

The Laws and Rules Governing the Practice of Veterinary Medicine and Disciplinary Actions

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Section 1

The Sources

Chapter 474, Florida Statutes

- Veterinary Medical Practice Act:
 - Provides the requirements for licensure as a veterinarian.
 - Provides the grounds for disciplinary action against a licensed veterinarian.
 - Creates the Board of Veterinary Medicine.
 - Grants the Board the authority to promulgate rules, including standards of practice.

Veterinary Medicine Defined

- “Practice of veterinary medicine” means diagnosing the medical condition of animals and prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease thereof; performing any manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of animals; or representing oneself by the use of titles or words, or undertaking, offering, or holding oneself out, as performing any of these functions. The term includes the determination of the health, fitness, or soundness of an animal.
- “Veterinary medicine” includes, with respect to animals, surgery, acupuncture, obstetrics, dentistry, physical therapy, radiology, theriogenology, and other branches or specialties of veterinary medicine.

Veterinary Medicine Defined

- Some chiropractors are offering “animal chiropractic treatment,” but they lack the authority to do so under the law because the definition of the term “practice of chiropractic medicine” in §460.403(9), F.S., is defined by reference to “the human body.” However, if a chiropractor treats an animal pursuant to the order and direction of a veterinarian, then the chiropractor may be considered to be acting as a veterinary aide.
- The definition of the term “practice of veterinary medicine” is very important, because the Board can only discipline a veterinarian for negligence “in the practice of veterinary medicine.” For example, if the veterinarian runs a red light and is involved in an accident, and a patient in the vehicle is injured, the veterinarian should not be disciplined for negligence in the practice of veterinary medicine because transporting patients is not included in the definition.

Exemptions

- Faculty Members.
- Interns or Residents.
- Enrolled students under immediate supervision of a licensed veterinarian.
- A DVM employed by a State or Federal Agency.
- Any person, or the regular employee of such person administering to the ills or injuries of her or his own animals.
- Part-time or independent contractors hired by the owner to assist with herd management and animal husbandry tasks, including farriery and manual hand floating of teeth on equines.
- Board Certified Specialist Veterinarian licensed in another state that responds to the request of a veterinarian licensed in this state to assist with treatment on a specific case or the animals of a single owner.

Rule 61G18, FL Administrative Code

- Contains all the rules promulgated by the Board of Veterinary Medicine, including:
 - Education, minimum standards of practice, minimum standards for premises where veterinary medicine is practiced, and record requirements.
 - Grounds for disciplinary proceedings and disciplinary guidelines.

Chapter 120, Florida Statutes (APA)

- Defines what a rule is.
- Provides requirements for promulgation of rules.
- Provides a definition of “invalid exercise of delegated legislative authority,” which means the various grounds a rule can be challenged, including that the rule exceeds the authority of the Board; enlarges modifies or contravenes the law implemented; or is vague, arbitrary or capricious.

Chapter 455, Florida Statutes

- Contains a number of laws applicable to all practitioners under the umbrella of DBPR including:
 - §455.225, F.S., establishes the authority and procedures to conduct an investigation and disciplinary action.
 - §455.227, F.S., provides general grounds for disciplinary action against all DBPR licensees.

Other Laws and Rules Relevant to the Practice of Veterinary Medicine

- **Chapter 499, F.S.** Drugs, Devices & Cosmetics.
- **Chapter 465, F.S.** Florida Pharmacy Act.
- **Chapter 893, F.S.** Controlled Substances Act.
- **Chapter 828, F.S.** Animals: Cruelty, Sales, Animal Enterprise Protection.
- **Section 705.19, F.S.** Abandonment of animals by owner; procedure for handling.—
- **Section 713.655, F.S.** Liens for professional services of veterinarians.—
- **Plus a whole bunch of other laws and rules, both Federal and State.**

Section 2

The Board of Veterinary Medicine

The Board of Veterinary Medicine

- Consists of 7 members:
 - ▣ Five Licensed Veterinarians
 - ▣ Two Consumer Members
- Serve 4-year terms.
- No member may serve for more than the remaining portion of a previous member's unexpired term, plus two consecutive 4-year terms.
- Appointed by the Governor of Florida, subject to confirmation by the Senate.

The Board of Veterinary Medicine

- The Board meets approximately four times a year for one day, plus teleconferences as necessary.
- The Board of Veterinary Medicine members work with the Department of Business and Professional Regulation in meeting its mission to, “License Efficiently. Regulate Fairly.”
- The Board’s headquarters are located in Tallahassee, FL.
- **Website:**
<http://www.myfloridalicense.com/dbpr/pro/vetm/index.html>

Section 3

Licensure and Continuing Education

Licensure by Examination

- Graduated from a college of veterinary medicine accredited by the AVMA Council on Education.
- Graduated from a college of veterinary medicine listed in the AVMA Roster of Veterinary Colleges of the World and obtained a ECFVG certificate.

An unlicensed doctor that has completed all parts of the examination and is waiting for the results can practice under the immediate supervision of a licensed veterinarian.

Licensure

- **License Categories:**
 - Veterinarian
 - Limited Service Permit
 - Premises Permit
- **Methods of Licensure:**
 - By Endorsement - Yes
 - By Examination - Yes
 - By Reciprocity – No

Limited Service Permit:

- Veterinarians offering limited service clinics perform vaccinations and/or immunizations against disease on multiple animals, and veterinarians may also perform preventative procedures for parasitic control. Limited service clinics cannot be held more than once every two weeks and no more than four hours in any one day at any single location.
- All locations must be registered with the board at least 28 days prior to the offering of the limited service clinic. A copy of the limited service permit must be clearly visible at each limited service clinic.
- A veterinarian must remain on site throughout the duration of a limited service clinic and must be in charge of all medical decisions made.

Premises Permit

- Any establishment, permanent or mobile, where a licensed veterinarian practices must have a premises permit issued by the department. Upon application and payment of a fee not to exceed \$250, as set by rule of the board, the department shall cause such establishment to be inspected. A premises permit shall be issued if the establishment meets minimum standards, to be adopted by rule of the board, as to sanitary conditions, recordkeeping, equipment, radiation monitoring, services required, and physical plant.

Continuing Education Requirements

- Completion of 30 hours of continuing professional education in veterinary medicine every biennium, 1 of which shall be in the area of dispensing prescription drugs and 2 in laws and rules.
- Additionally, not more than 15 hours shall be non-interactive correspondence courses and a licensed veterinarian shall receive credit for no more than 5 hours of continuing education in business, practice management courses or stress and impairment seminars during any biennium period.
- **A licensee can receive up to five hours of continuing education for attending a meeting of the Board of Veterinary Medicine.**

Section 4

Permit Requirements

Applying for a Permit

- All establishments where veterinary medicine is practiced are required to have a permit issued by the Department of Business and Professional Regulation.
- An application for a permit must be filed with the Department at least 14 days before the establishment opens. Before a permit is issued, the establishment must be inspected to ensure it complies with the minimum standards for sanitary conditions and physical plant, as set forth by Board rule.

Reinspection:

- If the inspection reveals deficiencies, the establishment may be reinspected prior to issuance of the permit. The decision to reinspect is made by the Department on a case by case basis, but is based on the number and severity of deficiencies documented on the initial inspection report.

Responsible Veterinarian:

- The applicant must designate a responsible veterinarian in whose name the permit is jointly issued. If a change in the responsible veterinarian occurs, the **permittee** (not necessarily the responsible veterinarian), has 10 days to notify the Board office in writing of the change and must include the name of the new responsible veterinarian. Not doing so requires the permittee to fill out an entirely new application.
- *It shall be the duty of the licensed veterinarian named on the permit to return the permit to the department when the named veterinarian ceases to be responsible for the management of the establishment, or notify the Board that the veterinarian is no longer the responsible veterinarian at that location.*

61G18-15.002, F.A.C.

Minimum Standards for Premises Where Veterinary Medicine Is Practiced:

□ Exterior:

1. Legible sign to identify location.
 2. Facility clean and in good repair.
 3. Telephone number for emergency veterinary care shall be visible and legible from the exterior.
- If premises where veterinary medicine is practiced have grounds, they must be clean and orderly

61G18-15.002, F.A.C.

Minimum Standards for Premises Where Veterinary Medicine Is Practiced:

□ Interior

1. Restroom – clean and orderly.
2. Office: (a.) Clean and orderly; (b.) License renewal and premise permit displayed.
3. A telephone must be answered 24 hours a day which one may call for emergency service.
4. Examination areas: (a.) Clean and orderly; (b.) Lined waste receptacle; (c.) Sink and disposable towels. Sinks located in restrooms may not be used to satisfy this standard; (d.) Examination table constructed of smooth impervious material.

61G18-15.002, F.A.C.

Minimum Standards for Premises Where Veterinary Medicine Is Practiced:

5. Pharmacy.

- a. Clean and orderly.
- b. Blood storage or blood donor available.
- c. Existence of accurate controlled substance log and individual patient records.
- d. If controlled substances are on premises, a locking, secure cabinet for storage.
- e. DEA certificate on premises.
- f. Segregated area for the storage of expired drugs.
- g. Disposable needles and syringes.
- h. All drugs stored in the pharmacy must be properly labeled with drug name, strength, and expiration date.

61G18-15.002, F.A.C.

Minimum Standards for Premises Where Veterinary Medicine Is Practiced:

5. Pharmacy (Continued):

- i. If drugs are dispensed to the public the drugs are to be distributed in child-resistant containers unless a specific written request for non child-resistant containers is made by the animal owner. All containers distributed must be labeled with the name of the drug contained within, the strength and quantity of the drug, the expiration date of the drug, instructions as to the use of the drug, the name and species of the animal for which the drug is intended to be administered, the last name of the animal's owner, and the name, address and telephone number of the veterinarian prescribing the drug.

61G18-15.002, F.A.C.

Minimum Standards for Premises Where Veterinary Medicine Is Practiced:

6. Medical records as required by Rule 61G18-18.002, F.A.C.
7. Laboratory.
 - a. Microscope.
 - b. Centrifuge.
 - c. Urinalysis equipment or outside laboratory services available.
 - d. Hematology facilities or outside laboratory service available.
 - e. Blood chemistry facilities or outside laboratory service available.
 - f. Microbiological capability or outside laboratory service available.

61G18-15.002, F.A.C.

Minimum Standards for Premises Where Veterinary Medicine Is Practiced:

8. Facilities and equipment to render immediate resuscitative care.
 - a. Clean and orderly.
 - b. Sterile instruments, drapes, caps and masks.
 - c. Operating table appropriate to the proposed use constructed of smooth impervious material.
 - d. Oxygen and equipment for its administration.
 - e. Anesthesia equipment.
9. Holding areas shall be capable of sanitation and shall be maintained by including proper ventilation, sufficient lighting and be of a size consistent with the welfare of the animal.

61G18-15.002, F.A.C.

Minimum Standards for Premises Where Veterinary Medicine Is Practiced:

10. Garbage and trash disposal.
 - a. Sanitary cans lined with disposable bags.
 - b. Effective insect and rodent control.
11. Carcass disposal – any adequate method used in area, provided the sanitary code is not violated.
12. Emergency lighting which must include at least a functioning rechargeable battery-operated light.
13. Fire extinguisher, with current annual inspection.
14. Refrigeration of stored drugs, biologicals, lab samples, reagents and other perishable items.
15. Comply with the requirements of Rule 64E-16, F.A.C., concerning the handling and disposal of biohazardous waste.

61G18-15.002, F.A.C.

Minimum Standards for Premises Where Veterinary Medicine Is Practiced:

- **All premises must have facilities for radiology, surgery and long-term hospitalization**, or in lieu thereof, written evidence that arrangements have been made with a local clinic or hospital must be available for inspection. Local is defined as within 30 minutes or 30 miles whichever is greater to provide the service outside the premise.

61G18-15.002, F.A.C.

Minimum Standards for Premises Where Veterinary Medicine Is Practiced:

- 1. Radiology.
 - a. X-ray machine; 100 MA preferred minimum.
 - b. Developing tanks.
 - c. Monitoring of exposure of personnel to radiation required.
- 2. Surgery.
 - a. Clean and orderly.
 - b. Method of sterilization of surgical equipment, either by autoclave or gas sterilization.
 - c. Operating table appropriate to the proposed use constructed of a smooth impervious surface.
 - d. Well lighted.
 - e. Oxygen and equipment for its administration.
- 3. Hospital wards.
 - a. Clean and orderly.
 - b. Holding areas shall be capable of sanitation and shall be maintained by including proper ventilation, sufficient lighting and be of a size consistent with the welfare of the animal.
 - c. Well lighted.
 - d. Proper ventilation.

61G18-15.0035, F.A.C. Minimum Standards for Mobile Premises Permits

- (1) Minimum standards for equipment for mobile premises permits are the same as for other premises where veterinary medicine is practiced, except for the requirements in subsections 61G18-15.002(1) and (2)(a)1., F.A.C.
- (2) Veterinarians must have a written agreement with a local clinic or hospital for the provisions of long-term hospitalization, surgery, or radiology, if these services are not available at the mobile clinic itself.
- (3) Veterinarians must have a written agreement with a local clinic for the provision of emergency services and display a notice to that effect within the mobile unit to so inform clients.
- (4) Veterinarians must furnish a permanent address at which they can be reached to their clients in order that their clients may obtain their veterinary medical records.

61G18-15.006, F.A.C. Minimum Standards for House-Call Practices

- Veterinarians practicing on a house-call basis and who practice where the animal is kept must meet the requirements of Rule 61G18-15.002 or 61G18-15.0035, F.A.C., except that no premises permit is required.

61G18-15.005 Periodic Inspections.

- *(1) The Department shall make inspections of veterinary premises every two (2) years. Such inspection shall include but not be limited to verification of compliance with Rule 61G18-15.002, F.A.C., governing minimum standards for veterinary premises.*
- *(2) Additionally, the Department shall conduct unannounced routine inspections of one percent (1%) of the veterinary premises each year. The selection of premises to be inspected shall be made by the Department on a random basis.*

Recent Rule Changes:

61G18-15.0025 Minimum Standards for a Mobile Veterinary Practice for Agricultural Animals.

All pharmaceuticals and biologics shall be maintained at the temperature recommended by the manufacturer in a refrigeration device that is powered by a stable energy source and is capable of maintaining a constant temperature. A thermometer shall be included where the biologics are being stored.

If controlled substances are on the unit, a locking secure cabinet for storage and an accurate controlled substance log.

Must have an AVMA approved chemical method of euthanasia.

Must have a segregated area or container for the storage of expired drugs.

Recent Rule Changes:

61G18-15.005 Periodic Inspections

For the purpose of this section “veterinary premise” is defined as all locations where a premise permit is required or where a licensee stores veterinary pharmaceutical supplies or veterinary medical equipment, whether said location is fixed or mobile.

Recent Rule Changes:

61G18-15.007 Minimum Standards for Limited-Service Veterinary Medical Practices.

Limited time means no more than once every two (2) weeks and no more than four (4) hours in any one day for any single location. Can go up to eight (8) hours in one day within the two week period if the limited service clinic is held inside a climate controlled building which meets all local building and safety codes and the limited service clinic provider has been operating for no less than five (5) years and has professional liability coverage. If operating for the eight (8) hours, there are additional requirements under 61G18-15.0071 for patient records and 61G18-15.0072 for the written statement that must be provided.

Section 5

Records

Record Keeping

- **Inadequate record keeping is the most common cause of disciplinary action against veterinarians.** Cases are often seen where veterinarians fail to adequately keep records of patient visits, diagnosis, treatment and other relevant information. You are required by statute to keep these records, and they can be your best defense against complaints made against you.
- Chapter 61G18-18, Florida Administrative Code, details the proper handling of medical records.

61G18-18.002 Maintenance of Medical Records:

- There must be an individual medical record maintained on **every patient** examined or administered to by the veterinarian, except when a veterinarian is providing services to a client owning or leasing 10 or more animals of the same species at a location where the client keeps the animals.
- In that case, only one medical record may be kept for the group of animals. This record must include the species and breed of the animals, and the approximate number of the animals in the group.
- However when one specific animal is treated, the record must include the identification, diagnosis, and treatment regime of the individual animals examined and treated at each visit to the location, as well as all other information required by this rule.

61G18-18.002 Maintenance of Medical Records:

- Each record must be maintained for a period of not less than three years after date of last entry. The medical record must contain all clinical information pertaining to the patient with sufficient information to justify the diagnosis or determination of health status and warrant any treatment recommended or administered.

61G18-18.002 Maintenance of Medical Records:

Must be created as treatment is provided or within 24 hours from the time of treatment and include:

- ❑ Date each service is performed.
- ❑ Name of owner or agent
- ❑ Patient identification
- ❑ Record of any vaccinations administered
- ❑ Complaint or reason for provision of services
- ❑ History
- ❑ Physical examination to include (but not limited to) weight, temperature, pulse and respiration (or note why it was not collected)
- ❑ Any present illness or injury noted
- ❑ Provisional diagnosis or health status determination

61G18-18.002 Maintenance of Medical Records:

- In addition, medical records shall contain the following information if these services are provided or occur during the examination or treatment of an animal or animals:
 - Clinical laboratory reports
 - Radiographs and their interpretation
 - Consultation
 - Treatment – medical, surgical
 - Hospitalization
 - Drugs prescribed, administered, or dispensed along with the route, strength, and dosage of the drug and time said drug was administered if not otherwise discernible from the record.
 - Tissue examination report
 - Necropsy findings

Confidentiality:

- A veterinarian shall maintain confidentiality of all patient records in his/her possession or under his/her control. All patient records shall not be disclosed without the consent of the client. Appropriate disclosure may be made without such consent:
 - (a) in any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice by the party seeking such records to the client or his/her legal representative;
 - (b) when required by the Board's rules.

Who is the Client?

- 474.202(3), F.S. “Client” means the owner or caretaker of an animal who arranges for its veterinary care.
- If there is a question about ultimate ownership, the person that has custody of the animal and arranges (pays) for its veterinary care becomes the “client” and thus entitled to the confidentiality provided by §474.2165, F.S.
- What happens when a person brings an animal with a microchip that is registered to somebody else?

A Sticky Wicket

- A person can bring an animal with a microchip registered to somebody else for several reasons: The person purchased the animal; received it as a gift; found the animal; or stole the animal.
- Discuss with the person that the microchip is registered to somebody else, and that the reason owners microchip animals is to assist in finding them if they are lost. If the person indicates that is the case, then the owner should be contacted.
- If the person tells you they purchased or received the animal as a gift, and you have no reason to believe otherwise, you have no further duty to inquire or contact the person registered to the microchip. You can then establish a VCPR and the person becomes your client.
- If you have seen fliers showing the animal as lost or stolen, then you may have reason to believe otherwise. Do not establish a VCPR (i.e. do not accept any \$\$ or treat the animal).
- If it so happens that you have a VCPR with the animal and the actual owner, then you should retain the animal and contact the owner.

Providing Patient Records:

- A veterinarian shall, upon a **written request**, furnish, in a timely manner without delays for legal reviews, a true and correct copy of all of the patient records to the client, or to anyone designated by the client. Such records release **shall not** be conditioned upon payment of a fee for services rendered, except for the **reasonable cost of duplication**.
- What constitutes a reasonable cost of duplication? Not more than \$1.00 per page for the first 25 pages, and not more than 25 cents per page for each page in excess of 25 pages.
- What about reproducing x-rays? Actual costs. In other words, the cost of the material and supplies used to duplicate the record, as well as the labor costs and overhead costs associated with such duplication.

61G18-18.0015 Medical Records; Relocating or Terminating Practice; Retention and Disposition:

- Every veterinarian or entity licensed pursuant to Chapter 474, Florida Statutes, who terminates practice or relocates practice and is no longer available to patients or clients, shall retain medical records pertaining to patients for at least a period of **3 years** after the date of last entry.
- **No later than one month** after the veterinarian or entity terminates practice or relocates practice and is no longer available to patients or clients, the veterinarian or entity shall cause to be published in the newspaper of greatest general circulation in the county where the veterinarian or entity resided or practiced, a **notice** indicating to the owners of the patients of said veterinarian or entity that the medical **records are available to the owners of the patients or their duly constituted representative from a specific person at a specific location.**

61G18-18.0015 Medical Records; Relocating or Terminating Practice; Retention and Disposition:

- At the conclusion of a 3 year period of time from the date that the veterinarian or entity terminated practice or relocated practice and was no longer available to patients or clients, the veterinarian or entity shall cause to be published once during each week for 4 consecutive weeks, in the newspaper of greatest general circulation in the county where the veterinarian resided or practiced, a notice indicating to the owners of the patients of the veterinarian or entity that the medical records may be disposed of or destroyed one month or later from the last day of the 4th week of publication of notice.

Drug Logs

- The board also hears many cases where drugs are not handled properly; i.e., logs are incomplete, expired drugs are not segregated, controlled substances are not secured and drugs are not properly labeled.
- Rule 61G18-15.002(2) provides some of the requirements for the storage and dispensing of drugs.



Section 6

Common Ground for
Disciplinary Action

Chapter 828, F.S.: Animals: Cruelty, Sales, Animal Enterprise Protection

- ▣ §828.05: Killing an injured or diseased domestic animal.
- ▣ §828.055: Controlled substances and legend drugs; permits for use--
- ▣ §828.058: Euthanasia of dogs and cats.
- ▣ §828.065: Euthanasia of animals offered for sale by pet shops.

Chapter 828, Florida Statutes

- §828.29 Dogs and cats transported or offered for sale; health requirements; consumer guarantee.— Official certificates of veterinary inspection.
- Very important that these OCVI's be properly completed. If you do not administer a specific vaccination for a medical reason, “not in the best medical interest” or something similar should be noted.

§705.19, F.S. Abandonment of animals by owner; procedure for handling.—

- (1) Any animal placed in the custody of a licensed veterinarian or bona fide boarding kennel for treatment, boarding, or other care, which shall be abandoned by its owner or the owner's agent for a period of more than 10 days after written notice is given to the owner or the owner's agent at her or his last known address may be turned over to the custody of the nearest humane society or dog pound in the area for disposal as such custodian may deem proper.
- (2) The giving of notice to the owner, or the agent of the owner, of such animal by the licensed veterinarian or kennel operator as provided in subsection (1) shall relieve the veterinarian or kennel operator and any custodian to whom such animal may be given of any further liability for disposal. Such procedure by a licensed veterinarian shall not constitute grounds for disciplinary procedure under chapter 474.
- (3) For the purpose of this section, the term “abandonment” means to forsake entirely or to neglect or refuse to provide or perform the legal obligations for care and support of an animal by its owner or the owner's agent. Such abandonment shall constitute the relinquishment of all rights and claim by the owner to such animal.

§713.655, F.S. Liens for professional services of veterinarians.—

- In favor of any veterinarian who renders professional services to an animal at the request of the owner of the animal, the owner's agent, or a bailee, lessee, or custodian of the animal, for the unpaid portion of the fees for such professional services, upon the animal to which such services were rendered. Such lien shall remain valid and enforceable for a period of 1 year from the date the professional services were rendered, and such lien is to be enforced in the manner provided for the enforcement of other liens on personal property in this state.

Section 7

Common Causes for Disciplinary Action

Common Causes for Disciplinary Action

Found in §474.213, F.S. and Rule 61G18-30.001, F.A.C. They Include:

- Inadequate Record Keeping
- Knowingly employing unlicensed persons in the practice of veterinary medicine.
- Knowingly operating a veterinary establishment or premises without a valid premise permit.

Common Causes for Disciplinary Action

Having a license or the authority to practice veterinary medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including any agency or subdivision thereof.

If you have licenses in another state(s), you must keep in mind that any disciplinary action in the other state(s) may result in disciplinary action against your Florida license, and vice-versa. If you voluntarily relinquish the license in the other state after an investigation was started, that will be deemed to constitute disciplinary action. Also keep in mind that discipline against “the authority to practice” by the licensing authority of any jurisdiction “including any agency or subdivision thereof” will subject your license to discipline. Action by the USDA against your authority to issue health certificates, or action by the pari-mutuel or racing commission against a license or permit at the racetrack may result in discipline.

Criminal Offenses

Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of veterinary medicine or the ability to practice veterinary medicine. Any crime which demonstrates a lack of regard for animal life relates to the ability to practice veterinary medicine. In addition, crimes relating to the ability to practice veterinary medicine shall include, but not be limited to, crimes involving any violation of state or federal drug laws.

If you are ever accused of a crime, you need to keep in mind the possible adverse consequences to your license. Even if you plead “no contest” and the Judge withholds adjudication of guilt (which means that you will not have a criminal record) the Board can still discipline you “regardless of adjudication.” There are other dispositions, such as Pre-Trial Intervention or Drug Court that may allow you to enter a not guilty plea and have the case eventually dismissed if you comply with court ordered conditions, in which case you will not have been convicted or found guilty. Also, and as part of a plea bargain, you may have the chance to enter a plea to a crime that may not be as directly related to the practice as the original crime you were accused of. Your criminal defense attorney should consult with an administrative law attorney to best coordinate your defense.

Additional Grounds for Disciplinary Action

- Being unable to practice veterinary medicine with reasonable skill and safety to patients by reason of illness, drunkenness, use of drugs, narcotics, chemicals, or any other material or substance or as a result of any mental or physical condition.
- Knowingly maintaining a professional connection or association with any person who is in violation of the provisions of Chapter 474, F.S., or the rules of the Board.
- Paying or receiving kickbacks, rebates, bonuses, or other remuneration for receiving a patient or client or for referring a patient or client to another provider of veterinary services or goods. In construing this section, the Board shall deem that a referral to an entity with which the veterinarian has a contractual relationship, for the sale of non-veterinary, non-medical pet food or pet supplies, does not constitute a kickback, so long as the client is aware of the relationship.
- Performing or prescribing unnecessary or unauthorized treatment.

Additional Grounds for Disciplinary Action

- Engaging in fraud in the collection of fees from consumers or any person, agency, or organization paying fees to practitioners.
- Fraud, deceit, negligence, incompetency, or misconduct in the practice of veterinary medicine.
- Being convicted of a charge of cruelty to animals.
- Being guilty of incompetence or negligence by failing to practice veterinary medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent veterinarian as being acceptable under similar conditions and circumstances.
- Failing to keep the equipment and premises of the business establishment in a clean and sanitary condition or having a premise permit suspended or revoked pursuant to Section 474.215, F.S.
- Refusing to permit the Department to inspect the business premises of the licensee during regular business hours.

Additional Grounds for Disciplinary Action

- Using the privilege of ordering, prescribing, or making available medicinal drugs or drugs defined in Chapter 465, F.S., or controlled substances as defined in Chapter 893, F.S., for use other than for the specific treatment of animal patients for which there is a documented veterinarian/client/patient relationship.
- Violating any of the requirements of Chapter 499, F.S., the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 seq., the Comprehensive Drug Abuse Prevention and Control Act of 1970, more commonly known as the Federal Drug Abuse Act; or Chapter 893, F.S.

Criminal Self-reporting

- **§455.213 General licensing provisions.--**
 - During the 2009 Legislative Session, the Florida Legislature passed House Bill 425, which became law on October 1, 2009. Beginning October 1, 2009, House Bill 425 requires all professional licensees to report to the department within 30 days of being convicted or found guilty of, or having plead nolo contendere or guilty to a crime in any jurisdiction. A licensee who fails to report that information may be subject to disciplinary action, including fines, suspension or license revocation.
 - DBPR has an online criminal self report document that can be found on the Board's website

What can the Board do to you for a violation?

- Range of Penalties:
 - ▣ Denial of an application for licensure.
 - ▣ Revocation or suspension of a license.
 - ▣ Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.
 - ▣ Issuance of a reprimand.
 - ▣ Placement of the licensee on probation for a period of time and subject to such conditions as the board may specify.
 - ▣ Restriction of the authorized scope of practice by the licensee.

Also: Aggravating and Mitigating Circumstances

Emergency suspension, restriction, or limitation of a license:

- If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, the agency may take such action by any procedure that is fair under the circumstances
- Example of such a situation: Being arrested for a crime pertaining to substance abuse or diversion.

Section 8

The Disciplinary Process

Disciplinary Process

§455.225, F.S., Disciplinary proceedings:

- A complaint is legally sufficient if it contains ultimate facts that show that a violation of this chapter, of any of the practice acts relating to the professions regulated by the department, or of any rule adopted by the department or a regulatory board in the department has occurred.
- The department may investigate an anonymous complaint if the complaint is in writing and is legally sufficient, if the alleged violation of law or rules is substantial, and if the department has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true.
- Division of Regulation: enforcement authority for the professional boards and programs.

Due Process Rights

- Your License is considered a substantial property interest.
- Therefore, it is protected by Due Process rights found in the Constitution



Three Different Legal Systems

- Civil. Burden of proof is a “preponderance of the evidence.” This means more likely than not, which can be roughly anything over 51%.
- Criminal. Burden of proof is “beyond a reasonable doubt.” Roughly 90%.
- Administrative Disciplinary Proceeding. The law considers these proceedings as “penal” in nature. The burden of proof is “clear and convincing” evidence. Roughly 75%.

Administrative Disciplinary Proceedings

Because it is a “penal” proceeding, the law recognizes that a licensee has many (but not all) of the rights of a criminal defendant, such as the right to remain silent, the right to confront witnesses, and the right to review any evidence against you.

If you only remember one thing from this presentation:

- WHEN AN INVESTIGATION OF ANY SUBJECT IS UNDERTAKEN, THE DEPARTMENT SHALL PROMPTLY FURNISH TO THE SUBJECT OR THE SUBJECT'S ATTORNEY A COPY OF THE COMPLAINT OR DOCUMENT THAT RESULTED IN THE INITIATION OF THE INVESTIGATION.
- **THE SUBJECT MAY SUBMIT A WRITTEN RESPONSE TO THE INFORMATION CONTAINED IN SUCH COMPLAINT OR DOCUMENT WITHIN 20 DAYS AFTER SERVICE TO THE SUBJECT OF THE COMPLAINT OR DOCUMENT. THE SUBJECT'S WRITTEN RESPONSE SHALL BE CONSIDERED BY THE PROBABLE CAUSE PANEL.**

Important:

- ***Biggest Mistakes Veterinarians Make When Receiving a Notice of Disciplinary Action:***
 1. Not responding at all (i.e. hoping it will go away).
 2. Submitting a response without understanding the consequences.
 3. Failing to request a copy of the Department's Investigative File.
 4. Submitting to an interview with a DBPR investigator.

Important:

- Upon completion of the investigation and pursuant to a written request by the subject, the department shall provide the subject an opportunity to inspect the investigative file or, at the subject's expense, forward to the subject a copy of the investigative file. The subject may file a written response to the information contained in the investigative file.
- **Such response must be filed within 20 days, unless an extension of time has been granted by the department.**

Important:

- When its investigation is complete and legally sufficient, the department shall prepare and submit to the probable cause panel of the appropriate regulatory board the investigative report of the department. The report shall contain the investigative findings and the recommendations of the department concerning the existence of probable cause.
- The determination as to whether probable cause exists shall be made by majority vote of a probable cause panel of the board, or by the department, as appropriate.
- All proceedings of the panel and all documents and information obtained during an investigation are confidential only until an investigation ceases to be active. An investigation ceases to be active when the case is dismissed without a finding of probable cause or 10 days after probable cause is found.

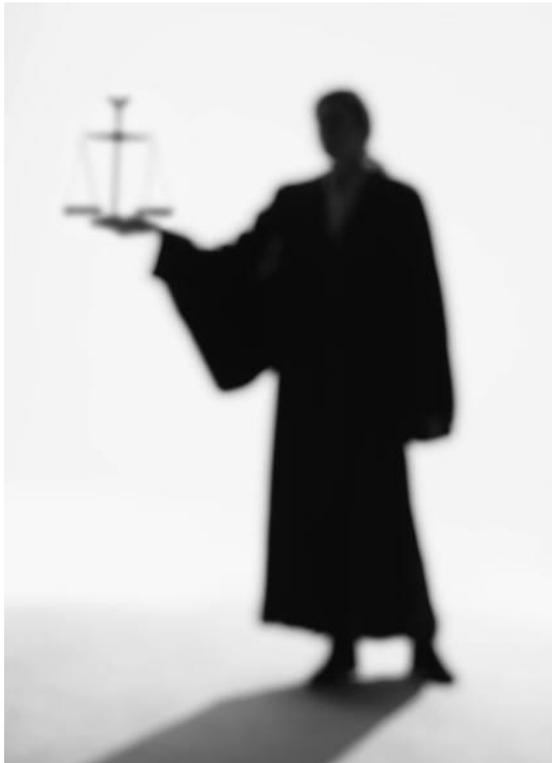
Important:

- In lieu of a finding of probable cause, the probable cause panel, or the department when there is no board, may issue a letter of guidance to the subject.
- If the probable cause panel finds that probable cause exists, it shall direct the department to file a formal complaint against the licensee.

Other Probable Cause Panel Options:

- ▣ Send the case for further expert review.
- ▣ Outright dismissal.
- ▣ **Reconsideration?**
 - ▣ On very rare instances, it may be possible to bring a case back to the probable cause panel for reconsideration.

What are your options?



- **Formal Hearing** before an Administrative Law Judge. Facts in dispute
- **Informal Hearing** before the Board. You admit the facts and argue the law, or offer mitigating circumstances
- **Settlement Stipulation**
- **Do nothing (Default)**

Hearing Before an ALJ

§ 455.225(5), F.S.: A formal hearing before an administrative law judge from the Division of Administrative Hearings shall be held pursuant to Chapter 120, F.S., if there are any disputed issues of material fact the administrative law judge shall issue a recommended order pursuant to Chapter 120. If any party raises an issue of disputed fact during an informal hearing, the hearing shall be terminated and a formal hearing pursuant to Chapter 120 shall be held.

Final Agency Action

§ 455.225(6), F.S.: The appropriate board, with those members of the panel, if any, who reviewed the investigation pursuant to subsection (4) being excused, or the department when there is no board, shall determine and issue the final order in each disciplinary case. Such order shall constitute final agency action. **Any consent order or agreed settlement shall be subject to the approval of the department.**

Recommended Order

- After a formal hearing, a Recommended Order is prepared by the ALJ and submitted to the Board for Final Action.
- The Recommended Order contains findings of fact, conclusions of law, and a recommended penalty.
- **Exceptions to a Recommended Order:**
 - The parties can file exceptions to findings of fact or conclusions of law.
 - The Board may reject a finding of fact only after a review of the record and a determination that the finding of fact was not supported by competent and substantial evidence.
 - The Board has more leeway to reject a conclusion of law.

Appeal

- Any Final Order of the Board may be appealed to the First District Court of Appeal in Tallahassee, or to a Court of Appeal in the District where the respondent resides.

Section 9

Top Ten Ways to Avoid Legal and Disciplinary Problems

What is the best way to avoid legal and disciplinary problems?

- **Good veterinarians can and do get in trouble...**
- **You *probably* will not . . .if you remember these 10 Easy Rules**



Number 10:

**Timely and Accurately Apply
for and Renew Licenses**

Number 9:

**Verify Credentials and Licenses
of all Staff and Relief
Veterinarians**

Number 8:

Keep up with your Continuing Education



Number 7:

Obtain Appropriate Consults as Necessary and Document Them

Number 6:

Respect and Listen to Your Patients' Owner(s)



Number 5:

Know Your Limitations

Number 4:

Keep Control Over Your Billing



Number 3:

DOCUMENT EVERYTHING!

Number 2:

**Do Not Ignore a Notice From
the Board or the Department**



Number 1:

**When In Doubt,
Consult Your Attorney**

END OF PRESENTATION

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