



# Legal FAQS

**By** Stephen Marmaduke, Esq.

In this issue, we depart from our normal, one-subject legal article to frequently asked questions posed by CVMA members through the CVMA Legal Services Program. CVMA attorney Steve Marmaduke of Wilke Fleury LLP provides answers.

**I received a letter from the Veterinary Medical Board (VMB) advising me that it is investigating a consumer complaint about the care I provided to “Fluffy.” The VMB is requesting that I provide copies of medical records and comments responding to the complaint. What should I do?**

First, let’s address what NOT to do. Do NOT ignore the letter. Do NOT make “corrections” or “additions” to the medical records. Do NOT assume that because you provided Fluffy outstanding medical care this will go away. Of equal importance, do NOT assume that you are powerless to respond.

Although the VMB’s letter may appear to be merely requesting records, understand that this correspondence with you is part of an investigation that could have adverse consequences on your license. Your first step is contacting your insurance broker, such as Veterinary Insurance Services Company, to report the matter, as some professional liability insurance policies provide a limited defense to administrative claims against your license. If you don’t have such coverage, you should still retain an attorney to counsel you. Attorneys who have experience with the VMB may be able to provide valuable advice regarding your options, defense strategies, and prospects for success. They can also lessen your burden by interfacing with the VMB to minimize your risk, defend your actions, or negotiate a favorable settlement.

Whether discipline is imposed often depends on the facts. The statutes and regulations under which the VMB operates are not always clear, especially when applied to different case scenarios. Good advice and representation may save you time, stress, costs—and your license.

**What should be my primary concern when the VMB contacts me about a consumer complaint?**

Consumer complaints often arise out of an emotional reaction to the loss of or a perceived injury to a beloved pet. There are standard of care issues that can be of concern, but frequently the ultimate issues are unrelated to care provided to the patient and instead center on the condition of the medical records.

When the VMB is investigating a consumer complaint against a veterinarian, its first step may be to request a copy of the relevant medical records. At that point, the adequacy of the medical records will become a primary focus. All veterinarians should be intimately familiar with the recordkeeping requirements of the Veterinary Practice Act (Title 16, California Code of Regulations, sections 2030 et seq.) and should maintain their records accordingly. Simply put, if it does not appear in the medical records, it didn’t happen.

**I was offered a new job. The employment agreement includes a provision that I will not compete with the employer after the termination of my employment. Aren't covenants not to compete in employment agreements unenforceable in California?**

As a general principle of law, provisions in an employment agreement barring an employee from competing with the employer after the termination of employment—also known as “covenants not to compete”—are unenforceable as an unlawful restraint of trade under Business and Professions Code section 16600. Nonetheless, they appear in employment agreements and can be problematic for employees.

Some employers will attempt to circumvent the prohibition, either by a broadly drawn confidentiality provision or a provision that prohibits the solicitation of any clients of the employer. The enforceability of these provisions is questionable. Some employers, particularly based outside of California, may provide that other state laws shall govern the employment relationship, which may make the covenant not to compete enforceable.

Employment agreements are significant legal documents governing the relationship between the employer and employee. Covenants not to compete and other terms applying after the end of the employment relationship may impact an employee's future and should be carefully reviewed by a qualified attorney.

**I am presently a sole proprietor. Should I form an entity that protects me from liability? What are my options?**

Veterinarians may form a corporation to limit their liability. A corporate structure may have tax advantages as well. In general, corporate status is advantageous and recommended. But it is not a “one size fits all” matter. A decision to form a corporate entity should include

consideration of the risk exposures, the cost of forming and maintaining a corporation, and the assets that the veterinarian is seeking to protect.

Balancing the risk of operating a mobile practice with few assets, significant debt, and no employees may be different from owning a multi-doctor practice with significant staff, a primary residence, and vacation property. For example, the risks of malpractice and vehicle liability for the solo house call or mobile practitioner can be adequately covered by insurance. The owner of a larger practice may have exposure to other risks that may be limited, but not eliminated, by insurance.

Although forming and maintaining a corporation is not expensive, there are formation, legal, and accounting costs to be considered. The decision to incorporate should involve consultation with an attorney and an accountant. Generally, though, if a practice has employees, serious consideration should be given to forming a corporate entity. ■

*CVMA veterinarian members may access an attorney for up to 30 minutes of free legal consultation each month through the CVMA Legal Services Program. Attorneys with expertise in business law, employment law, and administrative law (Veterinary Medical Board license defense) are available to answer general questions. More information about this member benefit may be accessed on [cvma.net](http://cvma.net) in the Membership section under Member Benefits.*



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Mr. Marmaduke has been a partner with Wilke Fleury for 30 years and has been practicing law in California for over 40 years. One of his primary focuses is the representation of physicians and medical groups in matters ranging from corporate structure, mergers and acquisitions, joint ventures, business transactions, regulatory issues, and professional employment.

Mr. Marmaduke is part of the CVMA's Legal Services Program, a program designed to assist CVMA member veterinarians with workplace safety, legal issues, and laws and regulations that affect the veterinary profession.