



## REGULATORY AGENCY ACTION

III-1-91 set forth verbatim the language of Specific Notice III-5-83, but also included an "Inspection Policy" directing Branch 3 licensees to either inspect roof coverings believed to be infected by wood-destroying organisms or nondecay fungi or state that the roof covering was not inspected and recommend inspection by a Branch 4 registered company. (See CRLR Vol. 11, No. 3 (Summer 1991) pp. 108-09 for background information.)

### FUTURE MEETINGS:

May 5 in Sacramento.  
August 7 in San Diego.

### TAX PREPARER PROGRAM

*Administrator: Jacqueline Bradford*  
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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).

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 initial registration fee is \$50 and the renewal fee is \$40.

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.

An Administrator, appointed by the Governor and confirmed by the Senate, enforces the provisions of the Tax Preparer Act. Under the Act, the Administrator is supposed to be assisted by a nine-member State Tax Preparer Advisory Committee which consists of three registrants, three persons exempt

from registration, and three public members. All members are appointed to four-year terms. However, the last committee members' terms expired on December 31, 1988; no members were appointed to replace them. The Department of Consumer Affairs recently announced the dissolution of several advisory committees in response to budgetary concerns; however, the State Tax Preparer Advisory Committee is not among them. Because the Committee currently exists in statute only, it costs the state no money. Many believe that it would cost the state more to dissolve the Committee than to maintain the status quo.

### RECENT MEETINGS:

The Advisory Committee has not met since December 13, 1988.

### FUTURE MEETINGS:

To be announced.

### 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 re-

view, 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's Complaint Review System.*

Last summer, the Board agreed to implement a new complaint review system for a six-month trial period. Under the new system, Board-hired consultants, in conjunction with a committee of Sacramento veterinarians, act as "gatekeepers" and review 95% of all complaints received; the Board's regional complaint review committees are used only in extreme cases. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 115; Vol. 11, No. 3 (Summer 1991) p. 111; and Vol. 11, No. 2 (Spring 1991) pp. 107-08 for background information.) At its October 3-4 meeting, the Board announced its award of new consulting contracts to veterinarians Tom Condon and Steve Wagner. The Board was expected to decide whether to permanently adopt the new complaint review system at its January meeting.

At its November meeting, the Board reviewed its present complaint disclosure policy, which prohibits Board staff from disclosing information about complaints filed against veterinarians to an inquiring member of the public until a formal accusation is filed by the Attorney General. The Board discussed the possibility of amending its policy to allow public disclosure of complaint information prior to the filing of an accusation; however, many members expressed a desire to retain the present policy to prevent disclosure of information regarding complaints later found to be meritless. The Board was scheduled to continue discussion of its complaint disclosure policy at its January meeting.

#### *Proposed Legislation and Rulemaking to Increase Fees.*

At its July and October meetings, the Board discussed its need to raise the statutory ceiling of BEVM's licensing fees. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 115 for background information.) In light of a budget report prepared by budget analyst Phil Coyle, the Board agreed at its November meeting to seek a legislative amendment to raise BEVM's licensing and examination fee ceilings, and regulatory amendments to raise premise and practical examination fees. The Board unanimously moved to pursue amendments to section 2070, Title 16 of the CCR, to increase premise permit fees from \$30 to \$50 and practical examina-



tion fees from \$100 to \$180; BEVM also agreed to ask Senator Ken Maddy to author legislation amending Business and Professions Code sections 4905 and 4842.5 to raise licensing and examination fees as follows:

- veterinarian licensing and biennial renewal fees from \$150 to \$250;
- AHT licensing and biennial renewal fees from \$50 to \$100;
- AHT examination fees from \$40 to \$100; and
- delinquent fees from \$10 to \$25.

BEVM expected to publish notice of the proposed regulatory amendments in late January and conduct a public hearing at the Board's March meeting.

**Scope of Practice of "Unregistered Assistants."** For several years, the Board and the veterinarian professions have locked horns with animal groomers over the extent to which nonveterinarians may clean animals' teeth. In 1988, BEVM adopted a rule defining the term "dental operation" to include animal teeth cleaning with motorized instruments. An animal "dental operation" may be performed only by a veterinarian or a vet-supervised AHT; thus, groomers are prevented from providing this service. Two subsequent legislative attempts to supersede the Board's rule failed; AB 3482 (Bronzan) was vetoed by then-Governor Deukmejian in July 1990, and AB 343 (Bronzan) was defeated in a cloud of controversy last April. (See CCLR Vol. 11, No. 4 (Fall 1991) pp. 115-16; Vol. 11, No. 3 (Summer 1991) pp. 110-11; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 126 for extensive background information on this issue.)

As an offshoot of this controversy, the Board has engaged in general discussion of the tasks which may be performed by "unregistered assistants" (unlicensed personnel) under the Veterinary Practice Act. At its October meeting, the Board asked Deputy Attorney General Diana Woodward Hagle to provide legal advice on this issue, a draft of which was discussed at the Board's November meeting. Among other things, the opinion concluded the following:

-An unregistered assistant may perform in the context of an animal hospital setting; any unregistered assistant must be an employee of the veterinarian (as opposed to an independent contractor). Unregistered assistants must work under the direct or indirect supervision of a licensed vet or AHT, and may perform all tasks authorized by the Veterinary Practice Act and the regulations implementing it.

-An unregistered assistant may not perform auxiliary animal health care

tasks in a "range setting" (any setting other than an animal hospital setting) and is limited to performing auxiliary animal health care tasks in an animal hospital setting.

-The definition of "animal hospital setting" refers to all veterinary premises which are required by Business and Professions Code section 4853 to be registered with the Board.

-An unregistered assistant may perform auxiliary animal health care tasks on registered premises from a van which is not itself registered, if the van is operated from a building or facility which is the licensee manager's principal place of business and the building is registered with the Board, and such registration identifies and declares the use of such a mobile unit or vehicle.

-The Veterinary Practice Act does not prohibit an unregistered assistant from billing a client directly for auxiliary animal health care tasks.

-An unregistered assistant may provide training in auxiliary animal health care tasks, provided that the training concerns tasks that the unregistered assistant is allowed to practice under the Veterinary Practice Act and the appropriate level of supervision is exercised by the veterinarian who employs the unregistered assistant.

-The Veterinary Practice Act does not prohibit veterinarians in private practice from contracting with or making other arrangements with unlicensed persons (such as pet groomers) to perform services, so long as those services are not acts which constitute the practice of veterinary medicine or which may only be performed by AHTs or unregistered assistants. The Veterinary Practice Act does not prohibit a pet groomer, operating his/her own grooming business, from being an independent contractor.

-With regard to veterinary dental services, pet groomers operating as independent contractors in their own businesses may only "utilize cotton swabs, gauze, dental floss, dentifrice, toothbrushes or similar items to clean an animal's teeth." Unlike unregistered assistants, such independent contractors are not limited to working in an animal hospital setting, and need no veterinarian supervision.

**Proposed Rulemaking to Amend Recordkeeping Procedures.** Section 2031, Title 16 of the CCR, currently requires only those veterinarians and animal hospitals with animals in their custody to adhere to certain detailed recordkeeping procedures. In August, the Board's Inspection Committee recommended that the Board amend section 2031 to require all veterinarians

to adhere to these recordkeeping procedures; at its October meeting, the Board moved to pursue the suggested amendments. BEVM was expected to publish notice of the proposed regulatory amendments in late January and conduct a public hearing at its March meeting.

### **Alcohol/Drug Diversion Program.**

At its October meeting, the Board discussed the inadequacy of BEVM's Alcohol/Drug Diversion Program run by Occupational Health Services (OHS). Only twelve veterinarians are currently enrolled in the program. Both BEVM and the California Veterinary Medical Association believe this number fails to reflect the extent of chemical abuse in the veterinary profession in California. The Board directed BEVM Administrative Assistant Susan Geranen to prepare a critical evaluation of OHS' program and present her findings at the Board's March meeting.

### **LEGISLATION:**

**AB 1660 (Speier)**, as amended August 29, would require the presence of a licensed veterinarian during any rodeo sanctioned by the Professional Rodeo Cowboy Association or the International Professional Rodeo Association; require that a veterinarian be on call at all other rodeos and available to respond as expeditiously as possible; authorize the Director of the Department of Food and Agriculture to waive the requirement that a veterinarian be present at the rodeo, under specified conditions; and require the immediate treatment of animals injured during the course of, or as a result of, any rodeo. This two-year bill is pending in the Senate Appropriations Committee.

**SB 664 (Calderon)** would prohibit veterinarians, among others, from charging, billing, or otherwise soliciting payment from any patient, client, customer, or third-party payor for any clinical laboratory test or service if the test or service was not actually rendered by that person or under his/her direct supervision, except as specified. This two-year bill is pending in the Senate Business and Professions Committee.

**SB 663 (Maddy)**, as amended May 2, would, among other things, require licensed veterinarians to complete a minimum of 50 hours of continuing education (CE) approved by the Board during each two-year licensure period as a condition of license renewal, and require the Board to publish a list of professional associations, organizations, educational institutions, and other providers which it approves to provide CE to veterinarians for credit under this bill.



## REGULATORY AGENCY ACTION

(See CRLR Vol. 11, No. 1 (Winter 1991) pp. 89-90; Vol. 10, No. 4 (Fall 1990) p. 108; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 127 for background information on this issue.) This two-year bill is pending in the Assembly Agriculture Committee. The Board has postponed work on this bill pending a Department-wide study of mandatory CE currently being conducted by DCA.

### LITIGATION:

In *Hall v. Kelley*, No. G009476 (Fourth District Court of Appeal), Dr. Linda Hall, who suffers from dyslexia, has appealed the Orange County Superior Court's dismissal of her lawsuit against BEVM for its alleged failure to provide her with an adequate setting to take the practical exam. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 113; Vol. 11, No. 2 (Spring 1991) p. 109; and Vol. 11, No. 1 (Winter 1991) p. 91 for extensive background information.) Dr. Hall seeks a ruling that she adequately alleged causes of action against BEVM for violation of her statutory rights under 29 U.S.C. section 794, Government Code sections 11135 and 12946, and her rights to due process and equal protection under the U.S. Constitution. Alternately, Dr. Hall seeks leave to re-amend her amended complaint to correct any deficiencies the court may find. The Court of Appeal heard oral argument on September 19; no decision has yet been issued.

### RECENT MEETINGS:

At its October meeting, BEVM discussed complaints regarding misleading telephone directory advertisements for veterinary services. Section 2030.5, Title 16 of the CCR, requires advertisements for emergency veterinary hospitals to list hospital hours and the availability of a veterinarian to provide emergency service. The Board examined several advertisements and concluded that, although they technically comply with section 2030.5, they are misleading. BEVM decided to inform telephone directory publishers of its advertising requirements, but to take no further action until actual violations of section 2030.5 occur.

At its November meeting, the Board discussed the parameters of its re-examination policy. Department of Consumer Affairs legal counsel Greg Gorges advised the Board that, pursuant to its penalty guidelines, the Board may re-examine a veterinarian whose license was revoked for negligence or incompetence in general areas of expertise, rather than the veterinarian's specific area of expertise, and may require the

veterinarian to take the Clinical Proficiency Exam (CPE) as a condition of reinstatement. Gorges further advised that the Board may require a graduate of a non-approved veterinary school to pass the CPE in order to qualify for the California Reciprocity Examination.

### FUTURE MEETINGS:

May 7-8 in Sacramento.  
July 9-10 in Sacramento.  
September 10-11 in Sacramento.  
November 12-13 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 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 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 57,677 LVNs with active licenses, 31,836 LVNs with delinquent active licenses, and 12,163 with inactive licenses, for a total LVN population of 101,616. The Board's psych tech population includes 13,519 with active licenses and 5,014 with delinquent active licenses, for a total of 18,533 psych tech practitioners.

### MAJOR PROJECTS:

*Regulatory Action on Accreditation Procedures.* At its November 15 meeting, the Board took action on amendments to several sections of Division 25, Title 16 of the CCR, which concern the accreditation of LVN and psych tech

education and training programs. Originally the subject of public hearings in March, some of these amendments were adopted at a hearing in September. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 117 and Vol. 11, No. 2 (Spring 1991) pp. 110-11 for background information.) The Board adopted or reconfirmed adoption of the following regulatory changes on November 15:

-amendments to sections 2526 and 2581, to specify the written documentation which must be submitted to the Board by a facility's director in connection with the application for accreditation;

-amendments to sections 2527 and 2582, to state that any material misrepresentation of fact in any report required by the Board is cause for revocation of accreditation;

-amendments to sections 2529 and 2584, to specify the requirements for enumerated faculty positions for LVN and psych tech programs; and

-amendments to sections 2530 and 2585, to require programs to have sufficient faculty, clinical facilities, library, staff, support services, physical space, and equipment to achieve the program's objectives. The revision also specifies that only one teacher assistant may be assigned to each instructor, each instructor must have a daily lesson plan correlating theory and practice, and each school must have on file proof that each student has completed education through the twelfth grade or the equivalent.

These amendments were submitted to DCA for approval on December 17. The Board anticipated forwarding them to the Office of Administrative Law (OAL) for approval by mid-January.

*Amendments to Curriculum Regulations.* After deferring action at its March and September meetings, the Board amended regulatory sections 2533 and 2587, which specify required curriculum content for LVN and psych tech programs, at its November meeting. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 117; Vol. 11, No. 2 (Spring 1991) p. 110; and Vol. 11, No. 1 (Winter 1991) p. 92 for background information.) The amendments require content on communicable diseases (including AIDS) and specify that all curricular changes which alter the program's philosophy, conceptual framework, content, or objectives must be approved in advance by the Board. These amendments await DCA and OAL approval.

*Intravenous Therapy for LVNs.* At its November 15 meeting, the Board amended regulatory section 2542 and reconfirmed its adoption of sections 2542.1 and 2542.3, which expand the