



AND THE LAW

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ANIMAL PATIENTS

The pharmacist at Anytown Pharmacy had prepared prescriptions for two pets and placed them in the refrigerator awaiting pickup. When Butch's owner came in to pick up his prescription, the owner was given another dog's prescription. Upon administration, the dog became lethargic and Butch's owner took him to the vet. Unfortunately, Butch's symptoms couldn't be reversed and he died as a result of the incorrect drug's effects. Butch's owner subsequently made a claim for damages against the pharmacy.

What damages is Butch's owner entitled to recover? In the majority of states, pets and other animals are considered personal property. As such, the owner is not entitled to recover damages for emotional pain and suffering or mental anguish, no matter how close the owner is to the pet or how much a part of their family they consider the pet to be. This can make these types of claims difficult to settle because the owner feels that the bond with their pet is not being considered. Under the law, they are correct. The bond with their pet is not compensable.

What is compensable is the market value of the animal and other costs resulting from the incident. These other costs could be the cost of treatment by a vet or in extreme cases, the cost of burial or cremation of the animal. The market value of an animal includes a number of factors, such as the original purchase price, the cost of replacement, and other elements that can enhance the animal's value. For example, if the animal patient is a prize-winning race horse, the owner would be entitled to recover lost stud fees and other income derived from the horse's performances. The cost to replace a winning race horse can also be substantial.

The potential vet bills for an injured pet could also be substantial. Because of the bond with their pet, the distraught owner might be willing to try any treatment, even those with only a small chance of success. It would not be unusual for vet bills to exceed the market value of an animal.

Because animals are considered property under the law, some states may have different procedures for these types of claims. States that have

damage caps in medical negligence cases may not apply them here. These caps are generally applied to the injured patient's damages for pain and suffering. Because animal claims are property claims and there are no emotional damages, these caps do not apply. Also, because these claims are property claims, they may not be eligible for the Medical Review Panel process if that is in place in your state. In the Medical Review Panel process, the negligence claim is reviewed and evaluated by a panel of practitioners before the case can go to court. The case then only goes to court if one of the parties disagrees with the panel's decision.

Pharmacists may not think much about the financial risks from an animal claim because there are no damages for emotional distress. While this is true, the other exposures can still be significant. Market values for race horses that have died as the result of prescription errors can reach six figure settlements. This can be multiplied if more than one animal is killed or injured. A case in Florida in 2009 resulted in the deaths of 21 polo ponies from a compounded nutritional supplement. A jury awarded the owners of the horses \$2.5 million.

Pharmacists are health care providers because they want to help their patients. This is true whether the patient is human or an animal. The differences in the law for damages as the result of an error should not influence the way that a pharmacist approaches the care that they provide. There are groups advocating in several states for changes in these laws to allow for the owner to recover emotional damages. Pharmacists will need to verify the law in their state. All patients deserve the

same processes and safeguards. As with any aspect of their practices, pharmacists should be well informed of the standards and risks for any activity undertaken.

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