
**FINAL RECOMMENDATIONS FOR
THE CALIFORNIA VETERINARY MEDICAL BOARD
AND THE BOARD'S RESPONSES
JUNE 4, 2004**

**RECOMMENDATIONS OF THE JOINT SUNSET REVIEW COMMITTEE
AND THE DEPARTMENT OF CONSUMER AFFAIRS (Department)**

ISSUE #1. (CONTINUE REGULATION OF THE PROFESSION AND THE BOARD?)
Should the licensing and regulation of the veterinary profession be continued, and be regulated by an independent board rather than by a bureau under the Department?

Recommendation #1: *The Joint Committee and the Department recommend that the practice of veterinary medicine should continue to be regulated and that the Board has proven to be an effective structure for regulation of the profession and should be continued.*

Comments: The technical and highly specialized practice of veterinary medicine lends itself to government regulation. Without the presence of a license, consumers would have little ability to determine if a veterinarian has the requisite knowledge, skills and abilities needed to practice.

Board Response: SUPPORT

ISSUE #2: (GIVE RVT COMMITTEE SPECIFIC INDEPENDENT AUTHORITY?)
Currently there exists a Registered Veterinary Technicians Committee (RVTC) which acts as an advisory committee to the Board, however, they have no independent authority from the Board regarding decisions that impact their own profession.

Recommendation #2: *The Joint Committee recommends that the Registered Veterinary Technicians Committee be given independent statutory authority over issues within its jurisdiction, e.g., examinations, eligibility categories, establishing criteria for and approving RVT school programs, etc.*

Comments: At the January 7, 2004 Joint Committee hearing there were concerns expressed regarding the lack of RVT representation on policy matters approved by the Board that impact the RVT population. Providing independent statutory authority in a number of areas handled currently by the Board will help resolve concerns that RVTs have in assuring they have a voice in decisions that impact the RVT profession.

Board Response: SUPPORT

ISSUE #3: (CLARIFY DUTIES OF UNREGISTERED ASSISTANTS?) Concern has been raised that unregistered assistants may be performing activities that only veterinarians or registered veterinary technicians (RVTs) are licensed and/or qualified to perform.

Recommendation #3: *The Joint Committee and the Department recommend that the Board report to the Joint Committee and the Department with recommendations on ways to clarify and delineate veterinary and RVT duties.*

Comments: At the January 7, 2004 Joint Committee hearing, RVTs and consumers expressed concerns regarding unregistered assistants performing duties normally completed by veterinarians or RVTs. The RVTC is working with the Department's Office of Examination Resources to conduct a statewide practice analysis that is scheduled for completion in May 2004. The practice analysis will provide the Board and the RVTC with updated information as to the application of the current RVT-only tasks and the level of harm associated with each task.

Board Response: SUPPORT

ISSUE #4. (CONTINUE PROVIDING BOTH NATIONAL AND STATE EXAMINATIONS FOR VETERINARIANS AND RVTs?) California requires three examinations for licensure of veterinarians including a national and state examination, and requires a state examination for RVTs rather than the national exam.

Recommendation #4: *The Joint Committee and the Department recommend that the Board pursue the validity of requiring the administration of national and state examinations for veterinarians and RVTs.*

Comments: Since legislative proposals to increase fees have not been successful in the past couple of years, it would be more prudent to pursue the need to administer national and state examinations for veterinarians and RVTs as a means of consumer protections.

Board Response: SUPPORT

ISSUE #5. (DEFINE SPECIALTY AREAS OF VETERINARY MEDICINE?) The Practice Act does not define what constitutes a veterinary medicine specialty, and consumers and other veterinarians may be misled about the qualifications of veterinarians who use specialty titles.

Recommendation #5: *The Joint Committee and the Department recommend that the Board establish regulations incorporating the American Veterinary Medical Association (AVMA) guidelines for the use of specialty titles used by veterinarians. The should also develop a plan to educate consumers on specialty titles.*

Comments: Currently the Board uses the AVMA guidelines as a basis to determine if disciplinary action is warranted. Establishing regulations will educate licensees on the legal appropriateness of use of specialty titles.

Board Response: SUPPORT

ISSUE #6. (CONTINUE THE DIVERSION PROGRAM AND MAKE IT SELF-SUPPORTING?) Over the past four years the Board has spent over \$40,000 on its Diversion Program, had nineteen participants, two successful completions, and two unsuccessful completions. There has not been a single successful completion during the past two years.

Recommendation #6: *The Joint Committee and the Department recommend that the Board should prepare a follow-up report with recommendations on the feasibility of continuing the diversion program and other options for the program to be self-supporting.*

Board Response: SUPPORT

ISSUE #7: (INSPECT MORE VETERINARY FACILITIES?) Over the past seven years, the Board has inspected an average of only 13 percent of veterinary facilities a year. Once a facility has been inspected, it generally is not inspected again until other facilities have been inspected -- perhaps as long as six or more years later. These inspections have been performed by licensed veterinarians.

Recommendation #7: *The Joint Committee recommends that the Board should attempt to increase the number of veterinary facilities inspected, as staff is made available, and these inspections should be done on a "random basis." Priority should be given to those veterinarian facilities in which complaints have been filed with the Board.*

Comments: California Code of Regulations §2030 sets the minimum standards for fixed veterinary premises where veterinary medicine is practiced, as well as all instruments, apparatus, and apparel used in connection with those practices. The method the Board has selected to enforce such standards is premise inspections. Each year, the Board inspects an average of 300 registered veterinary facilities that are selected from a master list, and an average of thirty-one facilities in response to complaints it receives. The vast majority of these inspections are unannounced. During the past seven fiscal years (since 1996-97), the Board has completed 2,616 inspections, including 211 complaint-related ones. The average rate for annual routine hospital inspections during the past seven years has been 13 percent, with a slight improvement during the past two fiscal years: 18 percent in 2001-02 and 16 percent in 2002-03. In its report to the Joint Committee, the Board indicated that all new veterinary premises are now inspected within the first six to twelve months of operation. In subsequent oral communications with the Joint Committee, the Board stated that its goal is to have all premises inspected within a five-year period.

The Board further indicated to the Joint Committee that when it “randomly” selects premises to inspect, it eliminates from selection those premises with the most recent inspection dates. Thus, it appears that once facilities are inspected, they enjoy “safe harbors” from random inspections for an extended period of time, perhaps as long as six or more years. To accomplish these inspections, the Board has contracted with private veterinarians who hold current California licenses and have at least five years of clinical practice experience. However, the Board is considering expanding the pool of prospective inspectors to include RVTs as well.

Board Response: SUPPORT

ISSUE #8: (INCREASE THE FINE AUTHORITY OF THE BOARD?) The current self-imposed maximum cite and fine authority of \$1,500 may not be high enough to deter illegal activity and unprofessional conduct and is inconsistent with other boards under the Department.

Recommendation #8: *The Joint Committee recommends that the Board’s cite and fine authority should be consistent with authority granted to other boards under Section 125.9 of the Business and Professions Code.*

Comments: The Board implemented the citation and fine program in 1990 to augment its complaint review process. It uses the program to address violations of the law that do not warrant revocation or suspension of a license or criminal prosecution. In the Board’s report, it indicates that it established regulations that provide a flexible guide to determine an appropriate civil penalty related to the nature and gravity of each violation as it affects the health, safety, and welfare of the public. The number of citation and fines issued has grown from 10 in 1996-97 to 87 citation and fines in 2002-03. The Board developed the violation guidelines to outline the criteria for issuing a citation and fine. The following fine guidelines are divided into three categories based on degree of harm and history of previous citations:

Class “A” violations – most serious violations – with fines from \$1,001 to \$1,500.

Class “B” violations – serious violations – with fines from \$501 to \$1,000.

Class “C” violations – minor violations – with fines from \$50 to \$500.

Under Business and Professions code §125.9, the maximum statutory level for these administrative fines is currently \$5,000, effective January 1, 2004, as a result of recently enacted legislation (SB 362, Figueroa; Chapter 788, Statutes of 2003).

Board Response: SUPPORT

ISSUE #9: (ASSURE CONSISTENT APPLICATION OF DISCIPLINARY GUIDELINES?) It has been argued that the Board is ignoring its own disciplinary guidelines regarding the mandatory revocation (no stay) of licenses in cases involving cruelty to animals.

Recommendation #9: *The Joint Committee recommends that the Board should assure that disciplinary guidelines are consistently applied to disciplinary cases which are decided upon by the Administrative Law Judge and the Board.*

Comments: The Board's disciplinary guidelines state that animal cruelty "is considered by the Board to be so severe that revocation is the only appropriate penalty, together with a \$5,000 fine." It was argued during the January 7, 2004 Joint Committee hearing that the Board has been ignoring this policy by staying revocation in at least one case where a veterinarian was found to have committed animal cruelty.

Board Response: The Board supports the concept of consistent application of the disciplinary guidelines, but has little to no control over the application of such guidelines by an administrative law judge. Each case and the resulting fact pattern is unique and administrative law judges must have the latitude to apply the guidelines uniquely to each case.

The Board reviews the guidelines regularly to insure that they are current and relevant. It is currently in the process of updating the guidelines to be as consistent as possible with the laws governing veterinary medicine in California.

ISSUE #10: (ASSURE EXAMINATIONS PROVIDED BY THE BOARD ARE SELF-SUPPORTING?) During the last review of the Board, the Joint Committee recommended that the Board make examinations self-supporting so that funds that could otherwise be spent on enforcement are not used to subsidize them. However, the Board's current report indicates that it continues to lose money on the State Board Exam.

Recommendation #10: *The Joint Committee recommends that the Board should raise fees to be paid by applicants for licensure to assure that licensing fees are not subsidizing the costs of the development and administration of examinations provided by the Board.*

Comments: During the previous Sunset Review of the Board, the Joint Committee recommended that application and license fees should not be used to subsidize the costs of examinations. It noted that the Board was using license fees to subsidize the national, and perhaps state examination, thereby limiting the amount that could be spent on enforcement. Since the Joint Committee made those recommendations seven years ago, the Board has explored ways to reduce its costs for the national and California State Board examinations without compromising their integrity. In conjunction with the Department's Office of Examination Resources, the Board took several actions, including streamlining its state exam testing format to focus on issues specific to the western states regions and reducing the total number of questions from 240 to 100. However, while these actions initially reduced the Board's costs, higher increased examination preparation and validation costs have caused the

Board to lose money on the state exam. And despite the \$325 statutory ceiling on state board fee, the Board has not raised the fee (currently \$140) to make the state exam self-supporting.

Board Response: SUPPORT

ISSUE #11: (IMPROVE INFORMATION PROVIDED ON BOARD'S WEB SITE?)
The Board's Web site does not disclose any cite and fine information nor does it provide detailed information about a licensee's disciplinary record.

Recommendation #11: *The Joint Committee recommends that the Board should work with the Department to improve the information provided on its Web site and to assure that all disciplinary actions taken against a licensee are made available to the consumer.*

Comments: Consumers who log on to the Board's Web site to obtain information about veterinarians or veterinary hospitals may currently obtain only general information about the licensee, such as license status, address, and whether disciplinary actions have been taken. However, if disciplinary action has been taken, the consumer must contact the Board to obtain more detailed information. The Board has indicated that DCA possesses a software program, currently used by the Board of Behavioral Sciences (BBS), that it would like to use to make more useful information available online to consumers. BBS Web site users have direct consumer access to a summary of disciplinary action against a licensee. According to the Board, the reason such information is not available on its Web site is because DCA does not have staff available to "patch" the current database that the Board uses. With respect to a licensee's cite and fine history, the only way that consumers may obtain such information is by contacting the Board.

Board Response: SUPPORT

ISSUE #12: (BAN THE PRACTICE OF EAR CROPPING ON DOGS?) The practice of ear cropping in dogs -- cosmetic surgery performed on dog ears to give them a pointed appearance -- is practiced by few veterinarians and illegally by people involved in dog fighting.

Recommendation #12: *The Joint Committee recommends that the ear cropping of dogs should be prohibited unless for therapeutic purposes or injury to the dog, and only for that purpose if performed by a licensed veterinarian.*

Comments: Ear cropping is sometimes performed by those who breed certain types of dogs for cosmetic reasons only. The American Medical Veterinarian Association, as well as state veterinary organizations, including the California Veterinary Medical Association, discourage ear cropping and state that the surgery is medically unnecessary and can cause pain and distress in the dog. The World Small Animal Veterinary Association, which represents the veterinary associations in at least 26 countries on this issue, opposes the practice and believes ear cropping in dogs should be illegal. Ear cropping is prohibited in Australia, Great Britain, Austria,

Belgium, Denmark, Finland, Greece, Luxemburg, Norway, Portugal, Sweden, Switzerland, Cyprus, Czechoslovakia, Norway, Israel, and in the Canadian provinces of Newfoundland and Labrador. Further, the American Kennel Club states that, "There is nothing in AKC rules or in any breed standard that compels an owner to have this procedure performed as a prerequisite to entry at a dog show."

Ear cropping is also performed on dogs used in dog fighting activities. In this situation, the dog's ear is almost cut off entirely. This "battle cropping" has been performed legally by veterinarians and illegally by people involved in dog fighting activities. If prohibited by law, law enforcement could potentially have another tool to use for closing down illegal dog fighting operations.

A poll was recently conducted to query California Veterinary Medical Association members about ear cropping. Only about 10 percent of its members practice ear cropping for cosmetic reasons. 74 percent think that veterinarians should not do ear cropping unless it is for the health and well-being of the dog. 86 percent think that ear cropping is painful during the post-operative period, including anesthetic recovery and after-care. And, 56 percent of small animal practitioners would support legislation to prohibit ear cropping, unless for therapeutic purposes.

Board Response: The issue of whether or not to allow veterinarians to perform ear-cropping procedures appears to be a societal issue that should be referred to the veterinary profession or the state association. Should a law be developed in this area that fell within the Board's jurisdiction, it would be enforced.

ISSUE #13: (SHOULD VETERINARIANS AND RVTs REPORT ANIMAL ABUSE?)
Veterinarians and RVTs have no duty to report animal abuse or cruelty for animals under their care or treatment. However, other like health care professionals, including physicians, dentists, nurses, and chiropractors, are required to report child abuse.

Recommendation #13: *The Joint Committee recommends that licensed veterinarians and RVTs should report incidents of animal abuse or cruelty about which they know or have reasonable suspicion regarding such abuse or cruelty to animals under their care or treatment. However, legal immunity should be provided to veterinarians and RVTs who report such abuse or cruelty to the proper authorities.*

Comments: The Child Abuse and Neglect Reporting Act (California Penal Code § 11164 et seq.) designates professions and occupations whose members, while acting in their professional capacity or within the scope of their employment, must report incidents of child abuse and neglect about which they know or have reasonable suspicion. The list of "mandated reporters" include health professionals, such as, physicians, surgeons, psychiatrists, dentists, podiatrists, chiropractors, licensed nurses, dental hygienists and optometrists. No mandated reporter shall be civilly liable for any report required or authorized by the Act. Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of \$1000 or both.

The lack of legal immunity for reports of animal cruelty was the subject of recently enacted legislation in the state of New York. Under this new law, a veterinarian who reasonably and in good faith suspects that a companion animal's injury, illness or condition is the result of animal cruelty or a violation of any law pertaining to the care, treatment, abuse or neglect of a companion animal, or believes that disclosure of certain records is necessary to protect the health or welfare of a companion animal, a person or the public, may report the incident and disclose records concerning the companion animal's condition and treatment to the law enforcement agencies and others. Veterinarians who make such reports are immune from liability in the form of damages in any civil or criminal proceeding on account of such reporting or disclosure.

Board response: The Board believes that animal cruelty is the worst offense for a veterinarian and is no less serious when done by the animal's owner. There is an existing mandated reporting requirement for a veterinarian who suspects that an animal's injuries were sustained in a staged dogfight. The Board supports any efforts to report animal abuse, but believes that this issue should be discussed with the profession and the public to explore factors including, but not limited to, the reporting process, definitions of abuse and/or cruelty, enforcement and liability.

ISSUE #14: (IMPROVE REPORTING OF RODEO-RELATED ANIMAL INJURIES?)
There appears to be general non-compliance with the California law that requires rodeo veterinarians to report rodeo-related animal injuries to the Board.

Recommendation #14: *The Joint Committee recommends that the Board should attempt to assure veterinarians are aware of the reporting requirements regarding any rodeo-related animal injury for which they provide care or treatment, and should consider whether an injury form could be provided over the Board's Website. It should also be made clear that all rodeo events in California should be subject to the reporting requirements under Section 596.7 of the Penal Code.*

Comments: California Penal Code § 596.7 (SB 1462, Perata; Chapter 992, Statutes of 2000), which became effective on January 1, 2001, requires, among other things, that: (a) rodeos have attending or on-call veterinarians at all times, (b) that any animal that is injured during, or due to, a rodeo event shall receive immediate examination and appropriate treatment by the attending veterinarian or shall begin receiving examination and appropriate treatment by a veterinarian within one hour after the determination of the injury requiring veterinary treatment, and (c) that such veterinarians must submit brief reports of any animal injury to the Board within 48 hours of the injury. The Board has received only three reports since January 2001, all within the past year.

Board Response: The Board does not have jurisdiction over the operation of livestock events such as rodeos and believes that the reporting of injuries should be done to the California Department of Food and Agriculture (CDFA). Most of the animals used in rodeos are privately owned by individuals or by stock contractors. When they are injured, the owners take them home to their own veterinarian for treatment.

One reason for the low number of reports may be that the law does not require reporting of all animal injuries, it only requires reporting of the injuries that were treated on the site of the rodeo by the designated event veterinarian.

Veterinarians are subject to the Board and the record keeping laws. If a consumer complained about the veterinary treatment provided, the Board would contact the veterinarian directly and investigate the complaint.

ISSUE #15: (INCREASE SETTLEMENT AMOUNT REPORTED TO THE BOARD?)
The amount of claim or action for damages reported to the Board is currently \$3,000, while the amount for other health related professions is \$10,000 or greater.

Recommendation #15: *The Joint Committee recommends that the amount of any settlement or arbitration award reported to the Board by insurers be raised to \$10,000.*

Comments: The California Veterinary Medical Association (CVMA) has expressed an interest in increasing the reporting limits for professional liability settlement for veterinarians that has been reported to the Board from \$3,000 to \$10,000. State law requires any professional liability settlement over \$3,000 to be reported to the Board by the insurance carrier. Over the last few years, several of the medical professions have increased their minimum reporting threshold. Veterinarians have not had a change in the minimum threshold for more than 15 years. The increase to \$10,000 would not only bring veterinarians into more appropriate parity with their medical colleagues in similar professions, but CVMA believes it would be a cost savings for the Board as they would not need to process the data on these smaller cases.

Board Response: SUPPORT

ISSUE #16: (CLARIFY DEFINITION OF “DENTAL OPERATION?”) The CVMA has indicated that there are some that are practicing illegal animal dentistry because the definition of “dental operation” is unclear.

Recommendation #16: *The Joint Committee recommends that the Board review whether changes are necessary to the definition of “dental operation” in the Business and Profession Code and make recommendations to the Legislature if necessary.*

Comments: According to CVMA, current law makes reference to “or similar items to clean an animal’s teeth.” This vague reference to “similar items” has been interpreted by those looking to practice illegal animal dentistry as permission to use metal or hard plastic scalers on an animal’s tooth, which is a violation of the Veterinary Practice Act.

Board Response: SUPPORT

ISSUE #17: (PROHIBIT LOCAL PREEMPTION OF THE VETERINARY PRACTICE ACT?) The CVMA has indicated that cities have passed local ordinances that prohibit veterinarians from performing certain procedures that would be permissible under the Veterinary Practice Act.

Recommendation #17: *The Joint Committee recommends that the Board review whether local cities or counties can or should be prevented from passing local rules, regulations or ordinances regarding the practice of veterinary medicine within their jurisdictions.*

Comments: According to CVMA, several cities have passed ordinances or considered ordinances that would strictly prohibit veterinarians from performing certain procedures, such as cat declawing in their city. Not only does CVMA believe that these type of ordinances challenge the state-defined Veterinary Practice Act, but it also creates an unfair business practice environment for those practicing in the jurisdiction affected.

Board Response: The issue of whether or not local cities or counties can or should be prevented from passing local rules, regulations or ordinances regarding the practice of veterinary medicine within their jurisdictions appears to be outside the Board's jurisdiction. Should a law be developed in this area that fell within the Board's jurisdiction, it would be enforced.