

Microchip Scanning and the Veterinarian-Client-Patient Relationship



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It is well established in California that implanting a microchip in an animal is not considered the practice of veterinary medicine.¹ It is equally well established that California law does not require veterinarians in private practice to scan animals for microchips.² No one is suggesting that veterinarians should insert themselves into ownership disputes or that veterinarians have a duty to confirm that their clients are the rightful owners of their patients.³

However, there are two scenarios involving pet ownership and microchips that occur frequently in veterinary hospitals and raise questions regarding the veterinarian's duties and responsibilities under the California Veterinary Practice Act. Those scenarios occur 1) when a client admits to the veterinarian or staff that he or she is not the owner of the animal; and 2) when a veterinary hospital scans a new patient for a microchip for identification purposes and finds the client is not the registered owner.

Scenario No. 1: Client/Finder Admits Animal is a Stray

In scenario number one, the client/finder either immediately or following the examination admits that the animal is a stray. The questions raised by this scenario are whether the client/finder must report the stray to the local authorities, whether the veterinarian can treat the animal, whether a valid Veterinarian-Client-Patient Relationship ("VCPR") is formed, and whether the veterinarian has a duty to take steps to find the rightful owner by scanning for a microchip.

If the client/finder does not want to keep the stray, he or she should contact their local animal shelter. If the client/finder wants to keep the stray, it is important to determine whether there is a local ordinance regarding handling of stray animals. Although there is no specific California law regarding the duty of the finder of a stray animal to report to the authorities, there are many local ordinances that set forth specific steps that the finder must take.⁴ A prudent veterinarian should be familiar with the local ordinance and be prepared to counsel the client/finder regarding his or her responsibility under the ordinance. None of the local ordinances require a veterinarian (who is not a finder) to notify the authorities.

Under California law, the finder of a stray animal is an "involuntary" depositary and responsible for providing "necessary and prompt veterinary care."⁵ Consequently, the

client/finder has a duty to seek veterinary care for the stray. There is no provision under California law that prohibits a veterinarian from providing veterinary care to a stray brought in by a finder. In fact, the veterinarian might have an ethical duty to provide emergency care notwithstanding knowledge that the client/finder is not the rightful owner.⁶

California Code of Regulations, Title 16, section 2032.1(a) states, "except where the patient is a wild animal or its owner is unknown," it constitutes unprofessional conduct for a veterinarian to practice veterinary medicine on an animal without having first formed a VCPR. If the client/finder has informed the veterinarian that the owner of the animal is unknown, it appears that there is no requirement under this regulation for a VCPR. However, it is not recommended that veterinarians rely on this section of the regulation to protect themselves against allegations of violation of the regulation by the Veterinary Medical Board ("VMB"). The only circumstance where there is arguably no requirement for a previously formed VCPR would be in an emergency, where, for example, a passer-by finds an injured animal in the middle of the street and brings it into the local animal hospital. Otherwise, it is highly recommended that the veterinarian form the VCPR as set forth in section 2032.1(b) prior to practicing veterinary medicine on the animal.

Sections 2032.1(b)(1) and (2) provide the requirements for a VCPR. Section (b) refers to the "veterinarian," the "animal" and the "client." There is no definition of "client" and no mention of the "owner" of the animal. There is no requirement that the "client" in the VCPR be the "owner" of the animal and, consequently, no problem with a veterinarian developing a VCPR with the finder of a stray animal. The critical issue is whether the provisions of section 2032.1(b) have been followed and whether the client/finder has authorized treatment/provided informed consent and accepted financial responsibility for the care of the animal.

As mentioned, California law does not require a veterinarian in private practice to scan for a microchip in a stray.⁷ There is no common law duty that a veterinarian must determine the rightful owner of a stray prior to the provision of veterinary services. A California veterinarian can establish a VCPR with the finder of a stray. Despite the lack of a legal duty to determine ownership, a veterinarian who is uncomfortable providing services to a stray animal in a

non-emergency circumstance can always refuse service to the client/finder.⁸ The veterinarian's duty to be honest and fair and to avoid misrepresentation and deceit suggests that a veterinarian who suspects foul play or has information about the rightful owner must have a forthright discussion with the client/finder and recommend that he contact the animal's owner.⁹ The veterinarian should counsel the client/finder about trying to find the owner and about scanning for a microchip. However, in this circumstance, a veterinarian should not scan for the microchip without authorization from the client/finder. Frank discussions with the client/finder must be fully documented in the medical record. Finally, as discussed below, a veterinarian who has established a VCPR with the client/finder can not disclose confidential information to the rightful owner, but could disclose the information to the local animal control authority.¹⁰

Scenario No. 2: Veterinary Hospital Scans a New Patient for a Microchip/Client Is Not the Registered Owner

Many veterinary hospitals routinely scan new pets for microchips. If the hospital offers this service or performs it as a routine for new patients, the client should be informed. The hospital staff or veterinarian should have a straightforward discussion with the client regarding whether the client is aware of the presence of a microchip and whether the microchip is registered in their name. The client should be given the opportunity to explain why there may be a discrepancy between the information obtained from scanning the microchip and their ownership of the animal. All discussions regarding ownership must be documented in the medical record. If the microchip reading indicates that the client is not the owner of the animal, another discussion should occur and again be documented in the medical record. If the veterinarian is satisfied with the explanation given by the client for the discrepancy, there is no duty to take additional steps to find the rightful owner. If the veterinarian is concerned about the veracity of the client and is suspicious about the ownership of the animal, he or she can refuse to provide service to the client or can request additional documentation as proof of ownership.¹¹ A veterinarian who is suspicious regarding whether the client is the rightful owner should be especially careful before providing euthanasia or spay and neuter services in non-emergency situations in order to avoid possible civil liability.

Regardless of how the veterinarian chooses to proceed regarding the provision of veterinary services where the client's information does not coincide with the information from the scanned microchip, once the VCPR is established with this client, the veterinarian cannot disclose client information to the person identified by scanning the microchip. There is no duty to contact the rightful owner, and the veterinarian can not disclose the new client's information to the person identified by scanning the microchip or rightful owner, under the provisions of Business and Professions Code section 4857. If the veterinarian cannot convince the new client to find and contact the

rightful owner, the only recourse for the veterinarian is to contact the local animal control authority. Section 4857(d) specifically allows, "sharing of veterinary medical information between veterinarians and peace officers, humane society officers or animal control officers who are acting to protect the welfare of animals." It does not allow a veterinarian to share client information with third parties not identified in section 4857 such as rightful owners.

Summary

A major objective behind electronic identification of animals is to "aid in reuniting animals with their owners."¹² While veterinarians are in a position to assist in this effort, they must comply with the provisions of the California Veterinary Medicine Practice Act regarding confidentiality of medical records and the establishment of a VCPR. In order to avoid possible civil liability, veterinarians who are suspicious that the client is not the owner should decline to provide services and, in any event, should not provide euthanasia or spay and neuter services on a non-emergency basis.

1 Dennis, *To Scan or Not To Scan, That is The Question!* (May/June 2009) California Veterinarian.

2 Ibid.

3 Ibid.; *The Objectives and Key Elements Needed for Effective Electronic Identification of Companion Animals, Birds and Equids* (April 2010 revision) AVMA Policy <http://www.avma.org/issues/policy/electronic_identification.asp> (as of February 22, 2011).

4 See Los Angeles County Code section 10.20.020; Pomona Ordinance No. 4017, section 6-9; San Dimas Municipal Code section 6.04.060, La Verne Municipal Code section 6.20.040; Diamond Bar Ordinance No. 14, sections 6.24.010 and 6.24.020.

5 Civil Code sections 1845 and 1846.

6 *Principals of Veterinary Medical Ethics of the AVMA* (April 2008 revision) AVMA Policy, sections II(A) and (F) <<http://www.avma.org/issues/policy/ethics.asp>> (as of February 22, 2011); CVMA Code of Veterinary Ethics <<http://www.cvma.net/doc.asp?id=1401&pid=1255>> (as of February 22, 2011).

7 Dennis, loc. cit.

8 *Guidelines to Professional Behavior*, CVMA Code of Veterinary Ethics, paragraph 6 <<http://www.cvma.net/doc.asp?id=1401&pid=1255>> (as of February 22, 2011); *Principals of Veterinary Medical Ethics of the AVMA* (April 2008 revision) AVMA Policy, section II(E) <<http://www.avma.org/issues/policy/ethics.asp>> (as of February 22, 2011).

9 *Principals of Veterinary Medical Ethics of the AVMA* (April 2008 revision) AVMA Policy, section II(B) <<http://www.avma.org/issues/policy/ethics.asp>> (as of February 22, 2011).

10 Business and Professions Code section 4857.

11 *The Objectives and Key Elements Needed for Effective Electronic Identification of Companion Animals, Birds and Equids* (April 2010 revision) AVMA Policy <http://www.avma.org/issues/policy/electronic_identification.asp> (as of February 22, 2011).

12 *The Objectives and Key Elements Needed for Effective Electronic Identification of Companion Animals, Birds and Equids* (April 2010 revision) AVMA Policy <http://www.avma.org/issues/policy/electronic_identification.asp> (as of February 22, 2011).

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