For what may damages be awarded in a malpractice action against a veterinarian?

Because animals are property, it is basic that the value of an animal (if lost, or diminished in value if injured) may be recovered in a successful suit by a client. This may be substantial if the animal was an expensive bull or horse but negligible if it was the family dog. However, it is not surprising that when companion animals are lost, regardless of their market value, the owner will seek more. Additional claims may be for pain and suffering, emotional distress, outrageuous conduct, loss of companionship of the animal, or even for the wrongful death of a human. Whether recovery based on these causes will be allowed depends on the degree of negligence of the veterinarian, the policy of the courts in a particular state, and pertinent statutory provisions.

Whether professional liability insurance is applicable to pay for these kinds of "punitive" damages (those that punish a wrongdoer for more than ordinary negligence) depends on the terms of the insurance policy and on the policies in the particular state on allowing a defendant to be insured for such wrongdoing. In many states, such coverage will not be allowed, the theory being that indemnifying a defendant under such circumstances would encourage rather than discourage the same conduct in the future. Issues regarding insurance for punitive damages were discussed in 2 earlier Legal Briefs, "Punitive Damages—A Malpractice Insurance Question Mark" (JAVMA Nov 1, 1980, pp 774, 776) and "Pet Owners and Punitive Damages?" (JAVMA Aug 1, 1981, p 224).

There may be a state statutory limit on the amount of recovery allowed for a punitive damages claim. However, constitutional issues arise in imposing such limits. The Illinois legislature established a $500,000 limit for recovery for "noneconomic" damages, but, in a 1997 decision, the Illinois Supreme Court declared the act unconstitutional (Best v Taylor Machine Works, 689 NE2d 1057).

Emotional distress—In some earlier decisions, courts held to the theory that because an animal is "property," an owner should not be compensated for emotional distress because of its loss. However, this view has changed materially. Courts now recognize that a companion animal is more than property—and with respect to compensation to the owner, has some of the attributes of a member of the family. As early as 1964, a Florida Appeals Court in LaPorte v Associated Independents Inc, 163 S2d 267, allowed the owner of a Dachshund that had been intentionally injured to recover for her emotional distress.

One court has said that awards that fail to compensate for mental suffering are inadequate as a matter of law (Hilliard v A. H. Robbins Co, 196 Cal. Reporter 117 [1983]). A similar conclusion was reached in Fredeen v Stride, an Oregon Supreme Court case (525 P2d 166). In that case, the owners of a German Shepherd Dog reluctantly agreed with the veterinarian that their dog should be euthanatized. Instead of doing so, the veterinarian treated the dog, which recovered and then transferred to a new owner. When the original owners discovered what had happened, they sued the veterinarian and were allowed to recover for emotional distress. The new owners of the dog were not held liable, because they had no knowledge of the circumstances that led to their acquisition of the dog.

In Jason v Parks, 638 N.Y. S2d 170 (1996), the appellate division of the Supreme Court of New York held that a dog owner could not recover for emotional distress caused by the negligent destruction of his dog. This was a memorandum opinion, so there are no details about the veterinarian's actions or the degree of negligence. If it were only ordinary negligence, one could agree with the court's ruling; if it were gross negligence, courts in many other states could have held differently.

Loss of companionship—Courts have apparently been reluctant to allow punitive damages for loss of companionship. An Illinois Appellate Court so held in Jankowski v Preiser Animal Hospital LTD (510 NE2d 1084). Because loss of companionship could be an element in emotional distress, there might be recovery through that route in those states that would not recognize loss of companionship as an element of damages. But this does seem unrealistic, because the value of pets as companion animals for older persons and those in retirement homes is now well recognized. Why should there not be recovery for such loss?

Wrongful death—If an owner or an agent of an owner assisting a veterinarian were to die as a result of injuries received, and negligence and conduct supporting punitive damages could be proved, there could be a recovery for wrongful
death. Also, it has been held that recovery can be allowed even when a cause of death is not direct physical injury. In Rasmussen v Benson, the Supreme Court of Nebraska so held (280 NW 890). In this case, the defendant's negligent sale of an unlabeled poisoned brand caused death or permanent injury to the buyer's dairy cows. The buyer suffered nervous shock because of worry over loss of his business and the fear of communicating poison to dairy customers. He died from a heart condition. The court said that a physical injury resulting from an emotional upset induced by the negligence of another creates liability for damages. The court also said that damages for actual injury resulting from fright and shock are recoverable, although not accompanied by a contemporaneous injury.

The burden is on the client to prove that the veterinarian engaged in conduct that would support a claim for punitive damages. A plaintiff-client must show by clear and convincing evidence that willful and wanton conduct, gross negligence, or an intent to harm was the proximate cause of the injury.

The veterinarian is not without defenses when there is a claim for punitive damages. Clients sometimes become angry and irrational and describe the actions of the veterinarian in colorful but inaccurate terms. The veterinarian, after all, has a right to describe the incident as he or she saw it. Also, there may be a question of proximate cause, especially when there is some intervening incident that could have lead to the damage. If an animal or animals in question had been returned to the custody of the owner, there may be a comparative negligence issue under which the veterinarian could show that the plaintiff is at least partially at fault with respect to the death of or damage to the patient. And finally, the statute of limitations should not be overlooked. If the client did not file suit within the time specified by law, the cause of action is lost.

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