



Jennifer Rupe

Associate
208.383.3976
Boise
jmrupe@hollandhart.com



Gabriel (Gabe) Hamilton

Partner
208.383.3952
Boise
gahamilton@hollandhart.com

Is There a Veterinarian in the House? Understanding the Risk of Advertising 24/7 Emergency Veterinary Clinics in Texas

Insight — December 21, 2022

We've all heard the saying, "Don't mess with Texas." That's particularly true when advertising that a veterinary clinic is open 24 hours a day, 7 days a week. Because there are very limited veterinary medical services that can be performed under Texas law without a veterinarian being physically present, advertising that the clinic is open 24/7 suggests to the public and clients that a licensed veterinarian is present or immediately available.

Although Texas law does not impose any obligations on veterinary medical facilities specifically to have licensed veterinarians on-site during posted operating hours, veterinarians have professional obligations that prohibit advertising or marketing that may be construed as false, deceptive, or misleading.

In Texas, the practice of veterinary medicine is regulated by the Texas Board of Veterinary Medical Examiners (Board). Under the Rules of Professional Conduct, a Texas-licensed veterinarian may not engage in advertising that "intends to create or is likely to create an inflated or unjustified expectation" or "an expressed or implied material misrepresentation of fact." A violation of this rule may result in sanctions, including licensure revocation and administrative penalties up to \$1,000.

In addition, the American Veterinary Medical Association (AVMA) has developed and adopted a code of ethical conduct known as the Principles of Veterinary Medical Ethics (PVME). PVME's third principle is that a "veterinarian shall uphold the standards of professionalism, be honest in all professional interactions, and report veterinarians who are deficient in character or competence to the appropriate authorities." PVME further states that "advertising by veterinarians is ethical when there are no false, deceptive, or misleading statements or claims." Failure to follow these standards may result in the AVMA Board of Governors choosing to report alleged infractions by members and nonmembers of the AVMA to the appropriate agencies. Even if a veterinarian is not an AVMA member, AVMA may relay a violation of the PVME to alert the Board to a potential violation of Texas regulations.

For example, a clinic may not have a veterinarian on premises on a 24-hour basis but advertises on its website that the clinic is open to handle any situation or emergency, whatever the day, and no matter the hour.

These statements could be considered false, deceptive, or misleading in violation of both Texas regulations and the PVME. Further, Texas regulations require a veterinarian who is unable to provide care to a patient to refer the patient to a facility that can provide the care required.

Use of Waivers and Acknowledgements

You may be thinking, what if I had my clients sign a waiver alerting them that a licensed veterinarian is not physically present on-site during certain hours and that the facility is otherwise open and providing non-veterinary care and supervision to patients?

Unfortunately, the Board is unlikely to allow a veterinarian to escape professional duties to clients this easily, and the waiver likely would not protect the veterinarian from civil liability for harm to an animal.

Bottom line—take the time to review your website and sales materials to ensure that you are following the AVMA and the Texas Board guidelines. List the specific services that are available after hours, and clearly state when a licensed veterinarian will be available.

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.