



Veterinary Medicine and the Law

The keeping of animals

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Three legal standards apply to activities occurring in the various parts of any veterinary practice. First, all veterinary practices are subject to the general rules of tort law that apply to any business open to the public. In the reception area, for instance, if a client were to slip on a rug and break an arm or a cat waiting to be examined were to be bitten by a dog, the general rules of tort law would apply, and the outcome would depend on the application of concepts such as negligence, duty toward invitees, and assumption of risk.

Second, the legal rules of professional liability and veterinary malpractice govern many of the activities occurring in the examination rooms and surgery suites of veterinary practices. In particular, they apply to disputes that arise between animal owners and veterinarians regarding the treatment of animals brought to a veterinary practice.

Third, the law of bailment applies in those areas of any veterinary practice where healthy animals are formally or informally kenneled. In the broadest terms, a bailment is the lawful possession of an animal by someone other than the owner, and the set of legal rules that govern this aspect of veterinary practice is known as the law of bailment. Interestingly, although the concept of veterinary malpractice only arose as a separate cause for legal action in the 1950s, bailment law goes back several centuries.^{1,2}

Examples of Bailment

Consider the situation of a cat, a terrier, and a 6-year-old boy sharing the waiting room of a local veterinary practice. Although the boy seeks to exercise self-restraint, he eventually gives up and uses his hidden squirt gun to shoot water at the cat. The cat jumps, startling the terrier, which goes after the cat, inflicting bites that require medical treatment. Is the veterinarian liable for the cost of the cat's injuries? In this instance, the law of bailment would not apply because the veterinarian had no control or responsibility for either animal at the time the injuries occurred. Rather, legal liability would be determined by the general rules of tort law (specifically, the rules concerning duties to business invitees), and most likely, a court would hold

that the veterinarian was not liable because the series of events was neither predictable nor preventable by the veterinarian.

Similarly, consider the situation of a cat that is brought to a veterinary practice for a minor operation, but dies suddenly because a drug is incorrectly administered. Although the owner had given physical possession of the cat to the veterinarian, establishing a bailment, any claim for damages would be governed by the legal rules of professional malpractice, rather than the rules of bailment. In particular, in the case of *Price v Brown*,³ the Supreme Court of Pennsylvania considered in detail the issue of which law to apply to matters arising out of activities in the surgery room and decided that the professional standards of malpractice would apply and not the rules of bailment. In that case, the plaintiff had brought her dog to the defendant for surgical treatment to correct a prolapsed urethra. Dr. Brown performed the surgery, but when the plaintiff Price visited the dog at the veterinary hospital the next evening, she noticed that the dog was panting strenuously and appeared groggy, and she requested that the dog be monitored on a 24-hour basis. The plaintiff was assured that monitoring would be done by an unidentified agent of the defendant, but the following morning, the dog died. Price alleged that the dog had been left unattended after midnight and sued under a theory of breach of duty arising out of a bailment. The court, however, held that when a veterinarian performs surgery on an animal, the legal standard to be used to judge the appropriateness of the conduct should be that of malpractice, not bailment. Although some authors have argued that the rules of bailment should be an allowed cause of action for disputes that arise out of actions in the surgery room,⁴ it is clear that courts today will find that malpractice rules govern surgery and recovery-room activities.

Finally, consider the situation of an owner who, as she has done every weekend for the past 2 months, brings her cat to the local veterinary practice on Friday afternoon to board for the weekend. The owner gives the cat to a receptionist, who takes the cat back to the kennel room and places it in a cage. Unfortunately, the cage is improperly latched, and the cat escapes and is bitten by a dog. In this instance, liability would be determined by the rules of bailment. Importantly, this

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will be the case even though there was no written agreement and the veterinarian did not personally see the animal. Although a bailment can be explicitly created by written contract, it can also be implicitly created by the attendant circumstances. In this example, a court would find that a bailment existed because there was a transfer of possession of the animal from the owner to an agent of the veterinarian (ie, the receptionist). When the agent of the veterinarian assumed control over the animal, a bailment was created.

Importantly, although most bailments are commercial in nature (ie, commercial boarding of animals), a bailment can also arise even if no money is exchanged. For example, in a case⁵ involving a veterinarian who was keeping an elephant for the local Republican Party (*Elephant Inc v Hartford Accident & Indemnity Co*), it was found that a bailment existed even though the veterinarian did not receive any payment from the Party. In that case, the elephant had been placed in a new stall by the veterinarian. A quantity of poison was left within reach of the elephant, and the elephant consumed the poison and later died.

Creation of Bailments

As stated, in the broadest terms, a bailment is the lawful possession of an animal by someone other than the owner. Examples of bailments include a stallion that spends a day on another farm for breeding purposes, transportation of an animal by a commercial carrier, and even a neighbor who keeps a friend's dog for the weekend. In all of these situations, possession of the animal is with someone who is not the lawful owner of the animal.

The laws of bailment will determine the rights and duties of the parties to a bailment.^{3,6,7} The primary legal consequences that arise are that the bailee (ie, the individual who has taken possession of the animal) is liable for any damages to the animal that occur during the period of the bailment as a result of negligence. The bailee is also liable for any damages that may occur because of delivery of the animal to any individual other than the bailor (ie, the lawful owner of the animal).

A bailment is a relationship between parties that normally arises by express agreement, which can be written or oral. A court may also infer the existence of such an agreement on the basis of the conduct of the parties or on the basis of past practices of the parties. For the creation of a bailment, two elements are critical. First, there must be physical delivery of the animal to the bailee. Second, there must be knowing acceptance of the animal by the bailee.

For example, consider an owner bringing her dog to a veterinary practice with the expectation of boarding the dog for the weekend whose dog is attacked in the entryway by another dog leaving the practice. In this instance, no bailment has been created because there had not yet been any transfer of possession, dominion, or control from the owner to the veterinarian or an employee of the veterinarian.

In contrast, consider the situation of an owner who brings her cat to a veterinary practice for boarding and who hands the cat over to the practice receptionist, who takes the cat in the back room, where it is later

killed by a dog.⁸ In this case, a bailment has been created, as the receptionist was an employee of the veterinarian and presumably was authorized to take control of the animal. The veterinarian would not have to have had any actual knowledge of the event to be liable under the rules of bailment. On the other hand, if the owner had left the cat with a man she met in the veterinarian's parking lot, who then walked away with the cat, a bailment would not have been created, as there would not have been sufficient delivery of the animal to an agent of the veterinarian.

Finally, consider the situation of a veterinarian who comes out of a grocery store and opens his car door to find a cat in the back seat of the car. Although the veterinarian has physical control of the animal, a bailment has not been created, as there was no agreement or expectation of transfer of possession.

Duties of Bailors and Bailees

Because the bailor (ie, the lawful owner of an animal) is parting with his or her animal when a bailment is created, the bailor's duties are fairly limited. Nevertheless, a bailor does have certain duties, including delivering the animal agreed upon, disclosing any unusual information the veterinarian would need to properly care for the animal, and warning the veterinarian about any unusual characteristics of the behavior of the animal.

As might be expected, because the bailee (ie, the individual accepting the animal) has possession of the animal, the bailee's duties are more numerous and detailed. The primary duty of a bailee is to return the bailed animal, either at a set time or on demand, to the bailor or someone designated by the bailor in at least as good a condition as the condition it was in when the animal was received.

The greatest number of problems arises over the question of a bailee's duty of care toward an animal in his or her possession. The term care in this context not only refers to the positive duty of providing adequate food, water, and shelter, but also incorporates broader concepts of general tort law, which include an obligation to refrain from any action or nonaction that could foreseeably result in injury to the bailed animal. Thus, the duty of the bailee is to provide a level of care appropriate to all the surrounding circumstances. Whether an appropriate level of care has been provided is a factual issue (ie, one that is settled by a jury) that must be determined on a case-by-case basis. In general, a "reasonable person" standard is applied, which presupposes familiarity with the animal's needs. Some factors that ought to be considered in determining whether reasonable care has been provided include the nature and purpose of the bailment, including whether it is for pay or gratuitous; the commercial value of the bailed animal; any special duties specified within a written or oral agreement; prior practice between the parties and in the geographic area; the disclosure of special knowledge by the bailor to the bailee; and any special needs of the animal.

At a minimum, the bailee must meet the criminal standard of humane care, providing adequate food,

water, and shelter, but the level of care required of the bailee could be less than the ordinary level of care when so directed by the bailor. Also, the bailee should not be considered an insurer of the animal. Thus, when the acts of a third party injure the bailed animal, the bailee is not liable. Finally, if unusual or extraordinary events happen, the bailee's duty is to contact the bailor to obtain further instructions, unless such contingencies are already covered by an agreement.

Recovery for Loss or Injury of a Bailed Animal

There are several situations under which a bailor may sue for damages because of loss or injury of a bailed animal. The easiest situation to deal with is also the one that is the least likely to occur. Remember that the bailee has a duty to return the bailed animal to the bailor. Thus, if the bailee delivers the animal to someone other than the owner without authorization from the bailor, the bailee is liable for the animal's value at that time. Lack of negligence will not constitute a defense in this situation because the issue is not the reasonableness of the bailee's conduct. Rather, the bailee has an absolute duty to deliver the bailed animal to the bailor. As an example, if a veterinary practice was boarding two black Labrador Retrievers, and the wrong one was given to an owner, the veterinarian would be liable for any damages arising out of the act. If, for instance, the wrongly delivered dog were to disappear, the true owner could collect appropriate damages.

The bailee has a duty to exercise reasonable care toward the bailed animal under the circumstances. If this duty is breached, then the bailee is liable for the resulting damages. For example, if poison were to be negligently left next to a box of food, and an animal were to receive the poison and die, the veterinarian would be liable. Similarly, if a dog were negligently left in an outside exercise area overnight and died from exposure, the veterinarian would be liable.

Of course, when something does go wrong, there may be some practical difficulties involved in the bailor's proving what happened to the bailed animal. Importantly, the laws of bailment differ from other legal standards of care in regard to burden of proof and the legal presumptions that arise in favor of the bailor. If, for instance, an owner were to file a tort action based on a claim of veterinary malpractice, the owner would have the burden of proving that the veterinarian's negligence caused the harm. However, this is not the case when the cause of action is based on a bailment. In these cases, the bailor need only prove the existence of a bailment relationship, delivery of the animal to the bailee, and failure to return the animal

undamaged. If the bailor can prove these three facts, then a presumption of negligence arises in favor of the bailor. For example, in *Buchanan v Byrd*,⁹ the owner of a horse brought action to recover for the value of the horse after it escaped from the bailee's premises through an open pasture gate and was killed by a train. Although the plaintiff horse owner could not prove that the bailee was negligent, this was not critical because once a bailment had been established, a judgment would be made for the defendant bailee only if the bailee could prove that the horse's escape was not a result of negligence. Further, lack of knowledge by the bailee as to how the injury occurred would not be considered an acceptable defense against liability.¹⁰

This shifting of the burden of proof does not happen if the legal action is based on malpractice. Thus, if a dog were to die during surgery, and the owner were allowed to bring suit based on the law of bailment (ie, the dog was returned dead), the veterinarian would have to prove that the care provided was reasonable under the circumstances. In contrast, because legal action in such instances must be based on the principles of malpractice, the owner would have to prove that the care provided by the veterinarian was unreasonable under the circumstances. In the absence of sufficient information, the person with the burden of proof will most often be the loser.

Conclusion

As bailments are a regular occurrence in veterinary practice, veterinarians need to be aware that a different standard of legal care is imposed on them in such circumstances. Ensuring full communication between parties and adopting standard office procedures when the veterinary practice takes possession of animals will help to protect not only the animals themselves but also the veterinary practice and its owners.

References

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