Civil Litigation and Licensing Board Matters

By John A. McPhilliamy December 4, 2023

Three Topics

- Professional Liability Insurance
- ► Civil Litigation
- Licensing Board Complaints

PROFESSIONAL LIABILITY INSURANCE

Insurance Concepts

- Indemnity
- Defense
- ▶ Who is covered?
- ▶ What is covered?
- Coverage limits
- Self Insured Retention (SIR)
- Deductibles
- ► Consent to Settle



YOUR OBLIGATIONS TO YOUR PROFESSIONAL LIABILTY CARRIER

TWO OBLIGATIONS

- ► Give Timely Notice of any Claim or Incident
- Cooperation with the Defense of Claim

CONSEQUENCES

- Reservation of Rights
- Denial of Claim



CIVIL LITIGATION

JURISDICTIONAL LIMITS

Jurisdictional Limits in New York

- Supreme Court
 - ► no jurisdictional limits
 - ► Civil Court- New York City
 - **>** \$50,000
- Small Claims Court New York City
 - **\$1,000 / \$10,000**
- Small Claims Court Outside of NYC
 - **>** \$5,000
- District Court Long Island
 - **\$15,000**

Small Claims Court "Peoples Court"

- WHY ??
 - Minimal filing fees
 - ► Generally, no attorneys involved
 - Speedy justice
 - "Loose" rules of evidence
 - Mediation and Trial are both available to resolve cases

Small Claims Court

- WHY NOT ??
 - ► Shared calendars with other types of cases
 - Long calendars
 - Multiple Adjournments as of Right
 - Multiple court appearances
 - Inconvenient to work schedule- specific days of week, morning and evening calendars

ELEMENTS OF VETERINARY MALPRACTICE CLAIMS

Four Elements:

- Duty
- ► Breach of Duty
- Causation
- Damages

All Four Elements Need to Be Proven to Prevail!

Animals are considered property

► The court in Johnson v. Douglas, 723 N.Y.S.2d 627 (2001), held that:

"It is not inconceivable that pet owners would seek some remuneration for the death of a faithful and loyal friend. However, the law is clear that pet owners cannot recover for emotional distress based upon an alleged negligent or malicious destruction of a dog, which is deemed to be personal property."

Expert testimony is generally necessary to Prove Your Case

The court in Solomon v. Center for Specialized Veterinary Care, 13 N.Y.S.3d 853 (2015), held that:

"In order to establish a prima facie case of veterinary malpractice, a plaintiff is required to show a deviation or departure from accepted veterinary practice, and that such departure was a proximate cause of the injury. Ordinarily, in a malpractice action, expert testimony is necessary to establish the applicable standard of care, as well as a deviation from such standard, which resulted in injury, unless the matter is one within the experience and observation of the average layperson."

Is there a Counterclaim Available ?????

LICENSING BOARD COMPLAINTS

- ► New York State Education Department (NYSED)
 - ► What is it?
- ► NYSED Office of Professional Discipline(OPD)
 - ► What is it?
- www.NYSED.gov

Complaint Phase

The University of the State of New York
The State Education Department
Office of the Professions
Division of Professional Licensing Services www.op.nysed.gov

Professional Discipline Complaint Form

Instructions for Completing Complaint Form

To complain about service or treatment by a licensed professional, or about illegal practice of a profession by an unlicensed person, complete the COMPLAINT form on page 2. Please note that we do not have authority to investigate fees you believe are too high or to intervene in fee disputes. However, we can investigate complaints involving fraudulent billing.

Type or print clearly in black ink. Describe your complaint as completely as you can. If you do not have a daytime telephone number, it is helpful if you can provide a number where a message can be left for you during the day. If you have any papers that may support your complaint, such as bills or correspondence, please attach copies. Do not send originals. If you have physical evidence, such as incorrectly dispensed medications, it is important for you to retain that evidence in its original condition

Be sure to sign and date your complaint. Send it to one of the regional Offices of Professional Discipline. When your complaint is received, it will be assigned to an investigator who will contact you in writing or by telephone. You will have an opportunity to explain your complaint in more detail. If we do not have the authority to investigate your complaint we will refer it to the appropriate agency.

Also, complete the AUTHORIZATION portion of this form by entering your name and the name of the practitioner and/or hospital in the appropriate spaces. The Authorization directs the professional, hospital, or other facility to release information about your treatment or the services rendered to you. Sign and date the Authorization, and have it signed and dated by a witness. A witness can be any person 18 years or older. The Authorization does not have to be notarized. Please note that if you leave the Authorization blank, it may delay the investigation of your complaint.

IMPORTANT! Complaints against physicians (general practitioners, internists, cardiologists, gynecologists, pediatricians, urologists, surgeons, infrovirus companies agents physicians of the property of the

Albany 80 Wolf Road, Suite 204, Albany, NY 12205, Telephone: 518-485-9350, Fax: 518-485-9361

Bronx/Queens 2400 Hasley Street, Bronx, NY 10461, Telephone: 718-794-2457 or 2458, Fax: 718-794-2480

55 Hanson Place, Brooklyn, NY 11217, Telephone: 718-722-2587, Fax: 718-722-2840

295 Main Street, Suite 562, Buffalo, NY 14203, Telephone: 716-842-6550, Fay: 716-842-6551

Central Administration

1411 Broadway, 10th Floor, New York, NY 10018, Telephone: 212-951-6400, Fax: 212-951-6420

Long Island
250 Veterans Memorial Highway, Room 3A-15, Hauppauge, New York 11788, Telephone: 631-952-7422, Fax: 631-952-1029

Manhattan 163 West 125th Street, Suite 302, New York, NY 10027, Telephone: 212-961-4369, Fax: 212-961-4361

One Gateway Plaza, 55 S Main Street, 3rd floor, Port Chester, NY 10573, Telephone: 914-934-7550, Fax: 914-934-7607

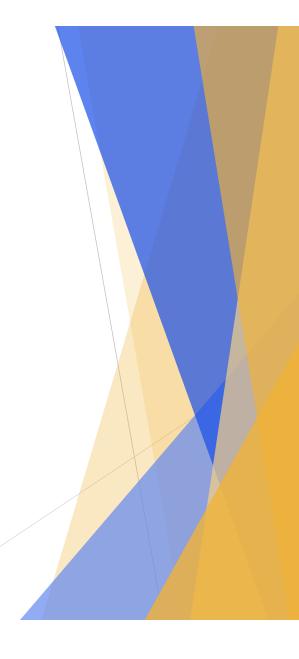
85 Allen Street, Suite 120, Rochester, NY 14608, Telephone; 585-241-2810, Fax: 585-241-2816

333 East Washington Street, 2nd Floor, Suite 211, Syracuse, NY 13202, Telephone: 315-428-3286, Fax: 315-428-3287

Professional Discipline Complaint Form, page 1 of 2, Rev. 6/22

Information About You			
Name			
Address			
City	State	Zip Code	County
Daytime Telephone		Evening Telephone	
Email		_	
Information On The Person(s) You Are Complaining	ng About		
Name(s)			
Profession			Telephone
Name of Hospital/Business/Store (if applicable)			
Address			
City	State	Zip Code	County
Describe your complaint here. Be specific. What happ	ened? When?	- '	Use additional sheets if necessary
Please read the instructions on page 1 carefully before	re describing yo	our complaint.	
To the best of my knowledge, the information in this c	omplaint is true	e and complete.	
Signature Check here if you have included additional sheets I, (print your name here)	or other materi	ial.	Date
1, (pint your name licensed professional or practitioner facility and/or any other hospital or facility, to disclose information and records relating to the diagnosis, trea behalf, by the said licensed professional, practitioner,	fully to the Ne- tment, prognos	w York State Education Depart sis made for and/or on my beha	ment and its authorized representatives all
Name of practitioner(s)			
Name of hospital(s) or other facilities			
Your Signature			Date
Signature of witness			Date

Professional Discipline Complaint Form, page 2 of 2, Rev. 6/22



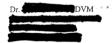
Look what arrived in today's mail "The Letter"



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK

Office of Prefessional Discipline, 183 West 125th Street - Room 302, New York, NY 10027 Tel. 212 961-4369

May 4, 2022



Certified Mail:

OPD Case

Dear Dr.

This office is responsible for investigating complaints involving persons licensed by the New York State Education Department. We are in receipt of a complaint regarding your practice of Veterinary Medicine.

In connection with this investigation, pursuant to the Rules of the NYS Board of Regents, you are directed to submit to this office a certified copy of Complete patient records for 'the complete patient chart, treatment plan, x-rays and other diagnostic materials and billing records. Please provide a brief narrative describing patient's treatment.

Please be advised that any records submitted will become part of our investigative files and therefore will remain confidential under the provisions of the Education Law §6510 (8). If additional information or a personal interview is needed, you will be contacted after the requested materials have been reviewed.

Failure to respond to these directions within thirty (30) days of this letter constitutes professional misconduct under Regent's Rules 29.1 (b) (13) and may subject you to the penalties for misconduct as set forth in the NYS Education Law.

If you have any questions concerning this matter, please contact Eric Cunningham at the $(212\ 961-4363\ or\ by\ email\ at\ eric.cunningham@nysed.gov$

Very truly yours,

Mohammed Chowdhury

Supervising Investigator

If I Receive The Letter

What should I not do:

- Contact the complainant directly
- Change, alter, modify or discard ("sanitize") any of your records
- Contact the OPD Investigator directly

If I Receive The Letter

What should I do:

- Contact your broker/ insurance carrier to advise of Complaint
- Confirm coverage for claim
- ► Gather and duplicate ALL records and await further instructions
- Coordinate any witnesses
- Cooperate with the assigned claims specialist
- Cooperate with assigned defense counsel
- Make yourself available to become involved in your defense
- Contact the OPD Investigator directly ... only if necessary!

INVESTIGATION PHASE

Your Records:

- ALL Clinical Notes written and/or EMR (SOAP format preferably)
- ALL Laboratory Results
- ALL Imaging
- ALL Photographs (and Videos)
- ALL Completed and Executed Documents and Consents
- ALL Billing Information
- ALL Client Communication, including emails, text messages, voice recordings and video recordings
- Anything Else that you have !!

What Is The Next Step after your Records are Submitted to OPD?

- OPD Investigator will obtain any additional records from other providers
- ► Typically request an interview with the professional
- Investigation file is then sent to the Board Member for review

The Interview

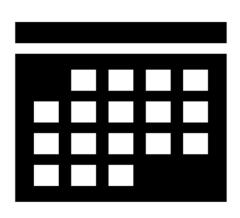
- Conducted by the investigator assigned to case
- Investigator is not a licensed professional and handles investigations for different areas of licensure
- ▶ In Person at the OPD office or Remotely Via WEBEX
- Audio or Videorecorded
- Your Counsel is Present
- Question and Answer Session
- Not Adversarial
- Generally learn what the complaint is
- Typically takes less than 1 hour

OPD Board Member

- Licensed in your profession Veterinarian
- Appointed by the Board of Regents
- ▶ No less than seven members in the state
- ▶ Board members volunteer their time to serve
- ► Generally well credentialed and knowledgeable

The Waiting Game





What is the next step for you after the Interview?

Either:

- Receive a closing letter from the OPD investigator or supervisor, OR
- Contacted by the Prosecuting Attorney

Closing Letter

THE UNIVERSITY OF THE STATE OF NEW YORK
NEW YORK STATE EDUCATION DEPARTMENT
OFFICE OF THE PROFESSIONS

OFFICE OF PROFESSIONAL DISCIPLINE 163 West 125th Street Suite 302 New York, NY 10027

Phone (212) 961-4369

OCTOBER 20, 2023

CASE NUMBER:
PROF: VETERINARY MEDICINE

Dear Sir/Ms:

The Office of Professional Discipline of the State of New York, in accordance with Article 130 of the Education Law, is mandated to investigate allegations of professional misconduct. This office attempts to perform this investigative function with all due fairness to licensee and complainant.

We have concluded an investigation into an allegation that was made against you. We did not develop evidence to support taking any disciplinary action and are therefore closing our file on this matter.

Please be assured that neither the fact that this investigation has taken place, nor its contents, are matters of public record.

Very truly yours,

MOHAMMED CHOWDHURY Supervising Investigator

Closing Letter

THE UNIVERSITY OF THE STATE OF NEW YORK NEW YORK STATE EDUCATION DEPARTMENT OFFICE OF THE PROFESSIONS

OFFICE OF PROFESSIONAL DISCIPLINE One Gateway Plaza -3rd fl Port Chester, NY 10573

Phone (914) 934-7550



JULY 5, 2023



Dear Sir:

The investigation of the above matter has been completed. We believe that the conduct involved alleged simple negligence which, unlike gross negligence, does not constitute professional misconduct.

Section 6509, paragraph 2 of the Education Law defines professional misconduct as:

"Practicing the profession... with gross incompetence, with gross negligence on a particular occasion or negligence on more than $% \left(1\right) =\left\{ 1\right\} =\left$ one occasion".

Each case must be considered separately.

Since this is the first act of alleged simple negligence/ incompetence on your part to come to our attention, we are closing our case. Please note this is not an official adjudication of simple negli-gence. No adjudication can be made against you unless there has been a hearing where the licensee has been afforded due process rights.

VINCENT VOLLARS

Supervising Investigator

CHARGES PHASE Education Law

Sec.6509: Definitions of Professional Misconduct

Fourteen Definitions of Professional Misconduct Listed:

- 1. Obtaining a license fraudulently
- 2. Practicing the profession fraudulently, beyond its authorized scope, with gross incompetence, with gross negligence on one occasion or negligence or incompetence on more than one occasion
- 3. Practicing while impaired by alcohol, drugs, physical disability or mental disability
- 4. Being habitually drunk or being dependent on or a habitual user of narcotics, barbiturates, hallucinogens or other drugs having similar effects
- 5. Being convicted of an act constituting a crime under NYS law, Federal law or the law of another jurisdiction which would constitute a crime in NY



- 7. Permitting, aiding or abetting an unlicensed professional to perform activities requiring a license
- 8. Practicing the profession while the license is suspended

Additional Definitions of Professional Misconduct:

- ► Education Law Sec.6509-b: Arrears in Payment of Support
- ► Education Law Sec.6509-c: Failure to Comply in Paternity or Child Support Proceedings

Rules of the Board of Regents

Part 29. Unprofessional Conduct Part 29.1 General Provisions

Fourteen Areas of Unprofessional Conduct

- 1. Willfully or gross negligent failure to comply with a substantial provisions of Federal, State or local laws, rules or regulations governing the practice
- 2. Exercising indue influence on a patient
- 3. Directly or indirectly offering, giving, soliciting or receiving referral fees
- 4. Permitting any person to share in the fees for professional services other than what is permitted
- 5. Conduct in the practice of a profession which evidences moral unfitness
- 6. Willfully filing a false report or failing to file a report required by law
- 7. Failing to make available to a patient copies of documents

- 8. Revealing of personally identifiable facts, data or information without the consent of the client
- 9. Practicing or offering to practice beyond the scope permitted by law
- 10. Delegating professional responsibilities
- 11. Performing professional services which have not been authorized
- 12. False advertising or guaranteeing any service
- 13. Failing to respond within 30 days to written communication from the Education Department
- 14. Violating any term of probation or condition or limitation imposed by the Board of Regents

Rules of the Board of Regents

Part 29 Unprofessional Misconduct
Part 29.6 Special Provisions for the Profession of
Veterinary Medicine

Eleven Areas of Additional Professional Misconduct

- 1. Claiming or using any secret or special method of treatment which they refuse to divulge
- 3. Failing to maintain adequate records
- 5. Claiming professional superiority or special professional abilities
- 6. Guaranteeing the satisfaction or a cure will result from the performance of professional services
- 8. Abandoning or neglecting an animal patient under and in need of immediate attention without making reasonable arrangements
- 10. and 11. Failing to identify the treating veterinarian, failing to supervise licensed and unlicensed personnel,... and failure to provide a proper practice setting

Education Law Sec. 6510: Penalties for Professional Misconduct

- 1. Censure and reprimand
- 2. Suspension of license Actual
 - a. wholly for a fixed period of time
- b. partially until completion of course of retraining in which the suspension applies
 - c. wholly until completion of coursework
- 3. Revocation of license
- 4. Annulment of license
- 5. Limitation on registration or issuance of a further license
- 6. Monetary fine not to exceed \$10,000



8. Requirement to perform up to 100 hours of community service

Stayed Suspension - Actual/Stayed Suspension

Probation -runs concurrent with Suspension

Generally, a combination of penalties

PENALTYS ARE PROGRESSIVELY MORE SEVERE WITH THE NUMBER OF COMPLAINTS FILED AGAINST YOU

NEXT STEP

Contacted by the Prosecuting Attorney and they will advise of charges of professional misconduct and will offer a penalty to resolve the Complaint

TWO OPTIONS AT THIS POINT

- Accept Offered Penalty and Enter into a Consent Order OR
- ► Reject Offered Penalty

Accept Offered Penalty and enter into a Consent Order

- Brief description of charges of professional misconduct
- You either admit or do not contest the charges of professional misconduct
- Enumeration of items of the agreed to penalty
- Executed by you, your counsel, and the prosecuting attorney
- Need to be approved and executed by Board of Regents
- ► Generally takes several months to go into effect
- BECOMES PUBLIC RECORD

Reject Offered Penalty

Two Options:

- ► Informal Settlement Conference (ISC), OR
- Hearing

Informal Settlement Conference

- Presently conducted remotely via WEBEX
- Attended by you, your counsel, the prosecuting attorney, the Board member and the Executive Director
- Brief opening statements by each counsel
- Dialogue between the Board member and you
- Proposal by your counsel as to a new penalty
- Private conference between the Board member and Executive Director
- Presentation of new penalty by Executive Director
- ► Takes approximately 1 hour

Accept Offered Penalty from ISC

Enter into a Consent Order

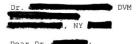
Better Penalty



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK

OFFICE OF PROFESSIONAL DISCIPLINE, PROSECUTIONS DIVISION 1411 BROADWAY, 10TH FLOOR, NEW YORK, NEW YORK 10018-3496 Tol. (212) 951-6401

November 13, 2023



The Professional Conduct Officer of the Office of Professional Discipline, after consultation with the State Board for Veterinary Medicine, has determined that there is sufficient evidence of professional misconduct on your part to warrant a disciplinary proceeding pursuant to New York law. However, in order to resolve this matter expeditiously without a hearing I am authorized to offer you a settlement consisting of a Censure and Reprimand and a \$500.00 fine.

If you are interested in such a resolution, please sign the enclosed form and return it to me along with your check for \$500.00 within $\underline{15}$ days of the date of this letter.

In the event that you do not remit the aforesaid payment by December 1, 2023, we will proceed in this matter with a full hearing
at which you would be subject to the full range of penalties listed
in Section 6511 of the Education Law if found guilty. Please be
advised that the proposed settlement of this matter would be a
matter of public record.

Thank you for your prompt attention to this matter.

Very truly yours,

David Mapitupulu Prosecuting Attorney

/dn Enclosure.





THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK

OFFICE OF PROFESSIONAL DISCIPLINE, PROSECUTIONS DIVISION 1411 BROADWAY, 10⁷⁸ FLOOR, NEW YORK, NEW YORK 10018-3496 Tol. (212) 951-6410 Fax (212) 951-6410

Re: D.V.M. License #

File #

VIOLATIONS COMMITTEE STATEMENT

TO: The New York State Office of Professional Discipline
The New York State Board for Veterinary Medicine

I wish to settle and dispose of the misconduct allegations which are pending against me, to wit: committing unprofessional conduct (on or about through through the Respondent failed to sufficiently document the rapidly developing serious condition of patient an 18 month old dog, as reflected by a serious shift in white blood cell count and fever), in violation of New York Education Law section 6509(9), in grossly negligent violation of 8 NYCRR 29.6(a)(3), a substantial provision of state law governing the practice of the profession of veterinary medicine. For the purposes of settlement I do not contest said allegations. I understand that this settlement will be a matter of public record. I agree to be censured and reprimanded. My check in the sum of \$500.00, payable to the order of "New York State Education Department," is enclosed.

Signature Date



Reject Initial Offered Penalty or Offered Penalty from ISC

Adversarial Hearing

Adversarial Hearing

Multi-step process

- Hearing Panel consists of no less than 3 Board members. Two state Board members in your profession and one either public representative to the Board or a Board member in another profession
- Both sides present witnesses and evidence
- Transcript(1) generated from the Hearing
- ► Hearing Panel renders a Report(2), with findings of fact, determination of guilt on each charge by a preponderance of evidence and recommendations of a penalty
- Next Step: Regents Review Committee generates a Report(3) based on 1 and 2
- Final Step: Board of Regents renders a Regents Decision and Order based on 1, 2 and 3
- Appeal: Article 78 Proceeding

April 2023

Veterinary Medicine

FALCONER NY

Profession: Veterinarian; Lic. No. 007949; Cal. No. 33223

Regents Action Date: April 18, 2023

Action: Application for consent order granted; Penalty agreed upon: 3 months actual suspension, 21 months stayed suspension, upon return to practice, 2 years probation, \$5,000 fine.

Summary: Licensee admitted to charges of having failed to document her conversations with a dog's owner regarding treatment and having failed to document the time when treatment was provided; and probation term violations.

March 2023

Veterinary Medicine



Profession: Veterinarian; Lic. No. 004473; Cal. No. 33372

Regents Action Date: March 13, 2023

Action: Application to surrender license granted.

Summary: Licensee did not contest the charge of failing to document in a patient's medical record the strength of the DSS (dioctyl sodium sulfosuccinate) enema given and the type of subcutaneous fluid given to said patient.

January 2023

Veterinary Medicine

DVM PC; NEW YORK, NY

Profession: Professional Service Corporation; Cal. No. 32604

Regents Action Date: January 10, 2023

Action: Application to surrender certificate granted.

Summary: Registrant did not contest the charge of failing to record a canine's condition before, during, and after surgery, and failing to record the canine's heart rate, body temperature, and pain level.



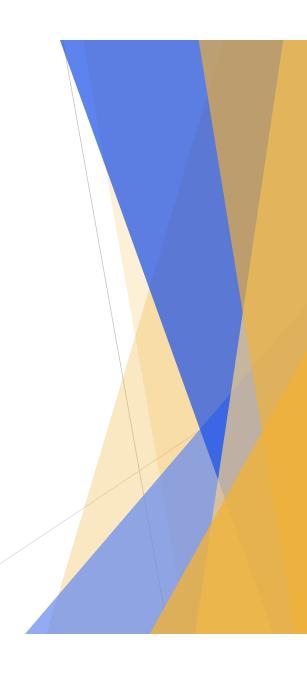


Profession: Veterinarian; Lic. No. 003106; Cal. No. 32603

Regents Action Date: January 10, 2023

Action: Application to surrender license granted.

Summary: Licensee did not contest the charge of failing to record a canine's condition before, during, and after surgery, and failing to record the canine's heart rate, body temperature, and pain level.



July 2023

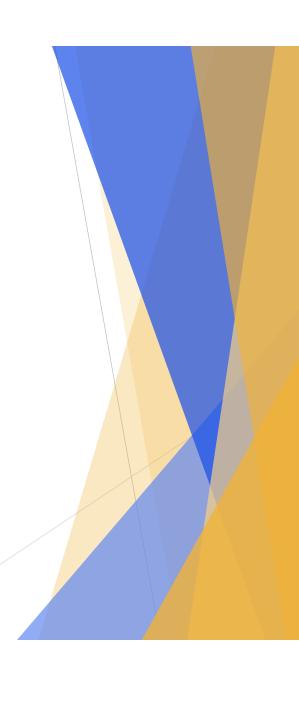
Veterinary Medicine

BRONX NY

Profession: Veterinary Technician; Lic. No. 005802; Cal. No. 33578

Regents Action Date: July 17, 2023 **Action:** Application to surrender license granted.

Summary: Licensee admitted to the charge of practicing the profession of veterinary medicine as a veterinary technician while not registered.



QUESTIONS ???????

John McPhilliamy

► Email:

John.McPhilliamy@ADMLAW.com

Phone: 516 535 1815