

The South African Veterinary Council (SAVC)

The SAVC has a checkered history and has been accused of incompetence, corruption, nepotism and cover-ups in the past. The SAVC is currently very much a political animal run by the countries' ruling party, against a background of widespread and open government incompetence, corruption, nepotism and cover-ups

The SAVC of the 1980's was largely incompetent and self-serving. Matters changed dramatically however in early 1992, when the VDA was involved in legal proceedings against the SAVC and commenced a petition within the profession to remove the then current SAVC board members. This led to the resignation of all but one of the board members, who then became the president for the following two terms.

During this period, the VDA was able to negotiate disciplinary proceedings that have endured through good and bad since then, and the quality of current SAVC disciplinary proceedings is still amongst the best in the world (albeit where standards are generally poor). The quality of the process has endured due to the sterling efforts of a small group of colleagues throughout this period. However, the SAVC still has a number of major defects, which the VDA hopes to correct by negotiation rather than litigation, with the support of the profession.

The defects are as follows:

With this Board, it is the same small group of people that sets the rules, investigates complaints, decides to prosecute, determines the nature of the prosecution and hears the cases. This Board therefore acts as the government, the legislature, the police, the prosecutor, the judge and the jury.

1. When a Board has such draconian powers, the danger is that they become autocratic and learn that it is most convenient to rule the profession by fear and without being questioned; they may become dictatorial and tyrannical. They are in danger of forming a small inner ring of chosen people and indulge in favours-for-friends, nepotism, bias, cover-ups, secrecy, unlawful behaviour, bullying and other psychopathic behaviour.
2. The SAVC does not screen complaints properly. This leads to poor complaints management and the unnecessary risk of unfair conviction.
3. The SAVC is still confused about the meaning of *screening vs investigation* and *inquiry vs hearing*.
4. The SAVC introduced "search and seizure" legislation and summary suspension from practice. In the VDA's view, no veterinary statutory body should ever be granted such draconian powers. Such powers are at odds with a country purporting to have a rule of law and a bill of human rights.
5. The SAVC still does not properly comprehend the rights to silence, not to be compelled to provide incriminating evidence and the right to a fair trial, as embodied in the Bill of Human Rights, which is the highest law of the land.

6. The SAVC has grossly mismanaged the access to dangerous drugs by lay people and continues to do so. The SAVC openly condoned the supply of M99 to lay persons by veterinarians through the 1990s; this has now backfired with the scandal regarding rhino poaching. The SAVC continues to authorise lay people to get access to anesthetics, euthanasia solutions and other dangerous drugs.

The VDA's views are that such actions are unlawful.

The SAVC has recently published the following (VDA comments follow in square brackets):

Did you know?-

That a complaint is not processed or submitted to the Investigation Committee [IC] if the client does not confirm that s/he has paid the account in full.

[This has not taken place to the VDA's knowledge to date, but the VDA hopes that this promise is carried out in the future].

How is a complaint dealt with when a complainant makes telephonic contact?

The client is requested to first take the matter up with the veterinarian. Only if the client/ complainant is not satisfied with the outcome, is the client/ complainant informed by the Administration of the complaints procedure.

May a complaint be submitted without a sworn statement?

No, the complaint has to be in affidavit form. Not everyone is au fait with what a sworn statement is and/or what an affidavit should look like and the Administration will guide members of the public/ complainants on how to submit a statement, or the complainant may peruse the relevant links on the SAVC website. It should be borne in mind that a sworn affidavit is confirmation of the truth in a court of law.

[Unfortunately, the SAVC still accepts complaints that are not in affidavit form or do not comply with all the legal requirements for an affidavit. Coupled with this, the SAVC still accepts complaints made by parties other than the owner of the animal. These issues create problems of fairness and lawfulness that could so easily be prevented by better administration.].

Can a complainant submit a complaint a year after the service had been rendered?

No, the IC who screens complaints and responses will not consider the complaint if there are not valid grounds for the delay in the submission of the complaint exceeding 12 months.

[Unfortunately, the SAVC still seems to accept complaints older than 12 months, even when the complainant has no valid excuse. Any excuse seems to be accepted. Again, this problem could be solved with more critical administration].

What process is followed when a complaint is received?

The veterinarian has an opportunity to provide his/her version of the matter, and has 60 days to respond.

Who screens the complaint and the response?

The Investigation Committee [IC] screens the complaint and the response and takes in all relevant information and/or mitigating circumstances into consideration. If the veterinarian prefers not to respond then only the complaint is screened. It is important to realise that the IC can only evaluate and rule on a

complaint with the information at its disposal, thus to follow the rule of 'more is better than less' (including patient records) at submission is always prudent.

[This is completely incorrect. Firstly, the SAVC should examine the complaint to establish whether the SAVC have jurisdiction (scope and power) to try the complaint. The next step is to screen the complaint. The correct procedure for screening complaints is to establish whether the complaint, in isolation and on its own merits, objectively places the veterinarian on his or her defence. In other words, frivolous, vexatious and groundless complaints should be dismissed at this stage, and only complaints that create a sufficient case against the veterinarian to justify Investigation (which is the next stage of disciplinary proceedings) of the matter should be considered for investigation. Since screening (like establishment of jurisdiction) is a preliminary step, the accused veterinarian should not be engaged and should not be "asked to provide his/her version of the matter". A response to the complaint can only be lawfully requested if and when the Board has established that the accused veterinarian has a valid case of sufficient substance to answer. In 1992, the VDA requested that, in the SAVC's request for a response, VDA members be informed of their rights to silence and that they are not compelled to provide a response. In addition, the VDA negotiated a 60 day period for response. These are still in place today (kudos to the SAVC).

When a Board is faced with a response of silence, then it is obliged to conduct any further investigation with reference only to the material before it and to base any decision to prosecute or not on an objective evaluation of that information.

So why would an accused veterinarian refuse to provide information? "Surely if I just tell the Board what happened, the Board will accept this and then 'all will be well!'" Not necessarily. This is one of the biggest fallacies in the veterinary profession, and one that gets a lot of innocent veterinarians convicted.

Remember that your case will be viewed in isolation; remember that the SAVC is notorious for applying the incorrect "test of perfection" (with the benefit of hindsight), rather than the correct test of whether the conduct reached minimum practice standards. If you were ever accused by your demented neighbour of rape and murder, your best defence may be to make the State prove a proper basis for the accusations against you, and to remain silent until they do. If you value your veterinary licence and professional integrity and reputation as much as you do your personal freedom, then your best defence tactic may be the same. All countries with a rule of law acknowledge that courts wrongfully convict people and provide you with the right to be considered innocent until proven guilty and the right to oblige the State to prove your guilt without your assistance. Any veterinarian that gives up these rights risks an improper conviction by the SAVC].

Who are the members of the IC?

The chairperson of the IC is an elected Councillor, the members are your colleagues involved in private practice and state veterinary services and represent rural, urban, companion and large animal practice.

Expertise is co-opted if necessary. The Administration merely facilitates the complaints process by

assisting in the smooth running of the meeting, providing records or database information, taking minutes and a record of decisions, and can be consulted for legal advice if so required.

[A peer evaluation system has great merit, provided your peers are properly advised and trained.

Unfortunately, your peers on the SAVC have never had the benefit of proper advice and training, which has led to a hit and miss approach and many unfair convictions. It would take the will of the SAVC and some effort to establish proper channels of advice and training. Since the SAVC expects high standards from veterinarians, why shouldn't the profession hold the SAVC to the same high standards?].

What is the approach of the IC?

The IC screens the complaint to assess whether there are grounds for a complaint or not.

[The SAVC confuses screening with investigation. See above.].

What is the test used to assess whether there are grounds for a complaint?

The test is whether the veterinarian did what the reasonable veterinarian would have done in the particular circumstances.

[This is the incorrect test. The 'reasonable veterinarian' test is the test applied by the civil courts for claims of damages in cases of veterinary medical negligence. The SAVC does not have the jurisdiction to try cases of negligence. The correct test is whether the veterinarian reached the required minimum standards of practice.].

CASES:

1. Case DM1612:

In this case, the VDA has written a letter to the President of the SAVC to protest the apparent failure of the SAVC to screen the complaint. According to the SAVC website and numerous newsletters such as Number 37 & 38, the SAVC claims to screens complaints.

As in previous cases, the VDA has stated that *Screening* requires that the SAVC applies its mind to the complainant's allegations in isolation and on their own merits in a judicial manner with due regard for the fundamental human rights of the accused, including the right to Fair Administrative Action and the right to practice their profession without undue interference and with due respect for the Rules of Natural Justice and the Bill of Rights.

The duty to screen complaints means that the SAVC must determine whether the offending conduct as described by the complainant, if proven, would reasonably place the accused veterinarian on his or her defence. Any averments that are frivolous, vexatious, groundless or without substance must be rejected without requiring the veterinarian to respond.

It is apparent that the SAVC secretaries simply receive complaints, attach standard covering letters and send these to the accused veterinarian, without any Council veterinarian screening the information in the complaint. We have asked the SAVC to correct this statement if it is not correct; to inform us of the date in which the SAVC met to examine this complaint and to provide full written details of their decision in terms

of Section 5 of the Promotion of Administrative Justice Act. And, if this statement is not challenged, the VDA shall assume it to be correct for all purposes.

It is clear that the SAVC has once again failed to screen the complaint in this case. Consequently, the SAVC has failed to recognise the following issues:

1. Our member has never met the complainant, never had anything to do with the complainant or anyone related to the complainant.
2. The dog that is the subject of the complaint is a stray and is not the property of the complainant or any other known person.
3. The averments made by the complainant relate to the welfare organisation's management of the aforesaid stray dog. Our member is an employee of the welfare organisation, has nothing to do with the management of strays and had nothing to do with the management of this case.
4. Our member did nothing more than assess a stray dog in hospital and recommend that a stray dog that was *in extremis* with terminal neglected Ehrlichiosis with zero prognosis be euthanased in order to end its suffering.
5. The complainant acknowledges that she was never present at the welfare organisation before, during or after the treatment and euthanasia of the stray dog.
6. The complainant acknowledges that a third party presented the aforesaid stray dog to the welfare organisation and signed an admission form, which states that:

"I also freely surrender all my interests, if any, therein to the [welfare organisation] and I request that the animal be dealt with as deemed advisable in the discretion of the [welfare organisation]. It is expressly agreed that neither the [welfare organisation] or its officers and employees will incur any obligation to me on account of such disposition of said animal."

1. It is clear from the complaint and the complainant's website that the complainant is an animal rights activist that believes that animals should be granted human rights, including the right to life, but apparently not the right to be humanely euthanased, even when the animal is suffering, in a terminal state and beyond help. Whatever the complainant's beliefs, our member acted within current *mores* of society and more specifically within the ethical obligations expected of veterinarians to end their patient's suffering when there is no hope.
2. The SAVC has the jurisdiction only to evaluate complaints of misconduct against the yardstick of currently accepted professional behaviour. The complainant's crusade falls outside of the SAVC's disciplinary powers and jurisdiction.

It is therefore clear that:

- a) this complaint is groundless and vexatious,
- b) there is no complaint which places our member on her defence,
- c) the issue raised, if proven, does not amount to unprofessional or improper conduct,
- d) our member had no dealings with the complainant,
- e) and therefore this complaint should have been dismissed at the screening stage.

If the SAVC does not agree, the VDA has requested full written reasons for this decision in terms of Section 5 of the Promotion of Administrative Justice Act. In terms of this Act, the SAVC has ninety days within which to produce these reasons.