

# Informed Consent

What the term “informed consent” means and why it is important.

By Roxanne Hawn



The concept of informed consent grew out of common law hundreds of years ago when the gap between “learned professions,” including medicine and law, and everyday people – most of whom were illiterate – was great. Essentially, courts required professionals to give clients sufficient information about their legal or medical cases.

Whereas professionals once collectively defined what was sufficient using a “Reasonable Practitioner Standard,” the modern era moved toward a “Reasonable Patient Standard,” in

which disclosed information involves what a patient/client would want know before making a decision. This patient-centered model remains the most commonly used and upheld in courts.

However, as medical advancements expanded in recent decades, a higher standard for informed consent evolved, in which practitioners provide additional information based on the patient’s individual medical history – not just broad medical literature. According to Douglas Jack, LLB, an attorney special-

izing in veterinary law, as clients gain more knowledge about medical care, options and outcomes, they expect to take a more active role in medical or surgical decision-making for their animals.

“The law is fairly clear on [the elements of informed consent],” said Jack. “The practitioner must advise the animal owner of the probable risks of the treatment plan, the material risks and the possible risks, if those risks are catastrophic.”

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Yet the details can be subjective:

- Probable risks typically come from practitioner experience, medical literature and research. They include any likely risks of consenting to treatment and other risks of declining treatment or choosing alternative options, if there are any.
- Material risks often depend on the animal's medical history and the client's requirements or expectations. (Breeders, for example, would want to know of any infertility risks.)
- Possible risks include things that are unlikely, but possible. Any risks that are catastrophic in nature, no matter how rare, should be disclosed.

Carried over from human medicine into veterinary medicine, informed consent's application to animal cases is sometimes challenged in veterinary board compliant hearings and civil legal cases. Fred Kray, JD, an attorney specializing in animal law, explained, "There is a whole body of law – some of it statutory – about what's required of doctors for people, and the first question you have to ask yourself is, 'Does that body of law apply to animals?' There are some cases [legal precedents] that say it does." Both *Ladnier v. Norwood* in Louisiana and *Ullman v. Duffus* in Ohio uphold the need for informed consent in veterinary medicine.

### Key Elements

Jack explained that informed consent happens along a continuum in veterinary practice, in which the extremes of "nobody said nothing to nobody about nothing" and a fully illustrated, lengthy, multimedia consult with a specialist are equally unlikely. Most of what happens is somewhere in the middle.

"The best-case scenario and the advice I would give my clients is that the practitioner should actually meet with the owner and go through a discussion about what the treatment or surgical plan is and outline what those material, probable and possible, if catastrophic, risks are," said Jack. "Ask whether they have any questions. Make sure the client understands what those risks are. Sometimes, although I don't encourage it, the practitioner delegates some of that responsibility to lay staff members."

Too often, receptionists check patients in and

merely have clients sign a "consent form."

In the case of an anesthetic death, for example, Jack said, "If there was no discussion about that, merely having the client sign a form that somewhere in eight-pica font says, 'Oh, by the way, we're using a general anesthetic and your dog might die'" is not sufficient. "I don't think a licensing board or a court reviewing that is going to say, 'Oh, well, you discharged your obligation.' It's much more important that [practitioners] have a conversation and document that conversation."

Such conversations can happen over the phone, if necessary, as long as you document the discussion in the medical record.

### Two Cases of Anesthetic Death

These cases in which an animal died following the use of general anesthesia reveal different outcomes related to informed consent.

**Case one:** Kray represented a family whose older dog died during a dental cleaning. The clients signed a consent form for the use of sedation for the procedure. The practice used general anesthesia instead. The lawsuit Kray filed was for negligence. "On top of negligence, there not only was a lack of informed consent, which means you were not informed of the things you should have been, but there was no consent because we only gave consent for sedation, and they did a greater thing, which is general anesthesia," Kray said. "That was actually what you would call 'trespass' because a dog is a form of property. You would say there was trespass because you gave them the right to do X and they did Y, so the judge let that count go forward."

The case, which cost the client \$15,000 in legal fees, settled. "In my opinion," Kray said, "that particular informed-consent case was a winner because ... it's clear that if the dog had not had general anesthesia, it would not have died."

**Case two:** A feline patient died following a routine neuter at Dodgeville Veterinary Service in Dodgeville, Wisconsin but because the doctors executed a full and accurate disclosure of risks, no lawsuit ensued. "In talking with the client, we explained the risks ahead of time," said Alan Holter, DVM. "We examine everything, and we do the blood work, and we take all the precautions, and we do all

the monitoring, but there's always a risk, and there is always something we may not pick up on exam or blood work. [The clients] understood that. I think the communication went much better than if we hadn't prepared them ahead of time. It was obviously very traumatic, but I think they weren't automatically mad at us. They were able to understand that there are risks and that we do as much as we possibly can to prevent them."

### How Emergencies Differ

In emergency cases, Jack explained that veterinarians have "the privilege of proceeding without consent."

Yet, complications can occur when the pet dies from lack of treatment or despite treatment. For example, a severely dehydrated dog immediately gets fluids but dies anyway. If that client cries a lack of informed consent, Kray pointed out, "If the question was whether the dog would have no chance of living if you didn't give treatment, no person would withhold their consent."

### Cautions and Pitfalls

Even in cases with apparently good informed consent, things can still go wrong.

**Confirm ownership:** In cases of family disputes, neighbor caretakers or "good Samaritans," veterinarians can be in a tough position when consent comes from someone other than the animal's owner. Whenever possible in these cases, Jack recommends contacting the owner by phone for consent.

**Language barriers:** Jack cautions practitioners in urban areas with greater cultural diversity to recognize and get translation help for cases in which a difference in language of origin may complicate discussions of treatment and risks. For example, Jack said, the practitioner may tell the client he is putting a cat to sleep but the client thinks the cat will wake up.

**Comprehension levels:** It is important to recognize client comprehension levels. Most verbal and written client education should be delivered in language usage below a seventh grade level.\* It is easy for professionals with advanced degrees to be caught up in lingo and concepts that others find hard or impossible to grasp. Clients may smile and nod, but that doesn't mean they absorb (due to emotions involved) or understand (due to differences in

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knowledge base) what you are saying.

**Benefit of hindsight:** The primary purpose of informed consent is to give the person enough information to make a decision about whether or not to approve the procedure. The other purpose, to document the discussion and approval, prevents someone from saying, "Now that I know the dog died, I would never had said yes to that."

### Value and Communication

Beyond the legal responsibilities, Dr. Holter believes that informed consent gives veterinarians the opportunity to explain the value and importance of every little thing done behind the scenes. "What I see as a big plus is that we increase the perceived value," he said. "We tell [clients] we want to do blood work because we're looking for potential problems

with the liver or kidney or proteins. We want to make sure the anesthesia is safe. We're going to give them fluids. We're going to have monitors. When we go through the whole process, then that perceived value is so much better [than if] a technician says, 'Okay, we're going to spay your dog today. Sign here.'"

Dr. Holter's practice team has noticed additional benefits since they have stepped up efforts to educate clients and cover risks. "It requires a conversation between the client and the veterinarian, so there isn't lack of communication." Also, he said, "It gives a standard of care, so you need to know what's available. It keeps you up to date so you can explain the options."

At Dodgeville Veterinary Service, veterinarians handle informed consent either at the ini-

tial appointment if the procedure will be done within a few days or at check-in the day of the procedure. Dr. Holter admits it can be time consuming – sometimes an extra 10-15 minutes per case, which can slow down a morning with six surgeries. However, after learning from local veterinary medical association workshops on what is truly required with regards to informed consent, he is pleased with the added client education and communication. ■

*\* This article, for example, reads at nearly a 12th-grade level, which is fine for a professional veterinary reader but may not be for the average client.*

## Informed Consent Recap



### Who:

Veterinarians (not technicians or front office staff) delivering information directly to client/pet owner

### What:

Medical information on pet's case, including diagnostic or treatment options, risks of each option, risks of doing nothing

### When:

At examination/diagnosis or immediately prior to procedure or surgery

### How:

A real conversation (in person or on the phone) during which veterinarian confirms client's understanding of information delivered and documents consent to proceed

### Form:

Merely having clients sign a consent form isn't enough; the conversation is what matters

### Content:

Probable risks, material risks, possible risks (if catastrophic)

### AVMA Policy on Owner Consent

The policy statement reads in part: Veterinarians, to the best of their ability, should inform the client or authorized agent, in a manner that would be understood by a reasonable person, of the diagnostic and treatment options, risk assessment and prognosis, and should provide the client or authorized agent with an estimate of charges for veterinary services to be rendered. The client or authorized agent should indicate the information is understood and consents to the recommended treatment or procedure.