

Legal Brief

Direction and control of the veterinarian's assistants

Who can be a veterinarian's assistant? The answer: anyone whom he or she chooses to hire—veterinary technician, receptionist, kennel help, or veterinarian. It is obvious that a "going" veterinary clinic will employ a range of people doing many jobs. The jobs they do and the supervision they receive take on legal significance as they do things that may appear to be "the practice" of veterinary medicine. Veterinary medical practice acts are in agreement on one point: the only persons who can legally practice veterinary medicine in the state are those who hold a "valid and existing license." If then the state legislature provides for the certification of veterinary technicians, how will it be determined just what they can do and under what circumstances?

Some practice acts state what certified veterinary technicians (and, of course, other nonveterinarians) cannot do. Illinois law, for example, states that "...such services shall not include diagnosing, prognosing, writing prescriptions or surgery." Obviously, this leaves a wide range of things that technicians can do. Some practice acts, and regulations developed under them, attempt to enu-

merate the kinds of tasks technicians can perform under the supervision of the veterinarian. As with all enumerations, this may be helpful up to a point, but since everything that a technician or lay helper might be expected or asked to do cannot possibly be listed in legislation or regulations, there will still be unanswered questions.

Many veterinarians are troubled by the requirement that there be "supervision" by the veterinarian. Some practice acts seek to define supervision. It is generally accepted that veterinarians do not have to "stand over" technicians or lay help. Many things are permissible if the veterinarian is either on the premises or can be reached by two-way radio or telephone.

In a paper prepared for the Kansas Veterinary Medical Association by Gregory M. Dennis, counsel for the association, entitled, "The Law and the Veterinary Technician," there is a listing of "typical statements of permissible and impermissible activities of veterinary technicians" as contained in the laws of several states. Georgia law provides that "a technician is employed under the direct supervision of the licensed veterinarian to perform the following duties:

- 1) obtain and record information about animal patients;
- 2) prepare animal patients,

instruments, equipment, and medication for surgery;

- 3) collect specimens and perform laboratory procedures;
- 4) apply wound dressings; and
- 5) assist the licensed veterinarian in diagnostic, medical and surgical procedures."

The Kentucky law points out that the technician shall receive no fee or compensation for services other than the salary or compensation provided by the employing veterinarian. This should be obvious, but when veterinary technician certification was first being considered, many veterinarians expressed the fear that a separate and competing profession would evolve. Thus far, state practice acts have kept the lid on this.

The Iowa law states that the veterinarian shall "personally examine the animal before the assistant carries out any procedures" and that the veterinarian shall "direct, control and supervise the conduct of the assistant..."

Veterinarians are particularly vulnerable when they leave the practice in the hands of a technician or other unlicensed persons while they are away from the practice (eg, at a conference, on vacation, or otherwise unavailable to supervise). Certainly they do not have to "close up shop." Their lay helpers can give routine care to any animals in the

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clinic, provided that there are no animals for which the veterinarian's services might be required at any moment, and they can make agreements with prospective clients about service when the veterinarian returns. They can do billing and other "office work," and if the veterinarian has a sales service area, may sell pet supplies and unrestricted products.

The vulnerability exists because those in charge, though with good intentions, may ask questions, give advice, and even dispense materials that do add up to the practice of veterinary medicine. In an Illinois case in which this issue arose in a veterinarian's practice, a circuit court overruled the licensing board's suspension of a veterinarian's license, not by ruling that the unlicensed assistants had not been "giving injections and running the veterinary office without supervision" as maintained by the board, but because the court ruled that expert testimony should have been procured to make the determination—that it was not proper to consider that veterinary board members could supply the expert testimony, because members of such a board are not automatically experts just because they are licensed practitioners. In my opinion, this was a case where fact and principle collided.

Unless the law states that only certified veterinary technicians can perform functions listed in the practice act, there

is a presumption that other lay personnel can perform the same functions whether or not they are certified. I believe that any lay person, certified or not, who has the skill to do what the veterinarian requests, who has supervision that meets the definition of the law, and who does not engage in an activity that is denied to certified veterinary technicians, is legally in the same position as the latter. If technicians or other skilled lay help take blood samples (this issue was raised in Illinois), it should be done with the veterinarian present and in position to make an accurate certification when a report is made.

There is a time-honored principle in our law that the negligence of an employee while in the discharge of his or her duties may be imputed to the employer. This is certainly true of veterinary technicians and other lay help employed by the veterinarian. This points up the importance of training, instructions, and oversight on the part of the veterinarian. Certainly no veterinarian would wish the practice to suffer because of the ineptness of the employees, but two issues do arise. Is anything added to the arsenal of a suing client by showing that the lay helper was not a certified veterinary technician? Also, what insurance protection is there for the assistant? Though the fact that an assistant was not a certified veterinary technician might raise

a presumption that that person was not qualified to perform the particular act complained of, it is, in my opinion, a presumption that can be rebutted.

A few years ago I raised the question of professional liability insurance coverage for employees with underwriters for the AVMA Professional Liability Insurance Trust. At that time (1987), Lance Sandburg of the insurance broker wrote "Without any contractual obligation to do so, the insurance company often provides gratuitous defense for lay employees named as defendants along with the insured veterinarian. This is always done with a full understanding at the outset that, in the event of a judgment against the employee, the AVMA insurance policy will not respond... Only the veterinarian whose name appears on the face of the policy is insured." Though, under the "deep pocket" theory, a suing client might not expect to recover anything from an employee and would look only to the veterinarian, employees are nevertheless vulnerable unless insurance of some kind is provided.

In the last analysis, the proper use of lay help by a veterinarian depends on two things—the veterinarian's knowledge of any strictures that may exist in the practice act or regulations developed under it, and his/her own good judgment in using employees.