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## **HIPAA for Hippos?**

### ***Navigating Veterinarian Confidentiality Laws in California***

By [Geoffrey T. Macbride](#)

While HIPAA does not protect the confidentiality of veterinary medical records, California law does. California, along with many other states, have passed confidentiality laws which protect information related to veterinary care and impose steep criminal, civil, and disciplinary penalties for their violation. The law has numerous exceptions, which could be complicated to navigate. This article discusses when, and under what conditions, confidential information could be safely disclosed. It also provides a few tips to help ensure compliance and properly document it.

In California, confidential veterinarian information is defined by Business and Professions Code, section 4857 as information concerning: 1) an animal receiving veterinary services; 2) the client responsible for the animal; and 3) the veterinary care provided to the animal. Improper disclosure of this information is a misdemeanor which carries a maximum sentence of \$3,000 and/or one year in jail. A veterinarian can also face disciplinary penalties. In the most severe cases, in which disclosure puts the client or animal in jeopardy, the penalty is license revocation and a \$5,000 fine. A veterinarian also faces civil liability for damages caused by a negligent disclosure.

Despite these penalties, disclosure of confidential information is sometimes necessary to aid in the treatment of the animal or comply with the law. To deal with these situations, California law carves out several circumstances in which confidential information can be disclosed.

#### **Disclosures to Aid in Treatment or Comply with the Law**

The most common disclosure of confidential information is to provide records to another facility that is now treating a past patient. In this cases, it is best to get a written record of who is making the request and why the records are requested. While client consent is not required, it is a good idea to have it. This adds an extra layer of protection and forestalls claims that the disclosure was improper.

Another common, though less straightforward, disclosure occurs when a vet seeks out help from others in the diagnosis and treatment of an animal. It is proper to disclose confidential information with another vet to aid in the treatment and diagnosis of an animal, but caution is urged. Refrain from disclosing the client's name or other identifying information unless it is necessary to diagnosis or treat the animal. Also, using social media and other public platforms to discuss confidential information can violate the law if



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information is disclosed to non-veterinarians. The law only allows disclosure to other vets and facilities.

Disclosure of confidential information is also allowed to peace, humane society, and animal control officers acting to protect the animal's welfare. When making this type of disclosure, document the reasons for disclosure, what was disclosed, who the information is disclosed to, and whether the officer requested the disclosure or the vet initiated it. Keep in mind, even a proper request may result in a client filing suit. You may want to consult an attorney experienced in representation of veterinarians and their businesses regarding potential adverse consequences of disclosure before doing so. A vet should use similar methods when disclosing information to comply with federal, state, and local laws. Some laws and regulations require a veterinarian to report confidential information, i.e. reporting potential dog fighting or animal abuse. Make sure to document the disclosure, and consult an attorney experienced in this area before making the disclosure if you are uncertain about whether it should be made.

Finally, you must disclose records pursuant to a valid subpoena or court order. The scope of what must be produced depends on the subpoena. Producing too much, or too little, information can create problems. If you are served with a subpoena or court order to produce confidential records, it is highly advisable that you consult an attorney before making the disclosure.

### **Obtaining and Properly Documenting Client Consent**

While disclosing information based on a client's request may appear straightforward, a mere request is insufficient to comply with the statute. Proper disclosure must satisfy two requests. First, the authorization must be written or a "witnessed oral authorization." A written authorization should be signed by the client and state what is being disclosed, who it is being disclosed to, and that the client is making a "knowing and informed consent" to the disclosure. The statute does not define what a "witnessed oral authorization" means. At a minimum, at least two people should hear the oral authorization. In order to protect the veterinarian and her practice, it would be best to record the oral authorization in a letter or email that is sent to the client. The letter should include the same information as a written authorization and also detail who heard the authorization and what was said. This will protect you should the client reverse course and claim the authorization was never made.

Second, the authorization must be on knowing and informed consent. Once again, this term is not defined by the statute, leaving its exact meaning up to interpretation and argument. That said, other areas of the law define informed consent as agreement to a



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proposed course of conduct after communicating and explaining the relevant circumstances and the material risks, including any actual and reasonably foreseeable adverse consequences of the proposed course of conduct. At a minimum, you should explicitly tell the client what disclosures are being authorized, i.e. what information will be sent and where it will be sent, and if you foresee any adverse consequences arising from the disclosure. The information provided to the client should be included in any written authorization or documentation of an oral authorization.

### **Client Online Complaints and Lawsuits**

Confidentiality is also affected when a client files, or causes to be filed, a civil or criminal complaint placing the animal's treatment or the extent of the animal's injuries at issue. If a vet is sued, she can use her records to defend herself. This only applies if a formal complaint is filed. It does not apply if a client complains online or in other informal settings. This was not a large issue in 1999 when the confidentiality law took effect, but the growth of social media over the last two decades now makes these a significant issue. This means that if a client complains about treatment on social media, you should not respond with confidential details of the treatment to dispute the claim. While confidentiality was arguably waived, this is a fact intensive review which should not be done without first consulting an attorney.

In these circumstances, the safest course is to keep all confidential information just that...confidential. Even acknowledging that the client was treated could be considered a violation of the law. Avoid stating or confirming any specific facts about the treatment. If you must publicly respond, keep the response as vague and generalized as possible, i.e. "We take every complaint seriously and will work diligently to find and correct the cause of your concern." Then continue the conversation in private. If the client continues to complain and requires a stronger response, you may want to consult an attorney experienced in veterinary practice. If you feel that the client is dangerous and could cause harm to you or your staff, call the police.

*Geoffrey T. Macbride is an associate at Murphy, Pearson, Bradley & Feeney in San Francisco, Calif. His involvement with animals started in his childhood while growing up on what he describes as a "suburban farm." No stranger to pets, he has had cats, dogs, finches, goldfish, a tarantula, rabbits, lizards, doves, turtles, guinea pigs, chickens, ducks, mice, and rats. While Macbride pursued a legal career, his sister followed her love of animals and became a veterinarian. His interest in representing veterinarians grew during his conversations with her, where she shared the legal difficulties veterinary professionals confront and the difficulty they have in getting helpful legal advice. Macbride is known for his pragmatic approach to litigation. Emphasizing on the veterinary industry, his practice focuses on defending business owners in various tort and contract disputes.*