



AN OUTLINE OF THE DISCIPLINARY PROCESS

Veterinarians facing disciplinary conduct by the Texas State Board of Veterinary Medical Examiners often sit in a precarious situation brought about by a complicated and intimidating process. Few veterinarians have a full understanding of the process and are both surprised and perplexed when they receive notice of a pending disciplinary action.

Acts that can subject a person to disciplinary action or denial of a license include:

1. presenting fraudulent or dishonest evidence of qualifications;
2. committing fraud or deception in the examination process or to obtain a license;
3. becoming intoxicated habitually;
4. engaging in dishonest or illegal practices in, or connected with, the practice of veterinary medicine;
5. being convicted of a felony;
6. engaging in practices or conduct that violate the board's rules of professional conduct;
7. permitting another to use the person's license to practice veterinary medicine in this state;
8. fraudulently issuing a health certificate, vaccination certificate, test chart, or other form used in the practice of veterinary medicine that relates to the presence or absence of animal disease;
9. issuing a false certificate relating to the sale for human consumption of inedible animal products;
10. committing fraud in connection with the application or reporting of a test of animal disease;
11. paying or receiving a kickback, rebate, bonus, or other remuneration for treating an animal or for referring a client to another provider of veterinary services or goods;
12. performing or prescribing unnecessary or unauthorized treatment;
13. ordering a prescription drug or controlled substance for the treatment of an animal without first establishing a veterinarian-client-patient relationship;
14. refusing to admit a board representative to inspect the person's client and patient records and business premises during regular business hours;
15. failing to keep the person's equipment and business premises in a sanitary condition;
16. committing gross malpractice or a pattern of acts that indicate consistent malpractice, negligence, or incompetence in the practice of veterinary medicine; or;
17. is subject to disciplinary action in another jurisdiction, including the suspension, probation, or revocation of a license to practice veterinary medicine issued by another jurisdiction.

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In addition, the Board may suspend or revoke a license, place a license holder on probation, or reprimand a license holder for knowingly failing to report a disease to the Texas Animal Health Commission. A license may be suspended, revoked, or the holder placed on probation for failing to maintain records. In addition, a license can also be suspended or revoked for mental incompetence, but can be reinstated if a court adjudicates the person to be competent.

All persons who have their license revoked or suspended, who are placed on probation, who receive a reprimand, or are assessed an administrative penalty are entitled to a hearing where the license holder can respond to and present evidence and argument on the issues involved in the case. Either two scenarios will result: either the veterinarian will be taken through the formal contested case process used for all administrative agencies, or the Board will utilize an informal process to decide the contested case. Under the formal proceeding procedure, it is always advisable to obtain counsel to attend the hearing with and argue on behalf of the license holder. It is extremely important that anytime a veterinarian receives notice of a pending disciplinary action, that they contact an attorney experienced in handling Board matters to represent them. Not only will the attorney be better suited to anticipate the evidentiary needs to defend the veterinarian, but attorneys are more experienced at arguing the issues, persuading the Board members, and presenting a concise case in favor of the veterinarian. In addition, Rules of Evidence, as used in civil jury cases, are also applicable, which can present difficult hurdles to veterinarians attempting to defend themselves. Furthermore, discovery procedures such as requests for production of documents, expert reports, and depositions are also authorized. A hearing can take place any time after ten days notice is given to the veterinarian, which illustrates why a prompt response by the veterinarian is essential.

Once a final decision is rendered under the formal proceeding process and mailed to the veterinarian or their counsel of record, a motion for rehearing is, in most circumstances, a prerequisite for appealing the decision. In situations where a motion for rehearing is not necessary as a prerequisite for appeal, where the motion was denied, or where the veterinarian wishes to appeal the results of the rehearing, the veterinarian must then file a petition initiating judicial review in a District Court of Travis County, Texas. The case will then proceed as if it were an ordinary lawsuit brought in a District Court of Texas.

The procedures and rules for an informal proceeding, however, are different. In this situation, the veterinarian must be given reasonable notice of a hearing before two or more veterinarian board members and one or more public board members where the complaint requires medical expertise. If the complaint does not require medical expertise, a board staff may preside over the hearing and recommend enforcement action. Before an informal disposition of the complaint is effective, the board must review and approve at a public meeting the recommended disposition. If the disposition involves temporarily suspending a license or license holder, the decision must be made by the president and two other board members appointed by the president, or by a majority vote of the board only after finding that the license holder constitutes a continuing or imminent threat to the public welfare. A license MAY BE temporarily suspended without notice or hearing if a hearing is scheduled not later than the 14th day after the date of suspension. A second hearing must be held on the suspended license not later than 60 days after the date the suspension was ordered. If the second hearing is not held by that time, then the license is automatically reinstated. As with the formal process, a veterinarian may appeal the Board's decision by filing the action in a District Court of Travis County.



Administrative Penalties

Where the alleged violation is not serious enough to warrant a license suspension, probation, or revocation, an administrative penalty may be assessed not to exceed \$5,000.00 for each violation per day. The Board takes into account the following factors:

1. the seriousness of the violation, considering the nature, circumstances, extent and gravity of the prohibited act and the hazard or potential hazard created to the health, safety, or economic welfare of the public;
2. the economic harm to property or the environment caused by the violation;
3. the history of previous violations;
4. the amount necessary to deter a future violation;
5. efforts to correct the violation; and
6. any other matter that justice may require.

Where an administrative penalty is assessed, a committee may issue a report to the Board stating its recommendation on the imposition of an administrative penalty and the amount of such penalty. Written notice must be given to the license holder within 14 days after the date the report is issued. Within 20 days after receiving notice, the veterinarian can accept the penalty or request a hearing on the occurrence of the violation and/or amount of the penalty. The hearing must take place before an administrative law judge of the state office of administrative hearings and the judge will issue an opinion to the Board regarding the occurrence of the violation and amount of the proposed penalty. The license holder can always appeal this decision by filing a petition for judicial review.

Other Enforcement Provisions

The Board can implement procedures for monitoring any license holder who was ordered by the Board to perform certain acts. In addition, the Board may, through the attorney general or district or county attorney, bring an action for an injunction or a proceeding incident to an injunction to enforce its rules and prevent violations, or enjoin a veterinarian or veterinary practice from practicing in violation of its rules. Unlike in all other judicial actions, a request for injunction or proceeding incident to an injunction must be brought in the county where the veterinarian or practice has a principal office, depending on whether the action is brought against the individual or practice.



MISTAKEN EUTHANIZATION

On May 15, 2008, owners of a three-year-old black Labrador retriever mix arrived to pick up their beloved dog from the Denton County animal shelter. The dog had been picked up by animal control officers on May 8th after it had escaped from its yard. A neighbor told the officers where the dog lived, so the officers left a notice on the door telling the owners how to redeem it. After calling the shelter, the owners were told that they had until May 16th to pick up the dog, but that his recovery fee would be \$109.00. Because the owners did not have the money to redeem their dog until after payday, they advised the shelter that they would redeem their dog on the 16th of May. A note was placed on the entry of the dog's records reflecting that its owners would redeem him on May 16th.

On May 15th, the owners arrived at the shelter to pick up their dog, only to learn that a worker had failed to notice the note about the owners picking him up and had euthanized their dog that morning. According to the shelter policy, the shelter will hold stray dogs and cats for at least four days to allow owners to redeem them. If the animals are not picked up, they can be adopted or euthanized. While the shelter did admit fault in this case, and the police chief even visited the owners' home to apologize, the owners are asking the city for \$206,000.00 for the loss of the dog and future breeding opportunities, along with emotional pain and stress. The couple then filed a liability claim on May 22nd with the city's risk management department. The shelter has investigated the euthanization and admitted wrong doing, but the owners will not accept a simple apology.

It stands to reason that a lawsuit could certainly ensue for wrongful euthanasia of an animal under these circumstances. While damages are ordinarily limited to the cost or value of the pet, and damages for mental anguish and pain and suffering are not recoverable, it is obviously a situation that any veterinarian would want to avoid. One could hardly imagine a situation such as this one occurring in the private practice realm, but euthanizing animals when the owner is not present does happen. So is there any law that regulates this practice?

In emergency situations, veterinarians are protected from liability for rendering treatment to an ill or injured animal on the veterinarian's own initiative, or at the request of a person other than the animal's owner unless the veterinarian commits gross negligence. If the veterinarian performs euthanasia on the animal, it is presumed to have been a humane act necessary to relieve the animal's pain and suffering and is not actionable by the animal's owner. Of course, this shield to liability is only effective for emergency treatment situations.



For more information regarding Chamblee & Ryan's Veterinary Law practice, please contact Todd Allen at 214-905-2003.