

# Top Recent Regulatory Cases

September 20, 2025

1:00pm – 2:30pm





# Dale Atkinson, Esq.

THE ATKINSON FIRM

LEGAL & CONSULTING SERVICES

**MINDS SHARED**



- AAVSB
- ASWB
- FCLB
- FSBPT
- ARBO
- FSMTB
- ICFSEB
- NMTCB
- LEARN
- JRCERT
- NWRP
- JFCSF

# Topics

- **Licensure criteria/competence examinations**
- **Speech v conduct**
- **Right to serve on a government board**
- **Rescinded education degree**
- **Deference to agency**
- **Service on Association/Federation BOD**
- **Malpractice**
- **Expert testimony**
- **Voluntary surrender**
- **Practice outside scope**
- **Unlicensed practice**
- **Psychological and substance abuse evaluation**



# Licensure Criteria: Increased scrutiny



# Good moral character Criminal background checks Entry-level examinations

# ***Alameda v. Association of Social Work Boards...***

2024 U.S. Dist. LEXIS 175886

- Plaintiffs, seeking class action status, filed suit
- Alleged violations of Title VII of the Civil Rights Act, Section 1981, and the New York State Human Rights Act
- Argued disparate outcomes on licensure exam
- Court granted ASWB Motion to dismiss

## ***Disparate Outcomes on Exams***

# Speech v Conduct



# Canadian Charter of Rights and Freedom

- **Section 2(b) – Freedom of expression**
- **Provision**
- 2. Everyone has the following fundamental freedoms:
  - freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

# First Amendment United States Constitution

- Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.



# ***Hines v. Pardue.....***

117 F. 4<sup>th</sup> 769 (5th Cir. 2024)

- **Hines I**...First Amendment, Equal Protection, Due process
- Dismissed via 5<sup>th</sup> Circuit, conduct, incidental effect on speech
- **Hines II**...Plaintiff refiled, premised upon recent SCOTUS decision
- 5<sup>th</sup> Circuit remanded dismissal, First Amendment analysis and remanded back to District Court which awarded summary judgment in favor of Board
- 5<sup>th</sup> Circuit reversed finding that activity is speech and requirement of in person encounter does not survive intermediate scrutiny.

# ***Richwine v. Matuszak.....***

707 F. Supp. 3d (N.D. IN 2023)

- Death doula—or Death midwife, not licensed, does not claim to be a funeral director, does not claim to be exempt from licensing laws of Indiana re funeral directors
- Death Done Differently, LLC, speaks with clients about death and dying
- Plaintiff subject to a cease and desist order by IN State Board of Funeral & Cemetery Service until duly licensed
- Settlement agreement
- Plaintiff challenged, free speech
- Preliminary injunction prohibiting enforcement granted, during pendency of litigation



# ***Richwine v. Matuszak.....***

707 F. Supp. 3d (N.D. IN 2023)

**UPDATE.... Subsequent Appellate History**

**Appeal filed (Jan. 19, 2024) (No.24-1081):**

# **Brokamp v. James, 66 F 4<sup>th</sup> 374 (2<sup>nd</sup> Cir. 2023)**

## **Brokamp v. District of Columbia, 2022 U.S. Dist. LEXIS 40158**

- Counselor licensed in Virginia
- Clients relocated to District of Columbia and New York
- Counselor not licensed in DC or NY
- Counselor maintained professional relationship and provided services via technology



# **Brokamp v. James, 66 F 4<sup>th</sup> 374 (2<sup>nd</sup> Cir. 2023)**

## **Brokamp v. District of Columbia, 2022 U.S. Dist. LEXIS 40158**

- Counselor challenged the licensing requirements in D.C. and NY as unconstitutional violative of First Amendment
- New York case motion to dismiss...granted (and affirmed on appeal)
- D.C. case motion to dismiss....denied

# Peterson v. College of Psychologists of Ontario,

2023 ONSC 4685

- Peterson, a prolific social media presence, accused of making public comments that “may” be “degrading, demeaning, and unprofessional.”
- Complainants not patients/clients of Peterson
- College issued a non-disciplinary “statement of Concern and Remediation Plan (SCERP).
- Peterson challenged and the Superior Court affirmed.



# ***Mcbride v. Lawson***

2024 U.S. Dist. LEXIS 210217 \*; 2024 WL 4826378

- New York physician and California patient allege California's licensure requirements violate constitutional principles
  - Out of state commerce (U.S. Const. Article I, Section 8, Clause 3)
  - Privileges and immunities clause (U.S. Const. Article IV, Section 2, Clause 1)
  - First Amendment/free speech (U.S. Const. Amendment 1)
- Motion to dismiss granted (with leave to partially amend complaint)

# Chiles v. Salazar, 2023 116 F. 4<sup>th</sup> 1178 (10<sup>th</sup> Cir. 2024)

cert granted 2025 U.S. 1025

- Constitutionality of Colorado law which bans conversion therapy for minors.
- District Court denied Motion for a Preliminary injunction finding law regulated conduct and only incidentally involves speech, thus rational basis test.
- 10<sup>th</sup> Circuit affirmed.
- SCOTUS granted certiorari.



# Right to serve on a government board

# ***Cubin v. Wyoming Governor.....***

**2025 U.S. Dist. LEXIS 4746**

- Member of WY Board of Medicine
- Also belonged to/member of trade association
- Supported proposed legislation, wrote letter to all House of Representatives
- Trade association opposed legislation
- Letter to House members called out trade association and specific members
- Governor removed Board member, conflict of interest, impartiality of Board
- Board member sued for reinstatement to Board and \$\$ damages\*\*
- Motion for preliminary injunction denied

***Mixing Trade and Regulation & Conflict of Interest***



# JK on that degree

# ***Dudley v. Boise State University....***

2024 U.S. Dist. LEXIS 81524

- District Court granted school Motion to Dismiss
- Plaintiff argued due process, property interest, liberty interest
- Relationship between college and student is contractual and NO property interest
- No liberty interest either

***Rescinded Degree***



# Deference to agency

# ***Loper Bright Enterprises v. Raimondo,*** 144 S. Ct 2244 (2024)

- Chevron deference case overruled (Chevron U.S.A., Inc v. Natural resources Defense Council, Inc, 467 U.S. 837, 104 S. Ct 2778 (1984))
- Federal courts not required to give deference to administrative agencies findings related to interpretation of laws

***Deference to Administrative Agency***



# Service on Association Board of Directors: Discrimination

# ***Vanterpool v. Federation of Chiropractic Licensing Boards,***

Case No. 1:22-cv-01208-CNS-NRN

- Jury verdict in favor of FCLB
- No contract
- No discrimination

## ***Federation-BOD Relationship***



# Additional Veterinary Cases

# Professional misconduct:

*College of Veterinarians of Ontario and Bangor,*

2025 ONCVO 2

- Veterinarian found to have failed to maintain standards of practice
- Conflict of interest assertions rejected
- Penalty phase of proceedings challenged
- Court upheld sanctions of
  - Reprimand
  - Suspension
  - Assessment of costs



# Expert testimony: Administrative proceeding

## *Salem v. Virginia Board of Veterinary Medicine,*

*2025 Va. App. LEXIS 144 \*; 2025 LX 262290; 2025 WL 756702*

- Veterinarian alleged to have failed to meet standard of practice related to treatment of multiple dogs.
- Board did not call or use experts in the administrative proceeding.
- Board found wrongdoing.
- Circuit Court affirmed.
- Court of Appeals affirmed Circuit Court decision that substantial evidence supported the Board's findings.
- The appellant's argument that expert testimony was necessary as a matter of law for the appellee to find that he violated the regulations under 18 VAC 150-20-140(7) was not preserved for appeal.

# Malpractice: Expert witness, civil proceeding

*Martinez v. Maier,*

*2025 Conn. Super. LEXIS 265 \*; 2025 LX 60744; 2025 WL 520918*

*The plaintiff's cases do not undermine or even address the established law regarding whether an expert is necessary to assist the jury in determining if a defendant committed professional malpractice. An expert is clearly needed to aid the jury in this case. The plaintiff [\*9] did not disclose an expert by the deadline given by the court, nor does the plaintiff argue that she intends to disclose an expert.*

## CONCLUSION

*Accordingly, the defendant's motion for summary judgment is granted. (February 11, 2025)*



# Board action: Voluntary Surrender

*Martinez v. Maier,*

*2025 Conn. Super. LEXIS 265 \*; 2025 LX 60744; 2025 WL 520918*

STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH  
HEALTHCARE QUALITY AND SAFETY BRANCH

*Re: Ronald Maier, D.V.M. Petition Number: 2022-218*

*License No.: 000797*

*VOLUNTARY SURRENDER OF LICENSE AFFIDAVIT*

*April 10, 2025*

# Board action: Voluntary Surrender

*Martinez v. Maier,*

*2025 Conn. Super. LEXIS 265 \*; 2025 LX 60744; 2025 WL 520918*

## Voluntary Surrender Affidavit:

*4. I hereby voluntarily surrender my license to practice as a veterinarian in the State of Connecticut as provided pursuant to Connecticut General Statutes §19a-17(d).*



# Board action: Voluntary Surrender

*Martinez v. Maier,*

*2025 Conn. Super. LEXIS 265 \*; 2025 LX 60744; 2025 WL 520918*

## Voluntary Surrender Affidavit:

*5. I agree and acknowledge that if I seek a new license or to reinstate my license at any time in the future, the allegations contained in the **Statement of Charges dated August 2, 2023** shall be deemed true. I further agree and acknowledge that any such application must be made to the Department which shall have absolute discretion as to whether said license shall be issued or reinstated and, if so, whether said license shall be subject to conditions as provided pursuant to Connecticut General Statutes §19a-14(a)(6).*

# Practice outside the scope:

*Roman v. Board of Registration in Veterinary Medicine,*

*Mass. 1044 \*; 256 N.E.3d 1274 \*\*; 2025 Mass. LEXIS 206 \*\*\*; 2025 LX 38887*

- Veterinarian disciplined by Board of Veterinary Medicine for acting outside the scope of practice in advising humans on COVID remedies.
- Board deemed email with COVID advice was within practice of veterinary medicine.
- Two-year suspension
- Lower Court affirmed
- Supreme Judicial Court affirmed



# Malpractice: Damages

*Shriver v. Raptosh,*

*557 P.3d 398 \*; 2024 Ida. LEXIS 109 \*\*; 2024 LX 80636; 2024 WL 4395178*

- Civil case seeking damages for damages re wrongful death of cat.
- Malpractice action.
- No wrongful death action available.
- Claim for infliction of emotional distress not available re death of pet.
- Necropsy and damages re outrageous conduct should be left to jury.

\*\*\* Idaho Board website shows license active with no discipline\*\*\*

# Unlicensed practice: Permanent injunction

*Nova Scotia Veterinary Medical Association v. MacEachern,*

2025 NSSC 18

- Litigation guardian (Mother) representing her neuro-diverse daughter.
- January 2023, daughter graduated from Florida school.
- School teaches teeth-floating without sedation.
- After graduation, returned home to perform teeth floating on her own animals, eventually performed on others' animals.
- Nova Scotia Medical Association sought and was granted a permanent injunction prohibiting Respondent from engaging in unlicensed practice.



# Erratic Behavior: Psychological & substance abuse evaluation....Interim order

*Bellapianta v. Arizona State Veterinary Examining Board,*

*2025 Ariz. App. Unpub. LEXIS 26 \*; 2025 LX 18862; 2025 WL 52722*

Based upon inquiry from a MO practice re hiring a veterinarian,  
Arizona Board opened a case.

Erratic behavior exhibited.

Note, multiple other complaints received by AZ Board.

AZ Board issued an interim order requiring evaluation.

Licensee challenged interim order.

Appellate Court upheld interim order.



Will this dude ever stop talking??

Best session ever!!



I forgot my middle name!

What time is it?

My brain is full



*"Hit It Out of the Park!"*

2025

AAVSB

ANNUAL MEETING

&

CONFERENCE

*CINCINNATI*  
*09.17 - 09.20*

September 20, 2025