

## Access to Veterinary Records When An Animal Is Surrendered To A Local Animal Shelter

By Megan Senatori, DeWitt, Ross & Stevens, s.c.

**Q** I am a veterinarian who recently received a request for veterinary records for a patient of mine (a cat) that was apparently surrendered to a local humane society. My client did not sign a release form allowing me to send the veterinary records to any third parties. I did not know that my client surrendered her cat. I am concerned about sending the records to the animal shelter without obtaining a signed release from my client. On the other hand, I am more concerned about not timely releasing the records because I am aware that the cat has serious medical issues. I am concerned that if I do not timely send the records to the animal shelter, it may jeopardize the cat's health. Can you help?

**A** This is a very good question and one that comes up fairly regularly. Unfortunately, the issue is not clearly addressed in the statute. However, the concern about timely releasing the records is a valid one because we are aware of situations in which an animal has died because the records were not timely released. There is also, however, a countervailing concern that the veterinarian could potentially face liability if the records are released to a third party when the records should not have been released.

As a starting point, veterinary records are confidential under Wis. Stat. § 453.075 ("Access To Health Care Records"). That statute states as follows:

**453.075 Access to health care records.** The owner of any animal patient of a veterinarian, or any other person who submits to the veterinarian a statement of written informed consent signed by the owner, may, upon request to the veterinarian:

- (1) Receive a copy of the animal patient's health care records upon payment of reasonable costs.
- (2) Have the animal patient's x-rays referred to another veterinarian upon payment of reasonable costs.

The answer to your question turns on who is the "owner" of the animal patient. The statute provides that the "owner" of the animal patient can request a copy of the veterinary records for the animal patient. The veterinarian does not need to obtain a signed release from the owner to send a copy of the veterinary records to the owner. On the other hand,

if a request for records is made by someone who is not the owner of the animal patient, the veterinarian may only send the records to the third party if the owner signs a "statement of written informed consent" authorizing the release of the records.

So, what does the statute mean by "owner"? Is the "owner" referred to in the statute the current "owner" of the animal or the old "owner" of the animal? Unfortunately, the answer is not clearly spelled out in the statute. It is our view, however, that it would be an absurd construction of the statute for the person or entity having custody and control (i.e., the "current owner") of the animal not to be entitled to receive a copy of the animal's veterinary records because, without the veterinary records, the current "owner" would not be able to provide adequate veterinary care for the animal. Further, when the old "owner" surrenders the animal to an animal shelter, there may be a practical difficulty getting the old "owner" to sign a release for the records. The animal's health should not be stuck in limbo in the interim.

We, therefore, believe that a reasonable reading of the statute when an animal is surrendered is that the current "owner" of an animal should be entitled to receive a copy of the veterinary records without the veterinarian obtaining a signed release from the old "owner." In the case of a surrender of the animal to a shelter, the animal shelter would typically become the new "owner" of the animal. In that event, it is our view that the animal shelter would have a right to receive a copy of the veterinary records and the veterinarian would not need to obtain a signed release from the old "owner" to do so. Due to the lack of clarity in the statute, releasing the records or not releasing them are both options with risk. However, the risk to the animal's health seems greater than the risk that the veterinarian will face liability for releasing records without consent.

As a best practice, we suggest that, when there is time, the veterinarian should try to verify with the original owner of the animal that the animal has, in fact, been surrendered to the animal shelter and it is okay to release the records. If the veterinarian cannot reach the original owner, we recommend that the veterinarian obtain from the animal shelter a copy of any paperwork signed by the original owner confirming that he or she surrendered the animal to the shelter. If



there is no such paperwork, the veterinarian should obtain a written statement from the animal shelter that the animal was surrendered and that the shelter is the current owner of the animal. We also suggest that the animal shelter modify its animal surrender forms to identify the name of the animal's veterinarian and to include an express statement that the owner surrendering the animal consents to the shelter receiving copies of all veterinary records relating to the animal. That is the easiest way of handling the predicament created by the unclear statute.

In an emergency situation, however, we recognize that there may not be time to obtain verification without jeopardizing the health of the animal. In that event, we recommend that the veterinarian carefully

document in the patient's records the steps that the veterinarian took before releasing the records to the animal shelter and why the veterinarian concluded that releasing the records was in the best interest of the animal.

Finally, the statute should be clarified to expressly address how veterinarians should handle access to veterinary records when the ownership of the animal changes and the veterinarian receives a request for the records. It would also be a good idea for the statute to also include a civil immunity provision that would protect any veterinarian who in good faith releases the records in the best interest of the animal's health.



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