

Law and Veterinary Medicine



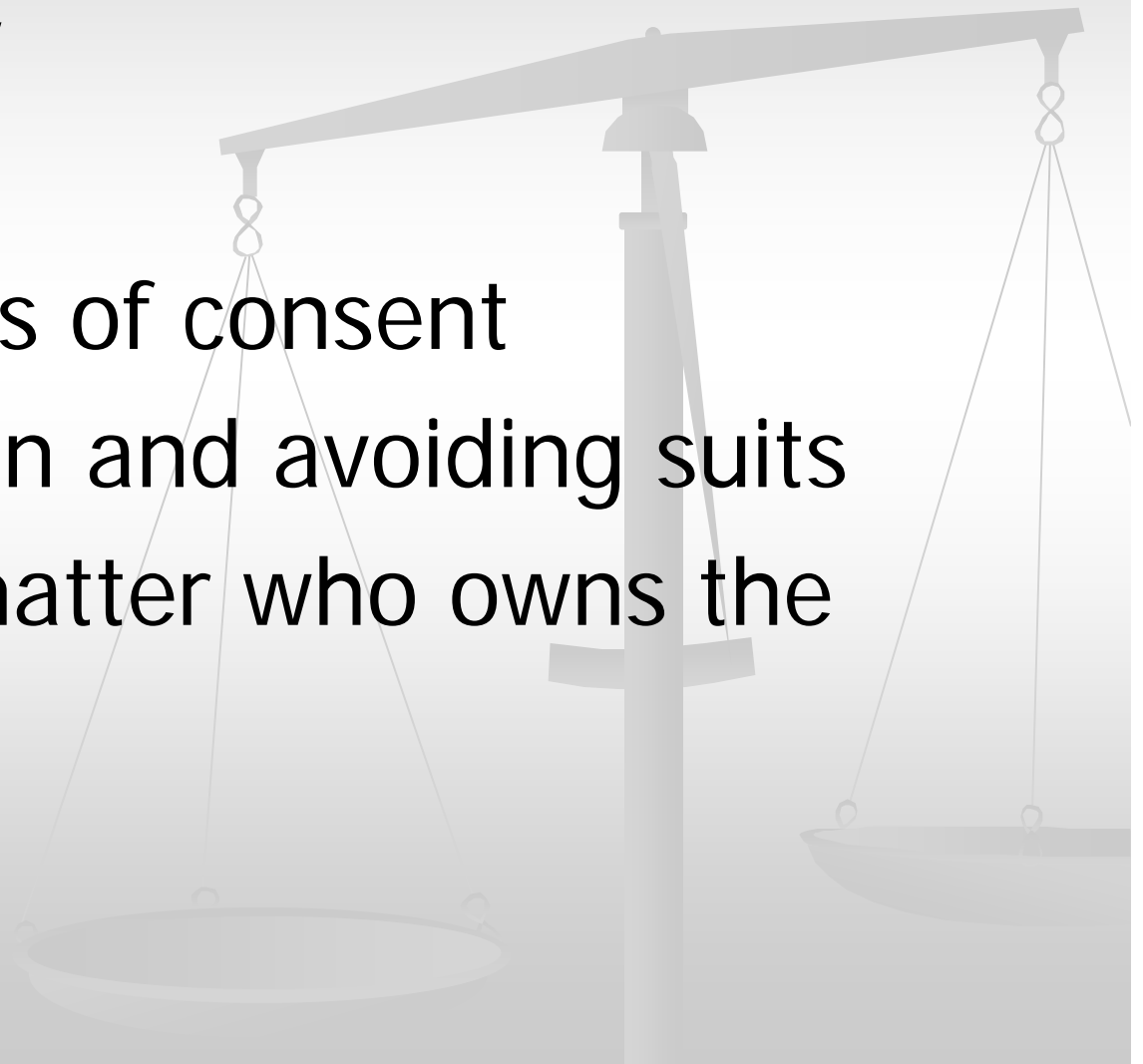
Second Hour: Confidentiality, Records, Consent and
Practical Issues

November 27, 2006

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Session Topics

- Confidentiality
- Records
- Practical issues of consent
- Communication and avoiding suits
- Why does it matter who owns the dog?



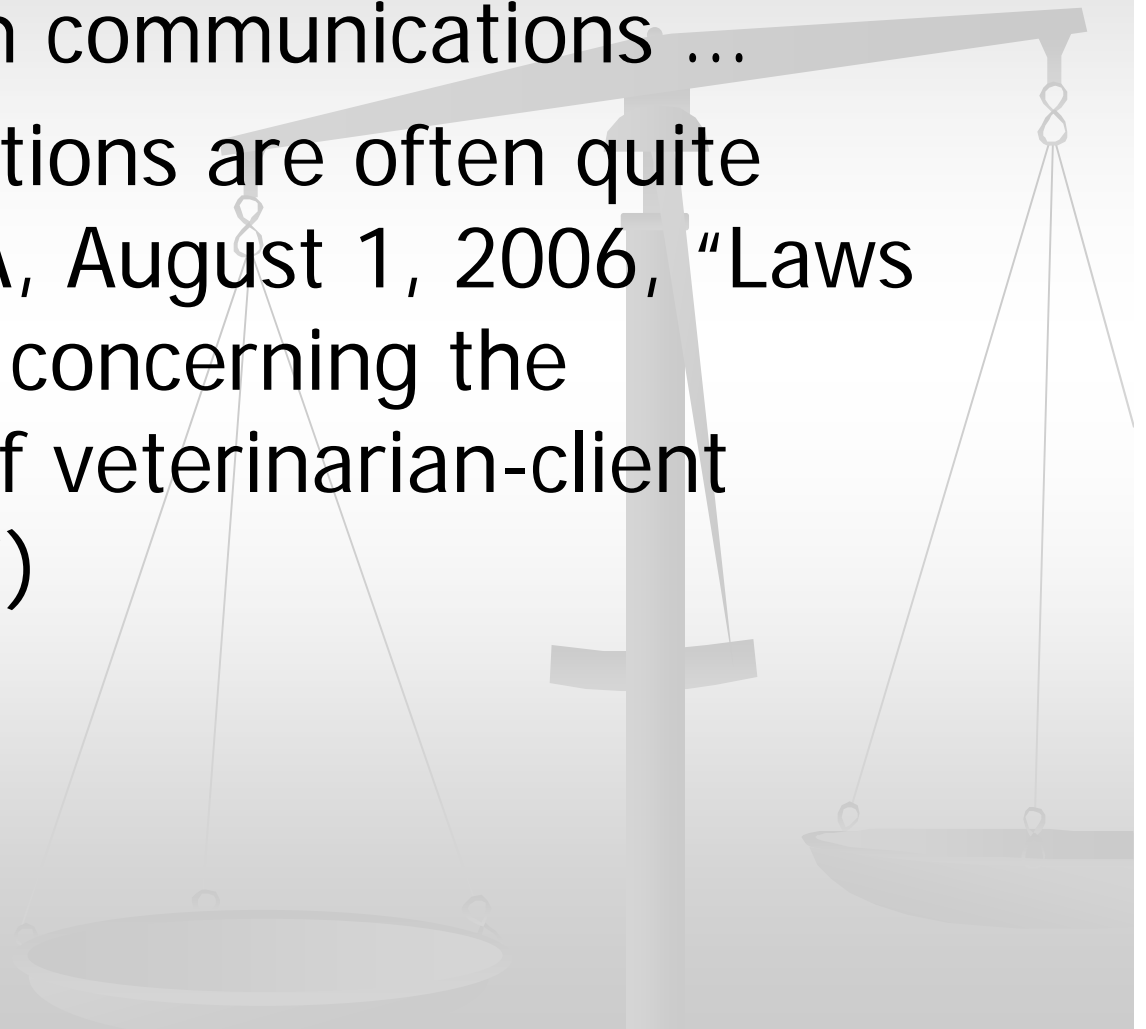
An important distinction

- Confidentiality of records
- versus
- Confidentiality of communications

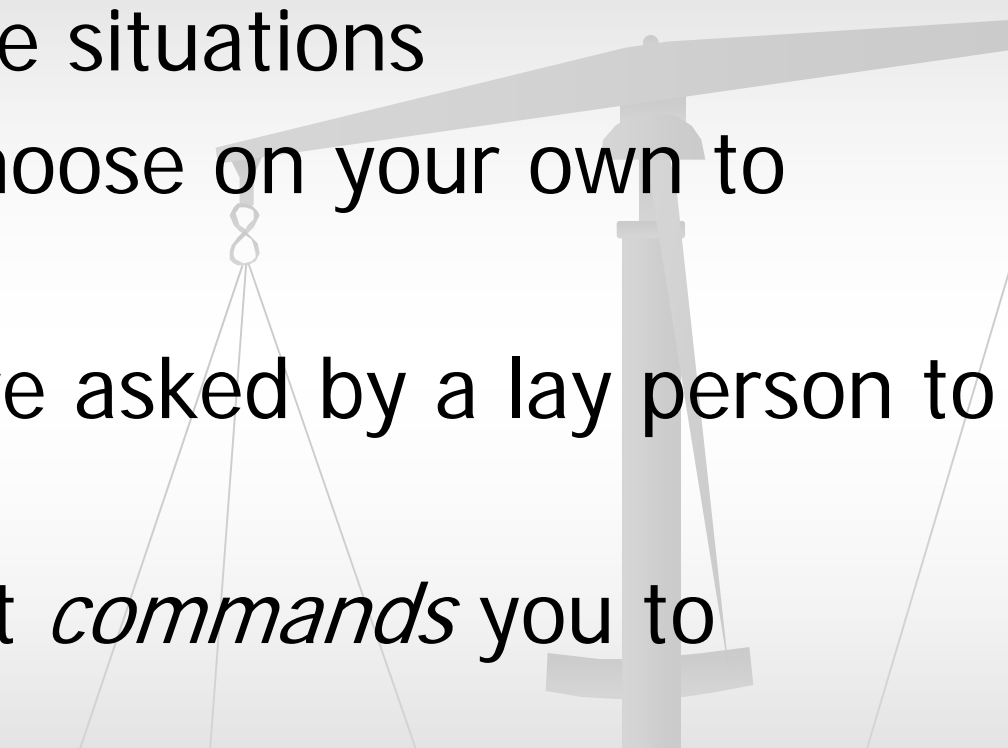


Confidentiality of records

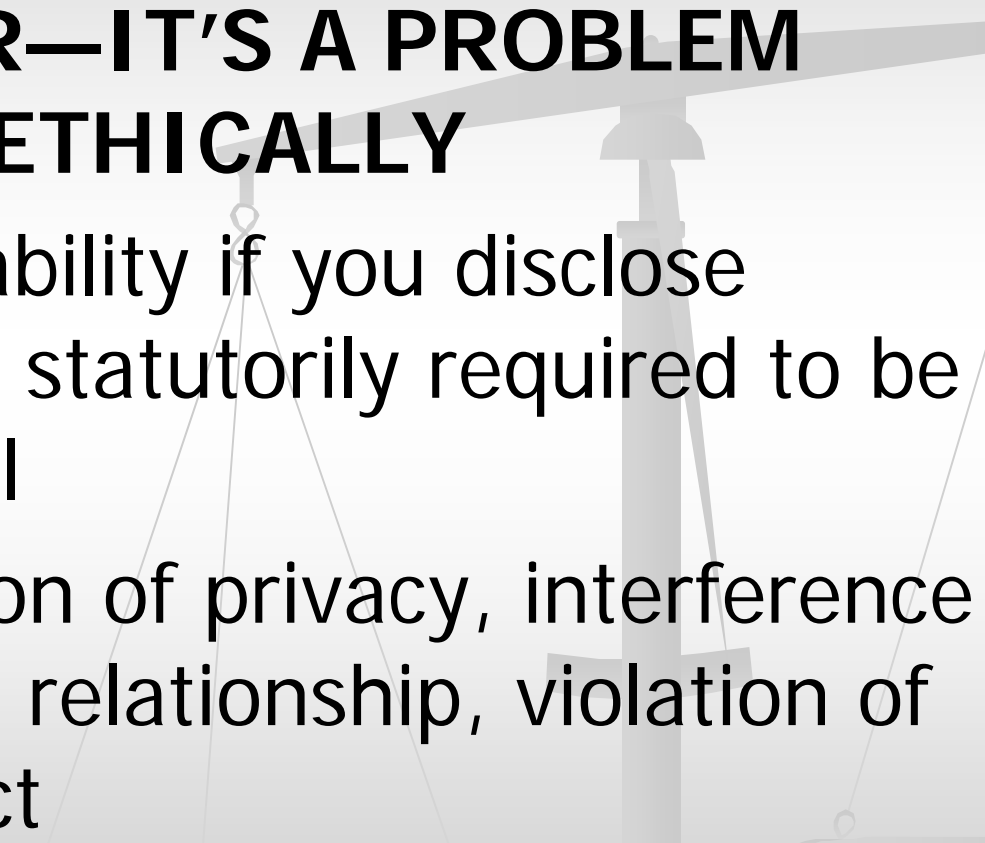
- ... different from communications ...
- Statutory obligations are often quite detailed (JAVMA, August 1, 2006, "Laws and regulations concerning the confidentiality of veterinarian-client communication")



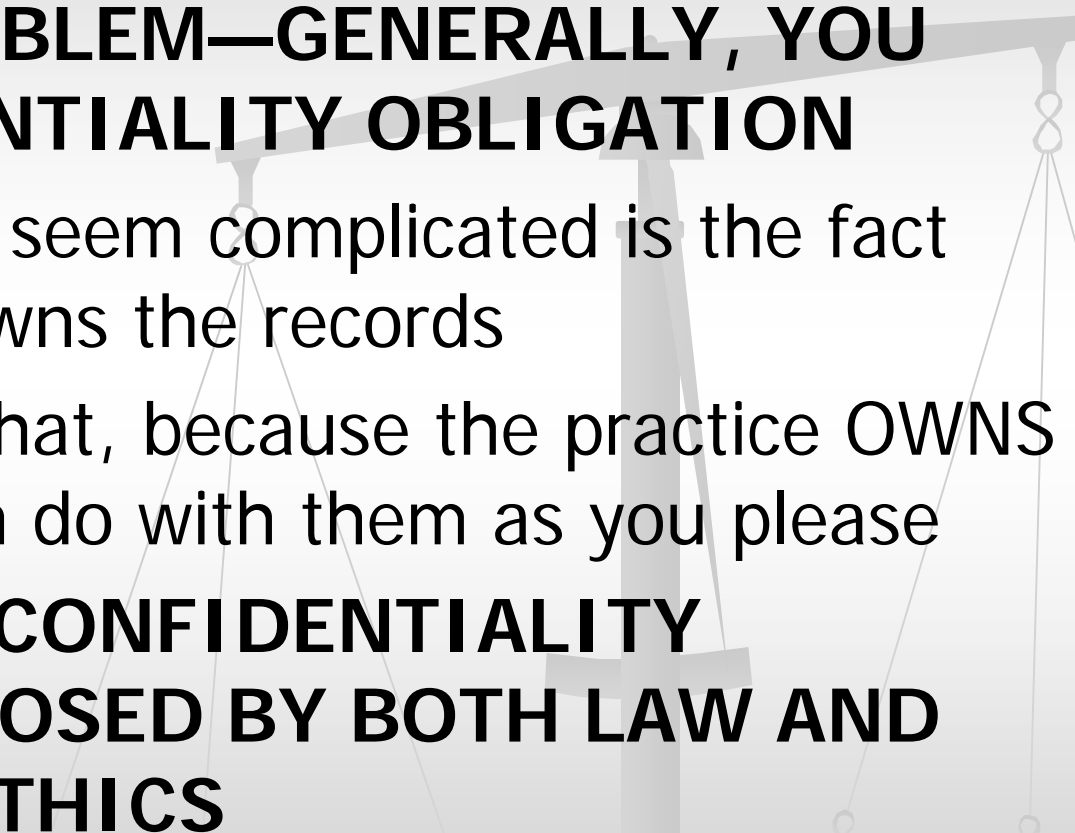
Confidentiality of records

- Distinguish these situations
 - **a.** where you choose on your own to disclose records
 - **b.** where you are asked by a lay person to disclose records
 - **c.** where a court *commands* you to disclose records
- 

a. Where you choose on your own to disclose records

- **EASY ANSWER—IT'S A PROBLEM LEGALLY and ETHICALLY**
 - You risk legal liability if you disclose records that are statutorily required to be kept confidential
 - Grounds: invasion of privacy, interference with contractual relationship, violation of state practice act
- 

b. Where you are asked by a lay person to disclose records

- **EASY—IT'S A PROBLEM—GENERALLY, YOU HAVE A CONFIDENTIALITY OBLIGATION**
 - What can make this seem complicated is the fact that your practice owns the records
 - You might assume that, because the practice OWNS the records, you can do with them as you please
 - **BUT YOU HAVE A CONFIDENTIALITY OBLIGATION IMPOSED BY BOTH LAW AND PROFESSIONAL ETHICS**
- 

Subsequent vets—can you give them information?

- Hypo—subsequent vet asks for your records, doesn't say anything about client permission
- Wilson 345-6—It is **clear that subsequent vets treating an animal do NOT have a right to receive a copy of the patient's record UNLESS the owner requests that it be provided**
- But “ordinary facts not related to professional veterinary services, however, can be made without authorization”

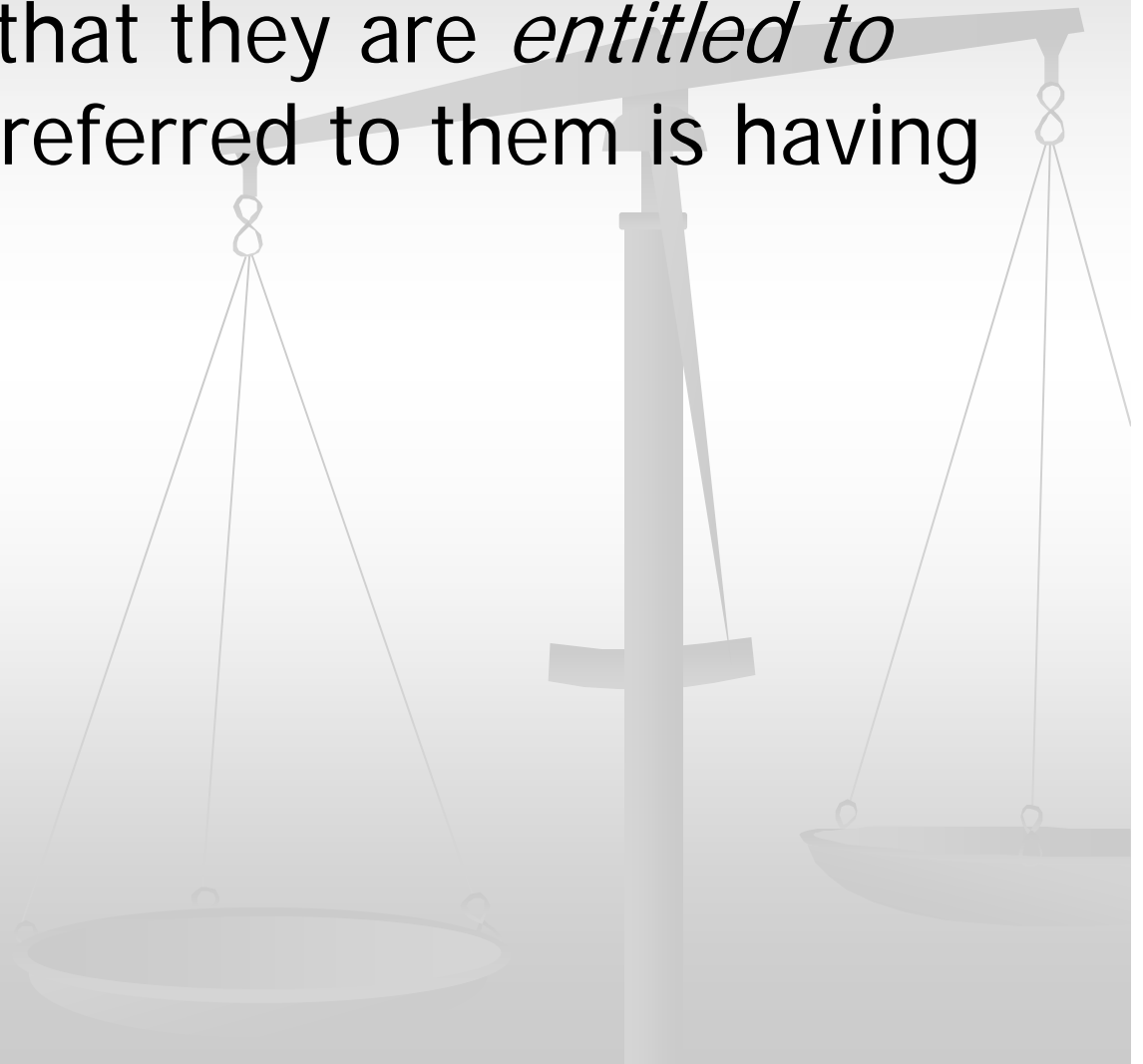
Wilson's examples of information that can be released without owner's authorization

- Patient's name
- Breed
- Species
- Sex, and
- "Probably vaccination history and medications dispensed"
- **But NOT patient's history, examination findings, diagnosis, and full course of therapy**

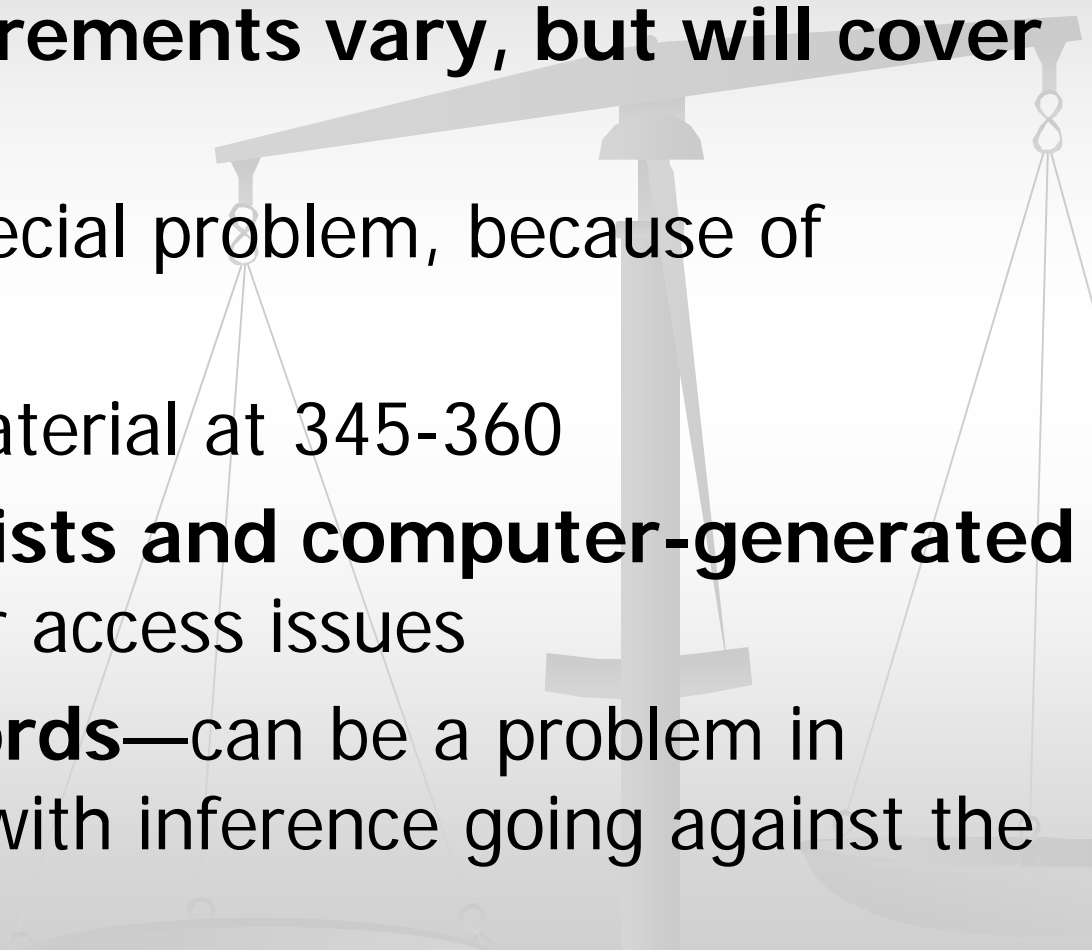


What about fees?

- How many feel that they are *entitled to know* if a client referred to them is having fee problems?



Confidentiality of various file documents

- **STATE LAW** requirements vary, but will cover **record retention**
 - **Radiographs** a special problem, because of duplication issues
 - Wilson has good material at 345-360
 - **Theft of mailing lists and computer-generated records**—computer access issues
 - **Lost medical records**—can be a problem in malpractice cases, with inference going against the practitioner
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c. Where a court commands you to disclose records

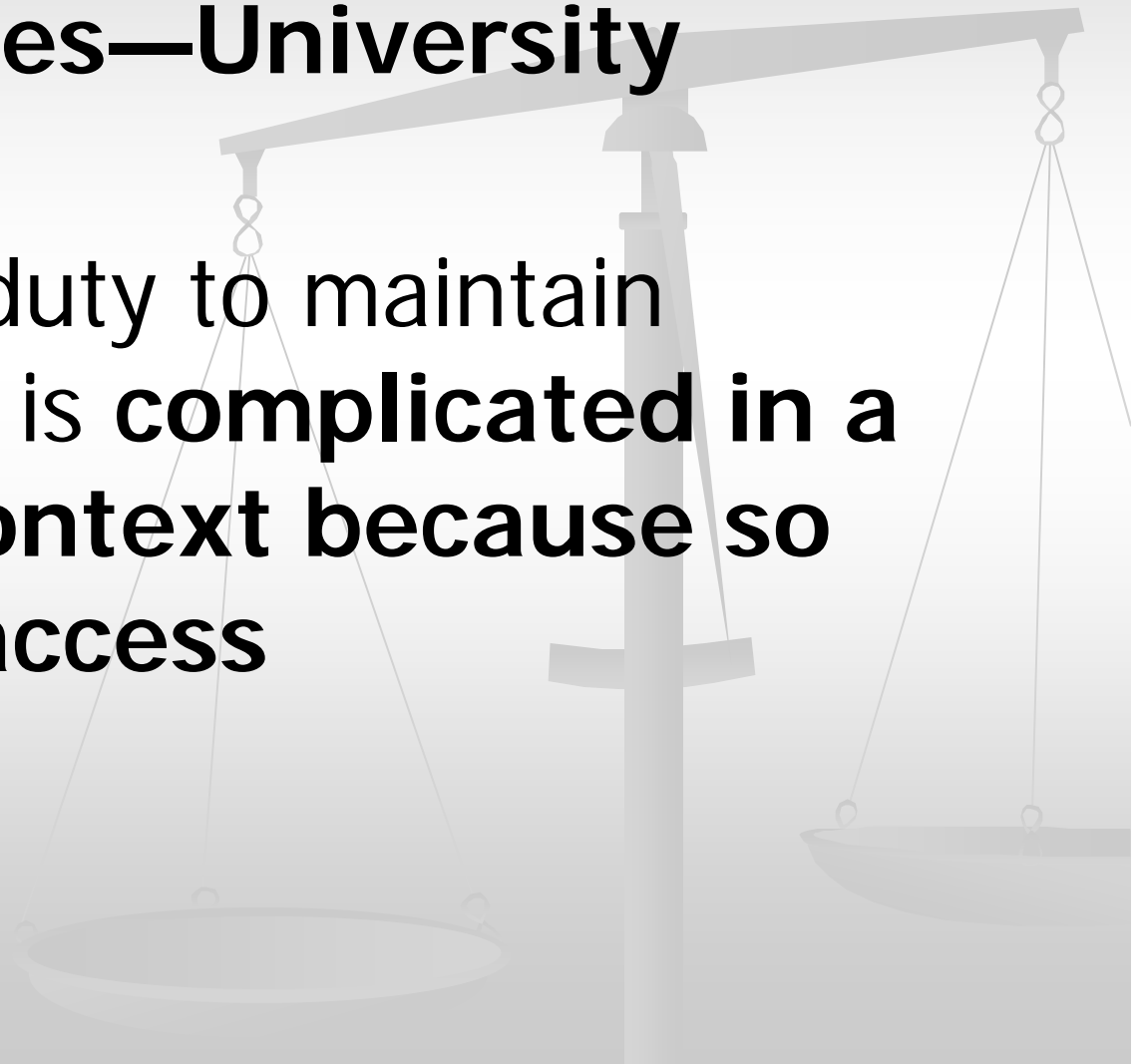
- (1) Suppose you receive a Notice of Deposition from an attorney for a private citizen, and it asks you to bring records of your treatment of an animal. Can you bring them?
- (2) Suppose you receive a subpoena from a court?
- Extra law that applies—usually states have a privacy protection provision for consumer records
- Practical solution—you can give notice to the client if there is a problem

Confidentiality of records

- If the law requires you to disclose, then you are ALWAYS going to be able to disclose with no risk of state discipline
- PVME VII, C requires veterinary records be kept confidential and privileged, not released **unless by order of court**, and suggests you get a written release

Confidentiality of records

- **SPECIAL cases—University context**
- (Wilson 345) duty to maintain confidentiality is **complicated in a university context because so many have access**

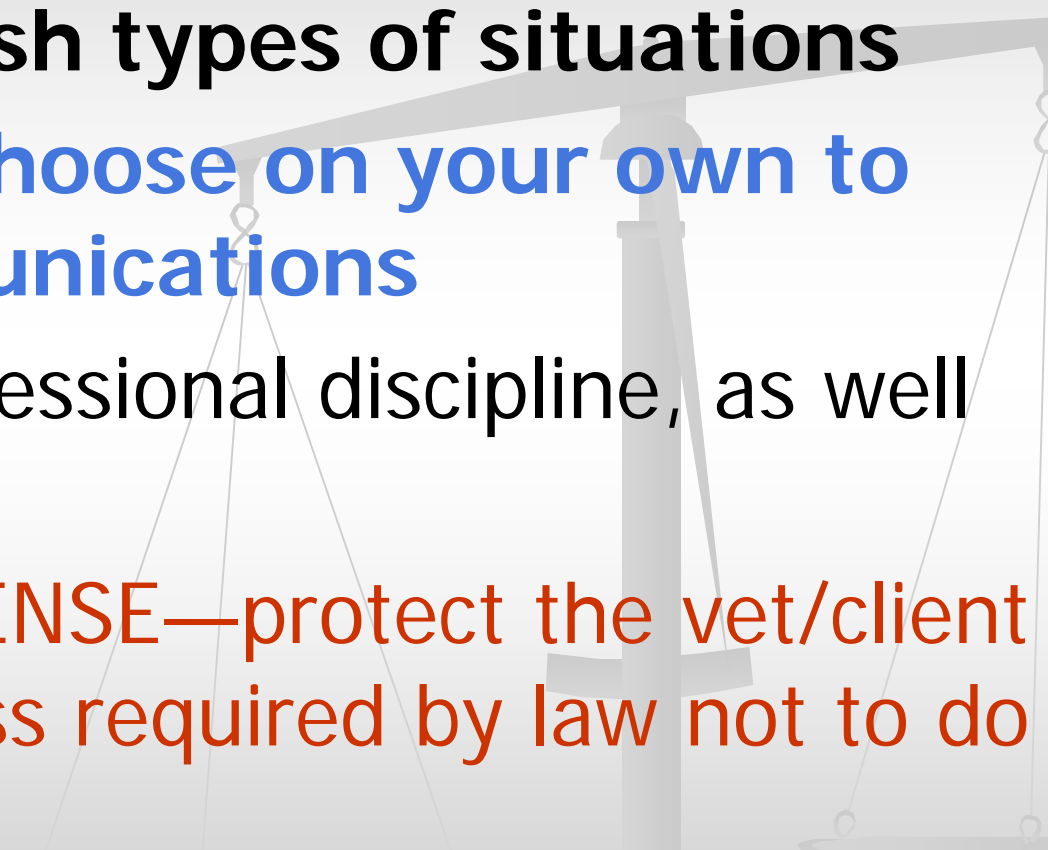


Confidentiality of communications

- Reminder—this is different from confidentiality of records



Confidentiality of communications

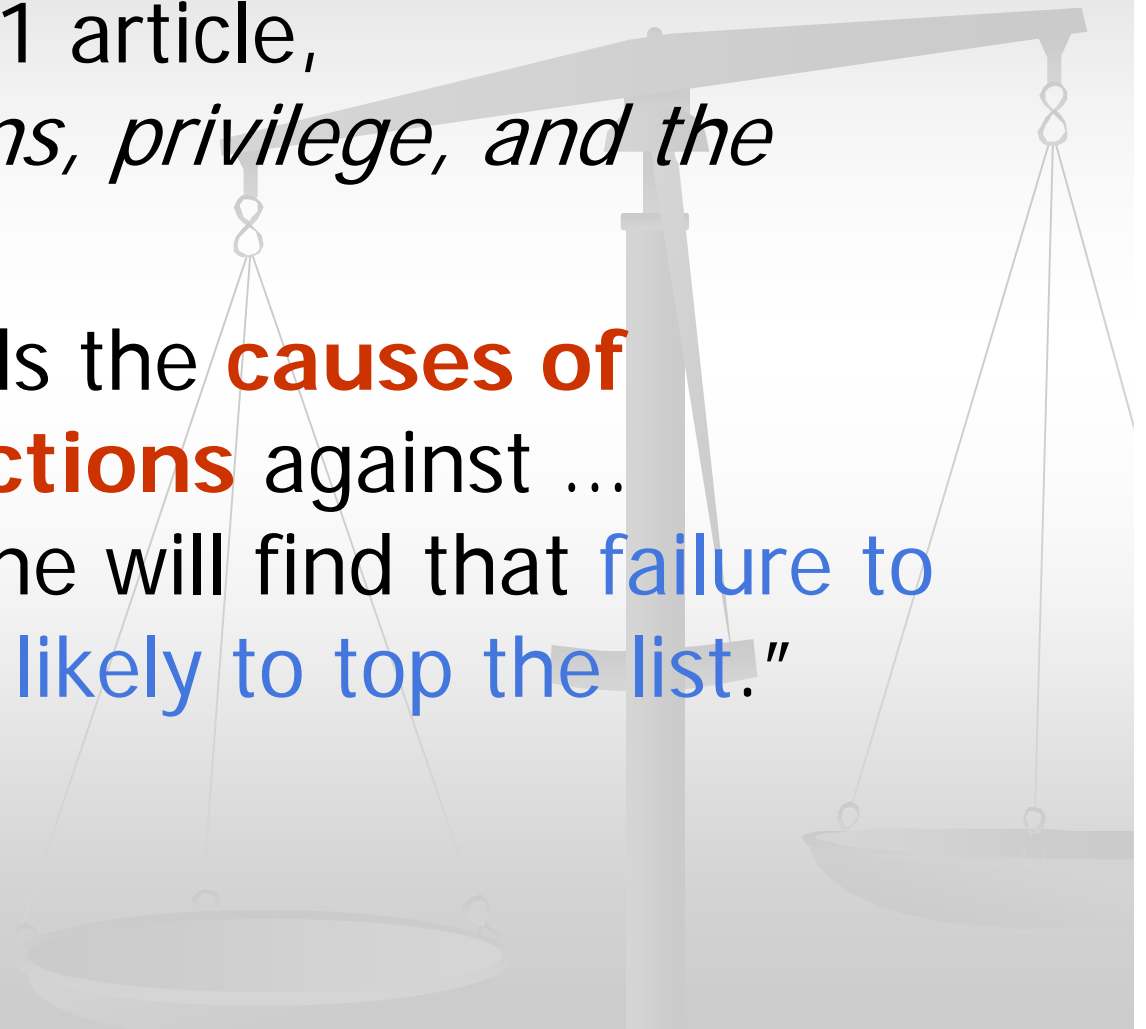
- Again, **distinguish types of situations**
 - a. **Where you choose on your own to disclose communications**
 - Great risk of professional discipline, as well as legal risk
 - **USE COMMON SENSE—protect the vet/client relationship unless required by law not to do so**
- 

Confidentiality of communications

- **b. Where you are asked by a lay person to disclose communications**
- great risk of both professional discipline and legal liability, unless you have permission
- use common sense, and protect the vet/client relationship unless required by law not to do so
- **c. Where a court (not just an attorney, but the court) commands you to disclose communications**

Observations on readings

- JAVMA July 2001 article,
"Communications, privilege, and the veterinarian"
- "When one reads the **causes of malpractice actions** against ... veterinarians, one will find that **failure to communicate is likely to top the list.**"

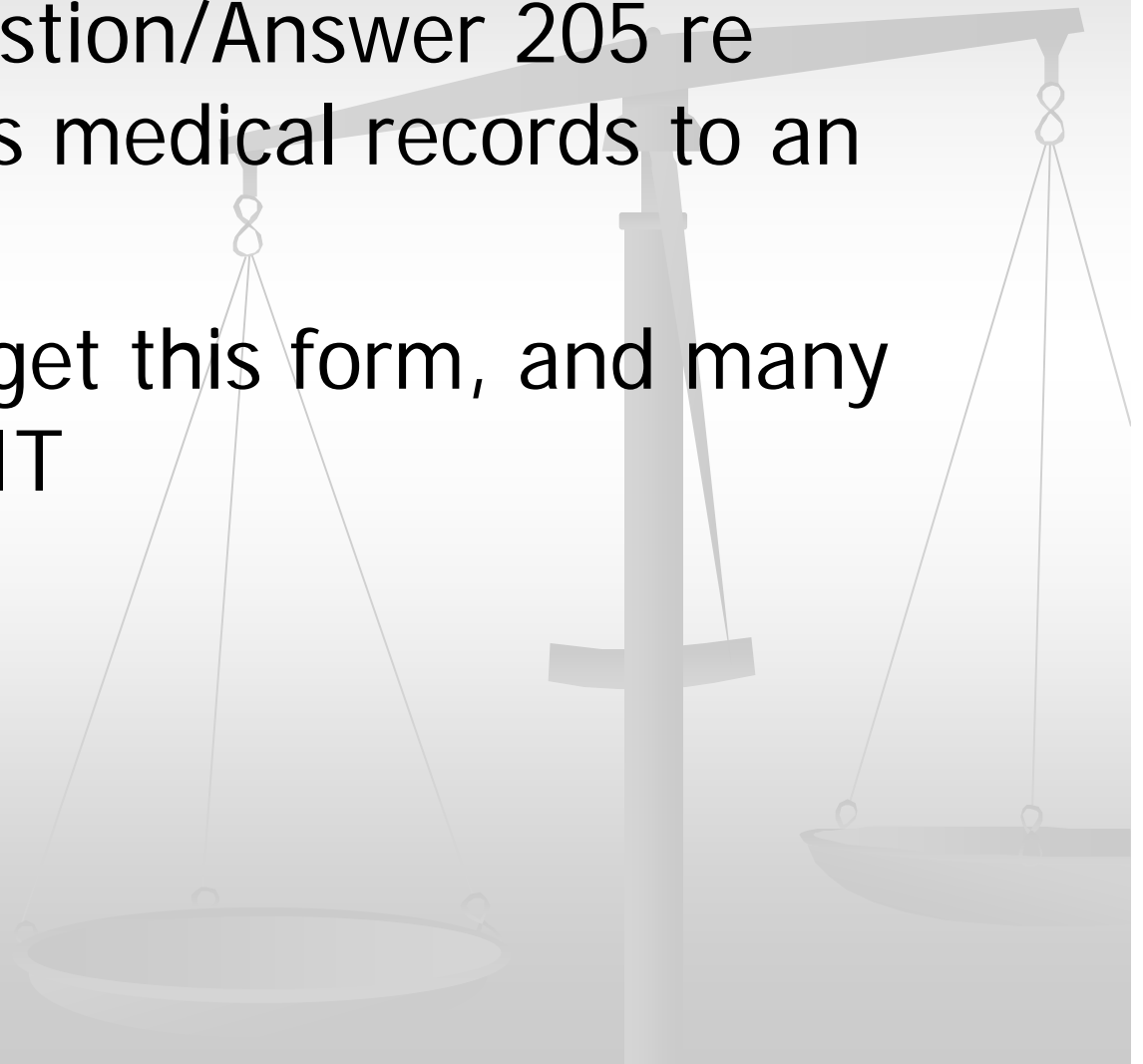


More observations re readings

- Issue of “privilege”
- Only a few states have a privilege for veterinarian-client communications (e.g., Kansas, Georgia, Illinois, Missouri, Texas)
- **Who holds the privilege?**
- **Answer: the client, not the veterinarian** (think about it—*only* the client can waive the privilege, so the client is deemed to “hold” the privilege)

Observations re readings

- AVMA PLIT Question/Answer 205 re providing a pet's medical records to an unhappy client
- You can call to get this form, and many others, from PLIT



More observations



- JAVMA Legal Brief, August 1996, “Veterinary medical records—some legal issues”
- Most of this you already know from review of state practice act and PVME
- For the exam, you do NOT need to know about the “admissibility of records in court”
- **“There is no simple answer”—why?**
- **50+ different jurisdictions**

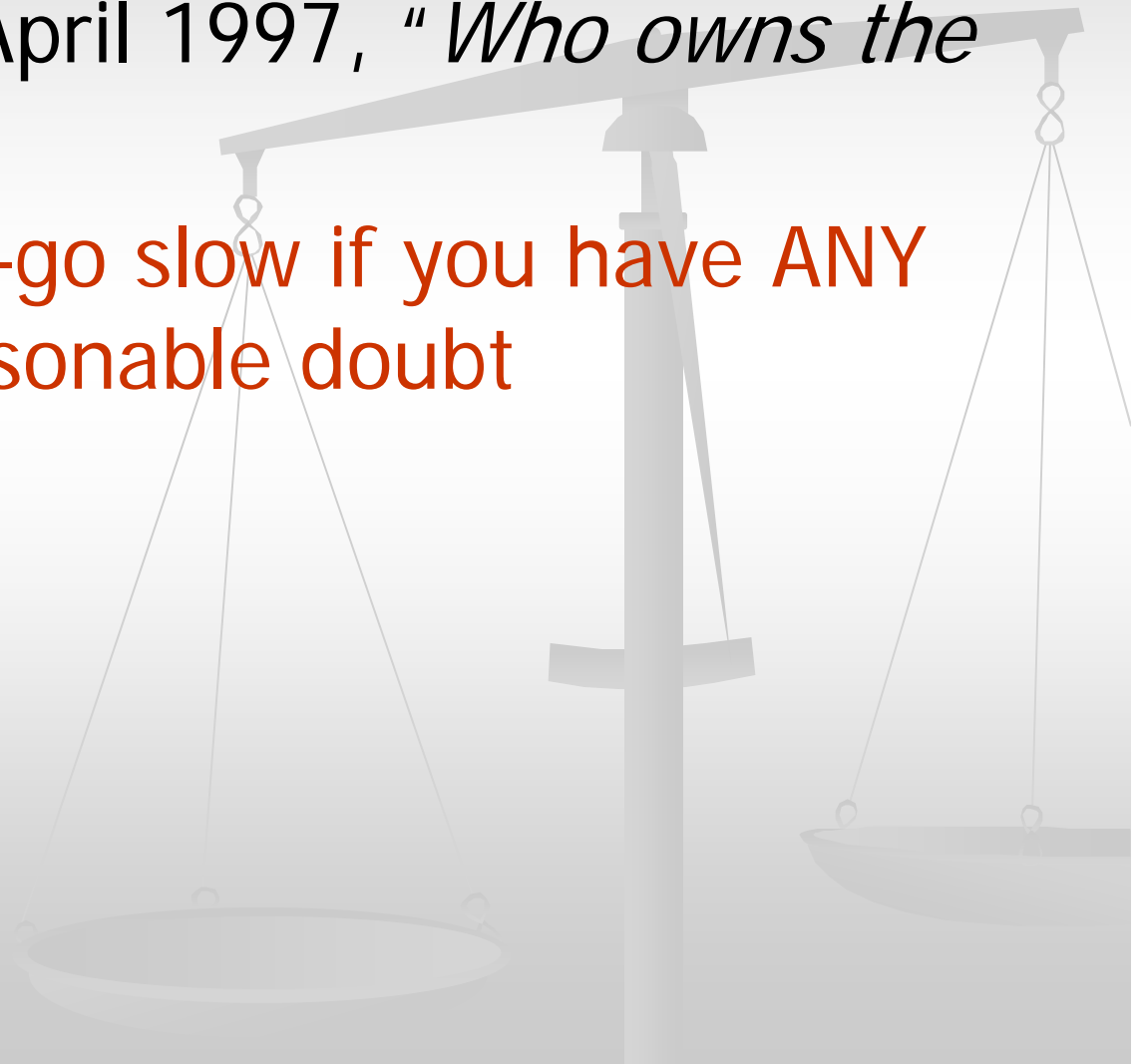
More observations



- MassVet News, May 2000, "*A Case for Thorough Documentation in Medical Records*"
- ... wonderful example of ...
- ... why careful documenting of interactions, offers of testing, and owners' agreements and refusals is important ...
- ... that some clients won't remember things correctly *or might even lie*

Readings

- JAVMA article, April 1997, "*Who owns the animal?*"
- Basic principle—go slow if you have **ANY** grounds for reasonable doubt



Ownership hypotheticals



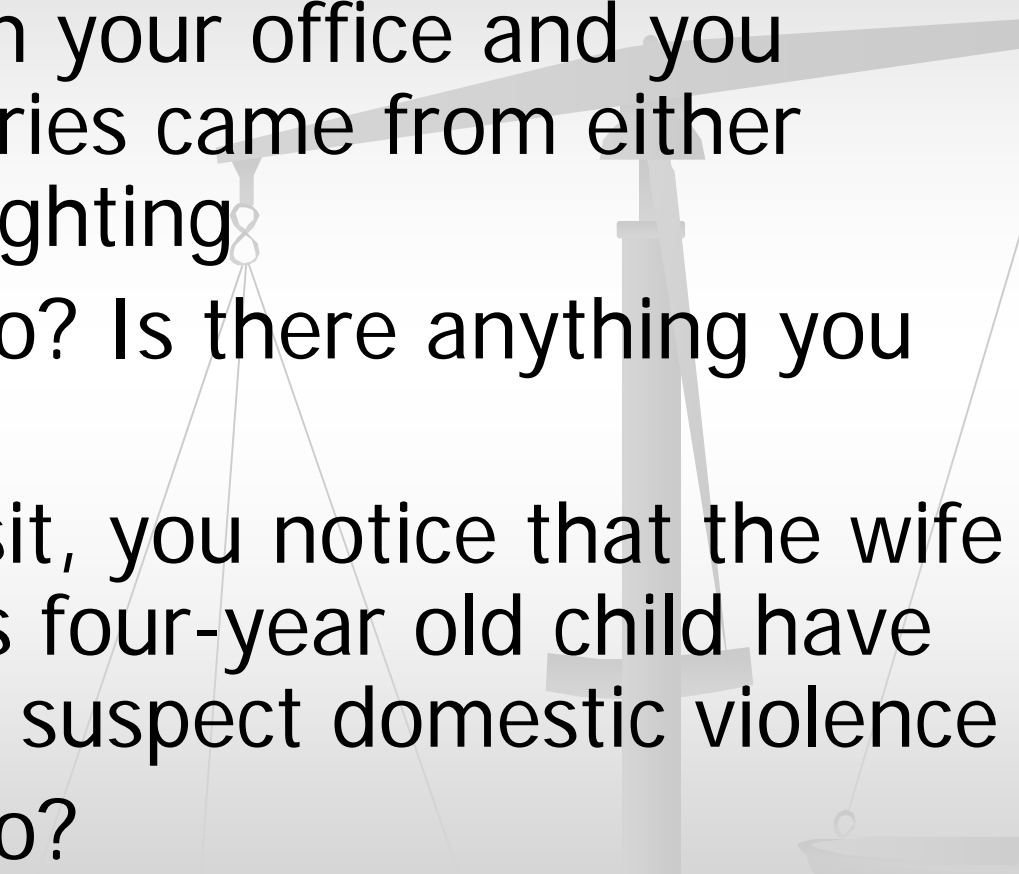
- Communications and authority problems caused by ownership issues ... (Helpful: JAVMA, April 1997, "Who owns the animal?")
- ... what if couple owns dog, and one disagrees with the other re whether *you* should take steps X or Y?
- What if neighbor has been asked to take a companion animal to you for euthanasia?
- What if you find a dog—can you euthanize?

Returning to initial hypotheticals



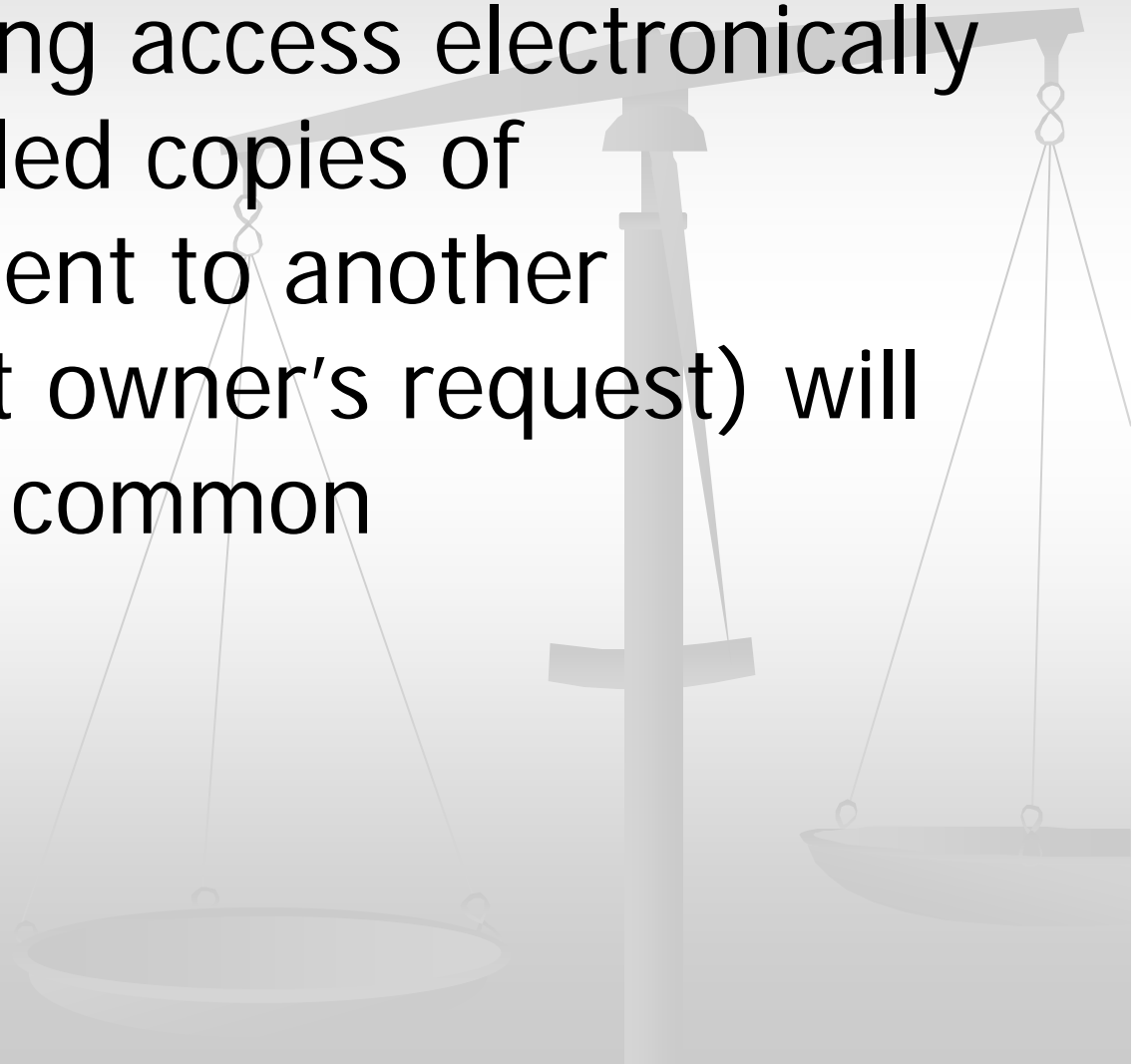
- A groomer calls your veterinary office to ask questions about a certain pet's medical records
- What do you tell the groomer?
- Determine what information is desired:
- Examples of information that can be released without owner's authorization: patient's name, breed, species, sex, and "probably vaccination history and medications dispensed"
- **But NOT patient's history, examination findings, diagnosis, and full course of therapy**

Returning to initial hypotheticals

- You see a dog in your office and you suspect the injuries came from either cruelty or dog fighting
 - What can you do? Is there anything you *must* do?
 - On the same visit, you notice that the wife and the couple's four-year old child have bruises and you suspect domestic violence
 - What can you do?
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Always new challenges

- NOTE: providing access electronically (such as emailed copies of radiographs, sent to another veterinarian at owner's request) will become more common



Next Session

- **November 30, Malpractice**

