POINT OF LAW

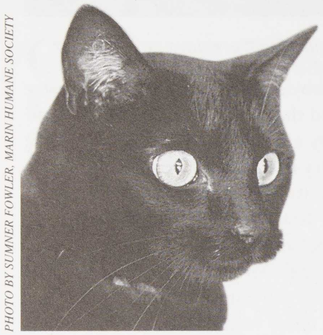

PHOTO BY SUMNER FOWLER, MARIN HUMANE SOCIETY

When You Suspect Veterinary Malpractice

BY KENNETH D. ROSS & THOMAS KANYOCK

ONE OF THE MOST FREQUENT requests for assistance that ALDF receives is from people whose companion animals have suffered injuries, or even death, and who fear that negligence by their veterinarian was the cause.

If you suspect that your companion animal was injured by veterinary malpractice, there are several things that you can do.

First, send a complaint to your state veterinary licensing board. This is a state agency, usually located in the capital, whose duties include the investigation of allegations of wrongdoing by veterinarians, including malpractice. State licensing boards have the power to suspend or remove a veterinarian's license, although this rarely happens.

Your complaint to a licensing board should be short, should fully identify all of the parties, and state the facts as you know them. Demand that the licensing board investigate your complaint and notify you of the results. A few weeks after you mail the complaint, call the board and confirm that they received it and have started the investigation. It is important that all licensing boards receive valid complaints and encouragement to monitor the practitioners in their state.

In addition, a complaint should be sent to the veterinary medical association in the county where the veterinarian practices. Again, demand an investigation and response. In some areas, the county veterinary association is not listed in the telephone directory. You can locate the mailing address by calling any veterinary clinic and asking for it.

A second approach to veterinary malpractice is hiring a lawyer to negotiate a settlement, or to bring a lawsuit.

The biggest problem with bringing a lawsuit is that, even if you win, you usually do not recover very much money. In this country, an animal is viewed as an item of personal property, and most courts limit recovery to the cost of replacing the companion animal with another animal. Because of the low potential for a large recovery, most lawyers are unable or unwilling to take veterinary malpractice cases on a contingency basis, and it is possible that the pet owner would invest more money in legal fees than can be recovered.

On the other hand, courts have recently begun to realize that a companion animal is unique and cannot simply be replaced. Courts are beginning to permit owners to recover the "reasonable sentimental value" of the companion animals to the individual owners, as long as the sentiment is not "excessive" or "maudlin." This can increase the potential recovery from a few hundred dollars, to perhaps a few thousand.

If you are not able to afford a lawyer, then consider going to small claims court, where you can represent yourself. In small claims court, recovery will be limited to "out-of-pocket" expenses. This includes only the money you lost already as a result of the malpractice, and does not include loss of your companion animal's sentimental value. In any lawsuit, you will still be required to secure expert testimony as to what act of negligence the veterinarian committed.

Finally, you must understand that neither complaining to the state veterinary licensing board, nor filing a lawsuit, will alleviate the sense of loss that you feel. You must allow yourself to grieve fully. Check with your local humane society to see whether they offer grief counseling sessions, or talk with other owners who have lost their beloved animals.

Kenneth Ross and Thomas Kanyock are attorneys in private practice in Chicago, Illinois and have handled numerous veterinary malpractice matters. Mr. Ross is Chairman of the ALDF Board of Directors.

Protecting Your Companion Animal

THE BEST WAY TO PROTECT your companion animal is to know your rights and the veterinarian's duties. Here are some major points to remember:

1. Seek out a qualified, competent, and caring veterinarian.
2. Do not be reluctant to seek a second or even third opinion regarding the diagnosis of your companion animal. There are specialists for animals just as there are for humans.
3. Monitor your companion animal's stay at the hospital or clinic. Ask questions if you do not understand what services the veterinarian is rendering. Trust your common sense.
4. If you suspect malpractice, immediately seek an independent and confidential second opinion. If your animal has died, preserve the remains and quickly take the body to another veterinarian (preferably a college of veterinary medicine) for a necropsy to determine the cause of death.
5. Request all medical records regarding treatment, including x-rays if taken.
6. If you have received a second opinion that supports your concern about malpractice, immediately seek expert legal advice.

POINT OF INFORMATION

ILLUSTRATION BY MARTIN RING FROM A PHOTO BY DICK RANDALL

Animal Damage Control - Management or Slaughter?

THE FEDERAL ANIMAL DAMAGE Control Act is intended to minimize the harm caused by predators and other wildlife to livestock and agriculture. For sixty years, it has protected the interests of a small but powerful group of ranchers and cattlemen, largely in the western states, while ignoring the interests of the animals, the environment and society at large.

Animal Damage Control (ADC), the governmental agency authorized to conduct predator "control," has been carrying out its mission with gusto. In 1993 alone, the agency was responsible for the killing of approximately 2.2 million mammals and birds, mostly on public lands. This mass slaughter is subsidized by taxpayer dollars to the tune of more than $36 million yearly, with an additional $15 million received from local governments and private interests.

The methods used by the ADC to eradicate predators are indiscriminate and inhumane, with no concern for the animals' pain and suffering. The animals are shot, trapped, snared, or dragged from their dens with a grappling wire hook in a process known as "denning". Coyotes are killed wholesale by aerial gunners in helicopters, with little distinction made between animals who depredate livestock and those who do not. Poisoning is frequently employed because it is quick and cheap, without regard to environmental damage. Also, non-target animals such as birds, cats, dogs and members of endangered species often fall victim to the traps, as well as others who feed on poisoned carcasses in an ever widening "ring of death."

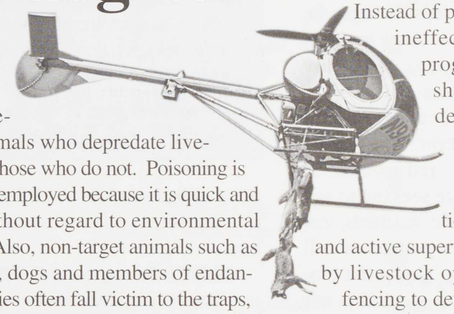

PHOTO BY DICK RANDALL

Recent scientific evidence has given us another view of the predator than was commonly held 60 years ago. Predators help maintain a natural balance in the ecosystem by eating rodents and culling sick or weak animals. Many people still have an ingrained "predator prejudice", but hopefully this will change as we understand more about the valuable role that predators play.

Despite this knowledge, the ADC has not changed its outdated agenda; it continues to kill as many predators as possible. ADC's hit list includes coyotes, mountain lions, wolves, bobcats, prairie dogs, gophers, foxes, black bears and several species of birds. Many of these animals are unfairly blamed for acts of predation they did not cause. Some cows may die from disease or other causes, and predator-related losses to sheep may be due to poor animal husbandry practices by ranchers, whose flocks are unsupervised on the open range for long periods of time.

Does Predator Control Work?

Thanks to the "successful" mass slaughter, some predators are now threatened or endangered, and several species have already disappeared. On the other hand, the benefits to livestock may be short lived. For example, it has been proven that once a stable population of coyotes is killed off, it is replaced by wanderers who will then compete for territories, as well as stimulate higher birth rates. Since the socialization of family life is disrupted, these newcomers will have less developed hunting skills and tend to go after easier prey, such as livestock.

Non-Lethal Alternatives

Instead of perpetuating this costly, ineffective and destructive program, the government should concentrate on developing and implementing non-lethal alternatives to wildlife control such as relocation, scare tactics, better and active supervision of open pastures by livestock operators, and electric fencing to deter predators. Many of these methods have been proven to work, but ranchers have no incentive to change if ADC continues to "fix" the problem for them.

HELP REFORM THE BEAST:

- ✔ Start a letter writing campaign to your federal and state representatives. Let them know that you want to limit the ADC program through budget cuts and legislative review. Suggest that more funding should be allocated to developing non-lethal methods of control.
- ✔ Write letters to your local newspapers stating your opinion on Animal Damage Control activities in your area.