



termite infestation. It directed the Technical Advisory Committee to arrive at the best method for monitoring these procedures.

FUTURE MEETINGS:

September 5 in San Francisco.

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 Committee has not met since December 13, 1988, and no new appointments have been made since the terms of all of the Committee members expired on December 31, 1988.

FUTURE MEETINGS:

To be announced.

BOARD OF EXAMINERS IN VETERINARY MEDICINE

Executive Officer: Gary K. Hill
(916) 920-7662

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 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 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:

Enforcement Complaint Review Workshop. Sections 4883 and 4875 of the Business and Professions Code authorize the Board to suspend or revoke a license and/or cite and fine a licensee for violations of the Veterinary Practice Act. Most of the violations for which the Board is authorized to take disciplinary action are specified in section 4883; guidelines for classifying violations for the purpose of assessing fines are specified in section 2043, Division 20, Title 16 of the CCR.

The Board recently began a review of its complaint processing system. The process begins with the referral of incoming complaints to either a BEVM executive staff member or to William Steinmetz, DVM, a Board consultant. Routine complaints, such as a veterinarian's refusal to release medical records or refusal to release an animal to its owner until the owner remits payment for medical services, are mediated over the phone. If the complaint cannot be mediated over the phone, Board staff sends a complaint form to the complainant to complete and return to the Board. Once the form is returned, an executive staff member reviews the complaint and sends an acknowledgment letter to the complainant. At that time, notice of the complaint is sent to the respondent veterinarian along with a request for copies of medical records, lab reports, and X-rays. If the respondent consulted with another veterinarian on the procedure or treatment complained of, Board staff sends a letter to that veterinarian requesting similar documents.

All death-related complaints are sent directly to either the northern or southern complaint review committee (CRC). These committees are composed of volunteer, practicing veterinarians. If the complaint is not death-related, Dr. Steinmetz reviews the complaint and medical records; based on his review, he either notifies the complainant and the respondent that the case is closed for lack of merit or refers the case to the appropriate CRC for further review.

Once the CRC receives the complaint, it has the option of closing the case for lack of merit, requesting additional information, recommending formal investigation, closing the case with admonishment, or assessing a citation and fine against the veterinarian. If the CRC recommends investigation, a CRC veterinarian/consultant begins the fact-finding process. Then an expert witness, a salaried veterinarian, evaluates the facts found; if the expert finds a violation of the Practice Act, the case is referred to the Attorney General's office for preparation of an accusation. The case against the veterinarian is then heard by an administrative law judge, who renders a proposed decision to the Board; the final disciplinary decision rests with the Board.

During its recent review of the complaint handling process, the Board agreed to make its admonishment letters more specific; some veterinarians have noted that these letters do not provide details regarding the acts for which the veterinarian is being admonished. In order to encourage consulting veterinarians



to participate in the investigation of respondent veterinarians, the Board also decided to omit statements submitted by consulting veterinarians from admonishment letters, to help maintain the consulting veterinarian's anonymity.

In order to improve CRC review response times and efficiently handle the periodically large influx of complaints, the Board agreed to try to assign CRC members no more than five complaints at a time; CRC members are supposed to respond to the complaints within thirty days.

Board staff was instructed to develop possible alternative procedures for the Board's complaint review process and present these alternatives at the Board's May meeting.

Occupational Analysis of Veterinary Medicine. At the Board's January meeting, Nick Fittinghoff of the Department of Consumer Affairs' Central Testing Unit (CTU) provided an update on CTU's occupational analysis of the practice of veterinary medicine, which is now under way. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 109 for background information.) The long-term goal of the project is the construction of licensing examinations which test the skills and abilities needed to perform the tasks and procedures actually conducted by veterinarians, weighted in proportion to their relative importance.

Dr. Fittinghoff reported that he had conducted 16 of the 60 scheduled interviews of veterinarians. After the collection of data, he will then compile the results and review the data with subject matter experts (ten from northern California and ten from southern California). The interview results will assist CTU in preparing a questionnaire which will be sent to 2,500 veterinarians regarding their tasks, duties, and responsibilities.

LEGISLATION:

SB 663 (Maddy), as introduced March 5, would require that a licensed veterinarian 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. This bill would provide that this requirement shall not apply to a veterinarian's first license renewal period and that this requirement apply only to license renewals on or after January 1, 1995. (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 bill would also require the Board to publish a list of those professional associations, organizations, educational

institutions, and other providers which it approves to provide CE to veterinarians for credit under this bill, and specifies criteria applicable to any course or program for which credit may be given under this bill, including but not limited to course content, course description, and instructor qualifications. This bill would authorize the Board to monitor or audit courses or programs and investigate any CE course or program; require specified course or program information to be available to the Board upon request; and authorize the Board to deny full or partial credit for any course or program which does not meet the requirements of this bill.

This bill would require each veterinarian to retain specified records for a minimum of five years of all CE which is completed for credit, and would require any course or program to retain specified records for a minimum of five years. The bill would also provide that if the Board determines that a veterinarian has not completed the required number of hours of CE, the Board shall renew the license and require that the deficient hours of CE be made up during the following renewal period in addition to the CE required for that period. If a veterinarian fails to make up the deficient hours and fails to complete the current requirement of hours during the subsequent renewal period, his/her license to practice veterinary medicine shall not be renewed until all the required hours are completed and documented to the Board.

This bill would authorize the Board to exempt from the CE requirement any veterinarian who for reasons of health, military service, or undue hardship cannot meet those requirements, and would require applications for waivers to be submitted on a form provided by the Board. This bill is pending in the Senate Business and Professions Committee.

SB 15 (Robbins), as amended February 6, would amend Penal Code section 487g to provide that every person who steals or maliciously takes or carries away any animal of another, or who knowingly, by a false representation or pretense, defrauds another person of any animal, for purposes of sale, medical research, or other commercial uses, is guilty of a public offense punishable by imprisonment in county jail or state prison not exceeding one year. This bill would also provide that a subsequent conviction is punishable as a felony by imprisonment in the state prison for up to three years. This bill is pending in the Senate Judiciary Committee.

AB 334 (Bronzan), as introduced January 28, would provide that the law regulating veterinary medicine shall not

prohibit any person from utilizing non-motorized instruments to remove calculus, soft deposits, plaque, or stains from an animal's teeth or to smoothe, float, or polish the crown of an animal's teeth, or from utilizing cotton swabs, gauze, dental floss, dentifrice, toothbrushes, or similar items to clean an animal's teeth. This bill would require that before performing the above-described services, a person not licensed pursuant to the law regulating veterinary medicine obtain written permission from the person requesting the services. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 126; Vol. 9, No. 1 (Winter 1989) p. 66; and Vol. 8, No. 4 (Fall 1988) pp. 75-76 for background information on this issue.) A similar bill carried by Assemblymember Bronzan last year was vetoed by then-Governor Deukmejian. The Board opposes this bill, which is pending in the Assembly Agriculture Committee.

AB 1429 (Gotch), as introduced March 7, would amend Business and Professions Code section 4848 to clarify that the examination for veterinarian licensure consists of a national examination consisting of a basic examination and a clinical competency test, and California's state board examination; and make certain changes to the licensure requirements for out-of-state applicants. The bill would permit the Board to make contractual arrangements on a sole source basis with organizations furnishing examination material. This bill would also amend section 4883 of the Business and Professions Code to authorize the Board to deny, revoke, or suspend a veterinary license or assess a fine for cruelty to animals. This bill is pending in the Assembly Agriculture Committee.

AB 1893 (Lancaster), as introduced March 8, would revise certain procedures with respect to penalties and fines imposed upon persons by the Board. This bill is pending in the Assembly Committee on Consumer Protection, Governmental Efficiency, and Consumer Protection.

Anticipated Legislation. At this writing, the Board is expected to propose an amendment to Business and Professions Code section 4855 to require that all animal patient records, drug stock, and equipment be open to inspection by the Board at all times during regular business hours. Additionally, the Board may propose an amendment to section 4883 to allow the Board to issue citations and fines for failure to provide animal patient records to the Board upon request. The Board may seek to have these provisions amended into an existing bill.



LITIGATION:

On February 18, the Board announced that it would reinstate Dr. Herbert Lok-Yee Ho's license on a five-year probationary basis, finding that Dr. Ho had established his rehabilitation. In 1987, the Board had revoked Dr. Ho's license on grounds that he had falsified his California veterinary license application, violated numerous drug and sanitation requirements of the Veterinary Practice Act, and was negligent in the treatment of various small animal pets. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 91-92; 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.)

However, prior to issuance of this probationary license, Dr. Ho must take and pass both parts of the national board examination and the California state board examination. Additionally, the Board specified a number of other conditions with which Dr. Ho must comply during his probation. For example, during the probation period, Dr. Ho must complete CE courses in addition to any CE required by law. Following completion of each course, the Board may test Dr. Ho's knowledge of the course through examination. Dr. Ho must also complete 300 hours of community service during the period. During his probation, Dr. Ho may practice only under the supervision of a Board-approved veterinarian.

In September 1988, the Board filed an accusation and petition to revoke probation against James Edward Bullock, DVM, alleging negligence in the care of three dogs, fraud and deception in connection with an X-ray taken on the wrong dog, and pet abuse. At the time the 1988 accusation was filed, Dr. Bullock's license was already on probation for negligence, fraud, and deception following a 1984 administrative hearing.

During December 1989 and February 1990, Administrative Law Judge Paul Hogan presided over an eleven-day hearing on the accusation, without Board members present. On February 26, 1990, ALJ Hogan submitted a proposed decision dismissing the accusation and the petition to revoke probation in their entirety. On April 9, 1990, the Board issued a Notice of Non-Adoption rejecting the proposed decision. Dr. Bullock appealed the Board's action; on November 30, following submission of written arguments, counsel for Dr. Bullock and the state appeared before the Board to present oral arguments.

Just prior to the commencement of the oral arguments, Mark Levin, Dr. Bullock's attorney, objected to the absence

of an ALJ to preside at the hearing. Department of Consumer Affairs (DCA) counsel Gregory Gorges stated that, pursuant to Government Code section 11517, the presence of an ALJ is not required at a non-adoption hearing. Further, the Board stated that, pursuant to section 11517, because the Board had received written arguments from both parties, BEVM was not required to entertain oral argument.

Mr. Levin also objected to the fact that the Board would be advised on any legal questions which might arise during the hearing by Deputy Attorney General Connie Barton. Mr. Levin suggested that Ms. Barton's counsel to the Board constituted a potential impropriety, since the Attorney General's Office also represents the Board in its quest to revoke Dr. Bullock's license. After some discussion, the Board decided to defer instead to DCA counsel Greg Gorges for legal advice and rulings throughout the hearing.

Finally, Mr. Levin informed BEVM of his concern that the Board may have prejudged his client before receiving the administrative hearing record, thus denying Dr. Bullock a fair hearing. Mr. Levin based his concerns on an article that appeared in the *Newhall Signal* on April 28, 1990, before the Board received the transcripts from the administrative hearing. In this article, BEVM Executive Officer Gary Hill is quoted as saying: "The Board feels we have a strong case and it will render its penalty. We feel the administrative law judge was absolutely off-base in his finding." Board members responded that they were unaware of the article; each member stated that while he/she had formed some opinions based on the transcripts and other pleadings, each had reserved final judgment until conclusion of the oral arguments.

On December 10, 1990, the Board rendered its decision, finding that Dr. Bullock had committed multiple acts of negligence in the practice of veterinary medicine, and placing Dr. Bullock on five years' probation, subject to continuing education, reexamination, and a 90-day suspension.

On January 10, 1991, Mr. Levin petitioned the Los Angeles County Superior Court for a Writ of Mandamus and Temporary Stay of the Board's decision (Number BS005201). Mr. Levin based his petition on the objections he had lodged during the November oral arguments before the Board. Additionally, Mr. Levin pointed out that among the findings listed by the Board in its decision were two counts of negligence which were mentioned during oral argu-

ment but not alleged in the Attorney General's September 1988 accusation; Mr. Levin argued that this error denied Dr. Bullock due process of law and a fair hearing.

On January 10, Los Angeles County Superior Court Judge Frank S. Zolin granted Dr. Bullock's petition for writ of mandamus and ordered the Board to set aside its December 10 decision or show cause on March 12 why it has not done so. The court also ordered the Board to refrain from initiating publication, announcement, or dissemination to the public of any information concerning the Board's decision in Dr. Bullock's case, pending further order of the court.

At the March 12 hearing, BEVM stated that it would have reached the same penalty decision without considering the additional negligence charges. Superior Court Judge Ronald S. Sohigian ordered the Board to clarify the language in its decision accordingly, and to resubmit the decision for the court's review.

Dr. Linda Hall, who suffers from dyslexia, has been permitted to appeal the Orange County Superior Court's dismissal of her lawsuit against BEVM for its alleged failure to provide an adequate setting for her to take the practical exam. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 91; Vol. 9, No. 4 (Fall 1989) pp. 84-85; and Vol. 8, No. 4 (Fall 1988) p. 74 for background information.) At this writing, the case is awaiting full briefing in the Fourth District Court of Appeal.

In *Cohen v. McIntyre*, 226 Cal. App. 3d 801, 277 Cal. Rptr. 91 (Jan. 3, 1991), plaintiff-appellant Warren Cohen, DVM, appealed to the First District Court of Appeal from a summary judgment in favor of defendant-respondent Suzanne McIntyre; the case raises the question of whether the owner of a dog which bites a veterinarian may be liable for negligently concealing her pet's propensity to bite people, where the veterinarian receives actual knowledge of the same risk prior to the attack.

Before Dr. Cohen examined McIntyre's dog, Lobo, the animal snapped at Dr. Cohen, missing his left arm. Dr. Cohen insisted that McIntyre place a muzzle on Lobo; Dr. Cohen then performed his examination of Lobo and proceeded to remove the muzzle himself. At that time, Lobo bit Dr. Cohen several times. At no time did Dr. Cohen ask, nor did McIntyre volunteer, any information about whether the dog had a propensity to bite; Dr. Cohen subsequently learned that Lobo had bitten three people in the two years preceding the incident.

The court of appeal held that "[a]lthough Civil Code section 3342



(also known as the "dog bite statute") fixes strict liability upon dog owners to those injured by their pets regardless of prior knowledge of viciousness, in California a person who voluntarily exposes himself to the obvious hazard of being bitten cannot recover, either in negligence or under the statute." The court also relied on the decision in *Nelson v. Hall*, 165 Cal. App. 3d 709, 211 Cal. Rptr. 668 (1985), which announced the "veterinarian's rule": dog bites during treatment are an occupational hazard which veterinarians and their assistants accept by undertaking their employment.

Dr. Cohen attempted to distinguish *Nelson*, arguing that McIntyre's concealment of Lobo's previous vicious behavior created a risk which Dr. Cohen did not impliedly undertake. In rejecting this argument, the court stated that McIntyre's "admitted nondisclosure did not expose Cohen to any unknown risk"; the hazard which Dr. Cohen impliedly assumed was the risk that the dog would bite him. Further, the court noted that this "danger was graphically communicated to Cohen prior to the attack when the dog snapped at him." The court concluded that McIntyre's silence did not change the risk which Dr. Cohen knowingly encountered, and affirmed the trial court's decision.

RECENT MEETINGS:

At its January 11 meeting, the Board elected Arthur Hazarabedian, DVM, as president and Herbert Oh, DVM, as vice-president for 1991.

At its March 15 meeting, BEVM discussed its cite and fine program, which was implemented in January 1989. According to the Board, there have been 32 cases to date, with a total of \$8,700 collected as fines.

Also at its March meeting, the Board discussed the possible conflict between its Animal Health Technician Examining Committee (AHTEC) and the newly-created Council for Private Postsecondary and Education (CPPVE), which was formed to oversee the educational accreditation of private vocational schools. AHTEC is expected to ask the state Department of Education to inform the Committee about its role and function, as well as CPPVE's.

Also at BEVM's March meeting, Dr. Hazarabedian outlined some future topics which the Board will be addressing, such as laypersons treating their own animals, which has resulted in excessive legend drugs entering the animal food chain. Dr. Hazarabedian opined that all drugs entering the animal food chain, even over-the-counter drugs, must be administered under the supervision of a

veterinarian. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 127 for background information on this issue.)

FUTURE MEETINGS:

July 11-12 in Sacramento.

September 19-20 in Sacramento.

November 14-15 in Sacramento.

BOARD OF VOCATIONAL NURSE AND PSYCHIATRIC TECHNICIAN EXAMINERS

Executive Officer: Billie Haynes
(916) 445-0793/(916) 323-2165

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 65,062 LVNs with active licenses, 32,838 LVNs with delinquent active licenses, and 11,466 with inactive licenses, for a total LVN population of 109,366. The Board's psych tech population includes 13,649 with active licenses and 4,556 with delinquent active licenses, for a total of 18,205 psych tech practitioners.

MAJOR PROJECTS:

Permit Reform Act Regulations. At its January 18 meeting, the Board held a public hearing and adopted regulatory sections 2508 and 2567 to implement the Permit Reform Act of 1981, Government Code section 15374 *et seq.*, which requires the Board to specify processing times for considering and issuing permits. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 91 for background information.) The regulations 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 regulations 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 regulations specify the Board's actual application processing times, based on its performance during the past two years; these periods range from 1 to 387 days. These regulations are presently awaiting approval by the Office of Administrative Law.

Amendments to Curriculum Regulations. On March 12 and 13, the Board held public hearings on proposed revisions to sections 2533 and 2587, Division 25, Title 16 of the CCR, which set forth the required curricula for vocational nurse and psychiatric technician programs. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 92 and Vol. 10, No. 4 (Fall 1990) p. 110 for background information.) The proposed amendments to sections 2533 and 2587 would incorporate current language and trends that will include the critical components for the development of a sound vocational nursing or psychiatric technician program. The proposed regulations would specify that all curricular changes which alter the program philosophy, conceptual framework, content, or objectives must be approved by the Board prior to implementation. Following the public hearings, the Board decided to postpone further action on these proposals until September.

Proposed Regulatory Action on Psych Tech Continuing Education. Existing law permits the Board to establish a continuing education (CE) program with specific hours, content, and procedures as a requirement for psych tech license renewal. On March 13, the Board held a public hearing on proposed regulatory sections 2592-2592.7, which would specify psych tech CE requirements. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 92 for background information.) Due to the large number of public comments received, the Board postponed further action on these regulatory changes until September.

Proposed Regulatory Action on Accreditation Procedures. On March 12 and 13, the Board held public hearings on numerous proposed amendments to its regulations concerning the accreditation of LVN and psych tech education and training programs. First, the Board proposed to amend sections 2526 and 2581, to specify the written documentation