

Access to Information and Protection of Privacy Act (ATIPPA) and the confidentiality of veterinary medical records under a valid Veterinarian-Client-Patient-Relationship (VCPR)

Veterinarians in Newfoundland and Labrador are requesting that their practice and confidential veterinary medical records be exempt from queries made through the Access to Information and Protection of Privacy Act (ATIPPA).

Veterinarians in government have vast responsibilities. Certainly a primary obligation is to provide policy advice and to ensure that a particular jurisdiction's animal health community and veterinary infrastructure have the capacity and competency to effectively respond to foreign, emerging and future animal and zoonotic diseases. Importantly, veterinarians in government also act in a clinical role to assess, consult, and prescribe treatment for populations of animals within their jurisdiction. This role is very different than regulatory medicine, which includes an active and passive surveillance program for the purposes of early detection of Reportable Disease or to prove freedom from disease. Further, government licensed veterinary clinics provide laboratory services to veterinary clinics (both privately owned veterinary clinics and government owned) and enforcement agencies (Canadian Food Inspection Agency, Royal Newfoundland Constabulary and Royal Canadian Mounted Police). Members of the veterinary community, such as private veterinary clinics, submit samples to the provincial laboratories for analysis and there is a fee for these services. The information provided to the laboratories include private information regarding the owner of the animal and details regarding their pets. This is another example of why veterinary medical records must be safeguarded and must not be subject to ATIPPA.

Government employed veterinarians give advice on policy, conduct active and passive surveillance for Reportable Diseases, conduct and oversee research in support of industry and government needs, perform biosecurity audits, develop management plans, conduct laboratory testing and provide primary veterinary care. Primary veterinary care involves veterinary diagnostic visits, sampling and testing of animals, interpretation of laboratory tests, mitigation and treatment strategies, analysis of treatment success and preventative medicine.

The Veterinarian-Client-Patient-Relationship (VCPR) was adapted in Canada in 1951, as veterinarians required this relationship to prescribe veterinary drugs. Without having a free flow of information from the client to the veterinarian the treatments could fail, lead to resistance or cause harm to the animals. Maintaining confidential medical records in a VCPR is necessary to ensure that the clients trust that the information will not be released to any third party. After this time, client trust of confidentiality within a VCPR became important with respect to detecting, treating and mitigating disease. This is particularly important with respect to food safety, public safety and detecting reportable/emerging diseases. The level of client communication that the VCPR gives is required to ensure that these activities can still occur effectively. Ultimately,

protecting the confidential records maintained in VCPR is for the benefit of the public, veterinarians and the welfare of the animals.

According to the Newfoundland and Labrador Veterinary Medical Association (NALVMA), “upon entering into a consultation with a client, a Veterinarian-Client-Patient Relationship (VCPR) is formed” (Newfoundland and Labrador College of Veterinarians, 2007).

According to the By-laws of the College (Section 2. VCPR bylaw) and echoed by the Canadian Veterinary Medical Association (CVMA) and NALVMA, a VCPR requires the following:

- a) The client (owner or owner’s agent of the animal [s]) has given the responsibility of medical care to the veterinarian and has agreed to follow the instructions of the veterinarian, and;
 - b) the veterinarian has assumed the responsibility from the client for making clinical judgment regarding the health of the animal(s), the need for medical treatment, and for ensuring the provision of ongoing medical care for the animal(s), and;
 - c) the veterinarian has sufficient knowledge of the health status of the animal(s) and the care received or to be received. The knowledge has been obtained through recent consultations and/or examination of the animal(s) and the premises where they are (it is) kept or through a history of medically appropriate and timely examinations or interventions, and;
 - d) the veterinarian is readily available, or has made the necessary arrangements with another veterinarian, for ongoing medical care in case of adverse reactions or therapy failure.
- (Newfoundland and Labrador College of Veterinarians, 2007)

Failure to comply with the Clinical Standards, By-laws or Code of Ethics of the profession exposes the veterinarian to discipline by the College. According to the Veterinary Clinical Standards for NL adopted by the College (section 2.1(8)) *“Unless required for the purposes of a clinic inspection, or other legitimate action of the College, a medical record is considered to be confidential record that is accessible only to the owner of the animal (or representative) and the attending veterinary clinic.”*

According to the Newfoundland and Labrador College of Veterinarians, even Telemedicine (consulting over telecommunications such as internet and phone) is subject to the VCPR. According to the CVMA’s position on telemedicine “The attending and consulting veterinarians involved in a telemedicine consultation must ensure that the integrity and confidentiality of the veterinarian-client-patient relationship (VCPR) is maintained.”

The VCPR is the basis for interaction among veterinarians, their clients, and their patients. The VCPR serves to build trust and facilitate honest and comprehensive communication between the client and the veterinarian to ultimately improve accuracy of diagnosis and efficacy of treatment. Moreover, a VCPR encourages practitioners to fully and candidly record medical information (Babcock & Pfeiffer, 2006).

When a VCPR exists, veterinarians must maintain veterinary medical records (American Veterinary Medical Association, 2020). “Ethically, the information within veterinary medical records is considered privileged and confidential. It must not be released except as required or

allowed by law, or by consent of the owner of the patient” (American Veterinary Medical Association, 2020) (Babcock & Pfeiffer, 2006). As laid out in the Veterinary Medical Act, the Code of Professional Ethics in Newfoundland and Labrador states that “the right to practice as a veterinarian in the province is conditional upon adherence to the code of professional ethics as set out in the by-laws of the Newfoundland and Labrador Veterinary Medical Association.” (Newfoundland and Labrador College of Veterinarians, 2007). Furthermore, the American Veterinary Medical Association (AVMA) says that “without the express permission of the practice owner, it is unethical for a veterinarian to remove, copy, or use the medical records or any part of any record.” (American Veterinary Medical Association, 2020). Indeed, it is considered a breach of the veterinary ethical code to release medical records without written permission of the owner or without public health risk in which case it is required to report by the Health of Animals Act under the Canadian Food Inspection Agency (CFIA).

The Government of Newfoundland and Labrador employs veterinarians in both a regulatory and primary clinical role in the fields of agriculture, aquaculture, and public health. This is necessary due to the shortage of veterinarians who are available to work in food production, in rural areas that require significant travel. In many of the Atlantic Provinces, private veterinarians are difficult to recruit and retain. Government veterinarians are constantly being inundated with requests from both the general public and members of government to access health information that, if released, would be considered ethical misconduct. This would jeopardize the VCPR, affect the ability of the veterinarian to practice and potentially result in disciplinary action. Another serious consequence is that this will ultimately result in delayed detection/treatment/mitigation of diseases, which would be even more serious if it was a public health issue or a reportable disease. Moreover, the potential impact on the respective industry of the client, albeit aquaculture, agriculture, or public health, could be economically devastating. Releasing any other health information than that is required in special circumstances (e.g., the Canadian Food Inspection Agency or Health Canada) to the government or the public will result in delayed veterinary intervention and this will not safe guard the industry, increase food security/safety, the public or the welfare of the animals.

As prescribing veterinarians, those employed by the Government of Newfoundland and Labrador must comply with guidelines authored by the CVMA outlining the use of antimicrobials. The CVMA states that “antimicrobials approved for the treatment of the diagnosed condition should be used whenever possible” and that “antimicrobials used in animals should only be used within the confines of a valid veterinarian-client-patient relationship (VCPR)” (Canadian Veterinary Medicine Association, 2020). Furthermore, the CVMA holds that the treatment of animals using complementary or alternative veterinary medicine constitutes the practice of veterinary medicine and that these practices must too be provided only within the context of a valid VCPR.

In 2004, the Personal Information Protection and Electronic Document Act (PIPEDA) was issued. The CVMA sent out a document outlining how the PIPEDA will affect Veterinarians. Regarding professional confidentiality, the article states, “There may be some confusion about the need to protect and maintain personal information under the new laws and the time-honored tradition of maintaining confidentiality as required by veterinary ethical codes.” The article went on to say

that, “Given the high respect that the profession has for the duty of confidentiality it is suggested that the veterinarian will have little difficulty in complying with the new privacy laws”. As with any veterinary clinic, the Government of Newfoundland Labrador must now realize its requirements in accordance with PIPEDA regulations. As dictated in the law, client information must not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual providing the personal information or except where use or disclosure is required by law (PIPEDA). A veterinary facility must also safeguard and protect personal information under its control by implementing security measures appropriate to the sensitivity of the information.

In Newfoundland and Labrador, the Newfoundland and Labrador College of Veterinarians advise that, unless required for the purposes of a clinic inspection, or other legitimate action of the College, a medical record is considered to be a confidential record that is accessible only to the owner of the animal (or representative) and the attending veterinary clinic (Newfoundland and Labrador College of Veterinarians, 2007).

Indeed, the protection of the VCPR and confidentiality of medical records is a globally expected code of practice:

- In New Brunswick, aquatic animal medical records are protected by legislation.
- In the province of Nova Scotia, aquaculture veterinarians employed by the province had to stop providing veterinary care to their clients. This was due to requests under FOIPOP (Freedom of Information and Protection of Privacy), which is similar to ATIPPA. Regulations were changed and once the medical records were determined to be confidential, the veterinarians were able to resume practice.
- In the United Kingdom, the Royal College of Veterinary Surgeons requires by law that the veterinary professional not disclose to any third party any information about a client or their animal either given by the client, or revealed by clinical examination or by post-mortem examination (Royal College of Veterinary Surgeons, 2020).
- The Atlantic Veterinary College (AVC) is responsible for teaching future Veterinarians in Atlantic Canada. Teachings include professional conduct in addition to clinical skills. The AVC has a pre-clinical handbook that outlines expectations of students working in the teaching hospital. One rule in this guidebook states, “Be respectful of the veterinarian-Client-Patient-Relationship and do not, under any circumstances, disclose patient details to anyone not directly involved in management of the case, either in person or on social media.”
- In most states in the USA, written permission from the owner of the animal(s) is required by law to release a medical record. In these states, there are statutory or regulatory provisions prohibiting the release of veterinary medical records (American Veterinary Medical Association, 2020). The AVMA Model Veterinary Practice Act states that “no licensed veterinarian shall disclose any information concerning the licensed veterinarian’s care of a patient except on written authorization or by waiver by the licensed veterinarian’s client (written or verbal), or on appropriate court order, by subpoena, or as otherwise provided (Babcock & Pfeiffer, 2006).

A veterinarian is required by law to release confidential information in the following circumstances:

- To report suspected cases of cruelty against animals
- The CVMA states that “provincial acts also provide veterinarians immunity from prosecution when reports about animal abuse to humane authorities are made in good faith”. This implies that Veterinarians who break confidentiality with clients are subject to legal prosecution.
- To report a public health risk or Reportable Disease
- Federally Reportable Diseases in compliance with the Canadian Food Inspection Agency (CFIA) as required under the Health of Animals Act. Once detected these cases are under the care and control of CFIA.
- Public health issues reported to Health Canada

It is imperative that the VCPR be protected and safe guarded. Any information that is released to government or the public will be undoubtedly detrimental to veterinarians who practice in Newfoundland the Labrador, to their clients, and most importantly, to the welfare of the animals involved. The public interests are already considered due to the required reporting to Health Canada and the CFIA as listed above. Client trust will be destroyed, and open communication between the client and veterinarian will cease. This will lead to lack of expediency, accuracy, and completeness of a clinician’s practice, a subsequent lag in diagnosis and treatment of disease, and potentially devastating spread of pathogens between populations of animals. This serves the general public in no positive way. Confidentiality is key to operating health systems – it results in disclosure, investigation, and mitigation. For these reasons, a precedent that breaches the inherent confidentiality of the VCPR must not be set.

Request:

Veterinarians who practice primary clinical care within the structure of government should not be forced to breach a global veterinary ethical code. Human medical doctors working in similar roles for the Government of Newfoundland and Labrador are neither asked nor expected to break their ethical code, as they are exempt from requests under the Access to Information and Protection of Privacy Act. Veterinarians practicing in the province of Newfoundland and Labrador are requesting the same consideration.

Detection of Reportable Diseases (both Provincial and Federal) will still be subject to the Health of Animals Act and therefore will continue to be reported to the Canadian Food Inspection Agency.

- Potential outcomes:
 - Option 1: The ATIPPA accepts the exemption of veterinary medical records consistent with human medical records, solicitors and other professionals working for GNL.
 - Veterinarians can practice veterinary medicine and surgery under a valid VCPR with free flow of information to enable optimal care, early detection of pathogens/diseases and the ability to optimize detection of emerging diseases for animals used for food in Newfoundland and Labrador.
 - This will further enhance the ability to for the Government of Newfoundland and Labrador to safeguard our local food sources and optimize the ability of the province source local products.
 - Reportable Diseases (both Provincial and Federal) would still be subject to the Health of Animals Act and therefore will continue to be reported to the Canadian Food Inspection Agency.

- Option 2: The ATIPPA does not accept the exemption of veterinary medical records consistent with human medical records, solicitors and other professionals working for GNL.
 - There is a deficit of veterinarians available to provide veterinary care to food producing animals in the province of Canada. This is further impacted by the geographical challenges faced in the province of NL. Veterinarians working in the large animal and aquaculture sectors are difficult to recruit and retain and therefore cessation of these services are not an option at this time.
 - By not safeguarding medical records and the VCPR, free flow of information between clients and veterinarians will impact the veterinarians ability to detect disease in a timely fashion and subsequently effectively provide mitigation and treatment strategies.
 - Reportable diseases detection and intervention would be delayed due to the owners feeling that they cannot trust their health care professional. This could potentially result in pathogen transfer between animals and facilities, ultimately negatively impacting the sustainability of the NL food producing industry.

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