

professional liability

Inside this issue:

Understanding the Complaint Process

Medical Records & License Defense

License Defense Closed Claims

Veterinary License Defense: Don't Practice Without It!

Now more than ever, it's important to create layers of protection around your veterinary license and ability to practice. Owner expectations have changed and the value that is placed on pets and other animals has also changed, leading to an increase in dissatisfaction and complaints. Plus, many licensing boards now allow online complaint submissions, making it easier for an upset owner to file a complaint against a veterinarian's license. As a result, the AVMA Trust has seen an increase in veterinary license defense claims over the last five years. So, in these ever-changing times, the best way to protect yourself as a practicing veterinarian is by having veterinary license defense (VLD) coverage.

How does VLD coverage work?

Veterinary licensing boards are state regulatory agencies whose job is to protect the public. These agencies are obligated to investigate every complaint—including frivolous ones—and they may demand a veterinarian's medical records, request an investigative interview, or even inspect a facility. Receiving notice of a board investigation can be stressful, but with VLD coverage, the process, can progress much more smoothly.



VLD coverage is usually an endorsement—sometimes an optional one—to a professional liability insurance policy. When triggered, the coverage entitles you to legal counsel and provides coverage for legal expenses incurred in defending your license (up to the endorsement limits). The defense attorneys assigned to such cases should be well-versed in administrative and regulatory law, familiar with the licensing agency's process, and experienced in protecting veterinary licenses. The attorney's role is to help you respond to the state licensing board's request for information, answer your questions and provide legal defense.

Through years of reviewing malpractice claims and board complaints, the AVMA Trust has compiled data on the causes of license complaints. The most common one is failed expectations or a bad outcome for a patient. Such complaints can be managed—or even avoided—through good communication. And speaking of communication, it is another common reason for complaints—specifically, a lack of communication on lab results, obtaining consent, potential risks of procedures, and aftercare recommendations.

Many license complaint investigations are closed after finding that the veterinarian's conduct did not violate the applicable state law governing the practice of veterinary medicine. Often, these findings are based on the complaint's lack of merit. But having an experienced attorney can also play a role in a positive outcome.

Understanding the Complaint Process

It's best to familiarize yourself with the complaint process before you're contacted by your state licensing board. Many states explain their investigative process online, and reviewing these websites periodically to familiarize yourself with your board's investigative process and your state veterinary practice act can help prepare you in the event of a complaint.

The investigative process varies from state to state. Your state's laws govern what information your board will provide at the

Medical Records & License Defense

When investigating a complaint, the state licensing board will have access to your medical records and can issue fines for lack of appropriate documentation. In fact, the number one fine by licensing boards is poor record keeping, so it is important to ensure your medical records are in compliance with the state practice act. Your medical records are also your primary defense against a complaint. Appropriate documentation is essential to support your standard of care and protect against false allegations of negligence.

The purpose of medical records is to document a patient's condition and medical care. They also are a key component of continuation of care. Any veterinarian who reads your records should be able to understand the patient's condition and pick up where you left off with treatment. Items that should be included in the medical record are written consent forms, anesthesia logs, surgery reports, physical exam findings, diagnostics and treatment accepted and declined by the client, lab results, estimate sheets, discharge instructions, and all communications including texts, e-mails, voice messages, and verbal conversations. Consult your state practice act for specifics on what to include in your medical records. But remember, this is a minimum requirement.

In addition, records should be accurate, legible, and timely, meaning entries should be made on the same day or within 24-48 hours. It can be challenging at times to slow down long enough to make medical record entries, but the longer you wait to document exams and findings, the more likely you are to forget items. Right or wrong, the quality of your care will often be judged on the quality of your records.

start of an investigation and how the board will conduct the investigation. Some states will mail or email you a copy of the complaint and ask that you provide them with a copy of your medical records and a written response. Some will send you only a summary of the complaint. Others will provide neither the complaint nor a summary. A small number of states may simply send an investigator to your office to request records and interview you. Regardless of how your board opts to contact you, remember the following:

- Never ignore correspondence from your board. Your time to respond will be limited, and in many states, the deadline for your response is set by law.
- Contact your professional liability carrier as soon as you receive a notice from the board that a complaint has been made against your license. If you have VLD coverage, the carrier will assign an attorney to assist with your responses to the board and guide you.

Almost every complaint made to the regulatory agency leads to some level of investigative activity. Still, few investigations result in a “formal complaint” being filed against the veterinarian. A formal complaint is a public document or pleading that lists specific charges against the veterinarian’s conduct and seeks to discipline the veterinarian’s license. Disciplines can range from reprimand to revocation. Regardless of the outcome, having VLD coverage is essential to your peace of mind.

License Defense Closed Claims

Lack of VLD Coverage Forces Dr. A to Self-Represent

Dr. A performed an enterotomy on a two-year-old MN Labrador Retriever to remove a corn cob from the jejunum. The client declined transfer for overnight monitoring and elected to take the patient home, returning daily for outpatient treatment. Three days post-op, purulent incisional discharge was observed. Bloodwork revealed leukopenia and hypoglycemia. The patient was transferred to an emergency hospital for continued care, where an abdominal exploratory diagnosed a septic abdomen secondary to dehiscence



of the enterotomy site. Surgical repair and stabilization were attempted, but the patient continued to decline and went into cardiac arrest the following day.

The owner filed a complaint against Dr. A’s license, alleging that Dr. A’s treatment resulted in the patient’s death. Dr. A reported the complaint to their insurance carrier and discovered they did not have the VLD endorsement. Dr. A was given the option of paying attorney fees out of pocket or representing themselves to the licensing board. Dr. A elected to represent themselves. After reviewing the medical records, the board determined that Dr. A’s surgical technique resulted in dehiscence of the enterotomy site and subsequent peritonitis. Dr. A was ordered to refund the client’s fees, complete 15 hours of CE on soft tissue surgery, and pay a \$5,000 fine.

Premature Puppies Trigger Complaint

A pregnant two-year-old Boston Terrier presented for a C-section. The client informed Dr. B of the breeding dates and requested to have surgery before the patient went into labor. A C-section was performed without incident and five puppies were delivered. Once recovered from anesthesia, the dam and puppies were discharged. The client found one puppy dead the following morning and rushed the remaining litter to a local emergency room, where they all died shortly after arrival.

Based on PE findings and necropsy, the puppies were determined to be premature.

The client filed a complaint with the state licensing board, alleging that Dr. B's treatment resulted in the death of the puppies. Dr. B filed a claim, and the insurance carrier provided legal defense counsel to respond to the board. After review of the claim and medical records, the board agreed that the puppies were delivered prematurely. Dr. B's medical records did not contain any PE findings to dispute this claim. The licensing board found that Dr. B. lacked medical record keeping and failed to offer diagnostic testing to better determine the whelping date. They also reiterated that the gestation length and whelping date should be based on the date of conception, not breeding dates. They recommended that Dr. B pay a \$5,000 fine and complete 10 hours of CE in theriogenology and medical record keeping. Dr. B did not accept the recommendation, and their attorney requested a formal hearing. At the hearing, the board decreased their findings to 5 hours of CE and no fine. The legal fees paid by the insurance carrier to defend Dr. B against the licensing complaint were more than \$3,500.

Lack of Client Consent Leads to Complaint

A one-year-old F Golden Retriever mix presented to Dr. C for a spay and DHPPL booster. At surgical check-in, the client mentioned to the technician that the puppy vomited after the last DHPPL vaccination and requested that leptospirosis not be administered this time. Surgery and DHPPL vaccination were performed. Despite the patient not exhibiting any signs of an adverse reaction, the client became upset at discharge to find that the dog had received a leptospirosis vaccine. Dr. C apologized, but the client filed a complaint with Dr. C's state regulatory agency.

Dr. C notified their insurance carrier, who assigned local defense counsel. When the

claim came up for review, Dr. C's attorney stated that Dr. C was not made aware of the client's request and informed the board of new protocols at Dr. C's hospital to prevent this type of error from occurring again. The licensing board was satisfied with the changes and the complaint was closed with Dr. C receiving a letter of advice. The legal fees to defend Dr. C totaled \$2,600.

Dr. D Reported to Board after Euthanasia

Dr. D was presented with a 12-year-old Warmblood mare for forelimb lameness. Bilateral forelimb laminitis was suspected after examination and radiographic imaging. Treatment was administered, including phenylbutazone, therapeutic shoes, diet change, and stall rest. Pain management and therapeutic support were modified over the next few months, but the lameness progressed. While the patient was receiving a hoof trim, a farrier found an abscess resulting in the client questioning Dr. D's diagnosis of laminitis. During Dr. D's next exam, they found signs of P3 sinking, purulent discharge from around the coronary band, and detachment of the hoof capsule. The client was informed of the catastrophic changes and elected to pursue a referral. The patient was ultimately euthanized.

A malpractice claim was filed against Dr. D, which was denied as their treatment was deemed appropriate. The client then filed a board complaint, alleging Dr. D misdiagnosed the mare. Dr. D notified their insurance carrier, who provided legal counsel. Upon meeting with the board, Dr. D's legal counsel argued that the patient's physical and diagnostic findings were consistent with a diagnosis of laminitis, and that abscesses are a common sequelae of laminitis. After review of the medical records, the board agreed with Dr. D and their counsel and dismissed the claim. Attorney's fees paid by Dr. D's insurance carrier totaled \$1,500.

For a coverage comparison and quote, call **800-228-7548, option 2**. For the full suite of AVMA Trust offerings, visit avmaplit.com and avmalife.org.

AVMA LIFE[®]
AVMA PLIT[®]