Barks ‘n Bytes 2017 Articles (VDA South Africa)

Contents

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Standing up for Your Rights

(Article 500)

Veterinary boards are creatures of statute that are given the powers to regulate the veterinary profession and to discipline veterinarians by the state and society on the principle that professional conduct is reviewed by a panel of peers. A 'peer' is defined *as a person who is equal to another in abilities, qualifications, age, background, legal and social status.*

The problem with the veterinary profession is that the peers that are appointed to serve the disciplinary function often lose sight of their status as equals and in time 'get ahead of themselves' - or 'lose their heads' - by turning into despots. In other words, they turn from *caretakers into rulers who hold absolute power*, *and exercise this power in a cruel or oppressive manner.* Veterinary board members are merely temporary custodians; they are not the owners of the board or the profession. When they operate without checks and balances, without transparency and accountability, they soon take over, turning to intimidation to maintain their illegitimate power.

The law contains protections for any accused person, including the right to privacy, the right to dignity and the right to fair administrative action. Despotic boards are boards that do not believe in, or pay heed to, the rights of the accused veterinarian. Despotic boards violate these rights as a matter of course. A despotic board is one that refuses, for example, to screen complaints and to dismiss complaints that lack sufficient substance, instead choosing to persecute good, diligent veterinarians, because they can. And the best way to intimidate and subjugate a veterinarian is to treat them as criminals and subject them to "investigations" and the threat of prosecution, that might last for many months or even years, based on ridiculous allegations. This subjects good, diligent veterinarians to huge and often unbearable stress, for no reason other than the despotic board's desire to be cruel and oppressive. Veterinarians are generally sensitive, care-giving types of people, and this stress, combined with the normal stresses of veterinary practice, can lead to depression and even suicide. The veterinary profession has amongst the highest suicide rates of all professions.

One veterinary board goes a step further than any other board we know. Where most veterinary boards are content with just running frivolous cases against innocent veterinarians for months or years before terminating the process, this board continues to intimidate the respondent veterinarian. When this board investigates a veterinarian and can find nothing about the management of their case to criticise, they then admonish the veterinarian for "the disrespectful tone" of their response, with the threat that "in the event that there is any future correspondence of a similar tone, the board will consider taking disciplinary action".

It is common knowledge that being the subject of a veterinary board investigation is cited as one of the most stressful events a veterinarian can experience during their career. Given that investigation by a veterinary board can have potentially very far reaching ramifications, including loss of registration/license and therefore loss of the ability to earn a living, this is not surprising.

With this in mind, the VDA takes the approach of assisting our members to draft a business-like submission, avoiding speculation, and providing a clear account of the veterinarian's recollections, a concise answer to any concerns raised by the Board, and support of the defence with appropriate case law, where indicated. Since the response is a legal document that will form the basis of any further proceedings beyond the board's processes, including any courts of appeal and review, it is vital to record any deficiencies in the board's processes. This includes the violation of the veterinarian's rights, including the failure to screen and dismiss complaints that do not have sufficient substance. A failure to deal with such deficiencies in the response to the board may lead to the court refusing to allow this as part of the appeal application. Any competent lawyer will tell you that it is prudent to argue all aspects of your defence from the start.

Gone are the days that a veterinarian can "dash off a response" to the Board and comfort themselves that the Board will see fit to clear their "good name".

The board in question has not elaborated on exactly what they find objectionable about the veterinarian's response beyond the "tone". And given that the "tone" of a letter is subjective, this creates an unfortunate and untenable situation. Furthermore, there is no legal basis on which this board or any other board can take action against a veterinarian because they "don't like the tone of their response". The problem is that illegality does not seem to bother many veterinary boards.

It appears that the board does not want veterinarians to present their best defence in a robust professional manner, but rather to submit 'dumbed-down' begging, grovelling responses that stroke the board members' egos and shows "respect" for the board's power. And that, rather than amend their antiquated veterinary act to include screening and other aspects that would bring the board's processes into the 21st century, they would prefer to maintain the status quo by intimidating anyone who challenges their authority.

One only has to look at the leading veterinary board in the world, the Royal College of Veterinary Surgeons, to see how boards *should* conduct themselves. There is the RCVS at the top, with most of the rest of the boards at the bottom.

So what does the veterinarian do, whose response was robust enough to successfully defend themselves, but simultaneously invoked "the ire" of the board? Does s/he respond to the Board's letter seeking clarification as to exactly what it is that offended? And what legal provision the veterinarian is alleged to have transgressed in doing so? Or would the tone of such a letter be considered inappropriate, triggering some sort of arbitrary disciplinary action?

Careful consideration must be given to every word of a submission to the Board, with the VDA consultants spending copious time researching, debating, drafting, and redrafting a response prior to providing the top quality resultant document to our member for their consideration. The official response to the allegations is the primary and, most often, the only document that saves or sinks the accused veterinarian: you only get one chance. The subjective views and egos of the board members are entirely irrelevant.

The saving grace for all veterinarians is that veterinary board members, too, are required to operate to a minimum standard of competence and integrity. When they do not meet these standards, they become personally liable for any damages suffered as a consequence of their conduct. So it is obvious that, in order to protect themselves, veterinarians should be standing up for themselves against bully-boy veterinary boards. Every veterinarian that gives in to a bully-boy veterinary board entrenches the board's bad behaviour and makes it worse for the next veterinarian in line.

Of course, vets do not need to fight their battles alone: they can join the only independent veterinary advocate for the profession in Australia,the USA, Canada, South Africa and Hong Kong, which - with the support of their colleagues in numbers - will fight the battle on their behalf: the Veterinary Defence Association.

Published 2017-12-13

Locums and Issues of Responsibility

(Article 499)

Locums often ask the VDA whether the practice (and therefore the owner of the practice) or the veterinarian who is on duty is legally responsible for claims and complaints? They also ask whether the concept of vicarious liability, where the principal of the practice is responsible for the actions of his or her subordinates, pertains to the veterinary profession?

Locums should remember that their actions as veterinarians are considered to be performed autonomously. This is the case for most professional people. An employer of a locum or assistant in a practice is much less likely to be held vicariously liable for the actions of the locum or assistant than they would be for the actions of a receptionist or kennel orderly.

However, each case would be different and there is no clear, defining line. There is an overlap to some extent, of course, in cases in which the locum or assistant is following specific and direct instructions of the employer, without deviating from these. In most cases, the assistant or locum will have exercised some discretion, which relieves the employer of the liability. Even when following direct instructions, the locum or assistant vet would be obliged to exercise their own discretion in carrying out the instructions. An assistant or locum would have the standing to object and/or query any part of the instructions with which they did not agree, much more so than a layperson staff member.

If you are providing your locum services to a practice on an independent contractor basis, this would relieve the practice owner of almost any vicarious liability.

The great disadvantage of being a locum, especially at practices in which you do not regularly work, or haven't worked before, is that you are stuck with the methods, procedures and equipment utilised by the practice owner.

Sometimes these are well below minimum standards of practice and this places you in a position of unacceptable liability towards the animal and owner.

Your best protection is to be unequivocal about what you will and will not be prepared to do, and to protect yourself as much as you can, by working in practices with good consent forms that contain clauses that protect your liability. Make detailed clinical notes, especially when you are faced with a client that shows reluctance or aggression.

Being a VDA member means that you are protected by the defence capabilities that the VDA offers to its members. Commercial insurers have little or no veterinary defence service, infrastructure or capability – your cover will simply pay claims. This is the last thing you should want, since many clients interpret an insurance payout as an admission that your treatment was negligent and feel compelled to take the

matter further by complaining to the veterinary board, or spreading malicious rumours that blacken your name and reputation.

In contrast, the VDA provides an advice and guidance service when the incident or altercation first occurs. You get the benefit of the VDA's dispute resolution service, and the VDA will protect and defend your integrity and reputation in the event of a civil claim or Board complaint. The VDA's programs and services reduce the chances of you facing a civil claim or a Veterinary Board complaint by 80%, and increase the chances of you being able to successfully defend yourself by 90%.

We invite you to contact us for advice and guidance whenever you feel concerned about your liability.

Published 2017-12-06

Dispensing drugs

(Article 498)

On November 30th, 2017, the www.iol.co.za and www.thenewage.co.za websites in South Africa published an article which caught the attention of the VDA and which validates the concerns we have with regards to members (and non-members alike) who practice haphazardly and illegitimately by dispensing scheduled drugs to lay persons.

The article was titled “Game farmer charged after worker dies in freak accident” and “Gun owners warned after accidental suicide”.

The game farmer is reportedly facing charges of culpable homicide after a worker on a neighbouring farm accidentally shot himself with a dart gun belonging to the farmer.

The accident happened when the farmer and one of his labourers were searching for a buffalo that had escaped from the farm. The farm worker from the neighbouring farm went to assist them in the search and the farmer handed him a loaded dart gun. It is alleged that the farm worker shot himself while walking with the farmer and his helper while tracking down the buffalo. The farm worker immediately started shivering and was rushed to hospital where he later died, apparently due to the effect of the darting drug.

The burning question is: where did the farmer get the game capture drug from?

This is a very serious reminder to members that all schedule 5 injections, schedule 6 and schedule 7 (especially M99 & euthanasia solutions) are NOT to be dispensed. Only tablets may be dispensed.

The VDA will not indemnify members against any claim, liability, loss, damage, costs or expenses of whatsoever nature, including human illness or death, arising from euthanasia solutions, game capture drugs, tranquilizers, anesthetics and any other hazardous drugs and products or the dispensing or any drugs or substances other than for a bona fide purpose for a bona fide patient in a proper veterinarian-patient-owner relationship.

Remember this:

These drugs must only be used by you, the veterinarian.

It is a legal requirement that S5, S6 & S7 drugs are locked in a drug safe or strong cabinet, and only registered veterinarians have access to the keys or safe code.

It is also a legal requirement that a drug register is maintained and balanced every three months or sooner by the registered veterinarian.

M99 must be under your personal control at all times. You must handle, draw up, and even shoot the gun. You may not sell M99 to a lay person or at all.

The VDA requires that only a registered veterinarian handles S6 & S7 drugs. You must draw up and inject euthanasia solutions – you cannot draw up the syringe and hand it to your nurse or kennel assistant to inject. It is prohibited to sell or give a bottle of euthanasia solution to an animal welfare organization for use at their discretion.

Drugs such as Phenobarbitone may be dispensed in tablet form but only for a period of thirty days. You may not sell Xylazine.

There is no good reason for scripts to be used in veterinary practice. You cannot by-pass any requirement by writing a script for a client and then filling the script yourself. You may only write a script for bona fide patients, but then a pharmacist must fill the script. You cannot fill the script for another veterinarian except if that vet works in the same practice as you, but in this instance your clinical record serves as the basis for a veterinary associate to dispense a drug. You are not entitled to act as a pharmacist by filling scripts.

You are not allowed to sell any scheduled medicine over the counter as though you are a pharmacist. Any drug that you dispense and sell must be for an animal or (in the case of large production animals) a group of animals that are under your direct supervision. You, or any veterinarian that works in your practic

e, i.e. a partner, principal, assistant or locum must have consulted with the owner and examined that animal or group of animals every time you prescribe and dispense a drug.

If you are in any doubt whatsoever, please contact your VDA consultant for assistance.

Published 2017-11-29

No consent? No treatment!

(Article 497)

The most important thing that every veterinarian can do to manage their cases well is to obtain written informed consent to treatment for any animal that they are presented with.

This may be stating the obvious to those many of you who already practice defensively and would, rightly, never consider touching an animal without owner consent. But believe it or not, there are still veterinarians out there who place themselves at risk daily by not obtaining written consent to treatment.

Consent is a prerequisite for treatment – performing any procedure without consent is unlawful. Obtaining signed Consent to Treatment provides the veterinarian with unassailable proof that they had the legal right to treat the animal. Consent is legally required by boards and courts.

Here is an example to put things in perspective for you:

Mrs X presented her cat for a dental. Upon signing the consent form, Mrs X demonstrated that she understood and provided consent for the cat to be sedated, the teeth scaled and polished, be allowed to recover and discharged.

Dr A delved into the carry cage to retrieve the cat but the cat attacked him, leaving him with serious wounds and an unexpected trip to the emergency room at the local hospital.

Dr B, now more cautious, squashed the cat against the side of the cage in order to be able to administer a high dose sedative. (Keep in mind that it is possible that squashing the cat against the side of the cage might have triggered a cardiac arrest which might have causef the death of the cat).

Dr B did not phone Mrs X and tell her of the problems they had encountered and Dr B changed the course of the management of the cat from that discussed with Dr A.

Mrs X returned later in the day to fetch her cat and while standing at the reception desk, she read about the cat attacking the staff on the computer screen.

Mrs X could have reacted in two ways:

She could have apologized profusely for the misbehavior of her cat, explaining that she had omitted to mention that the cat was feral and unmanageable, even at home, or

She could have made a complaint against Dr B for not having her consent to ‘squash’ her cat in order to administer the anesthetic.

The reader must recognise here that the risk had become too high for applying a procedure that had not been discussed, and for anything that took place after that. Dr B should have stopped, contacted and discussed the matter with the owner and then taken the agreed new course of action.

It is this transfer of liability from the owner to the veterinarian which is of much more concern than what Mrs X may have read on the computer screen.

When Mrs X omitted to warn the vets in advance that the cat could not be handled, this omission made Mrs X liable to the staff for their war wounds.

However, the moment Dr B proceeded, he waived this protection and took on liability for injuries to the staff and the cat.

The VDA approved consent form clauses explain:

Clause 1:
This clause provides the actual consent to carry out the treatment specified. Without this, the veterinarian would be open to facing a denial that there was ever an agreement to the procedure, with dire consequences.. The additional consent to "any further or alternative measures" provides the member with latitude to take care of unforeseen events that occur, within the scope of the consent given.

Clause 2:
Some clients have an expectation for their animals to be provided with continuous 24-hour monitoring by trained staff. This clause must be included in the consent form if the veterinarian/ practice is unable to provide this service. This clause places the onus on the client to make arrangements for 24-hour monitoring elsewhere.

Clause 3:
This clause switches any onus of keeping the client up to date with the progress in the case from the veterinarian to the client. It is often difficult for a veterinarian to get hold of the client but it is usually easy for the client to get hold of the veterinarian or the practice staff to obtain updates.

Clause 4:
This clause waives the right of the client to sue the veterinarian for damages. This clause may be used to vigorously defend the 99% of claims that are exaggerated, fraudulent, frivolous, vexatious or are otherwise without merit, without wasting large sums of money on legal fees in order to defend these cases.

In cases where the pet owner has complied with their legal obligation of proving that the veterinarian was negligent, a negotiated settlement can be secured. Ex gratia settlements (without admitting liability) can also be arranged.

Keep in mind that many pet owners use the disciplinary process run by boards as a free no-risk method of testing the merits of the claims. Armed with a guilty finding of unprofessional conduct by a board,

many pet owners then go on to make civil claims – a sort of double jeopardy for veterinarians. Negotiated settlements form a position of strength and often provide an obstacle to vindictive complaints and claims.

(An example is the owner who killed her dog by pushing a tablet wrapped in polony down the dog's trachea, and then blamed the vet for not saving its life after three hours of stabilization and referral to a specialist facility).

Clause 5:
This clause gives an undertaking by the client to enter into ADR with the VDA in the event of a dispute before making a complaint to a Veterinary Board, or entering into civil litigation.

This clause compelling the pet owner to do ADR has poured oil on troubled waters in more cases than we can recall. Quite simply put, this ADR clause is a life-saver.

ADR is a well-tested legal process used by the VDA to assist pet owners in understanding the complicated issues involved in veterinary medicine and the law. ADR gives pet owners answers that they would never receive in any other forum, and this information provides the perspective they need to see why cases were handled in a particular manner.

If, however, a person who is NOT the owner presents an animal, and they can be considered the legal agent of the owner and are willing to sign a consent to treatment form, this usually meets the legal requirements for informed consent. But go out of your way to deal with the actual owner and obtain first-hand consent from the owner. The VDA has no objection to members adding further clauses to the consent form (e.g. with regard to conditions of payment), provided these do not interfere with the validity of the prescribed VDA clauses.

Train your receptionist to get the owner to sign the consent form. Impress upon your reception staff that they check that the client has not modified or deleted any of the clauses, thereby nullifying your cover. Don't make any alterations to the signed consent form, and keep it for eternity.

Published 2017-11-22

Absolutely Absurd!

(Article 496)

Mrs X's dog had Polyurea/Polydipsia and drank many litres of water through the night. However, when Mrs X presented her dog to Dr A the next day, she said that she did not have money for Dr A to run tests or do treatments.

Dr A went into great detail about possible causes and even brought out a text book to show Mrs X diagrams and charts and other information. Dr A offered referral to a specialist and explained to Mrs X that without running proper tests, it would be very difficult to reach a diagnosis or to determine a treatment plan.

Mrs X was understandably upset. However, she did not want her dog to suffer and she felt that she could not put him through further testing and treatment with unknown outcomes. Mrs X suggested euthanasia and signed the consent to euthanasia form. Dr A euthanized the dog.

It is traumatic to have to say goodbye to one's pet, and Dr A was sympathetic with the grieving process that he knew Mrs X would go through. However, he was shocked when Mrs X had an inexplicable change of heart, and wrote a letter of complaint (in the form of an affidavit) against Dr A to the veterinary board. In her affidavit, Mrs X complained that she had not understood the information that had been provided to her by Dr A. Mrs X's husband then submitted a supporting affidavit, two month's later, claiming that the receptionist had "forced" Mrs X to sign the consent to euthanasia form, despite the fact that Mr X was not present at the consultation or during the euthanasia process and therefore could not honestly bear witness.

Despite her emotional claims in her affidavit, Mrs X admitted that Dr A had provided her with substantial information. Mrs X also admitted that she had signed a consent to euthanasia form.

Dr A submitted his clinical notes to the veterinary board in which he had recorded what transpired during the consultation. The notes included his offer of referral and Mrs X's request for euthanasia on the basis that her dog was suffering too much and that she could not allow for his suffering to continue. Dr A requested the board to dismiss the complaint if they considered it to be frivolous, vexatious or groundless; alternatively that the board provide a list of concerns that would place him on his defence.

The board's reply was rather odd - the board stated that the treatment that Dr A gave to Mrs X during the consultation was in contravention of the Code and the Rules! The board's exact wording was "The treatment that your client gave to the complainant during the consultation was in contravention of clause 3.1.1 A and C read with rule 1 (definition of unprofessional conduct) and rule 4. Signed by the Board's employee, "With kindest regards, Deputy Director Investigations"

This reply was odd for a number of reasons:

The board's concern was in the form of a decision, but this decision had been made by one person prior to an investigation and a hearing of a four-member tribunal.

Furthermore, there were no specifics about exactly how Dr A's treatment of Mrs X was a "contravention" of the Rules. *In fact, the board did not quote a particular section of the code and rules, but merely stated that Dr A had contravened all of them.*

The Rules are the definitions and broad outlines of desired behaviour, drafted by the legislature to provide general guidance in the form of how the ideal veterinarian should behave. Even if the board had selected one or more of the code or rules, these rules are vague and nonspecific and could not pinpoint where Dr A's actions had been lacking.

Mrs X's complaint has nothing to do with the definition of unprofessional conduct in the rules – or the Rules do not appear to cover the complaint.

The rules alleged to have been breached completely lack any specifics that could be used as a guideline to judge the conduct of this particular veterinarian and his dealings with this pet owner.

The board's statements ought to concern the whole thinking veterinary profession.

Nowhere in the Rules and Code of Conduct of the regulatory Board concerned does it mention the wording of the board's allegation that "the treatment that your client gave to the complainant during the consultation" is a transgression. In fact, nowhere in the world would such a broad allegation of breaching all the rules amount to professional misconduct. It appears, on the face of it, that Dr A's manner of dealing with Mrs X during the consultation is normal, standard veterinary practice.

Furthermore, the board made their allegation in the form of a decision. This is unlawful inter alia because the board must first investigate and hold a hearing before making a Decision. This board's decision is also subjective, nebulous and capricious, and nothing more than a conjecture and personal opinion made by the board's employee.

The board has an obligation to inform Dr A of what he did wrong, what he should have done differently and why. The board also has an obligation to explain where it is written in law that Dr A's conduct is a transgression of *legislation*.

What makes the board's response so bizarre is that their allegation is vague and is devoid of any particularity. This makes it impossible to defend. The legal test which should have been applied by the Board is whether the conduct, if proven, would create a substantial sense of indignation in a representative body of reasonable veterinarians who understand the correct application of the law, as to warrant a guilty finding and penalty.

Recently, new international case law has been decided that clearly creates an onus on veterinary boards around the world.

In order for an allegation to be valid, a board's decision must be based on a specific professional duty, which is generally accepted by veterinary practitioners, and is written down in current statutory provisions and was in place at the time of the alleged incident.

Veterinary boards are also precluded from drawing on their own knowledge and experience to create a specific professional duty – in other words, boards may not "make it up" as they go along by depending on their own subjective assessments.

Even when there is a specific, written current statutory provision prescribing the appropriate conduct of a veterinarian, (which in this case, there is not) it is a further requirement that the accused veterinarian understood that s/he was required to meet the specific provision or rule and that the accused veterinarian acted intentionally in breach of the provision or rule.

There are also Constitutional and/or Natural Justice Rights which each board should consider, such as the right to administrative action that is lawful, reasonable and procedurally fair; the right to be informed of the charge with sufficient detail to answer it; the right to be presumed innocent, and the right to remain silent, and not to be compelled to give self-incriminating evidence. It appears that these rights are bypassed in this board's process.

Many boards are infamous for alleging and charging veterinarians with having "transgressed codes and rules" when all these codes and rules do is to merely set out the general and abstract ideals for professional conduct. That means that many boards are fabricating transgressions in order to obtain unlawful convictions against innocent veterinarians - which is disgraceful behaviour and should be protested in the strongest terms!

How would you feel if you were in Dr A's shoes? The veterinary profession needs to make their voices heard.

The VDA will shortly be adding a Petitions link to the VDA South Africa and VDA Australia websites regarding governing authority decisions that impact the profession. Members, as well as non-members, will be able to add their signatures to each petition to show their concern.

Published 2017-11-15

Violence against healthcare workers around the world
(Article 495)

According to different sources and recent studies, the statistics are alarming!

As we enter the period just before Christmas, or "The Silly Season" as it is known, where many people behave worse than usual, and alcohol and drugs might play an even greater part, we would like to remind members to be alert and aware of escalating conditions.

The www.medscape.com website recently published an article which included statistics that 75% of all workplace assaults that took place between 2011 and 2013 happened in healthcare. This article focussed on the tragic death of a surgeon at Brigham and Women's Hospital in Boston, Massachusetts, in January 2015. The surgeon was shot and killed by the son of one of his patients, who had died after surgery.

In another article on www.reuters.com, Dr James Phillips, MD of Harvard Medical School has called the healthcare industry “the most violent non-law-enforcement industry in the United States”. Dr Phillips himself was assaulted twice in the past five years. The first time was when an intoxicated patient, who knew he had hepatitis C, spat blood in his face. Dr Phillips was forced to undergo six months of testing. The second time was when he had asked a patient in the emergency room to stop screaming and cursing because there were two children in the next stall. The patient threw her cell phone, struck Dr Phillips in the face and then stood up and spit on him in the presence of a police officer. (She was ultimately convicted of assault and battery.)

The Doctors Company recently issued an article on www.hubspot.net in which they told of a 75 year-old retired barber who shot and killed urologist Dr Ronald Gilbert in 2013. Dr Gilbert had participated in an evaluation of the patient’s urological condition twenty years previously in 1993, but had never actually treated him.

Violence against healthcare workers has been underreported, tolerated and largely ignored for far too long.

70% of mental health employees are assaulted each year and 154 shootings with injury on the grounds of American hospitals were reported between 2000 and 2011.

If all the above is occurring in the human healthcare world, then it is no wonder that abuse and worse occurs in the veterinary world too.

The BVA (British Veterinary Association) – through www.vettimes.co.uk - published an article on October 20, 2017, stating that veterinary authorities have reacted with alarm to figures which show that 8 out of 10 practice staff have been exposed to threatening client behaviour.

According to the article, “More than 80% of vets told the BVA Voice of the Veterinary Profession survey (that) they or a team member had felt intimidated by a client’s language or behaviour, with support staff, such as receptionists, often bearing the brunt of the tirades.

The statistics paint an even bleaker picture for companion animal and mixed practice vets, with almost 90% reporting some sort of intimidating experience. Young vets and female vets are significantly more likely to have experienced some form of intimidation too, the survey revealed.

Treatment costs often trigger bad behaviour and language, with 9 out of 10 clinical practice vets having stated they or a team member had been challenged over fees or charges.”

The VDA’s assistance has been called on in many situations where the veterinarian or staff have been sworn at and threatened. Even worse, was a case where a client had taken his dog to a member’s home for emergency treatment. The veterinarian’s home was not the same place as his practice, but this client thought that he could get the vet to treat his dog immediately by going to his house. The veterinarian’s gate was locked as he was having lunch with his family. By the time he had walked down to the car at the gate, the client was enraged, swearing at and trying to physically harm the vet through the fence. The veterinarian’s wife saw what was transpiring and called the police.

Another violent case was when a dog had died of renal complications after being treated by a member veterinarian for dental disease. The dog had toxaemia and endocarditis. The client blamed the veterinarian for her dog's death. The client chased the veterinarian through his practice premises, shooting at him. A bullet hit the vet on his thigh but, very luckily, was deflected by the pager device the vet had in his pocket. The vet managed to hide in the kennels in the hospital. The client then took aim at the veterinarian’s teenage son who was attending reception. Fortunately, she was tackled and restrained by another client who had witnessed what was happening. The client was later reported to have Bipolar Disorder.

Diffusing a confrontational situation with an enraged client is something that, universally, neither veterinarians nor healthcare employees have been trained to do.

Learn to recognize clients who present elevated risks of violent behaviour. These clients are emotionally or mentally unstable, and may show verbal or nonverbal indications of potential violence by:

exhibiting bullying behavior;

being angry or hostile;

making unreasonable demands and expressing unrealistic expectations.

Some less apparent factors to take notice of, if the information comes your way:

The client has potentially violent family members;

The client has litigation in progress and brags about it;

The client has a family member who does not want their pet to receive certain treatments or procedures;

The client recently experienced other major life changes such as job loss, divorce, death of a loved one, or is struggling with substance abuse.

Consider the following safety precautions:

Establish a written code of behavior that includes zero tolerance for violence in the workplace. Include the words “Verbal abuse and threats of violence will not be tolerated.” Display this notice clearly in your practice.

Remove potential ‘weapons’ from your reception area (sharp objects; heavy objects).

Conduct safety and evacuation codes, and practice these with all staff.

Make sure that your staff has access to a phone to call police or security companies, or has access to a remote-operated panic alarm.

Consider taking a class on practice safety and classes on personal safety. Include these opportunities for self-help when training staff.

Consider putting up CCTV cameras. (CCTV cameras are also invaluable when there are other less or non-violent disputes, such as payment disputes, or whether or not client permission for treatment has been discussed).

Always remember to contact your VDA consultant immediately if you see the potential for a complaint or if you need any other practice related assistance.

Published 2017-11-08

When things don't go as planned!

(Article 494)

Have you ever done your utmost to treat a case to the best of your ability and yet everything that the textbooks say should happen, doesn't? We are sure that every veterinarian has been met with this scenario – known as an "adverse outcome".

The failed treatment is only half of the whole stressful saga; the other half is how to explain the failed treatment to your client. This is where matters often deteriorate - especially for the less experienced veterinarian.

Rushing into expedient explanations aimed at gratifying the client and diverting blame away from yourself is the wrong thing to do. The VDA has dealt with cases where the veterinarian will, for example, label a gastro case as "Parvo" or a death under anesthetic as a "heart attack", in the hope that these glib explanations will forestall any further questions by the owner. That might have been the case in the past, but nowadays owners have become less trusting and more probing with regard to their pets' health, and they take their responsibilities seriously. They will not simply accept the veterinarian's word without some "fact- checking" and will have no hesitation in taking steps to verify it via the internet (also known as Dr Google). They may even approach a willing veterinary colleague or two.

If the determined client then finds information that brings the diagnosis into dispute, it may be all that is required to trigger the client to enter into litigation. The consequences of that could vary from acute embarrassment (if the client later decides to drop the issue, or the board chooses not to pursue the case) to potentially devastating when the veterinarian is obliged to explain him/herself to the veterinary board or the judge in a court of law.

It is also very unpleasant for the veterinarian to have his/her version shredded by a specialist surgeon or physician acting as expert witness for the plaintiff or for the prosecutor.

You need 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 you can base a suspected diagnosis on that.

It is much safer to speak of a gastroenteritis (because the animal had symptoms of vomiting and diarrhea) and then 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.

In the case of an anesthetic death - which is always unexpected when your pre-anesthetic clinical examination has revealed no abnormalities - you should 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.

So, when you are faced with a treatment that has gone wrong, consider taking the following steps:

Provide the pet owner with an explanation based on your current knowledge of the case. Do not make definitive statements without basing this on scientific results of confirmed tests.

Offer referral to a specialist for further tests and additional treatment, and explain the additional costs that may be involved.

Be prepared to provide estimates of alternative treatments.

If the animal has died, offer a post mortem examination, preferably by a specialist pathologist.

Discuss the matter with the client personally—do not delegate this to someone else. 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 at the end” may be familiar to your client and will help to give them perspective about their expectations of your treatment as a veterinarian.

Avoid apportioning or accepting blame for the outcome. While it is natural for you 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.

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, re-opens the lines of communication. On the other side of the coin, you may find the client less interested in listening to you than they are in abusing you, but a second approach is always worth a try.

Consider expressing empathy and compassion by using the word “condolences”. Never use the phrase “I am/was sorry” to express regret, as this may be interpreted as an admission of guilt by a client who is seeking evidence of your guilt.

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.

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.

The VDA’s function is to carefully analyze all aspects of each case and to consider a suitable defence 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.

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

Published 2017-11-01

Signs of a Greater Malaise?

(Article 493)

The VDA read with interest an article on the www.abc.net.au website, published on September 15th, 2017, and entitled "Adelaide lawyer implicated in maladministration and misconduct, SA ombudsman finds".

The article related the circumstances wherein senior lawyer, Debra Lane, committed maladministration and misconduct whilst chairing a State Government Board - the Veterinary Surgeons Board of South Australia - during her six-year term with them, ending 2014.

It was found by the ombudsman that Ms Lane had overseen unauthorized payments that had been paid to committee members of the SAVSB, and had failed to appropriately respond when she was alerted to the problem.

A total of approximately $23,000 was paid to committee members for meetings and "out of session" duties, contrary to what was allowed. Ms Lane herself received about $8,760 and wrongly ordered the board to pay two of her parking fines.

The ombudsman report found that Ms Lane had been alerted to potential problems with the unauthorized payments by the board's registrar in June 2014, but she had failed to seek immediate legal advice, citing "the Board's parlous financial position."

It was reported that Ms Lane had later issued a direction to the Registrar of the Board to report only through her and not to go elsewhere for guidance on board members. The ombudsman said in his report: "I consider the purpose of this direction was to prevent the nature and extent of the board's greater remuneration practices coming to the attention of [the Department of Premier and Cabinet]".

The VDA went into our archives to look at files of cases that were held by the South Australian Veterinary Surgeons Board during Ms Lane's tenure. Two cases stood out as exhibiting an extremely poor understanding of administrative justice and point to further incompetent dealings by this board. These cases are perhaps proof of a greater malaise lurking beneath the surface.

In 2012, a VDA member had a complaint laid against him regarding an alleged undetected heart murmur in a puppy.

The dog went to new owners a couple of years after being examined by our member, and when a new veterinarian examined him, a heart murmur was discovered. The second set of owners demanded payment of over $5000 from the first veterinarian for the replacement of their dog, claiming that the heart murmur should have been detected when Dr A had examined him as a puppy. There was no way to prove that the heart murmur had been present in the pup to begin with - or even that this was the same animal that our member had examined. When the board contacted our member demanding his

clinical notes, the VDA advised Dr A not to hand them over, as the current owners would be considered a third party, and the notes are confidential between the vet and the first owners.

Even though there was no proof that the alleged heart murmur was present in the puppy when the veterinarian had examined him, Ms Lane referred the matter to the crown solicitor. The Board and the crown solicitor had already admitted that there was not a case against Dr A but still requested to 'view' his clinical notes. Dr A refused as, if there was no case against him, then there was no legal basis for viewing his clinical notes. The crown solicitor concluded that the vet's failure to cooperate by not handing over his clinical notes was a "significant issue". He further concluded that the veterinarian's behavior fell short of the standards expected of a reasonable veterinarian and that these considerations would be held against him in future complaints. So, even though Dr A had not been found guilty of anything, there was a mark against his name and if by some unfortunate fate a different complaint was laid against Dr A, the Board would hold this event against him.

Another VDA member had two complaints against her and the board found that her conduct was "inadequate" - but did not make a finding of "guilty".

In the first case, Dr B treated an elderly dog that reportedly had a seizure during the day she was taken in. Dr B obtained written permission for hospitalization, IVFT, blood tests and x-rays. Tests revealed raised liver enzymes and when Dr B attempted to discuss treatment with Mrs X, she removed her dog against Dr B's advice, saying she was familiar with end stage liver problems as a family member had had the same. When the dog died, Mrs X complained that the bill was too high, that x-rays should not have been performed – despite having signed permission for these - and sent a complaint to the Board. This was a frivolous complaint, as Dr B had obtained permission for every test performed. The complaint was dismissed, but the board warned Dr B that her clinical notes were "inadequate".

The second complaint against Dr B involved a 15-year-old cat that she had vaccinated and treated for a sore paw. Upon physical examination, Dr B had attempted to check the cat's mouth. When the cat opened his mouth about half an inch, and then cried and became aggressive, Dr B requested that the cat be returned for a follow-up examination the following day, but never saw the cat again.

Three months later, a "Please explain letter" arrived from the veterinary board. The owner of the cat, Mr Y had stated that the cat was presented to Dr B for vomiting and that Dr B had misdiagnosed the cat and missed the signs of renal disease which had been diagnosed by a different veterinarian. The cat had been euthanized.

The VDA suggested ADR, after which the registrar threatened Dr B with being charged with unprofessional conduct if she contacted the owner. After a lengthy to and fro scenario between the VDA and the Board, Dr B was exonerated of any wrongdoing but warned that her communication skills were "inadequate".

The Board's demonstrable inability to screen complaints properly and the way they processed these complaints were tormenting and intimidating to the unfortunate veterinarians who came before them.

In terms of the relevant veterinary legislations, boards are limited to reprimanding or cautioning a veterinarian only after a hearing has been held, and after the board has found a veterinarian guilty of unprofessional, improper or disgraceful conduct. Passing any sort of judgment without proper investigation or hearing is unjust and automatically brings a veterinarian's name into disrepute.

Veterinarians have the right to written protocols from Veterinary Boards setting out minimum standards for treatments. Failing this, the Boards cannot be entitled to prosecute veterinarians for falling short of standards of practice.

An essential element of any disciplinary process is that the professional must be accused of breaching an accepted written rule.

It is most unfair for veterinarians to undergo disciplinary matters when the board who examines their behaviour does not offer clear and compelling reasons for the conclusions that they draw, or when the board draws inconsequential conclusions that leave a question mark over the veterinarian's conduct, while not providing that veterinarian with any proper guidelines or rules.

The disciplinary cases we have described that happened during the tenure of Ms Lane show evidence of a lack of care and due diligence on the part of the board. Now we also have information of maladministration and what appears to be fraud during this same period. This behavior is of great concern, as it affects every veterinarian registered with this board, and points to the possibility of further careless actions that may have played havoc with these veterinarians' mental states, their reputations and their right to earn a living.

Published 2017-10-25

Bullying Boards!

(Article 492)

The VDA recently dealt with two complaints that were laid at the veterinary board that should have been properly screened and dismissed. Instead, the board chose to send the veterinarians both a "please explain" letter – thereby placing the veterinarians on their defence and creating unnecessary stress and anxiety.

In one case, Dr A was accused of holding down Mrs X's dog in order to clean its ears. The dog was badly behaved, and Mrs X could not control him. Dr A had to muzzle the dog in order to shave him and clean his ears. Mrs X did not give any indication that she was dissatisfied at any time during the consultation or upon discharge. In fact, she had even thanked Dr A and asked him for the after-hours telephone number. Mrs X's complaint to the Board was that her dog had been traumatized by the rough handling by Dr A. The board dismissed the complaint but proceeded to caution Dr A that he must improve his communication with clients, although the board failed to inform Dr A what he should have done differently and why.

In the other case, Mr Y's dog had a scheduled operation. Mr Y discussed with Dr C that the dog's nails be clipped very short and requested that any bleeding nails be cauterised while the dog was under anaesthetic for the operation. Dr B's veterinary nurse clipped the nails and cauterised the bleeding nails as requested.

Mr Y phoned Dr B the following day to complain that his dog's nails had been clipped too short and laid a complaint at the veterinary board.

Dr B had not clipped the dog's nails, but the veterinary board continued its investigation against Dr B. The board eventually dismissed the complaint, but proceeded to issue Dr B with a warning to improve his communication.

If the board thought that Dr B's behaviour or the treatment provided by him fell below a certain standard, then the board was obliged to have stipulated what the standard is. The board failed to inform Dr B what he should have done differently and why.

Both cases ought to have been dismissed during screening because both complaints were frivolous, vexatious and groundless. Not only was there no discernible complaint against either of the veterinarians, but the complaints had nothing to do with communication. Indeed, neither case had anything to do with "communication", and yet, in both cases, the board felt it necessary to admonish the veterinarian concerned for poor communication.

The disciplinary powers of the board in terms of the relevant veterinary legislations are limited to reprimanding or cautioning a veterinarian only after a hearing has been held, and after the board has found a veterinarian guilty of unprofessional, improper or disgraceful conduct. No such hearing was held in either case, no evidence was produced and tested, and no adverse finding was made in either case.

There were no facts in either case that could possibly proscribe a transgression of any lawfully accepted rule of practice.

An essential element of any disciplinary process is that the professional must be accused of breaching an accepted written rule. It is not lawfully acceptable for a tribunal member to rely on their own experience or knowledge in order to create a transgression.

There was no lawful basis for the board to “warn” or “caution” the veterinarians. These decisions were ill-considered and constituted unlawful and inappropriate administrative action, tantamount to bullying.

Upon issuing the warning and caution to Drs A and B, the board wrote that “This might help eradicate clients feeling aggrieved and lodging complaints with the [board]”. Such a comment indicates how far out of touch with reality the board is. Not least of all there is no recognition by the board of the high level of unrealistic expectation that the public has, nor that mental illness and irrational aggression pervades the animal-owning public. There is, sadly, an irrational and destructive persecutorial mentality of the board towards the profession, which makes the board entirely unfit for purpose.

Let us know about your experiences. Remember, the VDA consultants are available to assist you in dealing with grievances as they occur. Don’t wait for them to become full-blown board complaints when the damage is harder to undo.

Published 2017-10-18

Veterinary suicide

(Article 491)

Approximately one million people die by suicide each year worldwide. According to the Canadian Veterinary Journal, the number of lives lost through suicide exceeds the number of deaths due to homicide and war combined. Beyond the tragedy of the loss of life, there is the devastating effect that suicide has on family members, friends and colleagues to consider.

Several studies have pinned a link between suicide and occupation. The rate of suicide in the veterinary profession has been pegged as close to twice that of the dental profession, more than twice that of the medical profession and four times the rate in the general population.

Human beings share the common experiences and feelings of joy, sadness, strife, hardship and life's struggle to meet challenges. The negative experiences can sometimes accumulate – leaving us feeling depressed, overwhelmed and alone – the perfect recipe of feelings to entertain thoughts of suicide.

We all need to be sensitive to the emotional needs of others and these identifiers will assist us in being forewarned and empathetic towards companions who are considering suicide:

The best way to identify the intention of suicide is to ask directly.

Suicidal talk is a major warning sign for suicidal risk and should always be taken seriously.

People who have attempted suicide before are the most at-risk for future attempts – 40 times higher, in fact!

A sudden, traumatic event may trigger the decision to commit suicide but most often, suicide is a result of events and feelings that have accumulated over a long period of time.

A person planning suicide usually gives clues about their intentions.

Males die by suicide approximately 4 times more often than females, yet females attempt suicide approximately 4 times more often than males.

Veterinarians tend to be high achievers who have perfectionism traits. These traits can be risk factors for depression and mental illness.

Coupled with personality traits comes the fact that 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, 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 who is therefore always placed on the back foot in terms of diagnostics.

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 expectations that their animal's treatment be equivalent to treatments received by humans, who almost always have treatments that are underpinned financially by medical insurances.

Medicine is hard for lay people to understand and people are emotional and irrational and unable to be objective. It is easy for people to get the wrong end of the stick when conversing with their veterinarian.

These factors all build up to a perfect storm – and these do not even include what personal struggles a veterinarian may be facing.

The VDA knows of a number of veterinarians that have either attempted suicide or committed suicide.

Dr Peter Hatch, (a Veterinarian who is also a Psychology Counselor) regularly consults with VDA members who are undergoing emotional upheaval. Dr Hatch is able to provide help and support to members who are facing chronic stress and burdens that are unique to the veterinary profession.

We encourage any member who has suicidal thoughts or feelings or anyone who has a colleague facing troubled times to contact Dr Hatch for assistance.

Dr Peter Hatch (BVSc, Dip. Of Prof. Counselling) of Hatch Counselling and Consultancies, resides in Victoria, Australia, and may be contacted by e-mail at peterhatch@iprimus.com.au or by PHONE on: 0403719821. He has a website at http://home.kooee.com.au/yourvisionyourlife/profile.html.

Published 2017-10-04

Assertiveness - and a good dose of patience!

(Article 490)

"Assertiveness is the ability to stand up for yourself and to say what you think and feel in a way that is respectful towards other people's thoughts and feelings. Assertiveness is not being mean, but it isn't necessarily being nice either. Assertiveness helps you to protect yourself in a strong yet respectful way. The ability to be assertive is a key component of self-respect, which in turn provides a good foundation for happiness and confidence."

Jo Hamilton: "The Ultimate Assertiveness Toolbox for Kids".

There are many ways in which to present yourself as an assertive person but a key component is the 24 hour rule. This "rule" stems from a popular anecdote regarding soldiers not being allowed to make a complaint against superior officers until the following morning. The army forces them to sleep on it and allow their emotions to cool and rationality to prevail. We could all benefit from following this rule.

Mr X brought his dog in with a limp. Dr A examined and took some x-rays which did not reveal any pathology, so he dispensed some anti-inflammatory tablets. The tablet packet has a large red warning label and Dr A also warned Mr X to keep the packet out of reach of children and animals.

When Mr X got home, he placed the tablet packet on the kitchen counter. His 2 cats came along and batted the packet onto the floor, where his dogs gobbled up all the tablets. When Mr X realized what had happened, he panicked and rushed the dogs to an emergency facility for checking.

Mr X was furious. He immediately wrote a letter to the veterinary board. The board's response to Mr X was to ask him to submit his complaint under oath. The board also inquired whether Mr X had attempted to resolve the matter with Dr A at all.

Mr X then emailed the veterinary practice, demanding Dr A's full name and his board registration number. Mr X said that he would be contacting his attorney to take matters further.

Mr X also wrote an emotional letter to Dr A via email.

Dr A responded to this email in a very calm manner and inquired whether Mr X's animals were not well and offered assistance. Mr X replied and admitted that he was at fault for not reading the packet label, but still blamed Dr A for not having explained to him that the tablets were highly palatable and to keep them out of reach of all his animals. Mr X told Dr A that his email was not a threat to take legal action against Dr A – which was in contradiction to his recent actions.

Dr A contacted the VDA for assistance. The VDA discussed the case thoroughly with Dr A and then sent him email guidance the same morning.

Unfortunately, Mr X seemed to then change his mind and sent another email to Dr A, ranting and raving and threatening to sue Dr A. At this point, Dr A should have allowed the VDA to start Alternate Dispute Resolution with Mr X as advised, but Dr A felt the need to be directly assertive and stand up for his actions and reputation. This resulted in a tit-for-tat email string between Dr A and Mr X that afternoon. The result of this was a highly inflamed Mr X who now threatened a board complaint. This all happened in the space of a day!

Fortunately it seems that Mr X had consulted with a family member who was a lawyer and who looked at this case objectively and explained to Mr X that he had no grounds for a complaint and no board complaint materialised.

When a veterinarian is pushed to their limits with the pressing issues of business, practice and family, a complaint, (especially one that is frivolous, vexatious and groundless), causes extreme stress, emotional flooding and sometimes depression.

Waiting at least 24 hours to respond to Mr X may have resulted in a more cordial interaction. Dr A would also have benefited from handing over all correspondence to the VDA, and trusting the process of ADR instead of becoming emotionally embroiled with an irrational client.

Published 2017-09-27

Failing to refer

(Article 489)

A recent court ruling in NSW, Australia, in which a general practitioner was found negligent for failing to refer his client to a specialist for treatment, serves as a warning not only to GPs but to veterinarians too.

The case came about when Dr B's patient, Mr Y, sustained lacerations on his left hand when he grabbed a knife to avoid being stabbed during an armed robbery. Mr Y had consulted with Dr B on two occasions and alleged that he had breached his duty of care to him by failing to properly assess and diagnose Mr Y's injuries and to refer him to a hand surgeon or to a hospital emergency department for review and investigation.

The particulars of breach of duty of care were pleaded as follows:

"Failing to recognise the severity of the plaintiff's injuries on 17 October 2011 and to appropriately attend to the plaintiff's injuries on 17 October 2011;

Failing to properly assess and diagnose the plaintiff's injuries on 17 October 2011;

Failing to appreciate the significance of the lacerations to the plaintiff's left middle finger on 17 October 2011 and the associated complications, namely, injuries to deeper structures such as tendons, nerves and arteries;

Failing to properly examine the plaintiff's left middle finger for damage to tendons, nerves and blood vessels on 17 October 2011;

Failing to diagnose the complete or partial laceration of the plaintiff's third FDP and FDS tendons;

Failing to refer the plaintiff to a hand surgeon and/or to an emergency department at a hospital for review of the left third FDP and FDS tendons on 17 October 2011;

Failing to refer the plaintiff for imaging or other necessary investigations to assess the nature and extent of his injuries on 17 October 2011;

Failing to refer the plaintiff for imaging and/or other necessary investigations to assess the nature and extent of his injuries on 17 October 2011 in circumstances where the plaintiff provided a history of a knife attack as the cause of the injuries."

As a result of Dr B's breach of duty of care, Mr Y pleaded that he had suffered a loss of function of his left third finger, a chronic pain syndrome, and an adjustment disorder with depression and anxiety.

The judgment set out a detailed analysis of the expert (hand surgeon) opinions relied upon by Mr Y as well as Dr B, including their concurrent evidence given in court.

The court preferred the evidence given by Mr Y, over that of Dr B – noting that Dr B's clinical notes of his examination of Mr Y were grossly deficient and did not support some of his evidence.

The court was satisfied that Dr B had breached his duty of care and Mr Y was awarded a total of $206,000.00. The full case can be read at :
https://www.caselaw.nsw.gov.au/decision/578851bae4b058596cb9d7af

The following description is a veterinary case in point in which Dr A failed to refer……

Dr A was holding a spay day to assist a local welfare organisation. Mrs X presented her Min Pin to take advantage of the low cost spay.

Dr A induced the dog, but before the uterus and ovaries could be found and removed, he encountered problems. There was more bleeding than anticipated. The plane of anaesthesia was not stable, and the dog's breathing was erratic. Dr A exercised his prudence, and closed up and stopped the anaesthesia without finding the uterus or ovaries.

Dr A informed Mrs X that the spay was not completed, and told Mrs X that he thought she should consult a specialist instead.

However, the following day, Mrs X returned because the dog now had a bloody diarrhoea. This is where Dr A should have immediately referred the dog to a specialist and insisted that he could not treat the dog. Unfortunately, Dr A chose to hospitalize the dog and treated the haemorrhagic diarrhoea himself. This little dog's problems were not over - there was an abdominal swelling and bloody urine. The dog had a cough and faster respiration rate than normal. In addition, the skin on the dog's toes and pad of one foot began to slough. Yet, Dr A still attempted to treat the symptoms.

Eventually, the dog was taken to a specialist. Parvo-virus infection was diagnosed, together with pneumonia. The dog was eventually euthanized because the owner did not have any money to treat the dog. Given this dog's parvo infection and young age, and the abdominal and skin complications, it is unlikely that this dog would have survived even with treatment.

Mrs X didn't see it that way. She asserted that Dr A had caused all the problems described when he anaesthetized the dog and attempted to spay it, and that Dr A had compounded his negligence by hospitalizing the dog instead of referring it immediately to a specialist.

Mrs X seemed to ignore the fact that her dog was infected with parvo-virus, and she seemed to not know that parvo is a life-threatening infection which was probably the cause of the other complications. The VDA assisted Dr A with ADR and explained the severity of parvo-virus to Mrs X. Fortunately for Dr A, Mrs X did not pursue this case.

The moral of the story is: If you experience complications with a case that increase the risks of further treatment, then refer to a specialist without delay!

Published 2017-09-20

Supplementing Clinical Notes

(Article 488)

Clinical notes are not forensic documents. In other words, clinical notes were not intended to be used for legal purposes such as in court civil claims and disciplinary hearings. Forensic documents include reports and expert opinions – but not clinical notes.

Clinical notes are merely your diary. They are your personal property and are private and confidential, and no-one, not even the owner has a lawful right of access to your notes. Unfortunately, many boards have grabbed the power to demand your clinical notes and (unfairly) use them to evaluate your professional conduct. However, clinical notes are merely your aide to memory – they are usually in abbreviated form, and this can be misunderstood by someone else reading them. Clinical notes are never complete because they can never contain all the information about that consult or procedure – there just simply isn't the money or time to perform every test and record every nuance of tone of voice.

And that is where supplementing your clinical notes comes in.

There may be an occasion – such as when a pet owner makes a grievance or board complaint – and that complaint revolves around issues that you did not record in your clinical notes at the time of the consult – because you could not predict that the issue raised later was important at the time of the consult.

Therefore it may now be pertinent for the veterinarian to add information that they can remember about this new aspect of the past consult. This is an opportunity to supplement vital information that could possibly save you from a conviction at a board hearing. The board will be scrutinizing your clinical notes and using them to evaluate your professional conduct, but these clinical notes probably lack the information that is relevant to the issues raised in the complaint – clinical notes only contain the information that the veterinarian considered important to treating the animal at the time. As you can see, the veterinarian is at a distinct disadvantage in this situation, because the veterinarian's clinical management of the case – as reflected in an abbreviated, incomplete diary - will probably be regarded as inadequate.

Another factor that places the veterinarian at a disadvantage is that the disciplinary process can take years to run its course. Therefore, information that may be useful to you in a hearing or court review will have faded from your memory. However, if you supplement your clinical notes as soon after the consult as possible, your memory may be fresh and the information you remember more reliable. The red flag that alerts you to consider supplementing your notes will be when you first realize that the consult may result in a complaint. For example, an unexpected death or an angry owner or a refusal to pay.

Think of the situation that a pathologist is in – the pathologist is briefed about why his report is required, and the pathologist knows what purpose his report may be used for. The pathologist has all the time at their disposal, to inspect all the organs within the body, with good lighting and microscopes

to aid their vision, and access to any textbook and experts to consult. The veterinarian did not have these luxuries at the time of the treatment. A definitive diagnosis might be 'obvious' in the eyes of the pathologist – and the board. But this information was not available to the veterinarian at the time of the consult, and therefore the veterinarian's conduct ought not to be judged on information recorded in the clinical notes that the veterinarian was not aware of at the time of the consult.

Supplementing clinical notes must be done in the proper manner:

• Make a new entry under the current date (ie the date on which you supplement – not the date of the consult).

• Make a heading that identifies the new entry as a supplement or addendum.

• Never alter existing entries as this may be regarded as fraudulently altering clinical notes.

It is advisable to create supplementary notes immediately that you are aware that the consult could result in a complaint, while the facts are still fresh in your memory. This is your opportunity to place the facts of the treatment in proper perspective.

Good record keeping is of the utmost importance. Veterinarians are now required to record as much detail as possible at the time that it occurs. This administration is part of your professional time and may be charged for. Each animal must have a separate record (computer file or paper) which must identify the animal completely. A record implies a permanent copy either hand-written in ink or digitally stored on a computer and backed-up.

If you are in doubt, contact your VDA consultant first. The VDA Handbook which contains Bulletin 13 to assist you in supplementing your clinical notes is available to members on the VDA website. All other VDA approved consent forms are available in the handbook too.

Published 2017-09-13

The Invisible Responsibilities

(Article 487)

What responsibilities does the law and ethics place on a veterinarian to police the ownership of dogs? Read on for an interesting tale of intrigue, a convoluted story line and at last, some rational thinking.

Mr X presented his dog to Dr A because it was limping. When Mr X presented the dog, he told Dr A that this was his dog, and that he was prepared to pay whatever it took to make the dog better. But within a couple of weeks, Dr A received a surprising and off-the-wall grievance – that the dog belonged to Mrs Z (whom Dr A had never met) and who was intent on making an example of Dr A for not returning her dog.

But let's start at the beginning, or as close to the beginning as the role players can make out.

Mr Y was taking a stroll through his neighbourhood one sunny February afternoon, when a large dog with no collar wagged his tail and followed him home. Mr Y's friend, Mr X, fell in love with the dog, and Mr Y "gave" the dog to Mr X, believing that the dog was a stray and that Mr X would provide a responsible and loving home for the dog.

Imagine Mrs Z's panic when she returned home and her beloved dog did not come running to greet her as usual. Mrs Z called for her dog; she and her husband searched the streets; they handed out flyers, put notices and posted "missing" images on social media – but all to no avail.

In April, Mr X presented his dog to another vet, Dr B, because it was limping. In July, some 5 months after the dog went missing, Mr X presented his dog to Dr A for a second opinion on that limp. Both Dr A & B scanned the dog for its microchip to insert into their records. Neither Dr A nor Dr B checked on the numerous microchip databases whether the identity of the person listed on the microchip database matched that of the person who presented the dog for treatment. There wasn't any immediate reason to do so as Mr X presented the dog as his own dog – not a stray. Dr A examined the dog and treated his limp and dispensed medication to Mr X.

Within a week of Dr A treating the dog, a friend of Mrs Z's saw the dog and she remembered the social media post about a similar dog being missing. Thankfully, the dog was reunited with Mrs Z.

When Mr X handed over the medication that Dr A had prescribed for the dog, Mrs Z now had the name and contact details of someone she believed could be held responsible for not returning her dog to her.

Mrs Z was furious that she had been searching for her dog relentlessly for five months, and felt that Dr A should have checked the microchip database and realized the dog did not below to Mr X. Mrs Z wrote a bitter letter of complaint to Dr A, after which the VDA immediately assisted with Alternate Dispute Resolution.

The VDA patiently explained to Mrs Z that there were numerous factors at play in this scenario, and that there was no evidence that Dr A had acted unethically or illegally:

Some of the legal aspects included:

1. There is no legal or ethical obligation on veterinarians to scan the microchip of new patients that are presented as being owned in a bona fide client relationship and checking the numerous external microchip databases to correlate the client information.
2. There is certainly no obligation on veterinarians to police pets (to check if they are stolen or lost) or act as private investigators in reuniting pets with their owners. A veterinarian's job is to treat sick and injured animals that are presented to them.
3. If a stray animal is presented to a veterinary clinic, then the veterinary clinic does scan for a microchip number, and they do check microchip databases, and contact the person listed. This is not mandatory, and is a free service.
4. Most veterinary clinics scan new patients presented to them for their microchip number as part of the information capturing process for their private patient notes and there is no policy, procedure or law requiring veterinary clinics to check new patients details against the microchip databases.
5. The details listed on the numerous microchip databases is not proof of ownership. In the eyes of the law, the database listing merely provides a link between a microchip number and a person's name, nothing more. Therefore Dr A does not have the authority to decide who the owner is and to remove a dog from one "owner" and give the dog to another "owner".

In this particular situation, the following aspects were pertinent:

6. Even if Dr A had checked the particular microchip database that Mrs Z's dog was listed on, there is no "red flag" function on that microchip system that alerts anyone checking the database that an animal has been reported as missing. Mrs Z had claimed that a missing alert was made on the microchip database, but this was disingenuous because the note was made under the heading "markings" - which can hardly be construed as a noticeable red alert for a missing dog!
7. Mrs Z was not a client of Dr A's. Therefore Dr A had no contractual relationship with Mrs Z and there were no contractual obligations or duties placed on Dr A in relation to Mrs Z.
8. Mr X is the person registered with Dr A, and therefore Dr A may not breach confidentiality by providing any information about Mr X and his dog to any third party without Mr X's permission.
9. When Mr X presented the dog to Dr A's practice, he was caring and concerned about his pet. Mr X had paid for veterinary fees and did not present the dog as a stray animal and there was no reason to suspect that he was not the legitimate owner of the dog.

The VDA further brought to Mrs Z's attention:

On an average day, 30-40 pets are presented at Dr A's practice for treatment. It would be impossible, and unnecessary, to check the details of every pet on the numerous microchip databases.

Mrs Z's dog went missing while under her care, therefore Dr A's practice was not responsible for the fees incurred by Mrs Z in looking for her lost dog.

Mrs Z's dog was injured while under or deemed to be under her care (no dog was injured while under Dr A's care), therefore Dr A's practice was not responsible for the cost of treating injuries that Mrs Z's dog suffered.

Mrs Z had said that she would like to see the law to be changed to facilitate reuniting lost pets. While we can sympathize with Mrs Z's motive, it can be seen from the above information that there are serious challenges, both legal and logistical, to guaranteeing that pets are reunited with owners. Changes to laws are merely one facet - there would need to be changes to the technical setup of microchips to prevent fraud, changes to the law of ownership of information, to databases and patient notes, changes in the regulations which govern the manner in which all veterinary practices function, changes to the incompatible computer software programs, not to mention the additional cost of such changes, which would inevitably fall onto the shoulders of animal owners in general.

Published 2017-09-06

Pet owners are grateful for information

(Article 486)

Mr and Mrs X presented their aged small breed dog to Dr A as they were concerned about bloat. Dr A examined the dog thoroughly and performed blood tests, but nothing abnormal was detected, at this time.

Just over a month later, the owners took the dog back to Dr A as they were again concerned about the dog being bloated. Dr A ran further tests, including radiographs and an ultrasound was performed. No heart pathology was detected but a diagnosis of suspected hepatopathy with low grade pancreatitis was made. Dr A recommended that Mrs X monitor the dog's response to trial medication over the following 14 days, and to return immediately if the dog deteriorated.

During this time, Mrs X was taking the little dog for physio due to his advanced age and aching joints. Mrs X claimed that the physiotherapist was shocked at the deterioration in her dog. The physiotherapist instructed Mrs X to take the dog back to Dr A as she was concerned that the dog may need to be placed on a drip. Three days later, Mrs X took the dog back to Dr A - rather long time to wait and see if a drip may be needed. Dr A did not find anything seriously wrong and did not find any signs of dehydration, and asked Mrs X to return the following day for further tests.

Shortly before midnight, Mrs X noticed that her dog was not breathing and rushed him to Dr A's emergency clinic. The dog was in extremis and unfortunately could not be resuscitated. Dr A offered Mrs X a post mortem at a specialist pathologist.

The pathologist report stated that the diagnosis was moderate chronic multifocal fibrosing myocarditis. The report further stated that "The most significant findings histologically are the lesions of chronic multifocal myocarditis. These lesions are chronic and sudden cardiac decompression may have resulted in acute cardiac failure. In acute heart failure, there may be intermittent weakness and syncope caused by a substantial change in heart rate or rhythm, resulting in a precipitous drop in cardiac output. The effect of acute heart failure is often sudden unexpected death, often with minimal lesions."

Mrs X wrote to Dr A wanting to know the cause of death of her dog. She also wanted to know if Dr A had provided the correct and best treatment, and stated that Dr A ought to have performed tests and listened to her dog's heart on the day he had been presented and subsequently died.

The VDA invited Mrs to participate in Alternate Dispute Resolution. It was explained to Mrs X that chronic myocarditis is a pre-existing condition which is almost impossible to detect. A chronic multifocal fibrosing myocarditis is a terminal disease and it was only a matter of time that would determine when Mrs X's dog was going to die, and there was nothing anyone could do about it.

Dr A had performed an examination as would have been expected, and had listened to the dog's heart, finding a normal rhythm, synchronous with the peripheral pulse, and a normal temperature.

The VDA explained to Mrs X that the presenting signs, including bloating, are not associated with chronic myocarditis. There is also no test or treatment commonly available in veterinary medicine to detect or prevent an acute cardiac failure. The tests that may detect a chronic myocarditis are expensive, and not generally available in veterinary medicine. Even in human medicine these tests are only considered if there are signs of heart problems. Performing expensive tests without any indication may be seen to constitute over-servicing.

Mrs X thanked the VDA for our services and helping her to understand what had happened to her dog. She also stated that she was facing double tragedy in the loss of her dog as well as a family member. She was comforted by the fact that the VDA had assisted her in understanding that there was nothing that Dr A or any other veterinarian could have done to save the life of her little dog.

Published 2017-08-30

The Value of a Post Mortem

(Article 485)

A post mortem should be offered in every case of unexpected death. The post mortem should ideally be performed by an independent specialist pathologist. If no specialist pathologist is available or the owner refuses to pay for this, then a colleague, rather than you, should perform the post mortem. As the veterinarian involved in the treatment, you should not be performing a post mortem. If there is no alternative and you have to perform the task yourself, you should not promise the owners that you will provide a report.

Here is an astounding fact - the value of a post mortem is that in most cases, (and by most cases we mean more than 95%) the post mortem reveals the true cause of a death to be unrelated to the treatment administered by the veterinarian!

The following case history will further illustrate this point.

Mrs X presented her 6 month-old large breed bitch for a spay and requested that Dr A perform a prophylactic gastropexy in an attempt to prevent future gastric dilation volvulus. Dr A admitted the puppy and the surgical procedures were performed successfully. The dog recovered uneventfully and was discharged.

Mrs X returned to Dr A's practice the following evening with the body of the dog. Thank goodness, Dr A had the foresight and presence of mind to offer a post mortem and Mrs X agreed.

Mrs X was sure that a post mortem would prove that Dr A was to blame for the death of her dog and wrote a letter of complaint to Dr A. Dr A immediately contacted the VDA for assistance. The VDA entered into ADR (Alternate Dispute Resolution) with Mrs X.

Mrs X's complaint was that she should not have to pay for a post mortem to determine what the vet "did wrong". And she demanded a refund because she alleged that Dr A had euthanized her dog!

However, the post mortem revealed that there was a rope-like foreign material in the stomach and intestines. This linear foreign body caused a gastric rupture, a septic peritonitis and an intussusception. The post mortem further confirmed that the intussusception appeared to be an acute incident as there was little inflammation or fibrous adhesions and it was relatively easily reduced at post mortem. There was a further post mortem finding of dystrophic mineralization in the diaphragm and a portion of the heart, and chronic antigenic stimulation in the stomach wall. Clearly there was more going on in this dog than could be determined from an examination prior to a spay.

The VDA responded to Mrs X's complaint by pointing out the following to her:

The veterinarian did not euthanize the dog – he had spayed the dog. This was obvious but needed to be placed on record.

The dog ate a foreign body whilst in the care of Mrs X. Owners are responsible if foreign bodies are within their dog's reach at home and are consumed by the dog. Mrs X had not informed the veterinarian that her dog was ill or showing any adverse signs. If she had informed the veterinarian, then the elective surgical procedure would not have been performed, and the cause of the dog's illness would have been investigated.

The foreign body and adverse systemic effects were not detectable by the veterinarian at any time whilst the dog was at the practice.

After receiving this explanation, Mrs X fell off the radar and was not heard from again by either Dr A or the VDA.

A post mortem is necessary in order to establish the cause of death. It is only possible to apportion blame (if any blame is warranted) after the cause of death has been objectively determined.

The VDA's ADR process is invaluable. In fact, the ADR process has produced a 98% success rate. This means that 98% of grievances received by our members have been amicably resolved and prevent the distressing and fateful Board complaints process. Pet owners need time for their emotions to calm down and for rationality to return – performing the ADR process, which is always performed in writing, assists in taking the heat out of the situation.

Pet owners are also looking for answers – and there is no other forum in which pet owners will receive an explanation of the legal factors which have a bearing on their dispute.

In this case, even though Mrs X had received a copy of the post mortem results, she still went ahead with her complaint to the practice. We can only imagine that she did not understand the implications of the post mortem information, and she needed an explanation in lay terms to understand the contents of the report and the issues at stake.

Make sure that you have and are using the latest VDA-approved Consent to Treatment form, which includes the ADR clause.

Published 2017-08-23

Your word against theirs

(Article 484)

Emotions can run high when an emergency comes along for admission. In such emotionally charged situations, the value of obtaining a full deposit and a signed consent form is inestimable. Many practices have numerous staff such as multiple veterinarians, nurses, and multiple receptionists. At least one of these staff members can be tasked with dealing with the pet owner while the professional staff deal with the patient. There is more strain on a small practice during emergencies, and it would be wise to establish a strict protocol of how to deal with owners and patients to foil the lapses in important paperwork and the payment for treatment that would otherwise occur.

Mr X took his cat to Dr A after being attacked by a dog.

He later claimed that upon arriving at Dr A's clinic, he asked two ladies at reception if a veterinarian was available for an emergency. He said that the one lady at reception said she was unsure and the other lady said she thought so and would check.

When the lady who went through to check if the veterinarian was present, she returned with a veterinary nurse who told Mr X that they would attend to the cat and later phone him to let him know how the cat was. Mr X left to go home.

When the promised call was not received, Mr X called Dr A's clinic and spoke to the vet nurse who informed him that the cat was not doing well and that "all his guts were hanging out" and that Dr A would return his call. Mr X says he asked the nurse whether he should visit his cat and was told again that Dr A would phone him.

Approximately 3 hours later, Dr A telephoned Mr X to inform him that his cat had unfortunately passed away.

Mr X proceeded to write a complaint letter to Dr A, via email, listing the following:

1. Ladies at reception were unprofessional in dealing with Mr X's emergency when he arrived just after 12 noon.
2. The vet nurse attended to his cat and not the vet who was "busy".
3. The vet nurse promised a phone call to let him know about his cat's condition which did not happen.
4. On phoning the clinic, Mr X alleges he spoke to the vet nurse who informed him the all of the cat's guts were "hanging out". He contended that this was a lie as he had carried his cat from home to the clinic and there was no blood and that the guts were not hanging out.
5. Mr X asked for and was promised copies of the radiographs "within 24 hours" from "the accounts lady". Mr X demanded to see the X-rays taken of his cat before paying his account.

Dr A's version is as follows:

On Mr X's arrival with his cat, the cat was immediately attended to by Dr A's qualified Veterinary Nurse, who administered the necessary initial treatment on his instructions and took x-rays.

The X-rays revealed broken ribs, a fractured sternum and a pneumothorax. The initial treatment was to stabilise the patient, after which surgery could be considered.

Dr A's staff members denied any knowledge of Mr X's claim that he had been informed that his cat's guts were hanging out.

Dr A was busy with procedures as well as stabilising Mr X's cat, and therefore could not telephone him immediately.

Three hours is not an unreasonably long time for Mr X to wait for a phone call.

Dr A telephoned Mr X soon after the cat had died, and informed him that his cat had not suffered because the initial treatment included pain relief.

When Mr X received his account he requested copies of the X-rays before payment. He was informed that he was only entitled to copies of the x-rays AFTER he had paid for them. Dr A asked Mr X what the reason was for wanting the x-rays and Mr X stated he wanted a specialist to provide him with a report. Dr A offered to explain the x-rays if Mr X would kindly come in, but Mr X retorted that he is a lay person. Dr A asked which specialist Mr X had appointed, and Mr X obfuscated by saying he wanted the x-rays sent to him personally so that he could take them to "his chap".

Dr A declined to send the x-rays to Mr X.

Every time Mr X was contacted to settle the outstanding account, he slammed the phone down refusing to speak to Dr A's bookkeeper. Dr A is now (some months later) still out of pocket and planning to hand the account over to his debt collectors. The VDA has offered to enter into ADR with Mr X should he become threatening or abusive.

A full deposit at admission would have prevented Dr A from not being paid, and may have prevented this unpleasant situation completely.

Make comprehensive notes, just in the case your version differs to that of your client's.

And always remember to contact the VDA immediately if you suspect a case may go awry!

Published 2017-08-16

Why Clause 5 of the VDA's Informed Consent to Treatment form is important

(Article 483)

The VDA's Informed Consent to Treatment form has been honed and perfected over the years to assist our members in practicing defensively.

Despite our reminders, we are aware of many members who are still using older versions of this form and who have not consulted the VDA website to download the latest handbook which contains the most updated versions of all the consent forms.

We remind members that their opportunity to practice defensively is at the beginning of their contract/agreement to treat their client's pet and that this is when the client should be presented with the Informed Consent form.

Informed consent is not only a requirement of the Veterinary Rules, but is a requirement of VDA membership. The VDA uses the form as a basis for assisting with client's disputes. It is also a good practical tool that helps the client understand their own obligations and responsibilities within the Veterinarian-Client-Pet relationship.

Let us examine the reasoning behind this vital administrative tool.

The first clause deals with the client's authorization for the veterinarian to perform whatever treatment or alternative treatment is deemed necessary. This clause also confirms that the person signing the form is an adult and not a minor.

The second clause is there to make the client aware that your facility is not a 24-hour clinic (if this is the case). If the client would like their animal to be monitored for 24 hours a day, then they need to move their animal to a 24-hour facility. Through our years of assisting members, we have dealt with many complaints arising from clients claiming not to know that the veterinarian or staff will not be monitoring their animal day and night.

The third clause in the consent form is there to place the onus squarely on the client to communicate with the veterinarian. The VDA deals with many cases in which the client complaints to the veterinary board that the veterinarian did not keep in touch with them and did not phone them to give the client a step-by-step progress report. This clause is required to keep you from being accused of not communicating.

The fourth clause, the waiver of liability clause, is there to alert the client to the fact that there is a risk in any veterinary procedure, and to warn the client not to have any unrealistic expectations.

The fifth clause is a very important clause. This clause obliges the client to undertake to enter into and complete the VDA's free Alternative Dispute Resolution (ADR) process, before resorting to any other

action or remedy, should a grievance or dispute arise. Since the VDA has introduced this aid to members, we have been able to reduce veterinary board complaints and satisfy the client's concerns in around 98% of cases.

The success rate of ADR drops when the veterinarian does not notify the VDA immediately when the incident occurs, and the pet owner is left to harden their hearts and make board complaints and civil claims without the pet owner receiving the benefits of ADR.

The sixth clause is an acknowledgement that all the above conditions were read and that the pet owner binds themselves to these clauses.

The purpose of the consent form is not only to protect the veterinarian but is also aimed at getting the client thinking about the procedure and the risks and to get them talking to the veterinarian about their concerns. This helps to get rid of misconceptions (of which the public has a large and unpredictable array!) and creates a closer bond between veterinarian and client, which aids further communication during the course and even after the treatment. The two greatest misconceptions are that veterinarians will always cure their patients and that there will never be any complications.

Members who do not use VDA-approved consent forms are placing themselves at unnecessary risk.

Please download your updated consent forms containing Clause 5 from the VDA website, under MyVDA, Members' Handbook. Or contact your VDA offices who will send you a copy info@vetdefenceco.com.

Published 2017-08-10

Understanding the Concept of Professional Misconduc
(Article 482)

In a civil case, the primary claim for damages made by plaintiffs is usually for the market value of the animal that died. If the animal is still alive, the primary claim is for a reduction in market value caused by the Negligence of the defendant. There are usually also additional claims for expenditure related to the animal.

When the animal is a sterilised pet, the market value is usually zero. When the animal is ill on presentation to the veterinarian for treatment, the market value might be greatly diminished, given that the "goods are damaged' in terms of the law and the law recognises that there is no guarantee of a cure. A dead animal - even a meat production animal that is filled with medication - has no market value.

A finding of unprofessional conduct by a board is not sufficient to entitle the pet owner to any money, let alone a 'reimbursement' of fees paid for treatment. Fortunately for South African veterinarians, South African courts have not yet begun awarding general damages for pain and suffering. The South African legal system is still based on the proposition that an animal is property.

We say "fortunately" because the concept of damages for pain and suffering is open to vastly different interpretations personal to the official who is judging the case. One judge/magistrate might consider the concept of pain and suffering to be deserving of a huge sum of money, whilst another judge/magistrate might feel it is worth very little. In California, this concept has been taken very seriously and this has resulted in huge awards of money being granted in certain cases. For example, in a veterinary malpractice case in California, a jury awarded the owner of a dog $10 for the dog's market value, and another $30,000 for its special [emotional] value. However, such awards are still rare in the USA, although there is intense pressure from animal activists for this to change.

There have been significant changes in international case law recently which create an onus on boards such as the SAVC to consider much more carefully and fairly whether a veterinarian has acted unprofessionally or not. These are principles that the VDA has been presenting to the SAVC for the past 25 years, and it is only recently that case law has started catching up with the VDA's position. The principles are:

1. The rules of natural justice preclude a veterinary board from drawing on its own knowledge and experience to create a specific professional duty and, insofar as veterinary boards rely upon any general duties or norms, its allegations cannot be upheld in the absence of evidence.

2. In order to be valid, the SAVC's allegations must be based on a specific or particular professional duty, which is generally accepted by practitioners of good repute and competency in the veterinary profession; and there must be current statutory provisions or specific written professional conduct rules that are widely accepted by the profession, prescribing the appropriate conduct of a veterinarian.

3. Even when there is a specific, written current statutory provision or specific written rule of professional conduct prescribing the appropriate conduct of a veterinarian, it is a further requirement that the accused veterinarian understood that s/he was required to meet the specific provision or rule, and that they acted intentionally to breach the provision or rule.

4. In other words, the SAVC cannot "make it up as they go". It is unlawful for the SAVC to place vets on their defence and in jeopardy of an unlawful conviction, without complying with these principles.

The SAVC exhibits poor knowledge and skills when it creates unrealistic expectations and gives misleading advice to pet owners in correspondence, such as the message sent to Mr X that we discussed in last week's Barks 'n Bytes article, The Concept of Legal Negligence. And when the veterinarian is put upon his or her defence in such a case, the preliminary investigation committee and tribunal members in the VDA's view do not meet the minimum required standards for veterinarians entrusted with the power to administer disciplinary powers. In fact, at a recent SAVC public meeting for the profession, the chairperson of the investigation committee of the SAVC could not even provide a correct definition of the test for professional misconduct (the reasonable veterinarian test). If the head of the Investigation Committee does not know what the correct and most basic legal test for professional misconduct is, how can the profession and the public have any faith in the quality of the work performed by the SAVC?

The current president of the SAVC has spent time and resources holding public meetings with the profession for a better SAVC, yet when this information is presented to the SAVC by the VDA that would vastly improve the SAVC, the SAVC not only ignores it, but tries to discredit and harm the messenger in the process.

If a veterinarian demonstrated such poor knowledge and skills in the practice of veterinary medicine, the SAVC would no doubt (rightly) take immediate and concerted action against this veterinarian. Yet generation after generation of SAVC office bearers continue to act with impunity. Will there be any consequences for the misconceived behavior of the legal director? Not unless the members of the profession band together and file complaints against her.

Published 2017-08-02

The Concept of Legal Negligence

(Article 481)

In an email dated 6th July 2017, and addressed to pet owner Mr X, with regards to a potential complaint the SAVC's Legal Director, Mrs Dinamarie Stoltz, made the following statement through her Legal Secretary, Lorraine Mhlongo:

"If, however, an order/finding is made of negligence, then you can refer the matter to a civil court for reimbursement."

This statement was made in reference to the SAVC's disciplinary process. However, it is factually incorrect and misleading.

Firstly, in South African law, Negligence is a finding that only the courts can make. The SAVC, as a quasi-judicial professional regulator, is not empowered to make findings of Negligence against veterinarians. For the SAVC's legal adviser to tell a complainant that the SAVC can make an order or a finding of Negligence indicates a poor understanding of the law. And, since it is likely to encourage a complainant to file a complaint under false pretences, such conduct is reprehensible.

The SAVC is empowered only to make findings of professional misconduct (unprofessional, improper or disgraceful conduct). This entails assessing whether the veterinarian met the minimum required standards of professional conduct or not. The legal test for Negligence is a substantially different legal test from the legal test for professional misconduct. Also, a finding of professional misconduct by the SAVC does not automatically or necessarily lead to a finding of Negligence by a court.

Secondly, the courts do not have the power to order 'reimbursement', so Mrs Stoltz's statement is once again misleading. What courts do order is the payment of damages for proven loss or injury. Damages are only awarded if Negligence is proven by the plaintiff (pet owner) AND the plaintiff proves that they have suffered a quantifiable and valid loss or injury in monetary terms. A finding of unprofessional conduct by the SAVC is never proof of Negligence and is no indication at all that a court will make a subsequent finding of Negligence against the veterinarian. There are many cases in which a veterinarian might have failed to meet the minimum required standards of professional conduct, but in which the plaintiff has suffered no damages.

In the case which brought about the misleading statement from the SAVC, the circumstances were that Dr A had treated Mr X's dog for lameness with a brand-name anti-inflammatory. The pharmaceutical manufacturer provides branded tablet packets with a warning pre-printed in red that the tablets are highly palatable and to be sure to keep them out of reach or locked away from pets. Mr X admitted that he did not see or read the warning. His kitten got up on the counter where Mr X had placed the tablets and pushed the packet onto the floor, whereupon his three dogs ate the contents.

Mr X's complaint was that Dr A had not warned him about the risk of an overdose or that the tablets were coated to make them palatable. (This complaint is, in itself, absurd, as everyone knows there is a risk of harm in overdosing: an owner does not need the vet to explain this to them).

The complaint had absolutely no merit, i.e. it was groundless.

The complaint was made with the full knowledge of the owner that it was the owner's fault and not the vet's fault i.e. it was frivolous.

The complaint was made by the owner with the full knowledge that, by filing a complaint with the SAVC, the owner was placing the vet's livelihood in jeopardy i.e. it was vexatious.

Mrs Stoltz was aware or ought to have been aware that the complaint was nonsense and that there was no prospect of achieving a conviction of professional misconduct at the SAVC, and there was no chance that a Court would award damages. Therefore her advice to the owner to pursue the vet at the SAVC and in civil court is not only inappropriate advice (because the Legal Director of the SAVC should not be actively encouraging a member of the public to make complaints and litigate against a member of the profession), but when the quality of the advice is so poor it brings the legal profession, the SAVC and the veterinary profession into disrepute.

We presume that Dr Marwick and Co. will be taking disciplinary action against Mrs Stoltz for this conduct.

Published 2017-07-28

Can the SAVC Handle Criticism?

(Article 480)

Clive Marwick, President of the SAVC, threatens to sue the VDA for defamation

Dr Clive Marwick is apparently offended by the VDA's commentary and criticism relating to the SAVC's actions in prosecuting VDA members for frivolous, vexatious and/or groundless complaints filed with the SAVC. In a recent article, the VDA referred to a comment that had been made in a working document dealing with the Rules circulated by the SAVC. According to the metadata on the document, the comment had been inserted by the "Legal Director" which is Mrs Dinamarie Stoltz, the legal director for the SAVC. The comment was "The purpose of the SAVC is to protect the public against the vets. They [The SAVC] do not represent the vets. They [The SAVC] police the conduct of vets and take action against them if they step out of line." Dr Marwick claims that the comment was actually made by Dr Johan Oosthuyse, the Chief Executive Officer of V-Tech (Pty) Ltd., and that it is defamatory to have attributed this to Stoltz or the SAVC. However, he fails to explain why he believes our quote to be defamatory.

What is more interesting though, is that Marwick does not deny that the quoted comment fairly describes the SAVC's current policy. We recently published the example of a case in which the SAVC is prosecuting a VDA member for clipping and cleaning up a Chow's chronic hot spots while the owner waited - a simple and very standard veterinary procedure carried out routinely across the country and, we daresay, around the world. The owner complains about the dog being held, being stressed, vomiting after she gave it the meds and developing a red eye. Nothing that indicates professional misconduct. So far, the SAVC has failed to screen and dismiss what is clearly a frivolous, vexatious and groundless complaint and instead, has placed our member on his defence and in jeopardy of conviction.

So it would seem that the SAVC's policy is very much in line with the comment ascribed to Johan Oosthyse, which begs the question why Dr Marwick thinks that ascribing these words to the SAVC is in any way "inaccurate". If the statement fairly describes the SAVC's actions, then how can he claim that they are defamatory, even if the SAVC did not make the comment? And if they are not the SAVC's policy, why didn't he take the opportunity to say so?

Let's take a look at what caused the VDA to ascribe the disputed quote to Mrs Stoltz and the SAVC. The document containing the quoted comment carries an uneditable title and date stamp of "Legal Director" (Stoltz), leading the reader to believe that Stoltz published the wording on behalf of the SAVC. At the very least, Stoltz stepped into the "chain of publication" by republishing these words without making it clear that these were not her words or the words of the SAVC. By re-publishing the wording, Stoltz creates the impression that she and the SAVC ratified the comment. Neither Mts Stoltz nor Dr Marwick nor the SAVC have denied that the words fairly describe the SAVC's current policy. So the only conclusion that a reasonable person could make is that this comment de facto represents the SAVC's policy. Therefore, Dr Marwick's protest that the comment is "incorrectly attributed" lacks credibility and

any basis in law, but most importantly, it lacks honesty. (By the way, there are others that also thought that these were Stoltz's words).

The next question is: Does Marwick, Stoltz and the SAVC have an actionable case of defamation against the VDA?

The answer is a resounding "No". The rules on defamation precludes an organ of state from suing for defamation. This includes quasi-state organisations like the SAVC, as well as the people who temporarily direct or manage them.

Furthermore, in order to prove defamation, Dr Marwick and the SAVC would need to prove that the VDA, by publishing the article, intended to defame Marwick & Co personally. Just one of the defences to 'intent' is that the VDA had an interest (and a duty) to bring the information to the attention of its members and the members had an interest in receiving this information. Since the SAVC has draconian powers over the members of the profession, including the power to destroy good veterinarians (by adversely affecting a veterinarian's professional life, his/her private life, quality of life, self-esteem and general well-being, including the will to live and the will to continue practicing as a veterinarian), there can be no doubt that the publication was fully justified. So we don't think that any court in the world would find in Marwick & Co's favour.

The next question is: Is Marwick justified in being indignant?

Again, the answer is 'No'. Marwick & Co were not forced to stand for election for the SAVC and nobody is forcing them to stay. Dr Marwick undertook to fill this position of his own free will. When he took the position, he tacitly consented to being subjected to scrutiny and robust criticism. If he cannot stand up to scrutiny and criticism, then he has no business being president: as they say "If you cannot stand the heat, get out of the kitchen". The same applies to all the other councillors, including Glenn Carlisle, the chairperson of the Investigation Committee. When you volunteer to fill such a position, you warrant that you have the required knowledge, skills, education and competence to do so. And that you undertake to act in the best interests of the profession and the public in doing so. The position of president of the SAVC, like the position of chairperson of the Investigating Committee, requires substantial knowledge, skill, commitment and integrity. These are not positions that should be fulfilled merely for the power and recognition that these might bring to the incumbents.

Most importantly for you as a member of the profession though, is that these are public positions of serious gravity and magnitude. The people who fill these positions are effectively 'public servants' that are given immense powers over your life and livelihood as a veterinarian. The people who fill these positions do not become "owners" of the position, the SAVC or the profession. The SAVC is not property, to use for Dr Marwick's personal agenda. As public servants serving the profession and the public, they are obliged to endure any criticism of their actions in public. Their response to criticism should be to defend their actions, admit when they fall short and to rectify their shortcomings. They are absolutely not entitled to attempt to suppress any discussion, debate or criticism by telling their critics to 'shut up or else' - threatening their critics with legal action. And when they do so, as Clive Marwick has done, you need to be offended and you need to take a stand against this.

Marwick has been president of the SAVC since November 2015, so he has had plenty of time to make his mark. It would therefore be appropriate to to take a look at his performance to date. Bodies that serve the profession and the public like the SAVC should meet high standards of Transparency, Competency, Independence, Accountability, Leadership & Management, Governance, Continuity, Consultation, Legislation, Legality and Liability. It would be fair to say that the SAVC under Marwick does not meet any of these standards and there is no indication from Marwick that he will move the SAVC to meet these ideals any time within his tenure. If anything, the SAVC has moved further away from these ideals, especially in terms of prosecuting veterinarians regardless of how patently ridiculous the vast majority of complaints filed against them are. So does the VDA have a right, as well as a duty to criticise Marwick & Co? You bet it does!

The next aspect to examine is: Is Marwick entitled to use the SAVC's funds to sue the VDA?

Since Dr Marwick has threatened the VDA that it will be the SAVC that sues and not Marwick himself in his personal capacity, one must assume that he intends to use the SAVC's funds in order to do so. Given that these are funds that are extracted from the profession on threat of deregistration, and the SAVC has the power to extract more funds in the future to cover shortfalls, including the costs of failed litigation, Dr Marwick is most definitely not entitled to use this money to fund legal action to shut his critics up. If he thinks he has a case for defamation, then surely he should use his own funds, and not your funds, to do so.

Finally, let's look at the Constitution and Freedom of the Press. In a democracy, people have the right to freedom of speech and equality before the law. If the ultimate right to decide on issues of public importance is vested in the people, then the people must have the ultimate right to information and an exchange of opinion. Our Constitution in fact explicitly guarantees the Freedom of Speech and Freedom of the Press. You can bet that the courts will not allow Dr Marwick and the SAVC to suppress the VDA's rights to free speech and freedom to publish any commentary or criticism of the SAVC and its office-bearers to VDA members which is in the public interest. Or allow them to use threats to try to shut the VDA up.

Dr Marwick seems to think that the VDA is taking a personal shot at him, whereas in reality, the VDA's is merely fulfilling its mandate to present and exchange information, ideas and opinions which have a significant impact on the profession. This exchange of information is a right of all citizens of any democracy. Marwick as an individual is irrelevant to the VDA: in twenty five years, the VDA has watched many SAVC presidents pass through. Readers are free to read the VDA's publications, agree with them, disagree with them, ignore them or simply forget them. We can assure Marwick & Co that this is not personal: we would deal with anyone that is perceived to be failing to fulfil their mandate in exactly the same way, no matter who they were. We have done so in the past and will continue to do so in the future.

The SAVC seem to want to cover up the fact that the press, and by extension the VDA, has the right to publish reports regarding public officials. And there is none more public in the veterinary domain than the President of the SAVC, the legal director of the SAVC and the Chairman of the IC of the SAVC.

Dr Marwick ended his letter to the VDA demanding a public apology or else he would take further action. The VDA is not going to apologise for ascribing a comment to a person in an organisation when it is clear that the comment fairly describes the organisation's policy. It is irrelevant who made the comment. And the VDA is not going to be intimidated by inappropriate threats. The SAVC has the reputation in the profession of being the profession's "playground bully-boy". Marwick's action in trying to intimidate the VDA into apologising and 'shutting-up' clearly makes this perception worse.

We leave you with this quote by Norman Vincent Peale who was an American minister and author: *"The trouble with most of us is that we'd rather be ruined by praise than saved by criticism."*

Published 2017-07-19

What is ADR?

(Article 479)

The law prefers complainants to exhaust avenues of reconciliation prior to approaching the courts and tribunals for relief. ADR, which stands for Alternate Dispute Resolution is an ideal forum to achieve these aims.

ADR includes conciliation, mediation and arbitration and is a process that is used to try to resolve disputes between veterinarians and pet owners without the lengthy and costly process of going to Court, or the stressful process of board hearings.

The VDA uses ADR on a daily basis as a free service to our members and to their clients. ADR is a non-confrontational process and is conducted in writing- which helps to decrease misunderstandings or issues being misconstrued.

By participating in the ADR process, ***the animal owner*** will benefit in many ways, whatever the outcome.

ADR provides the aggrieved animal owner with the opportunity to state their case and vent their grievances and frustrations. The animal owner will have an opportunity to fully express their version of events and they will be heard.

If it is found during the ADR process that the veterinarian's conduct fell below the minimum standard, the animal owner may have grounds to claim financial compensation.

However, should the veterinarian have acted reasonably and met the minimum standards expected of a reasonable veterinarian, the animal owner will receive an explanation of the medical aspects that affected their animal, the treatment of their animal as well as the circumstances that lead to the outcome.

This explanation may include information about the legal and ethical factors that have a bearing on the dispute, such as the 6 elements comprising the general test for unprofessional conduct and negligence. That means that the owner is provided with the necessary information to judge whether or not his or her claim has a valid legal basis, before spending money on a civil claim.

Courts and board tribunals do not provide the complainant with feedback, but ADR does.

The ADR process is not binding on either party and therefore does not prevent either party from taking further action.

The animal owner's complaint is taken seriously and the VDA maintains communication until the ADR process is complete.

The VDA is the only private forum that actually provides such answers to animal owners.

ADR holds many benefits for ***the veterinarian***.

The accused veterinarian is given the opportunity to present their case in their defence.

ADR is much less stressful than trying to defend a board investigation which places the veterinarian's license and livelihood at risk.

The process allows both parties to be heard in a fair, unbiased and unemotional light, and to be informed of the relevant facts and the law before taking any further steps.

The ADR process is advisory only and is aimed at ***empowering both parties*** with information. Therefore the veterinarian and their practice's reputation is held intact.

There will always be a very small handful of animal owners who will proceed with civil claims and board complaints, no matter what. But these complaints are usually groundless and vexatious and are usually struck down at these higher forums for this reason.

ADR has proven to be very successful. The VDA has assisted in the resolution of almost 99% of animal owner grievances. In fact, ADR is an essential element in protecting the VDA's members' reputations while reducing the costs of protecting our members - which ultimately keeps membership fees low.

So if you have an incident that could lead to a complaint or claim, contact your VDA consultant immediately so that we can initiate ADR at once. Apart from being an obligation of your VDA membership, it is the only sensible course of action.

Published 2017-07-12

Unpleasant outcomes!

(Article 478)

South African veterinarians are no strangers to fractious clients with unreasonable expectations.

Mrs X presented her pregnant bitch with a green vaginal discharge to our member, Dr A, and informed Dr A that no puppies had been born yet. Mrs X informed Dr A that she was a breeder of long standing, but nevertheless supplied only vague information about the bitch's temperature, labour signs, oestrogen/progesterone treatments or tests, the possible mating dates and anticipated date of gestation.

Dr A informed Mrs X that this was a risky situation for the foetuses. Something was wrong – a pregnant bitch with a green discharge but no puppies meant that the placentas had detached and that the foetuses were certainly in distress, if not dead. Mrs X agreed to Dr A's proposal of surgery and signed the consent form, which included the VDA's mandatory Alternate Dispute Resolution clause. Dr A immediately hospitalized the bitch and performed an emergency Caesarean section. Miraculously, one puppy was breathing and alive. The other six foetuses were, as expected, dead. But Mrs X was apoplectic. She accused Dr A and her team of being incompetent in not being able to save all of the puppies. She complained that too much anaesthetic had been administered and that this must have killed the foetuses. She was also angry that no-one had spoken to her after the first foetus was extracted, and that no pre-operative ultra-sound had been performed.

The VDA immediately invited Mrs X to participate in Alternate Dispute Resolution. Mrs X responded by claiming that she had never experienced such an event before, and she asked the VDA to contact 8 other veterinarians she had used before over the span of 20 years who would vouch for her integrity and ability as a breeder, and who had allowed her to assist in previous Caesarean operations. She also claimed that Dr Kurt de Cramer had personally signed her copy of his book, "Breeding is a Bitch".

The VDA explained to Mrs X that a green discharge from the vulva of a pregnant bitch prior to the birth of any puppies indicates that: a. at least one placenta has detached from the uterus wall, probably more; b. at least one foetus is in distress; c. foetal death will occur within a few minutes if no oxygen is available to the foetus/puppy; also d. no anaesthetic drugs can cross from the mother to the foetuses after the placentas have detached.

A telling point that defended Dr A against Mrs X's accusation of using too much anaesthetic, was that one foetus was born alive and breathing. Therefore the amount of anaesthetic must have been at normal levels.

The VDA reminded Mrs X that this particular bitch had been presented in 2014 for being in parturition distress, and that on that day, 6 puppies were alive, and 5 foetuses were dead with sloughed skin. The VDA informed Mrs X that the veterinarians that she had consulted in the past had supplied us with clinical histories which reflected difficult births with multiple dead foetuses in numerous bitches. It was

indeed fortuitous that Mrs X had a copy of Dr Kurt de Cramer's book, "Breeding is a Bitch". The VDA referred her to a section of his book which described the signs of foetal death and/or distress.

Regarding Mrs X's complaint that she had not been consulted after the first puppy's birth, she was reminded that Dr A's hospital policy is that owners are not permitted in the treatment, induction or operating rooms. Veterinarians are not able to talk to an owner at the same time as being focused on a procedure and should not be disturbed or distracted. As far as using an ultrasound was concerned, the post mortem report revealed that the dead foetuses had autolytic changes which confirmed intrauterine death. Since the foetuses were already autolysed, an ultrasound scan would not have detected any heart beats.

Take Home Message: Many of our members find themselves in the situation where a bitch is presented with a green discharge but no puppies have been born. Given that oxygen can only come from either the maternal circulation via the placenta, or the air after birth, there is a very narrow window of life - lasting just a few minutes. Since many pet owners are reluctant to spend money on veterinary fees, and that the green discharge can take hours to become noticeable by the pet owner, it is almost certain that the foetuses are dead by the time the bitch is presented. This is not the time to offer medical management – this is an emergency, and the risks are heavily weighted towards an unpleasant outcome. A pet owner who is forewarned, will accordingly be forearmed to accept the inevitable.

Published 2017-07-06

In response to "A Current SAVC Disciplinary Case"

(Article 477)

On 5 February 2017, in a comment on page 18 of the Rules, the Legal Director of the SAVC, Mrs Dinamarie Stoltz, published the following 'policy statement' from the SAVC:

"The purpose of the SAVC is to protect the public against the vets. They [The SAVC] do not represent the vets. They [The SAVC] police the conduct of vets and take action against them if they step out of line." [Our emphasis - Ed.]

In our last Barks 'n Bytes issue, we described the case of a frivolous, vexatious and groundless complaint (titled: "A Current SAVC Disciplinary Case") in which the SAVC seems determined to prosecute the veterinarian concerned, when the complaint has no merit whatsoever. The VDA has since been notified of another frivolous, vexatious and groundless complaint in which the SAVC seems equally determined to prosecute the veterinarian concerned.

The president of the SAVC, Dr Clive Marwick, together with Mrs Stoltz and the chairperson of the Investigation Committee, Dr Glen Carlisle, recently conducted workshops in Pretoria to try to convince the South African veterinary profession that the mission of the SAVC is to protect and represent the interest of the veterinary and para-veterinary professions. It seems hard to reconcile the message transmitted by the SAVC at that workshop with this new line of attack on the profession, in which it seems apparent that all complaints, even those that are patently ridiculous, are going to be prosecuted.

We can only guess at what has made the SAVC adopt this new attitude, but there can be no doubt that the profession needs to stand together to fight this. Otherwise the South African veterinary profession is going to become like the Californian veterinary profession, in which a quota of veterinarians are struck off each year, no matter whether these veterinarians deserve it or not.

Here are a few of the responses we received from the article in our last issue:

1. *"The board is there to make sure veterinarians do their job in a professional way and meet standards, but what about the board themselves? Is there a regulatory body that make sure the board doesn't prosecute unnecessarily? … This is so unsettling."*

2. *"A vicious, aggressive dog is usually more manageable if the owners are asked to wait in the waiting room - I do this all the time. To remove the animal from the owners is correct and is indicative of clinical experience - smart veterinarian."*

3. *"Irrespective, this is not a case which deserves this type of response [from the pet owner or the SAVC]. The response of the SAVC is FULLY UNJUSTIFIED and one must determine the motive behind their actions: The ConCourt might actually be the place to uncover their institutional motive to unjustly accuse the veterinarian of a crime which has not clearly been defined or laid out."*

4. *"The SAVC will continue in exactly the same manner until the day that somebody with enough money pursues legal action against them. It is sad that they see themselves as a law of their own. As was the case with Mrs Stoltz' predecessor the current one has her very own reading of the law. Sad one could say, if it wouldn't cause so much harm and stress."*

5. *"I have often requested that the rules of complaint be changed to require that the complainant supply a deposit with the complaint which is refundable if the vet is found guilty of misconduct but which is given to a charity if the case is indeed frivolous. This would weed out a fair number of cases and lighten the load on all. As ever I am disgusted with the SAVC'S approach----how can we be expected to pay our fees to a board whose end and aim in life is to make our lives difficult? Perhaps if we all refused to pay our yearly fees and the employees of SAVC ceased to be paid monthly they would catch a wake-up call?"*

It is time for the profession to take action against the SAVC:

A. Force the SAVC to relinquish its disciplinary function to a committee made up of people independent of the SAVC (just as the RCVS has done - see http://www.rcvs.org.uk/news-and-events/news/independent-disciplinary-committees-vsa-amended/).

There are three reasons for this:

1. Fair and unbiased disciplinary action:

The SAVC has made it clear that it represents the consumer exclusively. It is therefore officially no longer a neutral arbitrator (not that it ever was) and it therefore can no longer fulfil the functions of complaints receiver, investigator, prosecutor, judge and jury and first court of appeal, in the same way that the judge and assessors in a trial must be unbiased and independent. It is a clear and untenable conflict of interest for the SAVC to try to do so. [It has always been unlawful for the SAVC to fulfill all these roles in the past, anyway]. The SAVC will no doubt argue that its tribunals are made up of vets that are independent of the SAVC, but it is evident that the majority of these vets are nothing more than the SAVC's minions and that these tribunals therefore have no credibility whatsoever.

2. Reduced cost:

The current manner in which the SAVC runs the disciplinary process is unnecessarily expensive and extremely wasteful. Since there is patently no sign of screening of complaints, it is clear that the majority of SAVC prosecutions are unnecessary, unlawful, frivolous, vexatious and/or groundless and should have been dismissed as soon as they are received. Therefore a competent independent body which screened out and dismissed all the frivolous, vexatious and groundless complaints could function on just 50% of the SAVC's disciplinary budget and would take away the financial burden of administering the disciplinary process from the SAVC.

3. A much higher standard of justice:

The profession could ensure that a new disciplinary body operates at a much higher standard of justice. Complaints could be properly screened, investigations conducted efficiently, pre-trial and trial

procedures adopted to make the process quicker, more efficient and more accurate. As a minimum requirement for success of a new disciplinary process, the disciplinary committee office-bearers must be obliged to provide full written reasons on request at each stage of the process (screening, decision to prosecute, decision to convict, etc.). Without such transparency, the new disciplinary committee would be the same failure of a system that we have now. Full Written Reasons would enable a veterinarian who has not met the minimum standards of care to consider pleading guilty earlier in the process, thereby saving stress, time and finances. In the event that the veterinarian has met the minimum required standards of care, it would force the disciplinary committee to review its chances of obtaining a successful conviction before it proceeds with the prosecution. A disciplinary committee member who did not have the required knowledge skill and aptitude could be quickly identified and removed (unlike in the current SAVC system).

B. Make a concerted effort at the next election to get the 'right people' onto the SAVC.

C. Boycott the annual renewal fees until the situation is rectified.

Emotional stress:

A veterinarian experiences extreme stress when faced with a board complaint. This stress will result either in anxiety and a highly emotional state, or in cynicism and compassion fatigue, and these feelings may progress to depression or even the action of suicide. When the complaint is frivolous, vexatious and groundless, this stress is completely unnecessary. It is malicious to force a veterinarian to go through an unnecessary complaint investigation process. Indeed, a hallmark of SAVC prosecutions since the 1980s and before, is the SAVC's attitude that, once it believes that a vet is 'guilty', they go all out to try to obtain a conviction, no matter what. Surely that also counts as malice?

In the 25 years that the VDA has been dealing with the SAVC, in which the SAVC continually claims that it acts in the best interests of the profession and the public, we are truly perplexed by the SAVC's apparent inability to see that what they are doing is most decidedly contrary to the profession - and the public's - best interests. When veterinarians are persecuted in the most arbitrary manner, how could this possibly be in the profession's interests? And when the public are forced to deal with vets who refuse to make diagnoses, order more tests than are actually required for fear of making an error, and who are no longer willing to partner with the animal owner as this makes them vulnerable to attack, how can this possibly be in the best interests of the profession? Or in the best interests of the public?

If the SAVC is not willing to change, then it is time for the profession to force the required change upon the SAVC. This can only come about if the profession is willing to break through the intimidation and silence barrier and to stand together.

Published 2017-06-29

A Current SAVC Disciplinary Case

(Article 476)

What is the biggest single threat to a veterinarian's right to practice veterinary medicine in South Africa? Answer: The SAVC.

The SAVC is generally regarded with great suspicion by the profession and here is a case currently before the SAVC, that illustrates why this might be so. The complaint is clearly absurd as it is frivolous, vexatious and groundless, yet the SAVC sees fit to place the veterinarian concerned on his defence and to place him in jeopardy of a long, drawn-out unreasonable and stressful investigation - and in jeopardy of a wrongful conviction.

Mrs X presented a cross Chow dog for pruritus on both hips, shaking his head, scratching his ears, and licking his paws. The clinical notes had a warning that the dog bites and is difficult to handle. Dr A successfully treated the dog and Ms X paid her bill, appeared to be satisfied and did not voice any complaint at the time.

Ms X telephoned the next day to say that the dog had vomited after she had given the antibiotic tablet, and the veterinarian on duty instructed her not to administer the antibiotic again.

Ms X submitted a list of complaints to the SAVC against Dr A.

The complaints were worded as follows, verbatim:

1. "Firstly why did Dr A ask my parents and I to stand outside and wait. It is my right to stand there with my pet while being treated.
2. Why was he dealing with so many pets at one time?
3. Why was I given medication that was open?
4. What did they do to my dog that traumatised him in that way?"

The VDA invited Ms X to participate in Alternate Dispute Resolution (ADR), but she declined, despite the fact that it was explained to her that ADR is designed to provide an aggrieved owner with the answers, and that a regulatory board is only empowered to make a finding of whether the veterinarian's conduct was unprofessional or not.

The SAVC sent a please explain letter to Dr A, thereby placing him on his defence. In the letter they tried to coerce Dr A into submitting an answering affidavit with the threat that the SAVC would make a decision without his input if he refused to do so. The VDA wrote back to the SAVC pointing out that the 'demand' for an affidavit is premature, since the SAVC has failed to screen the complaint, and - given the frivolous, vexatious and groundless nature of the complaint - the SAVC has failed to comply with its obligation in law to dismiss the complaint.

The whole point of the SAVC and the Investigation Committee being made up of veterinarians is that they will understand in a case like this that it is normal, accepted protocol to treat an animal in the treatment room and to ask the animal owner to wait in the waiting room; that veterinary practices commonly have a number of pets to deal with at any time (especially those that do not operate on an appointment system); that bulk package medication is often used in treatments in the veterinary clinic as well as dispensed from, or the first dose of the medication that is intended for the patient is administered in the veterinary clinic before the balance is dispensed to the owner, meaning that the packs are 'open'; and that a dog does not become traumatised in any substantial way from being held and to have hair-cut. In other words, the SAVC/Investigation Committee was in a perfect position to dismiss this complaint. Yet the SAVC/Investigation Committee apparently not only believed that there was substantial evidence of professional misconduct, they also believed that there was a reasonable prospect of this veterinarian being convicted of unprofessional conduct.

The SAVC's response to the VDA came back in just five hours. Mrs Stoltz, the legal director, responded via Ms Mbali Ngcobo, that the complaint is valid as the alleged behaviour of the veterinarian fell expressly within the definition of unprofessional conduct as contained in the rules. The SAVC quoted from the definition of "unprofessional conduct" listed in the Veterinary Act: "unprofessional conduct" means unprofessional, dishonourable or unworthy conduct on the part of a veterinary professional including, inter alia, the following acts and omissions:

(i) neglecting to give proper attention to his/her clients and/or patients or in any way failing to attend to patient welfare while under the veterinarian's care without valid reason;
(ii) failure to provide follow-up care and/or advice as required in terms of the veterinarian-client-patient relationship.

The definition of unprofessional conduct is designed by the legislators to be an explanation of what the term 'unprofessional conduct' means. It was never designed, and can never be used, as a standard (or yardstick) by which any particular veterinarian's conduct can be judged. If it were to be used as a yardstick, then it could be used to justify the prosecution of ANY complaint, no matter how ridiculous that complaint was. And it would be hard to imagine a more ridiculous complaint than this one.

Mrs Stoltz's response meets no legal standards or requirements for the formulation of grounds for investigation by the SAVC. First, Mrs Stoltz fails to set out precisely how our member allegedly neglected to give proper attention to the client and patient; precisely how he allegedly failed to attend to patient welfare while the dog was under his care; or precisely how our member allegedly failed to provide follow-up care and advice as required in terms of the veterinarian-client-patient relationship.

The law requires that there exist clear, precise and proper laws and regulations which are widely accepted by the profession, and that set out precisely what a particular standard is that a veterinarian is required to meet, so that a veterinarian is in no doubt as to what the minimum expected standard of conduct is that is required of him or her and in what manner their conduct is adjudged to have fallen substantially below this standard. So it is unlawful for Mrs Stoltz to 'throw out' a general definition as justification for investigation and prosecution: Mrs Stoltz is legally obliged, as merely the first step in the

process, to quote the precise standard from legislation that is required and precisely how the accused veterinarian substantially failed to meet that standard.

In other words, the law requires that a veterinarian can be in no doubt as to what the standard is that a veterinarian is required to meet, with sufficient particularity and clarity, BEFORE the veterinarian commits the act. The law requires that every veterinarian be in a position to know in advance precisely what standard of care s/he is required to meet with regard to each and every aspect of veterinary practice. The law makes it illegal for the SAVC to base investigations and prosecutions on grounds fabricated for the purpose or, as here, on grounds based on vague general principles.

There are no written, codified, accepted standards for veterinarians in South Africa that set out what the minimum standards are for

1. treating an animal in the treatment room while asking the animal owner to wait in the waiting room;
2. the number of animals that veterinary practices are allowed to deal with at any time (especially those practices that do not operate on an appointment system);
3. the medication that is first used and then dispensed (or from bulk packs), meaning that the package is 'open';
4. and so that a dog does not become traumatised in some substantial way from being held and to have hair-cut.

International case law is clear: without such codified, accepted standards, there is no basis on which the SAVC can justify the investigation or prosecution of this case.

The rules of natural justice preclude a veterinary board from drawing on its own knowledge and experience to fabricate a specific professional standard and insofar as veterinary boards rely upon any general duties or norms, its allegations cannot be upheld in the absence of evidence of such general duties or norms. In order to be valid, the SAVC's allegations must be based on a specific or particular professional duty which is generally accepted by practitioners of good repute and competency in the veterinary profession; and there must be current statutory provisions or specific written professional conduct rules that are widely accepted by the profession, prescribing the appropriate conduct of a veterinarian.

Even when there is a specific, written current statutory provision or specific written rule of professional conduct prescribing the appropriate conduct of a veterinarian (which is absent from this case) it is a further requirement that the accused veterinarian understood that s/he was required to meet the specific provision or rule, and that they acted intentionally to breach the provision or rule.

Furthermore, in order to justify an investigation or prosecution, the SAVC must have a reasonable prospect of proving that the veterinarian's conduct was unprofessional, based on the evidence before it at the time of reviewing the complaint. On a complaint such as this one, there can be no justification on any level or any reason for the SAVC to proceed. In such circumstances, any further action by the SAVC other than dismissing the complaint is unlawful.

The question that has fascinated us for the past 25 years is: What is it that motivates the SAVC to conduct cases in this manner, without the necessary screening out of what are obviously frivolous, vexatious and groundless complaints?

Do you have an opinion on this subject? If so, we would like to hear from you.

Published 2017-06-21

Just not just

(Article 475)

The Western Australia Veterinary Surgeons Board is an interesting subject for study when it comes to veterinary board attitude and competence.

Two recent WAVSB cases are of particular interest, as they involve the permanent de-registration of two WA veterinarians. Unfortunately, neither were VDA members, so neither had the support and protection they needed at the time.

The WAVSB has stated that: "Removal of a name from the Register is the most severe disciplinary sanction available against a registered veterinary surgeon under the Act. Such a sanction is only imposed if the SAT is satisfied that the person is not a fit and proper person to be a registered veterinary surgeon and the unprofessional conduct is so serious that the person is permanently or indefinitely unfit to practice. Removal of a name from the Register is not for the purpose of punishing the registered veterinary surgeon concerned but for the protection of the public and the reputation and standards of the veterinary profession."

In other words, the veterinarian concerned must have been guilty of causing substantial and unacceptable harm to animals and owners and attempts at counseling and rehabilitation have failed. A veterinary board that contemplates the de-registration of a veterinarian must itself act to the highest standards of skill, care, competence, circumspection and impartiality.

The WAVSB is the only board in Australia to have had its adjudicatory and disciplinary function taken over by the State Administrative Tribunal (SAT). The WAVSB's function in any disciplinary proceedings is to recommend and support a particular outcome. The goals and tone set by the board will influence the outcome of the case, particularly if the veterinarian is not represented by competent legal counsel or is not represented at all. In the event that the veterinarian in unrepresented, the board needs to act with much greater circumspection. If the board was to be over-zealous in its approach, injustice would likely result. The WAVSB has the profession's money to play with,of course, in terms of accumulated registration fees, whereas the respondent veterinarian only has the contents of their own pockets. So it becomes, in effect, a battle between the board with all its resources vs. a veterinarian (if they are not VDA members) with few or no resources. A 'double-whammy' of injustice for the hapless veterinarian.

In the case of Elizabeth-Jo Vickridge, the SAT found her guilty of breaching the Veterinary Surgeons Act between July 2010 and February 2013 by allowing veterinary students and others in her practice to perform surgery on animals. The SAT made a costs order against her of $200,000, leaving her with no realistic ability of ever paying it back – especially given that she is a single mother that has lost her profession. And, as long as the debt remains unpaid, there is little prospect of the board ever allowing her to re-register in the future. And any application for re-registration would have to be made to the same board members that sought to deregister her in the beginning.

So let's examine if the Board complied with its own definition and policy on the de-registration of a veterinarian. To quote the board again: "Such a sanction is only imposed if …. the person is not a fit and proper person to be a registered veterinary surgeon and … the person is permanently or indefinitely unfit to practice. Removal of a name from the Register is not for the purpose of punishing the registered veterinary surgeon concerned but for the protection of the public and the reputation and standards of the veterinary profession."

Let's concede, for sake of argument, that allowing non-veterinarians to perform surgery in her practice was unacceptable. Does this make her unfit to practice? You can argue that it was irresponsible and reprehensible, but you would surely agree that there is no evidence to suggest that she herself is incompetent to practice veterinary medicine. So, would it not have been better to prevent her from owning a practice, but allow her to continue practicing as an assistant in another practice?

To quote the board once again, "Removal of a name from the Register is not for the purpose of punishing the registered veterinary surgeon concerned but for the protection of the public and the reputation and standards of the veterinary profession".

The VDA calls on the WAVSB to justify to the WA veterinary profession:

1. How the board's application to the SAT for the de-registration of Liz Vickridge (and the application for a crippling costs order against her) is anything but for purposes of punishing Liz Vickridge.

2. Why the board failed instead to apply for restricted registration for Liz Vickridge, to ensure that she practices under the control and care of another veterinarian.

3. How the removal of a veterinarian who is perfectly competent to practice veterinary medicine protects the public and is in the profession's and public's best interests.

In 2014, Dr Anita Tasovac was sentenced to a term in jail of three years for perverting the course of justice after she covered up for her sister, who allegedly stole equestrian equipment in 2008. The board successfully applied to the SAT to have Dr Tasovac de-registered. The WAVSB declared that it was inappropriate for someone who had committed such a crime to be a registered veterinary professional.

Let's examine this statement for a moment. No doubt, it was inappropriate for Dr Tasovac to cover up for her sister: even she would admit this. But does this really prove that she "is not a fit and proper person to be a registered veterinary surgeon"? Does covering up for your sibling's petty crime really make you "permanently or indefinitely unfit to practice"? Remember that the crime was petty theft. And remember too that Anita Tasovac did not commit the crime. She merely covered it up. So, in criminal law terms, she is an accessory to a crime rather than being a criminal. The fundamental test (yardstick) for veterinary conduct is "what the reasonable veterinarian would have done in the same circumstances". Can you say in all honesty that you would not have done the same thing to protect your sister, in the same circumstances?

Worse was to follow. In terms of the SAT's order against Anita Tasovac, she was entitled to re-apply to the SAT for restoration of her name to the register in February 2016. Instead of giving Anita Tasovac

another chance at making good, the board went out of its way to block her attempts at re-registration by trying to unearth evidence that she did not comply with the de-registration requirements. The evidence against Anita Tasovac was mostly flimsy and speculative. But clearly the board was determined to block her application, and clearly this 'evidence' will be used against her in any future application.

Let's examine the board's statement about de-registration again. "Removal of a name from the Register …. is only imposed if …. the person is not a fit and proper person to be a registered veterinary surgeon and the unprofessional conduct is so serious that the person is permanently or indefinitely unfit to practice. Removal of a name from the Register is not for the purpose of punishing the registered veterinary surgeon concerned but for the protection of the public and the reputation and standards of the veterinary profession."

Again, while Anita Tasovac's actions were foolish and ill-considered, there is no evidence to say that she was not a competent, compassionate and caring veterinarian, and that her "crime" makes her in any way a risk to owners and their animals, or by any stretch of the imagination permanently unfit to practice.

The VDA calls on the WAVSB to justify to the WA veterinary profession:

4. How the handling of Anita Tasovac's re-application for registration is anything but for purposes of punishing her.

5. Why the board failed to give her a second chance.

6. How the removal of a veterinarian who is perfectly competent to practice veterinary medicine protects the public and is in the profession's and public's best interests.

It is one thing to apply a penalty so that lessons are learned. It is quite another matter when the board punishes the wrongdoer way beyond what they deserve and then tries to make sure that there is no way back for them.

Typically, veterinarians are gentle, nurturing, non-confrontational human beings with few or no business or legal skills. This makes them open and vulnerable. The VDA has seen so many members do inexplicably risky and silly things, often crossing boundaries, mainly to prevent confrontation with owners. There is no evidence to suggest that Liz Vickridge and Anita Tasovac are anything other than two vets who crossed boundaries and did risky and silly things.

But are they really "permanently or indefinitely unfit to practice"? Do they really not deserve a second chance?

Published 2017-06-14

Saved from a veterinary board case

(Article 474)

Mrs X presented her 14 week old puppy to Dr A as he had stopped eating the previous day. Mrs X told Dr A that the puppy had never been vaccinated. Upon examination, Dr A found that the puppy was bright and alert and his temperature as well as other clinical signs were normal. The puppy was not vomiting and did not have diarrhea.

Dr A treated the puppy symptomatically and dewormed and vaccinated him and warned Mrs X that Parvovirus infection was still a possibility and that Mrs X should return her puppy to the clinic immediately if his condition did not improve or if Mrs X noticed any signs of deterioration, as puppies can dehydrate in a matter of hours.

Two days later, Mrs X returned to Dr A with the puppy who was now vomiting and in a dehydrated state. The Parvo virus snap test was positive.

Dr A immediately hospitalized the puppy and administered IV fluids as well as medication.

Unfortunately, the puppy did not survive and Mrs X was informed the following morning.

Mrs X was understandably very upset and the grief she felt turned to anger toward Dr A. She immediately wrote a letter of complaint to the veterinary board.

Mrs X's complaint was that:

Dr A was negligent;

If Dr A had tested her puppy for parvo virus at the first consultation, he could have admitted the dog to hospital and he would possibly have survived.

Dr A contacted the VDA who moved swiftly in writing to Mrs X, inviting her to enter into ADR (Alternate Dispute Resolution). Mrs X agreed to withdraw her complaint at the veterinary board while the ADR process was underway.

In the first ADR letter to Mrs X, the VDA pointed out the following to Mrs X:

The generally accepted veterinary protocol is to vaccinate puppies four times against Parvo Virus at approximately 6 weeks, 10 weeks, 14 weeks and 18 weeks of age.

The animal owner is solely responsible to ensure that their puppies receive the Parvovirus vaccination in accordance with the accepted vaccination protocol.

The fact that Mrs X had not ensured that her puppy received the first two Parvovirus vaccinations left it vulnerable to Parvo infection, which led to the puppy dying.

The Parvo virus Snap test is unlikely to be able to detect the Parvo virus particle (antigen) prior to the appearance of clinical signs, inter alia because the Parvo virus particle (antigen) is released into the faeces in minute quantities in the early stages of the disease, if at all. The Parvo virus Snap test is not sensitive to minute quantities of antigen.

There is no medical reason to admit into hospital animals which are bright and alert and are not vomiting or don't have diarrhoea. In fact, it may be considered unethical to do so. Animals are admitted into hospital when they become clinically sick, and are dehydrated and debilitated.

The treatment that Dr A prescribed at the first consultation was the same treatment used to treat suspected Parvovirus infection in the initial stages.

Upon receiving the VDA's explanatory letter, Mrs X understood that she had no grounds to continue with her complaint with the Veterinary Board and did not continue with the case. Mrs X did continue to express that she was very upset that her puppy died, which is perfectly understandable.

This case illustrates the value of Alternate Dispute Resolution and the importance of the VDA being proactive in offering ADR after a board complaint had been made. The board's investigation would not have served any purpose except to make the vet's life a misery while he anxiously waited the outcome. The board would not have provided Mrs X with any feedback and Mrs X may have possibly made the same mistake of not vaccinating with her next puppy. The VDA was able to defend our member's reputation once again!

Published 2017-06-07

SWOT analysis for you and your practice

(Article 473)

A SWOT Analysis is a way of evaluating the Strengths, Weaknesses, Opportunities and Threats that affect something. It can be used to provide a comprehensive insight into a business, its structure, management and operations. It also helps identify key competitors, services and products. SWOT analysis has been extended beyond companies to products, organizations, countries and industries over the past decade and are now being included in many professional business plans.

For a veterinarian, starting up a veterinary practice may seem a very daunting task but by using a SWOT Analysis, you will be able to analyze the pros and cons of doing so. And if you have an existing practice, making use of this formula will help you with understanding and improving on your existing business structure.

The **advantages** of using a SWOT analysis are:

- SWOT analysis can be used to summarize a vast array of complex situations and is easily understood with little or no costs involved.
- Quantitative and qualitative information from different sources can be combined.
- Focus is made on the key internal and external factors affecting the situation or organization.
- It is easy to perform and can be used fast.

There are also **limitations** to SWOT analysis:

- There is no weight or prioritization of factors.
- A SWOT analysis contains a list of factors without further descriptions or links between factors.
- The analysis does not provide any solutions. It is only a description.

The www.impromed.com website published an article written by Dr Phil Zeltsman, titled “Is your SWOT Team Ready for Action this New Year?” in 2012.

The below paragraphs are quoted directly from this article:

“In a sense, SWOT analysis is a simple way to audit your clinic or a project. You can do this in the privacy of your office. Or you can do it during a staff meeting, - general or limited to managers or supervisors, which surely will generate different answers.

What are your strengths?

To determine your strengths, you need to determine which characteristics of your clinic or your team give you an advantage over your “competitors,” real or perceived.

Ask yourself:

- What do others perceive as strengths?
- What do clients love about your practice?
- Is your location ideal?
- What is your competitive advantage?

Answers may include:

- A good reputation
- A particular expertise
- Excellent, modern, up to date equipment
- Hardworking, motivated, long-standing team members
- Well known, well established clinic
- Unique or specialized service
- Experienced staff
- Established marketing plan
- Low staff turnover
- Strong balance sheet
- Higher than average wages, which attract superior employees

Identifying your strengths is a great feeling, so you should start with those. However, this is no reason to rest on your laurels.

What are your weaknesses?

Weaknesses are features that place your clinic at a disadvantage compared to other practices or businesses.

Ask yourself:

- What do others perceive as weaknesses?
- What holds you back?
- What do clients dislike about your practice?
- What do clients complain about?
- Is your clinic hard to find?
- Is your parking lot too small?
- What limits your clinic's performance?

Answers may include:

- Doctors always competing for technicians
- Not enough reliable, experienced, certified technicians
- No marketing plan in place
- Lack of vision or leadership
- Poor communication
- “Front” vs. “back” rivalry
- Increasing competition from online or big box pharmacies
- Nearby pet stores with lower prices
- Outdated facility and equipment
- Time spent on management rather than good medicine
- Practice relies greatly on retail revenue, which is shrinking
- Poor reputation
- Poor online reviews
- Low staff morale
- Owner has no exit strategy
- Poor customer services
- Long wait times (on the phone or at the clinic)

Identifying your weaknesses may be a painful process. However, as they say, awareness is the first step. Once clearly defined, weaknesses can be addressed. You and your team will come out of it stronger.

What are your opportunities?

Opportunities are a chance to become better, grow to be more organized or make greater profits.

Ask yourself:

- What can we do to become better?
- How can we become more organized?
- What can we do to generate more income?
- How can we save money or resources?
- What can we do to protect the environment?

Answers may include:

- Expanding or launching new services: ultrasound, dentistry, behavior, training classes…
- Write a “pet column” in the local paper
- Become more active in the community
- Focus on a specific topic each month: parasites, dentistry, eyes…
- Design new ways to ensure quality control
- Hire a management consultant

- Hire a practice manager
- Reach out to breed groups, local shelters, agility clubs
- Start a recycling program
- Create a drive-through pharmacy

The good news is that there are plenty of opportunities for any practice, small or large, urban or rural, general or specialized.

What are your threats?

Like any business, a veterinary clinic faces a number of threats, either local (other practices, retail stores) or national (online pharmacies, the Economy). These are external factors that are difficult or impossible to control or change.

Ask yourself:

- Who are your competitors?
- What are your competitors doing, that you are not?
- How good are your competitors?
- How are your competitors perceived by pet owners?
- What can we do to improve customer service?

Answers may include:

- New clinic opening down the street
- Bad local economy
- Tough job market
- Losing staff members to local competitor
- Nearby practices have longer evening hours
- Local practices have Sunday hours
- Surrounding pet stores offer rock bottom prices on pet food

You can't control all of these threats and you can't fix the economy. However, knowing your main threats should give you peace of mind, after your make sure that you have done everything you can to insulate your clinic from fixable problems."

Consider using the SWOT analysis formula regularly, once, or even twice a year, to assess your current practice situation and to help you to plan ahead.

Sources: www.impromed.com; Wikipedia; www.swotanalysis24.com

Published 2017-05-31

Veterinary Boards and the Law
(Article 472)

Premise

In administering their disciplinary processes, veterinary boards do not act in a vacuum, but operate under the constraints of the legal system, in much the same way that courts operate. In fact, the lower the forum in the hierarchy of any legal system (and veterinary boards along with similar professional regulatory authorities, operate on the lowest rung of the legal ladder), the more strictly the rules of law should be applied and the less freedom and discretion the forum is allowed.

Misperceptions and Misconceptions

It is a common misperception amongst veterinarians that veterinary boards have freedom in deciding whether a veterinarian is guilty of professional misconduct or not and that they are empowered to conduct an investigation and prosecute as they deem fit. This is a misconception that is mostly propagated by veterinary boards themselves, as well as the circle of veterinarians that surround and support them. There is not only a failure by some boards to apply the law properly to their disciplinary processes, but there is often an attitude of "the law does not apply to us" or "we are above the law". Coupled with this is the active intimidation of the profession and the constant threat against veterinarians who dare to question them, which has resulted in many boards 'getting away with murder' for all these years. [We argue that the use of the term 'murder' here is not too strong a term, as some boards have consistently 'murdered' the personal rights of accused veterinarians, and some boards have been directly and indirectly responsible for causing the attempted suicide and/or suicide of some of our colleagues.]

Boards as Consumer Protection Organizations

The trend over the past 25 years is for veterinary boards to see themselves more and more as consumer protection organizations rather than the objective, unbiased administrators of the profession that they should be. In fact, many US veterinary boards are nothing more than consumer protection departments of state government operating in the guise of a veterinary regulator. Boards are proposing (and the Legislatures are enacting) more and more regulations that make veterinary practice more onerous than ever before in the history of the profession.

So, since many veterinary boards are "consumer protection organizations" in disguise, most new regulation is retrogressive to the interests of the members of the veterinary profession to practice their profession with freedom and lack of fear. Rules of practice are being changed with frequency, and while each new rule or amendment proposed often sounds superficially like a "good idea", the accumulative effect of all these new rules is to make veterinary practice more onerous.

The problem with the new rules and the people who propose them is that they are usually not in a position to foresee what unintended consequences these rules will have on a veterinarian in a particular

future situation. And when the board adopts a bureaucratic approach to the administration of the conduct of veterinarians, veterinarians protesting that they were acting in the best interests of the animal and/or owner may nevertheless find themselves convicted of professional misconduct. The board's response will be: "That is the rule; you transgressed this rule and we are just doing our job by convicting you".

The most dangerous aspect for you as a veterinarian is that your board, acting as a consumer protector, also has primary power over your registration/license.

The irony in this is that an 'iron-fisted' approach to the veterinary profession, adopted by many boards, in which veterinarians live in constant fear of prosecution, is never in the best interests of the consumer. Veterinarians in Australia, Canada, South Africa and Hong Kong live in the same fear. Every practicing veterinarian worries that some frivolous or vexatious owner complaint will result in harm to them. This impacts on their ability to practise with sound judgement. Veterinary medicine and practise is being compromised and hamstrung by over-regulation.

Threat to your profession

The profession needs to realise that veterinary boards are not there for the benefit of the profession and that veterinary boards present the biggest threat to your right to practice your profession safely and without fear. In the same way as you would not consider the state prosecution system to be your friend in the event that you were falsely charged with a crime and you would make sure that you had a competent defense lawyer to represent you in court, you need to ensure that you have the best professional defence system behind you, if and when you are faced with a complaint or action by a veterinary board. The only veterinary professional defence organization that is primarily focussed on justice for the profession in the USA, Canada, Australia, South Africa and Hong Kong - that is willing to take the veterinary boards head-on - is the Veterinary Defence Association.

Evolutionary process of the law

It is a fact that law that protects the medical professions, including the veterinary profession, evolves at a slow pace. Evolution in veterinary law is based largely on precedents set by the courts, which are the endpoint of long and expensive trials and appeals. Evolution in veterinary law might well be slow, but the courts are eventually getting there. Legal principles and the proper and reasonable application of the law to veterinary practice is a subject that the VDA has been studying and preaching for the past 25 years. It is only in the last few years that case law has reached the point where it is of real value to the VDA in defending its members. The courts have confirmed that the VDA has been right all along, and that the boards that have relied on their self-perceived autonomy and self-serving interpretation of the law have in fact been wrong all along.

To the Rescue!

The courts are coming to the rescue of the profession in many ways, in many countries, starting with the South African Supreme Court of Appeal case of South African Veterinary Council vs Veterinary Defence

Association in 2002 up to the Michigan Appeal Court judgement in Michigan State Veterinary Board vs Pol in 2016. The courts are also settling useful precedents in human medical cases, such as Medical Board of Australia vs Dekker. Some of the lower courts are also coming to the aid of the veterinary profession, like the New South Wales CAT case of NSW Veterinary boards vs Gallagher, confirmed by the Supreme court of NSW.

Most boards are responding positively to the VDA's approach of using the new precedential supporting case law from judgements made worldwide to defend our members, although this is with the notable exception of the Western Australian Veterinary Board, whose response has been to accuse a veterinarian who handed in a carefully considered submission containing this case law as a defence, of being discourteous and disrespectful - accompanied by a threat of disciplinary action.

Published 2017-05-24

Maslow’s hierarchy in the veterinary world

(Article 471)

Maslow's hierarchy of needs is a theory in psychology proposed by Abraham Maslow in his 1943 paper "A Theory of Human Motivation" in Psychological Review.

Subsequent to this, Maslow extended this idea to include his observations of humans' innate curiosity. His theories parallel many other theories of human developmental psychology, some of which focus on describing the stages of growth in humans. Maslow used the terms "physiological", "safety", "belonging" and "love", "esteem" and "self-actualization" to describe the pattern that human motivations generally move through.

For veterinarians, Esteem is very important. Animal owners challenge our esteem when they express grievances, make board complaints and institute civil claims for negligence. That is where the VDA is probably at our most effective - we assist the veterinarian, place the grievance on an un-emotional level, and restore their esteem.

Maslow attained his benchmark findings by studying what he called “exemplary people” (such as Albert Einstein, Jane Addams, Eleanor Roosevelt, and Frederick Douglass) rather than mentally ill or neurotic people, writing that "the study of crippled, stunted, immature, and unhealthy specimens can yield only a cripple psychology and a cripple philosophy."

Maslow also studied the healthiest 1% of the college student population and his theory was fully expressed in his 1954 book “Motivation and Personality.”

The hierarchy remains a very popular framework in sociology research, management training and secondary and higher psychology instruction.

In 2009, an article was published on the dvm360.com website titled: “Boost productivity by meeting team members’ needs” in which (quoted directly below) it was explained how the accounting firm “Lacher McDonald & Co” had adapted Maslow’s hierarchy of human needs to the veterinary workplace.

“In Maslow’s original hierarchy, the ladder of needs starts with the most basic—food, water, shelter—and ascends all the way to self-actualization, when people have the time and freedom to live their dreams and think about others’ needs as well as their own. Here is Lacher McDonald’s ladder of veterinary needs on the road to self-actualization. Are your managers keeping team members on the bottom of the ladder or helping them to reach the very top?

1. **Physiological needs**, like air, food, water, and healthy body temperature. Good air conditioning and comfortable working conditions are major contributors to meeting physical needs. When employees are too cold or too warm, production suffers. When unpleasant smells permeate through your clinic, more effort is spent on breathing than working. Provide better, more pleasant air throughout your practice.

2. **Safety needs**, like freedom from tripping, electrical misconnections, and unsafe equipment. Handling aggressive animals can squash productivity, and front-desk personnel are ineffective if they feel threatened by clients or other visitors to your clinic. Establish procedures to keep team members safe.

3. **The need for love, affection**, and a sense of belonging. Team members who are alienated from the work group won't be effective. Team members can sometimes make new employees feel uncomfortable and insecure. Helping new employees phase into your clinic can help them to bond. Introduce new team members to the entire staff, arrange for new team members' first lunch, and assign someone to mentor new employees.

4. **The need for esteem**. We don't just need to be loved. We need to be respected. Team members can't get past this rung if they're belittled, needlessly criticized, or constantly yelled at by their peers and superiors. Managers who belittle team members drive good employees away. Simple thank-yous can fill this need and result in a high level of self-confidence and productivity.

5. **The need for self-actualization**. Once all the above needs are met, a person is ready to self-actualize and do what they were born to do. That's when productivity really happens. According to Maslow, self-actualized team members and managers tend to focus on problems outside of themselves, have a clear sense of what's true and what's phony, are spontaneous and creative, and are not bound too strictly by social conventions. Allowing managers who are not self-actualized to continue in their roles can be damaging to a veterinary team's morale."

Every person is capable and has the desire to move up the hierarchy toward a level of self-actualization. Unfortunately, progress is often disrupted by a failure to meet lower level needs. Life experiences may cause an individual to fluctuate between levels of the hierarchy. Therefore, not everyone will move through the hierarchy in a uni-directional manner but may move back and forth between the different types of needs.

Maslow noted only one in a hundred people become fully self-actualized because our society rewards motivation primarily based on esteem, love and other social needs.

Sources: dvm360.com; Wikipedia; Lacher McDonalds & Co; Simplepsychology.com

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Published 2017-05-17

Global Cyber-Attacks - Wanna Cry?

(Article 470)

Another great article by guest writer: Dr Stephen Rose

Stephen has been a practicing veterinarian for 15 years and practice owner for 10. He has progressed his interest in Information Security with a Master of Information Technology specializing in security. His latest venture is adapting and implementing the NIST CyberSecurity Framework within different types of professional small businesses (medical centers, veterinary practices, dental surgeries) to provide sound security and risk balanced security outcomes.

Global Cyber-Attacks - Wanna Cry?

This week you may have noticed the publicity surrounding an unprecedented global cyber-attack called “Wanna.Cry” which has infected almost a million computers in 150 countries. This malware is part of a group of computer attacks known as cryptovirus and ransomware. They are programs that encrypt (scramble) your files in the background and then hold these files to ransom as they can't be unlocked without the appropriate key.

If you are unfortunate enough to have your computer hacked by this virus, you will be presented with a screen telling you to pay the small ransom or risk losing your files.

The Cause

The US National Security Agency had identified a flaw in all Windows systems and was exploiting this flaw for their own purposes, when -late last year - along came a group called the “ShadowBrokers” who hacked into the Government systems and stole the information. It was then publicly released and "weaponised" to mass-infect computers and create this ransomware.

Older systems (server 2003 and XP for example) are particularly vulnerable as they have fallen outside the normal patching cycle by Microsoft.

In order for the flaw to be turned into a ransomeware attack, it must be actively employed by the unwary user/owner of the computer. An unpatched machine would not become infected unless an email attack took place and was activated because the unwary user opened the email and activated it. Vulnerable machines need a way to "catch" the virus, so to speak. In this case, the virus was introduced into networks by a malicious email that one single person would have opened. From there, the other computers on the same system became infected. There was complete paralysis of the National Health System throughout major hospitals in the UK when it fell prey to this attack. Read here….
https://www.theguardian.com/society/2017/may/12/hospitals-across-england-hit-by-large-scale-cyber-attack?CMP=share_btn_tw

This email would have had an attachment in the form of a .zip file. These emails are surprisingly convincing and people open them without question. Unfortunately it only takes one person on a network to open an infected file for the infection to take hold of the entire network's files and data.

These clever virus programs search for other computers and data stores on a shared network, replicate the virus on all machines, and then start encrypting the files and data. Such a virus can easily take down an entire network and all the computers and data on them. Once complete it will present the ransom message to users. The ransoms start small - only about USD 300 (in bitcoin) but it doubles frequently. Eventually, if enough time elapses, the data is irretrievable regardless of ransom being paid!

Preventative solution

Microsoft issued a fix for this flaw (14th March 2017), and all up-to-date patched systems are immune to this specific problem. It is highly recommended that you have automatic updates selected on your systems as well as fully operating anti-virus programs.

Once you are infected

Once your data is encrypted, you will no longer have access to your files and essentially your entire computer without paying the ransom. You only have 3 options at this point:

1. Pay the ransom - this involves buying bitcoins online and sending this as per the instructions on the screen, where the process is then reversed automatically.

2. Restore your data from backups - cutting losses, you can restore from your backup, assuming it was not on your network and not encrypted. This is dependent on you having made a backup that is functional. Sadly, many backups are not tested to work and often do not contain all the important information that you think they do. It is vital to remember that you will lose all data back to the point of when that backup was made.

3. Start fresh with no personal data at all - not a viable or sensible option in many cases.

There has been some recent research into decrypting some of these attacks, but it would not be wise to rely on this in commercial settings at this stage. Fundamentally, once the encryption is performed, you cannot reverse it without the key from the attacker.

Anti-virus protection

In many cases anti-virus programs are not effective. Newer updates of popular anti-virus programs (Symantec, McAfee, Windows Defender) are trying to spot encryption and alert you, but in most cases they fail to detect the problems before it is too late. Further, they are failing to detect the phishing email in the first place. You cannot solely rely on anti-virus to protect you with these issues!

Email as a portal

Entry of the malware into your network via email phishing is a major issue, as even though this version was "patched" there are many other versions that are not. Having an effective spam filter on your email is essential and training your staff members to never open an email attachment from an unknown source is critical. Recognising nefarious emails is important. Hosting your email in the cloud with the major players can be of benefit here as the filtering is done on a global scale. This may not by any means be perfect, but it certainly reduces the risk of malware load via email.

Patching

Keeping your systems up to date is also critical. In this case it was the easy preventative measure, however it is not always that easy.

Replacing old systems

Older systems such as XP and Windows Server 2003 were particularly at risk due to being outside the Windows support framework. UK hospitals were still using a lot of these machines, hence the reason they became a visible and easy target. Given the growth of cybercrime, it is worth considering updating to newer and more secure systems.

Backups

Backups are critical not just because of the risk of this particular virus but for a myriad of other reasons. Backups need to be frequent as well as disconnected and "removed" from the network, otherwise they are included in the attack. Simple solutions include a disconnected hard drive via USB, or backing up to the cloud. It must be noted that checking that the backups have been effective is important. This includes making sure the backups:

1. include all the data that you can't live without

2. have completed without error

3. are restorable - many backups appear to have worked but when it comes to restoring the data they fail. Actually testing your backups must be part of the process every now and again.

Lessons to learn

There are only a few salient points to take away here:

1. Have a solid backup plan

2. Patch your systems frequently (monthly)

3. Train your staff not to open unknown emails

Does this only affect Windows?

Whilst this version affects a flaw in Windows systems, there are many more versions that affects both windows and Mac operating systems. All systems are at risk of cryptovirus through email phishing (malicious attachments and links).

Within networks there may be additional non-traditional risks to this problem. For example, within the UK hospital systems, some diagnostic systems became inoperable as they were network-connected. I have personally used network-connected anaesthetic monitors that would also fall into this category. As our equipment becomes more sophisticated and connected, it is important to consider their security within your broader IT security posture.

Published 2017-05-11

The dangers of assumption

(Article 469)

Daisy, a little diabetic dog belonging to Mrs X, was suffering from all the ills that unfortunately befall a diabetic. Daisy had recently been to the Eye Specialist for cataract complications, and had been on anti-inflammatories for some time.

Mrs X took Daisy to Dr A as she was now not eating and had an intestinal ailment, with symptoms varying from diarrhoea to intestinal bleeding. Dr A examined Daisy and administered treatment, and requested Mrs X to return Daisy if she was still not eating. The next day Daisy was admitted and hospital treatment was instituted.

There is another piece of information that appears to have a lot of bearing on this case - and on many others similar to it: Mrs X lived in a poor neighbourhood and was not financially well-off. Drs A and B consequently made the assumption that Mrs X would not be able or willing to afford extensive tests or treatment even though Mrs X had paid for specialist treatment on Daisy's eyes previously.

Now, Drs A and B only administered the basic symptomatic treatment for the gastro-intestinal symptoms, and did not offer to or perform any tests on Daisy.

Daisy seemed to respond to the symptomatic hospital care, and was about to be discharged, when she collapsed and passed away, moments before Mrs X arrived to collect her. Mrs X was understandably very upset and shocked. But she railed over the bill and the type of treatment her dog had received, rather than complaining that her dog had died.

Drs A and B contacted the VDA and we undertook Alternate Dispute Resolution with Mrs X. Mrs X responded to ADR unusually by taking a very long time to clarify her list of grievances, which were largely related to the costs of items on the invoice. In response, Dr B admitted that there were some errors on the invoice – such as different amounts charged for the same services (administration of injections). These errors were rectified by Dr B and a new error-free invoice was then sent to Mrs X.

When the invoice, accompanied by an explanation regarding her grievances was provided to her, Mrs X sent a second letter in which she changed the direction of her grievance to focus on the intestinal ailment instead. She now alleged that the dog had died from a gastric ulcer and that Drs A and B had failed to perform any tests that would have proved this. (Changing the thrust of a complaint is a common tactic used by aggrieved owners. Since they are usually grieving and therefore not very rational, they will clutch onto any complaint to sustain their grievance). Mrs X first focused on the incorrect invoice but once Dr B had admitted the errors and corrected them, she needed to find something else to complain about. And she fastened onto the fact that the vets had not offered nor performed any tests on her dog to properly diagnose her illness.

This complaint could not be refuted. Drs A and B had made a fatal error and treated the little dog symptomatically without offering any further testing because they had assumed that Mrs X would not be able to afford any further testing.

Veterinarians ought to offer all the tests that are indicated - whether they know the client's financial situation or not.

If the tests are declined by the client, the veterinarian needs to make careful notes about what was offered and also note the client's refusal.

This would provide an adequate (and possibly complete) defence to any allegations of not performing tests or of not diagnosing the problem.

Most times, the animal owner will accept the offer of tests. This will allow the veterinarian to obtain more objective information and will obviously produce more income. Crucially, the animal owner will not be able to complain that tests were not offered or performed.

Published 2017-05-03

Brownie Points

(Article 468)

Veterinarians need to beware of making demeaning comments to their clients, regarding the treatment choices made by other veterinarians.

The VDA is often faced with having to assist a member when the client claims that they had made bad medication choices or that their surgical abilities were lacking - after they had approached another veterinarian for a second opinion.

When one veterinarian bad-mouths another, the adverse comments will almost always be reported by the owner back to the first veterinarian. The animal owner will be upset that they spent their money on, for example, a less-than-satisfactory procedure which had to be repeated, and they will be agitating to get this money refunded. The VDA is of the opinion that a veterinarian will gain greater respect from his/her clients and his/her colleagues if s/he merely gets on with treating the case presented before them and avoids trying to sound clever by bad-mouthing the other veterinarian.

Trying to score 'Brownie Points' with clients probably has the opposite effect. More often than not it does not gain a client and does not even gain that client's respect. The veterinarian who tries to undermine a colleague may very well find themselves the target of the client's ire.

Members should also consider that complaints that escalate into cases before the Veterinary Board or in the civil courts will, without a doubt involve the second veterinarian and place unnecessary strain on the VDA's time and financial resources, defending a case that was caused by an imprudent remark. And if both of the veterinarians are VDA members, there is the added complication of possible conflict of interest when the VDA has to assist both members in defending Veterinary Board complaints and civil litigation. Such a situation can also lead to unnecessary stress on the member whose bad-mouthing caused the complaint, as they will be drawn into the Veterinary Board investigation or lawsuit as a witness and their "expert opinion" will come under scrutiny by the defence party.

As our regular readers already know, there are enough pitfalls in private practice with clients who lay claims against veterinarians for frivolous and vexatious reasons. There is no room for veterinarians to be back-stabbing one another. Let's work together for a better profession.

Published 2017-04-26

Don’t get sued!

(Article 467)

Which type of practitioner within the veterinary profession do you think would be more likely to receive complaints and get sued? Over the 25 years the VDA has been assisting veterinarians the answer to this question has emerged as twofold: Emergency room practitioners - and Locums.

Pet-owning clients are more likely to make complaints about after-hours emergency practitioners and this may have to do with a client’s reduced mental capacity for rational decision-making at night. Perhaps it is related to a person’s inability to listen and hear and assimilate the information given to them by the veterinarian at a late hour. Or possibly it has something to do with nocturnal biorhythms; perhaps the emergency veterinarians themselves are over-run and too stressed to communicate properly. Certainly some veterinarians are tired after a long day and if they simply put up a drip and put the patient in a kennel, unsupervised, and go home for the night, a complaint may well follow.

A malpractice attorney, who sues medical professionals on behalf of his clients, had some thoughts on the reasons medical professionals get sued. We have adapted his article for our veterinarian readers.

The best way to avoid getting sued is to establish good relationships with your clients.

You have to treat your clients with respect.

You have to take the time to talk to them and listen actively. It is important to make communication personal and return telephone calls promptly. If you are busy, have another staff member phone the client back on your behalf. If the waiting room is full, let your receptionist tell those waiting that you apologise for keeping them waiting and explain why. Maybe you are busy performing an emergency caesarean - surely the clients waiting would appreciate you treating an emergency case first.

A note on communication – make sure that your receptionists take messages and that you have a system for veterinarians to find those messages and return those phone calls. Even if you cannot get hold of the pet owner and have to leave a message, at least you will have a record of having tried to make contact. And this can make the difference between a strong defence and a conviction for failing to meet the minimum standards of professional communication. If you promise to call back, do it. If you promised the owner feedback to make further choices, then give them this opportunity. Advise your colleagues who take over serious cases of the communication arrangements that you made with the owner.

When you are sued, there are costs involved that you may never have considered. Economists call these “opportunity costs”. These include the time wasted sitting in court corridors waiting for your case to come up and then finding it is postponed, so you have to come back and repeat the whole time-wasting procedure again. Time is money – and this will be money lost from consulting and operating on

your patients. There is also the emotional stress that will cause you to lose sleep and be distracted from your work.

Write up clinical notes as though they'll be read by judges and plaintiff's lawyers, and not just reviewed by the veterinarian who treated the patient. It is important to be accurate and thorough.

The VDA has produced a template of 16 clinical parameters as a guide – please use our Bulletin 13 to assist you in capturing the correct information. It is not sufficient to record the abnormalities – the boards are of the opinion that if a clinical parameter was not recorded, it was not done, and a conviction will follow.

When a pet has a bad medical outcome, the pet owner wants to know why. It is a very bad idea to speculate and guess. Even worse is to make admissions that the pet owner will latch onto in order to make a claim of negligence. First listen and give the pet owner a chance to be heard. By all means sympathise with their unexpected outcome, but do not say "sorry". If they still are not satisfied, ask them to put their thoughts in writing to you. Then immediately contact the VDA for assistance and guidance. We offer our members and their clients a process called Alternate Dispute Resolution (ADR). ADR is a perfect process for allowing your client to express their frustrations and then to receive an explanation on why the procedure may have gone wrong. This keeps their attention away from the veterinary boards and at the same time gives them a forum to be heard and a chance to understand the medical complexities.

If your practice is a daytime-only facility, offer referral to a 24-hour monitoring facility, or at least make pet owners aware that there is no monitoring. Always use the VDA's approved Informed Consent to Treatment form to obtain the pet owner's agreement.

And as a re-cap: speak to your clients with respect. Those practitioners who speak in a dominant way or are arrogant are more likely to get sued. You are welcome to send us your recordings of your conversations with your clients for evaluation.

Source:

The American Association of Neurological Surgeons, Fall 2001, Volume 10, Issue 3.

Published 2017-04-19

Clients need boundaries!

(Article 466)

Many cases in which the VDA assists our members could have been avoided from the start, if only the veterinarian had set professional boundaries with their clients and not acted from their hearts or tried to be martyrs – allowing clients to take advantage of the kind nature that comes with being a veterinarian.

We have learned through our many years of assisting veterinarians that the veterinarians who fail to set boundaries with their clients are the ones who will be treated badly by those clients.

Mrs X presented her small breed dog to Dr A. Dr A removed two large, irregular masses from the dog's groin. Dr A discussed with Mrs X the possibility of the wound breaking down at the surgery site, as each time the dog moved its hind limbs there was some tension on the sutures.

On the day that Mrs X took the dog for its follow-up appointment, Dr A was unavailable so Dr B attended to the dog. As Dr A had warned, the wound had indeed begun to break down and Dr B was not at all happy with what she was seeing. Dr B told Mrs X that in her opinion the wound was too extensive to re-suture and offered Mrs X referral to a specialist.

Mrs X decided to wait and speak to Dr A. Dr A telephoned Mrs X and she informed him that she had borrowed the money from a family member to pay for the initial surgery and that she could not afford any further veterinary costs. Furthermore, Mrs X informed Dr A that she was perplexed that Dr B had suggested that her dog be referred to a specialist. Trying to appease Mrs X, Dr A informed Mrs X that her dog's wound could be treated as an open wound and that the wound would granulate and heal.

Mrs X was very confused by the two different opinions of two veterinarians working at the same practice but was prepared to take full advantage of Dr A's kind nature. Dr A proceeded to offer to treat Mrs X's dog free of charge for whatever further care the dog may need. In fact, the cunning Mrs X requested from Dr A an email stating that the further treatment would be free of charge.

And here's where Mrs X really started taking advantage!

Mrs X called Dr A's clinic a few days before an arranged check-up date and said that the pain relief medication for the dog had run out. Dr A instructed his staff to dispense the pain medication free of charge.

Mrs X telephoned Dr A's practice on another occasion and became abusive towards the veterinary nurse who was trying to assist her.

Mrs X called again a few days later saying that she was very angry that her dog seemed miserable and was in pain. Mrs X said that she could not go in to collect the medication as she had injured herself and she had no means of getting to the clinic. Dr A made a number of suggestions to assist Mrs X, including

sending the medication by express postal services – but Mrs X would agree to none of these ideas. Eventually, Mrs X became abusive and ended the call by threatening to sue Dr A in court. Dr A is now facing a Veterinary Board complaint submitted by Mrs X.

Discussion:

There is no such thing as “free” treatment - people do not appreciate "free" and if the owner doesn't pay, somebody has to, and in this case it was Dr A and his staff that were not only out of pocket but also paid in increased levels of stress.

The VDA suggested that Dr A supplement his clinical records on this case with observations relating to the parameters in bulletin 13 as soon as possible. (This supplement to the records would be dated with the current date and with a heading “Addendum” so that it would be clear Dr A was not trying to alter his records in any way).

No one needs this type of client and the VDA assisted Dr A in drafting a “fire the client” letter.

Mrs X breached two aspects of the agreement made with Dr A for free treatment. She failed to turn up for the appointment and she became abusive when she did not get what she wanted.

Medication should never be posted to a client. The client must collect the medication or you can fax a prescription to the client.

Unfortunately, in veterinary practice, there is no such thing as veterinarians being treated well by their client because the veterinarian had “helped the client out”.

The best advice the VDA can offer is to tell members to set proper boundaries with their clients; after all, they are clients, not friends. If they are also friends, they need boundaries too - otherwise they will soon become ex-friends.

Published 2017-04-12

Recording of consultations

(Article 465)

Recently, www.thedoctorweighsin.com website published an article titled “What To Do When Patients Want To Record Their Doctor Visits”. This seems to be a regular occurrence in the human medical world and the VDA has dealt with a recent case where a client used her smart-phone to record an altercation in the veterinarian’s waiting room.

Smartphones have become universal and ever-present, providing users with video and audio recorders that are always at hand.

The article mentioned a high profile case in which a patient had recorded his colonoscopy, capturing derogatory remarks made by the anesthesiologist while the patient was under anesthesia. The patient sued for malpractice and was awarded $500 000.

Another case which reportedly occurred in 2012 involved a patient who underwent knee surgery, during which he suffered cardiac arrest and died. The patient’s family had secretly recorded the hospital’s chief medical officer saying that a blood analysis had been delayed because of malfunctioning medical equipment. The recording was used in a wrongful death suit.

Patients wish to record their consultations with their doctors as they claim that the recordings will assist recollection of the doctor’s instructions and treatment adherence. However, keep in mind that a recorded consultation is a privacy and liability risk for the doctor.

Apart from the risks involved for the practitioner, recording devices could be disruptive and could be intimidating to doctors and staff. The recordings could also be manipulated and altered to create an inaccurate portrayal of what was actually said.

If a client records a consultation without the veterinarian’s permission, it could result in a loss of trust. Trust is the basis of any strong relationship, and the veterinarian-client-patient relationship is based on trust. There is no exception to the rule.

Clients need to be advised unequivocally that recordings on the premises are prohibited, in order to protect the privacy of other clients, the veterinarian and all staff. This can be done by way of a notice on your website, and/or a printed sign at reception, or in your waiting room and consulting room.

If a client requests to record a consultation, encourage them to rather take notes or have a trusted family member or friend attend the appointment with them to help them remember information or ask questions. On the other hand, you, the veterinarian, should seriously consider installing CCTV cameras to record all your consultations. Video footage may even assist in dealing with disciplinary matters with employees. One human GP had an experience where a child recorded his consult with the parent and posted screen shots on social media.

Remember that even though it may seem harmless to allow your clients to record your consultations, it could be used against you, the way it is being used in the human medical world.

Published 2017-04-05

A big no-no!

(Article 464)

It is hard to believe that in this litigious day and age, there are still veterinarians who are willing to dispense medication without first examining the animal, but alas, there are!

Clients often place immense pressure upon the veterinarian when they want to purchase scheduled medication for their pets and the VDA has dealt with more than one case recently where the veterinarians involved have carelessly dispensed medication without examining their patients - and then had to suffer the consequences!

One recent case involved some farmers who placed their orders with certain drug wholesalers for delivery to their farms. The farmers were responsible for ordering all levels of scheduled medication in various quantities and would pay for the medication themselves. The veterinarian's only involvement was via the receptionist who provided an order number for the goods in an attempt to show some regard for the law.

Are the following scenarios familiar?

Mrs V arrives at the clinic and says "Dr A, you know how Fluffy hates thunder and lightning; please can I have some more of those pills you gave me last summer for her?"

Mrs W arrives at your surgery and says "Dr A, we haven't met before, but I need some tranquilizing medication for my four dogs as I am going on an 8 hour car trip to visit my mother and am taking them with me."

Mr X walks into your surgery and says "Dr A, my dog needs to have his ears checked and his nails clipped but there is no way I can get him into the car to bring him to you as he is so big and aggressive. Please can you give me something to sedate him?"

Mr Y's horse requires scheduled medication and vaccinations and sends his trainer to collect and administer the medications "because it's so much easier than bringing the horse to you and cheaper than calling you out, Doc!"

Farmer Z sends an order in to Dr A via fax for medication for his herd of cattle. Dr A then retypes the script and orders the medication for delivery directly to Farmer Z, without Dr A ever having laid eyes on the animals. "You can charge me a mark up for your troubles, Doc", says Farmer Z.

What should your response be to these clients' requests?

The law requires that a veterinarian may not dispense or prescribe any medication, unless you have personally examined the animals first, and have a bona fide vet-animal-owner relationship. In other

words, the Veterinary Act prohibits a veterinarian from acting as a pharmacist or keeping an open shop.

However, if you have examined a patient and performed tests that provide you with sufficient evidence for a supported diagnosis, and the animal requires regular and ongoing medication which needs to be taken daily, you may prescribe and dispense enough medication for a month. The VDA recommends that you have a detailed discussion with the animal owner every month when they come back for a repeat prescription and record this in your notes, and you may only repeat for 6 months depending on the schedule before you are required to re-examine the animal/s.

A veterinarian may possibly be able to justify dispensing medication on request for travelling, thunder and lightning season and Fireworks nights; but these may only be dispensed for a young and healthy dog whom the vet had examined no more than three months prior to the client's request. It would be a very different matter for a middle-aged to old dog with bad teeth, heart murmur, or any other sign of chronic illness. Such an animal MUST receive a full and thorough medical examination before any medication whatsoever is dispensed.

There can be no justification for a farmer who wants to treat his own animals on weekends or because the veterinarian lives too far away. Either the farmer is trying to keep an animal alive that ought to be euthanized on humane grounds; or attempts at pain relief until emergency slaughter will result in the carcass containing prohibited substances for human consumption.

Two basic rules apply when it comes to dispensing medication without actually seeing the animal:

Rule 1: No examination, No medication.

Rule 2: Don't make other people's problems yours. In other words, don't take on liability even when the law does not prohibit it.

Published 2017-03-29

Taking a full deposit can save your practice!

(Article 463)

The VDA has always advised our members to take a full deposit on admission of an animal.

After all these years, though, we still hear of veterinarians who are battling along and only getting paid a portion of their bills because they are too trusting of the fly-by-night kind of people who seek their services.

Taking a full deposit ensures you of being paid for your services and you don't have to chase after a pet owner for money that is owed to you, or find yourself having to hand the bill over for collection and having to pay the debt collector a fee to do so!

We do realize that a full deposit policy can be difficult to enforce, as veterinarians are compassionate people who feel duty-bound to assist the suffering animals presented to them, no matter how "dodgy" the owners who present them may appear.

But please remember that your chances of recovering an unpaid debt are virtually nil. Debt counsellors and Courts may negate your claim which means that the client may never end up having to pay your bill. In legal terms, a debt counsellor acting on behalf of the client may allege that it is not the over-indebted consumer (the client) who was at fault, but the credit provider (the veterinarian) who entered into a reckless credit agreement where s/he failed to conduct an assessment of the consumer's ability to pay.

There will always be the "what if?" aspect. The solution is to set a practice policy wherein you assert your policy - and stick to it. Only you can decide whether to enforce a policy, or to help an animal when it may be at cost to yourself.

1. You are obliged to treat an animal in an emergency whether you get paid or not. This means providing immediate pain relief and anything else that may be immediately necessary to save the animal's life. Once the emergency treatment has been taken care of and the animal's pain has been relieved, you may refer the client to an alternate clinic. If the animal is in a dire condition, you may consider offering euthanasia which could save you a lot of costs that you would otherwise run up in your attempts to save its life.

2. Formulate a practice policy along the lines of 'no deposit, no treatment' for clients who don't have an emergency but who say that they will pay you at the end of the month. Suggest to the client that they put the payment on their credit card budget facility, or that they phone a friend from whom they can borrow the money.

3. Set a practice policy for clients who may phone in the middle of the night. BEFORE you get in your car and rush off to the clinic, tell them that a full deposit will be required before you will see the animal. If they cannot or will not agree to pay, refer them to an after-hours emergency clinic while you still have them on the phone.

Taking a full deposit does three things:

a. It filters out the owners who are taking a gamble and probably have no intention of paying;

b. It immediately shows who has the ability to pay and who should be referred to a welfare organisation;

c. And it makes it almost impossible for an owner to blackmail you into writing off the account since the first thing an owner who is trying to get out of paying will say is that the veterinarian was negligent!

If you do not take a full deposit, it is an open invitation for pet owners to dream up a complaint that you did something wrong and therefore the pet owner is not required to pay. The VDA can assure our readers that dealing with blackmail complaints from these clients is simply not worth the stress, anxiety and wasted time. Far rather lose these few dishonest clients by rooting them out with a firm "full deposit up-front" policy. There is no doubt you will sleep better at night for taking our advice.

Published 2017-03-29

Press Release – Response to the debate on Locum Cover

(Article 462)

Each and every veterinarian that provides veterinary services needs to have their own professional indemnity and professional protection in the form of a dedicated veterinary defense organization. The mere “insurance cover” touted by the SAVA, Vetprotect and others around the world, is not sufficient to protect your interests. Professional protection for veterinarians needs to be in the hands of veterinarians qualified and experienced in this field (not to be confused with vets who ‘smouse’ insurance cover to vets and insurance brokers who give advice to vets). The fact that various insurance schemes have come and gone over the years is proof of this.

The next principle to understand is that insurance companies merely provide financial cover. Real defence expertise comes from veterinary defence organisations, like the VDS in the UK and the VDA in five other countries.

In other words, veterinarians who consider that the “product” does not suit veterinarians in locum positions have not really done their homework, and are in danger of making a real error of judgement. (See Claims, below).

Locums (in fact, all veterinarians!) need to be alert to the changing times and the high risks imposed on the type of practice in which they earn their living. To comply with the law as well as to protect yourself adequately, you need to examine the working arrangements that you have made and make alterations accordingly. One of the values of VDA membership and professional protection is that it is personal to each veterinarian and follows you anywhere, to any practice, inside South Africa. This places the control of professional indemnity directly in your hands, and does not leave locums and assistant veterinarians open to abuse when the practice manager or the principal veterinarian decides not to claim on the “practice insurance cover” that was supposed to be there to protect you.

Because the VDA understands and interprets the law for our members, it facilitates member compliance with the law and this is invaluable assistance for the time-strapped, hard-working veterinarian.

The VDA speaks with the experience and wisdom gained from being involved in Professional Indemnity for 25 years in South Africa. In this time, the VDA has negotiated insurance cover and insurance wording with the local insurance companies in each country of operation and with various international insurance intermediaries, including Lloyds’ of London. The VDA has also dealt with veterinary boards and organizations in over 70 jurisdictions. Nobody in the world knows more about veterinary professional indemnity than the VDA.

In South Africa, the VDA became its own indemnity fund in 2015 and by doing so, placed the control of South African veterinary professional indemnity in the hands of veterinarians with the required knowledge to protect you. In 2016, the VDF was formed to create a pool of funds to defend civil liability for high value animal practitioners.

Consent Forms

No indemnity scheme – especially considering the miniscule size of the veterinary profession – can ever be viable without the protection of a properly worded consent form to protect the indemnity arrangement. Proper consent is a requirement of the SAVC and of common law. Alternative consent forms that the VDA has viewed vary from poor to useless in terms of enforceable legal value.

The founder of the VDA was the first veterinarian to use consent forms, and its consent form wording has been developed and honed through the past 25 years of the evolution of veterinary defense and a volatile legal climate.

Claims

Claims very often come in after the locum has been completed, all the way up to 3 years after the animal owner is aware of a problem! For this reason, amongst others, it is impossible to cover a locum using "occurrence based" cover, where the locum pays for cover only for the time-period of the locum. A locum veterinarian can only be properly protected using "claims based" cover – i.e. by having cover at the time of the incident as well as at the time of the claim.

Working in the veterinary profession is a minefield, and especially so for locums. Therefore, locums (and all veterinarians!) need to have proper protection from graduation, through their entire careers, and for 3 years, utilizing run-off cover, after they retire.

Locums and part time assistants statistically have a much higher chance of receiving complaints and litigation than other type of veterinary practice. It is imperative, therefore, for these veterinarians to be VDA members.

Prudent veterinarians who are serious about protecting their reputations will join the VDA before they start working. Those veterinarians who wait until a serious "incident" occurs are also welcome to join the VDA and will be assisted with the informed seriousness, empathy and integrity that your position deserves. The VDA is there for you!

Published 2017-03-22

“Special Value”

(Article 461)

According to numerous online reports, a jury in Orange County, California, awarded a man $39 000 in a malpractice suit against two veterinarians whose actions were found to have resulted in the death of his dog in February this year.

Marc Bluestone sued Drs Craig Bergstron and Robert Rooks of All-Care Animal Referral Center in Fountain Valley, California after his dog died of liver failure in April 1999. The veterinarians were sued for negligence, deceit and unfair business practices.

Mr Bluestone’s lawyer, Terri Macellero is also on the board of the California-based animal rights organization In Defense of Animals.

In January 1999, Mr Bluestone’s dog named Shane started receiving treatment at All-Care for non-life-threatening intermittent seizures.

The veterinarians were accused of misdiagnosing Shane's illness, lying about her condition, failing to advise Mr Bluestone of treatment risks, and giving unnecessary and improper medical care that ultimately caused the dog's death. It is claimed that Mr Bluestone ended up paying All-Care more than $20,000 in veterinary bills.

Mr Bluestone is said to have had Shane's medical records reviewed by an independent veterinarian who concluded that Drs. Bergstrom and Rooks had committed malpractice in treating Shane. The suit was filed in 1999. Even though three California cities refer to pet owners as “guardians”, under California State law, all animals are classified as property, not persons.

The case went to trial in the state Superior Court in January 2004 and went to the jury the following month. After deliberating, the jurors determined that Dr. Bergstrom had acted negligently but that his conduct was not intentional. Moreover, they found that neither he nor Dr. Rooks were guilty of intentional misrepresentation.

Additionally, the jury found that Shane held “special value” for Mr Bluestone. The jury estimated the market value of the mix-breed dog to be $10, but it assessed the dog's “special value” to be $30,000. Jurors awarded an additional $9,000 to Mr Bluestone for "unreasonable" payment to All-Care.

This may very well be the way in which the law will progress: the animal may have a negligible value as an item of property, but more and more the courts will award special damages to plaintiff owners in recognition of the additional special value the animal had as a pet. Special value may include the emotional benefit a pet provides.

In the past, courts only awarded market value and veterinarians in the US have had a temporary reprieve; but as owners and their lawyers get wise to claiming special value, the number of cases against veterinarians is likely to skyrocket.

The best way that the profession can prepare itself for this, (apart from practicing to higher standards) is to make sure that they present a higher quality defence than is currently the case. It will no longer be sufficient for veterinarians to rely on general law practice attorneys for their defence and they will need the services of experts who are both veterinarians and lawyers, and who have extensive knowledge and experience in the field of veterinary law and ethics.

Published 2017-03-15

Ordering human medication

(Article 460)

Last month, www.VetSurgeon.org published an article in which the RCVS Veterinary Nurse Disciplinary Committee had directed the Registrar to suspend Lois Hodgkinson RVN for ten months after she had ordered prescription drugs for her own use through the practice's veterinary wholesale ordering system.

Ms Hodgkinson was alleged to have placed orders for 30mg and 60mg Codeine Phosphate tablets, 250mg Naproxen (Naprosyn) tablets and 25mg and 50mg Amitriptyline tablets.

Ms Hodgkinson had ordered these drugs for her own use as well as her dog after being involved in a serious car accident the year before.

Although Ms Hodgkinson admitted the charges against her, her argument was that other staff at the practice had placed similar personal orders and that she had been given permission to do the same. Ms Hodgkinson accepted that the accusations amounted to disgraceful conduct in a professional respect.

The Committee accepted Ms Hodgkinson's admission of the charges.

In reaching its decision, the Committee took into account Ms Hodgkinson's assertion that she believed she had been given permission to order medication through the practice, whilst admitting that she must have been mistaken in that belief.

The Committee also took note of the College's submission that a number of aggravating features were present which amounted to serious professional misconduct, namely:

The potential risk posed to animal welfare;

Ms Hodgkinson's ignorance of fundamental legislative provisions;

A breach of trust placed in her by virtue of her RVN status;

The fact that the misconduct was repeated over a period of time;

A lack of awareness of professional responsibilities at the time of the conduct.

For these reasons, the Committee decided that her conduct amounted to serious professional misconduct.

A number of mitigating factors were put forward in Ms Hodgkinson's defence, including the fact that up to the relevant conduct she had had an unblemished career and the fact that she had made early admissions of guilt and shown insight into her misconduct. It was plead that a lengthy period of suspension or removal from the register would result in her losing offers of future employment.

Ms Hodgkinson was suspended for a period of 10 months.

The VDA has dealt with two cases in Australia very recently with vets who have been prosecuted for ordering amphetamine weight reduction medications for their own use. We have also dealt with many other cases in which veterinarians in all VDA countries have been prosecuted for ordering human medications on their veterinary medicine accounts for their own and/or family use.

The law in all countries of VDA operation is clear: Veterinarians are not licensed or registered to treat humans (even themselves), and purchasing medications for this purpose is illegal.

Published 2017-03-08

The “one that got away”

(Article 459)

Dr A has two partners who are older than him and are not VDA members. However, Dr A believes very firmly in following the advice of the VDA and insists that all of his clients sign a VDA-approved Informed Consent to Treatment form, before any invasive, manipulative or hospital case he is responsible for is treated.

Eight months ago, a client brought in his puppy for an examination. There was no vaccination history, and the puppy was thin and had severe enteritis. The client explained that this was a rescue dog that he had homed, and that he was not keen to spend a lot of money on him.

Dr A found the dog to be dehydrated, and suspected a worm infestation as a complicating factor. Dr A was concerned for the puppy’s life, therefore he admitted it into hospital, set up a drip, and treated the enteritis.

The puppy responded well to therapy, and by the third day was so well that he managed to pull the drip out of his own leg. Dr A discharged the puppy on day four.

Five days later the puppy was brought back to the clinic by the client, Mr X, as there was a patch of necrotic skin over the IV injection site. Dr A debrided the area, and started to treat the case as an open wound. The patient was hospitalised and received bandage changes twice daily. By the third day in hospital, the wound had started to granulate, and Dr A was very happy with the dog’s progress.

Later that day while Dr A was out on his afternoon off, Mr X came in and took his dog away exclaiming to the receptionist that if he were to leave the dog there, it would die!

Another eight months elapsed and Dr A was on the brink of handing Mr X’s account over to his debt collectors as he had only paid a very small amount of his total bill. Dr A was stopped in his tracks, however, by a letter from Mr X’s lawyer.

The letter stated that in Mr X’s opinion, Dr A’s treatment of his puppy was negligent. Mr X claimed that the application of the drip was unwarranted and had led to skin necrosis, and that Dr A’s actions were the direct cause of Mr X’s puppy’s wound. This wound had become infected by the time Mr X took his dog out of Dr A’s practice and care.

When the VDA requested a copy of the consent form that Mr X should have signed, Dr A found that it was missing. On looking back on his records, Dr A discovered that when Mr X brought the puppy into the practice for treatment, the usual receptionist that Dr A had carefully trained in defensive practice and making sure that pet owners signed his consent form was away on maternity leave, and as Murphy’s Law would have it, the substitute receptionist had forgotten to have a consent form signed.

After storming out of Dr A's practice with his dog in tow, Mr X allegedly took his dog to another vet in a neighbouring town. This vet, in turn, referred the dog to a bigger and more specialized practice in another town. The dog was treated for 3 months at this hospital, and after a skin graft, was discharged with a hefty bill. Mr X paid this hospital a deposit but had not paid a cent since, even though it was made very clear that he alone was responsible for the costs of treating the puppy's open wound. It is strange that a seemingly small necrotic wound from a short-duration catheter site should require such expensive treatment from a specialized practice. Mr X and his attorney never submitted any proof that such treatment was undertaken and such bills were incurred.

The lawyer who acted on Mr X's behalf asked Dr A's Veterinary practice to comment as to why all the veterinarians and the practice entity should not be held liable to pay the account at the other hospital.

After consulting with the VDA, Dr A's two partners have decided to apply for membership of the VDA. The VDA successfully explained to Mr X's attorney that his client was not able to satisfy the 6 elements of medical negligence and that there was no basis on which Mr X could succeed in such a civil claim. In addition, it was explained that there are risks to any treatment and that such normal and common complications are not proof of medical negligence.

If Dr A and his partners had used the VDA informed consent to treatment form, the indemnity clause wording (copyright, VDA) would have been a sufficient defence on its own.

As a precaution, Dr A should have contacted the VDA and spoken to a consultant when the dog was brought back to his practice with the necrotic skin lesion. If we had been consulted in time by our member, we would have been able to advise Dr A on how to handle Mr X. For example, when the dog was removed from hospital by Mr X, the receptionist should have made Mr X sign a premature release form before he was allowed to "discharge" his own dog.

The VDA is of the most benefit to those members who make good use of our "Claims Prevention Programme" by contacting us at the first whiff of an incident. Application of the methods suggested by our Consultants in dealing with difficult clients keeps our scheme strong and sound, and helps to deflate over-reaching behaviour from unscrupulous clients.

Published 2017-03-01

Introducing guest writer: Dr Stephen Rose

(Article 458)

Stephen has been a practicing veterinarian for 15 years and practice owner for 10. He has progressed his interest in Information Security with a Master of Information Technology specializing in security. His latest venture is adapting and implementing the NIST CyberSecurity Framework within different types of professional small businesses (medical centers, veterinary practices, dental surgeries) to provide sound security and risk balanced security outcomes.

Cyber Threats – What policies and procedures do you need to adopt in your veterinary practice?

Regardless of business size, cyber threats pose a real threat to your livelihood and vets are not immune to these risks and issues. For many years, small business has felt that security through obscurity is a valid protection, but no longer!

More and more we are seeing attacks against professional organisations, including veterinary practices, due to the rich and personal nature of their data. Connected networks and devices, data that is spread out over different devices and remote access all provide convenience but also increase the opportunity for disaster. Ransomware is one type of malware that is particularly rife and creating havoc at the moment.

There is much you can do to protect your practice's most valuable asset, but let's start with some sensible and easy ways to start this process off. A significant part of your whole practice, not to mention your VDA membership is having policies and procedures in place to minimize the risk of litigious clients. In the same way, some simply written (and easy to use) policies are also needed as part of the starting point for your data and IT infrastructure.

There are some really important yet basic policies to start a program, including;

-Appropriate use of work computers policy

What is the policy for surfing the net during work time? What about during a lunch break? Do you know the risk of anyone downloading a file onto a workstation (think Ransomware)? What degree of inappropriate content is allowed at any time on your computers?

You may need to consider putting a policy into place so that staff members know what they are allowed or not allowed to do during work time, or during lunch time, for that matter. There is tremendous risk of downloading malware if you do not have limitations in place.

Clear guidelines for appropriate internet use needs to be made available to staff. Controlling and monitoring suspicious activity without infringing on anyone's privacy is the duty of an employer.

-Remote access policy

Remote access is one of the key ways attackers may enter your network and database, creating a breach. Some questions you may ask yourself are:

Whether you have strong passwords in place and are the passwords changed regularly?

Is there any chance that these passwords may be the same passwords that employees are using for private use, such as a dating site which could get hacked?

Is it possible to monitor and know who has remote access, especially if it is at unusual times?

Would you know how to identify suspicious activity on your network? (The average time an attacker is on a network prior to being discovered is 200 days.)

-Bring your own device (BYOD) policy

If you have a policy in place where a veterinarian or nurse uses their own devices (computer/laptop/tablet/phone), have you considered what you would do if the vet or nurse lost their device containing sensitive laboratory results, client contact databases or password access to your database (on site or in the cloud)? Do you have a policy for remote wiping (consensual or forced)? Perhaps having a backup created for each device in the cloud would be a good way to eliminate the hazard of losing vital information on personal devices. This backup also needs to be in a secure place, protected by strong passwords.

If an employee were to leave, you would need to have a policy in place which ensures that work data is moved from their device to a work device and erased from theirs. A recent research paper reports that an amazing 40% of departing employees would use data from their past employer in their new role and 43% felt that it was not illegal to use this competitive data!

-Backups policy

How and where is your database and critical data backed up and how often? Do you have a copy offsite? Is this offsite copy also secure (many breaches occur from backed up data)?

How much money would you lose if your server/database was attacked right now? Do you have a backup and when was it last done? 5 mins ago? 1 day? 1 week? Never? A good suggestion would be for an incremental backup that occurs on an hourly basis with rotation of removable media offsite daily. Alternatively, you can use cloud services to automatically provide this offsite backup (remember it has to be secured as well). This way you are ensured to have the latest information backed up. Don't forget to test your backups periodically by restoring the data.

Ransomware attacks networks through suspect emails or from web surfing. Once an infection enters, entire databases are encrypted and "ransomed" by attackers. Without a backup there is almost no way of getting your data back without paying the ransom. Having an incremental backup is crucial for many reasons, but this is a recent and important addition to the list. More info on Ransomware here (https://www.microsoft.com/en-us/security/portal/mmpc/shared/ransomware.aspx).

On a personal note, do you have your personal home data and photos backed up?

These procedures might seem very simple, yet many practices don't have them in place, and don't have the support of their staff in adhering to them. Remember that a policy is something that needs to be interacted with and reviewed and adhered to regularly, and is useless sitting in a binder on the shelf. It is also about being fair to all involved, including the employer and employees. Creating a clear understanding of the issues and consequences is important for success.

Not having protections in place, as in the few examples shown here, is a serious risk. We can no longer expect to be left alone in this hyper-connected world, with its increasing use of the cloud, convenient devices and "always on" mentality.

These are just a sample of the many issues to consider in developing security policies for your practice. Hopefully this brief insight will stimulate you to consider what improvements need to be made.

Dr Stephen Rose

BVSc (Hons) CVA (IVAS) MInfoTech (Security)

Veterinarian and Cyber Security Consultant

steve@zel.uno

https://Zel.uno

Published 2017-02-23

A complicated matter!

(Article 457)

Mrs X was given a dog by Mrs Y (the breeder), on condition that the dog may be used for breeding when called upon. After honoring this agreement on one occasion, Mrs X was angry to see that her dog had a sore leg and was limping. There was a cut on his nose and sores on his ears - all of which must have occurred during his stay at the breeder's premises.

Mrs Y took her dog to Dr A's practice for treatment. She paid for the consultation and Dr A dispensed pain relief NSAIDs for a partially broken dew claw, mildly inflamed ears and mild dermatitis on the dog's nose.

A follow-up phone call by Dr A's practice revealed improvement on all the dog's symptoms.

Mrs X then called Dr A's practice two weeks later, requesting antibiotics be dispensed for the dog who was now experiencing discomfort when urinating. Dr A declined to prescribe any medication without examining the dog first and advised Mrs X to bring her dog in for diagnosis or to otherwise take her dog to her nearest veterinarian, since Dr A's practice was a 45 minute drive from where Mrs X lived.

Dr A heard nothing more from Mrs X, but a few weeks later Dr F (from a separate veterinary facility) called Dr A and asked for Dr A's clinical records and history on the dog. Dr F claimed that the breeders were the owners of the dog and that the breeders had paid for the consultation of the dog at Dr A's practice.

Dr A refused to hand over any of his clinical records.

Soon after this, Mrs X sent an email to Dr A, requesting the clinical records which she believed would aid 'an organization' who was filing a suit against the breeders of Mrs X's dog on behalf of multiple plaintiffs. Mrs X did not mention who the organization was.

Dr A telephoned Mrs X to try and find out what was going on. Mrs X explained that they did not want their dog to breed again with these breeders so they had been advised that a welfare organization would assist her as well as a number of other plaintiffs to file a case against the breeders. Mrs X said that even though her dog's injuries were minor, she would like to have Dr A's clinical records to add to the other plaintiffs' complaints against the breeders.

Dr A contacted the VDA for advice on this complicated matter.

The VDA gave the following advice to Dr A:

Not to give any information either verbally or in writing. A vet's records cannot be used in litigation without the vet appearing in court to verify them, thereby subjecting him/herself to cross-examination by the defendant's lawyer - whose approach would be to destroy or discredit the veterinarian's

evidence. (Being an expert witness is for veterinarians who have retired from practice, have undergone formal forensic training, have made this a career and charge a formal court day fee of thousands of dollars. It is not for the average private practitioner who is trying to run a practice and who would be distracted for hours by lawyers as well as wasting days in court without remuneration or compensation).

A clinical record is private; it belongs to the veterinarian and is merely an aide memoire. The owner does not have an automatic right to a copy.

Supplement the clinical record according to Bulletin 13. When a clinical record is supplemented, the supplemented information should appear under the last entry. The supplemented information should be under the current date, not under the date of the incident. Boards regard altering of records as fraudulent, but supplementation is recognised as being legitimate. Many veterinarians have been charged, suspended and struck off for altering their records. (Remember, the intentions behind altering one's records are irrelevant and would not be considered as a suitable excuse for having done so. The only thing that is relevant is whether the prosecutor will be able to "prove" fraud. Therefore it is imperative to follow Bulletin 13 to the letter, so as not to be found at fault).

Avoid taking payments from non-clients and non-owners. This always results in that person complaining that they did not receive what they paid for. And how could they if they were not the owner of the animal treated and perhaps were not even present?

Refuse to be involved in such complicated issues and tell the client that there is nothing you can do to help him.

Remember that the VDA's advice is not prescriptive and we are not encouraging you to turn away clients and legitimate work. We would like all veterinarians to run successful and busy practices. Our purpose is to point out to you the risks and consequences of actions that you choose to take. The VDA is here to provide you with tools and guidance to assist you in practicing defensively and with due regard to lawful principles.

Published 2017-02-23

Competition Commission and Price Fixing Allegations

(Article 456)

In the past three weeks, a number of VDA members have each received a summons from the Competition Commission, demanding that the member appear before the Commission tribunal on allegations of colluding with other veterinary practices and pet shops to fix prices.

The allegations against members are that they may have agreed to charge similar prices for Maine Coon Adult and Kitten food products sold to pet owners and that the alleged conduct may have commenced on or about 2014 and is on-going.

Following conversations with our members, it seems clear that none of these members that have been accused of colluding to fix prices have ever actually done so. What has happened is that members have been following the recommended selling price published by Royal Canin which has formed the basis of the Competition Commission's suspicion that veterinarians have been colluding with each other to fix prices.

The legal point we face in defending our members is: Is it against competition law for a group of veterinarians to follow the recommended selling prices produced by a supplier?

The VDA's legal research team has not been able to find any case law from the Competition Commission Tribunal, the Competition Commission Appeal Tribunal, or the High Court, Supreme Court of Appeal or Constitutional Court on any decisions on this point.

In 2012 the Competition Commission received a complaint of price fixing against the SAVC. The SAVC annually compiled and published a Tariff Guideline that prescribes minimum and maximum fees to be charged for veterinary services and it obliged its members to comply with it. The SAVC took disciplinary action against veterinarians who deviated from the pricing in the Tariff Guideline.

In September 2014, the SAVC was convicted for producing the Tariff Guideline but no veterinarians were convicted for following the Guideline.

The practice of following recommended fees does seem to be widespread. As an example, the writer recently came across a sign in the waiting room of a local human pathology laboratory which stated: "We follow the SA Medical Association recommended fees." Yet, no court has created law on this point.

It would therefore be prudent for members to ensure that the prices they charge for all pet foods deviates significantly from any recommended selling price list issued by pet food distributors to ensure that the prices you charge are not similar to any other practices selling prices. This would prevent the Competition Commission from falsely accusing you of colluding to fix prices with other veterinary practices.

Published 2017-02-15

Health Certification

(Article 455)

The VDA has always advised members that they should not certify that any animal is “fit for travel” or is “healthy”. All a veterinarian can reasonably and legally say is that no signs of illness or injury were found in the presented animal. No matter how many tests you do, there will always be unidentified and unidentifiable problems. For example, there may be an aneurism or a genetic disorder that will express itself just after you certify that the animal is “healthy”.

The Veterinary Boards have started to realize the absurdity of such statements in certain health certificates and at least one other Board has recently published information to veterinarians that a reasonable vet cannot certify that an animal is free from any or all disease or is healthy. Some State Veterinarians are realising that the ‘health certificates’ that they expect private veterinarians to sign are incompatible with what a reasonable veterinarian can certify.

The VDA has produced health certificates which our members should use to protect themselves when asked to certify anything about an animal.

VDA-approved certificates do not contain any warranty relating to the animal’s future suitability for any purpose. The reason for this is that an animal is an extremely complicated biological system living in a hazardous environment and there is no conceivable way that any veterinarian can make any prediction on the future state of an animal.

We are aware that it is still common practice for veterinarians to provide warranties for future suitability but this has dire consequences and we urge you not to fall into this trap. The only service that you could humanly provide is to perform a diligent examination of the animal, to report on the pathology found and to make recommendations about any further investigation of these. This is in itself a hazardous activity and is a source of much litigation, so we urge you to be expansive with your recommendations for further investigation, given that there is really no such thing as, for example, a lesion that does not have the potential of becoming an issue in the future.

Once the member has provided the recommendations for further investigation to the client, it is then over to the client to consider the options offered and to make their own decisions based on this. Members must avoid making decisions on behalf of the client.

Before any VDA member signs over a certificate of health for any animal, travelling or not, they should contact the VDA for advice and assistance and refer to Bulletins 4, 5 and 6 which are available on the VDA website, under the MYVDA tab.

Published 2017-02-08

Social media and You

(Article 454)

Businesstech.co.za has published an article regarding the Cybercrime and Cybersecurity Bill which will be entered into parliamentary discussion in the coming weeks in South Africa. The majority of the Bill appears to focus on criminalising the theft and interference of data, but it has also introduced new laws surrounding 'malicious' electronic communication.

This is a matter that affects us more and more as technology advances. You may have already had to deal with cyber-bullying on devices and forums used by your children, since the use of social media by children is on the rise. Schools have now started to offer advice on controlling usage.

Many VDA members use social media and have their own websites, and a number of our members have faced adverse comments on these sites. The VDA has been notified of, and assisted with, many of these incidents.

When dealing with adverse comments, exercising wisdom, restraint and consideration of the big picture will stand you in good stead. If a client makes an adverse post about you on their own web pages, first judge how detrimental to you this content really is. Remember that a Facebook post will get buried almost immediately with all the other feeds that appear. In addition, most people have short memories and their own real-life problems to deal with which are far more important in their minds than a cyber-post about someone else.

If a client makes an adverse post on a forum or website that you own and control, it may be best to delete it. If the post relates to an incident that occurred in your practice and there is a possibility of the incident escalating into a board complaint or civil claim, then contact the VDA immediately. The VDA will take over and invite the pet owner to participate in Alternate Dispute Resolution.

If the post makes significant claims, and there is a significant response from other people, then perhaps stronger action from you is called for. An attempt to respond with what you consider is a reasoned calming factual reply may not have the result that you intend. The reason for this is that most people feel that they can hide behind the apparent anonymity of the screen, and they may take your response as an invitation to hurl more abuse at you.

A stronger alternative may be to send the person a "cease and desist" and "delete" letter. You may need to up the ante by instituting legal action based on defamation.

But – never, never, ever respond to direct messages about alleged personal problems. And never, never, ever respond by making tacit admissions of personal problems.

Businesstech.co.za states that the new Bill criminalises malicious social media messages including inciting someone to damage property; intimidating or harassing a person including goading them to harm themselves or someone else; making an inherently false statement which is aimed at causing

mental, psychological, physical or economic harm; and posts of an intimate nature such as nudity, especially of someone else, distributed without their consent.

Businesstech.co.za reports that one could face 3 years in jail for sending malicious communications – even if they're private. The new messaging rules may be vague and it will take some time for the courts to interpret the proposed Bill's rules. But what is certain is that hefty fines and even jail time could result.

In addition, the Bill aims to compel all banking institutions, ISPs and cellular companies to assist in an investigation. This will allow the South African government to access any pertinent private information stored about you as evidence.

Published 2017-02-01

PATH REPORTS - “FLOGGING A DEAD HORSE”

(Article 453)

The VDA has recently had to come to the aid of a number of our members who found themselves in an invidious position due to speculative comments contained in pathology reports.

These members described having to go to extraordinary lengths to calm their distressed and accusing clients who misunderstood and misinterpreted the reports.

The problem is, post mortems often do not shed any light on the reasons for an animal’s deterioration or death. Since pathology reports can often leave pet owners with many unanswered questions, some pathologists fall into the trap of offering additional information to explain what may have occurred. Feeling compelled to try and ‘fill in the gaps’, they offer what amounts to pure conjecture rather than sticking to factual objective evidence. Such conjecture, of course, has no forensic value.

When pathologists provide this additional information, they are compelled to use “contingent” words such as associated, compatible, may and likely. Such contingent words may not be understood in context by pet owners and they may incorrectly assume that the additional information being offered by the pathologist was actually a forensic finding in their pet.

Pathologists should be mindful of the fact that post mortem reports are read not only by veterinarians and the owners of the animals but also by various other parties, including board disciplinary committees, attorneys and judges. Many of these readers are not familiar with veterinary medical terms and biology.

To complicate matters, at the time of a post mortem pet owners are still struggling to come to terms with the loss of their beloved pet and are looking for reasons for their pet’s death. Some may even be looking for a reason to blame the veterinarian who treated their pet. (Placing blame is a well-known reaction stemming from the “anger” stage, one of the Seven Stages of Grief).

So when a pet owner reads phrases such as “compatible with and may develop in association with septicemia”, or “due to other causes, for example, trauma and burns”, they may conclude that the veterinarian is responsible for causing infection or injury. And if the pet owner thinks that the veterinarian negligently caused the death of their animal, they will invariably take action against the veterinarian.

If the additional information offered by the pathologist is only a list of differential diagnoses, possible causes, vague speculation and items of academic interest - with no forensic value - then there are no legal grounds for action. However, this does not prevent the pet owner from making a complaint to the Board or instituting a civil claim against the treating veterinarian, and the result is devastating prejudice and damage to the veterinarian who treated the animal along with immense stress and a huge cost, all of which is totally unnecessary and avoidable.

A specialist pathologist's report has the same status as a veterinarian's certificate, and carries significant weight and forensic value. Therefore a responsible veterinary pathologist should only certify facts which

he/she personally knows or establishes;

that are scientifically verifiable and substantiated;

with reference to specific diseases in the specific animal;

subsequent to taking reasonable steps to be certain of what is stated, including testing if necessary;

to ensure that the information being provided is indeed correct.

Most boards take the position that it would be unprofessional for a veterinarian to certify information that is vague or speculative or general in nature.

The VDA suggests that if a pathologist wants to provide the referring veterinarian with additional information, then this should be done in a separate report or communication and in such a manner that there can be no doubt in anybody's mind what information is an actual formal forensic finding of the animal in question, and what information is speculative, general and for interests' sake only.

Such assistance would be much appreciated by the treating veterinarian, who is then able to better explain the adverse outcome to their distressed client.

Members: If you require assistance with uncertainty in a pathology report, call your friendly VDA consultant for advice.

Published 2017-01-25

Third Party Threat!

(Article 452)

Dr A requested guidance from the VDA on how to legally and ethically deal with a situation in which a third party is involved in the treatment of an animal. For example: The owners go away on holiday and their dog is in the care of a friend, sitter, neighbor or family member. The 'carer' is unable to reach the owners for whatever reason when the dog has fallen ill and requires treatment by a veterinarian.

The law requires that the owners of the animal must give their permission before any procedure can be performed. In other words, a veterinarian who treats an animal without the owner's permission does so unlawfully. The law in most jurisdictions offers a justification for treating without permission only in certain circumstances such as pain relief followed by referral or euthanasia in an emergency.

Of course, the owner's "legal agent" can lawfully provide permission – but this leeway may not be as dependable as we would like to think. Consider a situation where a stable manager telephones you to come treat a horse with a wound. When you arrive, you realize that the horse needs hospitalization and more intensive care than can be provided at the stable, and you recommend to the stable manager that the horse is referred to a specialist hospital. The stable manager says that he cannot make that decision and that he must telephone the horse's owner – but he cannot get hold of them. In other words, the stable manager has denied that he is the owner's agent, and therefore if you continue to treat the animal and make decisions for the owner, such as delaying the referral, you do so at your own risk.

To handle such a situation in a responsible manner while shielding yourself from blame, you should ask the third party to sign a VDA consent form as the legal agent. This will give you some degree of satisfaction that the third party is in fact the owner's legal agent and is willing to accept the responsibility of providing you with instructions.

Secondly, ask the third party for a full deposit. Asking for a full deposit is good financial practice – and asking for a deposit from the third party will also give you a strong indication of how confident the third party is that they are acting on behalf of the owner. It demonstrates that they expect to obtain a refund from the owner.

If the third party is not willing to sign a form or to pay a deposit, then the veterinarian has no clear, lawful right to treat the animal. The only reasonable and safe step is to refer the animal to another facility – after having made sure that there is no emergency to deal with. A reasonable veterinarian should only rely on clear instructions, preferably written and signed, and should never presume to know what an owner would like them to do.

Consider the case of the vet who was presented with a cat for euthanasia by the neighbor of the owner, who claimed that the cat had been attacking his cats, and thinking that, since the vet had been treating his cats' wounds, she should be sympathetic to his cause. The neighbor had actually "kidnapped" the animal without the owner's knowledge! Luckily, the vet was a VDA member, and phoned us to get

immediate direction on how to deal with this strange behavior. The neighbor was subsequently banished, with instructions to take his complaint to the local welfare organization; and the cat was returned to his rightful owner.

Do not allow a third party to make you feel distressed or to put pressure on you to take unlawful steps out of expedience. When you are unsure of what to do, contact the VDA for our considered guidance of your unique set of circumstances.

Published 2017-01-18

No quick fixes!

(Article 451)

Mrs X had a 6 year-old female dog who was losing weight - although eating ravenously - and had also started to show signs of polydipsia and polyuria.

Dr A ran some tests and informed Mrs X that her dog required insulin treatment since her blood glucose levels were significantly raised with a glucosuria and that Diabetes was the major differential diagnosis.

Dr A also mentioned to Mrs X that they should consider spaying the dog as progesterone was often implicated in insulin resistance.

Mrs X completely misunderstood the information that was presented to her, and refused the option of insulin therapy for her dog's treatment. What Mrs X "heard" was that spaying was a "cure" for diabetes and she jumped at the chance of a once-off elective procedure, thinking that this was a magical "cure-all" for her dog.

Dr A spayed the dog - without giving insulin - and sent her home. The next day she was collapsed and had to be re-admitted. This time Dr A administered insulin and intravenous fluids. Dr A, however, only recorded one blood glucose reading. The Doberman deteriorated over several days and was eventually euthanized. Mrs X then refused to pay for the hospitalisation on the grounds that Dr A "killed her dog".

Discussion:

1. One problem in this case is that Dr A was so enthusiastic and had so much information to impart that he confused and confounded Mrs X.

2. He also didn't prioritise the treatment – first treat with insulin, and if there is a poor response, then consider reasons and additional treatments.

3. A third problem was that Dr A "obeyed" Mrs X's instruction to spay the dog without administering insulin. It is the veterinarian who is in control of the treatment, not the owner. Therefore the veterinarian must take charge of the case and put a treatment plan into place.

4. It can never be a defence that the owner "consented" to substandard treatment. We have discussed this aspect before in situations such as fractures where the owner doesn't have the money for plates or fixation devices, and asks the vet to utilize a gypsum bandage instead. In many situations, old-fashioned methods fail, so don't be guilt-tripped into performing a procedure that is unlikely to succeed and is out-dated.

5. A veterinarian has a legal obligation to act in a certain manner, and falling substantially below that minimum standard of professional conduct may constitute medical negligence. If this owner was aware

that only one glucose measurement was recorded over four days of hospitalisation when initiating insulin treatment, Dr A would probably not be able to defend the complaint.

This case helps to entrench some very important basic principles:

Explain carefully and fully, and make sure the owner understands. Test and critically evaluate the owner's understanding. Try to explain matters in layman's terms rather than in veterinary terms that most clients would not understand. Talk slowly and do not use complicated, scientific descriptions when explaining a diagnosis or treatment plan.

There is no point in doing a procedure that you know will not be effective for the main problem. In fact, doing so probably constitutes medical negligence.

Treat and test and monitor to a standard that your peers and the public would agree meets the minimum accepted level of care.

Dr A was very lucky that Mrs X did not make a complaint.

Published 2017-01-11

Take a full deposit!

(Article 450)

The VDA receives many calls from frustrated members who are left with large unpaid bills by dishonest clients.

This problem is common to all situations where hospital treatment is undertaken on a trust basis.

When the animal recovers and the owner refuses to settle their account on discharge, veterinarians sometimes retain the animal as a lien over the account. This solution has been seen to backfire when the owner ignores the veterinarian's efforts to get them to pay by stalling the collection of their animal. Because the owner has not openly admitted to having made a decision to actually abandon their pet, there is no way to prove that this is the case. The veterinarian is then stuck with an unpaid account plus a pet with no market-value. The only viable option here is to simply hand the animal back to the owner without insisting on the bill being settled immediately. The veterinarian is then left to collect the debt in the usual unsatisfactory, unsuccessful fashion.

There is only one real solution.

Practitioners must insist on a full deposit or a full pre-payment of an estimated account before treatment is commenced. A practitioner is entitled to refuse to treat in circumstances where the client claims to have no money - unless it is an emergency, in which case the practitioner may offer pain-relief medication, referral to a welfare organization or euthanasia.

Private clinics and hospitals for humans always insist on prepayment of hospital fees. The human hospital rule appears to be "If you cannot pay, you will not be admitted." We believe that veterinarians should take a leaf out of the human hospital book to save themselves undue stress and financial loss.

Published 2017-01-11

The trap of giving an opinion

(Article 449)

Dr A was approached by Mrs X, who was seeking a second opinion on radiographs of her deceased dog. However, Mrs X and her dog were unknown to Dr A and Dr A was extremely concerned about giving an opinion on the presented radiographs he had been presented with. Dr A contacted the VDA for advice as he had never had such a request before and did not know how best to handle the situation.

The VDA advised Dr A not to offer any opinions on the radiographs since Mrs X's dog was deceased and the chances were that Mrs X had ulterior motives in requesting a second opinion, which could include lodging a complaint against her previous veterinarian with the Veterinary Board or suing her previous veterinarian for negligence.

The VDA advised Dr A not to get involved for the following reasons.

1. The animal was deceased, therefore there was no patient interest to protect

2. Dr A was not a specialist radiologist and was therefore not in a position to properly express an opinion for forensic purposes.

3. Mrs X had not been open and honest with what her intentions were with regard to seeking this form of second opinion.

4. For the benefit of a consultation fee, Mrs X was likely trying to draw Dr A into litigation that could result in Dr A spending hours or even days testifying in Veterinary Board or civil law suit cases without proper, or any, remuneration.

It is human nature that we pride ourselves on how much we know. But it is in the nature of litigation for a defence lawyer to discredit the expert providing an opinion. So only offer your knowledge in a bona fide veterinarian-animal – owner relationship.

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Adopt a stray animal policy!

(Article 448)

Dr A was presented with a small dog by Mrs X who said that the dog was a stray. Mrs X was a regular client of the practice and owned a dog of the same breed.

Mrs X told Dr A that her neighbor had found the stray dog in her kennels and had taken the dog to her because she had the same breed of dog.

Mrs X requested Dr A to vaccinate and de-worm the dog and said that she was looking for the dog's owner and wanted a separate invoice so that she could get the dog's owner to pay her back for the costs of treatment.

After having spent about two hours at the practice, Mrs X said that she did not want to take the little dog home as she didn't want her little dog to be infected with any virus the stray may or may not have. Mrs X asked Dr A to keep the dog at the practice and promised to fetch it the following day. Dr A had vaccinated and de-wormed the little dog, but he did not take a deposit.

Many of you will now be able to finish the story – Mrs X did not come back and could not be reached on the telephone or by email – Mrs X disappeared and left Dr A holding the dog and paying the bill.

The VDA receives many telephone calls from members who are overwhelmed with strays and who are emotionally pressurized into accepting them. Because vets love animals, after all, and will do anything involving an animal for free!

It may assist you to adopt a stray animal policy in your practice (pun intended) and displaying this clearly for your clients to see. This may help to eliminate problems such as the one Dr A faced. This is not the VDA's policy and is not a term of membership – this is merely intended to offer you an alternative view of dealing with strays.

Here are some points you may want to consider:

•Ask the person presenting the stray to take it directly to a welfare organisation.The reason for this is that the animal immediately enters into the welfare system which is the known manner to deal with strays and they receive the best opportunity to be re-united with their owners. And you the veterinarian will not be taking on the liability of looking after an unknown animal.

•Charge a standard boarding fee per day until the owner can be alerted or the animal can be taken to the welfare organisation.

•Inform the person dropping the dog off that there is no full time monitoring for strays over weekends and at night, and that they must make other arrangements on a case-by-case basis if they want monitoring.

•Take a deposit for any treatment provided and have the person presenting the animal sign your consent forms. Treatment is costly and only welfare organisations which are funded by charitable donations are able to provide free treatment. And the signed consent form will provide you with some level of protection.

•Inform the person presenting the animal that stray animals are completely surrendered. There is no reason for you to enter into any agreements that a person who is not the owner will be contacted or given an option on adoption.

And don't forget that when you are in doubt, your VDA consultant is a call away!