

Attachment to Email to Veterinary Board EO 3/17/11

(3) I am very sympathetic to non-lawyers' confusion with the following terms or phrases and how they relate to one another:

"Negligence"

"Incompetence"

"Unprofessional Conduct"

As well as: "Harm"

"Standard of Care" (and deviation therefrom)

I was glad that the concern surfaced at the MDAC meeting, but I believe that the meeting was the wrong venue to address the semantic confusion (especially with three lawyers weighing in on the issue!). Note that the confusion extends to our Board materials---see the Tab 8 page relating to the Cite and Fine Program in which a request is made for "...examples of 'minor negligence'..." There is no such thing as "minor negligence"---an act or omission either is or is not negligence, and that is your expert witness' judgment call.ⁱ

If you like, I would volunteer to brief your staff and expert witnesses on these areas. Another thought would be to offer Accusations that you consider well-pled for their review.

ⁱ A comment was made at the meeting that respondents (understandably) hate to be tagged with acts characterized as "negligent". In my experience, untrained expert witnesses also on occasion hate to call licensees "negligent"; I recall several Medical Board experts who waffled around saying that a doctor was "close to being negligent" and that his acts were "in the nature of negligence". In short, the expert's duty is to make the call, one side of the line or the other, not "approaching negligence" or "minor negligence".