

Legal

Professional Misconduct

Nearly every practicing veterinarian has likely received a letter at some point in his or her career from an investigator at the New York State Education Department (SED) Office of Professional Discipline (OPD). This is not surprising as the profession of veterinary medicine has one of the highest levels of complaints, on a per-license basis, of all the licensed professions in New York State. OPD is required to investigate each of these complaints, which could either be dismissed after investigation for lack of wrongdoing or lack of evidence, or lead to further proceedings and even charges of professional misconduct. Fortunately, the number of justified complaints against veterinary medicine professionals is among the lowest of all the professions. But what may be surprising to some veterinary medicine professionals is the sheer breadth of conduct that falls within “professional misconduct” and “unprofessional conduct,” which can be related or unrelated to the practice of veterinary medicine and upon which OPD may continue professional misconduct proceedings up to and including formal charges. “Professional misconduct” derives its meaning from a variety of statutory and regulatory bases, and covers a wide range of unprofessional, illegal, and improper conduct. This article will highlight some of the possible grounds of professional misconduct charges that veterinarians should be aware of, as well as actual penalties OPD has imposed in recent enforcement actions.

On the statutory front, a number of professional misconduct definitions from the Education Law are worth being aware of for veterinary medicine professionals. Some of these may be surprising in that the underlying conduct upon which the professional misconduct charge is based might be unrelated to the practice of veterinary medicine. First, Section 6509(5)(a) defines professional misconduct as a criminal conviction under New York State law, federal law, or the law of another jurisdiction, which would have constituted a crime under New York State law if committed within New York. OPD has made findings of professional misconduct under this provision for criminal convictions ranging from petit larceny to assault to forgery to criminal possession of a controlled substance to endangering the welfare of a child. If these criminal convictions seem extreme or unlikely for the typical veterinarian to confront, perhaps a more plausible scenario would be a veterinarian being convicted of driving while intoxicated (DWI). Indeed, OPD enforcement actions show that DWI convictions can lead to indefinite suspension of a veterinary license (“until fit to practice”), up to two years of probation, and up to \$1,000 fines.

Section 6509(3) of the Education Law also defines professional misconduct as “practicing the profession while the ability to practice is impaired by alcohol, drugs, physical disability, or mental disability,” and Section 6509(4) defines it as “being habitually drunk or being dependent on, or a habitual user of narcotics, barbiturates amphetamines, hallucinogens, or other drugs having similar effects.” In recent years, there has thankfully been an increased awareness of the mental health difficulties that veterinarians face. A 2014 study from the United State Centers for Disease Control and Prevention reported on the psychological distress of veterinarians, finding that nearly one in ten U.S. veterinarians “might suffer from serious psychological distress,” and more than one in six “might have experienced suicidal ideation since graduation.”¹

¹ <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6405a6.htm>

Unfortunately, depressed and stressed veterinarians often turn to substance abuse to cope, with the former head of the American Veterinary Medical Association's Committee on Wellness estimating that 11-13% of veterinarians are substance abusers—slightly higher than estimates for all medical professionals.² More unfortunately still, the stigma surrounding mental health and substance abuse, coupled with the potential professional misconduct charge and threats to a veterinarian's license, can lead afflicted veterinarians to suffer in silence. OPD, however, does contemplate an alternative, with Section 6510-b of the Education Law allowing for the temporary surrender of a professional license during treatment for drug or alcohol abuse, accompanied by immunity from professional misconduct charges in cases where no harm to a client or patient has resulted from the underlying substance abuse.

The next definitions from the Education Law to be aware of are wholly unrelated to the practice of veterinary medicine. Sections 6509-b and 6509-c, respectively, define professional misconduct as being in arrears in payment of child support, or combined child and spousal support, and failure to comply with a summons, subpoena or warrant relating to paternity or child support proceedings. Under Section 6509-b, if the Board of Regents receives a court order pursuant to certain provisions of the Domestic Relations Law or Family Court Act, it is required to notify a veterinarian identified in the order, and its Regents Review Committee initiates a hearing to determine whether, as of the date of the hearing, proof exists that full payment of all arrears of support established by the court order have been paid by the veterinarian. This is the only issue to be determined at this hearing, after which the veterinarian's license shall be suspended if he or she fails to present proof of payment. The suspension can only then be lifted once the court, or support collection unit, issues notice to the Regents Review Committee that full payment of all arrears of support have been paid. Section 6509-c operates similarly to Section 6509-b, except that there is no hearing of the Regents Review Committee; if the Board of Regents receives a court order indicating that a veterinarian, after receiving appropriate notice, has failed to comply with a summons, subpoena or warrant relating to a paternity or child support proceeding, it shall provide notice to that veterinarian that his or her license will be suspended in 60 days. Only the court can terminate this order to commence suspension proceedings, and only the court can lift a suspension after it goes into effect.

In contrast to Sections 6509-b and 6509-c, Section 6706 is intimately related to the profession of practicing veterinary medicine. Section 6706 prohibits the corporate practice of veterinary medicine by a business corporation, other than a professional service corporation organized under the Business Corporation Law. The Rules defining "unprofessional conduct" contain a similar prohibition. Section 29.1(b)(4) of the Rules defines unprofessional conduct to include "permitting any person to share in the fees for professional services, other than: a partner, employee, associate in a professional firm or corporation, professional subcontractor or consultant authorized to practice the same profession, or a legally authorized trainee practicing under the supervision of a licensed practitioner." Also related to fees, Section 29.1(b)(3) of the Rules, defines unprofessional conduct to include "directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a patient or client or in connection with the performance of professional

² <http://veterinarynews.dvm360.com/drug-abuse-poisons-veterinary-profession>

services.” In contrast to some of the other licensed professions,³ Sections 29.1(b)(3) and 29.1(b)(4) of the Rules are the only controlling regulations governing corporate practice and fee-sharing for veterinary medicine.

These sections are just two of fourteen general definitions of unprofessional conduct found in Part 29 of the Rules. Unlike the Education Law, the Rules are promulgated by the Board of Regents itself. As such, the Rules are in general much more applicable to the day-to-day practice of licensed professionals than the Education Law. Sections 29.1(b)(10), 29.6(a)(2), and 29.6(a)(3) are particularly important to note, and they have shown up in OPD enforcement actions as the basis for professional misconduct charges.

Daily practice for a veterinarian involves delegating appropriate duties to licensed veterinary technicians as well as unlicensed staff. Ultimately, the veterinarian him or herself is responsible for the proper delegation of these duties, and improper delegation is considered unprofessional conduct under Section 29(b)(10) of the Rules. Of the veterinarians OPD has charged with professional misconduct under this section of the Rules, penalties have ranged from an actual suspension of the veterinarian’s license of three months to one year, a stayed suspension of one year to 21 months, two years of probation, and fines ranging from \$2,500 to \$5,000. Section 29.6(a)(2) defines unprofessional conduct as the failure to exercise adequate supervision “over persons who are authorized to practice only under the supervision of the licensee,” but it does not appear to have been the basis for any professional misconduct charges in OPD enforcement actions. Nevertheless, veterinarians should be aware of the limits on duties that may be performed by licensed veterinary technicians and unlicensed staff, and also the supervisory requirements imposed on the licensed professional under whom these employees work. For further guidance on these requirements, please consult NYSVMS resources at <http://www.nysvms.org/?page=lvtduties>, <http://c.ymcdn.com/sites/www.nysvms.org/resource/collection/E45CA734-8B73-4255-B861-5BED0FCBBAC9/lasertherapy.pdf>, and http://c.ymcdn.com/sites/www.nysvms.org/resource/collection/824A08A0-F7AF-4D95-A850-C088F60C9C8E/Nysmvs_SeptOct_small.pdf.

The other section of the Rules that shows up in OPD enforcement actions for professional misconduct pertains to recordkeeping. Section 29.6(a)(3) defines unprofessional conduct as “failing to maintain *adequate* records of visits, diagnoses and prescribed treatments for a period of at least three years” (emphasis added). Unfortunately, the Rules do not define “adequate,” so to avoid unprofessional conduct, veterinary medicine professionals should look to the Practice Guidelines developed by the New York State Board for Veterinary Medicine. While it should be noted that the guidelines do not replace the legal requirements for practice found in the Education Law or the Rules, nor are they grounds for professional misconduct charges themselves, they do provide guidance on good veterinary medicine practice and are often necessary to parse the legal requirements governing the practice. For example, veterinary medicine professionals seeking guidance on what constitutes “adequate” records can look to Guideline 5.14 for extensive information on what veterinary medicine professionals “should” do

³ Section 6509-a applies only to the license or registration of a person subject to the provisions of Articles 132, 133, 136, 137, 139, 141, 143, 144, 156, 159, and 164, but not Article 135, under which veterinary medicine professionals are licensed or registered.

to prepare a “legible individual record every time [he or she] provide[s] professional services.” While penalties in OPD enforcement actions for professional misconduct based on failure to maintain adequate records under Section 29.6(a)(3) do not generally include the actual suspension of a professional license, stayed suspensions and probation have ranged from one to two years, with fines from \$500 to \$2,500 dollars. Additional guidance on recordkeeping can be found on the NYSVMS website at <https://nysvms.site-ym.com/?recordsfaq>, and http://c.ymcdn.com/sites/www.nysvms.org/resource/collection/DF663746-708A-49A0-A0E5-09C5EE248AB8/electronic_records.pdf.

This article highlights only a sampling of the vast laws and regulations that govern the practice of veterinary medicine and the multitude of conduct that could put a veterinarian’s license and practice at risk. Practice Guidelines as well as all the text of relevant portions of the Education Law and the Rules are available on the Office of the Professions’ website at <http://www.op.nysed.gov/prof/vetmed/>. NYSVMS encourages all its members to consult areas of the law or regulations with which they do not feel comfortable, and to seek legal advice with specific questions. NYSVMS also encourages veterinarians who might be struggling with depression or substance abuse to consult the resources available on the American Veterinary Medical Association’s Wellness and Peer Assistance page at <https://www.avma.org/ProfessionalDevelopment/Personal/PeerAndWellness/Pages/default.aspx>, to read more about the New York State Professional Assistance Program at <http://www.op.nysed.gov/prof/pap.htm>, and to consult legal counsel if contemplating voluntary surrender of a professional license.

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