

**Access to Information and Protection of Privacy Act (ATIPPA) and the confidentiality of animal health records protected under the Veterinarian-Client-Patient-Relationship (VCPR)**

Veterinarians in Newfoundland and Labrador are requesting that their practice and confidential animal health medical records under the Veterinarian-Client-Patient-Relationship (VCPR) be exempt from queries made through the Access to Information and Protection of Privacy Act (ATIPPA).

***The Role of Veterinarians***

Within the NL government, veterinarians play two roles. One role is to provide primary health care while the other is to act in a regulatory role.

***Primary Animal Health Care (Clinical Veterinary Medicine)***

A veterinarian's role in primary animal health care (clinical veterinary medicine) has the same role as a human medical doctor working in family practice. Veterinarians provide clinical care to patients by performing examinations of the animals, assess the clinical picture, provide a differential diagnosis, make a presumptive diagnosis, perform confirmatory tests and then prescribe a treatment or mitigation strategy. A typical day for a veterinarian practicing clinical veterinary medicine, working within government, would be to answer calls from clients/producers and arrange for an appointment to examine an animal (e.g., horse or a cow) or group of animals (e.g., flock of birds, pen of fish, herd of cattle). The veterinarian would then perform a physical examination, obtain samples and determine a presumptive diagnosis. Based on the clinical picture presented and the results from the samples collected the next step in the health management would be determined. These next steps might include surgery, additional diagnostic testing, treatment or some other mitigative strategy. The veterinarian would then arrange for follow-up and determine if the mitigation was effective and what additional steps might be required. A veterinarian working in clinical veterinary medicine, within government, has a similar role to a small animal veterinarian who is working in a private clinic.

Similar to human medical doctors, veterinarians are required by law, to report any suspicion of a reportable pathogen/disease or human health concern. Therefore, veterinarians offer medical care to animals while also ensuring the safety of other animals in the region and humans. All health information collected during a clinical examination or diagnostic visit by a veterinarian is collected under the Veterinarian-Client-Patient-Relationship (VCPR) and kept confidential. The health records collected are owned by the client and the veterinarians are the custodians. These are the expectations of the client and the veterinarian. Should a reportable pathogen/disease or a human health concern be detected, the veterinarian will report the finding to the appropriate authorities.

The Government of Newfoundland Labrador employs veterinarians to provide clinical veterinary services to private agriculture and aquaculture businesses due to the lack of private

veterinarians to provide service. Regular attendance by veterinarians enables veterinarians to fulfill their statutory duty to relay information to the Federal government if there is evidence of a reportable disease which, if not properly contained, could have serious ramifications for the respective industries and the health of Canadians at large. Most importantly, regular veterinary services to the private industry assists in the promotion of the health of the animals, and ultimately assists in increased food production, industry stability, food safety, animal welfare and economic development for Newfoundlanders and Labradorians.

### ***The Regulatory Role of a Veterinarian in Government***

A regulatory veterinarian, working within government, has 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 (Government of Canada, 2014). Government employed veterinarians conduct and oversee research in support of industry and government needs, perform biosecurity audits and develop management plans. Provincially employed veterinarians, regardless of their role, must report diseases that are reportable diseases or those of a human health concern to the federal authorities.

### ***Veterinary Associations for Atlantic Canada***

Newfoundland and Labrador College of Veterinarians (NL COV): The Newfoundland and Labrador College of Veterinarians (NL COV) is the licensing body for veterinarians in NL and it is charged with ensuring that the practice of veterinary medicine in the province is carried out in a manner that protects the public interest. The Veterinary Medical Act empowers the NL COV to make the bylaws, clinical standards and code of ethics that outline confidentiality.

Newfoundland and Labrador Veterinary Medical Association (NaLVMA): The Newfoundland and Labrador Veterinary Medical Association (NaLVMA) is committed to promoting, supporting and advancing the veterinary profession in Newfoundland and Labrador. The association promotes public awareness of the veterinary profession, contributes to the betterment of animal health and welfare, and promotes public health.

Eastern Aquaculture Veterinary Association (EAVA): Aquaculture veterinarians are represented in Eastern Atlantic Canada and Eastern United States by EAVA. This is a veterinary association that promotes aquaculture veterinarians and provides continuing education and information exchange to its members.

Canadian Veterinary Medical Association (CVMA): All Canadian Veterinarians are represented by the CVMA. The Canadian Veterinary Medical Association (CVMA) is the national voice for the veterinary profession dedicated to serving and representing the veterinarians of Canada. The Association is committed to excellence within the profession and to the well-being of animals. It promotes public awareness of the contribution of animals and veterinarians to society.

### *Veterinarians in Newfoundland and Labrador*

Currently, there are 113 veterinarians working in the province of NL. Of these, 13 are employed by government. This number fluctuates and the exact number of veterinarians currently practicing in the province is not known.

### *Development of the Veterinary Code of Ethics and Veterinarian-Client-Patient-Relationship (VCPR)*

In 1951, the CVMA for the very first time adopted the American Veterinary Medical Association (AVMA) Code of Ethics into their bylaws (Barker & Crowley, 1989). This code of ethics was placed in the veterinary oath at the same time. The 1951 Veterinary Oath read as:

“I solemnly dedicate my knowledge and position as a veterinarian to the benefit of society, to the conservation of our livestock resources and to the relief of suffering of dumb animals. I will practice my profession conscientiously and with dignity. The health of my patients, the best interests of their owners, and the welfare of my fellow man will be my primary considerations. I will, at all times, be humane and temper pain with anesthesia where indicated. I will not use my knowledge contrary to the laws of humanity, nor in contravention to the ethical code of my profession. I will uphold and strive to advance the honour and noble traditions of the veterinary profession. These pledges I make freely in the eyes of God and on my honour.” (Barker & Crowley, 1989).

The Veterinary Oath of the CVMA still carries with it the obligation to follow the Veterinary Code of Ethics. The current Veterinary Oath, as adopted in 2004 reads:

“As a member of the veterinary medical profession, I solemnly swear that I will use my scientific knowledge and skills for the benefit of society. I will strive to promote animal health and welfare, relieve animal suffering, protect the health of the public and environment, and advance comparative medical knowledge. I will practise my profession conscientiously, with dignity, and in keeping with the principles of veterinary medical ethics. I will strive continuously to improve my professional knowledge and competence and to maintain the highest professional and ethical standards for myself and the profession.” (Canadian Veterinary Medical Association, 2004).

In 1961, The VCPR was adapted in Canada 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 antimicrobial resistance, or cause harm to the animals. Maintaining a confidential health record in a VCPR was necessary (and still is to this day) to ensure that the client information would not be released to any third party. After this time, client trust of confidentiality within a VCPR became entrenched in the veterinary profession.

### *Definition of a Veterinarian-Client-Patient-Relationship*

The Newfoundland and Labrador Veterinary Medical Association (NALVMA) bylaw states, “upon entering into a consultation with a client, a Veterinarian-Client-Patient Relationship (VCPR) is formed” (Newfoundland and Labrador College of Veterinarians, 2013). A similar position is echoed by the Canadian Veterinary Medical Association (CVMA), that is, 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.

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 a considered 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, 2013)

According to the CVMA’s position statement, even Telemedicine (consulting over telecommunications such as internet and phone) is subject to the VCPR. Specifically, the CVMA’s position is that “The attending and consulting veterinarians involved in a telemedical consultation must ensure that the integrity and confidentiality of the veterinarian-client-patient relationship (VCPR) is maintained” (Canadian Veterinary Medicine Association, 2014).

When a VCPR exists, veterinarians must maintain medical records (American Veterinary Medical Association, 2014). “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, 2014) (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, 2013). Furthermore, the American Veterinary Medical Association (AVMA) states “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, 2014). 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) (American Veterinary Medical Association, 2014). The College of Veterinarians of Ontario considers the disclosure of confidential information about a client or their animals to be professional misconduct, except in the specific circumstances outlined above.

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, 2009).

### ***Importance of Maintaining the Veterinarian-Client-Patient-Relationship***

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).

There is a valid public policy reason for this requirement of confidentiality. The owners of animals require a confidential relationship with their veterinarian in order that they can be as forthcoming as possible with information that will assist the veterinarian in making the appropriate diagnosis and providing the appropriate treatment. If owners of animals understood that information conveyed by them to Provincial veterinarians could be readily available to any member of the public, including competitors in their respective industries, a significant dampening effect would be placed on the type of information exchanged between the clients and these veterinarians. This is not in the interest of the health of the animals, food safety and not in the interest of the public of Newfoundland and Labrador.

This situation is analogous to the relationship between a physician and a patient, where the relationship can only be effective when the patient has absolute confidence that information

conveyed to the physician will be treated as confidential information, and only disclosed under extraordinary circumstances.

Yet another analogy is in the context of occupational health and safety, where private businesses frequently employ physicians to provide health services to employees. The information exchanged between the health professional and the patient remains confidential, despite the employment relationship between the health professional and the employer, and the only information disclosed to the employer relates to whether or not the individual employee remains fit to practice and does not pose a risk to the public.

As previously indicated, the Government of Newfoundland and Labrador employs veterinarians in both a regulatory and primary clinical role in the fields of agriculture and aquaculture. 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, as a consequence, 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 client and industry, albeit aquaculture, agriculture, or public health, could be economically devastating. Releasing health information other than that as 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, the public or the welfare of the animals.

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" (CVMA). 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 (PIPEDA).

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

- In New Brunswick, aquatic animal health records are protected by legislation as mandated by the New Brunswick Aquaculture Act, Chapter 112, Section 38. The Act mandates that “all information, books, records, accounts and documents obtained under section 7, 9, 11, 23 or 30 are confidential.” (Government of New Brunswick, 2011). Sections 7, 9, 11, 23 and 30 are titled “Application for aquaculture licence”, “Application for renewal of aquaculture licence”, “Amendment of aquaculture licence”, “Books, records, accounts, and documents”, and “Inspection”, respectively. Section 38(2) states that:
  - “No person that disclose or allow to be disclosed any information, book, record, account, or document obtained under section 7, 9, 11, 23 or 30” (Government of New Brunswick, 2011).
- 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, 2014).
- 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” (Atlantic Veterinary College, 2013).
- The Federation of Veterinarians of Europe (FVE) Code of Conduct dictates that “veterinarians shall protect the customer’s confidentiality except in specified circumstances and, where possible, with the informed consent of the individual. Customers have the right to expect that veterinarians will respect confidentiality except when disclosure concerns public health, animal health, or when disclosure is required by law” (Federation of Veterinarians of Europe, 2009).
- 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, 2014). 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).
- The Code of Professional Conduct from the Veterinary Council of New Zealand states that “there are longstanding ethical expectations that veterinarians will respect the

privacy of their client's information collected and stored during the provision of veterinary services. Clients have the right to decide who should have access to this information and they trust that veterinarians will keep information pertaining to them, their animals, and their businesses confidential. Unless confidentiality is encouraged and maintained, clients may be less likely to provide important or relevant information in relation to their animals. This could lead to poorer healthcare outcomes for the animals concerned. Inappropriate disclosure by a veterinarian or their staff of a client's records may lead to adverse consequences affecting that individual's personal or business affairs.” (Veterinary Council of New Zealand). Furthermore, the code mandates “as well as the ethical obligations identified in this Code, there are statutory requirements under the Privacy Act 1993 which govern how a person's personal information must be managed. Privacy principles 8 - 11 place restrictions on how organisations can use or disclose personal information” (Veterinary Council of New Zealand)

- In Australia, the Australian Veterinary Association Code of Professional Conduct requires that “veterinarians will respect their clients’ right to confidentiality, and safeguard all information associated with the disease status of an individual animal or group of animals,” and that “unless required by law, information should not be provided to any third party without express approval of the client”.
- The Veterinary Surgeons Board of Hong Kong Code of Practice section 18.1.4 states that “all medical records should be kept secure. This includes ensuring that unauthorized persons do not have access to the information contained in the records and that there are adequate procedures to prevent improper disclosure or amendment.” (Veterinary Surgeons Board of Hong Kong, 2013).

### *Exceptions within the Veterinarian-Client-Patient-Relationship*

In Canada, a veterinarian is required by law to release confidential information in the following circumstances:

- To report suspected cases of cruelty against animals
  - In Newfoundland and Labrador, the Animal Health and Protection Act Part II Section 27 Veterinarian to Report states that:
    1. “A veterinarian who, in the course of practising veterinary medicine, believes on reasonable grounds that an animal has been or is subject to neglect or abuse that compromises the animal's health, other than in the course of an accepted activity, shall promptly
      - a) report his or her belief to the Chief Veterinary Officer; and
      - b) provide information respecting the matter that the Chief Veterinary Officer requests.
    2. An action shall not lie against a person for reporting anything under subsection (1) unless the reporting is done falsely and maliciously.”

(House of Assembly, 2010)

- 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 (Canadian Veterinary Medicine Association, 2011).
- 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, Section 5 Item 2: “Immediately after a person who is a veterinarian or who analyses animal specimens suspects that an animal is affected or contaminated by a reportable disease or toxic substance, the person shall so notify a veterinary inspector.” (Government of Canada Justice Laws, 1990). Once detected these cases are under the care and control of CFIA.
  - Public health issues reported to the Public Health Agency of Canada as mandated under Section 12 of the Human Pathogens and Toxins Act (Justice Laws, 2009).

### ***Potential Consequences of Breaching the Veterinarian-Client-Patient-Relationship***

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 in the veterinarian’s line of work 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 of the client owned records is necessary to successfully operate a health system – it results in disclosure, investigation, and mitigation. For these reasons, a precedent that breaches the inherent confidentiality of the VCPR must not be set.

Given the above, the NALVMA takes the position that the Government of Newfoundland Labrador should not disclose confidential client owned information that is maintained as confidential under the VCPR upon receipt of an ATIPPA request for such information. It forces veterinarians who practice primary clinical care within the structure of government to breach a global veterinary ethical code potentially facing disciplinary action as a result and it jeopardizes the worthwhile public policy initiative of ensuring the provision of appropriate veterinary medical advice to the owners of animal production farms.

Human medical doctors, solicitors, and potentially other professionals 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.

***ATIPPA requests:***

Examples of ATIPPA requests that would require veterinarians to release information that is confidential under the VCPR:

- 1) Any and all reports or information on the number of “morts” or mortality rates of farmed salmon for the years 2011 and 2012 – and what was the determined cause of these dead fish (outside the ISA infected fish population).
- 2) Confirmation and prevalence of BKD (Bacteria Kidney Disease) in farmed finfish in the province; and if so, what is the prevalence and treatment applied against this disease?

***Summary of Potential Outcomes of this Request***

- Potential outcomes:
  - The ATIPPA accepts the exemption of veterinary health records consistent with human medical records, solicitors and other professionals working for GNL.
    - No change to current veterinary practice.
    - Veterinarians will continue to report any suspicions of a reportable disease or human health concern to the appropriate federal authorities.
  - The ATIPPA does not accept the exemption of veterinary health records consistent with human medical records, solicitors and other professionals working for GNL.
    - Cessation of primary health veterinary activities by government employed veterinarians and transition to a regulatory role only. This would be detrimental to the industry, the public and welfare of the animals due to the lack of aquaculture veterinarians available to provide veterinary care. Disease detection/treatment/mitigation and reportable diseases detection and intervention would be delayed.

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