How to Protect Against Prepurchase Exam Malpractice Complaints

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Buyer complaints related to allegations of negligence when veterinarians perform prepurchase exams can be minimized by following recommendations that will be presented in this lecture. Author’s address: AVMA, PLIT, PO Box 1629, Chicago, IL 60690-9850; e-mail: nina.mouledous@avmaplit.com. © 2021 AAEP.

1. Introduction

The most common and costly equine malpractice complaints observed by the largest veterinary malpractice program involve buyer complaints related to pre-purchase examinations (PPEs). PPE claims are much more likely to go into a suit faster than the other types of equine malpractice claims. In addition, the indemnity provided in PPE settled claims and plaintiff verdicts have higher costs than most of the other types of equine claims and lawsuits.1 The majority of the claims involve performance horses, particularly of the Hunter/Jumper, Dressage, and Western disciplines and the complaints are related mostly to undisclosed radiographic abnormalities.2 Other complaints have been associated with missed heart murmurs, missed ophthalmic disease, missed surgical scars, and failure to recommend genetic testing. Certain drivers have been identified. Analysis of past claims shows that a majority of the PPE closed claims deal with lameness issues after the sale. A small percentage of the PPE allegations are related to cardiac, ophthalmic, and other uncommon abnormalities.1 After years of collecting data from PPE claims, the author has created tips on avoiding complaints and allegations of malpractice related to PPE claims to help educate equine practitioners. This presentation will focus on how to prevent PPE malpractice claims and will be reinforced by actual closed claims to support the recommendations. The goal of this presentation is to help practitioners reduce the incident of PPE complaints by adhering to the recommendations. The PPE has developed into a highly detailed experience not only for the practitioner, but also for the horse, seller, and buyer in many cases. Because of the highly litigious atmosphere today, veterinarians must be extra diligent when providing PPEs for clients.

2. Solution

First and foremost, a veterinarian should acknowledge and understand their role when asked to perform a PPE. The role can be established by acknowledging who the veterinarian is working for, the seller or the buyer. Veterinarians can greatly reduce their risks of complaints by avoiding conflicts of interest. A definition of a conflict of interest is a
situation in which a person or organization is involved in multiple interests, financial or otherwise, and serving one interest could involve working against another. Veterinarians should have a clear sense of who they represent and who they are working for when providing this service. If the veterinarian has a relationship with the seller, this is considered a conflict of interest and the safest course of action would be to decline the PPE and recommend another veterinarian. If there is no option to decline the exam, documenting that all parties waive conflicts of interest may be helpful but not “sue” proof. When a conflict of interest arises, such as if the veterinarian has a veterinarian-client-patient relationship (VCPR) with the seller and is performing a PPE for a buyer, veterinarians should obtain permission to disclose complete medical histories and preexisting conditions if they have knowledge of the horse’s background or access to the horse’s medical records. Even when the examining veterinarian does not have a VCPR with the seller and horse, if the horse is a patient of the practice and under the care of an associate, this situation could still be perceived as a conflict of interest by attorneys. This recommendation is an important one for all PPEs even if a conflict does not exist. If the seller is not compliant with this request, documentation of this omission should be entered into the PPE report. Taking on a PPE lawsuit where there is a conflict of interest is a plaintiff attorney’s dream. Even when the buyer has been informed of the conflict and even in the face of signed consent forms related to acknowledging a conflict of interest, these types of claims and lawsuits can be difficult to defend. In summary, PPE malpractice claims where a conflict of interest exists can be challenging to defend and therefore it is recommended to avoid these situations.

Secondly, documentation cannot be emphasized enough and could be a veterinarian’s only defense in the face of allegations of negligence. It is recommended that everything is documented, including buyer declinations of procedures, such as radiographs and drug testing. Document all communications between all parties involved including the seller, buyer, agent, and trainer such as phone call conversations, electronic communications, and verbal conversations. If the buyer’s primary veterinarian (PDVM) is involved, documenting communication between the PPE veterinarian and the PDVM is important, especially when the ultimate opinion lies with the PDVM. Having buyers initial all declinations of recommended tests or specific exams can be helpful in resolving disputes later if a client alleges that a certain test or exam was not offered. Ultimately, when a complaint involves an issue where the buyer declines a test or radiographs and then later denies that they were offered, if the declination is initialized by the buyer, this will provide proof that the conversation and declination occurred.

Another important step in the exam is to attempt to positively identify the horse, especially if the buyer is not present. This may seem awkward at times, so asking for a copy of the Coggins Test may be a good way to accomplish this task. All attempts to ensure accuracy of the age should be done through interpreting tattoos, checking registration papers, dental arcade exam, or microchips. Document the steps taken to accurately determine the age of the horse. PPE malpractice claims related to misidentification and improper aging have been reported.

Providing good quality imaging with complete radiographic studies is necessary. If the buyer declines a full set of radiographs, this declination should be clearly recorded in the report. Even if the practitioner opines that a full set of radiographs may not be necessary, the veterinarian should at least offer a full set and let the client decide. In many PPE claims, it never fails that the one joint that was not radiographed was the one with a significant lesion. If possible, obtaining additional documented opinions of image interpretations is optimal, preferable by a boarded equine radiologist. The PPE imaging allegations are most often related to poor quality of images that can be difficult to interpret by experts, missed radiographic abnormalities and not disclosed to the buyer, missed diagnosis, lack of radiography, incomplete radiological studies, and lesions on PPE films that developed into significant pathology that were originally opined as not significant. Examples from previous PPE malpractice closed claims were lucent cysts that develop into fractures and bone spurs that developed into bone chips.

Providing a comprehensive form or report to the buyer in a time frame agreed upon between the veterinarian and the buyer is necessary for a complete and comprehensive PPE. Too often, buyers are seeking results and opinions before the veterinarian can provide a complete report. Therefore, informing the buyer before the exam when to expect a full and complete report is important to avoid any miscommunication later. The PPE report should indicate that all systems have been examined, including ophthalmic, respiratory, neurologic, integument, especially for scars and the reproductive tract, if applicable. The report should also include all imagery including radiographs and ultrasound images, videos, and opinion statements. This is especially important with absentee buyers. Consider sending a hard copy via certified mail to officially document receipt by the buyer. If the report is sent via email, be sure to ask for acknowledgment of receipt. Many PPE negligent allegations are related to delayed receipt of or failure to send a final PPE report to the buyer. Again, it cannot be stressed enough that thorough documentation is important and could be the only proof that an exam of an anatomical area was performed. Recommend drug testing for analgesics, anabolic steroids, behavior altering medications and
breed specific genetic or inheritable diseases (hyper-kalemic periodic paralysis, hereditary equine regional dermal asthenia). Assure blood samples are drawn prior to any treatments such as sedation for radiographs. If the buyer declines a blood test, be sure they initialize the declination on the PPE report. Consider providing presale photography or videotaping for conformation, size, body condition, and serviceability. This documentation is especially important for PPEs involving absentee buyers.

Not all malpractice policies are the same. Understanding the policy limits on one’s malpractice policy is important and should be in line with the value of the veterinarians’ patients’ fair market value. When veterinarians secure or are renewing their malpractice insurance policy, it is important to insure they have adequate coverage for the monetary value of the horses they are examining for PPEs. And lastly, consider the use of PPE liability release agreements. As the cliché goes, contracts and release forms can be worthless for a defense and can provide a false sense of security. However, the author opines that it won’t hurt, could be helpful for defense, and may remind the buyer that the veterinarian should not be held liable for future issues or unforeseen problems. Here is a link for an example of a PPE liability release agreement, equine PPE liability release: https://avma.avmaplit.com/acton/attachment/43421/f-45296470-1be5-40b0-8953-93b551fbb41c1/-/-/-/-/PrePurchase%20Exam%20Release%20Form.pdf.

3. Discussion

Allegations of negligence associated with PPEs are the most common cause of equine claims and account for almost twenty percent of the total equine claims reported. Over the years of handling PPE complaints, the author has provided the above tips for equine practitioners to educate them on how to minimize PPE claims and lawsuits. Keep in mind that many of the allegations are determined to be frivolous once the complaint goes through a review process with a veterinarian’s insurance carrier and the claim may be denied. Often, the buyer will accept this review opinion and drop the claim, especially if they are unable to support the allegations through expert opinions. On the other hand, the buyer may pursue the claim and file a suit at which time the veterinarian’s insurance carrier should respond by assigning defense council to the veterinarian. One downfall that is often discovered too late is insufficient coverage for an alleged loss. As a reminder, veterinarians should check their malpractice policy limits and confirm they have enough coverage for the monetary value of the horses they are examining for PPEs. It is worth mentioning that veterinarians should know the value of the horse beforehand. This can be an awkward situation, because PPE guidelines recommend that the veterinarian not inquire about the price and should not use any findings in the exam to aid the buyer in negotiations. However, if a year down the road, an allegation is made that a practitioner was below the standard of care when performing a PPE on a $150,000 Olympic hopeful, it is important that the policy that was in place at the time of the incident is sufficient to cover the market value of the horse in case the claim will need to be paid. The author supports the AAEP PPE Guidelines and encourages veterinarians to refer to the guidelines when performing PPEs. The guidelines outline important areas veterinarians should adhere to such as medical records, identification, documenting abnormalities, informing buyers of the clinical significance of the findings, documenting buyer declination of further testing, retaining records and contact information for all parties involved, including witnesses and maintaining PPE records for appropriate time periods.

In conclusion, by avoiding conflicts of interest, requesting disclosure of past medical records, maintaining complete PPE records, exercising good communication and documentation with all parties involved, documenting all declines, offering and documenting additional testing, videotaping the exam, properly identifying the horse and its age, providing good quality imaging, seeking additional opinions of imaging and abiding by the AAEP PPE guidelines, veterinarians can greatly reduce their risk of PPE liability claims.

Acknowledgments

Declaration of Ethics

The Author has adhered to the Principles of Veterinary Medical Ethics of the AVMA.

Conflict of Interest

The Author has no conflicts of interest.

References

1. AVMA-PLIT Data, https://www.avmaplit.com/