



VSPA FALL 2022

**TOP 5 VETERINARY
PRACTICE LEGAL
MISTAKES**

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▶ Prevent the Error from Occurring!!!

▶ Help yourself or your Attorney Resolve Claim/Litigation Early in the Process

▶ Owner/Manager Must have a Basic Understanding of the Law

GOALS FOR PRACTICE


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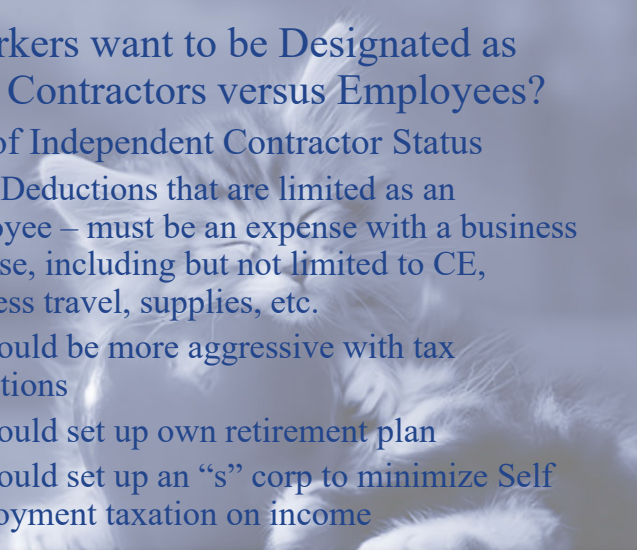


- ▶ Why do Employers want to designate Workers as Independent Contractors versus Employees?
 - ▶ Save Money!!!
 - ▶ - Avoid matching FICA
 - ▶ - Avoid unemployment
 - ▶ - Avoid workers compensation insurance
 - ▶ - Avoid cost of benefits

#1 – EMPLOYEE V. IC PROBLEMS




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- ▶ Why do Workers want to be Designated as Independent Contractors versus Employees?
 - ▶ Benefit of Independent Contractor Status
 - ▶ - Tax Deductions that are limited as an employee – must be an expense with a business purpose, including but not limited to CE, business travel, supplies, etc.
 - ▶ - IC could be more aggressive with tax deductions
 - ▶ - IC could set up own retirement plan
 - ▶ - IC could set up an “s” corp to minimize Self Employment taxation on income

#1 – EMPLOYEE V. IC PROBLEMS



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▶ Risks for Employer Designating Workers as Independent Contractors versus Employees?

- ▶ Worker could sue Employer for failure to classify as an employee:
 - ▶ Loss of employee benefits, ie paid vacation, paid health insurance, sick pay, etc.
 - ▶ Loss of unemployment benefits
 - ▶ Loss of protections under federal and state law for employees

#1 – EMPLOYEE V. IC PROBLEMS



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▶ Risks for Employer Designating Workers as Independent Contractors versus Employees?

- ▶ Penalties and Interest imposed by IRS are very high!!!

#1 – EMPLOYEE V. IC PROBLEMS



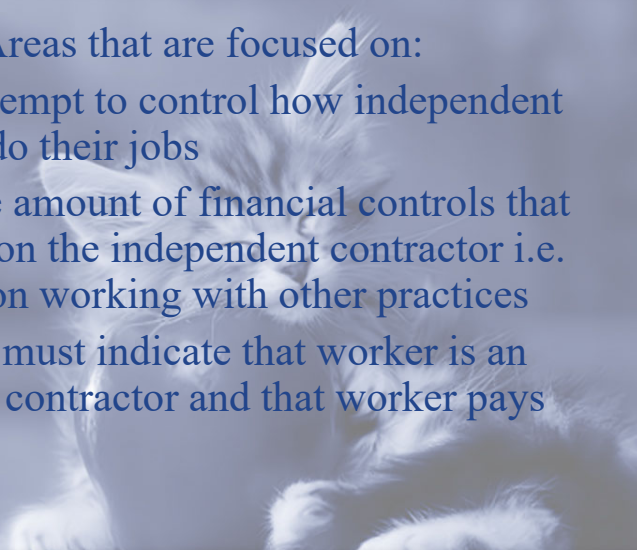
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- ▶ What should an Employer do to Protect itself from a Misclassification?
 - ▶ Must Understand that there are different classifications
 - ▶ IRS
 - ▶ Unemployment
 - ▶ Common Law
 - ▶ Federal statutes

#1 – EMPLOYEE V. IC PROBLEMS



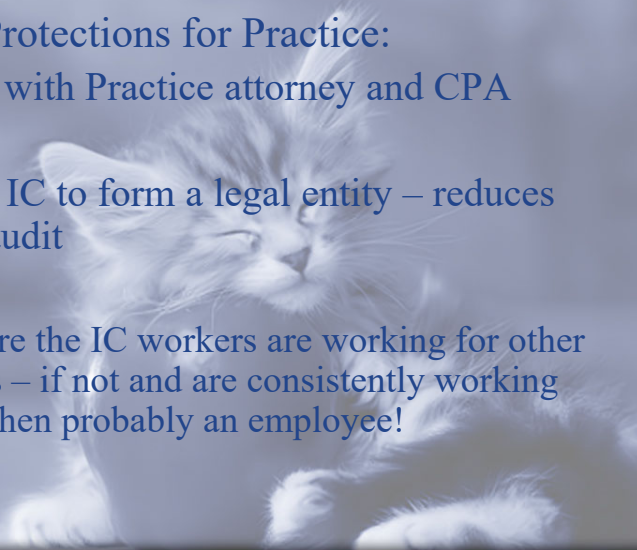
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- ▶ Three Key Areas that are focused on:
 - ▶ 1. Do not attempt to control how independent contractors do their jobs
 - ▶ 2. Watch the amount of financial controls that you impose on the independent contractor i.e. prohibition on working with other practices
 - ▶ 3. Contracts must indicate that worker is an independent contractor and that worker pays own taxes

#1 – EMPLOYEE V. IC PROBLEMS



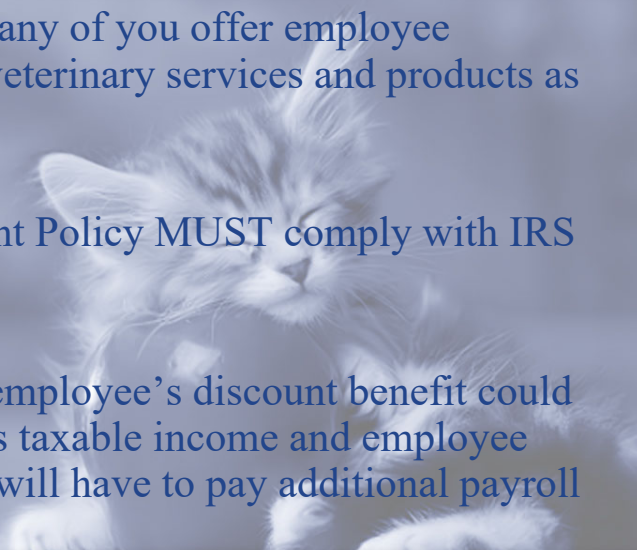
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- ▶ Additional Protections for Practice:
 - ▶ Consult with Practice attorney and CPA
 - ▶ Require IC to form a legal entity – reduces risk of audit
 - ▶ Make sure the IC workers are working for other practices – if not and are consistently working for you then probably an employee!

#1 – EMPLOYEE V. IC PROBLEMS



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- How many of you offer employee discounts for veterinary services and products as a benefit?
 - Discount Policy MUST comply with IRS requirements.
 - If not, employee's discount benefit could be classified as taxable income and employee and employer will have to pay additional payroll taxes

#2 – EMPLOYEE DISCOUNTS



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IRS STANDARDS:

- Cannot provide discounts to employees greater than 20% on services
- Cannot provide discounts to employees products that you sell that drop price below practice's cost
- Employment Manual policy must specify this limitation

**#2 – EMPLOYEE
DISCOUNTS**



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If you choose not to limit employee benefits:

- Include excess value of discounts above IRS standard as part of W-2 income
- Withhold corresponding payroll taxes from those employees for payroll period that the discount is taken by employee
- Employer must match withholdings per IRS rules as with other payroll

**#2 – EMPLOYEE
DISCOUNTS**



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- ▶ Important to understand legal effect of complicated commercial lease terms
 - ▶ Must be able to walk away if Landlord won't be reasonable on important lease terms
 - ▶ Should have contractor selected in advance of lease negotiations to assist

#3 COMM. LEASE NEGOTIATIONS



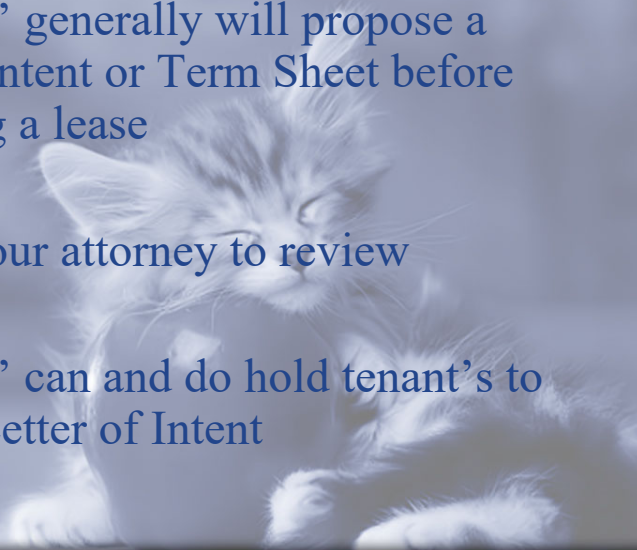
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- ▶ Do hire an experienced Tenant's leasing agent (at landlord's cost) to locate options on space and educate you on market rates
 - ▶ - Don't start process without first having agent to avoid problems with commission
 - ▶ Commercial leases are one-sided favoring landlord – Goal is to negotiate a “fair” lease

TENANT AGENTS



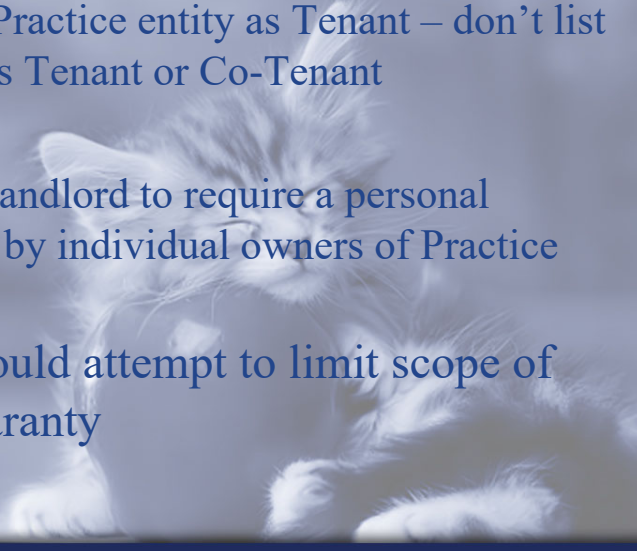
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- ▶ Landlords' generally will propose a Letter of Intent or Term Sheet before submitting a lease
 - ▶ Involve your attorney to review
 - ▶ Landlords' can and do hold tenant's to terms of Letter of Intent

LEASE LETTER OF INTENT




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- ▶ Identify Practice entity as Tenant – don't list owners as Tenant or Co-Tenant
 - ▶ Expect Landlord to require a personal guaranty by individual owners of Practice entity
 - ▶ Should attempt to limit scope of guaranty

COMMERCIAL LEASE TERMS



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Tenant entered into commercial lease giving it 60-days after signing of lease before rent commencement occurs. Tenant has trouble obtaining a permit for renovation and construction takes 150 days causing Tenant to have to pay rent for 90 days before opening her doors. What should Tenant have done to avoid this problem?

CASE STUDY



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- ▶ Term of Lease
 - ▶ Length of lease will impact tenant finish allowance dollars
 - ▶ Must decide how long you want to be locked into a base lease term before having the right to move i.e. buy a building or new leasehold
 - ▶ Must comply with minimum requirements of lender on lease term

COMMERCIAL LEASE TERMS



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- ▶ Options to Extend Lease

- ▶ Lease should give you base term and options for at least 15 years in multiple options
- ▶ Must make sure that you don't lose options if you assign to a buyer or have a default that is cured

COMMERCIAL LEASE TERMS



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- ▶ Rent and Operating Costs

- ▶ Need Leasing Agent to advise you on fair market value
- ▶ Triple Net Lease
- ▶ Base Rent plus percentage of operating costs

COMMERCIAL LEASE TERMS



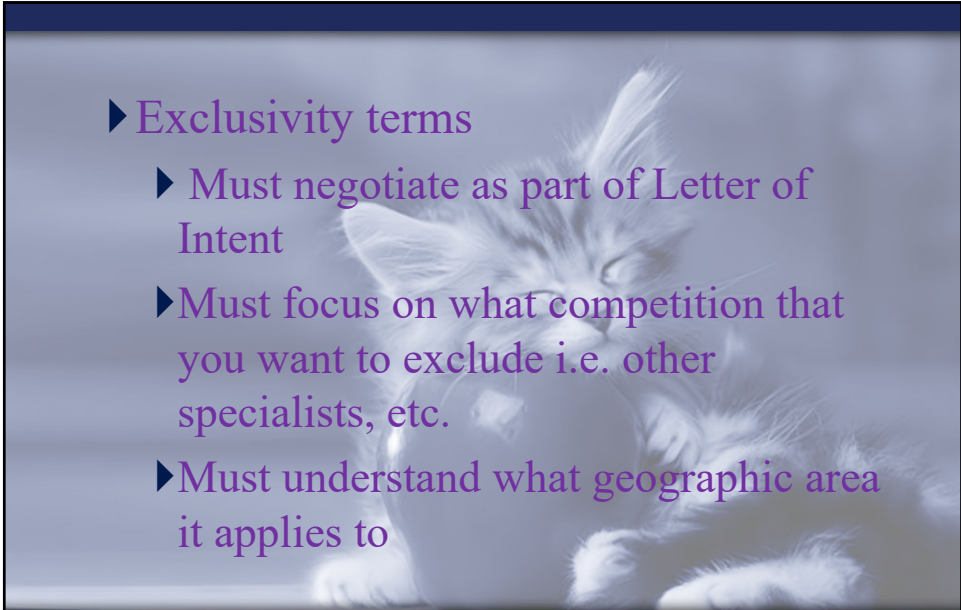
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- ▶ Definition of “Permitted Use” in Lease
 - ▶ Must be very broad for all veterinary uses, including retail sales – even as a specialty hospital in order to assign lease in the future

COMMERCIAL LEASE TERMS



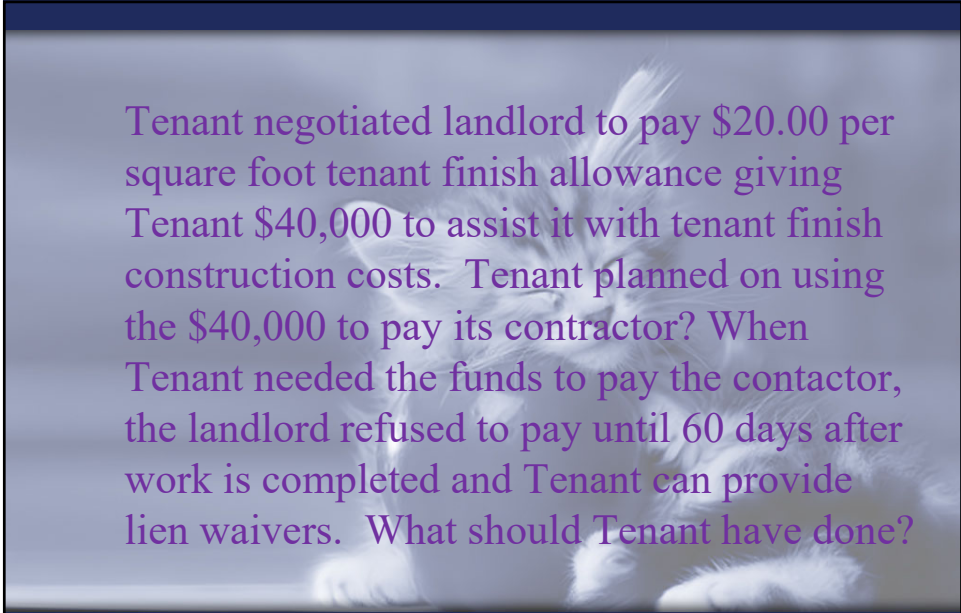
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- ▶ Exclusivity terms
 - ▶ Must negotiate as part of Letter of Intent
 - ▶ Must focus on what competition that you want to exclude i.e. other specialists, etc.
 - ▶ Must understand what geographic area it applies to

COMMERCIAL LEASE TERMS



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Tenant negotiated landlord to pay \$20.00 per square foot tenant finish allowance giving Tenant \$40,000 to assist it with tenant finish construction costs. Tenant planned on using the \$40,000 to pay its contractor? When Tenant needed the funds to pay the contractor, the landlord refused to pay until 60 days after work is completed and Tenant can provide lien waivers. What should Tenant have done?

CASE STUDY




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- ▶ Tenant/Landlord obligations for repairs
 - ▶ Must understand your obligations
 - ▶ Must have an inspection before signing lease

COMMERCIAL LEASE TERMS




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- ▶ Assignment of Lease
 - ▶ Must negotiate language the prohibits landlord from “unreasonably withholding consent to assignment.”
 - ▶ Can prevent you from selling your practice

COMMERCIAL LEASE TERMS



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- ▶ Assignment of Lease
 - ▶ Must limit payment obligations to landlord on assignment – limit to actual legal fees and not an excessive amount
 - ▶ Prevent landlord from having right to terminate lease on your request for assignment

COMMERCIAL LEASE TERMS



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► Relocation of Tenant

- Must refuse language giving landlord right to force practice to relocate within shopping center
- If landlord won't negotiate, must set parameters on what space would be acceptable
- Must specify all costs paid by landlord

**COMMERCIAL LEASE
TERMS**



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HIRING IN HASTE!!

- Any hiring misstep can cost you in lost productivity, bad morale in the practice and substantial replacement costs
- Develop a hiring process and follow it consistently
- Develop a well thought out job description

#4 HR Mistakes



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- Develop a job posting that is consistent with the job description
 - Develop screening questions to weed out under qualified applicants
 - Conduct background check consistent with your state's laws
 - Consider a pre-hiring drug screening consistent with your state's laws

#4 – HR Mistakes



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EMPLOYEE MANUALS:

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- Manuals are your best friend if properly thought through and drafted or worst enemy if not updated and not well drafted
 - Must develop policies that work for the practice and are legal
 - Must consult with local HR attorney to assist in updating Manual
 - All employees must read and sign acknowledging receipt and understanding

#4 – HR Mistakes



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EMPLOYEE MANUALS:

- Policies must be consistently applied to successfully defend a claim. You cannot give special treatment to favorite employees!!

- Should periodically review and have updated for applicable local, state and federal laws.

#4 – HR Mistakes



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IMPROPER PAY PRACTICES:

- Must fully understand exempt versus non-exempt employee under applicable Federal and State laws for overtime pay

- Subject to labor board/EEOC complaints and civil claims if practice doesn't follow applicable law

#4 – HR Mistakes



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IMPROPER PAY PRACTICES:

- Must adopt an employment manual policy in compliance with Federal Fair Labor Standards Act on exempt versus non-exempt employees and local law
- If employee is exempt – Employee not eligible for overtime pay
- Exempt if “bonafide executive, administrative, professional or outside sales”

#4 – HR Mistakes



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IMPROPER PAY PRACTICES:

- Associate veterinarians are generally exempt under Federal law
- Practice managers/administrators may be exempt – depends on specific duties
- “Duties Test” – Focus on how much time is spent performing exempt versus non-exempt duties i.e. technician versus management tasks

#4 – HR Mistakes



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MINIMIZE RISKS OF CLAIMS AFTER
TERMINATING AN EMPLOYEE:

- Don't terminate in the heat of the moment!!
- Must follow employee manual when terminating an employee
- If a progressive discipline policy in employment manual then you must follow it

#4 – HR Mistakes



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MINIMIZE RISK OF CLAIMS AFTER
TERMINATING AN EMPLOYEE:

- Utilize job description and employment manual policies to discuss the problem with the employee and how the employee has not met the expectations
- Describe to the employee what he/she needs to do to correct the problem
- Inform the employee that a written warning will be issued if the problem is not corrected

#4 – HR Mistakes



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MINIMIZE RISK OF CLAIMS AFTER
TERMINATION OF EMPLOYEE:

- Give the employee a chance to share his/her side of the issue and listen carefully. Does the employee make good points? If so acknowledge and consider them.

- Take detailed contemporaneous notes of the conversation and place in file.

#4 – HR Mistakes



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MINIMIZE RISK OF CLAIMS AFTER
TERMINATION OF EMPLOYEE:

- If employee does not correct behavior, follow through with a written warning and notify employee that next step is termination. Have employee sign written warning – or note on document that employee refused to sign.

- If employee doesn't change behavior, follow through and terminate employee.

#4 – HR Mistakes



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MINIMIZE RISK OF CLAIMS AFTER TERMINATION OF EMPLOYEE

- Read policy manual on termination before firing
- Consult HR attorney before you fire if you have any concerns – be especially careful with protected categories of employees
- Follow state law on payment of wages/benefits at time of termination
- Follow all COBRA notice requirements

#4 – HR Mistakes



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Handling clients that want prescriptions to use
with on-line pharmacies?

What does your practice do?

Is what you are doing effective?

#5 – Clients and Internet Pharmacies



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Strategies to Consider utilizing to fight trend?

Talk to clients about convenience with purchasing at practice

Talk to clients about how your practice can talk to them about the benefits and side effects

Talk to clients about tips for administration to animals – something most pharmacies cannot provide

#5 – Clients and Internet Pharmacies



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Look for opportunities for your staff to promote products that your clients should purchase regularly

Staff should focus on high standards of care when they promote regularly purchased products

Monitor big box stores and on-line sales and offer specials that you can communicate to clients

#5 – Clients and Internet Pharmacies



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Consider lowering purchase price to retain the business – small profit may be better than losing the sale

Consider rolling the price of the prescription into the consultation fee

Promote your products and services and standards of care at every opportunity

#5 – Clients and Internet Pharmacies



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QUESTIONS



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