

Legal Issues Facing Veterinarians Today

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Clinical practices of all types have become much more complex in recent years as regulations have become more pervasive and as our society of internet-fueled "experts" has become increasingly litigious. Practitioners engaged in veterinary medicine (as with physicians, dentists, and other licensed professionals who treat human beings) find themselves increasingly distracted from their practices as they are forced to devote more attention to the complexities of business planning and organization, and to potential legal concerns relating to such areas as contracts with professional colleagues, employment of staff, practice affiliations and mergers, commercial lease negotiations, and, for some, dealing with malpractice suits or **disciplinary committee investigations**.

Additionally, as our nation's growing view of their pets moves from "property" (which, based on common law, remains the current legal viewpoint) to "cherished family member", the number of malpractice suits may significantly increase with a corresponding increase in the monetary exposure attributable to such suits.

Veterinarians are also being held responsible for assessing possible cases of abuse and neglect and for evaluating the potential for dog aggression, especially where the canine, if not properly supervised, may engage in unpredictable or injurious behavior toward children or strangers. Both place the veterinarian in a vulnerable position for exercising his/her professional judgment and may result in a court issuing a subpoena for documentation and case notes, or an actual lawsuit.

Lastly, the vet may encounter the grieving owner who turns to an attorney following the death of their animal, claiming that the vet, through his or her acts or omissions, was negligent in treating the animal and therefore responsible for its passing.

While far from an exhaustive list, the above are just a few examples of why veterinary law has become a fast-growing legal subspecialty.

Below is a brief summary of other professional practice issues that might warrant engaging a law firm that is experienced in the business side of a veterinarian's practice.

- ***Business Entity Selection and Formation***. Selection of the most appropriate **business entity** to ensure the maximum legal protection from personal liability is a veterinarian's best protection in the event of a legal action. Unlike a sole proprietorship or general partnership, a corporation, limited liability partnership, or limited liability company can protect the veterinarian's personal assets in cases of business-related liabilities. Regardless of the type of entity chosen, veterinarians in a group practice should execute appropriate **"buy-sell" agreements** to address what happens to their equity interests in the practice in the event of death, disability, or retirement.

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- *Contract Negotiation and Employment Agreements* - As one's practice grows, he or she may seek to employ additional veterinarians and other key employees. Legal assistance in contract development can protect the practice through the inclusion of legally-enforceable non-compete clauses and by defining terms related to production-based compensation if you choose to implement this method of payment. Well-crafted employment agreements with management staff can also assist in protecting your practice, particularly when someone separates from employment, whether voluntarily or involuntarily.

- *Merger/Affiliations and Practice Sales*: Many professional practices have found that by combining their efforts into a multi-site affiliated network, they can realize cost savings through bulk purchasing, shared back-office functions and rotation of "on-call" assignments. Legal representation can help in developing affiliation agreements that comply with state law, protect your practice's independence, and limit its liability in case of a lawsuit.

Should you wish to merge your practice with another practice, or seek to **sell your practice**, an experienced law firm can ensure that the value of your practice is appropriately determined and that you are fairly compensated for your life's work.

- *Malpractice Suits* - As previously stated, in this country, an animal is currently viewed as an item of personal property and most courts limit recovery to the cost of replacing the companion animal with another animal. Although this is most frequently the outcome, having adequate **malpractice coverage** and competent legal representation can afford "peace of mind" for the veterinary practitioner. This is particularly needed as some veterinary malpractice claims have been converted by savvy attorneys to focus on issues of professional negligence versus the breach of bailment concept under which these cases have traditionally been tried. In a California case, this strategy resulted in the court applying medical malpractice standards to a case of veterinary malpractice and may serve as a precedent for similar cases in other parts of the country.

It should also be noted that courts are now beginning to permit owners to recover the "reasonable sentimental value" of the companion animal to its owner, as long as the sentiment is not viewed as "excessive" or "maudlin." This can increase the potential recovery from a few hundred dollars to much more.

As society moves away from viewing pets as property, the legal exposure of veterinarians will significantly increase. As in medical malpractice cases, awards for pain and suffering can be introduced and judgments may be substantial. Already, a New York Court (*Corso v Crawford Dog and Cat Hospital*) found that a pet "occupies a special place somewhere in between a person and a piece of personal property". As this special relationship is further defined, the courts will also need to address whose suffering should be compensated - - the animal's or its human companion/caregiver. A judge or jury made up of individuals who have lost a pet could conceivably render a judgment in a future malpractice case in the hundreds of thousands of dollars, taking into account the pain and suffering of the human caregiver. A well crafted business plan, guidance regarding documentation and organizational structure, and the availability of expert legal representation at trial can provide the veterinary practitioner with the protections he/she needs to safeguard his/her family and to ensure the continued viability of his/her practice.

- *Disciplinary Board Reviews* - What is frequently of greater consequence to the veterinary practitioner is that many malpractice cases are often accompanied by simultaneous complaints made to the **New York State Department of Education's Office of**

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Professional Discipline ("OPD"). All complaints to OPD are reviewed. In some cases, hearings are scheduled and the Board may suspend or revoke a practitioner's license, thus jeopardizing his or her livelihood. A vigorous defense, including, as needed, expert witness testimony, can assist a veterinary practitioner to maintain his/her professional license.

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For more information on legal issues affecting the practice of veterinary medicine, please contact **Joel M. Greenberg**, Esq. or **Ayman H. Soliman**, Esq. at our firm at (516) 775-0042 or by e-mail at jgreenberg@abramslaw.com. Thanks.

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