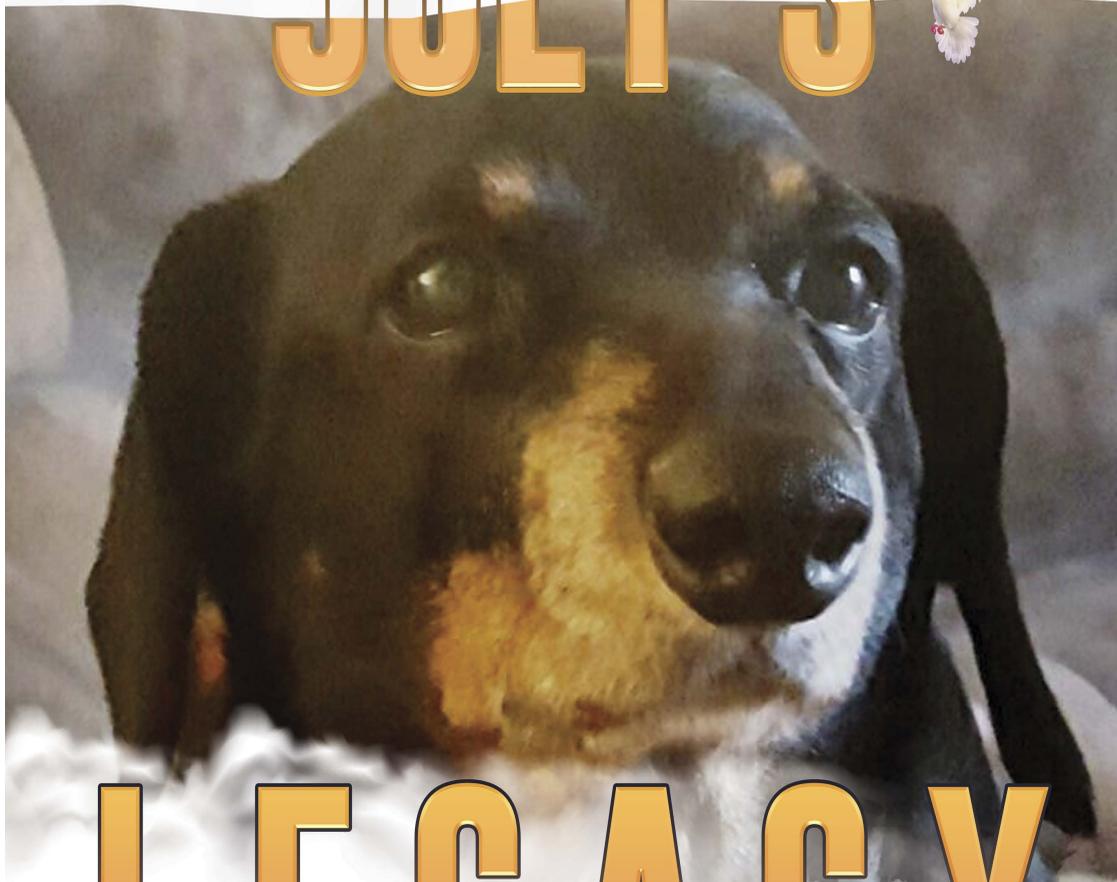


JOEY'S



LEGACY

SEEKING TRUTH AND INTEGRITY IN VETERINARY MEDICINE



AUTHOR JL ROBB

FOREWARD

Scott and Debbie Fine
Joey's Legacy

THE FIRST 60 YEARS OF MY LIFE were uneventful with all of my pet companions. All of the veterinarians were caring and compassionate people. Some visits were for vaccinations, some were sick visits, but none were as a result of life-threatening illness or injury. They all lived healthy, happy lives.

It was a different time.

I never experienced, nor heard any others talk about, the subject which is the basis for this book. It was never an issue brought into the public light, as far as I can recall.

The majority of veterinary practitioners today are loving, gentle professionals who entered the profession for the right reasons. They genuinely care about their patients. They want to make sure their patients live happy, healthy lives. They treat their patients like they treat their own loved ones, both human and animal.

There is a minority of veterinary practitioners that choose to follow a different path. Perhaps their practices have been bought by large conglomerates; entities whose bottom line is more important than the proper care of our loved ones. The practitioners, who are now controlled by others, must abide by the demands of their corporate bosses' new policies which often do not consider the welfare of their patients.

Part of this book will contain actual victim stories and photos. Nothing here is enhanced, embellished, or exaggerated for effect. It doesn't have to be. The reality of veterinary malpractice is that it exists. It will always exist because veterinarians are human, just like the rest of us. We accept that. Unexpected things happen to everyone in life. It's part of life.

We want to stop all the lying and deceit these "bad actors" feel is necessary to escape accountability. Ironically, 73% of the members of my Facebook group, Joey's Legacy-VetMal Victims, said that if the practitioner had only been honest with them about the events that led to the death of their pet

companions, they could have eventually found a path to forgiveness, and they wouldn't feel the need for "revenge" by seeking justice through legal action and exposure of the bad actor through social, print and television media. What creates the need for a Joey's Legacy is all of the duplicity and dishonesty these otherwise revered members of a very beloved profession feel compelled to engage in. Maybe one day, there will be a change.

I pray...

JOEY'S LEGACY



It was the summer of 2017 when we lost our shining star, our boy Joey, to whom this book is dedicated. He didn't die as a result of injury or natural causes, like the majority of his sisters and brothers. Joey, our dachshund, was given a drug that was contraindicated for his condition, according to its manufacturer. His condition was unknown at the time because no blood tests were performed to determine organ health. Two days later, we made the impossible decision to put an end to Joey's suffering, and so he was euthanized. We soon learned how many others were lost due to negligence, and so we decided to turn the worst experience of our lives into a place of comfort and solace for other victims of negligence. Joey's Legacy was born.

My vision was to form a non-profit organization that would include veterinary experts and animal law attorneys from around the country. The vets would review medical records and determine if veterinary malpractice occurred. If so, the vet would write an opinion letter that would be forwarded, along with all medical records, to an attorney in the state where the malpractice occurred to pursue legal action.

Simple, right? Not so fast

I contacted a number of vet experts around the country. Most were unwilling to call out their unprincipled colleagues in writing. They contribute to the problem. The “sin of silence”. Eventually, I found several vets who liked the idea of a “Joey’s Legacy” because they, too, were disgruntled and frustrated with the actions of those practitioners who lacked an ethical and moral compass. They agreed to join our team, on a trial basis. So now I have the first part in place: the vet experts. What about the attorneys?

I contacted a number of animal law attorneys in different states to see what kind of spin they put on my idea. As you might imagine, their responses were similar citing the “pets are property” laws and it wouldn’t be economically feasible for them to handle such cases.

Getting nowhere...shot down, over and over again. I wasn’t done yet.

One of the victims in our group told me about an attorney that might be interested in what I wanted to do. I contacted her, and she was on board with the idea within a few minutes.

Finally, attorney #1 was on board.

Slowly, we added one attorney after the other and we now have 31 attorneys that can assist members in all 50 states, who work with our 10 veterinary experts to assist our member victims seek justice.

Part of the age-old philosophy of convoluted thinkers like the AVMA and other vet-friendly organizations is trying to convince you that your dog or cat is only worth \$100 in court, so suing your vet doesn’t make sense. We now know that was part of the indoctrination we all fell for. That’s why there were very few attempts to sue veterinarians for negligence. After all, if your potential damages are \$100 in court it wouldn’t make sense to proceed against a vet.

But Joey’s Legacy found a better way in the last three years.

Not only do our attorneys sue for out-of-pocket costs and “replacement value” of your pet companion (still don’t know what “replacement value”

really means), our attorneys now also may sue for violations of consumer law, deceptive practices and common law fraud . This may include instances like when your veterinarian tells you that there will be someone at the clinic overnight to monitor your pet companion, who just had surgery and.....guess what.....nobody will actually be there. Happens more than you know.

Some victims damage awards have since increased substantially from the \$100 promised by the veterinary propaganda machine. In fact, some damage awards have reached into the thousands are commonplace. Joey's Legacy has demonstrated, over and over, that if you're a veterinary professional it doesn't pay to lie to one of our members.

THE "GOOD GUYS" IN VETERINARY MEDICINE

All professions have members that are competent at what they do. Let's call them the "good guys". They are ethical, professional, honest, and true. They don't lie, they don't deceive, and they don't play games with their clients. If something goes wrong, they tell the truth. They tell it like it is. They take their medicine, learn from it, and move on. They are professionals in every sense of the word. The same applies to veterinarians. There are 60,000+ veterinarians in small animal practice in the United States. This paragraph applies to most of them. They provide compassionate care for their patients. Pet parents rely on their expertise to ensure a great outcome during a pet visit to the animal hospital. Once in a great while, something unexpected occurs as a result of negligence. Sometimes the vet tech was negligent; perhaps the anesthesia dial was on "5" when it should have been on "2". The patient is overdosed with anesthesia, goes into cardiac arrest, and dies. Nothing done intentionally: just pure negligence. The vet was not present, but he must take the "hit", in most cases, because he is responsible for the actions of his employees. The good guy confronts the pet parent, in what will be a difficult conversation. He/she knows how this situation must be handled: be straightforward, truthful, and transparent no matter how difficult it is. Remorse and contrition must be conveyed in a genuine fashion. Assistance to the pet parent must be offered in the aftermath. The good guy has executed his responsibilities appropriately. The pet parent is now left to deal with grief, despair, shock and presumably anger at the loss

of the loved one. If the pet parent decides to take legal action against the vet, the vet must consider it as part of the aftermath that he/she must endure: a relatively small price to pay in light of the emotional turmoil and unnecessary mayhem caused by his animal hospital. However, my experience is that most pet parents in this situation are willing to find a path to forgiveness if the veterinarian was honest about what happened.

THE “BAD ACTORS” AND THEIR PLAYBOOK

Enter the bad actor.

In our group, a bad actor is a veterinarian who is super-motivated by the almighty dollar, someone who is usually a narcissist, is disinterested and insensitive to the needs of his/her clients and their pets and will lie in a heartbeat to protect himself/herself. This is the same misfit that would throw a staff member under the bus to save his/her own ass.

Bad actors are unprincipled misfits. Their depravity knows no bounds. They are trained to admit nothing if they commit negligence. Accountability, responsibility, and liability are words that are non-existent in their vocabularies. They won't think twice about altering medical records, if the pet parent files a complaint with the state board of veterinary medicine, in order to cover up their negligence. Serial offenders, some with a history of disciplinary action that dates back 10 years or more, are sharp enough to begin the process of scrubbing the records right away. The amateurs, those who haven't had an experience with the vet board tend to do nothing, expecting that they are in the clear. Then comes the letter from the vet board, and the race to scrub records begins. Scrubbing records can be done in a variety of ways, like changing lab results to reflect normal values or adding fictitious vital signs to present the appearance of a healthy patient. Just part of their playbook. It is stunning what levels the bad actor will go to in order to protect himself/herself. Nobody is safe, nothing is sacred. The irony of their conduct is that when a death occurs in their care as a result of negligence, they really have little to be concerned about.

Here's why:

1. If the pet parent decides to file a complaint with the vet board, the investigation begins with the vet board sending the veterinarian a letter notifying him/her that the pet parent filed a complaint alleging negligence in the death of their pet companion. The good guy will respond with truth and integrity, sending copies of the deceased's medical records, untouched, unaltered, and appearing as it did after the original vet visit. The good guy responds promptly to any correspondence from the vet board and accepts his punishment. Case closed.
2. The bad actor will typically scrub records after receiving word of the complaint, then respond to the state's request. They contact a defense lawyer, in most cases, to represent them. In reality, they could handle their cases pro-bono since the final order is almost always a joke of a plea deal, constructed well in advance of the final hearing date. For the second and subsequent offenses, while you may think the level of disciplinary action would escalate, in most cases it is the same ineffective discipline as was imposed the first time.
3. Many victims are threatened by the bad actors and their staff, telling them that if they go to the media about what happened, they will be sued. In my experience and opinion, the best defense against being sued is to provide irrefutable facts and pure opinions. Nevertheless, the victims heed the threat and are forced to suffer in silence.

AMERICA'S BOARDS OF VETERINARY MEDICINE-THE ACCOMPLICES THAT DRIVE THE GETAWAY CARS

Let's recap. We have the good guys: veterinarians who entered the profession for the right reasons...NOT for money, but because of a genuine love for animals. These good guys provide great care and compassion for their patients and are truthful and transparent with their clients at all times, regardless of the situation. These are true professionals in every sense of the word. And then, of course, there are the bad actors. If something goes wrong and the patient suffers permanent injury or death, job one is to cover the negligence, deceive the pet parent about what happened, and scrub the medical records to make sure there are no signs of wrongdoing in case the pet caregiver files a complaint with the state veterinary board.

Most complaints are seemingly dismissed by vet boards...statistics show up to 80%. In contrast, Joey's vet team finds malpractice in 70% of the records that are submitted to them by our members.

Why is that?

There is an inherent bias toward forgiveness and leniency by the vet boards toward their "falsely accused" colleagues, so that could explain the massive number dismissals of complaints. A few complaints make it to the probable cause panels of the vet boards, which usually consists of 2-3 board members who screen cases and decide if there is reason to move the case to the next level, which in Florida is the Office of General Counsel. The case then proceeds to a final hearing, although the plea deal outcome is already known. The vet board does have discretion to modify the plea deal and I have seen boards either reduce the recommended sentence or enhance it. First time offenders receive a fine, perhaps a reprimand, continuing education requirements and a period of probation, none of which fazes the average veterinarian:

1. The fine usually isn't much more than an upscale Saturday night out.
2. The reprimand appears on the vet board's public website which most people, even vet mal victims, don't even know exists. It's just

a formal description of what the pet parent writes on Yelp or Google. The difference is they can say whatever they want without fear of reprisal, as opposed to the pet parent who must stick with facts and pure opinions in order to mitigate the risk of being sued for defamation. Of course, any animal hospital that is dumb enough to sue for defamation exposes themselves to a very public lawsuit, which the astute pet parent will exploit to the max by providing all of the tragic details, many of which will not endear the public to the animal hospital. In addition, what pet parent would bring their loved one to a vet that might, one day, sue them?

3. CEUs (continuing education units) are perhaps the most valuable part of the disciplinary action because, as it turns out, education is greatly needed in some cases especially with the vets that have been practicing for 30-40 years who are not up to date on modern veterinary techniques.
4. Probation doesn't impede the vet's ability to generate income. He may practice "under supervision".

Disciplinary action for serial offenders is often the same, or similar, to first time offenders.

Why, you ask?

Think of the vet board members as the drivers of the getaway cars for the bad actors, who commit the negligence and count on the accomplices to help them "escape". Rarely will a veterinarian's license be suspended or revoked. Being that the vet board member is complicit, the act of suspending or revoking a license for something as "insignificant" as negligently causing the death of a pet companion is almost unheard of. They recognize that they can't suspend or revoke on a consistent basis for the same thing because they would be suspending the licenses of dozens of colleagues in their jurisdiction and, you know, that wouldn't do good things for their reputations in the community. However, if you want the reason given to me by one of the consumer advocates on the Florida Board of Veterinary Medicine...this is the official reason: "Who would take care of the dogs and cats if we suspended all of those licenses?"

Spineless cowards.

Even if a pet caregiver proves fraud and deceit to the board, they typically ignore the fact that the bad actor altered medical records to erase the appearance of negligence. Recordkeeping violations by vets, along with practice below the standard of care, are the two most commonly charged violations by the board and the two least deterred by disciplinary action. The outrageous lack of morals and ethics will continue. The vet boards enact laws to insulate them from legal jeopardy. The veterinary justice system is broken, it's corrupt and is in massive need of reform.

One of the reasons for this book is to educate and enlighten you that vet board exists, the maltreatment of bereaved caregivers is an old story and will sadly continue on and without meaningful, impactful changes I believe this level of injustice will continue. The vet boards allow serial offenders to continue to offend.

It's more than enough to make you vomit.

CHAPTER ONE

The world is a dangerous place to live; not because of the people who are evil, but because of the people who don't do anything about it.

Albert Einstein

A few months ago, a gentleman named George Floyd died in a confrontation with the police in Minneapolis. The police had been called because Mr. Floyd appeared “high on drugs” and was passing counterfeit bills, so it was reported.

Months later, there are still major riots in some of our largest cities, with some metropolitan areas actually commandeered by the rioting anarchists.

Why did this happen?

We hear the answer often: A few bad apples.

Every industry has *a few bad apples*, but city police departments seem to have a few more than other industries; and no one dislikes the bad apples more than the policemen who are good apples. That is the way it is in all industries.

The phrase is first found in the English language in 1340, and the original reads: A rotten apple quickly infects its neighbor.

By the 19th Century, church sermons used a modified version, "As one bad apple spoils the others, so you must show no quarter to sin or sinners."

Actually, the science is sound. Place apples in a group, and when one starts rotting, it quickly infects the others. So can one bad actor taint the entire group? Apparently so.

Studies have been done and a single bad actor does taint the entire group. This is what happened in the George Floyd case; and as a result, dozens of police cars and other vehicles have been burned, buildings have been burned, historical statues have been torn down or defaced, and the beat goes on.

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According to a study conducted by premarket.org, a whopping 40% of large police departments are corrupt:

A key strength of our setting is that the average officer writes hundreds of tickets over a several-year period. The high frequency of recorded activity allows us to adapt our empirical approach to estimate the degree of discrimination for each individual officer. Doing so, we find that 40 percent of officers practice discrimination.

While this figure is not the majority of officers, it is hardly a few bad apples.

With all this information available to the public, why do so many bad actors remain in our police departments? How did the FBI end up with so much high-level corruption?

Our police agencies are protected by Police Unions that have great power in expunging the records of the bad apples, and they do. Like the U.S. Congress, full of lawyers who write laws that often enrich and protect other lawyers, the fox is guarding the hen house. And the beat goes on.

Police Unions require that disciplinary records be expunged from a policeman's record, sometimes after only a few months. Even when an abusive policeman is fired, the unions often require that they be hired again. Though police unions decry judges who let criminals out of jail, they do the same thing by protecting the bad actors *from* jail. And then they demand the fired officer get back pay, which we the taxpayer, pay. It is truly a swamp.

What about the bad apples in the medical industry?

In the 1950s, there were few medical malpractice cases, doctors were doctors because of good hearts; and it was not unusual for doctors to make house calls, for \$20 or whatever you could afford, maybe a bushel of potatoes. Prior to the 19th century, medical malpractice was unknown to most. You went to the doctor and took your chances, because a lot of things were different then. Doctors were individuals rather than corporate-owned entities.

In the mid-1800s, malpractice suits did increase as doctors tried to repair broken legs rather than amputate. Sometimes the fix left a slightly shortened limb, resulting in a limp, *and* damages. The attorneys achieved income by defending the victim, and the victim began to get the attention of the bad actors and large monetary awards.

As we entered the 1970s, there seemed to suddenly be a plague of narcissism. There was the sexual revolution of the late 1960s, legalized abortion in the 1970s and the corporate takeover of America's hospitals. Good hearts were replaced by the desire to make the big bucks.

According to Johns Hopkins, medical malpractice is the 3rd leading cause of death in the United states, resulting in more than 250,000 deaths per year.

If you are a concert pianist and go to the hospital to have your gangrenous left foot amputated, what if they accidentally amputate the left hand? What is your recourse? What is a *fair* settlement? What will your new career be?

Fortunately for we-the-people, malpractice among doctors is nowhere near the 40% of big-city cops.

According to a 2014 report in The New England Journal of Medicine, only 4.8% of doctors account for 50% of malpractice settlement claims. Physicians with 2 or more settlements in 2014: 22.4%.

Human life is certainly a gift from God and should be protected with ultimate care. Negligence, especially negligence that causes loss of life, should have a stiff penalty. Going after the negligent doctor's pocketbook is about your only opportunity.

Most of Americans are pet lovers and look at our pets as a Divine gift also. For whatever reason, God made dogs to love us unconditionally. They live for two reasons: To eat and to please their owner(s). If your house catches fire in the middle of the night, it is unlikely that your cat, rabbit or canary will try to save your life; but it happens every day in the life of dogs.

My personal dealings with veterinarians goes back to 1968. During those 52 years, I have never had an instance of malpractice among the veterinarians who have treated my 5 Great Danes and 3 pet skunks. And the rabbit and chickens. Veterinarians are veterinarians because of their keen, almost obsessive, love of animals. The animal clinic I use for my animal's care, I have been using since 1980. Most veterinarians would never intentionally harm your pet, but sometimes mistakes happen.

In my research into veterinarian malpractice I have read so many sad and tragic cases, heartbreaking cases that were caused by veterinary negligence. A few decades ago, veterinary practices were basically small, mom and pop businesses. Now this is becoming less and less the case as

J.L. Robb

corporations do to the veterinary industry what they did to the hospital industry. They are turning the field into a money machine. Veterinary costs have skyrocketed to the point that many are forgoing the pleasure that pets provide.

The number one emotion I have noticed in all the stories I have read is the anger when the veterinarian lies to them. It happens often, as you will see when you read actual, heart-wrenching stories.

“If the vet had just told me the truth, I would not have sued.”

And the beat goes on.

CHAPTER TWO

If having a soul means being able to feel love and loyalty and gratitude, then animals are better off than a lot of humans.

James Herriot

Veterinarians deal with animals daily. Day in and day out, that is what they do; and the large majority do their jobs zealously and professionally.

Their intentions are good, but mistakes do happen. Too much anesthesia, a dropped scalpel severs an intestine, a wrong medication for a cat with kidney disease.

Americans, as a whole, are in love with our four-legged friends, especially dogs and cats. Dogs are unusual among domesticated animals. They are the bearers of unconditional love and seem to exist for one main reason: To please their owner.

According to the American Veterinary Medical Association (AVMA), their data indicates the following (2018):

- Percent of households owning dogs (38.4%), cats (25.4%)
- Number of households owning dogs (48,255,413), cats (31,896,077)
- Average number owned per household: dogs (1.6), cats (1.8)
- Total number in the USA: dogs (76,811,305), cats (58,385,725)

When a dog or cat owner loses their pets at the end of their lives, it is not uncommon to hear them compare the experience to losing a child. The depression suffered is real, long-term and often, intense; but the great joy they bring to your heart and your life makes it worth it. Dogs, after all, are people too.

As an owner of my 6th Great Dane since 1976, I have faced this depressing experience five times. Scarlett died from cancer August 17, 2020; and now we have Princess.

But what if your dog or cat or bird does not die of old age, cancer or CoVid-19? What if your beloved pet does not have the opportunity to bring years of love and happiness to your life, and theirs; because the veterinarian injected your pet with three times the normal anesthesia?

Though rare, anesthesia related deaths happen more than one would expect.

In one article I researched, Cindi, a victim reports in 2012: *My heart is broken and I can't stop crying. Last Thursday my 2-and-a-half-year-old Wheaten Terrier went in for a biopsy and passed away under anesthesia before surgery began.*

In another disgusting case, a family dog went in for surgery and died. The veterinarian told the owner that her dog was so cancer-ridden, she died during surgery. In this case, the owner told the vet that she wanted a necropsy. The veterinarian volunteered to perform the necropsy, but the owner took her dog to another veterinarian. Turns out the dog had no signs of cancer but did have a severed intestine and bled to death. The doctor finally admitted that a scalpel had been dropped into the body cavity.

Twenty years ago, veterinary malpractice was basically a non-issue. The veterinarian would offer a hundred bucks for the dog, and that was it. In the world of settlements, your beloved pet was worth little.

Thanks to organizations like Joey's Legacy, this malpractice injustice is rapidly changing.

Founded in November, 2017, Joey's Legacy has become the malpracticing veterinarian's worst nightmare, as you can see from their web page, JoeysLegacy.org.

The non-profit business was begun by Scott Fine and his wife Debbie, in an effort to comfort and benefit others through the tragedy they suffered when their trusted veterinarian cut a critical corner to save a little time because he thought he knew what was wrong with little Joey, the family dachshund. Since the doctor skipped the lab tests, he did not know that Joey had a kidney disease. As a result, the injection that Joey received was contraindicated for dogs with kidney disease and cost his life. And the happiness of Scott and Debbie

Founded in order to help others to benefit through their personal tragedy, Joey's Legacy has assembled a nationwide team of animal-loving attorneys and some of the top veterinarians in the land. Settlements have grown from \$100.00 to settlements in the thousands of dollars. Deservedly so.

Most veterinarians are dedicated to helping animals of any kind, loving their profession more than the almighty dollar. Most is the keyword, here. There are always some bad apples in every group, and crooked veterinarians are not above altering medical records.

The bad apples are the veterinarians that Joey's Legacy pursues, holding them accountable for their malpractice and the grief they bring to so many.

Joey's Legacy is new to me but have done a lot of research on this group. They give the grieving some hope as they pursue the bad actors for retribution via the only way they understand. The pocketbook.

This is a fantastic cause, so if you have a little money lying around and thinking of a good cause to donate to, Joey's Legacy is a non-profit group; and donations are tax-deductible. There are currently more than 1,500 members. Just made a donation myself. I love dogs and cats, and most any animal.

Closing advice: If your veterinarian kills your dog, let someone else do the autopsy.

CHAPTER THREE

A Brief History of Veterinary Medicine

There is no clear record of when veterinary medicine came to be, but it was a long time ago. In Genesis, the very first book of the Bible, there appears to already be a knowledge of genetics, though they did not know what a gene was at that time.

Jacob, however, took fresh-cut branches from poplar, almond and plane trees and made white stripes on them by peeling the bark and exposing the white inner wood of the branches. Then he placed the peeled branches in all the watering troughs, so that they would be directly in front of the flocks when they came to drink. When the flocks were in heat and came to drink, they mated in front of the branches. And they bore young that were streaked or speckled or spotted.

Genesis 30:37-39

The early domestication of animals, believed to have begun 14,000-15,000 years ago, probably resulted in early veterinary care. Man would have quickly learned it was necessary.

Though Europe generally gets credit for the development of veterinary medicine, they only built upon the accomplishments of much more ancient cultures. There is evidence of veterinary practice in ancient Egypt, China, Mesopotamia and India, provided by the physicians of the day.

Veterinarian is an English word meaning anyone who medically services animals. Its origin is Latin, *veheri*, and was a little more specific than the English definition, referring to anyone providing medical care for any animal that uses a yoke to perform work.

J.L. Robb

Scholars in the 18th century assumed that Europe was where veterinary medicine originated, but the earliest documented evidence comes from China. There really was no evidence at that time, but archaeology proved otherwise with the discovery of the people of Banpo.

The people of Banpo, like most people during the Neolithic Age, were vegetarians; so they were great farmers. The animals in Banpo Village, located in the Yellow River Valley of China, were found to be domesticated dogs and pigs. Discovered in 1953, the people reigned from 4500-3750 BC.

The villagers had many gods, but Fuxi was known as the domesticator of animals, his particular gift, “the ox-tamer,” and clear evidence of domestication was already long established by the time Banpo Village was thriving between 4500-3750 BCE.

Once Fuxi domesticated an animal, he taught mankind how to take care of the animals, including medical care. The first of these documentations of veterinary care in China refer to the care of horses and cattle. The doctors of the time, known as *horse priests*, actually utilized the science of acupuncture to treat colic in horses.

Veterinary medicine with a touch of the divine, was practiced in Mesopotamia by 3000 BC.

Modern-day veterinarians know much more than the discoverers and the early Europeans did about medically caring for animals; and with the advent of pain medications and anesthesia, many animals have been saved... painlessly.

When people have surgery, it is a requirement to talk with the anesthesiologist; because anesthesiology is one of the most dangerous aspects of surgery. To keep us from feeling any pain or discomfort, the anesthesiologist must decipher how much to use in order to get the patient near death but not let him die. Sometimes the anesthesiologist calculates wrongly, and those instances do not turn out well.

When a patient dies or suffers permanent damage for dying at the hands of the anesthesiologist, a medical malpractice usually follows, often with huge monetary awards. The pocketbook is the only way to get a doctor's attention, hoping he will not be so careless in the future. Doctors have malpractice insurance, but it often does not cover the awarded amount. And if the anesthesiologist tries to lie and not take responsibility, making up some answer like the patient died from cancer, the award is usually much higher. Significantly higher.

In the world of veterinary medicine, malpractice was not in the vernacular about 50 years ago. Over the years, the courts have begun to realize that our furbabies are people too.

Thanks to groups like Joey's Legacy and their wonderful membership of victims, top-notch veterinarians and animal-loving attorneys, the veterinary industry is changing.

About time.

CHAPTER FOUR

Pets are people too.

According to *National Geographic*, April 7, 2014, about 90% of owners consider their pets part of the family. More than 80% of us would likely risk our lives for them. Last year, we spent \$55 billion on the animals that share our lives.

Dog and cat owners have increased 400% since the 1960s and have now made their way into our justice system. In the last 20 years a lot of laws have passed that consider the “rights” of the pet: The right to be freed from abuse; the right to rescue from natural disasters; the right to legal protection against veterinary malpractice.

An article in *Psychology Today*, October 7, 2015, references a 1980s study by Sandra Barker and Randolph Barker that asked dog owners to complete what is called the Family Life Space Diagram, in which symbols representing family members and dogs are placed within a drawn circle representing one’s *life space*.

In nearly 40% of the diagrams, the dog was placed closer to the self than were other family members. Similar studies of pets’ placement within a family constellation have similar results: pets are quite often drawn very close to the center—closer even than human family members.

When I was a kid, the dog slept outside in a doghouse or on the porch. Today, over 62% of our pets share our bed. Our pets are now considered part of the family, and we hold great emotional ties to them.

In the world of 2020, a weird world indeed, the constant stress and worry of pandemics, riots, unprecedented hurricanes and fires, our pets offer something that is most difficult to find - unconditional love and dedication. They are here to please.

J.L. Robb

The American Pet Products Association claims the pet industry has surpassed a whopping \$63 billion in spending; and 65% of our households own a pet, which is an increase of 10% from 12 short years ago. These are astonishing numbers that increase every year.

What does this all mean? The average annual cost of owning a pet can be in excess of \$2,000, and that is without complications. Additionally, our love affair with our pets is translating into astronomical increases in veterinary spending.

Statistics provided by AVMA, American Veterinary Medical Association, indicate that in 2016 pet owners spent over \$44 million dollars taking their animals to the vet. Costs for some procedures rival that of human healthcare.

Common ailments such as joint injuries in dogs can cost around \$3,480. Removal of foreign objects ingested can average \$1,755. Cancer, which is diagnosed in 12 million pets annually, will set an owner back an average of \$2,033. However, if an animal is injured or killed due to veterinarian malpractice, the same animal its owners spent thousands of dollars on for treatment is considered by our judicial system as almost worthless, just a *piece of property*.

We all know the state of medical malpractice in healthcare, but what happens when something goes wrong with the treatment of your beloved pet?

Currently, the majority of courts view pets as personal property and restrict damages to their market value replacement cost, even in the event of proven wrongful death. Until the mid-part of the last century, the term "malpractice" did not even apply to veterinarians (and still does not in some states where the profession is not listed under the malpractice statute).

Recently, however, veterinarians have become subject to state malpractice actions. As the value of animals subject to malpractice actions increases from the traditional "market value" approach, it is expected that the number of malpractice claims will increase. To date, most animal medical malpractice cases are settled outside of court and few have won big settlements or verdicts.

The AVMA does not collect statistics on veterinarian malpractice suits and is against any changes in veterinary malpractice laws.

However, many states are beginning to give recognition to our furbabies as more than a piece of property. As a result, and because of groups like Joey's Legacy, veterinary malpractice awards have jumped from a hundred, insulting bucks to settlements of \$5,000 to \$139,000. In a recent settlement, the court awarded \$39,000 for a companion dog. The veterinarian offered \$400.

When looking for a quality, honest veterinarian, do your homework, like you would do if you were having heart surgery. Do not be intimidated by the veterinarian and ask questions.

AVMA PLIT Professional Liability for Veterinarians

When you are accused of professional malpractice, the program will vigorously defend you and pay the costs that you become legally responsible for due to allegations of professional negligence. Coverage automatically extends to veterinary-related activities such as speech making, consulting, clinical instructing, and serving as a member of a licensing or veterinary accreditation board. Limits below are listed as per occurrence / annual aggregate.

II. Summary of Potential Legal Actions

Veterinarians by the nature of their occupation deal with animals on a daily basis and in a variety of contexts. The core of their activities relate to the

providing of professional services, which are usually performed to the satisfaction of both the animal and his or her owner. But, invariably some of the interactions do not have the desired outcome. Based upon my research, the veterinarians who have been defendants in lawsuits find themselves confronted with a wide variety of legal claims:

1. **Malpractice.** Discussed in full below.
2. **Res ipsa loquitur.** This is an important alternative cause of action against a veterinarian, as an expert witness is not needed. Some mistakes are so obvious that the average person (the jury) can make an informed judgment without an expert witness.
3. **Administrative Action for Malpractice.** A person may file an action against a veterinarian with the state administrative licensing board that oversees veterinarians.
4. **Negligence.** As discussed below, if the actions in question are not within the realm of malpractice, then there may be legal liability based on common negligence. For example, if a veterinarian was overseeing the loading of a horse into a trailer and did not properly secure the horse, the standard of care is that of negligence.
5. **Gross negligence.** This is the more egregious form of a claim of negligence. If an animal came in for a treatment for fleas, and the veterinarian removed a leg, that would be gross negligence. A claim of gross negligence may support different kinds of damage awards, such as punitive damages or emotional distress for the owner.
6. **Intentional and negligent infliction of emotional distress (on the owner).** This may arise when the actions (against an animal) are intentional and likely to produce a strong reaction in the owner. This is an action in torts which is explained further in the Pet Damages discussion.

7. **Duties of bailee.** When a veterinarian acts as a bailee of an animal (for example when he or she boards pets), then legal liability may arise either out of negligent care of the animal or failure to redeliver the animal to the owner. In one case, an insured veterinarian was bailee of an elephant, who died from poison while in his custody. While his negligence in allowing the animal near poison would normally give rise to liability, the bailor and bailee had signed a release which held the bailee "harmless from any liability in the event of the death of the elephant 'Sparkle.'" A claim based upon a bailment does not require an expert witness and may have the effect of placing the burden of proof upon the veterinarian to explain what happened to the animal.
8. **Violation of a contract obligation.** This may be a useful approach if there is a written contract. However, oral agreements may also constitute a contract. The normal conversation with a veterinarian before rendering services would not constitute an oral contract. A contract claim cannot be based on general statements of reassurance, "I'm sure Fluffy will be better after the operation." Rather, it must be a specific promise to do something or obtain a specific result. In a contracts action, the promise in the contract becomes the standard for conduct, not the general standard of veterinarian care appropriate to the community. There may be a difference in the statute of limitations for filing a contract action (longer) verse tort or malpractice action.
9. **Deceptive trade practices.** However, professional services are often specifically excluded in the statutes that create the cause of action.
10. **Taking.** This may occur when the actions of an agent of the State result in the death of an animal. Only one case has been found to support such a cause of action. It first requires that the veterinarian

be an employee of the State. Secondly, because of some state policy the injury to the animal occurred.

III. Malpractice Distinguished

At common law, and even prior to World War II in the United States, legal claims based upon malpractice did not apply to veterinarians (just doctors and lawyers). The 1936 edition of the legal digest, CJS, has 289 pages of information about animal legal issues but the term "veterinarian" and "malpractice" does not occur anywhere in the material. Since that time, there has been an expansion of the application of the concepts of malpractice to include veterinarians. This has been done by judicial rule and by the adoption of new legislation. In understanding the scope of a claim based on malpractice, it must first be distinguished from an action based upon negligence. An action is properly based in malpractice if the acts or omissions at issue involve matters of medical science or require special skills not ordinarily possessed by lay people. When an injury occurs as a result of something that would be considered within the professional knowledge of the individual who holds him or herself out as a veterinarian, the legal cause of action will be classified as one based in malpractice. Some state law provides help in discerning which issues are professional by listing those actions for which an individual must have a state issued veterinarian license.

When a veterinarian is acting in other than his or her professional capacity, the normal negligence standard is used. For example, if a veterinarian performs surgery on a horse, the surgery shall be judged under malpractice standards, but if a veterinarian is arranging for the transportation of a horse by trailer, the reasonable person standard applies, since the activity is not within the bounds of his professional knowledge or skill. Likewise, if a veterinarian provides boarding facilities for healthy animals, then he or she would be judged under the same negligence standard as would any other bailee of an animal. Sometimes humans are injured in the offices of veterinarian. In one case, an injury to a worker in a human society shelter was found not to support an action in malpractice. As a veterinarian has a

professional duty only to his or her animal patients, an action for injury to a human will be based upon negligence not malpractice. In another case, the court held that the disposing of an animal's body was not within professional standards and therefore only an action in negligence might be supported by the facts.

IV. Malpractice Generally

For a plaintiff (animal owner) to recover damages for injury to an animal, in an action based on malpractice, all the following elements must be proven by the plaintiff

- (1) The defendant was under a duty of care toward the animal in question. The veterinarian had accepted the responsibility to treat the animal.
- (2) The actions or nonactions of the veterinarian did not conform to the professional standard of conduct.
- (3) The failure to conform to the professional standard was the proximate cause of the injury or harm at issue.
- (4) The injury or harm resulted in damages to the plaintiff (not just the animal in question).

Veterinarians are under no legal duty to treat an ill or injured animal. The decision whether or not to provide a service is an individual decision. A decision to not provide treatment is not malpractice. One case suggests, however, that professional ethics may require some level of attention in emergency situations, but this does not give rise to a legal cause of action. Once the decision to treat an animal is made, the veterinarian has a duty to continue to treat or at least inform the owner of his or her decision to stop treatment of the animal in question.

To lose your beloved pet to malpractice is bad enough; but the veterinary coverup makes it all worse. People make mistakes. Just own up to it.

The following stories are real and most are verified via correspondence, court records, veterinary analyses and legal documentation. Many of these owner-victims will never be the same, and their stories are heart-wrenching.