

**Vetting the Conflict:
Using Disclosure, Apology and Offer to
Nip Conflict in the Bud, Before It Nips You in the Butt**

By Debra Vey Voda-Hamilton

In 2012, two studies were done to find the impact of pets on their owner's lives and pocketbooks. One study listed the total amount of money spent by pet owners in 2012 on animal related care and services as \$53 billion dollars. Another showed that 62% of U.S. households own some kind of pet. The sky is the limit for veterinarians in this pet friendly atmosphere. They can practice their craft on small and large animals as well as exotics.¹

In such a target rich environment, conflicts are bound to occur. Bedside manner may be lacking, a misunderstanding in the transmittal of information can occur or the front desk staffs' client focus breaks down, to name just a few. These misunderstandings and breakdowns in communication can lead to conflicts arising between veterinarians and their client. These misunderstandings may escalate into full blown litigation, through no fault of the veterinarian or the pet owner.

Veterinarians are systematically told by medical malpractice insurance companies to avoid the conflict conversation in situations such as the ones described above. They prefer to let "sleeping dogs lie" and handle the conflicts themselves once a lawsuit is commenced. In doing so, small conflicts tend to escalate into bigger ones when left unaddressed by the veterinarian or the insurance company. Typically, the insurance company waits to be sued and instructs the veterinarian not to speak about the pending litigation. Huge amounts of money can later be spent, on both sides of the conflict, because of this lack of communication. This perceived disrespect, fuelled by the resulting inability to ameliorate the problem, stokes the fires of litigation.

In a recent article in the Milbank Quarterly,² medical community stakeholders were interviewed about the reality of implementing the Disclosure, Apology and Offer Program in medical malpractice situations. The article confirmed what was already suspected; parties on both sides want to change how medical issues, arising from services rendered, are handled. Parties want to be heard! They want to be acknowledged by each other thus minimizing the trauma of the event and the future trauma of reliving the event in litigation. Veterinary medical malpractice providers may want to lend an ear.

In the Milbank Quarterly article, it was evident that the medical community stakeholders wanted to have a conversation and encourage learning. Current veterinary medical malpractice process calls for none of the above, especially if litigation is pending or threatened. Veterinarians are systematically told not speak to disgruntled clients. Yet, the Milbank article indicated, in human medical malpractice, addressing a dispute with a preliminary conversation can lead to a reduction in costs and awards in future disputes. The Milbank article quoted a state official as saying, "Let's really look at what happened. Let's get it out in the open and let's have a good conversation. The next time, it's less likely to happen."³

Veterinarians can always make a personal choice to speak with their clients who have an issue. This choice can be supported by the alternative dispute resolution processes of mediation and collaborative practice. These conversations are conducted in a confidential setting. In other venues, insurance companies are learning that, by having a conversation, payouts tend to be lower and relationships maintained between the insurance company, the medical practitioner, and their patients. This thought process has not yet carried over to veterinary medical malpractice. Veterinarians do not always have the ability or choose not to have a conversation with their clients to settle the conflict as their medical counterparts do. This causes the inevitable loss of patient and veterinarian displeasure with insurance companies.

In the end, veterinarians desire to retain their clients, their professionalism and respect in their practice. Enabling this conversation helps them feel better about how they respond to the needs of the pet and their people.

Three Potential Barriers to Implementation

There are three potential barriers to the use of the Disclosure, Apology and Offer Program in veterinarian medical malpractice.

Pets as property

The fact that pets are, for the most part, still seen as property under the law does not create much space for settlement discussion beyond replacement value of the pet. However, with 64% of U.S. households owning a pet and \$53 billion spent annually on pet care, pets are increasingly viewed as family members. Their value to the family is difficult to measure in monetary terms. The value placed on a pet, by its owner, is substantially greater than the replacement value placed on them in the law. Few pet owners are satisfied with relatively low monetary settlement. Therein lies the problem with the current veterinarian malpractice insurance scheme.

Money is being spent to punish medical mistakes made by veterinarians, either real or perceived. For the insurance companies who insure veterinarians, their continued practice of ostrich management (pun intended), awaiting a lawsuit before discussing with the parties any of the details of the conflict, is foolhardy at best and tantamount to negligence, at worst. Most conflicts surrounding animals, like those in human medical malpractice, are based in emotion. Facts play a part, but the high octane fuel for the conflict is the emotional bond present between a person and their pet. Ignore that bond to your peril.

Insurance companies are not open to change

Veterinary medical malpractice insurance companies stubbornly refuse to recognize the value people place on their pets. Courts have been slowly in recognizing the intrinsic value of pets both as health care and emotional support providers for people with disabilities and depression. It benefits everyone involved to create a process where discussion can occur, between all the parties, as a pre-filing requirement or standalone confidential discussion.

This space can be created using one of several forms of alternative dispute resolution processes. In collaborative practice each party hires their own counsel, who

has chosen to forego litigation in this matter on their client's behalf, and is committed to facilitate collaborative settlement discussions. In mediation, the parties hire a neutral third party to guide the much needed discussion, in a confidential environment, with or without their attorneys. Post mediation, if an agreement is not reached, the parties can take the case to litigation. Studies have shown that litigation after a mediation is more amicable and the parties are more likely to negotiate a settlement by which they plan to abide.

Animal advocates not open to compromise

Animal advocates are passionate about protecting animals and often are not open to compromise. Animals have long been seen as victims, suffering in silence. They now have well-funded vociferous champions making it their mission to protect the animals who cannot protect themselves. However, in veterinarian medical malpractice cases, this zeal may be misplaced. Client and veterinarian, in most instances, can and do work out their conflict by themselves when given the opportunity to have a discussion. Animal advocates need to be more responsive to the needs of their client, both financially and emotionally. By the same token, veterinary medical malpractice attorneys need to be responsive to their clients' positions. Veterinarians want to retain their client, spend as little money as possible to settle or defend the action and make whatever changes feel right, from the suggestions made by a client, if it makes their practice better.

Hope remains eternal, that while we watch the human medical malpractice community move toward a more communicative, responsive and reactive practice, the veterinarians' malpractice providers will respond in kind and create a space where discussions can be had, resolutions made, understanding communicated between the parties and relationships retained.



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¹ Pet Industry Market Size & Ownership Statistics, American Pet Products Association, http://www.americanpetproducts.org/press_industrytrends.asp (last visited Oct. 2, 2013).

² Sigkall K. Bell et al., *Disclosure, Apology and Offer Programs: Stakeholders' View of Barriers to and Strategies for Broad Implementation*, 90 MILBANK Q. 682 (2012).

³ *Id.*