

## What Veterinarians Should Know About Pet Cemeteries and Crematoriums

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In September 1997, bodies of nearly 40,000 animals were found in a mass grave on a dairy farm in upstate New York.[1] The owner of the property told investigators that he had allowed a local pet crematorium to dump the animals on his farm for the last 30 years, receiving in exchange \$2 per animal. The crematorium owner had been dumping the bodies of the animals on the farm to avoid the costs of cremation, and had given thousands of deceived pet owners falsely labeled ashes in the process. In January 1998, the crematorium owner was sentenced to 6 months in prison and ordered to pay a \$5,000 fine and \$25,000 to local animal shelters.[2] He was also given 5 years probation and barred from ever again operating a pet crematorium or cemetery.

This incident was not the first time that mass dumping of animal bodies had been discovered in New York. Just 6 years earlier, a pet cemetery and crematorium operator on Long Island had been prosecuted under federal law for dumping 250,000 animals in mass graves over a 6-year period.[3] Employees of the facility stated that when the facility opened, it had a combustion furnace that could handle only 8 animals per day. The facility, however, was receiving 50 animals per day for cremation, and to handle the overflow, the owners began dumping animals in trenches in a fenced-off back corner of the property. Although the crematorium owners eventually bought a larger furnace, they were still receiving 4 times as many animals per day as they could handle, and the dumping continued unnoticed until the owners bid exceptionally low on a contract with the county for animal cremation. The county, concerned that the bid was too low to allow the company to do the job properly, investigated, along with the FBI, and discovered the fraud. The owners were prosecuted under the federal mail fraud statutes.[4]

Such incidents are not confined to New York. In 1985, a jogger discovered a trench filled with hundreds of dog carcasses in northern New Jersey.[5] Many of the dogs that had ended up in the mass grave had been delivered to a crematorium for cremation. In 1996, it was discovered that a pet cemetery and crematorium operator in Baltimore, Maryland, had been cremating the wrong animals, dumping animals in mass graves, returning mislabeled ashes to pet owners, and failing to deliver grave markers to the owners of pets buried on the property.[6,7]

### Risks to Veterinarians

Fraud by pet cemeteries and crematoriums is especially disturbing to grieving pet owners, but should also be a cause for concern for veterinarians. Unlike the human funeral business, the pet disposal industry remains largely unregulated, yet pet cremation and burial in special pet cemeteries is quickly growing in popularity.[8,9]

Veterinarians are often the only source of information clients have when choosing a pet cemetery or crematorium. Not only do veterinarians have a humanitarian concern for the way cemeteries and crematoriums handle deceased pets, they also have an economic concern. By referring pet owners to crematoriums and cemeteries, veterinarians may be opening themselves up to legal and public relations liabilities.

Although state laws differ, as a general rule, professionals are not liable for malpractice for referring clients to providers of other professional services.[8] In *Reed v Bascon*, 530 N.E.2d 417, 421 (Ill, 1988), for instance, the court held that a referring physician could not be held liable for another physician's negligence unless the referring doctor had some control over the course of treatment by the negligent physician, acted in concert with the negligent doctor, or was negligent in referring the patient to the other physician. Similarly, in *Nisenholtz v Mount Sinai Hospital*, 483 N.Y.S.2d 568, 572 (Sup. Ct., 1984), the court held that mere referral did not result in liability if the referring physician did not take any part in the treatment.

Traditionally, this principle was applied only to physicians and attorneys, primarily because veterinarians were, for many years, not recognized under state medical malpractice statutes. However, courts have continued to extend professional negligence theories to veterinarians, and states have included veterinarians in their malpractice statutes. For instance, in *Price v Brown*, 680 A.2d 1149, 1152 (Pa, 1996), the court held that professional negligence concepts extend to veterinary medicine, and in *Scripps Memorial Hospital v Superior Court of San Diego County*, 44 Cal. Rptr. 2d 725, 727, n. 7 (Ct. App. Ca. 1995), the court noted that veterinarians were not added to the malpractice statute until 1982.

Thus, theoretically, veterinarians should fall under the general referral rule protecting professionals against liability for negligence arising from referrals. However, this rule may not always protect veterinarians when referring clients to pet cemeteries and crematoriums. This is because some courts have found physicians liable for referrals if they fail to exercise due care in making referrals (*Reed v Bascon*, 530 N.E.2d 417, 421 [Ill, 1988]).

In legal terms, "due care" is defined as the type of care and thought a reasonable person would use in making a decision. In the context of referring patients to another veterinarian or to a provider of outside services, due care refers to the type of care a reasonably prudent veterinarian would use when deciding to whom to refer patients. When professionals fail to exercise due care in referring patients, they open themselves up to liability for professional negligence.

In *Reed v Bascon*, for example, the court noted that if a referring physician had knowledge that another physician used outmoded procedures or was generally incompetent, the referring physician could be liable for malpractice for referring patients to that physician, on the basis of failure to use due care. For veterinarians, this may mean that if they have personal knowledge of improper practices by or have heard negative comments about a pet cemetery or crematorium and continue to send bodies of pets or refer clients there, they may be found liable for professional negligence on the basis of failure to exercise due care.

Under certain circumstances, veterinarians could also be held liable for referring clients to improperly run pet cemeteries and crematoriums under a vicarious liability theory of law. Vicarious liability means that one party can be held responsible for the acts of another party. For purposes of this discussion, this means that veterinarians could be held responsible for the acts of a pet cemetery or crematorium to which they referred clients.

Vicarious liability is usually found where there is an agency relationship, i.e., when one party agrees to act as an agent for a second party. Veterinarians who have business relationships with pet cemeteries or crematoriums may be considered to have agency relationships with them and, therefore, should be aware of the risks involved and strive to avoid them. However, a formal business relationship may not be necessary to establish vicarious liability. For example, the relationship could consist of an exclusive oral agreement with one facility whereby a veterinary practice owner promises to refer all clients seeking pet cremations or burials to that facility in return for provision of a freezer for the practice at no charge, special treatment for staff-owned pets, or, perhaps, a percentage of the profits. Because the veterinary practice was receiving a financial benefit or incentive to refer clients, a court might reason that an agency-type relationship existed between the parties.

Courts also may find a partnership relationship between a veterinary practice and a pet disposal facility. In *Impastato v Degirolamo*, 459 N.Y.S.2d 414 (Sup. Ct., 1983), the court characterized a partnership relationship as one in which individuals share profits and losses, contribute to the capital of the enterprise, have joint ownership in the business, and exhibit the intention to be partners. In most situations, a partnership relationship generally is not established when a person has no proprietary interest in a business except to share profits as compensation. Therefore, although it is unlikely that merely receiving some compensation from a pet disposal facility would establish a partnership relationship, a court still could find that the facts of the case, such as provision of land or equipment for the pet disposal facility or a longstanding financially beneficial relationship to the practice, would be sufficient to bring about liability. In addition, although partnership principles are generally the same from state to state, there may be slight variations, and veterinarians would be wise to seek legal counsel regarding the partnership principles in the state where they practice.

### **Other Legal Risks**

Clients who have been the victims of fraud by a pet cemetery or crematorium could potentially file suit against the referring veterinarians for intentional or negligent infliction of emotional distress. To prove a claim of intentional infliction of emotional distress, the plaintiff must show that the defendant intended to cause emotional distress to the plaintiff, the defendant's conduct was so extreme and outrageous as to go beyond the bounds of decency, the defendant's actions were the proximate cause of the plaintiff's mental anguish, and the mental anguish suffered by the plaintiff was so serious and of a nature no reasonable person could be expected to endure. To prove a claim of negligent infliction of emotional distress, however, plaintiffs need only show that they were bystanders to an accident or put in fear of physical harm to themselves and that the defendant's actions were the proximate cause of the mental anguish. In *Langford v Emergency Pet Clinic* 644 N.E.2d 1035, 1037 (Ohio Ct. App., 1994), for example, the plaintiff's dog died after unsuccessful attempts by the veterinarian to save it. The veterinarian then sent the pet to be buried at the local pet cemetery, where it was buried with several other dogs. The plaintiff, after finding out that the dog was not individually buried, brought suit against the veterinarian and the cemetery for intentional and negligent infliction of emotional distress on the basis of improper burial of her dog. The court, however, granted summary judgment for the veterinary clinic and the cemetery, finding that the claims could not stand in this case. The court found that the handling of the dog's remains was in accordance with the customary procedure, the plaintiff was neither a bystander to the burial nor in fear of physical harm to her person, and the plaintiff had sought no medical assistance for her grief.

On the basis of this case and the law of many jurisdictions, it appears that it would be difficult for plaintiffs to establish claims of intentional or negligent infliction of emotional distress against veterinarians for improper disposal of pets' bodies. Juries or judges may recognize improper burial or cremation as extreme and outrageous conduct that could cause a great deal of mental anguish on the part of pet owners. However, most courts would probably hold that although veterinarians should exercise due care in referring clients to pet disposal facilities and explain the various disposal options, a failure to do so would not amount to an intent to harm.

As with other claims for professional negligence, however, courts may hold differently if a veterinary practice had a financial relationship with the pet disposal facility to which it referred clients, because it would then appear that the veterinary practice had something to gain by sending clients to a particular facility. In addition, the damages from negative public relations or press coverage of a sensitive situation such as this pose a risk as big or bigger than a lawsuit for negligence. Even if veterinarians knew nothing about what had been occurring at the facility, upset clients may read about the facility in the local newspapers and elect to take their pets elsewhere and to tell others to stay away from the veterinary practice that recommended the facility.

Most importantly, even if a veterinarian is ultimately not found to be liable, defending against a lawsuit brought by a grieving client, even if the suit does not go to trial, can involve substantial time and monetary expense and negative publicity. Therefore, it is recommended that veterinarians take steps to discover whether the pet disposal facilities to which they refer clients are properly operated.

### **Locate and Read Your State's Law**

At least 6 states (California, New York, Virginia, Nevada, New Jersey, and Ohio) provide some type of statutory regulation of pet cemeteries or crematoriums. Although veterinarians are under no duty to enforce these statutes, they should nevertheless be aware of them. Knowledge of these regulations may be helpful when clients are interested in selecting facilities on their own. In addition, state regulations could be used by veterinarians as a reference point when making referrals. Lastly, veterinarians in those states that currently do not have any regulations could use these laws as a basis for encouraging their states to develop regulations.

Currently, New York's statute is the most comprehensive. In contrast to the regulations of other states, New York's begins with a "Declaration of Policy" that acknowledges "that the relationships the humans develop with other members of the animal kingdom that are taken into our homes and kept as pets are unique and special" (N.Y. Gen. Bus. Law § 750) and further acknowledges that "pet cemeteries have a duty to act in an ethical and lawful manner to prevent grieving pet owners from experiencing further emotional pain or financial manipulation." The statute goes on to say that its purpose is "to protect the well-being of our citizens, to promote the public welfare, to promote the health of the public and to prevent pet cemeteries and pet crematoriums from falling into disrepair and dilapidation and becoming a burden upon the community." The statute mandates that pet disposal facilities provide veterinarians and pet owners with disclosure forms that set forth the various methods of disposal, their costs, and the place where each disposal will be carried out. The statute also requires that this form be provided to owners before their pets' bodies leave the veterinarian's office. The client and the pet disposal facility each receive copies of this form, and the veterinary facility must retain a copy with its medical records for 3 years. This statute also gives the state the power to inspect pet disposal facilities.

Some state veterinary medical associations already are involved in educating members about the risks of improper disposal of pet's bodies. For example, after the disclosure of dumping of animal carcasses in mass graves in September 1997, the New York Veterinary Medical Society issued an alert to all of its members in northeastern New York state explaining the New York state law and the need for pet disposal disclaimer forms.

Nevada also has a fairly comprehensive statute regulating pet cemeteries and crematoriums. The statute focuses largely on pet cemeteries, requiring that cemeteries have at least 5 acres of property that is not subject to a lien or mortgage and that the owner has a trust fund established for the long term care and management of the cemetery (Nev. Rev. Stat. § 452.670). To operate a crematorium in Nevada, the operator must be a cemetery owner and must obtain a certificate of authority from the state (Nev. Rev. Stat. § 452.675). In addition, the statute provides for inspections by the state (Nev. Rev. Stat. § 452.735). The New Jersey statute provides for inspections (N.J. Stat. Ann. § 4:22A-11), requires a disclosure form (N.J. Stat. Ann. § 4:22A-4), and requires a 5-acre minimum for cemeteries (N.J. Stat. Ann. § 4:22A-7). Owners of animals buried in the cemetery are required to pay maintenance fees, and the statute stipulates that graves cannot contain more than 5 pets (N.J. Stat. Ann. § 4:22A-10). The New Jersey statute, however, covers only cemeteries.

The Virginia, California, and Ohio statutes are not as comprehensive as those of New York, Nevada, and New Jersey. All 3 only regulate cemeteries and require trust funds to maintain the property. Virginia allows for inspection

by pet owners (Va. Code Ann § 57-39.22). Ohio requires a minimum of 3 acres to establish a pet cemetery, but does not have a restriction on the number of pets per grave (Ohio Rev. Code Ann § 961.03).

### **Evaluate the Facilities**

All veterinarians or, perhaps, representatives of local veterinary medical associations should visit the pet disposal facilities to which they are referring clients and ask questions about the facility's business practices. Although such inquiries may seem invasive, veterinarians must keep in mind that the pet disposal industry is largely unregulated and even where it is regulated, enforcement is inconsistent. Inquiries from referring veterinarians help to shield veterinarians from liability and provide an important service for clients, who may not be aware of problems with the pet disposal industry. In addition, the veterinary profession, by asking questions of the pet disposal industry, may bring this industry to the public's attention and, therefore, serve as a catalyst for creation and enforcement of regulations.

Veterinarians should ask the following questions when visiting pet disposal facilities:

- What kinds of records does the facility keep? How long are the records retained?
- What type of system does the facility use to identify the body bags in which animals are received?
- How will the facility handle multiple transfers from veterinary clinics to prevent loss of an individual body's identification tag?
- Are the bodies provided with toe tags or identification collars so that they can be identified even if they become displaced from the bags in which they are transported?
- Where and how are bodies stored after receipt by the facility and before disposal?
- Does the facility have refrigeration and freezer capacity to accommodate the volume?
- What method is used to identify patients' individual ashes and store and transport them after cremation?
- If the facility provides for burials, what size plot is allocated for each animal?
- How many animals can be buried in a plot or grave?
- What is the daily capacity of crematorium furnaces?
- What is the breakdown between the number of communal cremations versus individual cremations?
- How does the facility ensure that ashes of individually cremated pets are only those of the pet being cremated?
- What is the largest sized body that can be cremated in the facility's furnaces?
- Can the facility handle large breed dogs or small farm animals?
- If communal cremations are provided, how many animals are cremated at one time?
- Are owners or veterinarians permitted to observe the cremation or burial?
- What is the standard turn-around time for receipt of a body from the veterinary practice to return of the ashes to the practice?
- What kind of packaging is used for the ashes and can owners open the containers and view the ashes?
- What type of fuel (fuel oil or natural gas) is used in the cremation?
- Do ashes contain chunks of bone or teeth or are they sifted to remove those fragments before they are returned to the owners?
- Has the facility been inspected by the state, and if so, when was the last inspection?
- Are there any fenced-off portions of land in the cemetery area?
- What number of pets are handled annually? Does the facility have access to sufficient land to sustain its growth for the next 5 to 20 years?
- Does the facility engage in any business other than pet disposal? For instance, does it burn medical waste, and if so, are the ashes from that process mixed with animal cremations?
- Do the furnaces meet the EPA requirements for the location?

### **Conclusion**

Veterinarians should be aware of and work to prevent fraud associated with pet disposal. Lobbying state legislatures to establish statutes regulating pet cemeteries and crematoriums is one way to begin this process. Working with the animal welfare community and the pet disposal industry to establish a model code of practice for all states to adopt may be even more helpful. Once statutes are in place, veterinarians should urge frequent state or county inspection of pet disposal facilities to ensure they meet standards. At the very least, veterinarians should take an active role in determining the quality of the pet cemeteries and crematoriums to which they refer their clients. In doing so, they can help protect their clients from unnecessary grief and themselves from liability.

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