



MEMORANDUM

DATE January 22, 2013

TO Veterinary Medical Board

FROM Sue Geranen Executive Officer
DCA/Veterinary Medical Board

SUBJECT **Sunset Review Report/Legislative Process**

Background:

The Veterinary Medical Board submitted its 2012 Sunset Report to the Senate Committee on Business, Professions and Economic Development on Tuesday, October 30, 2012. The next step in the process is responding to questions from the Committee.

It is anticipated that the Committee will provide its questions to the Board approximately two weeks prior to the Legislative hearing tentatively scheduled for Monday, March 18, 2013, beginning at 1 p.m. Once those questions are received they will be sent out to whomever the Board designates to review them and assist the Executive Officer to prepare responses.

At this meeting the Board should decide who, in addition to the Executive Officer, is going to be representing the Board and testifying at the hearing.

The California Veterinary Medical Association has submitted its sunset recommendations to the Sunset Committee and to the Board. The letter is included in the binder for discussion.

Action Requested:

- 1) Determine who is going to assist the Executive Officer prepare responses to questions raised by the Committee.
- 2) Determine who, in addition to the Executive Officer, is going to represent the Board and testify at the hearings – in the past the Board has had two members present at the hearings prepared to testify.

January 14, 2013

The Honorable Curren Price
Chair, Senate Business, Professions, and Economic Development Committee
State Capitol
Sacramento, CA. 95814

RE: Sunset Review of the Veterinary Medical Board (2013 Session)

Dear Senator Price,

The California Veterinary Medical Association (CVMA) representing approximately 6500 veterinary medical professionals in the state, including veterinarians, registered veterinary technicians, and students from the University of California at Davis School of Veterinary Medicine and the Western University College of Veterinary Medicine in Pomona, would respectfully like to indicate support for the continuation of the Veterinary Medical Board (VMB), as it is to be reviewed during Legislative Sunset Review in 2012-13. Further, the CVMA would like to offer a series of issues for the committee's additional consideration based upon the November 1, 2012 document submitted to the committee by the Veterinary Medical Board.

Support the Continuation of the Veterinary Medical Board

The CVMA supports the continued existence of a Veterinary Medical Board, under the Department of Consumer Affairs, to regulate the practice of veterinary medicine and to provide necessary protection for California consumers. Veterinary medicine is a highly technical, constantly evolving health care profession, with a licensing program that has been in existence for well over a century. The CVMA believes that an independent board is essential to properly evaluate the competency of licensees who perform rigorous, complex medical procedures on animals. The Board also regulates registered veterinary technicians and veterinary assistants, and investigates unlicensed activity by laypersons.

Because the veterinary profession is at the forefront of countless scientific advancements, food animal safety protection, and humane treatment and care of

domestic and wild animals, it is essential that this important board be allowed to continue in statute.

Support the Current Composition of the VMB and Multidisciplinary Committee

The current composition of the VMB consists of four practicing veterinarians, three public members, and one registered veterinary technician (RVT). In 2010, the addition of an RVT to the Board was negotiated by the affected stakeholder groups and the Senate Business and Professions Committee Chief Consultant, and incorporated into AB 1980-Hayashi (Chapter 538, 2010). It was determined that an RVT Advisory Committee to the VMB had fulfilled its charge, and thus it was subsequently eliminated in that same legislation to make way for an RVT on the Board. Additionally, AB 1980 also added a second RVT to the very successful “Multidisciplinary Advisory Committee,” a standing committee, recommended by the CVMA, which has been lauded by the Board for their work ethic and productive solutions. The “Multidisciplinary Advisory Committee” consists of three appointed veterinarians, two RVTs, and one public member. Their tasks range from drafting regulations to clarifying inconsistent interpretations of statute, to creating a “Hospital Checklist” – an extensive document now available to every practice owner to assist him or her in insuring that their hospital facility contains all of the necessary components to ensure a positive hospital inspection.

We are grateful to Governor Brown for filling the vacancies on the Veterinary Medical Board several months ago. The new appointees are conscientious, dedicated, and focused. The CVMA fully supports the current composition of the VMB and the Multidisciplinary Advisory Committee and we would recommend no changes at this time.

Unlicensed Activity – Enforcement Efforts Must Be Intensified to Protect Consumers

Due to ongoing concerns about unlicensed persons illegally practicing veterinary medicine in California, the CVMA launched a major campaign regarding unlicensed activity in 2010, and polled all California licensed veterinarians (CVMA members and non-CVMA members), to determine the extent of unlicensed activity in the state. The CVMA received close to 1500 responses from veterinary professionals:

- 34% of the respondents stated that they had a client relay a negative experience to them involving unlicensed activity.
- 54% of the respondents indicated that the unlicensed layperson was illegally diagnosing and treating animals.
- 23% of veterinarians stated they had to administer care and treatment to an animal that was harmed at the hands of a layperson.

There is ongoing concern and frustration that the Veterinary Medical Board does not have the necessary authority to prevent harm to animals and consumers. The VMB is hard-pressed to deter behavior in this area when their options are most often a cease and desist letter, the occasional cite and fine and attempting to gain the interest of a local district attorney's office to pursue the case. Of concern to the consumer should be the proliferation of businesses, falsely advertising and using terms to mislead the public into believing that they are licensed veterinary professionals (e.g. "pet dental hygienists" or "animal physical therapists") when they, in fact, are laypersons performing veterinary services.

Even though the board has the authority to investigate an unlicensed person who advertises veterinary services to the public, they have stated that they cannot because there has been no harm to an animal. Sections 149 and 651 of the Business and Professions Code do not adequately address the Board's authority over illegal advertising. Also, if a veterinarian treated an animal that had been harmed at the hands of a layperson, and the veterinarian then reported the case to the VMB, we are told that the VMB will not respond unless the consumer files the injury report.

The CVMA would also like to call attention to Section 4830(a)(2) and (a)(3) of the Business and Professions Code. There have been a number of reports of out-of-state veterinarians who do not have a California license to treat animals, yet who are actively practicing in California. Local district attorneys are refusing to take these cases due to the lack of clarity in this statute. Their interpretation allows veterinarians who are not licensed in California the opportunity to treat the public's animals without being subject to oversight by the Veterinary Medical Board. This section needs to be changed to protect animals and consumers and to comply with state law.

The CVMA and the VMB sponsored legislation in 2011 by Senator Emmerson, which was held over as a two-year bill, and ultimately did not go forward due to strong opposition from the large animal community. The measure sought to strengthen the penalties for unlicensed activity, similar to the tools given to other licensed professions. The CVMA welcomes suggestions from the committee as to other alternatives and tools the VMB might use in helping to deter unlicensed persons from performing tasks that are only lawfully performed by a licensee. The CVMA would also recommend that the VMB consider modifying their website to include a form that a consumer could use to report unlicensed activity. (The current form is not easy to find and is practitioner-focused.) Additionally, and if appropriate, the CVMA would like to encourage the VMB to publish its actions against unlicensed activity violators on their website, so that the consumer would have the tools they need to make an informed decision about care for their animal.

Cases Continue to Take Too Long For Resolution

In 2000 the Bureau of State Audits revealed that "boards and bureaus within the Department of Consumer Affairs took too long to suspend or revoke licenses in disciplinary cases. The average time to process these cases ranged from 60 days for

the Athletic Commission to 1,095 days for the Veterinary Medical Board.” (Source: Sacramento Bee, November 29, 2000, pg. D1) Unfortunately, the Board continues to be plagued with significantly long delays for formal discipline (averages of 2 years and 10 days up to a maximum average of 2 years and 207 days).

For example, the VMB stated their “intake” goal was intended to have a target of only 10 days to process, but has now grown to 13-33 days. The VMB’s Sunset Review document notes: *“This goal was not met by the Board due to an increase in complaints received, staffing shortages, and hiring restrictions. Complaints at intake are processed by a part-time Office Technician, who also has a variety of other duties.”* While the report notes that the VMB received 770 complaints in 2011/12, their colleagues at the Medical Board had 7004 complaint/convictions and the Dental Board had 3513 complaint/convictions and they still managed to hit Intake targets of 10-17 days and 8-10 days respectively, with substantially more complaint activity. The Medical Board and Dental Board also have tighter formal discipline targets, while the VMB’s is surprisingly 200 days longer.

The CVMA is of the understanding that three VMB staff members were recently lost due to cutbacks, but we are told that none of these employees were working on enforcement issues. We also understand that some of the backlog may be at the Department of Justice level. The CVMA would welcome the committee’s suggestions on how the VMB might better utilize current staff, accelerate cases, and work more efficiently with the DOJ.

Identify Reasons for Complaint

When the VMB issues a notice of complaint/investigation letter to a practitioner, the practitioner is not instructed as to the nature of the claim. Rather, the practitioner is merely asked to forward information to the Board regarding a particular pet client and the appointment date. The CVMA believes the omission of the information – failure to cite the reason for the case being reviewed - is inappropriate and potentially a violation of due process. The CVMA recommends that all letters, originating from the VMB to a practitioner, should indicate for what the practitioner is being investigated.

Recommend Two or More “Experts” Review Cases

When cases against practitioners are reviewed by the VMB, they often utilize the services of veterinarian “expert reviewers,” who typically examine a case that pertains to their field of specialty. However, we are told that the VMB often uses only one expert reviewer on a case, because there was fear that if “two disagree, we have to throw the case out.” The CVMA believes inviting a second set of eyes to review a case, provides a critical check and balance. The CVMA recommends that two or more “expert reviewers” be the standard number used when reviewing important cases. Further, we recommend that these reviewers be current practitioners in good standing.

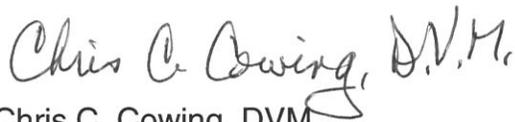
VMB Could Improve Its Public Accessibility

The VMB lacks a consistent process for providing meeting materials to the interested public in advance of a scheduled meeting. Agenda packets are often incomplete with additional documentation often handed out at the Board meeting and not posted on the website. We believe that in order to foster better transparency, the VMB website should include all meeting packet documents as well as dates, the address of the location and time of the meeting.

Lastly, the CVMA looks forward to working with the VMB and your committee during the 2013 session, as you perform your comprehensive review of the Board during Sunset Review. The CVMA thanks you and your staff for the opportunity to present our support, and to raise a few issues in response to the Board's November preliminary report to the committee.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Chris C. Cowing, DVM". The signature is written in black ink and is positioned above the typed name.

Chris C. Cowing, DVM
CVMA President

cc: Senate Business, Professions, and Economic Development Committee
G.V. Ayers, Consultant, Senate Business, Professions, and Economic Development Committee
Bill Gage, Senior Consultant, Senate Business, Professions, and Economic Development Committee
Amber Alexander, Policy Consultant, Senate Republican Caucus
Sue Geranen, Executive Officer, Veterinary Medical Board
Mike Dillon and Christina DiCaro, CVMA Lobbyists