

Report to Licensees

of the

LOUISIANA BOARD OF VETERINARY MEDICINE

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Prescriptions, Internet Pharmacies and Related Matters

By Michael Tomino, Board General Counsel

As you may be aware, the Pharmacy Boards of various states, including Louisiana, as well as the Louisiana Board of Veterinary Medicine, have been engaged in a legal conflict with a well known internet pharmacy regarding the filling of prescriptions for patients without the appropriate veterinarian-client-patient relationship being established.

The Board notified a well known internet pharmacy by certified mail, dated September 24, 2001, of violations of the Veterinary Practice Act and Rules and Regulations promulgated by the Board being committed in Louisiana. More particularly, the internet pharmacy was dispensing prescription drugs to the owners of animals in Louisiana upon demand (1) without a license to practice veterinary medicine issued by the Board; (2) without a prescription issued by a person licensed to practice veterinary medicine in Louisiana; and (3) without the establishment of the veterinary-client-patient relationship.

It is the Board's understanding that on or about April 16, 2002, a Consent Agreement was entered into by the internet pharmacy with the Florida Board of Pharmacy wherein it was disciplined and, more particularly, ordered to : (1) not knowingly fill, dispense, or distribute medication for prescriptions written by veterinarians who have not physically examined the animal for whom the prescription is written; and (2) immediately terminate the internet pharmacy's alternate veterinarian program regarding veterinarians under contract or employed to write prescriptions for medication when the veterinarian has not physically examined the animal for whom the prescription is written.

Thereafter, a Consent Order was entered into by the same internet pharmacy and the Louisiana Board of Pharmacy, regarding the improper dispensing of veterinary medication to a client in violation of applicable laws and violations pertaining to the practice of pharmacy. The internet pharmacy entered pleas of *no lo contendere* to cited violation in exchange for the Louisiana Board of Pharmacy dismissing any and all other complaints it received against the company as of March 6, 2002.

The substance of the Consent Agreements the internet pharmacy entered into with the Louisiana and Florida Boards of Pharmacy echo the legal authority set forth in the cease and desist letter forwarded by your Board referenced above, dated September 24, 2001. It is the Board's understanding that such illegal activities will cease due to recent decisions by the Louisiana and Florida Boards of Pharmacy which have primary jurisdiction over this internet pharmacy.

During the pendency of the conflict with the internet pharmacy, the Board received complaints and inquires from various sources, including clients, regarding a veterinarian's legal obligation to provide a prescription. The Board considered several legal authorities in forming its position on this issue.

Pursuant to Rule 705.G(3), “a veterinarian may refuse to write a prescription if it is not directly requested by a client with whom a veterinary-patient-client relationship exists.” (underscore added) Furthermore, Rule 1014 provides that a licensed veterinarian shall not violate the confidential relationship between himself and his client. For a veterinarian to provide a prescription to an internet pharmacy without a direct request from his client, also subjects the veterinarian to disciplinary action by the Board for violating the confidential relationship between himself and his client by sharing treatment information with a faceless third party by way of internet and/or facsimile.

Additionally, Rule 705.G(2) states that a veterinarian shall not be required to write a prescription for any medication that in his medical opinion is not appropriate for the patient’s medical care. While the American Heartworm Society may have an opinion that suggests testing for heartworms every two (2) to three (3) years, if a veterinarian is of the medical opinion that his patient must be seen and/or tested on an earlier basis, such is within the scope of his professional judgement pursuant to the Veterinary Practice Act and the Board’s Rules. Of course, a veterinarian must act in a reasonable manner and conform to the prevailing standard of veterinary medical practice regarding such issue.

You may also wish to note that pursuant to Rule 1001 the Board has adopted the Principles of Veterinary Medical Ethics of the American Veterinary Medical Association. Principle VI.A(1) provides that attending veterinarians are entitled to charge a fee for their professional services. In interpreting this Principle, the Board has ruled that a reasonable fee to review a patient’s file and write a prescription directly requested by the client is not a violation of the Veterinary Practice Act or Board’s Rules.

More recently, the Board has been asked whether a veterinarian can refuse to give a prescription to a paying customer if the drug is one he is prescribing and using on that customer’s animal. The factual scenario at issue involves a veterinarian providing the annual examination and shots to a dog. The veterinarian in the past provided Advantage and Heartguard to the client for administration to the patient. However, in this particular instance the client directly requested the prescriptions so that she might “price shop”. The veterinarian then refused to provide the prescriptions.

In applying Rules 705.G(2) and (3) to the factual scenario described, it is the Board’s opinion that the veterinarian can not legally refuse to provide the prescriptions requested directly by the client. This opinion is based on the premise that these drugs would have been the same drugs that the veterinarian would provide and/or administer to the pet.

In concluding, with regards to the issue of providing prescriptions, please keep in mind your legal obligations, as well as your rights, so as to avoid any unnecessary and legal woes. Also, the Board office and I are available to answer any questions you may have concerning the issue of prescriptions.

2003 License Renewal Deadline

The renewal period for the 2003-year licensing period began on July 1, 2002. Renewal packets were mailed to licensees the last week of June 2002. If you have not received a renewal packet, please contact the Board office via telephone at (225) 342-2176 or email at lbvm@eatel.net to check the address on file and request another packet. General renewal information and a generic renewal form are available on the Board’s website at www.lsbvm.org.

Currently held licenses will expire unless renewed by

September 30, 2002.

Preceptorship Program – Host Facilities

What is the preceptorship program requirement for Louisiana licensure?

The Louisiana Board of Veterinary Medicine (Board) has authority under La. R.S. 37:1518(10) and has established requirements under LAC 46:LXXXV.1101-1123 for a preceptorship program required to obtain Louisiana veterinary licensure. The preceptorship program is required to be completed by applicants for veterinary licensure prior to a license being issued. The preceptorship consists of eight full weeks in training under a practitioner whose veterinary facility has been pre-approved by the Board.

Veterinary facilities who wish to participate in the preceptorship program as a Board-approved host facility must complete a Practice Assessment Questionnaire which is used by the Board to determine if the practice meets the minimum standards required. The questionnaire includes a job description sheet which must be completed and accepted as part of the assessment questionnaire for approved host status. The job description sheet requires general descriptions of duties to be performed and instructions to be given to the preceptee by the preceptor including administrative instruction (such as office management, financial activities, personnel supervision, client relations), as well as medical and surgery activities. By copy of the job description, it should be ensured that both parties to be involved in the preceptorship understand what is to be expected during the preceptorship. Facility approval is granted for a two-year period. Update questionnaires are sent out for facilities that wish to continue to be a Board-approved preceptorship host facility.

The host facility's (preceptor's) responsibilities include assuming the role of instructor during the preceptorship period by working with the preceptee under direct supervision. Direct supervision means that the licensed supervising veterinarian (instructor) is on the premise with the preceptee at all times. Under direct supervision the preceptee may perform certain activities during the preceptorship time that an unlicensed person cannot do at any time under any circumstance. The preceptee may legally perform surgery, diagnosis, prognosis, and prescribing of drugs, medicines and

appliances under direct supervision and only during the registered preceptorship time. The preceptor host should never consider or represent the preceptee (student) as being a licensed veterinarian. The preceptor should ensure that the preceptee's assignments cover all aspects of private practice including office management, bookkeeping, and economics as well as medical and surgical aspects. The preceptor is required to evaluate the preceptee's performance at the end of the preceptorship time.

The Board does not have a policy or requirements for financial compensation of preceptees during a preceptorship. This issue is left up to the preceptor and preceptee and should be negotiated prior to the start of the preceptorship. The Board strongly recommends that liability insurance be carried for the practice and the preceptee during the preceptorship. Usually an inexpensive rider can be purchased through your insurance carrier. Neither the Board nor the preceptee's school carries insurance for this purpose.

This eight-week preceptorship is a serious requirement towards receiving a license to practice veterinary medicine in Louisiana. It is not associated with any outside preceptorships that may be required by the applicant's school. The preceptor or host facility should stress this fact to any prospective preceptees and have the prospective preceptee contact the Board office for details. Preceptorships performed as part of the applicant's school curriculum will not be accepted towards completion of the preceptorship required for licensure unless the facility is pre-approved by the Board and the applicant registers the time to be spent at a facility with this licensing Board prior to the start of the time by submission of the required Preceptorship Agreement form.

If you may be interested in becoming a Board-approved preceptorship host facility, you can contact the Board office for information and to have the assessment questionnaire sent to you or visit the Board's website at www.lsbvm.org.

For Your Information:

Ketaset/ Ketamine Scam

The Drug Enforcement Administration (DEA) would like to inform practitioners regarding a scam being perpetrated involving Ketaset/Ketamine. Someone is soliciting information about Ketaset/ Ketamine from veterinarians to possibly set up a scam to have the product returned to a recall center or to determine which veterinary clinics have a large supply of Ketamine for possible future burglaries. According to the DEA, there is no recall or problem with Fort Dodge Ketamine/ Ketaset products. The company has not issued a recall or sent out a survey to any veterinarians concerning stocks of the drug. If you have been contacted by someone in this capacity, you may contact DEA.

Forged Prescription Reporting

The Drug Enforcement Administration's New Orleans Divisional Office (DEA) is implementing a new Forged Prescription Reporting Program. Whenever a practitioner or pharmacy calls the DEA to report information concerning a forged prescription, the DEA will email the information to participating pharmacies. Pharmacists can use the information to alert them as to which practitioners' names are being used on the forged prescriptions. Participation in the program is encouraged but voluntary on the part of the pharmacies. This program will aid in the reduction of forged prescriptions being inadvertently filled by an unsuspecting pharmacists.

If someone has been using your name and DEA registration to forge prescriptions, contact the DEA at (504) 840-1100 to provide them with as much information as possible. The DEA will email the information to all participating pharmacies in an attempt to place them on the alert. In addition to reporting it to the DEA, you must also contact your local police department so they can conduct an investigation in an attempt to catch the individual.

Rules Update

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

Continuing Education

The Board's intent to amend Rule 403 relating to continuing veterinary education requirements was presented in the April 2002 newsletter. These rule amendments became effective June 20, 2002 and will apply for the 2003 renewal period, CE period July 1, 2002 to June 30, 2003, for the 2004 renewal year.

Preceptorship Program

The Board's intent to amend Rules 1103 and 1115 relating to the Board's current preceptorship program was presented in the April 2002 newsletter. These rule amendments became effective June 20, 2002.

Licensure Procedures

The Board has issued a Notice of Intent, dated May 20, 2002, regarding amendments to Chapter 3, Rules 301 and 303 relating to education certification of foreign veterinary school graduates. The proposed amendments will further assist the Board in its ability to certify the education of foreign veterinary school graduates by giving the currently accepted backlogged program relief in allowing another avenue for foreign veterinary school graduates to get their foreign education certified thereby shortening the time in becoming licensed to practice veterinary medicine in Louisiana. These rule amendments are anticipated to take effect September 20, 2002. The Board has adopted an emergency rule of these rule amendments to be in effect for the maximum time allowed by law or until adoption of the final rule.

Questions from the Real Lives of Veterinarians and Other Interested Persons

Who may adjust animals with chiropractic services; are chiropractors (human) allowed to adjust animals; under direct supervision with the veterinarian present; must a chiropractor complete additional specific certification to be able to adjust animals?

The Board is of the opinion that the provision of chiropractic care is included within the scope of the practice of veterinary medicine which is regulated by the Board. The provision of chiropractic care by an individual not licensed by the Board would be in violation of the Louisiana Veterinary Practice Act.

Is a veterinarian legally required to notify clients that drug manufacturers do not stand behind their products unless the product is purchased through the veterinarian?

There does not appear to be a legal requirement in the Louisiana Veterinary Practice Act for veterinarians to notify their clients that drug manufacturers do not stand behind their products unless they are purchased through the

veterinarian. Perhaps the obligation to notify potential users of such items rests with the drug manufacturers directly. A veterinarian is responsible for the course of treatment which will be followed once he has accepted employment (a client) and for advising questionable or unusual treatments. A veterinarian must conduct his practice on the highest plane of honesty, integrity, and fair dealing with his clients in services rendered. A veterinarian may refuse to provide a written prescription to a client when in the veterinarian's medical opinion, the prescribed substance is not medically safe for in-home administration by the client. The issue of civil rights and obligations between private parties is not within the Board's jurisdiction. The Board suggests contacting private legal counsel for advise on civil liability issues.

Can a veterinarian charge a "veterinary/pharmacy consultation" fee to an internet pharmacy requesting payment of the fee from the internet pharmacy with a credit card payment at the time a faxed prescription request is received and prior to authorizing the internet pharmacy to fill the prescription for a client?

A veterinarian can charge (the client) a reasonable fee for reviewing a file and providing a prescription pursuant to a client's request. A

veterinarian may refuse to write a prescription if it is not directly requested by a client with whom a veterinary-client-patient relationship exists. The Louisiana Veterinary Practice Act and Board promulgated rules do not address charging a consultation fee to an internet pharmacy for a prescription. This issue involves a business issue rather than a regulatory issue.

Disciplinary Cases

Case No. 01-0929V – Based on the Consent Order agreed to by the Board, the Board found that the respondent veterinarian was in violation of LSA R.S. 37:1511 et seq. and Board Rules, specifically Title 46, Part LXXXV, Sections 700, 701, and 711.A(5), in that the respondent did not have access to a properly functioning diagnostic x-ray machine and developing equipment. Disciplinary action taken included payment of a \$1,000 fine and \$2,159 in administrative costs and the requirement for the review of the Louisiana Veterinary Practice Act and Board Rules.

Case No. 01-0925V – Based on the Consent Order agreed to by the Board, the Board found that the respondent veterinarian was in violation of LSA R.S. 37:1526.A(14) and Board Rules, specifically Title 45, Part LXXXV, Sections 701.B, 1409 and 1415, in that the respondent failed to cooperate with an investigation of complaint information submitted against him. Disciplinary action taken included reprimand of the license, payment of a \$250 fine and \$1,500 in investigative costs and the requirement for the review of the Louisiana Veterinary Practice Act and Board Rules.

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