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Prepare the Umbrella Before it Rains – A Legal Well-Check

Rupp Pfalzgraf LLC

- Frank C. Muggia, Esq.
- Stuart R. Smith, Esq.



WHO ARE WE?

Frank Muggia and Stuart Smith are leaders in the Veterinary Law & Ethics field, serving as trusted business partners and advisors to various practices across the nation.

Based in Buffalo, New York, Frank and Stuart's combined decades of experience practicing in the field of veterinary medicine provide them invaluable insight to solve unique challenges in today's environment.

Frank and Stuart work exclusively with veterinarians and have a passion for assisting veterinarians in achieving their goals. While closing on average 15 transactions each year between veterinarians and corporate aggregators, Frank and Stuart have acute knowledge of the strategies, implications and practicalities of transactions with corporate aggregators.

Rupp Pfalzgraf, LLC



THE FOUNDATION

Corporate Entity Structure and Organizational Documents



Entity Selection

In starting any business, founders and owners must consider the foundational structure of their business and how they will implement a plan to achieve their goals and reduce risk using certain entity types.



Sole Proprietorships Inadvertently Expose you to Personal Liability

- What is a sole proprietorship?
- Sole proprietorships expose owners to personal liability for the debts and obligations related to the practice's operations, properties and affairs
- Weighing the pros and cons – liability protection vs. administrative burden



Corporation and Limited Liability Company Protection

- Protection from Personal Liability – Keep your Assets Safe and Segregated!
- Limited liability company flexibility in onboarding partners upon specific terms (management rights, creative economic structures)
- Tax Benefits – Self-Employment Tax

Organizational Documents

The practice's organizational documents are vital to ensure smooth operations with respect to major events and day-to-day decision-making.

Operating Agreements – Limited Liability Companies Shareholders Agreements – Corporations

- Capitalization – Who Owns What?
 - Voting and Non-Voting Equity Interests
 - Phantom Equity Considerations
 - Economic Rights and Preferred Interests
- Management, Authority and Control – Who has the Power?
 - Day-to-Day Control (Appointment of Officers)
 - Hiring and Firing
 - Liquidity Event Opportunities
- Transfer Restrictions – When Can You Get Out?
 - Call and Put Rights
 - Valuation Methodologies and Formulas
 - Succession Planning
 - Clarity to Avoid Disputes and Dissension

Associate DVM Ownership

Bringing on a Partner

- Incentive to increase production and revenue
- Retention to keep high producers onboard
- Eligibility considerations
- The initial conversation
- What is your succession plan?
 - Controlled and defined exit rights – valuation methodology and triggering events
 - Call and put rights
 - Employee purchase options
 - Tag and drag-along rights



Creating value to become an asset – employees

Securing Your Greatest Asset Employment Agreements



Employment Agreements

The Future Depends on What You Do Today

Why They Are Necessary



- Retention and Term
- Clarity for both sides – dispute and employee dissatisfaction avoidance
- Define Expectations
- Increase Stability

Are Your Current Agreements Sufficient?



- At Will vs. Term models
- Non-Competes
- Periodic Review

Protecting Your Practice Non-Compete Agreements



Non-Competes – Purpose and Value

So, why do non-competes have value and what is the purpose?

- Economic Investment Protection
- Capture of personal and corporate goodwill
- Revenue and profitability preservation
- Protection of trade secrets (e.g., client lists, pricing)
- Employee retention – minimizing turn over
- Reduces risk associated with business transactions and ensures a buyer will “get what they pay for”



CASH FLOW IS KING

Enforceability – The Teeth

Although each jurisdiction's laws regarding non-compete agreements and their enforceability vary, the main principle rings throughout:

What is required to protect the practice's legitimate business interests?



Non-compete provisions should be narrowly tailored to project the employer's legitimate business interest ensuring enforceability and redress upon a breach



Non-Compete Components

Whether your non-compete agreements are enforceable involves a multi-component analysis, any of which may render your non-compete unenforceable

1

Length and Duration – Initial and Tail Periods

2

Scope – Geographic and Client Specific Models

3

Subject Matter – What Constitutes Competitive Activity

Non-Competes – Self-Evaluation

- Does the practice require associate veterinarians to execute a non-compete as a condition of employment?
- Conduct a thoughtful and truthful analysis on the extent needed to protect your business. Do your non-competes exceed permissibility?
- The precise language matters
 - Defining competition
 - “Direct” vs. “Indirect” competition
- How to speak with employees about non-competes
- When is it appropriate to grant an exception?



Action Items – What Should I Do?

The Federal Trade Commission (FTC) Ban on Non-Competes

The FTC recently adopted a comprehensive ban and restrictions on non-compete arrangements

- **Exceptions** – Senior Executives and under a Sale of a Business
- **Status** – Current litigation leaves employers and employees in limbo



The only thing that is certain is uncertainty.



Non-Solicitation Agreements

The Future
Depends on What
You Do Today

What are they and how do they differ from Non-Compete Agreements?

- Purpose – a targeted approach to preserve the economic relationships with clients, employees and certain third-parties
- Direct and Indirect Solicitation
- Permitted Solicitation – General Third-Party Services
- Enforceability Concerns – Obtaining Knowledge and Working with Clients
- Boots and Suspenders to Non-Compete Agreements – Filling in the Gaps
- An Alternative Solution for Certain States that Ban Non-Competes



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Thank You!

Do you have any questions?

