

Legal FAQs

By Stephen Marmaduke

The CVMA's Legal Services Program assists members with workplace safety, legal issues, and laws and regulations that affect veterinary professionals. Here are questions and responses that are representative of those asked and answered through the CVMA's program:

Is an employer required to provide an employee handbook?

An employee handbook is not legally required. As businesses grow, however, they may develop myriad policies that are best collected and maintained in a single "handbook." As a rule of thumb, a handbook is appropriate when there are twenty or so employees. A handbook that is followed by the employer and the employees can promote consistency of expectations and treatment, thereby limiting confusion and mitigating claims that the employer acted arbitrarily, unfairly, or in a discriminatory manner. Employee handbooks may be an appropriate place for the employer's discrimination, harassment, retaliation, and other mandated policies, and can provide employees clear grievance processes. Further, they may be valuable in establishing the "at will" nature of the employment relationship.

Do note that courts have interpreted policies maintained in an employee handbook to be a contract between the employer and the employee. Thus, an employee handbook should not be hastily prepared for the mere sake of having one in place. Instead, an employee handbook should be thoughtfully drafted and should accurately incorporate the policies of the employer. Further, once published, the handbook must be regularly reviewed and updated, on at least a yearly basis.

I am selling my practice. The buyer will be assuming the long-term lease. Does the landlord have to consent to the assignment of the lease? Will I have ongoing obligations under the lease?

The sale of a practice often includes the transfer of the premises where the practice is located. When the selling

party leases the premises, this transfer is accomplished by an assignment of the lease to the buyer. Most leases provide that the landlord must approve the assignment. This approval right is also generally triggered when there is a sale of the ownership of a corporation that is a tenant. The landlord must act reasonably in approving or disapproving the assignment. The lease may contain financial standards, however, that the party assuming the lease must meet to be approved. Under most circumstances, the landlord is entitled to assure itself that the party assuming the lease will have the ability to fulfill the tenant's obligations under the lease.

Generally, the seller's assignment of the lease to the buyer, even with the landlord's approval, does not exonerate the seller's obligations under the lease. Thus, if the buyer defaults on the lease, the landlord can look to the seller, as the initial tenant on the lease, to pay the rent and fulfill other obligations under the lease. For that reason, it is very important that the selling party carefully review the length of the lease and determine whether there are any options embedded within the lease that may further extend the seller's liability. To avoid the risk of post-assignment liability, the seller may seek to negotiate with the landlord to be released from the lease obligations upon assignment, or require that the buyer enter into a new lease with the landlord that terminates the seller's obligations under the existing lease.

Location is often a valuable part of a practice and a key component of a practice sale. Whether the practice location is transferred to the buyer by a sale of the property or an assignment of the lease, both buyer and seller should engage qualified legal assistance to assess their respective risks for a successful practice transfer. ■



Stephen Marmaduke

Mr. Marmaduke has been an attorney with Wilke Fleury for over 30 years and has been practicing law in California for over 40 years. One of his primary focuses is the representation of physicians and medical groups in matters ranging from corporate structure, mergers and acquisitions, joint ventures, business transactions, regulatory issues, and professional employment.

Mr. Marmaduke is part of the CVMA's Legal Services Program, a program designed to assist CVMA member veterinarians with workplace safety, legal issues, and laws and regulations that affect the veterinary profession.