The focus of the AG's inquiry concerned the consumer to eradicate or control pests. A company may enter into a contract with recommendations for corrective measures, and existing inspectors and regular reports may be entered into if the specified requirements 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 Poloyonis-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 submission 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 precision 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

Executive Officer: Gary K. Hill
(916) 263-2610

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 its regulatory power the degree of discretion that veterinarians, RVTs, and unregistered as-
assistants 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 (RTVEC) consists of the following political appointees: three licensed veterinarians, three RVTs, and two public members.

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 during 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.

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
judge1ments regarding the health of the ani-
mals and need for medical treatment, dis-
cussed with the owner of the animal pa-
tient a course of treatment, and is readily
available or has made arrangements for
follow-up evaluation in the event of ad-
verse reactions or failure of the treatment
regimen. Proposed section 2033.2 re-
mains 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 reg-
ulations, 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 regard-
ing “limited service practices,” defined to
include any veterinary practice that does
not provide a full range of surgical, medi-
cal, 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, san-
tary location that provides for the safety
of animals and their owners and is condu-
ctive to handling animals and providing
consultation to the public. While the cur-
rent version of the language deletes pre-
viously-proposed requirements that sani-
tation equipment and solution be im-
mediately available and language regarding
the maintenance of bio-waste handling
equipment, the provision would still re-
quire 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 pro-
cedures to clients in duplicate; however,
the language would still require a veteri-
narian 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 pub-
lished notice of these proposed changes in
the California Regulatory Notice Regis-
ter.

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 veterinar-
ian and registered veterinary technician
examinations. Specifically, the action
amends section 2070 to increase the appli-
cation 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 sec-
tion 2070 commenced with the December
1995 examination, and the fee increase in
section 2071 commenced with the August
1995 examination.

Perm1it Reform Act Regulations Ap-
proved. 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 per-
mit applications. [15:2&3 CRLR 104]
Among other things, the amendments pro-
vide that within eight months after receipt
of an application for original registration
as an RVT, VMB shall inform the candi-
date whether the application is complete
and accepted for filing or that it is deficient
and what specific information or docu-
mentation is required to complete the ap-
plication. 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 ap-
plies 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 “Vetri-
nary Medical Board”; renames the former
Animal Health Technician Examining
Committee as the “Registered Veterinary
Technician Examining Committee”; and
revises certain requirements to be a mem-
ber of the Committee. The bill defines
various terms related to veterinary medi-
cine, including “diagnosis,” “animal,”
“food animal,” and “livestock.”

Existing law provides that any person
practices veterinary medicine, surgery, or
dentistry when he/she performs any man-
ual procedure for the diagnosis of preg-
nancy, sterility, or infertility upon live-
stock. Existing law also provides that
nothing prohibits any person from making
a determination as to the status of preg-
nancy, sterility, or infertility upon live-
stock or food animals under certain condi-
tions. This bill also applies these provi-
sions to equine or other animals.

Existing law provides exemptions from
the licensure requirements for a veteri-
narian 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 Agri-
culture or the U.S. Department of Agricul-
ture for performance of prescribed duties.

Existing law requires the Board to as-
tertain the professional qualifications of
applicants for licensure by means of ex-
amination, 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 exami-
nation, 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 licen-
see by another state or territory. This ur-
gency measure was signed by the Gover-
ror 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 ani-
mals are dispensed to a prescription from
a veterinarian, and which is issued a per-
mit for that location by the Board of Phar-
macy. The bill defines the term “veteri-
nary food-animal drugs” to include any drug
intended for use in food-producing ani-
mals that, by federal or state law, may be
dispensed only by the prescription of a
licensed veterinarian.

Under AB 611, a veterinary food-an-
imal drug retailer must be placed under
the charge of a responsible person exempt
from the pharmacist registration require-
ment, who has completed a training pro-
gram 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 condi-
tions; 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 stan-
daards 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 license 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 4842.5 would similarly provide that the fees for filing an application and examination 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.