

End of Legislative Session Update

7/17/2019

The 2019 New York State Legislative Session kept us extremely busy this year and overall our efforts have paid off, with one notable exception.

We want to thank the many members who placed calls or wrote to legislators, those who sat down with legislators on Lobby Day, and the tireless efforts of Brown and Weinraub PLLC. Without this teamwork the scorecard below would be primarily red. Thankfully we have many legislative successes to celebrate.

2019 Legislative Scorecard

		Assembly	Senate	
Office-use compounded medications	Support	Did not move	Did not move	Continue to work with legislature over the summer
Excluding Class 1 devices from veterinary practice	Oppose	Did not move	Did not move	We do not expect further action in this bill
Declaw ban	Oppose	Passed	Passed	Opposing with governor
Disclose all side effects of medications	Oppose	Did not move	Amended	Current version much improved with NYSVMS input
Prohibit bark softening	Oppose	Did not move	Did not move	Monitoring for activity
Restrict antibiotic use in farms, ban preventive use	Oppose	Did not move	Did not move	Extensive efforts were successful
Require informed consent for Euthanasia	Oppose	Did not move	Passed	NYSVMS working with assembly on amendments
Allow uneconomic damages	Oppose	Did not move	Did not move	NYSVMS in discussion with sponsors
Mandatory reporting of animal abuse	Oppose	Did not move	Did not move	NYSVMS involved in extensive discussions
Humanely moving ambulatory animals	Oppose	Did not move	Did not move	Extensive discussions with sponsor

NYSVMS 2019 End of Session Update

The New York State Veterinary Medical Society (NYSVMS) represents thousands of veterinarians across the state and is the acknowledged and respected voice for the profession of veterinary medicine in New York State. Our mission is to protect, promote, and advance the science and profession of veterinary medicine and to work to ensure that New Yorkers have access to the highest caliber veterinary care available.

The NYSVMS Government Relations Committee, in collaboration with legislative counsel and the Grassroots Legislative Network (GRLN), advocates on behalf of the profession of veterinary medicine by monitoring legislation introduced by the state legislature that has a direct impact on the profession's practice. For the first time, members of the Government Relations Committee and the Board of Directors participated in a "lobby day" in 2019, meeting with legislators who sponsor various items on our agenda and those who serve as chair of committees of relevant jurisdiction. This lobby day and the increase of the profile of NYSVMS among New York State government officials again resulted in legislators and staff proactively seeking the guidance and input of NYSVMS on issues of importance during the legislative session.

The 2019 New York State Legislative Session concluded on June 21st, completing the first year of the two-year session (January 2019 – December 2020). All legislation still pending will be "live" at the beginning of the next legislative session, scheduled to begin in January 2020. See below for the status of the bills on the NYSVMS 2019 Legislative Agenda and other items of importance.

Strengthening a Veterinarian's Ability to Treat Patients in a Timely Manner

NYSVMS continues to work on the issue of ensuring compounded medications are available for "office use" in a veterinary patient setting.

While NYSVMS has supported legislation sponsored by Senator Metzger (S.4343) and Assemblyman Zebrowski (A.2915) that would permit a veterinarian to keep compounded drugs in stock for office use and sale pursuant to a non-patient specific regimen, it did not advance in either the Senate or Assembly this year. Last fall, NYSVMS sought clarity on the meaning of "office use" by reaching out to the State Education Department's Board of Pharmacy; the Board responded this meant use in the office only. NYSVMS continued to push for this legislation as a means to allow veterinarians to send compounded medications home with a patient so treatment would not be delayed while a client sought the medication from a pharmacy.

During lobby day, NYSVMS members meeting with the Assembly's Higher Education Chair discussed this bill at length, explaining why it is needed and outlining the steps that have been taken to move this legislation over the last few years and the feedback received from the State Education Department and other interested parties. The Chair indicated that she understood the goals of NYSVMS and directed staff to reach out to the State Education Department to request they work on this issue and help determine a legislative solution. During the summer and fall, NYSVMS legislative counsel will work with the legislature and State Education Department to amend the bill's language.

Protecting a Veterinarian's License to Practice Veterinary Medicine

NYSVMS worked throughout the 2019 session to combat legislation that would restrict or prohibit the performance of specific procedures or the use of particular medicinal protocols.

- Legislation sponsored by Assemblywoman Rosenthal (A.1303-B) and Senator Gianaris (S.5532-B) would prohibit the declawing of cats (onychectomy) in all circumstances, except when “necessary for a therapeutic purpose” such as the diagnosis of a disease in the cat. NYSVMS believes declawing is a serious medical procedure and the choice to perform one is a decision which should be left to the sound discretion of fully trained, licensed, and state supervised professionals operating within appropriate standards of practice. In addition, NYSVMS believes that declawing should be considered only after a complete education about the procedure and full briefings on alternatives, where the claws present a health risk to an owner, or where serious attempts to stop a cat’s destructive behavior have failed. However, declawing is often an alternative for owners that may otherwise leave their pet at a shelter, which can lead to euthanasia. NYSVMS actively advocated against this bill during the 2019 legislative session, but it was passed by both Houses of the legislature. As of the date of this writing, the bill is awaiting delivery to the Governor for his signature or veto. NYSVMS will be requesting a veto of this legislation.
- Assemblyman Zebrowski (A.1897) continues to sponsor legislation that would prohibit bark softening in dogs unless performed by a veterinarian where the procedure is medically necessary for a dog. Like declaw, NYSVMS strongly believes bark softening is a medical decision which should be left to the sound discretion of fully trained, licensed, and state supervised veterinary professionals operating within appropriate standards of practice. Further, NYSVMS already discourages bark softening unless the procedure is medically necessary for a dog, is a last alternative to euthanasia, or when the animal will be surrendered by the owner if the procedure is not performed. Therefore, NYSVMS believes the determination to perform bark softening should be done on a case-by-case basis where specifics of the situation can be reviewed and evaluated, rather than having a ban placed on the procedure altogether. This bill did not move out of committee during the 2019 legislative session; NYSVMS will continue to monitor this issue moving forward and to oppose an outright ban on bark softening.
- Legislation that would restrict the use of medically important antimicrobials in food-producing animals (S.5742-A, Senator Kavanagh, and A.8335, Assemblywoman Romeo) did not move during the legislative session. This bill, newly introduced this year, had the potential to restrict the practice of food animal veterinarians in a manner that could have a detrimental impact on animal welfare. The bill would also establish an onerous set of reporting requirements. NYSVMS had extensive conversations with advocates in support of the bill, explaining veterinary protocol and the FDA guidelines already in existence to ensure the judicious use of antimicrobials in food animals. Through these discussions, NYSVMS emerged as a trusted resource to the Assembly sponsor of this legislation who has indicated that she wants to work on the bill with us before the start of the next session to ensure that the veterinary profession is not negatively impacted. NYSVMS looks forward to working with legislators on this bill.
- A bill that would require informed consent for euthanasia and limit the use of intracardiac injection (S.1555, Senator Serrano, and A.5699, Assemblyman Englebright) passed the Senate during the 2019 legislative session. This legislation would require extensive conversation with a client whose pet required euthanasia, including discussion of all alternatives available, the benefits and risks of each method, and the negative impacts on an animal. NYSVMS offered alternative language for this bill to ensure that a veterinarian’s professional judgment would not be usurped by statutory language requiring the offering of multiple methods of euthanasia, but the Senate moved the bill without accepting those changes. While the Assembly version of the bill did not move, NYSVMS

has already explained the challenges of the language to the appropriate staff and plans to discuss the bill further during the off-session.

Protecting Veterinarians from Liability

NYSVMS has successfully opposed legislation that would impose additional liability on a veterinarian; NYSVMS has also worked with legislators to improve the language of bills that would expose veterinarians' liability.

- Assemblywoman Glick has long sponsored legislation (A.1113) that would establish a civil cause of action for wrongful death of a companion animal brought by a guardian for the animal that would be appointed by the court. Until this year, the legislation has not traditionally had a companion in the Senate; Senator Martinez introduced the Senate version in 2019 (S.3414). The bill did not move in either house of the legislature this year. NYSVMS has closely monitored and opposed this type of legislation for many years on the basis that the bill could lead to costly court-ordered damages and could change the way SPCAs and animal control officers deal with injured, dangerous, or otherwise unadoptable animals. Passage of a guardianship or cause of action bill could also lead to lawsuits based on certain accepted veterinary practices; advocates believing these procedures are animal cruelty could seek the appointment of a guardian in those situations. NYSVMS will continue to oppose guardianship legislation in future sessions.
- Assemblywoman Rosenthal (A.1170) reintroduced legislation requiring veterinarians to report any incident and disclose records where the veterinarian suspects that the animal was abused. This legislation was not reported out of the Assembly Higher Education Committee. Relevant legislators repeatedly reached out to NYSVMS to discuss this legislation over the past year, wanting to ensure that our interests were protected and asking for our opinion and for us to articulate our concerns. After such discussions, those advocating for this legislation proposed changes to address each of our concerns: providing immunity to veterinarians for acting where no abuse was found after a report and where law enforcement did not act; a narrower list of individuals and organizations to which abuse should be reported, and a requirement for a report by law enforcement back to veterinarians detailing what they had done to investigate a report of animal abuse. NYSVMS also registered concern about the fact that abuse is difficult to define; this concern resonated with the State Education Department and some legislators, who ultimately determined the bill should not be moved out of committee or acted on during 2019.
- Buoy's Law (S.3959-C, Senator Brooks, and A.6502-A, Assemblyman Englebright) was originally drafted to impose a requirement on veterinarians prescribing or otherwise providing medication for an animal to notify the owner verbally and in writing of the potential risks and side effects of the medication. Through discussion with NYSVMS, the sponsors offered to amend the legislation to mirror the law in California; instead of requiring extensive disclosure, the bill was amended to provide that veterinarians offer a consultation in person or through electronic means that details side effects, warnings, and directions for proper use and storage. NYSVMS provided some critique of those amendments, which were adopted by the sponsors, so that the bill did not impose additional liability on a veterinarian for doing things normally done in veterinary practice. This bill passed the Senate in 2019 but did not move out of committee in the Assembly.
- Senator Metzger (S.5654) and Assemblywoman Rosenthal (A.7608-A) reintroduced legislation that would permit emergency services personnel to perform basic first aid on cats and dogs in an emergency, as long as they consult with a veterinarian via phone. The bill also provides immunity to veterinarians providing such advice where an injury or death of an animal results, unless gross negligence can be proved. After passage in the Senate, NYSVMS received outreach from the

Senate sponsor who was considering amendments to the language that would require a veterinarian or emergency services provider to prove that they had acted reasonably and in good faith where injury or death of an animal results. NYSVMS opposed this change, and the Senate agreed; the Assembly did make the amendment to the legislation to include the reasonable and good faith standard, but the bill did not make it to a vote in the Assembly. NYSVMS will continue to monitor this legislation to ensure that the appropriate liability standards and burden of proof are preserved.

Additional Legislation of Interest

A bill carried for many years by Senator Krueger (S.2724-B) and Assemblyman Englebright (A.5711-A) would establish appropriate guidelines for humanely moving non-ambulatory animals in a farm setting and require veterinary treatment of a non-ambulatory animal to determine if an animal should be treated, rehabilitated, or euthanized. NYSVMS worked with the sponsors of this legislation to ensure that the ability of a veterinarian to move a non-ambulatory animal would be preserved, even if, in a veterinarian's professional judgment, movement needed to be done with equipment deemed "inhumane" by the legislation's definitions. NYSVMS also encouraged the addition of a requirement that a farm follow protocol provided by a veterinarian with an established veterinary client patient relationship with a farm to assist in determining whether a non-ambulatory animal requires medical attention, rehabilitation, or humane euthanasia so a farm can act where a veterinarian cannot come to the farm right away. This bill did not pass either house.

Late in the legislative session, a bill exempting the use of pulsed electromagnetic field therapy was introduced (S.6269, Senator Addabbo and A.7899-A, Assemblyman Pretlow) at the request of the New York State Thoroughbred Horsemen's Association (NYSTHA). Earlier this year, a complaint was filed with New York State about a non-licensed individual who performed the pulsed electromagnetic field therapy on a horse. As a result of that complaint, the Gaming Commission's Equine Medical Director wrote a letter to the New York State Board of Veterinary Medicine opining that the performance of pulsed electromagnetic field therapy would not fall into the practice of veterinary medicine; the Board responded that their opinion is that it is veterinary practice and therefore requires the expertise of a veterinarian or veterinary technician. NYSVMS strongly opposed this legislation and shared with sponsors and relevant staff the position that NYSVMS opposes any erosion of the Veterinary Practice Act. NYSVMS also worked with NYSTHA to develop a form for a veterinarian's signature that would allow an unlicensed individual to perform pulsed electromagnetic field therapy at the prescription of a veterinarian. The State Education Department reaffirmed their position that this practice should only be done by a licensed veterinarian or veterinary technician. Ultimately, this legislation did not move in either house.