

Veterinarians' Legal Liability for Zoonotic Diseases©

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There are primarily two areas of law that regulate the conduct of veterinarians and help ensure that veterinarians act prudently and reasonably in their dealings with clients and their pets. The first is the civil court system, which adjudicates claims made by clients who allege that their veterinarians have acted carelessly. The second is the state board of examiners, which is an administrative office charged with enforcing a state's veterinary practice act. The state veterinary practice act sets forth laws to which veterinarians must comply in order to obtain and retain their veterinary licenses. In performing their daily clinical duties, veterinarians should be cognizant of these two areas of law, as they represent the two principle avenues by which clients may direct complaints and file claims of malpractice.

Receiving letters from the State Board of Examiners or a disgruntled client's attorney can be very distressing, sometimes causing veterinarians to respond impulsively and not always in their best interest. This is primarily the case with veterinarians who have been practicing for only a few years, as they are not likely to have been previously named in a lawsuit nor reprimanded by a regulatory agency. It is important for veterinarians to realize that the manner in which they initially respond to such allegations can have a significant impact on the final outcome. For this reason, it behooves veterinarians to become knowledgeable about the processes by which state boards and the courts adjudicate such allegations. The following zoonotic disease case example illustrates how these procedures work in real life.

Dr. Williams' Case¹⁰

On a brisk October day, Mrs. McDonnell and her two young children bring Hobbes, a recently adopted 2 month old kitten, to their local animal hospital where Dr. Williams is currently on duty. Mrs. McDonnell is surprised to see a new face; she has always seen the practice owner, Dr. Haus, for their 5 year-old Labrador retriever's annual visits. Dr. Williams explains that she was hired a few months ago and Dr. Haus is on vacation for a couple of weeks, and she would be happy to take a look at their new kitten.

Dr. Williams takes a fecal sample and performs a physical examination, noticing some mild nasal and ocular discharge. She also notices a few fleas and some patchy areas of alopecia and crusting, especially at the base of the tail. Dr. Williams explains that Hobbes probably has an upper respiratory infection and flea allergy dermatitis. Just then, one of the veterinary technicians

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informs Dr. Williams that there are four appointments waiting and a frantic client has just called to say that their dog was hit by a car and is on her way. Being the only doctor on duty, Dr. Williams knows she must act quickly. She returns to the exam room where Mrs. McDonnell is impatiently looking at her watch. She quickly performs a Wood's lamp test on Hobbes to rule out dermatophytosis (ringworm). Seeing that it is negative and knowing that lesions at the base of the tail are most often indicative of flea allergy dermatitis, she de-worms Hobbes, applies some topical flea preventative and sends Mrs. McDonnell home with some Clavamox for the upper respiratory infection. She takes a deep breath and hurries into the next exam room.

Dr. Williams's hurried medical notes for Hobbes read:

S: Owner brought kitten in for first visit. Recently adopted from an animal shelter.

O: QAR, T = 104.3, mild dehydration, bilateral green ocular and nasal d/c, HR/RR WNL, multifocal areas of crusting patchy alopecia, esp. at tail base. Fleas. Fecal neg.

A: Mild to moderate URI, flea allergy dermatitis.

P: 0.21 cc Clavamox PO BID 2 weeks. Topical flea tx.

One night, a few days later, Mrs. McDonnell sees her four year-old son, Eric, rubbing his elbow. She notices a red crusting spot where he had been rubbing. Concerned, she calls her daughter Eliza into the room and asks if she has any itchy red spots on her skin. Eliza says no. Mrs. McDonnell, a kindergarten teacher, suspects that Eric contracted ringworm from one of his classmates at school. She immediately takes both of the children to their family pediatrician, Dr. Smith. During Eric's physical exam, Dr. Smith asks Mrs. McDonnell if they have any pets. Mrs. McDonnell doesn't see what that would have to do with anything until he explains that ringworm is a zoonotic disease, one that can be spread from animals to humans. He explains that it is quite possible that Eric could have gotten ringworm from their new kitten. Noting that Mrs. McDonnell seems to have a similar lesion on her own arm, Dr. Smith recommends that she and her husband visit their own physician.

After a visit with her physician confirming that she also has developed ringworm, Mrs. McDonnell contacts the school principal to notify her of the situation. She is told that she cannot come to work until further notice, as she might spread the disease to her students and the school wants to avoid angry phone calls or even lawsuits from angry overprotective parents. At the mention of lawsuits, Mrs. McDonnell thinks of her upcoming recheck appointment with Dr. Williams and wonders why she was never told about the risk of Hobbes transmitting ringworm to her family. Had she only known, she could have taken some precautions to avoid this whole mess. Thinking more and more about the situation and becoming increasingly frustrated, Mrs. McDonnell picks up the phone and cancels Hobbes' appointment for next week. She then makes an appointment with a different veterinarian. Finally, she telephones her sister in law, who happens to be an attorney.

On a Monday morning, 3 months later, Dr. Williams receives two frightening letters--one from a local attorney stating that she had been named in a negligence lawsuit being brought forth by Mrs. McDonnell. The second letter was from the Veterinary State Board of Examiners, requesting her response to allegations that she had “carelessly and negligently failed to inform a client about the risks associated with zoonotic diseases, and failed to perform appropriate diagnostic testing.” Knowing that her boss had been out of town for Mrs. McDonnell’s appointment, Dr. Williams knew she would soon have some explaining to do.

What should Dr. Williams do?

Responding to Allegations of Professional Malpractice

How veterinarians address such accusations will in part depend on whether the allegations are in the form of a lawsuit, state board complaint, or both. Regardless of the form in which the allegation is made, the first step a veterinarian should take is to carefully read the complaint and determine what is being requested of them and in what time frame. Once this information has been assimilated, he or she should gather pertinent medical records and any other documentation relating to the services in question and delineate their recollection of the events in chronological order.

In this case, the complaints allege that Dr. Williams failed to warn Mrs. McDonnell about zoonotic risks associated with having a pet, failed to perform the adequate diagnostic procedures required to rule out dermatophytosis and failed to treat the pet accordingly. The facts indicate that Dr. Williams examined Hobbes, made a diagnosis of upper respiratory and flea allergic dermatitis and performed one diagnostic test to rule out dermatophytosis without informing the owner. Dr. Williams should carefully review the medical records to corroborate her recollection of the events. Unfortunately in this case, because the documentation is poor, it will be a scenario of Dr. Williams’s word against Mrs. McDonnell’s. For example, it will be difficult for Dr. Williams to claim that she informed Mrs. McDonnell of zoonotic risks, or that she even attempted to rule out dermatophytosis with any diagnostic testing, as there is no such notation in the records. Since Dr. Williams has a legal obligation to maintain medical records, the fact that she hasn’t done so adequately will imply that she also was careless with her medicine. As she reviews the records, Dr. Williams should write down the events that led to Mrs. McDonnell’s complaint. Most veterinarians will find this helpful since it will refresh their memories, help them develop a consistent “story” as to what happened, and provide a draft from which to develop a written response.

So as not to compromise her defense in the lawsuit, Dr. Williams should immediately upon receiving the complaint, contact her professional liability insurance carrier and ask for advice. However, if Dr. Williams suspected earlier that Mrs. McDonnell was likely to pursue legal action, she should have contacted her insurance carrier at that time. Insurance carriers may differ in how they handle negligence actions, but usually require the defendant to fill out a claims form in which the veterinarian describes the circumstances that led to the claim. A claims representative then reviews the facts, makes a recommendation as to a course of action and may assign an attorney to the case if the complaint cannot be settled quickly. In this case, if Mrs. McDonnell is offered a settlement and rejects it, it is likely an attorney would be assigned to

defend Dr. Williams since in this case failing to diagnose, treat, and warn the client of zoonotic risks of dermatophytosis is likely to be deemed negligent.

In dealing with the letter from the state board, Dr. Williams should be aware that she will most likely be defending her conduct at her own expense, since professional liability insurance carriers generally do not provide coverage for state board actions (exception: AVMA-PLIT and ABD Insurance and Financial Services now offer a limited policy insuring against state board actions). While Dr. Williams may respond on her own, it is usually advisable for her to obtain legal advice as to how she should respond to the allegation(s) and at the very least have an attorney review her letter. In drafting her response, Dr. Williams should not underestimate the time and effort it will take to address all the issues in the complaint, in an organized and articulate manner. Responses that are, disorganized, incomplete and difficult to follow often lead to further investigation by the board, whereas a professional, organized and complete response is more likely to warrant an early dismissal of the charges. Additionally, Dr. Williams may find it helpful to consult with other veterinarians to determine whether they routinely perform Wood's lamp tests and fungal cultures on all patients with tail-base alopecia and crusting; do they then inform their clients of the zoonotic risks of contracting dermatophytosis, even if they are convinced of a different diagnosis? This will assist Dr. Williams in determining whether she acted within the standard of care and provide an indication as to her liability.

Negligence

The burning issues for Dr. Williams of course, are whether she was negligent in failing to (a) accurately diagnose and treat Hobbes, (b) warn Mrs. McDonnell of the zoonotic risk associated with dermatophytosis and, (c) maintain proper medical records. Our courts and juries decide negligence on a case by case basis in light of the specific facts and circumstances of each situation, but, veterinarians should be aware of a few general principles. First and foremost, it is important to note that a veterinarian can be found negligent even if he or she did not intend to cause harm. Simply put, "I didn't mean to" is no defense to "you should have known better". A simple mistake, if deemed careless, can lead to liability.

Secondly, veterinarians can be found negligent even if the rest of their colleagues would have acted in the exact same way. Judges can determine that the entire industry is at fault if it is in the public's interest. Judge Leonard Hand, a famous judge once wrote in his opinion "[c]ourts must in the end say what is required; there are precautions so imperative that even their universal disregard will not excuse their omission."¹³ Hence, it is a false security to rely on what the rest of your colleagues are doing.

To recover damages from a veterinarian based on negligence, a client must prove four elements by a preponderance of the evidence, meaning it is more likely than not that the veterinarian erred:

Duty of Care

Clients must show that their veterinarians "owed" them a duty of care to provide veterinary services of a certain standard. This element is easy to prove, because courts almost always find that once a veterinarian has agreed to provide veterinary services, the

veterinarian also has assumed the legal duty to take reasonable care in providing such services. In our scenario, Dr. Williams clearly owed Mrs. McDonnell a duty to take reasonable care in providing veterinary services to Hobbes.

Breach of Standard of Care

A duty to provide services within the standard of care is breached when veterinarians fail to meet the standard of care as established by the veterinary profession, that is, when they fail to act with the level of skill and diligence commonly possessed by members of the profession in good standing. Mrs. McDonnell probably will be able to prove breach of duty if her attorney can show that veterinarians routinely perform fungal cultures in addition to a woods lamp test when multifocal alopecia and crusting is observed on physical examination. Conversely, Dr. Williams will attempt to establish that she did not breach her duty of care, by showing that most general practitioners do not perform fungal cultures or woods lamp examinations when they are convinced a different diagnosis due to characteristic lesions. It is at this stage that expert witnesses are hired to testify as to the standard in the case at hand.

Proximate Cause

Clients must then prove that the veterinarian's failure to provide services within the standard of care "proximately" or "closely" caused the harm suffered by the clients. If the harm suffered by the client is not a result of the veterinarian's actions or omissions, it would be unfair to hold the veterinarian responsible. In this case, it is not yet clear that Hobbes transmitted dermatophytosis to the McDonnell family. If a different veterinarian is able to prove that Hobbes indeed infected with dermatophytosis and the isolated organism is the same as the one isolated from Mrs. McDonnell or her children, proximate cause will be relatively easy to prove. Suppose, however, that dermatophytes cannot be cultured from a trichogram performed on Hobbes. It would be more difficult to prove that the family's infection resulted from any failure on Dr. Williams' part.

Damages

Even after they have proved negligence, clients also must establish that they suffered harm resulting from such negligence. Since animals are considered as property under the law and most state courts do not recognize loss of companionship, this harm is usually in the form of an economic loss. As a result veterinary malpractice awards are usually much lower than in human malpractice cases and clients usually only recover the fair market value of the animal, costs incurred for veterinary care, and loss of income or profits in cases where the use of the animal is lost. However, we are seeing more and more states entertain the possibility of awarding non-economic damages and this is likely to increase the scrutiny with which standards of care are evaluated as well as the number of lawsuits filed against veterinarians. Since this case involves a zoonotic disease, as further described in the following section, Mrs. McDonnell may be able to prove that she and her family suffered harm resulting from Dr. Williams' negligence; she would then be awarded damages for medical expenses, lost wages, or emotional distress.

Cases

Dr. William's case is an actual case that has had some of its facts changed to accommodate the scope of this chapter. While there has not been an overly abundant number of published cases involving veterinarians and zoonotic liability, below are a few examples of cases which illustrate the reality of the risk and need for veterinarians to review their practice policies so as to minimize the risk of transmission of zoonotic diseases to their clients and their families.

Malicki v. Koci, 121 Ohio App.3d 723, 700 N.E.2d 913 (1997)—plaintiffs who received a parakeet as a gift and thereafter contracted psittacosis were allowed to maintain a negligence action against the pet store. Plaintiffs presented an affidavit from their expert witness that pet store owners knew that parakeets may carry chlamydia and yet exhibit no outward signs of illness or symptoms. Also, that psittacosis is a potentially deadly public health hazard. That purchasers of parakeets should be notified by the seller at the time they buy the bird that it may carry chlamydia and that sellers should recommend the buyers have the bird examined by an avian veterinarian especially for zoonotic diseases. 121 Ohio App.3d at 727, 700 N.E.2d at 915.

Latham v. Wal-mart stores, Inc., 818 S.W.2d 673, 676 (Mo. App. E.D. 1991)—store and store manager were *not* strictly liable under products liability law for injuries to purchaser's husband caused by contracting psittacosis from a bird purchased at the store where the evidence revealed the purchaser was an employee of the store who had the bird specially ordered, store was not in the business of selling birds, and the store had the bird for less than an hour before it was sold to the purchaser.

Steele v. United States, 463 F. Suppl.321 (D. Alaska 1978)—optometrist found negligent in failing timely to refer a four-year old child to an ophthalmologist. The court found the child lost his eye because of toxocara canis and if the optometrist has promptly referred the child to an ophthalmologist, the child might not have lost his eye.

Baylis v. Wilmington Medical Center, Inc., 477 A.2d 1051 (Del. Super. 1984) *aff'd* 567 A.2d 418 (Del 1989)—medical malpractice action for improper treatment of patient who was suspected of having toxocariasis probably contracted from her dog.

Placko v. Fawver, 55 Ill.App.3d 759, 13 Ill. Dec. 492, 371 N.E.2d 187 (1977)—veterinarian who failed to take steps to assure the body of a suspected rabid cat was not disposed of, was found liable where, because no test could be performed to determine whether in fact the cat was rabid, child had to undergo series of painful rabies injections

Avoiding Client Complaints

Just as “an ounce of prevention is worth a pound of cure”, the best practice to avoid being dragged into a lawsuit or state board investigation is to take measures to avoid client complaints. Even if successful, Dr. Williams will spend a lot of time, effort and money defending herself in court and before the state board. In retrospect, it would have been far less costly and burdensome if Dr. Williams had informed Mrs. McDonnell of all the differential diagnoses concerning skin lesions and that there was a possibility that Hobbes did have a dermatophyte

infection. At a minimum, Dr. Williams should have offered a fungal culture and recommended isolating Hobbes until a definitive diagnosis was made.

Veterinarians will save themselves a lot of grief if they periodically evaluate their practices to identify areas where preventive measures and procedures will help avoid complaints before they start. Additionally, veterinarians should regularly consult with the staff, their colleagues and perhaps even their insurance carrier to ensure that they are aware of the latest preventive measures adopted by other practitioners. Keeping abreast of developments in the legal liability field should be an integral part of any veterinarian's continuing professional education. Because people are people, there is no way to prevent client complaints entirely. But in this area like many others, ignorance is dangerous and a preventive attitude is the best approach.

Conclusion

In the past few decades, there has been an apparent increase in the strength of the human-animal bond, changing society's expectations of veterinarians.^{2,3} Veterinarians are becoming increasingly viewed as protectors of general public health and with that responsibility has come increasing numbers of malpractice disputes.² Being accused of malpractice can be a disconcerting experience for any veterinarian, but especially for associates who have been in practice for only a few years. These allegations can come in the form of a civil law suit or state board action and require a veterinarian's immediate attention so as not to compromise his or her defense. Preparing a defense against such allegations is facilitated by having knowledge of the law of negligence and an understanding of the adjudicatory process. Nonetheless, the best defense is to err on the side of caution by addressing client complaints when they first arise, using honed listening and communication skills, keeping abreast of the standard of care within the industry and adopting appropriate preventative measures.

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