



Medical Errors: How To NOT Throw A Colleague Under The Bus

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Introduction

For many veterinarians, being confronted with a mistake (or more accurately an alleged mistake) made by another veterinarian is a daunting ethical dilemma. Fortunately, there are many resources available to veterinarians to help guide their decision making in such situations.¹ Unfortunately, though, there is rarely a clear-cut answer and there most certainly is no single solution applicable to all situations.

The purpose of this article is to:

- describe the absolute minimum threshold you should meet before you consider criticizing another veterinarian's care;
- outline the importance of getting ALL of the facts; and
- provide tips on what you might say when speaking to clients (and potentially the veterinarian whose actions are being questioned) in these delicate situations.

A colleague's potential error may be presented to you in one of two ways:

- a client specifically raises a concern about a previous veterinarian's care; or
- while performing your own assessment of a patient, which may include history-taking, physical examination and diagnostics, you personally become concerned about the possibility of a mistake on the part of another veterinarian previously involved in the patient's care.

For the purposes of this article, we will make the following assumptions:

- the alleged mistake is made by a veterinarian at another clinic (as opposed to being made by one of your co-workers); and

¹ Resources include: the Principles of Veterinary Medical Ethics of the AVMA; applicable state practice acts; applicable State Veterinary Board Regulations; other applicable state and local laws and regulations; applicable case law; treatises on veterinary ethics (e.g., Rollin, *An Introduction to Veterinary Medical Ethics: Theory and Cases*); AAHA Veterinary Guidelines and Position Statements; American Veterinary Medical Law Association; and in-house policies and procedures.

- the alleged mistake was a one-time event (as opposed to a series of potential errors made by the same veterinarian).

While much of what is written below is equally applicable to the situations where the alleged mistake was made by a co-worker or is one of many mistakes made by a single veterinarian, such situations raise additional considerations not covered in this article.

Minimum Threshold

Prior to 1989, the AVMA's *Principles of Veterinary Medical Ethics* (the "*Principles*") provided that it was unethical "[t]o criticize or disparage another veterinarian's service to a client." This strict prohibition against criticizing a colleague's actions (or omissions) is not part of the current *Principles*. However, veterinarians should still proceed with caution when speaking with clients about the care provided by another veterinarian.

The first step, then, is to determine whether criticism of another veterinarian is even justified. Criticizing another veterinarian's care before undertaking a thorough investigation of that veterinarian's care is both unfair and unprofessional. It could also expose you to disciplinary proceedings by your licensing body and/or a lawsuit by the other veterinarian for slander.²

One should not even think about criticizing a colleague's care unless the evidence supports the conclusion that the other veterinarian's act or omission breached the requisite standard of care. After all, would you not hope (and perhaps expect) your peers would grant you the same courtesy if the situation was reversed?³

For example, consider the case where a client comes in with her dead guinea pig and tells you that she took it to her usual veterinarian who prescribed amoxicillin and now her guinea pig is dead. This may seem like a pretty clear-cut case of a breach of the standard of care because the use of amoxicillin is contraindicated in guinea pigs. However, how do you really know that the previous veterinarian actually prescribed amoxicillin for the guinea pig? Perhaps the veterinarian prescribed the amoxicillin for the client's cat and she had some left over so, when the veterinarian told the client that her guinea pig needed antibiotics, the client figured she could save money by using the antibiotic she already had ... after all, a guinea pig is just like a small cat, right?

Duty to investigate

² Principles of Veterinary Medical Ethics of the AVMA, section II.I: "veterinarians should not slander, or injure the professional standing or reputation of other veterinarians in a false or misleading manner."

³ Principles of Veterinary Medical Ethics of the AVMA, section I.B: "... The basis of the Principles is the Golden Rule."

If it is the client raising the issue of a possible error (like the example above), you must first decide whether you want to investigate the allegation further. As will be discussed in more detail below, the duty to investigate an allegation of mistake is distinct from the duty to disclose (to the client or some other authority) the results of your investigation. The writer is not aware of any act or regulation imposing a legal duty on a veterinarian to undertake an investigation of this nature. However, depending on the state you practice in, you may have a legal duty to report the results of any investigation you agree to perform.

On the other hand, if you are assuming responsibility for the ongoing care of a client's animal, you have a duty (subject to obtaining the client's consent) to obtain past medical records for the patient, which might take you down the investigatory path.⁴

Standard of care

As you are obtaining a history from the client and sifting through past medical records, be mindful of the fact that a breach of the standard of care is not made out simply because:

- the previous veterinarian's diagnosis was subsequently proven to be incorrect;
- the previous veterinarian's treatment failed to yield the desired results; and/or
- you would have made a different diagnosis and/or offered different treatment.

A colleague's diagnosis and treatment should NEVER be judged with the benefit of hindsight. Facts available to you at the time of your investigation may not have been available to the previous veterinarian. Indeed, the course of the patient's illness over time and/or the patient's response/failure to respond to initial treatment protocols are facts that may be of significant benefit to your diagnostic/treatment decision making.

Other things to consider when you are trying to determine whether the previous veterinarian's acts or omissions breached the requisite standard of care:

- an intervening event may have occurred between the time of the previous veterinarian's involvement and your involvement (e.g., the client may not have complied with the previous veterinarian's instructions to confine the patient);
- a client's lack of understanding about what really happened can result from ignorance and/or confusion (e.g., the client may not have understood precisely what the previous veterinarian said because they were so upset at the time);

⁴ Principles of Veterinary Medical Ethics of the AVMA, commentary to section II.D: 1. "With the client's consent, the new attending veterinarian should contact the former veterinarian to learn the original diagnosis, care, and treatment and clarify any issues before proceeding with a new treatment plan."

- in many circumstances, reasonable veterinarians can reasonably debate the differential diagnoses and treatment options because veterinary medicine is not a black and white science; and
- if you are a specialist, it is important that you not judge a generalist's conduct by the standards applicable to your specialty.

Be Sure You Have ALL of the Facts

Your initial investigation should include:

- taking a history from the client;
- conducting your own physical examination of the patient;
- reviewing medical records of the previous veterinarian; and
- performing additional diagnostics as you deem necessary for the benefit of the patient.

If your preliminary investigation raises any concern about the previous veterinarian's care, you might also wish to consult with colleagues and/or relevant medical literature. As noted, there is rarely a single correct approach to diagnosis and/or treatment of a given condition and you may find that the previous veterinarian's care is supported by a reasonable school of thought – even though it does not accord with your own approach.

You should also call the previous veterinarian to get his or her version of events and find out what exactly what he or she was thinking. Remember, medical records are only a snapshot in time; they are not a complete recording of the events that transpired or the veterinarian's thoughts regarding the same.

Admittedly, calling another veterinarian to question his or her care is not an easy thing to do, especially if you are a relatively junior veterinarian. However, if the other veterinarian is inclined to “chew you out” for calling to check your facts before speaking to the client, imagine how angry he or she will be if you criticize his or her care to a client without attempting to confirm the facts.

A thorough investigation is essential because there can be significant fallout for any veterinarian you criticize, regardless of whether or not the criticism is warranted. For example, the client may:

- refuse to pay the first veterinarian's fee;
- decide to find another veterinarian to provide ongoing care for his or her pets;
- speak negatively about the previous veterinarian to other current or potential clients;
- file a complaint with the state licensing board against the previous veterinarian; and/or
- sue the previous veterinarian for malpractice.

What do You Say

Even if you elect not to investigate a client's allegation of "mistake" by the previous veterinarian, you should at least acknowledge the client's concerns and attempt to preserve the profession's reputation in his or her eyes. For example, you could say:

It sounds like you have had a very rough time lately given Fido's health problems. Anyone in your position would be upset. It is frustrating for everyone that medical science has not yet evolved to the point where we can be perfect in our diagnoses or guarantee successful treatment.

If the client pushes you for more and specifically asks you what you think about the previous veterinarian's care, you can say:

Without a full investigation of Fido's previous care I am not in a position to comment. Doing so would be unfair to you in that I could be giving you false information. It could also be unfair to your previous veterinarian.

If the client then asks you to conduct a full investigation and you are not inclined to do say, you can respond as follows:

I am sorry but I am unable to assist you with an investigation into Fido's previous care. My first priority is to provide all of my patients, including Fido, with the absolute best medical care that I can provide and I have dedicated all of my time to this endeavor.

If you are going to be assuming responsibility for the ongoing care of the client's pet, you will (as noted above) necessarily be undertaking at least a preliminary investigation into the previous veterinarian's care. What should you say at the initial meeting when faced with a client who is complaining about his or her previous veterinarian (i.e., before you have had an opportunity to fully investigate the client's allegation of mistake)? You might consider saying something along these lines:

It sounds like you and Fido have had a really tough time lately. I am going to do my very best to try to turn things around for both of you. In order to do this, I am going to need your permission to allow me to access Fido's previous treatment records and speak to Fido's previous veterinarian so that I know everything that has been done up to this point.

Duty to disclose

If, after you have conducted a thorough investigation as outlined above, you conclude that the previous veterinarian did, in fact, breach the standard of care, what if any duty do you have to disclose your findings to the client (or to the authorities)?

If the sole purpose of your inquiries was to investigate the previous veterinarian's care (i.e., you are not providing ongoing medical care to the client's pet but were merely retained by the client to conduct an investigation), then you have a legal duty to disclose all of your findings to the client because that is what the client has paid for.

On the other hand, if your inquiries were part of the due diligence required of you in assuming ongoing responsibility for the client's pet, you should consult your state's practice acts and codes of conduct as they may impose a legal duty on you to report substandard care provided by another veterinarian. For example, the Pennsylvania State Board of Veterinary Medicine – Rules of Professional Conduct provide that:

- 1(e) Veterinarians shall safeguard the public and the veterinary profession against veterinarians deficient in professional competence, professional conduct or ethical conduct as described in this chapter.
 - (1) When a veterinarian knows or has reason to believe that a professional colleague's actions demonstrate deviation from or failure to conform to the standards of acceptable and prevailing veterinary medical practice or professional incompetence, a veterinarian should bring the behavior to the attention of the colleague.
 - (2) A veterinarian shall bring the behavior of another veterinarian to the attention of the Board by sending a written report to ... if one or more of the following applies:
 - (i) The veterinarian cannot informally resolve an issue of the deviation from or failure to conform to the standards of acceptable and prevailing veterinary medical practice or professional incompetence with the other veterinarian.
 - (ii) The veterinarian learns of repeated deviation from or failure to conform to the standards of acceptable and prevailing medical practice, professional incompetence or misconduct.
 - (iii) The matter involves animal abuse or neglect.

In addition to any legal duty that may exist, you arguably have an ethical duty to speak up. In particular, the AVMA's *Principles* provide that "Veterinarians should be *honest, fair, courteous, considerate and compassionate*" (*italics added*).⁵ In addition, recall that the *Principles* are guided by the Golden Rule – only this time you are looking at the situation from the perspective of the client and asking yourself: "If I was the client, what would I want to be told?"

⁵ *Principles* at II.H – commentary.

To whom should you speak

Before discussing any of your findings with the client (or the authorities) it is incumbent upon you to go back to the previous veterinarian and discuss your findings with him or her. This is the approach embraced by the Pennsylvania State Board of Veterinary Medicine as outlined above.

Again, consider the situation where a guinea pig is given amoxicillin and dies. If after a thorough investigation you conclude that the previous veterinarian in fact prescribed the amoxicillin, you should call him or her up to discuss the matter. For example, you could say:

I see that you prescribed amoxicillin for Mrs. Jones' guinea pig. I appreciate that it is difficult to keep on top of all of the therapeutic options for each species, especially if you are like most of us and do not have the opportunity to treat a lot of guinea pigs so I thought you might appreciate receiving a copy of an article that I have indicating that amoxicillin is contraindicated in pocket pets.

If the other veterinarian is receptive to your call, you will have helped out a colleague and, if you happen to practice in Pennsylvania, you will have satisfied the state board's requirements.

During the course of this conversation, you can also give the other veterinarian the opportunity to "own up" to his or her error and attempt to make amends directly with the client.

Of course, not all of your colleagues will avail themselves of the opportunity to do the right thing. In those circumstances, all you can do is say to the other veterinarian, "I am sorry you feel that way but you have left me no choice but to speak to the client myself to convey my findings." You can then in good conscience proceed to outline your findings to the client.

Summary

Dealing with another veterinarian's mistake – or alleged mistake – is extremely difficult for most of us and requires a great deal of thought. Therefore, when confronted with such a situation, remember:

- never comment on another veterinarian's care until you have conducted a thorough investigation of ALL of the facts;
- your investigation should include a discussion with the other veterinarian (after getting permission from the client, of course);

- never criticize another veterinarian unless there are sufficient facts to reasonably conclude that the other veterinarian breached the requisite standard of care; and
- at the conclusion of your investigation, call the other veterinarian again to give him or her the opportunity to speak directly with the client and “make things right.”