



# Veterinary Medicine and the Law

## Requirements for mandatory reporting of animal cruelty

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The link between human violence and animal cruelty is well documented, and a history of animal cruelty can be a predictor of current and future violence directed against people.<sup>1,2</sup> This connection between human violence and animal cruelty makes it clear that animal cruelty is a problem that affects more than just animals and emphasizes the importance of reporting instances of animal cruelty and punishing those who are responsible. It has also led to the enactment by many states of statutes mandating the reporting of animal cruelty by veterinarians. Many of these states also offer veterinarians immunity from civil or criminal liability for reporting evidence of animal cruelty.

Veterinarians play an essential role in the recognition, investigation, and prosecution of animal cruelty because in their professional capacity, they have the opportunity to see and recognize victims of animal cruelty and prevent future harm. Veterinarians have an ethical and, in an increasing number of states, legal duty to report suspected cases of animal cruelty. The laws that mandate veterinary reporting of animal cruelty vary from state to state. However, they are all designed to promote animal and public health, safety, and welfare.

### Defining Animal Cruelty

Currently, 42 states have made animal cruelty a felony (the exceptions are Alaska, Arkansas, Hawaii, Idaho, Mississippi, North Dakota, South Dakota, and Utah). All of these state statutes contain at least some broad language prohibiting deliberate acts of cruelty and specifying that animals must be provided adequate food, shelter, and veterinary care.

Some states define animal cruelty quite generally. For instance, New York's cruelty statute states that "A person is guilty of aggravated cruelty to animals when,

with no justifiable purpose, he or she intentionally kills or intentionally causes serious physical injury to a companion animal with aggravated cruelty..." and that aggravated cruelty "mean[s] conduct which: (i) is intended to cause extreme physical pain; or (ii) is done or carried out in an especially depraved or sadistic manner."<sup>3</sup> Similarly, the California statute includes a general definition of animal cruelty, stating that "[c]ruelty, 'abuse,' and 'neglect' include every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted."<sup>4</sup>

In contrast, other states define cruelty more specifically. In Michigan, for instance, an animal's custodian is required to provide, among other things, adequate care, safe transportation, and shelter. The state's cruelty statute requires the following

[A] ... person having the charge or custody of an animal shall not do any of the following: (a) Fail to provide an animal with adequate care. (b) Cruelly drive, work, or beat an animal, or cause an animal to be cruelly driven, worked, or beaten. (c) Carry or cause to be carried in or upon a vehicle or otherwise any live animal having the feet or legs tied together.... (d) Carry or cause to be carried a live animal in or upon a vehicle or otherwise without providing a secure space, rack, car, crate, or cage.... (e) Abandon an animal or cause an animal to be abandoned ... without making provisions for the animal's adequate care.... (f) Willfully or negligently allow any animal ... to suffer unnecessary neglect, torture, or pain. (g) Tether a dog unless the tether is at least 3 times the length of the dog as measured from the tip of its nose to the base of its tail and is attached to a harness or non-choke collar designed for tethering.<sup>5</sup>

It is important for veterinarians to be familiar with the definition of animal cruelty in the states in which they practice veterinary medicine.

### State Requirements for Reporting of Animal Cruelty

Eight states (Arizona, California, Illinois, Kansas, Minnesota, Oregon, West Virginia, and Wisconsin)

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have laws that require veterinary reporting of animal cruelty.<sup>6</sup> In Kansas and West Virginia, the requirements for reporting of animal cruelty are located in the state regulations, but in the other states, the reporting requirements are statutory. For example, Illinois requires veterinarians who observe or treat an animal that has been injured because of aggravated cruelty, torture, or abuse to report such to the appropriate department and cooperate with the subsequent investigation.<sup>7</sup> The reporting veterinarian must provide the state with the owner's name, the date the animal was examined, any treatment administered, and a description of the animal (including microchip number, when applicable).<sup>7</sup> The statute also provides immunity from civil and criminal liability for veterinarians who report such information in good faith and states that good faith reporting is presumed in any proceeding.<sup>7</sup> This means that the court will assume that the veterinarian used "the proper degree of care and skill and [acted] under the honest belief that [this action] will benefit the animal."<sup>8</sup> The statute does not state any penalties that could result from a veterinarian's failure to report suspected cruelty; however, Dan Harden of the Illinois Division of Professional Regulation has stated that disciplinary action can range from an administrative warning letter up to and including the revocation of the veterinarian's license.<sup>9</sup>

In addition to these state laws and regulations, the veterinary practice acts in Maryland, Illinois, Arizona, and Oklahoma require that veterinarians report evidence of animal cruelty.<sup>9</sup> Maryland has instructed its veterinary medical board to encourage veterinarians to report animal cruelty and to draft regulations that ensure veterinarians report abuse.<sup>10</sup> The Maryland statute states that "[a] veterinarian should do the following, if a case of suspected animal cruelty is presented: (1) Note the condition of the animal upon presentation in the animal's treatment record; (2) Note the basis for suspecting cruelty in the animal's treatment record; and (3) Promptly report the suspected instance of cruelty, including animal fighting, to the appropriate local law enforcement or county animal control agency."

### Identifying Animal Cruelty

One concern that veterinarians have had regarding mandatory reporting requirements is that they are not always comfortable identifying animal abuse, partly because of the lack of uniform standards for judging an animal's condition.<sup>11</sup> However, their knowledge of accidental injuries makes veterinarians quite qualified to recognize nonaccidental injuries. In particular, a veterinarian may suspect that an animal's injuries are nonaccidental when the examination findings are not supportive of the initial history provided by the client<sup>b</sup>; the owner displays abnormal behavior, such as nervousness or apathy; or the owner's account of an accident continually changes.<sup>12,13</sup>

Although their training and professional experience in proper care and housing of animals can guide veterinarians in evaluating animals for potential abuse or neglect, surveys of veterinarians indicate that published guidelines would greatly increase their confi-

dence in determining where to draw the line between normal care deviations and neglect.<sup>14,15</sup> In contrast, a survey of veterinarians in Michigan found that the only factor that determined whether they would report suspected animal abuse was concern about possible retaliation by the accused client, not a lack of uniform standards.<sup>16</sup>

A variety of resources are available to assist veterinarians in identifying animal cruelty. The Tufts Animal Condition and Care Scales, for instance, were developed to assist veterinarians in scoring the degree of neglect in 4 different areas.<sup>17</sup> These guidelines, while useful in providing standards of care, are not designed to replace a definitive assessment of any animal's situation. If at all possible, a complete examination should be performed before any treatments that would alleviate or mitigate the condition of the animal are administered, providing that the delay in treatment would not be contraindicated on humane grounds. Whenever nonaccidental injury is suspected, the attending veterinarian should obtain a minimum database, including estimated age, an accurate body weight, and a body condition score, and should perform a complete physical examination, a thorough oral examination to establish the condition of the teeth, otoscopic and ophthalmic examinations to identify potential head trauma, radiographic examinations to rule out occult injuries, and other species-specific examinations as necessary.

Veterinary forensics is a new and emerging field. In response, Melinda D. Merck, DVM, a Veterinary Forensics Consultant with the American Society for Prevention of Cruelty to Animals (ASPCA) and veterinary practitioner, developed a Web site<sup>12</sup> to aid those who are investigating crimes involving animals. The Web site provides sample forms and also links to recommended related Web sites. In addition to these forensic references for veterinarians, the ASPCA plans to launch the National Veterinary Forensics Service Center (NVFSC) in 2006. This will be a call-in center that will operate similar to the ASPCA Poison Control Center. The NVFSC will take questions related to animal cruelty such as recognition of animal cruelty, necropsy techniques, diagnostic testing, evidence collection and documentation, photograph analysis, expert witness testimony, and so on. The NVFSC will handle these telephone calls by directing them to the appropriate individual, laboratory, or expert, depending on the service required. The ASPCA Web site ([www.aspc.org](http://www.aspc.org)) will announce the opening of the NVFSC.

### Immunity From Liability Associated With Reporting Suspected Animal Cruelty

Twenty-one states (Arizona, California, Colorado, Georgia, Idaho, Illinois, Florida, Kansas, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New York, Oregon, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia) have enacted legislation to protect veterinarians from potential civil or criminal liability arising from reporting suspected animal cruelty,<sup>18</sup> and 4 (Idaho, Florida, Maine, and New Hampshire) provide immunity from liability

for participating in cruelty investigations.<sup>19</sup> In addition, North Dakota provides immunity from liability for the assumption of custody of an animal, stating that “[a]ny ... person who has custody of an animal under this chapter and who is acting in an official or professional capacity and making a good-faith effort to comply with this chapter is immune from any civil or criminal liability for acts taken or omitted while attempting to comply with this chapter.”<sup>20</sup> Similarly, Washington provides immunity for acts undertaken to prevent animal cruelty, stating the following:

This chapter shall not limit the right of a law enforcement officer to destroy an animal that has been seriously injured and would otherwise continue to suffer. Such action shall be undertaken with reasonable prudence and, whenever possible, in consultation with a licensed veterinarian and the owner of the animal. Law enforcement officers and licensed veterinarians shall be immune from civil and criminal liability for actions taken under this chapter if reasonable prudence is exercised.<sup>21</sup>

### **Ethical Duty to Report**

The AVMA and the American Animal Hospital Association (AAHA) have stated that veterinarians who observe cases of animal abuse or neglect have a responsibility to report such cases to the appropriate authorities if the situation cannot be resolved through education.<sup>22,23</sup> The Canadian Veterinary Medical Association identified animal abuse as 1 of its top 3 priorities for the period of 1999 to 2001.<sup>24</sup> As members of a health care profession, veterinarians should take responsibility for reporting acts of cruelty, just as their colleagues in the fields of human health, nursing, and education do.

### **The Veterinarian as Expert Witness**

Because of their unique position, veterinarians often serve as expert witnesses in trials involving charges of animal cruelty. The veterinarian is expected to describe his or her particular involvement in the case and, often, is asked to express an opinion as to whether the animal suffered abuse or was neglected.<sup>25</sup> In such cases, veterinarians may be the only witnesses qualified to give opinion evidence, such as an opinion as to whether an animal's condition was caused by abuse or cruelty.

At trial, the veterinarian may be asked to comment on the sanitary conditions under which the animal was maintained, including air and water quality, and the adequacy of measures provided to protect the animal from the elements, consistent with laws governing the particular species and the principles of general husbandry. Often, the veterinarian will be asked to testify regarding the availability, quantity, and quality of food for the animal. In Washington, the scope of a veterinarian's testimony was addressed in *State of Washington v Long*,<sup>26</sup> an unpublished decision, in which the Washington Court of Appeals found that a veterinarian could testify that an abused horse suffered pain.

Many resources are available for veterinarians who are called to serve as expert witnesses.<sup>27-29</sup> In addition,

Tufts University is developing a Web site to link veterinary forensic materials and guidelines for testifying as an expert witness.<sup>30</sup>

### **Confidentiality Issues**

One issue that concerns veterinarians when deciding whether to report suspected cases of animal cruelty is compliance with legal and ethical obligations to maintain client confidentiality. Approximately half the states have some form of a confidentiality requirement in place regarding veterinarian-client communication,<sup>31</sup> and the AVMA Principles of Veterinary Medical Ethics state that veterinarians should protect the personal privacy of their patients and clients.<sup>32</sup> However, in most instances, there is no true conflict between confidentiality requirements and animal cruelty reporting. In states such as Arizona, for instance, which has an animal cruelty-reporting requirement but no confidentiality requirement, there is no legal conflict, and the veterinarian would be expected to report any evidence of animal cruelty. On the other hand, in states such as California and Illinois, which have statutory requirements both to report animal cruelty and to maintain confidentiality, these statutes typically have language that clearly addresses this apparent conflict. In California, for instance, the Business and Professions Code mandates that veterinarians maintain confidentiality, but provides an exception that permits disclosure, “as may be required to ensure compliance with any federal, state, county, or city laws or regulations.”<sup>33</sup> The Illinois statute states that “[n]o veterinarian shall be required to disclose any information concerning the veterinarian's care of an animal except when communicable disease laws, cruelty to animal laws, or laws providing for public health and safety are involved, the privilege provided by this Section is waived.”<sup>34</sup> In states such as Minnesota that have statutes mandating reporting of animal cruelty and regulations requiring confidentiality, the statute has greater force of law than does the regulation.<sup>35</sup> In contrast, in states such as Kansas and West Virginia, which have statutes requiring confidentiality and regulations mandating reporting of animal cruelty, the statute would be expected to outweigh the regulation. However, in such states, exceptions to confidentiality requirements are typically incorporated into their statutes to allow for animal cruelty reporting. Kansas has recently supplemented its veterinary practice act<sup>36</sup> to include animal cruelty reporting as an exception to the requirement for confidentiality.

### **Practical Concerns**

Veterinarians are concerned that reporting animal cruelty will have an impact on their practice and business. Requiring all veterinarians in the state to report animal cruelty will help level the playing field. In addition, other professions that have similar reporting requirements have not experienced a negative impact on their professional relationships.<sup>37</sup> At this time, there has been no reported effect on veterinarians' businesses in states that have made reporting of suspected animal cruelty mandatory.<sup>c,d</sup>

## Conclusion

Awareness and activism in the area of animal cruelty are growing across the United States. One of the biggest problems a veterinarian has is entertaining the possibility of the horrific causes that have led to an animal's injuries and accepting that they are not accidental.<sup>1</sup> A study<sup>14</sup> published in 1999 found that 79% of veterinarians surveyed had seen at least 1 case of animal abuse in their practices. Considering this statistic, it is important for veterinarians to be familiar with the many resources available for veterinarians testifying as expert witnesses in animal cruelty prosecutions, as well as guidelines to help veterinarians identify and score an animal's condition and care. These resources are designed to help determine the presence of cruelty and neglect.

Multiple states have enacted statutes or regulations mandating that veterinarians report evidence of animal cruelty to the proper authorities, and interest in efforts to draft similar legislation in other states is growing. Over the past decade, there has been increasing pressure on veterinarians to report suspected animal cruelty, not just because animal cruelty has an adverse impact on animal welfare, but also because animal cruelty is thought to be an indicator of a propensity for violence toward humans. Statutes mandating reporting of animal cruelty have been enacted to promote animal and public health, safety, and welfare, and even those states that require maintaining the confidentiality of veterinarian-client communication typically provide exceptions for reporting of animal cruelty.

The veterinary profession will continue to be confronted with the decision of how active it wishes to be or what role it wants to take in the development of additional animal cruelty prevention laws and policies in the future. In 1 study,<sup>14</sup> the majority of veterinarians responding to a survey agreed that veterinarians have an ethical responsibility to report suspicions of abuse, although less than half thought the responsibility should be mandated by law. However, mandatory reporting by veterinarians of suspected animal abuse or animal fighting, coupled with immunity from civil liability, removes legal impediments to reporting suspected cruelty and encourages veterinarians to promote the health and safety of animals and the public. It is likely that veterinarians will contribute to the protection of animals, similar to how physicians and other health care workers revolutionized the protection of children when they became mandated reporters of suspected child abuse. Veterinarians, therefore, should be aware of the signs of animal cruelty and of the reporting requirements in the states in which they practice.

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