

Mediation Agreements and Anti-Reporting Clauses Are Unlawful

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During the past five years, the California Veterinary Medical Board (VMB) has received a steady increase in the number of consumer complaints against veterinarians. In an attempt to avoid VMB investigation and potential disciplinary action, some veterinary practices have explored the possibility of requiring clients to sign mediation agreements that include clauses which prevent a client from filing a complaint with the VMB, an affiliate of the California Department of Consumer Affairs. While the intent of mediation and gag clauses may be to amicably resolve disputes in a quiet and efficient way, California law prohibits licensees under the Department of Consumer Affairs from offering, using, or requiring them.

According to the California Business and Professions Code Section 143.5(a):

No licensee who is regulated by a board, bureau, or program within the Department of Consumer Affairs, nor an entity or person acting as an authorized agent of a licensee, shall include or permit to be included a provision in an agreement to settle a civil dispute, whether the agreement is made before or after the commencement of a civil action, that prohibits the other party in that dispute from contacting, filing a complaint with, or cooperating with the department, board, bureau, or program within the Department of Consumer Affairs that regulates the licensee or that requires the other party to withdraw a complaint from the department, board, bureau, or program within the Department of Consumer Affairs that regulates the licensee. A provision of that nature is void as against public policy, and any licensee who includes or permits to be included a provision of that nature in a settlement agreement is subject to disciplinary action by the board, bureau, or program.

Not only does the law stipulate that any such agreement is null and void, it allows the VMB to impose additional disciplinary action against the licensee. Such action could include administrative review and discipline.

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If the VMB becomes aware of a mediation agreement between a veterinarian and client after both parties have settled their dispute, the VMB may not impose any additional civil penalties, as stated in Section 143.5(b):

Any board, bureau, or program within the Department of Consumer Affairs that takes disciplinary action against a licensee or licensees based on a complaint or report that has also been the subject of a civil action and that has been settled for monetary damages providing for full and final satisfaction of the parties may not require its licensee or licensees to pay any additional sums to the benefit of any plaintiff in the civil action.

Mediation and gag clauses, if discovered by the VMB, can result in significant accusation and subsequent administrative action. Defending such allegations takes time and often proves costly. To avoid these issues, do not incorporate mediation agreements or gag clauses into veterinary business practices. ■

