



Reporting animal abuse and cruelty

Question: As a licensed professional counselor, do I have a mandatory duty to report animal abuse or cruelty, just like I have a duty to report child abuse?

Answer: All 50 states have mandatory child abuse reporting laws that typically provide immunity for mental health professionals, including licensed counselors and school counselors, who must report child abuse. In recent years, animal abuse legislation has been enacted in many states, but it's important to ascertain four things before making a report:

- 1) Whether there is any duty to report in your state
- 2) If there is a reporting duty, whether counselors in your state are among the mandated or permissive reporters
- 3) How counselor-client confidentiality and privilege laws come into play
- 4) Whether the state law provides immunity for making such reports

The American Veterinary Medical Association (AVMA) has published a 50-state online summary of animal abuse reporting laws (see tinyurl.com/mr7rsam). Although this resource mainly addresses the duties of veterinarians, it is also a useful starting point for counselors and other health care professionals. Data from the summary show that slightly less than one-third of the states have no reporting laws. Approximately one-third of the states have mandatory reporting laws for veterinarians (with some laws extending to vet techs, animal shelters, animal control workers and so on). Slightly more than one-third of the states have permissive reporting laws, but most of them do not pertain to counselors as reporters. The Animal Legal Defense Fund publishes a similar 50-state summary addressing veterinarians' reporting duties (see aldf.org/downloads/veterinary_guide_reporting_cruelty.pdf).

In looking at some of the individual state laws, one can see the wide variation in reporting duties and rights. Florida's law is an example of a *permissive* reporting statute, but it pertains to veterinarians, not

counselors. Under Florida law, it is a crime (misdemeanor) for people to unnecessarily kill or torment animals or deprive them of necessary sustenance. Licensed veterinarians are held harmless from criminal or civil liability for any decisions or services rendered under the law, and they are immune from liability in investigations of cruelty to animals. However, in states with laws such as Florida's, counselors who breach the confidentiality of a client to make a report of animal abuse or cruelty would likely put themselves at risk of a civil suit or a licensure board complaint.

In West Virginia, veterinarians have a *duty* to report abandoned, neglected or cruelly treated animals, but other individuals have a *right* to report such behavior to a humane officer. However, in West Virginia and other states with similar laws, counselors are cautioned to obtain legal advice before making a report because reporting is not mandatory as it is for veterinarians. Therefore, reporting by counselors could violate confidentiality and privileged communication statutes.

An emerging trend in abuse reporting legislation is cross-reporting of animal abuse and child abuse (see AVMA's summary of these statutes at tinyurl.com/k9vg26r). This trend stems from research involving the co-occurrence of animal abuse and child abuse/domestic violence. Note that most of these laws do not include counselors and other mental health professionals as mandatory reporters.

Maine has an interesting twist in its permissive animal cruelty reporting statute. It states that health care professionals and other social service employees *may* report a reasonable suspicion of animal cruelty to the local animal control or welfare program. It specifies that the reporting health care professional must disclose only limited confidential information as necessary to identify the animal's location and owner's mailing address.

Yet another interesting variation in the law comes from Oregon. According to Or. Rev. Stat. § 40.252, certain privileged communication statutes do not apply to

reporting under the aggravated animal abuse law described in Or. Rev. Stat. § 167.322. These privilege laws include lawyer-client privilege (Or. Rev. Stat. § 40.225), psychotherapist-patient privilege (Or. Rev. Stat. § 40.230) and regulated social worker-client privilege (Or. Rev. Stat. § 40.250). Whether by oversight or intent, counselor-client privilege is not specified. One might argue that communications between most licensed counselors and their clients would fall under psychotherapist-patient privilege. In any event, the provisions of Or. Rev. Stat. § 40.252 do not create a duty to report, so the issue is probably academic at this time.

The bottom line is that most states do not *require* counselors to report animal abuse. However, as animal rights advocacy becomes a more recognized legal subspecialty, and as media reports of animal cruelty increase, state laws may change. You should seek advice from an attorney in your state to confirm whether you have an obligation or a right to report animal abuse or whether your state's confidentiality and privilege laws would outweigh such action. You should also consider your confidentiality obligations under Section B of the 2014 *ACA Code of Ethics*.



The question addressed in this column was developed from a de-identified composite of calls made to the Risk Management Helpline sponsored by the American Counseling Association. This information is presented solely for educational purposes. For specific legal advice, please consult your own local attorney. ♦

Anne Marie “Nancy” Wheeler, an attorney licensed in Maryland and Washington, D.C., is the risk management consultant for the ACA Ethics Department.

Letters to the editor:
ct@counseling.org