

BEST PRACTICES: LEGAL AND ETHICAL ISSUES WITH DELIVERING VIRTUAL CARE

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There is a need for clarity on the following issues by State Boards in regard to best practices Legal and Ethical Issues with Delivering Virtual care:

Check with your state, territory, or country to learn the rules and regulations that apply in your area, especially pertaining to your:

- a. Veterinary practice act.
- b. Pharmacy act.
- c. Licensure and credentialing.
- d. Record retention.
- e. Client confidentiality.
- f. Federal laws and regulations, including FDA, USDA, DEA, OSHA, etc.

All telemedicine must adhere to the respective rules and regulations of the given state, territory, or country.

Defining the VCPR such that it is precise enough to provide consistent and predictable guidance to the licensees. If a physical exam is required:

- a. Is it “personally acquainted” exam or can it be done by another vet in the practice or licensed professional such as nurse or technician?
- b. Is it “physical” exam or can it be “virtual” examination?
- c. How long ago does the PE have to have been done that it is still valid to maintain the VCPR?
- d. Does the PE have to be related to the condition for which the telemedicine consult is being requested?

Development of virtual care standards of care by State Boards and experts within the veterinary community

- a. Clarity for the State Board as to what differentiates “teleadvice/teletriage” from telemedicine

Staff utilizing virtual care should be trained to do so properly.

- a. Ensure every shift has capacity for those assigned to be fully dedicated to telemedicine if needed.

Identify and frame opportunities for appropriate use of telemedicine, including:

- a. Preventative Care
- b. Hospice and end-of-life care
- c. Client Education
- d. Teletriage
- e. For clients/patients located in underserved areas
- f. To assist in monitoring patients in isolation
- g. Recommending patients that aren't suitable patients for telemedicine to be seen in-person.

Licensing Issues

- a. Determine how VCPR is established **See Section 3**
- b. Determine where veterinarian has to be licensed
- c. Determine continuing education requirements specific to telemedicine if practice includes telemedicine consultation.
- d. Determine whether any veterinarian who is licensed in another Jurisdiction, or any Person whose expertise, in the opinion of the Veterinarian with an established VCPR, would benefit an Animal, and who is consulting with the Veterinarian, is exempt from licensure in this Jurisdiction.

Medical Record Keeping

- a. Integration with platforms of service providers assisting with data collection and monetization of telemedicine consultations
 - i. Confidentiality: released as required or allowed by law or by consent of the owner of the patient
 - ii. Data security: encryption of data during transmission and at rest.
 - iii. Data integration and retrievability

- iv. Data needs to be maintained and available in accordance with state laws and regulations.
 - 1. Copies of all patient-related electronic communications
 - a. Client-veterinarian communication
 - b. Prescriptions
 - c. Test results
 - d. Evaluations
 - e. Consultations
 - f. Records of past care
 - 2. Instructions obtained or produced in connection with the utilization of telemedicine services.
 - 3. Signed informed consent form
- v. Monetize telemedicine services appropriately
 - 1. Expressing professional expertise
 - 2. Client convenience
 - 3. Animal health and welfare
 - 4. Secure collection of payment for services
- b. Practices and virtual care service providers should develop, maintain, and implement written policies and procedures for documentation, maintenance, and transmission of the records of encounters using telemedicine services. Such policies and procedures should address:
 - i. Veterinarians and virtual care service providers should provide current pet owners with a copy of the patient's records upon request in a timely manner.
 - ii. Privacy
 - iii. Personnel who will process messages.
 - iv. Hours of operation.
 - v. Types of transactions that will be permitted electronically.
 - vi. Required patient information to be included in the communication, such as name, species, breed, sex, weight, and presenting complaint.
 - vii. Archival and retrieval.
 - viii. Quality oversight mechanisms
- c. Policies and procedures for veterinary medical record privacy, data management, and security should be:
 - i. Written.
 - ii. Periodically reviewed and, as needed, updated.
 - iii. Maintained in an accessible and readily available manner

- iv. Veterinarians should be aware that they can use their own data for research, education, marketing, public good, etc. when the data are anonymized.
- v. Veterinarians using 3rd party vendors should be aware of how those vendors are using data obtained from their clients.

Malpractice Insurance

- a. Ensure telemedicine services provided by the insured are covered
- b. Assess the risks of using virtual care platform vendors, such as:
 - i. How do they maintain medical record confidentiality?
 - ii. How do they capture and store information, and for how long?
 - iii. Do they have insurance, and does the insurance protect the healthcare provider?
 - iv. Does the healthcare provider's primary malpractice insurance protect against vendor negligence?
- c. Be aware that malpractice insurance may not cover practitioners treating patients in states in which they are not licensed.
 - i. Practitioners should be aware of how each state regulates VCPR and telemedicine services.
- d. Check with your professional liability carrier for any additional recommendations it may have pertaining to providing telemedicine services.

Client communication tailored to the provision of telemedicine

- a. Be sure to reply to owners in a timely, professional manner.
- b. If your practice does not have the capacity to dedicate someone to telemedicine, establish specific time(s) during the workday to incorporate telemedicine consultations.

Client consent forms should address the following main concepts:

- a. Identification of the client, the patient, the practitioner, and the practitioner's credentials, location and Jurisdiction's license number and licensure status.
- b. Introduction to telemedicine
- c. Record keeping
- d. Hold harmless clause for information lost because of technical failures
- e. Requirement for express client consent to forward medical records to a third party if needed.
- f. The client understands the potential risks and benefits of telemedicine.

- g. The client understands that the laws that protect privacy and the confidentiality of traditional medical information also apply to telemedicine.
- h. The client understands that no information obtained in the use of telemedicine which identifies the client or patient will be disclosed to researchers or other entities without the client's consent.
- i. The client understands that they have the right to withhold or withdraw their consent to the use of telemedicine in the course of patient care at any time.
- j. The client engaging in telemedicine understands that in-person options are available for treatment and care.
- k. The client understands that there will be a plan for ongoing care.
- l. The client understands that there will be a plan for alternative care in the case of an emergency or technological malfunction.
- m. The client understands that it is the role of the veterinarian to determine whether the presenting complaint is appropriate for a telemedicine encounter.
- n. The client has the ability to register complaints with the appropriate Board of Veterinary Medicine or other regulatory body.

Requirements for prescribing through telemedicine

- a. Determine if the state in which you are providing services requires an in-person physical exam to prescribe medication through telemedicine.
- b. The indication, appropriateness, and safety considerations for each prescription issued in association with telemedicine services must be evaluated by the veterinarian in accordance with all jurisdictional and federal laws and standards of care.