

Reporting Animal Cruelty for Veterinarians

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BACKGROUND

Due to increased prosecution of animal cruelty defendants, Veterinarians are being compelled to assist in bringing these perpetrators to justice. With the rise of mandatory reporting requirements for veterinarians, the veterinarian's role as a viable witness in cruelty cases has expanded. Determining the cause, severity and duration of an animal's injuries are important legal elements of a cruelty case. Yet these elements cannot be established without the expertise of the veterinarian who has examined or treated the animal in question.

Currently the duty to report suspected animal cruelty by licensed veterinarians varies depending on state law: Alabama (Obligated), Alaska (No Duty), Arizona (Mandatory for dogfighting), Arkansas (No Duty), California (Mandatory for dogfighting), Colorado (Mandatory), Florida (No Duty), **Georgia (Voluntary)**, Hawaii (No Duty), Idaho (No Duty), Illinois (Mandatory), Indiana (No Duty), Kansas (Failure to report may result in disciplinary action), Maine (Voluntary), Maryland (Statute encourages veterinarians to report and regulation indicates veterinarian should report), Massachusetts (Mandatory), Michigan (No Duty), Minnesota (Mandatory), Mississippi (No Duty), Nebraska (Mandatory), Nevada (Voluntary), New Hampshire (No Duty), New York (Voluntary), North Carolina (Implied Voluntary), North Dakota (No Duty), Oklahoma (Mandatory), Oregon (Reporting required for suspicion of aggravated abuse), Oklahoma (Report required within 24 hours), Pennsylvania (Mandatory for repeated abuse by professional colleague), Rhode Island (No Duty), Texas (No Duty), Utah (No Duty), Virginia (No Duty), Vermont (No Duty), Washington (No Duty), West Virginia (Mandatory), and Wisconsin (Mandatory for dogfighting).

DEFINITIONS

In an animal cruelty case, **Veterinary Forensics** is the application of medical sciences, including veterinary medicine, to answer legal questions of law in determining the causes, diagnosis, and treatment of diseases and injuries to abused animals. Veterinarians may be asked to give evidence as a **direct or factual witness** based on the evidence he/she collected during the examination of the victim, or may be asked to give an opinion as an **expert witness** based on the evidence collected by others.

The veterinarian's role as **expert witness** in the prosecution of cruelty cases may involve (1) determining the cause of death and sequence of injuries, pre-mortem or post mortem; (2) distinguishing the cause of death or injury that resulted from human versus non-human causes; (3) identifying evidence that may link the injuries to a particular suspect such as neglect, starvation, ligatures, toxic substances, beatings, stab wounds, etc.; (4) determining the correct identity/species of the victim; (5) offering the degree of suffering the victim experienced; (6) commenting on the actions that could have been taken to prevent injury or death; (7) investigating the actual crime scene; (8) testifying in court as an expert witness; and (9) testifying on evidence gathered by others such as police officers and animal control.



Veterinarians may be asked to accompany the police or cruelty investigators to the scene of a suspected animal cruelty case to conduct an examination of the animals. Similarly, at the request of law enforcement, veterinarians often examine, treat and perform necropsies on animals seized for animal cruelty, neglect or animal fighting.

Veterinarians can also be ordered by a court through a subpoena to turn over records or other information concerning animals they have treated. A subpoena may also be used to compel the testimony of a veterinarian concerning his or her patients and their condition and treatment. For testifying in court, some states, including Georgia, have expressly included "veterinary immunity" in their statutes for such testimony.

FEDERAL LAWS

Testimony based on application of forensic techniques in an animal cruelty prosecution is likely to be subjected to a **Daubert** test (**Daubert v. Merrill Doe Pharmaceuticals** (1993)). Under **Daubert**, a court should consider: "(1) whether the expert's hypothesis can be and has been tested; (2) whether the expert's methodology has been subjected to peer review and publications; (3) how often the methodology yields erroneous results; (4) whether controls over the methodology exist and are maintained; and (5) whether the scientific community has accepted methodology." In 1999, the U.S. Supreme Court ruled that the **Daubert** standard should be extended from purely scientific testimony to include technical and specialized-knowledge testimony (**Kumho Tire Co. v. Carmichael**). However, states can vary in their application and interpretation of these rules, so it is important that the prosecutor apply the rules of evidence in that state.

GEORGIA LAW

In Georgia, the law for veterinarians to report abuse is not mandatory, but rather veterinary professionals are **voluntarily** allowed to break patient-client confidentiality to report abuse (**O.C.G.A. §4-11-17**). Georgia expressly allows veterinarians to testify **with immunity** concerning an animal's care in judicial and administrative proceedings. Georgia also extends immunity under the same provision to licensed veterinary technicians.

To successfully prosecute an animal cruelty case, the state must commonly show the nature, severity and duration of the animal's injury, the cause of that injury or death, and in some cases, the degree to which the animal suffered or experienced pain as a result of its injuries. The veterinarian who treated the animal or who examined the animal in most cases, is considered to have the professional expertise as an **expert witness** to establish the nature, duration, and severity of the animal's injury.

Prior to 2005, Georgia's statute regarding the admissibility of **expert testimony** simply read: "The opinions of experts on any question of science, skill, trade, or like questions shall always be admissible." (O.C.G.A. § 24-9-67). In practice, it was a rare occasion that an expert's testimony was excluded by a trial court. It is important to point out that the liberal standard of O.C.G.A. § 24-9-67 has not been completely overturned. The statute still exists even though modified, and is now specifically applicable in criminal cases.

Subsection (b) of Georgia's new statute **O.C.G.A. § 24-9-67.1** provides: "If scientific, technical, or other specialized knowledge will assist the trier of fact in any cause of action to understand the



evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise, if: (1) The testimony is based upon sufficient facts or data which are or will be admitted into evidence at the hearing or trial; (2) The testimony is the product of reliable principles and methods; and (3) The witness has applied the principles and methods reliably to the facts of the case.”

CONCLUSION

The improved capability of veterinarian forensics to document and present physical evidence of animal cruelty has led to more aggressive prosecution of animal cruelty cases. By understanding the veterinarian’s role in identifying and reporting cases of suspected animal cruelty, and by using their expertise to assist the police and prosecutors in the investigation and prosecution of the case, veterinarians play a critical role in preventing further acts of animal neglect and abuse. Veterinarians not only can protect their own animal patients, but also can help to make their community a safer and more humane place to live for humans and animals. Also, veterinary professionals provide an objective community standard for what is considered reasonable care of an animal. Increased awareness and the reporting of suspected animal abuse are the first steps to resolve unhealthy situations and make communities safer for all.

REFERENCES

<https://www.gabar.org/newsandpublications/georgiabarjournal>

Veterinary Forensics, Giving a Voice to Those Who Cannot Speak for Themselves, Janel Brown, 2009

<http://www.animalcareconference.org>

<http://www.vvma.org>

<https://www.animallaw.info/statute/ga-veterinary-veterinary-practice-code>

<https://www.ncbi.nlm.nih.gov/pmc/articles/>

<http://nationallinkcoalition.org/wp-content/uploads/2015/11/Vet-Med-RR-article.pdf>

<http://www.aspcapro.org/resource/disaster-cruelty-animal-cruelty/veterinarians-legal-role-animal-cruelty->

<https://www.animallaw.info>

APPENDIX I – GEORGIA EXPERT TESTIMONY LAW

O.C.G.A. §24-9-67.1 (2010) Expert opinion testimony in civil actions; medical experts; pretrial hearings; precedential value of federal law

(a) The provisions of this Code section shall apply in all civil actions. The opinion of a witness qualified as an expert under this Code section may be given on the facts as proved by other witnesses. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing or trial. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of



the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

(b) If scientific, technical, or other specialized knowledge will assist the trier of fact in any cause of action to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise, if:

(1) The testimony is based upon sufficient facts or data which are or will be admitted into evidence at the hearing or trial;

(2) The testimony is the product of reliable principles and methods; and

(3) The witness has applied the principles and methods reliably to the facts of the case.

(c) Notwithstanding the provisions of subsection (b) of this Code section and any other provision of law which might be construed to the contrary, in professional malpractice actions, the opinions of an expert, who is otherwise qualified as to the acceptable standard of conduct of the professional whose conduct is at issue, shall be admissible only if, at the time the act or omission is alleged to have occurred, such expert:

(1) Was licensed by an appropriate regulatory agency to practice his or her profession in the state in which such expert was practicing or teaching in the profession at such time; and

(2) In the case of a medical malpractice action, had actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given as the result of having been regularly engaged in:

(A) The active practice of such area of specialty of his or her profession for at least three of the last five years, with sufficient frequency to establish an appropriate level of knowledge, as determined by the judge, in performing the procedure, diagnosing the condition, or rendering the treatment which is alleged to have been performed or rendered negligently by the defendant whose conduct is at issue; or

(B) The teaching of his or her profession for at least three of the last five years as an employed member of the faculty of an educational institution accredited in the teaching of such profession, with sufficient frequency to establish an appropriate level of knowledge, as determined by the judge, in teaching others how to perform the procedure, diagnose the condition, or render the treatment which is alleged to have been performed or rendered negligently by the defendant whose conduct is at issue; and

(C) Except as provided in subparagraph (D) of this paragraph:

(i) Is a member of the same profession;

(ii) Is a medical doctor testifying as to the standard of care of a defendant who is a doctor of osteopathy; or

(iii) Is a doctor of osteopathy testifying as to the standard of care of a defendant who is a medical doctor; and

(D) Notwithstanding any other provision of this Code section, an expert who is a physician and, as a result of having, during at least three of the last five years immediately preceding the time the act or omission is alleged to have occurred, supervised, taught, or instructed nurses, nurse practitioners, certified registered nurse anesthetists, nurse midwives, physician assistants, physical therapists, occupational therapists, or medical support staff, has knowledge of the standard of care of that





health care provider under the circumstances at issue shall be competent to testify as to the standard of that health care provider. However, a nurse, nurse practitioner, certified registered nurse anesthetist, nurse midwife, physician assistant, physical therapist, occupational therapist, or medical support staff shall not be competent to testify as to the standard of care of a physician.

(d) Upon motion of a party, the court may hold a pretrial hearing to determine whether the witness qualifies as an expert and whether the expert's testimony satisfies the requirements of subsections (a) and (b) of this Code section. Such hearing and ruling shall be completed no later than the final pretrial conference contemplated under Code Section 9-11-16.

(e) An affiant must meet the requirements of this Code section in order to be deemed qualified to testify as an expert by means of the affidavit required under Code Section 9-11-9.1.

(f) It is the intent of the legislature that, in all civil cases, the courts of the State of Georgia not be viewed as open to expert evidence that would not be admissible in other states. Therefore, in interpreting and applying this Code section, the courts of this state may draw from the opinions of the United States Supreme Court in **Daubert v. Merrell Dow Pharmaceuticals, Inc.**, 509 U.S. 579 (1993); **General Electric Co. v. Joiner**, 522 U.S. 136 (1997); **Kumho Tire Co. Ltd. v. Carmichael**, 526 U.S. 137 (1999); and other cases in federal courts applying the standards announced by the United States Supreme Court in these cases.

APPENDIX II – GEORGIA CASE LAW

Mason v. Home Depot U.S.A., Inc. et al., 283 Ga. 271, 658 S.E.2d 603 (2008)

The Supreme Court of Georgia upheld the constitutionality of the statute over challenges on several fronts. The decision in Mason provides for a uniform approach to the analysis of the **admissibility of expert testimony** in line with the Federal Rules of Evidence and also paves the way for Georgia's trial courts to require expert testimony to meet higher standards for admissibility than perhaps any other state in the nation.

Prior to the enactment of O.C.G.A. section 24-9-67.1, although moving towards an approach

Condra v. Atlanta Orthopaedic Group, P.C., 292 Ga. App., 664 S.E.2d 281, (2009)

This case reverses Georgia's old evidentiary rule that an expert's personal practices are inadmissible. The reasoning behind that rule was that the issue for the jury was whether the defendant violated the standard of care in the professional community, and what one particular professional did had no bearing on the general standard. In this case, a doctor was sued and the claim was that the plaintiff's injuries were a result of the doctor's failure to perform blood count monitoring during a course of medication therapy. The defense expert testified that blood count monitoring was reasonable, but not the standard of care in the profession. However, discovery had elicited that the defense expert himself did conduct blood monitoring when performing the therapy. The trial court and the court of appeals held that the evidence of the expert witness's personal practice was inadmissible, but the Supreme Court reversed, acknowledging that **O.C.G.A. § 24-9-67.1** directs courts to consider the holdings of federal courts on the matter. Therefore, it is now permissible to inquire into the expert's personal practices in determining the credibility of the expert's opinion.





Hamilton-King v. HNTB Georgia, Inc., 296 Ga. App. 864, 676 S.E.2d 287 (2009)

The court of appeals reversed, chiding the trial court for too rigidly applying the standards set forth in **Daubert**. The court of appeals affirmed that the determination of whether an expert opinion was appropriately admissible was a flexible one guided by the statutory criteria of whether or not the testimony is given by an expert who has reliably applied accepted principles and methods to the facts of the case. Once these criteria are met, the opinion is admissible, and the issues raised by the defense were properly matters of cross-examination for trial (and the jury).

Credit to Kaye Klapper

