

Deer Sedation, Prescription Animal Remedies and Veterinarians' Liability

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Introduction

The most frequent reason for deer sedation is velvet removal. It is recognised that every year a number of deer die, directly or indirectly as a result of the sedation process. The reasons fall into one or more of the following categories.

- Delayed hypersensitivity to xylazine (referred to in this paper as inherent risk)
- Environmental factors such as excessive ambient temperature/poor ventilation
- Excessive stress including difficulty with yarding
- Over-dosing with sedation drugs/absence of reversal drug usage
- Physical trauma, smothering, misadventure
- Blood loss post sedation and velvet removal
- Inhalation pneumonia
- Other causes

Background

NZ deer veterinarians are entrusted with a key role in the use and dispensing of deer sedation Prescription Animal Remedies (PARs). Vets use/dispense deer sedation PARs in both a direct and indirect supervisory manner, according to the following legislation.

- Animal Remedies Act (1960) and Amendments (1997) until the ACVM Act is invoked.
- Animal Welfare Act (1999)
- Veterinarians Act (1994)
- Agricultural Compounds and Veterinary Medicines Act (1997)
- Possibly Medical Remedies legislation if various opioids or human medicines are used

This legislation defines the responsibilities for use and dispensing of deer sedation PARs as well as wider issues relating to welfare and other issues.

As well there is supporting literature to influence veterinary conduct as found in.

- Code of Professional Conduct for Veterinarians (1999/2000).
- Code of Recommendation and Minimum Standards for the Welfare of Deer during the removal of Antlers, (and other related Codes)
- National Velveting Standards Body – Training Manual for Velvet Harvest.

Veterinary liability can be questioned when untoward outcomes eventuate in the process of sedation of deer, during both direct or indirect supervision.

Many individual deer farmers accurately understand the issues relating to deer sedation and untoward outcomes, and subsequently assume personal responsibility for the issue.

The primary untoward outcome is death of the deer, and the primary liability is monetary reparation. It is recognised that liability can potentially be far broader than simply monetary reparation but this paper will focus on that alone. Annually there are cases of vets being challenged for compensation in the event of untoward outcomes.

Real or perceived shortfalls in the way that vets conduct their responsibilities are judged by:

- 1) The Veterinary Council of NZ with possible resultant fines, censure, suspension, retraining, de-registration, criminal prosecution etc

- 2) Direct demand for monetary reparation by the animal owner and threat of legal action through civil courts unless reparation is forth coming

Discussion

Vets conducting themselves in an ethical and professional manner can readily defend their actions to the Veterinary Council or the courts. The specific responsibilities are broadly covered in the Code of Professional Conduct for Veterinarians (1999/2000). Specific standards are further covered in the legislation listed above and supporting Industry literature.

Challenges for reparation and the threat of court action are difficult to handle. Individual vets are usually covered by professional indemnity insurance. Such cover is a positive “catch all” for vets, but has the potential to fuel an expectation from aggrieved parties for settlements of liability regardless of cause.

The Deer Branch NZVA Annual General Meeting (Year 2000) was presented with a Standard Operating Procedure (SOP) proposal for the sedation of deer. That SOP proposal identified possible causes of untoward outcomes, but suggested liability of the veterinarian extend beyond the practice of veterinary medicine, into liability for the physical facility. The proposal contained the concept that a punitive excess was to be paid by the vet for an insurance claim when a procedure was performed in a facility that did not meet the standards set down in the Velvet Removal Manual, regardless of whether negligence/incompetence was involved.

The Deer Branch NZVA recommended the SOP not be adopted because

- 1) Veterinarians have a sound training in physiology and pharmacology as well as animal behaviour and other relevant subjects. That training is underpinned with experience. Velvetting of deer is not a procedure with significant changes in recent years requiring the complete upskilling of all vets nationally. Additionally the National Velvetting Standards Body – Training Manual for Velvet Harvest is an excellent industry standard, readily available for vets.
- 2) The attempt to provide detailed requirements for facilities, environmental standards and other stress factors (as demanded by an SOP) resulted in outcome oriented standards not adequately defined. As with the On Farm Deer QA Programme it was found to be impossible to define by way of an exact definition the standards for these requirements. Therefore the resultant loose jargon simply opened up the potential for further debate by any party seeking dissension.
- 3) It must be recognised that when deer farmers employ vets to sedate stags that there are biologically inevitable risks involved, namely delayed hypersensitivity reactions. All deer farmers need to accept that risk, not attempt to burden the vet profession with that responsibility. This concept is well recognised by the vast majority of all NZ deer farmers but not all and hence the problem.

The Way Forward

It is now proposed that:

- Responsibility for untoward outcomes (related to the inherent risk of sedation) are accepted by the deer farmer client
- Vets need to enter into individual contracts with their clients to ensure that responsibility for factors other than veterinary negligence and incompetence is assumed by the deer farmer client
- The profession needs to create *pro forma* contracts for general use

Professional indemnity insurance companies would best provide discounted premium rates for those vets that enter into such contracts with all their clients.