

AVOIDING MALPRACTICE SUITS AND BOARD HEARINGS

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One evening I was on call, but at a dinner lecture sponsored by a pharmaceutical company. I got an “emergency call” from an irate client of another veterinarian in our emergency group. She had been promised a call back from her regular vet regarding a pet which had been admitted earlier in the day and never got the call.

This anecdote is about the best example of a malpractice avoidance tip *missed* that I can think of. Remember, that above all, communication with clients is the holy grail of malpractice avoidance.

The problem with client communication is that often, the clients we hate speaking to the most are the ones who are most likely to think about suing us. We sometimes refer to these people as “high-maintenance.” That term is open to interpretation. Nonetheless, these people’s needs and desires are neglected at our peril.

Suffice it to say that if you can’t follow the recommendation to keep high-maintenance clients (along with other clients) fully and regularly informed, it might be beneficial to simply decide not to provide services to people who demand constant attention. I can truly think of nothing that can get a veterinarian into a lawsuit faster than failing to satisfy a client’s need to be kept updated. If those expectations are at an elevated level, the doc must be ready to step up.

Another key tip to protecting oneself from civil or administrative liability is to make sure that all clients are informed of all available diagnostic and therapeutic modalities at all times. When this is done, clients are much more likely to look inward for fault if they feel that they bypassed an opportunity to do something or take some step that might have resulted in a better medical or surgical outcome. When clients begin to “own” part of the case’s complication, the veterinarian is no longer as likely to be on the hook as the “proximate cause” of the patient’s unexpected problem. Let us look at an example.

Cats can be difficult to regulate with medication when they become hyperthyroid. Sometimes the doses of medication have to be regularly varied and even with close observation and care, there can be poor clinical response. When a hyperthyroid patient develops signs of cardiomyopathy, a client may want to know what else could have been done.

The client hits the internet and reads about expensive radioisotope and surgical therapies which you failed to mention because you know the client can barely pay for her Tapazole®. Suddenly, you caused the cardiomyopathy because *of course* the client would have had surgery if she had known it would help. Since you didn’t mention it, “you caused my cat to go into heart failure!” Go directly to court, do not collect two hundred dollars.

Consider the opposite situation: You recommend an ECG and full blood panel for each and every surgery you do which involves general anesthesia. You offer these to a client who declines them then you spay that client's dog. It dies during surgery from what you strongly suspect is a clotting problem or a cardiovascular issue.

Whereas the client might have received the news of the death with an accusatory demeanor under different circumstances, you have given yourself the upper hand. You have helped avoid the malpractice suit by requiring the owner to "own" a part of the bad result: *Owner* declined the CBC which might have shown anemia. *Owner* refused the ECG which might have highlighted a possible cause for the surgical death. Before running to his lawyer, this client is going to lose a few nights' sleep trying to assess his own culpability in the death. Over time, his inclination to come after you begins to subside.

Finally, consider the matter of state veterinary board proceedings. These are fun for no one and there are ways to avoid ending up defending yourself in front of one.

First, remember that in terms of actual damage to your professional life, state board investigations carry considerably more clout than lawsuits. In some states, the proceedings are open to the public and therefore easily accessible to the press. Even if the proceedings in your state are closed, administrative agencies which regulate health professionals have the right to suspend or revoke licenses. In short, you want to stay away from board hearings.

Second, it is important to note that state boards look poorly on bad judgment but **much more poorly on laziness and abdication of responsibility**. It is one thing to misinterpret an x-ray. It is another to be on-call and tell the owner of a blocked cat or a whelping dog that things should be fine, just come in as soon as we open. The exercise of due care and diligence is, by itself, enough to avoid the majority of state board claims. You would be surprised at how many clients will excuse errors if the vet's heart was in the right place and went out of his way to try to help.

Third, and this may seem crazy, it might be worth while in some cases to "steer" an irate client toward her attorney or small claims court. Clients are not experienced in the law and do not generally realize that calling the veterinary board is much more of a pain for you than having to call your insurance company to handle a money claim for damages. If a client threatens to sue, you might even politely express that you don't believe you have done anything wrong but mention, "here are the phone numbers of attorneys who specialize in handling veterinary cases..."

What I have found generally happens is that the clients call those or some other lawyers, discover that they are disinclined to handle cases with such puny economic rewards and before long, the client loses steam and goes on to some other cause. All the time, the client is focused on suing you, rather than taking the serious (and *free*) step of starting a board investigation.