Legal Brief

The duty of a veterinary medical association to discharge members

In an earlier Legal Brief (*JAVMA*, Aug 1, 1997, pp 300–301), there was discussion of the duty of a veterinary medical association to grant membership to veterinarians who met requirements of the veterinary medical practice act. This brief explores just the opposite question—may there be circumstances under which it is the duty of a veterinary medical association to discharge a member?

Before exploring this issue, some observations are in order. Many animal owners believe that a veterinary medical association can punish a delinquent member—or even terminate that member's right to practice. This is not true. The only entity that can punish or terminate a veterinarian's right to practice is the state's veterinary licensing and disciplinary board. The most a veterinary medical association can do is terminate membership. This must be done in accordance with its bylaws; these bylaws must provide for due process and must state the causes for which membership can be terminated.

When economic advantages or privileges depend on membership in an association, this becomes an important issue for the professional man or woman. In many cases, for example, hospital privileges for a medical doctor depend on membership in a local medical association. A veterinary hospital could impose such a requirement; but for most veterinarians, termination of membership in an association would not affect their practice. Nevertheless, loss of membership would mean loss of the educational and other advantages available through membership in a professional association. Therefore, for many veterinarians, membership is important, and although their right to practice does not depend on it, they are likely to defend themselves against expulsion.

The following cases will address the question of whether a veterinary medical association has a duty to expel a member, and if it fails to do so, may one who claims injury because of such failure have a cause of action against the association?

In *Foster v Greenville County Medical Society*, 367 SE2d 468, the parents of a child injured during delivery by a physician with a drinking problem sued, (among others) the Greenville, SC Medical Society and members of its grievance committee for negligence in failing to investigate the obstetrician's drinking problem. The trial court and appeals court of South Carolina held for the defendant. The court said that failure of the society and its grievance committee to investigate the complaints about habitual drinking breached no duty to the obstetrician's patients and, thus, does not render the society and grievance committee members liable for injury to the child. The court pointed out that the society had no authority to suspend or expel the obstetrician from the hospital staff but only from its own society.

The Texas Court of Civil Appeals reached a similar conclusion in *Guiddry v Harris County Medical Society* 618 SW2d844. The plaintiff alleged that at the time she agreed to let a physician perform surgery on her 10-year-old son for asthma, a complaint had been lodged against the physician with the state board of medical examiners and that she had not been advised of this or told about the validity of "carotid body" surgery for asthma. In ruling for the defendant society, the court held that the society was not negligent in failing to ask for medical records; also, trial court records showed that the plaintiff's testimony was impeached to the extent that the jury was not required to believe it.

It seems a far cry to suggest that an association should be liable for the malpractice of one of its members, but that was the gist of the complaint in *Collins v American Optometric Association*, 693 Fed 2d 636. A plaintiff with glaucoma alleged that the association was liable to him when an optometrist failed to detect glaucoma. The US Court of Appeals affirmed the circuit judge's finding that representations made by the association regardless of their accuracy were not the proximate cause of the plaintiff's injury; therefore, the association was not liable to the plaintiff for allegedly misrepresenting that optometrists as a group were qualified to detect eye diseases such as glaucoma.

Might there be circumstances under which information provided about a practitioner by an association could lead to liability? How would "proximate cause" be established? It is the writer's view that it is not the function of a veterinary medical association to comment on the qualifications of its members beyond the fact that they are licensed as required by law. To provide additional information could leave the association vulnerable to suit by the practitioner. The fact that a complaint may have been lodged with the licensing and disciplinary board and that association officials know about this, does not mean that this information should be relayed to a potential client. If

Prepared by Harold W. Hannah, JD, Texico, IL 62889, formerly Professor of Agricultural and Veterinary Medical Law, University of Illinois, Urbana.

this were done and the veterinarian successfully defends himself or herself before the disciplinary board, a suit might then be filed against the association for tortious interference with the veterinarian's practice. A veterinary medical association should have a policy of attempting to get an aggrieved client and the veterinarian to resolve their differences. However, if the complaint indicates there might have been a violation of the practice act, there is no reason why the complainant cannot be given the address and telephone number of the licensing and disciplinary board.

What if a medical or veterinary medical association makes laudatory statements about a doctor and there is negligence amounting to malpractice during treatment? Does the patient or client have a cause of action against the association? "No," said the Court of Civil Appeals of Texas in *Jeffcoat v Phillips et al*, 534 SW2nd 168. The court held that representations by the county medical society that the doctor was one of the finest surgeons in the county, that the society representative would not be afraid of him, that he had "a real good reputation," and that he didn't have any "bad reports against him"—were only matters of opinion, judgment, or expectation and not representations that if false, could amount to actionable fraud. It would appear from this decision that ethical considerations aside, a veterinary association could extol the virtues of one of its members to prospective clients and not be liable if the veterinarian were successfully sued for malpractice.

But that a court might view the question of liability in a different light if a medical staff, rather than a medical association, fails to exercise proper surveillance over its members is exemplified by *Tucson Medical Center v Misevch*, 545 P2d 958. The Supreme Court of Arizona held that hospitals and their governing bodies may be held for injuries resulting from negligent supervision of members of their medical staffs.

Among considerations made by courts in refusing to allow action against a medical association by an aggrieved client or patient are that such associations are entitled to protection from ordinary negligence because they are not for profit and that the most they can do is terminate membership. They cannot stop negligent practice. It might be expected therefore that if a suit is brought against a licensing and disciplinary board that does have the power to revoke licenses or impose disciplinary measures, the suit by an aggrieved person for its failure to take action might be viewed in a different light; however, in *Koppen v Board of Medical Examiners*, 759 P2d 173, the Supreme Court of Montana ruled against plaintiffs in their suit against the Montana Board of Medical Examiners on the basis of the board's failure to limit or revoke a doctor's license. Plaintiffs claimed the doctor's negligence in handling 2 pregnancies resulted in the death of the 2 infants. The supreme court upheld the ruling of Flathead County judge Lief Erickson that the board of examiners was a quasi-judicial body and, therefore, entitled to immunity from suit.

Veterinary medical associations have several objectives, important ones being to improve the practice abilities of its members through educational programs and information and to create a positive image of the profession in the eyes of the public. That the courts are apparently reluctant to hold such associations legally responsible for failure to discipline or discharge members should not eliminate their concern about members whose unprofessional behavior throws an undesirable light on the profession and gives rise to client complaints lodged with executives of the association. Some of these complaints, if unresolved, become matters for a grievance committee. They call for good judgment—with respect to the rights of a complaining client and the veterinarian. Terminating membership may not be easy if the veterinarian decides to contest it and even if this is accomplished, the veterinarian can continue to practice. Whether associations should do more than tell aggrieved clients how to get in touch with the licensing and disciplinary board is a question of judgment depending upon the seriousness of the veterinarian's default. Whatever is done, should be done in good faith; if malice is detected, the immunity from ordinary negligence that may be provided association officers in a not-for-profit corporation act would not apply.