

## **A General Overview of New York State Law Governing Recordkeeping By Veterinarians for Animal Care and Frequently Asked Questions for the Veterinarian**

### **A. MAINTAINING ANIMAL PATIENT CARE RECORDS**

#### **What information is a veterinarian required to keep regarding treatment and evaluation of an animal?**

The Veterinary Medicine and Veterinary Technology Practice Guidelines (the “Practice Guidelines”) developed by the New York State Board for Veterinary Medicine and the State Education Department offer detailed criteria as to what constitutes “adequate” recordkeeping under New York Law. (1)

The Practice Guidelines stress that legible individual records need to be kept for each animal for all services provided to that animal (2), including assessments, vaccinations, treatments, and prescriptions. To facilitate legible recordkeeping, New York State Law permits medical records to be kept in written or electronic format. Regardless of the format, the individual providing the service must initial and/or validate the record being made.

Adequate medical records should include all clinical information pertaining to the animal, including sufficient information to justify the diagnosis and treatment and should include, but not be limited to, the following enumerated information:

- (1) Client identification (name, address, phone numbers);
- (2) Patient identification (species, breed, age, gender, reproductive status, colors and distinguishing markings, tattoo, microchip, etc.);
- (3) Patient history (past and recent history, current illness and chief complaint), which should include the dates of visits;
- (4) Results of physical examinations including, but not limited to, weight, temperatures (when possible), pulse rate, respiratory rate, mental status, conformation, hydration status, and complete systems review (as appropriate to the circumstances);
- (5) Results of laboratory, imaging, and any other diagnostics performed as well as consulting specialist’s reports;  
-Original radiographs should be retained by the facility providing the service and should also be marked to include the owner’s name, animal information, veterinary information, date radiograph taken and any other identifying information.
- (6) Assessment, differential or definitive diagnosis;
- (7) Recommended treatment plan, including diagnostic recommendations, surgical procedures, any medical alternative, or other therapy discussed;
- (8) Written documentation of the owner’s informed consent, when appropriate, for the treatment including acknowledgement of risk;

(1) A full copy of the Practice Guidelines can be found at <http://www.op.nysed.gov/prof/vetmed/vetmedpg.pdf>.

(2) In a food animal or large colony practice where individual records might not be maintained, the Practice Guidelines require sufficient written information be kept so that another veterinarian can continue veterinary services in a logical and professional manner.

(9) Treatments performed and therapy administered (including names, dosages, routes of administration of all drugs including anesthetics);

-Daily treatment records, anesthesia logs, and surgical reports are all considered part of a patient's medical record.

(10) Results of treatments performed, when available;

-In the case of hospitalized patients, daily narratives of the patient's condition, assessment, changes in therapy and date of discharge.

(11) Recommendations for outpatient care, follow up visits, postoperative instructions;

(12) All owner communications, either in person, via telephone or email;

(13) Results of necropsies performed; and

(14) All other pertinent veterinary information. (3)

(3) *The Practice Guidelines offer a comprehensive supplement to New York Law providing enumerated criteria for what constitutes an adequate medical record of an animal patient.*

### **Are there special requirements for medical records to be retained by an emergency clinic?**

Yes. At a minimum, emergency clinic records should contain a copy of the following:

(1) Physical examination findings;

(2) Dosages and time of administration of medications;

(3) Copies of diagnostic data or procedures;

(4) All radiographs, or copies of radiographs;

-The facility should obtain a signed-release for the transfer of any radiograph.

(5) Surgical summary;

(6) Tentative diagnosis and prognosis if known; and

(7) Any follow-up instructions.

The owner should also be provided with a copy of the medical record upon release of the animal.

### **What form must animal medical records be retained in?**

The Practice Guidelines state that an animal's medical records may be either written or electronic (computer generated). Regardless of the form of the records, it is important that all medical record entries are signed, initialed, or otherwise validated by the individual making the entry.

## **B. RETENTION OF MEDICAL RECORDS**

### **Is there a length of time a veterinarian is required to maintain copies of an animal's medical records?**

Yes. Animal medical records must be maintained for a minimum of three (3) years, from the date the animal was last seen by the veterinarian. (4) Failure to "maintain adequate records of visits, diagnoses and prescribed treatments" for at least three (3) years is considered unprofessional conduct and could subject the veterinarian to disciplinary action and potential fines. (5)

(4) *The Practice Guidelines clarify that the three (3) year period begins to run from the date of the animal's last visit with the veterinarian.*

(5) *Rules of the New York Board of Regents ("Regents Rules"), Part 29.6(a)(3).*

## **Are there additional requirements for recordkeeping when the animal has been administered a controlled substance regulated by the Federal Drug Enforcement Administration (“DEA”)?**

Yes. Separate records of controlled drugs used to treat an animal must be maintained for a minimum of two (2) years (6), in accordance with DEA regulations (7). A registered veterinarian is required to keep records of controlled substances that are dispensed to the patient. Specifically, the DEA Practitioner’s Manual requires, a registered practitioner “to keep records of controlled substances that are dispensed to the patient, other than by prescribing or administering, in the lawful course of professional practice. A registered practitioner is not required to keep records of controlled substances that are prescribed in the lawful course of professional practice, unless such substances are prescribed in the course of maintenance or detoxification treatment. A registered practitioner is not required to keep records of controlled substances that are administered in the lawful course of professional practice unless the practitioner regularly engages in the dispensing or administering of controlled substances and charges patients, either separately or together with charges for other professional services, for substances so dispensed or administered.” (8)

Additionally, the veterinarian must maintain an inventory of the controlled substances maintained on the premises, which should include the following information:

- (1) Whether the inventory was taken at the beginning or close of business;
- (2) Names of controlled substances;
- (3) Each finished form of the substances (e.g., 100 milligram tablet);
- (4) The number of dosage units of each finished form in the commercial container (e.g., 100 tablet bottle);
- (5) The number of commercial containers of each finished form (e.g., four 100 tablet bottles); and
- (6) Disposition of the controlled substances.

A veterinarian must also keep records of any controlled substances that are transferred or disposed of.

These records should be kept separate and in addition to the medical records maintained for the animal. Compliance with DEA controlled substance recordkeeping rules does not alleviate the obligation of the veterinary to keep records of all drugs, administered, prescribed and dispensed to the animal in accordance with New York Law.

It is important to note, that only veterinarians registered with the DEA or veterinarians employed by DEA registered veterinarians may prescribe, dispense, and administer controlled substances. It is important to consult with the individual rules of the DEA when dispensing such medications to animal patients.

(6) A full copy of the United States Department of Justice Drug Enforcement Practitioner’s Manual (the “DEA Practitioner’s Manual”) is available at [http://www.deadiversion.usdoj.gov/pubs/manuals/pract/pract\\_manual012508.pdf](http://www.deadiversion.usdoj.gov/pubs/manuals/pract/pract_manual012508.pdf).

(7) It shall be noted that the Practice Guidelines ascribe a five (5) year recordkeeping requirement for use of controlled substances on the animal.

(8) The DEA Practitioner’s Manual ascribes the following definitions to the pertinent terms as follows: Administer: “The direct application of a controlled substance to the body of a patient or research subject by 1) a practitioner or (in his presence) by his authorized agent, or 2) the patient or research subject at the direction and in the presence of the practitioner, whether such application is by injection, inhalation, ingestion, or any other means;” Dispense: “To deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling, or compounding necessary to prepare the substance for such delivery;” Prescription: “An order for medication which is dispensed to or for an ultimate user but does not include an order for medication which is dispensed for immediate administration to the ultimate user (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription).”

## **C. DISCLOSURE OF ANIMAL MEDICAL RECORDS**

### **Who may an animal's medical records be released to?**

Medical records must be released to the owner upon written request. A response to a request for records by the owner must be made within a reasonable time, but may include a reasonable charge for the production of the animal's medical records.

No disclosure of an animal's medical records may be made to any third-party, absent consent of the owner. The consent of the owner is required, even when the medical records are to be provided to another veterinarian for continued care of the animal. It is also important to document the consent to disclosure by the owner, to protect the veterinarian from any professional misconduct liability.

### **Are there exceptions to the general rule of confidentiality of animal medical records?**

Yes. Ordinarily, veterinarians may not produce the medical records or vaccination information for an animal without the consent of the owner, except in certain limited circumstances. Disclosure is authorized to be made to law enforcement officers, animal welfare agencies and certain other enumerated persons: (1) in cases of suspected neglect or abuse of the animal; and (2) where disclosure is necessary to protect the health of the animal or a person (9). New York law also requires a veterinarian, upon request, to provide any public health official with the certificate of rabies immunization in the case of possible rabies exposure to or by the animal under the veterinarian's care. (10)

Such disclosure, without consent, must be made reasonably and in good faith. A veterinarian is determined to be acting in good faith when "he or she reasonably believes that his or her actions are necessary to protect the health and welfare of the companion animal or public." Thus, a veterinarian will be protected from liability even where the suspicion was unfounded as long as the disclosure was reasonable and made in good faith.

## **D. UNPAID MEDICAL BILLS AND MEDICAL RECORDS**

### **May a veterinarian withhold copies of an animal's medical records when there are unpaid medical bills?**

No. New York Law requires disclosure of an animal's medical records upon written request of the owner. While a veterinarian may charge a fee for production of the requested medical records, the veterinarian may not condition disclosure of the animal's medical records on payment for services.

## **E. REPERCUSSIONS FOR POOR RECORDKEEPING AND IMPROPER DISCLOSURE OF ANIMAL MEDICAL RECORDS.**

### **What pitfalls are associated with inadequate recordkeeping of animal medical records?**

Failing to maintain adequate records of visits, diagnoses and prescribed treatments for a period of at least three (3) years constitutes unprofessional conduct of a veterinarian (11), exposing the veterinarian to potential penalties (12). Potential penalties for professional misconduct include the following:

(1) Censure and reprimand;

(2) Suspension of veterinarian;

-Wholly, for a fixed period of time;

-Partially, until the veterinarian successfully completes a course of retraining in the area to which the suspension applies; or

-Wholly, until the veterinarian successfully completes a course of therapy or treatment prescribed by the regents.

(3) Revocation of license;

(9) NY Educ. § 6714.

(10) NY Pub Health § 2141(1).

(11) Regents Rules, Part 29.6(a)(3).

(12) NY Educ. § 6709(9).

- (4) Annulment of license or registration;
- (5) Limitation on registration or issuance of any further license;
- (6) A fine not to exceed Ten Thousand Dollars (\$10,000), upon each specification of charges of which the veterinarian is determined to be guilty;
- (7) A requirement that a veterinarian pursue a course of education or training; and
- (8) A requirement that a veterinarian perform up to one hundred (100) hours of public service, in a manner and at a time and place as directed by the Veterinary Medicine Board. (13)

**May a veterinarian face penalties for disclosure of an animal’s medical records, without the owner’s prior consent?**

Yes. “Revealing of personally identifiable facts, data or information obtained in a professional capacity without the prior consent of the patient or client, except as authorized or required by law (14)” constitutes unprofessional conduct, which is punishable as misconduct in accordance with the penalties provided for in Education Law § 6511 (set forth above).

However, New York State Law shields veterinarians, who disclose an animal’s medical records in good faith and in accordance with the enumerated public and animal health and welfare exceptions from liability in certain instances. New York Education Law expressly provides “[a] veterinarian who reasonably and in good faith reports or discloses records in accordance with . . . [§6714] shall be immune from liability in the form of damages in any civil or criminal proceeding on account of such reporting or disclosure.” (15)

(13) NY Educ. § 6511.

(14) NY Educ. § 6530(23).

(15) NY Educ. § 6714(4).

