

Veterinary necropsy in the light of ethics and law

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Summary

Legal norms determine the rules for conducting a veterinary necropsy to a limited extent, leaving the regulation of this matter to the veterinary art. The norms of binding Polish law and rules of veterinary professional ethics in relation to conducting a necropsy are analyzed and interpreted. The ethical and legal aspects of the veterinary surgeon's activities have been highlighted. Non-observance of these rules during the post-mortem examination of animals may result in the incompatibility of the proceedings with the principle of acting *lege artis*, the effect of which is civil and professional liability. Moreover, when the section was commissioned by the authorities, inappropriate conditions or the manner in which it was carried out (including legal and ethical premises) may diminish the meaning of the section protocol as evidence. It should be remembered that animal corpses are subject to obligatory utilization, so in the vast majority of cases the section protocol is the only documentation and it cannot raise the slightest doubt, which may be the case in the failure to observe the discussed principles of performing a posthumous examination of animals. Considering that every veterinary surgeon may be appointed by various institutions (i.e. courts, police, prosecutor, insurance company) to conduct the necropsy, it is advisable to familiarize this professional group of public trust with the ethical and legal aspects of its implementation.

Keywords: legal norms, moral philosophy, posthumous obduction, post-mortem examination

Neither the provisions of Polish nor European law specify in what situations a veterinary surgeon should carry out a post-mortem examination of an animal. There are no detailed legal regulations of this aspect, and in many activities related to the necropsy, the guiding principle is the veterinary art. In Poland, only the *Good Veterinary Practice Code* recommends that 'in case of death of an animal in unexplained circumstances, diagnostic difficulties or lack of improvement after treatment, the veterinarian should perform a post-mortem examination and prepare documentation' (10).

In veterinary practice in Poland necropsy is performed relatively frequently in the case of farm animals, when clinical symptoms and data from the medical history make it impossible to make a preliminary diagnosis (a suspicion of the cause of the disease in the herd, or the death of individual specimens). Such necropsies should be classified as veterinary diagnostic

sections. Sections of this type are usually carried out at the place of death of the animal in question. In most cases, these are not full sections, and are extremely rarely documented with appropriate reports.

Another type of obduction is a scientific veterinary necropsy. Its purpose, as well as the purpose of scientific autopsy (4, 9, 28, 29) and veterinary diagnostic section, is to recognize or confirm the morphological background of the underlying disease and side-effects, as well as to determine the *causa mortis* (13, 15, 27).

There are also sections for judicial purposes (8, 13, 26), and administrative (sanitary and administrative) sections (24), related to the control and eradication of infectious diseases.

The decision to carry out a necropsy may be made by the court, prosecutor, police, municipal guard, state or local administration authority, insurer, owner or possessor of the animal, and veterinary surgeon, depending on the circumstances (2, 8, 12, 13, 16, 26, 27).

The rules of posthumous examination of animals

Each full post-mortem examination consists of external (visual inspection) and internal (dissection) examination of the cadaver, and is carried out according to a specific pattern and established rules (3). The purpose of necropsy in animals, regardless of its formal type, is to determine anatomopathological lesions (abnormalities in the structure and arrangement of internal organs, tissues, and body cavities) and – based on them – to determine the cause of death. The necropsy should be documented with the appropriate necropsy report. Based on the changes found, the pathologist issues a statement on the cause of death, which is part of the report.

The report should be prepared during the conduct of the necropsy, or immediately after. It may be written by a clerk, but it must always be signed by the pathologist (if the report was written by the clerk, he or she should also sign the report). If there are other deponents present during the procedure, they should also sign the post-mortem report. Although the animal necropsy report is an official document, there is no pattern established. In Poland, only in the Ordinance of the Minister of Agriculture and Rural Development of July 4th, 2017 on the method of keeping documentation related to the infectious diseases' combat, a model of an animal necropsy report is prescribed as a part of administrative actions (23).

The structure of the discussed report is imposed by the veterinary art (17, 18, 22, 25). The document should contain the initial part and the arguments of the section, which includes: external (before body cavities are opened) and internal examination (description of body cavities, systems, organs, and tissues). The arguments should be an objective description of the actual state found during the examination (*status praesens*, *status quo*). It should not be confused with the subsequent diagnosis in which the identified pathological lesions are reported. The arguments end with the pathologist's statement. It is a subjective part of the report, in which the veterinary surgeon presents conclusions resulting from the identified anatomopathological lesions, results of additional tests, data from the interview and medical history, and presents his own view and commentary to the conducted examination. If the observed post-mortem lesions do not allow for the issuing of a substantive statement (even in the form of a supposition), then the pathologist should use the formula 'death from transient causes'.

It is a common practice to omit in the protocol the description of organs and tissues in which no pathological changes have been observed. This practice arises from the adoption of the presumption that any organ omitted in the post-mortem report is considered to have no pathological lesions. Such a procedure has a partial justification, because the proper state of organs in terms of both macroscopic and microscopic structure should be familiar to any veterinarian. The description of such

organs adds nothing to the proceedings, and it takes a great deal of time to produce such a description. It makes the report difficult to understand and obtain relevant information. However, it is advisable in such cases to include an appropriate annotation in order to avoid misunderstanding.

It is desirable that the course of necropsy would be additionally documented by imaging techniques (photos or films), which does not require – at the end of the second decade of the 21st century – a great financial cost, and is easy to implement. The recommendation of such a procedure results from the fact that the necropsy (and the autopsy) is a unique activity, and the completion of once wasted material is unfeasible (7). The formulation of another opinion based on existing factual data (correctly and reliably written report and personally made photos or videos) is then possible. For this reason, it is extremely important that the necropsy is as properly and as accurately documented as possible. This applies primarily to the detail and clarity of the reports, but also to the quality of photos and videos. Although the visual documentation is easy and useful, it is sometimes not recognized by the prosecutors and courts. These authorities allow photographs taken only by qualified personnel, and using approved equipment.

Necropsy report as a court evidence

Each posthumous obduction is a unique activity, and therefore the report cannot be defective, incorrect, or imperfect. This is particularly true of formal issues such as: information about the time of conducting the post-mortem examination and the conditions in which it was performed, e.g. temperature, type of lighting. It is also crucial to indicate all the participants and the character in which these people participate in the activities (pathologist, helper, clerk, witness).

In some cases, pathologists do not prepare complete documentation from the activities, but only a brief summary of the morphological lesions found. This practice is a serious failure from the perspective of the standards of the veterinary profession.

The pathologist should include in the statement not only the ascertainment of the fact of the cause of death, but also the pathogenesis that led to a lethal exit. An example of a reprehensible situation can be the statement: "the cause of death was the loss of blood from the vascular bed to the abdominal cavity," while not indicating the mechanism leading to the hypovolemic shock.

Sometimes it can be observed that the necropsy report contains neither photographic documentation nor any other preservation and consolidation of the activities conducted. This may make it difficult or even impossible to assess the necropsy, especially in conflicting situations, which is also the case if the report is deficient and vicious. Therefore, it is crucial to prepare additional photographic documentation of good technical quality, and a legible description.

In civil, criminal or professional cases and proceedings (19-21), a necropsy is treated as an act of evidence by means of which information from the source of evidence (in this case, the animal body) is obtained, that is relevant to the ongoing proceedings (8, 13, 26). The necropsy report is a form of documentation of this activity. In connection with these facts, the *lege artis* performance of such a necropsy, and its proper documentation, should be the standard action of each veterinary surgeon.

Obligation of diligence and obligation of result

The healing activities of veterinary surgeons are obligations of diligence, not of result (5, 6). The veterinarian may not commit himself to a strictly defined service because he cannot be obliged to heal the animal, only to treat it in accordance with the best knowledge, skills, and will.

There are, however, doubts whether the performance of a post-mortem examination can also be included in scope of the obligations of diligence, or rather the obligations of result. Certain medical treatments (the concept of which is not the same as the concept of curative treatments), or additional tests, are of nature of the obligations of result. In such cases, the potential liability is wider, and – beyond the culpable failure to exercise due diligence – also includes the negative effects of failure to achieve the expected effect (1, 26).

In the case of necropsy, it can be claimed that it is the obligation of result. Regardless of the theoretical character of the discussed civil relation, the veterinarian should, in any case, perform due diligence in his services (5), and act proficiently and ethically (6). The veterinarian is liable on the basis of his fault, objectively assessed, that is, a failure to exercise due diligence in his actions (5).

Lack of or improper performance of obligations by the veterinary surgeon exposes him to the civil liability *ex contractu* or *ex delicto*, connected with an unlawful action or a tort committed (5). Moreover, liability resulting from other legal acts, and the code of professional ethics could arise (6). Damage caused by his actions and omissions, causally related, may take on a material or non-material character (e.g. as a damage of moral nature).

The notion of tort in Polish civil law includes not only acts prohibited by the law, but also culpable acts incompatible with the principles of social co-existence (5). Lack of due diligence and caution necessary to take correct actions, and draw correct conclusions from them, are signs of unintentional acts (5).

Consent to the performance of the animal necropsy

Even after the lethal exit, an animal is a subject to ownership. It is therefore appropriate (despite the presumption of consent) to obtain a written acceptance from the owner of the animal for carrying out

the necropsy (10). The presumption of consent (in the absence of objections) cannot be derived directly from the legal acts.

Carrying out a scientific veterinary necropsy is allowed in the absence of any objection from the owner. In Poland, pursuant to art. 19 para. 1 of the Ethical Code (6), every veterinary surgeon is obliged to understandably inform the owner, possessor, or guardian of the animal, about the diagnosis, prognosis, intended behavior and associated risks and costs, the expected utility and quality of life of the animal after healing, and to obtain consent regarding the planned activities. In para. 2, the referenced article indicates the possibility of obtaining written consent of the owner to carry out the conducted action. As is clear from the language interpretation (6), and the principle of *lege non distinguente, nec nostrum est distinguere*, the consent should also apply to the necropsy.

Conducting the discussed examination does not require the owner's consent if the police, prosecutor, or court orders such an action during the case proceedings. Similar rules are applicable to the administrative necropsy carried out as part of an epizootiological investigation in the combat of infectious diseases (23)

Requirements to be met a space in which necropsy is performed

There are neither unambiguous guidelines nor legal regulations of the requirements that should be met by places where the animal necropsy could be carried out. The established practice, resulting from general veterinary knowledge, literature, and pathologists' experience, requires, as far as possible, a specially designated room. It should be equipped with adequate facilities, appropriate equipment and tools, which as a whole constitutes the dissecting room (17).

The dissecting room's constructing project should ensure the safety of the participants of the procedures, and eliminate any threats to public and animal health resulting from contact with potentially infectious and toxic material (3). It is assumed that every animal cadaver is the source of such a threat, regardless of the *causa mortis* (1).

Due to potential sources of danger, and the lack of appropriate equipment, posthumous examination of animals should not be carried out in rooms that are not adapted to the purpose, e.g. in operating theatres of animal clinics. The places best prepared to carry out such activities are public veterinary hygiene offices and university dissection departments located at the faculties of veterinary medicine.

Each veterinary surgeon who has the right to practice may perform the necropsy. It should be carried out in every situation in which the veterinarian has reasonable doubts and grounds to expect that the result will determine the cause of death, as well as the mechanism that led to it. It is advisable to obtain the consent of the owner of the animal. Moreover, it is important that the

conditions and rooms are appropriate and allow for the safe execution of the procedure.

For judicial purposes, necropsies can be performed by any veterinarian who has been appointed by the procedural authority. In practice, such orders are sent to scientific institutions or veterinary forensic experts entered into lists of experts of district courts who have the capacity to undertake such a task. If the appointed veterinary physician recognizes that there are obstacles (formal, substantive, technical, or otherwise) that prevent him from the diligent and objective fulfillment of the order, he or she should immediately notify the requesting authority, indicating the person or institution that can perform such activities. Such a negative premise can be, for instance, the ongoing investigation in relation to the complaint submitted by the animal's owner. The involved party cannot take any action that could affect the objective evaluation of collected evidence.

It should be stated that the *lege artis* execution of the animal necropsy requires not only anatomopathological knowledge, but also accordance with the law and principles of professional ethics (11, 14). Sections should be made in appropriate rooms, properly equipped, and ensuring security for participants and third parties. The course of the procedure should be reliably documented in the properly prepared report, using modern documentation methods in electronic form as well.

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