

# Professional and legal issues: surgical misadventure

*Euthanasia is an especially traumatic time for clients and can result in emotionally tense situations for the owners and veterinary professionals. Ensuring ownership and gaining informed consent is an essential part of any veterinary undertaking, and registered veterinary nurses have professional responsibility to maintain detailed record keeping of any conversations they have with owners. This article considers and discusses the range of legal, professional and ethical issues associated with gaining appropriate consent for veterinary procedures during a difficult and emotionally charged situation.*

The status of the veterinary nurse is developing from that of a vocation towards that of a profession. One step towards this in the UK is the non-statutory register for veterinary nurses and the associated disciplinary committee. Accountability is a key area in this change (Hamlin, 2011) and veterinary nurses now need to be equipped with the necessary skills and knowledge to know what their professional responsibilities are. This article discusses a fictitious scenario which poses a number of professional legal and ethical issues that affect registered veterinary nurses (RVNs).

## The problem

In the scenario (Box 1) there are several issues to consider. The primary concern is the validity of the action of euthanasia by the RVN, as authorised by the veterinarian, due to someone other than the owner giving consent over the telephone.

## Legal issues

In criminal law there are three pieces of legislation that directly relate to this incident:

**Veterinary Surgeons Act (1966)** — the RVN was giving medical treatment, acting under the direction of the veterinarian, as set

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### Box 1

A 1-year-old West Highland white terrier, presented without previous warning at 2100 hours following a road traffic collision (RTC) that had taken place approximately 4 hours earlier. He was brought in by the registered owner's daughter, as the elderly owner was too infirm and upset to come herself. The daughter explained she had six children at home to feed, bath and put to bed before seeking veterinary attention, hence the delay.

The dog presented shocked, collapsed, hypothermic, with severe abdominal bruising and a fractured femur.

Following a consultation (treatment or euthanasia were discussed, the patient was not insured and the owner was a pensioner with little money) the owners' daughter signed the hospitalisation consent form to investigate. Conscious radiographs were taken and these confirmed a femoral fracture, with no evidence of bladder injury visible. The plan was treatment for shock and analgesia, with reassessment the next day.

The owner's daughter telephoned 3 hours later and spoke to a RVN, now alone in the practice, stating that the matter had been discussed with her mother, the registered owner of the patient, and that euthanasia had been decided. The RVN telephoned the veterinarian and, using the authority of the consent provided over the telephone, the veterinarian agreed and the RVN euthanised the patient.

The RVN took a call from the owner's other daughter who lived in America at 0600 hours, who stated that she would cover all costs incurred on behalf of her mother's dog. The situation was explained, resulting in verbal abuse to the RVN and accusing the practise of acting hastily.

out in the schedule 3 exemption, (s3 (18.4)(a). 'Direction' is interpreted in (s3 (18.5)(a)) as the veterinarian instructing the RVN as to the tasks to be performed, but is not necessarily present.

Under the definitions of this act the RVN was lawfully carrying out the euthanasia procedure. The veterinarian would have assessed the RVN's abilities and been satisfied that she was qualified to carry out the euthanasia prior to instructing the RVN to do so. This is also covered under the Code of Professional Conduct (CoPC) from the Royal College of Veterinary Surgeons (2012) for both the RVN and veterinarian.

**Veterinary Medicines Regulations (2011)** — under (s4 (1.1)) of this legislation, which consolidated controls on veterinary medicines previously part of The Medicines Act 1968 (Veterinary Medicines Directorate, 2011). This legislation outlines the status of drugs and the qualifications of persons able to handle them. The RVN is authorised to draw up and administer Euthatal (pentobarbital) POM-V, a barbiturate schedule 3 drug (British Small Animal Veterinary Association, 2012), if directed by and working under the responsibility of a prescribing veterinarian. Legally, this legislation puts the onus for

the prescription of the medication onto the veterinarian.

**Animal Welfare Act (2006) (AWA)** — there are several sections of this act that may apply to this situation, (s3 (3)) deals with responsibility for animals, a person who owns an animal shall always be regarded as being a person who is responsible for it.

There was a 4 hour delay prior to seeking veterinary attention for the dog. The owner and/or the owner's daughter could face prosecution from an animal welfare perspective. According to Lord Hunter (1984) in the case *Patchett v Macdougall* cited in Wood (2011), suffering 'imports the idea of the animal undergoing for however brief a period, unnecessary pain, distress or tribulation'. This is stated in the AWA under section 2.

From the veterinary staff's point of view the act certainly substantiates their course of action, the AWA (S4) clearly states nothing in this section applies to the destruction of an animal in an appropriate and humane manner. Moreover, they could argue that given the financial situation the dog had come from, it was euthanased on welfare grounds. Yeates (2010) notes that under UK law (if valid consent is given) there is nothing illegal about euthanasing a healthy animal; the validity of the consent would be argued under the legal remit of civil law.

### Civil law

One section of civil law is concerned with consent procedure. Under this section, by not seeking, at the very least, verbal consent for the euthanasia, or initially confirming that the daughter was acting as an authorised person, the veterinarian and/or the RVN may have failed in their obligations towards the owner.

The Criminal Damages Act (1971) defines domestic animals as property; it is unclear whether this means the person in possession of the animal constitutes being the animal's owner in the context of euthanasia (Dye, 2006). The loss of property is not classed as causing distress to owners; the onus is on the owner to show that they have suffered a financial loss (Veterinary Defence Society, 1996).

In veterinary practice the three main civil cases are based on trespass, negligence or a breach of contract.

### Determining consent

Wright (1995) defines trespass as doing something to someone else's property without consent. There was no euthanasia consent form; the hospitalisation form signed by the daughter was only consenting to treatment

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for post RTC injuries. Consent can be given in several ways: implied, verbal and written, all are equally valid in law (Dye, 2006). Written consent is favoured for evidentiary purposes, although even signed consent forms may not equate to valid, informed consent.

Wright (1995) suggests that it is safer for avoidance of misunderstandings if separate consent forms are used for euthanasia and that a person must legally possess 'necessary authority' to give consent. There is no question that the daughter knew what she was requesting; the overriding question is whether she had the authority to do so. Wright (1995) concurs that 'necessary authority' can be ambiguous, stating that only the legal owner, or someone authorised by them, can give consent. Dye (2006) questions whether the action of bringing a patient into the practice, requesting treatment, determines necessary authority. It is generally taken in 'good faith' that the person has authority to do so (Dye, 2006). It was at this point, the veterinarian could have established authorised consent, when the issue was providing treatment, before it reached irreversible euthanasia. Wright (1995) advises that considerations of willingness and necessary authority should be particularly clarified in euthanasia cases.

Brooman and Legge (1997) argue that if someone without lawful excuse destroys or damages an animal belonging to someone else, intentionally or recklessly, this would be an offence. Martin (2003) defines 'reckless', in law, as being aware of the risk of a particular consequence arising from one's action but deciding nonetheless to continue with one's action and take the risk. It would seem the RVN in this instance was not aware there was a risk of her

action, under this definition it would not be deemed a reckless act, and one could argue that she has not committed an offence.

Did the veterinarian take reasonable measures to ascertain the owner's consent before authorising the RVN to perform euthanasia?

No attempt was made to speak to the owner after euthanasia had been requested, no consent form was signed. It could be deemed under these points that the veterinarian acted recklessly. Dye (2006) questions how far veterinary practices have a responsibility to establish ownership of an animal before instigating consent for treatment. A certain amount of good faith has to be taken when a person brings an animal that the person has authority to do so. However, surely when an action as irreversible as euthanasia is requested there has to be responsibility to determine authorised consent and ownership? Furthermore, Wager (2011) argues that a veterinarian is liable for negligence if euthanasia is performed without the owner's consent.

### Negligence

For negligence to be established Earle (2006) states that three questions must be posed:

- Is there a duty of care?
- Has there been a breach of that duty of care?
- Has this resulted in damage which would have been reasonably foreseeable?

A duty of care is established in this situation, as the owner is a registered client and the veterinarian admitted and agreed to treat the patient. In order to show that this duty of care has been breached, it must be shown that the care or service provided falls below a reasonable standard of practice (Earle, 2006). It is fair to conclude that reasonable standard of practice would be to establish 'authorised consent', before carrying out an irreversible action such as euthanasia, as judged against the standards of others undertaking similar work. The RVN could argue that she was not as experienced

as the veterinarian and early in her career was not aware of the implications of her actions. This, however, would not be an acceptable excuse, as Earle (2006) states that in law, an individual must take responsibility for their own actions. Prior to undertaking any procedure an RVN must ensure that they have the correct skills, competence and authority to carry out that task. The fact that the elderly owner allowed her daughter to bring her dog to the practice, displays some element of owner consent. But under the circumstances, with the severity of the outcome of euthanasia, a much higher standard than 'implied consent' needs to be employed.

## Contract law

Earle (2006) argues that consent is evidence that a contract exists between the veterinary practice and the client; furthermore, Dye (2006) states that consent to treatment can be described as the client entering into a contract with the veterinary surgeon and practice. However in this case the point of consent is not established, therefore, does a contract exist?

There are four essential criteria for establishment of a contract:

- Capacity — ability to understand actions entered into
- Intention to be legally bound — both parties intent on entering into binding agreement
- Offer and acceptance — one party makes an offer, another party accepts said offer
- Consideration — parties must exchange something of value.

Turner (2004) states that an offer can be defined as 'a statement of intent by the offerer to be legally bound by the terms of the offer if it is accepted, and the contract exists once acceptance has taken place'. Additionally, Dye (2006) states that by discussing estimated costs (which this veterinarian did, including both treatment and euthanasia) the veterinary surgeon is establishing consideration for the service, creating a contract with the client. Therefore one can argue that a contract has taken place between the daughter and the practice, even though at this time no money has exchanged hands. It is questionable if this contract would hold up legally, should the elderly owner have pursued matters in a civil court.

## Vicarious liability

Vicarious liability is a legal doctrine of *respondere superior* (Latin for 'let the master answer'), relating in this case to an employer/employee relationship. Under English Tort Law employers are liable for any tort committed by an employee, referred to as imputed negligence. For *respondere superior* to occur, negligence must occur within the scope of their employment (Law Teacher, 2012). RVNs are covered under vicarious liability, but as RVNs pursue professionalism and the ability to act autonomously this may become more complicated an issue. Wood (2011) argues that the days where RVNs do not consider the consequences of their actions are gone. They may escape prosecution under civil law but could now face the disciplinary council and risk losing their career.

## Professional considerations

As the vocation of RVNs progresses towards a profession, individuals will need to consider their actions, as 'vicarious liability' will be no defence when presented before the profession's disciplinary board. The CoPC for veterinary nurses 2012, has guidelines and supporting guidance for the profession to follow and be judged on. As RVNs seek professional standing, they are expected to make appropriate ethical judgements, not only from a legal perspective but also from an ethical point of view (Welsh and Whiting, 2012).

In both the theories of animal rights and in animal welfare ethics it is proposed that euthanasia does not cause direct suffering, but can alleviate suffering. This poses the question, is an animal harmed by being humanely killed (Mullan, 2006)? Yeates (2009, 2010) considers death can be a positive welfare issue, if it prevents the animal experiencing any negative welfare states, death could be a welcome state, this could be argued in this case. Euthanasia is humane in the right circumstances, the patient at this time may not be considered a healthy animal, and therefore it could be considered humane to euthanase, although this is difficult to determine as the extent of his injuries were still unknown.

Forrest (2007) states that as individuals RVNs have a moral duty to provide a high standard of care and act in the best interests of their patients; this would support further diagnostic workup, in order to make a truly informed decision regarding the patient's wellbeing.

Section 8 of the CoPC relates to euthanasia, s8.1–8.4 all defend the RVN's actions in wishing to alleviate the patient's suffering. S8.7 refers to euthanasia based on financial reasons and advises directing the owner to charitable assistance. Conversely, s9.14 addresses the need for euthanasia to be carried out on economic grounds and s8.6 points out that refusing an owner's request for euthanasia may add to their distress and could be deleterious to the welfare of the animal.

Pertinent to this situation is s11.2, which states that the client may be the owner of the animal, someone acting with the authority of the owner, or someone with statutory or other appropriate authority. Warning that care should be taken when the owner is not the client, practice staff should ensure they are satisfied that the person giving consent has the authority to provide consent. Part of s11.3 states if there is any doubt about the client's consent, efforts should be made to resolve this, which should then be recorded. Furthermore, s11.5 states that if the client's consent is in any way limited, or qualified, or specifically withheld, this should be recorded on the clinical records; veterinarians and RVNs must accept that their own preference for a certain course of action cannot override the client's specific wishes, other than on welfare grounds.

Wager (2011) questions whose professional responsibility it is to obtain consent? Her response to this quandary is taken from Burnard and Chapman (2003) who advise that it is desirable to be the person carrying out the procedure.

Although RVNs have a certain element of responsibility, gaining owner's consent is primarily the veterinarian's responsibility which is often delegated to the RVN (Dye, 2006). The CoPC for veterinarians state they must communicate effectively with clients and ensure informed consent is obtained before treatment or procedures are carried out (s2.4).

## Future recommendations

Acting 'in good faith' in this litigious day and age may no longer be viable. Future incidents should establish authorised consent prior to treatment or admission of the patient. The willingness of the elderly owner in this scenario will never truly be known, however the evidence would indicate that she may have been coerced by the daughter — or perhaps

not even have known of the telephone conversation requesting euthanasia.

## Conclusion

Evidence suggests that the onus for actions in this clinical incident would fall on the veterinarian or the practice. However, as RVNs are pursuing professional autonomy, they should be aware of their responsibilities, legal and professional. Since the implementation of the new CoPC in April 2012 and the instigation of the disciplinary board, vicarious liability may no longer qualify as a defence. **VN**

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## Key Points

- Professional accountability is a key element of being part of profession and is a requirement for a registered veterinary nurse.
- Veterinary nurses need to be aware of the legal category of medication and the permissibility of their use.
- Informed consent is always an essential part of any veterinary undertaking, especially in emotionally tense situations.
- Ensuring ownership and authority of consent of the client and the animal can be very difficult, detailed record keeping of any conversations regarding this should always be kept.
- Euthanasia is an especially traumatic time for clients, it is important to remember that verbal abuse may just be a manifestation of their grief.