

Veterinary (Management of Complaints and Appeals) Regulations

G. N. No. 387 (contd.)

GOVERNMENT NOTICE No. 387 published on 25/11/2005

THE VETERINARY ACT, 2003
(No. 16 OF 2003)

REGULATIONS

Made under section 52

THE VETERINARY ACT (MANAGEMENT OF COMPLAINTS AND APPEALS)
REGULATIONS, 2005

PART I
PRELIMINARY

1. These Regulations may be cited as the Veterinary (Management of Complaints and Appeals) Regulations, 2005 and shall be read together with the Veterinary Council of Tanzania Inquiries Rules of 2004.

Citation

2. In these Regulations unless the context otherwise requires:

Defini-
tions and
interpre-
tation

“Act” means the Veterinary Act, 2003;

“Complaint” means a written statement made by a credible person which is filed with the Veterinary Council of Tanzania charging a person with having committed an act that, if proven, violates a law or regulation governing the practice of veterinary medicine or fraud or indicates potential professional misconduct, conduct unbecoming the profession, incompetence or incapacity. A complaint must allege with reasonable certainty each specific act relied on to constitute a violation of a specific law or regulation;

Interpre-
tation
Act No.
20 of
2004

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- “Complainant” means an person lodging a complaint or makes a complaint pursuant to the Veterinary Council of Tanzania Inquiries Rules of 2004;
- “Council” means as defined in the Act;
- “Gross misconduct” means the misconduct established under Section 49 and includes such conduct or acts relevant to the practice that, having regard of all circumstances which will be ragarded as disgraceful, dishonourable and tantamount to mass death of an animal or the client or the veterinarian or the population at large;
- “member” means a member of the Disciplinary Committee established under section 45 of the Act;
- “officer” means a member of the Inquiry Committee established under Section 46 of the Act and under the Veterinary Council of Tanzania Inquiries Rules of 2004;
- “respondent” means a person named in the complaint as the source of the complaint;
- “staff” means an employee of the Veterinary Council of Tanzania;
- “secretariat” means the office and staff of the Council;
- “paraprofessional” means any person defined under Section 2 of Act;
- “Paraprofessional Assistant” means a person defined under Section 2 of Act;
- “practice” means practice defined under Section 2 of the Act;
- “practitioner” means a registered veterinarian, veterinary specialist, enrolled Paraprofessional and enlisted Paraprofessional Assistant engaged in veterinary practice;
- “private practice” means any private practice as defined in Section 2 of the Act;
- “professional misconduct” means any misconduct established under Section 49 and includes such conduct or acts relevant to the practice that, having regard of all circumstances which will be regarded as disgraceful, dishonourable and without limiting the generality of the foregoing and it may include:

- (a) failing to uphold the Code of Conduct and ethics adopted by the Council;
- (b) failing to maintain standards of practice or practice facility;
- (c) conduct oneself unfairly by abusing a person verbally, physically, emotionally or sexually;
- (d) unethically signs or validates a certificate without actually or physically examining the animal;
- (e) publishing or causing to be published any advertisement that is false, deceptive or misleading and refers to secret methods of treatment and violates regulations on advertising.

“Veterinarian” means a person defined under Section 2 of the Act;

“Veterinary Specialist” means a person defined under Section 2 of Act;

PART II

PROCEDURES FOR LODGING COMPLAINTS

Complain-
t initia-
tion

3.-(1) Subject to the provisions of Section 45(1) of the Act, the Veterinary Council of Tanzania may administer a complaint lodged by:

- (a) any credible public person or an owner of an animal;
- (b) a client of a veterinary practitioner;
- (c) a Corporation or Institution, private or public employing a veterinary practitioner; and
- (d) the Veterinary Council of Tanzania.

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(2) Subject to the provisions of Sub-regulation 1 of this regulation the council may, either as a result of a complaint lodged or of its own accord, conduct an investigation into the conduct of:

- (a) a registered Veterinarian;
- (b) a registered veterinarian specialist;
- (c) enrolled paraprofessional;
- (d) enlisted paraprofessional assistant;
- (e) unregistered or unerolled or unenlisted persons conducting or undertaking veterinary practice.

(3) The complaint must be submitted in writing to Registrar, Veterinary Council Chairman; or Veterinary Council of Tanzania and it shall include the following information:

- (a) mailing address;
- (b) e-mail;
- (c) telephone;
- (d) Fax.

Informa-
tion on a
complaint

4.-(1) The complaint shall include the following information:-

- (a) personal particulars address of the Complainant and the person lodging a complaint;
- (b) date of complaint;
- (c) name;
- (d) address;
- (e) town or village;
- (f) district;

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- (g) telephone;
- (h) name of business facility subject of complaint; and
- (i) business address;

(2) A chronological statement of the complaint shall include:

- (a) dates when occurred;
- (b) attached list of names, address and telephone numbers of witnesses including professionals;
- (c) attachment of all documents relevant to the complaint, such as letters (correspondence), contracts, drawings, receipts, X-rays, prescriptions etc; and
- (d) attached copies of any police (or any government institution) involvement, if any, including case number and a copy of the police written report, if available.

(3) Identification (personal particulars and address) of the Respondent, the person accused:-

- (i) name;
- (ii) place of business premises;
- (iii) type of business/licence;
- (iv) town/village;
- (v) district;
- (vi) telephone;

(4) The declaration shall be made in writing or orally assisted by an Officer of the Secretariat, where any fact stated in the declaration is not within the personal knowledge of the complainant the source of the information and the ground of his belief in its truth must be accurately and fully stated and such declaration shall include the following statement:-

- (i) I wish to provide information about the practitioner named above;

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- (ii) I understand that the Council does not represent the practitioner nor the Complainant;
- (iii) I understand that the Council cannot give legal advice to individuals seeking the return of their money or other personal remedies;
- (iv) I understand that I may wish to consult a private lawyer to determine my legal rights and civil remedies in a Court of law, which are separate from the proceedings of the Veterinary Council of Tanzania (a regulatory body);
- (v) I am however filling this complaint to notify the Council of the activities of this practitioner so that it may be determined if disciplinary action against the practitioner is warranted;
- (vi) Complaints about veterinary practitioner are handled through administrative proceedings given by Section 45 and 46 of the Veterinary Act of 2003. These proceedings are not equivalent to trial in Court. The Veterinary Council takes action based upon the files, record and information before it;
- (v) I promise to cooperate with the Council and assist the Council in its investigation(s);
- (vi) I confirm that all statements made by me in relation to this complaint are true to the best of my knowledge and belief.

Name:.....
Signature:.....
Date:..... Time:.....
Place:.....

5.-(1) Complaints lodged to the Council against Veterinary practitioners are handled through administrative proceedings allowed by the Act complaint handling

(2) The Council shall prepare information for public interest describing the functions of the Council and the procedures by which complaints are lodged with and resolved by the Council;

(3) The Council shall provide name, mailing address including electronic mails and telephones numbers of the Council for the purpose of directing complaints to the Council.

(4) Any withdrawal of complaina requires the Complainant to writes to the Council and sent a copy of the statement to the Respondent explaining the reasons for the action taken.

PART III

PROCEDURES FOR PROCESSING COMPLAINTS

Procedure
for
processing
complaints

6. The procedure for processing complaints shall be:

- (a) a written complaint lodged by an aggrieved person to the Council by filing a written and signed statement with the Secretariat of the Council;
- (b) the Registrar of the Council translates the written complaint on a form and acknowledges receipt of the complaint by writing a letter to the complainant and the Registrar shall ensure that a person who lodges a complaint has an opportunity to explain the allegations made in the complaint;
- (c) the Registrar shall make preliminary examination as spelt out under section 6 of the Veterinary Council of Tanzania Inquiries Rules of 2004;
- (d) The complaint and the signed statement mentioned in Section 6(a), (b) and (c) above shall be forwarded to the Disciplinary Committee of Council that meets regularly;

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Compla-
ints and
functions
of
discipli-
nary
committee

7.-(1) The Disciplinary Committee at the next regularly scheduled meeting under the powers given under section 45(2) of the Act shall review the complaint to determine if the complaint falls under the jurisdiction of the council.

(2) The Disciplinary Committee shall have the following functions:-

- (a) to conduct a preliminary investigation under the power given under Section 45(2) of the Act, in a manner it sees fit;
- (b) to take testimony, hear proofs and receive exhibits into evidence at its preliminary investigation and other testimonies and exhibits that shall be given after the preliminary investigation shall be accepted only under oath or affidavit;
- (c) to invite any person for mediation or to provide expertise as may be required and reaching a settlement the parties shall write the facts agreed upon for purposes of settlement;
- (d) to determine whether an inquiry is warranted, or the complaint shall be dismissed for lack of sufficient evidence or the matter shall be resolved by an agreed mediation or the matter be determined because of vivid evidence and submits to the council a report on the preliminary with recommendations;

(3) The Council shall determine whether the matter:-

- (a) not proceed further; or
- (b) determines the means to deal with the complaint without necessarily carrying out any detailed formal investigation or inquiry; or
- (c) proceed by conducting out a formal investigation by use of Inquiry Committee;

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(4) The Council shall appoint a Committee of Councillors to deal with the matter in case of 7(2) above or appoint an Inquiry Committee in case of 7(d).

(5) The procedures for inquiry shall be as outlined under the Veterinary Council of Tanzania Inquiries Rules of 2004.

(6) The Inquiry Committee shall report its findings with recommendations to the Council.

(7) The Council shall determine the matter.

(8) The Registrar of Council shall inform the Respondent and Complainant of its decision within 21 days of the Council's decision.

PART IV

THE DISCIPLINARY COMMITTEE

procedures of information proceedings 8.-(1) (a) the Registrar of Council shall assign the complaint to a staff of the Secretariat to assist the Complainant fill the form and declare the correctness of the complaint;

(b) the Respondent shall be mailed a copy of the complaint and all relevant materials through registered mail and the Respondent, who is the accused person shall be given 14 days to write an answer to the complaint to the Council and submit it by registered mail or in person;

(c) the Complainant shall receive a copy of the Respondent's answer to the complaint and the Complainant shall be given days to write a reply to the Council and if the Respondent's answer does not satisfy the complaint, the Complainant may state why and provide any additional evidence to support the dissatisfaction;

(d) after receiving the reply, the Council shall pass all documents (the complaint, the Respondent's answer and the Complainants' reply) to the Disciplinary Committee;

(e) the complaint shall be considered during the next regularly scheduled monthly meetings of the Disciplinary Committee and Minutes of the Committee deliberations shall remain confidential and as the property of the Disciplinary Committee.

(2) The decision of the Disciplinary Committee shall be by voting and the Committee shall vote on if-

- (i) there is a case; or
- (ii) there is no case; or
- (iii) there is a case for mediation;

(3) Occasionally a decision on the complaint shall be postponed because the Committee wishes to visit the area of business and also invite the Complainant and/or the Respondent to meet with the Committee in closed session;

(4) If the complaint is continued, it will be determined again at the subsequent regularly scheduled monthly meetings of the Disciplinary Committee;

(5) The Disciplinary Committee in all cases shall obtain

- (a) The practitioner's past training, qualification and experience from the Council;
- (b) The performance of the practitioner in the area of practice through interviewing a number of clients and persons;

(6) The Disciplinary Committee shall select cases for mediation, approve any mediated solutions and attempt to mediate the complaint and make recommendations regarding the complaint in the absence of a formal investigation and inquiry and discuss the case and votes on a decision.

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(7) If the Disciplinary Committee votes to mediate the complaint, the lawyer member of the Disciplinary Committee shall write an invitation to the Respondent and the Complainant and submit by registered mail it to the concerned, giving date, time, place of next meeting of the Committee.

Decision
of the
Discipli-
nary
committee

9.-(1) The decision of the Disciplinary Committee shall fall into:

(a) complaints which are dismissed because the Committee:

- (i) determine that no probable cause exists; or
- (ii) the Veterinary Council lacks the jurisdiction to proceed

(b) complaints in which the Committee is satisfied that a complaint is valid it shall give its recommendations to the Council and in this case the Committee may recommend the following:

- (i) complaint is obvious and Council give its decision without additional information;
- (ii) complaint requires investigation;

(2) The complaints shall be resolved on receipt of detailed written explanations accompanied by full records including diagnostic images where applicable without having to refer the matter to an inquiry.

(3) Before the Disciplinary Committee presents its findings to the Council meeting, the Disciplinary Committee shall give the Respondent and the Complainant information on how the matter was resolved and how the matter is being recommended to the Council.

PART V

OFFENCES

offences

10. Any person who-

- (a) abandons the treatment of a client without advising the client of the necessity of immediate medical treatment when needed and without advising the patient to seek treatment from another practitioner;

- (b) performs surgery without the client's express or implied consent or the express or implied consent of the patient's guardian;
- (c) practices or offering to practice professional responsibilities which the licensee knows or has reason to know he or she is not competent to perform;
- (d) practices or offering to practice, without adequate supervision, professional services which the enrolled or enlisted person is authorized to perform only under the supervision of a registered veterinarian as provided for in the act, except in an emergency situation where a patient's life or health is in immediate danger;
- (e) delegates or assigning professional responsibilities to a person when the one delegating or assigning such responsibilities knows or has reason to know that such person is not qualified by training, by experience, or by registration or enrollment or enlistment to perform it;
- (f) fails to present in the office at periods when needed to supervise, or failure to provide needed level of supervisions of, the work of a paraprofessional or paraprofessional assistant, or other employee not registered as a veterinarian under the Act;
- (g) if a practitioner allows his enrolled or enlisted persons to be used by a person who is unlawfully engaged in the practice;
- (h) makes an employment of fraud, misrepresentation or deception in obtaining registration;
- (i) impairment caused by that person's use of alcohol, drugs or controlled substances and impairment interferes with that persons ability to practice or habitual drunkenness or addition to any deleterious drug is an act;

- (j) makes use of advertising or solicitation which is false, misleading or deceptive or makes advertisement that is false, fraudulent or deceptive;
- (k) is convicted of a criminal or civil offence in the court of law;
- (l) incompetent, severe negligence or other malpractice during practice;
- (m) dishonesty in the false statement or in the reporting or reporting of any test for diseases animals;
- (n) fails to keep veterinary facilities premises and equipment in a or failing to maintain the standard of practice or practice facility;
- (o) fails to report or handle modifiable disease mentioned under the Animals Disease Act;
- (p) makes false report or dishonesty or gross negligence in inspection of food and animal products under the Food Drugs and Cosmetics Act;
- (q) refuses or fails without lawful cause to comply with directives of Council commits an offence.

PART VI
DECISIONS OF THE COUNCIL

- Decisions
11. The Council on receiving the report shall adopt one of the following decisions:-
- (a) when there is no cause it will direct the matter not proceed further and inform the complainant of the reason why they Council can not proceed;
 - (b) the matter is an offence related to unauthorized practice or related to fraud and it shall be submitted to the court of law;

- (c) issue a letter of caution warning when no clear misconduct is found but it is determined by the Council that the conduct of the Respondent may be the subject of misconduct if continued and that letter shall be mailed to the Respondent and a record of such letter of caution shall be maintained in the Secretariat;
- (d) issue a letter of reprimand when cause is found but Council determines is of minor level because it is in accord with accepted professional practice and does not threaten life of an animal or human being, be mailed to the Respondent and drafted by the legal counsel for the council and signed by the Chairman a record of such letter of reprimand shall be maintained in the Secretariat.
- (e) issue a letter of suspension for misconduct and neglect for ninety days when cause is found and Council determines the practice is not in accord with accepted professional practice but does not threaten the life of an animal or any person and that letter shall be drafted by the council and signed by the Chairman impose conditions and limitation which must be fulfilled within a specified period of time and practice shall cease on the date of recovering the letter mailed to the conditions spelled out in the letter are fulfilled;
- (f) issue a letter to revoke and terminates the Certificate of registration or enrolment or enlistment for gross misconduct or incompetence and neglect when cause is found and Council determines practice was not in accord with accepted professional practice and damages or endangers the life of an animal or safety of any person.

12. For assessment of penalties the Council shall consider

- (a) the circumstances leading to the violation;
- (b) the severity of the violation and risks of the harm to the animal and public;
- (c) the benefit gained by the respondent as a result of non-compliance;
- (d) the interest of the Council and public to safeguard standards of practice;

Assess-
ment of
penalties

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(e) whether the penalty imposed will be deterrent.

Repeat
action

13. Repeat action in all cases shall take a penalty higher than that given in the previous one.

Enforce-
ment of
decisions
of council

14. When allegation is confirmed and Council has made a decision and the Respondent has been notified but fails to comply with the directive, the Registrar shall after seven day of receiving the decision of Council by the Respondent, use state organs to enforce the decision. It should be noted that the time frame involved in the enforcement process applies only when no intention for appeal has been filed. An intention for appeal should be submitted within twenty one days.

PART VII

PROCEDURES FOR APPEALS

Procedure
for stay
of
execution

15. Where a decision of the Council for an offence makes it unlawful for a person to practice or use any veterinary practice facility, the person shall stop practising and shall not use the facility if any appeal or stay of execution is lodged until the appeal is determined

Procedure
for
appeals
for
review by
the
Council

16. (a) the Council shall establish and maintain an internal appeal procedure in which an appellant who is dissatisfied with a coverage determination by the Council shall have the opportunity to appeal for re-determination (review) by the Council;

(b) if the Complainant or the Respondent is still dissatisfied with the way in which the matter was handled, the Complainant or Respondent may ask Council to review the matter. The request for review shall be made within 90 days after receiving the report on decision of Council;

(c) the Council will then appoint a new Inquiry Committee of persons who had had no prior direct involvement with the complaint.

Procedure
for
appeals
to the
Minister

17. (a) the Council shall establish and maintain an appeal procedure in which an appellant who is dissatisfied with a coverage determination by the Council shall have the opportunity to appeal for re-determination by the Minister;

- (b) in all case notwithstanding the date for submitting the appeal, the Complainant or Respondent shall submit a statement of the intention to appeal within 21 days;
- (c) the appeal to the Minister shall be made within 90 days after receiving the report on decision of Council and as directed by Section 47 of the Act.

18. Whenever it shall appear to the Council that a violation of the Veterinary Act of 2003 including unregistered practice has occurred or is occurring or will occur, the Council shall seek and obtain in Court of law an injunction prohibiting such act or practice (pending investigation) or may issue orders as will be necessary to prevent performance of unlawful practice. The Registrar shall sign such orders. The Secretariat shall then ask the Council to investigate the matter and determine its legality.

Injunction

SCHEDULE

THE SEAL OF VETERINARY COUNCIL OF TANZANIA IS HEREBY AFFIXED IN PURSUANCE OF THE RESOLUTION PASSED AT A MEETING OF THE COUNCIL DULY CONVENED AND HELD ON DAY..... MONTH YEAR AND THE SAME WAS AFFIXED IN THE PRESENCE OF:-

.....
Registrar
VETERINARY COUNCIL OF TANZANIA

.....
Chairman
VETERINARY COUNCIL OF TANZANIA

I APPROVE

MINISTER FOR WATER AND LIVESTOCK DEVELOPMENT

Dar es Salaam,
1st November, 2006

EDWARD N. LOWASSA (MP),
*Minister for Water and Livestock
Development*