NATIONAL VETERINARY LAW GROUP AT
MANDELBAUM BARRETT



Veterinary Law Newsletter

Volume 23

A Message from our Chair:

What a busy start to 2023 it has been! We were fortunate to see many of our industry friends, clients and colleagues recently at VMX and WVC and look forward to events throughout the year. As always, thank you for the trust you place in us each day and please accept our gratitude for your continued business.

Peter Tanella, Esq.

FEATURED ARTICLES



Equity Incentives for Practice Owners

Over the course of the last decade, veterinary practices have increasingly been acquired by corporate buyers. This new trend means more and more veterinarians own equity (stock) in a large company, instead of full ownership in their own practice (or ownership split among two or three partners). But the concept of holding a stake in a veterinary practice is not limited to corporate consolidators. In fact, for the private practice owner, incentivizing employees with an equity interest in the practice is increasingly becoming a requirement, not an optional perk, for attracting and retaining quality veterinarians and support staff.

Innovative compensation incentives can help veterinary practice owners recruit and retain talent.

Every veterinary practice owner is competing for quality veterinarians and support staff and these kinds of financial incentives can be useful to attract and retain talent. However, offering equity and establishing a profit-sharing plan are two different options. While they both can promote employee satisfaction, increase motivation, and improve loyalty, it is important to understand the distinctions.

The upside of equity.

Offering an employee a percentage of the practice gives a valued team member an incentive to overperform but doesn't commit the owner to share or collaborate in major operational decisions. If the employee leaves the practice they can sell the shares back to the owner, ideally at a higher price, because the practice has grown over time. The owner can also offer to pay dividends on that stock from time to time. Shares in a private company can rarely be sold or given to someone else, so the owner doesn't have to worry about the associate selling those shares to someone else.

There is also an emotional element to having equity in a business: people are more likely to take more responsibility and "think like an owner" if they have stock in a business. It is not unlike buying stock in your favorite food or clothing company. You can help the company do well by buying their products, but you're also helping yourself as the stock price rises.

Things to consider before providing equity.

One of the drawbacks to providing equity is that the employee must have the financial ability to pay for the shares. The owner can, "in effect," lend the employee the purchase price. (The loan is only "in effect" because no money actually changes hands between the parties.) Nevertheless, ultimately, the employee must repay the loan, or suffer an adverse tax consequence. Further, if the owner ultimately forgives the loan, then it has been doubly disadvantaged in that the owner has given the employee an ownership interest and the owner has not been paid for it. Another drawback is that it creates a long-term relationship. While that means the owner is more likely to encourage loyalty from the team, it also means the owner has a legal commitment to the equity holders because they own (albeit a small) part of the practice. If the owner later decides to sell the practice (to another private owner or to a corporate buyer), it may be more difficult legally to do so. Another drawback can arise if the owner must buy out an associate who leaves the practice. It could be impractical or impossible to quickly determine a value and pay someone who is leaving the practice or worse, that the owner has decided to part ways with. It can be a great long-term relationship, but the road runs both ways.

But equity is not the only option: profit sharing models.

Profit sharing is another way to reward employees beyond straightforward compensation options like raises and bonuses. Profit sharing is just what it sounds like. On a regular basis, usually annually, an organization announces its profits for the prior fiscal year. Employees receive a modest percentage of that profit. Profit sharing provides employees an incentive to work harder for the practice since they share in an upside. As long as the overall practice is profitable, every member can receive a share. Thus, essentially, the employee shares in the owner's future growth in value. (The share doesn't have to be equal, however. It can be proportionate to their role.)

The advantages of profit sharing.

Profit sharing is different from a bonus. A profits interest is an outright grant of an equity compensation benefit to the employee. The employee does not pay for the profits interest because it is granted in consideration for the employee's services and other contributions to the owner. Profit sharing can be a complement to the bonus structure in order to recognize that the practice as a whole benefits from everyone's participation. This can particularly incentivize those employees that are key to the practice but don't offer as much direct revenue. And unlike equity, a profit interest can be easily altered from year-to-year and if the practice has a low-performing year, the owner may not have to pay it out at all. The owner can also combat the risk of complacency that comes with high salaries: structure a higher payout for everyone upon reaching a specific milestone. The owner only pays it out if the practice makes it.

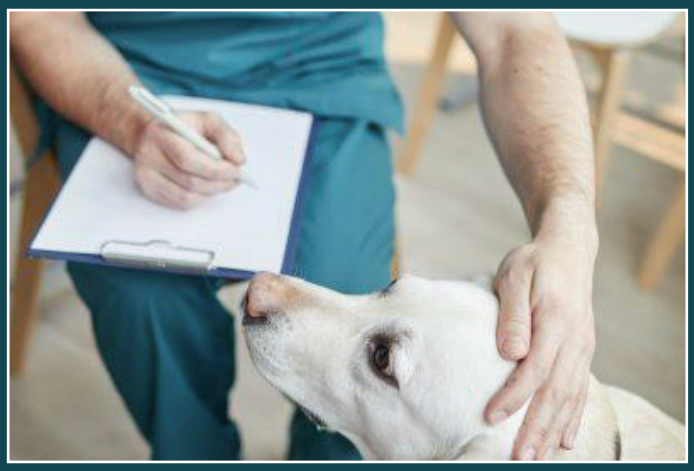
The challenges of profit sharing.

Most practice owners, like any small business, are privately held and therefore only the owner and the owner's accountant know the numbers. Profit sharing will likely require more transparency, since documenting the profit means showing total revenue and total expenses. The owner does not have to disclose the salary of each employee, but the owner should be prepared to at least offer a top-level view into expenses like total compensation paid. The owner may also need to offer some insight into costs like rent or mortgage, marketing, equipment rental, or utilities. And with transparency can come an invitation for unsolicited advice and opinions. While the team is likely to be more motivated to help the practice increase revenue, they may also be more willing to speak up if they have ideas on how the owner can better run the practice. The owner won't be under any obligation to listen. But it can be a mental shift for an owner to invite this additional scrutiny. And unlike equity, it won't necessarily create a long-term incentive: if profits begin to dip, the profit-sharing is only academic, and some team members might decide to move on.

Equity and profit-sharing opportunities can increase employee participation and loyalty.

They both are innovative ways to help employees feel more economically and emotionally connected to the practice they work for. It can also help employees think about ways they can help the practice beyond their job description: getting the word out, helping to train junior staff, and reducing unnecessary expenses. In either case, an owner should seek both legal and financial advice to fully understand the commitment they are making. There very likely will be local laws, tax laws, or best practices that influence how and when the owner can implement each of these programs. However, the upside could mean a loyal and motivated staff that not only works for the owner, but with the owner, to build and grow a successful practice.

Contracts Every Veterinary Business Should Review or Update Now



Even the most conscientious business owners usually don't spend a lot of time reviewing contracts. You might focus on a new sales contract when you land a client or look over the terms of a vendor agreement if you're making a large purchase. But most people spend their time actually running their business. Veterinary practices are no different: even though many veterinarians technically own their business they spend most of their time taking care of their patients, not reviewing documents. But it is critical to review certain agreements from time to time, especially as individual circumstances can change, as can general market conditions. Over the last few years, the veterinary industry has seen significant change (like just about everyone else). And a few key contracts could be impacted in ways most people don't think about.

Own a veterinary practice? Here are key agreements you should review.

Employment agreements.

As we discussed in a recent article, most veterinarians who own their practice employ staff, which means they must think like employers, not just practitioners. Since the pandemic, there have been a lot of shifts in how and why people work. For veterinarians, now could be a good time to reassess employment agreements with associate veterinarians. Although veterinary telehealth has surged in recent years, much of veterinary care still requires on-site employees. At the same time, more and more employees want to work from home. Some veterinarians now need to offer more flexible schedules or anticipate part time workers. However, that could mean you need to modify vacation or other benefits that reflect that arrangement. If possible, proactively update your employment agreements with current employees or at least review key provisions for new joiners.

Independent contractor agreements.

The gig economy has exploded in the last few years and veterinarians may find that they are working with an individual instead of a company in any area of their business: marketing, custodial services, a specialist veterinarian, or any other vendor or partner. However, be sure to have a contract. With a large business, you rarely need to worry that they will get sick and not deliver as planned, or question if they are insured. But working with an individual means you should be particularly vigilant about making sure you have these kinds of situations resolved and documented. Also a 1099 status (an independent contractor) is legally defined. If someone is working solely for you, under your direction, they may legally be an employee. (And no, you can't just agree to treat them as a 1099 anyway.) It is important to get legal advice if you think this situation applies to you.

Leases.

We mentioned how veterinarians are often employers, not just practitioners. Many are also tenants. While you might not think about your lease often, especially if you have been there for years, that doesn't mean it isn't worth reviewing. For example, if you are nearing retirement, or considering selling your practice, you might not have noticed a "change of control" provision in your lease. Basically, this can require you give notice to – or even get permission from – your landlord before someone else can take over your lease. Landlords can do anything from increase the rent to demand a payout in exchange for allowing a change of tenancy (we have seen landlords ask for a six-figure payout). As any veterinarian knows, the cost of building out a space for a practice is a huge investment and not being able to transfer the actual physical set up to a new owner could be critical to the ability to sell. Review these provisions now and try to negotiate while it is still a theoretical situation.

If you own a veterinary practice, then you run a business. Review your agreements to protect it.

Just because now is a good time to review contracts doesn't mean that you need to make major changes or renegotiate terms. Sometimes it just helps to refresh yourself on your legal obligations, as well as know the protections you have. If you're considering retirement or selling your business (to another individual or a corporate entity) it's especially important to know the current state of your contracts. If you uncover any significant issues, getting legal advice sooner rather than later can prevent small problems from becoming big ones. Veterinarian owners spend years training and building their practice, you owe it to yourself to make sure your business is protected.

The National Veterinary Law Group at Mandelbaum Barrett is available to handle your contract reviews and updates and any other business needs for your practice.

What to Consider Before You Start Your Own Veterinary Practice

Most new veterinarians begin their careers as associates supporting a more experienced practitioner for several years. Over time many go on to start their own practice – an exciting milestone professionally and personally. While most veterinarians will wait until they are confident regarding their medical skills, it's important to realize that the business aspects of starting a new practice can be the most challenging. Key to success is understanding the business side and surrounding yourself with a team of professionals who can help.



Before you start your own veterinary practice, know these five things:

1. Understand the business.

Most veterinarians receive at least some basic corporate training in veterinary school, but they are far from prepared for all the non-medical elements of business ownership. Every veterinary practice requires a basic understanding of bookkeeping, business contracts, and employment law. You will need to understand how to market your business and many owners will even have to manage real estate if they own the property where the practice is. That can be intimidating for a new owner-practitioner, and therefore it is critical to work under an experienced veterinarian before opening your own practice, not only to learn day-to-day care of patients but also gain insight into business operations.

2. Managing clients (the human ones).

Most veterinarians went into their profession because of their love of animals. But it is the human clients who will control much of the fate of their business success. After all, humans will determine if you are paid on time, receive good reviews on social media, get referrals, and maintain repeat business. While veterinarians are trained to respond to medical complaints, they may be less likely to have a client-oriented mindset when it comes to their (human) clients. What happens when a client is frustrated that pricing is not as expected? Who responds when someone posts a Yelp review stating that they had a poor interaction with a team member? While staff or third-party business partners should be able to deal with these issues day-to-day, these challenges ultimately are the responsibility of the practitioner-owner. Even if you're not a "people person," you will need to build relationships with clients, suppliers, and employees if you want your practice to thrive.

3. Supply and inventory.

The last few years have brought huge market disruptions. The pandemic and the war in Ukraine have led to supply chain issues, inflation, and worker shortages. Procuring materials and equipment has become more expensive and less predictable. Add to that the specialty nature of the products required in a veterinary practice, and this can impact the ability to run a smooth operation. Building a relationship with reliable suppliers and having in place signed agreements that lock in pricing, delivery, and other key deliverables are more critical than ever. Before starting your own veterinary practice be clear on not only how much and how frequently you will need different equipment and supplies but also where you will get them from and how to ensure consistent delivery.

4. Employer expectations.

Many would-be practitioner-owners began their careers as associate veterinarians and have experienced the employer-employee relationship from that perspective. However, being the boss means being in charge of all hiring, firing, and retention issues. The Great Resignation that was prompted by the pandemic hit particularly hard jobs that cannot be performed from home. Even with the huge increase in veterinary telehealth, vets need staff that can be on-site. Our recent discussion of how to attract and retain talent in the current climate explained that keeping staff now might require signing bonuses, larger salaries, or more lucrative benefits. And once you have a team in place, the work doesn't stop there. You will need to meet ongoing compliance requirements with employment laws, not to mention a plan to professionally develop any associate veterinarians you bring on – they will want the same mentorship you once sought.

5. Property rights (and wrongs).

Most veterinarians receive at least some basic corporate training in veterinary school, but they are far from prepared for all the non-medical elements of business ownership. Every veterinary practice requires a basic understanding of bookkeeping, business contracts, and employment law. You will need to understand how to market your business and many owners will even have to manage real estate if they own the property where the practice is. That can be intimidating for a new owner-practitioner, and therefore it is critical to work under an experienced veterinarian before opening your own practice, not only to learn day-to-day care of patients but also gain insight into business operations.

Ask questions before you start your own veterinary practice and get help.

No business owner got started on their own. The key to a successful veterinary practice starts long before you see your first patient. Understanding all of the points above is made far easier by getting professional advice. Whether it's learning about your financing options or how to use social media to promote your business, these are worthwhile investments that are part research and part education. The more work you do up front, the less likely you will have unpleasant business surprises down the road. Instead, you will be able to focus on the satisfaction and rewards of being a veterinarian practitioner — and owner.

The National Veterinary Law Group at Mandelbaum Barrett is here to answer any questions you may have.

IN THE NEWS

How can entrepreneurial veterinarians reap benefits of a corporate practice while remaining independent? National Veterinary Law Group attorneys Peter Tanella, Esq. and Dennis J. Alessi, Esq. set out to answer that question (and others!) in their latest dvm360® article "Veterinary-Owned Management Companies: Why Not?" In the article they look at what a Management Services Organization (MSO) is and what it does, how the MSO acquires a practice, and what the relationship is between the MSO and the "friendly" practice.

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Concierge Veterinary Care Arrives in Northern New Jersey

February 14, 2023

Symbios Animal Health, a new entrant into the veterinary space, has just opened to serve Chatham and the surrounding communities. Over the last decade human medicine has experienced an ever-increasing number of options for the delivery of care; included among these new modalities, concierge medical practices have focused on curating care to meet the needs of their patients. Veterinary medicine, to the contrary, has remained stagnant in the client experience and delivery of care. Symbios Animal Health is looking to change this with a commitment to the highest-quality care with a distinct personal touch. This unique concierge-style veterinary hospital will limit the doctor to patient ratio to 25% of the industry average while providing all routine services to their members.

The all-inclusive curated veterinary care model that Symbios provides is focused on serving those who consider their pet part of the family and deserving of the same level of care as any of their other two-legged family members. Symbios' Chief Veterinary Officer and partner, Dr. Megan Armani said, "When approached with the idea I was most excited to have the time to build a relationship and deep connections with my patients and their families. As a former hospital owner I understand the stress on a doctor and the client to be moved through your appointment too quickly. I am committed to being there for our members." This focus on the relationship between the veterinary care team, patient and client is not new in veterinary medicine. However, as hospitals have grown, access to diagnostic tools has increased, and operational decision makers have frequently moved offsite, the level of personal touch has dwindled. Symbios is striving to bring the relationship back to the forefront - re-focusing on what has made veterinarians a part of your family for years.

While the aspirations of Symbios are lofty, early adopters are experiencing the Symbios difference already. Aaron Freedman noted, "I truly feel as my veterinary care team has genuine concern not only for Oscar, but the team spends time to get to know my family. "How the care is delivered may be a large driver for this feeling. Included with all memberships are same-day appointments, in-home wellness care and 24/7 access to telehealth care. Additionally, each member has their own dedicated patient advocate. Each advocate comes not just with veterinary hospital experience but also advanced training on nutrition and fostering the human animal bond. The Co-Founder and CEO of Symbios Animal Health, Dr. Nick Pope shared, "Seeing our team deliver on the vision of a next-level experience for our members combined with peace of mind and access to the best care inside an all-inclusive model, drives us to share this with the community."

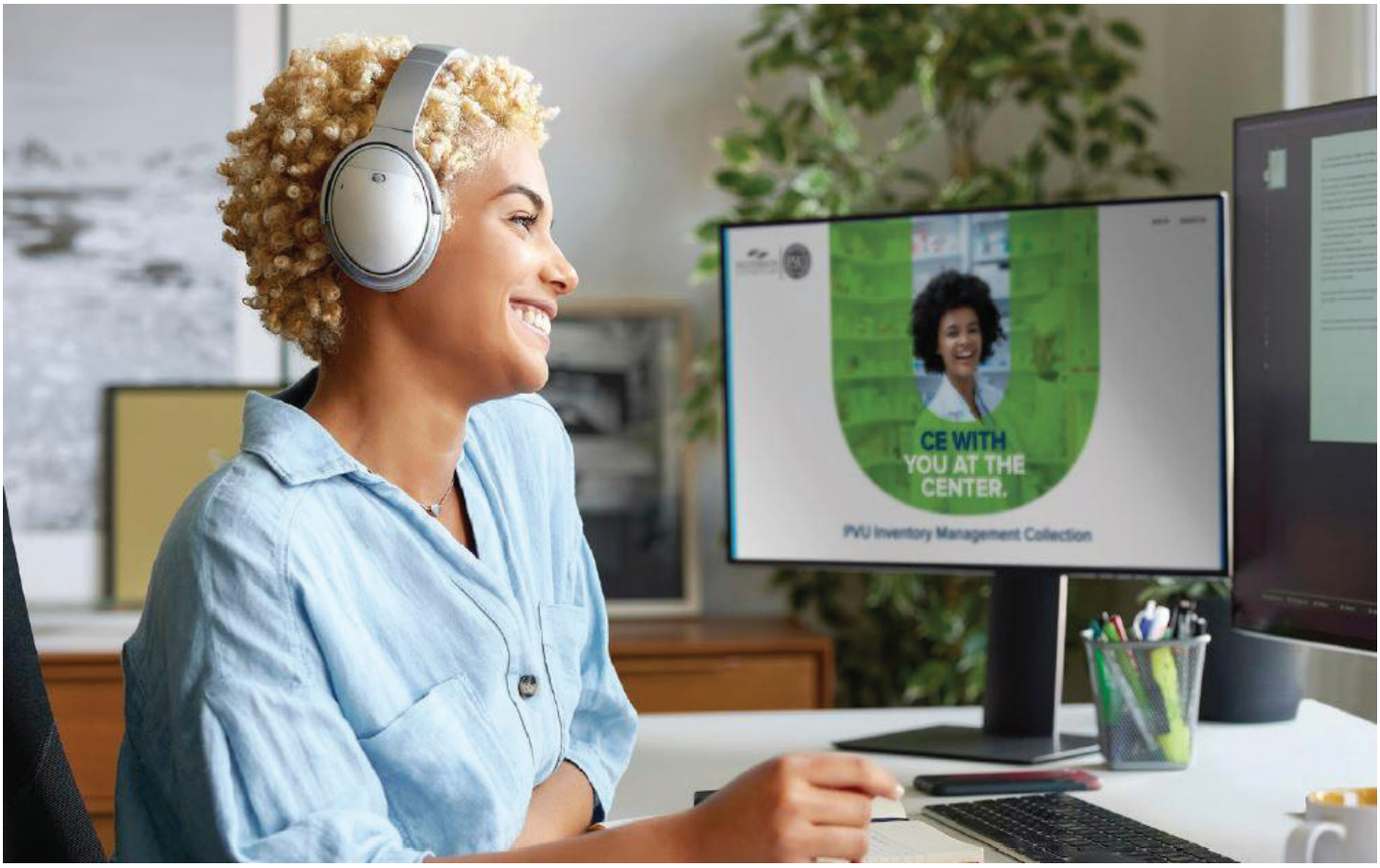
Symbios and their veterinary care team are committed to delivering "Exceptional Veterinary Care, As it Should Be."

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BLACKDVM NETWORK

EMPOWERING THE BLACK VETERINARY COMMUNITY

BlackDVM Network is an online platform for the empowerment of Black veterinarians, technicians, assistants, and students. Founded in 2018, by then veterinary student Dr. Tierra Price, BlackDVM Network was created as a safe space for Black veterinary professionals to connect, learn, and empower one another. We provide a community for Black veterinary professionals to advance their careers and access economic opportunities. In the spirit of self-care, we support our members so they can lead healthy, successful careers and have the ability to give back to the veterinary community.

We believe successful veterinary professionals are core to the advancement of veterinary medicine. BlackDVM Network is a community of veterinary professionals who are ready to grow professionally and personally while helping others along the way. Our membership offers access to professional, financial, and wellness resources and opportunities provided by our partners.

You can learn about us by visiting our website at https://link.edgepilot.com/s/b9de0036/i-JpKZGRp0ykSb26cFUdHA?u=http://www.blackdvmnetwork.com/ or by reaching out to info@blackdvmnetwork.com.



Today's Veterinary Business

PPP Loans and Your Practice

A fraudulent application can deliver costly ramifications before or after a hospital sale.

Issue: February/March 2023
Peter H. Tanella

Companies nationwide, including many veterinary practices, relied on emergency financial assistance to stay afloat during the COVID-19 pandemic. Today, however, enforcement action by the U.S. Justice Department in the case of Paycheck Protection Program loans to businesses highlights the importance of conducting due diligence when entering into the sale of a veterinary hospital.

A Brief History

In 2020, the Coronavirus Aid, Relief and Economic Security Act was enacted to provide emergency financial assistance to businesses impacted by the pandemic. One aspect of the CARES Act was the Small Business Association's Paycheck Protection Program, which aided eligible companies in the form of forgivable loans for payroll and other specified expenses. Qualified businesses could receive PPP loans of up to 2½ times their average monthly payroll and a maximum of $10 million. In addition, the second round of PPP funding granted eligible businesses as much as $2 million more.

Both PPP rounds carried interest rates of 1% and required no collateral or personal guarantees. Borrowers were eligible for complete loan forgiveness if specific criteria were satisfied within eight to 24 weeks after the loan's disbursement.

The criteria included:

- Spending at least 60% of the proceeds on payroll costs.
- Maintaining employee and compensation levels.
- Using all the proceeds for payroll or other eligible expenses.

Fighting Loan Fraud

Despite the government fully or partially forgiving an overwhelming majority of PPP loans, the Small Business Association continues to identify loans fraudulently obtained or improperly forgiven based on misrepresentations or omissions of fact.

While concerns about potential fraud were present from the start, the SBA identified internal oversight failures. In response, a federal law passed in 2022 established a 10-year statute of limitations for criminal and civil enforcement against borrowers who engaged in PPP loan fraud. Shortly after, the Justice Department created strike-force teams dedicated to investigating and prosecuting fraud involving COVID-19 relief funds.

The federal government has several legal tools when prosecuting PPP loan fraud, including the False Claims Act, which imposes liability on people and companies defrauding government programs.

In addition to the crackdown, the IRS issued guidance on the repercussions involving improperly forgiven PPP loans. The agency advised that when a loan to a taxpayer is forgiven based on misrepresentations or omissions, the taxpayer cannot exclude the improperly forgiven amount from income and must pay taxes on it.

The Effect on Veterinary Transactions

When two parties engage in a post-pandemic veterinary practice transaction, due diligence should reveal whether the owner received PPP loans or other pandemic relief. However, the buyers and sellers often dismiss any concerns when they see proof that the loans were forgiven. Often, the "proof" is a simple email from the Small Business Association rather than a formal letter or document from the lending bank.

Practice buyers should be aware that PPP loan audits are ongoing. If a future audit determines that loans were improperly forgiven, the financial impact on the buyer can be devastating. On the other hand, sellers should understand that they might be held responsible should issues arise.

Tips for Both Sides - Hospital buyers and sellers should answer these questions:

BUYER

- Was the seller eligible for the PPP loans applied for and received?
- Does the seller have adequate proof of PPP loan forgiveness?
- Was the seller the subject of an audit or investigation related to PPP loans? Is the seller now the subject of one?
- Did the seller make appropriate representations and warranties regarding the PPP loans?

SELLER

- Have you reviewed all PPP loan applications to identify any misrepresentations or omissions?
- Did you satisfy all the conditions for PPP loan forgiveness?
- Did you receive documentation from the lending bank confirming PPP loan forgiveness or repayment?
- What representations and warranties did you make to the buyer?
- Did you indemnify the buyer from future PPP loan enforcement actions?
- Did the seller make appropriate representations and warranties regarding the PPP loans?

Don't Delay

PPP loans and other relief funds were critical in allowing veterinary practices to stay open and treat patients during difficult times. While many businesses are eager to put the pandemic in the past, PPP loans cannot be overlooked when a practice changes ownership. By conducting thorough due diligence, buyers and sellers can ensure that government audits and legal enforcement won't come back to haunt them.



NATIONAL VETERINARY LAW GROUP AT MANDELBAUM BARRETT

RECENT EVENTS



VMX 2023

At VMX 2023 in January, our National Veterinary Law Team of Peter Tanella, Esq., Justin Wade, Esq. and John DeFuria, Esq. enjoyed connecting with industry friends, colleagues and clients as well as meeting new ones and look forward to "continuing the conversation."



Vet Partners Annual Meeting

Peter Tanella, Esq., Chair of the National Veterinary Law Group at Mandelbaum Barrett recently participated in the VetPartners Annual Meeting in Las Vegas. VetPartners is a non-profit organization dedicated to serving the veterinary profession and their annual meeting is an opportunity for collaboration and networking among industry thought leaders.







WVC Conference

Veterinary Law Chair Peter Tanella, Esq. and Partner Dennis J. Alessi, Esq. gave 2 presentations at the recent WVC Conference in Las Vegas. Their first session discussed "Everything You Wanted to Know About MSOs: And Why Veterinarians Should Establish Their Own" followed by "Non-Traditional Methods for Granting Employees Equity Interest in Veterinary Practice." Our Team including Peter Tanella, Esq., and John DeFuria, Esq. also exhibited at the show.



Our Veterinary Law Blog

Our Veterinary Law Blog has a number of resources to help you manage and grow your practice. Recent articles cover management services organizations, malpractice liability, tips on staying independent and maximizing profits, and much more.

Visit our Website!

Helping our clients to feel confident in their negotiations when buying or selling practices is one of our main goals. We understand that every deal is unique and that these are often once in a lifetime opportunities for our clients. Our team takes the time to get to know the veterinarians we work with, and we strive for that 5-star service each and every time.





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