

### Dead animals, abandoned animals, and animals held for payment of fee—a veterinarian's options

What should a veterinarian do when an animal dies in the clinic? Since the body of the animal still belongs to the client, he or she should be notified to identify any preferences for its disposition. If the animal did not die of a communicable disease that under the law of the state might prohibit its movement to the property of the client, it should be released to the client if that is his or her desire. If left to the discretion of the veterinarian, he or she may use any legal means of disposition. This could include cremation, delivery to a licensed disposal agency, or burial in a pet cemetery. There is a reported instance where a veterinarian delivered a little dog to its owner in a neat box and when the owner took it home and opened it, the box contained a cat. Veterinarians ought to be careful about the identification of an animal returned to the client.

**Abandoned animals**—It is safe to say that all state veterinary medical practice acts contain a provision under which a veterinarian may, by following the provisions of the law and pertinent regulations, dispose of an animal that the owner does not claim. These laws usually provide for a notice to the owner and a period of time during which the animal will be held if the owner doesn't reclaim it. In *Animal Hospital of Elmont v Gianfrancisco* (100 Misc 2d 406; New York District Court, 1979), an owner did not have the resources to pay the fee and hence did not remove the animal. In attempting to comply with the statutory provisions on notice to an owner when an animal is to be disposed of by the veterinarian, the veterinarian also

included in the letter a statement that suit would be instituted to recover the fee. The court held that this in effect nullified the notice, because it should not have been added to the language of the notice provisions provided by the statutes. Hence, the owner had a right to recover from the veterinarian for wrongful disposal of the body of the animal. However, the court also held that the debt still remained and that the veterinarian could institute proper action to recover the fee.

**Retention of animal for recovery of fee**—A few states have a specific veterinary lien permitting a veterinarian to hold the animal until paid in addition to collecting fees for board and other expenses attendant on keeping the animal. Also, in a few instances, the courts have applied a more general lien (ie, one on cattle). Some of these liens are possessory, meaning the animal can be held pending payment; some are nonpossessory but provide that by filing with the appropriate local government agency within the time specified by the law, the lien can be preserved even though possession is yielded to the owner.

In *N E Kansas Production Credit Association v Fervrache* (693 P2d 1152 Kansas Supreme Court, 1985), a veterinarian who had treated 3,000 to 4,000 head of cattle for a client and who currently held 85 head in possession, filed under the Kansas Lien Statute, which was a possessory lien. The court allowed recovery for the 85 head of cattle but determined that to apply the lien to several thousand cattle that had been treated over a period of years, and long ago released to their owners, did not apply. This means that if the lien is a possessory lien, the cattle must be retained at the time of suit. If they are released, the lien is lost.

In *New Concepts Confinement Technology Feeders v Kuecker* (364 NW2d 450 Minnesota Court of Appeals, 1985), a veterinarian filed for a nonpossessory lien for recovery of his fee after releasing cattle. There apparently was no statutory provision on filing or a filing period, but the court under the law felt that the nonpossessory lien existed and that a reasonable time should be allowed for the lien holder to file for recovery under the lien. The court held that possession was not required under the Minnesota statute and that a veterinarian could recover after yielding possession of the cattle by filing for recovery under the lien.

Veterinarians have numerous options to consider with regard to dead or abandoned animals and animals held for payment of fee. It is important that owners receive some form of notice concerning the disposition of a pet prior to any action taken by the veterinarian. This could save the veterinarian many headaches. In addition, before acting on any options, the veterinarian should consult local laws governing these issues or contact a local attorney.

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*Editor's note: This is the final Legal Brief to be published in the Journal of the American Veterinary Medical Association. The first was published in 1969, and since then we have published 409 Legal Briefs authored by Harold "Hank" Hannah. Through these articles, several generations of veterinarians have learned how important it is to continue to observe, question, and learn from the past to be able to deal with the challenges of today and tomorrow.*

*In honor of Professor Hannah's dedication and service to the veterinary profession, the JAVMA Legal Brief feature will be retired; however, in cooperation with the American Veterinary Medical Law Association, we expect to debut a new feature in 2003 on legal issues relevant to veterinarians.*

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