

VETERINARY MEDICAL BOARD
Subcommittee on Corporate Practice of Veterinary Medicine

1 April 2019

Status Update on Proposals Related to Premises Registrations, Managing Licensees and the
Corporate Practice of Veterinary Medicine

The Subcommittee has had several phone conferences to discuss the above matter, as well as all information submitted. The following is our brief outline of findings to date:

- We solicited input from corporations that are currently operating or are considering operating veterinary medical premises in California. To date, we have received comments from one group.
- We have reviewed comments submitted, including those by Animal Policy Group.
- We have discussed the concerns brought forth to the subcommittee.
- There are specific concerns relating to the Veterinary Medicine Practice Act and a premises permit/property where veterinary services are provided as noted previously.
 - Clarification may be necessary regarding corporation premises ownership and its influence in the practice of veterinary medicine.
- The Veterinary Medical Board (VMB) has not received a high volume of complaints regarding this issue; this may be due to the non-disclosure clauses that are included in the employment contracts between the corporation and the veterinary medicine practitioner. Veterinarians and registered veterinary technicians (RVTs) who entered into these contracts may not feel free to come forward.
- The Subcommittee understands the VMB is being proactive in its approach to a potential issue; therefore, we recommend soliciting feedback from veterinary medicine practitioners.
- To solicit honest feedback from licensees without the fear of retaliation, the Subcommittee distributed an anonymous survey to VMB subscribers. Comments received by the Subcommittee will be discussed at the April meeting.
- We will also consider comments and discussions from stakeholders at the April meeting

Respectfully submitted,

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MEMORANDUM

DATE	February 2, 2018
TO	Members Veterinary Medical Board
FROM	Tara Welch, Attorney III Legal Affairs Division, Department of Consumer Affairs
SUBJECT	Corporate Practice of Veterinary Medicine

Questions Presented

Can a general corporation own or operate a veterinary medical practice or influence the standards of veterinary medicine practice?

Short Answers

Current statutory and regulatory law does not explicitly prohibit general corporate ownership or operation of a veterinary medical practice or influence over the standards of veterinary medicine practice.

Discussion

In recent years, there has been a trend toward large corporations purchasing smaller veterinary practices. These mergers may be beneficial to consumers, who can continue to receive veterinary services for their pets rather than having to find a new veterinary practice if the small veterinary practice otherwise closed, but these mergers raise potential concerns as to whether these corporations are influencing the veterinary care provided by veterinarians and whether California consumers have any protection from the commercialization of veterinary practice.

This memorandum reviews the state laws affecting the corporate practice of medicine, corporate ownership of a veterinary premises, and corporate ownership and operation of a veterinary practice. This memorandum also discusses contractual arrangements for management services of a veterinary practice and the potential implications on consumer protection. This memorandum also provides possible recommendations for the Veterinary Medical Board (Board) to consider submitting to the Legislature in order to address the issues raised herein.

A. Background on the Corporate Practice of Medicine and Professional Corporations

A corporation is a legal entity created by statute, which permits a group of people, as shareholders, to apply to the government (the California Secretary of State) for an independent organization to be created. A corporation is empowered with legal rights usually only reserved for individuals, such as to

sue and be sued, to own property, hire employees, or borrow and loan money. Benefits to individuals organizing as a corporation include immunity from individual liability and reductions in taxes applicable to the income received by the organizing individuals.

According to the California Research Bureau, “[b]etween 1905 and 1917, courts in several states ruled that corporations could not engage in the commercial practice of medicine, even if they employed licensed physicians, because a corporation could not be licensed to practice medicine and commercialism in medicine was contrary to sound public policy.” (A. Kim, California Research Bureau, *The Corporate Practice of Medicine Doctrine* (Oct. 2007), CRB 07-011, p. 12.) These courts established the common-law corporate practice of medicine doctrine, which bans the corporate practice of medicine.

As the corporate practice of medicine doctrine developed under common law, in the 1930s, several statutes were enacted in California’s Medical Practice Act to prohibit unlicensed persons from practicing medicine, employment of unlicensed physicians, and interference with a physician’s medical judgment (Bus. & Prof. Code, §§ 2052, 2264, 2401). These statutes protect patients from a treating physician with divided loyalties between independent medical judgment and meeting the demands of a lay person or entity (corporate owner).

In 1968, the Moscone-Knox Professional Corporation Act (Moscone-Knox) (Corp. Code, § 13400 et seq.) established the ability of individuals who are professionally licensed to organize as a professional corporation. Moscone-Knox defines “professional corporation” to mean a corporation organized under the General Corporation Law that is engaged in rendering professional services in a single profession pursuant to a certificate or registration issued by the governmental agency regulating the profession and designates itself as a professional or other corporation as required by statute, and “professional services” means any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act.” (Corp. Code, § 13401(a), (b).)

Following the enactment of Moscone-Knox, the California Attorney General issued an opinion that further clarified California’s corporate practice of medicine doctrine and stated that a corporation is a creature created by statute, and, aside from Moscone-Knox and nonprofit corporation provisions, the Corporations Code does not provide specific authority for a corporation to practice the healing arts. (58 Ops. Cal. Atty. Gen. 755, 758 (1975).) That opinion also stated that “[e]xcept as otherwise specifically provided by statute, it is well settled that neither a corporation nor any other unlicensed person or entity may engage, directly or indirectly, in the practice of certain learned professions, including the legal, medical, and dental professions.” (*Id.*)

In 1980, the Medical Practice Act was repealed, revised, and recast. At that time, the Medical Practice Act included that lay entities (e.g., general corporations) have no professional rights, privileges, or powers to practice medicine (Bus. & Prof. Code, § 2400), but professional medical corporations in compliance with Moscone-Knox were exempt from this restriction (Bus. & Prof. Code, § 2402).

With respect to the corporate practice of veterinary medicine, the Veterinary Medicine Practice Act similarly prohibits the unlicensed practice of veterinary medicine and the aiding and abetting of the unlicensed practice of veterinary medicine, and provides that a veterinary corporation is a corporation which is authorized to render professional services, as defined, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are licensed veterinarians are in compliance with the Moscone-Knox (Bus. & Prof. Code, §§ 4825, 4883(j), 4910). Unlike the Medicine Practice Act, the Veterinary Medicine Practice Act does not provide that lay entities

have no professional rights, privileges, or powers to practice veterinary medicine, and there is no explicit ban on interfering with a veterinarian's medical judgment.

B. General Corporate Practice Ban Problem

Although the Medical Practice Act provides limitations on the corporate practice of medicine ("corporations and other artificial legal entities shall have no professional rights privileges, or powers" (Bus. & Prof. Code, § 2400)), most of the other healing arts practice acts do not contain this prohibition. Rather, numerous healing arts practice acts only provide that a professional corporation is authorized to render professional services as long as the shareholders, officers, directors, and employees rendering professional services are licensed and in compliance with the Moscone-Knox (e.g., Veterinary Medicine Practice Act, Bus. & Prof. Code, § 4910; Physical Therapy Practice Act, Bus. & Prof. Code, § 2690). Even though common law bans the corporate practice of medicine, the statutory language authorizing formation of a professional corporation may be interpreted as permissive (i.e., licensees *can* organize as a professional corporation) rather than restrictive (the *only way* to organize as a corporation and provide health care services is to organize as a professional corporation). The statutes are otherwise silent as to whether corporations that do not comply with Moscone-Knox may practice.

Consequently, these boards and their licensees are left to interpret a patchwork of statutes in their respective practice acts, Moscone-Knox, general corporation law, and the Medical Practice Act to determine whether corporate practice of the profession is prohibited. Without statutory language that clearly bans corporations from practicing a health care profession requiring licensure or rendering health care services, healing arts boards struggle with enforcing the corporate practice ban intended to protect consumers from commercial motives of the corporation being asserted over a healing arts licensee's professional judgment.

C. Specific Corporate Practice Ban Problem of Veterinary Medicine

Veterinary medicine, a healing art under the Business and Professions Code, has two problems relative to the corporate practice ban that are unique to veterinary medicine and not applicable to most other healing arts. First, the Medical Practice Act and its ban on the corporate provision of medical services does not apply to the provision of animal health care services. Thus, while some healing arts boards are authorized through their respective practice acts to enforce violations of the Medical Practice Act and could potentially refer to the Medical Practice Act's corporate practice ban statute, the Board is not authorized to rely on that statute. Rather, the Board's authority is limited to the Veterinary Medicine Practice Act statute authorizing licensees to organize as professional corporations pursuant to Moscone-Knox. (Bus. & Prof. Code, § 4910.) But again, that arguably permissive professional corporation language does not specifically ban the practice of the licensed profession or rendering of veterinary services by a general corporation owned by non-licensed individuals.

Second, the Veterinary Medicine Practice Act is unique in that it licenses veterinarians who practice veterinary medicine, registers the veterinary premises, and authorizes professional corporations to render veterinary services. Notably, the Veterinary Medicine Practice Act does not specifically define whether a veterinary premises means the property at which a veterinary practice provides services and does not define a veterinary practice as the business that offers veterinary medical services. This has led to the terms "premises" and "practice" to be used interchangeably, even though they are conceptually very different. The Veterinary Medicine Practice Act requires that a premises be registered but does not require the premises owner to be a licensed veterinarian. Further, the Act is silent as to requiring that a veterinary practice be registered or owned by a licensee.

The lack of definition of the veterinary practice has led to a trend where general corporations are purchasing and operating not only veterinary premises, but also the veterinary practices located at the premises. General corporate ownership of veterinary practices raises potential concerns for consumers in that corporations are in a position to dictate the standards of care provided by the veterinarians employed by the corporation. This situation is analogous to a medical clinic that is owned and operated by unlicensed individuals and where the licensed professionals are employed to render health care services. Under the Medical Practice Act, clinic owners/operators are prohibited from interfering with, controlling, or otherwise directing the professional judgment of a physician and surgeon (Bus. & Prof. Code, § 2401(b)). Conversely, there is no specific statutory prohibition on unlicensed shareholders/owners/operators of either a veterinary premises or practice interfering with the professional judgment of a veterinarian.

Accordingly, national corporations are purchasing veterinary premises, registering the premises in the corporate name, operating the veterinary practices housed at the premises, employing veterinarians as Licensee Managers of the premises, as well as general practitioners, and, ultimately, practicing the licensed profession of veterinary medicine. Such corporations have unlicensed officers who also manage the payroll department and negotiate employment agreements entered into between the general corporation and veterinarians and veterinary staff working at each premises. The employment agreements contain net revenue percentage incentives to sell the corporation's animal care products, including vaccinations, flea treatments, vitamins, shampoos, dental products, and prescription pet foods and services, which may or may not be in the best interest of the animal. Consequently, these employment agreements, and the commission-based fee structures therein, create an environment where veterinarians may believe their employment is at risk if they are not selling the corporate animal care products and services to the client.

In addition, veterinarians who own a veterinary practice may enter into contracts for the provision of management services that may be provided by the corporate premises owner, outside management services organizations, or even as corporate partners in the veterinary practice. These arrangements also potentially allow for corporate control over veterinary medical practice. Notably, since the Medical Practice Act specifically states that legal entities (corporations) have no practice rights but the Veterinary Medicine Practice Act does not, and veterinary premises can be owned by unlicensed entities, general corporation premises and/or practice owners could argue that the lack of a similar limitation of corporate practice rights under the Veterinary Medicine Practice Act shows that the Legislature did not intend to place the same limitations on the corporate practice of veterinary medicine as are applied to the corporate practice of medicine.

Given the recent trend of large corporations merging with small veterinary practices, and the corporations' employment of veterinarians and veterinary staff with financial incentives tied to selling the animal health care products of the corporations, it would be helpful to clarify in statute the boundaries between corporation ownership of the premises and/or practice and the corporation's influence over the practice itself.

D. Possible Board Recommendations of Statutory Solutions

Attached hereto for the Board's consideration is statutory language to address the corporate practice of veterinary medicine in several ways, described further below. These proposals are modeled after the Medical Practice Act and related laws, which provide similar limitations on corporate hospital and clinic ownership and employment of physicians and other healing arts practitioners. Since access to veterinary services may not otherwise be available without the corporate ownership and operation of the veterinary practice, these proposals are intended to provide a conservative approach to updating

the veterinary medicine practice laws without banning general corporation ownership altogether. The bracketed information below refers to the location of the provision in the attached proposals.

1. Limit practice authority of premises permit holders. This proposal would add to the premises permit statute a new provision that the issuance of a premises permit does not authorize the holder of the permit to furnish animal patient advice, services, or treatment and would track a similar provision in the Health and Safety Code prohibiting the practice of medicine by a clinic. [Pg. 1, Bus. & Prof. Code, § 4853, new subd. (d).]
2. Corporation rights, privileges, and power. This proposal would add two new statutes to provide that corporations and other artificial legal entities, other than professional veterinary corporations, have no professional rights, privileges, or powers and are prohibited from engaging in the practice of veterinary medicine; this would track the corporate limitations provided under the Medical Practice Act. [Pgs. 1-2, Bus. & Prof. Code, new §§ 4910.1, 4910.2.]
3. Employment of licensed professionals. This proposal would add a new statute providing for employment by a veterinary clinic or hospital owned by a general corporation of persons licensed under the Veterinary Medicine Practice Act, but prohibit employment agreements providing for clinic or hospital control of professional judgment or services. This provision would also authorize the Board to obtain information from the clinic or hospital (such as employment agreements) to enforce the provision. This proposal tracks the clinic/hospital prohibition on control of professional judgment in the Medical Practice Act, as well as the authority to obtain necessary documents provided in the Pharmacy Act. [Pg. 2, Bus. & Prof. Code, new § 4918.]
4. Management Services Organizations (MSOs). Aside from selling the veterinary practice and becoming employed by a general corporation that owns and operates the veterinary practice, veterinarians may instead enter into agreements for the provision of administrative and/or management services by a management services organization (MSO), which can be beneficial to the veterinary practice by applying management expertise to reduce the operating costs of the practice. These types of arrangements may include agreements in which the management services organizations lease to the veterinarians the facility and medical and non-medical equipment.

As with the general corporate ownership of a veterinary practice problem, there are currently no prohibitions on the exertion of control by an MSO over the professional judgment of the veterinarian. Notably, a general corporate premises owner could also enter into a management services arrangement with the veterinary practice owner. Although these types of arrangements may be necessary for a veterinarian who wants to focus on the provision of animal health care services rather than the day-to-day administrative affairs of running a business, it may be prudent to authorize these types of arrangements by statute, and, in addition to cross-referencing the existing prohibition on patient referral rebates (see Bus. & Prof. Code, § 650), clarify the limitations of these agreements by regulation. This proposal would allow veterinarians to contract for administrative/management services while protecting consumers and animal patients from unlicensed control over the care rendered by the veterinarian. [Pg. 2, Bus. & Prof. Code, new § 4919.]

E. Regulatory Proposals

In addition to the statutory proposals above, the Board may wish to consider adopting regulations to clarify the new authorization in proposed Business and Professions Code, section 4918, subdivision (c) to require the clinic, hospital, or veterinarian to disclose to the Board any information deemed reasonably necessary to enforce the prohibition on contracts providing for control over professional judgment or services. [Pg. 6, CCR, new § 2095.] Additionally, if the Board agrees that management services should be addressed by statute, the Board may wish to consider defining the limitations of MSOs by regulation. [Pgs., 3-5, CCR, new §§ 2090-2093.]

Conclusion

Although the ban on corporate practice of medicine has evolved over time and strengthened human patient protection, the protections for animal patients and their owners has not kept pace. Potential risks exist to consumers and animal patients if commercial motives are prioritized above professional judgment. Due to the increasing corporate ownership and operation of veterinary practices and the need for veterinarians to properly apply their professional judgment on a case-by-case basis, the Board may wish to recommend legislative proposals and adopt regulations to address these issues.

Attachments: Legislative and regulatory proposals

VETERINARY MEDICAL BOARD
Corporate Practice of Veterinary Medicine

Proposed revisions are shown in single underline for new text and ~~single strikethrough~~ for deleted text.

Statutory Proposals:

Business and Professions Code, Division 2, Chapter 11

Article 3. Issuance of Licenses.

4853.

(a) All premises where veterinary medicine, veterinary dentistry, veterinary surgery, and the various branches thereof is being practiced shall be registered with the board. The certificate of registration shall be on a form prescribed in accordance with Section 164.

(b) "Premises" for the purpose of this chapter shall include a building, kennel, mobile unit, or vehicle. Mobile units and vehicles shall be exempted from independent registration with the board when they are operated from a building or facility which is the licensee manager's principal place of business and the building is registered with the board, and the registration identifies and declares the use of the mobile unit or vehicle.

(c) Every application for registration of veterinary premises shall set forth in the application the name of the responsible licensee manager who is to act for and on behalf of the licensed premises. Substitution of the responsible licensee manager may be accomplished by application to the board if the following conditions are met:

(1) The person substituted qualifies by presenting satisfactory evidence that he or she possesses a valid, unexpired, and unrevoked license as provided by this chapter and that the license is not currently under suspension.

(2) No circumvention of the law is contemplated by the substitution.

(d) This section does not authorize any person, corporation, or artificial legal entity, other than a licensed practitioner of veterinary medicine or a veterinary corporation practicing pursuant to Article 6 (commencing with Section 4910) of this Chapter and the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), to furnish to any person or animal patient any advice, services, or treatment within the scope of veterinarian licensure under this chapter. This section does not authorize any person, other than a licensed veterinarian within the scope of his or her license, to engage directly or indirectly in the practice of veterinary medicine, surgery, and dentistry. This section does not regulate, govern, or affect in any manner the practice of veterinary medicine, surgery, or dentistry by any person duly licensed to engage in such practice.

Article 6. Veterinary Corporations

4910.1. (a) Corporations and other artificial legal entities shall have no professional rights, privileges, or powers.

(b) The provisions of subdivision (a) do not apply to a veterinary corporation practicing pursuant to the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code) and this article, when such corporation is in compliance with the requirements of these statutes and all other statutes and regulations now or hereafter enacted or adopted pertaining to such corporations and the conduct of their affairs.

4910.2. A professional corporation, foreign professional corporation, or other legal entity not owned exclusively by one or more licensed veterinarians shall not engage in the practice of veterinary medicine.

4918. (a) Except as provided in Section 13403 of the Corporations Code, a veterinary clinic or hospital that is owned by a general corporation, foreign corporation, or other legal entity but is not exclusively owned by one or more licensed persons shall be registered with the board pursuant to Section 4853 and may employ, or enter into contracts or other arrangements with, any person or persons licensed under this chapter, but no such employment, contract, or arrangement shall provide for the rendering, supervision, or control of professional judgment or services other than as authorized by law.

(b) The veterinary clinic or hospital shall not interfere with, control, or otherwise direct the professional judgment of any licensed veterinarian, registered veterinary technician, or veterinary assistant.

(c) The board may require any information the board deems is reasonably necessary for the enforcement of this section.

4919. (a) A veterinarian or group of veterinarians, whether or not incorporated, may employ, or enter into a contract or other arrangements with a management services organization to provide management services to the veterinarian or the veterinary practice, but no such employment, contract, or arrangement shall provide for the management services organization to render control, supervision, or intervention in a veterinarian's practice of veterinary medicine, or violate Section 650.

(b) For purposes of this section, "management services organization" means a person or entity that provides management or administrative services.

(c) The board may require any information the board deems is reasonably necessary for the enforcement of this section.

Proposed Regulations:

California Code of Regulations, Title 16, Division 20

Article 12. Management Services Organizations in Veterinary Practice

2090. Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(a) "Control" means the ability to order or dictate the delivery or the manner of delivery of any services or tasks. Consulting with another person regarding a service or task, or assisting in the performance of a service or task, does not constitute control.

(b) "Intervene" means directly altering the practice of veterinary medicine. Recommending or providing a service or supply or performing management services under this section does not constitute intervention.

(c) "Management services" means those services and activities relating to the operation of a veterinary practice exclusive of the practice of veterinary medicine.

(d) "Management services organization" means a person or entity that provides management services.

(e) "Veterinary medical personnel" means persons under the direct or indirect supervision of a veterinarian who perform duties directly related to the practice of veterinary medicine.

Note: Authority cited: Sections 4808, Business and Professions Code. Reference: Section 4919, Business and Professions Code;

2091. Prohibited Practices.

(a) A management services organization shall not control or intervene in a veterinarian's practice of veterinary medicine. Prohibited activities by a management services organization, whether or not authorized by contract, include but are not limited to:

(1) employing a veterinarian to practice veterinary medicine;

(2) determining the compensation of a veterinarian for the practice of veterinary medicine;

(3) controlling or intervening in a veterinarian's diagnosis, treatment, correction, change, manipulation, relief, or prevention of animal disease, deformity, defect, injury or other physical condition, including the prescription or administration of a drug, biologic, anesthetic, apparatus, or other therapeutic or diagnostic substance or technique;

(4) controlling or intervening in a veterinarian's selection or use of type or quality of medical supplies and pharmaceuticals to be used in the practice of veterinary medicine;

(5) determining the amount of time a veterinarian may spend with a patient;

(6) owning drugs, unless the drugs are owned in compliance with applicable state or federal law;

(7) owning and controlling the records of patients of the veterinarian;

(8) determining the fees to be charged by the veterinarian for the veterinarian's practice of veterinary medicine;

(9) mandating compliance with specific professional standards, protocols, or practice guidelines relating to the practice of veterinary medicine;

(10) placing limitations or conditions upon communications that are clinical in nature with the veterinarian's clients;

(11) requiring a veterinarian to make referrals in violation of section 650 of the code; or

(12) penalizing a veterinarian for reporting violations of a law regulating the practice of veterinary medicine.

(b) Veterinarians, and entities in which veterinarians are the sole owner, shareholders, or partners, are not prohibited from performing the activities set out in subsections (a)(1) - (10) of this section.

Note: Authority cited: Sections 4808, Business and Professions Code. Reference: Section 4919, Business and Professions Code.

2092. Permitted Management Services. Permitted activities by a management services organization include, but are not limited, to:

(a) providing by lease, ownership, or other arrangement:

(1) the facility used by the veterinarian in the practice of veterinary medicine;

(2) the medical equipment, instruments, and supplies used by the veterinarian in the practice of veterinary medicine; and

(3) the business, office, and similar non-medical equipment used by the veterinarian.

(b) providing for the repair, maintenance, renovation, replacement or otherwise of any facility or equipment used by the veterinarian in the practice of veterinary medicine;

(c) providing accounting, financial, payroll, bookkeeping, budget, investment, tax compliance, and similar financial services to the veterinarian;

(d) providing information and information systems and services for the veterinarian so long as any patient records in these systems are clearly owned and freely accessed by the veterinarian;

(e) providing the services of billing and collection of the veterinarian's fees and charges;

(f) arranging for the collection or sale of the veterinarian's accounts receivable;

(g) providing advertising, marketing and public relations services that comply with Section 651 of the code pertaining to the practice of veterinary medicine;

(h) providing contract negotiation, drafting, and similar services for the veterinarian;

(i) providing receptionist, scheduling, messaging, and similar coordination services for the veterinarian;

(j) obtaining all licenses and permits necessary to operate a practice of veterinary medicine that may be obtained by a non-veterinarian, and assisting veterinarians in obtaining licenses and permits necessary to operate a practice of veterinary medicine that may be obtained only by a veterinarian, provided that the executive officer of the board approves the method of payment for veterinary license renewals paid by the management services organization;

(k) assisting in the recruiting, continuing education, training, and legal and logistical peer review services for the veterinarian;

(l) providing insurance, purchasing and claims services for the veterinarian, and including the veterinarian and veterinary medical personnel on the same insurance policies and benefit plans as the management services organization;

(m) providing consulting, business and financial planning, and business practice and other advice;

(n) establishing the price to be charged to the veterinary client for the goods and supplies provided or managed by the management services organizations;

(o) employing and controlling persons who:

(1) perform management services;

(2) are veterinarians employed by a management services organization to perform management services but not the practice of veterinary medicine; or

(3) perform management, administrative, clerical, receptionist, secretarial, bookkeeping, accounting, payroll, billing, collection, boarding, cleaning and other functions; or

(p) employing veterinary medical and other personnel, if a veterinarian present at the practice location in charge of veterinary medicine for that practice location at which the veterinary medical and other personnel work has the right to:

(1) control the medically related procedures, duties, and performance of the veterinary medical and other personnel; and

(2) suspend for medically related reasons the veterinary medical and other personnel unless the suspension is contrary to law, regulation or other legal requirements.

Note: Authority cited: Sections 4808, Business and Professions Code. Reference: Section 4919, Business and Professions Code.

2093. Disclosure of Contracts.

(a) A veterinarian or a group of veterinarians that contract with a management services organization shall:

(1) make available for inspection by the board at the main office of the veterinarian or group of veterinarians copies of the contracts with the management services organizations; and

(2) if the board opens an investigation against a veterinarian or a group of veterinarians, make available to the board copies of the contracts with the management services organizations.

(b) Verbal contracts will not be considered evidence of compliance with this section.

(c) Copies of contracts provided to the board pursuant to this section are confidential and not subject to disclosure pursuant to section 6250 et seq. of the Government Code.

Note: Authority cited: Section 4808, Business and Professions Code. Reference: Section 4919, Business and Professions Code.

Article 13. Requirements for Corporations

2095. Disclosure of Corporate Records

(a) Upon request by the board, a veterinary corporation, foreign veterinary corporation, general corporation, foreign corporation, or other legal entity shall make available for inspection or provide copies of the following:

(1) copies of all documents filed with the Secretary of State.

(2) all corporate records, including, but not limited to, ownership agreements between any director, officer, owner, or shareholder.

(3) any employment contract between the corporation or legal entity and a licensee.

(4) all written policies or procedures.

(b) Copies of corporate records provided to the board pursuant to subsection (a)(2) shall be considered corporate financial records and/or corporate proprietary information including trade secrets and are confidential and not subject to disclosure pursuant to section 6250 et seq. of the Government Code.

Note: Authority cited: Sections 4808 and 4916, Business and Professions Code. Reference: Sections 4910, 4912, 4918, and 4919, Business and Professions Code; Section 13401.5, Corporations Code; and Section 6254.15, Government Code.

Comments Regarding Proposed Veterinary Medicine Practice Act Amendments Related to “Corporate” Veterinary Practices in California

March 22, 2019

The Animal Policy Group works full time nationally with a wide range of stakeholders in the area of animal health and veterinary medicine, including corporate practices, and appreciates the opportunity to submit comments to the MDC.

Overview

Legal counsel from the Attorney General’s Consumer Affairs division submitted to the California Veterinary Medical Board (CVMB) a memorandum, draft legislation and administrative rules proposing to clarify and restrict “corporate practices” in California. The proposed legislation and rules are unnecessary based upon current protections in the Veterinary Medicine Practice Act (“Practice Act”), and erroneously single out a particular ownership structure for highly intrusive and burdensome restrictions. If some form of legislation or administrative rule ultimately is desired, then much simpler alternatives are available.

Rationale for Pending Proposals

The fundamental flaw in the proposals first appears in the opening section of the February 2, 2018 memorandum provided by Consumer Affairs legal counsel. The memorandum offers the premise that corporate mergers of veterinary practices “raise potential concerns as to whether these corporations are influencing the veterinary care provided by veterinarians.” These concerns are purely speculative, and no evidence, examples or consumer complaints are cited in support. The absence of complaints or data pointing to corporations crossing over the boundary during the decades of corporate involvement in veterinary practices colors the entire analysis. We are to assume for this entire project that these speculative concerns are fair and real. They are not.

No data or performance history exists to support a claim (characterized as a “concern”) that a particular form of ownership or size of entity triggers a risk that improper financial motives are “influencing the veterinary care provided by veterinarians”. This argument faces two problems. First, solo practices, two-person small town practices, 2-4 site practices, shelters and large metropolitan corporate practices all face economic pressures, whether owned by veterinarians or not. The need to meet payroll, make lease payments, acquire equipment, cover insurance and benefits costs...all are daily factors in operating a veterinary practice regardless of the legal form of ownership and scale of practice. It is neither accurate nor fair to assign these risks solely to “corporate practices.” Second, it is not unethical or a violation of the veterinarian’s code or Practice Act for a veterinarian to be mindful of these economic realities. Any more than

it's unethical for a medical doctor, lawyer, engineer, accountant or other service professional to be mindful of these facts of professional life. What's not appropriate is to make a veterinary medical judgment affecting a patient based upon *these* factors, rather than the physical and medical facts at hand and a professional's trained judgment. The elaborate structure of the proposed statutes and administrative rules are overkill to achieve an end already mandated in the Practice Act.

The memorandum goes on to suggest that "concerns" must be addressed as to "whether consumers have any protection from the commercialization of veterinary practice." Frankly, it's not even clear what is meant by the *commercialization of veterinary practice*. The phrase sounds ominous and implies that veterinary practices in California only recently began engaging in commercial activities, presumably due to the onset of corporate mergers and acquisitions. This isn't the case for reasons that the MDC and CVMB readily may appreciate. The need to make a profit and keep the doors open has been present since the first veterinary clinic opened in California and remains the case today. More important, where is the evidence supporting a concern that consumers require greater "protection" from the "commerce" of veterinary medicine than provided currently in the Practice Act?

The memorandum relies upon a false hypothetical that corporate practices are intending or attempting to "practice veterinary medicine" in California. It implies that corporate practices are directing or allowing persons other than California-licensed veterinarians to treat patients and make medical judgments. Or it suggests that California-licensed veterinarians are being instructed by laypersons on how to diagnose and treat patients. On page 4 of the memorandum it is declared that "national corporations are...practicing the licensed profession of veterinary medicine." This is a dramatic assertion, to be sure, but it's not supported by evidence and should not serve as a basis for legislative amendments or administrative rules.

The Practice Act expressly "prohibits the unlicensed practice of veterinary medicine". Only a veterinarian is *licensed* to practice veterinary medicine in California. The Act is not ambiguous in how this works, nor has the CVMB been hamstrung or confused in enforcing this rule. An academic debate about whether the terms of the Act are sufficiently "permissive" or "restrictive" may be interesting, but it's not a real-world debate justifying legislation or administrative rule-making.

Management Services Agreements

The same problems apply to the discussion and proposals related to management services agreements (MSA's) between veterinary practices and corporate entities. The memorandum suggests that MSA's "potentially allow for corporate control over veterinary medical practice". Again, we are presented with a hypothetical but no evidence of this taking place in California, or of actual consumer harm. The justification is not anchored in a current problem requiring

correction, but only that “(p)otential risks exist to consumers and animal patients if commercial motives are prioritized above professional judgment.” This risk could apply to any form or structure of veterinary practice in California, and it is misguided to arbitrarily confine this risk to larger-scale corporate practices. It is equally misplaced to impose the highly burdensome regulations suggested in the draft rules, including employment agreement interference and inspections, related to MSA’s.

Specific Statutory Amendments Proposed in the Memorandum

- Article 3, 4853(2)(d): This language is not necessary, but basically adopts the solution proposed above, in this case addressing premises owners. If this is adopted, then it should be applied across the board and not limited to premises owners.
- Article 6, 4901-4910: Singles out corporations unfairly and provides that they “shall not engage in the practice of veterinary medicine.” This is already part of the California Practice Act which limits the practice of veterinary medicine to individual veterinarians licensed by the CVMB, so it’s unnecessary.
- Article 6, 4918: Provides CVMB with new powers to compel information from corporate owners (without justification), and “permits” corporations to enter into employment contracts with veterinarians but declares that “no such employment, contract, or arrangement shall provide for the rendering, supervision, or control of professional judgment or services other than as authorized by law.” This vague restriction will confuse, rather than enlighten the matter.
- Article 6, 4919: Applies similar restrictions in Article 6, 4918 to Management Services agreements, and declares that “no such employment, contract, or arrangement shall provide for the management services organization to render control, supervision, or intervention in a veterinarian’s practice of veterinary medicine...” Again, this broad prohibition will lead to confusion, not clarity.

The California Legislature should not be placed in a position to sort through the hypothetical issues raised by the memorandum and proposed legislation. Nor is the Legislature the best forum to explore, if it’s warranted, the extent to which economic or commercial considerations are factors in the daily life of every veterinary or other professional service practice in the state of California.

EMPLOYMENT AGREEMENT ([REDACTED] 2006 CALIFORNIA VERSION)

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into this [REDACTED] day of [REDACTED], by and between VCA [REDACTED] ("VCA"), and [REDACTED] ("Employee").

This Agreement must be read in conjunction with the VCA Hospital Employee Manual (the "Manual"), which provides additional details to the provisions set forth herein. In the event of any conflict between this Agreement and the Manual, the terms of this Agreement will govern. Please note, that the Manual is intended only for general guidance and is not an employment contract.

1. Employment. This Agreement is effective as of the date set forth above and governs the terms and conditions of Employee's employment by VCA in the position of **Associate Veterinarian** (the "Employment Relationship").

2. Term of Employment. Employee's employment will commence on the date set forth above and will not terminate until either party gives notice to the other of termination, either with or without cause. The at-will nature of this Employment Relationship cannot be changed except in writing signed by the Chief Executive or Chief Operating Officer of VCA.

3. Duties.

(a) Employee's duties and responsibilities will include those that are set forth in VCA's standard Job Description for the position of **Associate Veterinarian**, a copy of which will be provided with the Manual.

(b) Employee agrees to devote Employee's working time, effort and attention to Employee's duties as a **Associate Veterinarian** for VCA. Employee further agrees to use Employee's best efforts and abilities faithfully and diligently to promote the interests of VCA and VCA's clients.

(c) Employee is solely responsible at all times for ensuring that Employee's veterinary license is current and in good standing.

4. Compensation. Employee will be compensated during the Employment Relationship in accordance with the Schedule of Compensation and Benefits attached hereto as Exhibit "A" and incorporated herein by this reference. The Benefits included in Exhibit "A" are based on a presumption of full-time employment (which is a minimum of 40 hours work per week for purposes of this Agreement.) If your employment status changes, notice should be provided to payroll and

any employment benefits included therein are subject to change at VCA's discretion, including time off, health insurance, CE allowance and days.

5. Confidentiality and Trade Secrets. Employee agrees to execute and to be bound by the Confidentiality, Non-Disclosure and Non-Solicitation Agreement attached hereto as Exhibit "B."

6. Miscellaneous.

(a) Entire Agreement. This Agreement, including the attachments, contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter of this Agreement, and any and all prior discussions, negotiations, commitments and understandings, whether oral or otherwise, related to the subject matter of this Agreement are merged. Neither party has relied upon representations, oral or otherwise, express or implied, other than those contained in this Agreement.

(b) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of CA.

(c) Severability. In the event any portion of this Agreement is found to be void or against public policy by any court of law, all remaining provisions of this Agreement will remain in full force and effect.

(d) Successors and Assigns. Except as set forth below, this Agreement and all obligations of and benefits to Employee and VCA will bind and benefit Employee and VCA, and VCA's affiliates, successors and assigns, whether by merger, consolidation or acquisition of all or substantially all of their business or assets.

(e) Assignment. Employee may not assign or subcontract Employee's duties and obligations under this Agreement. VCA may assign its rights and delegate its obligations under this Agreement in connection with any sale, transfer or other disposition of all or substantially all of its business or assets.

(f) Modifications. This Agreement may only be modified or amended in writing, agreed to and signed by both Employee and VCA.

(g) Waivers. All waivers of any term, condition, obligation or provision of this Agreement must be in writing. No waiver of any breach or anticipated breach of any provision of this Agreement will be deemed a waiver of any other contemporaneous, preceding or succeeding breach or anticipated breach, whether or not similar, on the part of the same or any other party.

(h) Notices. Any and all notices required or permitted to be given under this Agreement will be sufficient if furnished in writing and either (a) delivered by hand or mailed by first class U.S. mail, postage prepaid; (b) sent by facsimile transmission, with confirmation mailed by first class U.S. mail, postage prepaid; or (c) sent via overnight courier service; and addressed to the parties as follows: mail to Employee's last known residence in the case of Employee, and in the case of VCA, to [REDACTED] or that person's successor.

(i) **Headings.** The headings of paragraphs in this Agreement are for convenience only; they form no part of this Agreement and will not affect the interpretation thereof.

(j) **Confidentiality.** Any information pertaining to the terms of Employee's employment, including, but not limited to the terms of this Agreement, any oral discussions pertaining to the Employment Relationship, any business and financial information of VCA, and any other documentation or correspondence delivered by one party to another constitutes "Confidential Information". Employee agrees not to provide, discuss, permit access to and/or disclose any Confidential Information to any of VCA's employees, or to any outside third party, other than Employee's immediate family, attorney or tax advisor, without the prior written consent of VCA.

VCA [REDACTED]

By: [REDACTED] Date _____
[REDACTED]

By: [REDACTED] Date _____
[REDACTED]

EMPLOYEE

By: [REDACTED] Date _____

EXHIBIT A

COMPENSATION AND BENEFITS

1. Compensation. As compensation for services rendered for VCA during Employee's employment, Employee will receive an annual base of [REDACTED], which will be paid in twenty-six (26) equal biweekly installments or [REDACTED]% of the Employee's production, whichever is greater, regardless of any and all approved time off that Employee takes pursuant to paragraphs 3-6.

2. Production Compensation: In addition to the annual base, Employee will be eligible for production compensation equal to the amount by which a percentage of the Net Revenues generated by Employee's efforts, as set forth below, exceeds Employee's base during each year. Net Revenues are defined as gross revenue less all discounts (including marketing, courtesy, and employee discounts) and monies not collected within ninety (90) days of the date of service. Employee's production compensation will be calculated and paid on a monthly basis based on:

(a) [REDACTED]% of the Net Revenue generated from office calls and examinations, consultations, injections, vaccinations, radiological and anesthetic procedures, bandages, casts, splints, dentals, euthanasia, fluid therapy, medical services, hospitalization, in-hospital medications and injections, medicated baths supervised by Employee, laboratory tests, surgery, prescription drugs (including Heartgard, Revolution and Interceptor), prescription refills, and ultrasound and other special procedures performed or provided by Employee or by veterinary technicians or veterinary assistants under the direct supervision of Employee while rendering veterinary care for VCA's patients. Employee will also receive revenue credit for any interpretation fees added to VCA's cost for ultrasound, EKG's, or other special procedures and consultations not performed by Employee. In addition, Employee will receive five percent ([REDACTED]%) of the Net Revenues generated from vitamins, shampoos, insecticides (including Advantage, Frontline, etc.), dental products and prescription pet foods purchased by clients in association with a paid professional examination. Excluded from Net Revenues are retail food sales, all over-the-counter sales, service fees (such as biohazard), boarding, grooming, baths, after death care, burial, and cremation, and pet supplies and any product (prescription or otherwise) purchased over the Internet. Any treatment or service not specifically mentioned above is excluded from the definition of Net Revenue and will not be included in production compensation.

(b) When applicable, if Employee takes after hours emergency calls Employee will receive [REDACTED]% of the after hours emergency exam fee, and this fee will not count towards the monthly production compensation. Employee will receive income generation credit for all other services provided in conjunction with the emergency visit, as specified in Section 2(a) above.

(c) Within thirty (30) days of the conclusion of each month of employment, VCA will calculate and pay the percentage of the Net Revenues generated by Employee's efforts that month, as set forth above. The amount of Employee's base paid for that month will be subtracted from this calculation and Employee will receive any surplus, less standard payroll deductions. In the event the percentage of the Net Revenues generated by Employee's efforts is insufficient to cover any month's base, the negative number resulting from such calculation will be carried over to future months and such deficit(s) must be made up in subsequent months before Employee becomes entitled to receive any additional production compensation.

EXHIBIT A

- 3. Vacation Time.** Employee will accrue **Twelve (12)** days of vacation per year accrued at the rate of **10.00** hours per month. This vacation is to be used in accordance with the provisions of the Manual in effect at the time the vacation is taken. Except where required by law, unused vacation time has no monetary value.
- 4. Sick Time.** After ninety (90) days of employment, Employee is allowed three (3) sick days per calendar year, which must be scheduled workdays. These days have no monetary value, are prorated, do not accrue from year to year, and will not be paid out at year-end or upon termination.
- 5. Continuing Education/Professional Dues/Licenses.** Employee is eligible for up to **Five (5)** days off per calendar year for continuing education and reimbursement of up to [REDACTED] per calendar year for approved professional dues, licenses, conferences, etc. Continuing education days and reimbursement are available on a calendar year basis, are prorated, cannot be carried forward to next calendar year and have no monetary value. VCA-sponsored meetings are not counted towards Employee's yearly allotment of continuing education days.
- 6. Holiday Time.** Employee is eligible for six (6) holidays per year. Paid holidays for exempt employees, as defined in the Manual, include: New Years Day, Memorial Day (last Monday in May), Independence Day (4th of July), Labor Day (first Monday in September), Thanksgiving, and Christmas. Employee may be required to share responsibility for hospitalized cases on these specified holidays. Holidays are paid, provided those holidays fall on a normally scheduled workday. If Employee works the holiday, Employee will receive a day off during the year at a time mutually acceptable to Employee and VCA.
- 7. Pet Care Discount.** Employee will be allowed a professional staff discount as set forth in the Manual.
- 8. Uniform Allowance.** Employee will be provided with at least two (2) uniform lab coats and/or scrubs with the VCA logo every year, as needed through VCA's national purchasing agreement.
- 9. Health Insurance.** Employee is eligible for the core benefit package associated with VCA's present master health plan. Health insurance will be provided according to the terms of the VCA health insurance plan. Other health care options and dependent care are available in the plan at additional cost to Employee. The health care plan presently covers medical, vision, dental, life, accidental death and disability, and long-term disability income insurance. Prices and coverage options are subject to change, based on plan year benefit renewals.
- 10. Professional Liability Coverage/Valid Veterinary License.** Employee is covered under VCA's master liability policy at all times while Employee is working in any capacity for a VCA hospital. Employee is not covered by VCA's liability insurance if and when Employee works outside of VCA's network. A copy of Employee's current veterinary license must be posted in the hospital and on file with VCA.
- 11. Retirement.** Employee will be eligible to participate in VCA's 401(k) plan after six (6) months of continuous employment. Employee may enroll on any January 1 or July 1, after meeting the eligibility requirements. At VCA's discretion, VCA may make contributions to the accounts of employees who contributed to their own 401(k) plans during the year.

EXHIBIT A

12. Other Benefits. All other benefits will be the same as provided for similarly situated veterinarians of the company as set forth in the Manual.

EXHIBIT B

CONFIDENTIALITY, NON-DISCLOSURE AND NON-SOLICITATION AGREEMENT

This Confidentiality, Non-Disclosure and Non-Solicitation Agreement (this "Agreement") is made as of the [REDACTED] by and between VCA [REDACTED] ("VCA"), and [REDACTED] ("Employee") (VCA and Employee are collectively referred to as the "Parties").

RECITALS

WHEREAS, VCA employs Employee in the capacity of **Associate Veterinarian**, at the premises located at VCA [REDACTED] CA (the "Hospital");

WHEREAS, in consideration of Employee's continued employment, VCA desires to receive from Employee a covenant not to disclose its confidential information or solicit its employees and clients;

WHEREAS, VCA and Employee desire to set forth in writing the terms and conditions of their agreements and understandings;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Contractual Obligations. By signing this Agreement, Employee expressly represents and warrants that Employee is not currently under any contractual obligation of any kind, written or oral, regarding the preservation or protection of confidential, proprietary trade secret information of any former employer, or any other obligation associated with the termination of any prior employment, which would prevent Employee from being employed by VCA or any competing veterinary practice.

2. Confidential Information.

(a) Employee understands that while employed by VCA, Employee will gain close contact with clients and potential clients of VCA and its affiliates, and/or provide management or supervisory services and/or technical assistance to individuals employed by VCA or its affiliates and will gain certain knowledge, skills, or experience related specifically to the business of VCA and its affiliates that is critical to VCA's ability to continue to conduct such business (the "Confidential Information").

(b) Employee therefore expressly understands and agrees that, except as otherwise required by law (after first notifying VCA and giving it reasonable opportunity to object), Employee will not, during the Employment Relationship, or at any time thereafter, exploit, use for any purpose not specifically related to the Employment Relationship, or disclose to any person other than VCA or its affiliates or

EXHIBIT B

employees acting on behalf of VCA or its affiliates, any of the Confidential Information. For purposes of this Section, Confidential Information includes, without limitation, the following: treatment forms, laboratory results, x-rays, phone logs, appointment books, telephone and address books, mailing lists, and computer software programs and data, marketing information, manuals and training materials, financial planning, new business development information or materials, price lists, pricing information, customer lists, lists of potential customers compiled or purchased by VCA, financial information, records, techniques, business secrets, trade secrets or any other information with respect to VCA's business that is not available generally in the veterinary field and that is not known to competitors of VCA or other third parties unaffiliated with VCA or its affiliates.

(c) Employee agrees that the Confidential Information, as well as continuing education materials and reference works purchased by and/or paid for by VCA, will not be removed from VCA's place of business. Upon the termination of the Employment Relationship for any reason whatsoever, Employee will return to VCA all of the Confidential Information (whether furnished by VCA or prepared by Employee in the course of the Employment Relationship), and Employee will neither make nor retain copies of any of the Confidential Information after the termination of the Employment Relationship.

3. Non-Disclosure of Client Information. Employee further agrees that Employee will not, during the Employment Relationship or after the termination, for any reason, of the Employment Relationship, disclose to any person, firm, corporation or any other party, the names or addresses of any past or present clients of VCA or any client records, information about VCA's financial affairs, management or medical systems and procedures, manuals, confidential reports, trade secrets or any other information or documents which may be used in any way to injure, damage or interfere with VCA's business and professional methods and operations.

4. Non-Solicitation of Clients. Employee further agrees that during the Employment Relationship and for a period of two (2) years after the termination, for any reason, of the Employment Relationship, Employee will not solicit or divert business of a similar nature to that of VCA from any of VCA's clients existing on the date of termination of the Employment Relationship or prior thereto, or from any referring veterinarian(s) who referred Employee two or more cases per year during term of Employee's employment with VCA, nor give any person, firm or corporation the right to do so, nor dissuade clients from utilizing the services of VCA.

5. Non-Solicitation of VCA Employees. Employee further agrees that during the Employment Relationship and for a period of two (2) years after the termination, for any reason, of the Employment Relationship, Employee will not recruit or solicit employment of any employee of VCA or any of its affiliates, or of any person who had been an employee of VCA within the past three months, or otherwise induce such employee to leave the employment of VCA, to become an employee of or otherwise be associated with Employee or any company or business with which Employee is or may become associated. In addition, during the Employment Relationship, Employee will not do any act that is inconsistent with VCA's interests or in violation of any provision of this Agreement or the Employment Agreement.

6. Equitable Relief and Other Remedies Upon Breach by Employee. If Employee violates any of the terms of this Agreement, VCA will be entitled to any and all remedies at law and equity, which remedies may be cumulative, and will include, but will not be limited to, the right to

EXHIBIT B

injunctive relief or preliminary restraining order and the right to seek damages. No bond or other security will be required of VCA in connection with such injunction or temporary restraining order.

7. Reasonableness of Restrictions. Employee has carefully read and considered the provisions of this Agreement and, having done so, agrees that the restrictions imposed by this Agreement are reasonable, that they are necessary to protect the legitimate business interests of VCA, and that such restrictions do not and will not impose an undue hardship on Employee.

8. Satellite Hospitals. The terms of this Agreement, including the restrictive covenant, apply equally to any satellite or ancillary small animal veterinary facility (ies) that VCA currently owns or acquires in the future, at which Employee works greater than one (1) full day per week for six (6) or more months of the year or greater than ten (10) full days per quarter, totaling more than forty (40) full days per year.

9. Miscellaneous.

(a) Entire Agreement. This Agreement, including the attachments, contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter of this Agreement, and any and all prior discussions, negotiations, commitments and understandings, whether oral or otherwise, related to the subject matter of this Agreement are merged. Neither party has relied upon representations, oral or otherwise, express or implied, other than those contained in this Agreement.

(b) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of CA.

(c) Severability. In the event any portion of this Agreement is found to be void or against public policy by any court of law, all remaining provisions of this Agreement will remain in full force and effect.

(d) Successors and Assigns. Except as set forth below, this Agreement and all obligations of and benefits to Employee and VCA will bind and benefit Employee and VCA, and VCA's affiliates, successors and assigns, whether by merger, consolidation or acquisition of all or substantially all of their business or assets.

(e) Assignment. Employee may not assign or subcontract Employee's duties and obligations under this Agreement. VCA may assign its rights and delegate its obligations under this Agreement in connection with any sale, transfer or other disposition of all or substantially all of its business or assets.

(f) Modifications. This Agreement may only be modified or amended in writing agreed to and signed by both Employee and VCA.

(g) Waivers. All waivers of any term, condition, obligation or provision of this Agreement must be in writing. No waiver of any breach or anticipated breach of any provision of this Agreement will be deemed a waiver of any other contemporaneous, preceding or succeeding breach or anticipated breach, whether or not similar, on the part of the same or any other party.

EXHIBIT B

CONFIDENTIALITY, NON-DISCLOSURE AND NON-SOLICITATION AGREEMENT

This Confidentiality, Non-Disclosure and Non-Solicitation Agreement (this "Agreement") is made as of the [REDACTED] day of [REDACTED] by and between VCA [REDACTED] ("VCA"), and [REDACTED] ("Employee") (VCA and Employee are collectively referred to as the "Parties").

RECITALS

WHEREAS, VCA employs Employee in the capacity of **Associate Veterinarian**, at the premises located at VCA [REDACTED], CA (the "Hospital");

WHEREAS, in consideration of Employee's continued employment, VCA desires to receive from Employee a covenant not to disclose its confidential information or solicit its employees and clients;

WHEREAS, VCA and Employee desire to set forth in writing the terms and conditions of their agreements and understandings;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Contractual Obligations. By signing this Agreement, Employee expressly represents and warrants that Employee is not currently under any contractual obligation of any kind, written or oral, regarding the preservation or protection of confidential, proprietary trade secret information of any former employer, or any other obligation associated with the termination of any prior employment, which would prevent Employee from being employed by VCA or any competing veterinary practice.

2. Confidential Information.

(a) Employee understands that while employed by VCA, Employee will gain close contact with clients and potential clients of VCA and its affiliates, and/or provide management or supervisory services and/or technical assistance to individuals employed by VCA or its affiliates and will gain certain knowledge, skills, or experience related specifically to the business of VCA and its affiliates that is critical to VCA's ability to continue to conduct such business (the "Confidential Information").

(b) Employee therefore expressly understands and agrees that, except as otherwise required by law (after first notifying VCA and giving it reasonable opportunity to object), Employee will not, during the Employment Relationship, or at any time thereafter, exploit, use for any purpose not specifically related to the Employment Relationship, or disclose to any person other than VCA or its affiliates or

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employees acting on behalf of VCA or its affiliates, any of the Confidential Information. For purposes of this Section, Confidential Information includes, without limitation, the following: treatment forms, laboratory results, x-rays, phone logs, appointment books, telephone and address books, mailing lists, and computer software programs and data, marketing information, manuals and training materials, financial planning, new business development information or materials, price lists, pricing information, customer lists, lists of potential customers compiled or purchased by VCA, financial information, records, techniques, business secrets, trade secrets or any other information with respect to VCA's business that is not available generally in the veterinary field and that is not known to competitors of VCA or other third parties unaffiliated with VCA or its affiliates.

(c) Employee agrees that the Confidential Information, as well as continuing education materials and reference works purchased by and/or paid for by VCA, will not be removed from VCA's place of business. Upon the termination of the Employment Relationship for any reason whatsoever, Employee will return to VCA all of the Confidential Information (whether furnished by VCA or prepared by Employee in the course of the Employment Relationship), and Employee will neither make nor retain copies of any of the Confidential Information after the termination of the Employment Relationship.

3. Non-Disclosure of Client Information. Employee further agrees that Employee will not, during the Employment Relationship or after the termination, for any reason, of the Employment Relationship, disclose to any person, firm, corporation or any other party, the names or addresses of any past or present clients of VCA or any client records, information about VCA's financial affairs, management or medical systems and procedures, manuals, confidential reports, trade secrets or any other information or documents which may be used in any way to injure, damage or interfere with VCA's business and professional methods and operations.

4. Non-Solicitation of Clients. Employee further agrees that during the Employment Relationship and for a period of two (2) years after the termination, for any reason, of the Employment Relationship, Employee will not solicit or divert business of a similar nature to that of VCA from any of VCA's clients existing on the date of termination of the Employment Relationship or prior thereto, or from any referring veterinarian(s) who referred Employee two or more cases per year during term of Employee's employment with VCA, nor give any person, firm or corporation the right to do so, nor dissuade clients from utilizing the services of VCA.

5. Non-Solicitation of VCA Employees. Employee further agrees that during the Employment Relationship and for a period of two (2) years after the termination, for any reason, of the Employment Relationship, Employee will not recruit or solicit employment of any employee of VCA or any of its affiliates, or of any person who had been an employee of VCA within the past three months, or otherwise induce such employee to leave the employment of VCA, to become an employee of or otherwise be associated with Employee or any company or business with which Employee is or may become associated. In addition, during the Employment Relationship, Employee will not do any act that is inconsistent with VCA's interests or in violation of any provision of this Agreement or the Employment Agreement.

6. Equitable Relief and Other Remedies Upon Breach by Employee. If Employee violates any of the terms of this Agreement, VCA will be entitled to any and all remedies at law and equity, which remedies may be cumulative, and will include, but will not be limited to, the right to

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injunctive relief or preliminary restraining order and the right to seek damages. No bond or other security will be required of VCA in connection with such injunction or temporary restraining order.

7. Reasonableness of Restrictions. Employee has carefully read and considered the provisions of this Agreement and, having done so, agrees that the restrictions imposed by this Agreement are reasonable, that they are necessary to protect the legitimate business interests of VCA, and that such restrictions do not and will not impose an undue hardship on Employee.

8. Satellite Hospitals. The terms of this Agreement, including the restrictive covenant, apply equally to any satellite or ancillary small animal veterinary facility (ies) that VCA currently owns or acquires in the future, at which Employee works greater than one (1) full day per week for six (6) or more months of the year or greater than ten (10) full days per quarter, totaling more than forty (40) full days per year.

9. Miscellaneous.

(a) Entire Agreement. This Agreement, including the attachments, contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter of this Agreement, and any and all prior discussions, negotiations, commitments and understandings, whether oral or otherwise, related to the subject matter of this Agreement are merged. Neither party has relied upon representations, oral or otherwise, express or implied, other than those contained in this Agreement.

(b) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of CA.

(c) Severability. In the event any portion of this Agreement is found to be void or against public policy by any court of law, all remaining provisions of this Agreement will remain in full force and effect.

(d) Successors and Assigns. Except as set forth below, this Agreement and all obligations of and benefits to Employee and VCA will bind and benefit Employee and VCA, and VCA's affiliates, successors and assigns, whether by merger, consolidation or acquisition of all or substantially all of their business or assets.

(e) Assignment. Employee may not assign or subcontract Employee's duties and obligations under this Agreement. VCA may assign its rights and delegate its obligations under this Agreement in connection with any sale, transfer or other disposition of all or substantially all of its business or assets.

(f) Modifications. This Agreement may only be modified or amended in writing agreed to and signed by both Employee and VCA.

(g) Waivers. All waivers of any term, condition, obligation or provision of this Agreement must be in writing. No waiver of any breach or anticipated breach of any provision of this Agreement will be deemed a waiver of any other contemporaneous, preceding or succeeding breach or anticipated breach, whether or not similar, on the part of the same or any other party.

EXHIBIT B

(h) Notices. Any and all notices required or permitted to be given under this Agreement will be sufficient if furnished in writing and either (a) delivered by hand or mailed by first class U.S. mail, postage prepaid; (b) sent by facsimile transmission, with confirmation mailed by first class U.S. mail, postage prepaid; or (c) sent via overnight courier service; and addressed to the parties as follows: mail to Employee's last known residence in the case of Employee, and in the case of VCA, to [REDACTED] [REDACTED] or that person's successor.

VCA [REDACTED]

By: [REDACTED] Date
Its: **Regional Operations Director**

EMPLOYEE

By: [REDACTED] Date

Confidentiality Non-Solicitation and Non-Competition - DVM

This Confidentiality, Non Solicitation and Non Competition Agreement ("Agreement"), dated and effective as of [REDACTED] 2016, is between ("I" or "me" or "my" or "Associate") and **Medical Management International, Inc.**, dba Banfield, the Pet Hospital® and its Affiliates ("MMI") (as defined in Section 14 below). As a condition of the employment relationship, and to protect MMI's Confidential Information (as defined below), customers, employees, inventions, and discoveries, I agree as follows:

1. Access to Information

I acknowledge that MMI is engaged in the business of providing pet healthcare and veterinary medicine services, developing and selling software for veterinary facilities, and conducting clinical trials related to the development or production of veterinary medication or pet products. I further acknowledge that, as an Associate of MMI, I will receive and/or have access to MMI's confidential and proprietary information ("Confidential Information") related to those products and services. I further acknowledge that it is prudent and reasonable for MMI to take certain measures to ensure the protection of such information for the present and future benefit of MMI.

2. Confidential Information

As used in this Agreement, Confidential Information refers to an item of information, or a compilation of information, in any form, related to MMI's business that is not generally known to the public or to other Persons, as defined in Section 15, who might obtain value or competitive advantage from its disclosure or use. Confidential Information will not lose its protected status under this Agreement if it becomes generally known to the public or to other Persons through improper means such as the unauthorized use or disclosure of the information by me or another Person.

Confidential Information includes, but is not limited to, computer software (source and object code), MMI forms, research and development, clients' preferences, clients' pets, client lists, patient information, marketing and business plans and analyses, forms of agreements and other legal documents, business procedures, systems and methods, financial statements and projections, operational data, techniques, technical data, know how, training materials, treatment protocols, innovations, unpatented inventions, trade secrets, and information about the business affairs of other Persons (including, but not limited to, clients and acquisition targets) that such third parties provide to MMI in confidence. Confidential Information includes trade secrets, but an item of Confidential

Information need not qualify as a trade secret to be protected by this Agreement.

3. Protection of Confidential Information

At all times during my employment and after my employment with MMI terminates for any reason, I will not disclose any Confidential Information to any Person regardless of the form or manner in which I obtain such information. I will not use any Confidential Information for my own benefit or for the benefit of any Person and I will take any steps necessary to protect and maintain its confidentiality. During my employment with MMI, I will not access Confidential Information which I have no legitimate need to know. I will become familiar with and abide by all MMI policies and protocols designed to safeguard its Confidential Information.

4. Assignment of Inventions

I acknowledge that MMI is engaged in research, development, innovation, invention and production of ideas, training, protocols, products and services ("Inventions"). I assign to MMI all of my rights, title and interest in all Inventions, whether or not patentable, copyrighted, published, or reduced to practice, which are made, invented, created or conceived by me (whether solely or jointly with others) during my employment with MMI, or during the one (1) year period after my employment with MMI terminates, if such Invention was made with or based upon any Confidential Information of MMI.

I agree that all such Inventions and copyrights are and will be the sole property of MMI. At the request of MMI, I will execute all documents necessary to evidence MMI's title to or ownership of the Inventions. I will render reasonable assistance to MMI in attempting to patent, copyright, trademark, or otherwise register ownership of the Inventions.

5. Return of Confidential Material

Upon my termination of employment with MMI for any reason, I will promptly return all Confidential Information to MMI, including all copies, notes and extracts therefrom. After returning a complete copy of all such Confidential Information to MMI, I will erase or cause to be erased all Confidential Information from any personal computer or electronic memory or storage device. Following my termination of employment, I will not take or copy any property, document, or information, whether electronic or otherwise, belonging to MMI.

6. Non-Solicitation of Associates

I understand that MMI has used its resources to educate, train and develop its workforce.

To protect that interest and MMI's Confidential Information, during my employment and for two (2) years after my employment with MMI terminates for any reason, I will not directly or indirectly employ, solicit for employment, or attempt to employ or solicit for employment, any of MMI's associates either for myself or for any Person. In this section, the term "solicit" means to communicate with associates to recruit, induce, convince, or cause them to end their employment with MMI, or to otherwise interfere with their employment relationship with MMI.

7. Non-Solicitation of Clients

Because MMI has spent time, money and effort to develop and retain its client base, during my employment and for two (2) years after my employment with MMI terminates for any reason, I will not directly or indirectly solicit or transact business with, including accept business from any MMI client, except immediate family members, with whom I had contact or for whom I provided services during the eighteen (18) month period before termination of my employment with MMI. I will not induce or assist any Person to engage in the same acts that I am restricted from performing under this Section 7.

8. Non-Competition for Full-Time Doctor Associates

Because MMI has spent time, money and effort to develop and retain the confidentiality of its trade secrets and/or Confidential Information, has entrusted me with those trade secrets or Confidential Information to perform my duties, and because MMI will spend money and resources to train me, I agree as follows:

- a. Except as set forth in Sections 8b through 8e, during my employment with MMI and for two (2) years after my employment terminates for any reason, I will not directly or indirectly manage, operate, or control, or participate in the management, operation or control of, or own more than five (5) percent of, or be employed by or perform services for any Person that competes in the same business as MMI ("Competing Business"). A Competing Business includes any Person that: (A) owns, manages, or operates one or more veterinary hospitals or other veterinary service facilities; (B) develops or sells software or software systems for veterinary hospitals or other veterinary service facilities; (C) develops or sells veterinary health insurance, veterinary wellness plans or other products relating to financing of veterinary services; (D) conducts clinical trials relating to the development or production of veterinary medication or pet products; or (E) compiles or distributes data related to the veterinary medical industry.
- b. Notwithstanding the restrictions set forth in this Section 8, I may, after my employment with MMI terminates for any reason, in any veterinary hospital or other veterinary service facility, including mobile clinics, work in my profession or line of business based on the following conditions: (A) if, at the time of my termination, I work at an MMI hospital or facility located in an area with a population of 2,500 or more, then my post termination work must be more than five (5) miles from the hospital or facility of MMI in which I worked at the time of my termination date; (B) if, at the time of my termination, I work at an MMI hospital or facility located in an area with a population of less than

2,500, then my post termination work must be more than fifteen (15) miles from any hospital or facility of MMI in which I worked at the time of my termination.

- c. The restrictions in Sections 8a and 8b will not apply to me if I do not work as a Full Time Doctor Associate at any point during my employment with MMI. Full Time Doctor Associate is defined as a veterinarian Associate regularly working for MMI for 30 or more hours in any work week.
- d. Nothing in this Section 8 restricts me from performing any work as a student related to a course of study in a degreed program with an accredited college or university.
- e. If the choice of law provisions in Section 16 do not control and I am employed by MMI in California, Oklahoma, Montana, Colorado, Georgia, Idaho, or Alabama, then the post termination restrictions set forth in this Section 8 will not apply to the extent such restrictions are impermissible under those states' law.

9. Reasonableness

I acknowledge that the confidentiality, non solicitation and non competition provisions of this Agreement are reasonable in view of the interests of MMI in protecting the value of its business and goodwill, Confidential Information, investment in clients and client relationships, and investment in its workforce.

10. Representation and Warranties

I represent and warrant to MMI the following:

- a. My employment with MMI does not and will not breach any prior agreement that I may have with another Person;
- b. I have not and will not improperly use or disclose during the course of my employment with MMI a previous/concurrent employer's or third party's proprietary information or trade secrets unless the previous/concurrent employer or third party has consented to that use and/or disclosure in writing;
- c. I have had reasonable opportunity to review this Agreement and have either sought or waived legal counsel's review of this Agreement;
- d. I have not entered into and will not enter into any agreement, either written or oral, that conflict with this Agreement;
- e. To the extent I am an "at will" employee, the Agreement does not change my "at will" employment status, nor does it create an obligation on MMI or any other Person to employ or continue my employment with MMI, and my obligations and MMI's rights under this Agreement will survive termination of my employment for any reason, as specified above;
- f. If I leave MMI for any reason, MMI may notify my new employer or prospective employer about my rights and obligations under this Agreement and may furnish a copy of this Agreement to that Person; and
- g. I have been given a copy of this Agreement as part of my offer letter at least two weeks before the commencement of my employment with MMI.

11. Severability

If any provision of this Agreement is ruled to be invalid, illegal or unenforceable by a court, such ruling will not affect any other provision of this Agreement. If any restriction is ruled by a court to be unenforceable, then the court may modify the restriction to the minimum extent necessary to make it enforceable.

12. Remedies

I acknowledge that any breach or threatened breach of this Agreement is likely to cause MMI irreparable harm for which money damages will be difficult to calculate and will not be an adequate remedy. Therefore, if I breach or threaten to breach this Agreement, MMI will be entitled to equitable remedies, including an injunction and/or specific performance, without proof of money damages. I waive any requirement that MMI post a bond or other security to obtain equitable relief.

Seeking equitable relief will not prevent MMI from also obtaining money damages or other available remedies for the same breach. All MMI's rights or remedies shall be cumulative and in addition to all other rights and remedies of MMI under this Agreement or under applicable law. In the event of any litigation (including appeals) under or in connection with this Agreement, the prevailing party will be entitled to recover its attorney fees and costs.

13. Modification; Waiver

This agreement may not be amended or waived except in writing. Any waiver of any breach of this Agreement shall not operate as a waiver of any subsequent breaches. I have no right to assign and will not assign any rights or obligations under this Agreement.

14. Successors and Assigns; Enforcement by MMI

This Agreement is binding on me and my heirs, legal representatives, and successors. This Agreement shall inure to the benefit of MMI, including its Affiliates, officers, directors, agents, successors and assigns. The term "Affiliates" includes Charter Practices International LLC, all subsidiaries of MMI (regardless of the legal form in which they are organized) and also includes A Caring Doctor, P.C., A Caring Doctor (Minnesota), P.A., A Caring Doctor (New Jersey), P.C., A Caring Doctor (Texas), P.C., A Caring Doctor (North Carolina), P.C., and any other person or entity operating one or more veterinary hospitals or facilities pursuant to an agreement or arrangement with MMI or any Affiliate.

15. Person Defined

"Person" means any individual, group of individuals, corporation, partnership, limited liability company, or other entity of any nature, public or private, other than Associate and MMI.

16. Governing Law; Jurisdiction and Venue

This Agreement is governed by the laws of Oregon, without regard to its conflict of law principles.

Associate's Authorization

By typing in my name in the name field below, I affirm I have read the information contained in this document and agree to the restrictions and conditions as a part of my employment. I further agree to the utilization of my name below as my electronic signature in lieu of using a paper document.

Your Name (First Last):

Date Signed: