

LAW



CPD BOOKLET

The laws and ethics relevant to general veterinary practice in South Africa

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The Veterinarian / Veterinary para-professional and the South African Law

South African Veterinary Council

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The Veterinarian and the South African Law 2016

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Introduction

Message from Registrar: South African Veterinary Council

Dear Colleague

The SAVC as the regulatory body of veterinarians and veterinary para-professionals in South Africa extends a warm welcome to you as you enter veterinary practice in South Africa.

To ensure that your induction period into practice in South Africa is a smooth one we compiled this CPD booklet to apprise you of the laws and ethics relevant to general veterinary practice in South Africa. This CPD booklet attempts to address most of the laws and ethics applicable to veterinary practice in South Africa, but it is by no means comprehensive.

You will be required to peruse the legislation relevant to your particular field of practice and be Continued Professional Development (CPD) compliant whilst practising in South Africa. The SAVC's website at www.savc.org.za is regularly updated with information and can be used as a reference.

For further information please contact the SAVC at:

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Chapter 1: General principles of South Africa Law

The Constitution and general concepts

The Constitution

The legal landscape in South Africa changed on the 4th of February 1996 when the Constitution of the Republic of South Africa (hereafter called the Constitution) came into operation. In accordance with section 39 of the Constitution (Constitutional Assembly, 1996, s. 39), courts have to interpret all legislation in the light of the fundamental rights entrenched in the Bill of Rights. The Constitution is thus the supreme law (highest law) of the country and all legislation are measured and interpreted against the Constitution (i.e. the values which underlie the Constitution).

The most important part for veterinarians and veterinary para-professionals as managers, employers and professionals is the section dealing with fundamental human rights (Bill of Rights S7-S39) (Constitutional Assembly, 1996, ss. 7-39).

These include:

- Equality before the law (everyone)
- The right to life (everyone)
- The right to human dignity (everyone)
- The right to freedom and security of the person (everyone)
- No person may be subjected to servitude (political domination), slavery or forced labour (everyone)
- The right to privacy (everyone)
- Everyone has the right to their own religion, belief and opinion (everyone)
- Freedom of speech and expression (everyone)
- The right to assemble and demonstrate peacefully or present petitions (everyone)
- Freedom of association (everyone)
- Every **citizen** have the right to freely choose their place of residence or freely move within South Africa
- No **citizen** may be deprived of citizenship
- Every **citizen** has political rights
- Every **citizen** has the right to choose their trade, occupation or profession
- **Everyone** has the right to have disputes resolved by Court / other forums (disputes that can be resolved by application of law)
- **Everyone** has the right to access information held by the state
- **Everyone** has the right to administrative action that is lawful, reasonable and procedurally fair.
- **Detained, arrested and accused** persons have the right to a fair trial and various other rights as described in S35.

- **Every worker/employer** has the right to fair labour practices and can join trade unions (employee and employer).
- **No one** may be deprived of property except in terms of a law of general application (everyone).
- **Every person** has the right to an environment which is not detrimental to health or wellbeing
- **Everyone** has the right to adequate housing, emergency medical care, health care services, food and water, social security.
- **Children** have the right to citizenship, parental care, security, basic health and social services.
- Right to use the language and participate in the culture of their choice(**everyone**).
- Right to basic education and access to educational institutions(**everyone**).

Please note that no legal or fundamental right are exhaustive (unlimited), but all rights have limitations or borders:

36. Limitation of rights.-(1) *The rights in the Bill of Rights may be limited only in*

terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-

- (a) the nature of the right;*
- (b) the importance of the purpose of the limitation;*
- (c) the nature and extent of the limitation;*
- (d) the relation between the limitation and its purpose; and*
- (e) less restrictive means to achieve the purpose.*

(2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights. (Constitutional Assembly, 1996, s. 36)

Basic Interpretation of statutes (laws)

- Please note this paragraph only highlights some basic concepts of interpretation to assist veterinarians or veterinary para-professionals in understanding relevant legislation and to enable them to comment on legislation.
- The purpose of the legislation (the short and long title) are very helpful to assist in interpreting an Act. The purpose can also be specifically mentioned in the relevant Act.
- Note the definition clause: a specific meaning is given to a term in the definition section, thus the term acquires a specialised technical meaning in that particular legislation.
- Terms or words with no definition takes on the general meaning i.e. the dictionary meaning, as well as the meaning within the context of the Act as a whole. (Botha, 1998)

Reasonableness

- Reasonableness is a concept that is used in administrative law, but the principle can be applied to especially **ethics cases**.

- Reasonableness is important when discretionary powers of officials are evaluated. Discretionary powers are the freedom to decide in a particular situation (Hornby, 1995).
- Basically the merits of the decision are evaluated when reasonableness is applied to a case.
- Unreasonableness can be due to: bad faith (*mala fides*), **failure to apply the mind duly and properly**, ulterior motives, irrelevant facts taken into consideration etc. (Burns, 2003)

Justifiability

- If a person's rights are adversely affected by an organ of the State w.r.t. administrative action he/she may request written reasons to explain the decision. This principle is applicable to administrative law, but can assist when considering ethical issues.
- Justifiability refers to having a good reason or good reasons for the decision.
- This concept plays an important role in the exercise of discretionary powers.
- Promotion of Administrative Justice Act 3 of 2000 (South African Government, 2000): S6(2)(f)(ii) describes the rationality test i.e. rational decision making (based on reason and logic):
- The decision should be logically connected to the:
 - purpose for which action was taken;
 - purpose of empowering provision;
 - information before the administrator; and
 - reasons given for it by the administrator (90 days).

Thus the veterinarian or veterinary para-professional needs to apply his/her mind (not just following a protocol by the letter, but "thinking" about what you are doing) when presented with an animal and take actions for a good reason. Also refer to unreasonableness above.

Norms, morals, ethics, laws

Norms are standards of behaviour which have been accepted by the community. Norms may vary from one culture, religion or country to another.

Norms determining human behaviour can be divided as follows:

Morals: Morals are norms that have a "*right and wrong*" attached to the behaviour e.g. envy, anger, dishonesty, cruelty, and infidelity, etc. These attitudes, if not controlled, harm the individual and his/her neighbour.

Social norms: These norms control facets of behaviour such as fashion, courtesy and convention e.g. *good manners*.

Aesthetic norms: *Norms of appreciation of beauty* and the morally good things in life e.g. aesthetic norms are design of buildings in a neighbourhood, neatness in a veterinary clinic etc.

Ethical norms / Ethics:

Ethics are principles or **beliefs**, that governs a person's view of the **right/wrong**, good/bad, just/unjust etc. of a situation.

- **Personal ethics** are related to the discretion of individuals (e.g. religion, charity),
- **Professional / ethical norms** regulate the behaviour of a profession.

The trust and respect of the community towards the profession, is the prime motive for maintenance of ethical behaviour at its highest possible level. The veterinary profession is largely under autonomous control via legislation namely the Veterinary and Para-Veterinary Professions Act 19 of 1982, as amended by the Veterinary and Para-Veterinary Professions Amendment, Act 16 of 2012 (the Amendment Act). The Amendment Act came into operation on 9 November 2015..

Laws: Norms can be developed into laws, that is, **norms which the whole community accepts as binding and are obeyed by the whole society**. Laws are modified and developed to adapt to the changing requirements of the community or nation.

Laws:

- govern human behaviour;
- are obeyed by all society;
- are systems of rights and obligations;
- are enforced by state organs; and
- if they are disobeyed may lead to prosecution or to some type of punishment.

Definitions

- **Legal subject:** Is a person who is subject to law (i.e. have rights and duties under these laws). Every person is a legal subject (also called a **natural person**), however organizations or companies may have a separate legal personality (also called a **juristic person**) which is independent of the legal personality of the members e.g. a company, university, the State (Snyman, 2008). Legal subjects have a duty not to infringe on the **rights** of other legal subjects e.g. their rights towards legal objects (e.g. ownership of practice building).
- **Legal object:** A legal object is something that has economic value e.g. a horse, a vehicle etc.
- **Rights:** Various rights exist e.g. (Neethling et al., 2006):
 - **Real rights:** refer to "things" e.g. the right to own a vehicle.
 - **Intellectual property rights:** creations of the mind e.g. copyright.
 - **Personal rights:** right to performance / service e.g. employee service.
 - **Personality rights:** personality property e.g. name, reputation, body, privacy etc.

Sources of South African Law

- Legislation.
- Court decisions (In South Africa we have the **judicial precedent system** – the verdict of a court is more or less binding on a court of the same or a lower order on a legal principle based on similar facts (Snyman, 2008).
- Common law (“gemenereg”): Common law is not contained in legislation i.e. it is traditionally handed down from Roman-Dutch law and influenced by English law, but most of these principles are explained and developed in case law (Snyman, 2008).
- African indigenous law and customary law.
- Other legal systems (other countries), books and experts opinions only have persuasive influence and are not law.

Division of law and liability

- Public law consists of e.g. the Constitution, law of evidence, civil and criminal procedures, international and administrative law.
- Private law consists of e.g. law of things (property), law of contract and law of delict.
- Labour law and mercantile law consist of aspects of public law and private law.

Law of things / property

This is the law of material goods (things) and the relationship of persons towards these goods. A person has a real right on a legal object, which she/he can maintain against other persons who infringe on these rights. These rights are e.g. important with regard to ownership of animals as well as buying, selling, renting or leasing a veterinary practice. (Things = physical object = corporeal object)

Ownership. This is the most comprehensive of all rights. It enables the owner to practice a very wide range of rights in relation to his/her property. These rights are limited by public law and by the rights of others, which might be infringed.

Governance (power/authority) or functions: legislative, executive, judicial

The Constitution (Constitutional Assembly, 1996) also lays down the framework for South African governance as follows:

- **Legislative:** Responsible for the creation of law, such as the passing of new laws (e.g. Acts of Parliament) and the changing of existing ones. The legislative function rests with Parliament. Laws formulated by the State (executive) are passed by the legislative body (Parliament). Provincial authorities may also promulgate laws and local authorities can pass by-laws.
- **Executive:** The executive function rests with the President, who is also the Head of State (this includes the government departments).

- **Judicial:** The judicial function rests with an independent judicial authority which administers justice through the courts and also develop law by means of the judicial precedent system (see above).

Criminal trial Contravention of certain Acts passed by Parliament is a criminal offence. The person contravening such laws will be prosecuted at the expense of the state. An example of a criminal offence is theft (state vs. accused, appellant vs. state). The burden of proof in such cases is **beyond reasonable doubt**.

Civil trial A person who has been wronged (plaintiff) brings his opposition (respondent) to Court (plaintiff vs. defendant, applicant vs. respondent, appellant vs. respondent). The burden of proof in such cases is on a **balance of probabilities**.

Liability
**“aanspreeklik-
heid”** Refers to accountability, responsibility or answerability. In criminal law liability is determined by investigating the voluntary conduct of the accused, compliance with the elements of the crime (i.e. did the accused meet all the elements that constitute the crime), unlawfulness and culpability (Snyman, 2008).

Chapter 2 Civil liability

General Civil liability can arise through delict, contract or due to labour issues (civil or criminal liability). The law of delict or the law of contract can be used by owners to claim damages from veterinarians or veterinary para-professionals for malpractice suits e.g. compensation for when an animal dies unexpectedly and the owner believes the veterinarian or veterinary-para professional is at fault (negligence or intent).

Law of delict, vicarious (strict) liability and negligence.

Definition and general principles A general principle in law is that damage (harm) rests where it falls, but the burden of damage can be shifted by means of certain principles in law. One of these principles is the law of delict (please note the law of delict is a principle of South African law and not a statute or legislation).

A delict is a conduct of a person⁽¹⁾ that in a wrongful⁽²⁾ and culpable⁽³⁾ way causes⁽⁴⁾ harm⁽⁵⁾ to another. 1 – 5 are also called the elements of the delict (Neethling et al., 2006) i.e. all five elements should be present before a respondent in a court case (instituted by the plaintiff) are obliged to compensate (if so instructed by the Court) the plaintiff for damages.

Elements: Conduct “optrede” (1) Conduct can be classified as a voluntary human act (commission) or omission i.e. not doing something. Please note if a person uses an animal as an instrument it is still seen as a human act (Neethling *et al.*, 2006). Some examples of a failure to act (omission) are (Neethling *et al.*, 2006):

- where a person has by virtue of a positive act caused a potentially harmful situation to develop and then fails to act in order to avert the danger from others;
- where someone has control over a dangerous object and fails to exercise proper control so that another suffers harm; and
- where a person is required to perform a positive act which she/he fails to do, to another person's detriment e.g. where one is in a particular relationship with another person which requires this act, where a person in public office is required to perform it or where a statute requires it.

Elements: Wrongful “onregmatig” (2) The test used by the courts to establish wrongfulness is normally an objective test namely the reasonable person test (The reasonable person is a legal personification i.e. a person with a

certain minimum knowledge and mental capacity.) Refer to reasonable veterinarian or veterinary para-professional test below.

The courts also take into account the infringement (“inbreuk / oortree”) of subjective rights (weighing up of conflicting interest of the parties involved) and *boni mores* (legal convictions of the community or good morals) (Neethling et al., 2006, Carstens and Pearmain, 2007). *Boni mores* is a principle of the South African law that refers to public policy and is interconnected with fairness, reasonableness and decency (Carstens and Pearmain, 2007).

Justification (excused by law) (“regverdiging”) (Neethling et al., 2006) may be:

- self –defense - to avert a danger to himself/herself;
- necessity (in protecting the interests of one party, a person violates the interests of a third party) - a person protects his own interests or that of another person against an existing or threatening danger and in so doing harms an innocent third person/party;
- provocation;
- consent (sport, medical treatment, agency);
- statutory authority; and
- official capacity.

Elements: Culpable = blameworthy (3) “skuld”

A person can only be held criminally accountable if he /she has the mental ability to distinguish between right and wrong.

A person can be found culpable (in criminal law) (accountable, “toerekenbaar”) or liable (in civil law), if he/she acted with intent (“opsetlik”) or with negligence (“nalatig”).

Intent is a subjective test i.e. a person’s attitude is taken into account. The Court evaluates what you “willed” or could/should have foreseen.

Negligence is an objective test namely the reasonable person test see above (Carstens and Pearmain, 2007). The Court may take into account the carelessness (reasonable steps not taken) of the person and /or the duty of care (duty of care towards the claimant’s animal).

Elements: Causation (4) “oorsaaklikheid/ kousaliteit”

Which harmful consequences can be attributed / imputed to the wrongdoer’s wrongful, culpable act (i.e. for which consequences would he/she be liable “aanspreeklik”)?

The Court will look at the facts of the case to determine if the conduct of the professional contributed to the harm (Carstens and Pearmain, 2007). If the facts indeed show that the conduct of the professional caused the harm or contributed to the harm, then the Court will consider whether the “harm caused” is directly linked (not too remote from the wrongful act). The Court normally takes into account direct and reasonably foreseeable (“voorsienbaarheid”) circumstances (Carstens and Pearmain, 2007).

Elements: Harm (5) “nadeel” Harm = Loss / damage
 Definition of harm: The detrimental impact upon any patrimonial property i.e. possess monetary value (Gardner, 2009) or personality (identity, feelings, reputation, dignity - e.g. defamation, pain and injury) or an interest deemed worthy of protection by the law.

- Remedies**
- An interdict is a court order to terminate the continuation of harmful activities that threaten the rights of another, or to force the wrongdoer to act in a certain way to avoid harming another (Neethling et al., 2006).
 - Alternative remedies (e.g. delictual or contractual court cases).
 - The disadvantaged party can claim for: [patrimonial \(direct monetary\) losses](#), personality infringements, pain and suffering. Pain and suffering in an animal cannot be claimed for.
 - The disadvantaged party may claim money as compensation.
 - Mitigation of loss: the person “harmed” should take reasonable steps to limit the damage.

Specific: Animals Damaged caused by animals:

Actio de pauperie (Neethling et al., 2006):

The claimant can claim damages from the owner of an animal which caused harm (damage). Fault (negligence / intent) by owner is not required.

- Requirements: claim must be made against the owner of the animal; it should be a domestic animal; the animal acted [contra naturam sui generis](#) (Refer to Delict – Biting dogs below.)
- Defenses: Provocation (e.g. the animal was provoked and then it attacked the person); voluntary assumption of risk; and unlawful presence

Actio de pastu is a claim for damages caused by grazing on another’s land (Neethling et al., 2006).

Delict – Biting dogs Case: *Thysse V Bekker* (Thysse v Bekker, 2007 (3) SA 350 SEC at 354C & 355A)

- The plaintiff’s 10 year old son had been bitten in the face by a dog, therefore the plaintiff claimed for damages.

Court’s decision:

- The dog acted *contra naturam sui generis* (acted contrary to the nature of his kind).

- The defendant could not prove that the child provoked the dog.
- An “Animal Behaviour Scientist” testified on behalf of the defendant – the testimony was used as a guideline, but the court based the finding on legal criteria and not on scientific criteria.
- The gist of the matter was that “... domestic animals have been under the influence of man for such a long time that a minimum standard of good behaviour can be expected from them.”
- The conduct of a specific dog was compared to a well-behaved animal of its kind (thus the reasonable dog test).
- The child did not approach the dog in a “menacing posture”, the dog’s previous experience did not precondition him to expect something “sinister from the child”.

Vicarious liability (“plaasvervangende aanspreeklikheid”)

A veterinarian may be held liable by third parties for negligence or deliberate wrongdoing by the veterinarian’s employees (e.g. workers, assistants) i.e. the veterinarian may be held liable for their conduct in delictual claims.

Escape from liability: The workers or assistants functioned or acted outside the scope of their employment (Carstens and Pearmain, 2007).

Negligence w.r.t. the veterinary profession

Please note: the reasonable person test now becomes the **reasonable veterinarian test or reasonable veterinary para-professional**.

Factors that can be taken into account include (Louw and Olivier, 1994):

General factors:

- specialty or area of expertise of the veterinary specialist; veterinarian or veterinary para-professional;
- necessary care and general competency of the veterinarians or veterinary para-professionals in this field (“vaardigheid en sorg”); or
- the veterinarian’s or veterinary para-professional’s duty at time of treatment (“plig”).

Specific factors:

- background information (“agtergrondkennis”) - e.g. the difference between doing surgery on a farm vs a theatre;
- a specialist vs a general practitioner (a veterinarian claiming to be a specialist will be evaluated as a specialist), thus a reasonable veterinary general practitioner vs a reasonable veterinary specialist;

- present knowledge and treatment methods in the profession;
- knowledge of new treatments (CPD compliance is thus very important!);
- *imperitia culpa adnumeratur* (see below);
- clinical error of judgment – as treatment methods differ the veterinarian or veterinary para-professional will be measured against a reasonable veterinarian or veterinary para-professional thus a veterinarian may be found negligent if e.g. he/she did not take an X-Ray to confirm a fracture or the severity of the fracture;
- normal practice vs not well known methods – again the reasonable veterinarian or veterinary para-professional test will be used to ascertain the culpability of the veterinarian or veterinary para-professional.

Imperitia culpa adnumeratur

- *Imperitia culpa adnumeratur*. This maxim means that “want of skill is reckoned as a fault” (Hiemstra and Gonin, 2008).
- South African law does not apply this principle directly, but rather applies it “...where a person undertakes an activity for which **expert knowledge is required [or skills]** whilst such person **knows or reasonably should know** that he lacks the requisite expert knowledge and **should therefore not undertake the activity** in question...” (Carstens and Pearmain, 2007).
- But what happens in an emergency situation where the veterinarian or veterinary para-professional is required to assist? [Necessity](#) (see definition under Law of Delict) has been a defense in South African law. Furthermore, if we adapt medical law to the veterinary profession a delictual case is unlikely to succeed if (Carstens and Pearmain, 2007):
 - There were no alternatives (e.g. a nearby colleague who can assist is not available or there is no colleague close enough to refer to);
 - Consent is present (i.e. the owner is informed of the professional’s lack of skill or knowledge and consent to the procedure being performed); and
 - The professional exhibits the same care and skill that a reasonable veterinary professional will exhibit in the same situation.

Negligence

In the Goliath case (Goliath v Member of the Executive Council for Health in the Province of Eastern Cape, 2015a (2) 97 SCA) the Supreme Court of Appeal’s judgement it was held that the plaintiff must prove that the damages sustained was caused by the medical practitioner’s negligence. Negligence was defined as follows “ *The failure of a professional person to adhere to the **general level of skill and diligence [carefulness]** possessed and exercised at the*

*same time by the **members of the branch of the profession to which he or she belongs** would normally constitute negligence.”*

Law of contract and informed consent

Definition and general concepts

A contract is an agreement (“verbintenis”), creating obligations (“verplichting”) e.g. one party has the right to performance and the other party has a duty to perform, that are seen as binding by law (Gardner, 2009).

Examples of contracts that a veterinarian can enter into (related to his/her practice are: contracts with employees, consent of clients, contracts with partners, buying a practice or a vehicle etc.)

A contract is only legal if an agreement (consensus) is reached between the parties. Consensus or agreement must be reached regarding (van Aswegen et al., 1996):

- the consequences (obligations or commitments);
- the fact that the agreement is legally binding; and
- the offer and acceptance (both parties must be aware that an offer was made and that it was accepted).

Mistakes /errors

Errors can make the contract null and void, the contract can be rectified or cause that the parties still need to perform depending on whether the mistake is material (affects consensus) or not. In some cases the parties can claim damages.

The lapse of an offer

An offer lapses in the following situations (van Aswegen et al., 1996):

- it is refused or rejected (turned down, counter-offer, conditional acceptance);
- after the expiry of the prescribed time or a reasonable time,
- death of offeree or offerer; and
- revocation (withdrawal) any time before acceptance.

Failure to comply with requirements

Formal requirements:
Certain kinds of contracts are legally bound to certain forms, e.g. the purchase and sale of land should be in writing. The contract will be invalid if it does not comply with the formal requirements.

Remedies & damages

- Innocent party insist on performance OR
- Innocent party accept defective performance OR
- Innocent party can cancel contract
- AND compensation (Important: the innocent party need to mitigate loss i.e. limit damage or loss and also cannot make it impossible for the other party to perform the obligations as contracted on).
- The law of contract only compensates for [patrimonial losses](#) and not e.g. pain and suffering (Carstens and Pearmain, 2007).

The contract between a veterinarian and a client

Verbal contracts in practice include:

- fee quotations (e.g. fee to neuter a cat);
- estimates for treatment (e.g. estimate for treating a puppy hospitalised with parvovirus);
- agreement on type of treatment to be done (e.g. Robert Jones or pinning):
- consent to a particular treatment or operation. (e.g. consent for ocular enucleation): and
- permission for euthanasia or necropsy or post mortem.

Remember: Verbal contracts are also binding, however they have the disadvantage that the parties may disagree about the obligations of the contract.

Damages claimed i.r.o. breach of contract

A veterinarian or veterinary para-professional may be held liable for negligence or deliberate wrongdoing by his/her client and damages may also be claimed via the breach of contract route. The plaintiff will have to prove that there were (Carstens and Pearmain, 2007):

- a breach of contract;
- factual causation between the breach of contract and the damages suffered;
- the damages were reasonably foreseeable and direct (i.e. close enough to breach); and
- damages sustained.

Refer to delict for more info on these elements.

Informed consent (“toestemming”) and right to treat

As a rule the veterinarian has **no absolute right** to treat an animal without the consent of the owner **unless** there is:

- a statutory duty;
- he/she assumed control over a dangerous situation, object or animal,
- there is a contractual duty; the *boni mores* directs that there is a duty to treat the animal (e.g. emergency treatment of an animal that is not a patient of the veterinarian) (Carstens and Pearmain, 2007);
- the veterinarian or veterinary para-professional created the source of danger and fails to prevent damage (Neethling et al., 2006);

- the veterinarian or veterinary para-professional occupies a public office which imposes a duty (e.g. a state veterinarian performing functions under the Animal Diseases Act); or
- there is a relationship between the parties that imposes a duty (e.g. a patient of the veterinarian) (Kruger, 2006).

Thus, a limited duty to treat animals exists. The Code of Conduct and Practice ([Section 3.2.2.](#)) summarises circumstances in which treatment may be refused.

Medical law case:

Castell v De Greef 1994 (Castell v De Greef, 1994 (2) SA 408 C)

Adapted for veterinarians: The veterinarian needs to warn the client of a **material risk** inherent in the proposed treatment.

A **risk is material** for that specific circumstances if

- **a reasonable person**, if warned of the risk, is likely to attach significance to it OR
- **the veterinarian is reasonably aware (or should be aware)** that that specific client, if warned of the risk, would be likely to attach significance to it.

[Consent may be excluded during emergency cases](#) (e.g. where a stray is involved), but the veterinarian must still conduct himself/herself in accordance with the conduct of a reasonable veterinarian (refer to *Imperitia culpa adnumeratur*). The legal view on consent has shifted from the medical practitioner or veterinarian that had an obligation to inform the patient or owner of the patient of the risk to the quality of a patient's understanding and the quality of the consent (Carstens and Pearmain, 2007).

Indemnity clause (disclaimer)

Adapted from medical law:

The purpose of an indemnity clause is to protect the practice against delictual claims e.g. due to negligence or intent or against a claim for breach of contract (e.g. the animal dies).

The clause may read e.g. that the owner may not claim for any loss or damage originated from any cause...". An indemnity clause is lawfully enforceable BUT limited by: gross negligence, gross unethical conduct, against public policy, conflict with professional code (Carstens and Pearmain, 2007). Thus, if gross veterinary malpractice or professional negligence are proven in court the veterinarian or veterinary para-professional cannot hide behind this clause.

Restraint of trade

Restraint of trade is recognised in South African law as lawful and constitutional (The New Reclamation Group (PTY) Limited v Davies and another, 2015b JOL 33043 GJ). The principle of reasonableness is

paramount in this type of agreement between an employer and employee. The contract normally places a restriction on an employee (e.g. a veterinarian) leaving the employ of the employer (the veterinarian which is the owner of the practice) to not open a new practice within a certain period and within the general area from the practice where he/she originally worked. It is also frequently part of a purchase contract i.e. when a veterinarian sells his/her practice to another veterinarian. The right to freedom of trade is balanced against the protection of a practice's client base. The person who alleged that he/she is not bound by the restraint of trade must prove that the clause is against public policy or is unreasonable. The Court will take into account if the area, the period and the scope of activities which the veterinarian are excluded from is unreasonable.

Labour law

General

Disciplinary actions or grievances of employees can be referred to the CCMA (Commission of Conciliation, Mediation and Arbitration) or the Labour Court.

Fair or legitimate dismissal (in accordance with legislation) is allowed for only three reasons: misconduct, operational (economic) requirements and incapacity (South African Government, 1995, Schedule 8, Code of Good Practice: Dismissal, Item 2(2)).

Operational (business needs)

Business needs are e.g. if the company are facing financial difficulties and needs to dismiss workers. Dismissal is by means of retrenchments. It is imperative that the employees or their union must be consulted (discuss options, reasons for retrenchment) and severance packages are given to the employees.

Misconduct

Misconduct is when an employee intentionally or carelessly breaks the rules of the workplace.

It is recommended that misconduct should be defined in a disciplinary code that the employee sign to indicate that he/she read and understood it. Disciplinary procedures and penalties should be mentioned in the disciplinary code.

It is important to record misconduct incidences as well as the handling of the situations and to keep copies of documents that can serve as evidence.

Verbal warnings and written warnings at various stages (e.g. first warning, final warning) can be issued and depends on the seriousness of the case.

Misconduct procedures should adhere to substantive fairness, i.e. the employer must prove that the rule exists; the rule must be reasonable;

the employees must have knowledge of rule or the rule was so common that they should have had knowledge of the rule (theft, assault on co-employees); the rule must be consistently applied; and the dismissal or disciplinary procedure should follow appropriate steps and the sanction should be appropriate (Basson et al., 2002, Schedule 8, Code of Good Practice: Dismissal, Item 7, South African Government, 1995).

A misconduct procedure should also adhere to procedural fairness (Basson et al., 2002) – refer to disciplinary hearing below (i.e. the procedures followed should also be fair).

Disciplinary hearings (some tips) Ten golden rules (M.E Louw, SAVA Conference, 2000)

Some tips w.r.t. disciplinary hearings:

- Take timeous action;
- Charge the person in writing (employee need to sign receipt of charge);
- The employee needs time to prepare a defense;
- The employee may have representation by another employee (or trade union representative) and an interpreter where appropriate;
- Witnesses can be called, cross examination of witnesses, examine documents;
- Findings should be in writing;
- Record the hearing (tape recorder and notes);
- The employee if found guilty must receive an appropriate penalty (compared to severity of transgression);
- The employee found guilty at a hearing has the right to appeal the verdict as well as the penalty; and
- There must be an impartial chairperson - not the employer (not applicable to small employers) (employers may use employers unions to assist in the process).

Counselling government (2010)

Counseling , in cases of incapacity, requires the following steps:

- State the problem;
- State the consequences if the person continues with the unacceptable behaviour or action;
- Request a response from the employee;
- Inform the employee of the change expected of him/her; and
- Offer assistance to the employee.

Remember: training is important where incompetency due to inability to perform the duties attached to the post is the problem. Assistance and counseling must be offered. Where incapacity is due to ill health , alternatives should be provided (e.g. working half day), if practicable.

Labour Acts

- Basic Conditions of Employment Act, 75 of 1997;
- Occupational Health and Safety Act, 85 of 1993 (The employer is required to bring about and maintain, as far as reasonably possible, a work environment that is without risk to the health of workers.);

- Labour Relations Act, 66 of 1995 (This Act gives details on the role of trade unions and collective bargaining. It also describes the functions of the Commission for Conciliation, Mediation and Arbitration (CCMA) and the Labour Court. The most important section is w.r.t. termination of employment that may constitute unfair dismissal);
- Compensation for Occupational Injuries and Diseases Act, 130 of 1993;
- Employment Equity Act, 55 of 1998;
- Employment Services Act, 4 of 2014;
- Skills Development Act, 97 of 1998;
- Skills Development Levies Act, 9 of 1999;
- Unemployment Insurance Act 63 of 2001;
- Unemployment Insurance Contributions Act, 4 of 2002;
- Details of all these Acts are available on the internet at <http://www.labour.gov.za/DOL/legislation>

Chapter 3: Criminal liability

General

Criminal liability can arise from a criminal act by a veterinarian. Different crimes have different definitions and elements (refer to the section on delict as an example of the use of the definition or elements to establish a delict).

The following elements will also be present in a crime: act or omission, unlawfulness, culpability (intent or negligence), causation and specific elements of the crime. In some cases even an accomplice can be charged with the crime.

Other laws of particular importance to the veterinary profession

Contravention of most legislation (e.g. Medicines & Related Substances Control Act, 101 of 1965), may lead to criminal prosecution and disciplinary action by the Veterinary Council if the veterinarian is found guilty.

Chapter 4: Professional or ethical liability

Professional ethics

Sources of professional ethical guidelines for the veterinarian are:

- Veterinary & Para-Veterinary Professions Act;
- Regulations promulgated under the Veterinary & Para-Veterinary Professions Act;
- Rules relating to the Practising Veterinary Professional,
- Code of Conduct and Practise for Veterinarians,
- SAVC Newsletters, and
- precedents in court cases, especially medical law.

Refer to the SAVC website for more information. [LINK It is very important to read all Newsletters carefully to ensure that the veterinarian stays updated regarding SAVC policies.](#)

The Veterinary profession

The veterinary profession is one of a number of independent professions which render a service to the community and are governed by a regulatory body by law (the SAVC).

The South African Veterinary Council (SAVC)

This is a statutory controlling (regulatory) body that functions autonomously. Its composition (constitution) is laid down in the Veterinary and Para-Veterinary Professions Act. Apart from administering purely ethical rules, the Veterinary Council monitors professional practice standards (unprofessional conduct) and or statutory (criminal) transgressions. The Council protects the triangular interests of the public, the professions and the patients, as well as mediate disputes between veterinarians and veterinary para-professionals. Should a veterinarian or veterinary para-professional be found guilty of a criminal offence, further steps may be taken by the Veterinary Council. It is however not a requirement that the person must be found guilty before Council can institute its own investigation. The criminal process in Court can run parallel to Council's investigation. The processes are not mutually exclusive.

Professional conduct

What constitutes professional conduct?

The Health Professions Act 56 of 1974 defines unprofessional conduct as "improper or disgraceful or dishonourable or unworthy conduct or conduct which, when regard is had to the profession of a person who is registered in terms of this Act, is improper or disgraceful or dishonourable or unworthy;". Unprofessional conduct can be adapted (veterinary field) and divided into four areas namely:

- veterinary malpractice,
- improper and disgraceful conduct concerning patients or owners,
- improper and disgraceful conduct towards colleagues, and
- other improper and disgraceful conduct unbecoming a veterinary professional (Carstens and Pearmain, 2007).

Unprofessional conduct is defined in rules 1 and 4 of the rules relating to the practising of the veterinary professions (the Rules), which came into effect on 9 November 2015. The rules further state that any conduct which, in the opinion of the Council, is deemed to be unprofessional conduct, can be regarded as unprofessional conduct.

Common law principles of professional liability can be used to assist in answering the question what conduct will be regarded as unprofessional, improper or disgraceful. The Oxford Advanced Learner's Dictionary defines the above mentioned concepts as follows (i.e. ordinary meaning) (Hornby, 1995):

- unprofessional – not reaching or opposed to the standards expected in a particular profession and; not done with the skill or care of a trained professional;
- improper - dishonest or morally wrong, not suited or appropriate for the situation or circumstances;
- dishonourable – losing respect or honour and
- disgraceful – causing disgrace i.e. losing the respect of others, a thing or person that is so bad that one feels or should feel ashamed.

The test for medical negligence is to assess if the veterinarian or veterinary para-professional has employed reasonable skill, knowledge, ability, experience, diligence and care (not the highest standard) (Carstens and Pearmain, 2007).

Aspects of veterinary ethics

The veterinarian as expert witness

- A witness testifies on facts, the exception to this rule is the expert witness whom gives an opinion (Van Vollenhoven et al., 2013).
- The expert witness is more equipped to give an opinion on his/her field of expertise than the Court .
- The witness needs to prove to the Court that he/she is an expert in the field: qualifications and expertise are important, but also practical experience (Van Vollenhoven et al., 2013, De Villiers and Vorster, 1994).
- If you are an expert witness, substantiate your opinion (your opinion must be relevant to the case).
- Your report (can be used to refresh your memory) and the affidavit must be accurate and well-thought through.

- Do not take sides – the Court decides the merit of the case and the conclusion, not the witnesses.
- The Court can discredit the opinion of the veterinarian if the veterinarian's qualifications are not relevant, the testimony is unreliable or not credible or if there are discrepancies in the witnesses statement or testimony.
- Admit if the question is beyond your expertise.

Compounding & administration of certain schedule 5 & 6 medicines

It is very important to thoroughly familiarise yourself with the exact requirements of rule 10. Contravention of rule 10 is regarded as very serious unprofessional conduct and may lead to a fine of up to R 500 000, suspension or removal from the register, if found guilty.

Extra-label use of pharmaceutical products

Please refer to rule 10.

Rule 1 defines "extra-label use" as meaning the use of a medicine registered under either the Medicines and Related Substances Control Act, Act 101 of 1965 or the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, Act 36 of 1947 in an animal in a manner that is not in accordance with the approved labelling or package insert. This includes, but is not limited to, re-formulation for ease of administration, use in species not listed in the labelling, use for indications (disease and other conditions) not listed in the labelling, use at dosage levels, frequencies, or routes of administration other than those stated in the labelling.

In addition to rule 10, guidelines in using drugs extra-label are:

- If the animal is insured consider what would the implications be if the animal dies; and
- Written consent is advisable.

The SAVC requires a veterinarian-client-patient relationship, which is defined in rule 1 as follows::

- the veterinary professional has assumed the responsibility for making professional judgments and/or treatment regimens regarding the health of a patient or improvement in the production of the animal or animals, at the request of the client;
- the veterinary professional has sufficient personal knowledge to initiate at least a general or preliminary assessment of the condition of the patient by virtue of a consultation with the client; and
- clinical records are maintained.

If an investigation is held into the conduct of the veterinarian w.r.t. the use of extra-label use the veterinarian will have to prove via scientific data or conclusive empirical evidence that he/she acted in the best interest of the animal and in accordance with rules 1 and 10.

CPD

Veterinarians and veterinary para-professionals, if they are randomly selected and informed accordingly in writing by Council, or if requested by Council during the investigation of a complaint, must log the prescribed continuing education points within a certain time period to confirm registration as a veterinarian or veterinary para-professional. Please refer to the SAVC website. [LINK](#)

Secrecy clause

The Veterinary and Para-Veterinary Professions Act (South African Government, 1962) s 37 states that: *No person shall, except for the purposes of carrying out his or her functions or performing his or her duties under this Act or for the purpose of legal proceedings under this Act or when required to do so by any court or under any law, disclose to any other person any information acquired by him or her in the carrying out of his or her functions or the performance of his or her duties under this Act and relating to the business or affairs of any person registered or deemed to be registered in terms of this Act.*

The new rules (in effect from 9 November 2015) investigate this concept further in rule 4(3)(d) and states that secrecy is to respect the confidentiality of information acquired as a result of professional services and the relationships emanating therefrom, and, therefore, not disclose any such information to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose, nor use the information for the personal advantage of the veterinary professional or third parties.

The previous rules gave more insight in the secrecy clause: The Rules Relating to the Practising of Veterinary Professions Rule 13 explained the secrecy clause further

13.(1) A veterinary professional shall treat all information obtained by him/her in the course of the practise of his/her profession, and which relates to an animal, as strictly confidential, irrespective whether that information has been obtained as a result of the examination, diagnosis or treatment of that animal, or has been disclosed to him/her by another person.

(2) Information referred to in rule 13(1) -

(a) may subject to the provisions of rule 13 (2)(b) and 13(2)(c) only be revealed to another person with the consent of the owner of the animal concerned;

(b) shall be revealed by the person concerned if he/she is directed thereto by a court, or is obliged thereto under some or other law; and

(c) may be revealed by the person concerned if he/she is of opinion that the public interest outweighs his/her obligation to the owner of the animal concerned.

Public interest is a concept that is not clearly defined in South African law. The court objectively evaluates whether the action is “reasonably necessary in the interest of the public” and it outweighs the “hardships it will cause” the individual (Carstens and Pearmain, 2007). It is a flexible concept that can change if the circumstances change (Carstens and Pearmain, 2007).

Telemedicine / cybermedicine / e-health

With advancement of new technologies these branches of the practice of medicine and veterinary medicine has also developed. The South African law gives little guidance on how to deal with issues surrounding e-health (e-health is the generic term used to encompass the other terms) (Carstens and Pearmain, 2007). Telemedicine refers to clinical or supportive medical practice delivered across the various telecommunication mediums by authorised veterinarians (Carstens and Pearmain, 2007). This type of veterinary care is mostly practiced by veterinary behaviour practitioners due to the shortage of veterinarians in this field. The Executive Committee of the Medical and Dental Practitioner Board advised the medical practitioner and dentist as follows (Carstens and Pearmain, 2007):

- The medical practitioner or dentist are personally responsible for the diagnosis regardless of how it was obtained; and
- A medical practitioner or dentist may only issue a prescription on a personal examination of a patient or a report by another practitioner.

Veterinary practitioners assisting clients by means of a telephone consult clearly have a few ethical issues to consider namely that:

- A veterinarian may not dispense medicine on behalf of another veterinarian(i.e. if they send a report or prescription to another to prescribe medication on their behalf);
- There must be an existing veterinarian-client-patient relationship;
- A personal examination may be required (refer to ethical decision by the executive board above);
- Not all general practitioners (veterinarians) have the necessary skills or knowledge to prescribe behaviour associated medicines; and
- The plight of the animal (animal welfare concerns) should be taken into consideration (i.e. needing medication to ease the distress etc.).

The SAVC has not ruled or given guidelines on this issue, therefore the author recommends the following course of action: The veterinary behaviour practitioners should:

- gather information via a questionnaire and videos where appropriate;
- discuss and send a report to the private veterinarian who should perform the physical examination;
- have a collegial discussion on the recommended drugs, dosage side effects, etc.;
- send his/her recommendations to the private veterinarian.

If the animal needs medication the private veterinarian should prescribe the medication, after he/she satisfied him/herself that the medicine is indeed indicated and monitor the effects taking into consideration the advice of the veterinary behaviour practitioners or other veterinarian, as the case may be.

The SAVC does not accept online consulting as ethical, as a diagnosis based on a physical examination needs to be made and that can only be done if the animal was seen. The prescribing and/or dispensing of medicines requires that the veterinarian must have physically examined the animal and that the veterinarian must have a veterinarian-client-patient relationship with the client and the patient. Any deviation from these principles will have to be justified at the hand of the merits of each case in the event of a complaint.

Tail docking

The SAVC decided as of 1 June 2008 it will no longer condone routine tail docking of puppies by veterinarians and considers it to be unprofessional conduct, unless there is a valid medical reason for performing the procedure. Please refer to SAVC website and the Code of Conduct relating to the practising of the veterinary professions. [LINK](#)

Pain control

In the *Carl W. Seemann v Minnesota Board of Veterinary Medicine* (Minnesota Board of Veterinary Medicine v Carl W. Seemann, 2006) the board suspended a veterinarian found guilty of incompetence as well as unprofessional conduct as Dr Seemann did not automatically administer post-surgical pain medication, but only administered if he observed pain. Dr Jane Quandt testified that since pain in animals follows the same nociceptive pathways as in humans, animals experience similar pain as humans and should thus be treated accordingly (minimum standard during surgery is pre-, intra- and post-operative analgesia). Although this case has no direct influence on South African law, it is of importance to note the seriousness with which the board approached this case and to realise that the facts of pain management also applies to South African veterinarians. Refer to the [Code of Conduct section 4.12.4.](#)

Criminal defamation and Civil defamation

Criminal defamation (crime of defamation or *crimen injuria*) “consist of the unlawful and intentional publication (means to spread the information - even by mouth can be seen as publication) of matter concerning another which intends to injure his reputation” (State v Hoho, 2009 (5) 276 SCA). In this case the courts ruled that:

- Although the Constitution (Constitutional Assembly, 1996 s. 16) entrenched the right of freedom of expression, freedom of expression is not unlimited as human dignity is also valued in the Constitution;
- The law of defamation, both criminal and civil, is designed to protect the reputation of people-

- For criminal defamation, seriousness is a requirement i.e. the reputation of the person/persons must be seriously harmed;
- The law recognised that if defamatory matter is:
 - true and published for the public benefit;
 - constitutes fair comment; or
 - is published on a privileged occasion,the publication is not unlawful, thus the defamation case will not be successful.

The same requirements are applicable to civil defamation, but with the exception that the requirement of seriousness is not mandatory and monetary compensation may be claimed.

Veterinarians and veterinary para-professionals should thus carefully consider comments made in public or to other people that could damage a person's reputation. If the defamation is regarding a colleague i.e. the dignity of a colleague is defamed - criminal, civil and ethical liability may be occurred.

Emergency treatment

Emergency treatment is a medical decision and not a legal concept (Carstens and Pearmain, 2007), thus the veterinarian needs to evaluate the situation and determine what constitutes an emergency based on his/her knowledge. A veterinarian is however not obliged to render emergency treatment until such time that the patient has fully recuperated, but must stabilise the patient and refer the patient to the patient's normal veterinarian or a welfare organisation, as the case may be. Should the client not be able to pay the veterinarian's fees for treatment after the patient has stabilised, the option of euthanasia, free of charge, must be provided.

Chapter 5: Legislation

Legislation of importance to the Veterinary Profession

A list of the most important legislation is included below – please follow the links to the relevant legislation. The list is not exhaustive.

- **Constitution of the Republic of South Africa, 1996:**

http://www.saflii.org/za/legis/consol_act/cotrosa1996423/

- **Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies 30 of 1947**

This Act controls stock remedies.

<http://www.daff.gov.za/daffweb3/LinkClick.aspx?fileticket=fF3Lyub1Ds%3d&portalid=0>

- **Medicines & Related Substances Control Act, 101 of 1965 (Act 101):**

Important aspects of this Act have been incorporated into the Rules Relating to the Practising of Veterinary Professions 2015. This Act controls veterinary medicines.

http://www.saflii.org/za/legis/consol_act/marsa1965280/

The regulations under Act 101:

- <http://www.mccza.com/Publications>; or
- http://www.saflii.org/za/legis/consol_reg/toc-M.html

- **Acts related to the Department of Health**

- **Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972**

https://www.westerncape.gov.za/text/2016/August/act_-_foodstuffs_cosmetics_and_disinfectants_act-54_of_1972.pdf

- **Genetically Modified Organisms Act 15 of 1997**

http://www.saflii.org/za/legis/consol_act/gmoa1997286/

- **Compensation for Occupational Injuries and Diseases Act 130 of 1993**

http://www.saflii.org/za/legis/consol_act/cfoiada1993493/

- **Pharmacy Act 53 of 1974**

http://www.saflii.org/za/legis/consol_act/pa197498/

Regulations:

http://www.saflii.org/za/legis/consol_reg/toc-P.html

Code of Good Pharmacy Practice:

<http://www.mm3admin.co.za/documents/docmanager/0C43CA52-121E-4F58-B8F6-81F656F2FD17/00052829.pdf>

- **Acts related to DAFF (Department of Agriculture, Forestry and Fisheries)**

<http://www.daff.gov.za/daffweb3/Resource-Centre>

The Meat Safety Act, 40 of 2000

<http://www.nda.agric.za/doaDev/sideMenu/APIS/doc/MEATSAFETY.pdf>

Animal Improvement Act 62 of 1998

<http://www.daff.gov.za/daffweb3/LinkClick.aspx?fileticket=LMEq7UH16Sw%3d&portalid=0>

Animals Protection Act 71 of 1962

<http://www.daff.gov.za/daffweb3/LinkClick.aspx?fileticket=ZaKZVUNYJaU%3d&portalid=0>

Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies 30 of 1947

<http://www.daff.gov.za/daffweb3/LinkClick.aspx?fileticket=fF3Lyub1Ds%3d&portalid=0>

Genetically Modified Organisms Act 15 of 1993

http://www.saflii.org/za/legis/consol_act/gmoa1997286/

Performing Animals Protection Act 24 of 1935 and the amendment Act - Protection of Animals Amendment Act 7 of 1991

<http://www.gov.za/sites/www.gov.za/files/Act%2071%20of%201962.pdf>

<http://www.gov.za/sites/www.gov.za/files/Act%207%20of%201991.pdf>

Onderstepoort Biological Products Act 19 of 1999

<http://www.gov.za/sites/www.gov.za/files/a19-99.pdf>

Societies for the Prevention of Cruelty to Animals (SPCA) Act 169 of 1993

http://www.saflii.org/za/legis/num_act/sftpoctaa1993521/

Veterinary and Para-Veterinary Professions Act 19 of 1982

http://www.savc.org.za/pdf_docs/Veterinary%20and%20Para-Veterinary%20Professions%20Act,%2019%20of%2082.pdf

Animal Diseases Act 35 of 1984

- http://www.saflii.org/za/legis/consol_act/aia2002189/
- <http://www.nda.agric.za/vetweb/Legislation/govgezet/Act-Wet%2018%20of%201991.pdf> (Animal Diseases Amendment Act, 18 of 1991)

Regulations:

<http://www.nda.agric.za/vetweb/Legislation/Animal%20Diseases%20Act%20MAIN.htm>

Animal Identification Act 6 of 2002

http://www.saflii.org/za/legis/consol_act/aia2002189/

- **Agricultural Product Standards Act 119 of 1990**
<http://www.nda.agric.za/docs/NPPOZA/APS%20Act.pdf>
- **Animal Diseases Act 35 of 1984**
 - http://www.saflii.org/za/legis/consol_act/aia2002189/
 - <http://www.nda.agric.za/vetweb/Legislation/govgezet/Act-Wet%2018%20of%201991.pdf> (Animal Diseases Amendment Act, 18 of 1991)

The Animal Diseases Act provides for the control of animal diseases and parasites, for measure to promote animal health, and for matters connected therewith.

Controlled diseases are listed in this Act as well as their control measures. The veterinarian and person in control of a laboratory are obliged to report controlled- and notifiable diseases to the nearest State Veterinarian. Certain vaccinations and treatments are compulsory for an owner or manager. Certain types of research requires a permit from DAFF, before the research may commence. Controlled areas have restrictions on the movement of controlled animals or products originating from them.

- **The Meat Safety Act, 40 of 2000**
<http://www.nda.agric.za/doaDev/sideMenu/APIIS/doc/MEATSAFETY.pdf>

Provide for measures to promote meat safety and the safety of animal products; to establish and maintain essential national standards in respect of abattoirs; to regulate the importation and exportation of meat; to establish meat safety schemes; and to provide for matters connected therewith.

The regulations contain detailed structural requirements for abattoirs. The only approved method of slaughter in South Africa is the line-slaughter system. This entails hoisting up the carcass before or during bleeding so that all subsequent slaughtering and dressing procedures are carried out with the carcass suspended on and moving along an overhead rail. The process must be designed so that the process moves in one direction without any cross-flow or

contamination of products. Abattoirs are classified as rural, low throughput or high throughput with structural requirements becoming more sophisticated with increasing throughput of the abattoir. Also regulated are hygiene management practices for the handling of carcasses and offal; cutting and processing meat; chilling and freezing meat; loading meat for transport and sanitation of the facilities. Animal welfare considerations are transport and handling of animals; lair aging and rest periods for animals prior to slaughter; emergency slaughter and isolation of sick animals; and procedures for humane killing of animals. Approved methods of stunning include captive bolt or electrical stunning that may be used on animals that are restrained in a stunning box or a stunning pen respectively. Any other method of killing must be pre-approved by the local provincial government. Hygiene requirements for persons entering abattoirs include regulations concerning health checks and cleanliness of personnel and suitable protective clothing. Certain actions such as the wearing of jewellery or eating, drinking or using or handling tobacco in areas where meat is handled is prohibited. The regulations also contain detailed procedures for inspecting carcasses and offal of a variety of species (cattle, horses, sheep, goats, pigs, poultry and ostriches) for diseases or aesthetically unacceptable conditions. Meat or offal that is considered unfit for human consumption must be condemned and securely stored until it can be disposed of in such a manner that these materials do not enter the human food chain. Meat that is approved as fit for human consumption must be marked in the specified manner. The import and export of meat is also regulated. No person may import meat into South Africa without prior approval from the national executive officer.

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- **Acts related to the Department of Environmental Affairs**

<https://www.environment.gov.za/legislation/actsregulations>

Veterinarians and veterinary para-professionals working with game should please note the various legislation applicable to game (e.g. CITES) available at the above mentioned website. Please also consult provincial websites or provincial legislation that may contain extra requirements and restrictions.

- **Acts related to the South African Police Services**

http://www.saps.gov.za/resource_centre/acts/juta_acts.php

Firearms Control Act 60 of 2000
Game Theft Act 105 of 1991
Stock Theft Act 57 of 1959

- **National Animal Pounds Bill: for public comments**

<http://www.polity.org.za/article/national-animal-pounds-bill-for-public-comments-gazette-36385-notice-398-2013-04-18>

Municipalities may have by-laws for pounds.

Chapter 6: Animal Welfare Legislation

Animal Welfare (some important legislation) In terms of legislation, people are legal subjects, whereas animals are legal objects. Because they have no rights, animals can only be protected by people, thus legislation has been developed to protect animal's interests and well-being and to prevent cruelty.

Important Animal Welfare Acts

- Animals Protection Act 71 of 1962
- Performing Animals Protection Act 24 of 1935
- Provincial and municipal ordinances and by-laws
- Societies for the Prevention of Cruelty to Animals (SPCA) Act 169 of 1993

Codes of Conduct

of Codes of conduct have been drawn up, for example for humane treatment and welfare of experimental animals, intensive poultry production and for animal transport. These are agreements and not laws and cannot therefore be enforced. They may, however, be considered a "norm" in a Court of law, if they are standards agreed to by a majority of role-players and stakeholders.

Local ordinances and by-laws

It is important that veterinarians keep up to date with local ordinances and by-laws regarding the welfare of animals. Municipalities usually have by-laws regarding stray animals and in some cases directives w.r.t. the keep of animals. Pound laws are also important.

Animals Protection Act

<http://www.daff.gov.za/daffweb3/LinkClick.aspx?fileticket=ZaKZVUNYJaU%3d&portalid=0>

Performing Animals Protection Act

<http://www.gov.za/sites/www.gov.za/files/Act%2071%20of%201962.pdf>

<http://www.gov.za/sites/www.gov.za/files/Act%207%20of%201991.pdf>

SPCA Seizure of Animals

http://www.saflii.org/za/legis/num_act/sftpocaa1993521/

Veterinary and Para-Veterinary Professions Act

http://www.savc.org.za/pdf_docs/Veterinary%20and%20Para-Veterinary%20Professions%20Act,%2019%20of%2082.pdf

Veterinary and Para-Veterinary Professions Regulations

General regulations:

http://www.savc.org.za/pdf_docs/vets_%20and_%20paravets.pdf

Facility regulations:

http://www.savc.org.za/pdf_docs/Facilities%20regulations.pdf

CPD regulations:

http://www.savc.org.za/pdf_docs/regulations_%20CPD.pdf

http://www.savc.org.za/pdf_docs/CPD-GG38783-gon390.15%20May%202015.pdf

CCS regulations:

http://www.savc.org.za/pdf_docs/Regulations%20relating%20to%20the%20performance%20of%20Compulsary%20Community%20Service.pdf

Veterinary Shop regulations:

http://www.savc.org.za/pdf_docs/Vet%20shops%20regulations.pdf

Regulations Relating to suspensions, inspections and appeals

http://www.savc.org.za/pdf_docs/Regulations%20relating%20to%20Suspension,%20Inspections%20and%20Appeals.pdf

Rules relating to the practising of veterinary professions

http://www.savc.org.za/pdf_docs/CoC-Review%20Final-4Nov2016.pdf

Code of Conduct and Practice for Veterinarians

http://www.savc.org.za/pdf_docs/CoC-Review%20Final-4Nov2016.pdf
