

When is there a duty to treat animals?

In the Principles of Veterinary Medical Ethics of the American Veterinary Medical Association, it is stated that, “Veterinarians may choose whom they will serve. Once they have started patient care, veterinarians must not neglect their patients, and they must continue to provide professional services until they are relieved of their professional responsibilities.”

This statement of an ethical principle is also in accord with the law (something that is not always true). A legislative or regulatory requirement that would impose veterinarians with the duty to accept any animal brought to the clinic for treatment would be void as an unconstitutional interference with the freedom to contract. Nevertheless, laymen sometimes feel that there should be a duty, especially when emergency treatment is needed. There are times when veterinarians will need to balance the image they wish to create against their legal right to refuse treatment.

State legislatures, recognizing that veterinarians have a right to refuse treatment in emergency situations have enacted what are known as Good Samaritan laws. These laws encourage veterinarians and other professionals to render such service by providing that in rendering such treatment they will not be liable to the owner except for willful and wanton or grossly negligent conduct. These laws apply, however, only when the owner has not requested treatment.

Although a veterinarian cannot be legally required to initiate a contract for treatment of an animal, there are circumstances that impose a duty to treat.

Further treatment of an animal after release to the owner—If an animal that has been treated and released has recurrence of the problem for which it was treated, the veterinarian would have a duty to check on the animal and give further treatment. This can be viewed as a continuation of the original contract.

Herd care contracts—When a veterinarian contracts with a livestock farmer to look after the health of the herd and render necessary services, there is a duty to respond when the owner expresses a concern to the veterinarian. Also, if the contract establishes a schedule of visits by the veterinarian, the latter would be bound to abide by this.

Promise to treat—If by telephone or otherwise an owner requests the service of a veterinarian, and the veterinarian, or an office staff member authorized to make visitation agreements for the veterinarian, promises to see the animals, there is a contract binding on the veterinarian to see the animals after which a further contract may, or may not, be made for treatment of the animals.

Veterinarians for zoos, parks, or exotic animals or bird entities—Veterinarians for these organizations are relied on to provide constant surveillance so the health of such animals can be preserved.

Veterinarians employed by animal hospitals or veterinary clinics—These entities may have policies regarding acceptance of animals for treatment that could alter an employed veterinarian's duty in this respect. Although the duty to accept an animal cannot be imposed by law, it can be imposed by an employment agreement. Failure

to abide by such could amount to a breach of the employment contract, thus giving the employer the right to seek an appropriate remedy, including termination of employment. If, for example, the veterinary clinic had a policy of accepting emergency cases and an employed veterinarian refused to accept such a case when he or she was on emergency calls, that would be a violation of contractual duty.

Fineman v New Jersey Department of Human Services, 640 A 2d 1161 (1994), a case involving human medicine, is illustrative. The plaintiff physician was hired to give primary care to 100 patients in a nursing home. There were 2 other primary care physicians. One of these went on sick leave for 6 weeks, which forced the burden on the remaining 2 physicians. They met with the administrator and asked that additional help be procured. The administrator promised to look for additional physicians. But in the meantime, the second physician went on unauthorized leave, leaving only the plaintiff to care for all patients in the nursing home. He informed the administrator that he would assume responsibility only for the 100 patients agreed on, and would treat only emergency cases in others. The nursing home found other part-time physicians and commenced action to terminate the plaintiff's employment, claiming that he had refused to treat patients. The jury awarded him damages for wrongful termination, but the New Jersey Court of Appeals reversed, saying that his refusal to treat patients, even under these circumstances, was a breach of his contract.

Harking back to the ethical principle that a veterinarian “may choose who he will serve” and to the legal principle that a veterinari-

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an cannot be forced to make a contract for service, one is prompted to say that a veterinarian should avail him- or herself of these rights in a manner that will do the least harm to his or her public image. Although it is not necessary to tell an owner the reason why the ani-

mal cannot be accepted, generally it would be advantageous for the veterinarian to do so. A prospective client would understand and would feel better if he or she knew it was because of a full workload or lack of proper equipment or expertise to handle a particular case. It should

be remembered, too, that an owner is not automatically a client because of the times the veterinarian has treated his or her animals in the past. In the legal sense, the owner becomes a client only after there is an agreement to treat a particular animal or animals.