



deaths in the state in December and January. No violations were found by the agricultural commissioner's office; however, SPCB referred the matter to the TAC to discuss ways of ensuring that warning agents used during fumigations are sufficient to keep people from entering a structure while the fumigant level is still high. At SPCB's May 12 meeting, the TAC reported on changes being implemented by chemical manufacturers regarding the use of chloropicrin as a warning agent in fumigants. The manufacturer of Vikane is requiring fumigators to purchase a corresponding amount of chloropicrin with each purchase of Vikane fumigant to ensure the appropriate amount of warning agent is used. Both the Vikane and chloropicrin manufacturers are looking into changing their labels to more specifically address the use and placement of chloropicrin during the fumigation process. The TAC also discussed the effectiveness of warning signs, as there have been reports in recent months of people entering structures after fumigations even though warning signs were still in place. The TAC was unable to suggest additional ways of preventing people who are aware of the fumigation from entering.

At its May meeting, the Board discussed access by its licensees to records of inspection reports, and whether such access may be restricted under the Public Records Act. SPCB licensee Dale Luger (see above) has allegedly been using inspection records to contact property owners, offer a free re-inspection and, in some cases, advise the homeowner that the original inspection was faulty. He also sent letters to consumers which stated that he had the cooperation of the Board in investigating suspect inspection reports. Other licensees complained that his access to public records created an unfair competitive edge. At the May meeting, DCA legal counsel Don Chang advised the Board that, pursuant to the Public Records Act, access to these records cannot be restricted. Luger was advised that any statements regarding SPCB participation in his program are misleading and should be revised.

Also at its May 12 meeting, SPCB announced the resignation of Registrar Mary Lynn Ferreira, effective July 1; at this writing, a search for Ferreira's replacement is under way.

■ FUTURE MEETINGS

July 28 in Sacramento.
October 4-5 in Long Beach.
December 7-8 in San Francisco.

BOARD OF EXAMINERS IN VETERINARY MEDICINE

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Pursuant to Business and Professions Code section 4800 *et seq.*, the Board of Examiners in Veterinary Medicine (BEVM) licenses all doctors of veterinary medicine (DVMs), veterinary hospitals, animal health facilities, and animal health technicians (AHTs). The Board evaluates applicants for veterinary licenses through three written examinations: the National Board Examination, the Clinical Competency Test, and the California State Board Examination.

The Board determines through its regulatory power the degree of discretion that veterinarians, AHTs, and unregistered assistants have in administering animal health care. BEVM's regulations are codified in Division 20, Title 16 of the California Code of Regulations (CCR). All veterinary medical, surgical, and dental facilities must be registered with the Board and must conform to minimum standards. These facilities may be inspected at any time, and their registration is subject to revocation or suspension if, following a proper hearing, a facility is deemed to have fallen short of these standards.

The Board is comprised of six members—four licensees and two public members. The Governor appoints all of the Board's DVM members; the Senate Rules Committee and the Assembly Speaker each appoint one public member. Board members serve four-year terms. The Board has eleven committees which focus on the following BEVM functions: continuing education, citations and fines, inspection program, legend drugs, minimum standards, examinations, administration, enforcement review, peer review, public relations, and legislation. The Board's Animal Health Technician Examining Committee (AHTEC) consists of the following political appointees: three licensed veterinarians, three AHTs, and two public members.

In April, Governor Wilson appointed Robert Weber, DVM, to the Board; Dr. Weber, a 1967 graduate of the University of California at Davis School of Veterinary Medicine, currently owns Coming Veterinary Clinic, Inc. Dr. Weber was sworn in at BEVM's May 11 meeting in Sacramento.

■ MAJOR PROJECTS

Update on Practice Act Redefinition.
In furtherance of its plans to redefine the practice of veterinary medicine—particu-

larly in light of emerging alternative practices such as acupuncture and chiropractic, BEVM met for a second time with representatives of the Board of Chiropractic Examiners (BCE) on February 23; the boards are attempting to establish legal protocols enabling chiropractors and veterinarians to work in concert and be held accountable for practicing alternative medicine, while also making access to alternative practice safe and easy for the consumer, and to establish protocols for dealing with people not licensed by either board who are practicing chiropractic on animals. [15:1 CRLR 97; 14:4 CRLR 104; 14:2&3 CRLR 110]

At the February meeting, BEVM provided BCE with draft regulatory language regarding animal chiropractic therapy. Among other things, the language provides that animal chiropractic and other forms of musculoskeletal manipulation (MSM) are systems of application of mechanical forces applied manually through the hands or through any mechanical device to treat or alleviate impaired or altered functions of related components of the musculoskeletal system of nonhuman animals; the draft language provides that chiropractic and other forms of MSM in nonhuman animals are considered to be alternative therapies in the practice of veterinary medicine. Under BEVM's proposed language, chiropractic and other forms of MSM in nonhuman animals may only be performed by a licensed veterinarian, or by a licensed chiropractor upon referral from a licensed veterinarian, if specified conditions are met.

After reviewing BEVM's draft language, BCE made several suggestions for amendments, including the insertion of language stating that alternate therapies are not taught in veterinary college, and may require additional training, education, or consultation with a health professional trained in those areas. BCE's suggested amendments also state that chiropractic and other forms of MSM may only be performed by a California licensed veterinarian acting in consultation with a licensed health professional trained in the alternative therapy, or by a licensed chiropractor upon referral from a licensed veterinarian, if specified conditions are met; and it shall be the chiropractor's responsibility to maintain complete and accurate chiropractic records of the patient's treatment, and to provide the veterinarian with a duplicate copy of those records.

At its May 11-12 meeting, BEVM reviewed a revised version of the draft regulatory language. The revised language provides that animal chiropractic and other forms of MSM may only be performed by:



—a licensed veterinarian who has examined the animal patient and has sufficient knowledge of the medical condition of the animal, has assumed responsibility for making clinical judgments regarding the health of the animal and the need for medical treatment (including a determination that chiropractic/MSM will not be harmful to the animal patient), has discussed with the owner of the animal or the owner's authorized representatives 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. The veterinarian shall obtain, as part of the patient's permanent record, a signed acknowledgment by the owner of the patient or his/her authorized representative that chiropractic or MSM is considered to be an alternate (nonstandard) veterinary therapy; or

—a licensed chiropractor who is working under the supervision of a veterinarian, and where the supervising veterinarian has complied with the above requirements prior to referring an animal patient to a chiropractor; the supervising veterinarian has given either written or oral authorization to the chiropractor to examine and/or initiate the appropriate chiropractic/MSM treatment upon the animal patient; after the chiropractor has completed his/her initial examination and/or treatment of the animal patient, he/she shall consult with the supervising veterinarian to confirm that chiropractic or MSM care is appropriate, to coordinate complementary treatment, and to establish a supervision plan for ongoing communication to assure proper patient care; the veterinarian has provided with chiropractor, within ten days of the referral, specified information; and the supervising veterinarian shall be responsible to ensure that accurate and complete records of chiropractic treatments are maintained in the patient's veterinary medical record.

At BEVM's May meeting, Chair Nancy Collins instructed the Board to review the revised language and submit recommended changes, if any, by May 31; if there are no proposed changes, staff will forward the revised language to BCE for comments.

BEVM is also expected to meet with the Acupuncture Committee during 1995 and to introduce a legislative proposal to redefine the practice of veterinary medicine in January 1996.

BEVM Adopts New Rulemaking Package. On January 20, BEVM republished notice of its intent to adopt new sections 2033, 2033.1, and 2033.2, Division 20, Title 16 of the CCR; BEVM previously published notice of these changes in September 1994 [15:1 CRLR 97], but

subsequently withdrew that proposal. The January version of proposed section 2033 would require a veterinarian to conduct a physical examination on an animal patient prior to rendering any veterinary service upon the animal, unless the veterinarian determines, based upon the facts and circumstances of the case and consistent with good veterinary medical practice, that the veterinary services to be rendered upon the animal may be performed without a physical examination; the section provides that the manner of the physical examination would be left to the sound professional judgment of the veterinarian, consistent with good veterinary medical practice when viewed in light of the facts and circumstances of the case.

New section 2033.1 would require veterinarians to have established a veterinary-client-patient relationship prior to prescribing a dangerous drug, as defined in section 1747.1, Title 16 of the CCR. Section 2033.1 would also provide that a dangerous drug shall not be prescribed for a duration which is inconsistent with the animal patient's medical condition or type of drug prescribed, which in no event shall exceed more than one year from the date that the veterinarian examined the animal patient and prescribed such drug, unless the veterinarian has conducted a subsequent examination of the patient to determine the patient's continued need for the prescribed drug. The section would also define the term "veterinary-client-patient relationship" to mean that the veterinarian has examined the animal patient and has sufficient knowledge to make a diagnosis of the medical condition of the animal, assumed responsibility for making clinical judgments regarding the health of the animal and the need for medical treatment, discussed with the owner of the animal patient 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.

New section 2033.2 would specify the information which must be contained in a written prescription from a veterinarian for dangerous drugs. Specifically, the section would require that the order include the name, signature, address, and telephone number of the prescribing veterinarian; the veterinarian's license classification and his/her federal registry number if a controlled substance is prescribed; the name and address of the owner of the animal patient; the species of the animal patient; the name and quantity of the drug(s); directions for use; cautionary statements including, if applicable, expiration date and withdrawal time; date of issue; the number of refills; and a

legible, clear notice of the condition for which the drug is being prescribed, if requested by the owner of the animal patient.

BEVM held a public hearing on these proposed regulatory changes on March 10. On March 20, BEVM staff released a modified version of the proposed language for an additional 15-day public comment period. On April 27, staff made additional revisions and released the modified text for another 15-day public comment period; in the April 27 revision, staff presented two different versions of language—Alternatives A and B—for consideration. Alternative A contained the language as provided in the Board's March 20 proposal. In Alternative B, new section 2033 would provide that a veterinarian shall conduct a physical examination on an animal patient appropriate to the species prior to rendering any veterinary service upon such animal, and that the manner of the physical examination would be left to the sound professional judgment of the veterinarian, consistent with good veterinary medical practice when viewed in light of the facts and circumstances of the case; section 2033.1 would provide, among other things, that where the animal patient is a herd or flock, a veterinary-client-patient relationship shall mean that the veterinarian has examined the animal patients or has sufficient knowledge to make a diagnosis of the medical condition of the animals, assumed responsibility for making clinical judgments regarding the health of the animals and the need for medical treatment, discussed with the owner of the animal patients 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; and section 2033.2 would be as proposed in the Board's March 20 proposal.

At its May 11-12 meeting, BEVM unanimously adopted the language in Alternative B; at this writing, the changes await review and approval by the Office of Administrative Law (OAL).

Application Fee Increase Proposed. On January 20, BEVM published notice of its intent to amend sections 2070 and 2071, Title 16 of the CCR, to increase the Board's application fees. Specifically, the proposal would amend section 2070 to increase the application fee for section 1 of the National Board Examination from \$100 to \$135, increase the application fee for section 2 of the National Board Examination from \$80 to \$115, and increase the application fee for the California Board examination from \$180 to \$250; and amend section 2071 to increase the application fee for the AHT examination from \$50 to \$100.



BEVM held a public hearing on the proposed fee increases on March 10. On March 20, BEVM released a modified version of the proposed language for an additional 15-day public comment period; as revised, the fee increases in section 2070 would commence with the December 1995 examination, and the fee increase in section 2071 would commence with the August 1995 examination. On April 27, BEVM released another modified version of the language for section 2070; this version would increase the application fee for the California Board examination to \$240, instead of \$250 as originally proposed.

At its May 11-12 meeting, BEVM considered the adoption of these regulatory changes. Following discussion, BEVM unanimously adopted the proposed changes to section 2070. The Board also decided to revise its proposed fee increase for the AHT examination to \$75, instead of \$100 as originally proposed. BEVM adopted this modified proposal, on the condition that it does not receive any negative public comments to the change during a 15-day public comment period which commenced on May 15. If the Board receives any negative comments, it will reconsider the proposal at its next meeting; if not, the rulemaking file will be submitted to OAL for review and approval.

Permit Reform Act Regulations. On January 20, BEVM published notice of its intent to amend sections 2017 and 2018, Title 16 of the CCR, to comply with the Permit Reform Act, which requires BEVM to specify the period dating from the receipt of a permit application within which the Board must either inform the applicant, in writing, that the application is complete and accepted for filing, or that the application is deficient and what specific information is required; specify the period dating from the filing of a completed application within which the Board must reach a decision; and specify the minimum, median, and maximum times for processing an application for licensure, from the receipt of the initial application to the final decision.

The Board's proposed changes to section 2017 would provide that within eight months after receipt of an application for original registration as an AHT, BEVM shall inform the candidate whether the application is complete and accepted for filing or that it is deficient and what specific information or documentation is required to complete the application. The changes would also require BEVM to notify a candidate within 105 days after the filing date for the AHT examination of his/her results; this processing time would apply to those candidates who submit their complete AHT examination application on the examination filing deadline.

BEVM's proposed changes to section 2018 would provide that the minimum, median and maximum processing times for registration as an AHT from the time of receipt of a completed application until BEVM makes a decision are 100 days, 115 days, and 125 days, respectively; these processing times would apply to candidates who take and pass the first available registration examination and who submit a complete application on the first available examination deadline.

On March 10, BEVM held a public hearing on the proposed changes; no comments were received, and the Board adopted the changes. At this writing, the proposed changes await review and approval by OAL.

Premise Program Changes. On May 11, BEVM's Premise Program Legislative Committee reviewed proposed regulatory changes regarding limited services practices; specifically, the draft language would provide that a "limited service veterinary practice" means any practice that is not providing a full range of surgical, medical, or diagnostic services. [14:4 CRLR 104] Under the proposed language, a limited service practice shall provide—among other things—a sanitary location that provides for the safety of animals and their owners and is conducive to handling animals and providing consultation to the public. The section would also require that limited service practices make sanitation equipment and solutions immediately available; maintain proper bio-waste handling equipment, licenses, and procedures; maintain legible individual records for each patient; and provide test results and procedures to clients in duplicate with a copy to the managing licensee and a copy kept with the premise records. Also, the language would require a veterinarian to conduct a physical examination and establish a veterinarian-client-patient relationship with each animal, and mobile limited service practices to provide quarterly itinerant reports to BEVM detailing clinic locations and times.

At BEVM's May 11-12 meeting, Board member Michael Clark reported that the draft language would be circulated to BEVM members for review and comments, and that eventually the Board would publish formal notice of its intent to adopt the proposed language.

LEGISLATION

SB 42 (Kelley), as amended March 2, would change BEVM's name to the "Veterinary Medical Board"; rename AHTEC as the "Registered Veterinary Technician Examining Committee"; and revise certain requirements to be a member of the

Committee. The bill would define various terms related to veterinary medicine, including "diagnosis," "animal," "food animal," and "livestock."

Existing law provides that any person practices veterinary medicine, surgery, or dentistry when he or she performs any manual procedure for the diagnosis of pregnancy, sterility, or infertility upon livestock. Existing law also provides that nothing prohibits any person from making a determination as to the status of pregnancy, sterility, or infertility upon livestock or food animals under certain conditions. This bill would also apply these provisions to equidae or equine animals.

Existing law provides exemptions from the licensure requirements for a veterinarian who is employed as the official veterinarian for local or state government. This bill would eliminate this exemption, but would provide that the laws regulating the practice of veterinary medicine do not apply to unlicensed personnel employed by the California Department of Food and Agriculture or the U.S. Department of Agriculture for performance of prescribed duties.

Existing law requires the Board to ascertain the professional qualifications of applicants for licensure by means of examination, and requires the examination to consist of a national examination and a California state board examination. This bill would eliminate the reference to a national examination and instead require that the examination consist of a licensing examination, including an examination in basic veterinary science and an examination in clinical competency, and the California state board examination. Existing law provides the Board with the discretion to revoke, suspend, or impose a fine against a licensee based on a specified reason, including the revocation of a license to practice veterinary medicine by a sister state or territory. This bill would instead provide that the Board may take this action based on the revocation, suspension, or other disciplinary action taken against the licensee by another state or territory. [S. *Appr*]

SB 55 (Kopp). Existing law prohibits the importation into this state of those wild animals specified on a list published from time to time by the state Department of Health Services without a permit issued by that department. In addition, existing law prohibits the importation, transportation, possession, or release into this state of certain wild animals without a permit issued by the Department of Fish and Game. As amended March 2, this bill would allow domestic ferrets to be imported for, and owned as, pets without a permit if the owner of a ferret maintains, and can pro-



duce, documentation showing that the ferret has been vaccinated against rabies with a vaccine approved for use in ferrets by the U.S. Department of Agriculture and administered in accordance with the recommendations of the vaccine manufacturer and if the ferret is spayed or neutered. [S. NR&W]

AB 611 (Aguiar), as amended May 4, would create a new licensure program to be administered by the Board of Pharmacy—the veterinary food-animal drug retailer, defined as a place (other than a pharmacy) that holds a valid wholesaler certificate, license, permit, or registration, from which veterinary drugs for food-producing animals are dispensed pursuant to a prescription from a veterinarian, and which is issued a permit for that location by the Board of Pharmacy. The bill would define the term “veterinary food-animal drugs” to include any drug intended for use in food-producing animals that, by federal or state law, may be dispensed only by the prescription of a licensed veterinarian.

Under AB 611, a veterinary food-animal drug retailer must be placed under the charge of a responsible person exempt from the pharmacist registration requirement, who has completed a training program approved by that Board and passed an examination administered by that Board; may dispense veterinary food-animal drugs for food-producing animals under specified conditions; and may dispense veterinary food-animal drugs only to another veterinary food-animal drug retailer, a pharmacy, a veterinarian, or to a veterinarian's client pursuant to a veterinarian's prescription.

AB 611 is nearly identical to AB 2973 (Aguiar), which was vetoed in September 1994 by Governor Wilson, who claimed that the fees charged were not sufficient to make the regulatory program self-supporting. [15:1 CRLR 98; 14:4 CRLR 105] The author and the sponsor, the California Veterinary Medical Association, claim that the Department of Finance cost estimate of \$100,000 annually for the program was erroneous, and that it will cost only \$20,000 annually. [S. Floor]

■ LITIGATION

In *Jakubaitis, et al., v. Fischer, et al.*, 33 Cal. App. 4th 1601 (Apr. 12, 1995), a case of first impression, the Fourth District Court of Appeal considered whether Civil Code sections 3051 or 3080 *et seq.* govern a dispute involving a veterinary lien for services rendered to a horse.

In February 1994, a blood-bay horse owned by Frank and Tara Jakubaitis was admitted to Chino Valley Equine Hospital for emergency medical care. The horse,

which was hospitalized through early March, was treated by Theodore Fischer, DVM, the hospital's owner and primary veterinarian. A letter sent at the time of discharge notified the Jakubaitises that the horse would not be released until the outstanding bill of \$9,751 was paid. Moreover, the letter informed them that failure to make payment within ten days would result in the sale of the horse. Timely payment was not made, but the hospital's attempt to sell the horse was unsuccessful. The bill remained unpaid and the horse stayed in Fischer's possession. Finally, the Jakubaitises sued the hospital and Fischer, seeking injunctive relief and alleging conversion, claim and delivery, and intentional/negligent infliction of emotional distress. The Jakubaitises' motion for substitution of undertaking and release of livestock under section 3080 *et seq.* was granted, and Fischer was ordered to return the horse to them upon their posting a \$500 bond.

Upon appeal, the Fourth District noted that the trial court, in ordering the return of the horse to the Jakubaitises, impliedly found section 3080 *et seq.* controlling and sections 3051 and 3052 inapplicable; the sole issue addressed by the Fourth District was which statutory scheme governs this fact situation. According to the Fourth District, section 3051 recognizes veterinary proprietors' and veterinary surgeons' lien rights for compensation in caring for, boarding, feeding, and medically treating animals. Sections 3080 and 3080.01 govern liens applying to livestock servicers who provide “all grazing, feeding, boarding, general care, which includes animal health services” to livestock including “horse,...or other equine.” Moreover, section 3052 permits the lienholder, after giving appropriate notice to the debtor, to sell the animal at public auction. Section 3080.02 also permits the lienholder to sell the animal but only after judicial authorization, a judgment, or consent of the debtor. And, pursuant to sections 3080.09 and 3080.10, the debtor, after the posting of an undertaking, may regain possession of the animal before adjudication of the dispute.

According to the court, both statutory schemes facially appear applicable. Fischer, as a veterinary proprietor, provided care, boarding, feeding, and medical services to a horse. As a livestock servicer, he seeks compensation for health care services. The court noted that when confronted with two statutes dealing with the same subject matter, they should, if possible, be harmonized and effect given to both.

After reviewing the relevant statutory history, the Fourth District held that the legislature's intent is clear that section 3051 governs veterinary proprietors' and veteri-

nary surgeons' lien rights, and section 3080 *et seq.* governs all other livestock service providers. In reversing the trial court's decision, the Fourth District concluded that “[t]he apt statutory scheme is determined by who is in possession and who provides the services and not by which service is provided.” The court noted that the Jakubaitises argued that this interpretation will lead to absurd results whenever a veterinarian's services overlap with those of another livestock servicer or vice versa; specifically, they asked what will happen when a veterinarian, operating a livery stable, renders health care services to a horse or a livestock stable owner obtains necessary veterinarian care for a boarded horse. The Fourth District found that argument to be without merit, stating that when these services are rendered by a veterinarian in possession of an animal, sections 3051 and 3052 control regardless of whether those services are only for medical care or also include feeding, grazing and boarding; when these services are provided or procured by other livestock servicers in possession, section 3080 *et seq.* controls the lien rights.

■ RECENT MEETINGS

At BEVM's March 9–10 meeting, Department of Consumer Affairs legal counsel Don Chang discussed whether a veterinarian has a duty to report instances of child or animal abuse which they observe during the performance of their professional duties. Chang reported that pursuant to Penal Code section 11166, a veterinarian is required to report instances of suspected child abuse to a child protective agency. Business and Professions Code section 4830.5 only requires a veterinarian to report instances where a dog has been injured in a staged animal fight; accordingly, Chang concluded that a veterinarian is not under a mandatory duty to report other instances of animal abuse.

At BEVM's May 11–12 meeting, Enforcement Program Manager Sue Geranen updated the Board on the Program's objectives and activities; specifically, Geranen discussed the complaint process, and distributed the Board's revised complaint form. Although the form purports to require complainants to sign under penalty of perjury, Geranen stated that the Board will accept complaints whether they are so signed or not. Geranen also updated BEVM on the Board's citation and fine process, and reported on efforts that will be made to improve the Program's effectiveness.

■ FUTURE MEETINGS

July 6–7 in Sacramento.

September 14–15 in Sacramento.

November 16–17 in Sacramento.