

Euthanasia—some legal aspects

Before discussing some ways in which euthanasia performed by a veterinarian may raise a legal issue, it should be pointed out that owners have a right to treat their own animals, including the right to terminate the lives of those animals. This stems from the fact that animals are property, regardless of court pronouncements that they may be a special kind of property. But practice acts, like the one in Illinois, may indicate that even though owners may treat their own animals, it must be done in a humane manner (225 ILCS 115/4). In one Wisconsin General Attorney's opinion, termination of the life of an animal by injection is not the practice of veterinary medicine (1976 Op Att Gen, Oct 21). This does not mean that it may be done in an inhumane manner. Also, other jurisdictions may not agree with that opinion. Slaughterhouses and packing plants must abide by federal and state laws specifying humane methods of slaughter.

Who has the right to request euthanasia?—Before a veterinarian accedes to a request of a client that an animal be euthanatized, he or she should make certain that the person requesting this has authority to do so. If a stable keeper or other custodian of the animal requests euthanasia, the veterinarian should make certain that the person has this authority.

It may be assumed that a husband or wife has authority to request euthanasia, however that may be a false assumption. The October 1999 newsletter for the Society for Veterinary Medical Ethics described an incident in which the husband brought a cat to a clinic for treatment for a skin dis-

ease, but the veterinarian suggested that the cat be euthanatized because of the severity of the disease. The husband agreed. The wife became angry, because she claimed ownership in the cat and stated that it could have been sold for a substantial sum for breeding purposes. A complaint was filed with the state veterinary licensing board. Its conclusion was that there had been poor communication between members of the family and the veterinarian, and that the complaint should be dismissed—but the board suggested to the veterinarian that in the future, a consent form be signed. This is good advice even though it may be argued that the veterinarian is not responsible for disagreements in the family or for how family members claim ownership, and if dealing with an adult, may assume an agency authority.

When a minor requests that an animal be euthanatized, the veterinarian should be particularly careful and if there is any doubt, should contact the parents or the owner represented by the minor before acceding to the request to euthanatize.

Euthanasia consent form—Besides date, description of the animal or animals, and identification of the parties, this form should contain a statement that the person signing is the owner of the animal, or if not the owner, has been duly authorized by the owner to request euthanasia. It should make provisions for disposition of the body, and it should state that the animal is not under observation as required by rabies laws.

Disposal of the body—The body of a euthanatized animal still belongs to the owner and should be disposed of as the owner directs. The consent form may provide that the veterinarian shall dispose of the body, but if the owner wishes oth-

erwise, this portion can be struck. The only exception to the right of an owner to claim the body is when the right has been waived in a consent form or when the animal had a transmissible disease and animal health regulations would prohibit releasing it to the owner.

If a veterinarian disposes of an euthanatized animal through an animal disposal company, he or she should make certain the company is licensed or permitted to transport animals and that any applicable animal disease control regulations are followed.

Method of euthanasia—It is assumed that a veterinarian would use a method of euthanasia that would cause the animal the least possible pain and suffering. A departure from generally approved methods of euthanasia designed to reduce pain and suffering could lead to a count against the veterinarian for violation of the state cruelty to animals law. In applying the provisions of such a law, courts have said that evidence supporting the presence of any one of the acts described as cruel is sufficient to support a conviction. In *State v Andree* (39567-0-1 Slip opinion [Apr 20, 1998]), the Washington Appeals Court held that the defendant, who had stabbed a kitten 9 times, was guilty of cruelty. His argument that the statute was vague and that there must be a showing that he had violated all the elements constituting cruelty, fell on deaf ears. The defendant's argument that undue suffering as used in the statute was vague and should have been further defined by the legislature was answered when the court said,

The fact that a statutory term is not defined and requires a subjective evaluation, however, does not automatically mean that the statute is unconstitutionally vague. If persons of ordinary intelligence can under-

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stand a penal statute, notwithstanding some possible areas of disagreement, it is not wanting in certainty. Impossible standards of specificity are not required.

Destruction by the state—

When bovine tuberculosis and brucellosis eradication programs were initiated, a number of lawsuits were filed by livestock owners claiming that programs allowing the government to test and destroy animals were unconstitutional. These lawsuits failed in the face of courts' recognition that both animal and public welfare were at stake. But cases still arise testing the right of public officials to destroy animals in particular circumstances. This calls for a fine reading of the law providing for destruction and tends to keep animal control officers and state and federal veterinarians involved with

these laws permitting destruction on their toes. Companion animals may also be involved, not only from a disease standpoint but because of laws allowing the destruction under certain circumstances of vicious or dangerous dogs.

Wildlife may also be involved. In *Carmack v Saunders, Director, Missouri Department of Agriculture*, (884 SW2d 394 [Missouri App 1994]), the owner and operator of an elk farm sought a writ of mandamus against a Missouri state veterinarian to compel the destruction of 10 elk that had tested positive for bovine tuberculosis and for compensation for their destruction. The appeals court held that a writ of mandamus was not the proper action for a determination of the owner's rights, that the state veterinarian had the discretion of deter-

mining which elk should be destroyed, and that it was wrong for the trial court to award attorney's fees to the owner.

Perhaps the most important thing about euthanasia is that it can be traumatic for those who have to agree to the destruction of a companion animal that has meant so much to them. A highly emotional state and replays in the mind of the details of loss can lead to negative thoughts that would not otherwise arise about the veterinarian who treated and finally euthanatized the animal. This, in turn, may lead to criticism and claims that would not otherwise have been made. For veterinarians it bespeaks extra care, communication, and understanding, so clients' feelings can be assuaged and a complaint against the veterinarian less likely.