

A case-based approach to professional and legal issues

This article takes a case-based approach to a scenario in veterinary practice. The actions of the registered veterinary nurse are analysed from a legal and professional perspective, with the aim to generate recommendations to improve future practice.

Veterinary professionals are considered by many to be extremely fortunate to occupy such a rewarding career. Indeed the opportunity to care for companion animals is a gratifying honour; however this does not come without immense responsibility. Veterinary professionals can encounter challenging emotive situations requiring consideration of legal and professional issues. As veterinary nursing progresses towards professional identification it is imperative that registered veterinary nurses (RVN) are conscious of their responsibilities and are guided by these in their actions.

This article contemplates the professional and legal implications of an RVN's actions in practice through reflection on a fictitious scenario stemming from a potentially difficult situation. The author aims to utilise the analysis to make recommendations for future practice and provide evidence to support the development of the profession.

The role of the RVN

The critical incident (*Box 1*) resulted from a significant failure in team communication and severe lack of personal responsibility from a multitude of individuals. It is ultimately the veterinary surgeon who is responsible for the action of surgery; however it would be inappropriate to lay all of the blame for the incident with them. The involvement of the RVN completing documentation incor-

Joanne Webb BSc (Hons) RVN is Head Nurse, Southern Counties Veterinary Specialists, Ringwood, Hampshire.

Perdi Welsh BSc (Hons) DipAVN CertEd RVN is Lecturer in Veterinary Nursing and

Martin Whiting BSc BVetMed MA MRCVS FRSA is PhD candidate both at the Royal Veterinary College, London

Box 1

A Bernese mountain dog was diagnosed via radiographs with an osteosarcoma following 2 weeks non weight bearing lameness and severe pain in the right forelimb at the level of the humerus. The patient was admitted by the veterinary surgeon; consent for general anaesthesia and the amputation of the right forelimb was gained from the owner and documented through the signing of a consent form.

Routine pre-surgical procedures were followed by an RVN who filled out a surgery procedure form with the patient and procedure details, however it documented the limb to be operated on incorrectly. The patient was prepared for surgery following the details on the procedure sheet leading to the incorrect limb being clipped and scrubbed. The patient was transferred to theatre where the surgeon began the procedure without verification of the limb to be operated on, resulting in the amputation of the incorrect limb.

The result of this catastrophic series of errors forced euthanasia of the animal.

rectly and clipping the wrong limb directly contributed to the resulting error. The focus of the paper will be on the role of the RVN; it is felt by the author that consideration of the scenario will have significant constructive effects on the developing profession.

Professional issues

The introduction of the non-statutory register for veterinary nurses (VNs) in 2007 was a milestone in the recognition of the VN both within practice and in the eyes of the gen-

eral public. Although this was a progressive step it could be considered by many to be insufficient; in order to gain the respect as a profession, registration must be compulsory (Mahoney, 2003). Registration alone does not surmise a profession; individuals must practice with autonomy and stand accountable for their actions (Bowden and Pullen, 2006).

By drawing on the resources of human nursing, which has achieved professional recognition, it is clear to see that accountability and autonomy are intrinsically linked. Mullan (2006) states that 'autonomy relates to the ability of people or animals to be self-governing' and accountability considers 'that you are answerable for your actions and omissions, regardless of advice or directions from another professional' (Nursing and Midwifery Council, 2008: 3). In order to achieve professional status VNs must strive to execute these actions in clinical practice.

Code of Professional Conduct

The Royal College of Veterinary Surgeons (RCVS) in providing a *Code of Professional Conduct for Veterinary Nurses* (2012) (CoPC) have stipulated a baseline against which actions of RVNs can be judged. In conjunction with the disciplinary system which was introduced in April 2011, regulated by the RCVS, it is now possible for an RVN to face disciplinary proceedings if their actions are called into question.

The VN in the incident (*Box 1*) was registered, thus has acknowledged that they will abide by the CoPC in their professional practice. On reflection of the incident it is evident that numerous aspects of the professional responsibilities and principles of practice specified by the RCVS have been breached.

The primary professional responsibility stipulated by the RCVS (2012, s1.1) is that an RVN should make an animal's health and

welfare their first consideration. It could be argued that the RVN in this scenario has failed to prioritise the patient's wellbeing, directly contributing to the death of the patient by not verifying procedure details before taking action. This may not have occurred had a breach of another section of the code, stipulating that RVNs 'must keep clear, accurate and detailed clinical nursing and client records' not transpired (Royal College of Veterinary Surgeons, 2012: s2.5). Documenting the wrong limb on the patient's procedure sheet instigated the knock-on of errors; however, if at any point the consent form was referred to then the error could have been detected. This stated the correct limb, demonstrating a lack of clinical governance in the practice of the RVN.

Reflection on the RVN's actions highlights not only the need for a holistic nursing approach to patient care, but also a desire for comprehensive knowledge of the individual patient (Orpet, 2011). The RVN's actions may not have been conducted with the intention of violating the CoPC, this could be a mitigation in their favour if confronted by the regulatory body. Ignorance of the CoPC is not an acceptable excuse, human nurses are constantly reminded that they are personally accountable for their actions and this is the case for RVNs also (Crowley, 2006).

Communication

Lack of direct and specific professional communication between colleagues regarding the patient and procedure demonstrates a potential breach of the CoPC for both the RVN and the veterinary surgeon. Communication between professionals is essential to ensure the health and welfare of the animal (Royal College of Veterinary Surgeons, 2012: s1.6).

'Without good, effective communication, misunderstandings can occur' (Stobbs, 1999).

The World Health Organisation (WHO) identified that errors in communication in medicine directly jeopardise patient safety. The WHO compiled a series of questions entitled the 'Surgical safety checklist' designed to support the surgical team to ensure simple tasks were completed for each patient without suppressing the professional judgement of practitioners (World Health Organisation,

2008). The patient safety checklist has been demonstrated to improve compliance with standards of care by 65%, significantly reducing the mortality rate (Haynes et al, 2009). Implementation of a structured checklist would facilitate focused communication between all team members, crucially promoting the welfare of the patient; an aspect missing from the scenario.

By drawing on the resources of human nursing, which has achieved professional recognition, it is clear to see that accountability and autonomy are intrinsically linked.

Legal issues

Registration as a VN assumes the duty to not cause harm to animals or loss to clients. Domestic animals receive a duty of care, that is normally focused on the owner in the Animal Welfare Act 2006 (AWA) (Earle, 2006). The legal system in the UK can be divided into criminal and civil; both are of relevance to the practicing veterinary professional and harm to animals.

Criminal law

Criminal offences are punishable by the state, governed by parliamentary acts with the intention to protect society and individuals from harm (Gray and Wilson, 2006). The Veterinary Surgeons Act 1966 (VSA) empowers and controls both veterinary surgeons and VNs (due to the amendment to Schedule 3 in 2002), however its application to this scenario would pertain to the veterinary surgeon not the RVN.

The welfare and responsibility of an animal according to the AWA lies with the person responsible for the animal, whether temporary or permanent. With this in mind the RVN in the scenario, under terms of employment, renders the veterinary practice liable for maintaining the welfare of the patient while under their care. A consent form signed by the client specified details of treatment to be administered to the patient, by contributing to the provision of treatment not detailed by the owner the RVN has rendered the veterinary practice liable.

'A person commits an offence if an act of his, or failure to act, causes an animal to suffer, he knew, that the act, or failure to act, would have that effect or be likely to do so' (Animal Welfare Act, 2006).

Amputation of the incorrect limb essentially resulted in the patient potentially being unable to mobilise or function. This could be

seen to breach all of the five freedoms. The humane euthanasia that resulted prevented the patient from enduring any suffering.

It should be noted that acts of veterinary surgery, and those of veterinary nursing under Schedule 3 of the VSA, are separate from these elements of the AWA if they form recognised acts of veterinary surgery. The limb amputation had a clinical indication and thus the action of undertaking it falls under the permitted procedures of the VSA.

Civil law

An individual could face civil action if they inflict harm or loss on another person by committing a criminal act or failing to fulfil an obligation (Elliott and Quinn, 2007). Within the veterinary profession, Gray and Wilson (2006) state that civil proceedings commonly debated include breach of contract or negligence claims.

Breach of contract

A contract exists between a minimum of two parties providing four essential elements are met; these include a statement of intent by the proposer and acceptance of the offer, capacity of each party to enter into the agreement, intention to be legally bound and the payment for the service (Dye, 2006).

The consent to treatment represents the contractual relationship between the client and veterinary practice in this scenario; affirmation of the specific contractual details

were documented on a consent form and signed by the client. The client authorised the amputation surgery to be performed on their animal, however, consent was for the right forelimb not the left. In order to pursue a claim for breach of contract the client would need to demonstrate loss. The animal is unlikely to have been of financial value and in law the loss of a chattel is not considered to cause distress (Earle, 2006). A successful claim for breach of contract may be awarded, damages would probably be minimal due to lack of financial implications.

suming a duty of care to the client. In order to ascertain if a breach in the duty of care has occurred, the standard of care legally owed to the client needs to be established (Earle, 2006). The Bolam test facilitates assessment of the level of care; judging if this fell below a reasonable standard by comparison to the actions of an ordinary skilled professional in a similar situation (Earle, 2006).

The standard expected of an RVN is stipulated by the RCVS in the CoPC, which instructs that the accurate completion of records relating to the patient and client is

between genuine errors and gross incompetence or malpractice (Welsh, 2012). If considered to be a genuine error then steps should be taken to devise local rules and standard operating procedures (SOPs) to minimise the potential for this error to occur again. Adverse events and 'mistakes' have the potential to cause suffering and therefore as the patients advocate, and as service providers to clients, VNs have an ethical mandate to do all that can be done to prevent harm (Krizek, 2000).

‘A patient-focused discussion involving the surgical and anaesthetic team facilitates efficiency and accuracy of veterinary intervention.’

Contracts exist in many contexts within the veterinary profession; a veterinary practice will hold contracts with pharmaceutical and insurance companies, other veterinary practices and also their employees. The RVN in this scenario by failing in their responsibilities detailed is likely to have breached the employment contract. The result of this may differ in severity however, if it is evident that the contract terms have been breached the practice could propose legal action (Directgov, 2012).

Negligence

The tort of negligence is concerned with the breach of a duty of care resulting in damage to the plaintiff (Elliott and Quinn, 2007). Earle (2006) proposes three criteria which should be addressed in order for a claim of negligence to be assumed:

- A duty of care exists between the parties
- There has been a breach of that duty of care
- The breach resulted in reasonably foreseeable damage.

An RVN has a duty of care to the client, their colleagues and to their employing practice (Earle, 2006). The duty of care exists between the client and the veterinary practice to which they have entrusted the treatment of their animal. The RVN is employed by the practice to provide nursing care, therefore as-

ensured (Royal College of Veterinary Surgeons, 2012. s2.5). It is evident that the care fell below the expected standard of the profession.

For the client to progress with civil liability they would need to prove the action of the RVN caused loss that was reasonably foreseeable. It is true that the action of the RVN contributed to the end result. They did not however, directly perform the surgery resulting in the amputation of the incorrect limb; they are not responsible for the actions of the veterinary surgeon. The client may be successful in action against the veterinary practice as the employer of all staff members involved in the scenario. It would be the employer's responsibility to ensure protocols are in place determining how employees should act, especially when the outcome could result in fatality. It would be in the interest of the veterinary practice to offer the client an out-of-court settlement fee, public exposure would be detrimental to the practice reputation and court fees are extensive (Welsh, 2003).

Professional conduct

Clinical audits of incidents such as the scenario outlined (Box 1) enable the observation of frequency and intention of such incidents; facilitating the distinction

Summary

In this scenario the VN undertook a careless action, it was not a premeditated action, but an inattentive mistake. That mistake had very serious consequences and resulted in the death of the dog. This is the reason for the CoPC to stipulate the need for clear, detailed contemporaneous records, so as to prevent these errors. The VN is not solely to blame, their actions alone did not cause the death of the dog, in fact had the veterinary surgeon also undertaken their responsibility in checking the animal and the radiographs prior to surgery the error may have been prevented. However, the actions of the nurse did lead the veterinary surgeon to continue the error, if it had not been for this mistake the dog would likely not have been euthanased.

Close, trusting teamwork can have a positive and negative impact; it can ensure the practice runs efficiently, but it can also enable human error to go unchecked. In this scenario of a very close team it is understandable how the mistake described could happen, but the overarching message for both the veterinary surgeon and VN is that personal accountability means that they are each responsible for their own actions. Double checking team members' work does not carry a negative connotation, especially when decision making influences patient welfare; it is a process that should be welcomed to ensure serious mistakes are not made. Teamwork does not just mean blindly trusting each other, but it does mean supporting each other through double checking work where appropriate and being accountable. RVNs are autonomous professionals and thus all responsible for their contributions to any decision or action taken.

Recommendations for future practice

Errors in practice can occur as a result of poor communication, misjudgement or lack of comprehension. It is vital for patient safety and the progression of the veterinary profession that each error whether intentional or not is recorded. Clinical auditing enables the monitoring of adverse events, demonstrating trends and providing an opportunity to implement steps to avoid a similar occurrence in the future (Welsh, 2012).

SOPs provide a logical standardised system for all employees to follow when carrying out tasks in the work place. A SOP could specify where information is gathered before completion of procedure details on patients' clinical records, including how the information is counter checked. A patient safety checklist is a SOP specifying the information required before anaesthetising and carrying out surgery on a patient, encouraging communication between colleagues. A patient-focused discussion involving the surgical and anaesthetic team facilitates efficiency and accuracy of veterinary intervention, prioritising patient care. This could be implemented into every type of veterinary practice in the UK for each surgical procedure; team unity is essential for successful integration (Crompton, 2010).

Continuing professional development for RVNs is mandatory to demonstrate currency of practice. Seminars designed to

Key points

- Errors in communication and information transfer can easily occur and can have disastrous effects on the patient, client or team.
- Veterinary work assumes an important duty of care towards the animal and also to the client, breaches in this can lead to litigation or break the client's or public's trust in the practice and profession.
- Personal accountability is important for a profession and each member of the team must take responsibility for their own actions and their role in any series of errors.
- A patient-focused discussion involving the surgical, nursing and anaesthesia team facilitates dissemination of vital information and prioritises patient care.
- Standard operating systems, such as a surgical checklist, can help prevent the team overseeing key errors.

discuss ethical scenarios with legal implications could equip RVNs with the tools to act professionally when faced with such in practice. The responsibility of practicing as a VN within the remit of the RCVS' CoPC, guided by current evidence-based literature remains with the individual.

Conclusion

In this article the professional and legal implications of an RVN's actions have been analysed and the impact on parties has been considered. The catastrophic series of mistakes will emotionally influence and taint the RVN's professional future; potentially harm the reputation of the veterinary practice and prematurely inflict suffering and loss on the owner. In the changing professional environment for veterinary nursing the outcome of this scenario provides a stark reminder of the

grave consequences resulting from the lack of consideration in decision making and action in practice.

As veterinary nursing progresses towards professional recognition it is essential for VNs to be aware of the legislation set out to protect animals, clients and the reputation of veterinary nursing. It is not possible to determine from the evidence provided in the scenario if the act was a genuine mistake or one of gross incompetence, however it does leave the practice liable for negligence. Had the RVN given careful consideration to their actions, the outcome for the patient could have been vastly different, minimising the subsequent impact on other parties. Implementation of patient safety checklists and comprehensive SOPs would have avoided the errors in this scenario.

VN

References

- Animal Welfare Act (2006) [c.45]. HMSO, London
- Bowden S, Pullen S (2006) Regulation and representation. In: Pullen S, Gray C, eds. *Ethics, Law and the Veterinary nurse*. Butterworth Heinemann Elsevier. Philadelphia: Ch 5
- Crompton S (2010) Pain assessment and pain scoring models: a review. *The Veterinary Nurse* 1(1): 22-7
- Crowley D (2006) Ethical Thinking: the way forward?. In: Pullen S, Gray C, eds. *Ethics, Law and the Veterinary nurse*. Butterworth Heinemann Elsevier. Philadelphia: Ch. 13
- Directgov (2012) Employment contracts. <http://www.direct.gov.uk/en/employment/employees/employmentcontractsandconditions> (accessed 16 July, 2012)
- Dye K (2006) Consent to treatment in veterinary practice. In: Pullen S, Gray C, eds. *Ethics, Law and the Veterinary nurse*. Butterworth Heinemann Elsevier. Philadelphia: Ch 8
- Earle E (2006) Negligence and whistleblowing. In: Pullen S, Gray S, eds. *Ethics, Law and the Veterinary Nurse*. 1st ed. Butterworth Heinemann. London, UK: Ch 4, 29-33
- Elliott C, Quinn F (2007) *Tort Law* (6th ed). Pearson Longham: Harlow. Ch. 1
- Gray C, Wilson K (2006) Introduction to the legal system. In: Pullen S, Gray C, eds. *Ethics, Law and the Veterinary nurse*. Butterworth Heinemann Elsevier. Philadelphia: Ch. 3
- Haynes AB, Weiser TG, Berry WR et al (2009) A surgical safety checklist to reduce morbidity and mortality in a global population. *New Engl J Med* 360: 491-9
- Krizek TJ (2000) Surgical Error: Ethical Issues of Adverse Events. *JAMA* 283(11): 1359-66
- Mahoney K (2003) The politics of professionalisation: Some implications for the occupation of ambulance paramedics in Australia. *Journal of Emergency Primary Health Care* 1(3-4): 1-8
- Mullan S (2006) Introduction to ethical principles. In: Pullen S, Gray C, eds. *Ethics, Law and the Veterinary Nurse*. 1st ed. Butterworth-Heinemann, UK: Ch 2: 11-22
- Nursing and Midwifery Council (2008) Code of professional conduct for nurses and midwives. NMC, London: 3
- Orpet H (2011) How well do you know your patient? The need for nursing assessment. *Veterinary Nursing Journal* 26: 243-6
- Stobbs K (1999) Communication — a key skill in practice. *In Practice* 21(6): 341-2
- Royal College Veterinary Surgeons (2012) Code of Professional Conduct for Veterinary Nurses. RCVS, London
- Veterinary Surgeons Act (1966) [c.36]. HMSO, London
- Weiser TG, Haynes AB, Lashoer A et al (2010) Perspectives in quality: designing the WHO Surgical Safety Checklist. *International Journal for Quality in Health Care* 22(5): 365-70
- Welsh P (2003) VNs and the law: What would you do? *Veterinary Nursing*. 18(4), pp.117-120.
- Welsh P (2012) Whistle-blowing explained: to be or not to be a whistleblower, that is the question. *The Veterinary Nurse* 2(2): 122-6
- World Health Organisation (2008) Implementation manual: Surgical safety checklist. 1st ed. World Health Organisation Press, Geneva, Switzerland