

VETERINARIAN LEGAL LIABILITIES



BASICS

The following is not an offer or solicitation of legal advice and is intended for general information only and is not intended to be specific legal advice. This chapter is based around the legal system of the USA.

OVERVIEW

- Legal matters are very fact specific and therefore a particular matter may hinge on a very specific fact in each individual case. When determining liability, it is always best to seek competent legal advice for your specific situation.
- While traditionally animals have been considered property, courts have recently stated that animals may have value in excess of that of just property.
- Malpractice is the most prevalent legal liability a veterinarian faces.
- While not under a duty to care for an animal, once care is undertaken the veterinarian is required to exercise that care and diligence required by a normal veterinarian.
- Before liability attaches to a veterinarian, “proximate cause” must attach. That is, the result being claimed must have a causal connection to the malpractice claimed.

Traditionally, animals have been considered property, dependent upon people for basic care, and as such the legal liability associated with treating them has been low. As property, the limit on legal liability was usually considered the market value of the animal. For instance, if a dog cost \$100.00 the most that could be recovered in a legal dispute regarding the animal would be \$100.00. However, in the past decade this standard is beginning to change, albeit slowly. Today it is not unheard of for someone to recover \$10,000 to \$15,000 in judgments, with exotic animals and race horses having much higher judgments.

Recently, courts have recognized that pets have a value in excess of that which would ordinarily attach to property, since unlike other forms or personal property, they are not fungible. As such, courts are allowing pecuniary losses associated with medical treatment, damages based upon intrinsic value of the pet, or damages related to the specific performance of an agreement as between the pet’s co-owners.

Emotional distress for the death of a pet has been sought in numerous lawsuits but so far courts have not allowed such rewards. Some states have placed caps on the amount that can be recovered from the loss of a pet with some states considering such limits as high as \$250,000.00.

Similarly, the criminal penalties related to animals have also increased over the last decade or so. Traditionally animal abuse was a misdemeanor. At least fifteen states have now made animal abuse a felony, which carries much stiffer penalties, with more states considering making the change each year.

During the last decade there has also been a move towards defining pet owners as “pet guardians”, which changes the legal ramifications of the legal requirements of the pet owner. This affects how the veterinarian can legally interact with the pet owner and what authority the pet owner has to determine treatment and care of the animal and the communications and decisions the veterinarian can make.

Malpractice is the most prevalent legal liability a veterinarian faces. Legally, malpractice occurs when someone does an act that involves a matter of medical science or requires special skills not

ordinarily possessed by lay people. For instance, performing surgery would be judged under malpractice standards whereas boarding or transporting an animal would be considered under other legal standards, such as negligence.

For a person to recover damages for malpractice they have to prove in a court of law ALL of the following elements:

- 1) The veterinarian had accepted responsibility to treat the animal and owed a duty of care toward the animal.
- 2) The veterinarians' actions, or nonactions, did not conform to the professional standard required.
- 3) The action, or nonaction, of the veterinarian was the proximate cause of the injury or harm.
- 4) The injury or harm resulted in damages to the person, not just the animal.

Let's consider exactly what each of these elements mean in more detail.

Duty of Care Toward the Animal: It is important to note that a veterinarian is not under any legal duty to treat an injured or ill animal. If a veterinarian refuses to treat the animal there is no legal recourse back to the veterinarian whatsoever. However, if the veterinarian does decide to treat the animal then he or she has the legal duty to treat the animal to the professional standard required or to inform the owner of your decision to stop treatment. An exception to this rule is the "Good Samaritan" rule where a veterinarian provides emergency treatment to a sick or injured animal at the scene of an accident, where, absent gross negligence, the veterinarian would not be held liable for damages.

Professional Standard Required: The general standard of care required is "the exercise of the care and diligence as is ordinarily exercised by skilled veterinarians." It is the care and skill of the average or normal practitioner, not of the most skilled. However, if a veterinarian holds himself or herself out as an expert in a particular area then they will be held to that standard. So if one holds themselves out as a specialist for race horses, or in the treatment of exotic animals, then the standard of care is that of others that so hold themselves out as such specialist.

The standard for the average practitioner differs somewhat from one state to another. Traditionally the standard was limited to the local level, meaning the standard was the care and skill of other veterinarians locally or in the community. However, the trend is to broaden that standard to "similarly situated" veterinarians. So a veterinarian in a small town would be compared to other veterinarians in similar towns in the state. So such considerations as the nature of the treatment involved, the facilities available, and the character of the community would play a role in the standard expected of the veterinarian.

The standard of care required by the veterinarian continues to expand with communications allowing ready access to the latest medical information to virtually everyone and with the emphasis on continuing medical education. As a result, courts are beginning to apply a more uniform standard of care that takes into account the average veterinarian regardless of location. This is especially true for those veterinarians that hold themselves out as a specialist in a particular area of treatment or for particular animals, such as exotic animals or race horses.

It is important to remember that if the veterinarian makes explicit promises then he or she may be held to those promises. The burden of showing such promises would be on the person bringing the lawsuit.

By the same token, the veterinarian has a responsibility to keep the owner informed of the diagnosis and to have prior approval for treatment. In a recent case in Illinois, a professor of veterinary medicine at a veterinary school was hired to perform two procedures on a race horse: surgery on the left

carpal bone and draining of fluid from the right stifle. The owners specifically forbade the veterinarian to perform other procedures on the right stifle. During the procedure, which the professor did in front of his student veterinary class, he went ahead and performed surgery on the right stifle. The court held the veterinarian liable for malpractice as his responsibility as a veterinarian to the owner was to “perform only those nonemergency surgeries to which the owner has consented.”ⁱ

PROXIMATE CAUSE: Proximate cause is defined as “That which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces injury, and without which the result would not have occurred.”ⁱⁱ For those which have a preexistent condition, such as an injury or disease, then a showing of an increased risk of harm from the veterinarian’s action, or inaction, was a substantial factor in causing the injury ultimately sustained.

For instance, a woman claimed her horse turned into a “killer” after being operated on by the vet. The court held no liability because she did not show a connection between the operation and the way the horse acted after the operation.ⁱⁱⁱ

There has to be a direct, causal connection between the act claimed and the injury or damage.

EXPERT OPINION: In most lawsuits, before one can proceed they must have an expert offer an opinion as to whether the exercise of care and diligence as ordinarily exercised by skilled veterinarians was accomplished. The standard is not whether the expert would recommend a different treatment or diagnosis but whether the attending veterinarian exercised the skill that an ordinary veterinarian would have exercised. If the lawsuit involves a specialized veterinarian, then the expert must also be specialized in that area in which he is testifying. In almost all cases an expert must be a veterinarian.

The defendant may also offer expert testimony on their behalf to opine that the treatment or procedure done was proper given the circumstances.

OTHER FORMS OF VETERINARIAN LIABILITY: Malpractice is not the only legal liability that a veterinarian may face. Without going into great detail, some other forms of liability include:

- A) Res Ipsa Loquitur: Which is Latin for “the thing speaks for itself”. This happens when the action is obviously wrong. Examples would be operating on the wrong animal or leaving a sponge or needle in an animal after an operation. An expert witness is NOT needed in such actions
- B) Contracts with the Pet Owner: If a contract with a pet owner is made it will override the standard of “ordinary care” in malpractice cases. Contracts may be verbal or written. But they need to be specific promises to be upheld by the courts. Statements such as “I guarantee that Buffy will be as good as new” or “I guarantee that your pet will be able to walk normally again” are specific promises that may well hold you to ensuring exactly that result as compared to statements of reassurance such as “I’m sure Eros will be better after the operation” which is not a specific promise and will not change the standard to which a veterinarian is held.
- C) Administrative Action for Malpractice: Rather than going through the time and expense of a court action, a pet owner may just file an administrative action with the state licensing agency. While some states have statutes specifically stating what such Boards may do, most states allow such Boards to establish the standards and penalties they may impose upon those they license. Such cases have arisen from cases such as where a veterinarian claimed to have operated on a dog but a subsequent autopsy showed no such operation took place, failing to

communicate with clients, failure to maintain sanitary conditions, failure to inform animal owner of actual condition of the animal, misrepresenting to the public that an employee was a veterinarian when he wasn't, as well as other such actions.

- D) Negligence: Negligence is that care that a reasonable and prudent person would use under similar circumstances. When a veterinarian is acting outside of their professional capacity then negligence may be the standard of care required. For instance, an animal that is injured while boarding or loading and unloading an animal, improper disposing of an animal body, or mishandling an animal by an employee. Depending upon the circumstances punitive damages may be available in negligence cases.

STATUTE OF LIMITATION: In all of the above instances there are statutes of limitations that vary state to state. Normally malpractice statute of limitations are shorter (usually 1 to 3 years) with negligence a little longer (normally 3 to 6 years) with contracts a little longer (usually 3 to 6 years). You need to check your particular states' statute of limitations for the particular cause of action that you may be facing.

SEEK LEGAL ADVICE: Legal cases are very fact specific and liability, or non-liability, may turn on a very particular fact in your particular case. As a result it is advisable to seek legal advice, preferably from a licensed attorney in your state that has had previous cases dealing with animals and livestock matters.

ⁱ 229 Ill. 2d 104 (Ill. Sup. Ct. 2008).

ⁱⁱ Black Law Dictionary, 5th Edition

ⁱⁱⁱ Southall v. Gabel, 293 N.E. 2d 891 (Ohio 1972).

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