

**FREQUENTLY ASKED QUESTIONS
ARISING FROM THE RESCUE OF ANIMALS
AFFECTED BY A NATURAL DISASTER**

BACKGROUND

This Frequently Asked Questions (“FAQs”) project was designed to help address the legal questions generated by animal rescuers and animal shelters assisting with the recovery of animals affected by Hurricane Katrina in September of 2005. It was initiated and produced by the Animal Legal Defense Fund and the American Bar Association’s Tort, Trial and Insurance Practice Section’s Animal Law Committee.

Volunteer attorneys from across the U.S. donated their time to, as quickly as possible, research and write the legal memoranda that support the short answers provided here. Attorneys and others who would like to read the full memoranda prepared for any one or all of the questions may send your request to ALDF at action1@aldf.org.

ONLINE “HOTLINE” AVAILABLE

Don’t see the answer to your animal rescue legal question here? Then you or your organization can submit a question to action1@aldf.org and we will have a volunteer attorney research it and provide you with an answer if possible. We may also post your answer as part of these FAQs. (Don’t forget to include information on how to contact you to get you your answer!) We expect that as the hurricane season wears on, these FAQs will continue to grow, so keep watching this space.

DISCLAIMER

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1a. What actions may police or other government authorities take during a natural disaster to control dangerous or potentially dangerous dogs—i.e., can they shoot or otherwise harm them?

Dangerous dogs may be killed, humanely, without liability for money damages or criminal prosecution.

In Louisiana, see La. R.S. § 3:2773(D) and La. Atty Gen. Op. No. 1993-808; 1994.

In Mississippi, see Miss. Code Ann. § 41-53-11 (2005)

Also, generally, see 56 A.L.R. 2d 1024 § 1(b).

1b. Is anyone besides government officials permitted to take such action?

In Louisiana, sheriffs, constables, or other police officers, as well as citizens, may take such action.

In Mississippi, only sheriffs, conservation officers, or peace officers may take such action.

See the laws referenced above in question 1a.

1c. Does it make a difference if the dangerous animal is a companion animal, wildlife, or other type of animal?

The states' legislation refers only to dogs.

1d. What actions may be taken to control loose, but not dangerous dogs?

Answer is still being developed and will appear here shortly.

1e. What if there is a perceived risk that some or all loose animals may endanger public health and safety? How is this determined? What measures may be taken by government agencies and/or others to secure the public's health and safety generally, if the threat is not aggressiveness, but animals' rabies or communicable diseases?

Killing animals with communicable diseases is usually considered a proper exercise of a state's police power. U.S. and state case law tells us that, at least in normal circumstances, there must be first a series of steps taken to test or inspect the animals to confirm the existence of the disease and to provide notice and a hearing to the animals' guardian before the animal(s) may be destroyed.

In Louisiana, the State Livestock Sanitary Board has the power to make and enforce rules necessary to prevent, control, and eradicate contagious and infectious diseases of animals, and all other animal diseases. See La. R.S. § 3:2095.

Mississippi requires sheriffs, conservation officers or peace officers to kill dogs over the age of 3 months found running loose who bear no collar or tag showing they are unvaccinated against rabies. See Miss. Code Ann. §§ 41-53-1 et seq.

2a. What legal rights, responsibilities, and immunities exist, if any, for Louisiana and Mississippi licensed veterinarians (vets) in an emergency such as the aftermath of Hurricane Katrina?

In Louisiana, 2 laws address this question:

The Good Samaritan Law reads that state licensed vets who in good faith provide emergency services to an animal at the scene of an emergency shall not be liable for

damages for providing, or failing to provide, for the emergency care or arrangement of further vet medical treatment. See La. R.S. § 37:1731(C).

The Louisiana Health Emergency Powers Act requires vets to report all cases of animals who harbor any illness that may cause a public health emergency to the office of public health, infectious disease epidemiology section. See La. R.S. § 29:765(A)(1)(a)

See also question 2e below.

Mississippi law is still being researched on this question.

2b. What legal rights, responsibilities, and immunities exist, if any, for veterinarians (vets) licensed in other states who come to Louisiana and Mississippi to help there?

Louisiana prohibits persons from practicing veterinary medicine in the state if they are not licensed there, unless they are licensed in another state and are consulting with a licensed Louisiana vet. See La. R.S. § 37:1514.

That said, for purposes of the current emergency, that rule appears to be temporarily suspended pursuant to the following documents and Vet Board memo:

Louisiana (La. R.S. § 29:751) has adopted the Southern Regional Homeland Security and Emergency Preparedness Management Assistance Compact, which includes the following:

Article V - Licenses and Permits

Whenever any person holds a license, certificate or other permit issued by any party state to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

A nearly identical provision exists in the Interstate Emergency Preparedness and Disaster Compact. See La. R.S. § 29:733:

Article 4.

Whenever any person holds a license, certificate, or other permit issued by any state evidencing the meeting of qualifications for professional, mechanical, or other skills, such person may render aid involving such skill in any party state to meet an emergency or disaster and such state shall give due recognition to such license, certificate, or other permit as if issued in the state in which aid is rendered.

In relation to the above, our researchers obtained the following memo from the Louisiana Veterinary Medicine Board, which is reprinted in full here:

Veterinary Medicine Board
Hurricane Katrina Aftermath – Relief Assistance Memo
DATE: September 12, 2005

FROM: Louisiana Board of Veterinary Medicine

RE: Hurricane Katrina Aftermath – Relief Assistance

Due to the effects of Hurricane Katrina, Governor Blanco issued an Executive Order, KBB 05-35, (effective through September 25, 2005) suspending the requirement for a Louisiana issued licensed to those out of state licensed veterinarians, in good standing, in other states. Accordingly:

A. A veterinarian not licensed in Louisiana, but currently licensed, in good standing, in another state may practice veterinary medicine if:

1. the veterinarian has photo identification and license to verify a current licensure in another state, and properly registers with the LA Board;
2. the veterinarian is engaged in a legitimate relief effort during the emergency period (at what disaster facility are you intending to practice in Louisiana, and please keep the Board office current on this information); and
3. the veterinarian must practice in good faith, and within the reasonable scope of his skills, training, and ability.

B. The authority provided for in this shall cease on September 25, 2005, unless the Executive Order is renewed, modified, or extended, or earlier rescinded by the Governor.

C. All out of state licensed veterinarians shall submit a copy of their respective licenses and photograph identification, as well as other requested information, to the LA Board of Veterinary Medicine office at lbvm@eatel.net, 225-342-2176, or fax 225-342-2142, for registration with this agency.

Application Form in pdf format. http://www.lsbvm.org/DVM_app_temp_relief.pdf Use the Text Select tool to complete the form online and then print for signatures. Completed applications must be in original form – faxed copies not accepted.

Mississippi's laws permit several categories of persons to practice veterinary medicine there without having Mississippi-issued veterinary licenses, including:

Any member in good standing of another licensed or regulated profession within any state, or any member of an organization or group approved by the board, providing assistance requested by a veterinarian licensed in the state, acting with informed consent from the client, and acting under the direct or indirect supervision and control of the licensed veterinarian. Providing assistance involves hands-on active participation in the

treatment and care of the patient. The licensed veterinarian shall maintain responsibility for the veterinarian-client-patient relationship." Miss. Code. Ann. § 73-39-61(e).

Any veterinarian employed by an accredited college of veterinary medicine providing assistance requested by a veterinarian licensed in the state, acting with informed consent from the client, and acting under the direct or indirect supervision and control of the licensed veterinarian. Providing assistance involves hands-on active participation in the treatment and care of the patient. The licensed veterinarian shall maintain responsibility for the veterinarian-client-patient relationship... Miss. Code. Ann. § 73-39-61(f).

Any person who, without expectation of compensation, provides emergency veterinary care in an emergency disaster situation. Miss. Code. Ann. § 73-39-61(p).

See also question 2e below.

Mississippi has apparently not adopted either the Southern Regional Homeland Security and Emergency Preparedness Management Assistance Compact or the Interstate Emergency Preparedness and Disaster Compact, as we could find no mention of either one in the statutes.

- 2c. What are the limits, if any, on the types of medical treatments that may be performed on rescued animals—only those necessary to save life? What about spay and neuter procedures?**

We could find no express limitations set out in the laws or cases of either Louisiana or Mississippi. As noted in question 2a above, Louisiana does have a Good Samaritan Law found at La. R.S. § 37:1731(C), that would arguably shield from liability any emergency procedures performed in good faith.

- 2d. Is there a time where the answer to above question 2c changes—i.e., during the holding period for when animals may be reclaimed? What about after that? At what point does the holding period start? Is the holding period different during a declared emergency?**

As noted in question 2c above, the answer appears to be that there is no limit regarding the administration of medical treatment, no matter when it occurs.

Louisiana's Abandoned Animals Act, La. R.S. § 3:2451, states that an animal is abandoned if veterinary charges (medical and/or boarding) are not paid within 10 days of the services rendered, La. R.S. § 3:2452, and after notice is given to the guardian, the animal can be disposed of an additional 10 days later. La. R.S. § 3:2453.

Mississippi's veterinary statutes state that an animal placed in a vet's custody is considered abandoned if not claimed after 10 days, see Miss. Code. Ann. § 73-39-89(1)

Although no exception to these provisions seems to exist, principals of equity would no doubt dictate that 10 days is an insufficient period of time to locate a companion animal in the aftermath of a natural disaster.

2e. Aside from the laws, what do the American Veterinary Medical Association, Louisiana and Mississippi State Veterinarians, and state vet requirements say, if anything, about vets assisting with these types of rescue situations and the above questions?

The AVMA has a detailed Disaster Preparedness and Response Guide at: <http://www.avma.org/disaster>. It includes a document about the Veterinary Medical Assistance Teams (VMATs), which were in fact sent into the hurricane-devastated area. VMATs are funded through the American Veterinary Medical Foundation (AVMF), which is a 501(c)(3). The AVMA contributes to this foundation. Once VMATs respond to a disaster, their people who are participating become employees of FEMA.

The Louisiana Board of Veterinary Medicine, as noted above in question 2b, has created an application form for out-of-state vets to be temporarily licensed to come in and help. See the Louisiana Veterinary Medical Association's homepage with several hurricane links at <http://www.lvma.org/>, also their animal evacuation and recovery plan at <http://lvma.org/evacuationplan.html>.

Our Mississippi researchers contacted the Mississippi Veterinary Medical Association, which stated that they have no independent regulations governing their vets, only the MS Veterinary Practice Act found at Miss Code Ann. §§ 73-39-51 et seq., pertinent provisions of which are already cited here throughout.