



When a Client Requests Patient Records

In April 1997, I wrote an article detailing how long a veterinarian should keep patient records. However, that article did not answer the question of whether a veterinarian had to keep any patient records at all. That article also did not discuss whether patient records belong to the owner of the animal or the veterinarian and whether a veterinarian could hold onto patient records until the owner of the animal pays their bill. This article will answer those questions.

When Dr. Peter Prescott asked me to look into these issues I chuckled to myself, thinking these would be easy research issues. After all, law school taught me that patient records belonged to the patient and that was the end of the discussion. Furthermore, attorneys are required to give their client's file to their client upon request, regardless of whether they have paid their bill. Thus, I could not imagine that it would be much different for veterinarians.

Only one Michigan case has discussed turning over patient records. *McGarry v J A Mercier Co*, 272 Mich 501, 262 NW 296, 297 (1935), stated that in the absence of an agreement to the contrary, x-rays are the property of the physician or surgeon, rather than of the patient or party who employed the physician or surgeon. Op 5125 Att'y Gen 454, 455 (1978), clarifies *McGarry*, stated that "the ownership rule applies to [all] case records obtained by a physician or hospital as a result of examination and treatment." What is equally interesting about *McGarry* is that the court explicitly stated that the refusal by the physician to turn over the x-rays did not relieve the patient (or person paying for the patient) from obligation of paying the physician. Thus, it appears that a veterinarian can demand payment before turning over any patient records!

The physical records may belong to the doctor; however, the patient (or in the veterinarian's case, probably the owner of the patient) is entitled to have the information made available to him for copying or inspection. Op 5125 Att'y Gen 454, 457 (1978). Such access to the records may be limited to reviewing the records when it does not interfere with the normal routine of the doctor. *Id.* This opinion does not consider the propriety of charging for photocopies if requested by the patient. This author believes that if a veterinarian is using his/her resources to make the copies for the owner, that a nominal charge to

cover the veterinarian's expenses in copying records may be appropriate.

However, much of the above discussion may be academic. Should a lawsuit be brought against a veterinarian in circuit court, the owner will have a right to all of the veterinarian's medical records for the owner's animal. Furthermore, if the case was filed in district court, the district court judge could order, upon request, that the veterinarian turn over the medical records on the patient.

Does a veterinarian have to keep patient records at all? No case or statute answers this question. The only doctor required by statute to keep patient records is a dentist. Dentists must keep patient records for ten years. MCLA 333.16601 defines the "practice of dentistry" as being limited to the human mouth. Thus, it does not appear a veterinarian must keep patient records.

However, this author believes that such a habit only invites a malpractice lawsuit and demonstrates a veterinarian's negligence. The main purpose of medical records is to document the course of a patient's illness and medical treatment. Such records could be used by the veterinarian and his/her staff in evaluating, reviewing, and studying the patient care. Also, such records might be used later for research, study, or education. Primarily, though, the patient records assure the continuity of care should the patient be readmitted. Op 5125 Att'y Gen 454, 457 (1978), citing 14 Gray, *Attorney's Textbook of Medicine*, i179.10, et seq.

The case law and Attorney General's opinion that was cited in this article applied to human patient records. There were no known cases in relation to an animal. While veterinarians are often treated like human health professionals, there are several instances in which they are not. Therefore, a veterinarian should be cautious when handling patient records and should obtain legal assistance before taking any actions regarding those records.

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