



intent underlying the 1995-96 Budget Act and AB 910 (Speier) (*see above*), SPCB approved a proposal to sponsor legislation stating that it is unlawful for any SPCB licensee to recommend or to perform any pest control corrective work under any contract or agreement which the licensee knows or has reason to know is in excess of that required to eliminate the condition for which the licensee was employed.

LITIGATION

At SPCB's October 6 meeting, Harvey Logan, Executive Vice-President of Pest Control Operators of California, Inc. (PCOC), announced that his organization voted to legally challenge the requirements of AB 910 (Speier) (Chapter 381, Statutes of 1995), and would name SPCB and DCA as defendants (*see LEGISLATION*). At SPCB's December 7-8 meeting, Registrar Donna Kingwell reported that PCOC had in fact filed a lawsuit against DCA and SPCB; however, the parties had engaged in negotiations to settle their dispute over AB 910. Those proposed amendments will be presented to Senator Boatwright for his review and comment.

Pursuant to a SPCB request, Senator David Kelley requested an Attorney General's (AG) Opinion to clarify whether new terms and conditions of control service contracts imposed by amendments to Business and Professions Code section 8516 are retroactive to January 1, 1994, and whether the amendments apply to extended warranties. [15:2&3 CRLR 101; 15:1 CRLR 95] On November 2, the AG's Office issued *Opinion No. 95-108*, which concluded that all extended warranties executed by a structural pest control operator must include the performance of periodic inspections, and that the statutory requirements for executing a control service agreement by a structural pest control operator do not apply to agreements executed prior to the statute's effective date of January 1, 1994.

By way of background information, the AG explained that the legislature has enacted a comprehensive statutory scheme regulating the practice of structural pest control; operators and field representatives must be qualified in the use and understanding of poisons and other chemicals used in pest control and the theory and practice of pest control. After inspection and completion of a report describing and diagraming infestation and conditions likely to lead to infestation, as well as recommendations for corrective measures, a company may enter into a contract with the consumer to eradicate or control pests. The focus of the AG's inquiry concerned

the terms and conditions of section 8516, which applies to wood-destroying pests or organisms and prescribes the requirements registered companies must meet in order to perform work on contracts to correct any infestation. As a result of 1993 legislation, a control service agreement may be entered into if the specified requirements listed in section 8516 regarding inspection and reporting are met.

In considering the first question presented—whether all extended warranties executed by a licensed pest control operator must include periodic inspections as part of the agreement, the AG noted that although the statutory language is ambiguous, section 8516 clearly contemplates that some extended warranties will include regular inspections. After reviewing the legislative history of the section and its subsequent amendments, the AG concluded that extended warranties must include follow-up inspections in order for consumers to be properly protected.

However, the AG also concluded that the requirements of section 8516 with respect to the execution of control service agreements do not apply to agreements executed prior to January 1, 1994, the effective date of the applicable statutory amendment; according to the opinion, legislation may not be retroactively applied when it constitutes an impairment of an existing contract. Further, the AG stated that there is no indication in the language of section 8516 itself or in the legislative history of the 1993 amendment suggesting that the legislature intended the new requirements to apply retroactively.

RECENT MEETINGS

At its October 6 meeting, the Board unanimously agreed to give California-based researchers first priority in funding considerations, rather than limiting requests for research grants to California-based organizations. Further, the Board agreed to expand the scope of research proposals to include research in the area of *Poria Incrassata*.

Also at its October 6 meeting, SPCB elected Theodora Poloynis-Engen to serve as President, and R.C. "Chuck" Brasiel to serve as Vice-President.

Also at its October meeting, the Board voted to amend its procedures to, among other things, specify that while reviewing consumer complaints, staff must determine whether a building permit was required and, if so, whether it was actually obtained.

At its December 7-8 meeting, the Board authorized the Registrar to hire a consultant to assist with the preparation of the Board's sunset review report for submis-

sion to the legislature. Under the terms of SB 2036 (McCorquodale) (Chapter 908, Statutes of 1994), SPCB will cease to exist on July 1, 1998 unless the Joint Legislative Sunset Review Committee reviews the necessity and performance of the Board and the legislature enacts legislation to extend the sunset deadline. [14:4 CRLR 20, 102]

Also, the Board discussed a request to administer its licensing examination out-of-state; following discussion, the Board directed a committee to commence a review of this and other examination issues after January 1. However, the Board also authorized staff to administer the Branch 2 field representative's license examination in Utah on a one-time basis in February and March 1996.

The Board also heard a report from its Deck Committee, which it formed at its July meeting; the Committee was charged with reviewing issues regarding the inspection of decks and submit any findings and recommendations to the Board. Among other things, the Committee reported that there is a need for a clear statement of the limits of knowledge and tools, the special environmental vulnerability of decks, and the imprecision in estimating serviceability. Following the Committee's presentation, a motion to exclude all decks from inspection failed; instead, the Board agreed to include decks in all inspections unless the person ordering the inspection requests that they be excluded, and directed the Committee to determine whether this constitutes a limited report.

FUTURE MEETINGS

February 23 in San Diego.
May 24 in Pasadena.

VETERINARY MEDICAL BOARD

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Pursuant to Business and Professions Code section 4800 *et seq.*, the Veterinary Medical Board (VMB) licenses all doctors of veterinary medicine (DVMs), veterinary hospitals, animal health facilities, and registered veterinary technicians (RVTs). 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, RVTs, and unregistered as-



sistants have in administering animal health care. VMB'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 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 Registered Veterinary Technician Examining Committee (RVTEC) consists of the following political appointees: three licensed veterinarians, three RVTs, and two public members.

On July 6, Governor Wilson appointed Nancy Collins, DVM, to a second four-year term with an expiration date of June 1, 1998.

MAJOR PROJECTS

Update on Practice Act Redefinition.

In furtherance of its plans to redefine the practice of veterinary medicine—particularly in light of emerging alternative practices such as acupuncture and chiropractic, VMB met for a third time with representatives of the Board of Chiropractic Examiners (BCE) on June 17; 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. At the June meeting, board officials discussed draft regulatory language which would set forth the conditions under which animal chiropractic may be performed; the draft language under consideration would permit animal chiropractic to be performed by a licensed veterinarian or by a licensed chiropractor who is working under the supervision of a veterinarian. [15:2&3 CRLR 102; 15:1 CRLR 97; 14:4 CRLR 104]

At its July 6 meeting, VMB members determined that the term "chiropractic"

specifically relates to manipulation upon a human being and that it is not appropriate for either veterinarians or chiropractors to use the term "chiropractic" in a veterinary sense. As a result, a July 7 revision to the language eliminated the phrase "animal chiropractic" so that all references to manipulation upon animals will be characterized as "musculoskeletal manipulation" (MSM).

On August 9, Department of Consumer Affairs (DCA) legal counsel Don Chang further revised the proposed language in response to concerns expressed by VMB and BCE. Among other things, the revisions delete references to the term "supervision" and replace them with the term "referral"; according to Chang, this language more accurately reflects the nature of the relationship between the veterinarian and the chiropractor. Chang opined that although the Business and Professions Code requires a veterinarian to supervise, either directly or indirectly, an unlicensed person who is performing an animal health care task, the protocol established for a referral (e.g., the need to establish a plan for ongoing consultation between the veterinarian and the chiropractor) is consistent with supervision despite the fact that the relationship is characterized as a referral.

Chang also added a provision that allows a veterinarian to give verbal authorization to a chiropractor to practice MSM on an animal patient, so long as written confirmation is given by the veterinarian within ten days of the authorization; added a provision requiring the veterinarian to obtain copies of MSM records relating to an animal patient from the chiropractor within ten days of the termination of the referral relationship; and deleted the standard of care applicable to veterinarians who engage in MSM or refer animal patients to a chiropractor. According to Chang, the standard of care is always based upon expert testimony from veterinarians in good standing who engage in this type of activity; as this is the standard of care for all actions relating to negligence, incompetence, or unprofessional conduct, Chang explained that it is unnecessary to specify a standard. Finally, Chang added a provision stating that a chiropractor who fails to comply with the regulation will be deemed to be engaged in the unlicensed practice of veterinary medicine, and that a veterinarian who fails to comply with the regulation when referring animal patients to a chiropractor will be deemed to have engaged in unprofessional conduct.

At VMB's September 14-15 meeting, Board members requested minor revisions

to the August 9 version of the MSM regulation. For example, the Board requested that the language require the veterinarian to request that the chiropractor provide him/her with copies of all MSM records within ten days, instead of requiring the veterinarian to actually obtain the records within that time period. The Board also emphasized that this regulation deals only with veterinarians and chiropractors, and noted that in the future, VMB may seek to adopt a generic regulation to encompass all alternative therapies in order to avoid having to adopt a new regulation for each specific form of therapy.

At this writing, VMB is awaiting BCE's review and approval of the revised language. If the boards agree on proposed language, VMB will seek to adopt the provision through a formal rulemaking proceeding.

VMB Revises Rulemaking Package.

At its May 1995 meeting, VMB adopted new sections 2033, 2033.1, and 2033.2, Division 20, Title 16 of the CCR, which would clarify the veterinary-client-patient relationship. [15:2&3 CRLR 103; 15:1 CRLR 97] On July 21, DCA Director Marjorie Berte disapproved the rulemaking proposal on the grounds that it would require a physical examination for each animal before any veterinary services may be rendered; Berte opined that this would have an adverse affect on the public welfare by potentially increasing the costs of veterinary care to livestock and pet owners substantially, and could discourage people from seeking routine or preventive care for their animals and perhaps lead to the spread of disease in the animal population.

In response to DCA's concerns, VMB revised the proposed regulatory language and released the modified text on August 23 for an additional 15-day public comment period. As revised, the proposal deletes the original language in section 2033, which would have required a veterinarian to conduct a physical exam on an animal patient appropriate to the species prior to rendering any veterinary services upon such animal. Proposed new section 2033.1, now numbered as section 2033, would provide that prescribing, dispensing, or furnishing a dangerous drug without establishing a veterinary-client-patient relationship with the animal patient and its owners or the owner's agent constitutes unprofessional conduct. Section 2033 would also provide that such a relationship exists when the veterinarian has examined the animal patient or herd or flock and has sufficient knowledge to make a diagnosis of the medical condition of the animals, has assumed responsibility for making clinical



judgments regarding the health of the animals and 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. Proposed section 2033.2 remains the same as the previous proposal, except that it is now numbered as section 2033.1.

At its September 14–15 meeting, VMB adopted the August 23 version of the regulations, which await review and approval by the Office of Administrative Law (OAL).

Premise Program Regulatory Changes. At its July 6 meeting, VMB reviewed draft regulatory changes regarding “limited service practices,” defined to include any veterinary practice that does not provide a full range of surgical, medical, or diagnostic services. [15:2&3 CRLR 104; 14:4 CRLR 104] Under the proposed language, a limited service practice, whose primary function is to provide vaccinations, would be required to provide—among other things—a clearly identified, separate, sanitary location that provides for the safety of animals and their owners and is conducive to handling animals and providing consultation to the public. While the current version of the language deletes previously-proposed requirements that sanitation equipment and solution be immediately available and language regarding the maintenance of bio-waste handling equipment, the provision would still require the maintenance of licenses, premise permits, and legible individual records on each patient. A veterinarian would no longer be required to provide test results and procedures to clients in duplicate; however, the language would still require a veterinarian to conduct a physical examination and establish a veterinarian-client-patient relationship with each animal. Instead of requiring mobile limited service practices to provide quarterly itinerary reports to VMB detailing clinic locations, the new draft language requires that such reports be provided to VMB upon request.

At this writing, VMB has not yet published notice of these proposed changes in the *California Regulatory Notice Register*.

Application Fee Increases Approved. On August 28, OAL approved VMB’s amendments to sections 2070 and 2071, Title 16 of the CCR, which increase the Board’s application fees for the veterinarian and registered veterinary technician examinations. Specifically, the action amends 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 \$240. The amendment to section 2071 increases the application fee for the RVT exam from \$50 to \$75. [15:2&3 CRLR 103–04] The fee increases in section 2070 commenced with the December 1995 examination, and the fee increase in section 2071 commenced with the August 1995 examination.

Permit Reform Act Regulations Approved. On July 31, OAL approved VMB’s proposal to amend sections 2017 and 2018, Title 16 of the CCR, to comply with the Permit Reform Act, which requires VMB to specify processing timeframes for permit applications. [15:2&3 CRLR 104] Among other things, the amendments provide that within eight months after receipt of an application for original registration as an RVT, VMB 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 also require VMB to notify a candidate within 105 days after the filing date for the RVT examination of his/her results; this processing time applies to those candidates who submit their completed RVT examination application on the examination filing deadline.

LEGISLATION

SB 42 (Kelley), as amended March 2, changes the Board’s name to the “Veterinary Medical Board”; renames the former Animal Health Technician Examining Committee as the “Registered Veterinary Technician Examining Committee”; and revises certain requirements to be a member of the Committee. The bill defines 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/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 also applies 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 eliminates this exemption, but provides that the laws regulating the prac-

tice 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 eliminates the reference to a national examination and instead requires 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 instead provides 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. This urgency measure was signed by the Governor on July 5 (Chapter 60, Statutes of 1995).

AB 611 (Aguiar), as amended July 3, creates 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 to a prescription from a veterinarian, and which is issued a permit for that location by the Board of Pharmacy. The bill defines 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 the Board of Pharmacy and passed an examination administered by the Board of Pharmacy; 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 also establishes minimum standards for veterinary food-animal drug



retailers, and requires them to establish written policies and procedures regarding certain information. The bill also requires a consulting pharmacist to be retained to review these policies and procedures, and to certify at least twice a year whether the retailer is in compliance with the requirements of the Pharmacy Law. The bill also establishes the initial fee for a veterinary food-animal drug retailer certificate, license, permit, or registration at \$400, and establishes the renewal fee at \$250. This bill was signed by the Governor on August 3 (Chapter 350, Statutes of 1995).

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 produce, 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]

Future Legislation. On August 8, DCA approved VMB's proposal to seek amendments to Business and Professions Code sections 4905 and 4842.5. The existing language of section 4905 limits the amount VMB may charge for the veterinary licensing and state Board exams to \$250 each. VMB has been advised by the exam vendor that commencing in December 1995, the fee for purchasing the licensing examination will be increased to \$305. When the vendor increases its price above the statutory limit, the Board is not authorized to pass on its actual costs to licensure candidates. The existing language of section 4842.5 limits the amount VMB may charge for the RVT exam to \$100, which is much less than the cost of developing, purchasing, grading, and administering the exam. The proposed amendments to section 4905 would allow VMB to fix in regulation the fee for filing an application for the examination in an amount it determines is reasonably necessary to provide sufficient funds to carry out its purpose; the fee for the examination would be the actual cost to the Board of developing, purchasing, administering, and grading the examination. The proposed amend-

ments to section 4842.5 would similarly provide that the fees for filing an application and exam fees for the RVT examination are to be set by VMB by regulation to meet the costs that the Board incurs.

At its November 8-9 meeting, VMB agreed to revise the proposal to specify reasonable ceilings instead of allowing the ceiling to be variable as previously proposed; VMB based its action on the concern that examination vendors would have no incentive to keep their bids down without a specified ceiling.

RECENT MEETINGS

At its September 14-15 meeting, VMB discussed an enforcement program workshop held on August 16 in Sacramento; the goal of the workshop was to share Board policy on enforcement procedures. Participants went through a simple hypothetical case with members of VMB, reviewed the complaint review process, and discussed the citation and fine process.

At its September 14-15 and November 8-9 meetings, VMB discussed the ongoing sunset review process; VMB is scheduled to come up for review by the Joint Legislative Sunset Review Committee in late 1996. [14:4 CRLR 20, 105] As such, its sunset review report must be submitted to the legislature by October 6. VMB agreed to appoint all of its members to its Sunset Committee in order to facilitate the completion of the report.

At its November 8-9 meeting, VMB discussed the possibility of creating limited licensure for "poultry practitioners," veterinarians whose practices deal solely with poultry. The Board noted that out-of-state poultry practitioners are needed to come into California to practice, but often are not able to pass the CCT due to their limited practice. The Board discussed the possibility of creating such a limited licensure program, noting that this may lead to a flood of similar requests by other specialty practitioners. However, following discussion, VMB unanimously agreed to support a legislative proposal which would allow for limited licensure for poultry veterinarians.

Also at its November meeting, VMB reelected Nancy Collins, DVM, to serve as Board President, and selected Ellen O'Connor to serve as Vice-President for 1996.

FUTURE MEETINGS

January 8-9 in Sacramento.
March 7-8 in Sacramento.
May 9-10 in Sacramento.

BOARD OF VOCATIONAL NURSE AND PSYCHIATRIC TECHNICIAN EXAMINERS

Executive Officer:

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As its name suggests, the Board of Vocational Nurse and Psychiatric Technician Examiners (VNPTE) regulates two professions: licensed vocational nurses and psychiatric technicians. Its general purpose is to administer and enforce the provisions of Chapters 6.5 and 10, Division 2, of the Business and Professions Code. A licensed practitioner is referred to as either an "LVN" or a "psych tech."

The Board consists of five public members, three LVNs, two psych techs, and one LVN or registered nurse (RN) with an administrative or teaching background. At least one of the Board's LVNs must have had at least three years' experience working in skilled nursing facilities.

The Board's authority vests under the Department of Consumer Affairs (DCA) as an arm of the executive branch. It licenses prospective practitioners, conducts and sets standards for licensing examinations, investigates complaints against licensees, and may revoke, suspend, and reinstate licenses. The Board is authorized to adopt regulations, which are codified in Division 25, Title 16 of the California Code of Regulations (CCR).

MAJOR PROJECTS

Citation and Fine Regulations Approved. On July 27, the Office of Administrative Law approved the Board's adoption of new sections 2523, 2523.1, 2523.2, 2523.3, 2523.4, 2523.5, 2523.6, 2523.7, 2579.2, 2579.3, 2579.4, 2579.5, 2579.6, 2579.7, 2579.8, and 2579.9, Title 16 of the CCR, which implement an administrative citation and fine program for LVNs and psych techs. [15:2&3 CRLR 106; 15:1 CRLR 99] Among other things, the regulations authorize the Board's Executive Officer to issue citations for any violation of law or regulation which would be grounds for discipline by the Board; specify the format of the citations, the range of fines for violation of specified provisions, the factors to be considered in assessing the amount of an administrative fine, the consequences of failure to comply with the order, and the method by which citations may be contested; and authorize the Board