

ADVICE NOTE 2

NEGLIGENCE

- 1) In veterinary practice, negligence may arise where:-
 - a) the veterinary surgeon owes a duty of care – the normal skill and judgement that would be expected of the average or reasonably competent veterinary surgeon. A veterinary surgeon is expected to exercise a reasonable degree of care and skill in his or her practice. A duty of care would be owed to all clients and patients and, on occasion, to third parties; and
 - b) there is a breach of that duty - a failure to maintain the standards expected of an average or reasonably competent veterinary surgeon; and
 - c) In considering the duty and alleged breach, various factors may be taken into account, for example:
 - i) the standards of the profession at that time;
 - ii) there may be more than one accepted approach to the clinical management;
 - iii) the veterinary surgeon's level of expertise;
 - iv) the veterinary surgeon is not necessarily expected to have the latest journal article on the topic; and the practice is not necessarily expected to have the latest equipment.
 - d) loss or damage was suffered and was caused by the breach of duty; and
 - e) the loss or damage was reasonably foreseeable.
- 2) The outcome of surgery or treatment is not certain and diagnosis is an imprecise art often based on the balancing of probabilities. Therefore, an unsuccessful outcome may not be because the veterinary surgeon has been negligent. In addition, some procedures are inherently risky; some procedures are riskier than others.
- 3) Negligence is not confined to things that have been done (or not done); advice (or a failure to advise) can be negligent. Financial loss may justify a claim in negligence as much as physical injury.
- 4) Claims for negligence may be resolved between the client and veterinary surgeon, sometimes with the involvement of the veterinary surgeon's professional indemnity insurers, for example, the Veterinary Defence Society. If not, the claim may be taken to the civil courts, where any facts in dispute are decided by the court on the 'balance of probabilities'. The civil courts will adjudicate on the claim of negligence and may award compensation or damages.
- 5) The RCVS has no jurisdiction to adjudicate on claims of negligence and no powers to award compensation or damages and most other professional bodies are in the same position.

- 6) If you think you may have a negligence claim against a veterinary surgeon in the civil courts, you are advised to seek legal advice from your solicitor.

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