“Write it Down!”
Veterinary Medical Records and Informed Consent to Treatment

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DISCLAIMER

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Most attorneys will agree that effective records management within the veterinary clinic can be a decisive factor in successfully defending a claim against the clinic and its practitioners or not. One of the key strategies in risk management in a veterinary context is to create and maintain effective client records that can be relied upon in the defense of a subsequent claim. In this article we shall discuss both the legal and practical requirements for veterinary records management in the context of maintaining an appropriate veterinary/client/patient relationship. As well, we shall focus some attention on the issue of obtaining and documenting informed consent to treatment and the use of computerized record-keeping. In this way, the veterinary hospital owner or manager can introduce new strategies to assist in avoiding and defending litigation and complaints by clients.

THE VCPR

It is a pre-condition to the delivery of professional care that an appropriate veterinary/client/patient relationship (“VCPR”) be established. It is clear that only a client of the hospital could initiate legal proceedings claiming damages for veterinary negligence or malpractice - without the VCPR no such claim would, in my view, be able to be maintained.

While various jurisdictions throughout North America have adopted the notion of the VCPR in slightly different ways, it can be accepted that the relationship exists only when the following have been established:

1. The practitioner must have assumed responsibility for making medical judgements regarding the health of the animal and the owner must have indicated a willingness to accept the advice of the practitioner;
2. The practitioner must have sufficient knowledge of the animal by virtue of a history or inquiry and either a physical examination or medically appropriate visits to its place of possession (the latter is particularly true in large animal medicine);
3. The practitioner must be readily available to assist especially if treatment has commenced and an unexpected, adverse result is found.

With these principles in mind, one should approach the taking of clinical notes and records with care and prudence to confirm that such a relationship either exists or does not. Too often, veterinarians are found in difficult circumstances as a result of the “phantom client” - that person
who contacts the veterinarian or his or staff by telephone without disclosing sufficient information and seeks advice which, if further information had been provided, would not have been rendered. The subsequent compromise in the animal’s health is then blamed upon the advice given by the practitioner to his or her detriment. The prudent practice owner or manager should ensure that an appropriate VCPR is established prior to rendering any advice whatever.

STATUTORY COMPLIANCE

The legal requirements for veterinary record-keeping is often found in the state or provincial practice statutes; thus, the reader should review the legislation in his or her jurisdiction to become familiar with any particular requirements. While the rules may vary slightly, the requirements for proper veterinary records can be summarized as follows:

1. Patient identification including species, age and sex;
2. The Client name, address and contact telephone numbers (for emergencies contacts as well);
3. The date for each time the practitioner sees the animal or has a telephone inquiry;
4. A history of the animal’s health including a record of vaccinations;
5. The animal’s current weight (in order to determine appropriate drug dosages);
6. Particulars of each assessment including any laboratory results obtained;
7. Notes of any professional advice given and an indication to whom and when such advice was given - in particular, it is very important to note any advice which has been declined by the client;
8. All medical or surgical treatments and procedures that have been performed or prescribed must be noted including the name, strength, dosage and quantity of any drugs;
9. The records should include copies of any reports or certificates issued by the practitioner;
10. The notes should indicate the final assessment of the animal;
11. The records should include a copy of any professional account rendered including drug costs or dispensing fees; and
12. The notes should include a record of any communications, by telephone or otherwise, that has occurred between the clinic and the client.

One should be mindful of the clear legal requirements to maintain appropriate records as the records are admissible in any subsequent legal proceeding. More and more courts and tribunals are placing great reliance on the records introduced in evidence in order to determine the credibility of the witnesses providing testimony.

PRACTICAL CONSIDERATIONS FOR RECORDS

Notwithstanding the clear legal obligation to keep and maintain appropriate records, there are some practical tips that owners and managers of veterinary facilities should bear in mind. By adopting these protocols in the clinic one will have introduced an effective risk management strategy.

Legibility

Clearly, one must endeavour to enter notations in the medical records in a legible way. To the
extent that the records are not clear and understandable they will offer no assistance whatever to the practitioner in defending a claim.

Factual

Appropriate record-keeping demands that only factual information be recorded in the patient notes. One should avoid any editorial or emotive comments regarding the client in the medical records. A good rule of thumb is that one should not enter any information in the medical records that one does not wish to have reviewed by a judge or jury. The insertion of emotional comments about the conduct of the client or otherwise merely serves to compromise the professionalism of the practitioner which could have a serious adverse affect on the issue of credibility.

Contemporaneous

In order for the records to be admissible in evidence they must be made contemporaneous with the conduct records; that is, the records must be maintained currently as a notation made the next day or some weeks after the event would, in most jurisdictions, not be admissible evidence.

Corrections

Any corrections to the records should be made clearly on the original notes noting that it is a correction and the date of the correction.

Computerized Records

Most jurisdictions specifically authorize the use of computers for the generation of medical records. One should seek the advice of their own regulatory body on the specific requirements; however, generally speaking, computerized record-keeping is permissible so long as the software does not permit changes to the records to be made without a specific notation that the record has been changed. Most general word processing software would not meet this specific requirement.

INFORMED CONSENT TO TREATMENT

Finally, it is appropriate to consider one specific record which is dealt with on a daily basis within a clinical setting: the form relating to the consent to treatment of an animal.

Everyone will agree that the practitioner can only proceed with any treatment plan so long as he or she has the consent of the client and that such consent must be informed. While much has been written on this topic it is important to review some of its more salient aspects.

Probable Risks

It is clear that the practitioner must inform the client of all of the probable risks of a particular treatment or procedure based on the reasonable care and skill of the veterinarian. If the procedure has any risk of death or serious injury to the animal then that risk must be disclosed even though it may be only possible.
Material Risks

The veterinary practitioner must also advise the client of any material risks - this requires a subjective view of the circumstances and discussion with the client to determine what is material or not. For instance, the risk of sterility will be very relevant to a breeder client but may not be for the companion animal owner.

Authority to Give Consent

It is clear that the only person from which consent can be lawfully obtained is the owner of the animal or the owner’s authorized legal agent. One should make inquiries as to whether or not the person giving the consent is the owner of the animal. As well, one should be cautious in accepting the consent of a child without confirming the consent with an adult person.

Emergencies

In the event of an emergency, one has the right to proceed with treatment without consent; however, the prudent practitioner will make certain that the facts of the case support the notion of life-threatening presentation prior to proceeding without consent.

Obtaining Consent

The manner in which one obtains consent to treatment varies; however, it is clear that a written consent thoughtfully considered by the client is the most appropriate. If one obtains telephone consent (as is often the case) it is important that the fact of consent be entered into the clinic records.