

IN THE SUPREME COURT OF THE STATE OF VERMONT
DOCKET NO. 2008-030

SUSAN GOODBY and ROBERT GOODBY

Appellants

v.

VETPHARM, INC., d/b/a BCP VETERINARY PHARMACY, VALERIE YANKAUSKAS,
D.V.M., PAULA YANKAUSKAS, D.V.M., CYNTHIA PRATT, D.V.M. and CHARLES
POWELL, D.V.M.

Appellees

APPEAL FROM LAMOILLE SUPERIOR COURT
DOCKET NO. 252-12-04 Lecv

BRIEF OF THE AMERICAN VETERINARY MEDICAL ASSOCIATION
AND THE VERMONT VETERINARY MEDICAL ASSOCIATION
AS AMICUS CURIAE IN SUPPORT OF DEFENDANTS-APPELLEES

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ISSUE FOR REVIEW

Amici Curiae Vermont Veterinary Medical Association (VVMA) and American Veterinary Medical Association (AVMA) will address the following question:

Regardless of the legal theory of recovery, should plaintiffs be entitled to non-economic damages such as loss of companionship and society and emotional distress for the alleged wrongful deaths of their two cats?

INTEREST OF THE AMICI

The American Veterinary Medical Association, established in 1863, is the largest veterinary medical association in the world. As a not-for-profit association created to advance the science and art of veterinary medicine, the AVMA is the recognized national voice for the veterinary profession. The Association has more than 76,000 members, representing approximately 85% of U.S. veterinarians. The issues presented in this case directly involve the veterinary profession, putting the AVMA in an excellent position to assist the Court in reaching its decision.

The Vermont Veterinary Medical Association was established in 1898 and currently has over 300 members. The VVMA's membership includes Vermont veterinarians from all areas of veterinary medicine. The mission of the VVMA is to promote animal well-being and public health, to provide education for Vermont veterinarians and the public, to advocate on issues concerning veterinary medicine, and to enhance the ability of Vermont veterinarians to succeed. The VVMA understands well the challenges facing Vermont veterinarians and Vermont consumers of veterinarian services, and is pleased to offer its perspective to assist the Court in this matter.

STATEMENT OF THE CASE

Amici Curiae AVMA and VVMA adopt the Statement of the Case as stated in the brief of the individual defendant Appellees.

ARGUMENT

INTRODUCTION

The record in this case indicates that the trial court issued a partial summary judgment in favor of defendants finding that non-economic damages are unavailable to the Goodbys in this matter, on any of the claims set forth in the Complaint, and that the claim of negligent infliction of emotional distress (NIED) cannot be maintained here because the Goodbys clearly were not within the “zone of danger” regarding the injuries to their cats. *See* Appellants’ Printed Case at 2-6; *see also Brueckner v. Norwich University*, 169 Vt. 118, 125, 730 A.2d 1086, 1092 (1999) (setting forth standard for NIED claim when plaintiff has witnessed injury to another); *Vaillancourt v. Medical Ctr. Hosp. of Vermont*, 139 Vt. 138, 143, 425 A.2d 92, 95 (1980) (same). Indeed, the Goodbys’ claim fails multiple parts of Vermont’s NIED standard: their cats are not among the close family members whose witnessed injuries have previously supported NIED claims; even if they were, the Goodbys themselves were not within the “zone of danger” of defendants’ allegedly negligent acts; and the Goodbys were not subjected to reasonable fear of immediate personal injury. *Id.*

In an apparent attempt to convert a partial summary judgment against them into an immediate appeal, the Goodbys moved to dismiss with prejudice all claims other than their NIED claim. *See* Appellants’ Printed Case at 66-68. In this appeal, the Goodbys have focused the bulk of their brief on the damages that they believe ought to be available to them, rather than upon the elements of the NIED claim itself. If the Court agrees, as *amici* urge it should, that

Vermont's common law claim for NIED does not extend to this matter, then the Court will not reach the proper measure of damages. Nevertheless, because the Goodbys and the Animal Legal Defense Fund focus their briefs on the damages issue, and because the allowance of non-economic damages could profoundly impact veterinary medicine in Vermont, the AVMA and VVMA submit this brief to assist the Court on the damages issue.

Amici acknowledge the deep bond humans develop with their pets. It is a mutually-beneficial relationship, enhancing our well-being and our pet's quality of life. *See* AVMA Policy, *Human-Animal Bond* (Nov. 2005), available at http://www.avma.org/issues/policy/human_animal_bond.asp. The obvious attachment humans can develop with animals is beyond dispute; it is the driving impetus for many who choose to become veterinarians and guides the ethical practices of the profession.

The Goodbys argue that because of the special position companion animals occupy in American life, non-economic damages should be awarded in lawsuits involving pets. They seek, in essence, to create a new cause of action, allowing non-economic damages for wrongful death or injury of a pet, through judicial expansion of the common law. The leap the Goodbys ask of this Court is not supported by *amici*. For several reasons, both the AVMA and the VVMA firmly believe that allowing non-economic damages for negligent harm to companion animals is contrary to public policy and would result in harm to Vermont's veterinary industry and the animals it serves.

I. VERMONT HAS A STRONG VETERINARY MEDICINE INDUSTRY AND FACES CHALLENGES KEEPING IT STRONG IN THE FUTURE.

Vermont has the highest rate of household pet ownership in the nation – 74% of Vermont households have one or more pets, compared to the national average of 57.4%. *See* American

Veterinary Medical Association, *U.S. Pet Ownership and Demographic Sourcebook* (2007), <http://www.avma.org/reference/marketstats/sourcebook.asp>. On average, pet owners nationally spend \$366 per year on veterinary services. *Id.* To service both companion animals and livestock, Vermont has approximately 300 licensed resident veterinarians, and over a thousand veterinary technicians and other employees supporting their practices. *See* Vermont Secretary of State, Office of Professional Regulation, *Vermont State Veterinary Board Newsletter*, License Statistics (May 2007), <http://www.vtprofessionals.org/opr1/veterinarians>.

Like many industries in Vermont, veterinary services here are offered by a high percentage of solo and small practitioners - over half of Vermont companion animal veterinarians own their practices. *See* AVMA 2007 Membership Data, as tabulated by University of Massachusetts Donohue Institute for the Tufts Cummings School of Veterinary Medicine, *Veterinary Medicine in New England: State by State Characteristics and Economic Impact* at Fig. 8, page 10 (January 2008) (in press, cited with permission) (hereinafter “Tufts Cummings School Report”) Supplemental Printed Case (“Supp. P.C.”) at 71. Vermont currently faces a shortage of large animal veterinarians, with a critical shortage in all areas of veterinary medicine projected in the next six years, as Vermont veterinarian retirement threatens to significantly outpace new recruiting. *See* Nina Keck, Vermont Public Radio, *Vermont Faces Large Animal Vet Shortage*, aired Oct. 1, 2007, available at http://www.vpr.net/news_detail/77572/; *see also* AVMA 2007 Membership Data, as tabulated in the Tufts Cummings School Report at Fig. 19, page 24 (Supp. P.C. at 85).

One possible challenge to Vermont’s ability to attract and retain veterinarians is that Vermont’s median income for veterinarians is lower than that of the surrounding New England states. *See* Bureau of Labor Statistics, *National Occupational Employment and Wage Estimates*,

available at <http://146.142.4.22/oes>. This challenge is enhanced by the cost of a veterinary education and the debt load of students upon graduation. The mean educational debt nationwide for graduating veterinary students with debt, which include about 90% of students, was \$106,959 in 2007, an increase of 6.1% in one year. See Allison J. Shepherd, *Employment, Starting Salaries, and Educational Indebtedness of Year-2007 Graduates of US Veterinary Medical Colleges*, 231 J. Amer. Vet. Med. Assoc. 1813 (2007) (Supp. P.C. at 51). Over 50% of all graduates incur debt of \$100,000 or more. *Id.* at 1815. Clearly, Vermont's ability to attract and retain veterinarians, and to provide excellent care to Vermont's companion animals and livestock, depends upon Vermont's ability to maintain a great environment to practice despite financial barriers that exist here.

II. ALLOWING RECOVERY OF NON-ECONOMIC DAMAGES WOULD RESULT IN SIGNIFICANT FINANCIAL CONSEQUENCES FOR VERMONT VETERINARIANS AND FOR THEIR CLIENTS, ULTIMATELY HARMING ANIMAL WELFARE RATHER THAN ENHANCING IT.

Certainly, many of the challenges identified above are not unique to Vermont. The AVMA's entire membership nationally faces retention and recruitment issues, as veterinary schools graduate fewer students than required to fill the ranks of the practice. Similarly, challenges regarding educational debt load are shared nationwide. Although Vermont's veterinary practice is the focus of this claim, the public policy concerns posed by the damages the Goodbys seek extend beyond Vermont's borders.

It is with the above facts in mind that the AVMA and VVMA urge the Court to consider the consequences of expanding available damages for negligent harm to companion animals. The expansion of non-economic damages will increase the cost of veterinary care, which will

make the practice of veterinary medicine more difficult and costly, to the detriment of practicing veterinarians, their clients, and the animals they serve.

A. Increased Insurance Costs Will Strain Veterinarian Care In Vermont

The most obvious increased cost caused by the allowance of non-economic damages will be higher liability insurance premiums for practicing veterinarians. The availability of non-economic damages in such cases, so subjective in nature and restricted not even by the statute of limitations and other controls found in Vermont medical malpractice and wrongful death litigation in Vermont and elsewhere, will increase the amount of money awarded and inevitably will lead to an increase in the number of lawsuits filed. Thus, not only damage awards, but also the costs of defense or settlement and administration, will rise. Limiting recovery to only economic damages is fairly predictable, but to open veterinarian negligence cases up to non-economic damages would make monetary recovery inconsistent and unpredictable. As a result, insurers will need to substantially increase reserves for potential claims, resulting in an increase in premiums and deductibles. *See* Victor E. Schwartz & Emily J. Laird, *Non-Economic Damages in Pet Litigation: The Serious Need to Preserve a Rational Rule*, 33 *Pepperdine L. Rev.* 227, 261 (2006) (Supp. P.C. at 35). Similar to the human medical practice experience in many states, increased liability and ever-increasing awards could lead insurance carriers to exit the veterinary liability insurance market. This would result in less competition, yet another factor to drive up the costs of insurance.

B. Defensive Veterinary Medicine Will Increase The Cost Of Care And Create An Adversarial Relationship Between Client and Veterinarian.

Insurance costs aside, expanding damages in the manner suggested by the Goodbys may also increase veterinarian costs through the practice of so-called defensive medicine. As in human medicine, increased liability and litigation may create a defensive mindset, leading veterinarians to recommend procedures or avenues of treatment in order to decrease the risk of a lawsuit from unhappy pet owners. *See id.* at 267. Of course, additional treatments mean additional cost.

Another unfortunate result of expanded damages in pet litigation would be the harm to the veterinarian-client-patient relationship. Concerns about being sued will create adversarial relationships between veterinarians and clients, at the expense of open communication and cooperation. This is particularly important in veterinary medicine, where owners often lack pet health insurance and, regardless, have to make reasonable care choices regarding their pets within the resources that are available to them. Clients want supportive veterinarians who present choices without judgment or fear of personal liability. Adding the possibility of non-economic damages will weaken, not strengthen, this important relationship.

C. As Costs Increase, So Do The Risks To The Public

Increased costs likely will be passed on to pet owners, harming the affordability of veterinary care for lower-income pet owners. Most consumers are willing and able to spend up to a certain amount for their pet's medical care and no more. *See American Veterinary Medical Association, U.S. Pet Ownership and Demographic Sourcebook (2007),* <http://www.avma.org/reference/marketstats/sourcebook.asp>. If prices are too high, pet owners are likely to visit the veterinarian less frequently or not at all, ultimately harming the animals.

Less veterinary care will also increase public health risks. Control of rabies and other zoonotic disease, through evaluation and vaccination, is an important function of veterinary practice. Moreover, veterinarians strained by an additional burden and cost to practicing in Vermont or elsewhere may find their ability to offer reduced cost or pro bono services limited. Presently, for example, Vermont veterinarians have a strong record of community service, many offering low cost spay/neuter programs and services to rescue organizations. Deterring such services through increased practice costs may hurt animals in need of such services and all Vermonters, whose own health relies in part upon a healthy animal population.

Increasing the costs and burdens of pet ownership will also result in more animal abandonment. This will place even greater strain upon our public and private animal agencies and shelters. It also risks animal and human health, as the numbers of stray dogs and feral cats increase in our communities.

D. Besides Veterinary Services, Other Industries and Individuals Will Face Increased Liability And Cost If The Court Allows Claims For Non-Economic Damages For Negligent Harm To Pets.

In addition to veterinary medical care, boarding, grooming, training, medication, food, transportation and supplies will be impacted if the Court allows the Goodbys to recover the damages they seek – indeed, nothing in their claim limits the damages sought to instances of alleged veterinarian malpractice, and claims that have been brought elsewhere indicate the range of lawsuits that might be expected. *See, e.g., Rabideau v. City of Racine*, 627 N.W.2d 795, 798 (Wis. 2001) (denying non-economic damages for shooting death of a pet dog in a case against a off-duty police officer and neighbor); *Harabes v. The Barkery, Inc.*, 791 A.2d 1142 (N.J. Super. Ct. App. Div. 2001) (denying non-economic damages for death of a pet dog allegedly caused by heat prostration against grooming facility); *Nichols v. Sukaro Kennels*, 555 N.W.2d 689, 690

(Iowa 1996) (denying non-economic damages for injury to a pet dog against boarding kennel).

Might an individual who negligently hits a dog with an automobile face potentially huge liability in the form of emotional distress and loss of companionship damages by the dog's owner, for example? Nothing in the Goodbys claim would limit such an outcome. Society will bear the burden of paying for this newly-created remedy in the form of higher costs for several lines of insurance, such as automobile, homeowners and general liability.

III. LEGISLATURES AND COURTS IN OTHER STATES THAT HAVE CONSIDERED THE MATTER HAVE REJECTED THE DAMAGES SOUGHT BY THE GOODBYS

The Goodbys seek to recover non-economic damages through judicial expansion of Vermont's common law, bypassing legislative consideration of the overarching public policy in favor of a specific ruling regarding the concededly terrible loss of their two cats. It is the position of the AVMA and VVMA that legislatures, not courts, are best suited to consider such a radical change to the tort system. *Amici* believe that the Court should decline to consider fashioning a new set of damages available to pet owners, leaving such a decision to the Vermont Legislature. *See, e.g., Smith v. Parrott*, 175 Vt. 375, 380-382, 833 A.2d 843, 848-49 (2003) (declining to adopt loss-of-chance in the medical malpractice context because of the "significant and far-reaching policy concerns more properly left to the Legislature, where hearings may be held, data collected, and competing interests heard before a wise decision is reached.") (internal quotations and citation omitted); *Medical Center Hosp. of Vermont v. Lorrain*, 165 Vt. 12, 16, 675 A.2d 1326, 1329-30 (1996) (involving requested changes to the law regarding medical debts of married persons, finding "[t]he Legislature, not this Court, is better equipped to assemble the facts and determine the appropriate remedies in an arena fraught with social policy involving the law of property, the institution of marriage, and the distribution of the costs of health care

expenses.”) Even if the Court decides to do so, however, *amici* believe that the clear trend, in both legislatures and courts nationwide, supports affirming the trial court here.

Over the past few years, legislatures throughout the United States have consistently rejected bills proposing the recognition of non-economic damages such as loss of companionship, pain and suffering, and negligent infliction of emotional distress in pet litigation cases.¹ Indeed, only two states – Illinois and Tennessee – have enacted laws allowing some form of non-economic damages in companion animal cases, but even these states have significantly limited available recovery.

The Illinois statute applies only to aggravated cruelty and torture, or to bad faith injury or death of a seized companion animal; the statute limits exemplary damages to \$25,000, and sets a two-year statute of limitations. *See* 510 Ill. Comp. Stat. 70/16.3; *cf. Lamare v. North Country Animal League*, 170 Vt. 115, 125, 743 A.2d 598, 604-05 (1999) (expressing concern regarding improper pet seizure and leaving open the viability of “a future case seeking recovery for the emotional distress or other damages resulting from the negligent handling of an impounded animal.”).

The Tennessee law applies to death of a pet, but limits non-economic damages to no more than \$5000. Such damages are available in cases involving unlawful, intentional acts; for merely negligent acts, such damages are precluded unless the death or fatal injury occurs on the property of the deceased pet's owner or caretaker, or while under the control and supervision of

¹ For example, in 2007, the following bills proposing some type of non-economic damages in actions alleging harm to pets were introduced: District of Columbia, B17-0089; Hawaii, SB 1301; Massachusetts SB 789; Mississippi HB 179; New Jersey AB 4217; New York A 2610, S 3526; Oregon SB 438; Rhode Island SB 524, HB 5767. *None* of these bills were approved by their respective legislatures with the non-economic damages provision intact. State legislatures rejected a similar number of bills in 2005 and 2006.

the deceased pet's owner or caretaker. *See* Tenn. Code Ann. § 44-17-403. Furthermore, the statute exempts altogether awards of non-economic damages in an action for professional negligence against a licensed veterinarian. *Id.*

There is no trend, therefore, in legislatures nationwide supporting the award of such damages. To the contrary, the trend indicates that, even when states decide to allow some form of such damages, legislatures set specific limits and criteria upon the imposition of awards. There is likewise no indication that the Vermont Legislature would enact such a provision if it had the opportunity. For example, while the Vermont Legislature recognized loss of companionship and society for wrongful death of close family members, the Legislature did not include the loss of pets in the wrongful death statutes. 14 V.S.A. §§ 1491, 1492. Certainly, the Vermont Legislature has not displayed any reluctance to consider animal welfare legislation or to take on issues regarding the practice of veterinary medicine, and so the failure to address non-economic damages for loss of pets cannot have come simply from inertia. In just the last few years, the Legislature has debated the issue of canine ear cropping, *see* Vermont Senate Bill S. 250, *An Act Relating To Cropping A Dog's Ears For Nontherapeutic Purposes* (2006), and has passed legislation protecting both “Good Samaritan” veterinary practices and the reporting of suspected animal abuse. *See* 26 V.S.A. §§ 2404, 2405.

The Goodbys and the ALDF claim that such legislation indicates a willingness on the part of Vermont to extend non-economic damages to the Goodbys’ claims, but that interpretation is unfounded. Vermont has robust animal protection laws because Vermonters respect animals and take seriously humankind’s obligation to treat animals with care. In this regard, Vermont is joined by the other states – including those that have specifically considered and rejected

legislation aimed at allowing the types of damages sought by the Goodbys. It is beyond dispute that the Vermont Legislature has never extended the concept of personhood to animals.

Ironically, should the Court permit the damages sought here by the Goodbys, negligent injury or death of a pet will be elevated to a status not accorded to many of our very close human relationships. Vermont sets a shorter statute of limitations in wrongful death matters, and also restricts the capacity and relationships of the parties that may sue. *See* 14 V.S.A. §§ 1491, 1492; *Quesnel v. Town of Middlebury*, 167 Vt. 252, 256, 706 A.2d 436, 438 (1997) (“Next of kin” entitled to damages for wrongful death in Vermont limited to those defined by descent and distribution statutes). A rich, emotionally rewarding, but non-familial human relationship in Vermont would not be accorded the status the Goodbys seek here.

As noted by the trial court, this Court has not yet had an opportunity to pass on the damages issue raised by the Goodbys. The isolated cases that touch upon animal welfare issues at all are consistent with Vermont’s treatment of animals as charges dependent upon the protection of their human owners, *see Morgan v. Kroupa*, 167 Vt. 99, 103, 702 A.2d 630, 633 (1997) (regarding ownership rights in lost pet), or – as in *Lamare*, 170 Vt. at 125 – concern the government’s exercise of its seizure power, which can irrevocably deprive owners of their animals.

Courts elsewhere throughout the United States have repeatedly rejected allowing non-economic damages in cases such as this. For example, in *Koester v. VCA Animal Hospital*, 624 N.W.2d 209 (Mich. App. 2001), the court declined to allow recovery for emotional injuries caused to a pet owner whose dog died of suffocation after being too tightly bandaged by a veterinarian in the course of treatment. Although the court recognized the emotional value of pets to their owners, the court determined that such a sweeping change was properly left to the

legislature to consider. *Id.* at 211 (“In essence, plaintiff requests that we create for pet owners an independent cause of action for loss of companionship when a pet is negligently injured by a veterinarian. Although this Court is sympathetic to plaintiff’s position, we defer to the Legislature to create such a remedy.”)

In *Rabideau*, 627 N.W.2d at 798, the Wisconsin Supreme Court rejected a claim for negligent infliction of emotional distress brought by an owner whose pet dog, which later died, had been shot in front of her by her neighbor, an off-duty police officer. Although the court expressly noted, as has this Court, that dogs are beloved companions and not mere “property,” the court declined to allow the claim on public policy grounds. *Id.* The court noted that negligent infliction of emotional distress cases in Wisconsin, like Vermont, are limited circumstances involving close family members, and the court declined to find that pets fit into that category. The court held that allowing emotional distress claims by a pet’s “human companion” “enter[s] a field that has no sensible or just stopping point.” *Id.* at 802. The court determined that it would be difficult to limit such claims “because the human capacity to form an emotional bond extends to an enormous array of living creatures.” *Id.*

Cases have also recognized the difficulty measuring non-economic damages in pet litigation would pose. A case considered by the Iowa Supreme Court provides a good illustration of this dilemma. In *Nichols*, 555 N.W.2d at 690, the Iowa Supreme Court denied mental distress damages to a family whose dog had a leg and shoulder torn off in a vicious attack by a kennel owner’s dog while boarding at the kennel. The dog survived; family members were not on the premises when the attack occurred. In denying recovery for mental distress damages based on sentimental attachment to the dog, the court noted the family’s expert testimony that a pet’s worth is in the eye of its owner, ranging from \$100-\$200 to “as high as the national debt.” *Id.* at

691. The court declined to subject merely negligent defendants to the risk of such extraordinary and potentially limitless damage claims. *Id.* (distinguishing *LaPorte v. Associated Indep., Inc.*, 163 So.2d 267 (Fla. 1964), which involved malicious destruction of a dog). Other courts have likewise commented upon the inherently subjective and easily inflatable damages that may be claimed by pet owners in such matters. *See Harabes*, 791 A.2d at 1144-45 (rejecting NIED and loss of companionship claim for death of pet; collecting cases and noting “the difficulty in quantifying the emotional value of a companion pet and the risk that a negligent tortfeasor will be exposed to extraordinary and unrealistic damage claims”).

Thus, there is no evident groundswell of case law or support for legislative initiatives to expand liability in pet litigation, here or elsewhere. Perhaps that is because there is also no evident problem – widespread veterinarian malpractice or mistreatment of the animals they are charged with treating – requiring such a blunt and overbroad solution. Indeed, the public holds veterinarians in high regard as one of America’s most well-respected professions. *See Schwartz & Laird*, *supra* § I.A., at 251 (Supp. P.C. at 25). Without an evident or growing problem – and with potentially grave consequences to veterinary medicine here in Vermont – there is no justification for imposing the subjective damages sought by the Goodbys here.

IV. VERMONT HAS ADEQUATE MEASURES IN PLACE TO PROTECT ANIMALS AND TO PROVIDE AVENUES FOR COMPLAINT

There are at least three avenues available in cases that justify action beyond the economic damages available to pet owners in a tort suit.

First, Vermont veterinarians must be licensed by the state after extensive training and education. *See* 26 V.S.A. § 2401 *et seq.* After licensure, the Veterinary Practices Board, made up of four licensed veterinarians and two members of the public, has jurisdiction to ensure that

veterinarians maintain the medical and ethical standards of the practice. *See* 26 V.S.A. § 2413 and *Rules Relating to the Profession of Veterinary Medicine*, available at <http://www.vtprofessionals.org/opr1/veterinarians>. Clients may file complaints with the Board if they believe that a veterinarian has violated practice standards, or worse. After investigating, the Board can censure, suspend, or even revoke a veterinarian's license. These remedies have worked well to provide oversight and discipline the few veterinarians who do not meet the standard of care. From 2002 through 2007, the Board received 81 complaints, and although the vast majority did not, after investigation, result in discipline, nearly 10% did cause some form of disciplinary action. *See* Vermont Secretary of State, Office of Professional Regulation, *Twenty-Sixth Annual Report On Professional Licensing* (November 2007), available at <http://www.vtprofessionals.org/downloads/26annualreportall.pdf>. The Board has also provided advice for veterinarians on issues such as client communication, community service, record keeping, and similar issues which enhance the practice of veterinary medicine for the benefit of all Vermonters. *See* Vermont Secretary of State, Office of Professional Regulation, *Vermont State Veterinary Board Newsletter Volume 4* (May 2007), available at <http://www.vtprofessionals.org/opr1/veterinarians>.

Second, Vermont, like all 50 states, has criminal statutes to protect companion animals from abuse and neglect by any person. *See generally* 13 V.S.A. §§ 351-399. When otherwise applicable, these criminal statutes can be used to prosecute a veterinarian whose conduct did not conform to accepted veterinary practice for the area. *See* 13 V.S.A. §§ 352 & 352b(b)(1), (4) (2007). The statutes extend to many different areas of animal treatment and use, and provide for fines in addition to other punishments.

Finally, there is no limit in Vermont to the types of common-law tort claims where punitive damages may be sought, so long as a Plaintiff can demonstrate the intentional and deliberate wrongdoing that would justify such damages. *See Bolsta v. Johnson*, 176 Vt. 602, 602-603, 848 A.2d 306, 308 (2004). Malicious harm to pets is certainly one factor upon which such awards have previously been based. *See Shahi v. Madden*, 2008 VT 25, -- A.2d. --, 2008 WL 615079.

These measures have functioned effectively in Vermont for a number of years. There is no rash of negligent veterinarian behavior – or, for that matter, any general lack of regard for the welfare of pets by other individuals who could be subject to the type of claim the Goodbys pursue here – that would justify expanding Vermont tort law to create an overly broad remedy to the claimed problem of negligent behavior towards companion animals.

CONCLUSION

Allowing non-economic damages in cases of negligent harm to pets would be an abrupt departure from established and effective tort law here and elsewhere, and would result in a number of harmful public policy consequences. The AVMA and VVMA urge this Court to reject the Goodbys' attempt to recover such damages in this matter. Vermonters love their pets, and the Court rightfully has acknowledged the special property status pets hold. Indeed, it is this special status – the moral and legal duty to care for animals and provide for them – that drives the veterinary profession. Awarding non-economic damages in cases of negligent harm to pets would, however, be a misplaced and harmful way of honoring the value of our pets. Such awards will result in higher veterinary liability insurance costs, forcing a variety of bad consequences at a time when Vermont, like the nation as a whole, needs more, not fewer, veterinarians, and fewer, not more, barriers to good animal and public health. If the treatment of

non-economic damages in pet injury cases is to be considered at all, it should be in the legislative arena, in a comprehensive way designed to address all public policy considerations, rather than through the judicial system. Therefore, the AVMA and VVMA respectfully request that the Vermont Supreme Court affirm the judgment of the Superior Court in this case.

DATED at Burlington, Vermont, this 16th day of April, 2008.

Respectfully submitted,

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