

A note on negligence

- 1) In veterinary practice, negligence may arise where:
 - a) the veterinary surgeon (vet) or registered veterinary nurse (RVN) owes a duty of care – the normal skill and judgement that would be expected of the average or reasonably competent vet/RVN. A vet/RVN 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 vet/RVN, ie standards that fall short of what is expected; 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 vet's/RVN's level of expertise;
 - iv) the vet/RVN 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; and,
 - 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 always certain and diagnosis is 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 vet/RVN, sometimes with the involvement of the vet's/RVN'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) We have no jurisdiction to adjudicate on claims of negligence (unless it is so severe as to amount to serious professional misconduct) and no powers to award compensation or damages.

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

- 7) The test for negligence, ie falls short of the standard expected, is not the same as the test for serious professional misconduct, ie affecting fitness to practise, where the test to be applied is higher and is if the treatment falls far short of the standards expected.