

The Law of Professional Negligence

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Practice Management to Avoid a Lawsuit –
The Law of Negligence and Professional Liability

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PRACTICE MANAGEMENT TO AVOID A LAWSUIT

I. THE LAW OF NEGLIGENCE AND PROFESSIONAL LIABILITY

In the limited amount of time available to discuss the important aspects of professional liability, we will briefly describe the basic elements of a suit for negligence. Thereafter, this presentation will focus on some specific areas where additional knowledge and discussion would be most valuable, including the areas of animal restraint, informed consent, and several new client consent forms. This material is covered in-depth in Chapter 6 of the *Law and Ethics of the Veterinary Profession* textbook, available from Priority Press, Ltd., (215) 321-9488, Yardley, PA 19067.

A. Intent of Seminar

1. Present practice management and medical record ideas that will improve personnel efficiency and generate additional income.
2. Promote principles that reduce time spent dealing with unhappy clients or client complaints.
3. Provide information and sample record forms that reduce exposure to legal actions.

B. Defining Risk Management - recognizing and handling complaints by clients and/or employees in a manner that prevents or at least minimizes the potential for a lawsuit and legal liability for negligence, malpractice, and breaches of contract.

C. The Origin of Client Complaints and the resultant refusal to pay for services rendered.

1. Breakdowns in communications about medical care and fees.
2. The failure to provide satisfactory quantity and quality of veterinary care.
3. The failure to offer timely referrals - not at all or too late to be of value.
4. The failure to show adequate compassion.
 - a. When a patient dies.
 - b. At the time of euthanasia.
 - c. When providing a mechanism for disposal of the patient's body.
 - d. When a client is injured.
5. Aggravating the potential for complaints.
 - a. The egotistical veterinarian.
 - b. Making a diagnosis too quickly.
 - c. Filing a small claims court action to collect on an unpaid account.
6. Avenues for addressing grievances.
 - a. Talk with clients on a regular basis!!!!!! Do not pass this job on to a receptionist or office manager. Meet with them in person when ever possible.
 - b. VMA ethics committees or peer review committees.
 - c. State boards of veterinary examiners and courts of law.

II. THE FOUR ELEMENTS

A. Duty - the requirement that veterinarians practice in a manner that prevents injuries to clients and animals.

1. Negligence cases.
2. Malpractice cases.
3. Duty to refer to specialists.
4. What's the story about a "duty to provide emergency care?"

B. The Standard of Care - care equal to that provided by a reasonably skilled and careful veterinary colleague.

1. The similar locality rule.
2. Omissions and commissions.
3. Standards for continuing education - set by State Board regulations.
4. Standards for the administration of compounded drugs.
 - a. They exist and originate in the 2003 FDA Compliance Policy Guidelines Manual (CPGs) Sec. 608.400 *Compounding of Drugs for Use in Animals*.
 - b. Sec. 530.13 Extralabel use from compounding of **approved new animal and approved human drugs**.
 - i. This part applies to compounding of a product from approved animal or human drugs by a veterinarian or a pharmacist on the order of a veterinarian within the practice of veterinary medicine. Nothing in this part shall be construed as permitting compounding from bulk drugs.
 - ii. Extralabel use from compounding of approved new animal or human drugs is permitted if:
 - (a) All relevant portions of this part have been complied with;
 - (b) There is no approved new animal or approved new human drug that, when used as labeled or in conformity with criteria established in this part, will, in the available dosage form and concentration, appropriately treat the condition diagnosed. Compounding from a human drug for use in food-producing animals will not be permitted if an approved animal drug can be used for the compounding;
 - (c) The compounding is performed by a licensed pharmacist or veterinarian within the scope of a professional practice;
 - (d) Adequate procedures and processes are followed that ensure the safety and effectiveness of the compounded product;
 - (e) The scale of the compounding operation is commensurate with the established need for compounded products (e.g., similar to that of comparable practices); and
 - (f) All relevant State laws relating to the compounding of drugs for use in animals are followed.
 - iii. Guidance on the subject of compounding may be found in guidance documents issued by FDA.

Sec. 530.30 Extralabel drug use in nonfood animals.

- (a) Because extralabel use of animal and human drugs in nonfood-producing animals does not ordinarily pose a threat to the public health, extralabel use of animal and human drugs is permitted in nonfood-producing animal practice except when the public health is threatened. In addition, the provisions of Sec. 530.20(a) (1) will apply to the use of an approved animal drug.
 - (b) If FDA determines that an extralabel drug use in animals not intended for human consumption presents a risk to the public health, the agency may publish in the Federal Register a notice prohibiting such use following the procedures in Sec. 530.25. The prohibited extralabel drug use will be codified in Sec. 530.41.
- c. Problems with rampant use of compounded drugs by companion animal veterinarians.
- i. The compounders are not governed by Good Manufacturing Principles, i.e. no quality control or manufacturing standards are in force;
 - ii. Because there is no manufacturing oversight, it is possible that these drugs could be contaminated with pathogenic organisms that will cause disease instead of cure it;
 - iii. The veterinary practitioner prescribing, dispensing or administering the drug accepts legal responsibility for its use, i.e., there is no strict product liability for the manufacturer in situations where there is no FDA approval (usually the case with compounded drugs);
 - iv. The concentration of active ingredients may be inconsistent from batch to batch;
 - v. In most cases, the compounders can produce no safety or efficacy studies for these drugs;
 - vi. There is no known shelf-life for the drug and often no information about the need for refrigeration of the product;
 - vii. Changes in pH can change the bioavailability of ingredients, yet, no one is monitoring this;
 - viii. The molecular size of the active ingredient of some FDA approved orally administered drugs is so large that it could never be reformulated to be effective when applied transdermally, yet some compounders are selling topical version of these drugs for use in cats that could never be effective (enrofloxacin Baytril™);
 - ix. These drugs are often referred to as generics, yet, if the drug is manufactured from bulk, it is not a generic and the pharmacokinetics of the drug in its reformulated state is totally unknown;
 - x. The provision of these fly-by-night drugs from compounders that often compete with FDA approved drugs removes the incentive for the large ethical pharmaceutical firms to research, develop, seek FDA approval, and market new drugs because their costs will exceed their return on investment; and

- xi. Lastly, and perhaps the worst, continued use and sale of compounded drugs in the face of knowledge of their ineffectiveness could be determined to **constitute fraud**, thus, voiding one's professional liability insurance coverage for claims of mere professional negligence!

- 5. Emerging standards of care relating to pain management. (Based principally on AAHA's standards found at www.aahanet.org)
 - a. Assess the level of pain for each patient during histories and physical examinations regardless of the specific complaint.
 - b. Assess degree of pain using a standardized scale or scoring system and record results in the medical record for all patient evaluations.
 - c. Individualize pain management treatment regimens for each patient.
 - d. Utilize preemptive pain management as indicated.
 - e. Provide appropriate pain management for the anticipated level and duration of pain.
 - f. Offer to provide medications with all surgical procedures that will minimize pain.
 - g. Reassess patients for evidence of pain at intervals for any procedures that have the potential to cause discomfort.
 - h. Evaluate patients with persistent or recurring conditions such as painful diseases such as periodontitis, pancreatitis, neoplasia, osteoarthritis, and otitis externa and media to determine their pain management needs.
 - i. When pain is suspected but cannot be confirmed by objective methods, use analgesic therapy and close owner observations as tools to confirm the existence of painful conditions.
 - j. Utilize written pain management protocols.
 - k. Know the classes and dosages of the six standard forms of pain management.
 - i. Local anesthetics: for use in regional analgesia.
 - ii. Corticosteroids: for use with inflammatory mediated pain.
 - iii. Non-steroidal anti-inflammatory drugs: for use when corticosteroids are contraindicated.
 - iv. Alpha₂ agonists: use for sedation and analgesia.
 - v. Opioid Agonist Antagonist / Opioid Partial Agonist: use for mild to moderate pain.
 - vi. Opioid agonists (agonist-antagonists): use for moderate to severe pain.
 - l. Educate clients in writing and verbally in cases where pain management is part of the therapeutic plan regarding potentially beneficial and/or adverse effects of the therapy.

- 6. The changing standard of care.
 - a. With respect to delivery of veterinary care to animals
 - b. With respect to the standards for informing clients about **zoonotic diseases**.
 - i. What do (or should) we know that we should tell our clients?
 - ii. Who's the expert? - the veterinarian or the physician?

- iii. Concerns about the “big and obvious” one - rabies have always been at the forefront.
 - iv. Concerns about children and immunocompromised people.
 - v. Concerns about the transmission of parasitic diseases from pets to humans.
 - vi. Toxocara canis - cutaneous and ocular larval migrans.
 - vii. Hookworms - cutaneous and visceral larval migrans, enteritis in children.
 - viii. Baylisascaris transmission from raccoons (and dogs?) to humans causing severe encephalitis.
 - ix. Toxoplasmosis - pregnant women
 - x. Bartonellosis – all cat owners but especially the immunocompromised..
 - xi. Tapeworms - hydatidosis.
 - xii. Heartworm disease in immunocompromised people.
 - xiii. Giardia.
7. Standards of care regarding offering referrals to specialists. Remember that evening and week end emergency clinics in a community are included in this group of parties to whom clients should be offered referrals.
8. Statutory standards of care - those established as minimums by State Boards of Veterinary Examiners.
9. Guidelines for care are rapidly creeping into the profession and, though they are not at this time considered “standards,” they may well be the precursors to them. They include:
- a. Guidelines for parasite control and treatment created by the Companion Animal Parasite Council (www.capc.org)
 - b. Guidelines for feline and canine vaccinations produced by the AVMA, AAHA, and AAFP.
 - c. Guidelines for dentistry, diagnostic imaging, pain management and medical records created by the AAHA (and found on their website, www.aahanet.org).
10. Standards regarding liability for inadequate restraint.
- a. Risks of injury from animal restraint problems come in three primary forms - a) injuries to people, b) injuries to animals, and c) injuries to staff members.
 - b. In view of today's litigious society one must now question whether it is within the standard of care to allow clients to restrain their own animals.
 - c. Criteria to be considered when restraining animals:
 - i. The age, size, and stature of the client(s) assisting with restraint;
 - ii. The person's level of experience restraining the species of animal about to be examined;
 - iii. The person's health and physical condition;
 - iv. The veterinarian's familiarity with the temperament and controllability of the patient;
 - v. The adequacy of the facilities available for restraint;

- vi. The availability or non-availability of a trained veterinary assistant (during daytime hours trained personnel usually are readily available - after hours veterinarians may be required to use their clients as assistants);
- vii. The length of time required to complete and difficulty associated with the diagnostic or treatment procedure about to be performed;
- viii. The amount of pain that might be produced by the examination;
- ix. The presence and location of bystanders; and
- x. The value of the animal.

11. Standards of care and the legal consent doctrine.

- a. Veterinarians must understand the tie-in between contract law and informed consent with the hope that statutory changes or court precedents will eradicate the informed consent doctrine in veterinary medicine.
- b. The KEY INGREDIENTS needed for an educated legal consent include:
 - i. Information about the medical and surgical alternatives.
 - ii. Explanations describing the procedure(s) in language and using teaching aids sufficient for owner to understand what will occur.
 - iii. Explaining clearly what you expect to accomplish (the outcome you anticipate) with your surgical or medical course of treatment.
 - iv. Informing of the most common or serious complications. (Medicine is an inexact science - be realistic).
 - v. Discussing the type and extent of follow-up care.
 - vi. Apprising clients of estimated fees and making arrangements for payments.
 - vii. Using written consent forms whenever indicated by the degree of risk and/or difficulty or complications associated with the procedure. (See U of Penn guidelines for the use of written consents on following page and the 72 *Legal Consents for Veterinary Practices, 4th Edition* book published by Priority Press and available by calling 215-321-9488 or from the AAHA store section of the www.aahnet.org website.

12. Standards of care and the 2003 AAHA/Hill's study about client compliance, titled *The Path to High-Quality Care - Practical Tips for Improving Compliance*.

- a. As a result of this publication and seminars explaining its impact, benchmarks now exist that show that a **failure to send timely reminders** for core vaccines, heartworm tests, dental prophylaxes, feline and canine therapeutic diets and senior screening tests, medication refills, and/or other routine services could in the future constitute the negligent practice of veterinary medicine.

13. Standards of care regarding the duty to inform clients about preventative parasite control for pets as a means of preventing the transfer of zoonotic parasites to humans.

- a. Novartis Animal Health, Merial, and Bayer all have programs to educate veterinarians and their staff about the incidence of human parasitic diseases acquired from pets. Merial has a CD-Rom and book titled *Protecting Pets, Protecting People*. Novartis has had national teleconferences for employees of veterinary practices and animal shelters covering this subject. Bayer has worked to draft client consent forms to help limit veterinary liability.
- b. The Center for Disease Control and American Association of Veterinary Parasitologists has a brochure to educate veterinarians, www.cdc.gov/ncidod/dpd/parasites/ascaris/prevention.htm and the CDC and Merial have a brochure to educate clients about these risks, www.cdc.gov/Healthypets/Merial_CDCBroch_rsgWEB.pdf.

GUIDELINES FOR USE OF INFORMED CONSENTS WHEN TREATING CLIENT-OWNED PATIENTS AT THE UNIVERSITY OF PENNSYLVANIA

These guidelines covering diagnostic and/or treatment procedures other than those performed in the normal course of diagnosis and treatment have been approved by the Hospital Board at VHUP.

Procedures Already Covered by Signed VHUP General Consent Forms (The Ideal Client Consent found in this hand out) and, thus, Where No Additional Discussion or Client Consents Are Required:

1. Using left-over volumes of patient fluids or tissues after use in client-authorized biopsies or clinical laboratory diagnostic testing procedures.
2. Employing surgical or other invasive procedures or chemotherapeutic, antibiotic, anti-inflammatory or other drugs described in reviewed literature as “successful” in the species in which the therapy is being applied, but historically not used at VHUP.
3. Collecting and utilizing data acquired via standard diagnostic and treatment procedures.

Specific WRITTEN Consents Are Required For:

1. Additional invasive procedures, including the collection of supplementary volumes of fluids or tissues or extra collection procedures, where such practices are not necessary for the patient’s planned diagnostic work-up and treatment.
2. Novel procedures or drugs being used where successful alternative treatments exist.
3. Circumstances where patients are assigned to treatment protocols that differ from the norms used at VHUP or other veterinary teaching hospitals or specialty practices.
4. Situations where patients are enrolled in clinical trials for drugs or procedures funded by extramural resources.

VERBAL And MEDICAL RECORD-ANNOTATED Consents Are Recommended When:

1. Clinicians use previously undescribed procedures, drugs or drug dosages in instances where no “successful” alternatives are known to exist.
2. Additional procedures are performed on patients that pose additional risks to patients other than those inherent in the planned treatments.

Support staff and clinicians who are uncertain about the interpretation or enforcement of these guidelines are urged to contact James Serpell, Chairman, VHUP ethics Committee, Dr. Jim Wilson, VHUP Risk Management Consultant, Barry Stupine, Hospital Director or VHUP’s Medical Director. Known violations should be reported to the Chairman of the Hospital Board or the VHUP Medical Director.

C. **Proximate Cause** - a material element and substantial factor in bringing about the type of injury that occurred.

1. The injury must have been one that was foreseeable and directly caused by the failure of the defendant practitioner to practice within the standard of care. This is often the most difficult element to prove in a cause of action for negligence.

D. **Damages** - generally awarded in the form of money. *Law & Ethics* book pages 145+.

1. Nominal.
2. Compensatory - special damages.
 - a. Lost income while the animals are out of production;
 - b. Lost use of the animal (stud fees, etc.);
 - c. Expenses incurred attempting to prevent the death or permanent disability of the patient (for example, follow-up veterinary medical expenses);
 - d. Lost profits (from the sale of a crop of puppies or kittens, etc.);
 - e. The market value of the animal;
 - f. The “unique property” theory of damages;
 - g. Any other damages that the plaintiff’s legal counsel can drum up - including costs of psychological or psychiatric care.
3. Compensatory - general damages.
 - a. Emotional distress (pain and suffering) - always available when humans are injured, available in a few states for loss of animals.
 - b. **Intentional Infliction of Emotional Distress (IEDD)**
 - i. Plaintiff must prove: Defendant intentionally committed an “extreme and outrageous” act that caused severe emotional distress for which punitive and emotional distress damages are available.
 - ii. Must shock the conscience of judge/jury.
 - iii. Hard to prove this when veterinarians are defendants unless their actions or those of their staff constituted animal cruelty or they engaged in willful and wanton misconduct.
 - c. **Negligent Infliction of Emotional (NIED)**
 - i. Courts generally allow recoveries only when plaintiffs:
 - (a) suffer physical injury or impact on their bodies,
 - (b) are in a zone of physical danger, and/or

- (c) are people whose children, spouses or parents were injured or killed and the plaintiffs witnessed the incident.
 - ii. In these instances, courts usually deny damage awards for significant other, life partners, friends, neighbors and sometimes grandchildren. They often describe the emotional distress as “parasitic” to some other grounding claim or injury so long as the distress is authentic and not unmanageably widespread.
- 4. Punitive damages
 - a. Requires proof of malice, intent, fraud, gross and wanton neglect for the property of another.
 - b. OUCH! Not covered by liability insurance.
- 5. Note: attempting to collect on past due accounts receivable may prompt clients to file lawsuits for negligence - so be sure your practice of medicine was within the standard of care before seeking to recover accounts receivable via collection agencies or in the small claims court.

E. **Defenses** to legal actions

- 1. Contributory negligence of the complaining party.
- 2. Assumption of risk by the injured party.
- 3. Comparative negligence – many jurisdictions compare the degree of negligence and contribution to the injury for both parties and then partition damages in that same relationship.
- 4. Failure to prove all of the above elements.
- 5. Statutes of limitations, i.e., time periods within which lawsuits must be filed or plaintiffs lose the right to pursue them because of the staleness of the evidence.

III. **PREVENTING COMPLAINTS - the use of consent forms.**

The publication entitled *Legal Consents for Veterinary Practices, 4th Ed* with all forms in English and Spanish is available from AAHA at (800) 883-6301 or its website www.aahanet.org or at from Priority Press, Ltd. Information about this 2006 publication is available at www.pvmc.net/publications. The book contains 72 different consent and release forms and comes with a CD ROM containing Word versions of all forms for customization by individual practices. Three examples follow.

CONSENT FOR TREATMENT AND/OR ADMISSION

(HOSPITAL OR CLINIC NAME)

Pet's Name _____ Approximate Age _____ Color _____ Breed _____

I, the undersigned owner, owner's agent or Good Samaritan responsible for seeking veterinary care for the pet identified above, certify that **I am/I am not** (circle one) over **eighteen** years of age, and hereby consent to the examination of this pet by staff veterinarians at (XYZ Veterinary Hospital). I also agree that after consultation with me, the hospital's doctors may prescribe medication for, treat, hospitalize, sedate, anesthetize and/or perform surgery on this animal. I understand that some risks always exist with anesthesia and/or surgery and that I am encouraged to discuss any concerns I have about those risks with the attending veterinarian before the procedure is initiated. Should some unexpected life-saving emergency care be required and the attending veterinarian is unable to reach me, the hospital's staff has my permission to provide such treatment and I agree to pay for such care.

I understand that an estimate of the costs for veterinary services will be provided to me and that I am encouraged to discuss all fees attendant to such care before services are rendered and during this pet's ongoing medical treatment. If this animal is hospitalized, I agree to pay a deposit of _____% of the estimated fees and assume financial responsibility for the balance of all services rendered on a cash, credit card or check basis at the time the pet is discharged from the hospital. In the event the pet is hospitalized for more than 48 hours and the attending doctor is unable to reach me, I understand it is my responsibility to call the hospital at least every 48 hours to inquire as to the medical status of this animal and the fees incurred for medical services up to that day. In the event of an open balance, I agree to pay a monthly billing and financing fee equal to 1.5% of the unpaid balance.

I understand that veterinary care during **nighttime hours and/or week ends** is provided at the discretion of the attending veterinarian. Continuous presence of personnel may not be provided during these hours.

I agree that either I, or an authorized agent of mine, will pick up this pet and pay for all accrued charges within 5 days after receiving written or oral notification that this animal is ready to be released from the hospital. Such notice will be given at the address maintained on the hospital's patient/client record or the address listed in my record. I agree that if I fail to comply with this policy, the XYZ Veterinary Hospital may handle this abandonment in the best interests of the animal and the hospital.

HAVE YOU TALKED WITH YOUR DOCTOR ABOUT THE FOLLOWING

1. The medical and/or surgical treatment alternatives for your pet?
2. Sufficient details of the procedures for you to understand what will be performed?
3. How fully your pet might respond or recover and how long it could take?
4. The most common complications and how serious they might be?
5. The length and type of follow-up restraint and care required?
6. How much this treatment is expected to cost and how payments will be handled?

Signature of owner or agent

Date

Signature of Parent/Legal Guardian
if owner/agent less than 18 yrs. old

Date

DECLINING PREANESTHETIC DIAGNOSTIC TESTS

Your pet is scheduled for anesthesia or surgery. Fortunately, advances in anesthesia have made routine procedures relatively safe, with low rates of complications. However, occasional problems can occur due to preexisting conditions not evident during routine histories and physical examinations. To minimize problems, we recommend that your pet be screened prior to surgery by means of the diagnostic tests that have been circled below:

1. a pre-anesthetic blood profile
2. a urinalysis
3. diagnostic radiographs (x-rays)
4. an E.K.G.
5. Other:

These tests will be performed and you will be billed for them or, occasionally, with the attending veterinarian's approval, they may be waived via your signature below.

I, the owner, or owner's agent, of the pet named _____, hereby decline such pre-anesthetic safety evaluation and agree to hold (practice name) harmless, in the absence of negligence, in the event of untoward anesthetic complications that might have been detected had these tests been performed.

Signature of owner or agent Date

CONSENT TO DONATE PET REMAINS

(practice name) is committed to improving the health and welfare of animals. By donating your pet's remains for use by the doctors of this hospital, you can become an integral part of this process. An educational memorial can help save other animals and improve the quality of their lives by providing our doctors and technicians with a source of knowledge in important subjects such as surgical anatomy and surgical techniques. If, after your pet's euthanasia or death, you would like to donate your pet's remains to the (practice name) to be used for educational purposes, please sign the statement below.

As owner or duly authorized agent for the owner of the animal (pet's name) described below, I hereby release possession of my pet's remains to (practice name) for use in teaching and learning as the doctors deem appropriate.

SPECIES _____ BREED _____ SEX _____ COLOR _____

AGE _____ NAME _____

SIGNATURE OF OWNER/AGENT _____

OWNER/AGENT NAME (PLEASE PRINT) _____ DATE _____

IV. WHAT VETERINARIANS SHOULD DO WHEN FACING MALPRACTICE LITIGATION

- A. Don't panic. Not all actions constitute negligence nor do all mistakes or bad outcomes lead to liability. Remember that medicine is an imperfect science and, therefore, undesirable outcomes sometimes occur because of errors in judgment rather than negligence or incompetence.
- B. Don't get angry and defensive. It is human nature to want to defend your actions - often before you even understands what the issues are. Be aware that comments uttered during states of anger, often with erroneous information and fractionated facts, may come back to haunt you later in the game.
- C. Listen carefully to the clients' concerns and complaints. Take notes regarding what they are saying, informing them that you will "get back to them" after you have gathered enough information to respond appropriately to their complaints.
- D. Keep avenues of communication with clients open - until a lawsuit is filed, at which point communications should be left to your attorney. Most lawsuits involving professional negligence occur because veterinarians fail to communicate with the clients who feel they and their animals have been wronged.
- E. Show concern and exude compassion. Many elder statesmen in this profession have fulfilled their careers without ever having been sued. In most cases these people have learned to "move to the client's side" and have tried to understand the client's point of view. Comments like, "Mrs. Jones, I understand where you are coming from and why you are angry. I'm sure I would be, too, if I were seeing this only from your perspective. However, there are two sides to every story and after I have more information, I hope to be able to provide an explanation to you as to what actually happened. As you can imagine, none of us wanted this to occur."
- F. Alert staff to the existence of a problem. Insensitive or ignorant staff can magnify problems multifold. Involved and sensitized staff who have been coached on what to say, if anything, and what not to say will help defuse problems rather than exacerbate them.
- G. Contact your professional liability insurance carrier. As soon as it appears you are in trouble, call someone at the office of your insurance carrier, inform them of the facts as they are known at that time, and ask for advice. Keep notes of the names of people with whom you spoke and your conversations in a location other than on the patient's medical record. Remember, your insurance policy is a contract between you and your carrier. Your job is to apprise them of any risks they may have and their job is to 1) advise you as to how you can minimize those risks and 2) defend you in the event you provided incompetent, negligent or even fraudulent medical care.

- H. Review the patient's medical records. Be sure all relevant facts, treatments, diagnostic notes, and "client reluctances" to proceed with recommended treatments have been recorded. This should be done as close as possible to the time such actions occurred and long before any requests for copies of medical records are made by angry clients. Do not covertly alter your medical records, instead overtly amend them to clarify points that might not previously have been recorded. Be sure not to lose any lab reports, radiographs, tissue samples, etc.. Document all in-person discussions with owners, all phone consultations with them or with other family members or agents, and all unsuccessful efforts to reach them. Keep in mind that most cases are won or lost based on three factors, 1) reliable testimony that the medical care provided was within the standards for the profession, 2) the depth, accuracy, credibility, and quality of the medical records, and 3) the competence of the expert witnesses supporting your course of action.
- I. Read about and understand the law of negligence and the informed consent doctrine. For clients to succeed in court, the four elements of negligence must be proven by a preponderance of the evidence. In order to understand how to protect yourself, it is essential to know what "crime" you supposedly have committed. Most veterinary practices can review current references in their libraries dealing with medicine and surgery without any delays. However, when it comes to references on problem-solving questions relating to ethics and law, their libraries draw a blank. Texts like Dr. Wilson's *Law and Ethics of the Veterinary Profession* and *Veterinary Ethics* by Jerrold Tannenbaum, Esq. are essential for veterinarians to understand how best to respond and defend against any threat of litigation. In 2001, Dr. Wilson also published a 3rd edition of the *Legal Consent Forms for Veterinary Practices* with the American Animal Hospital Association. It contains 49 consent written consent forms for use with a variety of veterinary services and products, all of which are on a diskette in MS Word so that practices can reproduce them with ease.
- J. Ask a colleague for an opinion on your actions. The standard of care that must be met with respect to a given set of medical circumstances is that which a reasonably prudent veterinarian would have provided under the same or similar circumstances. In other words, you don't have to be perfect. However, what you think about the standard of care provided by your practice is irrelevant to a court - it's what other reasonably prudent veterinarians think about the care you provided. Thus, you probably will need to consult with some colleagues and see how they would have responded to the situation in which you found yourself. Of course, this assumes you are not a hermit and actually have colleagues, something we all need in this small profession of ours.
- K. Do not lie. Answer all questions you can as honestly as possible without incriminating yourself or the practice. Don't answer questions that were not asked. Don't be afraid to say "I don't know." In other words, be honest but don't jeopardize your insurance carrier's opportunity to defend your case.

- L. Locate a capable attorney. How soon in the course of events you pursue this action will depend on how serious the claims are, how worried you are, and how big the public relations or financial damages are likely to be. If things are getting sticky and your insurance carrier hasn't yet stepped in with legal counsel to assist you, locate someone on your own. Keep in mind that the claims of negligence, incompetence or fraud may end up before the state board of examiners and not the civil court system, in which case your insurance carrier **will not** provide legal counsel for your defense. To find an attorney who understands veterinary medicine, your needs, and the law of negligence, contact the American Veterinary Medical Law Association via its web site at www.avmla.org for a referral to someone versed in veterinary law. All members of this unique organization are either attorneys with an interest in veterinary medicine, veterinarians with an interest in the law or combination veterinarian-lawyers who specialize in veterinary legal issues.
- M. Don't settle a dispute by paying damages or purchasing a replacement animal for the client without the consent of your insurance carrier. It's one thing to offer to reduce one's fees as a gesture of goodwill in order to amicably and expeditiously resolve a dispute. However, an outright admission of fault or an apparent admission, brought about by a generous effort to "right the wrong and make the problem go away," can sabotage the efforts of your insurance carrier's lawyer to defend your actions. And, in the end, the problem may turn out to have been an error in judgment or simply bad luck, not negligence.

Copies of the *Law and Ethics* book can be purchased for \$59.95 through Priority Press, Ltd., 16 S. Main St., Yardley, PA 19067, 215-321-9488 (fax 321-7495). The *Legal Consent Forms* are available through AAHA Press at 800-883-6301. See also Bernie Rollin's excellent new book, *An Introduction to Veterinary Medical Ethics, Theory and Cases*, Ames Iowa, Iowa State University Press, (515) 292-0140.