

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.

On June 23, Assembly Speaker Antonio Villaraigosa reappointed public member Ellen O'Connor for another four-year term on VMB; O'Connor is currently serving as Board President. At VMB's July 7 meeting, staff reported that public member Karen McNamar resigned from the Board due to scheduling conflicts; on September 8, Governor Gray Davis appointed homemaker Julia Warren to replace McNamar. On October 4, Ray Weitkamp, DVM, resigned from the Board; at this writing, Governor Davis has yet to name his replacement.

MAJOR PROJECTS

Mandatory Continuing Education Regulations

On September 3, VMB published notice of its intent to adopt new sections 2085–2085.12 and 2072, Title 16 of the CCR, to implement SB 155 (Kelley) (Chapter 1070, Statutes of 1998). SB 155 added section 4846.5 to the Business and Professions Code, which provides that—after January 1, 2002—the Board may only renew the licenses of veterinarians who have completed 36 hours of approved continuing education (CE) during the prior two-year renewal period. SB 155 was sponsored by the California Veterinary Medical Association (CVMA). VMB op-

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posed the bill because it is not convinced that continuing education appreciably contributes to competent practice; instead, a CE requirement often becomes a revenue stream for the sponsors and providers of CE courses who have a captive audience of licensees required to take CE in order to renew their licenses. [16:2 CRLR 75; 16:1 CRLR 92, 95]

As published on September 3, section 2085 would require VMB to establish a Continuing Education Committee responsible for evaluating and approving providers of CE, evaluating and approving courses in CE, and monitoring the quality of CE courses. This proposed regulation stems from Business and Professions Code section 4846.5(h), which requires CE courses and providers to be approved by an approval organization or group designated by the Board. Pursuant to this statute, in early 1999 the Board issued a request for proposals from external groups, to include a description of how the group will certify CE providers, criteria under which providers will be approved, and how the group will monitor and approve courses and maintain and manage related records and data. VMB received proposals from both CVMA and the American Association of Veterinary State Boards (AAVSB), a national nonprofit association of all state boards that regulate veterinary medicine. After tabling the issue at its April 1999 meeting, VMB decided at its July 7 meeting to instead designate itself as the accrediting agency, and drafted proposed section 2085 to create a CE Committee of the Board to undertake this activity.

Proposed section 1085.1 would define several terms used in SB 155, including "continuing education," "approved provider," "approved course," and "self-study course" (which includes viewing videotapes, listening to audiotapes, or

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participating in studies electronically transmitted from another location; all self-study courses must include "self-assessment testing" which must be completed by the licensee, submitted to the provider for grading, and returned to the licensee with the correct answers). Section 2085.2 would require VMB licensees, upon renewing their licenses, to certify in writing that they have completed at least 36 hours of approved CE during the prior renewal period; under this section, licensees may take a maximum of 18 hours of approved self-study CE courses to satisfy their CE requirement (subject to exemptions to this limit set forth in section 2085.3). The licensee must retain receipts and certificates of CE courses for four years, and the Board will audit at random "a number of licensees as is necessary to assure that the CE requirements are met." A licensee who falsifies or cannot provide verification of completion of CE is subject to disciplinary action. Section 2085.3 would identify circumstances in which the 18-hour limit on self-study courses may be waived, and section 2085.4 would set forth various types of activities which may qualify for CE credit.

Sections 2085.5–.7 would require that CE courses be taken from a Board-approved provider, set forth criteria that must be met in order to be approved as a CE provider, and specify the reasons for which an application for approved-provider status would be denied and for which a provider's approval could be withdrawn by the Board. Section 2085.8 addresses advertising of CE courses, and would outline the information that must be included in CE course advertising. Section 2085.9 would set forth qualifications for course instructors utilized by approved CE providers, and sections 2085.10–.11 would establish CE recordkeeping requirements for approved providers and Board licensees. Section 2085.12 would provide that a licensee who completes an unapproved CE course which was started on or after January 31, 2000 shall receive CE credit for that course, provided the provider is approved by the Board's CE Committee before December 31, 2000 and the course provider designates the course as meeting the Board's criteria for approved courses. Finally, section 2072 would establish a \$200 application and renewal fee for Board-approved CE providers.

At its October 22 meeting, VMB held a public hearing on its proposed CE regulations. Following the public hearing, the Board's Legislation Committee noted that it had studied the comments received at the hearing and in writing prior to the hearing, and stated that it had changed its mind about the identity of the accreditation entity required by Business and Professions Code section 4846.5(h). Instead of the Board (or a "CE Committee" as required in proposed regulatory section 2085), the Legislation Committee recommended that VMB appoint AAVSB as its accreditation body for CE providers, contingent upon clarification by AAVSB of three issues identified by the Board. In 1998, AAVSB developed the Registry of Approved Continuing Education (RACE) program as a service to its member boards, and has experience in approving CE courses. Following discussion, the full Board

approved the Legislation Committee's recommendation, and decided to delete section 2085 (creating the "CE Committee") and to add a new section identifying AAVSB as its CE accreditation agency and defining its responsibilities. The Board also decided to modify other sections of the proposed regulations, and directed staff to publish the modified version of its CE regulations for an additional 15-day comment period. At this writing, staff is preparing the revised version of the CE regulations for another public comment period, and the Board is scheduled to review any comments received on the revised version at its November 30 meeting.

Update on Other Board Rulemaking

The following is an update on recent VMB rulemaking proceedings described in detail in Volume 16, No. 2 (Summer 1999) of the *California Regulatory Law Reporter*:

♦ **SB 2003 "Temporary License" Regulations.** For the past year, the Board has been busy adopting 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 state and seek to practice in California. The bill establishes minimum qualifications for out-of-state veterinarians who qualify for the temporary license; requires them to practice for one year as a "temporary licensee" under the supervision of a licensed California veterinarian in good standing and complete a 30-hour, Board-approved educational curriculum on "regionally specific and important diseases and conditions" before becoming eligible for full licensure; and restricts VMB's examination of these out-of-state veterinarians to an open-book, "mail-out" test covering only its statutes and regulations. SB 2003 also requires VMB to issue a temporary license to applicants accepted into qualifying internship or residency programs ("temporary licensee interns") under specified conditions. [16:2 CRLR 71–73; 16:1 CRLR 90–92]

Pursuant to advice from DCA attorney Don Chang, VMB has followed a multi-step approach to implementing SB 2003. In February 1999, it approved emergency regulatory changes amending sections 2014, 2024, and 2070; adding new sections 2015.2, 2021, 2021.1, 2021.9, 2021.10, and 2023; and repealing section 2016, Title 16 of the CCR, to implement the provisions of SB 2003 which took effect on March 1, 1999. Among other things, these changes establish the new temporary license; define the level of "supervision" under which temporary licensees must practice; establish the new "veterinary law examination" which will be administered by mail to prospective temporary licensees; and establish a \$35 fee to take the veterinary law examination and a \$125 fee for the one-year temporary license. Thereafter, VMB published notice of its intent to permanently adopt these changes. Following a public hearing on April 23, the Board adopted the changes subject to several minor modifications.

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On July 30, the Office of Administrative Law (OAL) approved all of VMB's permanent changes except one subsection of new section 2021.9, which sets forth standards for the supervision of temporary licensees and requirements supervisors must meet. The statute, Business and Professions Code section 4848(b), states that temporary licensees must be supervised "by another licensed California veterinarian in good standing." As submitted, subsection 2021.9(a)(4) stated: "The supervisor shall have had sufficient experience, training and education to supervise competently the temporary licensee." OAL rejected this subsection as failing to comply with the clarity standard in Government Code section 11349, because it is "a subjective standard susceptible to varying interpretations. It contains no criteria to help a prospective temporary licensee, a licensed veterinarian, or a Board member gauge whether a particular licensee's experience is sufficient to meet the standard contemplated by the Board." VMB has since decided to strike the offending language from section 2021.9.

On May 21, the Board published two additional sets of regulations to implement SB 2003. In the first package, VMB proposed to amend sections 2015 and 2015.1 and adopt new sections 2016, 2021.3, 2021.4, 2021.5, 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 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).

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.

The Board held a public hearing on these proposed regulations at its July 7 meeting. With the exception of section 2021.3 (the "California curriculum"), VMB adopted the first package as published; the Board modified section 2021.3

slightly (to rearrange the hours of some of the components of the 26-hour course, and to delete a portion of the course that would have discussed professional veterinary trade associations in California), and directed staff to release the modified version of the section for an additional 15-day comment period. At this writing, the modifications have not yet been published; if the Board receives no adverse comments on the revised version after it has published them, staff will submit them to DCA and OAL for approval.

In the second package of regulations published on May 21, VMB proposed to amend sections 2021, 2021.1, 2021.9, and 2043, Title 16 of the CCR. 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 (a "temporary licensee intern"). The proposed regulatory amendments define the type of supervision necessary for temporary licensee interns and the duties of a supervisor when an intern's participation in the program terminates; specify the guidelines and criteria required prior to qualifying for an internship residency program; set forth consequences for a temporary licensee intern's failure to comply with the laws and regulations governing his/her license; and

permit the Board to assess civil citations and fines against RVTs for failure to comply with its statute and regulations.

Prior to the scheduled July 7 public hearing on the second package of regulations, VMB submitted the amendments to sections 2021, 2021.1, and 2021.9 to

OAL on an emergency basis; OAL approved those regulations on August 2 for an effective period of 120 days. Following the July 7 hearing on the permanent adoption of the regulatory changes, the Board adopted the proposals as published with the exception of subsections 2021(f), (g), and (h); it modified these subsections slightly, and directed staff to publish the modified version for an additional 15-day comment period. Staff published the revised version of these subsections on July 9 for another comment period ending on July 26. On October 18, staff submitted the rulemaking file on these regulatory changes to DCA; after DCA approves the file, it will be forwarded to OAL. In the meantime, the amendments to sections 2021, 2021.1, and 2021.9 are effective as emergency regulations.

♦ **Minimum Standards for Veterinary Practice and Premises.** On June 9, VMB held a public hearing on proposed regulatory changes that would impose new standards for veterinary practice and premises that all veterinarians must follow wherever veterinary medicine, dentistry, or surgery is performed in California. Specifically, the Board proposes 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.

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.

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New sections 2032 and 2032.1 would establish minimum standards of veterinary practice, redefine the veterinarian-client-patient relationship, and specify that 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; subsection 2030(g) would establish standards for veterinary premises where surgical services are provided. New section 2030.1 would set forth minimum standards for small animal fixed premises; section 2030.2 would set forth minimum standards for small animal mobile clinics; section 2032.2 would set forth standards for the dispensation of drugs and issuance of written prescriptions by veterinarians; section 2032.3 would specify record-keeping requirements for veterinarians, including standards regarding radiographs and laboratory data; section 2032.4 would set forth anesthesia standards; and section 2032.5 would establish standards for emergency veterinary hospitals. [16:2 CRLR 73-75; 16:1 CRLR 92-93]

Following the public hearing, the Board's Legislative Committee reviewed all of the comments submitted on the proposed regulatory changes, and recommended to the full Board at its July 7 meeting that VMB incorporate several modifications to the regulations and release a modified version of the proposal for an additional comment period. At this writing, staff expects to release the modified version of the regulations in December.

LEGISLATION

SB 490 (Kelley), as amended July 8, prohibits a veterinarian from disclosing information concerning an animal receiving veterinary services, the client responsible for an animal receiving veterinary services, or the veterinary care provided to an animal, except (1) upon written or witnessed oral authorization by knowing and informed consent of 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 an authorized agent of the client; (3) in response to a valid court order or subpoena; or (4) as may be required to ensure compliance with any federal, state, county, or city laws or regulations.

SB 490 provides that all information obtained from a dog owner by compliance with the provisions relating to rabies control is confidential to the dog owner and proprietary to the veterinarian, and may not be released except to ensure compliance with existing federal, state, county, or city laws or regulations.

court order or subpoena; or (4) as may be required to ensure compliance with any federal, state, county, or city laws or regulations.

SB 490 specifies that it is not intended to prevent the sharing of veterinary medical information between veterinarians or facilities for the purpose of diagnosis or treatment of the animal who is the subject of the medical records. Further, the bill states that it does not apply to the extent that the client responsible for an animal or an authorized agent of the client responsible for the animal has filed or caused to be filed a civil or criminal complaint that places the veterinarian's care and treatment of the animal or the nature and extent of the injuries to the animal at issue, or when the veterinarian is acting to comply with federal, state, county, or city laws or regulations.

Existing law specifies certain licensing and vaccination requirements for dogs in rabies areas. SB 490 provides that all information obtained from a dog owner by compliance with the provisions relating to rabies control is confidential to the dog owner and proprietary to the veterinarian, and may not be released except to ensure compliance with existing federal, state, county, or city laws or regulations.

SB 490 was sponsored by CVMA, which is concerned that some cities and counties are sell-

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ing 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. The Governor signed SB 490 on September 16 (Chapter 418, Statutes of 1999).

RECENT MEETINGS

At VMB's July 7 meeting, staff reported several important items related to the Board's licensing examinations. First, the two national exams administered by the Board (the Na-

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tional Board Examination and the Clinical Competency Test) are being combined into one test called the North American Veterinary Licensing Examination (NAVLE) that will be administered via computer by November 2000. The NAVLE is an eight-hour (6.5 hours of actual testing), 360-question multiple choice exam that combines the concepts of the written NBE and the more clinical CCT. Further, staff is working with DCA's Office of Examination Resources (OER) to convert the California State Board examination into a computerized exam by April 2000. Staff noted the need to amend numerous Board regulations to accommodate the changes in the names and the modality of its licensing examinations; staff hopes to publish these proposed regulatory changes before the end of 1999.

Second, staff announced that the Board's Examination Committee will be working closely with OER to commence a full occupational analysis of the veterinary profession by July 1, 2000. Under Business and Professions Code section 139 and implementing guidelines recently adopted by DCA, boards

should conduct an occupational analysis approximately every five to seven years. An occupational analysis identifies (usually by survey of the profession) specific tasks and functions currently performed by licensees, and the knowledge, skills, and abilities (KSAs) needed to perform each task or function competently and with safety to the public. Following completion of the occupational analysis, a licensing board must evaluate whether the licensing exam(s) it administers adequately test the identified tasks, functions, and KSAs, and must eliminate areas of the exam(s) which are not job-related. VMB's occupational analysis is expected to take at least one year.

FUTURE MEETINGS

- November 30, 1999 in Sacramento.
- January 14, 2000 in San Diego.
- April 19–20, 2000 in Monterey.
- July 12–13, 2000 in Sacramento.
- October 18–19 in San Diego.