Veterinarian as expert advisor: improving the quality of veterinary services and scientific research

ANDRZEJ DZIKOWSKI

Department of Food Safety and Public Health Protection, Warsaw University of Life Sciences, Nowoursynowska 159, 02-787 Warsaw, Poland

Received 18.10.2023 Accepted 03.11.2023

Veterinarian as expert advisor: improving the quality of veterinary services and scientific research

Summary

Veterinary surgeons often provide professional veterinary advice to both their colleagues, scientists, and lay clients. A number of them give advice unwittingly, and are unaware of the legal consequences of their actions. This analysis investigates veterinary advisorship from a comparative perspective. Ethical and legal analysis, and interpretation is performed. Essential types of veterinary counseling are indicated: advice provided by a veterinarian to another veterinarian, and provided by a veterinarian to a lay client. Veterinary advice in scientific research is a mixed type. Legal and deontological relevant factors of counseling, and consultants’ liability are identified. The wide range of responsibility, and liability of veterinary consultants is demonstrated. A veterinary counselor may be subject to various types of civil liability in relation to the person seeking advice, as well as to third parties. It is argued that an explicit, or implicit advisory clause in a contract, or an independent consulting agreement may be concluded, with the special regime of liability for veterinary advisorship. The conclusion is that – despite the fact that scope and liability differ in the discussed types of advisorship – the connecting factors are: specialist knowledge, which as advice or information is provided by a specialist in relation to a non-specialist, as well as the obligation to respect professional veterinary ethics.

Keywords: veterinary forensic medicine, veterinary general practice, veterinary law, civil law, professional conduct; liability, ethics; deontology

It is not uncommon for a general veterinary practitioner to refer his client and animal patient to another veterinary surgeon. Indeed, it is a fairly common, and legitimate practice. This type of referral is usually aimed at performing veterinary medical consultations with an outstanding, and recognised specialist in a given field of veterinary medicine. The latter serves as an advisor – both to the animal owner, and to the primordial veterinarian. This, however, is definitely not the only possible case of veterinary advisorship. Another broad aspect of veterinary professional advice is such provided to scientists, as a part of conducting scientific research, such as in vivo animal tests. This scope includes both voluntary scientific cooperation, and participation of a veterinarian in research required by the statutory acts.

Veterinary counseling covers many different factual and legal situations, but it has common features that allow it to be assessed as a relatively uniform phenomenon. Among the equivalent names: advisor (or adviser), consultant, and counselor are indicated. Numerous veterinary surgeons give advice unwittingly, regardless, or unaware of legal consequences of their actions. Nevertheless, this aspect of the professional work of veterinarians is researched only to a meager extent, usually on the occasion of completely different issues raised (10, 22, 29, 35, 37). A lack of syntheses, and works in world-wide languages can be observed.

In the current study, types of veterinarians functioning as advisors will be examined. Analysis is conducted in a legal form, according to the legal methodology. In particular, it focuses on indicating the ranges of advisory veterinarians’ activity for various entities, in various scopes, both in the actual sense, and those recognised by the law. In relation to legal standards, duties and responsibilities of veterinarians providing advice will be demonstrated, and discussed.

The author’s intention is to make this analysis as universal as possible, therefore it was decided to minimize the number of citations of particular statutory norms. The number of quoted codes of professional ethics has also been reduced to representative examples. In order to make the current analysis generally available, individual jurisdictions will be treated only as
examples, and as a source of inspiration for general rules. Conclusions obtained, and observations made will be generalised.

The author’s claims on universal aspects of the current study are not intended to assume uniformity of the veterinary law, nor the globality of presented normative solutions. Such an approach is possible due to the global uniformity of the veterinary profession. All veterinarians face the same problems and challenges. In the author’s opinion, veterinary advisiorship is an example of a general, universal phenomenon all veterinarians, not only individuals but also professional bodies, should face. It is also an example of a common legal problem, a phenomenon all jurisdictions should consider. In some legal systems, however, the discussed problem is not regulated in a sufficient way. Such gaps in the veterinary law result in the uncertainty of the law. Judgments unfavorable to veterinary surgeons are potential negative consequences.

The intention accompanying this analysis is, therefore, to indicate common solutions. Different ways to solve the discussed issue are undoubtedly possible. Normative solutions analysed and discussed in this article are only examples. Nevertheless, these examples can become a source of actual and legal inspiration. In different jurisdictions, ideas can be drawn from present considerations to improve the legal position of veterinarians seeking specialised advice, and providing professional counsel.

Results and discussion

Veterinary consulting is undoubtedly a type of veterinary service. This fact implies remuneration of such a service (18, 28). Free, gratuitous consulting, given in good faith, and often encountered in daily veterinary practice, is not a desirable phenomenon (21). This may not only be detrimental to the prestige, and reputation of the veterinary profession, but also reckless: considering the high risk of legal and professional liability by the veterinarian. Moreover, in particular jurisdictions gratuitous veterinary services are illegal, and their performance might result in penal, and fiscal liability. It should be observed that giving advice, e.g. on animal breeding, or treatment, cannot turn into medical veterinary teaching (21).

The conducted analysis has revealed that the discussed phenomenon of veterinary advisiorship is not homogenous. Two essential types of veterinary advisiorship are distinguished. The first of them is a veterinary medical consultation, i.e. a professional veterinarian–veterinarian relationship. The second type of veterinary advice distinguished in the current study is the veterinarian’s role as lay client’s advisor. Veterinary advice provided in scientific research is a mixed type. In the following part of the article, detailed characteristics of these types will be analysed, presented, and discussed. Legal, ethical, and professional specific features within each type would be indicated. Furthermore, the problems of the legal liability of the veterinarian seeking advice, and veterinarian-advisor will be examined. It is necessary to indicate the specific features of the veterinarian’s responsibility for this kind of professional service. It is the duty of all veterinarians to meet numerous obligations arising from the specific ethical, deontological, and legal status of this profession (4, 14, 15, 31, 32). The risk of (any) liability of the veterinarian, or other public trust professional, is greater than in other professions (not being the public trust ones, and not bound by professional ethics (31). The essential criterion affecting the increase in the rigor of the liability is being a representative of the profession of public trust (17, 19, 34). It has been found that the specific liability of the counselor is only an addition to the general professional, and civil liability of the veterinary surgeon.

Professional advice veterinarian–veterinarian

Characteristics. As it has already been demonstrated, veterinary medical consultation, or professional advisiorship, is a professional relationship of at least two veterinary surgeons. Veterinarian–veterinarian relation in question pertains strictly to the practice of the veterinary profession. This covers any case of a veterinarian seeking professional advice of a more experienced veterinarian, a colleague with more knowledge, skill, or competence, or a specialist in a given field. The discussed advice includes, above all, the already mentioned animal health specialist consultations. A typical example is a general practitioner seeking advice from a specialist, such as a cardiologist, or neurologist.

Veterinary clinical practice is, however, not an exclusive domain. Professional veterinary medical consultation may concern all issues covered by the veterinary profession, and thus also the protection of public health, environmental protection, animal welfare protection, all kinds of veterinary scientific research, etc. Indeed, just as the scope of the veterinary profession is wide – so the scope of advice, and consultation may be. This type of counseling covers both situations in which a veterinarian refers directly to another veterinarian with particular skills, and knowledge in the appropriate discipline (direct professional advisiorship), and when the client, and the animal patient, is referred (indirect professional advisiorship).

The subject scope should be narrowed down. Performing additional tests that require the necessary equipment, shall be excluded. Commissioning another veterinarian to carry out additional tests cannot be considered a type of veterinary medical consultation, because such an agreement is characterised by different objectives, purpose, and different means for their implementation. Actual situations, in which another veterinarian not only performs additional an test, but also describes its results, and makes a diagnosis, can
be considered as a veterinary medical consultation – although only partially. Teamwork of several veterinarians on the same case in animal treatment should also be excluded. As in the above case, purpose, objectives, and means of veterinary clinical teamwork are different from obtaining the veterinary medical consultation (3, 4, 11).

It should be observed that the examined issue is regulated in codes of veterinary professional ethics and deontology (2, 5, 7, 18, 20, 28, 34). While in some states counseling is regulated directly; in others, standards of professional ethics regarding veterinarian–veterinarian advisorship can be derived only from the general provisions. It has been found that, regardless of the jurisdiction, a common, general institution of professional camaraderie, and the rule of comradeship between veterinarians exist. It is one of the basic features of veterinarians as a professional group, united in corporations, and professional chambers. In the author’s opinion, the discussed problem may be assumed as a common, universal custom of mutual assistance (18).

All relations of veterinary surgeons should be courteous, complimentant, friendly, amicable, and obliging (2, 5, 7, 18, 20, 28, 34). Indeed, many veterinary physicians are classmates, Kommilitonen. Others have professional, social, or sociable relationships, including those within official, or social professional organisations. Nevertheless, even those who do not know each other personally are colleagues, and owe each other mutual help, respect, and kindness (18, 34). Camaraderie applies also to mutual assistance, teaching the younger and less experienced veterinarians by older and more experienced colleagues, and finally – the duty to provide advice (18, 34). It must not be forgotten that the professional comradeship is an ethical, and deontological rule. It is not only soft law. On the contrary – it is directly applicable norm. Professional liability before the veterinary peer court (or other professional judiciary body) is possible for the non-compliance with the discussed ethical rule.

**Liability.** It has been revealed that civil liabilities of a consultant, and of a primary veterinarian do differ. First of all, it should be observed that the possibility of commissioning the veterinary medical consultation may be excluded, or limited in a specific situation. Limitation, or exclusion may result from the strictly personal nature of a given veterinary service (which cannot be entrusted to another person), or from the contract. The requirement of personal performance by a veterinarian is associated with the appropriate veterinary knowledge, legal authorisation, personal qualities, skills, knowledge, qualifications, apparatus, etc. (6, 18, 34). In case of inappropriate veterinary medical consultation – the primary veterinarian violates the statutory provisions, or is responsible for a breach of contract. In both cases the client may be entitled to compensation and damages. The veterinary surgeon commissioning the veterinary medical consultation, or seeking advice, may, in particular, be civilly liable for the client (the animal owner).

Most veterinary medical activities related to animal diagnostics and therapy are obligations of due diligence, arising under unnamed contracts, similar to a mandate. This kind of obligations covers typical veterinary services. The responsibility of the primary veterinary surgeon includes: his/her own acts or omissions and, alternatively, the fault in the selection of the advisor (a substitute, deputy, or subcontractor), and acts or omissions of the latter – if the execution of the service is entrusted to the counselor. The provision of veterinary services may be entrusted to another, consulting veterinarian if it results from the statutory act, the contract, the local custom (such as the rule of veterinary comradeship), or from various actual circumstances requiring substitution (23, 33).

If the primary veterinarian performed an act of diligence (e.g. notifying the client about the referral), then his/her liability is restricted to the fault in the choice (culpa in eligendo). It should be noted that the liability for the culpa in eligendo in this case is limited due to the fact that the consultant is a professional, a veterinarian him/herself (18, 33). In case of veterinarian’s activities, which are civilian obligations of result (contract work), it is generally permissible for the veterinarian to use the assistance, provision of services, work, as well as subcontracting from third parties. This type of contracts applies, e.g. to vaccinating animals, or performing laboratory tests.

The primary veterinary surgeon is then responsible for the actions and omissions of the consulting veterinarian as for his/her own (6, 23, 33). Nevertheless, cases of veterinary medical consultation in obligations of result are relatively rare, or even do not fall within the scope of this analysis. Similarly, it is doubtful that it would be possible to use the liability analogous to the warranty for physical defects, and guarantee in the discussed case (6, 23, 33). It has been revealed that liability towards third parties is of particular importance in the discussed legal relationship. This type may be realised, e.g. by the animal buyer who has not been the client of the veterinary surgeon (instead, the animal seller was) (4, 11, 36).

It is possible for the third party to sue the veterinarian:

- directly;
- based on the liability under the Vertrag mit Schutzwirkung zu Gunsten Dritter (contract with a protective effect in favour of a third party) (3, 4, 11, 12). The aforementioned German legal concept can be applied both in the continental civil law, and in the common law, as they are based on the broadly understood idea of breach of contract, and breach of obligation.

An important element may also be tort liability. The consulting veterinarian may be civilly liable as
a subcontractor, deputy, or auxiliary – as a third party. The professional responsibility, and liability of the consultant veterinarian concerns, above all, takeover of clients from the primary veterinarian (who referred the client for veterinary medical consultation). Such a behaviour is directly prohibited by the rules of professional veterinary ethics (2, 5, 7, 18, 20, 28, 34). Regardless of this norm, the client may choose to transfer to the new veterinary surgeon him/herself. It must, however, be an independent, and uninfluenced decision of the client.

It has been found that professional liability may apply to veterinary medical consultations carried out without the knowledge, and consent of the client (the animal owner) (2, 5, 7, 18, 20, 24, 28, 34). In the author’s opinion, this is a specific type of responsibility, combining elements of the professional secrecy, protection of personal data, and the prohibition of disposing of an animal without the owner’s consent. This kind of professional liability applies to both the veterinarian ordering the veterinary medical consultation, and the consultant. Disciplinary responsibility may occur as well, e.g. in the establishment in which veterinarian is employed. It should be noted that various types of overlaps of responsibility may occur.

**Veterinarian as advisor to the lay client**

**Characteristics.** The second type of veterinary advisorship distinguished in the current study covers veterinarians acting as advisors to lay clients. The position of the advisor is closely related to the basic characteristic of the veterinarian as a veterinary medical professional: educated, having special knowledge and skills, that laymen do not have.

The following examples of veterinary advisorship for the lay clients can be indicated, i.e.:

- advice on animal health;
- agricultural consultancy, advice on farm animal health, and breeding (21, 32);
- advice on animal welfare, environmental protection, and nature conservation;
- advice on public health issues;
- advice for animal owners, sellers, and buyers (4, 13, 27, 35, 36);
- advice for the food, fodder, or pharmaceutical industry;
- advice for insurance companies; information obtained may be used in financial operations, and legal proceedings (20);
- advice for lawyers, such as legal counselors, or judges; information obtained may be used e.g. as a substantive support, source of arguments, or further evidence requests in legal proceedings (8, 9, 14); this type can be qualified as an expert opinion (in the legal sense);
- advice as a result of a transfer from the primary veterinary clinician, or request from a client (34).

Regardless of who receives the veterinary advice, and what information is obtained, it is a relationship between a professional and a lay client. For the lay client, any veterinarian is an expert, a professional, and a competent professional. Not only he/she is perceived as such, but he/she should also behave as such. The veterinary advisor should have knowledge, and skills in the scope of the advice provided. This conviction is as important for individual clients in general veterinary practice, as for enterprises, and business corporations (26).

The basic features of the veterinary advisor, apart from the expertise, and cognizance, are the good faith, and the ability to convey trust (26). These are features closely related to above-average ethical standards to which veterinarians, as public trust professionals, must comply (2, 5, 7, 18, 20, 28, 34). Moreover, the veterinarian should give advice in a manner that is competent, sound, but also comprehensible for the lay client. Only comprehensible information can be assimilated, and used by the lay client (21). Firm belief in competence, and professionalism of the counselor is key in decision-making in business investment, animal breeding, and in animal therapy (26). Counseling, however, plays a secondary, auxiliary, and additional role in the veterinary practice. It is not the main element of the professional work, nor the main legal obligation of the veterinarian. Therefore it does not determine the nature of this profession. It is important to remember that the advice of the professional to the lay client is not unique to veterinary practice. Veterinarians – as a layman in other fields – may also need advice and assistance from professionals, including marketing, labour market, information and communications technology systems, and law (10).

It should be noted that this special kind of legal relationship involves the notion of veterinary medicine as a profession of public trust. Providing advise – and trust of the lay client in the cognizance, expertise, and professionalism of the advisor, and the quality of the advice obtained – are the basic elements of the analysed phenomenon.

**Liability.** The legal nature of the profession of public trust, and the need to observe the highest ethical standards, results, above all, in the broad, and strictly professional liability of veterinary surgeons. Nevertheless, it has been found that in the examined scope professional liability of veterinary surgeons has no special features: it is related to the general responsibility to act *lege artis*, ethically, and honestly (2, 5, 7, 18, 20, 28, 34). The sphere in which both professional and civil liability occur is veterinary malpractice. Malpractice which caused harm to the party seeking advice, or its legal opponent, may result in pecuniary compensation, and prohibition, or restriction of the right to practice the veterinary profession. It has been found that in the case of veterinary counseling as a result of a transfer
from the primary veterinarian (general practitioner),
or a specific veterinary medical consultation request
from the client (animal owner), the primary veterinary
surgeon is obliged to provide essential information,
and documentation – if the client has decided so. Moreover,
consulting veterinarians are not obliged to provide the
original ones with information, and documentation,
unless the client decided so (34). Furthermore, pro-
fessional ethics requires that the second, consulting,
referred veterinarian not criticise the first one – and
vice versa (18, 34).

The analysis made it possible to indicate that the
civil liability of veterinary advisors for damages, and
for the _culpa in contrahendo_, based on the contract
(agreement between the veterinarian, and the client)
(1, 6, 11, 33, 35, 36) is especially important for the
(private-law) advice for lay clients. Moreover, a special
and specific type of veterinary advisor’s responsibility
can be argued to exist (6, 29, 33, 35, 36). According to
this legal concept, a veterinarian may also be respon-
sible for consulting, giving advice to lay clients (6, 29,
33, 35, 36). This type of civilian liability can be quali-
fied in several ways, as the _culpa in contrahendo_, or
liability under an explicit, or implicit advisory clause
in a contract, or an independent consulting agreement
(German _Beratungsvertrag, Beratervertrag_) (6, 22,
29, 33, 35, 36). It especially includes cases in which
erroneous veterinary advice has led to an unfavorable
disposition of property by the lay client (29). This
approach assumes that the veterinarian–advisor’s liability
is analogous to the professional seller’s liability. It is
based on the idea that a person dealing with something
professionally should provide comprehensive, com-
petent, and professional information (4, 13, 27, 29).

The discussed concept has been created in the
German veterinary legal literature, on the margin
of considerations on the sales-related animal health
examinations. According to the author, however,
a far-reaching generalization of the _Beratung_-liability
is possible: both in terms of the subject matter (any
manifestations of veterinary counseling for lay clients),
and jurisdiction. It can be used in whole, or in part, both
in the civil continental law, and in the common-law
systems. It is, therefore, crucial from the point of view
of both veterinarians, and their clients – as potential
litigation opponents, to be aware of such a legal pos-
sibility. The client or his legal counselor may use this
concept in a lawsuit. Veterinarians should count with
the risk of suing them on the basis of advisoryship. Once
again, the professional ethical obligation should be
recalled: veterinarians ought to have legal knowledge,
and legal awareness (18, 28).

**Professional veterinary advice in scientific research**

Veterinary professional advice may be sought by sci-
entists, such as those conducting biological, medical,
and legal awareness (18, 28).

**Professional veterinary advice in scientific research**

Veterinary professional advice may be sought by sci-
entists, such as those conducting biological, medical,
striving for the pure development of human knowledge – enriches scientific discourse, and makes it possible to ensure high quality of research.

**Enhancement of responsibility and liability**

In addition to the above conclusions, another issue may be raised. These are factors of a general, non-specific nature, which nevertheless affect the level of veterinary professional service performance, deontological aspects of conduct, and responsibility. Due to the lack of their specificity for the subject of current research, they will be deliberately treated briefly, only to indicate certain aspects.

Veterinary specialisation is an example of relevant non-specific factor closely related to the discussed problem of advisorship. In particular, this applies to the official title of specialist.

In some jurisdictions veterinary specialisation is a title officially recognised by the law, while in others it is merely respected by professional corporations and individuals. The title of specialist in a certain branch of veterinary medicine (such as a cardiology, neurology, epizootiology) should, *ex definitione*, result in a more professional practice. It may result in greater interest from customers. Moreover, the official title of specialist is often required to get a position in different institutions. A scientific career also raises the qualifications of a veterinarian.

Both official and actual veterinary specialisation, as well as scientific titles, provide recognition of professional veterinary competence and expertise in specific fields of veterinary medicine. Where there is a higher level of professionalism, there is also a higher level of responsibility and liability (18, 27, 30, 36). Social and professional activity of veterinary surgeons is of a similar nature. It increases the level of due diligence required (in the sense of civil law, as well as regarding professional ethics and deontology). This position stems from the assumption that individuals who are socially active should be ethical “models” for the entire community. Examples include veterinary surgeons active in professional bodies (e.g. professional societies, chambers, official colleges), public administration authorities (especially District Veterinary Officers), or in Academia (veterinary medical academic teachers and researchers). The claimed “ethical leadership” of such individuals can be considered both in terms of the professional veterinary community, and general public. As demonstrated, a higher level of due diligence and higher ethical standards required of a veterinarian, are directly related to the degree of the scientific development, experience and competence gained, as well as social activity.

The enhancement of duties results in an increase in liability, and in its strictness (18, 27, 30, 36). Such an assumption is relevant in almost all Western legal systems. Without delving into the particularities of legal regimes, the history of legal doctrines and philosophy, a single, but extremely important source of such a general legal view can be indicated: “for unto whomsoever much is given, of him shall be much required, and to whom men have committed much, of him they will ask the more”, Luke, 12:48 (16).

It has been found that the discussed enhancement of responsibility, and liability resulting thereof, applies to both professional veterinary medical consultations (veterinarian–veterinarian), and advice provided to lay clients. As indicated above, these are non-specific factors. Therefore, they increase the level of responsibility and liability in any case law related to the veterinary practice, due to the position of the public trust profession. It should be noted that a similar increase in the level of responsibility occurs not only in different situations of veterinary practice, but also in other professions of public trust.

**Recapitulation**

It has been revealed that veterinary advisorship includes: professional veterinarian–veterinarian relationships, and veterinarian–lay client relationships. Veterinary advice in scientific research is of a mixed type, depending on factual features of a particular case, but distinguished by the scientific ethical responsibility. Any type of veterinary professional consulting is a veterinary service, which implies remuneration. The specific characteristics of obligations, legal responsibilities, and liability in presented essential types differ, whereas the connecting factors are: specialist knowledge, which as advice or information is provided by a specialist in relation to a non-specialist, as well as the obligation to respect the professional veterinary ethics.

The responsibility of the veterinary advisor is based on the essential features of the profession (18, 20):

- every practicing veterinarian is de facto an expert, a professional;
- no veterinarian may exceed the scope of his/her competence, cognizance, knowledge, skills, nor experience;
- every veterinarian is bound by above-average ethical standards.

The essential criterion affecting the increase in the rigor of the liability of any veterinary surgeon is being a representative of the profession of public trust. The legal importance of veterinary specialisation and scientific career raising the qualifications of a veterinarian, as well as social and professional activities, that enhance the required level of ethical conduct, should be reaffirmed. The analysis demonstrated that the legal liability of veterinarians in consulting is very extensive, strict, and serious. It covers cases of non-compliance with both the statutory, and professional corporate law (veterinary professional ethics and deontology).

Legal norms originating, most of all, from the continental civil law have been presented and analysed. Nevertheless, they might be also applicable in common-law systems as a breach of contract. Moreover, the
mentioned doctrinal achievements, and the presented proposals can be used as an indirect source of legal argumentation in the adversarial contradictory processes.

The need to raise the legal awareness of veterinarians acting as advisors was identified.

It should be observed that giving advice, e.g. on animal breeding, or treatment, cannot turn into medical veterinary teaching. Nevertheless, veterinary advisorship performs an important social function. It is also a tool for improving the quality of veterinary services provided. It is also a tool for improving the scientific research, in particular in vivo tests. It contributes to the dissemination of veterinary medical knowledge, and good practices in health, breeding, and keeping of animals.

References


Author’s address: Andrzej Dzikowski, LLM DVM PhD, Department of Food Safety and Public Health Protection, Warsaw University of Life Sciences, Nowoursynowska 159, 02-787 Warsaw, Poland; e-mail: andrzej_dzikowski@sggw.edu.pl