



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-092

September 28, 2015

The Honorable Blake Johnson
State Senator
320 West Court Street, Room 120
Paragould, AR 72450

Dear Senator Johnson:

You have requested my opinion concerning the regulation of the practice of veterinary medicine in Arkansas. Your letter refers to questions from a Central Arkansas veterinarian regarding the authority of the Veterinary Medical Examining Board ("VMEB") to "annually review the corporate charters of veterinarians licensed to practice in Arkansas and charge a fee for the review." Your letter further states that upon this review, the VMEB issues a certificate approving the corporate status.

You have posed the following specific questions in this regard:

- 1) Is there a basis for corporate status being a requisite for licensure for veterinary medicine?
- 2) Is this review within the scope of the VMEB?
- 3) Does Arkansas law authorize the imposition of the fee on veterinarian corporations?
- 4) What happens with the fee generated from the review?

RESPONSE

With regard to Question 1, the formation of a corporation is not a prerequisite to an individual obtaining a license to practice veterinary medicine in Arkansas. But

a license to practice veterinary medicine is a prerequisite to engaging in the corporate practice of veterinary medicine in this state. In my opinion, the answer to Question 2 is “yes” with regard to the corporate practice of veterinary medicine. The VMEB is specifically charged with regulating veterinarians in a corporate practice and preventing corporate or non-corporate holdings from being sold to, directed by, or controlled by non-veterinarians. The answer to Question 3 is “yes” in my opinion. It is my opinion in response to Question 4 that the fee is properly deposited in the State Treasury to the credit of the Veterinary Examiners Board Fund, to be used to support the VMEB’s functions in accordance with the VMEB’s appropriation act.

DISCUSSION

Question 1 - Is there a basis for corporate status being a requisite for licensure for veterinary medicine?

I understand this question to be asking whether the formation of a corporation is a prerequisite to obtaining a license to practice veterinary medicine. The answer to that question is “no.” There is no requirement that a corporation be formed before a person may be licensed under the Arkansas Veterinary Medical Practice Act¹ to practice veterinary medicine in this state.

However, given the reference to “corporate charters of veterinarians” in your request for my opinion, and Question 3’s reference to “veterinarian corporations,” I believe it also bears noting that if the wording of Question 1 is reversed, the answer is “yes.” That is, a license to practice veterinary medicine is clearly a prerequisite to engaging in the corporate practice of veterinary medicine.

This latter conclusion follows from the requirements of the Arkansas Professional Corporation Act.² Under that body of law, a professional corporation may be formed to engage in the practice of veterinary medicine, but all veterinary services must be rendered by licensed veterinarians:

¹ Ark. Code Ann. § 17-101-101 *et seq.* (Repl. 2010 & Supp. 2013).

² Ark. Code Ann. § 4-29-201 *et seq.* (Repl. 2001).

(a) One (1) or more persons duly and properly licensed under and pursuant to the laws of the State of Arkansas to render the same type of professional services, as defined in § 4-29-202,^[3] may form a corporation, pursuant to the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., to own, operate, and maintain a professional corporation and to engage in the professional services thereby authorized, by and through its licensed shareholders, directors, officers, and employees only.

(b) *It is mandatory that such professional services be rendered by or through persons who are duly and properly licensed, individually, to engage in the profession.*⁴

It clearly follows from the above-emphasized language that veterinary services may be provided through a professional corporation only by individuals licensed pursuant to the Arkansas Veterinary Medical Practice Act (“Veterinary Practice Act”). This mandate is echoed in the Veterinary Practice Act, which vests the VMEB with the power to prevent corporate holdings by non-veterinarians:

The Veterinary Medical Examining Board shall have the power to ... [r]egulate all veterinarians in a corporate practice and prevent corporate or noncorporate holdings from being sold to, directed by, or controlled by a nonveterinarian.⁵

³ “Professional service” is defined in § 4-29-202(2) as “any type of professional service which may be legally performed only pursuant to a license or other legal personal authorization for example, the personal service rendered by certified public accountants, architects, engineers, dentists, doctors, and attorneys at law.” This definition plainly includes personal service rendered by veterinarians. *See* Ark. Code Ann. § 17-101-307(a) (Supp. 2013) (“No person may practice veterinary medicine in this state who is not a licensed veterinarian or the holder of a valid temporary permit issued by the Veterinary Medical Examining Board.”).

⁴ Ark. Code. Ann. § 4-29-206 (emphasis added). *See also* Ark. Code Ann. § 4-29-208 (providing that all persons having any part in the “ownership, management, or control” of a corporation formed under the Arkansas Professional Corporation Act must be licensed under the laws governing their profession).

⁵ Ark. Code Ann. § 17-101-203(9) (Repl. 2010).

In sum, there is no requirement that a corporation be formed before a person may obtain a license under the Veterinary Practice Act to practice veterinary medicine. So a person may obtain a license and choose to practice veterinary medicine without forming a corporation. A license to practice veterinary medicine is, however, a prerequisite to engaging in either the unincorporated practice of veterinary medicine or the corporate practice of veterinary medicine.

Question 2 - Is this review within the scope of the VMEB?

I understand this question to be asking whether the VMEB's "annual review" of a veterinarian corporation – as referenced in your letter – is within the scope of the VMEB's authority. The answer is clearly "yes," in my opinion, pursuant to both the Veterinary Practice Act and the Professional Corporation Act.

As noted above, a provision in the Veterinary Practice Act— Ark. Code Ann. § 17-101-203(9)—vests the VMEB with the power to regulate veterinarians who are in a corporate practice and prevent corporate holdings by non-veterinarians. The VMEB thus plainly has authority under the Veterinary Practice Act to review veterinarian corporations to ensure compliance with § 17-101-203(9).

The VMEB's authority in this regard corresponds with the corporate registration requirement in the Professional Corporation Act:

No corporation shall open, operate, or maintain an establishment for any of the purposes set forth in §§ 4-29-202 and 4-29-206 without a *certificate of registration from the state board, department, or agency, as the case may be, authorized by law to license individuals to engage in the profession concerned.*⁶

Corporations involved in the practice of veterinary medicine are thus subject to registration by the VMEB pursuant to the Professional Corporation Act. A prerequisite to such registration is a VMEB finding that the incorporators, officers, directors, and shareholders are licensed veterinarians.⁷ Once issued, a veterinarian

⁶ Ark. Code Ann. § 4-29-210(a) (emphasis added). The corporate practice of veterinary medicine plainly falls within this statute. *See, supra*, note 3, (and accompanying text).

⁷ *See* Ark. Code Ann. § 4-29-210(c)(2) (providing for the licensing board's issuance of a certificate of registration upon a finding that, among other things, "the incorporators, officers,

corporation's certificate of registration remains effective "until January 1 following the date of the registration."⁸ The VMEB then performs an annual compliance review upon the certificate holder's application for renewal:

Upon written application of the holder, accompanied by a fee of ten dollars (\$10.00), the board, department, or agency which originally issued the certificate of registration shall annually renew the certificate of registration if it finds that the corporation has complied with its regulations and the provisions of this subchapter.⁹

The annual review of a veterinarian corporation is therefore clearly within the scope of the VMEB's authority under the Professional Corporation Act, as well as the Veterinary Practice Act.

Question 3 - Does Arkansas law authorize the imposition of the fee on veterinarian corporations?

As explained above in response to Question 2, the VMEB performs an annual compliance review of a veterinarian corporation upon the certificate holder's application for renewal of the corporation's certificate of registration. And this application must be "accompanied by a fee of ten dollars (\$10.00)." The answer to Question 3 is therefore clearly "yes."

Question 4 - What happens with the fee generated from the review?

There is no statute directly addressing the fee's disposition. As explained above, however, the fee is a prerequisite to the VMEB's annual renewal of a certificate of registration upon a finding that "the [veterinarian] corporation has complied with [the VMEB's] regulations and the provisions of [the Professional Corporation Act]." I believe it reasonably follows that the fee is properly deposited in the State

directors, and shareholders are each licensed pursuant to the laws of Arkansas to engage in the particular profession involved....").

⁸ *Id.*

⁹ Ark. Code Ann. § 4-29-210(d).

Treasury to the credit of the “Veterinary Examiners Board Fund,” to be used to support the VMEB’s appropriation act.¹⁰

Sincerely,



LESLIE RUTLEDGE
Attorney General

¹⁰ See Acts 2015, No. 604, § 3 (appropriating funds from the Veterinary Examiners Board Fund for the personal services and operating expenses of the VMEB).