Owner — OR — Guardian?

What's afoot with movements to define pet owners as guardians in city codes and state legislatures? Do the changes bode well for veterinary practices and their clients?

by Tamara Chapman

In 2000, the city of Boulder, Colo., became the first in the nation to modify its city codes to define all pet owners as guardians. Proponents of the move claimed that by changing the language in city laws to equate ownership with guardianship, humans would take their responsibilities toward animals more seriously.

At the time, most casual observers considered the Boulder law another wacky, but essentially benign, governmental act from a city celebrated for its avant-garde politics. Across the state, Coloradans exchanged jokes about Boulder's goofy, if well-intentioned, impulses.

Many veterinary industry insiders didn't react quite so flippantly. From his office in Mill Valley, Calif., Elliot M. Katz, DVM, founder and president of the nonprofit activist organization, In Defense of Animals (IDA), celebrated the success of his brainchild, a campaign designed to improve the plight of America's house pets. He also braced for the inevitable ridicule. "All the shock jock shows wanted to interview and poke fun at me," he recalls. But over the howls of laughter, Katz was savoring his victory.

Meanwhile, from her vantage point in Millbrae, Calif., Sharon Coleman found nothing to joke about and nothing to savor. A legal analyst with the Cat Fanciers' Association, Coleman tracks legislation and court cases with ramifications for breeders and pet owners. As a founder of the Animal Council of California, she serves as a clearinghouse on information related to the legal status of animals. The Boulder law struck her as chock full of potential ramifications — none of them promising for her constituency, for animals, for the professionals who treat them or, she maintains, for society at large.

It also struck her as a harbinger of things to come. And on that score, she and Katz are in perfect agreement.

Be informed

The primary advocate and organizer of guardian campaigns is California-based In Defense of Animals (IDA), an international animal advocacy group known for its efforts against *foie gras* production, abuse of circus animals and puppy mills. IDA makes its case at www.idausa.org. The Animal Legal Defense Fund — www.aldf.org — also posts arguments in favor of changing the legal status of animals.

To keep abreast of the veterinary profession's response to guardian campaigns, check the AVMA's website at www.avma.org. That organization's Task Force on the Legal Status of Animals is expected to make its final report by early summer. At the state level, many veterinary associations also are exploring the issue (for links to state VMAs, see www.aahanet.org/About_aaha/About_Links.html#state).

Charlotte Lacroix, DVM, Esq., an opponent of guardian legislation, urges animal health care professionals to get active at the grass roots level. At the very least, she says, veterinarians should stay informed about proposals before their municipal and county governing bodies. In addition, veterinarians should be prepared to educate government representatives about the ramifications of guardianship.

Lacroix also observes that in their acknowledgement of the human-animal bond, practice team members often have confused the issue by reinforcing the idea that pets are family members. "We as veterinarians need to take [the term] 'family member' out of the vocabulary," she says. "I think 'best friend' is the better model" — particularly in court. As she notes, it's much harder to file a suit on behalf of a best friend than it is to file one on behalf of a family member or ward.

Debate over the terms

Since 2000, more than a dozen cities, all of California's Marin County and the state of Rhode Island have joined Boulder in adopting guardian language. In cities as different as San Francisco and St. Louis, elected representatives have given the nod to guardian language in a bid to reduce animal neglect, cruelty and abandonment. Most of the laws modify existing codes, equating the term "owner" with "guardian" and stipulating that, where rights and responsibilities are concerned, the two terms mean essentially the same thing.

Katz sees his guardian campaign as a consciousness-raising initiative that will better the lives of millions of companion animals. Coleman sees guardian laws as a threat to property rights and isn't reassured by claims to the contrary. As currently written, she acknowledges, the laws are essentially harmless. But, she adds, "My feeling is that the word 'guardian' is not good." That's because the term is linked to a host of legal precedents associated with the guardianship of children and incapacitated humans. Under those precedents, guardians have significant obligations — namely, to put the welfare of the ward ahead of other interests. That scenario, Coleman maintains, simply cannot apply to the human-animal relationship.

Coleman believes that given the litigiousness of U.S. society and the sometimes-careless way in which legislation is passed, it's only a matter of time before the legal guardian model is applied to pets. "Once you have got it on the books, there it is, and you can build on it," she notes. Coleman envisions a day when, as guardians of animal wards, humans are compelled to make decisions based solely on the best interests of the animal. And who, she asks, will define what constitutes those best interests? At that point, she argues, the animal is no longer property, and the guardian no longer has property rights — the right to breed, to neuter, to euthanize or even to claim the pet should it run away.

To proponents of guardian campaigns, Coleman's scenario seems farfetched and well beyond the scope of their intent. "A guardian is someone who protects or looks after another," Katz explains. "It's a term that is positive and proactive."

Indeed, Katz considers it the perfect word for raising awareness. He believes in the power of language to shape attitudes. Consider the precedent set by animal shelters, he says. In an effort to educate clients about the weight of their responsibilities, shelters began referring to the placement of pets as "adoptions." Although once controversial, the term is now widely accepted. What's more, it signifies the relationship that owners have with their pets.

The guardian campaign is striving for a similar mindset shift, Katz says. And, he adds, it's working. As evidence, he cites the results of an independent IDA-commissioned survey of people who self-identified as either guardians or owners. According to survey results, guardians are more likely than owners to spay and neuter, to procure licenses, to have their pets live indoors or even to include their pet's name on family greeting cards. They are significantly less likely than owners to relinquish a pet to a shelter or to profess support for chaining or caging an animal for prolonged periods.

Veterinary industry weighs in

As proponents and opponents of the guardian campaign clash over its intent and long-term effects, veterinarians and the organizations that represent them are beginning to ponder the ramifications to their clients and practices. The executive board of the AVMA has assembled a 15-member task force to study the issues related to the legal status of animals, including the questions of guardianship and noneconomic damages in court cases. Many state associations have launched similar inquiries.

"The issue of the legal status of animals has come to the forefront with a lot of emotion," says Michael Chaddock, director of the AVMA's Governmental Relations Division. The AVMA task force — which Chaddock says comprises "experts knowledgeable about all sides and all species affected by this issue" — is charged with minimizing that emotion and helping the AVMA executive board shape policy and proposals based on sound science and legal principles.

With participation from legal analysts, animal ethicists and groups as diverse as the American Humane Association and AAHA, task force meetings promise to be filled with debate and perhaps even contention. Despite the enormity of the subject matter, Chaddock expects the group to submit its findings and recommendations by early summer.

As an attorney and a veterinarian, New Jersey-based Charlotte Lacroix welcomes the veterinary profession's growing interest in guardian questions. She has followed the issue since it first surfaced, and, like Coleman, she's troubled by its implications for property rights, the future of veterinary practice and the welfare of pets. "The issue of guardianship is a sleeping giant," she warns, "and it will have a very big impact on the relationship pets and animals have with their owners."

Lacroix's alarm is stoked by what she considers stealth tactics to introduce legal changes without full and open discussion of intent or consequences. "They picked a word that has a lot of legal connotations alread," she says. "First you get the word in, and then you chip away at the definition. On the surface, it's benign. And you know why? Because if it's benign, legislators are much more likely to pass it."

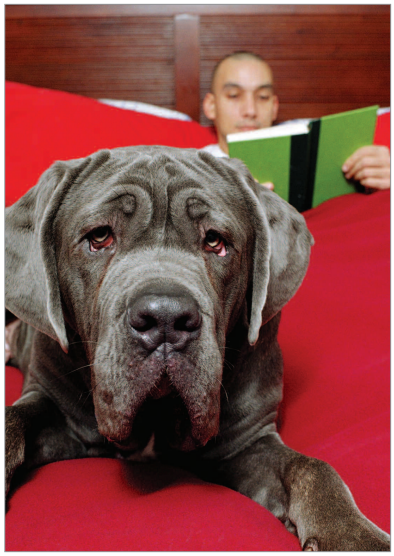
Katz acknowledges that the word guardian was carefully chosen — but not with a stealth campaign in mind. In addition, he points out, all the guardian laws passed have been carefully vetted by attorneys. "If you listen to them," he says of his critics, "you would think that the attorneys of the various city councils that have adopted this are fools. But all of them have doubled-checked to make sure there are not going to be any legal implications."

Like Lacroix, Kent McClure, DVM, JD, general counsel for the Washington, D.C.-based Animal Health Institute, is not convinced. He considers the guardian movement a component of a larger, more troubling campaign to grant rights to animals. "Plain and simple, it's an animal-rights-activist agenda. What we are seeing is the warm and fuzzy leading edge of that agenda," he says.

"One of the activists' goals is to have animals equal people under the law," McClure says. "An insidious way to do this is to claim that these two terms — 'guardian' and 'owner' — are equal. [But] to equate people and animals under the law is a Teutonic shift in the U.S. legal system."

Such a shift, in fact, will require new infrastructure and a rethinking of many of the premises that currently define animal-human relationships. For example, Lacroix explains, the legal guardian model assigns a bundle of rights to the ward, including that lawsuits can be filed on the ward's behalf. Should we assign that right to animals? Which other rights? And how will we ensure those rights and enforce the obligations associated with guardianship? Who will pay for this?

Just as troubling, Lacroix continues, the legal guardian model also assumes temporary possession of the ward. If that possession is successfully challenged, by a state animal welfare agency or even a private party, who gets the animal? Another presumption inherent in the model — that guardians be willing to put the ward's interests ahead of their own — assumes that humans have the same commitment to animals as to children. But Lacroix points out, "When the rubber hits the road, the majority of the population would not make the same sacrifices for a pet that they would make for a child."



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The effect on practices

Christopher Morris, a veterinarian in Parker, Colo., and chair of the Colorado VMA's Animal Status Task Force, believes that guardian legislation could dramatically alter the way veterinarians practice.

"Right now, these ordinances that delineate guardianship have no legal muscle. They don't change anything," he explains. "But 'owner' and 'guardian' are two entirely different legal designations that cannot be used interchangeably."

Morris envisions the day when, under guardian legislation, an outside party might challenge a decision to neuter or declaw. Veterinarians affiliated with animal shelters may find their ability to euthanize and to make public-health decisions compromised.

Just as troubling, veterinary practices might find themselves in the sticky situation of having to act against client wishes. Under a guardian-ward model, what happens when a veterinarian recommends a life-saving treatment a client cannot afford? Will the veterinarian be required to perform the procedures anyway? And, Morris asks, "Just what are the fiduciary responsibilities of the guardian?" All these assumptions make Morris and others like him wary of trading more than 200 years of existing law — in which animals are clearly designated as property — for the uncertainty of guardianship.

The property status, Lacroix explains, reflects human dependence on animals for everything from food to labor to scientific research. That relationship may trouble many people, but Lacroix doubts that most Americans are ready or able to redefine it.

Instead, Lacroix maintains, animal-welfare issues should be addressed by updating and clarifying existing animal-cruelty laws, which will do much to keep animal-welfare questions out of the potentially volatile arena of civil courts. "If you work within the animal-cruelty statutes you already have, abuse becomes a crime, not a tort issue," Lacroix says.

Coleman, too, favors addressing animal welfare issues through existing laws and legal concepts. "When you undermine basic concepts our society has had from the very beginning," she cautions, "you create a lot of uncertainty."

Katz favors updating current laws as well. But laws often address abuses after the fact — providing for fines and punishments for done deeds. The guardian campaign, by contrast, seeks to prevent abuse. After all, Katz says, "the way we speak is a precursor to the way we act." ■