



“Good samaritans”: A legislative solution for mandatory reporting of suspected animal abuse

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Few would doubt that animals, particularly companion animals, have enjoyed an enhanced status in our society in recent decades. No longer viewed merely in the agrarian context of providing food and labor assistance for humans, animals are now considered by many as close companions and, as evidenced in various reported studies, as “family members” and even “children.” It is arguable then that with the enhanced status of animals, the legal risks to veterinarians as their primary caregivers has also increased; animal owners appear to be more willing to seek redress for alleged improper conduct by members of the veterinary community and are seeking higher monetary awards to compensate them for the loss or injury of their family member. As courts throughout North America continue to wrestle with the notion of providing civil damages for “loss of companionship,” veterinarians must also consider the impact of the new place animals have in society when considering cases of suspected animal abuse. At present, there appears to be a great deal of confusion among practitioners in many provinces on a 2-fold basis: When should the practitioner report suspected abuse and what risks are presented to the practitioner who is alleging cruel treatment, if that opinion is later found to be incorrect?

Current status of reporting requirements

At present, only veterinarians in Quebec are required by law to report suspected abuse to appropriate authorities. In Alberta, the duty to blow the whistle is found with the ethical code for practitioners. In all other provinces, there is no positive duty for the veterinarian to report suspected animal abuse or neglect; rather, it is generally treated merely as an acceptable exception to the confidentiality requirement.

The policy established by the Canadian Veterinary Medical Association (CVMA) is laudable in this regard. Among other things, it indicates that the CVMA “believes that in situations that cannot be resolved through education, it is the veterinarian’s responsibility



to report such observations to the appropriate authorities.” This policy is similar to that adopted by the American Veterinary Medical Association. The Animal Welfare Committee of the CVMA furthered the policy in June and October 2004 by providing some written assistance on what actually constitutes abuse to include “staged fighting” and “hoarding.” While these policy statements are somewhat helpful, they appear to suggest, at least initially, that the veterinarian is under an obligation, first, to attempt to “educate” the client and, then, only if the teaching fails, to report to appropriate authorities without defining

just which authorities should be involved (presumably this would include police and humane society investigators, but it could also include representatives of child welfare services). There are also many questions not addressed in the policy itself: Who will pay the costs of the teaching? How will the teaching be evaluated? What skill set does the veterinarian have in order to teach successfully? What happens if the student just doesn’t understand?

A suggested approach

Much of the uncertainty that exists in this area can be addressed simply and resolved through the passage of legislative amendments in the provinces to make the reporting of suspected animal abuse mandatory for veterinarians. Such an approach has already been taken in the USA in Minnesota and West Virginia, and, in a more limited way, in California, Arizona, and Wisconsin, where if a veterinarian comes to the medical judgement through an examination of the animal that it has been subjected to abuse, cruelty, or neglect, he or she does not have a difficult choice to make and, in those cases, can rely on the legislative requirement to report. Such an enactment in Canada would relieve the veterinary community from the difficult position its members are placed in which these cases in which it is left to their judgement as to whether a case should be reported, or not.

The related immunity

Together with having a mandatory reporting requirement, veterinarians should enjoy an immunity from civil or

criminal defamation actions, so long as the reporting has been made in good faith. Several states in the USA have adopted such an immunity, which essentially absolves the practitioner from claims of libel or slander from the animal owner if, in fact, abuse has not taken place. The caveat to such an immunity must be that the practitioner must be acting in good faith, based on a reasonable conclusion resulting from an examination of the animal; otherwise, such a provision would potentially be abused in rare cases where a practitioner merely wanted to cause some harm to a client with whom he or she did not get along. The veterinarian properly reporting suspected abuse would not fear a lawsuit for defamation in the event that the conduct of the animal owner was subsequently shown not to constitute abuse or neglect.

In recent weeks the Council of the CVMA has approved a revised "position statement" relating to animal abuse, which not only reflects the role of veterinarians as being in a unique position to observe situations

of possible abuse but also confirms a moral obligation on the practitioner to report without the need for an attempt at educating the client. The policy also implicitly acknowledges that any legal requirement must be addressed, as a matter of constitutional law, at the provincial level. The text of the new policy calls for legislative change throughout Canada to make reporting of suspected abuse mandatory while protecting the interests of the veterinary community through immunity from claims for defamation. In this manner, the CVMA has, in my view, demonstrated an impressive level of leadership on an issue that has been the subject matter of great interest throughout North America.

This 2-fold approach of mandatory reporting of suspected abuse, coupled with an immunity against defamation claims for reports made in good faith, would create a great deal more certainty for veterinarians and, ultimately, benefit the patients for which they provide care.