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Legal position regarding the sedation and transport of wild animals

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The escape, and alleged sedation and capture by a private security company, of a juvenile tigress in Edenvale, Gauteng (the Edenvale tigress) on 30 January 2023, has attracted significant media attention and public interest. The ensuing fallout between the private security company and the Edenvale SPCA raises questions regarding the statutory and regulatory framework which governs the sedation and transport of wild animals, a topic which forms the subject matter of this article.

Factual background

The escape of the Edenvale tigress was first reported on 30 January 2023, following the release of CCTV footage which depicted the animal roaming around an office parking lot around five o'clock that morning.[1] This was the second tiger on the loose in Johannesburg in less than a month. Later that day, a local private security company, claimed on its Facebook page to have located and captured the tigress, announcing that the tigress had been "sedated and taken to a sanctuary for safe keeping".[2]

The Edenvale SPCA in a statement released on 30 January 2023 raised concerns about the claims made by the security company, emphasising that "[the security company is] not permitted, equipped, trained or experienced to handle wildlife".[3] On 1 February 2023, SPCA and SAPS officers executed a warrant to search the residential premises of the owner of the security company but failed to secure evidence of the tigress's presence on the property.

The security company then released another statement on its Facebook page on 2 February 2023, in which it claimed that the sedation of the tigress had been conducted by an "experienced veterinarian" who carried out the procedure "with the utmost professionalism and without any adverse effects to the Tiger".[4] The security company, however, did not disclose any information concerning the whereabouts of the tigress, claiming that the Protection of Personal Information Act No. 4 of 2013 prevented it from releasing the names of its clients.

Relevant statutory framework

The primary piece of legislation relevant to the sedation and transport of wild animals is the Veterinary and Para-Veterinary Professions Act No. 19 of 1982 ("the Act"). The Act is to be read together with the Rules Relating to the Practising of Veterinary Professions Published under GN R1082 in *GG* 39380 of 9 November 2015 ("the Rules"). This legislation deals, *inter alia*, with the practice of veterinary professions and para-veterinary professions.

Notably, section 23(1)(a) of the Act provides that "no person shall in any manner whatsoever practise a veterinary profession or a para-veterinary profession unless he or she is registered or deemed to be registered in terms of [the] Act to practise the profession concerned".

Section 23(2) of the Act, in turn, provides that the practising of a veterinary profession includes performing an act intended to diagnose, treat or prevent a medical condition in an animal or performing surgery on an animal, or rendering for remuneration

or profit a service, which is deemed, in terms of the Rules, to "pertain specially to a veterinary profession".

According to Rule 2 of the Rules, the services pertaining specifically to the veterinary profession include any "chemical restraint of an animal, which includes general, standing, and/or regional anaesthesia, chemical immobilisation or sedation". It follows, therefore, that the sedation of animals must be performed by a **qualified veterinary professional**.

The type of sedative used also gives rise to implications under the Medicines and Related Substances Act No. 101 of 1965 ("Medicines Act") — the Act which sets out the national framework for the registration and control of all medicines and Scheduled substances sold or distributed in South Africa.

The term "**medicine**" is defined in the Medicines Act to include any veterinary medicine, a term which itself is defined in the Medicines Act as any substance or mixture of substances —

> *"...used or purporting to be suitable for use or manufactured or sold for use in connection with vertebrates, for the treatment, diagnosis, prevention or cure of any disease, infection or other unhealthy condition, or for the maintenance or improvement of health, growth, production or working capacity, or for curing, correcting or modifying any somatic or organic function, or for correcting or modifying behaviour".*

A "**Scheduled substance**" is, in turn, defined in the Medicines Act as any medicine or other substance prescribed by the Minister of Health under section 22A. In this regard, anaesthetic medicines used in the sedation of wild animals generally appear in Schedules 5 and 6 of the Medicines Act, the result being that various restrictions apply to the manner in which the medicines may be sold and used, both in terms of the Medicines Act as well as the Act and the Rules.

In particular, and relevant to this article —

- Rule 6 of the Rules requires any person providing medical treatment to wildlife to maintain medical records that specify the treatment performed and provides that "the use of Schedule 5 and 6 wildlife capture medicines must be recorded with care"; and
- Rule 10 of the Rules provides that a veterinary professional must *personally* administer any Schedule 5 or 6 medicine which is used "[t]o tranquilise, sedate, chemically immobilise or anaesthetise wildlife" and is administered parenterally (other than through the mouth or alimentary canal). Rule 1 defines "wildlife" as including "all non-domesticated species of animals, whether free-living or kept in captivity";

The Rules also set out various additional requirements that apply when a veterinary professional is involved in the sedation of an animal, namely —

- with regard to transport, Rule 17 provides that any vehicle used to transport animals must be of such a nature as to ensure the comfort of the animal. The vehicle must be capable of easy cleaning and must reduce the risk of stress or injury to, and escape of, the animal from the vehicle; and
- Rule 23 sets out general requirements for anaesthesia, including *inter alia* that any person administering anaesthesia to an animal must be qualified or authorised by the South African Veterinary Council to do so and must be "competent in the efficient use of all anaesthetic facilities and equipment". Rule 23 further provides that the anaesthetised animal must be monitored and supervised by a veterinarian or a para-veterinary professional directly until such time as the animal has recovered.

Importantly, any person who contravenes or fails to comply with the Act, including the Rules, will be guilty of an offence and may be liable to a **fine or to imprisonment** for a period not exceeding one year (in the case of a first conviction), or to both a fine and such imprisonment.

Conclusions

The statutory and regulatory provisions set out above, therefore, are clear that anaesthesia and sedation of animals is regarded as a service that must be performed by a veterinary professional exclusively. The Rules further stipulate that the tranquillisation, sedation, chemical immobilisation or anaesthesia of "wildlife", which includes the tigress in question

(irrespective of whether it had previously been held in captivity or not), must be performed by a veterinary professional personally in all circumstances where a Schedule 5 or 6 medicine is used and administered (other than by way of the mouth or alimentary canal).

The transport of animals is also specifically regulated. With the escape of tigers becoming now an all too familiar occurrence in Johannesburg, it appears that the need to be aware of and to understand the relevant legal requirements surrounding the capture of wildlife is becoming all the more important.

Footnotes

[1] E Ogao & M Winsor "Search for tiger on the loose in South Africa" *ABC News*, accessed on 2 February 2023.

[2] J Venter & W Brederode "Another tiger on morning stroll sends children's nursery into lockdown in Johannesburg" *Daily Maverick*, accessed on 2 February 2023.

[3] J Marriah-Maharaj "SPCA Edenvale says it's searching for missing tigress, despite reports it was found" *IOL*, accessed on 5 February 2023.

[4] O Singh "We acted fast to limit risk to Edenvale tiger, now in a secure location: security company" *Times LIVE*, accessed on 5 February 2023.



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