

VSPA Members Business Meeting – November 10th & 11th, 2011

Roll Call for Voting Members

Veterinary Medical and Surgical Group, Inc. **Greg Stoutenburgh**
Veterinary Referral Center of Colorado **Lori Ramig**
Georgia Veterinary Specialists & Emergency Care **Mark Dorfman**
Veterinary Specialty Center of Tucson **Jan Woods**
Veterinary Specialty Hospital of the Carolinas **Jerry Waddle**
Veterinary Specialty and Emergency Center of Kansas City **not present at meeting**
Pittsburgh Veterinary Specialty and Emergency Center **Ken Spokane**
VetsNow Hospital **not present – arrived November 11th**
Florida Veterinary Specialists **Darryl Shaw**
Michigan Veterinary Specialists **Ned Kuehn**
NYC Veterinary Specialists and Cancer Center **Dave Gersholowitz**
Wisconsin Veterinary Referral Center **John Beltz**
Veterinary Specialty and Emergency Center **Lara Tseng**
Akron Veterinary Referral & Emergency Center **Shaun McWilliams**
Seattle Veterinary Specialists **Art Arnaiz**
Southeast Veterinary Specialists **Rose Lemarie**
Memphis Veterinary Specialists **Todd Tobias**

Membership Report

Kansas out of compliance – not present at meeting

Vets Now Scotland out of compliance – unpaid dues

Blue Pearl out of compliance – two practices qualified for membership and not applied for membership as individual member.

Treasurers Report

Reviewed Profit & Loss and Balance Sheet for 2011

Reviewed financial internal controls implemented in 2011

- VSPA has a second signer on account (President) in case the Treasurer is unavailable.
- Backup authorized signer on accounts (currently the President).
- Monthly Treasurer reports to Board of Directors (P&L and Balance Sheet).
- Bank statement reconciliation by individual with no access to funds.
- Quick Books back up file to Administrative Director monthly.
- Expenditures over a designated threshold to be co-authorized by the President.
- Audit by independent CPA.

- Background and Credit check or Bonding of Treasurer and President (account signers). To be done by security firm to maintain confidentiality.
- No one bank account to have above the FDIC maximum.
- Dishonesty policy for maximum available coverage.

Proposed VSPA By-law Amendments

Strike thru text to be deleted. **Large Bold** text to be added.

6.02 **Annual Election of the Members**-Each Member Hospital's membership term shall be for a period of one year commencing on July 1st of each calendar year and terminating on June 30th of the following calendar year. A Member shall be admitted to the membership only by a majority of "Yah" votes of the total membership, whom have cast their votes in such election. Thus, each June of each calendar year the Member Hospitals shall hold an election to elect the total Membership for the following year. ~~The 2011 Annual Election of Members to be held in December 2011.~~ **The 2011 Annual Election of members to be held by April 2012.**

a. Election Procedures-

- (i) **Independent CPA Auditor**- Each year prior to the June Annual Election of the Membership, the Executive Board shall retain an outside independent Certified Public Accounting firm (CPA) firm to receive the voting ballots from the Designated Representatives of the Member Hospitals and to tally said votes and certify the Member Hospitals and non member hospitals, who have been elected to the Membership as Member Hospitals. The Member Hospitals so elected and certified shall serve in such capacity for the next term beginning on July 1st immediately following the June election and ending on June 30th of the following year. ~~The July 1, 2010 to June 30, 2011 election year to be extended to December 31, 2011. The 2011-2012 year to begin January 1, 2012 and end June 30, 2012.~~ **The July 1, 2010 to June 30, 2011 election year to be extended to April 30, 2012. A 2012-2013 membership cycle to begin May 1, 2012 and end June 30, 2013 (14 months of dues).**

7.03 **Election of Officers**- Nominations for the officers, who shall serve on the Executive Board, shall be submitted to the Membership at least 30 days prior to the meeting for election of Executive Board members. Election of Officers shall occur at the last general meeting of the calendar year and shall follow the election of the Members as provided for hereinabove in Article 6. **Elections shall not be held in 2011 and current Officer terms to be extended 12 months.**

- a. **Majority Vote**- Elections shall require a majority vote of all voting members present at a regular membership meeting or a special meeting called for the purpose of electing officers.
- b. **Filling Vacancies**- ~~Vacancies on the Executive Board that occur by reason of death, resignation, or otherwise, shall be filled by election at the next regular meeting. The term of the replacement officer will be for the remainder of the original term.~~ **Vacancies on the Executive Board that occur by reason of death, resignation, or**

otherwise, shall be filled by special election no later than the next regular meeting. The term of the replacement officer will be for the remainder of the original term.

Approved by unanimous vote

Revised Executive Board Terms

Planning for Fall 2012 and 2013 Nominations/Elections (not elected position)

2011-2012 VSPA Officers	Voting Member	Term	Current Officers	Boarded	Term Expires
Immediate Past President	no	1 year	None	n/a	
President Elect	no	1 year	Sonja Olson	n/a	Fall 2011 extended to Fall 2012
President		2 years	Jan Woods	no	Fall 2011 extended to Fall 2012
Vice President		2 years	Sonja Olson	no	Fall 2012 extended to fall 2013
Treasurer		2 years	Lori Ramig	no	Fall 2011 extended to Fall 2012
Corresponding Secretary		2 years	Mark Dorfman	yes	Fall 2011 extended to Fall 2012
Officer at Large		2 years	Rose Lemarie	yes	Fall 2012 extended to fall 2013

VSPA Direction and Future

The Direction and Future of VSPA – text from Executive Board Presentation *November 10, 2011*

VSPA Mission

VSPA is a defined membership of veterinary specialty hospitals where members actively participate in creating benchmarks and tools through communication and collaboration.

VSPA Vision

To be leaders in and advance the delivery of specialty veterinary services.

From VSPA By-laws

Prohibition of Horizontal Competitors-

- No Member Hospital shall be located within a 125 aerial miles radius of any other Member Hospital.
- Exceptions may be granted by a majority vote of the Executive Board with the consent of all of

the Member Hospitals, who may be within said 125 aerial radius miles.

Provided that Executive Board specifically determines that exception will not violate nor result in a reasonable likelihood of violating any of the federal and or state anti competition laws.

Why did the Executive Board seek the opinion of attorneys?

Members approved expense by unanimous vote at May 2011 Members Meeting for consulting attorneys regarding corporate consolidators and VSPA's By-laws.

Attorneys Consulted

Kent Perry, Overland Park, KS

Neil Kuenn, Chicago, IL

Philip Homsey, Los Angeles, CA

Critical Questions

1. What risks are the board and members taking with current VSPA practices?
2. If VSPA grants an exception to a corporate consolidator such as BPVP will it violate anti-trust laws?
Critical Questions
3. If an exception is granted, can VSPA continue to deny applicants in the future as we have in the past such as Brighthouse, VCA, MOON etc.?
4. Can we continue to share detailed financials regardless of the answers above?

Antitrust & VSPA

Background Information

VSPA is a Trade Organization

- An organization of members, who share an interest in the same trade or profession.
- Offers benefits to its members, such as sharing of information, to confer a competitive advantage upon association members that is not enjoyed by nonmembers.
- Have legitimate interests in setting membership limits;
 - Include limitations to ensure common interests, common interests and common goals and manageable size of the group so that the associations goals can be achieved.
- In some cases, limiting the membership serves a pro competitive purpose when;
 - Prevent competitors, whose numbers represent more than a certain percentage of the relevant market from collaborating in certain activities, such as group purchasing.
 - In such cases, the association may need to limit its membership so that the association collectively does not represent more than a certain percentage of the relevant market.

Why is this important?

- Trade associations are treated differently under the law.
 - Often has economic and financial implications for the members.

- Criteria that improperly exclude competitors restrain competition and may violate the antitrust laws.
- The Act does not prohibit *all* restraints of trade, but only those restraints which are found to be unreasonable.

Trade Association (aka Group) vs. Share groups

- Where an association imposes a geographical limitation for membership it must consider if such restriction would be reasonable in light of the relevant market.
- Will the restriction foreclose competitors from the market or provide members with a competitive advantage in the market which is not available to non-members.
- Few associations impose geographical market restrictions.
- VSPA bylaws limit membership to a maximum of 20 member hospitals;
 - This type of provision is usually found "share groups" which are most often loosely formed, non-competitor organizations that are not tax exempt since they don't represent an "industry" within the meaning of Section 501(c)(6) of the Internal Revenue Code.

What is a Relevant Market?

Basic Definition of "Relevant Market"

- A relevant market comprises a product or group of products and the geographic area in which these products are produced and/or traded. Therefore, the relevant market has two components: the product market and the geographic market.
- For these reasons it is necessary to define the relevant markets.
- Books and treatises are devoted to defining this term.

Examples of how an association could be viewed as anti competitive:

ONE

- Members agreed to standardize associate compensation at 28%.
- A definition of Personal Production is part of the members' agreement.
- Members abided by their agreement.

Clearly this would be an antitrust violation as a "price fixing" combination.

TWO

- Instead of agreeing to fix associate compensation they exchange information with each other disclosing what the associates' compensation.
- Associates' compensation then started to trend toward all production based and at 28%.
- Government would assert that the exchange of information was anti-competitive by nature and then it would attempt to define the relevant antitrust market and finally the anti-competitive effect on that market.

The associates who work for the association members comprise a relative market.

VSPA and its members do not currently nor have they ever engaged in this type of activity.

What *else* is a Relevant Market:

Corporate Consolidators have two business purposes and two relevant markets;

Operating Hospitals

Purchasing Hospitals

Potential Antitrust issues:

- Membership restrictions (geographic perimeter)
- Salaries
- Production Percentages
- Fees
- Purchasing

Additionally it is important to understand that the current VSPA By-laws require a determination of a *violation or a reasonable likelihood of a violation* of antitrust laws.

All three attorneys agree that the current VSPA By-laws do not define a relevant market (only a 125 mile geographic restriction).

Critical Questions Detail

1. What are the potential risks to any entity that may violate antitrust laws?

- Penalties for violations of the antitrust laws are severe.
- Violation is a felony.
- Cost of defense can be catastrophic.
- Criminal indictment may be instituted by the DOJ.
- Imprisonment up to three years.
- Substantial monetary fines - up to \$10 million
- Civil damages.
- State Class Action case on behalf of all consumers in the state for antitrust law violations.

2. If VSPA grants an exception to a corporate consolidator such as BPVP will it violate anti-trust laws?

“The admission of BluePearl as a Member with its twenty-one (21) hospitals would impact the determination as to Relevant Markets and *could* increase the likelihood of problems simply due to the increased combined market power of the Member Hospitals.”

3. If an exception is granted can VSPA deny applicants in the future?

“We have been asked if our conclusion would differ in a fact setting which included a specialty hospital consolidator similar to BluePearl but without any of the affiliated hospitals having previously been a

Member Hospital of VSPA. The answer is no.”

VSPA *may* be exposed to challenges by applicants denied membership on the grounds that denial of membership substantially affects their ability to compete in a market where a competitor exists.

4. Can we share detailed financials regardless of the answers above?

Aggregate data may be shared with publishing reducing any likelihood of complaints.

Options for VSPA’s Future

1. VSPA - close to current format with corporate consolidators similar to an Association like AAHA.
2. VSPA - close to current format without corporate consolidators.
3. VSPA - Multiple groups of 20.
4. VSPA remains as is w/no changes – not supported by Executive Board or legal counsel.

1. VSPA - close to current format with corporate consolidators similar to an Association like AAHA.

- Open membership.
- Requires aggregate data collection by 3rd party.
- Data published for the industry.

2. VSPA - close to current format without corporate consolidators.

- Requires sensitive data collected by 3rd party.
- Only aggregates produced for members.
- Data published for the industry.
- Limited membership.

3. VSPA - Multiple groups of 20.

- Pods by Zip Code and other criteria.
- No corporate consolidators.
- Possible merger w/VSG.

4. VSPA remains as is w/no changes – not supported Executive Board or legal counsel.

Change is Necessary for Growth

Results of conference with attorney and VSPA members on Friday 11/11/2011.

1. As a for profit entity can we allow corporate consolidators to be members but exclude any that own any primary care practices?
 - a. YES – this does not create a significant risk with a for profit.

2. Do we have to be a for profit entity to have the above exclusion policy/rule.
 - a. Not for profit benefits the industry
 - b. For profit does not have this requirement, can be exclusionary (must follow federal non discrimination rules)
 - c. Will provide more flexibility but is not required
3. Can we have both a nonprofit and a for profit entity? Yes
4. What is the definition of a Corporate Consolidator?
 - a. I don't know. No legal definition –an individual that has an ownership stake in multiple hospitals
 - b. Read a text reference regarding definition - (not an IRS definition)
 - c. If each hospital is a separate entity
 - d. For our purposes this may not be significant
 - i. If we mean a person that has folded them into one entity
 - ii. If each practice keeps its identity and moves toward one common name then this may not be a consolidator
5. What is the difference between a Corporate Consolidator and entity that owns multiple hospitals?
 - a. See #4 above
6. What are the rules and boundaries if a privately held to be selective in membership criteria?
 - a. Only real test is a logical connection from criteria and the purpose the corporation as long as evenly applied and make sense based on the stated purpose.
7. Are there tax or any other implications if we change to a for profit entity?
 - a. The nonprofit stays open and keeps its own money. The for profit would generate its own income. There can be shared administrative costs between the two companies.
8. How do we transfer the assets to the for profit entity?
 - a. Cannot transfer assets to for profit entity

9. Can VSPA pay attorneys for this transition and/or addition of the for profit entity?
 - a. Yes but only if it serves the purpose of the nonprofit to do a double breasting situation.
 - b. Expense has to be legitimate based on stated purpose of VSPA
10. Can we have different levels of membership and dues, corporate vs. individual etc.? If so how do we set the criteria? Or can individual hospitals of a corporation join and not the corporation or all of its hospitals?
 - a. BIG QUESTION LOTS OF ANSWERS – simplified basic response
 - i. For profit – yes
 - ii. Non profit --- probably but many restrictions on how creative we can be with member restrictions and other things.
11. Is it better for the for the for profit entity to be owned by non members? Can members own the for profit and what are the risks?
 - a. Need a better idea of what the for profit will be doing
 - i. Set up to similar function as current VSPA
 - ii. Sell publications
 - iii. Hold meetings
 - iv. Plan to have some but not a lot of profit
 - b. **Update 12/02 – a for profit cannot own a nonprofit. A nonprofit CAN own a for profit.*
 - c. Need to consult a tax attorney on tax issues
 - d. Member question to clarify above – ownership (member/non member) and risk.
 - i. Response - Decide this after decisions made on the structure, size governance etc. of the entities (+/- profit)
12. If we set up a for profit owned by non members does this protect the members if owned by non member and have a clear for profit purpose.
 - a. Fair assessment that there would be an advantage to non member ownership.
13. If privately held for profit what does it look like (organizational)? What latitude do we have in setting membership criteria? What policies and procedures do we need?

- a. Depends on participation – number of members and owners, how much in out, can be widely exclusive. The not for profit rules should carry over as beneficial to the for profit. We can change policies and procedures as needed. Can refuse membership to someone who is just plain difficult to deal with – yeas as long as non discriminatory. Be as clear as possible on entrance criteria.
- b. We have the same antitrust issues regardless of profit and non profit.
- c. Raw data including pricing – as long as we share information that can't be used to extrapolate pricing features. We do not have to publish but we need to share data in aggregate – less transparency. Salaries are not included in “pricing”
 - i. We do not want to provide an environment where a corporate consolidator to a purchasing advantage when negotiating the sale.
- d. Aggregate data is critical to stay out of hot water.

14. What type of corporate entity? C-S-LLC

- a. Did not record response

15. How do we set boundaries for 1. VSPA as single entity or 2. VSPA as multiple groups of 20. Relevant market – zip code? +/- geographic, +/- other?

16. Can we have a Confidentiality Agreement?

- a. YES but with cautions - make sure the protected information is not the type that draws criticism.

17. Who would own the stock in the for profit corporation.

- a. All up in the air until we know what we will do with the for profit and what it will do.
Need tax attorney

Additional discussion:

Member – need to have criteria that are consistent with purpose.

Member – people feel that they will not be forthcoming with information if there are competitors in attendance at meetings

Attorney - blending of the numbers to provide significant information but not in a way that can be extrapolated detail. Share raw data in a form no longer ascertainable where the information came from. This eliminates the relevant market.

Member - Can we regionalize info? Attorney - YES as long and no one can extrapolate info in a

way that is detrimental for competition.

Attorney - Nonprofit – for a public benefit purpose. This means that a number of practices can say they should be able to belong because they are in the industry. With a for profit we do not have the same criteria – can be whoever we want and long as non discriminatory.

Member - If we were to determine a relevant market sans forensic economist. Attorney -If we have some sort of rules/formula will that prevent antitrust problems and relevant market.

Attorney - We have more leniencies if we are publishing aggregate data.

Member - If we eventually used all the assets of the nonprofit do we need to keep it? Attorney - No. If we are benefiting from it keep it and if not then close it.

Relevant market - If we approach it in a different manner the information we are sharing would not be at risk. Disseminate beneficial information in the safest way possible.

Member - If consolidator puts a hospital within 3 miles of a member hospital what happens to their membership. Attorney - Why would this matter? Member - Our concern is the sharing of best practices outside of the numbers. Example – we have admitted a consolidator and they build a hospital very close to another member’s hospital. We want the right to exclude the new practice. Attorney - What is to stop the existing members from sharing info with the other hospital even if excluded from membership? Member - If we then remove all members from that corporation. Attorney - Cannot answer that right now – need time to consider.

Member - What if specific sites (consolidator) were members and not the entire group of practices? Attorney - YES in a for profit as long as it has a logical basis in what the purpose of the for profit is.

Consensus decisions

Majority of VSPA members want some sort of distance requirement

Appointed a VSPA Reorganization Task Force consisting of executive board and member volunteers.

Jan Woods, Sonja Olson, Lori Ramig, Mark Dorfman , Rose Lemarie
Ken Spokane, Shaun McWilliams, Art Arnaiz, Greg Stoutenburgh, Todd Tobias,
John Beltz, Jerry Waddle

Working Model Discussed - Greg Stoutenburgh asked to create draft plan

- 1) VSPA,LLC is created and owned by individual
- 2) A board is created to direct the organization

- 3) Membership is defined by criteria and held as single practice site membership
- 4) VSPA 501C6 is maintained to support educational purposes
- 5) Sensitive information is provided in aggregate
- 6) Select information is published to the veterinary industry

CPA for VSPA

Multiple CPA's and their firms were interviewed by the Executive Board. The goal was to find a CPA with the experience necessary to collect, formulate and interpret the various data collected by VSPA. In addition this CPA would need to be appropriate to present the data to members at a meeting. The overriding criteria was that the CPA would have the above capabilities and not be writing or speaking in veterinary publications or conferences.

The Executive Board approved Tom Wagner, CPA/CFF, CVA, CFP or Wagner & Associates as the VSPA accountant beginning 2012. Tom was recommended by Charlotte Lacroix.

Web Development Team

Greg Stoutenburg presented a demo of site functionality and a draft article for Expertvet followed by discussion of project. Member support for this project continues to be enthusiastic. The website will be part of the VSPA reorganization. Brief discussion regarding start up costs for the site and the potential allocation of VSPA funds for the initial site development costs. Once the work begins the site will be up and ready for the public within six months.

Meeting Schedule

New Orleans May 15-18, 2012 (Wed-Fri)

Costs Rica October 3-6, 2012

Memphis May 14-17, 2013 (Wed-Fri) or May 15-18, 2013 (Thurs-Sat)

End of Minutes

Submitted by: Pam Stevenson

Date: December 4, 2011

STATUS -- Approved by January 4, 2012