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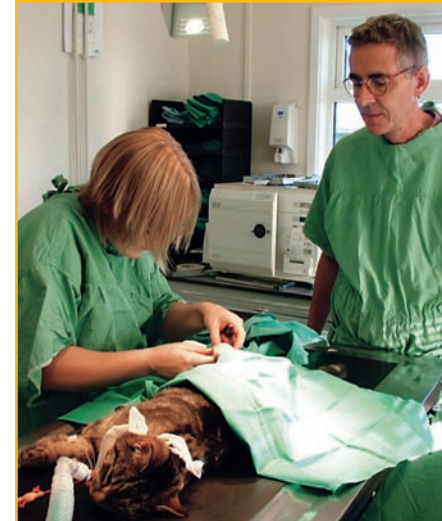
Veterinary Practice Group

The Veterinary Practice Group (VPG) specializes in attending to the legal needs of the veterinary community in conjunction with other advisors to help our clients maintain a successful and legally compliant veterinary practice.

VETERINARIANS' LIABILITY *for* PROFESSIONAL MALPRACTICE

Veterinarians currently have limited exposure under New York State law for damages resulting from professional malpractice. This is so because New York maintains that damages are limited to the replacement value of the animal and a refund of any fees paid. In comparison, medical doctors are exposed to claims by a victim of medical malpractice for loss of companionship, wrongful death, pain and suffering and emotional distress arising from the negligent acts or omissions of the physician. This difference in professional liability stems from the fact that New York State does not include the services provided by veterinarians in the definition of the word "medical" because the practice of veterinary medicine involves, by definition, the diagnosis and treatment of animals, which are considered property.

There is a distinction in New York between medical doctors and veterinary doctors regarding when an aggrieved party may commence an action for professional negligence. A claim against a veterinarian is governed by the three-year New York State statute of limitations contained in Civil Practice Law and Rules §214(6), which period commences on the date that the alleged negligent act or omission occurred. This is akin to a malpractice claim against an attorney or accountant. By contrast, in 1975, physicians, podiatrists and dentists were singled out by the New York State Legislature to be subject to a shorter 2 1/2 year statute of limitations period in order to reduce their overall malpractice liability.



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VETERINARIANS' LIABILITY *for* PROFESSIONAL MALPRACTICE

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To partially alleviate the burden that this shorter limitations period places upon victims of medical malpractice, the legislature provided for a tolling of the statute of limitations in cases where a foreign object is left within the body of an injured patient. In those cases, a claim can be brought within one year of the discovery of the foreign object, thereby extending the statute of limitations in those instances. This principal does not apply to veterinarians. There is no "tolling" of the statute of limitations for objects that are negligently left in the body of an animal by a veterinarian.

This disparity in the application of the "tolling" principal was described in a 2004 New York case, *Ratusch v. Attas*, where a dog owner commenced an action against a veterinarian for negligently leaving a sponge inside her dog during surgery. The sponge was discovered by another veterinarian six years after the procedure. The owner argued that the statute of limitations should be tolled, as it would have been had the procedure been performed upon a person by a medical doctor. The court disagreed and dismissed the owner's claim as time-barred by the three-year statute of limitations applicable to veterinarians.

Over the last decade, many states other than New York have expanded claims available to aggrieved pet owners based on the notion that pets constitute more than property and occupy a unique value that should be measured beyond their replacement value. However in a 2003 New York case, *Mercurio v. Weber*, which did not involve a veterinarian, the court assessed factors beyond the cost of the animal in determining replacement value.

In *Mercurio*, a dog groomer was sued for negligently killing one dog and injuring another when the dogs were severely burned by the hair dryer used by the groomer. The court determined that the deceased dog, which was purchased by its owner to provide solace after the loss of her husband in the September 11th attacks, had value to its owner as a companion, which could be considered in determining replacement value. The rationale was that an older dog becomes "more valuable as it becomes better trained, not on an idea of its increasing emotional attachment." The court accepted the plaintiff's own valuation of that loss in the amount of \$1,513.58 as reasonable.

The *Mercurio* case is a good example of a New York court pushing the envelope on damages that may be awarded to a pet owner beyond the replacement value. So, while veterinarians still enjoy a special status under New York State law that continues to limit their professional liability for malpractice, it would be prudent to keep a watchful eye on court decisions and legislative actions to be sure that there is no erosion of these protections. ■

A CLAIM AGAINST A VETERINARIAN IS GOVERNED BY THE THREE-YEAR NEW YORK STATE STATUTE OF LIMITATIONS CONTAINED IN CIVIL PRACTICE LAW AND RULES §214(6), WHICH PERIOD COMMENCES ON THE DATE THAT THE ALLEGED NEGLIGENT ACT OR OMISSION OCCURRED.

REAL ESTATE TAX NOTICE

One of the biggest expenses you may have is real estate taxes and you may be able to get them reduced. The most common method for reducing real estate taxes is the commencement of a tax certiorari proceeding. The tax certiorari proceeding challenges the value placed on your property by the tax assessor.

If you think your taxes are too high, you should have your tax assessment reviewed by an expert. You should not make the mistake of assuming that you know the value of your property for tax assessment purposes — the value for tax assessment purposes is very different than the value it may have to you from

a business standpoint. Our tax certiorari department is staffed with attorneys, paralegals and experts in the field who can evaluate your case for you. Without any obligation on your part, we will review your tax assessment. Tax Certiorari matters are handled on a contingent fee basis, which means that the attorney will only be paid a fee in the event a tax refund and/or tax reduction is obtained.

The filing period for commencing a tax certiorari proceeding for property in Nassau County is January 2, 2011 to March 1, 2011. In Suffolk County, it is May 1, 2011 to May 17, 2011. If your property is in an Incorporated City or Village, there are various different filing periods. ■



Overnight Boarding – *Notice to Clients*

A woman sued her veterinarian when her dog, which was left for overnight boarding at a New Jersey animal hospital, died when the dog hung herself on her cage. The animal hospital was unattended during the night. The case was settled before trial. The terms of settlement were not disclosed. The dog owner is now conducting a campaign to have legislation enacted in New Jersey which would require veterinarians to give notice to pet owners when pets are held overnight and are not supervised.

While New York, as far as can be determined, has no requirement that an animal hospital notify a client that an animal who is being boarded overnight will be unattended, the New Jersey case is cautionary; veterinary hospitals should take reasonable steps to notify clients in an open and demonstrable manner that their pet will not be attended during the night. The VPG suggests that, at the least, a sign should be posted in the waiting room to that effect. A written statement signed by the owner, acknowledging and consenting to the fact that there will be no person present overnight, would be effective. The hospital should retain this statement in its file. The publicity generated in New Jersey by this incident and the possible intervention of the New Jersey legislature is something that should be avoided in New York State. Publicity such as this, and the legislation proposed, does not present the proper image of the dedication of the veterinary profession to their clients. ■

LLC Members May Be Liable for NYS Sales Tax

Many of the veterinary practices in New York State are conducted as limited liability companies (“LLCs”). The section of the NYS Tax Law which provides for personal liability on the part of members (owners) for sales tax not paid by an entity (e.g., a corporation or partnership) was amended several years ago to deal with the sales tax liability of members of LLCs. That statute provides that any taxpayer who owns a membership interest in an LLC is personally liable for any sales tax not paid to the State by that LLC. In a corporate structure, shareholders, simply because they are shareholders, would not be liable for sales tax not paid by the corporation unless they are a person responsible to collect or remit sales tax. The responsible person requirement has been held not to apply to a member of an LLC, thereby expanding this tax liability to all LLC members. ■



ESTATE TAXES – 2010

As amazing as it sounds, there is no federal estate tax (as of this date) applicable to estates for persons dying in 2010. The N.Y. State estate tax is still very much in effect. Many estate plans were formulated to take advantage of certain estate tax exemptions and the language in many Wills referred to specific sections of the Internal Revenue Code. However, since there is no estate tax in 2010, and thus no applicable code section, the dispositive provisions of Wills of persons who die in calendar year 2010 may result in distributions to beneficiaries that were never intended to occur. For example, if the Will of a person who dies in 2010 leaves an amount to a non-spouse equal to the amount that can pass free of federal estate tax (which in 2009 was a maximum of \$3,500,000), that amount would, in effect, be 100% of the estate.

The N.Y. State Legislature has stepped in and enacted legislation to the effect that all Wills signed prior to January 1, 2010 will be interpreted as if the tax law in effect on December 31, 2009 was in effect on the date of death in 2010, unless proof of intent to the contrary can be shown. This legislation preserves the \$3,500,000 maximum distribution to the non-spouse beneficiary in the example above.

Hopefully, Congress will enact estate tax legislation that will give some certainty to estate planning. It is recommended that all estate plans be reviewed to be sure that the maximum tax savings have been considered. ■

NEW CONTINUING EDUCATION REQUIREMENTS

REMINDER: Effective January 1, 2011, all New York State licensed veterinarians and veterinary technicians will be required to comply with the state's new continuing education requirement on a triennial basis. The following provides answers to common questions about the new law:

HOW MANY CE HOURS WILL I NEED TO COMPLETE? During each triennial registration period, a veterinarian must complete a minimum of 45 hours of continuing education, of which a maximum of 22 1/2 hours may be self-instructional coursework which is accepted by the Department of Education, while a veterinary technician must complete a minimum of 24 hours of continuing education, of which a maximum of 12 hours may be self-instructional coursework.

AM I EXEMPT FROM THE NEW CE REQUIREMENT? There are exemptions from the new CE requirements. For example, if you are not currently practicing, or if you are engaged in teaching veterinary medicine at an approved veterinary education program, you may currently be exempt from the CE requirement. A statement must be filed with the State declaring such exempt status. Also, both veterinarians and veterinary technicians are exempt from the CE requirement for the triennial registration period during which they are first licensed.

WHERE DO I FIND APPROVED PROGRAMS? The State accepts "formal programs of learning that contribute to the professional practice of veterinary medicine." Acceptable programs will be offered by local veterinary medical societies and continuing education should be a major component at national and local veterinary conferences.

HOW MUCH WILL THE NEW CE REQUIREMENT COST? In addition to the fee paid as part of your triennial registration, there will be an additional fee added for the CE requirement. (While the amount of this fee has not yet been set, as a guideline, the State currently imposes a fee of \$45 for other licensed professions.) ■

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