

VETERINARY MALPRACTICE

Pet owners frequently contact the HSUS General Counsel's Office for advice on how to proceed when their pets have died or been seriously injured as a result of alleged mistreatment by veterinarians. Without in any way impugning the competence or integrity of the veterinary profession, we would like to offer general guidelines for dealing with such situations.

If you are notified that your pet unexpectedly died while at a veterinary hospital or that the treatment otherwise did not produce the result intended, immediately begin to gather as much information as possible about what happened from the veterinarian, the veterinarian's assistants, and anyone else who might know something about the incident.

Be sure to look for inconsistent versions of events that took place in the hospital. Take detailed notes of all conversations you have with anyone at the veterinarian's office about your animal. Insist that the veterinary hospital give you a written copy of your animal's medical history. If your pet has died, do not allow anyone to dispose of the body; instead, take the body to another veterinarian for an autopsy. Have a written autopsy report prepared and the body preserved. Do not sign any release of liability provided by the original veterinarian. Keep in mind that, generally, payment of a veterinarian for services will not bar a subsequent action against the veterinarian for malpractice. If you must pay the veterinarian's bill to obtain medical records, then pay it under protest.

If you are contemplating le-

gal action, consult an attorney as quickly as possible. Your attorney will advise you further as to what information must be gathered.

For an animal owner to recover in a suit for malpractice, all of the following must be proven: 1) The veterinarian must be under a duty of care toward the animal in question. In other words, the veterinarian must have accepted the responsibility to treat the animal. 2) The veterinarian, in carrying out his/her duty, did not conform to the professional standard of conduct. 3) The veterinarian's failure to conform to the professional standard of conduct must be the direct cause of the injury or harm at issue. 4) The injury or harm to the animal must result in damages to the owner. (Damages is the legal term for compensation in money for loss or damage.)

Generally, a veterinarian's professional standard of care is "the exercise of the care and diligence as is ordinarily exercised by skilled veterinarians." The work of a practitioner of average skill, not the best or the most highly skilled, sets the standard. It is important to note that some states, Utah and Louisiana, for example, require comparisons with the professional standard of care within the immediate community.

Expert testimony, usually given by another veterinarian, is typically necessary to establish the standard of professional care and the violation of that standard, since a layperson is not qualified to testify as to the proper standard of care and documents are considered hearsay.

Expert testimony may be harder to obtain in states that use a local community standard

of professional care because a veterinarian may be unwilling to testify against another local veterinarian, especially if the defendant veterinarian is someone he/she knows personally.

Most state courts limit the amount of money recoverable to the fair market value of the animal, on the theory that animals, at law, are personal property, as are cars or furniture.

The fair market value of the animal is its value at the time of death or the difference between its market value before its injury and its market value thereafter. In the case of many, if not most, pets, this is a nominal amount, a few hundred dollars at most.

To establish market value, the pet's purchase price, pedigree, training, show quality, capabilities, and any services rendered by it, such as guiding, breeding, and the winning of prizes, are all important considerations. However, a growing number of state courts, including those in Florida, New York, and Hawaii, have also allowed a pet owner to recover for mental pain and suffering due to the loss of a pet. Those courts have shown a willingness to recognize that a family pet is not merely an item of personal property and that what has been destroyed is not property but a close personal relationship.

Consequential damages are awarded for the foreseeable damages that arise from the injury caused by the veterinarian. These damages include veterinarian fees, loss of profits, and loss of use of the animal.

Punitive damages are damages over and above the value of the loss itself. Punitive damages may be awarded if there is gross negligence or outrageous conduct by the veterinarian.

Pet owners who are seriously contemplating a lawsuit should be aware that many veterinarians carry liability insurance. If the case goes to trial, you may find yourself facing a team of lawyers well versed in this area of the law as well as a number of expert witnesses supporting the actions of the veterinarian.

Try to seek administrative remedies if at all possible. Administrative remedies are often faster, less expensive, and less frustrating than using the courts.

One administrative remedy, which is available in most states, is to file a complaint with the state veterinary licensing board or other regulatory agency. Check to see if your state has a consumer-protection agency, or any other administrative body empowered to receive and rule upon complaints of malpractice, discipline the veterinarian involved, or mediate your claim with the veterinarian.

The death of a pet is a highly emotional experience for the pet owner. It is, therefore, important for an owner to keep in mind that not all unhappy experiences at a veterinary hospital result from malpractice on the veterinarian's part. Remember also that the law of veterinary malpractice varies from state to state and that your state's law may differ from the general principles presented in this article.

It is always best to contact a local attorney and seek advice before you begin legal action or accuse a veterinarian of malpractice. ■

The Law Notes are written by HSUS General Counsel Roger Kindler and Senior Counsel Murdaugh Stuart Madden.