



LITIGATION:

In *Americana Termite Co. Inc. v. Structural Pest Control Board*, No. B020747 (February 4, 1988), the California Court of Appeal (Second District) upheld the Board's Active Enforcement Program (AEP), which resulted in the suspension of four operators' licenses.

In 1982, the Board changed AEP's focus from fraud detection to administrative action against negligent and incompetent inspectors and termite companies. After SPCB's deputy registrar identified companies with the highest number of complaints within a geographic region, a Board investigator solicited the cooperation of area residents. Investigators inspected the residents' homes, after which the residents contacted companies on the SPCB's high-complaint list, requesting inspections. Following completion of these inspections, the companies filed reports with the Board.

After comparing the termite company reports with the investigators' reports, the SPCB suspended the licenses of four operators. The four petitioned the suspension to the trial court, which upheld the administrative actions.

The court of appeal affirmed, holding that the AEP did not deprive licensees of their statutory rights under the Structural Pest Control Act, because that Act allows the Board to impose discipline upon its own motion—not only in cases initiated through a consumer complaint. The court further held that AEP did not violate the licensees' right to equal protection because the Board's method (selecting the companies about which the most complaints had been received) was rationally related to a legitimate state interest in protecting the public. Finally, the court ruled that AEP was not a "regulation" and therefore did not have to meet the rulemaking requirements of the Administrative Procedure Act.

FUTURE MEETINGS:

To be announced.

TAX PREPARER PROGRAM

Administrator: Don Procida
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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 commercial tax preparers and tax interviewers in California.

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.

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:

Regulatory Change. The Program held a public hearing on May 17 concerning a proposed amendment to section 3230, Chapter 32, Title 16 of the California Code of Regulations. The proposal, which would double the registration fee for tax preparers and tax interviewers from \$25 to \$50 and increase the renewal fee from \$10 to \$40, was sent to the Office of Administrative Law for approval.

The increases are needed for the Program's enforcement budget. The Division of Investigation of the Department of Consumer Affairs handles the Program's enforcement investigations, such as complaints about fraudulent activities or preparers who take consumer funds but neglect to complete tax forms. The registration and renewal fee increases would add \$200,000 to the Program's enforcement budget, up from its current \$31,000 budget allocation. For the past two years, the Program has spent approximately \$230,000 per year for enforcement; the \$400,000 spent over budget was taken out of the Program's reserves.

LEGISLATION:

SB 91 (Boatwright), which would establish a Tax Practitioner Program as part of the Franchise Tax Board on January 1, 1989, remains pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

(See CRLR Vol. 8, No. 2 (Spring 1988) p. 78 for details.)

RECENT MEETINGS:

The Program has held no public meetings since December 17 due to scarce budget resources.

FUTURE MEETINGS:

To be announced.

BOARD OF EXAMINERS IN VETERINARY MEDICINE

Executive Officer: Gary K. Hill
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The Board of Examiners in Veterinary Medicine (BEVM) licenses all veterinarians, veterinary hospitals, animal health facilities, and animal health technicians (AHTs). All applicants for veterinary licenses are evaluated through a written and practical examination. The Board determines through its regulatory power the degree of discretion that veterinarians, animal health technicians, and unregistered assistants have in administering animal health care. 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 Animal Health Technician Examining Committee consists of three licensed veterinarians, one of whom must be involved in AHT education, three public members and one AHT.

MAJOR PROJECTS:

Regulation Changes. At its May 13 meeting, the Board conducted a lengthy public hearing to discuss the proposed adoption of section 2037, Chapter 20, Title 16 of the California Code of Regulations, which would clarify the term "dental operation" as it relates to the practice of veterinary medicine. The Board has been concerned about the increasing number of unlicensed individuals providing teeth cleaning services without any formal training in animal dentistry. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 79 for background information.)

The Board has listed a number of concerns regarding the use of manual and ultrasonic scaling devices by untrained individuals, noting that such use



can cause etching of dental enamel, which may actually speed up the tartar-forming process on teeth causing more periodontal disease than the animal originally had; injure and traumatize sensitive gums, leading to erosion and exposure of tooth roots; unnecessarily dislodge or prematurely loosen teeth; lead to animal-aspirated or inhaled water, saliva, or bacteria, causing bronchitis or pneumonia; and cause pain and discomfort to animals, making them overly sensitive to future exams.

As proposed, section 2037 would define a "dental operation" as the application or use of any instrument or device to any portion of an animal's tooth or gums for specified purposes, including preventive dental procedures such as the removal of plaque and stains. Section 2037 would allow these procedures to be performed by a licensed veterinarian or veterinarian-supervised AHT. Unlicensed individuals would still be allowed to perform procedures using dental floss, gauze, or toothbrushes.

The California Pet Groomers Association, one of the groups which would be affected by this regulation change, accused the Board of attempting to make these "routine" procedures the exclusive province of licensed veterinarians. These critics claimed that adoption of section 2037 would ensure veterinarians greater revenue. Pet owners also expressed concerns that section 2037 would eliminate anesthesia-free teeth cleaning options. Members of the public expressed concern about the increased price of the procedures and objected to a regulatory agency interfering with a private, consensual relationship between a pet owner and pet groomer.

Several veterinary dentists practicing in such specialties as periodontics, orthodontics, endodontics, and restorative dentistry also testified at the hearing. Their testimony centered on health concerns for both the animal patient and the health worker performing the procedures. In addition, they stated that chemical restraints, necessary on some animals to perform these procedures, should not be administered by untrained individuals.

After receiving comments on the proposed regulation, the Board agreed to table any further discussion of section 2037 until the end of June. In the interim, a task force comprised of representatives from interested groups was scheduled to meet to discuss possible modifications to the proposed language.

Examinations. A total of 231 candidates took the California Practice Exam

(CPE) in February, with 65% passing, which is the average pass rate for the CPE.

AHT Report. The AHT examination workshop convened at the end of April to conduct exam question writing and review. The committee conducting the two-day workshop has requested that a pool of examination item writers be created to continue these activities. The AHT Committee is also attempting to create a list of interested individuals to participate in the AHT school inspection program.

Alcohol and Drug Diversion Program. Occupational Health Services (OHS) has acquired BEVM's 1988-89 diversion program management contract. (For background information, see CRLR Vol. 8, No. 2 (Spring 1988) p. 79.) BEVM was impressed with OHS' prior experience and with the continuity OHS could offer the program. OHS maintains participant confidentiality while informing the Board of chemical- or alcohol-abusing veterinarians or AHTs who could pose a risk to the public. OHS has the discretion to accept or reject program applicants, design participants' recovery programs, ensure compliance with designated recovery schedules, and terminate a program participant when necessary. Currently, there are fourteen active participants in the program, six of whom are self-referral cases. OHS is attempting to fill vacant staff positions within the program.

LEGISLATION:

AB 3788 (Kelley) amends Code of Civil Procedure section 1985.3, adding "veterinarian," "veterinary hospital," and "veterinary clinic" to a list of witnesses from whom records may be sought, pursuant to a subpoena duces tecum, under specified conditions. This bill has been chaptered (Chapter 184, Statutes of 1988).

AB 4019 (Filante) would require biennial renewal of AHT licenses; require applications for BEVM licensure or registration renewal to contain a specified statement as to conviction of a felony, professional discipline, or law violation; and would authorize BEVM to make necessary inquiries of the applicant for renewal and conduct an investigation to determine whether cause for disciplinary action exists. AB 4019 passed the Assembly on June 6 and is pending in the Senate Business and Professions Committee.

AB 2756 (O'Connell) would expand the scope of civil liability exemptions for veterinarians who report instances

of animal abuse. The measure encourages vets to report enumerated crimes against animals to the appropriate law enforcement authorities, expanding the list of crimes to include animal abuse by animal owners, animals subject to needless suffering, or animals kept without proper care or attention.

AB 2756 would also delete a provision of existing law which provides that if a citation for a violation of the law relating to veterinarians is resolved by payment of an assessed civil penalty, or by an agreement to comply with an order of abatement, at or before a specified time, the civil citation and any records relating thereto are confidential and not subject to public disclosure.

Finally, as amended May 27, the bill would provide that (1) if a fine is paid by a veterinarian licensee, it shall be represented to the public as a satisfactory resolution of a violation; (2) if a fine is paid, it shall not constitute an admission of a violation; and (3) a request for a hearing on an assessment shall be made within thirty days. The requirement that the hearing on an assessment be heard by the BEVM would be deleted; and renewal of a veterinarian's license would be prohibited if an assessed fine is not paid.

AB 2756 is pending in the Senate Judiciary Committee.

RECENT MEETINGS:

At its May meeting, the Board outlined draft language for a four-point proposal to define activity which constitutes a physical examination. (See CRLR Vol. 8, No. 1 (Winter 1988) pp. 74-75 for background information.) The draft language for the proposal states that (1) an exam is a pre-condition to establishing a doctor/client/patient relationship; (2) a doctor/client/patient relationship is a pre-condition to performing any veterinary service; (3) as a general rule, good veterinary practice requires a hands-on physical examination; and (4) the extent of the physical exam will depend on unique facts and circumstances of the situation. Some of the Board members feel such a clarification of the term "physical exam" is necessary. Others stated that such a specific definition decreases Board discretion. The Board has not formally proposed this language as a regulatory change, choosing to wait until the minimum standards for practice have been established.

The Board announced in May that its 1989 hospital inspection program will be expanding from six to thirteen state-



wide districts. The Board is now accepting bids for the inspection program, which Board members believe to be necessary to monitor minimum standards of practice. Successful bidders will inspect veterinary facilities to enforce compliance with state laws, regulations, and BEVM standards. The inspection process also includes maintaining inspection records, filing reports, issuing violation notices, and assisting BEVM in hearings and prosecutions.

Bids are being judged on criteria which include knowledge of acceptable veterinary practice in the areas of record-keeping and sanitation. Acceptable background criteria for the inspectors include five years' work experience as either a California licensed veterinarian or AHT. The bids were to be evaluated by early summer.

In May, the Board reviewed the goals and objectives statement to be submitted to the Department of Consumer Affairs this summer. BEVM goals and objectives include (1) the establishment and maintenance of an equitable, job-related licensing examination which tests competency for the practice of veterinary medicine; (2) ensuring that licensees provide safe and effective veterinary services by continuing a random hospital inspection program; (3) development and enforcement of new regulations and legislation to clarify and establish current minimum standards of professional performance; and (4) increasing professional and consumer knowledge of acceptable standards of professional performance by studying the feasibility of mandatory continuing education for veterinarians, offering speaker services to consumer groups, and publishing educational pamphlets.

Also in May, the Board was notified of a July public hearing to receive comment on its proposed citation and fine regulatory language. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 79.) Any language adopted would be added to section 2043, Chapter 20, Title 16 of the California Code of Regulations, and would provide for the imposition of a civil penalty according to the nature of the violation. The Board reviewed criteria which would be used to determine the amount of a civil penalty, including (1) the good or bad faith exhibited by the cited individual; (2) the nature and severity of the violation; (3) the prior history of violations by the veterinarian; and (4) the extent to which the cited person cooperates with a Board investigation or attempts to mitigate any damage or injury. (See CRLR Vol. 8, No. 1 (Winter

1988) p. 74 and Vol. 7, No. 4 (Fall 1987) p. 69 for additional background information.)

FUTURE MEETINGS:
To be announced.

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 currently licenses approximately 68,000 LVNs and 14,000 psychiatric technicians.

MAJOR PROJECTS:

Update on Task Force Hearings. The Board has completed the public hearings of the Task Force on the Future Roles of the Licensed Vocational Nurse and Psychiatric Technician. (For background information, see CRLR Vol. 8, No. 1 (Winter 1988) p. 75; Vol. 7, No. 3 (Summer 1987) p. 93; and Vol. 6, No. 4 (Fall 1986) pp. 56-57.) In keeping with the overall Task Force plan, the Board recently held six advisory committee meetings throughout the state, four of which concerned vocational nurses and two of which focused on psychiatric technicians. The advisory committees consist of volunteers from the areas of education and labor, as well as representatives from hospitals and health organizations. After reviewing all of the recommendations received by the Task Force, the advisory committees will make a presentation to the Board at a

special Board meeting scheduled for November 2-4 in Los Angeles.

LEGISLATION:

SB 1552 (Kopp) would require the Board to consider including AIDS training in its continuing education requirements. At this writing, this bill is pending in the Assembly Health Committee.

SB 1966 (Davis) would require a psychiatric technician to take continuing education as a condition to renew his/her license. The Board supports this bill, which is pending in the Assembly Health Committee at this writing.

RECENT MEETINGS:

The Board recently received approval for a budget change proposal, effective July 1, 1988, which is earmarked for implementing a computer testing system. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 80 for background information.) The Board now anticipates that six computers will be available statewide for licensee applicants taking the state licensing examination. The initial stages of research and development to implement this innovative system are now under way.

FUTURE MEETINGS:

September 23 in San Diego.