



REGULATORY AGENCY ACTION

1948, Division 19, Title 16 of the CCR, which would have increased the pesticide use report filing fee from \$6 to \$7. [12:4 CRLR 127]

• **Secondary Recommendations.** On December 17, OAL approved SPCB's amendments to section 1992, Title 16 of the CCR, which provide that when secondary recommendations are made, they shall be labeled as such and included as part of the inspection report with a full explanation of why they are made, including a notation that they are sub-standard measures.

• **Barricading Doorways Without Doors.** SPCB submitted its rulemaking file on its proposed amendments to section 1970.3, Title 16 of the CCR, regarding procedures for barricading doorways without doors, to OAL on December 1. [12:4 CRLR 127]

• **Registered Companies.** SPCB staff is still preparing the rulemaking file on its proposed amendment to section 1937.16 which would subject Branch 4 registered companies to the provision which requires Branch 1 and Branch 3 registered companies to use a "Notice of Owner" form, as specified by the Board. [12:1 CRLR 101]

• **Use of the Term "Fungicide."** SPCB's proposed amendments to sections 1970.4 and 1983 would add the term "fungicide" to numerous provisions which currently relate to the use of pesticides. During a 15-day public comment period, the Board received comments which indicated that some modifications made to the sections were improper. Accordingly, the Board is re-evaluating its proposal and has tentatively scheduled another public hearing on the proposed amendments for February. [12:4 CRLR 128]

• **Condominiums and Townhomes.** SPCB is scheduled to conduct a February 26 public hearing on its proposed adoption of section 1990.1 regarding a SPCB licensee's inspection of a common interest development such as a condominium or townhouse unit. [12:4 CRLR 128]

RECENT MEETINGS

At SPCB's November 6 meeting, Registrar Mary Lynn Ferreira reported that DCA is considering proposals to consolidate the enforcement functions of DCA agencies within the Department; the Board unanimously directed Ferreira to oppose any attempt by DCA to remove or transfer the Board's enforcement powers.

The Registrar also reported that SPCB's Research Fund has \$90,000 for research grants during fiscal year 1993-94. If the funds are not awarded, they will accrue to the following year.

Also at its November 6 meeting, the Board discussed the feasibility of requiring two photographs to be submitted with an application for licensure; the first photo would be used to verify that an examinee is in fact the license applicant, and the second photo would be mounted on the SPCB license. Photo-bearing licenses would necessitate a \$10-\$20 increase in licensing fees. Following discussion, the Board directed staff to prepare regulatory language which would require photo identification on SPCB licenses.

FUTURE MEETINGS

May 6-7 in Los Angeles.

TAX PREPARER PROGRAM

Administrator:
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Enacted in 1973, abolished in 1982, and reenacted by SB 1453 (Presley) effective January 31, 1983, the Tax Preparer Program registers approximately 19,000 commercial tax preparers and 6,000 tax interviewers in California, pursuant to Business and Professions Code section 9891 *et seq.* The Program's regulations are codified in Division 32, Title 16 of the California Code of Regulations (CCR). An Administrator, appointed by the Governor and confirmed by the Senate, enforces the provisions of the Tax Preparer Act.

Registrants must be at least eighteen years old, have a high school diploma or pass an equivalency exam, have completed sixty hours of instruction in basic personal income tax law, theory, and practice within the previous eighteen months, or have at least two years' experience equivalent to that instruction. Twenty hours of continuing education are required each year.

Prior to registration, tax preparers must deposit a bond or cash in the amount of \$2,000 with the Department of Consumer Affairs. Registration must be renewed annually, and a tax preparer who does not renew his/her registration within three years after expiration must obtain a new registration. The Program's initial registration fee is \$50; the renewal fee is \$50; and the registration fee for a branch office is \$25.

Members of the State Bar of California, accountants regulated by the state or federal government, and those authorized

to practice before the Internal Revenue Service are exempt from registration.

BOARD OF EXAMINERS IN VETERINARY MEDICINE

Executive Officer: Gary K. Hill
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Pursuant to Business and Professions Code section 4800 *et seq.*, the Board of Examiners in Veterinary Medicine (BEVM) licenses all veterinarians, 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, including two public members. 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 Discusses Veterinarians' Duties Regarding Patient Examinations. At its October 14-15 meeting, BEVM discussed issues concerning when and how often an animal patient must be examined by a veterinarian prior to the administration of vaccinations or medication by AHTs or unregistered assistants. Pursuant to section 2035(c), Title 16 of the CCR,



the "supervising veterinarian shall have examined the animal patient prior to the delegation of any animal health care task to either an AHT or unregistered assistant. The examination of the animal patient shall be conducted at such time as good veterinary medical practice requires consistent with the particular delegated animal health care task." Thus, the regulation specifies no time interval for regular veterinarian examinations of animal patients. According to BEVM Executive Officer Gary Hill, the only condition under which a veterinarian is required to examine an animal patient is when delegating an animal health care task, not when the veterinarian is performing the task. According to Hill, the section was designed to provide supervising veterinarians with discretion to determine the appropriate length of time between examinations. However, some Board members commented that vaccinations should not be administered without an examination prior to each vaccination, even in apparently healthy animals.

The Board also discussed how the current regulation is applicable to new practice settings, such as mobile vaccination clinics. Board member Jean Guyer suggested that BEVM provide consumers with information to consider when having their animals vaccinated at such locations where there may not be a veterinarian on hand to examine the animal. Following discussion, the Board directed its Legislative Committee to review the Veterinary Practice Act to determine if amendments are appropriate to address the length of time between examinations and new practice settings.

BEVM/AHTEC Consolidation Considered. At its October meeting, BEVM discussed the possible consolidation of AHTEC into BEVM, due to current difficulties facing the AHT profession, including low pay, shortage of available AHTs, and possible deregulation by the legislature. AHT Harold Davis reported that the Committee has already scaled back and reduced the number of meetings and workshops to reduce overall program costs; however, AHTEC's current budget is \$119,000, compared to \$85,000 in projected revenue. Staff noted that 80% of AHTEC's current budget is examination-related, as AHTEC prepares and administers its own California exam instead of utilizing the national AHT exam. Use of the national exam would reduce AHTEC's program costs by 35%.

Under the proposed consolidation of AHTEC into BEVM, the Board would add an AHT to the existing BEVM and establish a standing committee to handle prep-

aration of the AHT examination, consult with the Board on AHT issues, and participate in school accreditation inspections. To facilitate the proposed consolidation, BEVM's Legislative Committee recommended that the Board consider the following changes:

-Business and Professions Code section 4832 currently refers to the Animal Health Technician Examining Committee; the Board should change this reference to the Veterinary Technician Examining Committee (VTEC).

-Presently, AHTEC consists of eight members. The Board should limit the membership of VTEC to four members: one veterinarian licensed to practice in California and three California-registered veterinary technicians.

-The eligibility requirements in Business and Professions Code section 4841.5 should be slightly modified, and language should be added to provide that a person who establishes eligibility with five years of equivalent experience within the specified time frame shall be allowed two attempts or two years, whichever comes first, in which to pass the California Veterinary Technician examination between January 1, 1994, and January 1, 1996.

-The separate AHTEC fund should be eliminated.

Following discussion, BEVM approved the consolidation proposal in concept, and agreed to seek legislation to bring AHTEC under the Board as a subcommittee and eliminate the independent AHTEC fund; however, the Board will track the separate expenses of the committee through subaccounts. Other details will be worked out later.

PES Contract Clause Challenged. At its October meeting, BEVM discussed its contract with Professional Examination Services (PES), which develops and prepares the national veterinarian examination. Currently, the American Veterinary Medical Association (AVMA) participates with PES in the preparation and development of the exam. The Board noted that—contrary to previous contract language stating that the passing score should not be the responsibility of PES or AVMA—the current contract submitted for the Board's authorization contains a clause designating AVMA to set the pass point. The Department of Consumer Affairs' (DCA) Central Testing Unit (CTU) informed the Board that this is unacceptable and that individual state boards should have the authority to set the pass point; according to CTU, "no state licensing board should allow, or appear to allow, a professional association, such as the AVMA, to control a passing score for

a test that is part of the board's licensing process." The Board also noted that while the national trade associations for dentists and medical doctors similarly participate in the preparation of their respective national exams, they do not set the pass points. Following discussion, the Board directed Executive Officer Gary Hill to strike the objectionable language from the contract and return the signed document to PES; further, the Board will work with PES to improve the contract language for future years.

BEVM Initiates Voluntary Information Survey. The Board currently reviews and updates its goals and objectives on an annual basis; however, long-term goals are difficult to track unless problem issues and areas are identified. As part of its approach to identifying long-term goals, BEVM initiated a voluntary information survey which it hopes will provide feedback from licensees highlighting areas in which the Board should focus. Among other things, the survey asked each respondent to answer specific questions regarding Board procedures, and to rate the Board in the areas of timeliness, accuracy, courtesy and fairness. The survey also covered whether continuing education (CE) should be required for license renewal; whether there should be some correlation between CE and the number of years in practice or the type of practice; and whether periodic reexamination for license renewal would be effective. Finally, the survey sought information on the effectiveness of the Board's newsletter, license renewal notices, inspections of veterinary premises, and premises registration requirements.

LEGISLATION

S. 2667 (Heflin) and H.R. 5297 (Stenholm) would have amended the federal Food, Drug and Cosmetic Act to clarify the application of the Act with respect to alternate uses of animal drugs and drugs intended for human use. [12:4 CRLR 131] These bills died in Congress.

Future Legislation. At its October 14 meeting, BEVM agreed to support DCA's legislative proposal which would provide that BEVM or an administrative law judge of the Office of Administrative Hearings, sitting alone, upon a petition filed by BEVM, may issue an interim order suspending a license or imposing drug screening, supervision of practice, continuing education, or other practice restrictions. Such interim orders would be issued only if affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions



constituting a violation of a provision of the Business and Professions Code, or has been convicted of a crime substantially related to the practice of the licentiate's profession or occupation, and that permitting the licentiate to continue to engage in practice will endanger the public health, safety, or welfare. DCA is proposing this legislation to address the problem of lengthy investigations and administrative proceedings which take from two to four years to complete, during which time the accused licentiate is usually free to engage in unrestricted practice (even in egregious cases).

DCA may also propose legislation which would provide that an applicant for license renewal who received his/her license through tender of payment by a check which was subsequently dishonored shall not be granted a renewal until the applicant pays the amount outstanding from the dishonored check, the applicable dishonored check fee, together with the applicable fee including any delinquency fee for the pending renewal. BEVM agreed to support this legislative proposal.

RECENT MEETINGS

At BEVM's October 14-15 meeting, Board member Nancy Collins, DVM, reported on the results of a survey she sent to veterinary universities nationwide asking about alternative surgical programs for veterinary students opposed to traditional surgical courses which frequently require the euthanasia of healthy animals for research purposes. These programs have been the source of some controversy for BEVM. [12:2&3 CRLR 153] Dr. Collins received a 100% response to her survey, and the respondent universities which have alternative surgical programs stated they are pleased with the quality and motivation of the student participants. One such university compared the surgical skills of students participating in the traditional program with those of students participating in the alternative program, and found no significant difference. Dr. Collins also reported that many universities have implemented a spay/neuter program to offer surgical training for students, as an alternative to surgical programs in which the subject animals are killed; in addition to providing surgical training, these programs offer students an opportunity to watch the recovery responses of anesthetized animals.

Also at its October meeting, BEVM discussed the appropriate role veterinarians should play in treating wolf hybrids. The Board noted that a veterinarian faces a dilemma each time an animal with both wolf and dog genes is presented for vacci-

nation against rabies, since no rabies vaccine is approved for use in wolf hybrids. Further, no vaccines are approved for use in wolf hybrids against any of the other canine diseases that may affect these animals. As a result, questions arise whether veterinarians will be subject to disciplinary action if they decide to vaccinate such animals. DCA legal counsel Greg Gorges opined that BEVM is not obligated to cite or fine a veterinarian who treats a wolf hybrid in a life-threatening situation. Although some members suggested that the issue be referred to the University of California for further study, or that the Board prepare a newsletter article about the current laws regarding wolf hybrids for consumer information, BEVM took no action on this matter.

Also in October, BEVM discussed whether to propose minimum standards of equine practice, since the Board currently has minimum standards only for the practice of veterinary medicine on small animals. The Board discussed incorporating the California Veterinary Medical Association's (CVMA) proposed standards for equine practices into BEVM's regulations; however, members noted that CVMA's standards exceed minimum standards. DCA legal counsel Greg Gorges stated that BEVM should determine whether it has the statutory authority to incorporate the standards into its regulations, or whether the Veterinary Practice Act should be amended to delegate such authority to BEVM; Board member Jean Guyer suggested that BEVM have legal counsel review the statute and report to the Board at its January meeting.

FUTURE MEETINGS

May 6-7 in Sacramento.
July 7-8 in Sacramento.
September 9-10 in Sacramento.
November 18-19 in Sacramento.

BOARD OF VOCATIONAL NURSE AND PSYCHIATRIC TECHNICIAN EXAMINERS

*Executive Officer: Billie Haynes
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This agency regulates two professions: 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 li-

censed 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 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, and has the authority to grant adjudicatory hearings. Certain provisions allow the Board to revoke or 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 65,630 LVNs with active licenses, 27,262 LVNs with delinquent active licenses, and 10,539 with inactive licenses, for a total LVN population of 103,431. The Board's psych tech population includes 13,728 with active licenses and 5,159 with delinquent active licenses, for a total of 18,887 psych tech practitioners.

MAJOR PROJECTS

Regulatory Action to Set Processing Times for Psych Tech CE Provider Applications. On May 29, the Board closed the public comment period on its proposed amendment to section 2567, Chapter 25, Title 16 of the CCR, which would specify thirty days as the maximum period of time in which the Board will notify an applicant that his/her application to be a psych tech continuing education (CE) provider is complete or deficient, and identify specific information which is required. [12:4 CRLR 133] Thereafter, the Board submitted the regulatory change to the Office of Administrative Law (OAL) and OAL approved it on December 11. However, the Board has never formally adopted the regulatory change at a public meeting, as required by the Administrative Procedure Act. The Board is expected to adopt the amendment at its March meeting, over two months after the regulatory revision takes effect.

Psychiatric Technician Occupational Analysis. At its September meeting, the Board heard an update from DCA's Central Testing Unit (CTU) on the occupational analysis being conducted of the psychiatric technician population to assess the validity of the California Psychiatric Technician Licensure Examination; CTU reported that it had interviewed psych techs to identify the tasks of each