

Veterinary Medicine and the Law

Practicing veterinary medicine across state lines—*are you legal?*

D. Duane Flemming, DVM, JD, DACVO

Until recently, the practice of veterinary medicine was conducted in-person and primarily within the state the practitioner was licensed in. However, in the past few years, rapidly developing and increasingly interactive telecommunication technologies, particularly those involving the Internet, have made it far easier for veterinarians to extend their practice across state lines to states in which they are not licensed. Because each state has different laws and regulations governing the practice of veterinary medicine within that state, veterinarians participating in interstate veterinary activity may be illegally practicing or aiding and abetting illegal practice in one or more states. This article discusses the many ways veterinarians engaging in in-person or indirect interstate veterinary practice may violate the various state laws governing veterinary practice and explores the possible penalties for doing so.

License Required to Practice Veterinary Medicine

Under the US Constitution, it is the sovereign right of each state government to protect the general welfare of its citizens. All states protect their citizens, in part, by requiring a license of people desiring to practice veterinary medicine in their jurisdictions. Alabama's statute is typical.

No person shall practice veterinary medicine in the State of Alabama who is not a currently and validly licensed veterinarian or the holder of a temporary permit issued by the board. Ala. Code § 34-29-76 (1975)

Veterinary Practice Defined

In all states, the practice of veterinary medicine is defined by statute. Although the statutes are not identical in language, they are remarkably similar. Kentucky's statute is typical.

[The] 'practice of veterinary medicine' means: to diagnose, treat, correct, change, relieve or prevent: animal disease, deformity, defect, injury, or other physical or mental conditions, including the prescription or administration of any drug, medicine, biological, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique, and the use of any manual or mechanical procedure for testing for preg-

nancy, or for correcting sterility or infertility, or to render advice or recommendation with regard to any of the above. Ky. Rev. Stat. § 321.181(5)(a) (1998)

Idaho and Oklahoma have recently incorporated the concept of telemedicine in their veterinary practice acts. Idaho has specified that the definition of the practice of veterinary medicine include practice done "through telephonic, electronic or other means, *regardless of the location of the veterinarian.*" Idaho Code 54-2103 (33) (2001)(Italics added) Oklahoma has instructed that veterinary practice includes:

[T]he transmission of diagnostic images such as, but not limited to radiographs, ultrasound, cytology, endoscopy, photographs and case information over ordinary or cellular phone lines to a validly licensed veterinarian or board-certified medical specialist for the purpose of consulting regarding case management with the primary care licensed veterinarian who transmits the cases. Okla. Stat. Title 59 § 698.2 (15) (1999)

Giving Advice Can Be Veterinary Practice

Many proponents of unregulated interstate veterinary practice, especially on the Internet, have suggested that simple advice to consumers or veterinarians, without attendant physical treatment or medical prescription, is not the practice of veterinary medicine. In fact, the laws of 21 states provide the contrary. As illustrated by the Kentucky statute quoted, these laws show us that simply rendering advice or recommendations relative to animal disease can be considered the practice of veterinary medicine.

Willingness to Perform

In 9 states, the practice of veterinary medicine includes any representation to the public that the person is able and willing to do any of the acts described in the practice act as the "practice of veterinary medicine." Colorado's statute provides some typical language.

Practice of veterinary medicine means . . . the representation, directly or indirectly, publicly or privately, of an ability and willingness to do an act described in paragraph (a) of this subsection (10); Colo. Rev. Stat. § 12-64-103(10)(b)

Advertisements claiming that the person offering his or her services is a veterinarian imply that the person doing the advertising is able and willing to perform

From the Contra Costa Animal Eye Clinic, 2100 Monument Blvd, Suite 7, Pleasant Hill, CA 94523-3440.

The American Veterinary Medical Law Association sponsors and coordinates this feature.

veterinary services. Thus, persons placing such ads in print or on the Internet could, in those 9 states, be considered to be practicing veterinary medicine.

Unlawful Use of Titles

It would seem to most of us that once a person graduates from any AVMA accredited veterinary school or college he or she would be entitled to the appellation of veterinarian and the automatic use of the letters DVM or VMD after their name. Surprisingly, that is not always the case. Thirty-two states provide that the use of those letters or titles is prohibited unless the user has a veterinary license in that state. Arizona's statute is typical.

No person shall append any letters to such persons name, indicating a degree in veterinary medicine, such as D.V.M. or V.M.D., or use the word doctor, veterinary, veterinarian, professor, animal doctor, animal surgeon, or any abbreviation or combination thereof of similar import in connection with such person's name, or any trade name in the conduct of any occupations or profession pertaining to the diagnosis or treatment of animal diseases or conditions mentioned in this chapter, unless such person is licensed to practice veterinary medicine under the provisions of this chapter. Ariz. Rev. Stat. Art. 2 § 32-2212 D (1998)

In these states, anyone not appropriately licensed who practices or advertises interstate veterinary services and uses the word veterinarian or the letters DVM or VMD could be considered as practicing in violation of the law.

Exemptions From Licensure

In meetings and lectures around the country, many veterinarians have expressed to me the belief that they are, in one way or another, exempt from the licensing requirements of the various states. In some circumstances, they may be. Each of the 50 states has established some exceptions to the licensing requirements. Most, if not all, do not require a license for persons working on their own animals, medical researchers, government employees, or veterinary students. Many states have exemptions for consulting veterinarians and for faculty members, although the exemptions are not standardized between the states. The old expression "the devil is in the details" is especially true here. It is in these exemptions that veterinarians practicing interactive interstate telemedicine can most easily run afoul of the law.

Consulting exemptions—A few states actually explain what they mean by consulting. Arizona, for example, defines consulting as "providing professional or expert advice which is requested by a veterinarian licensed in the state and is rendered only on a specific case basis." Whereas in Ohio, consultant means a "veterinarian who is not licensed in this state and who provides advice and counsel to a requesting veterinarian licensed in this state in regard to the treatment, diagnosis, or health care of animal or animals in a specific case."

Forty states and the District of Columbia provide some form of exemption to the licensing requirement

when the consulting veterinarian is a licensed veterinarian in another state or foreign country and is consulting with a veterinarian licensed in that state or district. The Oklahoma statute is typical.

The Oklahoma Veterinary Practice Act shall not be construed to prohibit: A veterinarian currently licensed in another state from consulting with a licensed veterinarian of this state. Okla. Stat. Title 59 § 698.12(7)(1999)

These statutes require that the out-of-state consultant be licensed as a veterinarian in at least one state within the United States. These laws do not appear to permit consultations by nonveterinarians, regardless of their subject matter expertise nor do they appear to permit consultations by veterinarians licensed only in foreign countries. By expressly stating that the consultation exemption is limited to consultations with a veterinarian licensed in another state, these statutes seem to preclude direct or telemedicine consultations between an unlicensed out-of-state veterinarian and a consumer within the state.

Eighteen states have enacted one or more variations to expand, limit, or otherwise clarify the permitted activities of the out-of-state consultant. California's statute is illustrative of these variations.

This chapter does not apply to: . . . Regularly licensed veterinarians in actual consultations from other states; . . . Regularly licensed veterinarians actually called from other states to attend cases in this state, but who do not open an office or appoint a place to do business within this state. Cal. Bus. & Prof. Code § 4830(b)(c)(2000)

Some states, such as Connecticut, limit the time a consultant may practice within that state without a license.

The provisions of this chapter shall not apply to . . . any veterinarian licensed in another state, who is employed as a direct consultant for not more than ten days during any calendar year with any practitioner licensed in conformity with the provisions of section 20-197. Conn. Gen. Stat. Title 20 Chap 384 § 20-205(1997)

Nevada's out-of-state consulting exemption is limited to board certified specialists, practicing under the auspices of a Nevada licensed veterinarian for 30 days in any 12-month period.

Nothing in this chapter applies: To any person who is a diplomate from an approved specialty board of the American Veterinary Medical Association who is called into the state for consultation by a person licensed to practice under this chapter for a period not to exceed 30 days in any 12-month period if he practices under the auspices of a licensed veterinarian. Nev. Rev. Stat. § 638.015(3)(2001)

It is uncertain as to how a state veterinary board or an administrative law judge would apply these time limitations to out-of-state veterinary telemedicine providers who do not physically enter the state.

Ten states have no consultation exemption. Presumably, in-state or out-of-state consultants not holding a license, or some exemption to licensure, in those

states could be liable for practicing without a license should they choose to consult with either veterinarians or lay clients within those states.

Consulting permit/registration required—Alaska, Florida, Ohio, and Wisconsin require out-of-state consultants to obtain a special license/permit in advance of the consultation. New Hampshire and North Carolina do not issue a special license or permit for out-of-state consultants, but do require that they register with the state before any consultations take place. Most of these states also limit the time the consultant can practice within the state and many place some restriction on the place and manner of the consultation.

Faculty exemption—Veterinary school faculty and resident staff are frequently called on to answer questions from veterinary and lay clients in other states. It has been argued that veterinary school faculty members are generally exempt from the licensing rules in their states and by extension are exempt in the other states as well. In fact, 17 states have no exemption from licensure based on a person's standing as a faculty member at a veterinary school.

However, 30 states do have some form of licensing exemption for veterinary faculty members. Alabama's statute is typical.

This article shall not be construed to prohibit . . . : A member of the faculty of a veterinary school performing his or her regular functions, or a person lecturing or giving instructions or demonstrations at a veterinary school or in connection with continuing education courses or seminars. Ala. Code § 34-29-77(7)(1997)

These states allow a member of a veterinary school faculty to practice without any additional license or permit so long as he or she is doing so as part of their regular faculty functions or is teaching as part of a continuing education program. The statutes do not define what constitutes regular faculty functions, nor do they specify who determines what those functions might be. Veterinary activities that are not a defined part of the faculty member's regular faculty function could be interpreted, and therefore prohibited, as practicing veterinary medicine without a license. Some states have special rules that limit the duration of the exemption or specify the venues to which the exemptions apply. Many of them specifically limit the practice to activities within the state. California's statute is illustrative:

This chapter does not apply to: Veterinarians employed by the University of California while engaged in the performance of duties in connection with the College of Agriculture, the Agricultural Experiment Station, the School of Veterinary Medicine or the agricultural extension work of the University. Cal. Bus. & Prof. Code § 4830(d)(2000)

Faculty license required—Georgia, Michigan, North Carolina, Texas, and Wisconsin require veterinary school faculty to have a special faculty license. In some of these states, the statutes limit the special license to a particular school or to schools located within the individual states. North Carolina's rules are typical.

. . . the Board may issue a veterinary faculty certificate to a faculty member in the college of Veterinary Medicine at North Carolina State University . . . The faculty member's certificate shall indicate that the holder is exempt from the requirements of licensing provided that the practice of veterinary medicine is confined to the faculty member's duties in the hospital or field service unit of the College of Veterinary Medicine. N.C. Admin. Code § 21-66.0203(1996)

Penalty for Unlicensed Practice

All 50 states and the District of Columbia have assessed penalties against those found guilty of unlicensed veterinary practice. The penalties vary from state to state, but all states assess at least a civil fine with most also considering unlicensed veterinary practice to be a crime with the possibility of jail time. In some states, the criminal offense, especially if repeated, can rise to the level of a felony.

Fine only—Delaware, Maryland, Mississippi, and Wisconsin penalize the unlicensed practice of veterinary medicine with only a civil fine. The fines range from as little as \$100 to \$500 for each violation in Mississippi, where each violation is a separate offense, to a maximum of \$5,000 in Maryland.

Felony—In Florida, New York, and Nevada, the legislatures have taken unlicensed practice somewhat more seriously and considered the offense in their states to be a felony. Illinois and Washington consider the first offense for unlicensed veterinary practice to be a misdemeanor and each subsequent offense a felony.

Misdemeanor—The remaining 43 states and the District of Columbia can assess civil fines, misdemeanor criminal penalties for unlicensed veterinary practice, or both. In these states, the civil fines range from as little as \$50 in Georgia to as much as \$20,000 in New Jersey. The criminal penalty can be up to a year in jail. In Alabama, the offender can still be sentenced to hard labor for up to 6 months. Persons engaging in interstate veterinary practice face potential prosecution in each state for which they do not possess a valid license to practice. Taken to an unlikely extreme, a person interacting with clients in all of the states and the District of Columbia could face charges and penalties in 51 separate jurisdictions. The trouble and expense of having to defend themselves in so many places would be immense, not to mention having to settle the fines (and potential jail time) if found guilty.

Liability for the Unlicensed Practice of Others

The information provided thus far has been directed at the potential liabilities of out-of-state and unlicensed persons for providing professional veterinary services to persons inside the state. The following sections explore the potential liabilities of a duly licensed veterinarian for the unlicensed activity of out-of-state practitioners. Violations of these statutes could result in penalties and sanctions against the license holder him- or herself independent of the sanctions levied against the unlicensed persons.

Aiding and abetting—In 19 states, licensed veterinarians may, through the aiding and abetting statutes, be subject to sanctions for the unlicensed activities of others. Again, Alabama's statute is typical.

A licensed veterinarian shall not promote, aid or abet the practice of veterinary medicine by an un-licensed person or promote, aid or abet any illegal or unethical act on the part of any veterinarian. Ala. Admin. Code § 930-X-1-.10 (9)(1975)

Knowingly employ—Twenty states specifically prohibit licensed veterinarians from knowingly hiring or otherwise employing unlicensed persons in their practices. The District of Columbia statute is illustrative of these statutes.

The Mayor may suspend, revoke or refuse to issue, renew or restore, a license issued under this act if the Mayor finds that the applicant or holder thereof...has knowingly employed a person who is practicing veterinary medicine unlawfully. District of Columbia D.C. Code. Ann. § 3-509 (a) (6) (1999)

It is unclear whether an out-of-state telemedicine consultant would be considered as an employee for the purposes of prosecution under these statutes. Again, the variability in state laws could cause licensed veterinarians contracting with out-of-state consultants or telemedicine providers to run afoul of these statutes.

Professional association—Duly licensed veterinarians in 18 states may be liable for merely having some professional association with persons engaged in unlicensed practice in those states. California's statute is typical.

For having professional connection with, or lending one's name to any illegal practitioner of veterinary medicine and the various branches thereof. Cal. Bus. & Prof. Code § 4883 (b) (2000)

The meaning of the term professional association has not been statutorily established and is therefore subject to definition by each state on a case-by-case

basis. Again, it is unclear whether any state would prosecute a licensed veterinarian for simply having a professional association with an unlicensed practitioner.

Conclusion

Continuing advancements in technology will more likely ensure that direct and telemedicine interstate veterinary practice will expand. At the same time, consumer protection law requires that the states protect their citizens, not only from licensed veterinarians providing inaccurate and unsound medical advice and treatment, but also from veterinarians or others engaging in unlicensed practice even where the advice or the treatment is sound.

In the past, and for a multitude of reasons, state veterinary boards and state attorneys general have been reluctant to prosecute anyone, much less out-of-state veterinarians, for illegal interstate practice. This fact does not, however, preclude future activity in that area. For example, in the Oct 30, 2002 issue of the Wall Street Journal, there was a report that the Illinois Department of Professional Regulation issued a cease-and-desist order against Mydoc on Oct 16, 2002. The company, which is owned by Roche Diagnostics, was cited for practicing medicine without a license and for having physicians prescribe drugs online for patients with whom they did not have a relationship. With the increased attention being paid to these activities by other professional boards, such as medicine, pharmacy, and law, as well as by the federal government, it is unrealistic to think that the veterinary regulatory community can or will ignore it for much longer.

Veterinarians and others who are currently engaged in, or who plan to engage in, interactive, interstate veterinary practice directly or by way of telemedicine techniques could minimize their exposure under these laws by seeking the advice and opinion of the state veterinary board and of independent legal counsel in their home state and in any state where they practice or intend to practice.