

Latent physical defects of the musculoskeletal system of dogs: The scope of veterinary expert assessment under current legal definitions in consumer sales. A case study

© ANDRZEJ DZIKOWSKI¹, © JÓZEF SZAREK²

¹Institute of Veterinary Medicine, Warsaw University of Life Sciences, Nowoursynowska 159, 02-787 Warsaw, Poland

²University of Warmia and Mazury in Olsztyn, Oczapowskiego 13, 10-719 Olsztyn, Poland

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Dzikowski A., Szarek J.

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Summary

In this case study, two veterinary expert opinions on latent physical defects of dogs sold were analysed. In both cases, a veterinarian was appointed as a court expert, primarily to determine whether a given animal had a disease and when it developed. However, the tasks of the veterinary expert were not limited to this. Case study analysis combined with legal analysis offered a broader perspective on the sale of dogs in which the buyer is a consumer and the seller is a professional breeder. The study revealed defects understood as physical pathologies and deviations from the state of health of the dogs, as well as other types of physical defects within the current legal definition of a physical defect.

Keywords: warranty, civil law, veterinary medicine, expert opinion

Dogs are often the subject of a sales contract, and most contracts are aimed at purchasing a companion animal. The buyer is usually a non-professional and does not intend to use the animal for profit, but rather as a companion – a pet or a guard animal. In this respect, the buyer is a consumer. If sellers are focused on breeding and selling dogs for profit as part of business activities, they are legally recognised as professionals (e.g. dog breeders). This fact implies numerous legal obligations for the seller, as well as facilities, and rights for the buyer of the dog.

When veterinarians, dog breeders or cynologists discuss physical defects of limbs in dogs, they often limit themselves to hip dysplasia and the particular breed predisposition of dogs to this condition. Of course, this is not the only or dominant pathology described as a latent physical defect of dogs sold.

Regardless of what illness, disease, or condition constitutes a physical defect of the dog being sold, the currently applicable legal definition of a physical defect is not limited to a physical pathology or deviation from the norm. According to the Polish Civil Code (57), a defect is a non-conformity with the contract (breach

of obligation). This definition is relatively new in the Polish legal system (4, 13, 15, 16, 58).

Therefore, the definition of a defect covers all possible kinds of non-conformity. The most common examples of non-conformity are the lack of properties of which the seller assured the buyer, such as good health or other attributes, and unfitness for use intended by the buyer of which the seller was informed when concluding the contract and to which he did not raise any objection (e.g. the use of the dog for breeding or as a companion animal – a pet). Also, the release of an animal without appropriate veterinary documentation may be considered a defect. A physical defect will also include the lack of characteristics that the dog should possess for the purpose specified in the contract or resulting from the circumstances or intended use. An example of such a characteristic is the free and unrestricted movement of the dog due to the proper functioning of its musculoskeletal system.

However, the above list does not exhaust the scope of defects or warranty liability. Nor does it exhaust the scope of veterinary expertise or a veterinary expert opinion.

This study analyses two original cases in which the veterinary expert opinion concerned latent defects of dogs sold. In both cases, a veterinarian was appointed as a court expert primarily to determine whether the animal had a physical defect, when the defect occurred, and whether the defect or its cause inherent in the animal itself already existed when the contract of sale was concluded. However, the tasks of the veterinary expert were not limited to the above, as they were conditioned by the court's questions (17, 56).

The two cases were examined by the case-study method, and legal interpretation methodology was also used. One of the cases concerned a Chihuahua dog whose primary defect was habitual patella luxation. The other case involved a so-called „American bully” dog with actual and alleged limb defects, as well as other congenital defects. The facts revealed in the course of the opinion demonstrated the presence of defects in the form of physical pathologies and deviations from the state of health, as well as other types of physical defects within the meaning of the new definition of a physical defect, especially in sales transactions in which the buyer of the dog is a consumer.

Case 1

Factual situation

A professional breeder sold a female Chihuahua aged over 3 months under a written agreement. The contract did not specify the sex of the dog, and the breed was given only as „CH”. No information was provided to identify and describe the dog, and the animal's date of birth was incorrectly indicated (several months after the date of the conclusion of the contract).

Although the contract did not mention it, the dog was purchased as a companion animal (pet) by private individuals who fit the legal definition of consumers.

After approximately 2.5 years, the owners noticed that the dog was having problems walking, and the animal's motor skills were steadily deteriorating. After several weeks, a veterinarian who provided constant care to the dog, was consulted about the abnormalities observed in its movement. Still, no medical documentation of the visit was prepared. The dog was referred to a specialist in veterinary surgery and radiology, where it underwent an orthopaedic examination with diagnostic imaging (X-ray).

Based on the orthopaedic and clinical examination, a diagnosis was made: bilateral medial patella luxation, grade III. As a result of the changes found and their severity, surgical stabilisation of the patellas under general anaesthesia was recommended. The procedure was performed in two stages with an interval of 1.5 months. First, the left patella was stabilised, followed by the right one. Detailed recommendations were issued regarding the treatment of the dog after the procedure. A follow-up visit was recommended after seven days, and an X-ray examination was performed six weeks after the procedure. As a result of the procedure and rehabilitation, the symptoms subsided.

Discussion

a) The habitual patella luxation, or dislocation, in dogs is a physical defect resulting from genetic predisposition. This also applies to Chihuahuas and was confirmed in the present case (8, 12, 21, 32, 38, 42, 44, 52, 59). This hereditary, congenital defect with a genetic basis, conditioned by a polygenic threshold trait, is progressive in the absence of corrective actions (49, 59, 60). It may also be the effect of pathological changes in the musculoskeletal system of the pelvic limb or a consequence of external factors, such as trauma, including those inducing a hereditary tendency.

This defect is found in all breeds of dogs of all ages, but occurs most frequently in small and miniature breeds (about 75% of all cases) and shows a clear correlation with sex (about 58.5% of these defects found in small breeds occur in females). Statistically, clinical signs are more often revealed in young dogs (up to seven years of age) (3, 11, 12, 21, 22, 38, 42, 44).

The above characteristics match perfectly the subject of the reviewed case: the Chihuahua is a miniature breed, the dog was a female, and the first clinical signs were observed about 2.5-3 years into the dog's life. The heritability of the defect for the Chihuahua breed is estimated at 0.25, which is high (3, 10, 11, 22, 32, 38, 42, 44).

Bilateral medial patella luxation (grade III) was diagnosed. A moderate luxation means that the patella is in a luxated position most of the time, but with the knee joint straightened, it can be manually retracted into the trochlear groove. Each flexion and extension of the joint leads to patella luxation again.

In orthopaedic examination, a crouched gait is observed; in the case of bilateral luxation, the pelvic limbs are semi-bent with inward rotation. Lameness or weakness of the posterior part of the body may be permanent. On palpation, there is a medial shift of the quadriceps muscle group, and an excessively shallow trochlear groove of the femur can also be felt. There may also be anomalies of the soft tissues reinforcing the knee joint (39, 48, 51).

In the case of medial patella luxation (grade III), surgical intervention is the only effective treatment in a dog (19, 34, 39, 48, 53). The diagnosis, treatment method, and surgical techniques used in this case were justified and effective. An indirect confirmation of this is that the dog returned to health.

b) As already mentioned, the dog had a latent physical defect, and thus, the buyers were entitled to a warranty. In analogous cases, it is also reasonable to seek compensation from the seller for the costs of diagnostics, surgical therapy and rehabilitation of the dog.

c) It was found that the seller, as a professional breeder, did not exercise due diligence in selecting the parents of the dog in question and the breeding line to avoid the occurrence of the defect. The seller did not conduct tests or document the parents' fitness and health. The fact that breeding documentation was not kept and diagnostics of the dogs bred, or only basic

clinical veterinary tests were not performed, indicates that the seller did not, in fact, conduct breeding work. Individuals were selected for reproduction solely based on their exterior (visible physical features). The seller did not undertake breeding activities to prevent or limit the occurrence of the defect in his dogs. The buyers were not informed about the possibility of such a defect. The seller did not provide pre-contractual explanations.

d) It should be noted that the buyers were consumers, and the seller was undeniably a professional. Therefore, they were entitled to broader protection than other buyers, and the seller was subject to more significant and complex obligations imposed by law (20, 28, 36, 47, 57, 58). The instruments of protection of buyers–consumers are, above all, limiting the availability of contractual derogation; protection through information and information about legal protection; abusive clauses; remedies available in the event of concluding a sales contract outside the business premises, online or at a distance; and finally – *displacentia*, i.e. the consumer right of withdrawal from the contract (5, 20, 28, 36, 41, 47, 58). In this case, it should be pointed out that the seller did not fulfil the pre-contractual information obligations. The seller should have provided the buyer with comprehensive information about the animal, its health condition and how it was and should be kept. The information should be transparent, i.e. understandable, comprehensible, clear, distinct, easily accessible, provided in a friendly form, in clear language, linguistically correct and unambiguous (28, 36). All these features should enable the consumer to make an informed and free decision. It is necessary and significant that they are integral elements of the contract (30, 31). These obligations are not only the sellers' assurances, but also their secondary contractual obligations, which are part of the content of the obligation relationship. Failure to fulfil them constitutes a breach of obligation and implies warranty.

e) Attention should also be paid to absent or inadequate medical documentation, the lack of breeding documentation from the seller and a slipshod or incomplete written contract of sale of the dog. All defects in documentation are examples of improper performance of obligations, as well as a violation of legal norms (especially in the case of veterinary documentation) (14, 18, 34, 35, 46).

Case 2

Factual situation

A male dog, the so-called „American Bully”, was born to an amateur breeder, a hobbyist. At the age of about four months, stiffness of the hind limbs was observed in the dog. A veterinary examination for hip dysplasia (clinical examination and X-ray) was performed. It was determined that the Norberg angles were 109 degrees for the left hip joint and 107 degrees for the right joint; the right femoral head was adequately

developed, the neck was correct; the left hip joint had a properly developed femoral head and a correct neck; no visible Morgan lines. A veterinary opinion was that the dog's hip joints were free from hip dysplasia.

A sales agreement was concluded when the dog was six months old. The buyer was a layman and bought the dog as a companion animal. No additional tests were performed before the sale. The day after the purchase, the new owner noticed that the dog had motor problems. It walked on stilted, straight pelvic limbs.

After a few days, a veterinarian examined the animal twice, and X-rays were performed. The following findings were made: slight bilateral shallowing of the hip joint sockets, significantly limited range of motion of the ankle joints, palpable displacement of the calcaneal tuberosities, bilateral hypertrophy of the ankle joints, rotation of the calcaneus with a mismatch in the tibial-calcaneal joint, hypertrophy of the knee joints, hypertrophy of the gastrocnemius and quadriceps femoris – secondary to this, pressure of the muscle tendons on the tibial tuberosity and calcaneal tuberosity. A tendon-muscle pathology was suspected, and the veterinarian explained the dog's motor disability risk after the growth phase.

After another 2 months, the dog was clinically examined several times again. Due to the diagnosed ectropion of the left lower eyelid, serous discharge from the eye, corneal ulcer in the lateral canthus of the left eye, papular inflammation of the third eyelid and obstruction of the nasolacrimal ducts, antibacterial and anti-inflammatory eye drops were used (available only on prescription from a veterinarian). Coughing, wheezing, reluctance to move and a pathological, machine-like heart murmur were also noted. Cardiological consultation and additional tests (echocardiogram, ECG) were necessary. The echocardiographic image revealed severe subvalvular aortic stenosis, significant concentric hypertrophy of the left ventricular myocardium, and altered mitral valve leaflets. Diastolic function was impaired, with no signs of failure. The diagnosis was severe subvalvular aortic stenosis.

Further cardiological examinations were performed 3 months and 7 months after the first. It was found that the changes had progressed. Compared to the first examination, a thickening of the free wall of the left ventricle and the interventricular septum and enlargement of the left atrium were visible. The last examination observed significant concentric hypertrophy of the left ventricular myocardium and a central wave of mitral valve regurgitation.

Discussion

a) Dogs referred to as „American Bully” are a cross between the American Pitbull Terrier, American Staffordshire Bull Terrier (AmStaff), Old English Bulldog, English Bulldog, American Bulldog, Staffordshire Bull Terrier, Bullmastiff and Rottweiler, not recognised as a breed by most cynological federations. Due to genetic predispositions inherited from the

breeds from which the „American Bully” originates, these dogs are relatively often diagnosed with diseases and defects that are either congenital or determined by genetic predispositions, e.g. deafness, hip dysplasia, habitual patellar luxation, elbow dysplasia, cleft palate, congenital heart failure, hypothyroidism, cerebellar abiotrophy, progressive retinal atrophy, cataracts, ichthyosis, zinc-sensitive dermatosis, heat intolerance (21, 52).

b) Several physical defects were revealed in the dog in question. The first of these was an excessive and too rapid development of pelvic limb muscles (hypertrophy of the gastrocnemius and quadriceps femoris), disproportionate to the degree of development of bone structures. The overdeveloped pelvic limb musculature had a negative effect on the bones through excessively increased pressure at the attachment points (tibial tuberosity, calcaneal tuberosity), causing abnormalities in their structure, such as hypertrophy of the ankle and knee joints. Disorders in the anatomical relations and functionality of the ankle joints accompanied this (2, 23, 27, 29).

This case shows how important it is to perform a veterinary examination before the animal sale, rather than after it. Of course, in the latter situation, the buyer is also entitled to a warranty due to latent physical defects. Nevertheless, if the buyers had known about the defect already at the pre-contractual stage, they would not have bought the animal, thus sparing themselves the pursuit of claims under warranty as well as avoiding stress and significant financial expenses (costs of veterinary diagnostics and therapy, costs of proceedings). This clearly shows that the buyer should have ordered a veterinary examination before concluding the contract or at least should have seen and thoroughly scrutinized the dog. This case is particularly striking because the defect was revealed just the day after the purchase.

One may wonder whether it was a latent or a patent defect – and the buyer only has himself to blame because he did not exercise due diligence or examine the animal. It should be rejected that the defect was patent (revealed or known to the buyer). In Polish civil law, there is no obligation for a veterinarian or a buyer to examine purchased animals (57).

Legal obligations, however, are imposed on the seller, who should disclose all defects and provide the buyer with information. The defect was known to the seller and was ignored by him, and it can be assumed that it was concealed.

The seller was aware of the dog's unusual gait (stilted, stiff gait) and, therefore, ordered a hip dysplasia test. Despite the test result indicating no dysplasia, the fact that the dog had disturbing motor signs should have raised his concern. A responsible breeder would have verified the dog's health. However, the inquiry was stopped at a (premature) hip dysplasia test. Undoubtedly, the seller did not

exercise due diligence to ensure the dog was free from physical defects.

In this case, although the seller was not a professional breeder but merely a hobbyist, he should be considered a professional under civil and consumer law (5, 20, 28, 30, 31, 36, 41, 47, 57, 58). Indeed, breeding activity was conducted, and its financial benefits were derived. As already mentioned, the buyer was a consumer and purchased the dog for purposes unrelated to any commercial activity.

Therefore, not only did the seller fraudulently conceal the defect, but also failed to fulfil pre-contractual information obligations under legal rules regarding consumer protection through information.

c) The examination conducted solely for hip dysplasia was irrelevant for other physical defects. The negative result of this examination did not exclude the presence of other abnormalities in the skeletal and musculoskeletal systems on the day the dog was delivered to the buyer. Moreover, that examination was conducted on a dog that was too young, and the assessment of it being free from dysplasia could not be final due to the incomplete development of the dog's bone structures (24, 40). Nevertheless, it proves that the seller already knew about the defect manifesting in the dog's stilted, stiff gait at a young age.

d) The musculoskeletal defects did not exhaust the scope of warranty causes identified in this case. Another diagnosed latent defect concerned the cardiovascular system. The pathologies included severe subvalvular aortic stenosis, significant concentric hypertrophy of the left ventricular myocardium, thickening of the free wall of the left ventricle, thickening of the interventricular septum, mitral valve insufficiency and impaired diastolic function.

It was found that the dog had an anatomical congenital defect: subvalvular aortic stenosis (SAS) (6, 45, 50). A consequence was the development of anatomical and functional abnormalities in the form of mitral valve degeneration caused by degeneration of the valve leaflets. As a result of compensation, the left ventricular muscle hypertrophy occurred, which exacerbated the heart dysfunction, leading to its failure. The remaining abnormalities in the heart were consequences of SAS (1, 6, 7, 9, 25, 26, 43, 50, 54).

This defect was probably not known to the seller. However, the sellers' lack of knowledge does not release them from warranty liability.

SAS is a progressive and incurable disease. Its severe form, coexisting with secondary changes in the structure and function of the heart, practically prevents the dog from any activity and consequently leads to death, and untreated dogs with such a defect live on average only up to 19 months. With appropriate therapy (beta-blocker administration) and simultaneous adherence to a proper diet, the average survival time is about 56 months (37, 50, 55).

In addition, the identified defects of the cardiovascular system significantly increased the risk of loss of life in the case of using diagnostic methods requiring general anaesthesia. As a result, the possibility of diagnosis and treatment of musculoskeletal system defects that affected the dog were drastically reduced.

d) On the day of delivery to the buyer, the dog had many severe defects in the skeletal, musculoskeletal and cardiovascular systems. The identified defects were progressive and incurable, causing a significant deterioration in the dog's quality of life and preventing any activity. Cardiovascular defects that affected the animal inevitably result in a fatal outcome.

The total assessment of the physical defects in this case leads to the conclusion that the material value of the dog with the above defects, documented by medical and veterinary examinations, was zero.

Conclusions

The cases analysed allowed the veterinary expert to reveal various physical defects in dogs sold. In addition to typical medical limb defects, such as habitual patella luxation and an anomaly in the musculoskeletal relations in the ankle joint area, he also found defects in the circulatory system that significantly worsened the animal's functioning and chances of survival. The circulatory defects also ruled out the possibility of therapy for the limb defect and determined the dog's value (or lack thereof). All these factors had to be considered in the veterinary expert opinion.

It is noteworthy, however, that the veterinary expert was also able to identify latent physical defects other than diseases. In particular, it was revealed that sellers had committed violations of the law in their dealings with consumers, i.e. people who buy dogs as companion animals for purposes unrelated to economic and commercial activity.

The current legal definition of the latent physical defect as any non-conformity with the contract allowed the veterinary expert to take a broader look at the analysed case and demonstrate the premises of defects: non-medical and loosely related to physical pathology.

The analysis demonstrated that the fact that the buyer is a consumer and the seller is a professional is crucial in the sale of dogs and warranties for their physical defects. This is important, even though the concept of „consumer” is not typically associated with animal trade. However, it is significant that in the current Polish legislation, consumer law has been extended to all buyers and all items of sale, although pro-consumer regulations initially applied only to industrial, mass-produced products.

On the one hand, this benefits non-professional dog buyers, increasing the scope of their legal protection and granting them additional warranty rights. On the other hand, however, this fact does not allow consumer regulations to adapt to the individual specificity of animals as living organisms. This also underscores the

importance of pre-contract veterinary examinations and veterinary expert opinions in court disputes.

In addition, our research allows us to conclude that dog sellers and breeders are often unaware of the applicable legal regulations regarding the warranty, especially in consumer sales and in terms of protection through information.

Considering all the results, it can be concluded that veterinary expertise and a veterinary expert opinion significantly increase the scope of legal protection for dog purchasers, predominantly non-professional buyers of companion animals.

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Corresponding author: Andrzej Dzikowski LLM DVM PhD, Warsaw University of Life Sciences, Institute of Veterinary Medicine, Nowoursynowska 159, 02-787 Warsaw, Poland; e-mail: andrzej_dzikowski@sggw.edu.pl