



report fees collected from structural pest control operators in the Structural Pest Control Research Fund. This bill authorizes the fee to be deposited with a bank or other depository approved by the Department of Finance and designated by the Research Advisory Panel or into the Structural Pest Control Research Fund, as determined by the Panel. This bill imposes specified requirements on those deposits. This bill was signed by the Governor on October 10 (Chapter 1077, Statutes of 1993).

**AB 1392 (Speier)**, as amended July 1, would—among other things—provide that SPCB's executive officer is to be appointed by the Governor, subject to Senate confirmation, and that the Board's executive officer and employees are under the control of the Director of the Department of Consumer Affairs. [S. B&P]

**AB 1851 (Connolly)**. Section 8505.1 of the Business and Professions Code includes a list of lethal fumigants, including methyl bromide, and a list of simple asphyxiants. As amended May 17, this bill would require SPCB to publish that list of simple asphyxiants and make it available to the public. This bill would also remove methyl bromide from the list of lethal fumigants, and require SPCB to prohibit the use of methyl bromide as a fumigant for structural pest control purposes, commencing January 1, 1996. [A. W&M]

**AB 520 (Knight)**, as introduced February 18, would repeal the Structural Pest Control Act and its provisions creating the Board. [A. CPGE&ED]

**AB 1807 (Bronshvag)**, as amended May 3, would authorize SPCB to issue a citation if, upon investigation, it has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services without being properly licensed, and to require the violator to cease the unlawful advertising. [A. Inactive File]

## RECENT MEETINGS

At its August 10 meeting, SPCB decided to continue accepting savings accounts assigned to the Board in lieu of bonds or insurance. SPCB Registrar Mary Lynn Ferreira had recommended that SPCB discontinue accepting savings accounts because of the problems in tracking these accounts and ensuring that the financial institution does not release the funds in the accounts back to the licensee. However, SPCB's legal counsel opined that statutory revisions would be required to discontinue the acceptance of such accounts.

Also at its August meeting, SPCB noted that it has prepared and released an information sheet containing definitions of commonly misunderstood terms that may

be used in agreements between licensees and their clients.

## FUTURE MEETINGS

December 3 in Sacramento.

February 25 in Palm Springs.

## 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 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.

At its July meeting, BEVM welcomed new member Alberto Aldrete, DVM; Dr. Aldrete lives in Davis and practices in Sacramento.

## MAJOR PROJECTS

**Update on PES Conflict of Interest.** For the past year, BEVM has been addressing a potential conflict of interest in its contract with Professional Examination Services (PES), which develops and prepares the National Board Examination and the Clinical Competency Test. The conflict focuses on a clause in the contract which authorizes the American Veterinary Medical Association (AVMA), a national trade association, to set the pass point for the examinations. According to the Department of Consumer Affairs' (DCA) Central Testing Unit, 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. Although PES offered to have AVMA's National Board Examination Committee (NBEC)—not AVMA itself—uses psychometric procedures to set a criterion-referenced passing score for the exams, this proposal did not satisfy BEVM. Accordingly, the Board directed Executive Officer Gary Hill to strike the objectionable language from the contract and return the signed document to PES; the Board also agreed to work with PES and AVMA to eliminate this conflict in future years. [12:2&3 CRLR 113]

In a September 16 letter to California Veterinary Medical Association (CVMA) Executive Officer Richard Schumacher, BEVM President Nancy Collins stated that BEVM supports a transfer of authority for examination preparation and the examination contract from the AVMA to the American Association of Veterinary State Boards (AAVSB); according to Collins, this transfer of authority would remove any perception of a conflict of interest between the professional association and the regulatory process. Collins noted that the AAVSB Executive Board presented a resolution to the AVMA Executive Board in January 1993 asking it to form a committee to address the conflict of interest issue; the committee met in July and is tentatively scheduled to meet again on November 11 to formulate a recommendation to be presented to the AVMA Executive Board. Collins also noted that the conflict of interest issue was discussed at AAVSB's July meeting and that 33 attending states unanimously passed a motion to strengthen the AAVSB by establishing new or modifying existing articles of incorporation and bylaws to establish a nonprofit status whereby the corporation can accommodate and direct policies regarding regulatory issues such as the national licensing exams. In conclusion, Collins sought CVMA's support for the proposed transfer of authority.



## REGULATORY AGENCY ACTION

In a September 24 memo to Collins, DCA legal counsel Greg Gorges presented a detailed analysis of the operating guidelines of the NBEC, an official body within AVMA. According to Gorges, the AVMA contracts with PES for the preparation of two examinations—the National Board Examination and the Clinical Competency Test—used nationwide by the state boards that license veterinarians; both of these examinations are required for licensure as a veterinarian in California. Gorges explained that the states in turn contract with PES for the right to use the examinations, which are administered at the same time throughout the country. According to Gorges, “[i]t is not clear from the guidelines whether the NBEC or PES is responsible for the actual drafting of the test items. [NBEC’s] Operating Guidelines authorize the ‘development, evaluation, and maintenance of the pool of examination items and problems’ with a contractor.”

Gorges noted that attorneys general from several states and some state boards have expressed similar concerns regarding the ownership and development of the national examination by an organization that is part of AVMA, a national professional association. According to Gorges, “[w]hen one compares the goals of the AVMA to promote excellence and to enhance the economic viability of its profession, with the purpose for the exercise of the states’ police powers [in licensing veterinarians], the difference in their objectives is quite perceptible, if not glaring.” Gorges commented that by controlling the licensure examinations, a professional organization can, in effect, co-exist as a gatekeeper with the state boards in controlling entry into the profession.

According to Gorges, in response to these concerns, AVMA and NBEC revised NBEC’s operating guidelines “in an attempt to foster the independence of the latter.” In reviewing the changes, Gorges commented that the new guidelines “essentially delete most references to the AVMA” and opined that, “[w]hile the revisions give the impression that the AVMA and its Executive Board are minimally involved in the activities of the NBEC, the revisions appear more cosmetic than substantial. Neither the revised guidelines nor any other document states or even suggests that the NBEC will change its status as an entity within the AVMA.” Gorges also noted that “[w]hile the guidelines state that decisions concerning the national examinations are not subject to review by the AVMA, the fact remains that the entity that prepares the national examinations continues to be a part of a trade association whose mission ‘is to advance the science and art of veterinary medicine’ rather [than] to

protect the public health, safety, and welfare by insuring that applicants who wish to practice veterinary medicine possess minimal competence.” Gorges concluded that “the revision of the NBEC Operating Guidelines do not address the fundamental principle or rectify the flaw that an essential requirement for entry to practice is controlled by a trade association.”

BEVM is expected to continue its discussion of this matter at future meetings.

**Alternative Veterinary Practice Update.** At BEVM’s July 7–8 meeting, its Premise Program Legislative Committee reported on its review of alternative veterinary practices such as house calls, mobile veterinary facilities, for-profit vaccination clinics, offsite vaccination clinics, and public vaccination clinics; the Committee is currently focusing on developing language for premise permits, minimum standards of practice, and scope of practice limits for mobile practices. [13:2&3 CRLR 113] BEVM member Michael Clark, DVM, reported that the Committee immediately agreed that there should be no distinction in the minimum standards of practice applicable to public and private mobile vaccination clinics. The Committee also acknowledged that BEVM must have access to mobile vaccination units for inspection purposes, and agreed that the Board should be provided with a list of vaccination clinic locations at regular intervals in order to perform random inspections while the clinics are operating. The Committee will continue to develop a definition of the veterinarian/client/patient relationship and a definition of the term “examination.”

**BEVM Continues to Develop Practice Act Definition.** At its July 7–8 and September 10 meetings, BEVM continued to discuss its plan to seek legislative changes to clarify the scope of veterinary practice for the purpose of identifying the unlicensed practice of veterinary medicine. [13:2&3 CRLR 113] At BEVM’s September meeting, the Practice Act Legislative Committee recommended that the term “diagnosis” be defined to mean the act or process of identifying or determining the health status of an animal through examination and the opinion derived from such an examination; the term “animal” be defined to mean any member of the animal kingdom other than man, including fowl, birds, fish, and reptiles, wild or domestic, living or dead; and the term “poultry” be defined to mean flocks of avian species maintained for food production, including but not limited to chickens, turkeys, ostriches, pet birds, and exotic fowl.

Also, the Committee recommended that the term “veterinary practice” be defined to include the following:

—the diagnosis, treatment, correction, change, relief, or prevention of animal disease, deformity, defect, injury or other physical or mental condition, including the prescribing or administration of any prescription drug, medicine, biologic, apparatus, application, anesthetic or other therapeutic or diagnostic substance or technique on any animal including but not limited to acupuncture, dentistry, animal psychology, animal chiropractic, theriogenology, surgery (including cosmetic surgery), and any manual, mechanical, biological, or chemical procedure for testing pregnancy or for correcting sterility or infertility or to tender service or recommendation with regard to any of the above;

—the collection of blood or other samples for the purpose of diagnosing disease or other conditions; however, this would not apply to unlicensed personnel employed by the U.S. Department of Agriculture or the California Department of Food and Agriculture who are collecting samples for brucellosis eradication programs or external parasite control programs pursuant to specified law; and

—the removal of any embryo from a food or companion animal for the purposes of transplanting such embryo into another female animal or for purposes of cryo-preserving such embryo or to implant such embryo into a food or companion animal provided, however, it shall not be considered the practice of veterinary medicine for a person or his/her employee to remove an embryo from such person’s own food or companion animal for purposes of transplantation or cryo-preserving such embryo into such person’s own food or companion animal provided ownership of the food or companion animal shall not be transferred or employment of such person shall not be changed for purposes of circumventing this law.

BEVM is also considering legislative changes which would authorize the Board to issue a limited license to a member of the faculty or staff of a Board-approved veterinary program at an institution of higher education, under special circumstances. The Board will continue to discuss this draft legislation at future meetings.

**BEVM Amends Complaint Disclosure Policy.** At the Board’s July meeting, Executive Officer Gary Hill explained BEVM’s complaint disclosure policy, noting that the Board does not disclose any complaint information to an inquiring consumer until the Attorney General’s Office files a formal accusation against a licensee; Hill noted that although many DCA boards have the same policy, some boards have chosen to be more responsive to consumer needs and release complaint



information as soon as the board's investigation is complete and the case is forwarded to the Attorney General for preparation of the accusation. [13:2&3 CRLR 79-81, 92, 94] Hill noted that—under such a policy—complaint information would be available to inquiring consumers anywhere from two to twelve months sooner than under BEVM's current policy, depending on the individual case. Following discussion, BEVM unanimously agreed to change its policy to authorize disclosure of complaint information to inquiring consumers upon its completion of a formal investigation and transfer of the case to the Attorney General.

**BEVM Clarifies Citation and Fine Disclosure Policy.** Also at BEVM's July meeting, Gary Hill asked the Board to clarify if and when information regarding citation and fine actions are to be released to the public. Hill noted that, due to conflicting legislative language and interpretation, there has been some confusion and misunderstanding about whether this information should be disclosed to the public. DCA legal counsel Greg Gorges noted that DCA's position is that once a fine is paid, the action is public information; it is a formal enforcement action and is almost analogous to an accusation so the outcome should be public information. Following discussion, BEVM unanimously decided that information regarding citation and fine actions is public information to be disclosed upon request once the fine is paid. BEVM will disclose this information to consumers upon request, but will not publish a list of persons who have received a citation and fine.

**BEVM Discusses Status of State Board Examination.** At its July meeting, BEVM discussed the suggestions of DCA's Central Testing Unit (CTU) regarding the California State Board Examination and procedures for test item preparation. Currently, 52% of the Board's current examination questions are on small animals; 33% are on food animals; 15% are on equine-related issues. Staff noted that BEVM's occupational analysis study is almost complete and the results of the study might necessitate a change in the exam blueprint based on actual areas of practice in California today. [11:3 CRLR 112] BEVM decided the exam format will remain the same for the December 1993 examination; the April 1994 exam may be changed depending on the results of the occupational analysis.

CTU noted other problems with the April 1993 exam: (1) the introduction of a high percentage of new test questions; (2) "a significant number of...test items [which] appeared to be testing rather specialized knowledge, i.e., knowledge of a

small part of a subspecialty within veterinary medicine"; and (3) the use of at least two exam raters "whose demands on the examinees were clearly excessive" and whose scores had to be excluded. CTU has had to delete items and rescore the Board's exam in the past. [12:4 CRLR 131] The Board agreed to explore these issues at a future date.

At BEVM's September meeting, the Board unanimously decided to include approximately ten jurisprudence questions on its examination; all law and jurisprudence questions were removed from the exam in 1979. At this writing, BEVM is expected to discuss this issue in more detail at its November meeting.

**Inspection Program Update.** BEVM began an experimental project this year in Los Angeles, San Bernardino, and Ventura counties which cross-checked registered veterinary hospitals with advertisements in telephone directories to see how many hospitals are not registered; if BEVM finds an excessive number of unregistered hospitals in these counties, it will expand its program to other counties. Of the total number of advertised hospitals in the greater Los Angeles area, 77 were licensed and 9 were unlicensed; in Ventura County, 43 hospitals advertised, of which 36 were licensed; and in San Bernardino County, 35 of the 48 advertised hospitals were licensed. This leaves a total number of 29 unlicensed but advertising hospitals in the Los Angeles, Ventura, and San Bernardino counties. The Board is expected to discuss the issue of requiring all registrants to post their license numbers in all advertisements at its November meeting.

## ■ LEGISLATION

**SB 842 (Presley),** as amended July 14, permits BEVM to issue interim orders of suspension and other license restrictions, as specified, against its licensees. This bill was signed by the Governor on October 5 (Chapter 840, Statutes of 1993).

**AB 2046 (Margolin).** Existing law prohibits any person licensed by BEVM to charge, bill, or otherwise solicit payment from any patient, client, or customer, for any clinical laboratory service if the service was not actually rendered by that person or under his/her direct supervision, unless the patient, client, or customer is apprised at the first, and any subsequent, solicitation for payment of the name, address, and charges of the clinical laboratory performing the service. As amended August 26, this bill requires, commencing July 1, 1994, a clinical laboratory to provide, upon request, to each of its referring providers, as defined, a schedule of fees for prescribed services. The bill also re-

quires, commencing July 1, 1994, a clinical laboratory that provides a list of laboratory services to a referring provider or to a potential referring provider to include a schedule of fees for the laboratory services listed. This bill was signed by the Governor on September 28 (Chapter 593, Statutes of 1993).

**AB 1807 (Bronshvag),** as amended September 8, would change the name of animal health technicians to "registered veterinary technicians," rename AHTEC as the "Registered Veterinary Technician Examining Committee," and revise its composition. AB 1807 would also delete the requirement that no two members of BEVM be from the same congressional district. [A. Inactive File]

**AB 302 (Horcher),** as introduced February 3, would require an owner, as defined, of a cat over the age of six months to have the cat sterilized by a veterinarian if the cat is permitted outdoors without supervision. The bill would prohibit this provision from preventing a city, county, or city and county from enforcing or enacting an ordinance relating to cat sterilization if the ordinance is equal to or more stringent than this provision. [A. LGov]

**AB 1209 (Tucker).** Existing regulations adopted by the California Horse Racing Board (CHRB) provide for an official veterinarian whose duty it is to supervise practicing licensed veterinarians at horserace meetings, and to enforce CHRB's rules and regulations relating to veterinary practices. As introduced March 2, this bill would require 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. [S. Inactive File]

## ■ RECENT MEETINGS

At its September meeting, the Board responded to a letter from the Los Angeles Zoo concerning a controversy over the qualifications a person must have to legally work in a zoological facility owned by the City of Los Angeles if he/she is performing the duties of a veterinarian or a certified animal health technician. The Board decided to invite LA Zoo Health Center members to its November meeting for further discussion of this issue.

Also at its September meeting, BEVM reviewed an opinion from DCA legal counsel Greg Gorges regarding feral cats and wild animals. [13:2&3 CRLR 114] According to Gorges, because feral animals



are considered "wild" and are not "owned," there is no licensure exemption for those who treat feral cats and anyone performing veterinary medicine on feral animals must meet the minimum standards of practice.

Also at BEVM's September meeting, staff noted that AAVSB recently informed its members of its decision to establish a National Registry of Disciplined Veterinarians, to be operated by PES' Interstate Reporting Service, whereby a database of all licensed veterinarians in the country would be established, along with a database of all official disciplinary action taken. [13:2&3 CRLR 113]

## ■ FUTURE MEETINGS

January 8-9 in Sacramento.

## BOARD OF VOCATIONAL NURSE AND PSYCHIATRIC TECHNICIAN EXAMINERS

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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 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). The Board currently regulates 64,724 LVNs with active or inactive licenses, and 30,992 LVNs with delinquent active licenses, for a total LVN population of 95,716. The Board's psych tech population includes 13,278 with active or inactive licenses and 5,964 with delinquent active licenses, for a total of 19,242 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.

In May, Executive Officer Billie Haynes announced her retirement, effective January 1994; at this writing, the Board has not selected Haynes' replacement. At the Board's September meeting, President Charles L. Bennett introduced three new Board members: LVN Karen Feller, psych tech Holly Donn, and RN Cecelia Estrada.

## ■ MAJOR PROJECTS

**Board Enforcement Statistics.** At its September 17 meeting, the Board discussed recent changes to its Enforcement Unit and fiscal year 1992-93 enforcement statistics. In February, the Board dedicated an administrative manager to the Enforcement Unit, which now consists of two enforcement analysts, two support staff, and the enforcement manager. The function of the Enforcement Unit is to review all complaints regarding licensees; staff must determine whether the Board has jurisdiction and the complaint has merit. If the complaint has merit, the Enforcement Unit refers the case to the Department of Consumer Affairs' Division of Investigation (DOI); based upon DOI's report and recommendations, the Board may refer the case to the Attorney General's (AG) Office for disciplinary proceedings and/or to law enforcement for criminal investigation and action.

In fiscal year 1992-93, the Board received 88 complaints against psych techs, referred 77 to DOI and 85 to the AG, revoked 18 psych tech licenses, and placed 15 psych tech licensees on probation. Also in fiscal year 1992-93, the Board received 237 complaints against LVNs, referred 213 to DOI and 146 to the AG, revoked 37 LVN licenses, and placed 44 LVNs on probation.

**Computer Adaptive Testing.** In July, the Board participated in a nationwide experimental testing program, known as the BETA test, to compare computer adaptive testing (CAT) to computer-administered and "paper and pencil" tests for LVNs. [13:2&3 CRLR 115] The Board recruited California test candidates and the Educational Testing Service, which sponsored the test program, selected 1,050 candidates; 193 of those selected were not eligible for licensure or failed to arrive at the California test center. Of the 413 candidates who took the CAT, 178 passed (43%); of the 89 who took the computer-administered exam, 41 passed (46%); and of the 355 who took the "paper and pencil" test, 146 passed (41%).

At the National Council of State Boards of Nursing (NCSBN) Delegate

Assembly, held in Orlando, Florida in August, the Assembly approved the Readiness Criteria for CAT, which must be met before CAT can be implemented. If the NCSBN, which administers LVN and RN exams nationwide, adopts CAT this December, the new testing will take effect on April 1, 1994. If implemented, the Board must also adopt a new retesting policy so that retest candidates are not exposed to the same exam questions within a three-month period. According to Executive Officer Billie Haynes, CAT provides greater flexibility for administration and grading, and is also more reflective of actual knowledge and skills. A candidate must pass a minimum level to receive his/her license; however, the test comprises several skill levels and automatically adapts to the candidate's level of performance.

**Board Participates at CLEAR Conference.** On September 6-11, six Board members, Executive Officer Billie Haynes, and eight members of the Board's administrative staff attended the thirteenth annual meeting of the Council on Licensure, Enforcement and Regulation (CLEAR) in San Diego; the Council provides educational and training assistance to administrative regulatory agencies and boards, and also acts as a clearinghouse for enforcement activities. Among other things, the Board's Enforcement Analysts attended the conference's National Certified Investigator/Inspector Training program. Executive Officer Billie Haynes chaired CLEAR's Management and Administration Subcommittee, and gave a presentation to define the role and function of CLEAR's Program Committee. Other topics discussed at the conference included the impact of the Americans with Disabilities Act, the North American Free Trade Agreement, national health care reform, global competition, test development, case studies in consumer protection, and reinventing government.

## ■ LEGISLATION

**SB 842 (Presley)**, as amended July 14, permits the Board to issue interim orders of suspension and other license restrictions against its licensees. This bill was signed by the Governor on October 5 (Chapter 840, Statutes of 1993).

**SB 574 (Boatwright)**, as amended September 2, revises certain revenue and fee provisions relative to psych techs. This bill was signed by the Governor on October 11 (Chapter 1264, Statutes of 1993).

**SB 993 (Kelley)**, as introduced March 5, would require all legislation becoming effective after January 1, 1995, which either provides for the creation of new categories of health professionals who were not required to be licensed before January