



Veterinary Medicine and the Law

Effects of veterinary board disciplinary actions on veterinarians licensed in multiple states

Sarah Babcock, DVM, JD; Theresamarie Mantese, JD; Christine L. Pfeiffer, JD

Editor's Note: The law has always had a profound effect on the practice of veterinary medicine, but recently, the relationship between veterinary medicine and the law has become more important than ever. Increasingly, owners dissatisfied with the treatment of their pets are turning to the courts for redress, and increasingly, the courts are ignoring the traditional view of animals as property and are awarding monetary damages in excess of fair market value to pet owners who successfully sue for the wrongful injury or death of an animal. Several states now allow owners to establish trusts for their pets, and several courts have been called on to decide which owner should have legal custody of the family pet following a divorce or separation. In addition to this, state and federal regulations, such as those related to sexual harassment and the Americans with Disabilities Act, and local and state laws, such as dangerous dog and animal cruelty laws, affect how veterinarians practice.

For more than 30 years, Harold W. "Hank" Hannah authored the "Legal Briefs" feature published in the Journal of the American Veterinary Medical Association. With Hannah's death in 2002, that feature was retired. But, the need for information on legal issues that affect veterinary medicine has never been greater. For this reason, with this issue, we debut a new feature, "Veterinary Medicine and the Law," which will focus on legal issues of importance to veterinarians. This feature will be published in cooperation with the American Veterinary Medical Law Association, a national association of veterinarians, attorneys, and other individuals and organizations with an interest in veterinary medical law and how it pertains to the veterinary profession and allied fields.

We hope that readers will enjoy this new feature and find it valuable. The AVMLA welcomes readers' suggestions for potential topics for upcoming articles. Suggestions can be made via the AVMLA Web site (www.avmla.org).

The increasing tendency among pet owners in the United States to consider their animals as family members has led to an increasing willingness to invest substantial sums of money in obtaining the best veterinary health care available. One side effect of this is that owners are more likely to take action if they are dissatisfied with the outcome following treatment of a pet. In some instances, this could take the form of a veterinary malpractice claim. Currently, however, damages in veterinary malpractice cases are typically limited to the fair market value of the pet or the economic loss of the owner. Thus, there often is little economic incentive for attorneys to file veterinary malpractice lawsuits.

Alternatively, owners who are dissatisfied with the treatment of a pet might consider submitting a letter of complaint to their state veterinary medical board (VMB). Such an action will trigger an investigation by the VMB, which may or may not result in disciplinary action against the veterinarian involved. For a veterinarian licensed to practice in a single state, disciplinary action by the state's VMB may affect the veterinarian's ability to practice in that state. Surprisingly, however, for a veterinarian licensed to practice in multiple states, disciplinary action by the VMB in one of those states may trigger action by the VMBs in one or more of the other states in which he or she is licensed. Thus, a veterinarian licensed in multiple states who is faced with a licensing complaint in one state may also be faced with unexpected licensing proceedings in the other states in which he or she is licensed, even if the action that prompted the original complaint occurred in only one state.

Procedures Associated With a Licensing Complaint

Every state has a VMB (or veterinary licensing board) that oversees the practice of veterinary medi-

From Animal & Veterinary Legal Services PLLC, 32750 S River Rd, Harrison Township, MI 48045 (Babcock); and Cook, Goetz & Rogers PC, 36700 Woodward, Ste 101, Bloomfield Hills, MI 48304 (Mantese, Pfeiffer).

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Address correspondence to Dr. Babcock.

cine in the state and decides whether sanctions should be imposed for violations of the state's laws and regulations. It is important that veterinarians have at least a rudimentary understanding of the procedures involved when a licensing complaint is filed with their state's VMB. These procedures vary from state to state, and a veterinarian who is faced with a licensing complaint should consult with an attorney as to the specific procedures applicable to the state in which the complaint was filed. In general, however, when a VMB receives a letter of complaint regarding a veterinarian licensed in that state, an investigation will be performed.

In Michigan, for example, when a licensing complaint is filed, a state investigator will first perform an informal investigation on behalf of the VMB. Typically, the investigator will interview witnesses, such as the owner, the veterinarian, and, possibly, an expert in the particular area of veterinary medicine involved. Even during this informal investigation stage, the veterinarian should contact an attorney, as any statements made by the veterinarian during these interviews may be used against the veterinarian in a subsequent hearing.

After the informal investigation, the state's attorney general may elect to file a formal complaint against the veterinarian, if the facts warrant. The case initially proceeds through an administrative process, during which a compliance conference is scheduled to resolve the matter, if possible, without having to proceed with an administrative hearing. If the case is not resolved, the case proceeds to a hearing before an administrative law judge, who makes findings of fact and conclusions of law related to the complaint. The case then proceeds to the disciplinary subcommittee of the VMB, which makes a decision on what, if any, sanctions should be imposed on the veterinarian.

Nationwide, the types of conduct for which VMBs have reprimanded veterinarians include such things as inadequate record-keeping (eg, inadequate recording of patient information and inadequate documentation of veterinarian-client discussions regarding informed consent and informed refusal), unsanitary environmental conditions in the veterinary clinic, failure to staff the veterinary facility with qualified personnel, failure to complete continuing education, and inadequate care and follow-up of patients. Penalties imposed by VMBs may include probation, suspension of a veterinary license, fines, required continuing education, required mental health evaluation and treatment, and consent to random facility inspections.

The Principle of Sovereign Entities

To understand why a veterinarian who is licensed to practice in multiple states should be concerned that a licensing complaint in one of those states might trigger disciplinary actions in other states, it is crucial to understand that the federal government and each state are separate sovereign entities. A sovereign entity has the authority to create, apply, and enforce its own laws. Therefore, a veterinarian licensed in multiple states is bound by the laws of each of those states and the fed-

eral government. More to the point, each of the states in which he or she is licensed has power over the veterinarian on the basis of having granted the veterinarian a license to engage in the practice of veterinary medicine within the state. It is for this reason that a veterinarian who is licensed in more than one state faces the risk that he or she may confront disciplinary action by the VMB in each state for an incident that occurs in only one of those states.

Veterinary medical boards in each state may report adverse disciplinary decisions against veterinarians in their state to the VMBs in other states through a process known as cross-reporting. Cross-reporting is not new, and physicians, dentists, and other health care practitioners have long been subject to the actions of the National Practitioner Data Bank, which provides reports of adverse actions to credentialing boards throughout the United States, regardless of the location of the original action.¹ The federal government has the authority to extend the requirement for reporting of adverse actions to veterinarians,² but to date has not exercised that authority.

Important Issues for Veterinarians Licensed in More Than One State

There are three main issues that a veterinarian licensed to practice veterinary medicine in more than one state should consider when deciding how to respond to a licensing complaint: the potential effect of an adverse disciplinary decision in the state where the complaint was filed, whether the state where the complaint was filed reports adverse disciplinary decisions to other states, and whether other states where the veterinarian holds licenses to practice might impose adverse disciplinary actions of their own on the basis of an incident in the state where the complaint was filed.

Similarly, when considering how to respond to a malpractice lawsuit, a veterinarian licensed to practice in multiple states should consider what disciplinary actions a malpractice judgment or settlement might trigger in the state where the lawsuit was filed, whether the state where the lawsuit was filed reports such judgments or settlements to other states, and whether other states where the veterinarian holds licenses to practice might impose adverse disciplinary actions of their own on the basis of a malpractice judgment or settlement in another state.

As an example, consider a veterinarian, Dr. A, who is licensed in Pennsylvania and Minnesota and has a licensing complaint filed against her with the Minnesota VMB. Before Dr. A decides whether to accept the Minnesota VMB's offer to dismiss the complaint if she pays a fine and agrees to participate in a year of continuing education, she must consider whether the action taken against her by the Minnesota VMB will be cross-reported to the Pennsylvania VMB and whether the Pennsylvania VMB might consider taking additional disciplinary action.

State-to-state Notification of Disciplinary Actions

If a veterinarian licensed to practice veterinary medicine in multiple states is disciplined in one state,

the other states in which the veterinarian is also licensed may receive notification of the disciplinary action in any of four ways: as a result of mandatory or voluntary reporting to the **Veterinarian Information Verifying Agency (VIVA)**, as a result of a state law that requires the VMB to report adverse disciplinary decisions to other states, as a result of a state law that requires veterinarians to report all adverse disciplinary decisions when they complete the necessary paperwork for license renewal, or as a result of reporting of a malpractice judgment or settlement by a veterinary malpractice insurance carrier.

The American Association of Veterinary State Boards, a national association of state VMBs, currently maintains the VIVA database, which, among other services, provides state VMBs with information regarding veterinarian licensure and disciplinary actions. Currently, state VMBs are not required to report disciplinary actions to VIVA, but do so voluntarily. However, the law that required the establishment of a National Practitioner Data Bank for physicians and other health care workers gives the federal government the authority to establish a mandatory reporting requirement for veterinarians. Although the federal government has, to date, not established a mandatory reporting requirement for veterinarians, it may do so in the future.

At present, only Ohio has a law that requires reporting of adverse licensing actions to other states,³ and this law only mandates such reporting when the Ohio VMB permanently revokes the license of an Ohio-licensed veterinarian. The law does not require that lesser sanctions be reported.

Some states require veterinarians to report any adverse disciplinary decisions to the state VMB. Florida, for instance, requires that any action taken in any jurisdiction against a veterinarian be reported within 30 days.⁴ Kentucky requires that any disciplinary actions be reported "promptly,"⁵ and Nevada requires reporting within 30 days.⁶ In addition, in most states, veterinarians must renew their license every two to three years, and on the renewal application, most states require the renewing veterinarian to disclose, under penalty of perjury, whether he or she has had any disciplinary action imposed by a licensing agency in another state. Failure to disclose such information may result in sanctions against the veterinarian, such as fines or penalties; public or private reprimand; or limitation, restriction, suspension, or nonrenewal of the veterinarian's license.

Finally, a few states, including California, Nebraska, and Texas, have laws that require a malpractice insurance carrier to notify them of an adverse judgment or settlement against a veterinarian that is paid by the insurer. For example, in California, a malpractice insurer is required to notify the California VMB of a settlement or arbitration award > \$10,000 or of a claim or action against a veterinarian for "damages for death or injury caused by [the veterinarian's] negligence, error, or omission in practice, or rendering of an unauthorized service."⁷ Similarly, Nebraska law⁸ requires an insurer to report any payment made by the insurer as a result of an

adverse judgment, settlement, or award in a malpractice action. This includes settlements made before a lawsuit was actually brought that arise out of an act or omission of the veterinarian. Furthermore, in Texas, a professional liability insurer must file an annual report with the State Board of Insurance that includes a description of all claims, including the amount of the claim, and the amount paid on claims by the insurer in judgments and settlements.⁹ Although malpractice insurance carriers in these three states are only required to report judgments and settlements to the government of that particular state, it is possible that other states may become aware of these claims.

Effects of an Adverse Disciplinary Decision in Another State

Some states have statutes that specifically allow for sanctions to be levied by the state's VMB against a veterinarian licensed in that state on the basis of an adverse disciplinary decision in another state. For example, the Pennsylvania VMB is permitted to begin a disciplinary action against a veterinarian simply on the basis of a disciplinary action imposed in another state. In fact, the Pennsylvania VMB may suspend or revoke a veterinarian's license or otherwise discipline the veterinarian if that veterinarian has been disciplined by another state or has had his or her license suspended or revoked.¹⁰

Importantly, these states do not necessarily have to inquire into the reason for a disciplinary action before they begin a separate disciplinary action in their own jurisdiction. In fact, in some states, disciplinary action taken by another state cannot be disputed by new evidence, and the fact that a veterinarian was disciplined is taken as conclusive evidence of a violation. On the other hand, some states allow a veterinarian to give new evidence to dispute the reasons for or fairness of an adverse discipline decision in another state. In Minnesota, for example, the disciplinary action is considered *prima facie* evidence that disciplinary action taken in another state was valid or fair¹¹; however, the veterinarian may present new evidence about the merit of the original disciplinary action.

To return to our example of Dr. A, a veterinarian licensed in Minnesota and Pennsylvania, who faces a licensing complaint in Minnesota. If the complaint results in an adverse disciplinary decision in Minnesota, then Dr. A would be subject, on the basis of that adverse disciplinary decision, to disciplinary action in Pennsylvania. Importantly, however, during the disciplinary process in Pennsylvania, Dr. A would not be able to explain why she agreed to the sanctions imposed by the Minnesota VMB, as the disciplinary action would be considered conclusive evidence in Pennsylvania. Accordingly, whether a veterinarian will be able to defend himself or herself against a disciplinary action will depend on the flexibility of the laws in the state where the licensing complaint was first filed and on the flexibility of the laws in the other states in which licenses are held.

Double Jeopardy

The idea that a veterinarian might be subject to sanctions in multiple jurisdictions for a transgression in only one of those jurisdictions would seem to conflict with the general notion that individuals should not be subject to double jeopardy. In fact, the Fifth Amendment of the US Constitution includes a provision that, in essence, prohibits an individual from being prosecuted twice for the same crime. However, the principle of double jeopardy applies only to criminal proceedings and not civil proceedings. Hence, an individual convicted of the crime of tax fraud can be subject to civil proceedings to collect back taxes without raising concerns about double jeopardy. Also, the double jeopardy protection applies only to prosecution by a single sovereign entity. Different states and the federal government are not barred from prosecuting an individual for the same crime if they have power over that individual, because each is a separate sovereign entity. Crimes are defined by state and federal governments on the basis of various necessary elements, such that each specific crime consists of a particular set of elements. Two crimes are different if one requires proof of an additional element that the other does not.

As an example, consider a veterinarian who is licensed to practice veterinary medicine in Michigan and Florida and who is disciplined by the Florida VMB for the illegal delivery, possession, or use of a controlled substance. The veterinarian could also be subject to discipline by the Michigan VMB and would likely be subject to criminal prosecution by both states and by the federal government. Moreover, the veterinarian could be subject to civil proceedings brought by private individuals in state

or federal court. Thus, a veterinarian could face multiple courts and licensing boards on the basis of a single act.

Conclusion

Veterinarians licensed to practice veterinary medicine in multiple states should not resolve to a disciplinary proceedings in one of those states without contemplating the impact on their licenses in other states. Even accepting a light sanction in a disciplinary action in one state, such as participation in continuing education, can have severe consequences in another state where the veterinarian is also licensed. Veterinarians can never be sure as to how any particular state's VMB may perceive a disciplinary action or whether a state's VMB might pursue harsher sanctions because it has different rules or a more aggressive makeup. Accordingly, it is advisable for a veterinarian licensed in more than one state to seek appropriate legal advice as to relevant statutes in all appropriate states before he or she makes a decision on how to proceed in an action involving his or her license.

References

1. 42 USCA §11101 et seq (1998).
2. 42 USCA §295k (1998).
3. Ohio Rev Code Ann §4741.24 (West 1991).
4. Fla Stat §472.214(1)(jj) (West 2000).
5. 201 Ky Admin Regs 16:010(13) (1993).
6. Nev Rev Stat §638.1406 (2004).
7. Cal Bus Prof Code §801 (West 2004).
8. Neb Rev Stat §71-1, 200 (2000).
9. Tex Ins Code Ann §5.15-1 (West 2003).
10. Penn Stat Ann Tit 63 §485.21(13) (2002).
11. Minn Stat §156.081 (1996).