

TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS
BOARD MEETING MINUTES
July 24, 2012

The Texas Board of Veterinary Medical Examiners met for a regularly scheduled meeting on Tuesday, July 24, 2012 in Room, #2-225 of the William P. Hobby, Jr. Building, 333 Guadalupe, Austin, Travis County, Texas. Bud Alldredge, D.V.M., President, called the meeting to order at 9:00 a.m. Board Members present were, David Rosberg, D.V.M., Vice-President; J. Todd Henry, D.V.M., Secretary; Richard Bonner, Janie A. Carpenter, D.V.M., John Clader, D.V.M., Joe Mac King, D.V.M., Mamie Salazar-Harper and Chad Upham. Board Staff present were: Nicole Oria, Executive Director; Laura Moriaty, General Counsel; Ina Franz, Director of Licensing; Debi McKay, Chief Fiscal Officer; Karen Phillips, Director of Enforcement; and Loris Jones, Executive Assistant.

Agenda Item 2, Consideration and Approval of October 18, 2011 Minutes. Dr. Clader Moved, Dr. Henry seconded and the motion passed to approve the October 18, 2011 minutes.

Ms. Phillips introduced new investigator, Jackie Tennison.

Ms. Jones introduced new receptionist, Lauri Lowry.

Agenda Item 3, Consideration and Approval of the March 27, 2012 Minutes. Dr. Carpenter moved, Dr. Clader seconded and the motion passed to approve the March 27, 2012 minutes with minor clerical corrections.

Agenda Item 4, Citizen Comments. No one signed up to make citizen comments.

Dr. Rosberg moved, Ms. Salazar-Harper seconded and the motion passed to go into Executive Session at 9:07 a.m. for private consultation and advice of counsel concerning pending or contemplated litigation or settlement offer and/or possible disciplinary action under the authority of the Open Meetings Act, GOVERNMENT CODE, §551.071; OCCUPATIONS CODE §801.407(d); and Attorney General's Opinion No. H-484. Open session resumed at 10:35 a.m. and it was announced that no action was taken. A certified agenda was made.

Agenda Item 5, Licensure Petitions.

a. Discussion, recommendation and possible action on petition(s) to take the State Board Exam.

- 1. Peggy Leshikar, DVM.** Dr. Leshikar is a 1986 graduate from Ross University, College of Veterinary Medicine. At that time, Ross was not an AVMA (American Veterinary Medical Association) accredited college of veterinary medicine, and Dr. Leshikar had to complete the ECFVG (Educational Commission for Foreign Veterinary Graduates) program administered by the AVMA. On December 9, 1987, Dr. Leshikar completed the program.

Dr. Leshikar is petitioning the Board to have the National Board Examination (NBE) requirement for licensing waived and asks that the Board allow her to take the Texas licensing examination.

As part of the ECFVG program, an applicant must pass the NBE with a score of 70%. This was accomplished in order for her to receive her certificate of completion from said program.

Subsequently, Dr. Leshikar applied to the Texas Board for licensing. Texas' standards for the NBE is a minimum score of 75%. She was required to retake the NBE. At the same time, she took and passed the CCT (Clinical Competency Test) according to Texas standards, but not the NBE.

Reports received from the AAVSB (American Association of Veterinary State Boards), the repository agency for all national board scores) indicate that Dr. Leshikar took the NBE a total of 14 times, never achieving a passing score for Texas.

In 1991, Dr. Leshikar earned a license in Tennessee, as their NBE requirement was 73% at that time. Her later and last attempt to pass the NBE was in 1994.

Dr. Leshikar indicates in her request to the Board that she had earned a temporary license in Arkansas. A discussion with the Executive Director of the Arkansas Board revealed that there is no record of a temporary license having been issued to her. It was also indicated by Dr. Leshikar that she passed the Oklahoma State Board Examination. A conversation with the Executive Director of the Oklahoma Board confirmed that Dr. Leshikar took and passed their board examination, however, she was not issued a license as she did not have a passing NBE score.

Since 2010, an applicant is allowed five (5) attempts at completing the national examination. As per a letter of agreement with the NBVME (National Board of Veterinary Medical Examiners), the Board agrees with this limit.

After discussion, **Dr. Henry moved, Dr. Rosberg seconded and the motion passed to deny Dr. Leshikar's petition to be allowed to take the State Board Exam. Dr. King voted against the motion. The Board also informed Dr. Leshikar that should she re-take the North American Veterinary Licensing Examination and pass with the minimum required score of 75% they will consider her application for licensure at that time.**

- 2. William Gengler, DVM.** Dr. Gengler is a 1972 graduate of the University of Missouri, College of Veterinary Medicine. That same year, he successfully completed the NBE (National Board Examination). The CCT (Clinical Competency Test) was not available at that time.

Dr. Gengler is petitioning the Board to waive the CCT prerequisite and allow him to take the Texas licensing examination.

In June of 1972, Dr. Gengler earned a veterinary license to practice in Missouri and New York, and, at a later time, earned a license in Wisconsin and Iowa.

In addition to practicing small animal medicine and surgery, he was an adjunct assistant professor teaching veterinary dentistry at the University of Wisconsin. In 1998, Dr. Gengler became board certified in the American Veterinary Dental College. Also that year, he became a full-time associate professor and section head of the Dentistry and Oral Surgery Service at the University of Wisconsin, College of Veterinary Medicine. Subsequently, he held the position of Associate Dean for Clinical Affairs until his retirement in 2011.

After discussion, **Dr. Rosberg moved, Dr. Clader seconded and the motion passed to waive the CCT prerequisite and allow** Dr. Gengler's to take the State Board Examination within one year of this waiver.

- 3. Audrey Wystrach, DVM.** Dr. Wystrach is a 1994 graduate of the Colorado State University, College of Veterinary Medicine. In December of 1993, Dr. Wystrach successfully completed both national examinations, the NBE and the CCT. She became licensed in Arizona in 1994, and her license is current to this date.

On the Texas application for veterinary licensing received by staff on June 21, 2012, Dr. Wystrach answered a question regarding disciplinary action in another state with a "no". Information received from Arizona shows that she was disciplined twice, once in 1996 and then again in 2010.

After discussion, **Dr. Rosberg moved, Dr. Carpenter seconded and the motion passed** to allow Dr. Wystrach to take the Provisional State Board Exam as well as the regular October 2012 SBE.

Agenda Item 6, Consideration and Approval of Agreed Orders. Dr. Rosberg moved, Dr. Clader seconded, and the motion passed to approve the Agreed Orders on the following: *Diana Magee, DVM; James L. Cox, DVM; Joey L. Romero, DVM; Kelli Shomette, DVM; Kristine M. Rocky, DVM; Kathleen Smith, DVM; Jimmy J. Dusek, DVM; Cole Q. Carter, DVM; Sarah Graham, DVM; Dan R. Kirby, DVM; Lisa A. Linton, DVM; James H. Kelly, DVM; Genevieve E. Keillor, DVM; Ali Rohani, DVM; James Gibbs, DVM; Nicole Koenigsknecht, DVM; Debra A. Garrison, DVM; David VanTrease, DVM; Richard W. Rafferty, DVM; Jess O. Adkins, DVM; Rohn Hendricks, DVM; Leonard King, DVM; Eddy Soranaka, DVM; Melissa Arnold, DVM; and Jonathan Dyes, DVM*

Agenda Item 7, Consideration and approval of Cease and Desist Orders. Dr. Carpenter moved, Dr. Rosberg seconded and the motion passed to approve the Cease and Desist Orders on the following case numbers: *10-293, 11-344, 11-345, 12-014, 12-092, 12-120, and 12-150*

Agenda Item 8, Report from the Rules Committee.

- a. **Discussion, recommendation, and possible action on rules to be adopted.** Ms. Moriarty presented an overview of each rule including the recommendations from the Rules Committee and written comments received. After discussion, **Dr. Rosberg moved, Dr. Clader seconded and the motion passed to adopt the amendments with non-substantive changes, to §§575.25, 575.28, and 577.16 as recommended by the Rules Committee.**

- b. **Discussion, recommendation, and possible action on rules to be proposed.** Ms. Moriarty presented an overview of each rule as presented for proposal. After discussion, **Dr. Clader moved, Mr. Upham seconded and the motion passed to propose the**

amendments, to §§573.10, 573.19, 573.43, 573.71, 573.80, 575.35 and 577.15 and to publish the proposed preambles and amendments in the *Texas Register* in accordance with law.

Agenda Item 9. Discussion, recommendation and possible action regarding approval of Equine Dental Provider Schools.

a. Texas Institute of Equine Dentistry. After consideration of the materials and information gathered by the Equine Dental Provider School Approval Advisory Committee, **Ms. Salazar-Harper moved, Dr. Henry seconded and the motion passed to deny the request for approval.** During deliberations about the matter, board members expressed the following concerns:

- Equine Dental Provider Schools Approval Advisory Committee member Carl Mitz reported to the Board that during his visits to the Texas Institute of Equine Dentistry, he observed demonstrations by students of the techniques taught at the Texas Institute of Equine Dentistry, and he felt that:
 - students were not required to keep their equipment as hygienic and sterilized as necessary;
 - students were not given appropriate instruction and demonstration about the role of the veterinarian in creating a veterinarian-client-patient relationship with the horse, in prescribing and dispensing sedation based on a diagnosis made following an examination of the horse, and in supervising the equine dental provider; and
 - students learn to perform equine dentistry based on feel, rather than by sight.
- Many members of the faculty of the Texas Institute of Equine Dentistry were educated and trained only by the Texas Institute of Equine Dentistry.
- None of the faculty is certified by the International Association of Equine Dentistry.
- Martin Brillhart, D.V.M., the veterinarian on staff, was recently disciplined for allowing equine dental providers to determine the dosage of sedation that he administered to horses undergoing equine dental treatment.

- b. Academy of Equine Dentistry, Idaho.** The Academy of Equine Dentistry withdrew their request to be an approved Equine Dental Provider School.

Agenda Item 10. Discussion, recommendation and possible action regarding approval of Continuing Education credit for Incident Management courses developed by the Federal Emergency Management Agency relating to Incident Management. Ms. Franz presented information provided by Suzanne Burnham, DVM related to Incident Management courses developed by FEMA. After discussion, **Dr. Carpenter moved, Dr. Henry seconded and the motion passed to approve the courses for continuing education credits.**

Agenda Item 11, Discussion, recommendation and possible action regarding fingerprinting of licensure applicants and licensees. Ms. Franz presented information on fingerprinting of licensees and applicants for licensure. After discussion, **Dr. Clader moved, Dr. Carpenter seconded and the motion passed to not require fingerprinting of licensees and applicants for licensure at this time.**

Agenda Item 12, Discussion, recommendation and possible action regarding authorization given to appeal the *Gene Giggelman, DVM vs. TBVME* lawsuit. Ms. Moriaty presented information on the lawsuit Gene Giggelman, DVM has filed against the TBVME as well as the options the Board has to either settle or appeal the case. After discussion, **Dr. Rosberg moved, Dr. Clader seconded and the motion passed to authorize staff to appeal the ruling in this lawsuit.**

Agenda Item 13, Executive Director's Report.

- d. Status of FY2012 Operating Budget.** Ms. McKay gave a brief overview of the FY2012 budget noting that we are on schedule and have spent approximately 50% of our allocated budget. Ms. McKay also gave a brief overview on the revenue projection for FY2013.

Agenda Item 13, Executive Director's Report (*continued*)

- a. **Report on Health Professions Council (HPC) Activities.** Ms. Oria discussed information on a petition for rulemaking the HPC has submitted to the State Office of Administrative Hearings.
- b. **Report on 2012 License Renewals.** Ms. Franz discussed the renewals as of July 11, 2012 noting that there continues to be an increase each year in the number of online renewals.
- c. **Report on State Board Exams.** Ms. Franz noted that the April State Board Exam is the only one administered by staff and held at Texas A&M University, all other exams are administered through participating ACT testing centers across the nation. Ms. Franz noted that there was a 98% pass rate for the April 2012 exam and a 100% pass rate with a record number of applicants for the June 2012 exam.
- e. **Board Performance Update.**
 - 1. **Enforcement Report:**
 - A. **Investigations.** Ms. Phillips discussed the Enforcement side of the agency and noted that as of July 24, 2012 there have been 491 on-site compliance inspections completed and that they are on target to complete approximately 600 on-site compliance inspections for FY2012. Ms. Phillips further noted that they are on target to receive approximately 400 complaints for FY2012.
 - B. **Legal.** Ms. Moriaty discussed the Legal side of the agency, noting that the backlog of cases should be cleared out by the end of the calendar year. Ms. Moriaty further noted there will be an increase in the number of Informal Settlement Conferences in FY2013.

- 2. Licensing and Examinations Report.** Ms. Franz discussed the statistics related to Licensing and Examinations. As of July 11, 2012 we had 7,872 licensed veterinarians in all categories.
- 3. Peer Assistance Report:** Ms. Oria mentioned that there are currently ten veterinarians under an Agreed Order and under contract with the Peer Assistance Program.
- f. Report on Discussions with Texas Veterinary Medical Association.** Ms. Oria reported on her discussions and noting the priorities presented in the Legislative Appropriations Request which include Peace Officer Status, Licensure of Registered Veterinary Technicians, Expert Witness Compensation, Funding of Database enhancements and maintenance, and Funding for a Website Manager to be shared by other Health Professions Council agency members.

Agenda Item 14, Discussion, recommendation and possible action regarding the employment, assignment, duties and discipline of employees in the Enforcement Division.

This item was not discussed.

Agenda Item 15, Discussion, recommendation and possible action regarding the employment and evaluation of the Executive Director. This item was not discussed.

There being no further business, **Dr. Clader moved, Dr. Henry seconded and the motion passed to adjourn at 2:17 p.m.**