

## **ANIMAL CRUELTY: FROM SUSPICION TO CONVICTION: A PROSECUTOR'S GUIDELINES FOR VETERINARIANS**

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There is a growing societal awareness about cruelty to animals. There is an expectation that perpetrators of animal cruelty be “brought to justice.” It has been long recognized that there is a link between cruelty to animals and violence towards humans and that animal abuse is often one of the indicators of domestic violence and child abuse. The law enforcement community now recognizes that intervention in animal cruelty cases is a matter of public safety and human welfare.

In order to effectively prosecute those who harm animals there needs to be an effective collaborative effort among agencies and individuals. Animal cruelty cases are unique because none of the “victims” are able to tell the authorities what happened. Therefore, there is a need for the expertise of a veterinarian or other animal health care professional in nearly every case. According to Neumann, society already sees veterinarians as animal welfare advocates,<sup>1</sup> and there is an expectation that veterinarians will fully cooperate in the investigation and prosecution of a cruelty case.

Many veterinarians have not been “formally” trained to recognize animal abuse. Even with some training they tend to hesitate to act for fear of being incorrect in their suspicions. There are currently eleven states that make it mandatory for veterinarians to report animal cruelty: Arizona, California, Colorado, Illinois, Kansas, Maine, Minnesota, Oklahoma, Oregon, West Virginia, and Wisconsin.<sup>2</sup>

### **FACTORS THAT INHIBIT REPORTING:**

One of the primary concerns expressed by veterinarians is that they do not feel competent in recognizing abuse. They feel a need to know the local applicable law in order to be able to apply that law to the particular situation before them. Most “reportable” cases will distinguish themselves and will be obvious to the veterinary professional. It is the responsibility of the law enforcement authority – animal control, the police, or the prosecutor – to make the ultimate determination. It is NOT the responsibility of the veterinarian. An awareness of the law is all that is necessary.

Another common misconception is that the veterinarian must be “positive” before reporting. All that is legally necessary is for the veterinarian to have a “reasonable” or “good faith” belief. Additionally, many veterinarians believe that the cruel or neglectful act must be “deliberate” or “intentional.” Many cruelty statutes cover “reckless” and “negligent” conduct as well. It is ultimately up to the law enforcement authorities to determine whether there is a provable mental state – it is only necessary for the veterinarian to report the situation.

Many veterinarians are uncomfortable accusing another individual of what amounts to criminal conduct. In certain situations, the suspected perpetrator may be an established client. Like all other crimes, the offender may be of any socio-economic, racial, ethnic, age, gender or other background.

In rural or smaller communities there is a fear of the loss of the relationship to the client’s family or a fear of an adverse effect on the veterinarian’s reputation in the community. In actuality, the reverse may well be true. A veterinarian actively engaged in reporting animal cruelty may experience an increase in his or her client base due to the fact that this is an attractive asset for potential clients.

In some situations the veterinarian fears being sued by the client. In most, if not all of the states that mandate reporting, there is built-in immunity from civil and criminal liability. If a veterinarian reports a case of cruelty in good faith he or she cannot be sued.

In situations where the abuse was committed in the context of family violence, there may be a concern for the safety of the veterinarian, his or her employees, and other clients and patients. Law enforcement officers are equipped to handle these types of concerns and should be contacted accordingly.

There are a number of veterinarians that simply do not want to get involved or invest the time. This is typically based on the lack of awareness of the importance of reporting.

There are far more compelling reasons to report. It is encouraged by the professional associations and it improves the welfare of the abused or neglected animal. Intervention in a particular case may break the cycle of violence therefore preventing additional harm to other animals and humans. By reporting certain incidents, the veterinarian may be making the community a safer one. Most importantly, it is the right thing to do!

### **AMERICAN VETERINARY MEDICAL ASSOCIATION POSITION STATEMENT**

“The AVMA recognizes that veterinarians may observe cases of animal abuse or neglect as defined by federal or state laws, or local ordinances. When these situations cannot be resolved through education, the

AVMA considers it the responsibility of the veterinarian to report such cases to appropriate authorities. Disclosure may be necessary to protect the health and welfare of animals and people. Veterinarians should be aware that accurate record keeping and documentation of these cases are invaluable.”<sup>3</sup>

### **AMERICAN ANIMAL HOSPITAL ASSOCIATION POSITION STATEMENT**

“There are many forms of animal abuse with which veterinarians are faced in daily practice, and range from minor neglect to willful and malicious intent to harm. While neglectful acts are often unintentional and can be addressed through education, intentional forms of animal abuse can be indicators of other forms of violence. Studies have shown that there is a correlation between animal abuse and other forms of family violence, including, child abuse, spousal abuse and elder abuse.

Since veterinarians have a responsibility to the welfare of animals and the public and can be the first to detect animal abuse in a family, they should take an active role in detecting, preventing and reporting animal abuse. While some states and provinces do not require veterinarians to report animal abuse, the association supports the adoption of laws requiring, under certain circumstances, veterinarians to report suspected cases of animal abuse. Reporting should only be required when client education has failed, when there is no likelihood that client education will be successful, or in situations in which immediate intervention is indicated and only when the law exempts veterinarians from civil and criminal liability for reporting.

In order to encourage veterinarians and practice team members to be responsible leaders in their communities and to assist in the detection and reporting of animal abuse, the profession should educate its members to recognize, document and report animal abuse, develop forensic models, promote legislation concerning reporting by veterinarians and collaborate with other animal and human welfare groups and professionals within communities to eliminate the incidence of animal abuse.”<sup>4</sup>

### **PRIMER AND PROTOCOL FOR REPORTING ANIMAL CRUELTY**

The simple protocol for reporting animal cruelty can be summarized as follows:

RECOGNIZE  
RECORD  
REPORT  
RECOUNT

First and foremost, do not compromise the timely treatment of the animal. In many cruelty cases time is trauma. Your analysis and opinion can wait.

### **Recognizing Animal Cruelty**

Cruelty to animals can involve anything from act to omission, from teasing to torture, and from intentional to negligent. It also includes, animal fighting, animal hoarding, and animal neglect. It is important for the veterinary professional to familiarize him or herself with their local statutes and ordinances. For example, the term “animal” is not universally defined and varies from state to state and city to city. In Colorado, “animal” is defined as any living dumb creature.

Following are excerpts from the Colorado statutory provision regarding mandatory reporting by veterinarians:

§12-64-121. (1) A licensed veterinarian who, during the course of attending or treating an animal, has reasonable cause to know or suspect that the animal has been subjected to cruelty or subjected to animal fighting, shall report or cause a report to be made of the animal cruelty or animal fighting to a local law enforcement agency or the bureau of animal protection.

(4) A licensed veterinarian who in good faith reports a suspected incident of animal cruelty or animal fighting to the proper authorities in accordance with subsection (1) of this section shall be immune from liability in any civil or criminal action brought against the veterinarian for reporting the incident. In any civil or criminal proceeding in which the liability of a veterinarian for reporting an incident described in subsection (1) of this section is at issue, the good faith of the veterinarian shall be presumed.

“The diagnosis of non-accidental injury is not an exact science either in children or in the family dog or cat.”<sup>5</sup> Several tools are available for the veterinarian to assist him or her in evaluating whether or not an animal (particularly a companion animal) has suffered “non-accidental” injury (“NAI”). One of the earliest studies on this topic was by Munro and Thrusfield and is titled “Battered Pets: Non-Accidental Physical Injuries Found in Dogs and Cats. Books on the relatively new and developing field of veterinary forensics are also valuable resources for veterinary professionals. Dr. Melinda Merck is the author of Veterinary Forensics: Animal Cruelty Investigations (Blackwell Publishing), which was released in June, 2007 and she is also the co-author of the book entitled Veterinary Forensic Investigation of Animal Cruelty: A Guide for Veterinarians and Law

Enforcement (Humane Press).

<b>PATTERNS OF NON-ACCIDENTAL INJURY</b> <b>by Melinda Merck DVM</b>		
Type of Injury	Examine for:	Diagnostic Process or Test
Head Trauma	Asymmetry from contusions or fractures Petechiae Ruptured tympanic membranes	Radiographs Inner ear exam
Abrasions or Bruising	Evidence of healing bruisers or cuts (indicative of repetitive abuse) Embedded debris in skin or fur that can indicate dragging or throwing Fractured bones or ribs, including evidence of past injuries	Radiographs Note location, size and shape to connect to potential weapon
Feet Injuries	Frayed nails Torn Pads Debris caught between pads and fur, or within frayed nail	Swipe feet across paper to preserve trace evidence In deceased animals remove nail DNA
Burns	Smell wound for accelerants, oils or chemicals	Swab the wound before and after treatment for analysis of chemicals Photograph burn patterns
Starvation	Evidence of pica Gastric Ulcers Occult fecal blood Melena	Bone marrow fat analysis Routine Profile Examine stomach content and feces
Embedded Collar	Visible signs of trauma Foul odor from infection and necrosis	Take pictures before and after shaving Measure width and depth of wound Save the collar
Dog Fighting	Characteristic puncture wounds on face, neck and front legs Evidence of starvation and beatings Evidence of heavy chain used as collar	Test for use of steroids, analgesics, hormones, or diuretics
Gunshot Wounds	Fur forced in or out at entrance and exit wounds Singed fur or coat Abrasion rings Gunshot residue on or inside the wounds	Remove bullets with fingers or cotton-wrapped forceps Photograph each wound before and after cleaning Shave and note powder patterns
Ligature Injuries	Crushing injury to skin, blood vessels and tissue Surrounding tissue may be inflamed and infected	Characteristic bruising pattern Trace evidence
Knife Wounds	Length and type of blade Note tapers on one or both ends of wound	Measure external wounds Measure wound depth Swab for DNA, both human and animal

There are certain behaviors that may put animals at risk for abuse: the need for constant supervision; urination and defecation in the house; chronic illnesses that pose a financial burden; resistant or destructive behavior; aggressive behavior; and excessive noise.

### **Recording (Documenting) Animal Cruelty**

Remember that everything you do, write and say will be disclosed to the police, prosecutor and perpetrator. Your documentation will serve as the basis for your testimony in court. Be objective, honest, and thorough. Resist the urge to use any terminology that may be perceived of as nonprofessional. Although it is not necessary, you may want to have another veterinarian (or other witness) memorialize their observations and assessments. They may support or contradict your findings – either way it is beneficial and will lead to a well-documented objective conclusion.

Your records include but are not limited to: your written records (electronic and handwritten), photographs, radiographs, CTscans, laboratory test raw data and results, and medication information.

Of particular importance is memorializing what your “client” tells you when he or she explains the animal’s condition. You should also note the client’s relationship to the patient – is it the owner, neighbor, pet-sitter, good samaritan, animal control officer, etc.? What the client says is often as important as what you observe. In some situations, the person’s behavior may be a factor to consider – do they appear genuinely concerned or conversely apathetic? Be sure to ask where the incident happened as this can affect which law enforcement agency has jurisdiction.

Your client may admit incriminating conduct. It is essential to try to write down exactly what is said and by whom. His or her account may change as you engage in conversation. There may be more than one person accompanying the animal. Note if one individual’s account is inconsistent with another’s. It may be apparent to you that one or more than one account is at odds with your medical findings. If the patient is an established patient you should have a treatment history which will assist you with your ultimate findings.

You may be confronted with instances where a very young child (under ten years of age) is responsible for the act or acts which resulted in the injury. You may attempt to communicate your concerns to the child’s parent or guardian if the circumstance allows. Do not presume that the parent or guardian will follow up – to the contrary they often minimize or deny the seriousness of this type of conduct. If the injury amounts to mutilation or torture or death, you should intervene and report.

In some cases an animal or animals will be brought to you by animal control or by the police. You should treat these animals in the same manner that you would treat them if they were brought in by anyone other than a law enforcement agent.

Conduct a thorough examination of the animal. When noting the results of the physical examination be sure to include the basic information including but not limited to weight, body and coat condition, dental condition, and behavior. Perform any necessary laboratory and other diagnostic tests. Try to keep concern about expenses a non issue. The money spent on exams and tests may corroborate your findings which may serve to be “priceless” in the long run. Also, if the individual responsible for the abuse is convicted, it is likely that the prosecutor can ask the court to order reimbursement as part of any restitution order.

If the case is unusual or peculiar, such as some types of poisoning, additional research or consultation with a specialist may be necessary.

In nearly every cruelty case it is important for you to note whether the animal was in pain or was suffering. If the client delayed seeking veterinary care and that caused additional pain, suffering or the inability to successfully treat the animal you should note that as well. “Although an individual’s response to pain varies with many factors – age, sex, health status, species, breed – what is important is whether the animal felt pain. If unsure, assume that if a procedure is painful to humans, it will also be painful to animals.”<sup>6</sup>

If there is evidence of “old” trauma or injury please note. Silhouette diagrams are available for most species and are invaluable when memorializing the location and nature of all injuries – recent and prior. The following form is used by the veterinarians at the Bergh Memorial Animal Hospital of the ASPCA:

The image shows two identical forms side-by-side. Each form contains a set of silhouettes for a dog and a cat. The dog silhouettes are shown from the side and from the back. The cat silhouettes are also shown from the side and from the back. Below the silhouettes is a section labeled 'COMMENTS' with five horizontal lines for writing.

If possible, photograph the animal prior to treatment and again subsequent to treatment – remember fur and feathers may conceal injury. Be sure to maintain custody of any physical evidence (embedded collar, bullet fragment, burned fur, extracted blood with evidence of poison or drugs, etc.) Put any potential evidence in a safe place, and make identifying marks (your initials) on an envelope or box or on the evidence itself, noting the date and patient. If you turn the evidence over to law enforcement you should write down who you gave it to, when, and their agency. Remember the body of a deceased or a living animal is evidence.

In animal hoarding, animal fighting and some “puppy mill” investigations and seizures you may examine several animals. It is critical to prepare and maintain a separate and distinct record for each individual animal.

If an animal is euthanized note the reasons why. Some states have guidelines and allow a veterinarian to euthanize an abused animal without a court order, if the animal is experiencing “extreme pain and suffering,” or is “injured past recovery.” If the animal is dead or must be euthanized, store the body until the body can be transported for a forensic necropsy. The forensic pathologist (or possibly animal control) will tell you whether to refrigerate or freeze. Be sure to note who picked up the body, when, and the name of their agency. Oftentimes, animal control will pick up the body and transport it for necropsy.

If at all possible DO NOT return the animal (dead or alive) to the client unless failure to do so would compromise your safety or the safety of your staff or other uninvolved individuals and animals on the premises. Remember, you can always call law enforcement to assist if you anticipate any type of conflict with the client.

### Reporting Animal Cruelty

Remember in an emergency dial 911! Be proactive and establish a relationship with a local law enforcement agent or agency before you need to call upon them to report a case of cruelty. Establish a clinic protocol and train your associates and employees. Post the essential phone numbers in a place where they are readily available to your staff. In Colorado we created the following magnet and distributed it after reporting became mandatory:

REPORTING ANIMAL CRUELTY  
IN AN EMERGENCY, DIAL 911

1) Local Law Enforcement Phone: \_\_\_\_\_  
Contact: \_\_\_\_\_

2) Local Animal Care Agency Phone: \_\_\_\_\_  
Contact: \_\_\_\_\_

3) Bureau of Animal Protection Phone: 303-239-4161  
(Additional resources at [www.colovma.org](http://www.colovma.org))

Colorado Veterinary Medical Association | Animal Assistance Foundation | DISTRICT ATTORNEY

To whom should you report? Depending on your jurisdiction you should be able to report to one of the following agencies: police; sheriff; animal control; humane societies or rescue agencies (if they have authorized cruelty investigators); district, county or city attorney; and in some states the state veterinarian or Bureau of Animal Protection.

Cruelty, neglect, fighting and hoarding cases generate a tremendous amount of media attention. Once a case is reported to the authorities you should refer media representatives to them. Once a criminal case is filed against a defendant all inquiries should be sent to the prosecutor's office.

### Recounting (Testifying About) Animal Cruelty

After you have reported a case of animal cruelty, the prosecuting authority may file criminal charges. It is likely that you will be endorsed as an expert witness. You should prepare a curriculum vitae (“CV”) and furnish a copy to the prosecutor. It doesn't have to be lengthy or detailed. It should contain information about your educational background: including your undergraduate degree, your veterinary degree, any specialized degree, or board certification; your experience in the field and any special expertise; your employment (present and past) and any publications.

In our present electronic age you need to be aware that the parties and lawyers in a pending case will do an internet search about you and your practice. Be very careful about what you put on Facebook or MySpace as it may be used against you when you testify.

You should be contacted by the prosecutor prior to testifying. You may be contacted by the defense attorney. You have the right to speak to or to refuse to speak to either or both. You should review your file prior to any interviews to refresh your recollection of the case. If you are concerned about your safety during the pendency of the case ask the prosecutor to get a restraining order against the defendant and list you as a protected person and your home and clinic as restricted places.

In an animal cruelty case “veterinarians may be the only witnesses qualified to give opinion evidence, such as an opinion whether an animal's condition was caused by abuse or cruelty.”<sup>7</sup> The Rules of Evidence govern what is and what is not allowed. Following are the relevant Federal Rules of Evidence which are likely to be identical to the rules in your state:

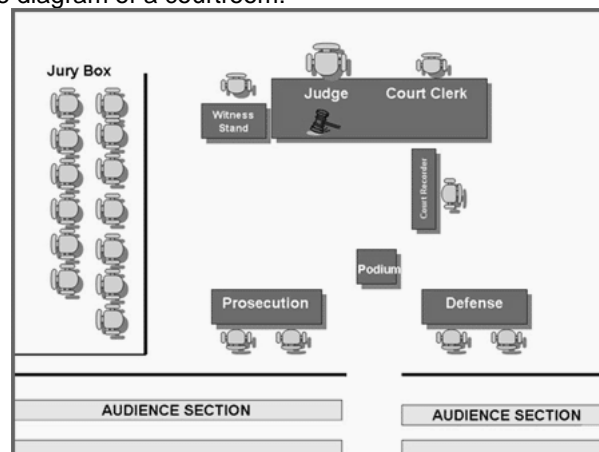
Rule 702. Testimony by Experts: If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 703. Bases of Opinion Testimony by Experts : The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

Following are the common areas of veterinary expert witness testimony: determining the cause of death, sequence of injuries and timing of pre-mortem or post-mortem wounds; distinguishing between death and injury resulting from human vs. non-human causes (for example predation) or intentional vs. accidental injury; identifying evidence that may link the injuries to a particular suspect or particular weapon; commenting on reasonably prudent actions that could have been taken to prevent disease, injury or death; offering opinions regarding the speed of unconsciousness and/or death, including the degree of pain and suffering; and commenting on reports provided by other veterinarians or investigators.

In many states animals are now recognized as "protected property" in a restraining order. These orders can exist in civil and divorce proceedings in addition to criminal proceedings. Veterinarians may be called upon as an expert witness in various types of hearings.

If you receive a subpoena to testify the parties should try to accommodate your schedule if at all possible. If you are unfamiliar with the courthouse it is advisable to get there early to survey the landscape and the parties. Following is a simple diagram of a courtroom:



The simple fact is that all you need to remember to do on the witness stand is tell the truth.

## Conclusion

"Research and professional experience provide compelling evidence that the veterinarian is not only a public health authority, but a type of "family practitioner" with a potential for preventing several forms of family violence."<sup>8</sup> Veterinarians are perceived by the public as a care-giving profession. Society expects veterinarians to take a leadership role in animal welfare and they are the best trained to identify abuse and neglect.

<sup>1</sup> Neumann, S. Animal Welfare – the Need for a United Veterinary Voice. Can Vet J Volume 46, Sept. 2006.

<sup>2</sup> American Humane

<sup>3</sup> [http://www.avma.org/issues/policy/animal\\_welfare/abuse.asp](http://www.avma.org/issues/policy/animal_welfare/abuse.asp)

<sup>4</sup> <http://secure.aahanet.org/eweb/DynamicPage.aspx?site=resources&webcode=referenceDetail&postKey=0672848e-0b44-4210-8576-18d75d86816b>

<sup>5</sup> Munro, H.M.C. and Thrusfield, M.V. Battered Pets: Non-Accidental Physical Injuries Found in Dogs and Cats. Journal of Small Animal Practice. Vol. 42. June 2001.

<sup>6</sup> College of Veterinary Anesthesiologists

<sup>7</sup> Babcock, S. and Neihsl, A. Requirements for mandatory reporting of animal cruelty. JAVMA Vol. 228, No. 5, September 1, 2006.

<sup>8</sup> Arkow, P. The Veterinarian's Role in Preventing Family Violence: The Experience of the Human Medical Profession. <http://www.animaltherapy.net/Vets-abuse.html>