

Veterinary Medical Board

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The Veterinary Medical Board (VMB) is a consumer protection agency within the state Department of Consumer Affairs (DCA). Pursuant to the Veterinary Medicine Practice Act, Business and Professions Code section 4800 *et seq.*, VMB licenses doctors of veterinary medicine (DVMs) and registered veterinary technicians (RVTs); establishes the scope and standards of practice of veterinary medicine; and investigates complaints and takes disciplinary action against licensees as appropriate. The Board's regulations are codified in Division 20, Title 16 of the California Code of Regulations (CCR).

VMB also registers veterinary medical, surgical, and dental hospitals and health facilities. All such facilities must be registered with the Board and must comply with minimum standards. A facility may be inspected at any time, and its registration is subject to revocation or suspension if, following a hearing, it is deemed to have fallen short of these standards.

The Board is comprised of seven members—four veterinarians and three public members. The Governor appoints all of the Board's DVM members and one of the public members; the Senate Rules Committee and the Assembly Speaker each appoint one public member. Board members serve four-year terms, and are limited to two consecutive terms.

Effective July 1, 1998, the Board maintains the Registered Veterinary Technician Committee (RVTC), an advisory committee on issues pertaining to the practice of veterinary technicians. The Committee consists of five members (three RVTs, one DVM, and one public member) who are appointed to four-year terms by VMB. RVTC is authorized to assist the Board in the examination, investigation, and evaluation of RVT applicants; make recommendations regarding the establishment and operation of continuing education requirements; and assist the Board in the inspection and approval of RVT schools and educational programs. VMB also maintains other advisory committees in the areas of legislation, examinations, administration, contract bid review, hospital inspection, citation and fine review, and public relations.

At its January 1999 meeting, VMB welcomed two new Board members (Raymond Weitkamp, DVM, and Karen McNamar) and two new RVT members of the RVTC (Alex Henderson and Nancy Erlich). At its April 1999 meeting, the Board welcomed new RVTC member Linda Zachritz.

MAJOR PROJECTS

Board Adopts Emergency Regulations to Implement SB 2003

During a February 9 meeting via teleconference, VMB adopted emergency regulations to implement SB 2003

(Knight) (Chapter 1070, Statutes of 1998). Effective March 1, 1999 until July 1, 2002, SB 2003 amends Business and Professions Code section 4848 to require the Board to establish a new one-year, "temporary licensure" system for veterinarians who are already licensed in another

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state and are seeking to practice in California. VMB's examination of these veterinarians is restricted to an open-book, "mail-out" test covering only its statutes and regulations. The bill was sponsored by PetSmart, which operates more than 500

veterinary establishments in 36 states (including the 55-hospital VetSmart chain in California), Canada, and the United Kingdom. During legislative debate on the bill, PetSmart argued that there is a growing shortage of veterinarians in California, and said it designed SB 2003 to remove barriers to entry faced by experienced out-of-state veterinarians seeking licensure in this state. The measure generally conforms with a model reciprocity program developed by the American Veterinary Medical Association, which endorses reciprocity between states based on national examination and practical experience requirements, and discourages state-specific licensing exams. The Board opposed SB 2003 for a number of reasons, but lost the battle. [16:1 CRLR 90-92]

Under SB 2003, the Board is required to issue a one-year "temporary license" to an individual who (1) holds a current valid veterinarian's license in good standing in another state, Canadian province, or United States territory; (2) has practiced clinical veterinary medicine for four years full-time within the five years immediately preceding the filing of an application for licensure in California; (3) has passed the national licensing requirement in veterinary science with a score on the examination equal to or greater than the passing score required to pass the national examination administered in California; (4) has either graduated from a veterinary college recognized by the Board under Business and Professions Code section 4846 or possesses a certificate issued by the Educational Commission for Foreign Veterinary Graduates (ECFVG); (5) passes a mail-out examination concerning VMB's statutes and regulations; and (6) agrees to complete a 30-hour Board-approved educational curriculum on "regionally specific and important diseases and conditions" during the period of temporary licensure. VMB must consult with the California Veterinary Medical Association (CVMA) in approving the 30-hour

curriculum, and must approve it no later than June 1, 1999. Once granted a temporary license, a veterinarian must practice under the supervision of another licensed California veterinarian in good standing and complete the 30-hour course before becoming eligible for full licensure.

SB 2003 further requires VMB to issue a temporary license to applicants accepted into qualifying internship or residency programs, provided: (1) the applicant has graduated from a Board-recognized veterinary college, holds a certificate from the ECFVG, or holds a valid license from another state, Canadian province, or United States territory; (2) the applicant works under the direct supervision of a "board-certified California-licensed veterinarian in good standing"; (3) two or more board-certified specialists are on staff of the veterinary practice; and (4) the program undergoes an annual evaluation and is approved by one or more organizations officially recognized for that purpose by the Board. VMB was required to designate one or more organizations for this purpose by January 31, 1999, and the evaluation and approval process was to begin no later than March 1, 1999.

At VMB's February 9 teleconference meeting, DCA legal counsel Don Chang advised the Board to follow a three-step approach to implementing SB 2003: (1) adopt emergency regulations immediately to implement the most pressing provisions of the bill; (2) soon thereafter, publish notice, hold a hearing, and adopt the emergency regulations permanently; and (3) publish notice of and adopt other regulatory changes which are needed to implement the bill. The Board followed Chang's advice and, at the February 9 meeting, amended sections 2014, 2024, and 2070; adopted new sections 2015.2, 2021, 2021.1, 2021.9, 2021.10, and 2023; and repealed section 2016, Title 16 of the CCR, to implement the provisions of SB 2003 which take effect on March 1.

New sections 2021 and 2021.1 establish the new temporary license, and define several terms used in SB 2003, including "year of full-time clinical veterinary medical practice," "in good standing," and "supervision." Under section 2021, the term "supervision" means "that the supervisor of a temporary licensee is ensuring that the extent, kind, and quality of veterinary services performed by the temporary licensee is consistent with that which is ordinarily provided by veterinarians in good standing, practicing in this state, under similar circumstances and conditions....Supervision shall include at least one face-to-face observation and review by the supervisor of the temporary licensee's veterinary services each week which shall be documented and maintained by the supervisor....Supervision shall include the establishment of a protocol where the supervisor or another designated California licensed veterinarian in good standing are [sic] available to the temporary licensee in the event of an emergency or a need arises for a consultation." New section 2021.1 provides that a temporary license expires one year from its issuance and is not renewable. A person applying for a temporary license must include on his/her application the name and license number of the veterinarian who is to be his/her

supervisor, accompanied by a signed acknowledgment from the supervisor that he/she has read and agrees to comply with the provisions of the Board's laws relating to supervision of a temporary licensee. New section 2021.9 sets forth requirements for supervisors, and new section 2021.10 prohibits a temporary licensee from continuing to practice veterinary medicine if the supervisory relationship has been terminated until the temporary licensee has submitted a written notice to the Board identifying a new supervisor (accompanied by the signed acknowledgment from the new supervisor).

New section 2015.2 establishes the new "veterinary law examination" which will be administered by mail. Applicants taking the veterinary law examination must return the completed exam to the Board within 40 days of its date of mailing by the Board. Consistent with SB 2003, an applicant who is a graduate of the UC Davis School of Veterinary Medicine and who has successfully completed a course on law and ethics covering the California Veterinary Medicine Practice Act is exempt from having to take the veterinary law examination upon providing appropriate documentation. Under amended section 2014, applicants must achieve a score of 80% on the veterinary law exam in order to pass. Finally, the amendments to section 2070 establish a \$35 fee to take the veterinary law examination, and a \$125 fee for the one-year temporary license.

Following the Board's adoption of these emergency regulations, the Office of Administrative Law (OAL) approved the changes on March 29. To implement the second component of Chang's advice, the Board published notice of its intent to permanently adopt these changes on March 5. At its April 23 meeting, the Board held a public hearing on the proposed changes, and adopted them subject to several minor modifications. The Board delegated authority to the Executive Officer to publish the modified version for a 15-day comment period and then forward it to OAL if no adverse comments are received. At this writing, Board staff is preparing the regulations for the 15-day comment period.

Also at its April 23 meeting, VMB reviewed and tentatively approved two other sets of draft regulatory changes which are needed to implement SB 2003, and agreed to hold a public hearing on them at its July 7 meeting. In the first set of proposed changes, VMB plans to amend sections 2015 and 2015.1, and adopt new sections 2016, 2021.3, 2021.4, 2021.6, 2021.7, 2021.8, and 2021.8A, Title 16 of the CCR. Of import, new section 2021.3 would establish the required contents of the course on "regionally specific and important diseases and conditions" ("California curriculum") which temporary licensees must complete before becoming eligible for full licensure. Section 2021.3 would require the course to be "presented face-to-face in the state." The draft regulations would require the course to be at least 26 hours in length and cover the following subjects: (1) practicing veterinary medicine in California (2 hours); (2) regulatory agencies with jurisdiction over animals and veterinary practice (5 hours); (3) zoonotic and cross-species diseases (3 hours); (4) diseases

associated with the California environment (6 hours); (5) regionally important diseases of pets in California (3 hours); (6) regionally and economically important diseases of food animals (5 hours); and (7) regionally and economically important diseases of horses in California (2 hours). In designing this course, the Board reviewed and incorporated suggestions from CVMA and VetSmart.

Sections 2021.4--7 would set forth requirements, qualifications, and criteria for the Board's approval of those who wish to provide the California curriculum. Section 2021.8 would establish guidelines for the Board's withdrawal of its approval of a California curriculum provider, and section 2021.8A would set forth the processing times for its approval of providers.

In the other set of draft regulations, VMB plans to amend sections 2021, 2021.1, 2021.9, and 2043, Title 16 of the CCR. Of import, these regulations would implement Business and Professions Code section 4848.3, the provision which requires the Board to issue a one-year temporary license to an applicant accepted into a qualifying internship or residency. At its April 23 meeting, the Board accepted the Legislative Committee's recommendation that CVMA be designated as the entity responsible for undertaking the annual evaluation of veterinary internships and residency programs. The Board also agreed to consider submitting these regulations as emergency regulations, and will decide at a teleconference meeting scheduled for May 7.

At this writing, staff is preparing the draft regulatory changes for formal notice in the *California Regulatory Notice Register*. Staff hopes to submit the notice to OAL in early May, in time for a July 7 public hearing.

Update on Other Board Rulemaking

The following is an update on recent VMB rulemaking proceedings described in detail in Volume 16, No. 1 (Winter 1999) of the *California Regulatory Law Reporter*:

◆ **Board Republishes Minimum Standards for Veterinary Practice and Premises.** On April 23, VMB republished its packet of proposed regulatory changes which would impose new standards for veterinary practice and veterinary premises that all veterinarians must follow wherever veterinary medicine, dentistry, or surgery is performed. The republication follows an October 1998 public hearing on the Board's first draft of these regulatory changes, and its incorporation of numerous comments into the proposed revisions. [16:1 CRLR 92-93] At this writing, VMB plans to hold a public hearing on June 9 to receive comments on its proposal to amend sections 2002, 2030, and 2068.5; adopt new sections 2030.1, 2030.2, and 2032; and renumber and amend numerous other sections in Title 16 of the CCR.

New sections 2032 and 2032.1 would establish minimum standards of veterinary practice and redefine the veterinarian-

client-patient relationship. Under new section 2032, the delivery of veterinary care must be provided in a competent and humane manner consistent with current veterinary medical practice in California. Prior to treating an animal, a DVM must develop a diagnostic assessment and treatment plan which includes recommendations and medications, the condition for which the medication is prescribed, and—if applicable—its withdrawal time, all of which must be discussed with and consented to by the client and entered into the patient's medical record. Section 2032.1 would clarify that it is unprofessional conduct for a veterinarian to administer or prescribe a drug, medicine, appliance, or application or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal without having first established a veterinarian-client-patient relationship with the animal patient and its owner (or the owner's authorized agent). Under the draft rule, it is unprofessional conduct for a veterinarian to prescribe, dispense, or furnish either a veterinary drug under 16 CCR section 1747.1 or a dangerous drug under section 4022 of the Business and Professions Code without having first established a veterinarian-client-patient relationship with the animal patient and its owner (or the owner's authorized agent). A veterinarian-client-patient relationship exists when (1) the veterinarian has assumed responsibility for making medical judgments regarding the health of the animal and the need for medical treatment, and has instructed the client as to the appropriate directions for administering the drugs or treatments; (2) the veterinarian has sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal (this means that the veterinarian has recently seen and is personally acquainted with the care of the animal by virtue of an examination of the animal or by medically appropriate and timely visits to the premises where the animal is kept); and (3) the veterinarian has discussed with the client a course of treatment and is readily available or has made arrangements for follow-up evaluation in the event of adverse reactions or failure of the treatment regimen.

Amended section 2030 would set forth minimum standards for fixed veterinary practices. These standards require an examination room separate from

other areas of the facility and of sufficient size to accommodate the veterinarian, assistant, patient, and client. If animals are housed or retained for treatment, a facility must have compartments for animals which are maintained in a comfortable and sanitary manner,

and which provide effective separation of known or suspected contagious animals. If there are to be no personnel on the premises during any time an animal is left at the facility, prior written notice of this fact must be given to the client; this may be accomplished by posting a notice to clients in a conspicuous place. When a veterinary premise is closed, a sign must be posted at the entrance with a telephone number and location where prearranged veterinary care is available;

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further, an answering machine or service must be used to notify the public when the veterinary premise will reopen and where prearranged veterinary care is available.

Subsection 2030(g) would establish standards for veterinary premises where surgical services are provided; these standards generated considerable controversy last year. The Board's redraft would require veterinary clinics to reserve a room, separate and distinct from all other rooms, for aseptic surgery procedures that require aseptic preparation. The surgery room must be well-lighted, have proper illumination for reviewing radiographs, and have effective emergency lighting. The floors, tabletops, and countertops in this room must be made of a material suitable for regular disinfection and cleaning, and must be cleaned and disinfected regularly. The draft regulation also sets forth standards for surgical instruments and equipment, attire of surgical staff, and sterilization procedures. The draft regulation also states that veterinary premises registered with the Board prior to 1981 and lacking such a separate room reserved for aseptic surgical procedures must comply with this standard by 2004. However, the Board may exempt such a veterinary premise if it determines that compliance would be a hardship due to zoning limitations, the premise is a historical building, or compliance would require the veterinary practice to relocate.

New section 2030.1 would set forth minimum standards for small animal fixed premises, defined as "a fixed veterinary premise which concentrates in providing veterinary services to common domestic household pets." In addition to the requirements set forth in section 2030, a small animal fixed premise which holds animals on the premise for 24 hours or more must provide them with an adequate opportunity for exercise. Compliance with this section may be achieved by the use of exercise runs or by providing the animal with the opportunity for outdoor walks.

Section 2030.2 would set forth minimum standards for small animal mobile clinics, defined as "a trailer or mobile home established to function as a veterinary premise which concentrates in providing veterinary services to common domestic household pets and is required by section 4853 of the Code to be registered with the Board." Such clinics must have hot and cold water, a 110-volt power source for diagnostic equipment, a collection tank for disposal of waste material, lighting adequate for the procedures to be performed, tabletops and countertops which can be cleaned and disinfected, and separate compartments to transport or hold animals. Small animal mobile clinics must also have the ability and equipment to provide immediate emergency care which is compatible with the risk of harm associated with the veterinary services they are providing, and establish a system to provide after-hours emergency services to their patients.

Amended section 2032.2 would set forth standards for the dispensation of drugs and issuance of written prescriptions by veterinarians. Under the draft regulation, all drugs dispensed must be labeled with the name, address, and telephone number of the facility and prescription number or other

means of identifying the prescription; the client's name; the species, name, number, or other identifying information of the animal; the date dispensed; the manufacturer's trade name of the drug (or the generic name) and the name of the manufacturer; the strength (if more than one dosage form exists), quantity, and expiration date (when available) of the drug; the name of the prescribing veterinarian; and the condition for which the drug was prescribed (if requested by the client). A written order for dangerous drugs under 16 CCR section 2747.1 must include specified additional information.

Amended section 2032.3 would specify recordkeeping requirements for veterinarians; these standards also generated opposition last year. The section would require veterinarians performing any act of veterinary practice to prepare a legible written or computer-generated record concerning the animal which contains the following information: identification of the veterinarian responsible for the entries; name, address, and phone number of the client; name or identity of the animal, herd, or flock; except for herds or flocks, the age, sex, and color of the animal; dates (beginning and ending) of custody of the animal; a history or pertinent information as it pertains to each animal, herd, or flock's medical status; data, including that obtained by instrumentation, from the physical examination; treatment and intended treatment plan, including medications, their dosage, and frequency of use; for surgical procedures, a description of the procedure, the name of the surgeon, the type of sedative/anesthetic agents used, their route of administration, and their strength if available in more than one strength; diagnosis or tentative diagnosis of the animal at the beginning of custody; if relevant, a prognosis of the animal's condition; all medications and treatments prescribed and dispensed, including strength, dosage, quantity, and frequency; daily progress, if relevant; and disposition of the case. The section would require veterinarians to maintain these records for a minimum of three years after the animal's last visit, and to provide a summary of an animal's record to the client upon request.

Section 2032.3 would also establish standards regarding radiographs. Subsection 2032.3(c)(1) would state that radiographs are the property of the veterinary facility that originally ordered them to be prepared, but must be released to another veterinarian upon that veterinarian's request and authorization of the client. Radiographs must be returned to the veterinary facility that originally ordered their preparation within a reasonable time upon receipt of a request. Radiographs originating at an emergency hospital become the property of the next attending veterinary facility upon their receipt. The section would also require all exposed radiographic films, except for intraoral radiographs, to have a permanent identification legibly exposed in the film emulsion, which must include the hospital/clinic name, the veterinarian's name, client identification, patient identification, and the date the radiograph was taken. Section 2032.3 also deals with laboratory data, noting that such data is the property of the veterinary facility which originally ordered it to be prepared;

however, the facility must release a copy to the client when requested. Finally, the section would require a veterinary premise to provide to the client a legible copy of medical records when the patient is released following emergency clinic service. At minimum, these medical records must include the physical examination findings, dosages and time of administration of medications, copies of diagnostic data or procedures, all radiographs (for which the facility must obtain a signed release when transferred), a surgical summary, tentative diagnosis and prognosis (if known), and any follow-up instructions.

Amended section 2032.4 would set forth anesthesia standards, and require veterinarians to use appropriate and humane methods of anesthesia, analgesia, and sedation to minimize pain and distress during surgical procedures. Further, within 12 hours prior to the administration of an anesthetic, the veterinarian must give the animal patient a physical examination and must note the results in the patient's medical record. An animal under general anesthesia must be under observation for a length of time appropriate for its safe recovery appropriate to the species. Veterinarians must also provide respiratory and cardiac monitoring, and deliver assisted ventilation as necessary.

Amended section 2032.5 would establish standards for emergency hospitals. Specifically, any veterinary premise that displays any sign, card, or device that indicates to the public that it is an emergency veterinary clinic or hospital must maintain a licensed veterinarian on the premises at all times during the posted hours of operation. Further, such a premise's advertisement must clearly state that a licensed veterinarian is on the premises during the posted emergency hours, the hours the facility will provide emergency services, and the address and telephone number of the premise.

◆ **Mandatory Continuing Education.** SB 155 (Kelley) (Chapter 1070, Statutes of 1998) added section 4846.5 to the Business and Professions Code. Under the new law, on or after January 1, 2002, the Board may issue renewal licenses only to veterinarians who have completed 36 hours of approved continuing education (CE) during the prior two-year renewal period. The bill, which was sponsored by CVMA, also requires VMB to adopt regulations as necessary for its implementation. [16:1 CRLR 92, 95]

Section 4846.5(h) requires CE courses and providers to be approved by an approval organization or group to be established by the Board. At its January meeting, the Board approved the Legislative Committee's call for proposals from entities wishing to be considered as the approval organization. Such proposals were due by April 1, and were required to include a description of how the group will certify CE providers, criteria under which a provider will be approved, and how the group will monitor and approve courses and maintain and manage related records and data.

On April 1, CVMA submitted a proposal to establish the provider approval group required by SB 155. CVMA proposes to establish a separate and independent 501(c)3 non-profit corporation to become the approval group required by section 4846.5(h). Known as California Continuing Veterinary Medical Education, Inc. (CCVME, Inc.), the entity would evaluate and grant approval to (accredit) continuing veterinary medical education providers on a biannual basis, provide preapproval of individual courses put on by nonaccredited providers, and provide post-course approval for individual veterinarians in a timely manner. Also interested in becoming the provider approval group is the American Association of Veterinary State Boards (AAVSB), which submitted a proposal on March 24. AAVSB developed the Registry of Approved Continuing Education (RACE) program in 1998 as a service to its member boards, and has already been engaged in approving CE courses.

At its April 23 meeting, VMB tabled discussion of the two proposals until its July meeting.

LEGISLATION

SB 490 (Kelley), as amended April 19, would prohibit a veterinarian from disclosing information concerning an animal receiving care, the client responsible for that animal, or the care provided to an animal, except (1) upon written or witnessed oral authorization by the client responsible for the animal receiving services or an authorized agent of the client; (2) upon authorization received by electronic transmission when originated by the client responsible for the animal receiving services (or authorized agent); (3) in response to a valid court order or subpoena; or (4) as may be required to ensure compliance with any federal or state law.

Existing law specifies certain licensing and vaccination requirements for dogs in rabies areas. This bill provides that all information obtained from a dog owner for rabies reporting purposes shall not be used for any purpose except to ensure compliance with vaccination requirements.

This bill is sponsored by CVMA, which is concerned that some cities and counties are selling personal information which they obtain from pet owners through mandatory licensing and vaccination laws to consumer list brokers. CVMA feels that public policy should be established to make it clear that the privilege of releasing veterinary information rests with the client. [S. Jud]

LITIGATION

On January 7, OAL issued *Regulatory Determination No. 1* (1999), in which it found that three policy documents used by VMB—its "Citation and Fine Guidelines," "Citation Procedures Manual," and "Complaint Procedures Referring to Complaint Review, Investigations, and Citations"—contain regulations which must be adopted pursuant to the

rulemaking requirements in the Administrative Procedure Act (APA), Government Code section 11340 *et seq.* None of these documents have been so adopted by the Board. The Board discontinued the use of the "Citation and Fine Guidelines" in July 1996, but continues to use the other two documents.

OAL found that all three documents contain standards or rules of general application which affect veterinary practitioners, and that those standards implement the law administered by the Board. Although some of the standards set forth in the "Complaint Procedures" and "Citation Procedures" documents fall within the "internal management" exception to the APA rulemaking requirements, none of the other standards of general application are exempted. Thus, they must

first be adopted pursuant to the APA rulemaking process in order to be valid.

RECENT MEETINGS

At its April 23 meeting, VMB unanimously elected public member Ellen O'Connor as Board President and Michael Clark, DVM, as Vice-President for fiscal year 1999-2000.

FUTURE MEETINGS

- July 6-7, 1999 in Sacramento.
- October 21-22, 1999 in Los Angeles.