When courts review revocation and suspension orders

One of the tenets of our common law legal system is that all persons have a right "to their day in court." With respect to the orders of administrative agencies such as veterinary licensing and disciplinary boards, this means that veterinarians may challenge the validity of such orders in court. State laws spell out the procedure to be used. Administrative review may also apply to appeals within a government agency. Thus, if there is a state agency empowered to review the orders of a veterinary licensing and disciplining board, a veterinarian would first need to make an appeal before filing for review by a court. This is known as exhausting the administrative remedies. Failing to do so, with some exceptions, means that the court will deny review.

The term judicial review may encompass review of an administrative decision, but it also refers to review by a higher court of a lower court's decision. Massa v the Department of Registration and Education, 116 Ill 2d 376, 507 NE2d 814 (1987), is an example of an appeal that went all the way. The veterinarian in this case was first subject to a hearing before the judicial committee of the state veterinary medical association. Following this, the Illinois Veterinary Licensing Board revoked his license after a hearing. This was upheld by the department. An appeal was taken to the circuit court, which reversed the department's finding of gross malpractice. The circuit court reversal was affirmed on appeal to the appellate court, but on appeal to the Supreme Court of Illinois, the appellate court decision was reversed and the order of the department affirmed.

The Supreme Court of Minnesota had the final word in Walker v Corwin et al, 210 Minn 337, 300 NW 800. The veterinarian was charged with permitting a lay person to diagnose a condition in a sick horse, treat the horse, and share the resulting fee. In fact, the lay person was in charge of a branch office of the veterinarian's clinic. The Minnesota State Board of Veterinary Medical Examiners revoked the veterinarian's license. Instead of asking for administrative review, the veterinarian petitioned the Supreme Court of Minnesota to issue a writ of certiorari (an order from a higher court to a lower tribunal to forward the record of proceedings in a case). The supreme court found that the board's actions were proper. It also found that the term gross malpractice is not arbitrary or vague and that by its very nature must allow a board some latitude in making determinations. However, because evidence indicated that the board thought it could only revoke and not suspend the veterinarian's license (because the act had no provision on suspension), the court remanded the case—not for rehearing, but to permit the veterinarian to petition the board for another hearing based on the supreme court's conclusion that the right to revoke also includes the right to suspend, even though this is not specifically stated.

In Ray v Department of Registration and Education, 94 Ill App 3d 1123, 419 NE2d, 413 (1981), the veterinarian's license was suspended for gross malpractice and failure to keep premises in a sanitary condition. Neither of these causes are defined in the section on causes for discipline in the Illinois Veterinary Medicine and Surgery Practice Act. The veterinarian argued that the terms are too vague to be enforceable. The court rejected these arguments, saying that these terms are not unconstitutionally vague. In its decision, the court made an important statement about the right of the head of an agency in which a veterinary licensing board is placed. It said that the agency head may accept or reject the board's recommendation or order a rehearing, but cannot retry the case. The veterinarian also objected to the director's ruling, stating that it was made without a review of the 700-page transcript of the hearing before the committee. The court said that under the law all the committee was required to present to the director is its written report of findings and recommendations.

When a veterinarian appeals an order revoking or suspending his or her license, courts will consider not only provisions in the veterinary practice act but the provisions in more general laws, especially a state administrative procedures act and a state administrative or judicial review act. The court will review not only the procedural aspect of the hearing and of a lower court ruling, if there is one, but will be especially concerned in reviewing due process issues raised by the veterinarian's counsel. Having a veterinarian's day in court means more than simply having the right to appeal for a judicial determination—it means that proceedings that led up to judicial review must have met fair standards of due process, regardless of how those standards might be expressed in a veterinary practice act.