

Professional Liability in Bovine Practice: The Changing Scene

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The **changing scene** in veterinary malpractice is one that encompasses not only veterinarians and their modes of practice but also encompasses the livestock industry and companion animals. The profession is governed by economic values as to the service performed while the results expected are often equated to the practice of medicine.

In today's era of consumerism, statements of intent to perform a service are generally taken to imply a guarantee of good results. Although professionals in the health field cannot guarantee the results of surgical, diagnostic, and medical procedures, or the use of drugs or biological agents, legal decisions in recent years increasingly have put veterinarians, like other health professionals at risk of being sued for malpractice. There will always be variables that compound a health problem, confuse the client, and create a potential claim-producing situation. A review of such incidents can help veterinarians guard against situations that predispose to malpractice claims.

There seems to be a close correlation between the understanding and confidence a client has in a veterinarian, or the lack of this relationship, and the client's decision to file or not file a malpractice claim. It would be impractical to compile a list of all the factors that can lead to misunderstandings. However, to indicate a few of the most important, the veterinarian should always manifest concern for the patient, discuss the contemplated procedure frankly with the owner, obtain either oral or written consent, and keep accurate records to substantiate all procedures. Claims related either to procedures or drugs often result from failure to give a full explanation of the treatment, and from failure to forewarn owners about potential risks inherent in treatment.

If one is to look at the problems involved in litigation, one needs to look at some of the causes. The following are several items of interest for your consideration:

Fees— Without considering the results of a procedure or a service rendered, a disagreement as to charges will raise the first contention in the mind of an owner. From that point on, all manner of allegations, real or imagined may take place. Add to this a consultation with an attorney, knowledgeable in professional liability litigation and one sees an immediate lawsuit.

Value of Animal— An attempt by an owner or owners to claim value beyond reasonable appraisal for the loss of an animal. This category does not take into account any claim for emotional value but would look only at monetary value

as related to chattel or property. The variables encountered include registered or purebred animals, loss of breeding or reproductive value, costs of care and feeding (multiplied by the numbers of animal involved), loss of market value (slaughter vs sale for breeding), costs of transportation, loss of income due to quarantine, and others. All or any of the above would require legal services to arbitrate or try a claim to conclusion.

Admission of Responsibility— Litigation following admission of responsibility by a veterinarian who in his mind feels that he has done something wrong is not always as it seems. Wrong in the mind of the veterinarian and wrong in so far as a definition of liability from a legal standpoint may not be the same. For instance, loss of an animal may have been accidental, and even though a veterinarian was involved rendering a professional service, may have been beyond the control of the attending veterinarian. Also, drug related losses, even though apparently directly caused, may have been as a result of an individual idiosyncrosy, not a responsibility of the veterinarian.

On the other hand, where no attempt was made to treat the animal or an actual abandonment takes place, there is little to defend in a court of law.

Physical Injury— Injury to a person, usually a client, is a constant threat depending on the type of practice conducted. Any practice, small animal or large animal, bovine or equine, or all impose an infinite number of variables effecting a risk to a client. An innocent bystander, adult or child, can also be involved with the same degree of liability as an animal owner. The responsibility of a veterinarian for human injury should not be taken lightly, as one recognizes that now we are directly concerned with pain and suffering, loss of income, and costs of medical and surgical care. All of these essentially are without a ceiling as to damages. The results depend totally on the establishment of negligence on the part of the veterinarian.

The usual position assumed by a plaintiff's attorney is that the veterinarian has been negligent and as such failed to exercise the necessary standards for the protection of others. There are remote instances where a position of contributory negligence provided a defense but is usually difficult if not impossible to prove.

Collection Suits— Collection suits bring counter suits for malpractice or negligence by return mail. For whatever reason that an owner did not pay for the service rendered, after the usual attempts to enforce payment, the filing of a

collection suit more time than not insures the veterinarian of a counter suit for malpractice. After all, what better way to forestall, embarrass, and possibly even win a settlement for alleged or real malpractice or negligence.

The rightful assessment would be that the service was rendered within all normal limits. No guarantee of results accompanies medical care unless someone inadvertently made such a promise. The veterinarian is owed and has the right to request payment. Now comes the dilemma, at what point, given all the facts, should a halt be called to such procedures.

The amount of money involved in the non-payment may vary from as little as an office and vaccine charge to as much as a full year of farm or ranch service charges. If the veterinarian has assumed a serious position relative to the attempt at collection, somewhere along the road his own attorney and an attorney for the client have entered the picture. Once this has occurred an evaluation of the situation can be undertaken. Attorneys trade information in sufficient depth to determine a real threat or just a running bluff. The situation calls for a cold-unemotional evaluation to determine if a collection lawsuit is "worth a day in court." Regardless of the results, a court hearing may be a losing proposition.

Let it be understood, you have the right to collect. You can file a suit with your own attorney and if there is no countersuit, determine if winning is worth all the effort. In the event of a countersuit for malpractice or negligence, your professional liability coverage will defend and pay costs and judgments. You will need to assess the time involvement. A customary happening is a compromise during the court procedure of the plaintiff dropping the malpractice charges and the veterinarian dropping the fee collection suit. Who wins—only the attorneys—not you, not the client and not the insurance company carrying your policy. The legal expenses for this type claim have covered a wide spectrum from a few hundred to a tops of several thousand only to have the case prove nothing. If you are concerned with the cost of insurance coverage, bear in mind, there are no "free lunches." All costs and specifically legal costs are charged against the case.

It would be appropriate to include several premises of professional liability insurance that are not always understood:

1. The coverage agrees to pay on behalf of the insured such costs of damages for malpractice, error or mistake as occur in the professional practice.
2. The coverage will defend and pay damages even if groundless or false but the company can make such investigations as necessary and, with the consent of the insured, settle a claim or suit.
3. The coverage does not apply to illegal acts but does cover acts of employees unless such act was committed jointly.
4. The coverage does not apply to advertising, broadcasting or telecasting activities.
5. The coverage does spell out certain conditions naming limits of liability, notice of claim or suit, and other matters including one that states the insured shall assist and cooperate with the company and attend hearing and trials, securing and giving evidence, obtain witnesses and aid in the conduct of the suit.

There have been numerous instances where the last item as spelled out was not considered important by the insured veterinarian.

Comments

The financial structure of claims is not included, but the amount demanded varies widely, depending on many factors, such as value of the animal as related to the original cost, its care, and its future. Substantial claims have been paid for breeding value, show value, and pedigree where all of these can be substantiated.

Two items of cost that occur during any claim pursued to completion, and that are not usually understood, are (1) the cost of investigation and (2) the cost of legal defense. These items are of greatest importance to the veterinarian faced with a real or threatened lawsuit.

It has been the practice of the AVMA Professional Liability Insurance Trust to protect and defend the veterinarian and the profession, and not to seek settlements. Consequently, veterinarians who are insured under the AVMA plan can rest assured that their personal reputations and the reputation of their profession will be protected.