

# Legal, ethical and professional issues for veterinary nurses

*This article takes a case-based approach to a scenario that occurred in a veterinary practice. The actions of the veterinary nurse are looked at from a legal, professional and ethical perspective, with recommendations for practice suggested.*

## Box 1. The scenario

One afternoon during a very busy consulting session in a veterinary charity hospital, a seizing Rottweiler was brought in by the owner. The owner was very distressed and told the receptionist that her dog had been having fits since late morning. Usual procedure in the practice is for the clinic's nurse to triage any emergencies that come in and then seek the advice and assistance of a veterinary surgeon to see if further treatment is required. While talking to the owner, the veterinary nurse made it clear that she was not a veterinary surgeon and obtained a history while carrying out an assessment of the animal. The veterinary nurse placed an intravenous cannula while the receptionist went to find a veterinary surgeon. As much room as possible was made to prevent the dog injuring itself, but the violence of the seizures had caused the dog to hit its head in the floor and bite its tongue. The veterinary nurse took it upon herself to administer a rectal diazepam to the dog after obtaining oral consent from the owner. This did not stop the dog's seizures completely, but it did reduce the severity. Shortly afterwards a veterinary surgeon came to assess the dog and was notified of the administration of the rectal diazepam. The dog was admitted and started on intravenous medication.

The issues that will be discussed surround the decision of the veterinary nurse to administer a prescription only medication (POM), without the permission of a veterinary surgeon, and the complications that could have arisen from this.

## Legal issues

The legal system can be split into two: that which deals with criminal law; and that which deals with civil law. In this scenario, both of these will be looked at.

## Criminal law

Criminal law is concerned with the punishment of offences by the state, in order to

protect society and individuals from harm (Gray and Wilson, 2006). In the above described scenario, the veterinary nurse was in violation of two acts of parliament. The first of these acts is the 1966 Veterinary Surgeons Act. Section 19 of this act states that no one may practice veterinary surgery unless they are held on the register of veterinary surgeons. Anyone who acts in contravention to this is liable for a fine.

The veterinary nurse was also in breach of the 1968 Medicines Act, which states that a POM-V may only be prescribed by veterinary surgeons to animals under their care. The British Small Animal Veterinary Association (BSAVA) support this by saying that a POM-V can only be prescribed by a veterinary surgeon following a clinical assessment of the animal, which must be under their care (British Small Animal Veterinary Association, 2010). Breach of this act carries a fine, but a prison sentence can also be given if the breach is severe enough.

Under The Veterinary Surgeons Act 1966 (schedule three Amendment) Order 2002, anyone is allowed to provide first aid in an emergency for the purpose of saving life and relieving suffering. The veterinary nurse could plead that by providing the diazepam, she was acting in the best interest of the dog by relieving suffering as the dog stopped hitting its head on the floor, thereby preventing further injury. However, as supported by Welsh (2003) administering a POM-V is not seen as a first aid measure. Despite the nurse still breaking two acts of parliament in order to relieve the dog's suffering, the courts may take her good intentions into account.

## Civil law

Civil law is concerned with losses suffered by an individual, either as a result of a crime, or a failure to fulfil obligations towards another person (Gray and Wilson, 2006). In veterinary medicine the two main ways civil claims can be brought to court are through a breach of contract, or by negligence.

## Breach of contract

Consent to treatment can be expressed in several ways including implied, oral and written. By the owner bringing their animal into the practice, it could be said that they are giving an implied consent to treatment. However, this is not an ideal situation, as the owner's understanding of what treatment their animal will receive is minimal, so if anything goes wrong during the treatment the client can claim that she was not fully informed. Therefore, any consent that is sought should be informed consent, and a contract entered into. For a contract to be formed, certain elements have to be met:

- Capacity
- An intention to be legally bound
- Offer and acceptance
- Consideration.

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It could be argued that given how upset the owner was at the time, she lacked the capacity to understand what the veterinary nurse was asking her. But, by saying yes and agreeing to treatment it is accepted that the owner will fulfil her part of the contract.

In law, an offer is defined as a statement of intent by the offeror to be legally bound by the terms of the offer if it is accepted, and the contract exists once acceptance has taken place (Dye, 2006). This does not have to be in writing. So, by obtaining oral consent from the owner by asking if it was all right if she gave the rectal diazepam, an offer had been made by the veterinary nurse, and the owner had accepted it.

The final element of forming a contract is consideration. This element involves the party offering the service receiving some form of payment. At this point, it becomes clear that a contract is not formed, as the practice where this occurred is not a private practice, but a charity practice where payment is not required. Dye (2006) points out that treatment carried out in charity veterinary clinics involves no payment, therefore there is no consideration. They also identify that any donation given would not be deemed as consideration. No consideration means that the final element of forming a contract is missing, so no actual contract between the owner and the veterinary practice is formed.

In this case, the owner would not be able to sue for breach of contract, regardless of whether anything had gone wrong. However, the owner may have a case for breach of duty of care.

### Duty of care

A 'tort' is a wrong against someone's personal safety, possessions or reputation (Gray and Wilson, 2006). Veterinary nurses have a duty in law not to cause harm or loss to clients. However, it is important to recognize that there is no legal duty of care owed to an animal patient. In the eyes of the law, animals are classed as 'chattels', or items of personal property. The law does not acknowledge that loss of, or damage to, chattels causes distress to the owners (VDS 1996, cited in Welsh 2003). As identified by Earle (2006) three questions must be addressed to establish a case of negligence:

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

### Is there a duty of care?

As already mentioned, the veterinary nurse has a duty of care to the client, not the animal. The legal test for establishing if a duty of care exists comes from *Donaghue v Stevenson* (1932) where the neighbour test was established. It states that a duty is owed to anyone who is reasonably likely to be affected by their acts or omissions, (Hendrick, 2000). The client was very distressed at seeing her animal as it was, but this did not give the nurse the right to administer a POM-V. Instead, while waiting for the veterinary surgeon the nurse should have been fulfilling her duty of care to the client by reassuring her and trying to explain the situation to her.

### Has there been a breach in the duty of care?

The legal precedent for establishing whether there has been a breach in the duty of care is the Bolam Test, derived from a case between *Bolam v Friern Hospital management committee* (1957). To prove a breach in the duty of care, the injured party must be able to prove that the care or service provided fell below a reasonable standard of practice, i.e. what an ordinary skilled professional would have done in the same situation (Earle, 2006).

In the above scenario, the veterinary nurse would have been judged against the occupational standards of the profession. As she acted outside the remit of a veterinary nurse by breaching the code of conduct, it could be argued that there had been a breach in the duty of care, especially if the dog had suffered an adverse reaction to the drug. The owner may not have expected a nurse to provide medical treatment in the way that she did, as she was expecting to see a veterinary surgeon.

### Has the breach caused foreseeable harm?

The administration of any drug has the risk of causing a reaction, anaphylaxis and death, although this would be rare. If this had happened and the owners had not been informed

of the risks, then it could be argued that the harm was foreseeable.

### Is there a case for negligence?

If all of the above elements could be proved, then there is a case for negligence. However, the veterinary surgeon is responsible for the actions of the veterinary nurse. As this occurred in a multi-vet practice, it would be the practice which would be sued for allowing their staff to act outside of the law, even though they were unaware of it.

## Professional issues

Bowden and Pullen (2006 pg 35) identify two key distinguishing features of a profession, autonomy and accountability. At present, veterinary nursing in the UK is not an autonomous profession as it has no governing body of its own. Instead, it is governed by the Royal College of Veterinary Surgeons (RCVS). They maintain the veterinary nurse register and govern what a veterinary nurse can and cannot do.

Bowden and Pullen (2006) identify the importance of understanding that being professional is not the same as being part of a profession. To understand a nurse's professional position in such situations as this, the *RCVS Guide to Professional Conduct for Veterinary Nurses* should be referred to, but it must be emphasized that this is not law. This guide helps to establish the extent of what a veterinary nurse can and cannot do. This is a publication that has increased in size, Welsh (2003) identifies this as a guide that only consisted of two pages. The current 2010 publication is 54 pages in length, but only the first 14 pages identify the responsibilities of a veterinary nurse. Within this guide is *The Ten Guiding Principles*. Points (h) and (i) are pertinent to the actions of the veterinary nurse, identifying that it is expected that a nurse will (h) understand and comply with legal obligations in relation to the supply and administration of veterinary medicinal products, (i) familiarize yourself with and observe the relevant legislation in relation to veterinary nurses (Royal College of Veterinary Surgeons, 2010). The Veterinary Surgeons Act (1966) also states that a veterinary nurse may provide medical treatment, but under the supervision of a veterinary surgeon.

From a professional stand point, the veterinary nurse was in breach of both of these points by administering a POM-V. She was also not under the supervision of a veterinary surgeon when administering the drug.

If this case was to come before the RCVS disciplinary committee, the actions of the veterinary surgeon who was asked to attend would be called into question, as they should have attended to the animal sooner.

## Ethical issues

Ethical decision making is not always easy. Mullan and Main (2001) identify several key steps in making ethical decisions including 'identifying possible courses of action, consideration of all interested parties (including any related legal or professional guidance), formulating a decision and finally minimizing any negative consequences of the decision'. When making an ethical decision often we do not consciously identify following these steps. There are many different sets of ethical principles, but generally they can be split into two major groups: those stressing the results of the actions; and those that stress the rightness and wrongness of actions (Rollin, 1999). By looking at different theories, the resulting decision can be very different.

## Consequentialism

This theory deals with the results of the actions. The most popular consequentialist theory is utilitarianism. It is associated with Jeremy Bentham (1748–1832) and John Stuart Mill (1806–1873), two philosophers whose main points were to stress that politicians should not act out of self interest but in the interests of their subjects, aiming to achieve the greatest happiness for the greatest number (Thompson et al, 2000). This theory, in its simplest form, is achieving the greatest happiness for the greatest number of people. By acting as she did, the veterinary nurse took a utilitarian approach to the situation by deciding what was best for the animal. Administering the diazepam resulted in reduced severity of the seizures, thereby reducing the chance of the dog causing itself greater injury. This also had a positive effect on the owner, who became visibly less distressed at seeing her dog's seizures subside.

However, despite acting in what the nurse thought was in the best interests of the ani-

mal and the owner, there was the potential for a very different outcome. There was the chance that something could have gone wrong as a result of the drug administration, and the dog may have suffered as a consequence. This result would have gone against the utilitarianism ideal, and placed the nurse in an ethical dilemma.

## Deontology

Deontology asserts that moral choices should be made by following certain rules, regardless of the consequences. Mullan and Main (2001) describe this theory as encompassing the notion of individual 'rights', as these can form the rules to be followed, and often these rights are enshrined in laws or professional codes.

If the veterinary nurse had used this approach then her actions would have been very different. Deontology would require her to work in accordance with the Veterinary Surgeons Act (1966) and The Medicines Act (1968) and not administer the diazepam. Instead she would be expected to make the animal as comfortable as possible until the veterinary surgeon was able to attend.

From the point of view of the owner this may not have been seen as an acceptable form of treatment. At this point, the veterinary nurse would have to make it clear to the owner that she was legally not allowed to carry out treatment.

## Conclusion and recommendations

Having looked at the actions of the veterinary nurse from a legal, professional and ethical perspective, it is clear to see where difficulties can arise. There are overlaps between each of these perspectives. The consequences of not taking action as well as taking action should have been considered, as shown by looking at two different ethical theories. Even when acting in the best interests of the animal, what this nurse did could be deemed as illegal and unprofessional.

With regulation on the horizon for nurses in the UK, it is important for everyone to recognize that veterinary nurses will be held responsible for their actions, and therefore can be held accountable for any wrong doing on their part. Nurses should be made aware from the moment they start training which

laws are applicable to them, so the introduction of law and ethics to veterinary nursing students would be beneficial, although this is already included in the syllabus of the Veterinary Nursing degree and the new Graduate Diploma in Clinical and Professional Veterinary Nursing. The creation of a continuing professional development course to update qualified veterinary nurses on which laws and acts are pertinent to their profession would be beneficial, especially with disciplinary proceedings for veterinary nurses due to be in place by early 2011.

There should be clearer ethical guidelines for nurses to follow. Everyone has their own set of beliefs and values, but when there are legal implications from making the 'right' ethical decision, the legal rights and wrongs of the situation should be considered above the ethical beliefs of the nurse. VN

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