

Report to Licensees

of the

LOUISIANA BOARD OF VETERINARY MEDICINE

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Board Changes

- ❑ The Board will certainly miss departing member, Patrick R. Bernard, DVM, whose term with the Board expired October 31, 2008. During his 6 year term, Dr. Bernard has shared insight and experience pertinent to veterinary medicine and regulatory functions of the Board, particularly in the equine area. The Board appreciates his service and wishes him well on future endeavors.
- ❑ The members of the Louisiana Board of Veterinary Medicine and staff of the Board office would like to welcome new Board member, Gary T. Levy, DVM. Dr. Levy currently practices in New Orleans (a predominantly small animal practice) and has been appointed to serve through July 30, 2013. We extend a warm welcome and best wishes for a productive team.
- ❑ Additionally, a welcome back is extended to Mica F. Landry, DVM, who is returning to the Board to fill the vacancy of Dr. Bernard. Dr. Landry practices in Donaldsonville, LA and has been appointed to serve through July 30, 2013.

Continuing Education and Late License Renewal

The LA Veterinary Practice Act, enacted by the State Legislature, requires continuing education for annual license renewal. However, the State Legislature delegates to the Louisiana Board of Veterinary Medicine (LBVM) the authority to promulgate rules to implement the specifics of the requirement. The LBVM has complied with its mandate and the results can be viewed in Chapter 400 of the Rules.

At the outset, it is not the objective of this article to discuss what constitutes approved continuing education nor the protocol for obtaining pre-approval of continuing education. There are also exemptions from the continuing education requirement, such as disability, retirement, and active military duty. For answers to questions regarding these topics, I refer you to the LBVM's website and/or the board office.

The primary purpose of this article is to address the issues of failure to timely obtain the required continuing education hours necessary for annual license renewal and the effects of such failure. More specifically, Rule 403 A states, in pertinent part, that "a minimum of 20 actual hours is required each fiscal year (July 1 through June 30) as a prerequisite for annual renewal of a license."

As you are aware, all licenses terminate on September 30 of each year. See Rule 305. In order to timely renew a license for the next year (beginning October 1), all requirements for annual renewal (including continuing education) must be completed and submitted to the LBVM along with the renewal application prior to the September 30 deadline. Therefore, as an example, a veterinarian has from July 1, 2007 through June 30,

2008 to obtain his required 20 hours of approved continuing education for annual renewal '08-'09. This information is required to be submitted to the Board office via completed license renewal application on or before September 30, 2008.

Rule 405 A states that "a licensee who fails to obtain the required approved minimum of 20 hours within the prescribed 12 month period (i.e. July 1 through June 30) will not meet the requirements for renewal of his license. Such a license shall expire on September 30 for any licensee who does not timely and properly comply with the annual continuing education requirement. Thereafter, a licensee may apply for renewal of his expired license, however, he shall be unable to lawfully practice veterinary medicine until such time as the requirements for renewal have been met and documented to the satisfaction of the board. Any late fees and/or fines assessed by the board shall be paid before the renewal is issued." Please note the above underscored language "license shall expire on September 30" and "unable to lawfully practice veterinary medicine."

Furthermore, Rule 413 D provides that "failure to obtain the required number of hours in the specified time period shall be considered a violation of the rules of professional conduct" for which a veterinarian can be sanctioned. Rule 413 D also provides for "a grace period of no more than 90 days may be granted by petitioning the board for an extension. A late fee of \$25 and a fine of up to \$50 may be levied."

However, for the grace period to be considered by the LBVM, Rule 405 B requires there to be "extenuating

circumstances,” as well as the requirement that the “licensee requesting the extension must petition the board at least 30 days prior to the expiration date of the license.” In short, the rule requires that the request for an extension (maximum of 90 days) must be submitted to the board office in writing on or before August 30. Even with the granting of an extension, the LBVM may still assess a late fee (\$25) and/or fine (up to \$50).

What could happen if (1) the petition for an extension is not timely submitted on or before August 30, and/or (2) the board rejects the explanation of extenuating circumstances necessary to grant the extension? The former licensee cannot lawfully practice veterinary medicine until he secures a current license.

While some may question the actual effect “a lack of a piece of paper” will have on the level of practice of veterinary medicine, please consider several consequences that quickly come to mind if one were to practice without a current license. First, there is the effect on DEA and LA Board of Pharmacy registrations and the use of controlled substances. Second, there is the effect of denial of insurance coverage for civil claims made during the period of cessation of licensure, as well as culpability and damages for practicing without proper authority. Third, there are potential criminal penalties imposed by the courts for practicing without a license. Fourth, sanction by the LBVM (perhaps actual denial of a license depending on the facts of the case?) for practicing without a current license.

In closing, the LBVM has been asked on occasion about the possibility of required continuing education hours

being extended over a two year period. The substance behind the request is generally to allow folks additional time to obtain the same, or even an increased number of, approved hours. Unfortunately, the “roll over” and “two year” scenarios are not applicable as continuing education coincides with annual license renewal as required by the Legislature, as well as the accounting/tracking standards established in the board office.

Please keep in mind that the public policy behind the requirement of continuing education is to assist the profession with continued competency which can be annually monitored. The pursuit of continued competency is the Legislature’s primary objective with requiring continuing education. Second, anyone that has attended a Board meeting can attest to the substantial amount of the Board’s business agenda during a board meeting devoted to the consideration of continuing education issues regularly presented to the Board. There is also the many hours of work by the Board’s office staff regarding continuing education between board meetings. A roll over or two year scenario would only add to an already difficult and time consuming accounting/tracking protocol for the Board and its office staff.

In concluding, it is hoped that this brief article on timely acquisition and reporting of approved continuing education has answered some questions. As always, if you have any questions or comments regarding this topic or any others, please submit them in writing to the Board office for review and response.

2009 Board Meeting Dates

The Louisiana Board of Veterinary Medicine will meet at 8:30 a.m. on the following dates: Thursday, February 5, April 2, June 4, July 30, October 1, and December 3, 2009.



Rules Update – Please call or write the Board office for a copy of any Notice of Intent or Rules described below.
Final Rule 700, 711 – Mobile Practice Vehicle – Effective February 20, 2009. Amended Rule clarifies the requirements for a veterinary mobile practice vehicle for other than large animals.

Medical Records

Issues regarding medical records seem to surface from time to time. In general, pursuant to Rule 701, a medical record shall be maintained for a period of five (5) years from the date of last treatment and is the responsibility and property of the veterinarian. A copy or synopsis of a patient’s record shall be provided to the client or the client’s authorized representative upon request of the client. A reasonable charge for copying and providing a patient’s record may be required by the veterinarian. The veterinarian shall not release a copy of the

record to any person other than the client or a person authorized to receive the copy for the client.

With regards to what constitutes a medical record, I will direct you to the Board Rules 701 et seq. which were amended recently and clearly address the Board’s position on this subject. Rule 701A.1 requires that the medical record be “written, or computer generated,…” which does allow a veterinarian to maintain a computer based record. However, it is the veterinarian’s obligation to be able to provide a hard

(written) copy of the record to the owner, a subsequent attending veterinarian, and/or the Board (or its representative) upon proper request. In addition, records are of the utmost importance in the event the patient is presented to another veterinarian who can review the records to determine what has been administered or provided by way of veterinary services. In short, you must still comply with the other provisions in the Rules regarding records if you elect to pursue computer generated records.

The Board also strongly suggests the maintenance of original signed consent forms, as well as diagnostic test results, which may be required if the validity of such items are brought under review and question. These documents and film, as well as any other items not specifically discussed herein, may be extremely beneficial to you in disputing allegations/claims made against you regarding these matters. Your "records" may be the only defense you can assert in a given inquiry. If you cannot produce defensible records, then your defense will not be persuasive. In addition, while the reliability of technology is ever growing, there still remains the unforeseeable occurrence of hard-drive/software glitches, failures, and human error.

However, for purposes of this article, it can be stated that a medical record is required when there is an establishment of the veterinary-client-patient relationship (VCPR). The Board's Rules also clearly defines the VCPR and when it is established. See Rule 700.

The primary objective of this article is to address the specific issue of production of the medical records to the client or the client's authorized representative (which may include a subsequent attending veterinarian) upon request of the client. Obviously, the requirement of client consent is predicated on the concept of confidentiality.

The identity of the client should be determinable by the medical record and the facts of a particular case; however, the more challenging issue is who can be considered the owner's authorized agent regarding confidentiality. It is suggested that if you are in doubt, perhaps you should first communicate with your client and satisfy yourself that the "authorized agent" of the owner is in fact authorized to request a copy of the medical record on behalf of the client. It is also suggested that you document your file accordingly in the event any action on your part in releasing, or refusing to release, a copy of the medical record is legally defensible in a given case.

In addition, perhaps it may be an accepted common practice for the second veterinarian to sign an authorization for the client (without communication from the client to the former attending veterinarian) in a "second opinion"

or "new vet chosen by client" scenarios, but potential legal problems with this approach presents themselves for the sending veterinarian to protect himself from claims of breach of confidentiality submitted by the client. If a complaint of this nature is ever filed by the client, then the sending veterinarian would be subject to sanction. There is no "implied" legal consent when it comes to confidentiality. The consent given must be actual and express which means that

the client must affirmatively consent to and name the authorized agent. So, for the new veterinarian to simply call the former veterinarian to "get the file" does not satisfy the client consent requirement.

There may be some with the opinion that "it should be a professional courtesy" to provide the records to the subsequent veterinarian (for a second opinion or new client/patient relationship). More than likely, the veterinarian with this opinion will be the one with the new client/patient. But, professional courtesy does not supersede the VCPR and confidentiality requirements. Board Rule 1041 clearly states that "a licensed veterinarian shall not violate the confidential relationship between himself and his client." In addition, the Board has also adopted, by Rule, the Code of Veterinary Ethics of the AVMA. Principle I.L of the Code of Ethics states that a veterinarian should protect the personal privacy of the client-patient, however, disclosure of confidential information is legally permissible "if required by law or it becomes necessary to protect the health and welfare of other individuals or animals."

Please keep in mind that a "referral" for care to a subsequent veterinarian, which the client has consented to, would satisfy the issue of consent. However, the file should properly document the client's consent. A document signed by the client consenting to the referral would be optimum to defeat a claimed breach of confidentiality.

Additionally, it is well known that veterinarians discuss various cases with one another. Such conduct is aimed at the best care to be provided to the respective patient. This conduct is not a breach of confidentiality, generally speaking, if there is no sharing the identity of the client and patient, but only a discussion regarding the veterinary care issues involved in the case.

As an aside, in the absence of a court order (subpoena) or client consent, the Board has concluded that a veterinarian may only disclose information regarding rabies vaccination, i.e., if the vaccination is current, due to the overwhelming concern for public health and welfare. In fact, as you know, in Louisiana only a licensed veterinarian can lawfully administer a rabies vaccination. The method to verify the timely administration of rabies vaccine by a licensed veterinarian is appropriate documentation, i.e., medical record to evidence administration of the vaccination, as well as a certificate/tag. It is beyond dispute that without appropriate documentation, there is no proof that the animal has indeed been timely and properly vaccinated by a licensed veterinarian. There is also the public policy behind the law regarding the prevention of a rabies outbreak.

Therefore, the administration of a rabies vaccination in Louisiana by a lay person does not legally count. In the event the animal bites another animal, or worse yet a person, without confirmation that the biter has been timely and properly vaccinated, the ramifications regarding medical treatment for rabies, and the resulting financial and legal woes between the owner of the biter and the person bitten, could be significant.

(cont. pg. 4)

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(cont. from pg 3) Also, keep in mind that in the event of a court order (subpoena) or client consent, a veterinarian may legally disclose other information, beyond current rabies vaccination, normally considered confidential by Rule 1041 within certain limitations. The client-patient information which may be lawfully disclosed is then, of course, defined and limited by the terms of the court order (subpoena) or client consent.

It is hoped that this article will be of assistance to you. If you have any questions or comments, please submit them in writing to the Board office for review and response.

Please Take Note...Per Rule 305D: "It is the duty of the licensee to maintain a current address with the office of the Board of Veterinary Medicine and to notify the board's office if an annual re-registration form is not received."



License Renewal Statistics 2008-2009

Active DVM – 1071, Inactive DVM – 219, RVT – 83, CAET – 105, RED - 5

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