NEGLIGENCE AND SERIOUS PROFESSIONAL MISCONDUCT

NEGLIGENCE

Negligence is a civil wrong which arises out of the breach of a duty of care owed by one party to another with resulting harm. It is remedied by an action for damages in the civil courts.

The law recognises that in some relationships where one of the parties is likely to have more knowledge or influence than the other, a duty of care will always arise, for example the relationship between doctor and patient, professional advisers and their clients etc. In more general terms we all owe a duty of care to anyone we could anticipate might be affected by our actions or in some cases our inaction. Hence ‘the categories of negligence are never closed’.

The law, however, does not require perfection, all harm is not necessarily actionable and the fact that course of treatment has not resulted in a cure does not mean that the veterinary surgeon was necessarily at fault. What the law does require is a reasonable standard of care. What is regarded as reasonable will be measured against the standard expected of any member of a particular trade or profession. A higher standard will, however, be expected of those with higher qualifications or additional training, for example RCVS recognised specialists.

It is possible to be negligent in words as well as deeds, for example by giving careless advice or providing an inaccurate certificate.

In order to establish negligence, it is necessary to prove on the balance of probabilities that a duty of care existed, that it was breached and that the damage suffered was the direct result of the defendant’s act or omission. Damage can be economic loss, physical injury or both.

The above is a very basic explanation of a complex area of law. It is therefore important if you are considering legal action, to seek the advice of a solicitor as to whether you have a viable case.

SERIOUS PROFESSIONAL MISCONDUCT

In The Veterinary Surgeons Act 1966 the Royal College, as the regulatory body for the veterinary profession, is given the responsibility for dealing with complaints against veterinary surgeons of ‘conduct disgraceful in any professional respect’. The regulatory bodies for other professions have similar statutory responsibilities for what is more often described as ‘serious professional misconduct’. Although these terms are not usually defined in the legislation, since the main sanction is to suspend or remove the right to practise, it follows that misconduct is regarded as a serious matter, in the same way as theft for example, would be likely to result in an employee losing their job.
Although originally misconduct was seen as a contravention of a professional code of ethics relating essentially to character and behaviour, and not to matters of clinical judgement, in response to a substantial increase in the level of public expectation, it has been more widely construed in recent years to include gross negligence. This emphasises the importance of Continuing Professional Development for all the professions.

The scope of both negligence and misconduct is widening and the distinction between the two is becoming increasingly blurred. One clear distinction however remains - the outcome - in that the result of a successful negligence action is an award of compensation for the wronged party, whereas a finding of misconduct is likely to lead to the individual’s right to practise being withdrawn in order to protect the public. Compensation would not be payable.

Further information may be found in the
RCVS Guide to Professional Conduct - Complaints and Disciplinary Matters.