The impact of products liability law on veterinary medicine

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Until now, veterinarians involved in malpractice litigation have generally not had to deal with most of the consumer-oriented principles of products liability. In fact, aside from prescription drug litigation, whereby veterinarians have a limited potential to incur liability as retailers of the drug at issue, products liability law has had little impact on the field of veterinary medicine. More often, the limited circumstances under which products liability law has been applied have involved consumers bringing suit against drug manufacturers for defective vaccines or harmful effects of their products. In these instances, even if a prescribing veterinarian were named a defendant, he or she could likely seek indemnification from the manufacturer. Further, claims against veterinarians resulting from the sale or breeding of an animal are rare.

However, creative plaintiff lawyers continually seek new methods to attach liability to those with deeper pockets. In several states, such lawyers have applied products liability principles to the sale of domestic animals. In doing so, these states have opened the door to a host of potential defendants, and veterinarians are no exception. The eventual ramifications will profoundly impact veterinary practice in all states that allow this exception. The eventual ramifications will profoundly impact veterinary practice in all states that allow this exception.

Animals as Property and Products

The American legal system has always treated domestic animals as personal property. But, there can be no products liability claim without a product, and it has not been clear whether, in the case of domestic animals, property equates with product. Undoubtedly, most owners do not consider their pets to be products, seeing them more as members of the family. But it is not clear why animals should not be considered products under the law. In particular, it seems illogical for courts nationwide to refer to domestic animals as goods, chattels, or property but to cringe at the thought of calling an animal a product. When, for instance, high-volume breeders produce large numbers of puppies for the commercial trade, their actions do, to some extent, begin to resemble assembly-line manufacturing of any other product. Nevertheless, courts have been reluctant to equate life and growth with production.

All of the courts in which the animals-as-products debate has been litigated have followed 1 of 2 rationales. The first is exemplified by the case of Whitmer v Schneble, a 1975 case from Illinois involving a Doberman Pinscher that had just given birth and that bit an infant visitor in the defendant-owner’s home. In that case, the plaintiff’s lawyer claimed that the dog was an inherently dangerous product. However, the court ruled that the argument failed on the basis of the concept of mutability, defined as “the constant process of internal development and growth.” The court reasoned that because the dog did not have a fixed nature, its temperament was subject to change following any sale and that, hence, the dog could not be considered a product. This ruling, however, appeared to ignore principles of selective breeding and modern genetics, as breeders certainly can have some influence over a dog’s temperament.

The Illinois ruling has subsequently been adopted by courts in Colorado, Missouri, Ohio, South Dakota, and Georgia. In contrast, other courts have adopted an opposite line of reasoning. In Beyer v Aquarium Supply Co., for instance, a New York court ruled that a diseased hamster constituted a product, and the court found no reason why a breeder or seller of a diseased animal should be less accountable for his or her actions than a manufacturer or seller of a defective product. The logic behind the ruling is straightforward: products liability law aims to protect consumers from unreasonably dangerous products placed into the stream of commerce by manufacturers and sellers who are in a better position to discover and eliminate the product’s harmful tendencies or to pay for any damages the product may cause.

An Oregon court extended the New York court’s ruling in Sease v Taylor’s Pets Inc. Interpreting broadly, the Oregon court determined that the term products encompasses all tangible property, including animals,
that “are subject to both natural change and intentional alteration.” This reasoning was later adopted in Connecticut, and courts in other states, such as Wisconsin, have hinted that domestic animals may be considered products within their borders, as well.2

**Products Liability Principles**

The law of products liability can be divided into 3 primary subsections—negligence, warranty, and strict liability, and a plaintiff may elect to bring his or her claim under any or all of these theories of liability. Each claim has its own elements that the plaintiff must prove to be successful, and each successful claim entitles the plaintiff to unique damage awards. When applied to the sale of animals, such claims may profoundly affect both breeders and sellers, which, in turn, could lead to veterinarian liability.

Claims regarding negligence are common in veterinary medicine, as they represent the premise behind every malpractice claim and the reason for malpractice insurance. Under a negligence claim, a plaintiff must prove that the defendant owed a duty to the plaintiff, the defendant breached that duty, and the defendant's breach caused injury to the plaintiff or harm to the plaintiff's property. A typical negligence claim against a veterinarian could entail a misdiagnosis that led to the death of a client's pet. However, unless a veterinary hospital or practitioner is selling animals or giving animals up for adoption, even if at no cost to the adopter, veterinarians will not likely be held liable to consumers for animals sold in a defective or diseased condition. On the other hand, veterinarians could be liable to other parties involved in a products liability lawsuit.

In the products liability context, a negligence claim for the sale of a defective or unreasonably dangerous animal will be successful if the harm caused was foreseeable. For example, if a pet store were to sell a puppy that was displaying clinical signs of rabies at the time of purchase, the pet store could be held liable under a negligence claim, as it was clearly foreseeable that the animal could bite its new owner and others likely to come in contact with it. Furthermore, a cursory examination by a veterinarian prior to the sale of the puppy could have easily disclosed the animal's condition. Thus, the pet store breached its duty of reasonable care by selling an unreasonably dangerous dog and would be held liable for any foreseeable harm caused (eg, bite wounds and the transmission of rabies).

In contrast, warranty claims generally are claims between buyer and seller only, although the law often extends potential claims to the buyer's family as well. There are 2 common types of warranty claims: express and implied. An express warranty occurs when a seller makes a statement, either orally or in writing, that warrants (guarantees) a product will work according to the statement. An implied warranty exists with each and every sale of a product, unless expressly disclaimed, in that sellers of any product warrant that the product will be fit for its ordinary purposes.4 If the product does not function as it is intended or, conversely, does not conform to the seller's representations, the seller is liable for breach of warranty.

In relation to the previous example of a pet store that sells a rabid puppy, the buyer may have a claim under an implied warranty, as it could be argued that the puppy was not fit for its ordinary purpose as a household pet. Furthermore, if the seller had claimed that the puppy was healthy, the buyer could also have a claim under an express warranty.

Finally, the buyer could have a claim under the concept of strict products liability. With a strict products liability claim, the plaintiff does not have to prove that the defendant was in any way at fault. Rather, the plaintiff need only show that the defendant manufactured or sold a defective or unreasonably dangerous product and that the product defect caused the plaintiff harm. Again, the rationale behind this is to apportion the plaintiff's loss to the party that is generally better suited to pay for it.5

The implications of a strict products liability claim are such that even if a seller could not possibly know of a hidden danger in the product, he or she is still liable for selling it in a defective condition. Returning to the previous example, even if the pet store bought and sold the rabid puppy while the disease was in its incubation period, before any clinical signs appeared, the pet store would still incur liability for any harm caused by the puppy's rabid condition, regardless of the store's lack of knowledge concerning that condition.

Products liability principles extend liability beyond the seller to the manufacturer. When applied to animal sales, breeders would be treated in the same manner as manufacturers and could be held equally liable as sellers. To this time, such claims have involved only the breeders and sellers of animals. However, the future of products liability litigation will likely feature veterinarians in a more central role, either as expert witnesses or as defendants.

**Greater Business and Greater Liability**

Advancing products liability law into the realm of animal sales has little impact on the legal relationship between an animal purchaser and a veterinarian performing a prepurchase examination. Buyers of animals may sometimes be successful on a negligence claim against a veterinarian who does not use reasonable care in evaluating an animal prior to sale. However, warranty and strict liability claims cannot exist, so long as there is no contract between the buyer and the veterinarian and the veterinarian neither breeds nor sells the animal.

Products liability claims against a breeder or seller will undoubtedly lead to litigation against any veterinarian performing a prepurchase examination. In particular, any misdiagnosis or undiscovered illness, even without veterinarian error, will subject the veterinarian to liability because the seller will inevitably seek contribution or indemnification from the veterinarian hired to evaluate the animal. In essence, if the seller is named a defendant, he or she will name the veterinarian as a codefendant or file a malpractice claim. In general, the court will view the veterinarian who performed the prepurchase examination as the seller's agent and will not hold the veterinarian liable for the seller but to the seller. With strict liability, however, the court would have to decide whether the seller, breeder, or veterinarian should be liable when none of the parties may be at
fault. Regardless, by certifying an animal as healthy or by simply being unable to discover a perhaps undiscoverable defect, a veterinarian may become involved in products liability litigation.

Conversely, when the buyer is required by contract to have the animal examined within a stated period of time after sale, the seller’s liability will likely be limited to a mere refund of the purchase price. The examining veterinarian, however, remains liable to the buyer for negligence related to unreasonable errors in diagnosis that result in harm to the buyer or to the buyer’s family or property.

On the positive side, if breeders and sellers begin to sustain damage awards for breeding and selling defective or unreasonably dangerous pets, they likely will turn to veterinarians for expertise and counsel, potentially leading to greater care and selectivity in animal breeding. In the realm of products liability law, a defect in an animal need not only be a disease. Breeders of overly aggressive or vicious dogs, trainers of ineffective assistance animals, and sellers of purebred animals that fail to meet breed standards may all potentially be liable under products liability law for providing a defective or unreasonably dangerous product.

Methods for Limiting Liability

Aside from the obvious expedient of obtaining liability and malpractice insurance, there are a number of things veterinarians can do to limit their exposure to products liability litigation. First, veterinarians performing prepurchase examinations should thoroughly examine the animals as close to the sale date as possible, even if this requires additional examinations at the seller’s or breeder’s cost. Also, the veterinarian should inquire regarding the health conditions of all animals housed with or near the examined animal to help determine the likelihood that the animal will contract any disease prior to sale. Subsequent observations of the animal to determine temperament, reaction to people (especially children), and other qualities denoting the animal’s suitability as a pet may disclose previously undetectable traits. By certifying an animal as healthy, a veterinarian may by guaranteeing both physical and mental health at the time of examination, as far as the courts are concerned. Products liability law is not intended to make a manufacturer an insurer of its own product. However, some jurisdictions expand it as near as possible to an insurer of its own product.

To be safe, veterinarians should, within the confines of what the breeder is willing to pay, examine animals for all possible conditions. Every condition for which the veterinarian has tested should be noted on an animal’s record. Further, whenever it is possible, the veterinarian should go as far as reason and circumstances will allow in determining the likelihood that the animal will contract any disease prior to sale. Subsequent observations of the animal to determine temperament, reaction to people (especially children), and other qualities denoting the animal’s suitability as a pet may disclose previously undetectable traits. By certifying an animal as healthy, a veterinarian may by guaranteeing both physical and mental health at the time of examination, as far as the courts are concerned. Products liability law is not intended to make a manufacturer an insurer of its own product.

With the expansion of products liability law into the field of animal law, courts in all jurisdictions will eventually answer the question of whether an animal can be considered a product. Clearly, preserving the status quo would defeat any products liability litigation regarding animal sales. However, while this may be a more preferable result for veterinarians, it could be perhaps a less preferable result for the animal community as a whole. Without a doubt, the American legal system views domestic animals as property, and it is not too much of a stretch to consider animals as products when they are bred for commercial gain. The application of products liability law to animal sales will force sellers to fully disclose animal traits and propensities, increase the level of veterinary care at the earliest stages of animal development, and protect consumers from animal-caused injuries of which they otherwise may not have been aware. More importantly, it will require breeders to take responsibility for the animals they are producing, leading to healthier and happier animals.

Conclusion

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References