

the
LOUISIANA BOARD OF VETERINARY MEDICINE
Report to Licensees

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AN EXPLANATION OF THE ROLE OF THE BOARD AND THE NEW DISCIPLINARY PROCEDURES
By Michael Tomino, LBVM General Counsel

The objective of the Board is to protect and insure the safety, health, and welfare of the consuming public and the animals receiving veterinary medical services. Such an objective is not always clearly understood or kept in mind by the general public and those individuals who are regulated by the Board. The Board protects the public by licensing and enforcing the laws relative to the practice of veterinary medicine. The primary tools the Board uses in regulating the practice of veterinary medicine are the Federal and State Constitutions, the Louisiana Veterinary Practice Act, the Board's Rules, the Administrative Procedure Act, and other various applicable laws. In regulating the practice, the Board has the obligation of investigating allegations of wrongdoing by those individuals it licenses or certifies, as well as unlicensed individuals or entities who are practicing without proper credentials. As General Counsel, I provide legal consultation to the Board and assist in the investigation and prosecution of allegations of wrongdoing. Please note that I stated "prosecution" and not "persecution." This philosophy is also shared by your Board.

With regards to the new investigative and disciplinary procedures, the Board has elected to make certain changes in order to become more efficient and cost effective in accomplishing its objective, as well as insuring that the legal and constitutional rights of all parties involved are not violated. It is strongly recommended that you review the new rules promulgated by the Board in this area and call if you have any questions or comments.

The new rules regarding investigation and disciplinary procedures are generally found in new Chapter 14 of the Board's Rules. There are several substantial changes which I would like to briefly address. First, in accordance with the new Rules effective November 20, 1999, any complaints received after this date will not have to be notarized. Such an approach will make filing a complaint more convenient for the complainant. Additionally, the submission of a complaint which is not notarized will also assist in bringing the matter to a quicker resolution. In the past, there have been a fair number of complaints which have been submitted without being notarized which required the Complaint Form to be re-submitted by the complainant. The re-submission of the complaint unfortunately takes additional time which should be avoided. Furthermore, pursuant to the new Rules, the Board can initiate its own complaint without the necessity of receiving a notarized complaint from a third party.

Second, the manner in which investigations will be conducted subsequent to November 20, 1999 is referenced in the new Rules. The new investigative procedure will entail more communication between the parties and hopefully streamline the process. The Board will no longer use the Complaint Review Committee approach to conducting investigations. Pursuant to the former Rules, the Board had the discretion to use an investigative committee which was chaired by a member of the Board who would select two (2) practicing veterinarians and one (1) non-veterinarian to serve as committee members. Other than the Board member, the remaining members of this committee remained anonymous. The former approach was cumbersome and unnecessary in most cases. Pursuant to the new procedure, a Board member will be the investigating officer with regards to the investigation of a complaint along with the assistance of the Board attorney. The various Board members will serve as investigating officers regarding new complaints on a rotational basis. Those investigations which do not result in a formal hearing will be presented to the remaining members of the Board who will serve as the tribunal deciding the case. The Tribunal will first see the facts of the case at the formal hearing as presented within the bounds of applicable law and constitutional guidelines. Once the Board receives a complaint and the matter is assigned to the investigating officer (Board member) and me, I will function in the capacity of assisting the investigating officer and prosecuting the complaint. I will not be providing legal advice to the remaining Board members regarding the case.

Therefore, there will be no commingling by legal counsel of the functions of investigative/prosecutorial and adjudication (decision making), nor the appearance of commingling.

Third, as the Board attorney, I will be involved with the investigation of a complaint of alleged wrongdoing from the very beginning. Such a procedure allows the investigating officer (Board member) to have access to legal advice in determining whether an alleged offense violates the law. Generally speaking, the investigating officer (Board member) will review the technical or clinical aspect of the alleged offense, while the Board attorney will review the legalities of such conduct. This investigative procedure has worked well with other regulatory boards that I am providing, or have provided, legal services to and it has withstood judicial scrutiny. Additionally, the Board's new investigative procedure will allow the Board attorney to be more informed about the case and be in a position to hopefully work toward an amicable resolution which is beneficial to all concerned interests. Please review the new Rules regarding informal proceedings and Consent Orders which address amicable and quicker (time and cost wise) resolutions.

Fourth, pursuant to the new Rules, the only person who will be able to seek an appeal (reconsideration or rehearing) before the Board after an adverse decision is rendered against him is the Respondent in a formal hearing. In a formal hearing, the only persons who can be a Respondent are licensees or certificate holders as defined in the Veterinary Practice Act and the Board's Rule. The individual filing the initial complaint letter with the Board does not have the constitutional right to seek an appeal (reconsideration or rehearing). Therefore, the Board's action in this area will bring matters to a quicker conclusion. Viewed another way, an individual who filed a complaint with the Board against a licensee or certificate holder cannot seek an appeal (reconsideration or rehearing) before the Board if the investigating officer (Board member) determines, with the benefit of counsel, that there is not sufficient evidence of a violation to warrant further prosecution of the case.

There are many other changes in the Rules with regards to investigations and disciplinary procedures. Again, it is highly recommended that you take the time to review these new Rules as well as other recent unrelated changes in the Veterinary Practice Act and the Board's Rules.

As an aside, the Veterinary Practice Act was amended this last legislative session to give the Board subpoena power over those records held by parties other than the persons regulated by the Board. As you are aware, the Board by law has the authority to obtain records held by its licensees and certificate holders. The new subpoena power will allow the Board access to information during the preliminary stages which previously required that a formal hearing be initiated. The new subpoena power will benefit all interested parties involved in an investigation to one degree or another. For example, it benefits the licensee accused of wrongdoing by allowing the Board to obtain information during the investigation which may lead to a resolution without the necessity of pursuing formal charges.

In the event you have a question about the applicability of a provision of the Veterinary Practice Act, another law involving your practice, or a certain Rule, please write to the Board and request a Declaratory Statement with regards to such issues. Board Rule 1423 further clarifies the procedure for submitting a request for Declaratory Statement. Upon receipt, the Board will review your request and obtain appropriate legal advice. A written response will be provided to you as soon as possible. These written responses or "Declaratory Statements" will benefit your practice as well as other practitioners in Louisiana. Declaratory Statements are public record and the substance of each statement will periodically be published in the Board's Newsletter for educational purposes. Such publication will not identify the person requesting the Declaratory Statement.

In closing, I have had the pleasure of meeting a few of you face to face and have had telephone conversations with several more. It is my opinion as a regulatory board attorney that it is much better for all concerned when a licensee or certificate holder conducts a preventative practice as opposed to a corrective one. In other words, I maintains an "open door" policy and encourages you to contact me with any questions or comments you may have prior to the birth of legal problems which could have otherwise been avoided. I look forward to meeting each of you in the future. I can be reached through the Board office.

Rules Update

[Please call or write the Board office for a copy of any Notice of Intents or Rules described below.]

Licensure and Examinations

The Board's intent to change Rules 301 and 303 regarding allowance of persons graduating from an AVMA-approved school or college of veterinary medicine to qualify for examination and licensure was presented in the August 1999 newsletter. This rule change became effective on November 20, 1999.

Disciplinary Procedures

The Board's intent to change rules in Chapters 1, 8, 10, and 12, as well as create Chapter 14 regarding disciplinary procedures for licensed veterinarians, registered veterinary technicians, and certified animal euthanasia technicians was presented in the August 1999 newsletter. These rule changes and new rules became effective on November 20, 1999. An explanation by the Board's general counsel of these new procedures is provided in this newsletter.

Fees and License Renewal Late Fees

The Board has issued a Notice of Intent concerning amendments to Rules 501 and 505 relating to increases in licensing and renewal fees.

Fees; Certificate Renewal; Late Charge for RVTs

The Board has issued a Notice of Intent concerning amendments to Rules 809 and 811 relating to increases in licensing and renewal fees.

Renewals

The Board has issued a Notice of Intent concerning amendments to Rule 305 relating to annual renewal of licenses, notification of expired licenses, and renewal of expired licenses.

Certified Animal Euthanasia Technicians

The Board has issued a Notice of Intent concerning amendments to Rule 704 and comprehensive amendments to Chapter 12 regarding clarification of application process, revision of fee schedule, expiration and revocation of certification, complaints and disciplinary proceedings, maintenance and security of drugs, creation and responsibilities of a "Lead" CAET, and requirement of continuing education for renewal.

Registered Equine Dentists

The Board has issued a Notice of Intent concerning adoption of Chapter 15 pertaining to registration and regulation of individuals to practice equine dentistry and other relative matters.

LICENSE RENEWALS COMPLETE

The board office has concluded the Year 2000 renewal period (from July 1 through September 30, 1999) with 925 active status veterinarians and 308 inactive status veterinarians. At the October 1999 board meeting, the Board took action to

suspend 28 first time expired licenses, continued the suspension of 50 continued non-renewed licenses, and revoked/canceled 14 licenses that have been expired and non-renewed for the past five years. So far in fiscal year 2000, there have been 35 new DVM licenses issued to practice veterinary medicine in Louisiana. At present, there are 111 individuals certified as animal euthanasia technicians, 63 individuals certified as veterinary technicians, and two individuals certified as equine dentists.

Something For You and Your Clientele --

During the 1999 legislative session, Act 229 (HB 127) was passed providing for the establishment of an "Animal Friendly" prestige license plate for motor vehicles, the creation of the Pet Overpopulation Fund within the state treasury, and the establishment of a Pet Overpopulation Advisory Council within the Department of Public Safety and Corrections. The set charge for this prestige license plate will be \$25 plus a \$3.50 handling fee in addition to the standard motor vehicle license tax already imposed. Each \$25 collected from the sale of this prestige license plate will be put into the Pet Overpopulation Fund for the sole use of providing reduced-cost sterilizations of adult animals to indigent pet owners. Any indigent pet owner on public assistance shall qualify for low-cost services. Any veterinarian licensed in the state of Louisiana, veterinary hospital, or organization qualified as a tax-exempt organization may apply for grants from the fund. Grants shall be distributed solely for purposes of providing low-cost pet sterilizations by licensed veterinarians. Private contributions, grants, and donations can also be made to the Pet Overpopulation Fund.

In accordance with legal requirement, this notice provided by the Board is for informational purposes only and its contents can not be endorsed by the Board nor required as a condition of licensure or certification.

Questions from the Real Lives of Veterinarians and Other Interested Persons

May a *trained lay person* perform the following *while under direct supervision*:

- administer anesthetics via box or mask? **YES**
- administer anesthetics after intubation? **YES**
- monitor anesthesia after intubation? **YES**
- administer oral treatments? **YES**
- administer topical treatments? **YES**
- administer injectable treatments? **YES**
- administer fluid therapy? **YES**
- insert IV catheters? **YES**
- insert IV catheters and administer medicines and anesthetics? **NO**
- be directed to extract a tooth that requires manipulation via extractors or splitting (deciduous, diseased, or fractured tooth)? **NO**

May a *trained lay person* perform the following *without direct supervision*:

- administer injectable treatments? **NO**

- administer injectables over the weekend via written directions of a licensed veterinarian? **NO**
- insert IV catheters? **NO**
- insert IV catheters and administer medications and anesthetics? **NO**

May RVTs perform the following *while under direct supervision*:

- insert IV catheters? **YES**
- insert IV catheters and administer medications? **YES**
- insert IV catheters and administer anesthetics? **NO**
- close skin incisions? **NO**

May RVTs perform the following *without direct supervision*:

- insert IV catheters? **YES**
- insert IV catheters and administer medications? **YES**
- insert IV catheters and administer anesthetics? **NO**
- close skin incisions? **NO**

The Board and board office personnel would like to welcome a new comer to the board office staff.

Ms. Tisha Turner has been hired to fill the Administrative Assistant position. Ms. Turner along with Kimberly Barbier, Administrative Director, and Amanda Hidalgo, Clerk, are always pleased to assist anyone with questions concerning the Board and its role in regulating veterinary medicine.

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