

May 23, 2007

The Honorable Lawrence K. Grooms
Senator, District No. 37
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Grooms:

We received your letter addressed to Attorney General Henry McMaster requesting an opinion of this Office as to public disclosure of complaints against veterinarians. In your letter you state:

It is my understanding that the Department of Labor, Licensing and Regulation may be waiting to publically release complaints until the licensee responds. However, because the statute does not require a response from licensees, making the public release contingent upon a response would seem to allow the possibility that the complaint could never be released.

You refer us to a provision of the South Carolina Code pertaining to the licensure and regulation of veterinarians and ask based on this statute: "Is it your opinion that once the licensee has been provided a copy of the complaint, the complaint should then immediately be made public? If this is not your opinion, exactly when should the complaint be made public?"

Law/Analysis

As you mention in your letter, section 40-69-90 of the South Carolina Code (Supp. 2006) provides a procedure by which the Department of Labor, Licensing and Regulation (the "Department") shall handle complaints received against a licensed veterinarian. According to this provision, complaints are received by the Department, which investigates the complaint in conjunction with the Investigative Review Committee appointed by the State Board Veterinary Medical Examiners (the "Board"). S.C. Code Ann. § 40-69-90(A). The Department, at the direction

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of the Board, may then file a formal complaint charging the licensed veterinarian with a violation of chapter 69 of title 40 or a regulation promulgated thereunder. Id. In addition, the statute provides: “If the department files a formal complaint, the department must make the formal complaint and any answer filed by the licensee available for public inspection. The licensee must be provided a copy of the formal complaint prior to making any complaint available for public inspection” S.C. Code Ann. § 40-69-90(A).

In considering the question you present in your request letter, we keep in mind the rules of statutory interpretation.

The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Carolina Power & Light Co. v. City of Bennettsville, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994).

Sloan v. Hardee, 371 S.C. 495, ___, 640 S.E.2d 457, 459 (2007).

The Legislature requires a licensed veterinarian be provided with a copy of the complaint prior to it being made available to the public. S.C. Code Ann. § 40-69-90(A). Therefore, according to the plain language used in section 40-69-90, the Department may not make the complaint available to the public prior to providing it to the licensee. However, other than providing a copy of the complaint to the licensee, we do not find any other prerequisites the Department must fulfill prior to making the complaint available to the public. Accordingly, we believe the Department must make a copy of formal complaint available to the public once it fulfills its obligation to provide a copy to the licensee.

As you indicate in your letter, in addition to making the formal complaint available for inspection, the Department must make “any answer filed by the licensee” available as well. Thus, given the inclusion of this language, we believe the Legislature intended to allow licensees the opportunity to respond to the formal complaint and requires this response to be made available to the public along with the complaint. However, section 40-69-90 neither makes such a response mandatory nor requires it be presented to the Department within a certain time frame. Therefore, we do not read this portion of section 40-69-90 to require the Department to wait until it receives a response from the licensee to make the complaint available to the public. Rather, we read this provision to require the Department to post such a response if and when the licensee makes a response available. Accordingly, regardless of if and when the Department receives a response from

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the licensee, it must make the formal complaint available. The statutes do not authorize the Department to wait until a response is received to make the complaint available to the public.

Very truly yours,

Henry McMaster
Attorney General

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REVIEWED AND APPROVED BY:

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