the VDA for advice on behalf of the practice and Dr A. The VDA immediately wrote to Mr X, inviting him to participate in ADR.

Mr X declined to participate in ADR with the VDA – indicating that he would attempt to emotionally blackmail Drs A and B. Both veterinarians agreed to deal with Mr X directly. Of course, Drs A & B did not have to agree to deal directly with Mr X – they could have insisted that Mr X deal with the VDA. But both veterinarians felt compelled by what they perceived as the "polite course of conduct", in spite of the overwhelming aggressiveness shown by the pet owner. Under normal conditions, if the pet owner "declares war" on the veterinarian, that relieves the veterinarian of any obligation to act politely, and they are best advised to withdraw and insist that the pet owner deals exclusively with the VDA. This would relieve the veterinarian of all emotional barrage, and force the pet owner to be more objective and calm.

The VDA was willing to assist Dr B behind the scenes to correspond with Mr X. However, Mr X became extremely rude and irrational. Drs A & B were, understandably, quite anxious. Dr A felt extremely stressed at facing a possible veterinary board complaint and wanted the situation to disappear as quickly as possible. Both Drs A & B were convinced that they had not done anything wrong. Both veterinarians confirmed that there was no indication to

administer anti-tick-venom treatment, which can itself cause an anaphylactic reaction when it is administered for no apparent clinical reason. However, the pressure exerted by Mr X was too much for Drs A and B to bear. Dr A decided to refund the full amount to Mr X with an ex gratia settlement agreement.

By caving in to this unreasonable demand, Drs A & B risk sending a ripple effect through their client base who will discover how easy it is to take advantage.
Another important reason why the two veterinarians should not have bowed to this pressure is that, in most jurisdictions, it is a requirement of cover that the VDA performs ADR - meaning that these two veterinarians could be voiding their cover by dealing directly with their client.

These two issues have the ability to create a recipe for disaster from which it may be difficult for Drs A and B to recover.

Publilius Syrus made the observation that "A good reputation is more valuable than money". Remember that the VDA is here to help defend your reputation. When the VDA guides your actions you have a far greater chance of succeeding against unfair emotional abuse by a client than you have when you go it alone.

Published 2016-12-14

Dealing with pet insurance companies

(Article 446)

Recently, the VDA published articles for the VDA Australia on this subject but we have since had requests for guidance when it comes to handing over clinical records to pet insurance companies by members in other countries.

Generally, the records belong to the owner in the USA and Canada, but not in South Africa, Australia and Hong Kong, where they are the property of the veterinarian. So veterinarians in the former two countries are obliged to hand over records to owners but not in the latter three countries. Even in the former two countries, the VDA advises never to hand records to third parties.

It has been reported to the VDA that there is one or more new Smartphone app on the market where the pet owner signs up to share certain veterinary information relating to their pet insurance with the insurance company. Veterinarians find themselves becoming involved because the app makes an electronic request directly to the veterinarian for the owner's records. The VDA's advice here is the same. Do not supply any pet owner information to ANY third party, even a pet insurance company. Let the owner make that decision, and bear the responsibility and liability for doing so.

Our words of caution relate to the following complications that the VDA has identified:

- Veterinarians do not have training or licensing as insurance brokers and may fall foul of insurance regulatory law;
- Claims work takes additional time and continuous effort which is not remunerated, yet holds the same risks and liability issues as if it was remunerated;
- By providing pet insurance companies with information, the veterinarian and staff are effectively performing the claim submissions on behalf of the insurer and pet owner, and incurring liability in relation to the insurance company, the owner and the veterinary professional regulator for doing so.
- The veterinarian is not a party to the contract of insurance between the pet owner and insurance company;
- A veterinarian cannot be bound – legally or emotionally – to a clause in the fine print of pet insurance company documentation which may place an onus on the pet owner to provide the clinical notes. Clinical notes are not the pet owner's by right.

The VDA recommends that veterinarians decline to provide any information to the insurance company on the basis that they are not entitled to this information because it is private and confidential, and the insurance company is a third party in these circumstances.

The risk of supplying information to an insurance company is that they or the pet owner may use the clinical notes for purposes not disclosed to the veterinarian.

Another risk is that the insurance company or the pet owner may lodge a veterinary board complaint or even a civil claim against the veterinarian based on the contents of the clinical notes. Remember that clinical notes are only an 'aid to memory' of the author; they were never designed to be forensic documents. There is much room for errors and

misunderstandings in using clinical notes as a basis for identifying and lodging complaints.

The only time a veterinarian is obliged to provide information to a third party is when requested to do so by their veterinary board or to a second-opinion veterinarian where the information is of an essential nature for further treatment for a specific animal. It is not the responsibility of the veterinarian to assist an insurance company in assessing claims.

The VDA is not opposed to insurance companies - pet owners may actually be able to have expensive procedures performed which they were not otherwise able to afford. The flip side is that a veterinarian may receive many requests for information from insurers or clients throughout the day and a lot of these requests are for trivial, irrelevant and historic purposes. This takes up a lot of the veterinarian's valuable time.

Remember that a veterinarian may not provide confidential information to a third party without the owner's permission. So, in response to a request for information to be supplied to an insurance company, all that a veterinarian is obliged to do is to provide the pet owner with the invoice, which the pet owner can submit to the insurance company. An invoice contains sufficient proof and information for an insurance company to settle claims. If the insurance company has any queries, they can confirm with the veterinarian that certain procedures were performed.

In order to make it clear right at the outset of treatment, VDA members can insert the clause below into their consent to treatment forms:
"I understand and accept that all clinical notes are the sole property of [clinic name] and that neither I, nor any pet insurance company have any rights to these; that [clinic name] are not obliged to provide reports to any third party; that there will be a fee payable for any reports provided at the sole discretion of the veterinarian concerned and that if I wish to make use of pet insurance that I will preserve invoices for veterinary care for presentation to the insurer".

We have additionally offered the clause below to members to add to their notes when they feel pressurized to provide their clinical notes:
"These clinical records are private and confidential and may not be used for any other purpose than that for which they were supplied. These records were compiled as an aide memoire only, for the sole benefit of the authors, are by their nature incomplete and were not compiled for third party or for legal purposes. These records or any part of the contents thereof may not be copied, communicated, disseminated or distributed in any form, to any other party, including to the owner of the animal, any other veterinarian, or any other person or entity."

The VDA understands the need for its members to expand their practices by taking advantage of new opportunities and pet insurance certainly expands opportunities for treatment, but veterinarians also need to protect themselves against risk and liability inherent in providing confidential information about treatments, as well as the substantial unremunerated time-wastage that insurance companies would exact upon our profession, if left unchecked.

If the insurance companies want veterinarians to do their work for them, then our Veterinary Associations should consider entering into negotiations with them to establish suitable remuneration for the time and risk this involves.

Published 2016-12-07

ADR and Ex Gratia

(Article 445)

We often have requests for copies of a VDA approved, standard ex gratia letter for when members think they may need to waive fees or write off a client account. Some practice owners simply write off an account if a client complains - in the hope that this will appease the owner and thwart a Board or civil complaint.

However, the VDA does not hand out ex gratia letters as a standard template. This is because ex gratia settlement agreements are drafted by our consultants and legal advisor for each individual case. There are more factors to consider than merely the wording of the agreement. The merits of the case and whether blame can be apportioned need to be taken into consideration. There are also human emotional factors to consider, and the future relationship between the client and veterinarian.

“Ex gratia” means “by favour” and refers to a voluntary payment that does not acknowledge liability. An ex gratia payment is often utilized when the giver recognises that they may have less than an adequate defence 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 for less than they would have originally bargained, and the ‘negligent’ party settles the matter for less than a Court may have awarded and without the black mark against their name. This give-and-take settlement hopefully leaves both parties equally appeased.
An ex gratia letter is not designed to be used in each and every case in which fees 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 prevent a client from proceeding to lodge a complaint with a Board.

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 surrounding the alleged unsatisfactory veterinary treatment as perceived by the client. 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 pet owner’s ultimate wish.

If you are a practice owner, please do not simply offer to waive your fees or write off a client’s account because you think this may resolve a potential dispute. Pet owners will very quickly realize that you are a soft touch and abuse your kind-hearted nature.

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. Rather 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, 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 assist you in Alternate Dispute Resolution (ADR).

Published 2016-11-30

Beware of Phishing for information in the veterinary world!

(Article 444)

Dr A, a Canadian member, contacted the VDA for assistance when her clinic experienced an issue with regards to sharing medical records on a mobile application.

A company called PawPrint Inc requested two of Dr A's patients' medical histories. The same owners owned both pets in question. Attached to their request was a consent form which was allegedly signed and dated by the owners.

According to the company's website www.getpawprint.com, they are a "mobile app" that stores "official medical records" for pet parents and reminds them when vaccines are due. They claim not to interpret records and allegedly all information is kept confidential.

The VDA advised Dr A to contact the owner and explain that she is uncomfortable with handing over confidential records to an unknown third party and that she is happy to provide their records to them (the owner) and they are free to utilize the services of PawPrint Inc at their own risk.

Dr A left two telephone messages for the client in order to confirm that they had indeed signed the consent form, but no one returned her call.

The VDA then assisted Dr A to draw up an email to be sent to the owners saying:

"We have been approached by a company called Pawprint with a request that we supply your pet's/pets' medical records to them for storage and use by other parties. We have left voice messages asking you to contact us to discuss this, but these calls have not been returned and we therefore address this correspondence to you.

We are uncomfortable with handing over confidential records to an unknown third party like PawPrint Inc. We are however happy to provide a copy of your records to you and you are free to utilize this service at your own risk."

The owners did not respond to Dr A's email either and PawPrint Inc sent the same forms to Dr A again.
Upon discussing this with the VDA Consultant network, it was discovered that one of our consultants had recently received a similar request from the same company. The VDA consultant contacted the owners who told the consultant that they had never heard of the company and had never made contact with them or filled in any such forms online. PawPrint Inc appears to be an app with no company behind it. It appears to be an on-selling and up-selling exercise.

This entity might also be phishing for records.

Phishing is an online fraud technique used by criminals to entice you to disclose personal information.

Phishers use many different tactics to lure you, including email and web sites that resemble well-known, trusted institutions. A common phishing practice involves spamming recipients

with a fake message under the name of a trusted institution. The purpose of this fake message is to trick you into providing personal information.

Responding to this can cause trouble for veterinarians if they comply, because they will be divulging confidential information to third parties. This could lay them open to veterinary board censure or a civil suit.

Generally, the records belong to the owner in the USA and Canada, but not in South Africa, Australia (check with the VDA for details and possible exceptions) and Hong Kong, where they are the property of the veterinarian. So veterinarians in the former two countries are obliged to hand over records to owners but not in the latter three countries. Even in the former two countries, the VDA advises never to hand records to third parties - let the owner get their records from you and they hand this over to the third party - and thereby bear the responsibility and liability for doing so.

Published 2016-11-23

Did the Owner Consent?

(Article 443)

Mrs X's pony developed signs of colic in the morning, but she delayed in calling Dr A until 16h45. Mrs X's first request was that Dr A dispense Finadyne in order for Mrs X to administer the medication. Luckily, Dr A had been reading her VDA Barks 'n Bytes newsletters and knew a thing or two about defensive practice. Dr A swiftly informed Mrs X that she is not a pharmacist and may not dispense medication for an animal that she had not examined. So, upon request, Dr A trundled off to the farm with an assistant in tow.

The pony was in a bad way and Dr A suspected a torsion of the intestine. Dr A recommended referral to a specialist equine facility for surgery. Mrs X declined referral because it was too far to drive to a specialist. Dr A then offered euthanasia because it was her opinion that the prognosis was very poor for any treatment because Mrs X had delayed in seeking veterinary assistance. However, Mrs X begged Dr A to treat the pony conservatively to give the pony a chance. The next morning Mrs X telephoned to say the pony was much better.

Dr A was a caring veterinarian willing to go the extra mile (at no extra cost) and was surprised that the pony was supposedly much better because it had been very ill the evening before with little chance of improvement without surgical intervention. So Dr A went back to the farm at approximately 12h30 the next day. The pony was in fact much worse and Dr A telephoned Mrs X to inform her that the pony was suffering and needed to be euthanized.

Mrs X consulted a veterinarian in a town approximately 4 hours drive away. Dr B allegedly suggested that a needle should be inserted into the caecum. So Mrs X telephoned Dr A and asked her to meet them at the farm at about 17h00.

On arriving at the farm, Dr A found the pony in extremis and immediately prepared to euthanize it. As she drew up the euthanasia solution into the syringe, Mrs X and her husband drove up to the stables and Dr A went to speak with them.

Dr A explained to them that she needed to euthanize the pony as she could not in good conscience allow it to suffer anymore. Mrs X then asked if they could administer a dose of ginger beer which she claimed was a curative for colic.

Dr A retained her composure and explained that the benefits of applying a carbon dioxide liquid into a bloated intestine was a fallacy and would only make the condition worse and more painful. Dr A informed Mrs X that the pony was now beyond saving, and even examined the pony with Mr X standing next to her so that he could see the poor clinical signs for himself. Mr X and Mrs X withdrew for a conversation, after which Mr X asked Dr A to "give the injection". Dr A felt for the jugular vein and euthanized the pony. Mr X appeared to be relieved, but Mrs X became hysterical.

A few days later, Dr A sent Mrs X an invoice for her services, whereupon she received an email asking for a report as to why the pony was euthanized.
The VDA assisted Dr A in drafting a reply explaining once again that the pony was euthanized on the owner's instructions because the pony was in extremis and was suffering.

The reply reminded Mrs X that referral and euthanasia had been offered at the first visit, but she had declined. And that by the subsequent visits, the pony had deteriorated and euthanasia was the only reasonable humane option.

Dr A asked Mrs X to settle the outstanding account.

Discussion

This was a reasonable outcome for Dr A, but the outcome could have been far more serious and stressful for Dr A.

Dr A did not have a signed Consent to Euthanasia form, and therefore there was room for Mrs X to dispute that she had consented to euthanasia, something which was tacitly implied in her email. When the owner has shown themselves to be irrational and unschooled, your risk is increased. We have seen this scenario play out many times before where the veterinarian is certain that the owner has given (verbal) consent, only to have the owner deny this when there was a dispute.

The best way to prove that the owner gave consent is to have them sign a consent form and store these consent forms indefinitely.

Written consent is taken for granted in other professions such as the medical profession, where no human doctor will touch a patient without written consent.

Professions such an engineers, architects, accountants and lawyers will also require the client to sign a written consent agreement before providing any services. The veterinary profession is at risk of high claims, but will be able to protect themselves with the strong protection offered by the VDA copyright consent forms. Please make sure that you have our updated approved version with the 5 mandatory clauses.

Published 2016-11-16

The not-so-stray Stray

(Article 442)

Mr X took a dog who was severely malnourished, dehydrated, had an injured eye, fractured teeth, mammary tumors, needed spaying and was infested with fleas to Dr A for treatment. Mr X told Dr A that the dog was a stray – but as you will read, it was later discovered that the dog belonged to Mr X's neighbor.

Dr A felt pressurized by Mr X, (who is a high-powered business man) and allowed himself to be persuaded into quoting a minuscule amount for the treatment of the dog, on the basis that it was a stray and that Mr X was going to be kind enough to give the poor dog a loving home. Mr X paid less than a quarter of the amount quoted as a deposit.

Dr A received a nasty shock when Mr X's neighbor phoned Dr A and demanded his dog back, while Mr X phoned and demanded his deposit back because the owner had now appeared and ought to take responsibility for his dog.

The VDA recommended to Dr A that his best course of action would be:

1. To deal directly with Mr X because Mr X was the person with whom he had contracted.

2. To let Mr X and his neighbour settle their dispute of ownership and responsibility for the bill without involving Dr A in any way.

3. To take a 100% deposit in all future transactions. This simple step can eliminate more than half the grievances. Generally, "charitable" people as well as many pet owners will promise the earth and say and do whatever it takes when presenting an animal for treatment, but will look for any excuse not to pay their bill after the work is done and they have a healthy animal again.

4. To quote properly and fairly for your expertise and time – not to quote based on the value of the animal. Veterinarians can only stay in practice and provide a decent standard of care if pet owners pay a reasonable fee. Veterinarians are not legally obliged to treat an animal for next to nothing. If the owner does not have the funds, they can be referred to a welfare organisation.

We assisted Dr A in explaining to Mr X why he was bound to pay by his original contract for treatment and why Mr X should resolve his dispute with his neighbor without Dr Dr A's involvement. Mr X saw the light and complied. In summary, Dr A found that it was in his best interest to adhere to the terms of his contract with the original client while following other best practice protocols that would ensure not only a better defence for him if challenged, but also more money in his pocket than might otherwise have been the case.

What is in your best interest is more often than not also the legally correct manner in which a veterinarian should practice. As a professional, your best interest should be to safe-guard your reputation. The VDA and You are the only people who have your best interest at heart. Take into consideration that, even though veterinary statutory boards are meant to uphold

minimum professional standards, they also have the power to destroy your professional reputation and take away your license to practice and earn a living.

When you use the consent forms provided and developed by the VDA, you will be complying with the terms of VDA membership as well as with the insurance policy (in some countries). You will also be equipping yourself with the strongest defence available should you find yourself at the end of a complaint to the Board.

Published 2016-11-16

Can veterinarians afford to treat wild game?

(Article 441)

The VDA has a solution – but first let's discuss the problem.

On the 19th September 2016, www.businesstech.co.za published an article about a buffalo named Inala that was sold on auction for R168 million.

Inala is the second-highest valued buffalo in the country, with another buffalo, "Horison", being valued in February 2016 at a whopping R176 million based on a part-sale.

Values of wild game have rocketed over the past ten years and there does not seem to be any sign of this slowing down anytime soon. Even less sought-after animals cost between hundreds of thousands and millions of rand.

Which begs the question: can veterinarians afford to treat wild game anymore?

The reality is, that once any animal reaches such high monetary valuations, it does not matter whether you were negligent in the darting or treatment of the animal that is injured or dies, or not. When animals are worth so much there is no doubt that owners will try anything to recoup their investment. People who can afford to pay hundreds of thousands or millions for animals have the financial and legal resources to sue, simply because their loss is far greater than is the cost of litigation. And the problem with litigation - especially in South Africa with its dysfunctional court system - is that the people with the deepest pockets usually win, whether their case has any merit or not. People with such large amounts of money at their disposal are going to be able to keep you in court indefinitely, until you roll over and pay out your last pennies or until you are forced into bankruptcy. So, with these levels of animal values, you are going to be bankrupted whether you were negligent or not, and whether you can afford to pay up or not.

It is impossible for insurers to provide cover for veterinarians for such potentially high claims. There are very low numbers of veterinarians who work in the wildlife field, therefore the premiums per veterinarian would need to be sufficiently high to cover any claims. Smart insurers have withdrawn from the wild game veterinarian indemnity market long ago and even the faithful ones are seeing the writing on the wall because the sums no longer add up. There are not enough vets in South Africa to pool the risk, and the premiums would be far out of their reach. To illustrate the problem: If there was one settlement of R10 million per year, each of the 100 or so wildlife vets in the country would be required to pay in the order of R5 million - R10 million in premiums per year (remembering that the primary aim of insurance companies is to make a profit). No insurer would provide indemnity that would include cover on wildlife such as Inala or Horison.

What is truly frightening for insurers is the penchant for vets to "treat now and ask questions later". This is what insurers would label as the veterinary profession's "reckless disregard" for the risks they incur or the value of the animals they agree to treat.

Most vets find out too late that the animal that died under their treatment was worth an astronomical amount of money. They often only find this out from the claim in the summons commencing action against them in court! What is also often unrecognized or

unacknowledged is the liability for death and injuries of humans due to a dangerous work environment, not to mention prosecution risks from the mishandling of medicines, so such a claim may be open-ended - meaning the value of the claim could soar exponentially.

Clearly, no right-thinking insurer is going to put itself at risk of major losses in exchange for a minuscule premium income.

So if commercial insurance companies are not going to protect high-risk veterinarians, then who is? The answer is obvious: the veterinary profession is going to have to do this for themselves. We have been saying for a long time that it is not sensible for a small profession like our South African veterinary profession to rely on commercial insurance cover for financial protection, as this is neither viable nor sustainable into the future.

The only future for the SA veterinary profession lies with the following two principles: First, we must rely on waiver of liability rather than insurance cover for protection. Second, there must be the veterinary medical and legal expertise to defend lawsuits claiming damages for negligence, otherwise crippling legal defense costs will render the waiver of liability meaningless. With these two principles in mind, the Veterinary Defence Fund was founded. The VDF is a mutual legal defense fund, separate to the VDA, which will use its funds to defend civil malpractice lawsuits made against its members.

Mutual professional funds have been very successful in the past in many professions and countries and the Directors are confident that the VDF is the best solution for the South African veterinary profession.

Vets that join the VDF will be provided with the appropriate protocols and indemnity agreements. The VDF is a separate entity to the VDA and requires its own application to join. Vets who treat low value animals are covered by the VDA and do not need to be members of the VDF. Vets who treat medium (market value over R50 000) to high value animals need to join the VDF. The VDF is not an insurance company and does not cover veterinarians for high value claims. The VDF is a mutual fund that uses its resources to defend members who have complied with the VDF's risk management protocols. The VDF can be contacted at vdf@vetdefenceco.com

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Published 2016-11-09

A $90 000 mistake!

(Article 440)

Now here is a story that will make every veterinarian cringe! Never fear though, the VDA has some great advice to protect our members from a similar situation.

In Atlanta, Georgia, a veterinarian has been ordered to pay $90 000 by federal prosecutors as a penalty to resolve allegations that he violated recordkeeping requirement for controlled substances.

www.patch.com Website reported that Dr Michael Good, who owns Town & Country Veterinary Clinic, did not admit to any criminal violations of the Controlled Substances Act, but according to a statement from the US Attorney's Office for the Northern District of Georgia, Dr Good agreed to pay the settlement.

The controlled substances were not named by the prosecutors in the case but they alleged that among other violations, Dr Good failed to keep accurate records of the drugs and failed to report thefts or losses as required by federal law.

The case was investigated by the US Drug Enforcement Administration, with assistance from the Georgia Drugs and Narcotics Agency and the Georgia Veterinary Board.

The DEA stated that: "Such careless behavior allows for substances to be diverted and sold on the black market with no true measure of accountability," Salter said in the statement. Civil penalties are one step that authorities "can take to discourage other negligent medical entities from engaging in such behavior."

The VDA has heard many a horror story from our members regarding misuse of scheduled drugs. One such story was when a veterinary assistant's love life turned stormy. During a raging argument over one weekend, this assistant dragged his girlfriend to the clinic where he worked and filled syringes with various solutions, threatening to "put her down".

The following day, the assistant's girlfriend laid charges of rape and assault against him at the local police station and upon hearing of this, he proceeded to swallow an assorted selection of pills from the clinic's dispensary – landing him in hospital for three weeks before being imprisoned for three months for the assault of his girlfriend.

Euthanasia solutions have assisted many suicidal veterinarians, assistants and other staff in reaching their final destinations.

It is therefore the advice of the VDA to not only lock away your scheduled drugs but to keep a very strict register of all usage of any scheduled drug.

Only veterinarians should have access to the locked drug storage area, and only veterinarians should order, receive, pack away, take stock and dispense scheduled medication.

Remember to logon to the VDA website where you are able to access all VDA consent forms and protocols via the MYVDA section. If you are ever in doubt about how any aspect of

veterinary medicine should be handled, contact the VDA immediately – that's why we are here.

Published 2016-10-09

Perceptions of Obstructionism

(Article 439)

At the SAVC workshop on 6 October 2016, Dr Glen Carlisle stated that his objective for the review workshop is to "change the perception that the SAVC wielded a big stick". This indicates that the councilors of the SAVC now appear to be acutely aware of the unfavorable perception in which the SAVC is generally held by the profession. The workshop follows a year in which a petition promoted by the VDA for an independent disciplinary body was signed by a significant number of VDA members. There was at least one other petition to the SAVC from another source. There have also been numerous individual letters to the SAVC, all of which indicate the general dissatisfaction among the veterinary fraternity with the manner in which the SAVC disciplines the profession.

1.Is the SAVC heavy handed?

Veterinarians who have undergone disciplinary procedures are almost universally of the opinion that the punishment meted out by the SAVC is often more severe than the misconduct warrants. There are also many veterinarians who are of the opinion that many charges of alleged unprofessional conduct were not transgressions of any actual regulation or proscribed conduct, or was conduct that did not warrant discipline or punishment, only guidance.

It may be difficult for the average veterinarian to analyze whether the profession's perception of the SAVC's conduct is valid. They would need to evaluate a number of disciplinary matters, and this is impossible without full access to these matters.

The VDA, on the other hand, has assisted many members in dealing with SAVC complaints, and does have access to many cases. The SAVC also publishes transgressions in the SAVC News from time to time and provides information about the alleged offence, the tribunal finding and the penalty. This information is available to all veterinarians in South Africa. These two sources of information inform the following remarks:

Where two veterinarians were charged with a similar breach of the Rules, you would expect their sentences to be similar. Obviously, each case would be evaluated on its own merits. But the VDA has seen certain cases where one veterinarian was punished more severely than another and the reasons for the more severe punishment were not explicitly explained in the reasons for the judgement, as would be expected. There are other cases where the tribunal members stated that their decision was based on information that was not admitted into evidence and/or which was not contained in the charge, and about which they did not have certainty. Decisions taken on unadmitted evidence or on unsubstantiated facts should never be permissible in a tribunal where a veterinarian's professionalism and livelihood is on the line. This is not just the VDA's "opinion". It is a basic principle of law.

Where these cases are concerned, the perception of "wielding a big stick" may have substance.

2. Is the VDA obstructive?

During the Workshop discussions Dr Carlisle and the deputy legal director mentioned that, in their opinion, the VDA was “obstructive”. We can only guess at what the SAVC means by "obstructive".

The VDA has examined all the cases where we took a firm stand on behalf of our members, (a form of "obstructionism?) and supply the following remarks for your consideration:

•The punishment ought to fit the misconduct. It is reasonable that a respondent veterinarian would expect not to be placed on their defense for frivolous, vexatious or groundless complaints; for the penalty to be reasonable; and for the penalty to be similar for similar offences. Expecting such reasonable treatment can never be viewed as "obstructive".

•The VDA has a duty to our members to inform them of their rights and to act in their best interest. A respondent veterinarian has the right in law to rely on all the rights of any accused person in defending a complaint against their professional reputation. This can never be viewed as "obstructive".

•The SAVC claims to handle complaints according to certain procedures, some of which are outlined in the flow chart produced by the SAVC at their workshop. It can never be "obstructive" to expect the SAVC to handle complaints according to their own protocol.

•It is not the respondent veterinarian’s duty - or within their power - to ensure that all the facts contained in the complaint and charge/s are correct and that there are no administrative errors. It can never be "obstructive" for the respondent veterinarian to insist that the SAVC puts the correct facts and information in the "please explain" letter, in the charge and in the bundle.

The aim of this article is not to find fault, but to raise awareness of the issues at stake. The VDA received a number of responses agreeing with our previous article that the SAVC ought to be dismissing complaints after screening when there is no prima facie evidence. Therefore a follow-up article was important to provide our members with additional information on their rights.

We look forward to your input.

Published 2016-11-02

Helping clients deal with euthanasia

(Article 438)

As a Veterinary professional, there will be no avoiding the stressful task of euthanasia. Fortunately though, there are ways of not only coping with euthanasia but of helping your clients and patients through this traumatic procedure. We hope that the information provided below will help veterinarians in managing everyone involved in getting through this peacefully and calmly.

Legalities:

Euthanasia is a final event – there is no going back. Therefore you should take precautions to protect against possible complaints and claims arising from euthanasia. Before you start administering the euthanasia solution, consider the following steps:

1. Properly inform the owner about the options. This can include referral to a specialist or to welfare.

2. Properly inform the owner about what euthanasia means. Make sure that no-one is confused by pseudonyms such as "putting to sleep". Some owners may confuse 'sleeping' with sedation. Do not make this decision for the owner.

3. Consider sedating the animal first. Even animals that do not appear fractious can react in a strange way to having an intravenous injection. Consider placing an intravenous catheter.

4. Consider performing the procedure alone without the owner being present. Owners may confuse involuntary movements and sounds as evidence of suffering or cruelty.

5. Have the owner sign the euthanasia consent form. This is imperative to protect against complaints and claims. The form needs to be signed by the owner or the authorised agent, the form should clearly be dated, the owner's name printed in full and also witnessed by signature. The VDA approved informed consent to euthanasia is available on the VDA website, under the MYVDA section.

6. Obtain written confirmation of what must be done with the body after euthanasia. Owners sometimes change their minds about cremation and return of ashes. Remember that the body, even though dead, belongs to the owner and the owner's permission is required for any post mortal procedures. You can advise the owner about any municipal by-laws that may exist about burying animals in suburban gardens, but ultimately this is their choice.

7. Clearly identify the animal in the consent form and consider taking blood for DNA matching if the animal is valuable.

8. Obtain payment in full before performing the euthanasia procedure. When the animal is dead, the owner will have almost zero incentive to pay.

From a human and emotional point of view consider the following issues:

The veterinarian's part:

Euthanasia (literally, an "easy death") is an important option that pet owners have, but for most it will be an excruciatingly difficult decision for them to make. As the veterinarian, your attitude at the time that the subject of euthanasia is brought up or actually performed is critical.

Veterinarians are professionals and need to be objective. This does not mean being dispassionate and unfeeling – your client will need your empathy and understanding - not cold logic or dismissal.

Many owners will need time to work through their feelings, so - give them time, encourage a second opinion if they wish it. They will often ask, "What would you do?" Though you cannot make this decision for them, as you do not know all their circumstances, you can advise and sketch the consequences and the alternatives for them.

At the time of euthanasia, the veterinarian's job is then to support that decision and to carry through the procedure with the minimum of trauma to pet and to owner (and to yourself and your staff.)

The Euthanasia:

Sedating animals first is recommended as the animal will be calm for the procedure, even if the owner is not.

Begin by talking the client through the process, this serves to let the client know what and why you are doing something and negates many possible concerns or misunderstandings.

Keeping your tone practical but calm and considerate will encourage the same behavior from the owner and their pet.
Gently explain to the owner what to expect throughout the procedure.

Not every client will want to be present during the procedure. Offer a choice and respect their decision.

After the Euthanasia:

- Offer to leave the client alone with the body - many appreciate this greatly, and are able to vent their grief in private - especially males. Others prefer your presence, or just to leave quietly and let you do the rest.
- After viewing the body, some clients like to clip a little hair as a memento. Offer them the collar and lead.

Children and Euthanasia:

For many children, this pet is the first thing they have truly loved and lost. They may have known it all their lives.

Our instincts are to protect children against pain and suffering but, unfortunately, loss is an inevitable part of all our lives. It is best to be honest with children who instinctively know when something is wrong in the family, even if they are unable to articulate this. Children tend to be egocentric and many feel somehow responsible for the pet’s loss- so be careful to make it very clear to them that this is definitely not so.

Published 2016-11-02

Prima Facie - On the Face of it

(Article 437)

During the workshop to review the disciplinary process on 6 October 2016, the SAVC handed out a flowchart of the complaints procedure.

The SAVC stated that their first step after receiving a complaint is to check if certain preliminary issues were present. The flowchart stated that the "Admin" staff would close the matter if there was no affidavit, the account had not been paid, the complaint was older than 12 months (without adequate circumstance), and most importantly if there was no prima facie evidence.

The VDA calls this initial assessment process "screening". We note that the SAVC confirms that "screening" or an assessment of whether the complaint contains the necessary prima facie evidence is the first step without which the matter ought to be closed. Screening is an essential preliminary step in the disciplinary process and ought to be based on the complaint's own merits, read in isolation from any information from the respondent veterinarian and without recourse to the respondent veterinarian.

However, there have been numerous matters in which the VDA has had to write to the SAVC informing them that there was no prima facie evidence contained in the complaint. As an aside, there have been equally as many matters in which the VDA has had to write to the SAVC informing them that the complaint was not in affidavit form. A complaint in an affidavit form is important because it places the author (complainant) at risk for making false statements. An affidavit limits anonymous stone-throwing and frivolous and vexatious complaints.

To get back to the issue of prima facie evidence being present in the complaint: In the workshop, the legal director stated that the SAVC must investigate a complaint if it is frivolous or not. But a frivolous and groundless complaint is a complaint that lacks prima facie evidence of substantial unprofessional conduct. In other words, a frivolous complaint is trivial and lacks substance. So the legal director's advice to the workshop attendees is at odds with the prima facie requirement that there must be evidence which at first sight (at screening) shows the complaint to have merit. The legal director's proposal is a violation of the accused veterinarian's human rights and is unlawful.

The legal director went on to aver that the Rules of Natural Justice provide that both sides are heard, and that if a vet will just tell their side of the story, the matter is likely to be dismissed. This seems to be at odds with the SAVC's assertion that their first step prior to sending the complaint to the respondent is to screen for prima facie evidence, and that they will close the matter if there is no prima facie evidence.

If the SAVC really do screen for prima facie evidence, we would call upon the SAVC to to produce an analysis of the prima facie evidence and their reasons for sending the complaint to the respondent veterinarian and thereby placing him/her on their defence in each and every case.

If, upon reading this, you support our contention that the provision of such reasons would be proper and fair proof that the SAVC has achieved what they claim they are achieving in terms of fair and balanced administrative screening, please let us know

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Published 2016-10-26

No challenge too big!

(Article 436)

Helping suffering animals and stressed-out owners can be grueling and veterinarians often need emotional support as well as administrative advice when things get out of hand. VDA members should remember that we are only a phone call or email away - 24 hours a day.

Veterinarians try to save every animal that comes through their doors but they're at high risk of compassion fatigue; a sustained stress that takes a toll on a caregiver's mind and body. In their daily veterinary practice, vets are left with feelings of guilt or apathy especially when they can do no more to save an animal than what the owner allows them to do. These, and many more emotions that veterinarians face daily, result in veterinarian suicide rates being the highest in the medical field. One in six veterinary school graduates say they have considered suicide.

Many veterinarians count the top three hardest parts of veterinary practice as euthanasia, abuse from clients and the inability to treat an animal due to the owners claiming a lack of funds.

Euthanasia becomes difficult for veterinarians who have treated a family's much loved pet for many years and then when that animal no longer has an acceptable quality of life it becomes very emotional, as the vet has developed a relationship with the family and the animal.

There are many reasons for owners behaving in a stressed and hostile manner, one of the most prevalent being that they are not able to afford suitable care. Lack of funds sometimes results in clients asking for convenience euthanasia. Other times, owners threaten to kill the pet themselves. As our members will know, sometimes conflicts escalate to the point where the clinic has to call the police.

Elizabeth Strand, founding director of the University of Tennessee's veterinary social work program noticed a huge need in the veterinary environment for social work, and Tennessee was the first school in the country to create a specialty in veterinary social work. Michigan and Missouri now offer similar programs.

Veterinary social workers provide support for animal-related professionals who need an extra hand in resolving stress or stubborn conflict. They can also gently guide grieving pet owners through heartbreak, or help figure out what to do when an animal is a victim of family violence.

No day is the same for a veterinarian and each animal patient will bring a new challenge or reward. The VDA has developed protocols and consent forms which are designed to help make our members practices run more smoothly. Our consultants and help lines are available 24/7 to assist with any and all veterinary-related issues you may have.

Published 2016-10-19

Dealing with Anger

(Article 435)

This article will assist you in your practice when facing angry and irrational people, or when you find you have become worked up over an issue and need some coping mechanisms.

Anger is an emotion that does not occur alone. Anger is an accompaniment to another emotion, such as frustration, pain, fear, excitement or hurt. Understanding this can help you deal with anger – your own, or that of others.

Anger is unpredictable. It is almost like a seizure: it builds up below the surface with very few, if any, warning signs - and then a rapid escalation of emotion occurs. Zeeman (1976) in his model of aggression called this 'the leap'.

If you can recognize anger building in yourself or potentially in another, THIS is the time to try to channel emotions to more constructive behavior. Trying to zero in on the underlying emotion and getting to the heart of what is causing this emotion can help avoid another 'leap' which may even escalate to violence.

There is no rationalizing with a truly angry person. A cooling off is necessary before any sense can be made of a situation and it is only when reason returns, that you can focus on the emotion underlying the anger and work from there.

Trying to effectively communicate with an angry person is a wasted effort and risks promoting further 'leaps'.

Instead, let the person vent their anger; let them rant; deflect the words and passion and do not try to resist it or push it back.

If at all possible, stay calm yourself, (like all advice, this piece of advice is easier to give than to take).

Simple relaxation tools, such as deep breathing and relaxing imagery, can help calm down angry feelings. There are books and courses that can teach you relaxation techniques, and once you learn the techniques, you can call upon them in any situation.

Angry people tend to curse, swear, or speak in highly colorful terms that reflect their inner thoughts. When you're angry, your thinking can get exaggerated and overly dramatic. Try replacing these thoughts with more rational ones.

Remind yourself that getting angry is not going to fix anything; that it won't make you feel better (and may actually make you feel worse).

Logic defeats anger, because anger, even when it's justified, can quickly become irrational. So use cold hard logic on yourself. Remind yourself that the world is "not out to get you," you're just experiencing some of the rough spots of daily life. Do this each time you feel anger getting the best of you, and it'll help you get a more balanced perspective. Angry people tend to demand things: fairness, appreciation, agreement, willingness to do things their way. Everyone wants these things, and we are all hurt and disappointed when we don't

get them, but angry people demand them, and when their demands aren't met, their disappointment becomes anger.

Sometimes, our anger and frustration is caused by very real and inescapable problems in our lives. Not all anger is misplaced, and often it's a healthy, natural response to these difficulties. There is also a cultural belief that every problem has a solution, and it adds to our frustration to find out that this isn't always the case. The best attitude to bring to such a situation, then, is not to focus on finding the solution, but rather on how you handle and face the problem.

As we have written about before, it is very easy for a situation to escalate when dealing with a client who has lost a beloved pet. Understand that their anger stems from their sorrow and despair and probably a feeling of guilt, misplaced or otherwise, or a need to deflect blame onto the nearest person - the veterinarian. It is hard, but if you can remember that your client is irrational at this moment, you will be able to accept and deflect their harsh remarks and your calm demeanor will do a lot to focus them and get them thinking more logically.

The VDA’s Claims’ Prevention and Claims’ Management programs are a condition of membership and these programs teach members how to think and act defensively and provides members with the tools to do so.

Published 2016-10-12

Evaluate Complaints the Reasonable Way!

(Article 434)

On 6 October 2016, the SAVC held a workshop to review their disciplinary process. The Registrar of the HPCSA, Advocate Philane Khumalo, facilitated the event. This workshop was arranged in reaction to the VDA's petition to the SAVC asking for an independent disciplinary body, which was signed by a significant number of our members. Another petition from an independent party was also run and - according to reports - a number of letters from private practitioners were also sent to the SAVC after the July 2016 mini congress.

The Reasonable Veterinarian Test

In giving a description of the process that the Investigating Committee follows when evaluating a complaint, the chairperson of the investigation committee, Dr Glen Carlisle, stated that the IC measures the veterinarian's conduct against that of a "reasonable veterinarian." At the Mini Congress, Dr Carlisle gave a definition of the reasonable veterinarian test as "what the majority of vets would do."

In the workshop, Dr Carlisle also stated that the IC would assess if the event had ever happened to one of the IC group. This, apparently, would be how they would apply the test: If this particular set of circumstances has happened to one of the IC group, and they had reacted in a similar way to the way the veterinarian under review acted, this would mean that the veterinarian had behaved the way a "reasonable veterinarian" might behave.

However, this is not the same definition that the Courts use. The Courts would define a "reasonable veterinarian test to be "what would be expected of a veterinarian with the same qualifications and experience under the same circumstances".

The assessment methods used by the IC appear to be biased - since the IC members appear to regard their conduct as unimpeachable - and limited - since it is likely that the members of the IC may not have experienced the same events which occurred to the respondent veterinarian. Another difficulty with Dr Carlisle's definition is that the majority of vets in our community (or even the minority within the IC group!) may be acting "unprofessionally" when measured against the five elements of the unprofessional conduct test.

In discussing the IC's method of evaluating which cases to refer to a hearing and which to dismiss, Dr Carlisle went on to say that "it doesn't take a rocket scientist" to immediately see if a vet has "stuffed up." However, whatever the subjective reaction might be, the IC is lawfully obliged to properly apply their mind to the facts. And such facts necessarily take some time to examine and assess. In addition, a properly trained assessor with the proper attitude and experience also requires an aptitude for carefully dissecting and applying the rules of law. When a veterinarian's reputation and possibly livelihood is at stake, their conduct cannot be dealt with in a haphazard or subjective manner.

The VDA is very concerned about the manner in which the IC is currently conducting the initial investigation of cases.

We believe that a veterinarian has the Constitutional right to be judged in a fair manner using a measure that is credible, reproducible, objective, easily understood and fair. We believe that the VDA's test of the Five Elements of Unprofessional Conduct meets this standard.
We have consistently and repeatedly offered our skills and knowledge to the SAVC which would give them sound internationally recognised and accepted measures to follow.

Published 2016-1-

"I just can't pay, Doc!"

(Article 433)

A very common question that the VDA hears is: "What should I do when a dog has recovered and is ready to go home but the owners do not collect the dog, do not answer their telephones and do not return messages, or they want to collect the dog but do not have sufficient funds to settle the account?"

From a legal standpoint, a pet is regarded as property, owned by a person - similar to a piece of furniture or a motor car. We do not recommend relying on the legal principle of a lien – holding onto the animal until they pay only results in additional costs (of food and care), and additional risks (of the animal escaping or something happening). Holding the animal as a lien does not guarantee that the owner will pay – some owners just do not love their animals enough and will just walk away.

So what to do?

The veterinarian has an obligation to contact the owners and give them an opportunity to resolve the situation. Therefore you will need to send the owners a message – either text message or email so that you have a record.

Contact the VDA for assistance in wording your message – applicable to your situation.

Two scenarios can play out:

1.The owners refuse to collect the dog or to take your calls.

Dr A admitted into hospital an emaciated, dehydrated puppy. Mr and Mrs X informed him that the puppy had run away from home some days before and it had only just been found. Mr and Mrs X told Dr A that he must spare no expense in treating and rehabilitating their puppy. Dr A treated the puppy and after 7 days, the puppy started to show improvement. However, it had developed pancreatitis and at this point the bill was already over $400. Dr A attempted to contact Mr and Mrs X to get further instructions from them, to inform them of their puppy's progress and to inform them of the further treatment required. Mr and Mrs X did not answer their telephones and refused to return any messages that Dr A and his staff left for them. Dr A's practice manager sent a registered letter to Mr and Mrs X, asking the owners to contact the practice urgently. The account was standing at $600 when the practice manager decided to telephone her VDA consultant. The VDA advised the practice manager to send a second message and supplied her with specific wording that would assist finalization of the matter.

Dr A had unfortunately not taken a deposit from Mr and Mrs X so he learnt a very expensive lesson about taking people at face value.

2. The owners would like to collect the dog but cannot pay their account.

The client may contact you and declare that his pet has not been abandoned but that they do not have the funds to settle the account. Under these circumstances you may not

dispose of the pet. The only sensible thing to do would be to allow the client to collect the pet and to make arrangements to pay off the account.

Dr B treated a young dog for haemorrhagic gastro-enteritis. The dog was hospitalized for 10 days. The dog's owners, Mr and Mrs Y, could only pay a small deposit at the time of admittance of the dog, leaving a fairly substantial bill outstanding. When Dr B telephoned Mrs Y to advise her that her dog was well enough to be discharged and that she could collect the dog upon settling the outstanding amount of $400, he was informed that because Mr and Mrs Y ran their own business they would only have the funds to settle the account a week later. Dr B told Mrs Y that he would then keep the dog until she could settle the account. Mrs Y did not take Dr B's statement very lightly and became extremely irate with Dr B. A short time later, Dr B saw Mr Y arrive at the clinic and he had the presence of mind to lock the security gate before he could enter. Mr Y - a large, substantially built man - attempted to shake the security door off its hinges while shouting obscenities at Dr B. When Dr B telephoned the VDA consultant for advice, we suggested that he allow the owners to collect their dog and if possible to get them to sign an acknowledgement of debt for the outstanding balance. Mr Y duly collected his dog, with much muttering and cursing, and signed an acknowledgement of debt.

The best way to prevent problems arising, is to take a full deposit at admission. This will do three things -

•It sifts out the owners who are taking chances and have no real intention of ever paying;
•It immediately shows who has the ability to pay and who should be referred to a welfare organisation;
•It makes it almost impossible for an owner to blackmail you into writing off the account – the first thing an owner who is trying to get out of paying will allege is that the vet was negligent in some way!

The alternative is to immediately refer the client. Should the pet require emergency treatment, you are then obliged by your ethical rules to render emergency treatment before referral. If the client has no money at all then you must offer pain relief as a minimum and offer euthanasia as an alternative.

Published 2016-09-28

Post Mortem Support

(Article 432)

Dr A had been in practice for a long time and was considered to be a very experienced veterinarian by his colleagues and clients alike.
Mr and Mrs X had heard only good things about Dr A and took in their unmanageable dog to be spayed.

Dr A induced anesthesia with a much lower dose of anesthetic than expected, intubated the dog and set up a drip. The dog was maintained on gas anesthetic.

Dr A had three assistants, one to continually monitor the dog by listening to the heart, another to count the dog's every breath and a third assistant to keep a watchful eye over the process.

Dr A removed the ovaries and uterus and as he was about to close the dog up, the assistant who was monitoring the heart, alerted Dr A to the fact that the dog's heart had stopped beating. Dr A wasted no time in commencing resuscitation procedures – but unfortunately the dog could not be saved.

Mr and Mrs X were furious and embarked on a tirade of abuse, shouting and crying and accusing Dr A of being negligent and incompetent. They even accused him of not being qualified! Dr A attempted to placate them and explain that he had done everything to save their dog but Mr and Mrs X wouldn't listen to a word and took matters into their own hands. They called the pathology laboratory, arranging to collect the dog's body themselves. They then proceeded to drive behind the laboratory vehicle, with a view to ensuring that the correct body was autopsied.

The post mortem report was conclusive. A dilated Cardiomyopathy had caused the dog's death. The pathologist's report stated: "Most cases occur without premonitory signs, leading to sudden death. Ante mortem aetiological diagnosis of this syndrome is difficult if not impossible. Under conditions of stress and especially surgery/anaesthetic, acute decompensation may take place in the heart, leading to acute heart failure. No abnormalities could be detected with regards to the surgical procedure."

After this traumatic event and in consideration of the manner in which the X's had treated Dr A, he had decided it would be in his best interests to send them a letter informing them that they needed to find a new veterinarian. Nothing more was heard from Mr and Mrs X.
Discussion:

1. Always perform a Post Mortem. There is no substitute for supportive evidence in defending your conduct, and independent evidence often creates an almost infallible defence. This should be done by an independent pathology specialist.

2. If you do welfare work, be sure that you do not increase your risk, by thinking that cut-rate welfare cases entitles you to perform veterinary work in a cost-saving manner. Only provide charitable therapy if you have a benefactor willing to pay for high quality care. Don't forget that you will be held to the same exceptional professional standards by the

Veterinary Boards and pet owners alike - whether you are doing work for a prince or a pauper.

Published 2016-09-28

How to Handle the Client who won't Spend the Money

(Article 431)

Dr A was presented with Mrs X's cat which was inappetant, dyspnoeic and tachycardic. There were increased respiratory sounds and dull heart sounds on the left side of the chest. The cat had been on a course of antibiotics for a couple of days and was not showing any signs of improvement. Dr A explained at length to Mrs X the many possible differential diagnoses for the cat's symptoms and that further diagnostic tests were indicated. A blood profile and thoracic radiographs were advised to begin the investigation. Mrs X declined any diagnostic imaging and consented only to a blood profile, which included a T4.

Dr A drew blood and the results showed a leukocytosis with a lymphocystosis and monocytosis. Dr A advised Mrs X that her cat still required thoracic radiographs and possibly other further diagnostic tests, and that her cat was in a very serious condition.

Mrs X declined any further tests and requested symptomatic treatment only. Dr A added in a second antibiotic and carefully explained to Mrs X that a diagnosis had not been made. Dr A also explained that the antibiotics may make no difference at all and that her cat could continue to deteriorate and this could be life threatening. However, Mrs X still refused any further diagnostic tests.

Veterinarians are often under pressure to prescribe antibiotics without a definitive diagnosis due to owners declining a workup. In a world where antibiotic resistance is becoming all too common, veterinarians feel great stress when they are forced into relying on antibiotics in these situations. Also, veterinarians often lack the courage to clearly inform the pet owner that they have insufficient information to make a diagnosis - in case the owner goes off to the next vet, who may be all too willing to sell himself and the profession out in order to gain a client.

The owner has the right to make a choice as to whether or not to pay for more tests. However if the owner's choice limits and restricts a vet's ability to act professionally and responsibly, then it is unfair for the owner to argue that the veterinarian is negligent when something goes wrong. Equally, it would be unfair for a board to go along with the owner and convict the vet for not doing more with less.

This is when a VDA-approved *consent form with all 5 clauses verbatim, along with a treatment plan, and clear clinical notes outlining the tests and/or treatments they were offered, yet declined , will be invaluable.

Similarly, having the client sign a *Premature Removal of Animal form can demonstrate that the client made an informed decision to decline tests and/or treatment.

*See the Member's Handbook under MYVDA on your country's website for further details.

Published 2016-09-21

The Importance of Taking History!

(Article 430)

Mrs X had been taking her pets to a particular veterinary practice for treatment for some time, so it was rather peculiar when she decided to take her dog to Dr A (who had never treated any of her animals before) to be spayed.

Dr A performed a standard 16 parameter clinical examination, found nothing unusual during this examination, and proceeded to spay the dog. The operation went smoothly, and the only thing noted that was out of the ordinary was a little excessive salivation while the dog was under anesthetic. After an uneventful recovery, the dog was discharged.

Dr A worked until late that evening and it is his testimony that Mrs X did not telephone the clinic whilst he was there. As was his habit, Dr A telephoned Mrs X the following morning to follow up on the operation and find out how the dog was doing. Dr A was rather bewildered when Mrs X claimed to have tried to telephone Dr A the evening before but could not get hold of him. Mrs X said that she had taken her dog to Dr B where she had passed away.

Dr A was perplexed to say the least, and telephoned Dr B to find out what had happened. Dr B informed Dr A that the dog was epileptic and that all of its litter mates had died of some undiagnosed congenital defect. It is not known why Mrs X did not take her dog to Dr B in the first place, as it appears that Dr B was her usual veterinarian and knew all about the dog's history and background problems. Dr A requested Mrs X's permission for a post mortem by a specialist pathologist, but Mrs X refused.

Mrs X contacted the local veterinary Board in order to lodge a complaint against Dr A and the Board advised her to approach Dr A with her questions first and if she was not satisfied with Dr A's response, she should send in a complaint. Some days later, Mrs X sent a very emotional e-mail to Dr A questioning why he had not obtained a full history on the dog's health from her. Mrs X asked why Dr A had not enquired about any previous problems the dog may have had, such as epilepsy, and claimed that she had not offered any such information as she felt the onus to be upon Dr A to find out any of this information.

Discussion:

This kind of complaint may occur because some practices rely on lay staff to admit animals, especially for routine neutering. Therefore the veterinarian doesn't meet the owner and ask them basic questions about the health of their animal.

In order to avoid such cases slipping through, the veterinarian (or a nurse who is specially trained) should admit every animal and speak to every owner personally. You should be checking that the owner truly comprehends what a spay or castration involves in order to dispel the misunderstanding that, for example, a reversible vasectomy will be performed, instead of a castration.

This case history highlights why a comprehensive admission form which asks questions such as "Does your pet suffer from any pre-existing condition?" or "Is your pet on any medication?" is advocated. We strongly advise that you add such questions to your admission Consent form, if you have not done so.

When it comes to spays and castrations, pet owners are known to “shop around” for the most inexpensive quotation, often going miles out of their normal neighborhood in search of a bargain basement price for these operations. This is not a time to ridicule your opposition, but to take extra precautionary steps when taking the history, examining and giving discharge instructions.

Published 2016-09-14

Staying Up Nights

(Article 429)

Veterinarians are required to meet the minimum standards of professional conduct, and one of these duties is the aspect of overnight monitoring. Patients in hospital must be monitored overnight - or alternatively, vets need to make it clear to the animal owner that their facility does not provide overnight monitoring. If the pet owner would like their pet/s to be monitored overnight, you can either arrange with a staff member to take the night watch or if you are unable to provide this service at all, you need to refer the animal to an overnight monitoring facility.

Dr A admitted a dog into hospital, and the dog remained hospitalised for five nights. Dr A explained carefully to Mrs X that there was no overnight monitoring but after the dog had stayed in hospital for two nights, Mrs X complained that she was unhappy that there was no overnight monitoring, and claimed that Dr A had never informed her of this fact.

The VDA informed consent to treatment form has four clauses that are required verbatim. The fifth clause relates to overnight monitoring and including this clause would obviously depend on how your practice operates. It states that the animal owner has been made aware that the facility does not provide 24-hour per day monitoring; and that if the animal owner wishes to have 24-hour per day monitoring, they will make arrangements with the staff. This clause is required, verbatim, if this is how your practice operates. However, this clause was not included on Dr A's consent form, so if Mrs X decides to take her complaint further, Dr A's defence will be based on a he-said, she-said argument which is weak, especially if there were no witnesses to support Dr A's contention that he explained the circumstances to Mrs X.

All veterinary boards have different rules regarding overnight monitoring. In South Africa, Rule 27(3) made by the SAVC states that animals hospitalised overnight must be adequately monitored having due regard to the animal's condition. If such monitoring is not available the client should be informed accordingly.

This standard may be vague, but if you leave the hospital at 6pm, leaving an animal on a drip after invasive surgery and only returning at 8am the following day, you would definitely not be meeting this standard. Especially, if you did not inform the owner that there would be no overnight monitoring so that they could arrange for this if it is what they want. Similarly, recording clinical parameters every hour in a hospital sheet during the day - but not at night - is likely to be prima facie proof of failing to meet this standard.

Regardless of who performs the task of overnight monitoring, the veterinarian is ultimately responsible for the care of the animal. The burden of providing overnight monitoring is particularly problematic for rural and small practices. One veterinarian cannot possibly work all day and stay up all night monitoring. One possible solution is to employ a kennel assistant to watch the hospitalised animals at night - and phone you the moment he notices something amiss. A solution for multi-vet practices may be for the veterinarians is to take it in turns to monitor overnight.

Overnight monitoring will be expensive, as night-time work is overtime and paid at twice the daytime rate. The pet owner needs to be informed of this fact. There is no onus on the

veterinarian to perform this service for free, and pet owners who request this service, must be willing to pay for it too. This aspect does not seem to have been discussed with Mrs X, so her choice in the matter remains unknown.

Mrs X's final bill was well over a thousand dollars but she agreed to resolve her grievance with Dr A in exchange for writing off the outstanding amount. This raises the question of whether Mrs X's grievance was bona fide or whether she discovered a loophole that would help her escape payment.

Taking a full deposit and obtaining full top-ups prior to providing the service would have gone a long way to in reducing Mrs X's ability to threaten Dr A, causing him unnecessary stress.

• If an animal owner tells you that they are unhappy about anything, do not simply dismiss or ignore their complaint! It is a condition of VDA membership that you contact the VDA immediately so that the complaint can be remedied as soon as possible. Failing to do this may see a small issue snowball into a civil lawsuit!

• To ensure that you have all the VDA-required clauses on your informed consent to treatment form, please go to our website, log in and refer to the "MyVDA" section and the VDA Members' Handbook, where you will find all the VDA approved consent forms. (You will need your password to login).

Published 2016-09-07

Complaints Cause Stress

(Article 428)

In every interaction with clients and their animals, the client has both preconceived ideas as well as notions that arise from the experience itself. Preconceived ideas are often based on the expectations that pet owners have absorbed from the human medical world, and may not be tempered by any understanding of what is reasonable or achievable by the veterinary profession that operates under severe financial constraints by comparison. Fear and grief may turn the owner of a beloved pet into a completely irrational being. When a client feels that a veterinarian did not live up to their expectations, they may seek recourse by lodging a complaint of unprofessional conduct with the veterinary board, or they may even sue the veterinarian in court.

Veterinary boards are obliged to investigate all complaints they receive against a veterinarian. Most boards have powers to discipline, suspend or deregister the veterinarian.

All complaints lead to stress, whatever the outcome. It can safely be said that every vet who faces a complaint experiences stress to a significant degree, and most vets develop a feeling of bitterness towards the disciplinary process. The most significant stress is experienced on initial notification of the complaint. Surprisingly, few veterinarians feel that their stress is eliminated completely once the complaint is resolved and in some cases, they feel that the stress has actually increased.

Veterinarians experience a wide range of emotional, physical and even behavioral symptoms which, in many cases, interfere with their professional and even personal lives. [In one particular case, a veterinarian passed away two weeks after a hearing had been conducted against him. Even though he had been found not guilty, he had taken the episode particularly badly and we have no doubt that the experience had led, indirectly or directly, to his death. In another case, in which the vet had been found guilty and deregistered, the vet committed suicide the day after his hearing].

The emotional symptoms of stress include anxiety, disbelief, anger, sadness, frustration, helplessness, loss of confidence, reduced self-image, loss of trust in their clients, the feeling of being bullied by the veterinary board and loss of control in their practice and private lives. These emotions are often directed inappropriately at clinic staff and family leading to strained and damaged relationships.

Physical symptoms of stress include headaches, palpitations, insomnia, exhaustion, aches and pains and gastrointestinal disturbances.

Behavioral problems include internalization of the problem; the need to externalize the problem; the lack of desire to perform their professional duties; and even social withdrawal.

Many veterinarians have found it helpful to talk their cases over with trusted colleagues, specialists and their veterinary college lecturers. Also helpful is the ability to talk things over with family and friends as well as with the VDA consultants. And most helpful is to attend professional counselling. The process of setting out the case with their thoughts and feelings in writing, required by the VDA in assisting with the defence, proves to be an effective means of collecting thoughts and can serve as a therapeutic stress-reducing exercise.

Few veterinarians regard the disciplinary complaint process as a positive learning experience or a valid method in which higher professional standards can or should be imposed on the profession. The general feeling that has been reported is of forced compliance at the expense of care and compassion in their work. Most veterinarians resolve to change their practice protocols in order to avoid repetition of the complaint, often with the result that this makes life more difficult for their clients. In some cases, the vet has chosen not to ever perform the type of work again that gave rise to the complaint in the first place. Many vets have expressed a desire to move to another place, to emigrate to another country, to reduce the size of their practice or to leave the veterinary profession completely and - sadly - many have actually done so.

The VDA provides advice and assistance to its members in all of these circumstances and is acutely aware that complaints of unprofessional conduct create significant stress over prolonged periods of time. We have taken special note of this in order to be able to provide better support and counseling to our members in their times of need. We encourage our members to remain in contact subsequent to the resolution of the complaint as the complaint may play on one’s mind long after resolution.

If you at any time feel the need to get things off your chest, call the VDA’s 24 hour hotline:

USA: 855 757 5700
Australia: 02 8355 9900
Asia: 5808 5451
South Africa: 087 550 9000

One of our consultants will be happy to let you vent and try to help you to put things into perspective.

Published 2016-08-31

Board Requirements for Record Keeping

(Article 427)

Around the world, Veterinary Boards are showing a tendency to pile on more and more requirements for the parameters of treatments that veterinarians must record. The boards seem to have little regard for the burden that all these requirements create for veterinarians in terms of time and loss of income. Apart from creating greater uncertainty about what is "sufficient" to comply with a board's requirements, these demands also place great stress on the profitability of veterinary services

Consider how a busy practitioner with a waiting room full of patients might feel when trying to recall and record all the parameters of his or her last examination, all the while aware of the fact that any examination he or she does will have the potential to become the subject of a veterinary board disciplinary proceeding in the future? Consider how stressful it would be for this practitioner as they make their best attempt to write down each and every aspect of the conversation that the board might rule 'ought' to have been recorded in the light of a future unknown complaint?

There is no fee charged for the time spent writing up records. Consultation fees are based on the time taken to examine and treat the animal; there is no additional fee charged for time spent writing up clinical notes for that examination. If a vet spends 15 minutes examining an animal and 15 minutes writing up clinical notes for that examination, the fee for the consultation is cancelled out by the loss of the fee that could not be charged for the time spent making notes.

The corollary to this is that the more aspects of clinical notes that Veterinary Boards find to prosecute, the more work the boards make for themselves, and the more boards must rely on registration/license fees to pay for the costs of the resulting increased number of disciplinary hearings and tribunals. In most cases, the only source of income for veterinary boards is the veterinarians they police and any increase in board costs comes directly out of the pockets of the profession. Recently two jurisdictions have been hit with either a special levy or by having their license/registration fees substantially raised.

In addition to highly detailed clinical records, many boards are now also requiring detailed, written, post-operative and discharge instructions containing "sufficient information". One board tries to explain this as "sufficient for another vet to be able to look at the notes and then be able to continue the treatment". Which is, of course, meaningless. So now veterinarians have the added burden of trying to work out how much information may or may not be deemed to be 'sufficient' in the eyes of the board member dealing with some unknown future complaint.

Where does one draw the line?

The VDA is currently dealing with a case in Australia, where the veterinarian has been informed by their statutory body that written discharge notes must be sent home with a client and that verbal post-operative instructions are considered insufficient.

However, according to the state's Veterinary Surgeons Regulations 2002, (Part 5, Miscellaneous provisions, Record of treatment of animals (vi)), a veterinarian is obliged to

record "...*details of any instructions given* when the animal is discharged". *[Our emphasis - Ed.]*

It does not state that the instructions have to be <u>written</u>, therefore the board's assertion that our member had been obliged to provide written discharge notes has no basis. In other words, verbal discharge instructions meet the requirement of the regulation. It is just another example of how boards often conveniently invent transgressions in order to create (unlawful) convictions.

A similar example of wording that can be manipulated is from the Georgia State Board of Veterinary Medicine Requirements, "700-12-.04 Record Keeping – Complete, accurate, and legible records must be maintained on all animals. This information must include, but is not limited to, animal owner information, animal identification, and veterinary care."

This loose wording ('not limited to') means that veterinarians could potentially be disciplined for leaving out just about anything that the prosecution can think up and present at the hearing in order to achieve the conviction.

Veterinary practice has become extremely onerous and there is no doubt that veterinarians are held to higher standards than any other profession in the world. The standards are unknown and undetermined – that is, of course, until you are charged! This leaves the veterinarian in a state of legal uncertainty - and eternal mental torture.

In most all of the cases (and there have been many) involving allegations of inadequate record-keeping that the VDA has defended, the board has used these allegations as the basis for the charge of professional misconduct, but have failed to allege that any particular rule or regulation was breached or in what respects they were breached. In many other cases, boards rely on the content of board newsletters, codes and provisions that are not law or the opinion of veterinary experts as the basis for charging veterinarians with misconduct. None of these sources form any lawful basis for prosecution; the only source that is lawfully valid is one that is written in law. In other words 'If you cannot go to the legislation and read the full details of what would constitute a transgression, there is no lawful basis on which you can be convicted.' This is a general principle of law.

Veterinary Boards cannot prosecute veterinarians for transgressions by 'making it up as they go'. If the board believes that an act would constitute professional misconduct, then it is the function and duty of the board to move to have this written into law. But before it does this, it is obliged to debate the issue with all the stakeholders in the profession, and then to act objectively and properly accordingly. Boards tend to be idealistic rather than practical, and rarely understand the issue that they are trying to remedy. Boards fail to listen to or even engage with the real stakeholders, being the people that really understand the problem. Which is why so much veterinary legislation is so poorly written and creates so many more problems than it ever cures.

As we said above, private practice is steadily becoming more and more onerous. And boards, in their overzealous attempts to protect the public are actually harming the profession. Which ultimately harms the public. The veterinary profession has always been based on altruism rather than common-sense business principles, which led to the veterinary profession being a hard place to earn a poor living in the first place. All these boards are doing is to push the profession closer and closer to the edge.

In the U.S. case in the Michigan State Court of *Appeals Bureau of Health Care Services v Jan H Pol* (the same Dr Pol that stars in the National Geographic TV series “The Incredible Dr Pol”) the court’s findings confirms the VDA’s contention that Boards cannot make up charges to suit the conviction:

“In the final analysis, we cannot conclude that the administrative decision in this case is supported by competent, material and substantial evidence on the whole record. The evidence submitted does not establish a clear standard of care that respondent violated. Indeed, given the numerous references in the PFD that go outside the scope of allegations in the complaint, references to items not in the complaint, references to items not in the record, and the hearing officer’s own opinion as to the need for mandatory continuing education as a formal standard of care, it can even be said that the [Bureau of Health Care Services’, or ‘The Board’s’] decision [against Dr Pol] is ultimately arbitrary and capricious…”

Published 2016-08-24

No problem too big or too small!

(Article 426)

r and Mrs X had been attending Dr A’s veterinary clinic for some two years and had always been very pleased with Dr A and his staff‘s dealings with their nervous young dog.

When they next took him over to Dr A’s practice for his annual check-up, vaccination, Heartworm injection and nail clipping, they were seen by Dr B – a veterinarian who had been newly employed by Dr A.

Mr and Mrs X claim that Dr B was apprehensive and ill-at-ease, causing their dog to feel the same. Dr B eventually had to put the dog on a lead and take him to the back room for assistance to complete his injections and nail cutting. We are all familiar with nervous dogs who ‘miraculously’ settle down when taken away from their owners and handled by strong experienced hands in a back room, and this was the case here.

However, Mr and Mrs X were concerned that removing the dog from the comfort of their owners was traumatic for both the dog and themselves and so decided to write a letter to Dr A to inform her of their interactions with Dr B.

On receiving the letter, Dr A contacted the VDA for assistance in replying to them.

Since this letter was deemed to be feedback rather than a complaint, the VDA suggested that Dr A write back to Mr and Mrs X in a friendly manner, thanking them and letting them know that their observations would be acted upon and that they look forward to seeing their dog again in the future.

The VDA suggested that Dr A hold a meeting of the veterinarians in the practice to discuss how they would deal with a wide-eyed nervous dog (and their nervous owners), and what they should say to calm the owners and reduce their fears. It was also suggested that a note describing the owners’ concerns be placed on the dog’s file so that the next time they came in the veterinarian could carefully explain how the dog will be handled whilst away from them and how it is actually more likely to be a positive than a negative experience for the dog.

The VDA is willing to assist in both small incidents and big matters. Whilst the VDA is at its best in dealing with ‘big’ matters such as veterinary board complaints, we are equally equipped to assist with day to day issues such as communicating with clients. Anything that causes our members stress is important to us and we will always answer your concerns to the best of our abilities.

Published 2016-09-17

An Examination of the Veterinary Practitioners Board of New South Wales's Article Regarding Informed Consent

(Article 425)

In law, informed consent to treatment consists of three components: Information, Appreciation and Consent. The veterinarian must provide sufficient Information for the consenter to be able to make an informed consent; the veterinarian must take reasonable steps to ensure that the consenter Appreciates (understands) the information and implications of consent; and the consenter actually provides their Consent.

The issue of informed consent is a common cause of complaints and veterinary board prosecutions against veterinarians, so please take the time to study this article. While this article was triggered by the NSWVPB article, most veterinary boards have similar approaches, and so our article is relevant to no matter where in the world you practice.

(Extract from the article, published on The Veterinary Practitioners Board of New South Wales website):

"A common cause for complaints that appear before the Board involves misunderstandings between clients and veterinarians over costs and treatments; both treatments given and those offered. At the heart of these complaints lie the issues of communication and informed consent and we would all like to see these types of complaints reduced as they cause unnecessary grief for both veterinarians and clients."

The Veterinary Practitioners Code of Professional Conduct (Code) (cl 7) states:

A veterinary practitioner must, where it is practicable to do so, obtain the informed consent of the person responsible for the care of an animal before providing veterinary services to the animal.

Informed consent is also addressed in the Code (cl 16) which states:

A veterinary practitioner must, where it is practicable to do so and before providing veterinary services in relation to an animal, inform the person responsible for the care of the animal of:

a. The likely extent and outcome of the veterinary services, and
b. The estimated costs of those services

The Board's remarks would be fair and reasonable if it were not for the excessive burden placed on the veterinarian by cls 7 and 16 of the Code. Since the wording of the Code is written and approved by the Board, it is surely disingenuous for the Board to write comments in a neutral tone, when the same Board prosecutes vets for failing to obtain informed consent based on cls 7 and 16.

From the Kevin Polglaze prosecution, one can deduce that the wording "when practicable to do so" in cl 16 provides a loophole. Not only does it give the Board an opening to prosecute every case, but it seems unlikely that the Board will regard any situation as not being "practicable to do so". After all, when you pay lip-service only to the concept and not to the

actual deep meaning of "reasonable", you can argue in every situation that it was "unreasonable" not to obtain consent.

In the Polglaze case, informed consent had been obtained for euthanasia, but the Board prosecuted Polglaze because he did not obtain new consent when the previously agreed fee increased, even though the owner was present and was fully aware that the euthanasia procedure was taking far more professional time and meds to complete than had been contemplated initially by either party. To draw an analogy: you take your car in for service. The price quoted is $x. During the service, at which you are present, the service takes longer and requires more parts than initially contemplated, or is normally required to service a car of your make and model. The bill presented reflects $x+y. Is it reasonable for you to refuse to pay the increased bill? After all, you were present and fully aware when it became apparent that the process required more than was originally contemplated.

Not only did the Board prosecute Polglaze, but it pursued the prosecution of Polglaze until it mentally and financially destroyed him. So how much weight can you place on the neutral tone of the Board's comments? Can you believe that the Board will be reasonable when it evaluates a complaint of lack of informed consent against you? In reality, informed consent is a two-way street. No doubt, in ordinary circumstances, the vet bears the burden of obtaining informed consent before proceeding with treatment. The law goes as far as to define informed consent as having three components: knowledge, appreciation and consent, and the law lays out the obligations on a practitioner for each of these components. These are: providing information on the options and reasonable risks; taking reasonable steps to ensure that the recipient understands the information; and physically obtaining that consent (preferably in writing). On the other hand, the law also imposes a burden on the recipient to ask questions if they do not understand any aspect of what they are consenting to and to object and/or refuse to provide their consent if they don't understand or do not wish to proceed. There is a clear line in law between the veterinarian's obligations and the owner's obligations.

The notion that the practitioner is somehow responsible for the recipient's obligations is a fiction that has been created by veterinary boards. In their zeal to "protect the public", boards typically disregard the clear boundary between the vet's obligations and the client's obligations, and hold the vet responsible for the latter. Since the profession consists for the most part of timid individuals with limited funds and limited stress capacity the board gets away with this behavior most times. It is only when vets band together en masse in the form of an independent professional defence organization that the rights of the individual - and thereby the rights of the profession - are upheld.

The Board's comments in their article and the wording of the Code do not resolve any of the complexities of informed consent, nor do the comments indicate that the Board has any real understanding of the realities of informed consent. These comments merely set veterinarians up for failure. Most concerning is that these comments take away the burden from the client and puts it on the shoulders of the veterinarian. And this is an impossible burden, as no reasonable veterinarian will always be able to take care of every obligation imposed on them by the Board and the legislation. The more that the Board tries to resolve the problems inherent in informed consent by placing more of the burden on the veterinarian, the more damage it does to the profession. This is not just a problem with the VPBNSW, but of many boards around the world. It comes about when veterinarians serving on boards play at being lawyers and employ law firms that will advise the board whatever it is they think the board would like to hear.

Clauses 6 and 17 of the NSW Code are, of course incorrectly worded, as the Law requires the owner of the animal or their lawful agent to provide the consent. A person may be responsible for the care of the animal but not be the owner or the lawful agent and therefore their consent would not bind the owner - leaving the veterinarian with no consent at all!

Clause 17 creates an unfair burden on the veterinarian. Firstly, the veterinarian bears the burden of estimating costs and informing the owner thereof for every case, even if the owner does not want to know what the estimated costs will be at the time of obtaining consent. No other profession bears such an onerous burden - if the consenter does not ask, the professional has no obligation to inform. This causes prejudice to vets in NSW on a daily basis in all sorts of circumstances and the board has financially destroyed one vet in the process of enforcing this requirement. Secondly, the term 'likely' is a subjective term that has no place in legislation. What you considered to be 'a likely outcome' at the beginning of the treatment when there was nothing known about the condition might be diametrically opposite to what the board, with the benefit of the results of all the diagnostics subsequently carried out and the benefit of hindsight considers 'likely'. And clearly, veterinary boards cannot necessarily be trusted with being sufficiently circumspect when examining the reasonable of any ''misdiagnoses.

Many Veterinary Boards and their lawyers do not adequately understand the law and its application in practice. Legally, the carer is irrelevant and veterinarians need to obtain consent from the owner of the animal. This is unless you have proof that the carer is the lawful agent of the owner and binds the owner in law. Many times, the carer does not qualify as the lawful agent; and you can bet that when the owner finds a reason to make a complaint he/she will argue that the carer is not the lawful agent, therefore the treatment had no legal basis. This would leave the defendant (the veterinarian) to argue Estoppel, (Estoppel Definition: A rule of law that when person A (the carer), by act or words, gives person B (the veterinarian) reason to believe a certain set of facts upon which person B takes action, person A cannot later, to his/her benefit, deny those facts or say that his/her earlier act was improper). This creates an awkward wrangle. How many times do people hold out to be the owner of the animal, then later (e.g. when the animal dies or the bill is presented for payment), tell you that this is not their dog, this is their daughter's/aunties'/uncle's/deceased mother's/neighbor's/friend's dog? In this respect, the Board has got it completely wrong.

The Board states that it accepts that often costs are not fully known; complex medical or surgical conditions may be difficult to explain; or a definitive diagnosis may not yet be made; but yet has placed the additional burden set out above on the veterinarian over and above what the law requires. The problem is that at the time of commencing treatment, the veterinarian often knows little about the diagnosis and nothing about the outcome or costs, but the board, when examining a complaint, has all the benefit of hindsight and all the time in the world to decide what the vet "did wrong". To date, the NSW board has not shown much good judgement or circumspection in understanding or applying the reasonable veterinarian test to a case.

The Board has created too great a burden on the veterinarian with all the suggested questions that the veterinarian should ask him/herself. The Board is creating a situation where there is a burden of proof on the veterinarian to comply with all these suggestions - suggestions which are well beyond what is legally required.

As confirmed by the court in the recent case Biggs v George [2016] New South Wales Court of Appeal 113, [in line with State and Federal Courts around the world] informed consent is merely a general requirement based on reasonableness. The veterinarian therefore needs only to satisfy him/herself that the substance of the information has been conveyed and been understood by their clients.

Consent Forms

The VDA has been examining non-VDA consent forms from non-VDA practices in NSW and across Australia, and very few, if any, of these have been found to provide proper protection to the veterinarian. The only form, which we are aware of, that provides proper and reliable protection in Australia is the insurer-approved VDA consent to treatment form. The consent form provides the legal basis for the treatment and is the first line of defense for the veterinarian, yet almost all non-VDA consent forms in Australia provide little or no protection.

Not only do properly worded consent forms protect the veterinarian, but they also place the veterinarian-owner relationship on the right footing right from the beginning of treatment. Proper informed consent leads to better client compliance with treatments and better outcomes for patients.

The sooner VDA members start using written treatment plans (combined with the VDA consent form), the more solid their relationship with the owner will be and the better their chances will be of pleasing the people who scrutinize their administration - and the safer they will be within the law. Contact your VDA Consultant for more information on treatment plans.

Published 2016-08-10

Dealing with complaints

(Article 424)

Good service and a good reputation are two factors that galvanize your business. Complaints have the potential to de-rail this “thrive drive”, and dealing with a complaint can be tricky and unpredictable. However, there are some tried and tested steps that help to deal with complaints effectively.

Ignoring or dismissing a complaint is the worst possible action you could take as you are effectively telling the client that you don’t value them and this could result in your one way ticket to a board hearing. Therefore the first step is to acknowledge receipt of the complaint.

No one likes dealing with a difficult client or one who complains but the most important thing to do is to make sure that they feel like you are really listening to them and that what they have to say does matter. By listening properly the first time around, you will save yourself a lot of wasted time and probably more trouble later!

Here are some useful tips to remember when listening to a complaint:

Stay calm

Take the client to a private area or transfer their call to a quiet zone

Thank the client for bringing the matter to your attention

Ask them to tell you the full story from the beginning

Just listen and keep listening – don’t interrupt or argue

Empathize – but it is generally better to avoid phrases such as “I know how you feel” (you can’t)

Take notes – and check what has been said to make sure you haven’t misunderstood or missed any key details.

Once you’ve listened carefully, thank the client for bringing the matter to your attention and if it is clear that their concerns have not been resolved, explain that you will submit their concerns to the VDA for evaluation. This is often all the client needs, but it must sound genuine. Avoid apologizing to your client and never use the word “sorry” until all the facts are known and evaluated.

Be sincere –the person you’re talking to will detect and resent an automatic response

Remember, an expression of regret will make the client feel heard and understood. It doesn’t mean you are admitting liability – and you never should use the word “sorry”. Try saying something like “it makes me unhappy to know that you are not satisfied” or “it is unfortunate that this has happened” or “I hear your complaint with concern”.

Do not make apologies on behalf of someone else.

Try to get the client on your side by saying things like “how can we solve this problem for you?”

If you can offer information that is factual and objective such as test results or declined offers, then a prompt explanation can often defuse their concerns. Here are some key points that might help:

Avoid written reports and explanations - contact the VDA first ? Never speculate

Don’t act defensively - any sentence that begins with “But, …” should be avoided.

Focus on the key issues that the client has expressed concern over

Use clear language and explain veterinary jargon ? Encourage the client to ask questions throughout

Check that they have understood

Ask the client if your explanation has answered their concerns

Reassure them that the matter will be dealt with promptly and that you’ll keep them informed of progress

Always ask for a complaint in writing

Never blame other staff members.

The VDA assists both parties to objectively process and to understand the facts in the context of the law relating to the limitations and constraints that applied to both the owner and the veterinarian at the time of the treatment. The VDA’s ADR process is free and designed to assist both members and animal owners to resolve disputes.

Be sure to contact the VDA the moment you feel that your client may be dissatisfied with your service or when something goes wrong.

Published 2016-08-04

The Curious Case of the Incredible Dr Pol

(Article 423)

In this article, we look at a recent development in the curious case of Dr Pol, being the judgement handed down by the Michigan Court of Appeals in June 2016 and the potential significance of this judgement to you as a practicing veterinarian.

For those not yet familiar with the case, Dr Jan Pol is a practicing veterinarian in rural Michigan and star of the National Geographic TV series "The Incredible Dr Pol". Following a complaint of substandard veterinary practice, the Michigan state veterinary regulator, the Department of Licensing and Regulatory Affairs ['the DLRA'], found Dr Pol guilty of not meeting required minimum standards of veterinary care and censured him. Dr Pol then took this finding on appeal to the Michigan Court of Appeals ['the Court'], which reversed his conviction.

The Court's reversal of Dr Pol's conviction has created quite a stir within the profession. The reaction from the complainant who filed the complaint against Dr Pol with the DLRA was "Michigan gets what Michigan wants".

"How could the court possibly say that Dr Pol met the required standards of care in the treatment of his patient?" many veterinarians are asking. So - did the Court get it wrong?

No, actually, the Court got it right, and we believe that it is important for veterinarians to understand why this is so.

It is important to understand that the Court did not endorse Dr Pol's standard of treatment of the patient. Rather, the Court rejected the manner in which the trial against him was conducted. It is not a case of "Michigan gets what Michigan wants = lower standards of veterinary care", but rather that "Michigan gets what Michigan wants = higher standards of veterinary discipline". The judgement not only highlights how the law ought to operate in order to protect our rights, but it also illustrates how precise the professional disciplinary process needs to be.

The disciplinary process is a highly technical process, and to have a reasonable chance of coming out on the right side of it at the end, I believe that every veterinarian needs to "have all their ducks in a row", starting right at the beginning with the first contact with the owner. It is not enough just to offer high quality treatment; there is so much more to making yourself resistant to veterinary disciplinary action against you. More on this later.

In the disciplinary trial against Dr Pol, the DLRA alleged that Dr Pol had (1) failed to wear gloves, a cap, mask, and gown during the surgical procedure; (2) had failed to provide intravenous therapy and (3) had failed to provide a warming pad or blanket post-surgically. The DLRA alleged that these failures violated sections of the Michigan Public Health Code ('the Code'), which also sets out the terms of disciplinary action available to the DLRA. Dr Pol was found by the DLRA to have failed to x-ray the patient's skull and chest; failed to properly cleanse the surgical area; was criticized for the type of anesthesia he used and for administering corticosteroids; failed to intubate for surgery; failed to use monitoring equipment during surgery; and failed to use proper procedures to take the x-rays. Can you see the problem with this?

The Code also sets out the terms for a court to review the DLRA's findings. The Code states that a court, in reviewing a decision or order of the DLRA, shall hold unlawful and set aside a decision or order if substantial rights of the accused veterinarian have been prejudiced; if the decision or order violates the constitution or a statute; if it exceeds the statutory authority or jurisdiction of the DLRA; if it is made from an unlawful procedure employed by the DLRA; if it is not supported by competent, material and substantial evidence on the whole record; if it is arbitrary, capricious or clearly an abuse or an unwarranted exercise of discretion; or if it is affected by other substantial and material errors of law.

The Court found that, in conducting the trial against Dr Pol, the DLRA had erred by going beyond the allegations that had been made against Dr Pol, especially when the DLRA determined that Dr Pol had violated sections of the Code not mentioned in the original complaint.

The DLRA made matters even worse by going outside of the section that authorizes disciplinary action. The law does not allow a person to be found guilty of violations that were not contained in the charges made against them. One of our universal basic rights, contained in the right to due process, is to be provided with full details of the case against us, so that we are given adequate opportunity to prepare our defence to allegations made against us.

At the DLRA disciplinary trial, Dr Pol's answer to the three allegations made against him were as follows:

(1) He and his assistant had properly sanitized their hands, which meets the standard of care required to prevent spread of infection, therefore there was no need for gloves, caps, masks or gowns. (2) That intravenous therapy was not necessary and that the anesthesia used was sufficient to properly sedate the patient for surgery. And (3) that the recovery room was at 75-80 degrees and newspaper and a rubber mat had been provided, therefore no heating pad or blanket was required. And that he would be able to tell when an animal was cold, and would take the appropriate steps if this were the case.

The Court considered whether Dr Pol's admissions to the three allegations had established a breach of duty or incompetence in terms of the Code. The Court found that there is no actual legal requirement that determines that a veterinarian must carry out surgery in a sterile environment, wear surgical gloves, gown, mask and cap during surgery, provide intravenous therapy, use specific types of anesthesia or provide specific forms of post-operative treatment or nursing. Therefore, there is no basis in law on which to establish a statutory violation when these are not followed.

The Court was clear on making the distinction between a "common standard procedure" and incompetence/negligence, and that failure to carry out the former can never automatically equate with the latter. In other words, even if the majority of the profession believed that it is a required minimum standard of veterinary practice to wear gloves during surgery, the fact that this is not proscribed in law means that an individual veterinarian that does not wear gloves during surgery cannot be convicted for having failed to do so. Even if this veterinarian is the only veterinarian in the community that omits to do so.

A fundamental basis for Dr Pol's defence had been that the owner had placed a financial limit on the treatment of $300, failing which the dog would have been euthanized. The DLRA had argued that cost is an irrelevant factor in relation to the provision of minimum

standards of care. The Court rejected this argument, stating that wherever an owner places a cost restraint on the treatment, particularly where euthanasia is the alternative, cost must play a role in the decision-making process of the veterinarian. The Court noted that this represented a stark difference between veterinary medicine and human medicine. This is an interesting decision, as it runs contrary to the approach used by many veterinary boards around the world. Many veterinarians have been disciplined for failing to provide care to minimum standards, even when the owner was or would have been unable to afford to pay for these standards.

The Court concluded that there was no reasonable basis on which Dr Pol could have been found guilty. The Court could not say that the guilty finding was supported by competent, material and substantial evidence on the whole record or that the evidence submitted established a clear standard of care that Dr Pol violated. In fact, the Court found that the DLRA's decision had been so far off the mark that it could even be said that their decision is ultimately "arbitrary and capricious" (quoting from the Code).

As you can see, the disciplinary process is a highly technical process, not unlike the process within the criminal justice system, portrayed on a regular basis on popular TV. For a veterinarian to have a reasonable chance of getting out unscathed at the end, every veterinarian needs to "have all their ducks in a row", beginning not with the 'please explain' letter from the Veterinary Board, but going right back to the very first contact with the owner or the animal. It happens all too often that a case that starts off on the wrong foot goes from bad to worse, ultimately landing the veterinarian with a conviction, and every attempt by the besieged veterinarian to make it better simply makes it worse. It is not enough to start managing your defense when you get the 'please explain' from the board; to have a reasonable assurance of success, you need to pro-actively manage every step of the process from the beginning. We call this the Pro-Active Risk Management Program", which is an intensive program that pervades every aspect of your practice. If you have had good advice from the beginning, and you mitigate weaknesses and build on the strengths in the management of the case, the "Re-active Risk Management Program", which deals with complaints before, during and after veterinary board disciplinary proceedings (or civil court proceedings), has so much more chance of success.

While most veterinarians are conscious of their duty to practice veterinary medicine to a high standard, I find that very few veterinarians manage their cases to minimum required standards. The few that do have the pro-active risk management program in place have done so preemptively in response to previous negative experiences with owners, but for some, it has taken negative experiences to the disciplinary process to convince them to do so.

Published 2016-07-27

Learn to Say No!

(Article 422)

Veterinarians form part of the "helping professions", and are always eager to assist their clients and ailing pets. When a client receives good service, it builds their confidence and brings in good business - and it makes everyone feel happy.

The problem is, many clients do not really understand the boundaries of what is legal and ethical (and sometimes even moral) when they approach their veterinarian for services. Clients will sometimes even demand risky services (although you may not be able to evaluate the risks at the time). This dilemma of trying to please the client and keep the business, versus satisfying the whims of clients asking for unconventional or illegal services causes our members a lot of stress. Most people find saying "NO" an extremely hard thing to do and this is even more true for caring and helpful veterinarians. However, saying "No" can be the most powerful word you can use when attempting to practice defensively and every veterinarian will have to learn to say no to some requests!

Saying "No" will prompt one of two reactions. Either the owner will walk out the door and you won't have to put yourself into a risky situation, or the owner will change his/her tune and ask for your advice and assistance instead. This will put you in the driver's seat, allowing you to control the situation based on ethical, professional and legal principles.

The (sometimes inevitable) result of standing your ground is that the owner could fly off the handle and hurl abuse, accusing you of being a money-grabbing, uncompassionate so-and-so.

Don't get side-tracked by the fear that the client will walk out the door and never return to your practice again. A good client is one who accepts your terms and conditions and pays you for your professional services, and those are the only clients you should want in your practice. Besides, who wants a client who purports to know more than you do and wants you to compromise your good reputation and take risks performing a procedure that you may not be qualified to do or may not be comfortable with?

Here are some examples of what your client may request, and what your response should be to those requests - and WHY.

Q: Doc, I know you haven't examined my dogs, but I am going on holiday and I need a tranquilizer for them so they will sleep during the trip. (*And when they die I will blame you for not having done an examination*)

A: No.

WHY? This topic has been covered in Barks 'n Bytes before. A veterinarian can only dispense drugs for a *bona fide* patient of a *bona fide* client. The VDA has seen a member narrowly escape being convicted of this unprofessional conduct. Thankfully, the Board accepted the veterinarian's explanation that the animal had been examined within a reasonable time frame before; that a clinical examination would not necessarily detect the presence of underlying condition such as heart disease that may have contributed to the animal's death; that following administration of the drug by the owner, the animal remained sedated for 14

hours but the owner did not take the animal to a veterinary facility. If this were to happen to you, you may not have such arguments to rely on.

Q: Doc, I have too many dogs to bring in for deworming. Just write out how much I must give of the dewormer alongside the names of my dogs, and I'll do it at home. (And when my Border Collie dies I will blame you).

A: No.

WHY? The above scenario was a case involving a number of dogs who suffered from chronic worm infestation, and were treated at home. The owner failed to mention all the breeds of dogs that she planned on dosing and the veterinarian was under the impression that they were all Rottweilers. Although many drugs can and do have adverse side-effects or even toxic effects that can occur even when taking the recommended dosages, it is difficult to prove that these effects were the fault of the drug and not your fault for prescribing an overdose. The best solution is to inform the owner that the drug you are prescribing has side effects, and that any unusual behaviour should be reported to you immediately. It is very important that you make written note of all advice given to your client in your clinical records.

Q: Doc, please write a report about my (*neglected*) horses saying there is nothing wrong with them so that the welfare organization won't take them away from me.

A: No.

WHY? We have on numerous occasions written about the dilemmas involved in report writing. Please refer to your Member's Handbook (online under MYVDA on your country's VDA website) for more on this topic. If it is impossible for you to turn down these requests, please contact the VDA for assistance in drafting the report.

Q: Doc, please may I have a copy of my animal's clinical records (so I can prove that you used the incorrect dosage of a drug and lay a complaint at the Board).

A: No. I will make a call or send a summary to the second opinion vet.

WHY? A clinical record is usually written in code (and bad handwriting!) that the owner cannot understand. Most veterinarians don't record even the basic clinical parameters. Sometimes the client asks for the record before the vet has had a chance to enter in all the important pieces of information. Please stop your receptionists from handing out the clinical record without asking your permission to do so. You should train your receptionist to inform you of a request for the clinical record, and that should prompt you to be wise and supplement it if necessary. You may not *alter* your clinical record, as this would be fraudulent, but you are legally allowed to supplement the record by clearly indicating the current date and the reason for doing so.

Q: Doc, just castrate that (uninsured) horse (and when the horse dies, the owner will be able to sue you for not having gained written consent.)

A: No.

WHY? Written signed consent is a prerequisite for VDA members. It is also recommended by some Boards that written consent is obtained for all procedures. The State Administrative Tribunal in Western Australia (the Veterinary Surgeons' Board of Western Australia was the applicant) has convicted a veterinarian for performing an ovariohysterectomy without express instruction or consent from the owner. They ordered the veterinarian to always have the written instruction and consent of the owner or agent when performing spays in the future. Obviously, this judicial precedent would apply to all operations. And considering that Boards around the world look to how their counterparts adjudicate matters, this case will have bearing on future complaints of this type in all our countries of operation.

Remember, *you* have the power. You are the professional. Your clients may just want a quick fix and have no concern for the risk to you - except when it all goes wrong. You have the knowledge to decide which requests are within reason and which are just too risky or illegal.

Published 2016-07-20

The Pet Shop Wins

(Article 421)

Dr A owns a veterinary facility which has come to an arrangement with a nearby pet shop. As a way of introducing new clients to Dr A's facility, Dr A and his team of veterinarians have entered into an 'understanding' with the pet shop. Dr A is a member of a veterinary organisation who proposed this arrangement, the intention of which is to increase the client and patient base of participating practices. However, there are many pitfalls, both from a legal and from a business perspective to what Dr A and his team are trying to accomplish.

The proposal goes as follows: Veterinarians from Dr A's facility visit the pet shop when a new 'stock' of puppies/kittens arrive for sale. The vets examine, vaccinate and micro-chip them. Dr A provides the vaccine and micro-chips at a reduced fee, and the veterinarian's professional time for travel and in performing the physical examination, and administering the vaccination and chip is free. In addition, any other veterinary services required by the pet shop animals are heavily discounted, and pet shop staff also receive a significant discount for veterinary care of their personal pets.

There are additional and more complicated terms of the arrangement which do not appear to be in Dr A's favour. The pet shop offers a "10 day guarantee" in which Dr A's facility will provide veterinary care to the animals sold from this pet shop within the first 10 days of being sold. But the new pet owner signs an agreement with the pet shop in which they agree to bring the animal back to the pet shop and not to Dr A. An employee of the pet shop is then supposed to take the animal to Dr A – resulting in a lack of historic and personal knowledge of the animal's condition. Using this course of action may also result in ownership and consent issues, not to mention breach of confidentiality issues.

The ten day guarantee limits the pet shop's liability to the amount paid for the animal. This is a good deal for the pet shop - the worst case scenario is that they 'lose' the money on one sale. They probably have a money-back guarantee with the breeder and pay them at 30 days, meaning they have control over their refund, too. So all they lose, in all probability, is the profit on the sale.

This is all at the expense of Dr A's veterinary facility as the veterinarians do a considerable amount of work for free.

In practice, other problems have been identified. Often when Dr A's veterinarian arrives to vaccinate or chip the animals, they are left dealing with a junior pet shop staff member who has no knowledge of the animals or their health status. Or it is found that there is no assistant available for the veterinarian, meaning a further staff member from the veterinary facility is removed from their work at the clinic to assist with pet shop animals. Apart from the inconvenience and loss of time and money, from a legal standpoint, this may mean that Dr A and his staff fall outside the veterinarian-client-pet relationship.

The VDA suggests that it is unwise to consider taking part in a scheme which covers the losses of a third party without any immediate, real and quantifiable benefit for the veterinarian. Liken this to the notion of an insurance company charging premiums for car insurance where the fee does not even cover the administration of the scheme; the insurance company then goes further and covers all losses above the deductible indefinitely,

in the hope that their clients may buy other insurance from them in the future, and expecting the profit that these future purchases make will cover the huge losses on the car insurance!

The only way forward for Dr A and his team is for the petshop to pay them an equitable fee for vaccinations and consultations that reflects his real costs + a profit margin. The pet shop should also pay for full hospital bills.

Veterinarians who wish to branch out from conventional veterinary business should sit down and work out their plan to the finest detail, weighing up all the permutations and risks, in a rational, objective business-like and unemotional manner.

No professional can provide today's services free in exchange for intangible "future profit". They may not survive financially long enough to reap the rewards!

Published 2016-07-13

Suicide in the veterinary world B & B

(Article 420)

The veterinary profession has the highest suicide rate of all professions – some reports say it is four times higher than the general population and twice as high as doctors and dentists. The causes we are able to identify stem from an over-identification with animals in pain, fatigue, irregular hours, overwhelming workloads, the expectations and demands of clients, working in an environment of psychological or physical isolation and lack of tools or resources to deal with stress.

All other professions have a direct relationship with the recipient of their services. The veterinary profession is unique in that it deals with a third party – being the owner of the animal – and not the patient directly. The owner often doesn't understand the medicine or surgical techniques required for treatment, or the consequences of taking certain steps in the treatment, yet the owner makes the decisions. The owner has complete control over the patient and there is often major conflict between the patient's needs and the owner's wants.

The patient cannot talk to the veterinarian so diagnosis often requires laborious testing and approaches to treatment that do not always work first time around.

Money is always an issue. Veterinarians rarely, if ever, are able to perform a thorough and complete diagnostic work up, due to the owner's financial constraints. Yet owners often have "human medicine" expectations.

Medicine is hard for lay people to understand and people are frequently emotional and irrational where animals are concerned and unable to be objective.

All these factors can work together to create the perfect storm in certain clients. The mix of misunderstanding, emotions, and irrational thoughts lead some people to feel they must take revenge for whatever reason. This often happens under the misperception that the client should act as advocate to stop the veterinarian from "harming" more animals. This emotional approach leads many people to bring the situation to a public platform, creating intense pressure on the hapless veterinarians involved.

Veterinarians under stress for all of the above-named reasons will sometimes have suicidal thoughts and have been known to follow through, thinking that this is the only way out.

Published 2016-07-06

Promising Reports…

(Article 419)

The VDA generally advises our members to never give reports and to not promise to give reports. There are a number of reasons for this. The job of a veterinarian is to treat animals, and there is no ethical or legal obligation to give reports. Writing reports is time-consuming and veterinarians ought to be paid for their time, but are rarely - if ever - compensated for the time it takes to write all the reports that are requested from them.

The Consequences of a Casual Attitude

One of the main reasons we recommend to our members not to hand out reports is that the report is often drafted in a casual manner that may not take into account the consequences and how it may be used. Veterinarians all too often draft a report without labelling the report "Private and Confidential". They often erroneously address the report "to whom it may concern". Under these conditions, a veterinarian cannot be certain where their report may land up and who will use it! And the result is often that their report is used against the veterinarian in some way. The person requesting the report is usually angry and combative and wants to blame and sue someone. This could be a colleague, but it is more often the veterinarian who is asked to write the report who may be challenged on the contents of this report and the (allegedly unprofessional) conduct that it describes.

Supply Sufficient Information to Afford Informed Consent

This advice must not be misconstrued as suggesting that veterinarians should not supply the pet owner with sufficient information. Communication with the pet owner is a very important and necessary skill. A veterinarian is ethically and legally obliged to give a pet owner sufficient information regarding a proposed procedure so that the pet owner can make an informed decision. An informed decision means that the pet owner has appreciated and understood the information and then gives substantial (written) consent. If the pet owner is overwhelmed or unsure or has questions and concerns, then it is best to deal with these before the procedure in any event. This communication should preferably occur face-to-face with the pet owner (or their legal agent) and prior to the procedure being performed.

Be Cool and Discrete

Be extremely wary of communicating in writing after an adverse event has occurred. This is precisely the time when cool heads and discretion are required, but is unfortunately the time when most people become emotional and defensive and cannot think clearly. And this is the time when many veterinarians offer up speculative information which may prejudice the defence if the matter progresses to a complaint or claim. There is very little that can be done to undo the harm it may have caused the veterinarian - especially when this is done in writing!

The VDA Will Assist You

There are occasions when it may be prudent or necessary to provide a report (but these occasions are much less frequent that most vets think). If you truly believe it is necessary to provide a report and you think you have a good reason, please contact the VDA who will assist you with evaluating the situation and editing a report. We have assisted a number of members in editing reports until those members have become proficient enough to draft reports on their own without prejudicing themselves. Note that if the pet owner is shouting and threatening, this is not a sufficiently good reason to jump in and provide a report.

Find a Diplomatic Way to Say "No"

The best way to deal with a precipitous and aggressive situation is to say "No". "No" is a very powerful word which buys you time and perspective. If you think "No" is too abrupt, then use any suitable phrase to make it clear that you are not going to provide any information at that stage. Then you have the emotional and chronological opportunity to objectively gauge the layout of the land. If the pet owner's anger dies down and they accept the outcome, all well and good, and you will not have unnecessarily stoked the fire (by providing a report that may implicate you or a colleague) or provided something that may come back to bite you. If the pet owner is serious and follows through on their threat and appoints a lawyer and initiates legal proceedings, then their attorney can approach you and we will assist you.

Not giving a report immediately after an adverse event cannot be construed as hiding something. This accusation is often used as emotional blackmail to unduly influence you. You should not provide information until you are in possession of all the facts and circumstances and are aware of the consequences of preparing that supposedly "indispensable" report. Contact the VDA so that we can assist you in evaluating the necessity and wording of a report.

Published 2016-06-29

Grey Areas in the Regulation of Veterinary Practice

(Article 418)

Over our 24 years of operation, the VDA has observed a number of grey areas creeping into the veterinary laws and statutes that govern our profession and we have seen how such grey areas impact on our members, resulting in unnecessary stress, financial loss, or even de-registration to practice.

There are a number of examples of such grey areas.

The Board Relinquishes Control

One example is that a veterinary board may determine that certain procedures (which were previously understood to be performed only by veterinarians), are now no longer regarded as a veterinary-only procedures. The board then relinquishes their jurisdiction over these procedures. This means that any lay person or unregistered veterinarian may perform such procedures. There is uncertainty regarding who will have authority and investigate and maintain standards over allegations of negligence. In effect, there is impunity over "unprofessional conduct" regarding such procedures.

In one country, procedures such as cosmetic treatments, breeding, and non-invasive ongoing treatments have been "deregulated".
Now, a number of veterinarians have informed the board that they are seriously considering de-registering themselves from the board and making a living performing the procedures that a lay person can perform because they would be able to do so without fear of conviction by the board.

A further complication that arises when boards decide to relinquish control over certain procedures is the fear and uncertainty of being criminally prosecuted such as for alleged maiming or cruelty.

The Requirement to Own or be Employed by a Registered Facility

One board has recently held a tribunal in which it was pronounced that veterinarians are required to own or be employed at a registered facility or otherwise face suspension. Conversely, certain veterinarians under that board's jurisdiction appear to be able to oversee multiple sterilizations at temporary premises without registering a facility. These veterinarians have so far escaped prosecution, creating a question mark over the interpretation by the board of their own determinations.

Contrary Rules Create Confusion

Another example is that veterinarians have an ethical duty to care for any animal presented in pain - including wildlife. However, treating wildlife may be in violation of nature conservation legislation that require a veterinarian to have a permit before commencing treatment.

Screening of Cases Lacks Even-handed Administration

We have witnessed situations where a board may decide to set out a procedure for screening urgent cases of alleged continuing and harmful unprofessional conduct, but does not apply the same Rules of Natural Justice to "normal" complaints.

DISCUSSION

Statutory bodies are duty bound to create an environment that creates certainty about what is proscribed (illegal). The effective way of dealing with such grey areas as described above would be to promulgate legislation which gives legal certainty as to who may or may not do certain procedures, which procedures are allowed and which are illegal, and under what circumstances exceptions may be allowed.

As a VDA member, you will have the full backing of our legal expertise and defence skills, should you be so unfortunate as to be charged with negligence for performing a procedure that was not proscribed, has not been declared illegal, and is in the grey area.

In the meantime, the VDA courteously suggests that our members weigh up the risk of dabbling in situations that may appear to be important charitable causes, but in reality only exposes them to unreasonable and unnecessary risk. Altruism will seldom be considered a good legal defence in the event of a civil claim. And a major hazard of being found liable in a civil claim is that you run the professional risk of then being prosecuted by the veterinary board. Presiding judges are usually obliged to inform the professional boards of adverse findings in their courtrooms against professionals. The veterinary board will then usually hold a disciplinary hearing, and will more than likely find the vet guilty of unprofessional conduct based on the evidence and finding in the court. The vet also runs a financial risk such as a having to pay damages, legal fees, lost income due to court appearances, locum fees, and possibly be stripped of their right to practice as a veterinarian.

Let us work with our statutory bodies to create certainty, for the good of the whole profession.

Published 2016-06-23

Dealing with adverse outcomes

(Article 417)

Most veterinarians are not strangers to adverse outcomes in treatments. The failed treatment is only half of the whole stressful saga; the other half is how to explain the failed treatment to your client. And it is this aspect where matters often deteriorate, especially for the less experienced veterinarian.

The wrong thing to do is to rush into offering an expedient explanation aimed at gratifying the client and diverting the blame away from yourself. For example, we have seen cases where the veterinarian will label a gastro case as "Parvo" or a death under anesthetic as a "heart attack", which may be true but can backfire without any empirical evidence for that diagnosis.

The appropriate route to take would be to stop, take a deep breath, and try to work out systematically and objectively where the treatment may have failed. The starting point is to establish what you know with reasonable certainty of the case and then to base a suspected diagnosis on that. So, it is much safer to speak of a gastroenteritis (because the animal had symptoms of vomiting and diarrhea) and than to say that you do not know what the cause is, but you can do a post-mortem, histopathology and cultures to try to establish the cause. Or, in the case of an anesthetic death, that the death was unexpected as your pre-anesthetic clinical examination had revealed no abnormalities, but you recommend a post mortem to try to establish if there was any pathology that may explain the death. This approach may be less satisfying to the client as it does not appease their immediate need for answers, but is a far safer and more truthful approach. Most importantly, this approach is beyond reproach in a court or at a disciplinary hearing - it will stand up to scrutiny at any level.

The modern client is often well-informed and will have no hesitation in taking steps to verify the information given to them by the veterinarian via the internet and even a willing veterinary colleague or two to assist them in order to do so. So many vets get themselves into great difficulties by providing an expedient diagnosis and then finding that they have to back-track later when the client is able to prove that diagnosis to be incorrect. This may be all that is required to trigger the determined client to make a Board complaint or enter into litigation against the vet. The consequences for you could vary from acute embarrassment (if the client takes the matter no further) to potentially devastating when you are obliged to explain yourself to your veterinary board or the judge in a court of law. It is very unpleasant to have your version shredded by a specialist surgeon or physician acting as expert witness for the plaintiff or for the prosecutor.

So when you are faced with a treatment that has gone wrong, we recommend that you take the following steps:

1. Provide the pet owner with an explanation based on your current knowledge of the case. Do not make definitive statements without basing them on scientific results of confirmed tests. In a live patient, offer referral to another veterinarian or specialist or further tests and additional treatment, and explain the additional cost. Be prepared to provide estimates of alternative treatments. In a deceased patient, offer a post mortem examination, preferably by a specialist pathologist. Telephone your VDA consultant for advice and guidance.

2. Discuss the matter with the client personally—do not delegate this to someone else. If necessary, explain that medicine is not an exact science, that outcomes are not always predictable, and that adverse outcomes are an inevitable part of veterinary medicine. It may help to draw comparisons with human medicine which may be more familiar and readily understood by the client. Simple statements like "people go in for a bunion operation and die under anesthetic" and "doctors sometimes prescribe thousands of dollars' worth of tests and are still not sure of their diagnosis" may be familiar to your client and will help to give them perspective about their expectations of your treatment as a veterinarian.

3. Avoid apportioning or accepting blame for the outcome. While it is natural for you as a caring veterinarian to feel personally responsible for an adverse outcome, you may be doing yourself a great disservice by apportioning or accepting responsibility before all the facts are known and the situation has been thoroughly analyzed. The VDA regularly deals with cases in which the member first believed that he/she had been responsible for the mishap, yet once the situation had been thoroughly analyzed it was found that some outside factor, or facts unknown to the vet at the time, had played a decisive role in the outcome - and the vet was exonerated.

4. Keep the lines of communication open with the client. Even in cases in which the client initially becomes abusive you may find that a phone call a few days later, when the anger has subsided, will re-open the lines of communication. Conversely, you may sometimes find the client is now less interested in listening to you than they are in abusing you! Nevertheless, a second approach is always worth a try.

5. Consider expressing empathy and compassion by using the words "condolences" and "sympathy". Never use the words "I am sorry" to express regret, as these may be interpreted as an admission of guilt by a client who is seeking evidence of your guilt.

6. Avoid discussions about what may have happened if a different course of action had been followed. It is unlikely that you will be able to explain to the client's satisfaction that your chosen course was reasonable when, with the benefit of hindsight, an alternative course will more likely have had a better outcome.

7. If the animal owner expresses any threatening or abusive or aggressive attitude, and it is clear that you ought to be concerned about the potential escalation of the matter, inform the VDA immediately. Remember, you are obliged to notify the VDA of an incident that may lead to a claim or complaint immediately, and the VDA advisory service is part of the benefit of membership. There is no limit on the use of this service.

8. Keep detailed notes of the event and ensure that you record the options and offers and instructions to and from the animal owner in your clinical notes.

9. The VDA's function is to carefully analyze all aspects of each case and to consider a suitable defense theme, if there is one. This can be a complicated and time-consuming process and requires legal knowledge and a host of skills well outside of the expertise of the member, so it's best to call us immediately.

In the case of board complaints, the VDA's function is to steer the case through the process on behalf of the member and to protect his or her rights to a fair hearing. In the case of civil matters, the claim is managed by the VDA.

Most cases are defendable and all the skills of the VDA's Consultants will be used in order to protect your reputation and integrity.

Published 2016-06-15

You can count on us!

(Article 416)

One Sunday morning, Dr A was consulted by a breeder client who had three English Bulldog bitches all whelping at the same time. The first bitch underwent a Caesarean section without any complications; two healthy puppies were delivered.

The second bitch also had a Caesarean section and three live puppies were removed; but somehow Dr A missed a part of the cranial uterus leaving another three puppies behind. Two days later this bitch gave birth naturally to a dead puppy. Mrs X telephoned Dr A, who told her to bring the bitch in immediately. On the way, a second dead puppy was delivered and on examination Dr A realised that there was a third dead puppy in the uterus. Although he operated immediately, the bitch died.

The third bitch had delivered a live puppy at home prior to Mrs X bringing all three bitches to Dr A's clinic that Sunday morning. After doing the caesareans on the first two bitches, Dr A examined bitch number three. When he pressed on her abdomen a lot of liquid was expelled from the vagina. He told Mrs X that the third bitch had finished whelping and she could go home with the other bitches and the five live puppies he had delivered by caesarean section. On the way home bitch number three gave birth to four live puppies and one dead puppy whose amniotic sac had ruptured in utero.

The three live puppies belonging to the second bitch all died two days later. Mrs X then demanded compensation for one dead bitch and seven dead puppies.

Unfortunately for Dr A, he had omitted to obtain a signed consent form before commencing treatment, as required by the VDA's insurers. Nevertheless, the VDA offered Mrs X reasonable compensation. Mrs X rejected this offer and instituted a civil claim against Dr A.

Mrs X claimed the bitch to be from an extremely valuable blood line and also added a value to the seven dead puppies as well as a further general damages claim.

The VDA consulted with the top two breeding kennels of English Bulldogs and were informed that Mrs X had substantially over-valued her dog and the dead puppies. We also learnt that Mrs X was not a well-known breeder and had never been seen at any dog show, placing her claim that her brood bitches were top of the line and their alleged worth in real doubt.

Courts are loath to award compensation for pain and suffering or general damages for the loss of an animal, unless the plaintiff can convince the court that the damages suffered are real (i.e. at least supported by a report from a psychologist). Even then, the award would be minimal. No one could guarantee that the seven dead puppies (had they survived) would firstly, have lived to a saleable age, and secondly, been sold for large amounts of money.

Worth noting is that Mrs X had run up an excessive account at Dr A's practice, which was still unsettled during this period.

Dr A was responsible for poor practice management, negligence in the treatment of the animals and not following the obligations of a VDA member. Apart from not having a signed consent form for the treatment, he also breached the terms of his membership by not seeking advice and guidance or timeously notifying the VDA that there was an impending claim. Dr A was supposed to contact the VDA for advice and directions when the bitch died and when it became apparent that the incident would lead to a claim, which he failed to do. Finally, he admitted liability to Mrs X without first obtaining guidance or authorisation from the VDA.

Dr A did not seek help from the VDA until he was already in a very deep hole and opened himself up to opportunistic claims by Mrs X.

However, the VDA never leaves a member in the lurch if there is any way that we can assist. The VDA corresponded with Mrs X's attorney on Dr A's behalf and managed to reach an out-of-court settlement which was substantially lower than Mrs X's original claim.

The VDA reminded Dr A of his duties as a VDA member, which are:

1. To phone the VDA and speak to a VDA Consultant when faced with a situation that may lead to a complaint to the veterinary board, a claim in a civil court or tribunal, and to do this long before there is a dispute with the client, colleague or staff member.
2. To fully abide by the decisions of the VDA to defend or settle a claim and to fully co-operate and provide information, records, and assistance.
3. To notify the VDA of any previous claims, potential claims or circumstances that may give rise to a claim.
4. To only use VDA-approved Consent to Treatment forms and to only use VDA-approved health certificates.

The VDA is here assist our members. The sooner you contact us, the better for you. You will not need to face the stress on your own – we will handle everything for you! So, don't be hesitant to pick up the phone!

Published 2016-06-08

Two at a time!

(Article 415)

Dr A had been in practice for over 30 years. She had graduated during the time when vocal fold resection was still taught as part of the Veterinary College surgery curriculum. Due to her excellent reputation and expertise, clients often traveled long distances to have her perform this procedure on their beloved pets.

Having had many years of surgical experience, Dr A did not hesitate when Mrs. X requested that the "debark" procedure be performed at the same time as a sterilization for her 2.7kg one-and-a-half year old dog. Mrs. X expressed her great concern about the risks involved with her dog undergoing anesthesia, as a few years before, one of her dogs had died post operatively whilst in the care of another veterinarian. Dr A confidently reassured Mrs X, telling her that they would take very good care of her dog and that she would be just fine.

During the sterilization Dr A noted that the patient's uterus was a little larger than normal for a dog of her size which suggested some proximity to estrus, but the tissues were not friable. During the ventral laryngotomy and vocal fold resection there was actually less bleeding than normal. Dr A felt that both surgeries went smoothly and without complications. The dog's vital signs had presented stable and normal throughout the anesthesia. A very close eye was kept on the dog post operatively and recovery was as per usual for the type of procedures that she had undergone. An occasional cough was noted which was due to the placement of sutures in the larynx. As is standard for the debark procedure, the dog remained in the clinic for the night following her operation. Mrs X excitedly collected "Simone" the next day and was informed by Dr A that some coughing was to be expected. Mrs X returned home and noted that the little dog was alert and seemed to be doing well.

Later that day, Mrs X phoned the clinic to express concern regarding the amount of coughing she was observing from the little dog. Mrs X described the symptoms to Dr A who confidently explained that the coughing was normal under the circumstances and that there was no cause for concern. The next morning Mrs X phoned the clinic in a bit of a panic, indicating that she thought her dog was dying. Mrs X then proceeded to make the one hour drive to the clinic but unfortunately the dog succumbed en-route. Dr A did everything to try to convince Mrs X to allow for an autopsy by the veterinary pathologist but all Mrs X wanted was to bury her precious little dog at home.

Dr A promptly phoned the VDA to report the incident. Unfortunately Dr A had not been using a consent form approved by the VDA and was therefore not eligible for financial coverage for the incident, were it to go to a board or civil hearing. Being a VDA member however did entitle Dr A to access the legal expertise and support to handle all communications for the case in the form of ADR. Dr A was advised to submit all pertinent information to the case and to notify the VDA if Mrs X made any further contact with the clinic.

Many clients become emotional and reactive after the death of their pet. Going through the stages of grief, anger and blame can cause a normal, logical person to lash out at the veterinarian, in the belief that the vet is responsible for the untimely death of their much loved pet. With this particular client's anxieties already elevated due to the loss of a

previous pet in the postoperative period, Dr A had good reason to be concerned about a potential backlash. And since Mrs X had refused a post mortem, Dr A had no way to ascertain the cause of death.

It does not appear that this particular client felt that Dr A was at fault or contributed to her dog's death. Mrs X has remained a client of Dr A. Still, the risk that a client would lodge a complaint in these type of circumstances remains high. After lengthy discussions with the VDA, Dr A has indicated she will no longer perform these two procedures together and the VDA has strongly encouraged her to ensure that she uses the VDA approved consent forms for all indicated procedures - without exception. Fortunately, Dr A dodged a veterinary board complaint in this case.

The VDA consent forms have been designed specifically to protect you and should be an integral part of your everyday practice. It can be devastating to have a client lodge a complaint or civil case against you when you take such pride in the hard work you do. You owe it to yourself to have these safeguards in place to protect your practice and your reputation.

Published 2016-06-01

What an Itch!

(Article 414)

Mrs X owned a small breed dog who had been treated for various minor ailments throughout his life, including eczemas, pyodermas and flea allergies.

On this particular occasion, Mrs X presented her dog for skin lesions and hind limb muscle atrophy and mild diarrhea. Dr A immediately recognised that the dog was a prime suspect for Cushing's Disease, and so refrained from using any cortisone treatment. Dr A analysed the dog's urine, which was concentrated and within the normal range; and since the blood screening tests showed no other abnormalities, he treated the patient topically. Frustratingly for Dr A, the laboratory that he used no longer performed urine cortisol : creatinine ratio tests. Dr A even showed Mrs X photographs of a Cushing's dog in a text book, and told Mrs X that follow-up consultations were essential to evaluate the progress.

Mrs X presented the dog for a check-up two weeks later. He was no better and had reacted negatively to the shampoo initially prescribed for his skin lesions. A new shampoo and antibiotic tablets were prescribed.

A week later the dog's condition had worsened. He was listless with more skin sores. This time a biopsy and histopathology were performed, which revealed an allergic dermatitis. In addition, the full blood count was now normal and there was no longer a stress leukogram. A Low Dose Dexamethasone test was negative for Cushing's. Dr A now felt justified in giving cortisone for two weeks in order to alleviate the dog's symptoms.

A week after this Mrs X went out for the evening and upon returning found that her dog had urinated on the couch. When she phoned Dr A he immediately told her to stop using the cortisone tablets. Mrs X also mentioned that the skin lesions had improved.

About 4 days later, the dog started vomiting. Mrs X could not reach Dr A after hours and went to a neighbouring practice. Dr B thought that the dog was clearly Cushingoid. Dr B started him on a drip and discovered that his blood glucose was significantly raised. He then instituted insulin therapy. Dr B waited two days to do another Low Dose Dexamethasone test.

Dr B then started Lysodren therapy. Two days later Dr B thought that the dog was clinically fine with a good habitus. But the next day the little dog took such a turn for the worse that before Dr B could carry out the owner's request for euthanasia, he passed away. Samples of the organs were sent to a Pathology laboratory who diagnosed suspected Diabetes Mellitus with complicating pneumonia, & DIC as the cause of death.

Mrs X wrote a complaint to the veterinary board against Dr A, stating that the dog had Cushing's disease which Dr A had failed to diagnose and that he had incorrectly treated the dog with prednisolone. The investigating committee accepted Dr A's response because he had kept such excellent records and had even noted the pictures he had shown Mrs X. The Board closed the investigation.

Discussion:

1. There is no substitute for having performed a thorough clinical workup when it comes to defending yourself. It is important to try to obtain consent for the most thorough workup that your resources make possible. Explain to the client the need for working-up a case and the severe limitations that a refusal will place on your ability to diagnose and thereby cure their animal. If consent is refused, bear in mind that you will need to record this in order to defend yourself, but that a defence of refusal is a poor substitute for a defence based on all the relevant clinical facts.

2. This is not the first time (and it certainly won't be the last) that a veterinarian is judged by the client with the 20/20 vision that only hindsight can bring. But don't be fooled – even hindsight can be blurred and unfocused. Veterinarians are far too easily manipulated into believing that they did something wrong and need to atone. That is where the VDA comes into its own – we defend your integrity and reputation - as if your life depended on it.

Published 2016-05-25

A Difference of Opinion? The Responsibility is Yours!

(Article 413)

Have you ever found yourself in the situation where you disagree with a colleague about medical treatments or surgery? If you have been in practice even for a short period of time, it is likely that you have already had a friendly discussion or perhaps even a heated debate with another veterinarian. This can be a very healthy and positive experience.

However, vets sometimes find themselves in situations where they disagree with a practice's 'standard' approach to certain aspects of medicine and surgery. Should this happens to be a mere difference of opinion on various ethical ways to approach the medicine or surgery, then that's one thing. But if you find yourself in a position where you are being expected to participate in unprofessional or unethical policies or practices, some of which may be in clear breach of the Veterinary Act, then that's another story entirely.

Ultimately, the thing that all veterinarians should be aware of is that responsibility for one's professional conduct cannot be delegated. In other words, you cannot be responsible for another veterinarian's actions – and vice versa! There may be certain situations where there is a grey area. For example, a senior veterinarian may be expected to assist and mentor a junior veterinarian, and not just throw them in the deep end without any help, but the junior veterinarian would nevertheless be expected to make their own decisions and to take responsibility for their actions.

The other situation where responsibility may be "shared" is in a clinic where poor standards are the accepted practice. This can be very stressful - especially if you are alone on a busy weekend.

In such situations, you will be required to justify your actions and choices to a veterinary board if your conduct is ever questioned. Whether you are a new graduate or an experienced veterinarian, the board will not accept that you were forced into a treatment path that you did not agree with. Our society has become far more litigious and as far as any veterinary board is concerned you are a professional individual, responsible for your own actions.

You may find yourself in a practice where the principal sets policies or procedures that you aren't comfortable with because you know they are not "best" or even "average" practice. In some practices there is still a great deal of pressure to conform to the way the senior veterinarian does things - the kind of pressure that is very difficult for many veterinarians and in particular, new graduates, to withstand and this may become a contributing factor to serious depression. You will have to ask yourself whether you really want to work in a practice where the principal is dictatorial and where you possibly have very little or no professional control. You may find yourself in a situation where your conduct is indefensible.

Another awkward situation veterinarians face is when they have to take over a case that is in hospital or see a patient for a re-evaluation after another veterinarian has treated the animal. It is not a good idea for you to just follow on with a treatment that you do not agree with, just because another veterinarian has set this treatment course. Even if you are the second or third veterinarian in a large practice to examine a patient, you should look at the

patient with fresh eyes - as though you were the first veterinarian. If you accept without consideration the decision of a previous colleague, you may ultimately be responsible for what occurs whilst the patient is in your care. This can be a political minefield and you would be wise to do what you feel is right by the patient, the client and your professional well-being. If it is not an urgent case, you may be able to get the client to re-schedule with the first veterinarian, but if the animal is already in hospital you will need to discuss the case with the other treating veterinarian/s to see if you can resolve any potential differences of opinion.

As an example, imagine finding yourself at a practice where referrals are generally not offered even in the event of unsuccessful treatment. You are presented with an 8 month-old dog that has such bad hip dysplasia (and potential other problems) that it cannot walk properly. It was seen at another practice that referred the case to a specialist surgeon for assessment but the owner's friend suggested the practice you work at. Radiographs were taken at the first practice but the owner is unclear on the outcome and there is practically nothing written in the clinical records. The dog had not received any pain relief and its condition has worsened. The owner had been told by the principal veterinarian that he didn't believe in hip surgery and did not offer any solution other than anti-inflammatories and a diet change. You now find yourself in the untenable position of having to contradict something that has been said by a senior veterinarian, knowing that they would dismiss your advice as incorrect. In this type of situation, you would have to be completely honest with the owner and explain that you are in a difficult position, because you believe that she should take the dog to see a specialist for assessment and to explore all possible options even though she has been told something different by another veterinarian in the practice. You also need to explain to the client that you are professionally responsible for the treatment and course of action you recommend in this current consult and that you feel ethically obliged to advise her as to what you consider to be the best option for her pet.

Another solution to this problem is to not work in a practice where you may find yourself either professionally compromised or trying to negotiate practice politics. Many veterinarians leave it too late and have to deal with a stressful complaint before deciding to leave. However, you can't always predict difficult situations. The above example is provided to try and help anyone who may find themselves in a situation where they could feel pressured to submit to inappropriate professional compromise. It demonstrates that there are ways to handle such awkward scenarios.

Do not criticise or bad-mouth another veterinarian to the client - it is unprofessional and your derogatory words may come back to bite you. Whenever possible, discuss it with the other veterinarian. Remember that you wouldn't appreciate a client complaint to the board based on the comments and assumptions of another veterinarian who had not even bothered to discuss the situation with you. A timely phone call to provide additional information and an exchange of personal perceptions that cannot be conveyed by the animal owner or even in the clinical notes could change your entire perspective on the situation.

In some practices, you may be in a position to effect positive change over a period of time and improve the standard of practice in a clinic. However, if the attitude is that you must conform to an unacceptable standard of practice rather than willingness to evolve or compromise, then it is advisable to reconsider your employment. Importantly, you should consider the toll this situation may take on your mental health. It is completely understandable that financial pressure may compel veterinarians to stay in undesirable work environments and that new or recent graduates may feel they have no choice. However,

once you start researching your options, you will no doubt find that there are many clinics where your desire to engage in “best practice” will be respected and valued rather than criticised.

Regardless of where you are working, remember that there are always things you can and should be doing to protect yourself professionally. Keep detailed clinical notes (including communication with clients) and always ensure that owners are fully informed. Obtain written consent. Record every aspect of what was offered and what was declined.

Remember that you are ultimately responsible for your professional actions. Make sure that you are familiar with your veterinary act and if you have any concerns, please contact the VDA for advice. We are here to assist our members!

Published 2016-05-25

Q & A on the VDF

(Article 412)

The VDF has been registered and is ready to go. The VDF is intended for veterinarians who work on high value animals. VDA members have received the announcement.

Here are some questions and answers to assist you in understanding how the VDF will operate:

1. Q: How will the VDF pay for litigation?
A: The VDF will use a reserve fund to pay for litigation costs to defend VDF members in civil claims.

2. Q: Why is commercial insurance becoming less appropriate?
A: The ever-changing veterinary professional liability landscape and the law on professional indemnity makes commercial insurance less appropriate. Claims will inevitably outstrip premiums because the value of animals has increased exponentially, but consultation fees have remained static. Commercial insurers have no emotional or professional ties to the veterinary profession. Commercial insurers consider the financial equation of premiums less claims = profit, and as soon as the profit turns to a loss, the cover is not renewed.

3. Q: Why was the VDF formed?
A: The VDA has been developing the concept of protecting the profession using its own funds to defend itself as it is inevitable that claims will outstrip premiums and the insurers will decide that the veterinary profession is no longer profitable and when they withdraw, the profession will be left high and dry and unprotected.

4. Q: Is the veterinary profession the only profession this is happening to?
A: No. It is happening with the RSA medical and engineering professions too. The RSA medical profession is down to its last insurer.

5. Q: Is the VDF an insurer?
A: NO. The VDF is not insurance cover, but rather a mutual reserve fund that protects its members against the legal defence costs of being sued.

6. Q: Why do members have to have indemnity forms signed by the client?
A: If there is no indemnity form, the whole premise of the VDF protection does not exist. Even though clients sign the form and waive their right to claim, they may still attempt to sue. The only way to protect a veterinarian is to have an indemnity form which limits the animal owner's claim to reasonable amounts.

7. Q: Are the VDF fees R10 000 per veterinarian or per practice?
A: The VDF membership fees are R10 000 per veterinarian per year payable annually in advance.

If our members have any further questions or would like any more information on the VDF, please feel free to email us at vdf@vetdefenceco.com

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Published 2016-05-18

Blackmailing the vet!

(Article 411)

It is not unusual for a VDA member to contact us for help when a client blackmails them.

This occurs when a client does not want to pay an outstanding account or wants to be refunded. The client will threaten to send a letter of complaint to the veterinary board unless the veterinarian refunds or writes off the outstanding account.

In Dr A's case, his client blackmailed him into buying a new puppy and writing off the balance of an unpaid account.

Ms X and her mother presented her 13-year-old male dog to Dr A complaining that the dog had not eaten anything since the previous evening and was vomiting. Dr A carefully examined the dog, taking its temperature, palpating the abdomen, listening to lungs and heart with his stethoscope, checking the lymph nodes and mucus membranes. Dr A checked and noted that the dog was not dehydrated. He then examined a blood smear. Meanwhile, Ms X and her mother fussed over the dog, patting and cooing to it continually. Mucus membranes, respiration and temperature were normal, but there was a 5% increase in white blood cells on the smear and the abdomen was tender and "gassy". Dr A told the owners that the dog had enteritis and treated him with injections of an antibiotic and an anti-emetic. This was carefully explained to Ms X and her mother and the dog was sent home with an electrolyte solution and an enteritis suspension.

Much later that afternoon Ms X's mother telephoned Dr A to inform him that the dog had died. Being a diligent VDA member who reads his newsletters and follows our advice, Dr A did not offer an opinion as to how or why the dog had died. Instead, he asked that the owners bring the dog's body back for a post mortem examination to establish the cause of death. The clients declined to do so.

Two months later, Dr A's accountant telephoned Ms X to enquire why she had not paid the balance of Dr A's bill. Ms X told the accountant that she was not happy with the treatment they had received at the clinic and that they had lodged a complaint with the Veterinary Board. Dr A telephoned Ms X to ask why she was so unhappy with the treatment he had provided and was told by Ms X's mother that her daughter would telephone Dr A back. When Ms X returned the call Dr A was not available and she spoke instead to the senior partner at the practice, Dr B. Ms X asked Dr B why Dr A had prescribed the medication he had without performing a thorough examination. Dr B obviously could not answer the question as he was not present during the consultation or treatment of Ms X's dog. The following week Dr B telephoned Ms X and informed her that he had spoken to Dr A and that Dr A had insisted that he had indeed examined the dog thoroughly - including using a stethoscope - and that he would never have dispensed medication without having done so.

As will be seen below, it is unclear whether the dog ever received any medication before it allegedly died.

Five months later, Dr A received a please explain letter from the veterinary board.

Amongst many strange allegations, Ms X stated under oath in her affidavit of complaint:
My dog presented the following symptoms (he) had not eaten the whole of the previous day, had collapsed shortly before being taken in for treatment and gone lame/paralysed in the hind legs. Dr A (only) did a blood smear and felt his stomach.

Ms X claimed that Dr A diagnosed gastro enteritis (which was true) and that due to the collapse and lameness, the dog had possibly suffered a stroke (which was totally untrue as Dr A did not see a collapsed, lame dog nor did he say anything about the possibility of the dog having suffered a stroke).

Ms X continued to allege in her affidavit that Dr A failed to check the dog's gums or eyelids, and that no further examination was done to determine where the infection had originated. Ms X said that Dr A did not take the dog's temperature, the dog's hind legs were not examined to determine other causes (of the alleged lameness), nor did Dr A listen to the dog's heart through a stethoscope. Ms X then stated "Leaving the consulting room we went home and the dog was placed in the room where he slept at night with my step-father. We went into the kitchen to fetch the enteritis medicine and when we returned we found that our dog had died." Ms X then contended that when her mother telephoned Dr A to inform him that the dog had died, Dr A said that the cause of death was probably due to the stroke.

The date on Ms X's affidavit was after Dr A's accountant had phoned her to discuss the outstanding balance and the subsequent conversation with Dr B in which Ms X was told that Dr A had indeed listened to the dog's heart with a stethoscope! Ms X wrote a second letter to the Board, two months after the first letter, in which she stated that her allegations in the first affidavit were absolutely true and that both she and her mother would swear under oath as to the veracity of her complaint, commenting that Dr A was attempting to make her and her mother out to be liars.

The VDA assisted Dr A to formulate his reply to the veterinary board but before it was submitted, Dr A was approached by a "go-between" who informed him that if he was prepared to purchase Ms X a puppy - there was a litter available - then Ms X would be happy to withdraw her complaint. Dr A instructed the VDA that he would prefer to purchase a puppy for Ms X, than to have the uncertainty of a hearing hanging over his head. Consequently, the VDA prepared an ex gratia settlement form for Ms X to sign with the proviso that, on the veterinary board withdrawing the complaint against Dr A, he would purchase the puppy for her. Dr B also wrote off the outstanding account. This was agreed to by Ms X.

Discussion:
It is unfortunate that veterinarians are at risk of unscrupulous clients. As can be seen by Dr A's decision to pay to purchase a new puppy rather than face a veterinary board investigation, veterinarians' fear of the disciplinary process is often greater than their desire to defend their reputation.

If this patient did actually die - remember Ms X did not bring a body back for a post mortem therefore nobody is certain of what became of the dog - there was nothing that Dr A could have done to prevent it, after just a simple consultation. The client and her mother were prepared to swear under oath that Dr A did not examine the dog properly, which made Dr A fear that, at a hearing, his clinical records and his solemn word would not be believed. So it seemed to him that to succumb to blackmail would be an expedient way out of his difficulties.

The conclusion that our readers must come to is that if it is this easy for a client to "scam" a veterinarian, it would obviously be even easier to do so in a complicated case involving surgery or a complex treatment regimen.

There was no post mortem and Dr A never saw a dead body to confirm that the dog actually had died, so whether Dr A was the victim of a carefully planned scam and the dog he examined is still running around in the garden with the new puppy which Dr A purchased for Ms X, (who received free treatment for her dog's gastro enteritis) we will never know.
It is, of course, more probable that the dog did die and that Ms X then took advantage of the situation by arranging to get a new puppy for free.

VDA Members are urged to ensure that whatever options are discussed with the client are also entered into the patient's records. Only meticulous record keeping can prevent this from happening to another veterinarian. Dr A's records were adequate, but not as detailed as he would have needed to protect himself at a hearing from these two scheming clients. We also urge our members to contact their VDA consultant when anything occurs that could possibly lead to a fraudulent claim of negligence or a possible complaint to the veterinary board. Both the fact that we have an event on record and our advice regarding your records could prove to be invaluable assets at a future hearing and/ or a Civil Claims procedure.

Published 2016-05-11

Now "'ear's" a problem!

(Article 410)

Mrs X's large breed dog had been involved in an altercation with the neighbour's dog which had left him with a torn ear.

According to Mrs X, when she presented her dog to Dr A he had advised that it was best not to treat the ear at that stage and she was given "no special instructions" to go home with.

A full two months later, Mrs X took her dog back to Dr A as the ear was still bleeding. Dr A reviewed the situation, and advised that he would need to resect some tissue to get skin to skin apposition and closure. The procedure took place and, although Dr A was not present at the time, the dog was discharged the same day, a small strip of plaster adorning the wound site. Mrs X queried whether it would be necessary to confine her dog and separate him from his companion but she was advised that it would not be necessary.

Mrs X returned with her dog the next day as the wound was still bleeding continuously. She observed that there was a large "v" shaped defect in the ear which had occurred when the dog's ear had first been ripped open by the other dog. Mrs X was concerned that Dr A had not attempted a skin-to-skin closure to mend the tear. After examining the ear again, Dr A informed Mrs X that he had not achieved his objective. He admitted the dog for observation, placing him in a cage "too small to allow him to stand", according to Mrs X. Mrs X suggested that the ear be immobilized and a bandage was then placed around her dog's head.

Mrs X visited her dog the next day. Seeing that nothing further had been done, and deciding that the situation had worsened, she removed her dog from the hospital. She refused to pay the bill for the one night of observation, and expressed her great dissatisfaction to Dr A.

Mrs X then took her dog to a different veterinary practice where the dog was confined, sedated and treated twice-daily for a full month, until the wound finally healed - although still leaving a "v" shaped defect.

Mrs X then wrote a letter of complaint to the veterinary board in which she described the treatment that her dog had received and accusing Dr A of negligence, in that he should have confined, sedated and treated her dog at the initial consultation, during which time she would have expected healing to take place within 7 to 10 days. She complained that the surgery undertaken by Dr A had only served to enlarge the defect, making healing more difficult, and deforming her "highly pedigreed show animal". Mrs X also complained that she was not informed at the time of discharge that the surgery had, in fact, failed. On top of this, she said that Dr A had at no stage advised separation, sedation or confinement of the patient, either before or after surgery.

Dr A was not a VDA member at the time of the incident and proceeded to compile his own response to the complaint sent to him by the veterinary board. Dr A's version was starkly different to Mrs X. In his reply, he explained that Mrs X had originally brought the dog in for his annual vaccination, at which time she had incidentally raised the issue of a small lesion on the caudal ear pinna. The lesion was not a recent injury, and Dr A had advised that it

would be wise to leave the wound to continue to granulate of its own accord, as surgery would enlarge the split that had caused a "v" shaped defect. Being an old wound, Dr A did not want to create more trauma to the wound and also could not suture the "v" closed.

The dog was returned two months later by Mrs X as the wound had never healed, largely due to the dog's companion licking it continuously.

Dr A discussed surgery with Mrs X, explaining that he would have to resect some of the exposed cartilage to achieve skin-to-skin apposition, and that this would create a further defect in the pinna edge. Mrs X was satisfied with this solution, providing it would stem the continuous oozing. Dr A performed the surgery, debriding the edges of the ear pinna and achieving skin closure, although he could not do anything about the "v" shaped defect. Only a light dressing was applied, because a larger dressing would have caused excessive head-shaking which would exacerbate the bleeding problem.

Dr A had not been at the hospital when the dog was discharged, but the wound had been checked by hospital staff, and was not bleeding at that time.The next evening, when the client returned, Dr A admitted the dog for observation, and to re-bandage the head to attempt immobilization of the ear.

Dr A also commented that he had not been informed that the dog had the status of "highly pedigreed show-dog".

The veterinary board wrote back to say that an inquiry would be held into Dr A's conduct. Dr A then contacted the VDA to assist him with his defence.

At the hearing, the following was revealed:

- Mrs X had stated in her complaint that she "consulted Dr A…. following an injury to her dog's ear" She omitted to say that the injury was already two months old.
- Mrs X conceded that she had not examined the closed wound, before jumping to the conclusion that no surgical closure had been performed on it. The fact was that the wound had been sutured closed using 3/0 vicryl subcutaneously.

A reasonable board would have to conclude that such careless misrepresentation indicates that the testimony is not credible and cannot be relied on.

Most of the case for Mrs X and the board revolved around the evidence of a surgical specialist who was called as an expert. He gave a well-balanced, objective and detailed overview of the treatment of ear wounds in general, and on this case in particular. He was of the opinion that Dr A's treatment had been reasonable in the circumstances, and although he might have done a few things differently, conceded that the reasonable general practitioner would, by and large, have behaved similarly.

Dr A was fortunately found not guilty. However, if he had been a VDA member at the time of the first treatment and had he then contacted us straight away, we would have been able to enter into ADR with Mrs X. It is likely then that this case would not have gone to the board, and on to a hearing.

Published 2016-05-04

The Case with No Merit

(Article 409)

Members need to be aware of how quickly issues can turn into problems and how quickly you could find a civil claim for damages being made against you. The following case history portrays how important it is that each case is judged on its own merits – as many have no merit at all.

Mrs X phoned Dr A and asked him to make a house call to see her cat, which was an ex-feral cat. When Dr A arrived, Mrs X's mother – Mrs Y, was home to assist Dr A. The cat was extremely difficult to handle, ran away, and had to be re-captured. Dr A diagnosed skin cancer of the ears, and explained that the treatment required surgically removing the affected parts. This would need to be done at his hospital.

Although the staff at the hospital knew that the cat was wild, they were nevertheless unable to prevent the cat escaping when they opened the kennel door to feed it. It apparently hurled itself at the unfortunate kennel orderly "like a ball of white fire" with teeth and claws slicing the air.

When Mrs X heard the news, she immediately approached her attorney to commence a civil suit, and also lodged a formal complaint with the Veterinary Board. She stated that Dr A had behaved "nonchalantly", and that the situation had been treated without due and reasonable care. Mrs X also instructed the attorneys to demand a sum of money in respect of damages sustained by her. The amount was based largely on a claim for emotional distress. (This draws a large dose of skepticism as the cat was a wild animal that Mrs X had not been able to touch, let alone pet and fall in love with.)

Dr A contacted the VDA and a replying affidavit was drawn up. Dr A explained that the accusation of nonchalance was very unfair, since he had driven around the whole area looking for the cat, had put up posters, informed all the neighboring veterinarians, welfare organisations and businesses as well as advertising in the local newspaper. Dr A had also kept in constant contact with Mrs X.

On top of this, the cat had never been a pet in the true sense of the word, and had only been 'adopted' by Mrs X the year before. It was fed by them but rarely came into their house. The receptionist at the clinic had heard Mrs X say that the cat was, in fact, a liability to them. Even with fore-warning, the staff could do nothing to prevent the escape of the cat.

In an attempt to pacify Mrs X, the VDA wrote a letter to her attorneys in which an ex gratia payment to replace the cat with a more domesticated version was offered. The attorneys wrote to say that they had tried to persuade Mrs X to take this offer, but that she had refused. The case went ahead to the Investigation Committee at the veterinary board who wrote back after their meeting to say that they had found no grounds for complaint, and were therefore closing their files.

This was bad news for Mrs X, who lost the opportunity to be recompensed for her loss.

In the meantime, Mrs X's charges and obstinate determination that Dr A should suffer for what had happened created great emotional turmoil in Dr A and a feeling of extreme injustice, since he had gone to great lengths to try and find the feral cat for Mrs X. Even after witnessing Dr A's efforts, Mrs X was still perfidious enough to go ahead with an attempt to sue him.

Fortunately for Dr A, logic prevailed in this case!

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Totally exhausted!

(Article 408)

Mrs X had been out on a run with her dog when it collapsed. She rushed the dog to the nearest veterinary facility. Dr A proceeded to place the dog in a cold bath and administered cortisone. In a short time the dog had recovered but Dr A wanted to be sure that the recovery was complete and so arranged to keep him for further observation.

When Dr A came in the next morning, he found the dog in extremis, and despite rushing him through to a specialist for emergency treatment, his patient succumbed.

At the time, Dr A was dealing with many personal issues and stresses and also had been unable to find a new locum to assist at the practice since the resignation of his regular locum a few weeks prior to this. This left Dr A alone to run a seven-day-a-week practice on his own. He was also on call 24 hours per day and was simply too fatigued and burned-out to give his full attention to the patient presented to him.

Dr A was unsurprised to receive a veterinary board complaint regarding this case. Dr A had no substantial defence to the allegations raised by the complainant and a replying affidavit would serve no purpose other than to assist the board in convicting him – so Dr A chose not to reply.

The Board consequently went ahead with their action and Dr A was duly charged with:

1. Failure to administer intravenous fluids
2. Failure to re-examine the patient timeously
3. Failure to assist the client in obtaining a second opinion.

On examining the charges, the VDA advised Dr A to plead guilty. The VDA assisted Dr A in asking the board what the penalty would be if he were to plead guilty. The Board responded that they recommended a month's suspension, suspended for three years.

The VDA replied that Dr A was a first time offender and that this penalty was very harsh based on the fact that the charges against Dr A were only related to unprofessional conduct regarding insufficient treatment, and that Dr A's conduct had not been tainted with dishonesty or fraud. Considering previous sentences for similar offences handed down by the board in the past, we suggested that a caution or reprimand would be more appropriate.

The Board wrote back stating that they stood by their original offer.

The VDA advised Dr A that we felt that although there was not a defence to the charges, we could at least make an appearance at a hearing in order to argue for a lesser sentence. Alternatively, should a more harsh sentence be handed down, the VDA believed that there was sufficient basis for a successful court review of the penalty.

Dr A, represented by the VDA, duly appeared before the tribunal and pleaded guilty to the charges. The VDA's advocate, in mitigation of sentence, outlined the background of the stress and work overload that Dr A was being subjected to against the prevailing lack of veterinary assistance in the profession.

To illustrate the fact that Dr A was an upstanding member of the profession who had merely been caught "off-guard" on this occasion, the tribunal was informed about the changes that Dr A had made subsequent to this incident.

In the first place, Dr A had lessened his patient load by reducing his consulting hours, and was referring all night- and most weekend- cases to other facilities.

In addition, he had recently been able to find a locum who could assist him with his workload during the week. In other words, from a "curative" point of view (being one of the principles of sentencing), the threat of going through the process of an investigation and a hearing had already had the desired effect on Dr A.

In the rebuttal, the pro forma complainant raised the fact that the complainant had not had the satisfaction of having their questions answered (as no replying affidavit had been received) and that, even though Dr A had pleaded guilty, the complainant remained aggrieved, particularly as there had been no remorse shown or apology from Dr A.

However, our readers should bear in mind that a disciplinary investigation is not designed to answer the complainant's questions – it is to determine whether the veterinarian's conduct fell below minimum standards. The only forum that is designed to provide the complainant with answers is Alternate Dispute Resolution (ADR) which the VDA runs very successfully on behalf of members.

As a remedy to the complainant's desire to receive an answer, the board proposed that a discussion be instituted which would include all the parties, so that opinions and explanations could be aired. Our advocate argued that round-the-table meetings with the complainant for such purposes had never been suggested or done before in these forums and that this would be ground-breaking procedure if this were to occur. Furthermore, as Dr A was prepared to participate in such a mediation, his willingness should be considered by the tribunal members as being a further mitigating factor, and that nothing more severe than a caution would be suitable and just punishment under these circumstances.

A caution was handed down to Dr A and preparations were made to hold the suggested round-the-table discussion with the complainant, the pro forma complainant, Dr A and the VDA's advocate in attendance.

In retrospect, the round-the-table discussion was an interesting experiment, but not one that we would comfortably recommend in the future. Through the years, we have had many opportunities to observe the reactions of complainants in disciplinary processes; from seeing the content and tenor of their original complaints, through their examination and cross-examination at the hearing, right up to their reaction to the conviction or non-conviction of the veterinarian concerned. These reactions have varied and in some cases, have gone to the extreme of hurling abuse at the board for not convicting "the

murderer". The VDA has invariably been left with the strong impression that the current conventional process of an investigation and a tribunal does not really serve the purpose or meet the expectations of the complainants. All too often, the complainant is left without any answers and without hearing any expressions of remorse from the veterinarian.

When one considers the substantial time, effort and cost in running a hearing (which in this case could have been saved had the board properly considered Dr A's argument as being reasonable and fair and in line with prior sentences), it becomes clear that the disciplinary process leaves a lot to be desired on every level.

The round table experiment also proved to be a failure, since the complainant dismissed the attempts to set out the surrounding circumstances in which Dr A had found himself as "unacceptable excuse-making", without providing Dr A sufficient opportunity to explain and clarify his position. We suspect that the process was weakened because the complainant was determined to harden herself to explanations of mitigating factors (which would have been new information, since Dr A had not submitted an answering affidavit) without having the benefit of spending time in consideration of his circumstances.

This is why the VDA's ADR process has become the most successful form of mediation. The 'complainant' has an opportunity to vent, to place their grievances in writing, to be heard and to receive an answer. The VDA's ADR process is less stressful for all parties concerned, and because it is conducted in writing, there is less opportunity for emotional derailing of the process.

While some animal owners express disappointment that they were unable to provide proof or reasons for considering that the veterinarian is negligent, the vast majority of complainants who complete the ADR process do not make any further action in any other forums such as boards or courts.

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The MRI that ended the road

(Article 407)

A human medical practitioner was the owner of a 12 year old diabetic Fox Terrier. One Friday afternoon, the little dog suddenly became lame on the entire right hand side of her body – including both front and hind limbs and the right side of her face. The pet owner took her little dog to the local veterinarian in their small rural town, who decided to refer the dog to a specialist surgeon who lived 350kms away. (The specialist surgeon had repaired some damage from lumbar disc disease on this patient approximately 18 months earlier)

The local veterinarian's receptionist made an appointment with the specialist surgeon, Dr B, for Monday morning, telling Dr B's receptionist that the dog was being referred for right limb lameness. She failed to mention that the pet owner was expecting the dog to have an MRI scan. This was an unfortunate omission, since Dr B did not own an MRI machine, and would have to make a booking at his local human hospital for the procedure. To make matters worse, such an arrangement could only be made at evening time after all the human work was completed.

On the Sunday afternoon prior to the appointment with Dr B, the pet owner drove the 350kms and booked into a Bed and Breakfast establishment.

She presented her dog to Dr B promptly on Monday morning at 08h00. After examining the dog, Dr B found right-sided paresis of the limbs and side of the face. He took radiographs and did a number of blood tests. The blood glucose level fell within the normal range as the pet owner had administered the dog's insulin injection that morning. Nothing abnormal could be detected on the radiographs. The blood serum urea was slightly high, therefore Dr B placed the little dog on IV fluids to prevent the serum urea going higher because the dog needed to be starved for the GA later in the day. Dr B felt that the dog's diabetic status was stable as she had received her morning insulin and was being starved all day for the GA.

Suspecting a stroke or a cervical disc lesion, Dr B informed the pet owner that he would book an MRI examination at the human hospital for that evening. The pet owner had only taken leave for one day and was rather annoyed that she would have to wait the whole day. Nevertheless, she telephoned her practice to inform them that she would not be back that evening as anticipated. She also booked another night at the Bed and Breakfast lodge.

Dr B changed his afternoon appointments in order to accommodate the unexpected MRI examination for the dog. On arriving at the hospital, Dr B induced anesthesia with the lowest calculated dose, and performed the necessary MRI views. The dog started to show respiratory distress, and Dr B reversed the anesthetic and stopped the procedure.

When the dog was breathing better, Dr B began to take her back to his vehicle which was parked at the nearest bay to the MRI centre. On reaching the vehicle the dog stopped breathing and the heart stopped beating. Dr B ran back for his medical bag in the MRI room and gave IV adrenaline and started resuscitation procedures. The dog initially responded but then stopped breathing again and unfortunately, died.

On hearing of the little dog's demise, the MRI technician suggested to Dr B that they complete the MRI so that they at least had those results available.

Dr B then telephoned the pet owner and explained what had happened and told her that her dog had died.

The MRI results revealed an intervertebral lesion at C2 but did not clearly reveal the cause of the dog's right-sided paresis or its death.

The pet owner was waiting for Dr B when he arrived back at his clinic. She accused Dr B of having given her dog too much IV fluid. Dr B checked and determined that the dog had received a correctly calculated amount of intravenous fluids for its weight and for the period of time that the dog had received the fluids.

Dr B immediately contacted the VDA for assistance as he felt that the situation required professional intervention from a legal point of view.

The VDA invited the pet owner into ADR and she immediately and positively responded to our letter.

The ADR process was performed as usual - the animal owner was given a chance to air her views and to receive an explanation of the legal and medical issues that had a bearing on her dog's condition.

The pet owner stated that she understood the explanation and accepted the manner in which Dr B had cared for her dog. It appeared that the event which caused the pet owner so much stress was the omission made by the local vet's (Dr A's) receptionist in not informing Dr B's receptionist of her desire for an MRI, causing the pet owner to have to wait an extra day and night for this process.

The pet owner thanked the VDA for its ADR process which brought closure for her in the loss of her faithful friend.

In hindsight, Dr B could have handled this situation better:

- Given that Dr B was a specialist surgeon and accepted referrals, Dr B's receptionist could be trained to ask if there were any special requests when a booking was made;
- Dr B could have used an endotracheal tube. This would have made ventilating the dog possible;
- Dr B needed to have an assistant to help him with all the tasks and monitoring that was required.
- Dr B could have first referred the dog to a specialist veterinary physician before attempting any anesthetic. This is what human surgeons do before they will touch a patient with a knife.

Luckily for Dr B, the pet owner was open to the VDA's ADR process which gave her understanding of the restrictions under which Dr B practiced. It is an unfortunate fact of life that even specialist veterinarians do not always have the resources to achieve the high standard of treatment that the modern world has to offer and has come to expect. The

stresses and forces of our modern lifestyle and the ever-present financial restrictions of veterinary practice often stand in the way of perfection.

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Pet Owners do NOT have a Right to Your Clinical Records!

(Article 406)

The VDA still receives regular queries regarding handing over of clinical notes and records.

We would like to advise our members: Don't do it!

Your clinical notes are YOUR private property. If you think of your clinical notes in the same way as you think of your personal diary, then you should not find it difficult to get your head around this issue. The only entities who have any right to see them are your statutory veterinary body and the courts - and the only reason that veterinary boards have a legal right to view your clinical notes (in other words, look at your personal diary) is because the boards grabbed this power while the profession was fast asleep]. Owners and pet medical aids have no such rights whatsoever.

Here is a case in point: Dr A sent a copy of his clinical notes to the pet medical aid. Mrs X, the owner of the patient, then demanded that Dr A send her a copy, too. Dr A contacted the VDA for advice after Mrs X requested that he supply her with his clinical notes "just so that she could keep the records file". The fact that Dr A had already violated his own privacy by sending his clinical notes to the pet medical aid placed him in a weak position with regard to the owner.

When Mrs X first approached Dr A, he told her that he did not hand out his clinical notes to clients. Mrs X later reported back to Dr A that she had telephoned the Veterinary Board and spoken to the legal representative who had informed her that Dr A was obliged to hand over his records as "this is what Mrs X was paying for".

The VDA wrote to the statutory board's legal representative to ask for her reasoning in this regard. She wrote back, denying that the discussion between the board and the pet owner included a discussion about any right of the client's access to clinical notes, and conceded the VDA's point that there was no law or rule addressing this issue. The rest of her letter, however, confirmed that she had no apparent understanding whatsoever of the veterinarian's rights to privacy and confidentiality over their clinical notes. This is, unfortunately, no surprise to the VDA, given that the legal experts generally employed by veterinary boards have a poor grasp of the law and this particular veterinary board has employed a succession of incompetent lawyers through the years.

Dr A decided that he would like to provide a clinical summary on his clinic letterhead of the occasions that he had treated Mrs X's dog. Having done this, he proposed that he should ask her not to come back to his practice. His thinking was that this client's readiness to go to the veterinary board for such a minor issue made her a serious liability.

A further and important consideration is that releasing clinical records to third parties may violate the veterinarian/client confidentiality relationship. This could get you into legal trouble somewhere down the line. You are bound by client confidentiality and should you wish to provide a report for verification of treatment to the pet medical aid, this should be done with the written permission of your client.

It is important to distinguish between clinical records and clinical notes. Clinical records includes clinical notes plus radiographs, scans, test results, pathology reports, etc. The clinical notes are the private and confidential property of the author and facility. The radiographs and test results can and should be shared with the lawful owner only, upon settlement of the fees for treatment. Clinical notes, on the other hand, are (as we said above) much like your personal diary, and should not be shared with anyone outside of your practice.

There is no good reason for pet medical aid to demand to see a vet's clinical notes. It is more than sufficient for the medical aid's purposes to see the client's copy of the clinic's invoice for veterinary services. The invoice details the items that make up the account for the treatment and serves as sufficient documentary proof that the treatment took place and that the owner's medical claim is legitimate. If the medical aid has doubts about the authenticity of the invoice, then the medical aid is free to contact the vet to verify the document. Any information beyond this is, quite frankly, none of the medical aid's business and any attempt by the medical aid to extract further information, especially by blackmail, should be met with a boycott by the profession.

The veterinary profession should not entrust pet medical aids (or anyone else) with their private and confidential information and the profession should not allow itself to be treated with mistrust by pet medical aids.

The VDA recommends that while members should decline to provide copies of their notes, members can offer to verify that the treatment described by the medical aid company was given. Alternatively, the medical aid company can provide you with a statement of the treatment given with a section at the bottom in which you sign to certify that the treatment listed was provided. But this should be done only with the pet owner's permission to divulge information to a third party.

We recommend that the pet medical aid company provides you with a declaration stating that the owner has no objection to confidential information being provided to the medical aid. The owner should sign such a declaration. This could be provided on the same form as the list of treatments and the statement by the veterinarian verifying the treatment. Such a document would not only make it much safer for you, but would considerably reduce the time you spend on it – given that medical aids expect you to give your time to them without any compensation!

The VDA recommends that you never commit to a specific diagnosis in any particular case unless you have specifically confirmed that diagnosis by eliminating all other possible causes. Due to financial constraints and the general lack of access to sophisticated diagnostic equipment, it is rare that a definitive diagnosis can be made in which all other differential diagnoses or concurrent illnesses and conditions have been eliminated. A diagnosis that has not been made by eliminating every other possibility, is merely a presumptive diagnosis and no veterinarian should incur liability by tying themselves down to a diagnosis which might prove to be inaccurate or incorrect.

In any event, the diagnosis is irrelevant to the medical aid company. The client has agreed to tests and treatment which you provided. The medical aid company is liable to reimburse the client for the costs of these tests and treatments, in terms of their agreement with the client. The company does not need your diagnosis in order to fulfill their contractual obligation to the owner.

The VDA cautions our members to guard their clinical records and refuse to allow any third party to see them. Veterinarians are convicted every year by veterinary boards for professional misconduct due to misconstruing the contents of clinical records supplied to them. There are also cases in which owners get hold of clinical records and use them for malicious purposes. There is no good reason for you to lay yourself open to this type of abuse.

The VDA is here for its members – to analyse situations, determine whether the risks involved are equitable, test the waters, and guide its members through them. So please let us know if you have any difficulties with pet medical aids or pet insurance claims. And don't hand anything over without talking to your Consultant first.

Please also remember to review Bulletin 13 on this subject.

Published 2016-03-30

IV fluids - Necessity or Optional?

(Article 405)

Dr A de-sexed Mrs X's cat and placed it on intravenous fluids. The cat's recovery was much slower than had been expected and unfortunately it passed away that night. Mrs X was distraught at the loss of her cat but seemed surprisingly understanding of the situation. As a result of the untimely death of Mrs X's cat, Dr A decided that it would be in his best interests to add a question to his practice's admission form, giving pet owners the option of having their pets placed on IV fluids at an additional cost.

Two years later, Mrs X took another cat in to Dr A for de-sexing. Mrs X ticked the "yes" block on the admission form, requesting IV fluids for her cat at an additional charge. The operation went well and when Mrs X came to collect her cat and settle Dr A's account, she re-read the new admission form and was really angry that she had been billed for the extra amount for the IV fluids. Dr A immediately credited her account and Mrs X appeared appeased. However, two weeks later, when Mrs X brought her cat to Dr A for stitch removal, she launched into a verbal attack on Dr A. Mrs X stated that if IV fluids were considered to aid the animal and make the operation safe(r), it followed that IV fluids should be standard practice with every operation or procedure performed. Mrs X accused Dr A of trying to do "ambush marketing" to make more money and of trying to absolve himself of the responsibility of keeping the pet safe. Mrs X also asserted that no pet owner should be asked to decide on an issue where the owner could not possibly be in a position to make an informed judgment.

IV fluids stabilize blood pressure and provide instant access, via the IV line, for emergency resuscitation drugs. According to an article published by Dr Becker on www.healthypets.mercola.com in July 2015, a study performed at the University of Pennsylvania School of Veterinary Medicine points to the importance of administering IV fluids during even minor surgery on pets. This is currently the recommended standard of care, but isn't practiced routinely in many veterinary hospitals.

For the study, the researchers focused on the effect of IV fluids on the network of small arterioles, venules, and capillaries that directly feed an animal's tissues and cells.

The researchers used a video microscope to capture the blood flow of dogs undergoing spays and discovered that increasing the amount of IV fluid they received improved the number of vessels receiving blood flow.

The study involved 49 dogs undergoing spay surgery and was conducted to evaluate how varying levels of IV fluids affected their blood flow.

The dogs were separated into three groups. One group received no fluid, one group received 10 milliliters per kilogram weight per hour of IV solution, and the third group received 20 milliliters per kilogram weight per hour.

The study results indicated that IV fluids affect circulation during the surgical procedure. The researchers found no differences among the three groups in the number of vessels receiving blood flow or the amount of blood flow. To their surprise, they also found no differences among the groups in the tiny capillaries that are less than 20 micrometers in diameter.

The researchers did, however, see a difference in the blood vessels larger than 20 micrometers. The dogs in the group that received the highest level of fluids had greater densities of these blood vessels than the other two groups.

These results suggest that fluids do affect circulation, but more research is needed to better understand what this information means, as well as the optimal rate of fluid delivery.

In August 2010, the VDA published our "Makes You Think Series, No. 29 – IV Fluids – Necessity or Optional?" We received many varying opinions on the subject. Some members believed that the administration of IV fluids should form part of the minimal practice standards of a responsible veterinarian while others felt strongly that it really should be the decision of the client who is accountable for the payment of treatment. One correspondent was adamantly of the opinion that IV fluids should not be administered as a matter of course, and should only be administered if compelling conditions exist, none of which should be dictated by the client.

In whichever direction your ethics pull you, it is necessary that your Consent to Treatment forms are comprehensible and uncomplicated and that the client signs the form before their pet is touched!

Published 2016-03-23

Breathing battles

(Article 404)

Dr A was presented with a healthy two year-old bulldog bitch that Mr X had purchased with the intention of showing and breeding her.

The dog had a skin condition that was causing her to shed an abnormal amount of hair, leading to bald patches and a sparse coat. Previous treatment with a medicated shampoo had had no effect so Dr A suggested that skin biopsies be taken in order to identify the condition.

The dog was duly hospitalized and a light general anesthetic was administered. Once induced, a cuffed endotracheal tube was inserted, as a precaution. The biopsies were taken and the dog was left to recover in a sternal recumbent position.

By late afternoon, the dog had recovered sufficiently to go home, albeit still in a somewhat drowsy state. Dr A carried the dog to the car for Mr X.

Mr X left his dog in her kennel outside to recover, while keeping an eye on her. She left her kennel on her own to urinate but was unsteady on her feet and Mr X had to carry her back to the kennel.

About an hour later, Mr X looked in on her and noticed she was no longer breathing. Mr X contacted Dr A urgently and went straight to the consulting rooms. Unfortunately, the dog was dead on arrival. Foreseeing a potentially litigious situation, Dr A undertook to keep the body overnight and send it in for an independent post mortem by a specialist pathologist in the morning.

The pathologist made his report directly available to Mr X. The diagnosis was a suspected tracheal stenosis with complicating “shock lung”.

The remarks by the pathologist were that tracheal stenosis is considered rare in the breed but has been described secondary to endotracheal tube damage of the airway passages, or external trauma to the trachea.

It was no surprise when Dr A received a letter from the Veterinary Board saying that Mr X had filed a complaint against him.

Mr X made specific complaints regarding what he called Dr A’s “negligence”:

He alleged that:

Dr A should have kept the dog under observation at his clinic until she had fully recovered, since it is a medical fact that bulldogs have problems with breathing.

Dr A did not request either oral or written agreement for administering a general anesthetic.

Dr A had not requested that Mr X withhold food and water before accepting the dog for hospitalization.

Dr A had not sent the dog home with any special instructions as to how the dog should be looked after in her recovery phase.

Dr A had not offered referral to an overnight monitoring facility.

Dr A contacted the VDA and a replying affidavit was compiled. These points were addressed:

Dr A had fully and specifically discussed the requirements for a general anesthetic with Mr X.

Once the patient had been induced, an endotracheal tube was immediately inserted, and was withdrawn as soon as the patient showed signs of chewing.

Respiration remained normal immediately after insertion and remained normal during the course of recovery at the clinic.

When the dog was discharged it was still in a drowsy state, but had recovered from the anesthetic, was clinically normal, was ambulatory and breathing normally.

There had been no regurgitation of stomach contents according to the post mortem report.

Since the dog was breathing normally at time of discharge, there could not have been tracheal stenosis present; and that a tracheal stenosis would develop so long after the removal of the endotracheal tube, was an unforeseeable event.

The Veterinary Board decided nevertheless to proceed with a hearing against Dr A and the charges made against Dr A were:

1. That he had prematurely discharged the patient, as the dog had not recovered adequately.
2. That he had not issued proper instruction to the owner on how to take care of the patient after discharge.

When Mr X was cross-examined, he made it clear that he blamed Dr A for the death of his dog, in that he felt that the dog was discharged too soon. It was emphasized by the VDA's legal counsel that the charges levelled at Dr A did not include an accusation of his being directly responsible for the dog's death.

Mr X furthermore admitted that his pet's condition had given no cause for alarm. He could hear the bulldog snoring in her kennel as usual, and the sound had been the same throughout. The dog was not shivering and he had not felt the need to bring her indoors. Mr X insisted that he had been given no instructions in after-care for his pet by Dr A. He also felt that he had spent a lot of money in buying this breeding and show dog, which had now been lost to him.

The VDA placed the findings of the pathologist's report in doubt, by arguing that there were other factors that might have influenced the development of a tracheal stenosis. The tribunal was also

reminded that the remarks made in the report were not part of the charges formulated against Dr A by the Board.

Under cross-examination, Dr A was adamant that he had given post-discharge instructions, including keeping the dog warm, keeping the wounds dry until the stitches were ready to come out, and instructions to feed her a light meal and give her water.

Dr A asserted that bulldogs take longer than most other breeds to recover from anesthetic and that it was therefore desirable to keep an endotracheal tube in for as long as possible, due to the likelihood of excess salivation, as well as the shape and length of the average bulldog's soft palate. This bulldog was collected at least three hours after the endotracheal tube had been removed, which would be more than enough time for Dr A to identify any complications during recovery.

The tribunal's decision was that Dr A was to be given the benefit of the doubt regarding the charges against him and he was found not guilty.

Published 2016-03-16

The Risks Involved in Making Apologies

(Article 403)

The real problem with giving an apology is that there is always a risk that it might come back to bite you. Many pet owners will view your apology as a form of admitting liability. In some situations an apology would actually be inappropriate.

It is fundamentally important to determine from the outset whether the event falls into the liability categories — in ascending order of gravity — of:

- mere adverse outcome
- mere oversight
- mere medical error or
- professional misconduct or negligence.

It would not be appropriate to apologize for an event that fits the first three "mere" categories. And it could turn out to be a really bad idea to do so in the last two categories.

Apologizing could also be considered a gesture of acknowledging fallibility and deserving of forgiveness. If the owner is in a noble mood, then your apology might be well received and you might well be forgiven — and respected for making the gesture.

However, if the owner is not so benevolent, the danger is that your apology might instead be purposely misconstrued and be used against you as an admission of guilt. Owners come in many different forms, unfortunately including those who may seek vengeance or retribution in the event that something happened to their animal.

The worst form of owner is the one who sees your apology as an opportunistic source of financial enrichment. They may use it to prove you were guilty of misconduct, as part of a complaint filed with the veterinary board. Your apology also may be used against you by the client's attorney in a civil lawsuit.

Any legal action against you places you at risk of a conviction. Any action against you in which the event fell into the first three categories places you at risk of an unfair conviction. Convictions, especially when unfair, are particularly stressful and can easily lead to depression, mental health issues and suicide.

"Mere" implies that the treatment did not fall below the required minimum standards of care. An adverse outcome implies that the outcome of a treatment was detrimental and unexpected. Not all adverse outcomes are due to professional misconduct or medical negligence; in fact, most adverse outcomes occur due to mere chance, accident or error in judgement, which occur even when minimum standards of care have been met. Professional misconduct and veterinary medical negligence imply a failure to meet minimum standards of care. Negligence is a civil law standard whereas professional misconduct is a professional disciplinary standard.

A veterinarian becomes liable only when his or her professional conduct did not meet the required minimum standards of care. So, an event that fits the first three categories implies that the veterinarian was not at fault. If the veterinarian was not at fault, an apology would be inappropriate, not to mention dangerous.

Veterinary liability must be viewed against the backdrop of the severe constraints faced by the veterinary profession. Mere adverse outcomes, mere oversights and mere medical errors reflect these constraints. Mere adverse outcomes often occur because veterinary medicine is not an exact or reproducible science. A treatment that was effective in 10 patients might not work in the 11th one, for no apparent reason.

Owner financial constraints means that veterinarians are under-resourced (in terms of both facilities and staffing) and overworked (in terms of long hours and mental fatigue). It also means less than optimum diagnostic workup with patients. These are among the factors that set veterinarians up to fail. None of this is the fault of the veterinarian: it is simply part and parcel of the realities of veterinary practice. Apologizing for something that is not your fault is simply inappropriate.

Apologizing has become a habit that started in the USA and is spreading across the world. Speak to any service provider in the USA, and before you can even tell them what is on your mind, the apologies start rolling off their tongues. “I apologize for that” comes before there is any reason to apologize, and comes so thick and fast that it become quite irritating. When you ask the person why they are apologizing, they are at a loss. Apologies are now so over-used that they now have the same status as other speech crutches, like “um” and “ah”, that is, they are a meaningless distraction. There is no integrity in an apology for events that occurred due to factors beyond the veterinarian’s control. Integrity requires that explanations be based on reality, not on obfuscation. If the reality is that the constraints of veterinary practice contributed to the cause, then that is the explanation that needs to be provided. That has more integrity than an apology.

The correct approach is to correctly categorize the event, then manage it accordingly. Owners are not pacified by apologies alone. They want to be taken seriously. They want answers that are meaningful and have integrity. They want timely and substantial answers to their concerns. They want restitution if the veterinarian did not meet the required standards of care. And they want to know that steps will be taken to protect animals against any such lapses in standard in the future.

Owners tend to get angry and take legal action when they believe that their concerns are not being treated seriously or that their veterinarian is trying to avoid responsibility. Glib apologies are not the answer and can just make matters worse.

Generally speaking, the standards of communication of the veterinary profession are rather poor. Poor communication after an adverse outcome is often due to indecision and lack of confidence. In order to be open and upfront with the owner, you either need to have the knowledge and confidence that you can manage the situation properly yourself, or you need the advice and guidance of professionals who are in the everyday business of veterinary law, like the Veterinary Defence Association.

The Veterinary Defence Association's complaints and claims management program has evolved over the years to take care of these issues. The Alternate Dispute Resolution process, which listens to the owner's concerns and provides properly founded answers and assurances, is especially effective. And where there is a loss due to genuine negligence, the VDA's Owner Compensation process will reimburse the owner, often closing the matter and thereby relieving the veterinarian of the stress of further legal repercussions.

Published 2016-03-09

Wound woes

(Article 402)

Dr A was in the process of closing up his practice one Sunday evening when Mrs B arrived with her neighbor's dog. The dog had been mauled by its mate and the neighbour (owner of the two dogs) was away on holiday.

Dr A admitted the dog into hospital and cleaned the wounds and bandaged them.

The following morning, Dr B arrived at the practice to locum for Dr A. On removing the bandages, Dr B discovered multiple punctures and some lacerations around the neck. Dr B repeated the treatment of administering antibiotics and pain relief and changed the dressings.

The owner of the dog, Mr X, gave Dr B consent over the phone for a drip, anesthetic and surgical treatment of the wounds. Dr B immediately placed the dog on intravenous fluids and sometime later anesthetized the dog, cleaned out the wounds, and disinfected and explored the laceration for damage to the trachea, jugular vein and other vital structures. The wound edges were not straight and Dr B debrided and sutured the skin as best as could be done under the circumstances. The dog recovered uneventfully. Dr B stayed on the premises and checked on the dog at midnight. The dog had virtually fully recovered, was standing, had drunk water and urinated.

The following morning, Dr B was concerned to find the dog was depressed, recumbent and showing little response. Dr B phoned the owner who had returned from holiday. He agreed to immediately come and visit his dog. Upon seeing the owner, the dog jumped up, ran around the waiting room and urinated in the corner. Dr B had painted somewhat of a poor picture regarding the dog's condition and felt embarrassed that the dog now seemed fine. After some discussion, it was decided that Mr X should take the dog home with medication and report back by telephone to Dr B that evening. In the morning he was to return the dog further for treatment.

That evening Mr X reported that the dog had eaten, drunk water, urinated and was ambulatory, although he kept his neck in a hung position.

The following morning, Dr B received a phone call from Dr C, a colleague from another veterinary practice where Drs C, D and E practiced. Dr C reported that the dog had been presented to them in a collapsed state. Mr X had said that the dog walked outside early in the morning but he had found the dog collapsed in the bathroom shortly thereafter and so he rushed him to Dr C's practice. On presentation, the dog's temperature was high and he was dyspnoeic. The dog was treated by Dr D with fluids and shock therapy, the neck was radiographed and the dog's condition stabilized. At 1pm, the dog suddenly deteriorated and died shortly afterwards.

A post-mortem was performed and samples taken for histopathology, but no swabs were taken for bacteriology. Massive muscle disruption of the dorsal neck area, some punctures and a large wound - all unshaved and untreated - were found on the back. There was pathology of the lung and heart as well.

A hearing was held against Dr A who had first treated the dog. Dr B was called to testify as a witness. At the time, Dr B was not a VDA member and was therefore not aware of his rights. A subsequent hearing was conducted against Dr B and to his distress, evidence he had given as a witness in the first tribunal was used against him. Dr B then appointed the VDA to defend him. The tribunal lasted three days and the testimony of the owner, and that of Drs C, D and E, the specialist histopathologist, two specialists from the local University, were examined and cross-examined. The charge sheet was changed three times by the pro forma complainants as the hearing progressed. This should have necessitated the recalling of all the witnesses to be re-examined each time, but Dr B's financial constraints prevented this from happening.

At one point during Dr B's examination in the first hearing, he was pressed by members of the tribunal to describe details of the wounds, after having already stated that he could not remember. Since he had no legal representative at this first hearing to object to this, Dr B replied, stating that there was a wound caudal to the shoulder blades on the dorsum of the dog. This corresponded to the large unshaved, untreated wound testified to by Dr D. Although not specifically dealt with in the judgment, this testimony undoubtedly led to the undoing of Dr B.

Dr B was criticized for insufficient fluid administration, insufficient monitoring of the dog, not taking radiographs, insufficient wound treatment and drainage.

What is significant is that the dog was taken home. At some stage, it is possible that it could have been bitten a second time by the owner's other dog. Additional doubt can be cast due to the fact that the lung and heart pathology could be indicative of pulmonary thrombosis and congestive heart failure, things that may not reasonably have been detected by Dr B. Both events and injuries would constitute new intervening causes, for which Dr B could not be held accountable.

The tragedy is that Dr B stated afterwards that he actually could not recall the details of the wounds at the tribunal as the incident had occurred some 18 months before, and his memory had failed him. At the time that he conceded to the presence of the wound on the back, he was scared, tired and confused due to the stress of being interrogated.

Was the wound missed or was it created during a second fight? We will probably never know. But the fact that the dog was taken home and could have been bitten a second time should have created reasonable doubt in the minds of the tribunal.

This case leads to the following guiding principles for our members:

1. Never appear at a hearing or in court where evidence you give may incriminate you without proper legal representation – even as a witness!
2. Treat bite wounds aggressively. Shave wounds widely, explore and probe wounds thoroughly

3. Be mindful of vital structures that may have been traumatized
4. Take radiographs!
5. Fluid and shock therapy are critically important treatments
6. Warn owners of the high costs and guarded prognosis due to the risks of SIRS and MODS.

Published 2016-03-09

The SAVC: Dragging its heels!
(Article 401)

In July 2015, the SAVC sent out an email to all registered South African veterinarians, inviting comment on draft regulation proposals for suspension, inspections and appeals.

A quick re-cap:

The SAVC's proposals included:

A proposal for the SAVC to pay a bonus to an investigator if the investigator produces evidence that results in a conviction.

A tribunal can "condone" any "clerical errors" made leading up to the hearing.

20 day limit for internal review applications.

The VDA issued a newsletter on the 29th July 2015 to explain the possible repercussions of these proposals (*inter alia*) as below:

Legislation governing the veterinary profession is becoming progressively more onerous for the veterinarian. The Bill of Rights gives you rights to fair administrative action and imposes obligations on the SAVC to treat veterinarians properly, fairly and lawfully. However, the SAVC is not only steadily removing these rights but also removing its own obligations to behave properly.

Bonuses for Investigators

The example cited was of the California Veterinary Medical Board's hospital inspectors conduct unannounced "search and seizures". The inspectors search until they find fault which result in instant citations, fines and draconian consent agreements. Several citations lead to a hearing by the State Attorney General in the State Administrative Court. State AGs are elected officials who rely on public vote for re-election (the conviction of veterinarians leads the public to believe that the AG (and the VMB) is doing a good job and so they will vote for the AG who they believe is supporting the cause of Animal Rights). Convictions by the AG lead to revocation of the veterinarian's license. The CVMB appears to work on a quota system – 12 veterinarians lose their licenses in California every year. We believe that California has the highest veterinarian suicide rate in the world. This is what happens when convictions are incentivized.

Condonation of Clerical Errors:

The proposal is that a tribunal can excuse "clerical errors" made by the administration. The standard of the SAVC administration has always been questionable. No doubt the SAVC would like to describe the errors that happen as mere "clerical errors" and of no major consequence, but they can, in reality, be errors that lead to severe and irreversible prejudice to the veterinarian.

They can be of such serious nature that they could potentially be used by the defence team in a court application to overturn a bad conviction. Therefore, the SAVC's motivation in moving towards taking this right away is clear to see.

<u>20 Day limit on Internal Review Applications:</u>

A further perturbing proposal is the one to impose a 20 day limit on applications for internal review by the SAVC of decisions and convictions made by the SAVC's tribunals. The SAVC would like to impose this restriction on your rights, but still believes that it has the right to take as long as it likes with any of its own processes. So SAVC processes that should take a few weeks land up taking months, even years, and sometimes are never completed. This could lead to the destruction of many years of hard work – not to mention – the end of your practice!

The current SAVC disciplinary process appears to be conducted on a "make it up as you go" approach.

The VDA would welcome a comprehensive set of rules that would give form, fairness and certainty to the current disciplinary procedure. Rules on procedure cannot be made in "bits and pieces" designed to favour only the SAVC or a particular complainant, to the prejudice of the accused veterinarian. The courts have very well-established sets of Rules of Court, which regulate and rationalize the legal process, while protecting the rights of all parties. It would be a very simple matter for the SAVC to sit down with the role players within the profession and using the Rules of Court, hammer out a fair, just and complete set of rules for disciplinary proceedings.

<u>The ultimate solution is for the whole disciplinary process to be taken away from the SAVC.</u>

No legal system with any credibility allows one body to fulfil all the roles of a disciplinary administration.

In response to this newsletter, the VDA received some very insightful questions from our members. A newsletter publishing these questions and answers was issued on 2 September 2015.

We would like to answer some of the questions we received, please see below:

<u>Independent Board:</u> When we say that the board should consist of vets who are independent of the SAVC, SAVA and VDA, we are not suggesting that "independent" veterinarians are those who are no longer registered with the SAVC or who are not members of the SAVA or VDA. We are saying that vets that have *previously served on the committees and boards* of these organisations should not be eligible to serve on an independent disciplinary body. The executives and committees of the SAVC and the SAVA consist of many of the same small group of people who use the revolving door to stay on these committees indefinitely. The SAVC is the SAVA and the SAVA is the SAVC.

<u>The VDA's role must be separate:</u> The VDA represents defendants, whereas the proposed new body would be an independent adjudicator. Representatives of defendants cannot also serve as adjudicators.

<u>Independence and Training:</u> It must be a fundamental requirement that the new disciplinary body is truly independent. And that they are properly trained in administrative law.

Transparent Candidates: Every new candidate should produce an election manifesto and the profession should openly debate that candidate's suitability for election.

The VDA wrote to the SAVC on the 1st September 2015 to request the full database of all the registered South African veterinarians, and made a PAIA application on 18 September 2015. Our intention was to open the proposed petition to all veterinarians for their vote.

Soon after this, in its NEWSLETTER 82, SEPTEMBER 2015, the SAVC made the statement that an independent disciplinary body would be prohibitively expensive and that the SAVC, on its own initiative, has already outsourced the disciplinary process to a very large extent over a period of several years.

There is no doubt that the current manner in which the SAVC runs the disciplinary process is unnecessarily expensive and extremely wasteful. Most complaints received by the SAVC are frivolous, vexatious and groundless and should be dismissed as soon as they are received. There is no good reason for such complaints to be subjected to an investigation or a hearing.

Given that four out of five SAVC prosecutions are unnecessary and unlawful, it is evident that a competent independent body could function on just 20% of the SAVC's disciplinary budget. Then there is further wastage caused by poor SAVC decision-making and administration. The SAVC's claim that an independent body would be prohibitively expensive is therefore clearly absurd.

As for the SAVC's claim that it has outsourced the process to a very large extent, this is simply obfuscation. The SAVC is still in complete control of every aspect of the process.

To date, the VDA has not received the database that we had requested from the SAVC, nor have we received a response to the PAIA application.

Is the SAVC playing for time, hoping that if it holds out on providing the information lawfully requested for long enough, the VDA and the profession will eventually give up?

Published 2016-03-02

Give them one finger, and they will take the whole hand

(Article 400)

For the past three years Dr A had been taking care of Mrs X's cat, treating it quite often for accidents and fight wounds.

Mrs X had never complained about the service she had received from Dr A, but nevertheless did not seem to get around to paying Dr A's bill. Eventually, after proceeding with legal action to recover his account, Dr A received a "please explain letter" from his Veterinary Board.

It seems Mrs X had not been happy with Dr A's services and had written up a very long letter of complaint to the Board.

The incidents that Mrs X had mentioned in her letter were as follows:

1. The cat had been attacked by a dog and had been presented to Dr A with a broken jaw. Mrs X said that Dr A had charged her almost double what he had originally quoted. She said she did not understand the technical reasons for this hefty fee but that she had paid the account anyway.

2. Mrs X had been spring-cleaning and her and her cat had been involved in a tumble over some rubble. Mrs X had rushed the cat in to Dr A with a broken leg. The leg required pinning and according to Mrs X, it had taken Dr A the whole day to find the correct pin and perform the operation, only allowing the cat to be taken home the following day.

3. A window had been left open on a top floor window where Mrs X had left the cat to recover from the operation. The cat had tried to escape this room via the window and Mrs X again had to rush the cat to Dr A. The plate and pin had to be removed and the operation performed again. This time the cat had contracted the 'snuffles' and Dr A had asked Mrs X to keep the cat at home, offering to make house-calls to give it its antibiotic injections. After making only one house call, Dr A had asked Mrs X to bring the cat into his clinic each day for the rest of the course of injections. Mrs X said that she had to wait hours each day to have the injection which Dr A would fit in between his other consultations. Mrs X claimed that the cat's leg was not healing correctly.

4. Dr A had suggested amputation of the cat's leg which Mrs X had refused. Dr A then offered a method of putting the leg into a type of traction, to assist it in healing correctly. Mrs X was concerned about the boarding costs for the extended period of stay this would require but Dr A had suggested that the cat was cared for in one of his portable cages. The cage was never supplied and Mrs X was forced to take care of her cat while it was wearing a heavy contraption on its leg. One day, while lifting her cat, the contraption had fallen off and Mrs X had to go back to Dr A for him to repair the damage with a cast. Dr A had charged for this consultation fee, plus an after-hours fee as he had been about to go home when Mrs X had arrived.

5. The cast was left on the cat's leg for about six weeks. The cat's shoulder blade seemed to be taking strain and the cat seemed uncomfortable. At this time Dr A was away on leave and his assistant would not examine the cat. When Dr A returned after another week, he had seen the cat and told Mrs X that the procedure was a failure and suggested that Mrs X take the cat to a specialist.

Mrs X had only praise for the specialist and the operation he had performed on her cat, despite the fact that this had too not succeeded, due to there having been "too many previous procedures on the leg".

Mrs X said that after being referred to the specialist, she had not heard from Dr A for over a year until she received a bill from him for the outstanding money on her account. Mrs X was unhappy with Dr A's fees and said that Dr A should have referred her to a specialist before the first operation as she would have had a far smaller bill to pay. Mrs X was very unhappy that Dr A had asked her to pay his account.

The VDA assisted Dr A in writing a replying affidavit to the Veterinary Board.

1. Mrs X's cat had been presented with bite wounds to his head and radiographs had shown a unilateral fracture of the ramus of the mandible, and a mandibular symphyseal fracture. Dr A had quoted to repair the ramus fracture with a plate, and to wire the lower canines for the symphyseal fracture. During surgery a further fracture in the temperomandibular joint was discovered, which required further surgery. The fracture had not been displaced at the time of the radiograph and hence could not be diagnosed prior to surgery. Since this particular surgery is notoriously difficult, the surgical time was much extended. Post-operative care was also most difficult and the cat had to be fed naso-gastrically. The post-operative hospitalization had to be increased and consequently the bill was much higher than originally envisaged. Dr A had explained frequently and in great detail what was entailed in this treatment and Mrs X had clearly indicated that she had understood.

2. The next procedure on the cat was after he was presented with a fractured proximal radius and ulna. The best surgical option was to plate the radius, but Dr A did not have the correct plate for the operation. However, he had sourced it immediately from the supply company and wasted no time in performing the operation. Mrs X had taken her cat home the next day and was instructed to confine the cat to an empty room, with doors and windows kept shut. Unfortunately the cat was not cared for in this manner and had fallen from a window, breaking the plate and pulling the screws out of the bone. The cat was only presented to Dr A many hours after the fall had occurred.

3. Dr A had re-operated and realized that he would be unable to re-apply a plate and screws since there was severe muscle contraction present, due to the delay in presentation. Dr A decided to apply a temporary cast until the substantial soft-tissue swelling had subsided and the surgical wound had healed. A permanent cast was then applied. Dr A performed the surgery, radiography and professional intervention at no cost to Mrs X. Dr A had only charged for the materials used – which Mrs X had never paid. Dr A was concerned that the cat might be injured again if he went home so a cage was offered at the hospital, which would aid in restricting the cat's movements. Dr A had offered this at a very nominal fee.

4. While hospitalized, the cat had contracted the snuffles. Mrs X had steadfastly refused to vaccinate her cat, despite many warnings and Dr A could refer to a record card with a highlighted refusal signature from Mrs X. The risk of spreading this disease in Dr A's clinic was too high and Dr A had asked Mrs X to take care of her cat at home. Dr A had offered to make house-calls and did on the first occasion but had then realized he had over-committed himself and had asked Mrs X to bring her cat in for the injections. Dr A never charged Mrs X for any of these injections.

5. The contraption referred to by Mrs X was a Dynacast synthetic splint. This was strapped over the cat's back to fixate the shoulder joint and to prevent the cast from slipping off. The appropriate principles applicable to joints and toes were adhered to. However, the radiograph taken after the healing period had revealed a non-union. At this point, Dr A suggested that Mrs X see a specialist surgeon since Mrs X had refused amputation.

6. The specialist attempted a Kirshner apparatus, something Dr A had discussed with Mrs X, but Dr A had decided was unlikely to succeed.

As far as costs were concerned, Mrs X was not charged a single consultation fee (apart from the after-hours charge made when the cast had slipped off) subsequent to the three initial consultation fees for the three accidents. Dr A had communicated daily with Mrs X while the cat was in hospital. At the cat's final discharge, Mrs X had stated that she would return to pay her bill.

The bill was sent to Mrs X on numerous occasions but was always ignored. When Dr A had phoned to talk to Mrs X, he was told she was too busy to talk to him and had on one occasion slammed the phone down in Dr A's ear.

Dr A had eventually been able to talk to Mrs X for long enough to threaten her with legal action if she did not pay her bill. Mrs X then stated that she was planning on contacting the Veterinary Board and that if Dr A put his case in writing, she would pay the bill. Dr A then sent Mrs X a fully itemized account which, too, was ignored. When Dr A instituted legal action, Mrs X wrote the letter to the Board.

Had Dr A written off the account, there is no doubt that Mrs X would not have written to the Board.

Approximately 60% of complaints that arise are motivated by the complainants' unwillingness to pay. These complaints are usually made when the outcome of treatment has been less successful than was expected. Many of the complainants, like Mrs X, take no responsibility for their own contributory negligence.

The Veterinary Board accepted Dr A's explanation and closed their file.

Published 2016-02-24

Admitting Liability – Contact the VDA Before You Do!

(Article 399)

No insurer will allow an insured to admit liability and still provide cover for them. And even if you are not insured, if you are a VDA member, remember that you need not be alone in handling the stresses of veterinary practice - the VDA is here to assist you. VDA membership entitles you to our free telephone and email helpline. You should use our helpline immediately when an incident occurs that could lead to a claim. The VDA will spring into action!

Remember that there are so many reasons for the failure of a treatment (other than what may appear obvious) that a veterinarian may never have the presence of mind to consider these on their own - especially when in an emotional state.

Veterinarians need the knowledge and experience of the VDA to properly assess the causes of the failure of treatment in an objective manner.

Here is an example of how handling the situation yourself can blow up in your hands:

Dr A was presented with a kitten to spay. After hospitalizing the kitten and obtaining Mrs X's signed consent, Dr A began the procedure. When Dr A tried to inject the kitten with the premed, the kitten unexpectedly hurtled out of the cage and fell down onto the next bank of cages, fracturing a femur in the process.

Dr A, feeling guilty about the accident, contacted the owner and offered to plate the fracture and do the spay for free. He did not inform the VDA.

Had he done so, we would have advised him not to admit immediately to liability in any form. This advice is based on knowledge gained from previous experience in similar cases.

The fact that a complete midshaft transverse fracture had occurred in a five-month-old kitten that had fallen only about one meter, should have set alarm bells ringing. The VDA would have been able to suggest to Dr A that he take radiographs of the fracture to check the mineralization of the kitten's bones. If, on examination, an underlying mineral-deficiency metabolic bone disease or pathology were discovered, this would have absolved Dr A of liability in the matter.

Unfortunately, Dr A did not take any radiographs, either before or after plating the femur, nor did he inquire about the cat's diet prior to the incident. Many people feed inappropriate food to their cats, usually with the best of intentions, thereby starving them of the calcium needed for early bone formation.

Typical to the nature of this case, matters went from bad to worse. The cat was returned to Dr A a week later and he discovered that the two screws distal to the fracture had come loose and that there was no bone callus formation. Dr A, caught in a spiral of calamity, offered to re-operate on the cat at no

charge to the owner. The two screws were replaced with longer screws and two cerclage wires tied around the plate. The cat was discharged with a cast.

Dr A was mortified when, after a further two weeks had passed, the cat was returned again! All the screws and the plate were loose and the fraught Dr A went ahead and replaced all the hardware with two intra-medullary Steinman pins. The cat was kept in hospital for a further ten days as a precaution. At the end of this period the cat, still unable to extend her toes, was discharged. Dr A put down the lack of extension to surgical trauma and possible irritation by the pins.

The cat was presented to another veterinarian for a second opinion. It was found that the top of one of the pins was irritating the sciatic nerve and so was removed. Under pressure from the owner (and STILL without having contacted the VDA for advice), our member offered to pay for half of the second veterinarian's bill. This was not to the liking of the client who responded with all sorts of threats!

Dr A decided at this point to contact the VDA for assistance.

The VDA drew up an ex gratia settlement for the second veterinarian's costs. If Dr A had contacted us right at the start when the fracture occurred, it is unlikely that Dr A would have been liable in law. However, since Dr A had attempted to deal with the matter himself, and had thereby apparently accepted liability, the best way to cut Dr A's losses (the cat had still not fully recovered) and fill all the holes that Dr A had dug for himself, was to use an ex gratia settlement agreement!

The lesson to be learnt here is to contact the VDA first, when an incident occurs. The VDA will assist you and the pet owner in objectively evaluating the matter, taking all the legal and medical issues into account in an unemotional manner. Then, if it is found that you have met the minimum standard of professional conduct, we can provide the owner with an explanation. If it is decided that you did not meet the required standard, the owner can be compensated appropriately. (Adopting this approach in this case also may well have saved the kitten from some of the many protracted surgical assaults on its leg).

All you have to do beforehand is read through and implement the VDA protocols and forms. Then contact us for help immediately!

Helpline numbers in our countries of operation are:

America & Canada: 855 757 5700

South Africa: 087 550 9000

Australia: 02 8355 9900

Hong Kong: Tel: 5808 5451

Published 2016-02-24

Wildlife is not fair game for SA veterinarians!

(Article 398)

In South Africa recently, a quarter share in a "super-buffalo" named "Horison" was purchased for R44 million, bringing the total value of this one single animal to R176 million. Values of wild game have rocketed over the past ten years and there does not seem to be any sign of it slowing down. The more valuable animals are counted in millions and the less valuable animals are counted in hundreds of thousands.

Which begs the question: can veterinarians afford to treat wild game any longer?

The reality is that once the value of any animal climbs to such high levels, it does not matter whether you were negligent or not in your darting or treatment. If the animal gets injured or dies - you are going to get sued, without doubt!

People who can afford to pay hundreds of thousands or millions for part shares or full ownership of such animals are going to sue, simply because their loss is far greater than the cost of litigation. And the problem with litigation (especially in South Africa with its dysfunctional court system) is that people with such large amounts of money at their disposal are going to be able to keep you in court indefinitely, until you roll over and pay out your last pennies.

So, with these levels of animal values you are going to be bankrupted - whether you pay up or don't pay up.

Smart insurers have removed themselves from the wild game veterinarian indemnity market long ago and even the foolish ones are on their way out.

The sums no longer make sense and there are far more lucrative markets for insurers. There are simply not enough vets in South Africa to pool the risk.

And the premiums would, in any event, be far out of the reach of any vet. To illustrate the problem: If there were 1000 game vets in the pool, and each vet was covered for R10 million per annum, each vet would be expected to pay in excess of R1 million in annual premium (>10%).

But there are not 1000 vets. If there are only 100 vets performing wildlife work, it means that each vet would be expected to pay R10 million premium per year. And this is cover for the value of the animal alone; it does not include cover for legal fees. So, unless South Africa can find 1000 vets willing to pay R2 million in premium per year, we can see no future in the game industry for veterinarians. [Actuarial calculations are, of course, far more complex than this. But this simple example does illustrate the problem].

Surely the solution would be for South African vets to confine themselves to the lower end of the market? One could try this, but animal values in the bottom end of the market are also escalating at

much the same pace as the high end, and vets will soon be pushed out of the low end as well. Then there is the problem that vets go out to dart or treat animals without knowing what the value of the animal(s) is/are. Many vets have had the misfortune of finding this out only when the summons arrives.

And there is still the "elephant in the room": the liability for death caused by humans due to mishandling of medicines as well as due to injuries caused by operating in a relatively dangerous environment. Such tragedies would also translate to policy claims in the hundreds of thousands or millions.

For these reasons, the VDA no longer provides indemnity for wild game work. Wild game vets are welcome to join or remain as Standard Members for low value animals, which entitles them to the VDA's professional protection services. Large Animal and Equine members on Flexi-Membership remain as before.

Published 2016-02-17

Prescribing human medication for animals

(Article 397)

Dr A contacted the VDA with a question regarding veterinarians providing prescriptions for clients who wish to obtain human equivalent medications for their pets.

Dr A had a client who was a General Practitioner and had asked Dr A to provide her with a prescription for the dog's medications so that she could obtain the human generic equivalents from a pharmacy, as they were far less expensive.

Dr A had examined the dog but was confused as to whether she was allowed to write the prescription for a human equivalent medication.

Dr A was also not clear on whether she could put a repeat on a prescription and for how long the repeats were allowed.

There are two issues at hand:

1. Issuing prescriptions on demand
2. Prescribing medication off-label.

The VDA advised Dr A as follows:

After Dr A has requested that this client, the GP, signs a consent to off-label use, it would be acceptable to provide him with a prescription. Dr A could make up the loss on the markup by charging a fee for the prescription and charging more for the consultation.

In some jurisdictions, it is mandatory that not more than 30 days' worth of medications be dispensed, with repeats of up to 6 months. Irrespective of the jurisdiction, it is imperative for veterinarians to set boundaries in their practices.

The VDA advises that these boundaries should be:

Medications are dispensed for a maximum of 30 days.

When the owner comes in for a repeat, the owner should be questioned and the answers recorded in the clinical notes.

If there is any concern regarding the animal's health, the owner must return the animal for re-evaluation.

If not, repeats can be given for 6 months total, with mandatory re-examination every 6 months.

It would be best practice to request that the owner comes back for each 30 day batch, so that they can be cross-examined on the animal's health, rather than to supply repeats on a prescription.

It is worth noting that, in at least some US states, veterinarians are obliged to issue a prescription for all dispensed medications, whether the owner wants it or not.

The bottom line for all veterinarians should be: I am in full control or I am not involved at all.

Published 2016-02-10

How to Really Support yourself as a Veterinary Practitioner

(Article 396)

It seems like some veterinarians are confused about VDA membership vs Vetprotect insurance cover. It is easy to get confused when comparing professional covers and it is easy to lose sight of the benefits of professional protection vs mere commercial insurance cover.

The fundamental difference is that the VDA is a non-profit association managed by twelve veterinarians who are qualified in law and/or have special training in veterinary medical law and ethics. Mere veterinary indemnity insurance cover, on the other hand, is a business model designed to profit from the profession and has no defence component.

VDA members can phone a VDA consultant or staff member at any time of the day or night to receive services. Try phoning your insurance company outside of normal business hours, Monday to Friday. And even when you can get hold of them, they would have absolutely no idea how to help you. They might ask you to fill in a form and send in the details of your claim, so that they can open a claim file. And if it is a claim for money that is covered by the policy wording, the complainant will likely receive a check in due course. Don't expect anything beyond that. And if you protest that you are in the right and the owner is smoking his socks, don't expect any support from your insurer, because they are not a professional defence organisation and you cannot expect them to have the infrastructure or expertise to defend you. They have no obligation to protect and defend you, to enter into ADR with owners, to defend you in Veterinary Board complaints and actions against you, or to defend you in court. Their only obligation is to pay claims. Read it, it's stated in your insurance contract.

Make no mistake, it's important to have insurance cover to cover you for large claims and legal costs, but it is important to differentiate between those who will protect and defend you and those who will make expedient settlements, because it is usually cheaper to pay the claim than it is to defend a claim. The VDA protects you and makes sure that you are covered via its insurance partners, so you get the best of both worlds. Mere insurers, on the other hand, tend to protect their own pockets.
So, if all you want is someone to cover you for claims, then buy mere commercial insurance cover. But do bear in mind that, if you are in companion animal or low-value large animal practice, you will on average pay far more in premiums than the insurer will pay in claims on your behalf. If it is a reputable company with deep pockets and will not pull out of the profession the year they experience claims that exceed premiums, then be our guest.
But if it is true professional protection you are after, look no further than the VDA.

So what is "true professional protection"?

With VDA membership comes immeasurable support, guidance and assistance, provided by our consultants - whose passions lie in protecting the integrity and reputation of each individual member.

The VDA provides members with assistance in dealing with:

• Investigation of a member by any statutory controlling body including the SAVC, Medicines Control Council or any other body or forum;
• Defence of a member in Statutory Criminal Defence for a statutory crime, including but not limited to criminal negligence, culpable homicide, attempted murder or murder;
• Defence of a member in CCMA hearings;
• Defence of a member against civil proceedings, including the member's and claimant's costs, fees, expenses and awards made against the member, in accordance with the law of the Republic of South Africa, as a result of an actual or alleged negligent act;
• General liability cover, including Public Liability cover, Employers Liability and Defamation. Wrongful arrest and statutory defence costs is provided under a separate insurance policy.
• Owner complaints and disputes
• Complaints of professional misconduct and civil claims of veterinary medical negligence
• ADR (Alternate Dispute Resolution) with owners – with compensation for owners when the veterinarian failed to meet minimum professional standards.
• Preventative measures in the form of consent forms, model certificates, record- keeping and bulletins

The members who have been assisted by the VDA have nothing but praise for our high standard of work and our support. Please visit our website at http://www.vda-southafrica.org/index.php/what-our-members-say to read a selection of these unsolicited comments.

It is easy to make the right decision about protecting your professional reputation. Once you have the right information to compare the options, it makes sense to stand together with your colleagues and join the VDA.

The VDA is the only organisation that is managed by veterinarians for the exclusive benefit of veterinarians and is wholly owned by veterinarians. That makes a world of difference!

Published 2016-02-03

Beware the Aggressive Client!

(Article 395)

Dr A contacted the VDA for advice after a very traumatic physical attack that took place a couple of days prior. This is the second physical attack by an animal owner on a veterinarian in the past couple of months. Over the years veterinarians have been punched in the head and even shot at by animal owners. This article is a forewarning to members to be vigilant of situations that may spiral out of control.

Dr A had been presented with a kitten belonging to a breeder named Ms Monja Venter. Ms Venter was accompanied by another female, who is believed to be in Ms Venter's employ.

The kitten was three days old and displayed a wound on its side. Ms Venter stated that she had no knowledge of how the injury had been sustained.

Dr A informed Ms Venter that the wound was infected and that she would like to hospitalise the kitten to treat it with antibiotics and to ensure that it received milk. Ms Venter explained that she did not work and would therefore prefer to take the kitten home to care for it there. At this point, the kitten was strong and not in critical condition, so Dr A accepted this.

Dr A left the consulting room at 08h30 so that she could arrange the antibiotics and some milk for Ms Venter to take home to feed the kitten. At 08h37, Ms Venter started walking around the hospital section of the veterinary clinic, looking for Dr A. Dr B, the practice owner, saw Ms Venter and approached her, requesting she wait in the consulting room. He then informed Dr A that her client was looking for her.

Dr A returned to the consulting room and told Ms Venter that she was preparing the antibiotics.
To this, Ms Venter demanded that she "hurry up". Dr A did not respond. Ms Venter then insisted: "Hurry up, my kitten is dying".
Dr A glanced at the kitten whose condition had not deteriorated from ten minutes prior and said to Ms Venter: "You are being very rude to me." Ms Venter then swore at Dr A.

Dr A left the consulting room and went to find Dr B, the practice owner, to tell him what had transpired. Dr B instructed Dr A to go and tell Ms Venter that her behavior was unacceptable and that she must immediately leave the practice and take her kitten to a different veterinarian.

When Dr A did this, Ms Venter approached Dr A aggressively. Dr A turned to walk away and Ms Venter then grabbed Dr A by the hair, threw her to the ground, and began to strangle her. Dr A's receptionist witnessed the attack and ran in to pull Ms Venter off Dr A. Dr A left the consulting room in utter shock.

Dr B then told Monja Venter that her behavior was unacceptable but, because he was afraid that the kitten may die if unattended, he hospitalized and treated it. Unfortunately, the kitten died at approximately 22h00 the same night.

Dr B telephoned Ms Venter to inform her that the kitten had died and that her friend may collect the body but that she was never to cross the threshold of their practice again.

Dr A remained in a state of shock for most of the day and found it necessary to telephone her psychiatrist for an appointment so as to work through this event.

The VDA advised Dr A to go to the police station and make a formal complaint against Monja Venter for assault and Grievous Bodily Harm and to include in her statement that she was in shock after the event and had to seek psychiatric help to deal with the episode.

As if such a situation is not dangerous enough, there is a further hidden danger that our readers need to be aware of. In the past, the SAVC has been known to take a complaint made by such a client at face value; not only accepting the complaint, but also going on to investigate and prosecute the veterinarian, despite the fact that the veterinarian offered evidence that the client was obviously mentally ill.

In this case, which the VDA dealt with some years ago, a woman held our member's son (a young student doing reception at our member's practice) hostage at gunpoint. The woman then chased our member through the hospital, firing shots at him. One bullet hit our member's thigh, but luckily was deflected off the pager device that he had in his pocket. The police were summoned and took the woman off to prison. The next day, they not only give this (clearly unhinged) person her gun back, but set her free! Then, to add insult to injury, the SAVC prosecuted the case that the client had made against our member.
So not only did the veterinarian have to face assault and attempted murder, but he was also acted against by the police force and the SAVC - whose members both seemingly condoned and supported the woman's behaviour.

If any VDA member has any contact with Ms Monja Venter, please contact the VDA urgently for advice and guidance.

Published 2016-01-27

With the help of a specialist….

(Article 394)

There comes a time when every veterinarian will have to deal with being asked to give a second opinion on the treatment of an animal – and in doing so, will come across what s/he believes to be evidence of unprofessional, negligent or careless work from the first veterinarian. On rare occasions, these 'second opinion vets' have been known to assist the client in reporting the first veterinarian to the veterinary board. If the veterinary board then chooses to investigate the case, they will no doubt turn to an expert in the field to clarify what went wrong.

Dr A was presented with a young dog by Mr X Junior, the son of Mr and Mrs X who were away on holiday.

The dog showed evidence of slight dyspnoea and an irritable trachea. The dog was discharged and treated for a respiratory infection, based on a high temperature and a neutrophilia found on the blood smear. Dr A examined the dog again the following day, and found that the temperature had returned to normal. Bronchodilator therapy was administered, and the client was asked to return again in two days time.

The next time Dr A saw the dog, his condition had deteriorated noticeably. Radiographs revealed loss of definition of organs in the thorax, indicating pleural effusion. Dr A considered the possibility of a diaphragmatic hernia, because of the dog's unusual sitting position. Dr A requested advice from Dr B, his colleague. Dr B agreed with Dr A's preliminary views.

Dr A contacted Mrs X, who gave consent for an exploratory laparotomy to diagnose and repair a diaphragmatic hernia, or, alternatively, to collect laboratory samples if other pathology was revealed. Dr B assisted with the operation.

Although the diaphragm was bulging, it was found to be intact. A sterile thoracic fluid sample was taken and the chest was drained by needle-puncture via the diaphragm. The fluid contained yellow floccules. The laboratory results showed non-specific inflammation and no malignant cells.

A follow-up examination showed further fluid accumulation in the chest, and Dr A considered the possibility of an exploratory thoracotomy.

At this point, the owner decided to take the dog to Dr C at a different practice for a second opinion. Dr C performed a thoracotomy, and found a growth in the chest, whereupon the dog was euthanized. On post-mortem, Dr C found a further growth near the left kidney.

Dr C was convinced that Dr A had grossly mismanaged this case and wrote a letter of concern to the veterinary board, on behalf of Mr and Mrs X.

Dr A contacted the VDA for assistance and after examining the evidence, it was decided to approach a Veterinary Specialist Physician for his opinion.

Dr D, the specialist physician, compiled an opinion (based on the information in the hands of Drs A and B) that the transudate did not contain any neoplastic cells. A diaphragmatic hernia was one of the differential diagnoses.

The laparotomy that had been performed was certainly indicated to rule out the possibility of the diaphragmatic hernia. When Dr C took over the case and performed a thoracotomy, he did not take a sample of the growth for histopathology, or cytology, and so no specific diagnosis could be made. However, in Dr D's expert opinion, if the "growths" were malignant, then it was conceivable, especially in the case of lymphosarcoma, that there was no visible sign of it in the abdomen at the time of the laparotomy, but that this tumour had grown in the time between the laparotomy and the autopsy.

Another important point was that mediastinal lymphosarcoma, thymoma and many other thoracic neoplasms often do not shed cells into the pleural effusion and can only be diagnosed on radiography or ultrasound combined with fine needle aspirate cytology; or during a thoracotomy with cytology and/or histopathology.

In light of this, the veterinary board closed their file and the enquiry ended there.

This positive outcome for Dr A was achieved because the VDA supplemented its legal expertise with the specialist knowledge of a physician. An opinion from an expert is necessary in certain cases to provide a good defence.

This case also demonstrates that second-opinion veterinarians should be far more cautious before placing blame on their colleagues.

Published 2016-01-20

Vaccinations - Your Clients' Responsibility

(Article 393)

At the end of last year, DVM360 published an article which we felt may be of interest to our members.

A jury in Lamar County, Texas, dismissed a negligence and liability suit against veterinarian Wally Kraft – finding the plaintiff in the case, the client, William Ray Shirley, responsible for 90 percent of his personal injury claims, as he had failed to vaccinate his dog against rabies.

Mr Shirley had taken his dog to Dr Kraft's clinic, where Dr Kraft conducted tests and suggested keeping the dog for overnight observation.

The following morning the dog became agitated and, in hopes of calming the dog down, Dr Kraft called Mr Shirley and suggested that the owner come in to visit the dog.

On arrival, Mr Shirley decided to take his dog home. After the cage door was opened and the dog attached to a leash, the dog bit his owner on the hand and groin. The dog was euthanized. Samples sent to the Texas Department of State Health Services returned a positive rabies result and Mr Shirley was given post-rabies-exposure injections over the course of the next few weeks.

Mr Shirley then sought a refund for medical expenses, pain and suffering, physical impairment and exemplary damages against Dr Kraft.

The jury found that the plaintiff had been sufficiently warned of the dog's aggressive behavior and that Mr Shirley was responsible for the injuries he had incurred, as he had failed to vaccinate his dog. Dr Kraft's lawyer said "It is extremely rare for a domesticated animal in Texas to test positive for rabies."

VDA members, please warn your clients of the risks of not vaccinating their animals against rabies and remind them that you will not be liable for any incident which may arise if they do not do so.

Published 2016-01-20

Keep Clients Informed, Stay Protected!

(Article 392)

In a world filled with commands and demands, the veterinary profession has not been left out. Clients demand complete cures from the ailments their pets suffer on the first consultation. In eras past, the approach to medicine was more philosophical and pragmatic. It was accepted that even a minor illness might have side-effects, or even some sort of negative outcome. The greater expectations that people have today is attributed to the greater sophistication of therapeutic and diagnostic procedures of our modern age, and of course - the internet! Animal owners consider themselves experts after consulting Dr Google, and expect that the veterinarian will work miracles! (After all, the explanation on the internet was so short and simple). But, as many of us have learnt the hard way, shortcut treatments very seldom have the desired outcome.

Do the expectations of clients then lead to more frequent accusations of malpractice? Does the practitioner of today feel more inclined to practice medicine overdefensively, i.e. in sending patients for unnecessary investigations and treatment in an attempt to cover all avenues, in case something is otherwise missed on diagnosis that s/he could be held liable for? Yes, in both cases!

An added complication to veterinary medicine lies in the fact that the value of a pet can very often be far below the cost of the medical treatment needed to sustain a cure. Yet, we have to be very careful to offer clients all the reasonable options for treatment that are available.

We cannot risk having a “paternalistic” attitude where we think we know what is best or guess which option a client will elect. Legally, the client needs to give us “informed” consent to treatment, which can only be given if the client is aware of all the reasonable options, risks and prognoses.

Most importantly, keep the communications with your clients strong:

The animal owner needs a full explanation of medical terms and risks

Re-educate them if necessary, and keep their expectations aligned with reality

Keep them informed and explain procedures in layman’s terms if they do not understand

Always explain possible outcomes or side-effects and

always, ALWAYS obtain written consent to treatment!

Published 2016-01-13

Dealing with Pet Insurers

(Article 391)

Though this article is not intended for our VDA-America, VDA-Canada and VDA-Asia members, many of the remarks contained herein relate to common-law rights and the article is consequently still a worth-while read for background information.

In Australia and South Africa, pet insurance companies have started to demand the clinical notes of patients from the treating veterinarian, failing which they refuse to process and settle the claim on an insured pet.

We would like to remind our members in South Africa and Australia of our policy regarding these demands, and the legal position that you will find yourselves in should you bend to these demands. Please note that these comments, *and therefore this article, do not apply to members in the USA and Canada.*

The first issue is that your clinical notes are your property, and the only entities who have any right (under certain limited circumstances) to see them is your statutory veterinary body and the courts. Owners and pet insurers have no such rights whatsoever.

The second issue is that releasing clinical records to third parties may violate the veterinarian/client confidentiality relationship, which could get you into legal trouble somewhere down the line. You are bound by these conditions and should you wish to provide a report for verification of treatment to the pet insurer, this should be done with the explicit written permission of your client.

At the outset, it is important to distinguish between clinical records and clinical notes. Clinical records includes clinical notes, as well as radiographs, scans, test results, pathology reports, etc. The clinical notes are the private and confidential property of the author and facility. The clinical records can and should be shared with the lawful owner only, upon settlement of the fees for treatment.

There is no good reason for pet insurers to demand to examine a vet's clinical notes. When the client makes a claim, the pet insurer should be presented with the veterinarian’s invoice by the client, which (should) not only detail the items charged for that make up the account for the treatment, but serves as sufficient proof that the treatment took place and that the owner's claim is legitimate. If the insurer has doubts about the authenticity of the invoice, then the insurer can contact the vet to verify the document.

The veterinary profession should not entrust pet insurers (or anyone else) with their private and confidential information and the profession should not allow itself to be treated with mistrust by pet insurers.

The VDA recommends that while members should decline to provide copies of their records, members can offer to verify that the treatment described by the insurance company was given. Alternatively, the

insurance company can provide you with a statement of the treatment given with a section at the bottom in which you sign to certify that the treatment listed was provided.

We suggest that the pet insurance company provides you with a declaration stating that the owner has no objection to confidential information being provided to the insurer. The owner should sign such a declaration. This could be provided on the same form as the list of treatments and the statement by the veterinarian verifying the treatment. Such a document would not only make it much safer for you, but would considerably reduce the time you spend on this – given that insurers expect you to give your time to them without any compensation!

The VDA recommends that you never commit to a specific diagnosis in any particular case unless you have specifically confirmed that diagnosis by eliminating all other possible causes. Due to high costs and the general lack of access to sophisticated diagnostic equipment, it is rare that a definitive diagnosis can be made in which all other differential diagnoses or concurrent illnesses and conditions have been eliminated. A diagnosis that has not been made by eliminating every other possibility, is merely a presumptive diagnosis and no veterinarian should incur liability by tying themselves down to a diagnosis which might prove to be inaccurate or incorrect.

In any event, the diagnosis is irrelevant to the insurance company. The client has agreed to tests and treatment which you provided and for the costs of which the company is liable to reimburse the client, in terms of their agreement with the client. The company does not need your diagnosis in order to fulfill their contractual obligation to the owner. The VDA cautions our members to guard their clinical records and refuse to allow any third party to see them. Veterinarians are convicted every year by veterinary boards for professional misconduct on the contents of their clinical records. There are also cases in which owners get hold of clinical records and use them for malicious purposes. There is no good reason to lay yourself open to this type of abuse.

The VDA is here for its members – to analyse situations, determine whether the risks involved are equitable, test the waters, and guide its members through them. So please let us know if you have any difficulties with pet insurers or pet insurance claims.

Please also remember to review Bulletin 13 on this subject.

Published 2016-01-06

Dispensing dilemmas

(Article 390)

In order to ethically and legally prescribe and dispense medicine for an animal, a veterinarian is obliged to fully examine the animal and determine the appropriateness of the medication. This means that, when an owner asks a veterinarian to dispense medication for their animal without examining the animal, they are not only asking the veterinarian to break the law but also setting the veterinarian up to potentially harm their animal.

Nevertheless, due to the unthinking and impractical nature of the pet-owning public, veterinarians face such requests on a frequent basis; and especially over celebratory periods which involve the use of fireworks, such as Chinese New Year, Independence Day and the Hindu Festival of Lights. During these times, animals become very stressed and frightened and owners tend to “pop in” on their way home from work to buy something for their animals at home. It also happens that pet owners who are on vacation walk into the veterinary practice at their holiday destination and request drugs over the counter.

Dr A was recently approached by a client whose father had just passed away. She had to go to her late father’s property to collect his dogs and move them to a different property. Miss X requested medication to sedate the dogs for the move.

Dr A was concerned that if he did not dispense medications as requested by this client, the client would abandon her services and simply visit the next veterinarian in the neighborhood who would dispense the medication. Dr A felt especially vulnerable since he was a recent graduate, and was trying to build up a new business.

The bottom line is that a veterinarian may not dispense medication without first seeing and examining the animal concerned. Clients who have nervous dogs and who would like medication to calm the animals over a period of anticipated disruption should be advised to bring their pets in for examination in advance.

By dispensing medication to clients without examining their animals, Dr A would be lining himself up for a veterinary board complaint. The VDA’s advice was that he should rather let the client go to another clinic than face a charge of unprofessional conduct. Firstly, as stated above, it is against the law; and secondly, the animal may have a condition, such as pregnancy or cardiac insufficiency, which makes sedation more risky and which could have been discovered with an examination. Furthermore, the veterinarian who writes scripts or dispenses medication without examining the animal is potentially endangering the animal’s health.

Veterinarians are accountable for the dispensing of drugs and the risk of an incident occurring is vastly increased in cases where the veterinarian has not seen the animal.

Life is full of instances in which people break the law and get away with it. However, veterinarians who are willing to break the law for as little money as the mark-up on the sale of a pack of tablets, are more foolish than they are criminally-minded - and their carelessness is guaranteed to land them with a veterinary board conviction, sooner or later.

Other important points to keep in mind are:

- Veterinarians are legally required to keep a drug register of Schedule 5 & 6 drugs which are ordered, used and dispensed;
- S5&6 drugs must be in a safe with only veterinarian access, and all other drugs must be in a separate room or cupboard which is locked;
- No human drugs may be ordered from a veterinary practice for use by humans; not even the practice owner's wife!
- A prescribed drug may only be dispensed for 30 days at a time;
- An animal need to be re-examined at least every six months in order to continue on chronic medication.