



12, the Board held a public hearing to amend section 1996(a) to change the effective date to September 1, 1991. The purpose of this amendment is economic feasibility: Companies will be able to use up existing supplies of old forms and have sufficient time to order or print the new forms. If old forms are used up before September 1, companies may utilize the new forms. On December 28, OAL approved the amendment.

LEGISLATION:

Anticipated Legislation. The Board is considering proposed legislation which would classify fumigants as either toxic fumigants or simple asphyxiants, each having separate regulations for safety precautions, licensing, supervision, and other pertinent requirements. The statutory amendment under consideration would identify liquid nitrogen as a simple asphyxiant, thus making liquid nitrogen subject to regulation by the Board. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 106; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 122-24; and Vol. 9, No. 4 (Fall 1989) p. 80 for extensive background information on this issue.)

RECENT MEETINGS:

At SPCB's October 11-12 meeting, the Board elected its officers for 1991. William Jones was elected President, and Caryl Iseman was elected Vice-President.

FUTURE MEETINGS:

April 5 in Pasadena.

TAX PREPARER PROGRAM

Administrator: Don Procida
(916) 324-4977

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. He/she is assisted by a nine-member State 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.

RECENT MEETINGS:

The Advisory Board 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). Effective May 1990, the Board now evaluates applicants for veterinary licenses through three written examinations: the National Board Examination, the Clinical Competency Test, and the California Practical 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 hear-

ing, a facility is deemed to have fallen short of these standards.

The Board is comprised of six members, including two public members. The Animal Health Technician Examining Committee consists of two licensed veterinarians, three AHTs, and two public members.

On December 6, Board staff announced the appointment of Nancy Lee Collins, DVM, to the BEVM. Dr. Collins, who is an equine practitioner, replaces Dr. Alan Edmondson on the Board.

MAJOR PROJECTS:

AHT Exam Grading Change Update. On November 28, the Office of Administrative Law approved the Board's amendment to section 2062, Division 20, Title 16 of the CCR. This amendment, adopted by BEVM at its April 1990 meeting, changes the current fixed percentage method of scoring the California AHT Examination to a criterion reference method. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 109 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 126 for background information.)

Board Performance Survey. At its October 19 meeting, BEVM staff presented the results of a survey taken among veterinarians to assess the responsiveness of BEVM and its staff. Executive Officer Gary Hill noted a substantial increase in the number of 1990 survey respondents who had contact with the Board and staff compared to respondents to a similar 1985 survey. In comparison to the 1985 survey, the 1990 survey results in general rated the Board higher on courtesy, about the same on accuracy, but lower on timeliness. According to the survey, 87% of the respondents rated the Board as fair to good in keeping them informed on changes in relevant laws and regulations. Also, 95% of the 1990 respondents indicated that continuing education would be useful. Mr. Hill noted a noticeable increase in support for continuing education among veterinarians surveyed since 1981.

LEGISLATION:

Proposed Legislation. BEVM may attempt to implement a required continuing education (CE) program for veterinarians through legislation. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 108; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 127; and Vol. 10, No. 1 (Winter 1990) p. 98 for background information.) Proposed new section 4906 of the Business and Professions Code would mandate CE for all licensed veterinarians. Specifically, this section would require all



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veterinarians to certify to the Board, at the time of license renewal or upon the Board's request, that they have completed a minimum of 50 hours of approved CE during the preceding two-year license renewal period. Proposed section 4907 would authorize the Board to approve sources of CE by publishing a list of approved CE providers, including professional associations, organizations, and educational institutions. Because the Board noted at its October 19 meeting that veterinarians, in the course of performing their health care duties, obtain valuable education from specialists in various areas of veterinary medicine, and because specialists were not included in section 4907's list of possible approved CE providers, the Board amended the draft section to include "other providers."

The proposed legislation would also grant the Board authority to specify other forms of acceptable CE, such as audio or video presentations, journal reading, examination preparation and review, and textbook writing and review for publication. Partly because of the difficulty in monitoring participation in these "other forms" of CE and partly because the Board considers keeping current through journal articles, in particular, an understood professional obligation, the Board limited credit for "other forms" of CE to 5% (2.5 hours over two years) of the CE requirement.

At the Board's October 19 meeting, several representatives from the California Veterinary Medical Association expressed concern that the CE requirements may prove an expensive hardship on veterinarians, because the sources of CE can be costly. The Board responded that the proposed legislation is broad enough to allow the Board some latitude in approving CE providers; for instance, local veterinarian associations would be considered for approval as CE providers. The Board stated that verified attendance at a local veterinary association meeting at which veterinary medicine is discussed would be classified as CE, and concluded that veterinarians will have inexpensive continuing education options.

At BEVM's October 19 and November 30 meetings, Board members and CVMA representatives expressed concern that the proposed legislation is too complex. CVMA recommended deleting provisions which address instructor qualifications and require providers to verify a licensee's completion of courses or instructional sessions. CVMA also recommended that the credit for "other forms" of CE be increased from 2.5 hours to 15 hours of the 50-hour CE

requirement. Department of Consumer Affairs (DCA) legal counsel Greg Gorges responded that the proposed legislation is as minimal as possible for a CE program outline, and opined that if the legislation is simplified any further, the omitted detail would have to be added through rulemaking, thus delaying implementation of the program. Additionally, Board member Jean Guyer stated that verification provisions are necessary if the proposed legislation is to pass DCA scrutiny, and do not represent an undue burden on CE providers.

The Board agreed that the legislation should be drafted in a manner sufficient to implement a CE program, while avoiding the need for rulemaking. However, the Board voted to resubmit the legislation to its CE Committee to determine whether the language could be further simplified. The Board was scheduled to discuss this legislation again at its January meeting.

The Board may also seek amendments to section 4848 of the Business and Professions Code, regarding exam waiver and reciprocity. The Board discussed amendments to section 4848(a)(2), which would expressly identify the three written exams, passage of which is required by the Board for veterinary licensure in California (the National Board Examination, the Clinical Competency Test, and the California State Board Examination).

Additionally, the Board considered amending existing section 4848(b)(1) to provide that an applicant shall not be licensed under section 4848(b) if he/she has failed within the last five years and has not subsequently passed the California written practical examination administered by the Board. According to the Board, this amendment would prevent someone who has failed California's exam and practiced in another state for a year or two from applying for reciprocity licensure. On the other hand, the Board does not want to exclude veterinarians with years of practice in another state from reciprocity consideration.

The Board also considered amending section 4848(b)(3), to provide that graduates of veterinary schools not recognized by the Board must possess a certificate issued by the Educational Commission for Foreign Veterinary Graduates and pass the clinical proficiency examination (not to be confused with the California written practical exam) to qualify for reciprocity licensure.

The Board is considering amendments to section 4902 of the Business and Professions Code, which currently sets forth the conditions under which the

Board may approve the license renewal of a veterinarian who fails to renew his/her license within five years after its expiration. The proposed amendment provides that if the applicant has been practicing in this state without a valid license in effect, he/she shall pay, in addition to any other fees required by section 4902, all accrued renewal fees which would have been paid had the license remained in effect.

The Board may also seek to amend section 4905 of the Business and Professions Code, which authorizes the Board to charge fees for various services. The proposed amendment would eliminate the statutory ceiling on the application fee amount, and authorize the Board to set the application fee by resolution (instead of through rulemaking); however, the fee shall not exceed the actual costs of processing the application. The Board is also considering the addition of new section 4905(b), which would authorize the Board to set by resolution the examination fee, which is not to exceed the actual costs of administering the national written exam and the written practice exam. Finally, the Board may amend section 4905 to increase the maximum license renewal fee, the fee for duplicate wall certificates, and the fee for failure to report a change in the place of practice. According to BEVM staff, the proposed fee increases would accurately reflect the costs of providing these services.

The Board may seek to amend Business and Professions Code section 4883 to authorize BEVM to deny, revoke, or suspend a license, or assess a fine, as provided in applicable regulations and Business and Professions Code section 4875, for cruelty to animals.

Finally, the Board is considering an amendment to section 4875 of the Business and Professions Code, regarding BEVM's citation and fine program. The proposed amendment would, among other things, authorize the Board to levy investigation costs and administration expenses against a licensee under specified circumstances.

LITIGATION:

In November 1985, BEVM filed an accusation against Dr. Herbert Lok-Yee Ho, DVM; in September 1986, the Board filed a supplemental accusation. In these accusations, the Board charged Dr. Ho, a former BEVM member, with falsifying his California veterinary license application, violating numerous drug and sanitation requirements of the Veterinary Practice Act, and negligence in the treatment of various small animal pets. (See CRLR Vol. 10, No. 4 (Fall



1990) p. 109 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 128 for background information on this case.) Following a February 1987 administrative hearing, the Board revoked Dr. Ho's license and imposed a \$5,000 fine. In Dr. Ho's subsequent appeals, both the Los Angeles County Superior Court and the Second District Court of Appeal upheld the Board's decision.

At the Board's November 30 meeting, Dr. Ho appeared before the Board and an administrative law judge (ALJ) in a hearing on Dr. Ho's petition for the reinstatement of his license. Business and Professions Code section 4887 and Government Code section 11522 state that a petitioner has the burden of demonstrating that he/she has the necessary and current qualifications and skills to safely engage in the practice of veterinary medicine within the scope of current law and accepted standards of practice. During this hearing, Dr. Ho testified and offered evidence in an attempt to establish his rehabilitation as well as his qualifications and skills to practice veterinary medicine. After the hearing, the Board met in closed session and reached a decision regarding Dr. Ho's reinstatement petition; the Board's decision will not become public until legal counsel drafts the order and serves it on Dr. Ho.

In *Hall v. Kelley*, Linda Hall, a dyslexic, sued BEVM for its alleged failure to provide an adequate setting for her to take the California practical exam. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 84-85 and Vol. 8, No. 4 (Fall 1988) p. 74 for detailed background information.) In April 1990, the Orange County Superior Court denied Ms. Hall's claim for relief. Subsequently, Ms. Hall's attorney missed the 60-day deadline for filing a notice of appeal. However, Ms. Hall's attorney filed a motion for an extension of time for filing the notice with the Fourth District Court of Appeal; the court has not yet rendered its decision on this motion.

RECENT MEETINGS:

At the October 19 meeting, Board staff reported that during the first six months of 1990, the Board received 186 complaints against veterinarians. Members of the public made 156 of these complaints; members of the profession filed 14; and the remaining complaints were made by other sources. Board staff informally handled 63 of the complaints in-house; 96 of the complaints were turned over for formal investigation by BEVM staff; and 27 complaints were turned over for formal investigation by DCA's Division of Investigation.

During this six-month period, 203 complaints were closed: 123 of the closed complaints were unactionable; 3 complaints were closed via settlement; and 77 complaints were closed through admonition letters.

During the same period, 238 clinics were inspected and 331 notices of violation were issued. Disciplinary actions for these violations included 15 citations, 77 violation letters, 16 license probations, 1 license suspension, and 2 criminal actions.

Also during this period, the Attorney General's Office filed 5 accusations.

Finally, Maureen Whitmore, BEVM's Drug and Alcohol Diversion Program Manager, reported that the program received and accepted one applicant in October 1990. Additionally, Ms. Whitmore reported that two participants completed the program in October.

FUTURE MEETINGS:

July 11-12 in Sacramento.

September 12-13 in Sacramento.

November 14-15 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 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 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 licenses 65,269 LVNs with active licenses, 32,352 LVNs with delinquent active licenses, and 11,412 with inactive licenses, for a total LVN popula-

tion of 109,033. The Board's psych tech population includes 13,596 with active licenses and 4,487 with delinquent active licenses, for a total of 18,083 psych tech practitioners.

MAJOR PROJECTS:

Permit Reform Act Regulations. At its January 18 meeting, the Board was scheduled to hold a regulatory hearing on the proposed adoption of new regulatory sections 2508 and 2567, to implement the Permit Reform Act of 1981 (Government Code section 15374 *et seq.*), which requires the Board to adopt regulations specifying processing times for considering and issuing permits. The proposed regulations would specify the maximum period of time in which the Board will notify an applicant that his/her application is complete or deficient, and what specific information is required if deficient; these periods range from 30 to 90 days. The proposed regulations would also specify the maximum period of time after the filing of a complete application in which the Board will notify an applicant of a permit decision; these periods range from 30 to 365 days. In addition, the proposed regulations would specify the Board's actual application processing time, based on its performance during the past two years; these periods range from 1 to 387 days.

Board Clarifies Licensees' Scope of Practice. At its November 16 meeting, the Board adopted the Education and Practice Committee's recommendations that the scope of practice of LVNs and psych techs be limited in the following ways:

- LVNs may not withdraw blood from central lines or measure central venous pressure, since LVNs do not receive the level of nursing education necessary to safely perform these procedures.

- LVNs may not administer intravenous medication via "piggyback," as no provision in the Vocational Nursing Practice Act permits LVNs to administer intravenous medications.

- Lavage procedures may be performed by an LVN only in an acute care setting and while a physician is available on the premises.

- LVNs may not prepare medications for administration by other health care professionals.

- LVNs may not administer local anesthesia by subcutaneous injection, because the basic curriculum in a vocational nursing program does not prepare licensees to perform this procedure.

- LVNs may not administer erythropoietin intravenously in a dialysis unit, as no provision in the Vocational Nursing