

## **VSG/AVMA Principles of Veterinary Data Ownership & Stewardship**

Veterinarians acquire and create many types of data, including client, patient and financial information. This data represents the business history of a veterinary practice and in many respects, embodies the intangible value of the practice. At the same time, a veterinary practice must use this data in order to serve its clients and patients and obtain necessary products and services. In many cases, practices store this data in a practice management system and may also make it available to suppliers and service providers, such as online pharmacies, email marketing companies, appointment reminder companies or financial analytics service providers. Many of these companies require that veterinary practices grant the licensees rights to use practice data as a condition of receiving products or services and in some cases, restrict the practices' access to and use of its data.

Veterinarians also owe their clients duties of confidentiality under most states' veterinary practice acts and are subject to state and federal consumer protection laws. These obligations and laws require veterinarians to use data only to the extent permitted by law or consented to by their clients. These limitations should also limit data licensees' use of practice data.

Overall, veterinary practices and their clients benefit greatly from the use of practice data. Many times, it is necessary for a practice to use data and/or allow a third party to use data in order to treat patients or for the practice to receive a service. For example, a practice may need to provide data to a lab services provider in order to obtain lab results for a patient. Similarly, a practice must provide client email addresses to its email marketing or appointment reminder service provider in order to send reminders to its clients. These services and the necessary use of data benefit the practice, the client and the patient.

At the same time, not all data uses benefit the practice, the client and the patient. For example, if a service provider uses the practice's information to market to the practice's clients without the consent of the practice, it harms the practice and reduces the practice's trust in the service provider.

Similarly, when a data licensee restricts a practice's ability to use its own data, such restrictions likely harm the practice and potentially, the client and patient. The harm becomes particularly acute when the data licensee lacks transparency, fails to obtain informed consent or increases its restrictions over time. Depending on the extent of the restrictions, a data licensee may effectively assert ownership of the practice's data. Or, if the service provider uses the data to barrage the client with information they are not interested in, it harms the client.

This white paper is intended to initiate an industry-wide discussion about a common set of data ownership and use principles – discussion that should reflect the values of the veterinary profession, the obligations veterinarians owe to their clients and the rights of veterinarians to control their data. Such discussion should also recognize the benefits data may provide to practices, clients, patients and the veterinary industry, such as opportunities to improve animal health, provide better, more personalized customer service to clients, create new revenue opportunities for the veterinary profession and improve efficiency of the veterinary industry.

Guided by these values, these “Principles of Veterinary Data Ownership & Stewardship” embody the ideas that veterinary practices own their practice data, have a duty to protect it, will not unfairly or unnecessarily be charged for access to it and should only grant rights to vendors, service providers and software companies (“data licensees”) with fully informed and knowledgeable consent. When implementing these Principles, veterinary practices should make individual determinations on how they want to license their data and any restrictions on the license or their use of their data. Each veterinary practice should also be informed of the terms of the license and the nature of the rights they are granting.

## **PRINCIPLES OF VETERINARY DATA**

### **OWNERSHIP & STEWARDSHIP**

1. Veterinary practices own their practice data.
2. Control is a necessary condition of data ownership.
3. Practice data should be portable and accessible.
4. Prior consent is the foundation of proper data use.
5. Data licensees should be transparent in their use of practice data.
6. Veterinary practices should be able to limit and withdraw consent.
7. Data should only be used for known lawful purposes.
8. Data licensees should collect only the minimum required data.
9. Data licensees should retain practice data only for the requisite time period.
10. Data licensees should be responsible for their own and their licensees' use of veterinary practice data.
11. Data licensees should maintain the confidentiality and privacy of veterinary practice data.

#### *1. Veterinary practices own their practice data.*

The principle that “Veterinary practices own their practice data” is the central tenet of the Principles of Veterinary Data Ownership & Stewardship and there appears to be general agreement across the veterinary industry that veterinary practices “own” their practice data.

Veterinary practice data and the related information about a practice's clients and patients would not exist without the efforts and investments of veterinary practice owners. Veterinary practice data represents the intangible value of a practice, which should be owned by the practice's owners.

2. *Control is a necessary condition of data ownership.*

To own something means that a person has the exclusive right to possess and control access to it. As an intangible asset, data cannot be "possessed" in the classic sense – it cannot be touched and held. In fact, practice owners may not physically possess their practice data if it is located in the "cloud" or in a third party's system. However, data can be controlled by limiting access to the data and its use. An organization that limits access to and use of data exercises "ownership rights" over the data.

For a veterinary practice to "own" its data should mean that the practice, and only the practice, decides how its data is licensed, used, stored and collected, and who can access and use its data. It also means that an individual veterinary practice should have a legitimate choice as to whether and to what extent to grant rights to its data to software providers or suppliers of products and services, such as distributors, manufacturers, practice information management system providers, testing laboratories or marketing service providers. In other words, veterinary practices should have the right to "control" their data and the rights they grant in such data and not be required to grant rights in their data beyond those deemed necessary by the individual practice to receive or use products or services as a pre-condition to obtaining those products or services. In addition, a practice's rights to access or use its data should not be unnecessarily or excessively restricted.

3. Practice data should be accessible and portable.

Ownership also means that a veterinary practice can retrieve, access and use its data readily without restriction. Therefore, when a practice's data resides in a vendor-controlled or vendor-developed system, such as a practice information management system, the data should be readily accessible in a format that the practice can use and analyze. A vendor or software company possessing practice data should also provide the veterinary practice with a copy of the practice's own data, upon request, in an electronic format that allows the veterinary practice to use its data, including analyzing the data or transferring it to a different system. The process for obtaining the practice data should be simple, and the data should be available as soon as reasonably possible.

4. Consent is the foundation of proper data use.

The right to control practice data does not exist in a vacuum; state veterinary practice acts and other laws limit veterinary practices' rights to disclose and use practice data. Veterinary practices must comply with applicable laws and obtain adequate client consent. It necessarily follows that individual practices may be required to limit rights of third parties to the terms of such laws and consents. Similarly, third parties, including the veterinary industry and service providers, should respect the rights and obligations of practice owners and their clients and not place practices in the position of violating such rights and obligations. This obligation becomes particularly acute when the third party possesses greater technological sophistication and capabilities than a veterinary practice.

In order to comply with its obligations, a veterinary practice should obtain express written client consent before disclosing data to third parties, including third parties who provide marketing or care reminder services, and disclose data only in accordance with such consents.

Similarly, data licensees desiring to use or license practice data and patient medical records should obtain specific consent from veterinary practices prior to using or licensing the information and recognize and comply with any limitations affecting data use. Moreover, data licensees should not sell or share practice data with third parties, including affiliates, without the prior written consent of the practice.

5. *Data licensees should be transparent in their use of practice data.*

Transparency creates trust between veterinary practices and data licensees. Transparency also enables veterinary practices and their clients to validly consent to the use of their data. A valid consent is informed and knowing. This concept applies equally to veterinary practices and data licensees. For practices to obtain valid consents from their clients, they must be able to inform their clients how their data may be used. However, a veterinary practice needs to understand how its data licensees will use their data because valid client consents can only be obtained if data licensees are transparent in their use of practice data. In other words, a veterinary practice should know the purposes for which data licensees are collecting, processing and using practice data. Among other things, a veterinary practice should understand the data it is licensing and how it will be used and data licensees should notify practices, in advance, of the data to be licensed, how it will be used, and whether it will be provided to third parties, including affiliates. Data licensees should also identify relevant risks, safeguards and restrictions on the practices' use of the data. Information regarding data practices and uses, as well as risks, safeguards and restrictions, should be conspicuous, easily accessible, specific, and understandable.

Data licensees should abide by their notices, privacy policies, terms and conditions, and contracts. Data licensees who wish to use the data for a different purpose or impose restrictions should first obtain the practice's informed express written consent to such use or restrictions from an authorized representative of the practice.

Similarly, data licensees should obtain the practice owner's specific informed written agreement prior to updating or changing the notices, privacy policies, terms and conditions, and contracts applicable to that practice.

6. Veterinary practices should be able to limit and withdraw consent.

A veterinary practice should have the right to opt out or limit the scope of any data license or withdraw its consent. A practice may need to limit or withdraw its consent because certain clients did not consent to sharing their data, because its client consents do not address a specific matter or because it does not want to share information with a potential competitor. A practice may also want to limit or withdraw its consent simply because it makes a business decision to do so.

The right to limit or withdraw consent does not mean such a decision cannot have consequences. To ensure a practice's decision is informed, data licensees should clearly explain the effects of a practice's decision to opt out or limit or withdraw the licensee's rights to use practice data, including whether any services or features may be disabled or limited or if the practice will incur additional expenses. However, such effects should be reasonable and something other than "take it or leave it" (or the economic equivalent). The effects may vary depending on the reason for the limitation, but a practice should not be negatively impacted for complying with its legal obligations. Ultimately, a practice should have a legitimate choice that reflects its legal obligations and business decisions, and data licensees should respect the choice and the practice's legal obligations.

7. Data should only be used for known lawful purposes.

Disclosing how practice data will be used is not sufficient. Veterinary practices and data licensees both have an interest in ensuring their data collection and management practices comply with applicable law. Veterinarians retain certain legal and ethical responsibilities

over their practice data, including when the data are used by a data licensee. Data licensees should take similar care to handle data lawfully to avoid potential liability for data misuse or inadequate data protection, which may fall on themselves, the veterinary practices, or both.

8. Data licensees should collect only the minimum required data.

Over-collection of data creates risks for data licensees and for veterinary practices. For data licensees, over-collection of data creates the impression of a “land grab” that facilitates the misuse of practice data (i.e., outside the scope of informed consent) and a corresponding loss of trust. It may also increase data security risks. For practices, over-collection of data may increase the risk that use of data by the practice or its data licensees will exceed the scope of the client consent. Data licensees should therefore collect only the practice data needed to provide the services requested by veterinary practices. A practice should determine the uses of its data, the data it is willing to license and any restrictions on the use/sublicensing of the data, and should make sure the license is consistent with client consent.

A data licensee should cease to collect data from a practice upon termination of the relevant agreement or relationship. In addition, to the extent that the data licensee continues to have rights in practice data after such termination, it should comply with its contractual obligations and limitations.

9. Data licensees should retain practice data only for the requisite time period.

Storing data for a longer time than required can create potential legal and ethical problems for both data licensees and veterinary practices. Data licensees should delete practice data when no longer required or after a pre-agreed period, inform practices before doing so and give practices an opportunity to obtain a copy of the data. In keeping with the dual themes of trust and transparency, data licensees should document their data retention policies and



procedures and make these policies available to practices. In turn, practices should be able to request that data licensees delete their data, and data licensees should do so as soon as is reasonably practicable.

10. Data licensees should be responsible for their own and their licensees' use of veterinary practice data.

Data licensees should be responsible for their use of practice data. Data licensees should also ensure that third parties obtaining veterinary practice data from them are equally responsible and assume the responsibility for such third parties' use. This principle reflects the trust that is essential to the data owner/data licensee relationship. To that end, data licensees should not disclose data to an outside third party, including affiliates, without ensuring that the third party complies with the same terms and conditions that the data licensee has with the veterinary practice. Furthermore, the data licensee should notify the veterinary practice if its data will be sold or disclosed, to whom, and for what purpose, and give the veterinary practice the opportunity to opt out or limit its consent. The veterinary practice should make sure that the data licensee is adhering to its contractual obligations.

11. Veterinary practices and data licensees should maintain the confidentiality and privacy of veterinary practice data.

Veterinary practices and data licensees should implement appropriate practices and procedures to maintain the confidentiality and privacy of veterinary practice data, including protection against data loss, data destruction, unauthorized data access, or data breach. These practices may include, but are not limited to, encryption, pseudonymization, and other options. Veterinary practices and data licensees should comply with all applicable laws when using and processing veterinary practice data, implement policies for notification and response in the event of a data breach, and inform practices and clients of these policies.

## **What comes next?**

The Principles of Veterinary Data Ownership & Stewardship reflect a critical starting point for a balanced discussion among veterinary practices, the veterinary industry and other data licensees. They are intended to balance security, innovation, respect, responsibility and transparency. In developing these Principles, American Veterinary Medical Association and Veterinary Study Groups' goals are to achieve profession-wide adoption of the Principles, endorsement by other leading veterinary organizations, and potentially development of an independent verification mechanism for veterinary data licensees to demonstrate that their business practices and agreements uphold these Principles.

