



SVME Newsletter

Newsletter of the Society for Veterinary Medical Ethics

Volume 13 Issue Number 3

October 2007

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By Christine Ehlers, Iowa State University School of Veterinary Medicine, Class of 2009	

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President's Message

Dear SVME Members,

In discussions (usually self-provoked) involving ethics, I frequently hear friends, colleagues and students comment that "Ethics is just a matter of personal opinion" or that "Ethics is just too subjective for me". It is true that there may not always be a single *right* answer every time an ethical dilemma rears its head, but I think it is safe to say there are often many wrong answers. Responding to the criticism that ethics is a "soft" science merely consisting of personal opinion and gut feelings, renowned medical ethicist Edmund Pellegrino commented, "It is hard to see how a discipline that aims to make ethical decisions more orderly, systematic and rational could be deleterious or how leaving everything to feeling or sentiment could be preferable".

Freedom of speech is a proud foundation of American society but I do not believe that we should accept or condone haphazard, inconsistent, or indolent moral reasoning. Studies involving nurses and physicians have shown that there is a "meaningful relationship between measures of moral reasoning and ratings of clinical performance". Approaching ethical dilemmas in a rigorous, systematic, rational and consistent way is the best way to promote the greatest good for the greatest number while also promoting the bioethical principles of justice, honesty, fairness and faithfulness. This must be true for all medical professions and all aspects of life.

Our profession seems to be in the midst of searching for its "moral compass". Declining numbers of large animal veterinarians, increasing numbers of female veterinarians, economic realities and a society that is becoming more aware of animal welfare concerns has made the need for clear, concise, and consistent moral reasoning all the more important. Although I'm just like the next guy who enjoys a nice Regan vs. Singer debate, SVME members, our listserv and the annual plenary session serve as wonderful resources for addressing real world, real life, day-to-day issues that face our profession and the ethical dilemmas that unexpectedly crop up in our daily practices.

I have been and continue to be a member of many animal welfare, animal protection and animal rights organizations. Many seem to do a better job of generating heat than light and at times I have been disillusioned by our own profession's failure to proactively address contemporary ethical issues. That said, I continue to be impressed by the incredible depth and breadth of knowledge that SVME members demonstrate on our listserv and I am proud to be part of an organization that serves as a beacon and focal point for such ethical discussion and critique.

I am honored to have been elected to be SVME President and I hope to bring further attention to this valuable organization during my tenure.

Gary Block DVM, MS, DACVIM



This newsletter is sponsored in part by a generous educational grant from Hill's Pet Nutrition, Inc.

Treasurer's Report

Treasurer's Report, Sept. 15, 2007
John S. Wright DVM

Below is the treasurer's report presented at the SVME annual business meeting in Washington D.C. on July 15, 2007. It can be seen that our net balance has decreased by \$227.74 in the fiscal year, July, 2006 – July, 2007. You may note that a large part of expenses were for the Robert R. Shomer Award For Outstanding Achievements in Veterinary Medical Ethics, which was awarded to Bernard Rollin in 2006, Carl Osborne in 2005; and the Student Ethics Essay contest, awarded to Christine Ehlers, a student Iowa State University College of Veterinary Medicine in 2007. Your SVME Board believes these are worthwhile initiatives to follow and I hope you agree.

It is time for annual SVME membership dues renewal. Notices will be sent out soon. As you can see from the annual report below, membership dues are the primary source of income for SVME. Please respond early to the first dues notice. Your prompt response will avoid the time and expense required in sending a second dues notice.

Condensed Treasurer's Report , SVME Annual Business Meeting July 15, 2007, Washington, D.C. (not audited)

July 9, 2007; Savings account balance = \$11,479.17
 Checking account balance= \$ 1,569.45
 Certificate of Deposit = \$10,447.91*
 July 9, 2007 balance = \$23,496.53
 July 2, 2006 balance = \$23,724.27

Net change in total balance FY 06-FY 07 = - \$ (227.74)

* CD matures 4-24-08 at rate of 5.05%

SVME Income and Expense Summary Fiscal 2006 - 2007

SVME Income Summary Fiscal 2006-2007
 Dues income = 1,680.00
 Interest income from savings account in 2006=121.01
 Interest income from 12 month C.D. = 447.91

SVME Expense Summary Fiscal July 15, 2006 - July 15, 2007

Newsletter Copy & Postage	Misc. Office & Postage	Student Ethics Essay Award	SAVMA Meeting***	Robert R. Shomer Award	Total Expenditures Fiscal 06-07
548.65	64.88	500.00	250.00	1,000.00	2,363.53

*** Expenses shared with American Association of Human Animal Bond Veterinarians for booth at SAVMA meeting in Raleigh, NC

Respectfully submitted, John S. Wright, DVM

AVMA conference, Washington, DC July 2007

The AVMA conference in Washington, DC was the site of the annual SVME plenary session and business meeting. The educational component of the meeting included a number of provocative topics from speakers with a wide range of interests and expertise. James Serpell, PhD discussed cases of "ethical consternation" that he has addressed at The University of Pennsylvania School of Veterinary Medicine, Immediate Past President of the SVME, Dr. Anna Worth reviewed the recently published AAHA guidelines relating to referrals and the respective responsibilities of the general practitioner and the specialist. Spirited discussion and debate ensued with a presentation by veterinarians Gary Block and Tom Carpenter. Veterinary internist, Franklin McMillan reviewed the literature and presented real-life examples of how physicians and veterinarians assess the concept of "quality of life". Alice Villabos concluded the day's presentation with a look at medical decision making in an oncology practice and how one avoids overtreatment of companion animals.

Minutes of the Annual Meeting July 15, 2007 at AVMA conference, Washington, DC

Board Members Attending: Gary Block, Anna Worth, John Wright, Francois Martin

SVME Student Essay Waltham Award

The winner of this year's SVME/Waltham Award, Christine Ehlers, was given a certificate noting her achievement as well as the \$500 prize that comes with the award. WALTHAM has generously provided us with \$2500 for this year and subsequent year's contests which will allow for \$1000 to go to the author of the winning essay, plane fare to attend the SVME Plenary session and up to \$500 to publicize the award to Vet Schools. Information regarding this coming year's essay contest can be found on the SVME website.

Treasurer's report

John Wright provided an abbreviated summary of the current financial status of the SVME a copy of which is updated periodically in the SVME newsletter.

SAVMA

The Board voted to contribute up to \$500 to support a booth at this year's SAVMA convention and that this support may or may not be in conjunction with the

Human-Animal Bond organization. The board also voted to reimburse John Wright for any out of pocket costs associated with his travel to and from the SAVMA conference where he serves as SVME representative.

The board noted that "reasonable" reimbursement would be used to compensate Dr. Wright.

Newsletter

Additional sponsors for the SVME newsletter were discussed so that the newsletter could take on a more "upscale" appearance. The goal for the newsletter would be to obtain adequate sponsorship to allow for a glossy, color newsletter instead of black and white. CareCredit (Ms. Lemonde) was listed as a potential sponsor and will be contacted by Dr. Block. The board agreed that sponsorship would involve recognition and thanks in the newsletter but not explicit endorsement.

Website

Sylvie will be asked to update the newsletter to make sure that all current board member information and student essay contest information is complete. A suggestion was made to have a direct e-mail link to the SVME president and Secretary from the Website.

Topics for next year's plenary session

A few possible topics were suggested including how to address workplace conflicts between veterinarians and veterinary support staff.

Complimentary membership suggestion

The board agreed to provide 1 year free complementary membership to the SVME for any speaker at the SVME plenary session who is not currently a member. This was considered a simple, effective way to increase SVME membership and expose individuals to the SVME who might then go on to be long-term members. Discussion was also undertaken regarding conferring similar membership to organizations such as the AAHAB veterinarians and the AVMLA. The Board will take up this latter suggestion at its next scheduled board meeting.

The following Board members were elected to serve terms as per the SVME bylaws:

President: Gary Block DVM, MS, DACVIM
Immediate Past President: Anna Worth DVM
President Elect: Clayton MacKay DVM
Secretary: Diane Levitan VMD, DACVIM
Treasurer: John Wright DVM
Parliamentarian: Francois Martin MS, PhD
Historian: Kate Knutson DVM
Webmaster: Sylvie Cloutier M.Sc., Ph.D.

2008 Schomer Award

The Society for Veterinary Medical Ethics (SVME) is inviting nominations for its 2008 Schomer Award. The Schomer Award is given annually to an individual who has made significant contributions to the field of veterinary medical ethics. Selection criteria for the award include leadership, scholarship, good character and a history of inspiring students and/or members of the veterinary profession. Previous winners of this prestigious award include Dr. Carl Osborne and Dr. Bernard Rollin.

Information regarding nomination and selection criteria can be obtained from the SVME website:

www.vetmed.wsu.edu/org_svme/

SVME WALTHAM Student Essay Award

Through a generous grant from The WALTHAM Centre for Pet Nutrition, the SVME Student Essay Award now includes a \$1000 prize to the winning essay's author as well as up to \$1000 in travel expenses to attend the SVME annual meeting that takes place at the AVMA convention.

The topic this year will be:

The Veterinary Practitioner's Role in Animal Cloning

Cloning of food producing animals has been readily available for a number of years and recently, the banking of tissues of companion animals is being marketed to pet owners. How should a veterinary practitioner respond to client requests for tissue collection for the purpose of cloning? Include in your analysis an exploration of veterinarians' professional responsibilities to various parties. Focus your essay on the unique problems associated with the cloning of either food producing animals or those with companion animals. Consider how a veterinarian's role and responsibilities may differ based on the medical condition of the patient and timing of client request for tissue collection.

Deadline for essay submission is March 30th, 2008.

Instructions for essay submission can be found on the SVME website at

www.vetmed.wsu.edu/org_svme/

Student Essay Award Winner

A certificate of achievement as well a \$500 prize was awarded for this essay

Christine Ehlers,

Iowa State University College of Veterinary Medicine,
Class of 2009

Veterinarians as Mandatory Reporters

Ethical, Legal, and Practical Issues Surrounding the Required Reporting of Animal Abuse

Author, Christine Ehlers

Animal abuse is an ongoing and underreported crime in America. With the judicial system bogged down in the prosecution of violent and nonviolent crimes against humans there is little reporting, and even less prosecuting, of crimes against animals. Veterinarians have long been held to be the voice of the animals, but is it our responsibility to report their owners for what we perceive to be animal abuse? Should such reporting be mandatory of veterinarians as a profession?

This is a currently debated question and, on the surface, it is deeply personal. Animal abuse has become an explosive issue in modern culture. The nightly news often includes stories ranging from examples of puppy mills in squalid conditions to veal calves or layer hens in confinement. Through the actions of several animal-rights organizations, animal abuse has become an explosive issue. Because it is often linked with domestic abuse and antisocial tendencies, animal abuse may be defined as a public health issue. Veterinarians, although defined as public health professionals, have been largely excluded from reporting systems for child abuse, domestic violence, and animal abuse.¹ Veterinarians as individuals, as well as a whole, must address these issues so that we can continue to be a well-respected profession in the eyes of society and further the physical and mental health of the humans and animals that we serve. As a result, it is imperative that veterinarians become mandatory reporters of animal abuse.

Many feel that mandatory reporting will force veterinarians as a profession to proclaim whose rights we value higher: the right of the owner to privacy and confidentiality or the right of the animal to be protected from suffering. We often feel that we have to choose, and that this choice will either cause us to neglect the Veterinary Oath or lose clients. Some of the most common reasons that veterinarians feel that they should not report possible cases of animal abuse include the perception that veterinarians will not see abuse, the lack of adequate training/education, fear

¹ Arkow, P. (2004). The veterinarian's roles in preventing family violence: The experience of the human medical profession. *Protecting Children*, 19 (1), pp. 4-12.

of litigation, fear of negative economic impact, the perception that no action will be taken, and confidentiality concerns.²

It is important at the outset to define animal abuse. The term has a variable but generally wide scope and includes physical cruelty by assault, by deprivation of adequate food, water, transport, and shelter, and proper care during illness, pregnancy and parturition, and participation in sporting events at a level beyond the animal's capacity to perform. Mental or psychological abuse is less readily defined but in today's culture is usually taken to include undue confinement, demeaning performance as entertainment, and harassment by teasing.³ Therefore, animal abuse applies to neglect and failure to act as well as malicious actions against an animal. Animal abuse should be viewed in context with the prevailing attitudes of the society in which it occurs.⁴ Animals are viewed differently in different societies; in some cultures it is acceptable to slaughter and eat an animal that may be viewed as a protected companion or religious symbol in another culture.

When the term 'animal abuse' is used, many people first think of the tortured stray cat or the dog that cowers in the corner because of a beating. It is true that cats appear to be at greatest risk, dogs slightly less so, followed by a range of smaller pets and wild mammals.⁵ These traditionally companion animals are often seen by the small animal practitioner for their injuries. These injuries include (but are of course not limited to) poor physical condition, animal fighting injuries, bruises or lacerations, bone fractures, burns or scalds, or poisoning.⁶ While it is often believed that an animal that has been abused will not be brought in for veterinary treatment, it has been found that the utilization of veterinary services among abusers is consistent with norms in the non-abusive population.⁷ Thus, it is not uncommon that a veterinarian will be treating an abused pet for its injuries.

Other animals may be abused as well, however. Horses are at risk of abuse, usually in the form of neglect, although race horses are not uncommonly given drug compounds or worked beyond their physical capabilities resulting in harm to the animal. Farm animals such as cattle, poultry, and swine are not exempt from abuse, although it's often harder to notice because of production practices. In these situations, abuse is commonly more a factor of crowding, unacceptable ventilation, food, or water supply, and slaughter practices. These abuses may occur as a result of economic, herd-health, and high-production pressures such as confinement. It is the responsibility of the veterinarian to ensure that the care and husbandry of these animals takes place in such a manner that the animal does not suffer.

² Arkow, P. (2004). The veterinarian's roles in preventing family violence: The experience of the human medical profession. *Protecting Children*, 19 (1), pp. 4-12.

³ Blood, D.C. & V.P. Studdert. *Saunders Comprehensive Veterinary Dictionary, 2nd Edition*. WB Saunders: Edinburgh, 1999.

⁴ Ascione, F. R. (1993) Children who are Cruel to Animals: a review of research and implications for developmental psychopathology. *Anthrozoos* 6 (4) pp. 226-247.

⁵ Felthouse, A. and S. Kellert (1987) Psychosocial Aspects of Selecting Animal Species for Physical Abuse. *Journal of Forensic Sciences* 32 pp. 1713-1723.

⁶ Intervet UK (2003) Forging the link: How to recognize animal abuse in your practice. Walton, UK.

⁷ DeViney, E., Dickert, J., & Lockwood, R. (1983). The care of pets within child abusing families. *International Journal for the Study of Animal Problems* 4, pp. 321-329.

It is also the veterinarian's responsibility to ensure that animals being euthanized or slaughters are done so in a humane method. It is abusive to allow animals to suffer and to prolong their suffering by the application of inhumane killing methods. The American Veterinary Medical Association has published a list of acceptable and unacceptable methods of euthanasia for all species. It is important that veterinarians follow these recommendations and demand that they are followed by farmers and slaughterhouse employees.

The most important reason that veterinarians should be mandatory reporters of animal abuse is its link to physical violence against humans. This issue has many facets: those who abuse animals concurrent to abusing humans in their household, children who witness or are victims of abuse and abuse animals themselves, and the progression from abusing animals to violent crimes against humans that has been made by many serial killers and others with very violent temperaments. In each of these situations, the fact of animal abuse or neglect is indicative of disordered relationships in which there may be other victims. In one study in Utah, 71% of battered women with pets reported that their male partner had threatened to hurt or kill and/or had actually hurt or killed one or more of their pets. Actual harm or killing of animals was reported by 57% of women with pets and included acts of neglect but more often acts of violence.⁸ Those who torture, act out violence, or neglect animals are likely to do the same to partners, children, and elderly parents. For some this is willful and pleasurable, for the majority it has to do with poor impulse control, mental health issues, ignorance, or inadequate coping strategies.⁹

Because of this, veterinarians are in an ideal position to be the first line of help for people who are victims of abuse. Most of the worries that veterinary practitioners have regarding economic loss and litigation can be allayed by the experience of physicians and the mandatory reporting of child abuse. Because they are legally as well as ethically bound to report any suspected abuse cases, physicians have resolved the conflict between confidentiality and protecting the child. Veterinarians can accomplish the same resolution of the conflict by pushing for national mandatory reporting laws such as are already on the books in ten states.

Of course the passage of any animal treatment or abuse laws brings up the treacherous issue of animals as property. Legally, animals are the property of the human that owns them. At the law's most basic premise, they are treated just as a table, a chair, or a stereo can be treated...they can be broken, sold, or replaced at the owner's whim. However, we know that there are laws prohibiting cruelty and neglect.¹⁰ Yet animals are traditionally seen in the courts as worth only the value that the animal would be if sold. For this reason, a winning racehorse could be worth millions with the proper genetics and training, cattle and swine are worth what they would bring at a livestock auction, and companion animals are worth what they're worth from a breeder

⁸ Ascione, F.R. (1998) Battered women's reports of their Partners' and Their Children's' Cruelty to Animals. *Journal of Emotional Abuse* 1, 119-133.

⁹ Conboy-Hill, Suzanne. Animal Abuse and Interpersonal Violence. The Companion Animal Behaviour Therapy Study Group. April 2000. 25 March 2007.

<<http://www.cabts.org/Resources/animalabuse.pdf>>

¹⁰ Sunstein, C.R. & Nussbaum M.C. Eds. *Animal Rights: Current Debates and New Directions*. Oxford University Press: Oxford, 2004. p. 11.

(therefore "mutt" dogs and cats are often worth little or nothing). This detachment is changing however. Since the success of some court cases such as *Johnson v. Douglas* in which the plaintiffs received compensation for the emotional distress for having seen their dog hit by a speeding car, the prevailing attitude has been changing toward the value of companion animals.¹¹ Soon dogs and cats will be seen as individual entities, perhaps similar to children in the eyes of the law, because they have the ability to think and behave on their own, yet are dependent upon their human guardian.¹² As a result, the law will grant more monetary awards to plaintiffs alleging emotional pain and suffering for the loss of their animal.

So what will this mean to the veterinary practitioner concerned about reporting animal abuse? It is possible that if a veterinarian were to not report perceived abuse, he or she may be investigated and prosecuted for animal cruelty- for neglecting the needs of the animal. Also, it is possible that a pet owner who is investigated for animal abuse and found to be innocent of that crime may sue the veterinarian for the emotional burden sustained by the investigation. Because of these concerns, veterinarians are confused. Should they report all possible cases of abuse to be sure they aren't missing anything, or should they only report cases they are absolutely certain about?. What is needed is not only mandatory reporting legislation, but also an accompanying bill waiving veterinarians of all liability for reports that they perceived as abuse but were determined not to be. This would free veterinarians to follow their ethical principles and medical training in deciding which cases merit reporting.

The American Veterinary Medical Association (AVMA) takes a stance upon the reporting of animal abuse in its Principles of Veterinary Medical Ethics (PVME),¹³ though rather obliquely. Section II-A of the PVME advises that veterinarians should first consider the needs of the patient: to relieve disease, suffering, or disability while minimizing pain or fear. To that end, it is vital that the veterinarian look out for the needs of the animal. If the animal is being abused, it is the veterinarian's responsibility to be its advocate and report the situation to the proper authorities. Section II-L of the PVME states that veterinarians and their associates should not reveal the confidences of their patients and clients unless required to by law or unless it becomes necessary to protect the health and welfare of other individuals or animals. Of note, it is currently seen in most jurisdictions as the professional opinion of the veterinarian as to the health and welfare of others in the animal's environment. However, if the decision was taken out of the veterinarian's hands, and required by law, then there would be little ethical dilemma.

In order to have an effective mandatory reporting system in place for veterinarians, several changes need to be made in the education of veterinarians and the infrastructure for reporting.

¹¹ Waisman, S.S., Wagman, B. A., and Frasch, P.D. *Animal Law: Cases and Materials*. Carolina Academic Press: Durham, 2004. p. 125.

¹² Sunstein, C.R. & Nussbaum M.C. Eds. *Animal Rights: Current Debates and New Directions*. Oxford University Press: Oxford, 2004. p. 11.

¹³ Principles of Veterinary Medical Ethics of the American Veterinary Medical Association (AVMA). Approved July 1999, revised November 2003. 25 March 2007.

<<http://www.avma.org/issues/policy/ethics.asp>>

There needs to be education in the veterinary schools and in continuing education meetings so that veterinarians know what signs to look for to tell if an animal or even its owner may be the victim of abuse. There must be a specific site or location for the practitioner to contact to report abuse. Currently, each area has a different reporting site: the local humane society, sheriff's or police department, SPCA, etc. If there were a specific office, perhaps at the state level, to which all allegations were directed, there would be less confusion in the reporting process. Finally, it is important to find a way for veterinarians to be in contact with each other regarding suspected abuse cases. Animal abusers are notorious for going to several different animal hospitals in their area so that the doctors aren't as suspicious of frequent injuries. If there were a way for veterinarians to dialogue regarding their concerns, some of these animal abusers may be identified and reported.

It is important to dispel the fears that many veterinarians have voiced regarding the loss of clients, the failure of clients to bring in abused animals, the ineffectiveness of the investigative process, and the break of confidentiality. When the human medical profession became mandatory reporters of child abuse, pediatricians had many of the same fears.¹⁴ However, it was found that these fears were very rarely realized. Instead, the new role of physicians proved them to be advocates of those in their care and put child abuse in the forefront of American interest. It is likely that the same will occur in veterinary medicine and that veterinarians will join the other health professionals in ending violence.

It is vital to the safety of the public, the veterinary profession, and the animals in our care that veterinarians become mandatory reporters of animal abuse. Because veterinarians are frequently the best qualified to determine if an animal is suffering unnecessary and excessive pain or if an injury or death was unjustifiable, because veterinary confidences may be revealed if the veterinarian is required to do so by law or if the health or welfare of others is endangered, and because veterinarians are largely given full immunity from civil or criminal liability for reporting suspected abuse to appropriate authorities in good faith, veterinary involvement is indicated.¹⁵ Becoming involved

¹⁴ Arkow, P. (2004). The veterinarian's roles in preventing family violence: The experience of the human medical profession. *Protecting Children*, 19 (1), pp. 4-12.

Phillips, T. (1994). Cruelty: To report or not to report? *Large Animal Veterinarian*, 49 (4), p. 34

will remove animals from unhealthy and dangerous situations, promote public health by exposing domestic abuse, and help veterinary practitioners to know that they are helping to promote healthy relationships between humans and animals. In order to have an effective change in the reporting policies, we must pass legislation mandating the reporting of animal abuse as well as protective legislation for those veterinarians who make reports. We must also be educated so that we feel confident knowing the signs of abuse and the appropriate steps to take when we suspect a case of animal abuse. As a profession, veterinarians are very highly respected by the public and are seen as the compassionate protectors of animals. It is up to us to take the steps necessary to maintain this status, and to continue to promote it in our changing society.

OPINIONS

**The New York Times Magazine Excerpt:
The Way We Live Now: 11-28-99**

The Ethicist By RANDY COHEN

Randy Cohen author of **The Ethicist** column on whether a cat owner should pay a veterinarian twice for a spaying procedure that did not work first time:

November 28, 1999: How much is a cat worth? My affectionate Manx needs a procedure that will cost a few hundred dollars. My instinct, of course, is to pay for whatever she needs, but I can't help thinking it's wrong. Wouldn't the cash be better spent on sick humans? *Jennifer Miller, Boston*

If you pose the question that way -- cat care or human care? -- most people (though not all, and in any case, very few cats) would say the answer is easy. But this is a false equivalency. There's no reason, after all, that your veterinary bill should reduce your donations to help sick people. It could just as easily come from your vacation fund. It would be troubling if you ignored the people around you in order to treat your cat, but not if you merely sacrificed a few days of Disneyfication.

It might help to think of the cat as a recreational device. Spending money on it is no more profligate than purchasing a giant-screen TV or theater tickets or dinner at a fancy restaurant or, well, name your own sybaritic discretionary spending.

NEWS FLASHES

California courts rule that a class action lawsuit could not proceed for pet owners, whose pets were allegedly harmed by greenies, making case law.

From the American Veterinary Medical Law Association web site:

CASE LAW: CERTIFICATION OF CLASS ACTION DENIED IN CASE AGAINST HARMFUL GREENIES

Class action certification was examined in a recent pet food case. In **Gartin v. S&M Nutec, LLC**, 2007 U.S. Dist. LEXIS 38050 (U.S.D.C., C.Dist. CA., 4/4/07), the plaintiff consumer sued a manufacturer of dog treats, alleging negligence, fraud, violation of the California Consumer Legal Remedies Act (CLRA)¹ and various statutory violations under California's Unfair Competition Law (UCL). Pursuant to Federal Rules of Civil Procedure (Rule 23), she moved for class certification, which is the issue affected by this decision.

Plaintiff claimed that the dog treat Greenies harmed her dog because they were extremely hard and difficult for dogs to chew them into small enough pieces to safely swallow and digest. She alleged that certain ingredients swelled when they came into contact with saliva and stomach acid and could cause esophageal and intestinal blockages. The suit was brought as a class action on behalf of all consumers who had purchased the dog treats based on the theory that the company had failed to disclose certain dangers associated with the treats.

Under the Federal Rules of Civil Procedure (Rule 23), a class member may sue as a representative party on behalf of all other class members if the class is (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. In examining these elements, it is the plaintiff's burden to establish each element is satisfied.

Courts examining class action suitability look at "typicality," which is most often found where the class representative's interests are comparable to those of the absent class members. The class representatives' claims need not be identical to those of absent class members, the class representatives must possess the same interest and suffer the same injury as the class members.

"Commonality" is another element in the analysis. The court must find that questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy..

Where significant elements of a claim or defense require individualized proof from each class member, class certification is inappropriate. The litigation includes a fraud claim which in this instance is viewed as an omission rather than an affirmative misrepresentation. Proof of such omissions is exceedingly speculative and **the court found that class**

action lawsuits are not a proper means of litigating the injuries suffered by the individual class members. Similarly for the negligence claim, the court found that the case would require analysis of many individual issues, such as each dog's medical history and whether the class members properly used Greenies.

The class action was also inappropriate on a conflict-of-laws basis. Plaintiff proposed a nationwide class, apparently suggesting that California law be applied to all plaintiffs. However, in order to avoid due process problems, complex choice of law issues with regard to every class members would have to be resolved. Variances in state law may overwhelm common issues of fact and destroy predominance. Damages calculations in product liability actions would have to be adjudicated on a state-by-state basis.

The District Court determined that the consumer's unique claims sought different relief than that likely to be sought by many class members. Since individual factual and legal issues were likely to predominate each class member's claims. In addition, the defendant company's affirmative defenses of contributory negligence, mitigation of damages and the statute of limitations required an individualized determination for each putative class member because each class member's knowledge and conduct would need to be examined. **Accordingly the class format was not superior to individual litigation and the motion to classify the case as a class action was denied.**

FDA CAUTIONS CONSUMERS ABOUT CHICKEN JERKY PRODUCTS FOR DOGS

September 26, 2007

The Food and Drug Administration is cautioning consumers of a potential association between development of illness in dogs and the consumption of chicken jerky products also described as chicken tenders, strips or treats. FDA has received more than 70 complaints involving more than 95 dogs that experienced illness that their owners associated with consumption of chicken jerky products.

To date, FDA has not been able to determine a definitive cause for the reported illnesses. FDA has conducted extensive chemical and microbial testing but has not identified any contaminant.

Many of the illnesses reported may be the result of causes other than eating chicken jerky.

FDA has also received preliminary information from Banfield, The Pet Hospital which suggests an association between exposure to the chicken jerky products and signs of gastrointestinal illness (vomiting, diarrhea and bloody diarrhea).

Dogs that have become ill, typically show the following signs: decreased food consumption, although some may continue to consume the treats to the exclusion of other foods; decreased activity or lethargy; vomiting; diarrhea, sometimes with blood; and increased water consumption and/or increased urination. Some or all of these signs may be present in any individual. Blood tests may indicate kidney failure (increased urea nitrogen and creatinine). Urine tests may indicate Fanconi syndrome (increased glucose).

Although most dogs appear to recover, some reports to the FDA have involved dogs that have died. FDA is advising consumers who choose to feed their dogs chicken jerky products to watch the dogs closely for any signs of decreased appetite, decreased activity, increased water consumption, increased urination, vomiting and/or diarrhea; and, if the dog shows any of these signs, to discontinue feeding the chicken jerky product. The signs of illness may occur within hours to days of feeding the

product. Owners should consult their veterinarian if signs are severe or persist for more than 24 hours. Chicken treat products should not be substituted for a balanced diet and are intended to be used occasionally in small quantities.

The FDA continues to actively investigate the problem. Consumers who wish to report animal illness, please see <http://www.fda.gov/opacom/backgrounders/complain.html> for contact information on the FDA complaint coordinator in their state.



From RD Rosen, H Prichett, R Battles: **bad dog**. Workman publishing, NY 2005

Pet Insurance innovation!
Injury coverage for your dog or cat while they're riding in the car.

"Finally, a car insurer that gets the role of pets in our lives". Progressive has added a \$500 [Pet Injury Protection](#) endorsement to all its auto insurance policies where the company will pay \$500 towards vet bills from a car accident.

But why was this needed anyway? Wouldn't a pet be covered anyway if it is in an insured car? Surprisingly, not necessarily. If someone hits your car and injures your dog or cat, the vet bills are covered under their policy under their property damage coverage (pets being property under the law) but if you have an accident and there's no other car involved or the other driver doesn't have insurance, your pet's injuries just aren't covered - up until now that is." *From Progressive insurance website.*

SVME

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