

No. 25-138

IN THE
Supreme Court of the United States

DR. MARGO ROMAN,
Petitioner,

v.

MASSACHUSETTS BOARD OF REGISTRATION IN
VETERINARY MEDICINE,
Respondent.

On Petition for a Writ of Certiorari to the
Massachusetts Supreme Judicial Court

**BRIEF OF VETERINARIANS AND MEDICAL
PROFESSIONALS AS *AMICI CURIAE* IN
SUPPORT OF PETITIONER**

WILLIAM E. EVANS
Counsel of Record
KEVIN P. MARTIN
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, MA 02210
wevans@goodwinlaw.com
(617) 570-1000

Counsel for Amici Curiae

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INTEREST OF *AMICI CURIAE*¹

Amici are veterinarians and medical professionals, many of whom, like Petitioner Dr. Margo Roman, are bound by professional licensing obligations and general principles of veterinary and medical ethics.² *Amici* believe that, by offering her good-faith views about potential preventative measures at the very outset of the COVID-19 pandemic, Dr. Roman was doing exactly what her Veterinarian’s Oath and corresponding professional standards *required* her to do: put her scientific knowledge to use for the benefit of the public in a time of crisis. Suspending Dr. Roman’s license for conduct required by both her oath and fundamental principles of veterinary ethics therefore raises serious concerns for *amici* and similarly situated practitioners.

If affirmed—and especially if replicated in other States—the decision of the Massachusetts Supreme Judicial Court (SJC) would threaten to silence veterinarians’ speech in violation of their ethical obligations and Veterinary Oath. It would risk chilling veterinarians from acting as educators in their

¹ No counsel for any party authored this brief in whole or in part. No party or counsel for a party, other than *amici* and their counsel, made a monetary contribution intended to fund its preparation or submission. All parties received timely notice of *amici*’s intent to file this brief.

² A full list of *amici*’s names is included in the Appendix to this brief. A number of *amici* submitted personal statements in support of Dr. Roman in prior proceedings; those statements can be found in the addendum to *amici*’s brief filed in the Massachusetts Supreme Judicial Court. Brief of *Amici Curiae* 36 Veterinarians and Medical Professionals in Support of Petitioner-Appellant, *Roman v. Bd. of Registration in Veterinary Med.*, No. SJC-2023-0454 (Mass. Jan. 16, 2025).

communities and advocates for novel treatments in the public sphere.

The SJC’s decision therefore poses serious free-speech and ethical concerns for medical professionals across the country. *Amici* have a vital interest in explaining the stakes of this case for all practitioners.

INTRODUCTION AND SUMMARY OF ARGUMENT

At the very onset of the unprecedented COVID-19 pandemic, Dr. Margo Roman emailed her human clients to explain the now-standard precautions her veterinary practice would take, and to offer general health recommendations she believed might slow the spread of the virus. The Massachusetts Board of Registration in Veterinary Medicine (Board) singled out *some* of Dr. Roman’s recommendations—particularly the use of over-the-counter ozone generators as a potential therapy—and concluded that these “health suggestions for humans” (Pet. App. 122a) constituted the practice of medicine outside the scope of Dr. Roman’s veterinary license under Massachusetts General Laws chapter 112, section 61(1). On the basis of this alleged violation, the Board suspended her license for two years. The SJC then affirmed that decision. It held that because “licensed professionals are subject to regulation, they do not come before us as citizens entitled to the full range of individual rights available to all citizens,” and so “[t]he [B]oard properly disciplined Roman for the statements that she made while practicing her profession.” Pet. App. 9a (citation and quotation marks omitted).

That decision was contrary to core free-speech principles. There is no general exception to the First

Amendment for speech made by medical professionals. *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 767-68 (2018) (*NIFLA*). For that reason, courts have not hesitated to apply First Amendment scrutiny when the government wields licensing requirements to punish a practitioner's mere "communication of a message." *Hines v. Pardue*, 117 F.4th 769, 778 (5th Cir. 2024). The Board obviously would not have punished Dr. Roman if she had told her human clients to get vaccinated. The SJC's decision—which affirmed the Board's decision to punish speech where the Board disagreed with the specific message Dr. Roman communicated—implicates these fundamental constitutional protections.

The SJC's decision also warrants the Court's review because it puts veterinarians' ethical and legal obligations in conflict. Massachusetts is one of many jurisdictions that require veterinarians to adhere to generally applicable ethical standards set by the American Veterinary Medical Association (AVMA). Those standards *require* veterinarians to consider the interaction of human and animal health holistically, using their scientific knowledge for the benefit of the public—especially during health emergencies. Indeed, during the COVID pandemic AVMA *encouraged* veterinarians to recommend that their human clients and the broader public get vaccinated. Under the SJC's logic, a veterinarian who did exactly what AVMA encouraged—recommend that clients and others get vaccinated against COVID—also would be making a "health suggestion[] for humans" and so be subject to suspension. As a result, the SJC's decision will force veterinarians to confront frequent line-drawing problems about when their practices—which often entail advising clients about, *e.g.*, human health

risks from contact with pets and farm animals—overstep the boundaries and tread into forbidden “health suggestions for humans.”

The SJC’s decision thus implicates bedrock constitutional guarantees and raises serious practical concerns for medical professionals nationwide. This Court should grant certiorari.

ARGUMENT

I. Veterinarians are essential health workers in communities across the country.

This case concerns the speech of veterinarians, a large, critical, but often overlooked group of medical professionals. As of 2024, there were over 130,000 veterinarians in the United States. See AVMA, *U.S. veterinarian numbers*, <https://tinyurl.com/2p9rsvua>. They have vibrant and varied practices. Many are the kind of classic general practitioner found in every American town, “[d]eliver[ing] care across a variety of animal types, including [the pet] companion[s]” of their neighbors. *Id.* Others “[p]rimarily deliver[] care to animals raised for food or fiber,” or “to animals used in research and education.” *Id.*

Though their practices focus on animal health, “the work of veterinarians protects people in ways [one] might not realize.” AVMA, *Veterinarians protect people, animals, and society*, <https://tinyurl.com/m6dj4e2c>. Among other things, they “are the first and best line of defense against” the “zoonotic diseases” that “can affect both animals and people—from rabies to avian flu.” *Id.* “Veterinarians also are key in responding to bioterrorism threats such as the anthrax attacks that followed 9/11.” *Id.* By caring for and supervising the treatment of livestock,

veterinarians also ensure that “all meat is safe for human consumption.” *Id.* And research performed by veterinarians furthers the development of novel drugs and treatments that often have applications for human as well as animal health. *Id.*

As part of this work, *amici* and veterinarians across the country give daily health-related advice to humans. They must advise clients on how to handle pet medications and dispose of animal waste; how to prevent the spread of diseases between animal and human populations; how animal and human health interact at home or on farms and ranches; and how to ensure that animal meats are properly prepared and safe for consumption. For this reason, the question of whether and how veterinarians can speak to fellow citizens about human health issues is neither abstract nor confined to the facts of Dr. Roman’s case—it is an issue of daily and national significance.

II. The SJC’s decision implicates core First Amendment concerns.

Dr. Roman was disciplined for pure speech: an email sent to her clients that did not involve any actual treatment of a human, that no one disputes was sent in good faith, and that caused no one any harm. The SJC nonetheless held that this “professional speech” is categorically unprotected by the First Amendment “‘because licensed professionals ... do not come before us as citizens entitled to the full range of individual rights available to all citizens,’ and in particular, they may be subject to restrictions related to speech.” Pet. App. 9a (alteration omitted) (quoting *Schoeller v. Bd. of Registration of Funeral Dirs. & Embalmers*, 977 N.E.2d 524, 533 (Mass. 2012)). Applying that standard, the court sifted through Dr. Roman’s email

to her clients—which included, among other things, guidance about widely-accepted distancing procedures—and singled out just *some* recommendations for opprobrium. In particular, the court thought that her recommendation of ozone therapy as a “possible” COVID treatment warranted professional discipline because it was a “health suggestion[] for humans.” Pet. App. 2a-3a, 7a-11a.

As Dr. Roman has ably explained in her petition (at 12-20), under this Court’s First Amendment jurisprudence, the SJC’s analytical approach was wrong twice over. First, veterinarians and other medical professionals do not surrender First Amendment protection at the door of their practice. And second, constitutional scrutiny should be *especially* rigorous when the government uses its regulatory powers to punish medical professionals from expressing disfavored viewpoints.

“Speech is not unprotected merely because it is uttered by ‘professionals,’” and this Court has consistently refused to lower First Amendment protections for professional speech outside limited exceptions. *NIFLA*, 585 U.S. at 767-68. Instead, “this Court has stressed the danger of content-based regulations in the fields of medicine and public health, where information can save lives.” *Id.* at 771 (citation and quotation marks omitted). Such restrictions “pose[] the inherent risk that the government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information.” *Id.* (brackets, citation, and quotation marks omitted). Ensuring the First Amendment remains undiluted as much in the examining room as in the public square is necessary “to preserve an uninhibited marketplace of

ideas in which truth will ultimately prevail.” *Id.* at 772 (citation and quotation marks omitted).

Following these principles, courts have applied rigorous First Amendment scrutiny to government regulation of speech by medical professionals. In *Hines v. Pardue*, for example, the Texas State Board of Veterinary Medical Examiners determined that a retired veterinarian had violated the State’s physical-examination requirement for veterinary practice by “giving online pet-care advice to animal lovers around the world” in the form of “send[ing] emails” in response to inquiries. 117 F.4th at 771-73. The Fifth Circuit held that application of the physical-examination requirement to the retired veterinarian violated the First Amendment. The court reasoned that “[b]ecause the act in which [the retired veterinarian] engaged that triggered coverage under the physical-examination requirement was the communication of a message, the State primarily regulated [the veterinarian’s] speech,” and thus the First Amendment was implicated. *Id.* at 778 (quotation marks and brackets omitted). Assuming without deciding that the physical-examination requirement was content-neutral, the court held its application to the veterinarian was unable to withstand even intermediate scrutiny. *Id.* at 778-85.

For similar reasons, the SJC should have applied First Amendment scrutiny here. Ultimately, all Dr. Roman did was “send emails – pure speech.” *Hines*, 117 F.4th at 775. So just as in *Hines*, “[b]ecause the act in which [Dr. Roman] engaged that triggered coverage under [Massachusetts General Laws chapter 112, section 61(1)] was the communication of a message, the [Commonwealth] primarily regulated

[her] speech,” and constitutional scrutiny is therefore triggered. *Id.* at 778.

This point is heightened by the compelling arguments Dr. Roman has advanced that she was disciplined based on disapproval of the particular message she conveyed. A core First Amendment principle therefore is at stake: “the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information.” *NIFLA*, 585 U.S. at 771-72 (citation and quotation marks omitted). Dr. Roman, regulators, and other medical professionals are permitted to have “good-faith disagreements” over topics like the efficacy of ozone therapy for reducing COVID’s spread. *Id.* at 771-72. The proper way to handle such disagreement is “to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail.” *Id.* at 772 (citation and quotation marks omitted). It is not to use selective and *post hoc* application of licensing laws to silence the unpopular side of the debate.

The First Amendment protects the right of Dr. Roman and *amici* to communicate their scientific perspectives to clients and the public at large. The mere fact that those viewpoints might be disfavored by the government cannot be grounds for suspending a license to practice. By holding otherwise, the SJC undermined core free-speech principles and deepened a split of authority concerning the application of First Amendment scrutiny to professional speech. Certiorari is warranted to end the division in the lower courts and to reaffirm this Court’s refusal to “recognize[] ‘professional speech’ as a separate category of speech.” *NIFLA*, 585 U.S. at 767.

III. The SJC’s decision is incompatible with the Veterinarian’s Oath, generally accepted principles of veterinary ethics, and binding professional-licensing standards.

Amici and their fellow veterinarians engage in health-related speech in their communities every day. See Part I, *supra*. That speech is not just encouraged but *mandated* by canons of professional ethics. The AVMA, which sets the standards followed by regulators in Massachusetts and many other States, requires veterinarians to share their scientific knowledge with the general public—particularly during an acute health crisis like the COVID pandemic.

Dr. Roman tried to honor that obligation by offering general observations about treatments that might be beneficial during the incipient pandemic. The SJC nonetheless affirmed the imposition of disciplinary sanctions for that good-faith attempt to honor basic veterinary ethics, simply because regulators decided, well *after* Dr. Roman shared her thoughts, that the ozone therapies she discussed were inadvisable. That decision puts *amici*’s and their colleagues’ ethical and legal obligations in direct conflict, and it poses impossible line-drawing problems for practicing veterinarians. The troubling implications of this decision for practitioners around the country further supports this Court’s review.

A. By regulation, veterinarians like Dr. Roman who practice in Massachusetts are required to “conform to currently-accepted professional and scientific standards in the profession of veterinary medicine such as but not limited to the AVMA Principles.” 256 Mass. Code Regs. § 7.01. This

alignment between state-law licensing requirements and AVMA's guidance is not uncommon. *See* Pet. at 27 n.4 (citing regulations from the District of Columbia and four States); *see also, e.g.*, Nev. Rev. Stat. § 638.140(8); S.C. Code Regs. § 120-8(A).

A core tenet of AVMA's professional and scientific standards is that veterinarians must consider the interaction of their practice with human health and use their knowledge for the benefit of the public, not just the animals they treat. This flows directly from the Veterinarian's Oath, according to which practitioners "solemnly swear to use [their] scientific knowledge and skills for the benefit of society," including through the active "promotion of public health[] and the advancement of medical knowledge" generally. AVMA, *Veterinarian's Oath*, <https://tinyurl.com/yc27a756>. This obligation was written directly into the version of the AVMA principles operative at the time Dr. Roman communicated with her practice. Under those principles, veterinarians are obliged to "make relevant information available to clients, colleagues, [and] the public," Pet. App. 77a, and are "encouraged to make their" scientific and medical "knowledge available to their communities and to provide their services for activities that protect public health," AVMA, *Principles of veterinary medical ethics of the AVMA* (Jan. 4, 2023), <https://tinyurl.com/36dyu9u8>.

AVMA doubled down on this ethical standard during the COVID pandemic. "[R]ecogniz[ing] the key role of veterinarians in society and public health," the Centers for Disease Control and Prevention partnered with AVMA to "launch a nationwide education and awareness campaign" to support vaccination efforts,

“includ[ing]” by making “a wide range of print and digital materials available to AVMA members,” and AVMA’s then-president emphasized that “[e]ncouraging preventive health care, including vaccination, is part of th[e] commitment” expressed in the Veterinarian’s Oath. AMVA, *AVMA launches campaign to encourage COVID-19 vaccinations* (Dec. 15, 2021), <https://tinyurl.com/43nz5mwp>. Outreach by veterinarians was essential because they “are healthcare providers trusted not only by their clients but by the public at large,” making them “uniquely qualified to share the importance of preventing and controlling disease in both animals and people.” *Id.*

AVMA continues to mandate this approach, exhorting “the role of veterinary professionals in support of human health care during emergency situations,” and stressing that veterinarians’ “knowledge of population and public health can be used to augment the capacity of the human healthcare system.” AVMA, *Addressing the role of veterinary professionals in support of human health care during emergency situations*, <https://tinyurl.com/46x5t5p3>. In short, well-established principles of veterinary ethics (and the state-law professional standards that track those principles) require veterinarians to act as “essential health workers” whose expertise “contributes not only to animal well-being but also to human[s] physical, mental and social wellbeing.” AVMA, *World Veterinary Day celebrates veterinarians as essential health workers* (Mar. 11, 2024), <https://tinyurl.com/453uc5ny>.

B. From *amici*’s perspective, there is zero daylight between the AVMA’s binding ethical standard

incorporated into Massachusetts regulations and Dr. Roman's communication with her practice.

Recall the full context and content of Dr. Roman's email. Just a handful of days after the COVID pandemic was declared a national emergency, she made a good-faith effort to share her knowledge with her community. Among other things, Dr. Roman detailed precautions that everyone now recognizes as standard techniques for minimizing the spread of COVID: social distancing, contactless pick-up arrangements, remote appointments for symptomatic clients, and rigorous sanitation procedures. Pet. App. 192a-193a. She also provided "[a]dditional information" she thought might help community members "protect [them]selves": use of an ozone generator for both general benefits ("because it disinfects") and because it offered a "possible" treatment for COVID; dietary routines she found helpful in her own experience (including "vitamins," "probiotics, echinacea, elderberry, astragalus," and "a whole food healthier diet with less sugar"); and "homeopathic" therapies that could act as "remedies for this coronavirus." Pet. App. 193a-194a. Dr. Roman underlined that the issue was not just a matter of public urgency but also a special personal concern, "because she has [a] compromised immune and respiratory system and she is over 60." Pet. App. 194a.

This sort of thoughtful engagement with the community is *exactly* what AVMA was *telling* veterinarians to do during the COVID crisis. See p 9-11, *supra*. But the SJC nonetheless affirmed suspension of Dr. Roman's license, on the grounds that "she was making specific recommendations about the treatment of COVID-19 in human beings." Pet. App.

9a. According to that court, “the issue ... was not whether the treatments she recommended were effective against COVID-19; it was whether, while practicing as a veterinarian, she could make such recommendations to her human clients.” Pet. App. 10a. The SJC held that she could not.

Even setting aside its legal flaws, this analysis cannot be correct on its own terms. As Dr. Roman notes (at 18-19), neither the Board nor the SJC took issue with most of the COVID-related precautions Dr. Roman described for her practice—likely because they quickly became broadly accepted by the medical and regulatory communities. It is absurd to think Dr. Roman would have been sanctioned for telling clients to practice social distancing, and so the Commonwealth has never seriously maintained that Dr. Roman would have been disciplined for simply repeating *verbatim* health guidance that had been issued by Massachusetts or federal officials. But it is impossible to distinguish that desirable speech from the message that resulted in Dr. Roman’s suspension, except for the one obvious difference: the Board and the SJC clearly thought Dr. Roman’s touting of ozone generators as a “possible” COVID therapy was a bad idea. And *not* because health officials had already inveighed against it—regulators would not take any position on this issue until well *after* Dr. Roman sent her email. See Pet. at 19; Pet. App. 110a-112a.

The upshot is that a veterinarian’s speech about possible treatments for a novel disease is required by professional ethics and state licensing requirements—until, it seems, the government decides *post hoc* that it disagrees with the speech. As a result, a veterinarian

risks losing her license simply for honoring her ethical obligations as a medical professional.

C. This kind of only-the-ideas-we-like approach to medical speech is not just wrong as a matter of constitutional law, it also puts practitioners like *amici* in an impossible bind, with consequences far beyond the confines of this case.

Day in and day out, *amici* and veterinarians around the country have to give health-related advice to their human clients: about, among other things, handling pet medication and waste, preparing meat for safe consumption, and preventing the spread of a range of zoonotic diseases (such as ringworm, rabies, Lyme disease, animal influenza, and bacterial infections). All told, *amici* and their colleagues have traditionally been front-line health advisors for their neighbors, especially in rural communities—not for prescriptions or direct treatment, but for essential knowledge about the interdependence of human and animal health on farms and ranches. *See* pp. 4-5, *supra*.

If the SJC's decision stands, *amici* and practitioners across the country will be left guessing when and how they can speak to their communities about these issues and other matters of public concern. Again, presumably the SJC's decision is not meant to discourage veterinarians from endorsing broadly accepted human-health measures like vaccinations, basic sanitary practices, and good nutrition. But even on those seemingly fundamental issues, ideas can change. Today's standard practice may be tomorrow's obsolete approach. There is no guarantee under the SJC's decision that a veterinarian cannot be targeted

with an enforcement action when her advice falls out of fashion at a later date.

The implications for the next major health crisis are especially alarming. Again, the AVMA principles and corresponding state-law ethical standards mandate that veterinarians put their scientific knowledge at the service of their communities during emergencies. But in light of the SJC's decision, *amici* face the risk of professional discipline just for honoring that ethical obligation—even if the advice they share is offered in good faith and is uncontradicted at the time it is given. If their ideas about solving a novel health crisis are ultimately not the ones endorsed by the government, *amici* are at the risk of losing their right to practice. So *amici* and other practitioners will inevitably be far less eager to join the discussion when the next health emergency hits us.

The result will be a loss for everyone. The free speech rights of *amici* and veterinarians across the country will be severely abridged, at the very moment their Veterinarian's Oath demands they speak out. Their communities will suffer too, because valuable and expert voices will be silenced at a critical moment. And without exposure to “an uninhibited marketplace of ideas in which truth will ultimately prevail,” the development of medical knowledge will slow as well, because practitioners will be chilled from entering the public square. *NIFLA*, 585 U.S. at 772.

The First Amendment is supposed to prevent the government from stifling debate on emerging matters of public concern. The SJC's decision greenlights such censorship, to the detriment of *amici*, other medical practitioners, and the public. The Court should grant

review to shore up the fundamental free-speech principles that this decision has eroded.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted.

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WILLIAM E. EVANS
Counsel of Record
KEVIN P. MARTIN
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, MA 02210
w.evans@goodwinlaw.com
(617) 570-1000
Counsel for Amici Curiae

APPENDIX A—LIST OF *AMICI CURIAE*

Christine Aiken, DVM, Dr. Med. Vet.
 Jean Albright, DVM, CVA
 Randy Aronson, VMD, CCRT, CVA
 Kathy Bachus, DVM
 Leslie Baldner, DVM
 Erin Bannick, DVM, DACVIM (Oncology), GDiplVCHM,
 CVA
 Ihor Basko, DVM, CVA
 Susan Beal, DVM
 Karen Becker, DVM, CVA, CCRT
 Larry Bernstein, VMD
 Wendy Biggs, DVM
 Dr. Jeannette Bimonte, DVM
 Ella Bittel, CVA, CVC
 Marsha Y. Blakeslee, DO
 Nancy Bozeman, DVM
 Nancy Brandt, DVM, OMD
 Jim Bridges, DVM, CVA, FAAO
 Garry Bright, Veterinary Surgeon-Qld VSB #4757
 PJ Broadfoot, DVM
 Deb Brown, DVM, CVA
 Beth Brown, DVM
 Dr. Gerald M. Buchoff, BVScAH (DVM equivalent), MS
 Martine Calache, CCH, Fhom, DiHom, RsHom pending
 ND
 Carrie Cannon, MD, MS
 Christina Chambreau, DVM
 Corinne Chapman, DVM
 Chuck Coleman, DVM, CAC
 Claudia M. Cooke, MD
 Lauren Cooke, DVM
 Eva DeCozio, DVM, CVA, CERP, Dip Grand VCHM
 Roger DeHann, DVM, MTS, CVC, CNHP
 Rosario Delgado, DVM

Carl Destfano, DC, ACVC
Rose Dileva, MS, VMD, CVCP, CVA
Laurie Dohmen, VMD, MS, RH (AHG), FACVBM
William Cutler Domb, DMD, FAAO
Tristan Doyle, DVM, CVA
Jill Elliot, DVM
Jeff Feinman, VMD, CVH
Lisa Fiorenza, DVM, CVA, CVFT, CVWHM
Tom Fitzpatrick, MD
Holly Foster, DVM
Michael W. Fox, BVetMed, PhD, DSc, MRCVS
Ava Frick, DVM
Kathleen Gensheimer, MD, MPH, FIDSA
Prof. Shahram Ghanaati, MD, DMD, PhD, FEBOMFS
Merry Gibson, DVM
Marty Goldstein, DVM, CVA
Robert Goldstein, VMD
Sara Gonzales, DVM
Louis N. Gotthelf, DVM
Isadora Guggenheim, ND, FNP, RN, MS, CNS
Erica Gurly, DVM
Penelope Harris, MD, Medical Hematologist Oncologist,
COL USAR, retired
Nathan Helman, BS, DVM, CVA, VSMT
Beth Hirsh, DVM, CVA, ACVA
Edwina Ho, DVM
Erin Holder, DVM, CVA, CVCH, CVFT, CVTP, CAOT
Jean Hollenstein, DVM
Judy Jasek, DVM
Rachel Jones, DVM, CVCP
Jeffrey Judkins, DVM, CVA
Nancy Keller, DVM
Komal Kenai, BVSc&AH
Brad Kerr, DVM, CVA
Akbar Khan, MD

Doug Kneuvan, DVM, CVA, ACVA
Henry W. Kostecki, DVM
David Kowalek, BVMS
Yukiko Kuwahara, DVM, DRIC, CVA
Monica Laflin, DVM, CVC, CVA
Kevin Landau, VMD, CVA
Martin Langhofer, DVM
Cynthia Lankenau, DVM, GDSWHM, ACVHM, CVA,
RH (AHG), MS (TCVM), FACVBM
Julie Ann Lee, DCH, RSCHom
Marjorie M. Lewter, DVM
Martha Lindsay, MS, DVM, CVH, CNE
R. David Lindsay, DVM
David Lowell, DVM
Selena Lucas, DVM, CVA
Audra MacCorkle, DVM
Stephen Markus, DMD
Cynthia Maro, DVM, CVA, CAC, VNAET, NAET,
VMRT, MQP
Armaiti May, DVM, CVA
David McDonald, DVM, CVA, CVMT
Dennis Mihalka, DMD, FAAO
Kathy Miles, BSN, RN
Angel Mitchell, DVM
Cameron Moorehead, DVM
Jamie Moran, DVM
Amy Muro, RN
Susan Nadeau, DVM
M. Spencer Newman, DVM, MS, CVA, CAC, CVCP
Jean Nordin, DDS, IDBM
Heather Oxford, DVM, MPH, CVA, CCRT
Janet Gordon Palm, DVM, CVCP
Gayln Perry, MD
Chery Peterin, DVM
Richard Pitcairn, DVM, PhD

Jean Pitcairn, DVM
Nancy Quigley, MSN, NP-C, MEd, AHN-BC, HWNC-BC
Bommi Reddy, DVM, MD, ND
Susan Reeler, DVM, cVMST
Mark Resty, VMD
Jenny Revermann, DVM
Tiffany Rimar, DVM, CVA
Ruth Roberts, DVM, CVA, CVCH, CVFT
Penelope Rochelle, DVM, CVA, CVSMT
Kimi Ross, DVM, CVA, CCRT
Robert Rowen, MD
Barbara Royal, DVM, CVA
Jyl Rubin, DVM, AAOT, CVA
Theresa Salee, DVM, CVA, CCRT, CVSMC
Valentina Sanguineti, DVM, CVA
Nancy Scanlon, DVM, CVA
Stefanie Scheff, DVM
Zachary Scheurich, DVM
Alan Schoen, DVM, CVA
Cheryl Schwartz, DVM
Kielyn Scott, DVM
Frank Shallenberger, MD, HMD
Melissa Shaw, DVM, LMT, CVA
Judith Shoemaker, DVM
Marlene Siegel, DVM
Suzanne Singson, FNP, BSN
Tejinder Sodhi, DVM, CVC
Daniel W. Stock, MD
Terri Su, MD
Odette Suter, DVM
Mary Kelly Sutton, MD
Sue Swanson, DVM
Laura Taylor, DVM
Paul Thomas, MD
Jodi Van Tine, DVM

Phil Totonelly, MD/JD, FACC, FCLM
 Dr. Alexia Tsakiris, BVetMed, CVA, GDVWHM
 Victoria E. Unt, DVM, BVetmed, MRCVS, CVA,
 CVBMA, CVNN
 Deborah Viglione, MD
 Wanda Vockeroth, DVM
 Marlice Vonck, DVM
 Debra Voulgaris, DVM, MA, CVA, CCRP
 Brian Voynick, DVM
 Melissa Walker, DVM
 Joy Waugh-Ingraham, PT
 Michelle Weidenkopf, DVM
 Keith Weingardt, DVM, CVA
 Laura Weis, DVM, CVH
 Mark T. Weiser, DDS, FALD, FOOT
 Eric Weisman, DC, TCMP, NCEOP
 Lindsey Wendt, DVM, CVA, CVFT, CCRT
 Teri Sue Wright, DVM
 Hsin-Lan Ying, DVM
 Zullyt Zamaro, DVM, PhD
 Franchesca Zenitsky, DVM, CVC, MS