



# MEMORANDUM

<b>DATE</b>	October 8, 2019
<b>TO</b>	Multidisciplinary Advisory Committee (MDC)
<b>FROM</b>	Kristi Pawlowski, RVT and Stuart Eckmann MDC's Corporate Practice Subcommittee
<b>SUBJECT</b>	<b>Agenda Item 5. Discussion and Potential Recommendation on Legislative and Regulatory Proposals Regarding Corporate Practice of Veterinary Medicine</b>

During the April MDC meeting, the Corporate Practice Subcommittee provided an update regarding corporate practice in veterinary medicine. Ms. Pawlowski and Mr. Eckmann summarized survey results from over 500 individuals regarding their experience with corporate practice. The intent of the survey was to identify if there is a need to investigate corporate practice further and determine if this was an issue in veterinary medicine, rather than to provide a statistical analysis of the results. The survey results indicated that this is an issue in veterinary medicine and one that warranted further investigation. After hearing concerns raised by the public regarding the survey's validity, the MDC decided to leave the survey open and to reach out to licensees for additional responses.

After the meeting, the [Animal Policy Group](#) provided a letter regarding their concerns with the Board's previously approved legislative and regulatory proposals. In short, the Animal Policy Group believes the proposals "are unnecessary, duplicative and will result in confusion in the practice of veterinary medicine." For ease of reference, the proposals and the Animal Policy Group's letter are attached. The Subcommittee respectfully disagrees with Animal Policy Group.

The Subcommittee spent several months researching this complex issue. This included researching other state laws, reaching out to college faculty and students, reading several articles, and discussing the corporate structure with individuals who are currently working or have worked in a corporate setting. Some of the articles are attached to assist the discussion.

In addition, the Board's Executive Officer, on behalf of the Subcommittee, emailed several individuals who previously indicated they were interested in sharing additional information with the Subcommittee. Many did not respond, and some responded expressing concerns about coming forward and inquired about "protections" the Board could provide. Some responses are attached for the MDC consideration. To encourage individuals to share their experiences without fear of retaliation, the Subcommittee arranged for individuals to participate in the MDC discussion over the phone. These individuals will not identify themselves, but they have agreed

to come forward. Veterinarians who are not licensed in California, but currently work in or have worked in a corporate-owned setting, will also participate.

**Subcommittee Recommendation:**

The Board's mission is to protect consumers and animals by regulating licensees, promoting professional standards, and diligent enforcement of the California Veterinary Medicine Practice Act. Public protection is the Board's highest priority in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public is paramount.

While some may argue there is a lack of evidence that undue influence is occurring, the Subcommittee believes many are not coming forward for fear of retaliation from their current employers and fear of putting their license in jeopardy. In addition, the Board would not receive complaints regarding this issue, because the influence happens behind the scenes and hidden from the clients. The Subcommittee believes there is enough evidence to justify the need for additional protections.

After careful consideration of this complex issue, the Subcommittee recommends the Board move forward with the legislative and regulatory proposals.

**Attachments:**

1. February 2, 2018 Memo Including Legislative and Regulatory Proposals
2. June 13, 2019 Letter from Bonnie Lutz, Esq., Representing Animal Policy Group
3. Articles Regarding Corporate Practice
4. Responses to Follow-up Questions



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## MEMORANDUM

<b>DATE</b>	February 2, 2018
<b>TO</b>	Members Veterinary Medical Board
<b>FROM</b>	Tara Welch, Attorney III Legal Affairs Division, Department of Consumer Affairs
<b>SUBJECT</b>	<b>Corporate Practice of Veterinary Medicine</b>

### Questions Presented

Can a general corporation own or operate a veterinary medical practice or influence the standards of veterinary medicine practice?

### Short Answers

Current statutory and regulatory law does not explicitly prohibit general corporate ownership or operation of a veterinary medical practice or influence over the standards of veterinary medicine practice.

### Discussion

In recent years, there has been a trend toward large corporations purchasing smaller veterinary practices. These mergers may be beneficial to consumers, who can continue to receive veterinary services for their pets rather than having to find a new veterinary practice if the small veterinary practice otherwise closed, but these mergers raise potential concerns as to whether these corporations are influencing the veterinary care provided by veterinarians and whether California consumers have any protection from the commercialization of veterinary practice.

This memorandum reviews the state laws affecting the corporate practice of medicine, corporate ownership of a veterinary premises, and corporate ownership and operation of a veterinary practice. This memorandum also discusses contractual arrangements for management services of a veterinary practice and the potential implications on consumer protection. This memorandum also provides possible recommendations for the Veterinary Medical Board (Board) to consider submitting to the Legislature in order to address the issues raised herein.

#### A. Background on the Corporate Practice of Medicine and Professional Corporations

A corporation is a legal entity created by statute, which permits a group of people, as shareholders, to apply to the government (the California Secretary of State) for an independent organization to be created. A corporation is empowered with legal rights usually only reserved for individuals, such as to

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sue and be sued, to own property, hire employees, or borrow and loan money. Benefits to individuals organizing as a corporation include immunity from individual liability and reductions in taxes applicable to the income received by the organizing individuals.

According to the California Research Bureau, “[b]etween 1905 and 1917, courts in several states ruled that corporations could not engage in the commercial practice of medicine, even if they employed licensed physicians, because a corporation could not be licensed to practice medicine and commercialism in medicine was contrary to sound public policy.” (A. Kim, California Research Bureau, *The Corporate Practice of Medicine Doctrine* (Oct. 2007), CRB 07-011, p. 12.) These courts established the common-law corporate practice of medicine doctrine, which bans the corporate practice of medicine.

As the corporate practice of medicine doctrine developed under common law, in the 1930s, several statutes were enacted in California’s Medical Practice Act to prohibit unlicensed persons from practicing medicine, employment of unlicensed physicians, and interference with a physician’s medical judgment (Bus. & Prof. Code, §§ 2052, 2264, 2401). These statutes protect patients from a treating physician with divided loyalties between independent medical judgment and meeting the demands of a lay person or entity (corporate owner).

In 1968, the Moscone-Knox Professional Corporation Act (Moscone-Knox) (Corp. Code, § 13400 et seq.) established the ability of individuals who are professionally licensed to organize as a professional corporation. Moscone-Knox defines “professional corporation” to mean a corporation organized under the General Corporation Law that is engaged in rendering professional services in a single profession pursuant to a certificate or registration issued by the governmental agency regulating the profession and designates itself as a professional or other corporation as required by statute, and “professional services” means any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act.” (Corp. Code, § 13401(a), (b).)

Following the enactment of Moscone-Knox, the California Attorney General issued an opinion that further clarified California’s corporate practice of medicine doctrine and stated that a corporation is a creature created by statute, and, aside from Moscone-Knox and nonprofit corporation provisions, the Corporations Code does not provide specific authority for a corporation to practice the healing arts. (58 Ops. Cal. Atty. Gen. 755, 758 (1975).) That opinion also stated that “[e]xcept as otherwise specifically provided by statute, it is well settled that neither a corporation nor any other unlicensed person or entity may engage, directly or indirectly, in the practice of certain learned professions, including the legal, medical, and dental professions.” (*Id.*)

In 1980, the Medical Practice Act was repealed, revised, and recast. At that time, the Medical Practice Act included that lay entities (e.g., general corporations) have no professional rights, privileges, or powers to practice medicine (Bus. & Prof. Code, § 2400), but professional medical corporations in compliance with Moscone-Knox were exempt from this restriction (Bus. & Prof. Code, § 2402).

With respect to the corporate practice of veterinary medicine, the Veterinary Medicine Practice Act similarly prohibits the unlicensed practice of veterinary medicine and the aiding and abetting of the unlicensed practice of veterinary medicine, and provides that a veterinary corporation is a corporation which is authorized to render professional services, as defined, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are licensed veterinarians are in compliance with the Moscone-Knox (Bus. & Prof. Code, §§ 4825, 4883(j), 4910). Unlike the Medicine Practice Act, the Veterinary Medicine Practice Act does not provide that lay entities

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have no professional rights, privileges, or powers to practice veterinary medicine, and there is no explicit ban on interfering with a veterinarian's medical judgment.

**B. General Corporate Practice Ban Problem**

Although the Medical Practice Act provides limitations on the corporate practice of medicine ("corporations and other artificial legal entities shall have no professional rights privileges, or powers" (Bus. & Prof. Code, § 2400)), most of the other healing arts practice acts do not contain this prohibition. Rather, numerous healing arts practice acts only provide that a professional corporation is authorized to render professional services as long as the shareholders, officers, directors, and employees rendering professional services are licensed and in compliance with the Moscone-Knox (e.g., Veterinary Medicine Practice Act, Bus. & Prof. Code, § 4910; Physical Therapy Practice Act, Bus. & Prof. Code, § 2690). Even though common law bans the corporate practice of medicine, the statutory language authorizing formation of a professional corporation may be interpreted as permissive (i.e., licensees *can* organize as a professional corporation) rather than restrictive (the *only way* to organize as a corporation and provide health care services is to organize as a professional corporation). The statutes are otherwise silent as to whether corporations that do not comply with Moscone-Knox may practice.

Consequently, these boards and their licensees are left to interpret a patchwork of statutes in their respective practice acts, Moscone-Knox, general corporation law, and the Medical Practice Act to determine whether corporate practice of the profession is prohibited. Without statutory language that clearly bans corporations from practicing a health care profession requiring licensure or rendering health care services, healing arts boards struggle with enforcing the corporate practice ban intended to protect consumers from commercial motives of the corporation being asserted over a healing arts licensee's professional judgment.

**C. Specific Corporate Practice Ban Problem of Veterinary Medicine**

Veterinary medicine, a healing art under the Business and Professions Code, has two problems relative to the corporate practice ban that are unique to veterinary medicine and not applicable to most other healing arts. First, the Medical Practice Act and its ban on the corporate provision of medical services does not apply to the provision of animal health care services. Thus, while some healing arts boards are authorized through their respective practice acts to enforce violations of the Medical Practice Act and could potentially refer to the Medical Practice Act's corporate practice ban statute, the Board is not authorized to rely on that statute. Rather, the Board's authority is limited to the Veterinary Medicine Practice Act statute authorizing licensees to organize as professional corporations pursuant to Moscone-Knox. (Bus. & Prof. Code, § 4910.) But again, that arguably permissive professional corporation language does not specifically ban the practice of the licensed profession or rendering of veterinary services by a general corporation owned by non-licensed individuals.

Second, the Veterinary Medicine Practice Act is unique in that it licenses veterinarians who practice veterinary medicine, registers the veterinary premises, and authorizes professional corporations to render veterinary services. Notably, the Veterinary Medicine Practice Act does not specifically define whether a veterinary premises means the property at which a veterinary practice provides services and does not define a veterinary practice as the business that offers veterinary medical services. This has led to the terms "premises" and "practice" to be used interchangeably, even though they are conceptually very different. The Veterinary Medicine Practice Act requires that a premises be registered but does not require the premises owner to be a licensed veterinarian. Further, the Act is silent as to requiring that a veterinary practice be registered or owned by a licensee.

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The lack of definition of the veterinary practice has led to a trend where general corporations are purchasing and operating not only veterinary premises, but also the veterinary practices located at the premises. General corporate ownership of veterinary practices raises potential concerns for consumers in that corporations are in a position to dictate the standards of care provided by the veterinarians employed by the corporation. This situation is analogous to a medical clinic that is owned and operated by unlicensed individuals and where the licensed professionals are employed to render health care services. Under the Medical Practice Act, clinic owners/operators are prohibited from interfering with, controlling, or otherwise directing the professional judgment of a physician and surgeon (Bus. & Prof. Code, § 2401(b)). Conversely, there is no specific statutory prohibition on unlicensed shareholders/owners/operators of either a veterinary premises or practice interfering with the professional judgment of a veterinarian.

Accordingly, national corporations are purchasing veterinary premises, registering the premises in the corporate name, operating the veterinary practices housed at the premises, employing veterinarians as Licensee Managers of the premises, as well as general practitioners, and, ultimately, practicing the licensed profession of veterinary medicine. Such corporations have unlicensed officers who also manage the payroll department and negotiate employment agreements entered into between the general corporation and veterinarians and veterinary staff working at each premises. The employment agreements contain net revenue percentage incentives to sell the corporation's animal care products, including vaccinations, flea treatments, vitamins, shampoos, dental products, and prescription pet foods and services, which may or may not be in the best interest of the animal. Consequently, these employment agreements, and the commission-based fee structures therein, create an environment where veterinarians may believe their employment is at risk if they are not selling the corporate animal care products and services to the client.

In addition, veterinarians who own a veterinary practice may enter into contracts for the provision of management services that may be provided by the corporate premises owner, outside management services organizations, or even as corporate partners in the veterinary practice. These arrangements also potentially allow for corporate control over veterinary medical practice. Notably, since the Medical Practice Act specifically states that legal entities (corporations) have no practice rights but the Veterinary Medicine Practice Act does not, and veterinary premises can be owned by unlicensed entities, general corporation premises and/or practice owners could argue that the lack of a similar limitation of corporate practice rights under the Veterinary Medicine Practice Act shows that the Legislature did not intend to place the same limitations on the corporate practice of veterinary medicine as are applied to the corporate practice of medicine.

Given the recent trend of large corporations merging with small veterinary practices, and the corporations' employment of veterinarians and veterinary staff with financial incentives tied to selling the animal health care products of the corporations, it would be helpful to clarify in statute the boundaries between corporation ownership of the premises and/or practice and the corporation's influence over the practice itself.

#### D. Possible Board Recommendations of Statutory Solutions

Attached hereto for the Board's consideration is statutory language to address the corporate practice of veterinary medicine in several ways, described further below. These proposals are modeled after the Medical Practice Act and related laws, which provide similar limitations on corporate hospital and clinic ownership and employment of physicians and other healing arts practitioners. Since access to veterinary services may not otherwise be available without the corporate ownership and operation of the veterinary practice, these proposals are intended to provide a conservative approach to updating

the veterinary medicine practice laws without banning general corporation ownership altogether. The bracketed information below refers to the location of the provision in the attached proposals.

1. Limit practice authority of premises permit holders. This proposal would add to the premises permit statute a new provision that the issuance of a premises permit does not authorize the holder of the permit to furnish animal patient advice, services, or treatment and would track a similar provision in the Health and Safety Code prohibiting the practice of medicine by a clinic. [Pg. 1, Bus. & Prof. Code, § 4853, new subd. (d).]
2. Corporation rights, privileges, and power. This proposal would add two new statutes to provide that corporations and other artificial legal entities, other than professional veterinary corporations, have no professional rights, privileges, or powers and are prohibited from engaging in the practice of veterinary medicine; this would track the corporate limitations provided under the Medical Practice Act. [Pgs. 1-2, Bus. & Prof. Code, new §§ 4910.1, 4910.2.]
3. Employment of licensed professionals. This proposal would add a new statute providing for employment by a veterinary clinic or hospital owned by a general corporation of persons licensed under the Veterinary Medicine Practice Act, but prohibit employment agreements providing for clinic or hospital control of professional judgment or services. This provision would also authorize the Board to obtain information from the clinic or hospital (such as employment agreements) to enforce the provision. This proposal tracks the clinic/hospital prohibition on control of professional judgment in the Medical Practice Act, as well as the authority to obtain necessary documents provided in the Pharmacy Act. [Pg. 2, Bus. & Prof. Code, new § 4918.]
4. Management Services Organizations (MSOs). Aside from selling the veterinary practice and becoming employed by a general corporation that owns and operates the veterinary practice, veterinarians may instead enter into agreements for the provision of administrative and/or management services by a management services organization (MSO), which can be beneficial to the veterinary practice by applying management expertise to reduce the operating costs of the practice. These types of arrangements may include agreements in which the management services organizations lease to the veterinarians the facility and medical and non-medical equipment.

As with the general corporate ownership of a veterinary practice problem, there are currently no prohibitions on the exertion of control by an MSO over the professional judgment of the veterinarian. Notably, a general corporate premises owner could also enter into a management services arrangement with the veterinary practice owner. Although these types of arrangements may be necessary for a veterinarian who wants to focus on the provision of animal health care services rather than the day-to-day administrative affairs of running a business, it may be prudent to authorize these types of arrangements by statute, and, in addition to cross-referencing the existing prohibition on patient referral rebates (see Bus. & Prof. Code, § 650), clarify the limitations of these agreements by regulation. This proposal would allow veterinarians to contract for administrative/management services while protecting consumers and animal patients from unlicensed control over the care rendered by the veterinarian. [Pg. 2, Bus. & Prof. Code, new § 4919.]

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E. Regulatory Proposals

In addition to the statutory proposals above, the Board may wish to consider adopting regulations to clarify the new authorization in proposed Business and Professions Code, section 4918, subdivision (c) to require the clinic, hospital, or veterinarian to disclose to the Board any information deemed reasonably necessary to enforce the prohibition on contracts providing for control over professional judgment or services. [Pg. 6, CCR, new § 2095.] Additionally, if the Board agrees that management services should be addressed by statute, the Board may wish to consider defining the limitations of MSOs by regulation. [Pgs., 3-5, CCR, new §§ 2090-2093.]

**Conclusion**

Although the ban on corporate practice of medicine has evolved over time and strengthened human patient protection, the protections for animal patients and their owners has not kept pace. Potential risks exist to consumers and animal patients if commercial motives are prioritized above professional judgment. Due to the increasing corporate ownership and operation of veterinary practices and the need for veterinarians to properly apply their professional judgment on a case-by-case basis, the Board may wish to recommend legislative proposals and adopt regulations to address these issues.

Attachments: Legislative and regulatory proposals

VETERINARY MEDICAL BOARD  
Corporate Practice of Veterinary Medicine

Proposed revisions are shown in single underline for new text and ~~single strikethrough~~ for deleted text.

**Statutory Proposals:**

Business and Professions Code, Division 2, Chapter 11

Article 3. Issuance of Licenses.

4853.

(a) All premises where veterinary medicine, veterinary dentistry, veterinary surgery, and the various branches thereof is being practiced shall be registered with the board. The certificate of registration shall be on a form prescribed in accordance with Section 164.

(b) "Premises" for the purpose of this chapter shall include a building, kennel, mobile unit, or vehicle. Mobile units and vehicles shall be exempted from independent registration with the board when they are operated from a building or facility which is the licensee manager's principal place of business and the building is registered with the board, and the registration identifies and declares the use of the mobile unit or vehicle.

(c) Every application for registration of veterinary premises shall set forth in the application the name of the responsible licensee manager who is to act for and on behalf of the licensed premises. Substitution of the responsible licensee manager may be accomplished by application to the board if the following conditions are met:

(1) The person substituted qualifies by presenting satisfactory evidence that he or she possesses a valid, unexpired, and unrevoked license as provided by this chapter and that the license is not currently under suspension.

(2) No circumvention of the law is contemplated by the substitution.

(d) This section does not authorize any person, corporation, or artificial legal entity, other than a licensed practitioner of veterinary medicine or a veterinary corporation practicing pursuant to Article 6 (commencing with Section 4910) of this Chapter and the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), to furnish to any person or animal patient any advice, services, or treatment within the scope of veterinarian licensure under this chapter. This section does not authorize any person, other than a licensed veterinarian within the scope of his or her license, to engage directly or indirectly in the practice of veterinary medicine, surgery, and dentistry. This section does not regulate, govern, or affect in any manner the practice of veterinary medicine, surgery, or dentistry by any person duly licensed to engage in such practice.

## Article 6. Veterinary Corporations

4910.1. (a) Corporations and other artificial legal entities shall have no professional rights, privileges, or powers.

(b) The provisions of subdivision (a) do not apply to a veterinary corporation practicing pursuant to the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code) and this article, when such corporation is in compliance with the requirements of these statutes and all other statutes and regulations now or hereafter enacted or adopted pertaining to such corporations and the conduct of their affairs.

4910.2. A professional corporation, foreign professional corporation, or other legal entity not owned exclusively by one or more licensed veterinarians shall not engage in the practice of veterinary medicine.

4918. (a) Except as provided in Section 13403 of the Corporations Code, a veterinary clinic or hospital that is owned by a general corporation, foreign corporation, or other legal entity but is not exclusively owned by one or more licensed persons shall be registered with the board pursuant to Section 4853 and may employ, or enter into contracts or other arrangements with, any person or persons licensed under this chapter, but no such employment, contract, or arrangement shall provide for the rendering, supervision, or control of professional judgment or services other than as authorized by law.

(b) The veterinary clinic or hospital shall not interfere with, control, or otherwise direct the professional judgment of any licensed veterinarian, registered veterinary technician, or veterinary assistant.

(c) The board may require any information the board deems is reasonably necessary for the enforcement of this section.

4919. (a) A veterinarian or group of veterinarians, whether or not incorporated, may employ, or enter into a contract or other arrangements with a management services organization to provide management services to the veterinarian or the veterinary practice, but no such employment, contract, or arrangement shall provide for the management services organization to render control, supervision, or intervention in a veterinarian's practice of veterinary medicine, or violate Section 650.

(b) For purposes of this section, "management services organization" means a person or entity that provides management or administrative services.

(c) The board may require any information the board deems is reasonably necessary for the enforcement of this section.

## Proposed Regulations:

California Code of Regulations, Title 16, Division 20

### Article 12. Management Services Organizations in Veterinary Practice

2090. Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(a) "Control" means the ability to order or dictate the delivery or the manner of delivery of any services or tasks. Consulting with another person regarding a service or task, or assisting in the performance of a service or task, does not constitute control.

(b) "Intervene" means directly altering the practice of veterinary medicine. Recommending or providing a service or supply or performing management services under this section does not constitute intervention.

(c) "Management services" means those services and activities relating to the operation of a veterinary practice exclusive of the practice of veterinary medicine.

(d) "Management services organization" means a person or entity that provides management services.

(e) "Veterinary medical personnel" means persons under the direct or indirect supervision of a veterinarian who perform duties directly related to the practice of veterinary medicine.

Note: Authority cited: Sections 4808, Business and Professions Code. Reference: Section 4919, Business and Professions Code;

### 2091. Prohibited Practices.

(a) A management services organization shall not control or intervene in a veterinarian's practice of veterinary medicine. Prohibited activities by a management services organization, whether or not authorized by contract, include but are not limited to:

(1) employing a veterinarian to practice veterinary medicine;

(2) determining the compensation of a veterinarian for the practice of veterinary medicine;

(3) controlling or intervening in a veterinarian's diagnosis, treatment, correction, change, manipulation, relief, or prevention of animal disease, deformity, defect, injury or other physical condition, including the prescription or administration of a drug, biologic, anesthetic, apparatus, or other therapeutic or diagnostic substance or technique;

(4) controlling or intervening in a veterinarian's selection or use of type or quality of medical supplies and pharmaceuticals to be used in the practice of veterinary medicine;

(5) determining the amount of time a veterinarian may spend with a patient;

(6) owning drugs, unless the drugs are owned in compliance with applicable state or federal law;

(7) owning and controlling the records of patients of the veterinarian;

(8) determining the fees to be charged by the veterinarian for the veterinarian's practice of veterinary medicine;

(9) mandating compliance with specific professional standards, protocols, or practice guidelines relating to the practice of veterinary medicine;

(10) placing limitations or conditions upon communications that are clinical in nature with the veterinarian's clients;

(11) requiring a veterinarian to make referrals in violation of section 650 of the code; or

(12) penalizing a veterinarian for reporting violations of a law regulating the practice of veterinary medicine.

(b) Veterinarians, and entities in which veterinarians are the sole owner, shareholders, or partners, are not prohibited from performing the activities set out in subsections (a)(1) - (10) of this section.

Note: Authority cited: Sections 4808, Business and Professions Code. Reference: Section 4919, Business and Professions Code.

**2092.** Permitted Management Services. Permitted activities by a management services organization include, but are not limited, to:

(a) providing by lease, ownership, or other arrangement:

(1) the facility used by the veterinarian in the practice of veterinary medicine;

(2) the medical equipment, instruments, and supplies used by the veterinarian in the practice of veterinary medicine; and

(3) the business, office, and similar non-medical equipment used by the veterinarian.

(b) providing for the repair, maintenance, renovation, replacement or otherwise of any facility or equipment used by the veterinarian in the practice of veterinary medicine;

(c) providing accounting, financial, payroll, bookkeeping, budget, investment, tax compliance, and similar financial services to the veterinarian;

(d) providing information and information systems and services for the veterinarian so long as any patient records in these systems are clearly owned and freely accessed by the veterinarian;

(e) providing the services of billing and collection of the veterinarian's fees and charges;

(f) arranging for the collection or sale of the veterinarian's accounts receivable;

(g) providing advertising, marketing and public relations services that comply with Section 651 of the code pertaining to the practice of veterinary medicine;

(h) providing contract negotiation, drafting, and similar services for the veterinarian;

(i) providing receptionist, scheduling, messaging, and similar coordination services for the veterinarian;

(j) obtaining all licenses and permits necessary to operate a practice of veterinary medicine that may be obtained by a non-veterinarian, and assisting veterinarians in obtaining licenses and permits necessary to operate a practice of veterinary medicine that may be obtained only by a veterinarian, provided that the executive officer of the board approves the method of payment for veterinary license renewals paid by the management services organization;

(k) assisting in the recruiting, continuing education, training, and legal and logistical peer review services for the veterinarian;

(l) providing insurance, purchasing and claims services for the veterinarian, and including the veterinarian and veterinary medical personnel on the same insurance policies and benefit plans as the management services organization;

(m) providing consulting, business and financial planning, and business practice and other advice;

(n) establishing the price to be charged to the veterinary client for the goods and supplies provided or managed by the management services organizations;

(o) employing and controlling persons who:

(1) perform management services;

(2) are veterinarians employed by a management services organization to perform management services but not the practice of veterinary medicine; or

(3) perform management, administrative, clerical, receptionist, secretarial, bookkeeping, accounting, payroll, billing, collection, boarding, cleaning and other functions; or

(p) employing veterinary medical and other personnel, if a veterinarian present at the practice location in charge of veterinary medicine for that practice location at which the veterinary medical and other personnel work has the right to:

(1) control the medically related procedures, duties, and performance of the veterinary medical and other personnel; and

(2) suspend for medically related reasons the veterinary medical and other personnel unless the suspension is contrary to law, regulation or other legal requirements.

Note: Authority cited: Sections 4808, Business and Professions Code. Reference: Section 4919, Business and Professions Code.

### **2093.** Disclosure of Contracts.

(a) A veterinarian or a group of veterinarians that contract with a management services organization shall:

(1) make available for inspection by the board at the main office of the veterinarian or group of veterinarians copies of the contracts with the management services organizations; and

(2) if the board opens an investigation against a veterinarian or a group of veterinarians, make available to the board copies of the contracts with the management services organizations.

(b) Verbal contracts will not be considered evidence of compliance with this section.

(c) Copies of contracts provided to the board pursuant to this section are confidential and not subject to disclosure pursuant to section 6250 et seq. of the Government Code.

Note: Authority cited: Section 4808, Business and Professions Code. Reference: Section 4919, Business and Professions Code.

**Article 13.** Requirements for Corporations

**2095.** Disclosure of Corporate Records

(a) Upon request by the board, a veterinary corporation, foreign veterinary corporation, general corporation, foreign corporation, or other legal entity shall make available for inspection or provide copies of the following:

(1) copies of all documents filed with the Secretary of State.

(2) all corporate records, including, but not limited to, ownership agreements between any director, officer, owner, or shareholder.

(3) any employment contract between the corporation or legal entity and a licensee.

(4) all written policies or procedures.

(b) Copies of corporate records provided to the board pursuant to subsection (a)(2) shall be considered corporate financial records and/or corporate proprietary information including trade secrets and are confidential and not subject to disclosure pursuant to section 6250 et seq. of the Government Code.

Note: Authority cited: Sections 4808 and 4916, Business and Professions Code. Reference: Sections 4910, 4912, 4918, and 4919, Business and Professions Code; Section 13401.5, Corporations Code; and Section 6254.15, Government Code.

June 13, 2019

**Corporate Practice of Veterinary Medicine**  
**Proposed Revisions to Statutes and New Regulations**  
**Comments by Bonnie Lutz on Behalf of Animal Policy Group**

**INTRODUCTION**

Tara Welch (“Welch”), Attorney III, with the Legal Affairs Division of the Department of Consumer Affairs provided a memorandum dated February 2, 2018 (“Memorandum”) to the members of the California Veterinary Medical Board (“CVMB”). The subject of the Memorandum was, “Corporate Practice of Veterinary Medicine.” The Memorandum identifies “problems” related to the corporate practice of veterinary medicine and includes specific recommendations for statutory revisions and proposals for new regulations. This issue is currently before the Multidisciplinary Advisory Committee (“MDC”) of the CVMB for analysis and consideration.

For the reasons set forth below, the Animal Policy Group believes that these revisions and proposed regulations are unnecessary, duplicative and will result in confusion in the practice of veterinary medicine. The comments below are addressed to the identification of “problems” related to the corporate practice of veterinary medicine as well as to each statutory revision or proposed regulation as stated in the Memorandum.

**GENERAL BACKGROUND INFORMATION**

Based on a review of 48 states performed in 2017, there are 19 states that require a corporation that owns a veterinary facility to be a professional corporation owned by veterinarians (“PC States”). Of the 48 states reviewed, 15 require that there be a premises permit for each facility similar to California (“Permit States”) Three of the 19 states and DC require both a professional corporation (if a corporation owns the facility) and a premises permit. Eighteen states do not require a professional corporation or a premises permit.

Recently two states, Louisiana and Oregon changed their laws to reflect that they are not PC States indicating that the movement is away from requiring professional corporation ownership of veterinary facilities.

The PC States statutes clearly indicate that if a corporation owns the veterinary facility, that corporation must be owned by veterinarians licensed in the state.

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The only state with a regulation that governs the Management Services Organization (“MSO”) is Texas which is a PC State. In March 2018, Louisiana repealed their regulation regarding the MSO.

In the Permit States, the words to describe the permit range from premises permit/license to hospital or facility license/permit to veterinary facility. Overall the physical places where the veterinary services are provided are referred to as “facility”, “hospital”, and “premises.” None of them refer to the “practice” as a noun indicating the place where services are rendered and none make any distinction between the “premises” or “facility” and the “practice.”

### **IDENTIFICATION OF “PROBLEMS” RELATED TO CORPORATE PRACTICE**

#### General Corporate Practice Ban Problem

Page 4 of 35 in the Memorandum implies that the applicable statutes in the California Veterinary Medicine Practice Act (“Act”) are unclear as to “whether corporate practice of the profession is prohibited.” Notwithstanding, the applicable statutes are very clear in stating the requirements for a “Veterinary Corporation.” Nothing in Business and Professions Code (“B&P”) sections 4910 through 4916 state or imply that a corporation that owns or operates a veterinary hospital MUST be a veterinary corporation. In fact, B&P section 4917 specifically states that “nothing in this article requires an applicant for or a holder of a certificate of registration of veterinary premises described in Section 4853 to be a veterinary corporation.” There is no “problem” or ambiguity because section 4917 specifically allows a corporation that is not a veterinary corporation to obtain a premises permit and Provide veterinary services at that premises.

#### Specific Corporate Practice Ban Problem of Veterinary Medicine

Similarly on page 4 of 35 in the Memorandum there is discussion of the fact that the provisions of section 4910 does not “specifically ban the practice of the licensed profession or rendering of veterinary services by a general corporation owned by non-licensed individuals.” There is no “specific ban” because in California a corporation that is not a veterinary corporation can obtain a premises permit and provide veterinary services pursuant to section 4917.

Furthermore, the Memorandum refers to an apparent confusion regarding the words “premises” and “practice.” However, there is no confusion between these words. The “practice” of veterinary medicine is defined in B&P 4826 and the “premises” is defined in B&P 4853. It is simply not correct that the words practice and premises are used interchangeably for the purposes of the Act.

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## **PROPOSED STATUTORY REVISIONS AND ADDITIONS**

### **Business and Professions Code, Division 2, Chapter 11**

#### **Article 3**

##### **Issuance of Licenses**

##### **Section 4853**

The apparent justification for the addition of section (d) is to prevent a non-veterinary owned corporation that obtains a premises permit from practicing veterinary medicine. However this provision is unnecessary and potentially confusing.

The provision is unnecessary because the practice of veterinary medicine by an unlicensed individual is expressly prohibited in the Act. B&P section 4825 specifically states that “it is unlawful for any person to practice veterinary medicine or any branch thereof in this State unless at the time of so doing, such person holds a valid, unexpired and unrevoked license as provided in this chapter.” B&P section 146 states that a violation of section 4825 is an “infraction”. Specifically section 146 (c) states, “the following sections require registration, licensure, certification or other authorization in order to engage in certain businesses or professions.” In addition to the fact that B&P section 4825 clearly states that a person must be licensed to practice veterinary medicine, section 4826 further clarifies that section by specifically defining the tasks and conduct that can only be undertaken by a licensed veterinarian. In addition, B&P section 4875.2 provides authority to the CVMB to issue a citation to an “unlicensed person acting as a veterinarian or registered veterinary technician”. Finally, the CVMB is specifically given the authority to inspect premises where veterinary medicine is being practiced to investigate unlicensed activity pursuant to B&P code section 4809.5. In summary, the Act is very clear in that only licensed veterinarians are allowed to practice the specifically defined acts considered to be veterinary medicine and those involved in unlicensed activity can be actively investigated and punished. There is simply no reason to add subsection (d) to B&P section 4853.

The proposed subsection B&P 4853(d) is also potentially confusing. First, section 4853 is entitled, “Registration of place of practice.” It deals exclusively with the requirement for a premises permit, the definition of a premises and the requirement for a managing licensee. Section 4853 does not define the practice of veterinary medicine or the people who can engage in that practice. Those terms are defined in B&P code sections 4825 and 4826. Second, section 4853 does not “authorize” anyone to engage in the practice of veterinary medicine and placement of the provisions of subsection (d) here is out of context. Third, it introduces a term “licensed practitioner of veterinary medicine” that is not defined in the Act. In summary, section 4853(d)

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will lead to more, rather than less, confusion in the profession regarding the corporate practice of veterinary medicine.

## **Article 6**

### **Veterinary Corporations**

As discussed above but for different reasons, these proposed new statutes are unnecessary and potentially confusing.

#### **Section 4910.1**

B&P code sections 4910 through 4916 clearly set forth the requirements for a veterinary corporation and section 4917 clearly allows for a non-veterinary owned corporation to apply for a premises permit. Consequently the provisions of proposed 4910.1 are unnecessary. Those provisions are also confusing because subsection (a) appears to state with certainty that “Corporations, and other artificial legal entities shall have no professional rights, privileges or powers.” Reading section 4910 together with 4910.1(a) appears to state that even a veterinary corporation has no “professional rights, privileges or powers.” In order to accurately understand the requirements of section 4910.1 one must also read subsection (b). However, 4910.1 does not add any clarity because 4910 already states that a “veterinary corporation is a corporation which is authorized to render professional services.”

#### **Section 4910.2**

The title of Article 6 is “Veterinary Corporations” and section 4910 clarifies what a veterinary corporation can do. As discussed above, B&P code sections 4825 and 4826 prevent non-licensed persons (or corporations) from practicing veterinary medicine. Section 4910.2 shifts the focus in this Article from veterinary corporations to corporations not owned by veterinarians and in doing so, defines those corporations as “not owned exclusively by one or more licensed veterinarians.” Unfortunately that phrase is not used in the definition of who can own a veterinary corporation in B&P section 4912 which states that “each director, shareholder and officer of a veterinary corporation shall be a licensed person.” This new statute is confusing, misleading and unnecessary.

#### **Section 4918**

Based on section 4853, every premises where veterinary medicine is practiced must be registered with the board. A non-veterinary owned corporation is no different. Whether owned by a non-veterinary corporation or a veterinary corporation, every premises must be registered pursuant to section 4853. The requirement in proposed 4918(a) is duplicative and appears to impose an additional requirement on a non-veterinary corporation. In addition, sections 4825 and 4826 already prevent non-veterinary corporations from rendering veterinary services. To the

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extent that it is duplicative, section 4918(a) will only serve to confuse the issue and will not do anything to prevent unlicensed activity.

The provisions of the proposed subsections 4918(b) and (c) apply exclusively to non-veterinarian owned corporations and should not be included in Article 6 that pertains to “Veterinary Corporations.” In addition, 4918(b) is not clear as to what “veterinary clinic or hospital” is prohibited from the activity listed. It is not clear that it does not apply to a Veterinary Corporation. Notwithstanding the fact that subsection 4918(c) is overbroad and unclear as to what “information” can be obtained from a privately owned corporation, the CVMB has already been given the authority to “investigate alleged unlicensed activity” pursuant to B&P section 4809.5. Again, section 4918 is unnecessary and leads to more confusion in the profession.

#### Section 4919

The phrase, “management services organization” or “MSO” is not used in any other state veterinary practice act other than Texas. The use of that term and the associated regulations are unique to Texas now that Louisiana has repealed its regulation regarding management services organizations. The CVMB should consider this fact in their analysis of the new statutes and regulations regarding the use of management services organizations.

The Proposed B&P section 4919 is also unnecessary, overly burdensome and unclear. First, as discussed numerous times above, California law is very clear on the issue of unlicensed activity and in the prohibition of performance of veterinary medicine by non-licensed individuals. Many veterinary facilities hire management companies to assist with the business aspects of running a veterinary hospital. It is unlikely that any of those companies enter into contracts with the veterinary facilities that provide for “control, supervision or intervention in a veterinarian’s practice of veterinary medicine.” The requirements of subsection 4919(a) are simply not warranted. Furthermore, it is unclear what is meant by the prohibition against the violation of “Section 650.”

Subsection 4919 (c) is overly inclusive, unclear and also unnecessary. As discussed above, the CVMB already has the authority to inspect veterinary facilities and to investigate unlicensed activity. Simply stated without evidence of wrongdoing by a business providing management services, the CVMB has no authority to obtain and review “any information the board deems is reasonably necessary for the enforcement of this section.”

Finally the definition of a “management services organization” as a “person or entity that provides management or administrative services” leads to the absurd result that this new statute and the new regulations applies to those individuals who are certified by the Veterinary Hospital Managers Association and may provide management services to one or two veterinary facilities. The authority vested in the CVMB under this new statute potentially allows the CVMB to obtain “any information it deems is necessary” from these small business owners.

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## **PROPOSED NEW REGULATIONS**

The proposed new regulations in California Code of Regulations, Title 16 Division 20, Article 12<sup>1</sup>, sections 2090 through 2095 are copied word for word from the Texas regulation governing the permitted activities of a Management Services Organization. Texas is a PC State and requires professional corporations to be owned by veterinarians if a corporation owns the practice. The purpose of the regulation of the MSO is to ensure that the non-veterinarian owned MSO, hired by the veterinarian owned corporation does not engage in the practice of veterinary medicine. Generally, there is a different dynamic in California in that there is no requirement for a veterinary corporation to own a veterinary hospital and therefore no reason for the MSO to be working as the middleman between the veterinary corporation and the facility. These new regulations are unnecessary and in many cases unclear. Furthermore, as discussed above, Texas is the only state with these regulations and the fact that they exist there does not translate into their being well written or a good example for California.

### Article 12<sup>2</sup>

#### Section 2090

These definitions are unnecessary for the reasons set forth above, and in addition are vague and will lead to unnecessary confusion in the profession. For example, the definition of “control” also appears to include the “manner of delivery of any services or tasks.” What exactly is meant by “manner” in this context? How does one “alter” the practice of veterinary medicine? Finally, subsection (d) also includes Certified Veterinary Practice Managers who may only work for one or two practices.

#### Section 2091

These “prohibited practices” are vague and in most instances unnecessary. To focus on a few terms, what is the problem with a business hired to assist with the management of a veterinary facility participating in the determination of the compensation of the veterinarian or the fees to be charged? As the entity involved with the business aspects of the facility, the MSO is arguably in the best position to determine veterinarian compensation and fees charged. What is the meaning of “supplies”? What is the rationale for not allowing the MSO to own drugs and what is meant by the phrase, “unless the drugs are owned in compliance with applicable state or federal law” in this context?

What is the purpose of a prohibition against “mandating compliance with specific professional standards” or “practice guidelines”? Veterinarians are required to provide

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<sup>1</sup>If the CVMB is considering adding these new regulations they should be in Article 11 not Article 12.

<sup>2</sup> Article 11

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veterinary services that are within the standard of care and in some instances to comply with “practice guidelines.”

What is the specific concern regarding the reference to B&P Section 650? This section refers to rebates for patient referrals. However, it is possible that this section may be interpreted as a prohibition against a referral to another facility managed by the MSO. Referrals are a necessary part of good veterinary medicine and this section is confusing as to what it intends to prevent.

Finally, although Subsection (b) carves out an exception for individual veterinarians and veterinary corporations, it should be clarified at the beginning of the regulation as to what services can be performed under those circumstances. For example, should a veterinary corporation owner be able to intervene in an individual veterinarian’s choice of practice notwithstanding the fact that a veterinarian is the owner?

Section 2092

The question here is whether the executive officer of the CVMB really needs to take the time and resources to “approve” a method of payment for veterinary license renewals.

Section 2093

The argument here is that the contracts between parties should be confidential to those parties and this section is overbroad. The realistic question is who in the CVMB is going to have the time and resources to review these contracts and for what purpose?

Section 2094

There is apparently no section 2094.

Article 13<sup>3</sup>

Section 2095

This section is not included in the Texas regulation.

It is also not supported by any California statute and is overly broad. The CVMB simply does not have any authority over a general corporation, foreign corporation or other legal entity such that it is entitled to review the documents listed in this proposed regulation. This proposed regulation does not limit the authority to general corporations, foreign corporations or legal entities having anything to do with veterinary facilities. The CVMB is not entitled to review “all written policies or procedures” from a general corporation, foreign corporation or legal entity.

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<sup>3</sup> Article 12?

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As discussed above the CVMB has the authority to inspect and investigate unlicensed activity. That authority is sufficient to allow the CVMB to obtain pertinent, narrowly defined documents from veterinary facilities and veterinary corporations in order to assist with the investigations. Allowing the CVMB unrestrained access to corporate documents is akin to having a police state in California.

### **CONCLUSION**

Without belaboring the issues, the statutory revisions and proposed new statutes and regulations are unnecessary, overly burdensome, confusing and more likely than not in violation of other California laws regarding privacy and confidentiality.

In the absence of any evidence that corporations are directing the provision of veterinary medicine in California, the CVMB us urged to strongly consider whether these legislative and regulatory changes are necessary or prudent.

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# Can a non veterinarian own a veterinary practice in the US?

Written by **Max Lee**

Dec 20, 2018 11:47:13 PM

## can a non veterinary own a veterinary practice



Veterinary practice ownership by non-veterinarians has been a hot subject in several states with arguments for and against pushing the matter to legal corridors. There are several states that have legalized the ownership of

veterinary practices by non-veterinarians but other states remain adamantly opposed to the matter. At the moment, rules that govern non-veterinarians owning a veterinary practice remain fluid and complex but not universal.

States like Florida, Colorado, and California have made it easy for those wondering *can a non-veterinary own a veterinary practice*.

There are many reasons why you might consider owning a veterinary practice as a non-veterinarian but the most common reason is finding an exit strategy. Most professional veterinarians start a vet practice without the thought of an exit strategy. However, there comes a time when you need to think of retiring or just relinquishing the management of your vet practice to another party. This is where your plans can hit a snag. Most veterinarians want to transition their practice to someone they trust. However, that party may not have always be a veterinary professional.



For those willing to own a veterinary practice as non-veterinarians, there are legal hurdles you will have to overcome with the help of an experienced attorney. There are practice owners who have been able to own vet practice in states that have strict veterinary practice ownership laws and we will be looking at what loophole they may have capitalized on to achieve this milestone.

But first, let us look at what is prohibiting non-veterinarians from owning a veterinary practice in certain states.

## **Can a Non-Veterinarian Own a Veterinary Practice - The Legal Implications**

The daunting complications surrounding the issue of 'can a non-veterinarian own a veterinary practice' have been discouraging to many potential vet practice owners. The inconsistency of the law across states and its enforcement is also subject to change if that particular state's veterinary board changes.

So why is it that a non-veterinarian owning a veterinary practice is such a big deal in certain states? Based on a philosophical reason: states' veterinary boards are against non veterinarians owning vet practice for the simple fear of medical decisions being made by someone without the professional skills or license to make those decisions. It is also a contentious point considering the daily operations in veterinary firms.

However, to circumnavigate such fears, veterinary practice partners (including both veterinarians and non-veterinarians) should develop a framework of what constitutes medical decisions. If state laws are clear, it is easier to find a way through the legal quagmire. However, where the state laws are on the fence, things can be a lot more complicated. In some

cases, the rules may not be enforced but that is subject to the veterinary board's predication. Should the board decide to be thorough, then non-veterinarians who counted on a lack of oversight may find themselves in legal hot water without warning.

The legal implications on the issue can also play a part when a practice owned by a non-veterinarian is sold. Some states require a sizable goodwill portion of the sales to go to the veterinary corporation.

## **What Are Your Options**

On the surface, more than half of states do not allow the ownership of veterinary practice by non veterinarians. Only about 15 states officially legalize non-veterinarians owning vet practice. All the others may or may not allow you to own a vet practice as a non veterinarian. This is quite unfortunate as it prevents those with veterinary practice management and direction skills from taking their careers to the next level and becoming owners. It could also push such folks out of the veterinary field altogether when they were so committed to making a difference in the practice.



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If you are stuck on the issues of can a non veterinarian own a veterinary practice, here are options you should consider:

## Splitting the Practice into two Separate Companies

A non-veterinarian could still buy into a veterinary practice and uphold the medical integrity in states prohibiting non veterinarians from owning a vet practice by considering splitting the practice into two separate LLCs. Both companies can be set up as LLC with one (which the non veterinarian can buy into) being the management service organization and the other being the veterinary corporation.

The management service organization would be in charge of a couple of activities such as the recruitment of technicians, take responsibility for the veterinary practice assets such as the premises, inventory, and payroll. However, this company cannot be in charge of the veterinarians' payroll.

The second company would only handle the professional operations and

hence would be in charge of making the medical decisions. For both companies to work amicably it is always best to draft a contract that clearly outlines the duties and responsibilities of each of the two companies.

## **Taking Over the Administrative Structure**

Another arrangement that can help you if the puzzle of can a non veterinarian own a veterinary practice is a hard one to crack is to consider taking over the administrative structure. In this concept, a non veterinarian can work in conjunction with a veterinary professional service corporation which is taking over the veterinary services.

The administrative structure provides all services and staff that are needed by the veterinary wing. You will, therefore, have a close interest in the veterinary service even if you are not part of the professional team. You can provide the leased space, furniture, equipment, recruitment of the professional staff, training, billing, accounting, and all the general administrative services.

As a non veterinarian, you will get your profits in form of the fees charged for the services offered to the veterinary wing.

Legally, this structure has been able to satisfy most of the states' concerns about protecting the public since mechanisms are in place to allow the medical services to be provided by the medically skilled professional who is licensed to do so.

By now the question of can a non veterinarian own a veterinary practice should be a clear one to you. If you have non veterinarian friends owning vet practices in states that prohibit the direct ownership of veterinary practice by non veterinarians, then it is because they took advantage of the options discussed above.

You could do the same and have shares in a veterinary practice even if you are not a professional veterinarian yourself. Provided you are not exceeding the 49% share, non veterinarians can own a veterinary practice in some states, an option you could exploit if you are open to the idea of relocation.



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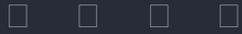
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BUSINESS, COLUMNS

## Make it your business

Practice ownership opportunities aren't just for veterinarians. In some cases, managers and nurses can become proprietors, too.

WRITTEN BY LESLIE A. MAMALIS, MBA, MSIT, CVA IN APRIL 2018



*Some states prevent non-veterinarians from owning a clinic. The opposition arises from a legitimate concern over animal welfare.*

Creating a successful veterinary practice takes more than a veterinarian. It takes a team to engage the pet owner, schedule appointments, provide veterinary medical and surgical care, assure a safe work environment, keep inventory stocked at appropriate levels, and find the best suppliers of everything from gauze to controlled drugs to appointment cards.

When you have one or more strong leaders on your team, be sure to keep them engaged and intellectually stimulated so they continue to grow and thrive in their positions, and help them make a career out of veterinary medicine.

For many, veterinary medicine is much more than a career; it is a calling. I am not talking just about veterinarians, but about veterinary nurses and managers, too.

## A Different Approach

In a profession where we wring our hands over the number of veterinary nurses who leave for better-paying jobs in human health care and over managers who lack the opportunity for professional growth and the salaries that go with it, there should be more discussion about ownership models that include these dedicated team members.

While non-veterinarian practice ownership is legal in some states, provided a licensed veterinarian makes decisions related to medical care, other states prevent non-veterinarians from owning a clinic. The opposition to non-veterinarian ownership arises from a legitimate concern over animal welfare.

Veterinary practice acts were written to ensure that medical treatment options were decided by a veterinarian who had the patients' needs foremost in mind and not by someone who might be more concerned about profits than patient care. In this day of widespread corporate ownership and consolidation of veterinary hospitals, more options are needed for those without veterinary licenses to direct the activities within veterinary hospitals.

## Consider a MSO

In states where **ownership** by veterinarians remains a requirement, management services organizations (MSOs) can be created to allow non-veterinarians to own a business that manages the practice. Common in human health care, MSOs are businesses that provide management and administrative services to the practice itself. The MSO owns the facility, equipment and inventory, while the veterinarian owns the patient records and hires and manages other doctors and, in some states, the veterinary nurses. The MSO leases the facility and equipment to the practice, hires and manages the non-veterinarian staff, markets the practice, handles vendor relations, and provides other administrative services for a fee.

There is no restriction on MSO ownership, giving managers and nurses the opportunity to have an ownership stake in the business. While there is legal work to do on the front end to ensure that the structure is set up correctly, this isn't the hurdle it once was.

Managers and nurses often become minority owners. When managers and nurses wish to buy 100 percent of the business, a bigger hurdle is financing the deal. Traditionally, business loans were given only to those who could generate sales for the business. This makes perfect sense because banks want assurance that the loans will be repaid by the borrower. In a manager-owned practice with a single doctor, if the doctor becomes ill or quits without notice, there is a risk that practice revenue will not be replaced quickly. This

scenario has more inherent risk than many banks are comfortable assuming, even though any manager worth her salt has a bank of relief doctors in her contact list.

Given the reluctance of some lenders to consider these deals, many of the sales to managers and nurses have been seller-financed. Since outside financing has become more available, most sales have been primarily cash deals in which the buyer acquires a bank note and the seller receives most or all of the purchase price in cash.

## An SBA Loan Might Make Sense

Other lending options exist for managers and nurses. Sometimes the loans available from a lender's practice-acquisition department require a short-term payoff, often after seven years. Depending on the purchase price, the buyers may not have sufficient cash flow to make large payments, particularly in the first few years of ownership. Some banks will consider engaging their commercial loan departments to allow a longer payback, perhaps 15 years.

Government-backed Small Business Administration (SBA) loans are another option. SBA lenders are less concerned about who owns the business and more interested in whether the cash flow is adequate to meet loan payments and operate the business. Although SBA loans include substantial borrower-paid fees, these might be a small price if they allow a nurse or manager to own a practice for several decades.

So often we hear that a veterinarian sells to a consolidator long before retirement age because the doctor wants to go back to being "just a veterinarian." After all, the reason he became a veterinarian in the first place was to care for animals. Few felt equally impassioned by the idea of negotiating with vendors, managing employees, marketing the practice or developing a standard operating procedures manual.

## Many Qualified Individuals

This is where other veterinary professionals excel. Veterinary managers have taken a big step forward in capability and professionalism. The Veterinary Hospital Managers Association, founded in 1981, helps managers grow and develop into industry leaders. Some of the best and brightest manage huge referral centers, and experienced managers are highly sought after by consolidators. Fortunately, this leaves hundreds of capable managers who love managing smaller practices and who often run the business by default when the veterinarian owners are too busy to do so.

The more capable and ambitious that managers and veterinary nurses become, the more it makes sense for them to be practice owners. Even someone who is highly compensated is limited in what she can earn as an employee. Owners not only receive compensation for working in the practice, they receive the profits.

Business owners should earn much more than employees because the owners are taking the risk. Employees can go home at night without worrying whether the woman who slipped on the ice in the parking lot will sue the business, whether an employee is abusing drugs or whether bullying is taking place in the practice. At no point does an employee risk losing her home if the business takes a downturn. One of the main reasons business owners are willing to assume such risks is the opportunity to make substantially more money than they could as employees.

Money isn't the only driver of hospital ownership. Owners also have the opportunity to lead their practices in the direction they choose, to make the final decisions on services offered and products sold, and to create a business culture that fosters the expression of their values.

The practice of veterinary medicine should allow doctors and the teams that support them to have lifelong careers doing what they love. With the number of practices for sale as the baby-boom generation moves into retirement, let's encourage valuable team members to think outside the box and contemplate ownership.

*Money Matters columnist Leslie A. Mamalis is the owner and senior consultant at Summit Veterinary Advisors. Learn more at [www.summitveterinaryadvisors.com](http://www.summitveterinaryadvisors.com).*

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# The harrowing tale of veterinary management service agreements

Once upon a time, veterinary practices were owned by veterinarians. Then other interested parties came along ...

Jul 10, 2018  
By Christopher J. Allen, DVM, JD  
DVM360 MAGAZINE



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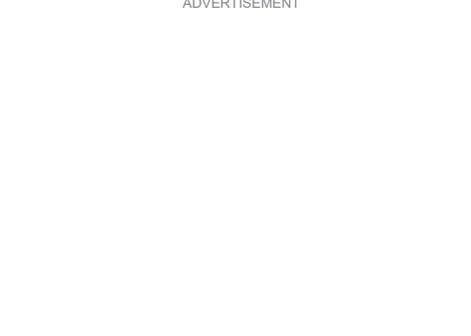
Time to look at the fine print critically. (Photo: Shutterstock.com)

Is anyone out there policing management service agreements? Based on a number of associate contract reviews I have conducted recently, it doesn't look like it.

What is a management service agreement, you ask? Why do they need oversight? Well, as the snowman says in the Christmas TV special "Rudolph the Red-nosed Reindeer," just pull up an ice block and I'll tell you the story!

Our story begins with the best of intentions ...

Decades ago, veterinarians owned veterinary clinics. And the law in most states was that *only* veterinarians were allowed to own them. But then



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along came sly attorneys who, in response to demands by venture capital and Wall Street, figured out a clever way that non-DVMs could sidestep the laws prohibiting lay ownership of professional practices. The strategy works this way: Lawyers designed a “veterinary practice operation structure” in which a veterinary hospital would function through the interaction of two separate legal entities. One would be a “professional corporation” (owned by one or more DVMs). The second would be a “management corporation” (owned by folks who have money but no veterinary degree).

To make it work, a *really long* document known as a management service agreement, or MSA, is entered into by the professional corporation and the management corporation. This agreement, signed by both corporations, provides that all activities and duties (*except* those requiring professional training, credentials, or both) will be carried out by the management corporation.

And that same paperwork provides one essential kicker: The management services are priced in such a way that most of the clinic’s profits go for—yes, you guessed it—management services.

What makes this legal? The essential element that has allowed the MSA (often called an MSO, or management service organization) to circumvent the nation’s veterinary practice acts is this: The MSA document must be designed with scrupulous care to designate the responsibilities of the management services company. MSAs must provide that all medical, therapeutic, diagnostic and other purely veterinary tasks are carried out by the professional corporation. Everything *except* veterinary medical activities (plus drug ownership) shall be handled by the management company.

For a long time, this structure has managed to avoid much legal challenge to its true objective, which is, of course, allowing the substantive ownership (and flow of profits) to a clinic owner who is not professionally licensed.

## A number of sticky situations arise ...

But here’s the big problem I see when I put on my veterinarian hat: The MSA/MSO structure has been widely adopted as acceptable and legal in myriad American jurisdictions. But is anybody checking to see whether the required separation of powers is genuinely being maintained? Or does the viability of the legal theory upon which these agreements are based tend to dissipate shortly after a clinic is purchased or a hospital empire is constructed?

Consider these issues that (when I put on my lawyer hat) are regularly being raised by many of my DVM clients who are employed doctors at veterinary facilities owned by non-DVMs:

**Drug purchases:** MSA documents usually state that the staff DVMs will select the drugs to be purchased and stocked for the treatment of animals *with consultation of the management corporation*. Do the worker-bee docs who are seeing the patients actually have a say in which medications will be purchased or from which supplier? Do DVMs genuinely choose whether generics will be ordered? What if an antibiotic is considered “too costly to stock” by the management company even though clinic vets want that product available to treat cases?

**Capital expenditures:** Sounds like a purely management decision as to when and how profits should be reinvested in the practice, right? Well, I’ve spoken to my share of employed DVMs who tell me that at some lay-owned practices, doctors’ requests for updated equipment are routinely ignored, or at least unjustifiably delayed. Obviously, profit is an important goal, but gee ... doesn’t the MSA say that medical decisions (like using non-obsolete equipment) are supposed to be made by veterinarians?

**Vaccine policy:** Who wins when the management hierarchy wants, for example, to offer vaccinations without requiring a physical exam while staff docs don’t? Theoretically, the DVMs should decide. Theoretically ...

**Staff hiring decisions:** Again, at first blush this might seem like a

fundamentally managerial decision as to which assistants and other non-DVM personnel should be hired and what they should be paid. But I've seen associate DVMs shocked and awed by the staffing choices made by some consolidator-operated veterinary hospitals. The main issue? Cost. Good profits may be at cross purposes with good, well-trained staff. I think the vets should have a bona fide say in who gets hired, though this may not end up being the case.

**Office call duration:** Is this a managerial decision? Or should a change from 15-minute sick appointments to 10-minute sick visits be a decision ultimately determined by staff veterinarians? Better check that MSA, then check how the actual decision making is done.

**Extension of credit:** I've actually run across corporate employment contracts that allow uncollected client balances to be deducted from the paycheck of the staff veterinarian on the case. So much for the MSA providing that the veterinarian will select the level of care to provide. God bless any doctor under one of these "corporate practice" employment agreements who expects that he or she will have discretion in the level of service to be provided. That vet will pay part of the tab if a costly treatment is provided and the owner can't pay.

**Clientele demographics vs. care level:** The staff doctors at a given MSA clinic may want to provide full-service care and develop long-lasting client-veterinarian relationships. But if the management company selects a "doing business name" for the practice like, say, "Super-discount Vet Hospital," the veterinary staff may be big-time unhappy with the clients such a name attracts. And when the employed DVMs register their discontent with the management company? The MSA probably says name selection is the prerogative of ... yes, the management company. But can't the name of the practice sometimes impact the level of medicine that the facility will routinely have to practice?

## A cautionary tale?

It doesn't look like very many state attorneys general or most secretaries of state throughout the United States are exceptionally concerned with how these veterinary MSAs are being implemented. But they should be. Since a rapidly increasing number of veterinary practice jobs are to be controlled by these documents, it's extremely appropriate that regulators monitor the degree of professional autonomy (or lack thereof) that employed doctors have.

In the final analysis, though, it doesn't appear that the government has a great deal of interest in making sure that non-licensed individuals refrain from directly impacting animal care. So my advice is this: Before accepting an associate position with a veterinary hospital owned by a corporation or other non-DVM owner, seek out the docs who are already there. Ask them if they feel that management is overreaching. Based on that guidance, it's far easier to select a clinic employer that features DVM-respectful management.

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- 1. Please describe a specific instance, if any, when any policy, either written or verbal, of the veterinary corporation required you to perform an examination of, procedures on, or treatment of an animal patient against your professional judgment.**

*There has been a recent push in Banfield to keep things "in house" as much as possible, which has led to some confusion regarding calls that come in from established clients that is clearly an emergency. We are "required" to bring them in for triage first at our location, which in some instances could be dangerous to that pet if we are unable to perform something in a timely manner. I recently received from backlash for a client with known high eye pressures at risk for globe rupture called just before closing saying the pet's eye had ruptured. Knowing there was very little we could do at a GP at that time of day, I referred them immediately to ER/ Ophtho for removal of the ruptured globe. Client was satisfied and the pet was seen right away on ophtho emergency but I was "talked to" about sending a pet away, even though it was clearly something I was not going to be able to fix. This is setting up a fine line for malpractice if we insist on seeing something beyond the scope of our practice.*

- 2. Did an individual instruct you, against your professional judgment, to perform the examination, procedure, or treatment and on what basis? Please describe the individual's credentials, professional licensure, and/or corporate affiliation.**

*I have never been forced to perform a procedure that I was opposed to, but there is definitely a push from chief of staff and directors of veterinary quality (both DVMS who oversee the associate DVMS in the market of the corporate practice) to push for "cover your butt" medicine, which most of the time makes sense, but sometimes borders on excessive. For example, a clear flea allergy dermatitis case does not need a full skin scrape, skin impression, fungal culture, but there is an underlying push to have offered all of these things or it was not done right. That does not feel like an appropriate use of client funds.*

- 3. Please describe a specific example of how your corporate employment contract altered or restricted your ability to exercise your professional judgment as a licensed veterinarian to act in the best interest of the animal.**

*Some of the blanket safety precautions cause issues, for example a severely aggressive pet that needs work up for ears, cannot be immobilized if it is considered brachycephalic, even if not deemed high risk by the DVM. So we are required to perform a full anesthetic procedure on a large boxer that likely does not need the gas maintenance and could be safely and more quickly completed with intubation and propofol only.*

- 4. Please explain any concern or consequence for not adhering to corporate policies that differ from your professional judgment in providing medical examinations, procedures, or treatment.**

*A discussion I have had multiple times with my boss is regarding treatment of ringworm without fungal culture. Clients are always informed about culture, and also about how long it takes to get results and how I recommend starting treatment in the interim. Most of these clients elect to try treatment only and the vast majority have resolved. If they are making an informed decision and the medical records reflect that, I see no issue, but my boss is constantly pushing for the fungal culture, because it is "required" and I find this unnecessary.*

- 5. Would you be willing to testify in front of the Veterinary Medical Board or its Multidisciplinary Advisory Committee regarding your responses?**

*Reluctantly, yes, but would be worried about retaliation.*

- 1. Please describe a specific instance, if any, when any policy, either written or verbal, of the veterinary corporation required you to perform an examination of, procedures on, or treatment of an animal patient against your professional judgment.**

*I did not experience any situations that fit this description. We were left to practice as we best deemed appropriate. For example, I had, in some cases, very specific requirements regarding the vaccinations I was willing to administer (In cats, recombinant vaccines that produced the least inflammatory response.) and the corporate owner had no issue with this, even though they "preferred" we use certain vaccines from certain manufacturers.*

*Also, I think it's important to note, I did see medical records from other, privately owned (sole proprietor) local clinic, that used outdated vaccine protocols and products that were not ideal. I would be concerned the associates there were directed by that owner to practice in a way that might be at odds with their professional judgment.*

- 2. Did an individual instruct you, against your professional judgment, to perform the examination, procedure, or treatment and on what basis? Please describe the individual's credentials, professional licensure, and/or corporate affiliation.**

*I was never directed by our practice manager, chief of staff veterinarian, or anyone in the corporate chain of command to do anything for a pet with regard to treatment, surgery, or recommendations. I was never discouraged from referral when I felt that was appropriate.*

- 3. Please describe a specific example of how your corporate employment contract altered or restricted your ability to exercise your professional judgment as a licensed veterinarian to act in the best interest of the animal.**

*There was absolutely nothing in my contract of that nature. I wouldn't have signed any contract that had that requirement.*

- 4. Please explain any concern or consequence for not adhering to corporate policies that differ from your professional judgment in providing medical examinations, procedures, or treatment.**

*I was not worried about it, because I would have accepted being fired rather than practice in an unethical manner without appropriate compassion for the client and the pet.*

*There really were not any policies that I was aware of during the time of my contract that were in conflict with my practice.*

*The only possible concern would be regarding diagnostic testing in house and with outside laboratories. I preferred a different diagnostic lab, but over my nearly 30 years of practice each lab, over time, had strengths and weaknesses so it was more of a preference for me than a true issue about quality of services. We continued to use specialty labs for pathology and for some specific testing as I saw fit.*

*Regarding in house laboratory testing, it's always more an issue of proper quality control and maintenance of the equipment that was concerning for me. Those issues were managed at the hospital level and not directed by the ownership.*

- 5. Would you be willing to testify in front of the Veterinary Medical Board or its Multidisciplinary Advisory Committee regarding your responses?**

*Yes.*

- 1. Please describe a specific instance, if any, when any policy, either written or verbal, of the veterinary corporation required you to perform an examination of, procedures on, or treatment of an animal patient against your professional judgment.**

No response provided.

- 2. Did an individual instruct you, against your professional judgment, to perform the examination, procedure, or treatment and on what basis? Please describe the individual's credentials, professional licensure, and/or corporate affiliation.**

No response provided.

- 3. Please describe a specific example of how your corporate employment contract altered or restricted your ability to exercise your professional judgment as a licensed veterinarian to act in the best interest of the animal.**

*Loomis Basin Veterinary Clinic was purchased by VCA in August 2012. Other than basic transition paperwork, we were not asked to sign a VCA specific contract until May 6, 2016. Our medical director claimed that the new contract was due to "limitations in the VCA Woofware software" that prevented them from adequately and accurately tracking the previous contracts of the grandfathered doctors (those of us who were in place before the VCA buyout). Despite promises that our contracts would be similar to our previously signed Loomis Basin contracts, our grandfathered doctors had to band together to try to guarantee that our previous contract items and benefits would be honored. Multiple doctors left as a result of VCA attempting to renege on this.*

*Specifically, they requested us to sign a loyalty oath to VCA and their best interests (as opposed to adhering to our client's or patient's best interests), and they required us to sign that these contract demands were "reasonable." They have a confidentiality clause in their contract that restricts us from even discussing the information in the contract.*

- 4. Please explain any concern or consequence for not adhering to corporate policies that differ from your professional judgment in providing medical examinations, procedures, or treatment.**

*I refused to sign the new contract, as did several of my associates who left. We felt the burden of the loyalty oath and other contract issues would ensure that we would be beholden to VCA's best interests, not our clients or patients. We had been employed by VCA for almost 4 years by time this contract became an issue.*

*VCA refused to fire me for not signing the contract, and also refused to pay me my commission due from May 23 until I resigned in December 2016. They threatened to "not put me on the schedule anymore, but they would not fire me.*

*Upon my resignation, VCA finally paid me the \$10,500 in commission that they had owed me from May 23 to the time of my resigning. This violated state and federal law, I am certain. Unfortunately, I erred in not hiring an employment attorney.*

*I have kept emails of the above events and copies of the VCA contract. I feel free to discuss this since I did not sign their contract or confidentiality clause.*

- 5. Would you be willing to testify in front of the Veterinary Medical Board or its Multidisciplinary Advisory Committee regarding your responses?**

*Yes, I would happily testify assuming I could appear in between my current work schedule.*