

PROFESSIONAL NEGLIGENCE CLAIMS: THE BASICS

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Previous articles in this column have discussed what you should and should not do if you are the subject of a complaint to the College of Veterinarians of British Columbia (the “College”). Of course, complaints to the College are not the only type of dispute you may become involved in. This column will focus on civil negligence claims and what you should know before and after you become the subject of such a law suit. Professional negligence claims against veterinarians have received relatively little judicial consideration compared to other health care professional negligence claims. However, the relative infrequency of veterinarian negligence claims should not lull you into a sense of complacency regarding the duty of care you owe to the owners of your patients. As with any other professional health care provider, you must understand the elements of your duty of care.

COMPLACENCY

Complacency is the enemy of all professionals when it comes to maintaining professional best practices. First-year professionals are rarely sued for negligence. Why? Because they are terrified of making mistakes. They typically follow established best practices carefully. I do not know at what stage in your practice you are most likely to be sued for professional negligence. I am willing to wager, however, that it is similar to those in my profession. Within the legal profession, lawyers with between five and ten years of practice are the most likely to be sued. The problem seems to be that once professionals have been practising for some time we become more confident. We then become willing to “economize” by taking shortcuts that speed up our ability to perform a certain task. Perhaps we decide to adopt efficiencies that omit one or two steps from what we consider to be an unnecessarily thorough process. If we do, however, we do so at our peril. The most effective way to avoid professional negligence claims is to identify and follow the recognized best practices in your profession regardless of your tenure and experience. Do not allow your professional success and experience to convince you that there is any benefit to doing otherwise.

BASIC CONCEPTS

What are the basic concepts of professional negligence? Someone making a claim of professional negligence against you must prove the following to establish their claim:

1. You owed them a duty of care (you do);
 2. You breached that duty of care; and
 3. The breach caused them to suffer a compensable loss or injury
- We will consider each of these in turn.

DUTY OF CARE

A duty of care is a legal and professional obligation to safeguard others in your care from acts or omissions that could cause them harm. As you know, as a veterinarian you owe a duty of care to both the animal you are treating and their owner. The existence of a legally recognizable professional duty of care, the breach of which may attract damages, is the result of judge-made law (the common law). It is also enshrined in section 204(1) of the College’s *Code of Ethics* (the “Code”): “When a veterinarian-client-patient relationship is established, a registrant must uphold the duties pertaining to such a relationship, including but not limited to those set out in the Code.” It will therefore be easy to establish that you owe a duty of care to the owner of a patient in most cases.

STANDARD OF CARE

Once you know you have a duty of care, you need to know the standard of care you are expected to provide. A standard of care is the level of skill and judgment that will reasonably be expected from you—more specifically, expected from a member of your profession in your circumstances. The standard of care applicable to veterinarians in most circumstances is that of a reasonably competent veterinarian in practice.¹ The Code conveniently refers to the standard of care in section 204(2): “In every veterinarian-client-patient relationship, a registrant must strive to use the level of care, skill and knowledge expected of a competent practitioner.” This language merely enshrines the common law. However, the Code also states that you must only provide services you are reasonably confident you are qualified and competent to provide.²

Generally, adherence to the standard practices of skilled, competent veterinarians will limit your liability in a negligence claim. The standard is not perfection. It does not require you to make the correct decision in every circumstance with the benefit of hindsight. Neither is the standard static. It will evolve with the practice of the profession. Importantly, it is also context-specific. The particular standard to be applied will depend on your circumstances. A lower standard may be applied where the normal standard of care would be too onerous when reasonably considered against a particular circumstance.

CAUSATION

An owner will not succeed against you in a negligence claim by proving only that you failed to meet your duty of care. They must also prove that it was your failure that caused them their injury or loss. Causation means proving that it was your action, and not some other thing, that caused or contributed to the injury or loss suffered by the owner. They must also prove that their injury or loss was a foreseeable consequence of your actions. The test the courts consider is called the “but for” test. Would the animal’s owner have suffered the loss *but for* your negligence?

EXAMPLES OF PROFESSIONAL NEGLIGENCE CASES

The following are two examples of how the law has been applied by our courts in the past.

*Priest v. Williams Lake Veterinary Hospital Ltd.*³

In this case, the claimant, Dr. Priest, sued the defendant, Williams Lake Veterinary Hospital Ltd. (the “Hospital”), for damages arising from the alleged negligent care of her dog. Dr. Priest’s horse kicked or stepped on the right forefoot of her dog, causing her dog to suffer from a comminuted fracture of the right distal radius and ulna. Dr. Priest informed Dr. S, the veterinarian at the Hospital, that she would be contacting Dr. A, a veterinary orthopaedic surgeon in Prince George, to perform surgery on her dog.

During a telephone call, Dr. A requested that Dr. S give the dog antibiotics and splint the dog’s leg for transport to Prince George. There were discrepancies in the evidence as to whether Dr. A specifically asked Dr. S to sedate the dog, as well as the type of bandage or splint that Dr. S was to put on the dog’s leg. Dr. Priest’s claim was premised on her claim that the Hospital did not properly bandage her dog’s leg for the journey to Prince George. She claimed the hospital was negligent and breached a duty of care by failing to administer pain medication.



The Court found that Dr. Priest did not prove her case. She was unable to prove that her dog's leg was improperly bandaged. The evidence established it was more likely than not (on the balance of probabilities) that the dog's leg was properly bandaged. There was also disagreement between the evidence of the two veterinarians. Concerning those discrepancies between the evidence of Dr. A and Dr. S, the Court found that it was more likely than not that Dr. A did instruct that no pain medication should be administered to the dog. It was not contrary to the standard of care expected of Dr. S to follow the instructions of Dr. A. The Court further stated:

Even if I had found that the evidence supported Dr. [A's] recollection that he told Dr. [S] "If he needs analgesics give them to him now," I could not conclude that, in these circumstances where Shadow [the dog] was exhibiting no signs of pain at the Williams Lake Veterinary Hospital, that Dr. [S] should have disregarded the fact that Dr. [A] had given her a discretion, and simply administered pain control medication. In short, there was no indication Shadow needed pain control, something recognized through Dr. [A's] best recollection of the words he used in his instructions.⁴

Accordingly, Dr. Priest failed to establish her claim of negligence against the Hospital. Her case was dismissed.

*Malcolmson v. Tsolum Mobile Veterinary Health Ltd.*⁵

The applicants in this case alleged that their veterinarian, Tsolum Mobile Veterinary Health Ltd. ("Tsolum"), was negligent in castrating their horse, Chevy. The claimant felt this ultimately led to the horse's death. Tsolum denied negligence and argued that the horse was euthanized because he broke his leg during a secondary procedure following the castration.

Neither party disputed that the horse would not have been euthanized if his leg had not been broken. Dr. X of Tsolum operated on the horse during the second procedure. He tied a rope around the horse's hind leg to move the leg away from the surgical site during the surgery. The applicants argued that Dr. X failed to complete the second procedure quickly enough. He also failed to notice the horse waking up from the anesthesia in time to untie him and prevent him from breaking his leg.

The evidence established that Dr. X passed the other end of the rope to one of the plaintiffs to hold while Dr. X was holding the sedated horse's neck. The plaintiff then tied the rope around the horse's neck with a fixed knot. This was contrary to Dr. X's instructions and done without Dr. X's knowledge. The knot tightened when the horse woke up and moved his leg, causing the horse to flail against the knotted rope and break his leg. Tsolum argued that if the applicant had folded the rope over the horse's neck, as per Dr. X's instructions, the rope would have loosened and slipped off when the horse woke up. The applicants did not dispute this. They argued, however, that Dr. X should have checked to see whether her instructions were followed. The Tribunal disagreed. They found it unreasonable for Dr. X to double-check whether the horse's owner was following her instructions. The Tribunal concluded, "I find the applicants have failed to show that Dr. X's conduct fell below the industry standard of a reasonably competent veterinarian. [...] Further, even if the applicants had shown Dr. X failed to meet the required standard of care, I would have found that Mr. Malcolmson's [the applicant's] knot tying, rather than Dr. X's conduct, caused Chevy's [the horse's] broken leg, which resulted in the joint decision to euthanize Chevy."

There was no negligence found. Notably, the Tribunal in this case said that even if they had found that Dr. X had failed to meet the standard of care in this case, that failure did not cause the horse's injury. There was no causation.

CONTRIBUTORY NEGLIGENCE

You are contributorily negligent if you do something that contributes to your own loss or injury. Mr. Malcolmson would have been found contributorily negligent in the harm he suffered as a result of Chevy breaking a leg if the Tribunal found Tsolum was negligent. Contributory negligence may prevent individuals from recovering for the negligence of others if they were also negligent in causing harm. The courts can apportion responsibility between tortfeasors for the loss they cause or contribute to. An owner's actions or the actions of another professional may factor significantly in determining what if any portion of the harm suffered you may be responsible for, even if you are found to be negligent in a particular case.

FINAL THOUGHTS

We understand this is a dry topic for most, but it is an important one for every professional. As professionals, we should all ensure that we have a basic understanding of these concepts. We should also periodically review them. We began this column by discussing the insidious effects of complacency. Ignorance of the concepts we have discussed above is no better. Adherence to professional best practices is motivated by a desire to do the best job you reasonably can for your patients and their owners. That desire must be tempered, however, with an understanding of the legal framework that creates obligations beyond your own desire to do the best job you reasonably can. It is not sufficient to rely only on your internal motivations for excellence throughout your career. Your understanding of your legal obligations and the standard of care that applies to you remains an important foundation that must inform that internal desire for excellence and those best practices that help you accomplish that excellence.

This column is meant to provide sufficient information to encourage you to ask questions. It is not intended to be comprehensive or legal advice of any kind. Professional negligence claims may be complex and nuanced. You will not be surprised to learn that we strongly recommend you consult your lawyer if you find yourself the subject of a negligence claim. [WCV](#)

¹*Malcolmson v. Tsolum Mobile Veterinary Health Ltd.*, 2021 BCCRT 926 (CanLII) at paragraph 16 ["Malcolmson"]; *Priest v. Williams Lake Veterinary Hospital Ltd.*, 2011 BCPC 63 (CanLII) ["Priest"].

²*Code*, section 205(1).

³*Priest*, *supra* note 1.

⁴*Ibid.*, paragraph 65.

⁵*Malcolmson*, *supra* note 1.



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