



methyl bromide used in fumigation. Currently, the methyl bromide fumigation solution consists of 99.5% methyl bromide and .5% chloropicrin, the tear-gas type of warning agent which alerts those re-entering a facility that the odorless methyl bromide has been applied. The permit would allow the mixture to contain 100% methyl bromide to which chloropicrin would then be added manually. According to the Board, this method provides a more effective warning than if chloropicrin is merely included in the original mixture; this method is currently used with Vikane, a sulfuryl fluoride fumigant.

Also at its July 28 meeting, the Board considered staff's recommendation to prescribe the minimum standard of chloropicrin to be used as a warning agent [14:2&3 CRLR 109]; following discussion, SPCB decided that it is more appropriate to follow the manufacturer's label for the amount of chloropicrin to be used in fumigation rather than to adopt a regulation prescribing a certain amount.

At its July 28 meeting, the Board decided to take no action on a proposal to establish a recovery fund which could reimburse consumers for damages caused by structural pest control operators who become insolvent or go out of business. [14:2&3 CRLR 109]

Also on July 28, the Board reported that a draft of its mission and vision statements had been prepared and would be presented at the October meeting. The Board also postponed until its October meeting discussion on whether it should establish a committee to review and revise the first page of the "Wood-Destroying Pests and Organisms Inspection Report," which was originally revised less than two years ago. [13:1 CRLR 70] SPCB also postponed a discussion of a delineation of the "gray areas" between structural and agricultural pest control until the Board receives input from county agricultural commissioners throughout the state.

■ FUTURE MEETINGS

October 21 in San Francisco.
December 8-9 in Sacramento.
February 25, 1995 in Oakland.

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.

■ MAJOR PROJECTS

BEVM Considers Strategic Plan. At its July 7-8 meeting, BEVM reviewed a draft version of a long-term strategic plan for the Board. Among other things, the plan states that the Board's mission is to administer an examination that measures minimum competency, is job-related, and ensures that only those individuals possessing the necessary qualifications are eligible to practice veterinary medicine; maintain enforcement priorities, procedures, and a citation and fine program to help eliminate incompetent veterinarians and unlicensed practice in California; ensure that all premises (including mobile units) where veterinary medicine, dentistry, or surgery is practiced are maintained in a clean and sanitary condition; establish and enforce the minimum standards of veteri-

nary practice in California; establish programs in consumer education, and encourage veterinarians to provide consumers with written estimates of costs and copies or summaries of medical records; hold regular public meetings and regularly review all rules and regulations for relevancy and currency; and administer the Alcohol and Drug Diversion Program for substance-abusing veterinarians. Among other things, the Board's goals during 1994-99 include validated testing for license renewal at eight-year intervals; the assignment of a Board consultant to work with the investigator on each disciplinary case; the implementation of a mediation program; increased enforcement staff; the use of computer technology to improve testing; and the inclusion of educational information pertaining to minimum standards of practice during premises inspections.

At BEVM's September 15-16 meeting, the Board noted that the Department of Consumer Affairs (DCA) is concerned with the staff time and costs involved in some of the goals included in BEVM's strategic plan; DCA Interim Director Dr. C. Lance Barnett asked the Board to prioritize its goals and objectives and identify the costs and staff time associated with each goal. Following discussion, BEVM directed staff to identify the personnel years and actual costs involved with each goal and objective, and agreed to postpone the final completion of the strategic plan until those issues are resolved.

DCA Completes Occupational Analysis. At BEVM's July 7-8 meeting, Nick Fittinghoff, Program Analyst with DCA's Office of Examination Resources (OER), reported that DCA had completed the three-year occupational analysis of the practice of veterinary medicine. [14:2&3 CRLR 112; 11:3 CRLR 112; 11:2 CRLR 108] The purpose of the analysis was to establish a list of the tasks most commonly performed by veterinarians and the knowledge, skills, and abilities required to perform them; this information will be incorporated into BEVM's examination blueprint.

At BEVM's September meeting, Board members Nancy Collins and Al Aldrete reported that they spent six days reviewing the occupational analysis, and stated that they found many errors in the report; following discussion, the Board agreed to request that OER revise the report and make the necessary corrections, and to non-adopt the occupational analysis until all of the corrections are made.

BEVM Addresses Referral Controversy. At its September 15-16 meeting, BEVM discussed the legal May 27 opin-



ion of DCA attorney Don Chang regarding an agreement between South East Area Animal Control Authority (SEAACA) and Pet Vaccine Services, Inc. (PVS); in particular, Chang reviewed the agreement to determine if it violates Business and Professions Code section 650, the anti-kick-back statute which provides that the offer, delivery, receipt, or acceptance by specified licensed individuals—including veterinarians—of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest or co-ownership in or with any person to whom these patients, clients or customers are referred, is unlawful.

SEAACA is an organization which represents several municipalities in Los Angeles County for the purpose of providing annual rabies vaccination clinics; PVS is a veterinary business which operates veterinary hospitals and clinics and offers low-cost dog and cat vaccinations. The agreement between SEAACA and PVS provides that PVS will be granted exclusive rights for a two-year period to conduct SEAACA-sanctioned low-cost vaccination clinics in SEAACA cities; PVS will act as an independent organization and is not an employee, subcontractor, or affiliate of SEAACA. PVS is allowed to use the SEAACA name in conjunction with its advertisements for SEAACA-sanctioned vaccination clinics; and SEAACA will assist PVS in advertising the dates and times of the vaccination clinics by distributing fliers for upcoming vaccination clinics and periodically publicizing the vaccination clinics in public service announcements and printed calendar events in local publications. The agreement also provides that PVS will pay to SEAACA one dollar for each rabies vaccination administered during a SEAACA-sanctioned vaccination clinic.

According to Chang, the elements of a violation of section 650 include (1) an offer, delivery, receipt or acceptance (2) by any person licensed under specified provisions of law (3) of compensation to any person (4) as compensation or inducement for (5) the referral of patients, clients, or customers. Applying those elements to the facts at hand, Chang found that PVS qualifies as a licensed person making an offer and delivery of consideration in the form of money as compensation to SEAACA; accordingly, Chang found that the first four elements of section 650 are satisfied. However, in determining whether the agreement involves a referral

of patients, Chang noted that, aside from publicizing its sanctioned clinics, SEAACA has no direct contact with any pet owner; according to Chang, "[a]s a reader of a notice publicizing a SEAACA-sanctioned clinic, the pet owner makes his or her own decision whether to attend a PVS clinic. If the pet owner decides to use a PVS clinic, he or she makes the determination as to the veterinarian being utilized; SEAACA is not making that determination." Accordingly, Chang concluded that the SEAACA/PVS agreement does not constitute a referral of patients, stating that "[a]lthough compensation is being given by PVS to SEAACA for each vaccination administered during a sanctioned clinic, it is not for a referral."

At the Board's September meeting, Roger Beck, DVM, of the California Veterinary Medical Association (CVMA) questioned Chang's conclusion and suggested that the Board consider obtaining an opinion from the Attorney General's Office on this matter. BEVM Executive Officer Gary Hill responded that if CVMA has new information pertinent to Chang's opinion, it should submit the information in writing for Chang's review.

Update on PES Conflict of Interest. Steps have been taken toward possible resolution of the potential conflict of interest presented by BEVM's contract with Professional Examination Service (PES), which develops and prepares the National Board Exam (NBE) and the Clinical Competency Test (CCT). The conflict stems from a contract clause which authorizes the American Veterinary Medical Association, a national trade association, to set the pass point for the examinations. According to DCA's Office of Examination Resources, no state licensing board should allow, or appear to allow, a professional association such as AVMA to control a passing score for a test that is part of the board's licensing process. [14:2&3 CRLR 110; 14:1 CRLR 86; 13:4 CRLR 91]

BEVM has supported a transfer of authority for examination preparation from AVMA's National Board Examination Committee (NBEC) to the American Association of Veterinary State Boards (AAVSB). On July 13, NBEC held a special joint meeting with members of the AAVSB and approved motions to incorporate NBEC separately from AVMA; add one AAVSB-appointed public member to NBEC; have NBEC—instead of AVMA—sign the contract with the testing company, and invite the AAVSB to also sign the contract, if it so chooses; provide the AAVSB with \$10 from each of six CCT administrations beginning in December 1994, and raise candidate fees for the NBE and CCT, if nec-

essary, to help pay for certain administrative expenses of the AAVSB; and raise candidate fees for the NBE and CCT to offset increased examination development and administration costs incurred by PES. NBEC is expected to be incorporated as a nonprofit organization under the laws of Illinois in early October.

At BEVM's September 15-16 meeting, Executive Officer Gary Hill reported that legal counsel determined that there are no conflict of interest issues in the 1994-95 PES contract that would inhibit the Board from signing the contract. BEVM directed Hill to send a letter to PES, along with the signed contract, explaining continuing concerns regarding the examination's administration. Also at its September meeting, BEVM agreed to introduce legislation during the 1994-95 legislative session which would increase the fees for the NBE and the CCT in response to NBEC's anticipated fee increases.

Minimum Standards for Limited Service Practices. At its September 15-16 meeting, BEVM adopted a goal for 1995 to define in regulations the minimum standards of operation for limited service practices, formerly termed "wellness clinics," "vaccination clinics," or "preventive care clinics." Acknowledging that the practice of veterinary medicine has evolved to include mobile and non-mobile clinics which provide limited veterinary services such as vaccine inoculations and fecal examinations, BEVM has officially termed such clinics "limited service practices" and defines that term to include any practice, mobile or non-mobile, that does not offer a full range of medical, surgical, and diagnostic veterinary services. In preparation for that regulatory action, BEVM will attempt to determine the minimum standards of operation for limited service practices, and will consider language for the minimum standards proposed by CVMA and PVS.

Update on Practice Act Amendments. BEVM continues to discuss plans to legislatively redefine the practice of veterinary medicine, particularly in light of emerging alternative practices such as acupuncture and chiropractic. [14:2&3 CRLR 110; 13:4 CRLR 92; 13:2&3 CRLR 113] At its September 15-16 meeting, BEVM agreed to meet with the Board of Chiropractic Examiners and the Acupuncture Committee during 1995 and introduce a legislative proposal in January 1996.

Update on Licensing Fee Increase, Clean-Up Amendments. BEVM's proposed amendments to sections 2011.5, 2019, 2020, and 2070, Title 16 of the CCR,



await review and approval by the Office of Administrative Law (OAL). The changes to sections 2011.5, 2019, and 2020 are all nonsubstantive, grammatical revisions; the amendments to section 2070 would increase the Board's initial and biennial renewal fees from \$150 to \$200. [14:2&3 CRLR 110] On May 27, BEVM released a modified version of its proposed changes to section 2070 for an additional fifteen-day public comment period; the modifications indicate that the increased fees will be in effect on and after January 1, 1995. At this writing, BEVM is expected to submit the proposed changes to OAL by October 1.

AHT Eligibility Update. On July 8, BEVM held a public hearing on its proposed regulatory amendments to section 2068.5, Title 16 of the CCR. The amendments would allow applicants to establish eligibility for the AHT examination by combining their practical experience with postsecondary coursework hours obtained from either college units or continuing education sources. [14:2&3 CRLR 110; 14:1 CRLR 85-86; 13:2&3 CRLR 114] After hearing much public comment in support of the proposal, BEVM adopted the amendments; at this writing, DCA legal counsel is reviewing the rulemaking file in preparation for submission to the DCA Director and OAL.

LEGISLATION

SB 2101 (McCorquodale), as amended July 7, repeals a provision of law which prohibits the membership of two BEVM members from the same congressional district at any time. This bill was signed by the Governor on September 30 (Chapter 1275, Statutes of 1994).

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at pages 110-11:

SB 2036 (McCorquodale), as amended August 26, creates a "sunset" review process for occupational licensing boards within DCA, requiring each to be comprehensively reviewed every four years. SB 2036 imposes an initial "sunset" date of July 1, 1998 for BEVM; creates a Joint Legislative Sunset Review Committee which will review BEVM's performance approximately one year prior to its sunset date; and specifies 11 categories of criteria under which BEVM's performance will be evaluated. Following review of the agency and a public hearing, the Committee will make recommendations to the legislature on whether BEVM should be abolished, restructured, or redirected in terms of its statutory authority and priorities. The legislature may then either allow the sunset date to pass (in which case

BEVM would cease to exist and its powers and duties would transfer to DCA) or pass legislation extending the sunset date for another four years. This bill was signed by the Governor on September 26 (Chapter 908, Statutes of 1994).

SB 1821 (Kelley), as amended August 24, would have renamed BEVM to "Veterinary Medical Board," renamed AHTEC to "Registered Veterinary Technician Examining Committee," and reduced the number of members on the Committee. This bill would have defined various terms related to veterinary medicine, including "diagnosis," "animal," "food animal," and "live-stock"; clarified an exemption from the Board's licensure requirements for veterinarians employed by federal or state government; eliminated a statutory reference to a national examination and instead required that BEVM's 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; and authorized BEVM to revoke, suspend, or discipline a license based on the revocation, suspension, or other disciplinary action taken against the licensee by another state or territory.

In a September 2 letter to Governor Wilson, BEVM President Nancy Collins, DVM, urged the Governor to sign SB 1821, noting that the bill was supported by DCA, CVMA, BEVM, and the Department and Food and Agriculture; according to Collins, there was no known opposition to the bill. On September 27, however, Governor Wilson vetoed SB 1821, stating that although he supported most of the bill's provisions, he opposed the proposal to reduce AHTEC's size by eliminating two of his appointments. According to Wilson, "[t]his Committee performs executive branch regulatory functions and, as such, appointments should be made by the executive branch. While I support reducing the size of this Committee, I cannot support reducing the members of the Committee until such time as the Legislative appointment authority is removed."

AB 2973 (Aguiar), as amended August 25, would have created a new certification program within the Board of Pharmacy to regulate "veterinary food-animal retailers," 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 licensed veterinarian, and which is issued a permit for that location by the Board of Pharmacy. Governor Wilson vetoed this bill on September 30. According to Wilson, the new li-

censure program should be self-supporting through the imposition of licensure and renewal fees; under the bill as written, Wilson contended that the estimated revenue that would be generated by those fees is substantially less than the costs associated with implementing the program.

AB 1209 (Tucker). Existing regulations adopted by the California Horse Racing Board (CHRB) provide for an official veterinarian whose duty is to supervise practicing licensed veterinarians at horse racing meetings, and to enforce the Board's rules and regulations relating to veterinary practice. As amended August 26, this bill requires every veterinarian who treats a horse within a racing inclosure to report to the official veterinarian in a manner prescribed by him/her, in writing and on a form prescribed by CHRB, the name of the horse treated, the name of the trainer of the horse, the time of treatment, any medication administered to the horse, and any other information requested by the official veterinarian. This bill was signed by the Governor on September 26 (Chapter 881, Statutes of 1994).

RECENT MEETINGS

At its July 7-8 meeting, the Board discussed a request by DCA's Family Support Unit (FSU) for access to the Board's computer files; the access would reportedly aid FSU in handling consumer inquiries about new laws concerning the suspension of professional licenses for delinquent child support payments. The Board expressed concern regarding security issues and decided to request clarification from FSU as to the level of access necessary.

Also at BEVM's July meeting, BEVM President Nancy Collins reported that AAVSB's national disciplinary register was expected to be operational by August 1; all states except Ohio are participating in the registry. [13:4 CRLR 94]

At its September 15-16 meeting, BEVM adopted a protocol for soliciting legal advice and opinions from DCA attorneys. Pursuant to the protocol, requests to legal counsel must be in writing and approved by a majority of the Board; or, if a meeting or conference call is not possible, the request must be approved by BEVM's President and Executive Officer.

At its September meeting, BEVM announced that it had commenced work on a brochure outlining the rights and duties of veterinarians and their clients and patients; the brochure is designed to be provided or otherwise displayed in the lobbies of veterinary practices, and will explain what the consumer and the veterinarian should expect of each other for a successful working relationship. [14:2&3 CRLR



111] BEVM hopes the brochure will prevent frequent consumer complaints that stem from communication problems and unrealistic expectations by all parties involved. The Board is currently working on the language of the brochure, and will discuss methods of distribution in the future.

Also at its September meeting, BEVM set a regulatory goal for 1996 to define minimum standards for equine veterinary practice; BEVM has experienced an increase in complaints submitted regarding equine practices. [13:1 CRLR 74]

BEVM also agreed to support the concept of a specialty license for poultry veterinarians; such veterinarians treat only poultry, may be called to practice around the country, but are often too specialized to pass the national board examination. A limited poultry practice license would allow BEVM to test, license, and regulate poultry specialists without requiring them to pass the broad state examinations.

■ FUTURE MEETINGS

November 17-18 in Sacramento.
January 5-6, 1995 in Davis.

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 examina-

tions, 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). The Board currently regulates 76,722 LVNs with active or inactive licenses, and 35,215 LVNs with delinquent active licenses, for a total LVN population of 111,937. The Board's psych tech population includes 12,987 with active or inactive licenses and 4,471 with delinquent active licenses, for a total of 17,458 psych tech practitioners. Inactive licensees include those who have paid their license fees but have not yet completed thirty units of continuing education within two years of reactivation.

Governor Wilson recently appointed Mary A. Humphrey of Carlsbad to VNPTE. Humphrey is the chief executive officer of Humphrey M.S.S. Engineering, a Del Mar bioaugmentation firm.

■ MAJOR PROJECTS

NCLEX-CAT Implementation Update. In October 1993, the National Council of State Boards of Nursing (NCSBN), which oversees LVN and RN exams nationwide, announced its decision to implement computer adaptive testing (CAT) in April 1994, in lieu of "paper and pencil" tests. [14:2&3 CRLR 112; 14:1 CRLR 88; 13:4 CRLR 94] Under the new process, licensure candidates who have completed their educational program are tested by computer at a testing center convenient to their location.

At the Board's September 16 meeting, staff reported that the new NCLEX-CAT system was fully implemented during the summer, although computer glitches continue to plague the system. The Board and the test contractor, Educational Testing Service (ETS), are currently looking into how to solve the problems. ETS released a statistical report showing that 90.9% of all U.S.-educated candidates passed the exam their first time on the NCLEX-CAT system.

Psychiatric Technician Task Force. In November 1993, the Board created a short-term task force of volunteers to study the future trends and practices of psychiatric technicians in California. This recommendation was based on the facts that in 1993, four psych tech programs were either terminated or in danger of termination from a decrease in student enrollment, and state hospital reductions have led to the layoff or termination of a large number of psych techs. [14:2&3 CRLR 112; 14:1 CRLR 88]

The Task Force met in late August to discuss factors which inhibit psychiatric

technicians from fulfilling their roles as licensed professionals. At the Board's September 16 meeting, the Task Force reported that the decline is due to a lack of recognition for psych techs, exclusion by other groups, and poor representation. The Task Force suggested that psych techs might improve their image by developing educational programs and marketing their profession to consumers; another suggestion is to make curriculum changes in the psych tech program. The Task Force is expected to make its final recommendations at VNPTE's November meeting.

Enforcement Committee Activity. At its September 16 meeting, the Board reviewed several recommendations made by its Enforcement Committee. First, the Committee recommended that the Board implement its authority under Business and Professions Code section 125.9 by developing and adopting a system for issuing citations and fines for minor violations of the Board's statutes and regulations. The Committee reviewed a first draft of proposed citation and fine regulations at its May meeting, and noted that it would present a more final version to the Board at its November meeting so a public hearing can be scheduled for the Board's January 1995 meeting. The Board approved this goal.

Second, the Committee noted that it is exploring the possibility of sharing with another board the cost of a toll-free complaint line; the Board instructed the Committee to secure more information about the cost of a toll-free line and report back at a future meeting.

Finally, the Committee noted that staff met with representatives of the Board of Registered Nursing (BRN) about BRN's remediation program which employs alternative methods of discipline to bring licensees into compliance with the law. Business and Professions Code section 2876(e) authorizes the Board to take whatever disciplinary action against an LVN as the Board, in its discretion, deems proper. After reviewing BRN's remediation program, the Committee recommended that the Board implement a similar program whereby licensees, if they meet certain criteria (including the condition that the standard behavior did not result in patient harm), would be invited to the Board's office to set up an educational/remediation plan with one of the Board's Nursing Education Consultants. The licensee would have a set period of time in which to complete the remediation program; failure to complete the plan may result in subsequent formal disciplinary action. The Committee also noted that the Board does not have the same statutory authority with