

## Commentary

# A new look at standard of care

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The term “standard of care” (SOC) has been defined many times in case law. In *Vaughn v Menlove*,<sup>1</sup> a case from 1837 and one of the oldest legal references to SOC, the court wrote that an individual under a duty of care must have “proceeded with such reasonable caution as a prudent man would have exercised under such circumstances.” Similarly, in veterinary tort law, the SOC has been defined as “the standard of care required of and practiced by the average reasonably prudent, competent veterinarian in the community,”<sup>2</sup> with one court stressing “nor does the legal standard set the threshold for liability at a particularly high level. The average or normal practitioner, not the best or most highly skilled, sets the standard.”<sup>3</sup> These legal definitions, however, do not provide the kind of clear, practical, clinically relevant guidelines that veterinarians need to help them understand and meet the SOC or that veterinary state boards need to consistently identify and appropriately discipline veterinarians who may be accused of malpractice.

Although the SOC essentially represents the minimum acceptable level of care, there is much confusion surrounding the term, with the SOC frequently mischaracterized as equivalent to “best practices.” Several recent articles have fostered this misperception by using the term SOC to denote gold standard or ideal care. This includes an article<sup>4</sup> in which the authors contend that failure to submit uroliths for quantitative analysis constitutes negligent care, an article<sup>5</sup> that concludes CO<sub>2</sub> lasers have “become a standard of care in general practices and in specialty and referral practices,” and another article<sup>6</sup> that suggests that “endoscopy is becoming the standard of care for thoracic surgery.”

There is also some confusion surrounding SOC because, historically, courts have ruled that a veterinarian’s actions must be considered in comparison to prevailing community standards or the actions of veterinarians in similarly situated communities, a standard known as the locality rule. These geographic distinctions likely arose because of a presumed lack of access in certain areas to the latest information, most recent equipment, and newest medical developments. However, this can create a perplexing situation whereby because of state-to-state variation in

how the SOC is defined, a different SOC might be applied to veterinary practices treating the same theoretical patient on different sides of a state border. Given the increasing emphasis on continuing education in veterinary medicine, the increase in online educational opportunities, and the widespread access to experts through various electronic means of communication, geographic SOC variability may no longer be defensible despite its persistence in many current state practice acts. For many of these reasons, human medicine appears to be migrating from a state-mandated to a nationally accepted SOC.<sup>7</sup>

Confusion regarding the definition of SOC can likewise arise because expert testimony is frequently used in legal proceedings to prove that a defendant breached the applicable SOC.<sup>8</sup> Although expert testimony is often used in this way in veterinary malpractice cases, the SOC is different for general practitioners than it is for specialists, with one commentator noting that “whenever a specialist diagnoses or treats an animal for a condition covered by his specialty he is likely to be held to an exceedingly high standard of care—and a much higher standard than would be applied to a generalist practicing in the same community.”<sup>9</sup>

There is increasing recognition that in veterinary medicine, the SOC, rather than representing a single baseline for the minimum accepted level of care, should instead reflect a continuum of acceptable care that takes into account available evidence-based medicine, client expectations of care, and financial limitations that may limit diagnostic and treatment options.<sup>10</sup> Because animals are considered property in the eyes of the law and owners are (in general) entitled to decide how much or how little to spend on their pets’ care, veterinarians are all too often faced with ill or injured pets whose owners essentially dictate what the SOC is going to be. Faced with a choice between providing what might be considered substandard care and providing no care, veterinarians will typically default to providing some care even if they know better options exist. Legally, veterinarians cannot provide care that falls below the SOC, but in reality, veterinarians commonly do so because of owners’ financial limitations.

For most veterinarians in clinical practice, the concept of SOC only becomes important when a malpractice complaint is brought by a client to a state's board of veterinary examiners. The members of these boards are tasked with investigating and determining whether a veterinarian may have breached the SOC. However, the information veterinarian board members use in making these assessments may be based more on their clinical experience than on evidence-based practices or clinical practice guidelines. Some state practice acts specifically recommend that the Principles of Veterinary Medical Ethics of the AVMA be used as the standard for professional conduct and that violation of these principles be considered a cause for disciplinary action. However, although the Principles of Veterinary Medical Ethics are a valuable resource, they are too general to provide guidance to veterinarians with regard to the SOC in specific clinical settings.

A variety of professional organizations have produced consensus statements, clinical practice guidelines, and white papers on various clinical practice topics, but there appears to be no agreement regarding whether these recommendations constitute a true SOC, and current recommendations do not cover every clinical scenario. In many instances, therefore, the SOC that applies in any particular clinical situation may be unclear. Surely, we can do better than this and provide some consistency and transparency, particularly for veterinary state boards. For physicians, clinical practice guidelines produced by specialist associations, US government agencies, and health-care organizations are collated by the National Guideline Clearinghouse to assist practitioners and patients in making decisions about appropriate health care in specific clinical circumstances. Creating a database of such white papers, consensus statements, and disease monographs for veterinary medicine and combining it with the growing body of evidence-based medicine could serve as an excellent first step for our profession and provide a resource for veterinary state boards and private practitioners alike.

Although the concept of SOC has been around for more than 100 years, there seems to be a general lack of recognition of the medical and legal ramifications

of SOC for veterinarians. Recent articles<sup>11,12</sup> suggest that the veterinary profession is finally starting to acknowledge and address some of the shortcomings related to SOC. The concept of SOC lies at the intersection of clinical practice, veterinary ethics, and the law. Although the term itself is frequently used in journal articles and conference presentations, the profession, to a large extent, lacks any consensus on what constitutes SOC in clinical veterinary medicine. This creates ambiguity and inconsistency in the care that practitioners provide, compromises the care pets receive, and prevents regulatory agencies and the courts from assessing veterinarian competence in a systematic and rational way. Redefining the SOC should be a priority for our profession in the next decade.

## References

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