



history plays a vital part in the diagnostic process by providing important guidance to the medical practitioner in choosing medicines or other therapies for the specific patient.

4. Because animals cannot verbally assist in their own diagnosis, veterinarians must rely instead on detailed observations of the animal's appearance, behavior, and response to various stimuli made by the animal's handlers and veterinary technicians. The veterinarian must also weigh previous medical observations, considerations, and judgments made by other veterinarians about the animal and any prior treatment the animal has received.

5. Because neither I nor Feld's other veterinarians can observe each of Feld's animals on a constant basis, we rely on Feld's animal care staff to make observations about each animal. Generally, the animal care staff is told to make notes about certain specific things – including whether or not an animal is eating and drinking – as well as to note anything that seems out of the ordinary about the elephant's behavior. Notes of these observations are maintained in each animal's medical records.

6. Because the animal care staff making these observations does not always know what symptoms are significant and what symptoms are insignificant, they frequently make note of details that prove inconsequential. In addition, because they do not have formal veterinary or scientific training, some members of the staff will note aspects of the animal's behavior that are not at all problematic. Regardless, more information is beneficial, particularly when put in the context of an animal's entire medical history.

7. If the medical personnel and handlers are discouraged from recording their accurate observations and judgments, veterinarians attempting to treat

future conditions will be deprived of a crucial source of information about the animal's condition and medical history, to the ultimate detriment of the animal's health.

8. In addition to the observations I just described, animals' medical records often contain lists of "rule-outs" – a veterinarian's list of possible causes for an animal's symptoms, each of which must be eliminated as the actual cause. Making a list of rule-outs is a standard part of accepted medical treatments in veterinary medicine. The list of rule-outs does not necessarily indicate which condition or disease the veterinarian thinks the animal has; it is merely a list of the possible causes of a clinical sign observed in an animal. The rule-out list helps the treating veterinarian devise a diagnostic plan for the animal and helps keep track of which diseases or conditions have been eliminated as possible causes by the diagnostics. The rule-out list also allows other veterinarians who may later be called upon to provide additional care to see the first veterinarian's thought process and informs them of what possible causes of an animal's symptoms have already been considered and eliminated, so as to avoid duplication of effort.

9. As a veterinarian, I view the medical records in which I list rule-outs as part of the thinking and deliberative process. Therefore, I view this as confidential information that is not intended for public disclosure. If the records were disclosed to the public, the list of rule-outs could be used out-of-context to make a case to the public that Feld veterinarians thought an animal had a particular disease or condition and therefore either the animal must have been mistreated or it must have been living in unhealthy or unsanitary conditions. Either way, such accusations would create the perception that the Feld animal care staff, my colleagues, and I have provided deficient care to the elephants. Knowing that such notes were available for public disclosure

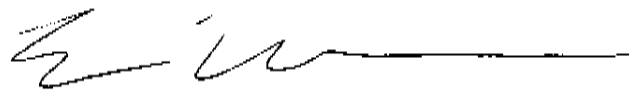
would make any reasonable veterinarian, including me, hesitant to include such a list in his or her medical records, for fear of being charged with deficient care of the animals.

**Medical Records as the Source For Scholarly Articles**

10. Feld's medical records form the basis for numerous articles that my colleagues and I are preparing. Among other things, I am aware of articles being prepared on elephant ophthalmology, surgery, and internal medicine.

11. Premature disclosure of these records would prevent the publication of many, if not all, of these studies because scientific journals require that they be the exclusive source of publication, and public disclosure of data will therefore impede publication in a scientific journal.

Pursuant to 28 U.S.C. § 1746, I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge.



Ellen Wiedner, V.M.D.

March 16, 2005