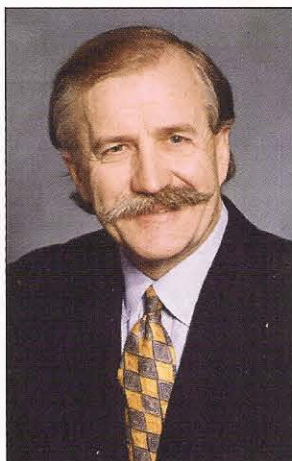


veterinary malpractice



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IT'S 6 A.M. SATURDAY. YOU GO TO THE BARN TO FEED AND NOTICE THE 3-YEAR-old colt you are preparing for the futurities is slightly off in the front. Since he doesn't seem to work his way out of the lameness you call the local veterinarian. He comes out and is unable to determine the cause of the lameness so he suggests doing some nerve blocks. You consent to the testing and "Doc" injects the leg. Your futurity prospect has an immediate allergic reaction to the drug and his leg swells to twice the normal size. Although the colt doesn't appear to be in any pain or distress, "Doc" injects him with another drug to counteract the effects of the first drug. Within seconds your colt begins to paw the ground and shake uncontrollably. He lays down, thrashes for a few more seconds and then everything is still. Although no autopsy was performed, it is determined by "Doc" that the horse probably died from a heart attack.

After thinking about it for several weeks, you decide to consult with an attorney. You believe that the veterinarian committed malpractice and feel that you are entitled to compensation for your loss. But in order to recover damages for veterinary malpractice, several factors must be proven.

- First, it must be shown that the veterinarian owed a duty of care toward the horse. In other words, the veterinarian accepted responsibility to treat and care for your horse.

- Second, it must be proven the veterinarian's actions (or inactions) deviated from the applicable standard of care. Typically, the standard of care is established by expert testimony from other veterinarians. The expert must offer opinion evidence the veterinarian did not act with reasonable skill, diligence and care as would reasonably and ordinarily be expected of veterinarians in the community.

- Third, the deviation from the standard of care must have been the proximate cause of the injury to the horse. To put it differently, there must be a legal cause and effect relationship between the act of malpractice and the ultimate injury. The veterinarian's actions (or inactions) must have set in motion a chain of events that caused the injury to the horse.

- Fourth, damages must be proven. Since horses are generally considered to be personal property, damages are limited to economic losses. The losses must be reasonably provable and not speculative. Moreover, non-economic damages (pain and suffering of the horse or the owner) are almost never recoverable.

So, is there a viable cause of action against "Doc"? Clearly "Doc" owed a duty of care toward the horse. He was called upon to diagnose and treat a lameness when the alleged malpractice occurred. However it is not at all clear whether "Doc" deviated from the standard of care. It is not known why the horse reacted the way it did. The colt may have been hypersensitive to one or both drugs. The drugs may have been contaminated by the manufacturer without the veterinarian's knowledge. Perhaps the sedative you gave the colt before the vet arrived to 'calm his nerves' had something to do with it. In any event, without an expert evaluation by an equine practitioner, it would be difficult, if not impossible, to determine whether there is a legitimate claim, especially without an autopsy or toxicology report. The issue of proximate cause would similarly be dependent on an expert's opinion.

Finally, the issue of damages must be analyzed. Often it is easier to evaluate a claim based on damages first. Since horses are considered to be personal property of the owner, damages are usually limited to the fair market value of the horse. To put it differently, what would a willing buyer pay a willing seller for a similar horse? Or, what would the horse bring at auction? If the horse was recently purchased at auction for \$5,000 and was in training for only 30 days, it would be reasonable to assume that the horse was worth only slightly more than \$5,000. On the other hand, if the horse was purchased at a private sale for \$250,000 and had a leading pedigree and had already won some initial futurities, his value would be considerably higher. The importance of this evaluation is to decide how much you are willing to risk against the amount you are likely to gain.

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