



REGULATORY AGENCY ACTION

the Assembly on May 29 and is pending in the Senate Business and Professions Committee.

RECENT MEETINGS:

At its April 5 meeting, the Board unanimously voted to sponsor legislation to require Branch 4 licensees to identify wood-destroying pests in wood shake and shingle roofs, issue certifications, and perform reinspections; the legislation would also require Branch 4 licensees to recommend that treatment be performed by a Branch 3 licensee.

Also on April 5, SPCB unanimously adopted Policy No. L-6, Continuing Education Exemptions for Armed Services Personnel, which provides that "[a]ny licensee who permitted his/her license to expire while serving in any branch of the armed services of the United States during Operation Desert Storm may have one year from the date of discharge from the armed services or return to inactive status to earn the required continuing education points necessary to reinstate his/her license; provided the license was valid at the time the licensee entered the armed services, and the application for reinstatement is accompanied by an affidavit showing the date of discharge from the armed services or return to active status."

FUTURE MEETINGS:

September 4-5 in San Francisco.

TAX PREPARER PROGRAM

Administrator: Jacqueline Bradford
(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.

MAJOR PROJECTS:

Governor Names New Administrator. On May 2, Governor Pete Wilson announced the appointment of Jacqueline Bradford as the new Administrator of the Tax Preparer Program. Bradford, who previously served in the Business, Transportation and Housing Agency as Executive Development Program Manager, will receive an annual salary of \$55,208.

Program Moves to New Offices. The Tax Preparer Program recently announced its relocation to new offices at 400 R Street, Suite 3140, Sacramento, CA 95814.

RECENT MEETINGS:

The Advisory Committee has not met since December 13, 1988; the Program has been functioning without the Committee since the terms of all 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 Compe-

tency 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:

AB 334 Defeat Results in "Dog-gyscam" Investigation. The controversy over animal teeth cleaning—which has pitted veterinarians against pet groomers for over three years—has taken a new twist which may result in bribery indictments.

After prolonged debate beginning in January 1988, BEVM adopted a rule in October 1988 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, pet groomers are prevented from providing this service. However, the Director of the Department of Consumer Affairs (DCA) rejected the rule in March 1989, on grounds that vet fees for teeth cleaning are considerably higher than groomers' fees for the same service. After the Board was unable to overrule the DCA Director, it initiated a new rulemaking process and readopted the rule at its November 1989 meeting. The DCA Director neither approved nor rejected the rule, so it was forwarded to the Office of Administrative Law (OAL), which approved it in April 1990. However, that year, Assemblymember Bruce Bronzan carried a bill expressly permitting non-vets to perform animal teeth



cleaning with specified instruments. The bill easily passed the legislature, but was vetoed by former Governor Deukmejian in July 1990, thus leaving the rule intact. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 109; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 126; and Vol. 10, No. 1 (Winter 1990) p. 97 for extensive background information on this issue.)

Assemblymember Bronzan reintroduced his bill as AB 334 in January. The bill would provide that nonveterinarians may use nonmotorized instruments to remove calculus, soft deposits, plaque, or stains from an animal's teeth, or to smooth, float, or polish the crown of an animal's teeth; and may use cotton swabs, gauze, dental floss, dentifrice, toothbrushes, or similar items to clean an animal's teeth. On April 1, the Assembly Agriculture Committee rejected AB 334; however, the bill was granted reconsideration that same day, and was set to be reheard by the Committee on April 29.

During the fourth week of April, five members of the Agriculture Committee received anonymous letters, each containing a \$50 bill and a promise to pay the member another \$2,000 to vote against AB 334. The letters, which were received by Assemblymembers Areias, Cannella, Clute, Kelley, and Bronzan, were turned over to the Sacramento County District Attorney's Office, which in turn forwarded them to the Department of Justice for further investigation. In the April 1 vote, Bronzan and Cannella had voted for the bill; Clute and Kelley had opposed it; and Areias had abstained from the vote (which amounts to a "no" vote).

The investigation, which has been dubbed "Doggyscam," delayed the April 29 vote on AB 334 for one week, while investigators attempted to determine the source of the attempted bribes. Subsequently, on May 6, the Committee again rejected the bill by a 6-5 vote, with three members abstaining. Of the Committee members who received the mysterious letters, Clute and Kelley again voted against the bill; Areias and Cannella voted for the bill; and Bronzan abstained on his own bill. At this writing, the Justice Department has not announced the results of its investigation.

In a related action, BEVM sent the California Veterinary Medical Association (CVMA) a letter criticizing CVMA's decision to hold a cocktail party in celebration of AB 334's defeat. In its May 17 letter, the Board stated that CVMA's decision was in "bad taste since it is not CVMA who benefits, but the animals and the consumers who should be celebrating." The Board

reminded CVMA that the purpose of opposing AB 334 was "animal welfare and consumer protection."

Board Continues Review of Complaint Review System. At its May 23 meeting, the Board reviewed an issue paper presented by Michelle Mason, Enforcement Coordinator, and Sharron Smith, Enforcement Technician, regarding the Board's complaint review system. The report was prepared in response to the Board's request that staff present alternative procedures for increasing the efficiency of its complaint review system. (See CRLR Vol. 11, No. 2 (Spring 1991) pp. 107-08 for background information.) According to the report, the Board's complaint review system has become paper-intensive and excessively time-consuming. These factors, combined with a dramatic increase in the volume of complaints received over the last three years, makes it "virtually impossible for staff to comply with state-mandated deadlines in responding to complaints....The results are excessive delays in processing complaints and consumers and veterinarians, who depend on timely handling of these services, may be exposed to negligent and incompetent practice."

The report stated that after a complaint is filed, it takes an average of 60 days to receive information from the respondent and the consulting veterinarian. Once this information is received, complaints are then assembled into packets, each containing approximately 40-50 documents. According to the report, 60 complaint packets are backlogged and waiting to be reviewed by either the northern or southern complaint review committee (CRC). The CRCs consist of volunteer, practicing veterinarians who review complaints against their peers and competitors. Under the current procedure, a complaint may not reach CRC for review for six months.

Further, the report describes additional delays even after the complaint reaches the CRC. For example, it takes an average of two months for CRC members to review the complaints and submit their reports to enforcement staff, and an additional four to six months for review by a Board consultant and the preparation and mailing of a closing letter to the respondent and the consumer.

As a result, the majority of complaints in fiscal year 1990-91 took approximately 14 months to close; the report estimates that this figure will increase to 14-17 months in fiscal year 1991-91 if the current system is continued.

Staff presented three alternatives for the Board's consideration: attempt to

absorb the workload involved with the current staff and the CRCs; contract out for temporary consultants to review the backlog of complaints and draft closing letters; or have 95% of all complaints reviewed in-house by the Board consultant. Staff recommended that the Board pursue the third option, utilizing the consultant for the initial review of most complaints, and reserving the CRCs for secondary level review. Staff estimated that this procedure would reduce the complaint process by an average of 7.5 months, therefore making it possible to close a complaint in an average of 7.2 months.

At the May meeting, the Board conducted an extensive discussion of these alternatives. A major concern voiced by many Board members was that, under staff's proposed procedure of using the consultant as "gatekeeper," he/she may be the only person to review a complaint prior to making recommendations for further action such as a citation and fine or an investigation. Following its discussion, the Board agreed to a six-month trial period during which its consultant would act as gatekeeper in conjunction with a committee of Sacramento veterinarians, and would use the CRCs only in extreme cases.

In an effort to alleviate the present backlog, some Board members also volunteered to review pending complaints. DCA legal counsel Greg Gorges informed that Board that a conflict of interest would arise if a member were to review a complaint which subsequently becomes the basis for an accusation and administrative hearing; the Board member would have to disqualify himself/herself from the final deliberations because of his/her initial review of the complaint. However, Board members agreed that the reduction of the backlog is an important enough objective to take such a risk, but also agreed to minimize the number of complaints seen by individual members.

Veterinary Standards. At BEVM's May 24 meeting, Donald R. Strombeck, DVM, Ph.D., a professor at the UC Davis (UCD) School of Veterinary Medicine, relayed his concerns regarding veterinary standards in California. Dr. Strombeck stated that many professionals believe that students are not receiving a sufficient amount of instruction in small animal surgery while in school, and that curriculum changes at the veterinary schools necessitate a change in the Board's method of examination and licensure.

For example, in a prior letter to the Board, Dr. Strombeck noted that the availability of animals for surgical



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instruction has decreased and the cost of such animals has increased; UCD has been forced to use other species of animals which do not provide the surgical training and experience which may be gained through the use of dogs. Additionally, an increasing number of students prefer to avoid using live animals for instructional purposes. Dr. Strombeck stated that teaching with cadavers and computers does not adequately develop anesthesia and surgery skills.

Dr. Strombeck also explained that UCD's curriculum is set up now so that students may specialize in one area, such as small, large, or food animal education; however, upon passing the Board's examination, they receive a general license to practice on all animals. He opined that a test covering all species is superficial and that the Board should explore a more comprehensive, species-specific examination and limited licensure. Dr. Strombeck added that perhaps UCD should give specialty degrees, based on a student's field of study.

Dr. Strombeck suggested that a BEVM representative attend the June 6 UCD faculty meeting to further discuss these issues and possible solutions.

Occupational Analysis of Veterinary Medicine. For the past six months, Nick Fittinghoff of the Department of Consumer Affairs' Central Testing Unit (CTU) has been conducting BEVM's occupational job analysis study. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 108 and Vol. 10, No. 4 (Fall 1990) p. 109 for background information.) During the first phase of this analysis, sixty veterinary practitioners who graduated after 1984 are being interviewed and observed at their work sites to assess how veterinary medicine varies among practices, species, subdisciplines, and specialties.

During the second phase, 20 practitioners will serve as subject matter experts during four project workshops, where they will define and refine a veterinarian's tasks, duties, and responsibilities and the associated knowledge, skills, and abilities necessary to exercise them. The results will assist CTU in preparing a questionnaire which will be sent to 2,500 veterinarians regarding their tasks, duties, and responsibilities.

The long-term goal of this 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. The last such study was performed in 1979, and these types of studies are generally conducted every 10 years. BEVM expects to complete the

current study in June 1992; however, at the May 24 Board meeting, Dr. Fittinghoff reported that the analysis is slightly behind schedule, due in part to DCA's relocation to new offices and the substantial amount of work involved in tabulating the data already collected. Dr. Fittinghoff was expected to provide the Board with a progress report at its July meeting.

LEGISLATION:

SB 664 (Calderon), as introduced March 5, 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 bill is pending in the Senate Business and Professions Committee.

AB 2021 (Polanco), as amended May 24, would prohibit a dog from being offered for sale by a pet dealer until the dog has been examined by a licensed veterinarian, and require a pet dealer to have each dog examined by a licensed veterinarian within five days of receiving the animal and once every fifteen days thereafter while the animal is in the possession of the dealer, provide any sick dog with proper veterinary care without delay, and cage any dog found to be afflicted with a contagious or infectious disease separately from healthy dogs until the time that a licensed veterinarian determines that the dog is free from contagion or infection. This bill would also require a veterinarian to humanely euthanize an animal if the veterinarian deems an animal to be unfit for purchase due a fatal disease, illness, or congenital condition, as prescribed. This bill is pending on the Assembly floor.

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 2 (Spring 1991) at page 108:

SB 663 (Maddy), as amended May 2, would, among other things, 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; require a licensed veterinarian to certify under penalty of perjury on a form provided by the Board as to his/her completion of the CE requirement; 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; require each veterinarian to retain specified records

for a minimum of five years of all CE which is completed for credit; and require any course or program to retain specified records for a minimum of five years. (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 passed the Senate on May 30 and is pending in the Assembly Agriculture Committee.

SB 15 (Robbins), as amended April 15, would 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 passed the Senate on May 9 and is pending in the Assembly Public Safety Committee.

AB 334 (Bronzan), as introduced January 28, would have provided that the law regulating veterinary medicine shall not prohibit any person from utilizing nonmotorized instruments to remove calculus, soft deposits, plaque, or stains from an animal's teeth or to smooth, 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 was rejected by the Assembly Agriculture Committee on April 1, granted reconsideration by the Committee that same day, and again rejected by the Committee on May 6. (See *supra* MAJOR PROJECTS.)

AB 1429 (Gotch), as amended May 30, would 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; make certain changes to the licensure requirements for out-of-state applicants; and 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 Ways and Means Committee.

AB 1893 (Lancaster), as amended May 24, would revise certain procedures with respect to penalties and fines imposed upon persons licensed by the Board. This bill is pending in the Assembly Ways and Means Committee.

LITIGATION:

In December 1990, BEVM found that James Edward Bullock, DVM, had committed multiple acts of negligence in the



practice of veterinary medicine, and placed Dr. Bullock on five years' probation, subject to continuing education, reexamination, and a 90-day suspension. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 109 for extensive background information.) Dr. Bullock appealed BEVM's decision to the Los Angeles County Superior Court on the basis that among the findings listed by the Board in its decision were two counts of negligence which were mentioned during oral argument but not alleged in the Attorney General's 1988 accusation against Dr. Bullock. At a March 12 hearing, the Board 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. The Board complied and Judge Sohigian approved the decision with the new language on April 24; the decision, which assesses the same penalty stated above, became effective June 10.

Dr. Linda Hall, who suffers from dyslexia, is appealing 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. 2 (Spring 1991) p. 109; Vol. 11, No. 1 (Winter 1991) p. 91; and Vol. 9, No. 4 (Fall 1989) pp. 84-85 for background information.) Dr. Hall has filed her opening brief with the Fourth District Court of Appeal; the Attorney General's office has filed its responding brief and is awaiting Dr. Hall's reply brief. No date has been set for oral argument.

RECENT MEETINGS:

At BEVM's May 23-24 meeting in Sacramento, the Board reviewed its monthly enforcement statistical report for April; 32 complaints were opened during April, bringing the total for the first ten months of fiscal year 1990-91 to 330. The Board has collected \$5,650 in fines during this ten-month period, an increase over the \$4,652 received during fiscal year 1989-90.

Also at the May meeting, Executive Officer Gary Hill reported that the Board would be undergoing an internal audit by DCA during the month of July; a final report will be prepared by August 31. The auditors will examine the Board's cashing system, its enforcement process, and its complaint review system.

FUTURE MEETINGS:

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 65,018 LVNs with active licenses, 34,263 LVNs with delinquent active licenses, and 11,650 with inactive licenses, for a total LVN population of 110,931. The Board's psych tech population includes 13,681 with active licenses and 4,595 with delinquent active licenses, for a total of 18,276 psych tech practitioners.

MAJOR PROJECTS:

Permit Reform Act Regulations Approved. On May 3, the Office of Administrative Law approved the Board's adoption of sections 2508 and 2567, Title 16 of the CCR, which implement the Permit Reform Act of 1981, Government Code section 15374 *et seq.* The new regulations specify the Board's processing times for considering and issuing permits. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 110 and Vol. 11, No. 1 (Winter 1991) p. 91 for background information.)

Board Adopts Policy Regarding Applicants on Criminal Probation. At its May 9 meeting, the Board adopted the Enforcement Committee's recommendation that LVN/psych tech licensure applications shall not be denied based solely on the fact that an applicant is on criminal probation at the time of application. The Board also accepted the Com-

mittee's recommendation that applications submitted by applicants on criminal probation should be reviewed by the Enforcement Unit staff to determine eligibility for licensure. It is the Committee's belief that such a policy would assure equitable consideration of applicants with similar criminal histories.

Board Adopts Guidelines Regarding Criminal Convictions. At its May 9 meeting, the Board adopted the Enforcement Committee's proposed guidelines regarding criminal convictions. Under these guidelines, staff may approve applications submitted by applicants who have one conviction for driving under the influence (DUI); two DUI convictions within five years immediately preceding the date of application provided that the last conviction is not within 18 months of the application date; one misdemeanor conviction such as petty theft, insufficient funds, shoplifting, etc.; or two misdemeanor convictions within five years immediately preceding the date of application, provided that the last conviction is not within 18 months of the application date. However, the Board did not approve the Committee's recommendation that staff be permitted to approve applications submitted by applicants who have one conviction of welfare fraud or unemployment insurance fraud.

Computer Testing. The California Psychiatric Technician Computer-Administered Testing Program was implemented in April 1990. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 111; Vol. 11, No. 1 (Winter 1991) pp. 92-93; and Vol. 10, No. 4 (Fall 1990) p. 110 for background information.) At its May 10 meeting, the Board announced that, since implementation, a total of 1,187 candidates have been scheduled for the examination at the Sacramento and Los Angeles test facilities. As of April 19, the passage rate for first-time examinees was 80%.

Discipline Statistics. At its May 10 meeting, the Board reported that during the month of March, fifteen LVNs had been formally disciplined, including eight for drug-related violations. The Board also reported that violations by five psych techs resulted in disciplinary decisions.

LEGISLATION:

SB 664 (Calderon), as introduced March 5, would prohibit LVNs and psych techs, 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,