

**TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS**  
**BOARD MEETING MINUTES**  
**March 27, 2012**

The Texas Board of Veterinary Medical Examiners met for a regularly scheduled meeting on Tuesday, March 27, 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 10:35 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., 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, Introduction of new Public Board Member, Manuela “Mamie” Salazar-Harper.**

Dr. Alldredge introduced and welcomed Ms. Salazar-Harper to the Board. Dr. Alldredge also introduced Deborah McKay, newly hired Chief Fiscal Officer for the Board.

**Agenda Item 3, Consideration and Approval of the October 18, 2011 Minutes.** A typographical error was noted in the minutes, and the Board directed staff to make the correction and bring the minutes of the October 18, 2011 meeting before the Board at the next regularly scheduled meeting on July 24, 2012.

**Agenda Item 4, Citizen Comments.** Dr. Alldredge called for citizen comments. Mr. James Hardie addressed the Board.

**Agenda Item 6, Licensure Petitions.**

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

**1. Renee Gross, DVM.** Dr. Gross is a 2003 graduate of Michigan State University. She has taken and passed the NAVLE, the national examination. Dr. Gross holds a license in California, and once held a license in Colorado and British Columbia, Canada.

Upon applying to this agency to be able to take the Texas State Board Examination for licensing, Dr. Gross did not disclose that any action had been taken against her license. The question on the application pertaining to this issue was answered with a “no”.

Information received from the licensing and regulatory authorities in Canada, revealed that Dr. Gross’ license in the BC province was indeed disciplined.

The material was reviewed by the licensing and legal staff. General Counsel believes that it is in the best interest of the public to bring Dr. Gross before the board to answer questions the members may have in regard to the aforementioned sanction. The board should also consider that Dr. Gross stated during the application process that no disciplinary action had been taken against her license in any other state, country or jurisdiction.

Dr. Gross appeared on her own behalf to answer questions the Board may have of her. After discussion, **Dr. Rosberg moved, Dr. Clader seconded and the motion passed to** require Dr. Gross to take and pass the State Board Examination within one year of her authorization to take the State Board Examination.

**b. Discussion, recommendation and possible action on petition(s) to reinstate revoked license.**

- 1. Christopher Arnold, DVM.** Dr. Arnold, upon passing all required licensing examinations, was originally issued Texas license number 8979 on April 19, 2001. Subsequently, his license was revoked on October 16, 2003, based on a felony conviction. The revocation action taken was based on Section 801.406 of the Texas Occupations Code which requires the Board to revoke a license of a veterinarian convicted of a felony under Chapter 481 of the Health and Safety Code in existence at that time. Dr. Arnold waived the hearing before a SOAH judge. The order revoking his license states that he can

petition the Board for license reinstatement five (5) years after the effective date of such revocation.

Dr. Arnold first appeared before the Board during their February 2009 board meeting, requesting that the Board reinstate his Texas veterinary license. The Board, at that time, voted that his license should be reinstated, provided that he meets certain requirements. One requirement was the taking and passing of the State Licensing examination. Dr. Arnold took and passed the State Board Examination as ordered by the Board.

Dr. Arnold appeared before the Board to show compliance with board ordered requirements and request that his Texas veterinary license number 8979 is re-instated. After discussion, **Dr. Rosberg moved, Dr. Clader seconded to reinstate Dr. Arnold's license.** After further discussion, **Dr. Rosberg amended his original motion, Dr. Clader seconded and the amended motion passed to reinstate Dr. Arnold's license under certain terms and conditions which require Dr. Arnold to complete the five (5) year contract with the Peer Assistance Program. Dr. Carpenter voted against the motion to reinstate Dr. Arnold's license.**

- 2. Jonathan Brooke, DVM.** Dr. Brooke, upon passing all required licensing examinations, was originally issued Texas license number 4280 on August 25, 1978. Subsequently, his license was revoked on June 14, 2007 based on a March 21, 2007 felony conviction and confinement in the Institutional Division of the Texas Department of Criminal Justice. The order issued by the Board stated that "upon discharge from prison, Dr. Brooke may apply for re-licensure in the same manner as a person applying for a new license."

On or about February 26, 2009, Dr. Brooke submitted his request for reinstatement to the Board. During the meeting, the Board voted to allow Dr. Brooke to take the State

Licensing examination and reiterated that he must comply with the requirements set out in Agreed Licensure Order 2009-63.

Dr. Brooke completed one such requirement by taking and passing the State Licensing Examination on October 12, 2009. The Board previously waived the Clinical Competency Test requirement. Continuing education was attained by him, as per the documentation he submitted, and thereby satisfying another requirement also found in the Order.

Dr. Brooke appeared before the Board today to request that his Texas veterinary license number 8979 be reinstated. After discussion, **Dr. Rosberg moved, Dr. Henry seconded and the motion passed to reinstate Dr. Brooke's license under the following terms and conditions.**

1. Prior to commencing the practice of veterinary medicine, Petitioner must submit to the Executive Director of the Board for approval the name of a monitoring licensed veterinarian, and receive approval from the Executive Director of the monitoring veterinarian ("Approved Monitor").
2. The Approved Monitor must provide general supervision of Petitioner for one year from the date of this order and provide quarterly reports to the Board during that period.
3. The Approved Monitor must submit a letter to the Board acknowledging that they have been made aware of the terms and conditions placed on Petitioner's license, and their responsibility to submit quarterly reports.
4. It is the responsibility of the Petitioner to ensure that the approved monitor submits quarterly reports for one year from the date of this Order regarding Petitioner's proficiency and attesting to Petitioner's:
  - a. Adherence to the laws and rules,
  - b. Veterinary skills; and
  - c. Proper record keeping.

**Agenda Item 6, Consideration and Approval of Agreed Orders.** Dr. Rosberg moved, Dr. Carpenter seconded, and the motion passed to approve the Agreed Orders on the following: *James Greenwell, DVM (two Agreed Orders); Gloria Chavez, DVM; Shelley Pasternak, DVM; Martin Brillhart, DVM; Lawrence Ruhr, DVM; Thomas Martin, DVM (two Agreed Orders); Amy Bevill, DVM (two Agreed Orders); Ellis Ford, DVM; Jennifer Whitfield, DVM; Jennifer Bowers, DVM; Clay Brieger, DVM; Valerie Mogas, DVM; Gregory Lisciandro, DVM; Cristin McCamish, DVM; Brandon Richards, DVM; William Dudley, DVM; Amanda Lovell, DVM; Thomas Evans, Jr., DVM; Janice Wolf, DVM; Stephen Williams, DVM; Bruce Hardesty, DVM; William Swann, DVM; Larry Marcum, DVM; Christopher Brooks, DVM; Thomas Hooper, Jr., DVM; Deborah Nelson, DVM; Eddie Hayes, DVM; Robert Colvin, DVM; Carlos Zamora, DVM; Marilyn Maltby, DVM; M. Gordon Parham, DVM; Stephen Kerpsack, DVM; Matthew Moskosky, DVM; Roderick Gant, DVM; Gary Moore, DVM; Jackie Valerius, DVM; R.R. Domer, DVM; David Snyder, DVM; Lewis Moore, DVM; Patricia Thompson, DVM; Karla Hilliard, DVM; J. Keith Leakey, DVM; Menaka Matsyaraja, DVM; and Dorie Lynne, DVM;*

**Agenda Item 7, Consideration and approval of Cease and Desist Orders.** Dr. Rosberg moved, Dr. Henry seconded and the motion passed to approve the Cease and Desist Orders on the following case numbers: *11-250, 11-265, 11-356, 11-357, 11-374, 11-385, and 12-059.*

**Agenda Item 8, Consideration and approval of Proposal for Decision on Kody Kothmann, DVM.** Dr. Rosberg and Dr. Carpenter were recused from discussion and voting on this agenda item, as was Laura Moriaty, General Counsel. Ms. Nancy Fuller from the Office of the Attorney General served as the Board's General Counsel. Dr. Kothmann appeared with his counsel, Mr. Keith Thompson, Mr. Tyler Vance represented the Board. Steven Rivas, Administrative Law Judge appeared and presented his Proposal for Decision. Mr. Vance presented a summary of the case history and the staff's recommendation along with documentation proving the Board's costs incurred in litigating the case before the State Office of Administrative Hearings. Mr.

Thompson presented Dr. Kothmann's response to the Proposal for Decision and Dr. Kothmann spoke briefly on his own behalf.

**Dr. Henry moved and Dr. Clader seconded to go into Executive Session at 12:22 p.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 2:05 p.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, **Mr. Upham moved, Ms. Salazar-Harper seconded and the motion passed to adopt the Findings of Fact and Conclusions of Law recommended by the Administrative Law Judge in the Proposal for Decision with the following modifications made to Conclusion of Law number 7. Conclusion of Law number 7 is amended to read as follows:**

"7. Based upon Findings of Fact Nos. 14-19, Staff has failed to show that Respondent failed to meet the standard of care by choosing to perform an OE instead of an OHE on the cat."

**Dr. Clader moved, Mr. Upham seconded and the motion passed to remove Conclusions of Law numbers 11 and 12 because penalty recommendations are not proper Conclusions of Law and the Board cannot consider such recommendations as binding.**

**Dr. Clader moved, Mr. Bonner seconded and the motion passed to adopt the remainder of Proposal for Decision 578-11-7257.**

**Ms. Salazar-Harper moved, Dr. Clader seconded and the motion passed to direct staff to develop a Final Decision and Order with the following terms and conditions:**

Dr. Kothmann be formally reprimanded, complete an additional six (6) hours of continuing education within one year in addition to the seventeen (17) hours

required of all veterinarians annually. Three of the additional hours must be in small animal surgery and the other three additional hours must be in record keeping. In addition, pursuant to Rule 575.10 and §2001.059 of the APA, because Dr. Kothmann was adjudged by the Administrative Law Judge after trial to be in violation of the Rules and thus §801.402(6) of the Act, Dr. Kothmann is ORDERED to pay to the Board, within 45 days of the date of this Order, the costs of litigation totaling FOUR-THOUSAND SIX-HUNDRED AND FORTY-SEVEN DOLLARS AND NINETY-NINE CENTS (\$4,647.99). If Respondent fails to pay the costs within 45 days of the date of this Order, Respondent's license may be suspended until the costs are fully paid.

**Agenda Item 6 (continued), Consideration and Approval of Agreed Orders.** Dr. Clader moved, Dr. Carpenter seconded and the motion passed to approve the Agreed Order on Gene Giggelman, DVM.

**Agenda Item 9, Report from the Rules Committee.**

- a. **Discussion, recommendation, and possible action on rules to be adopted.** Ms. Elizabeth Choate, Director of Government Relations/General Counsel for the Texas Veterinary Medical Association (TVMA) presented TVMA's comments regarding changes to the rules that were up for adoption. Ms. Moriaty presented an overview of each rule including the recommendations from the Rules Committee and written comments received. After discussion, **Dr. Clader moved, Dr. Henry seconded and the motion passed to adopt the amendments, as recommended by the Rules Committee, to §§571.1, 571.5, 571.6, 571.7, 571.9, 571.11, 571.13, 571.15, 571.21, 571.23, 571.25, 571.54, 571.55, 571.56, 571.59, 571.60, 571.61, 571.62, 571.63, 571.64, 575.8, 575.22, 575.24, , 575.27, 575.29, 575.35, 575.36, 575.40, 575.50, and 575.61.**

- b. Discussion, recommendation and possible action on adoption of Chapter 573 Rule Review.** Ms. Moriarty presented an overview of the Rule Review including the recommendations from the Rules Committee and written comments received. After discussion, **Dr. King moved, Dr. Rosberg seconded and the motion passed to adopt amendments and Rule Review of Chapter 573 with additional amendments resulting from comments from the Texas Veterinary Medical Association.**
- c. Discussion, recommendation, and possible action on rules to be proposed.** Ms. Moriarty presented an overview of each rule as presented for proposal. After discussion, **Mr. Upham moved, Dr. Henry seconded and the motion passed to propose the amendments, as presented, to §§575.28, 575.25 and 575.16 and to publish the proposed preambles and amendments in the *Texas Register* in accordance with law.**

**Agenda Item 10, Approval of January 26, 2012 Executive Committee Minutes, regarding David Snyder, D.V.M., Temporary Suspension Without Notice.** After discussion, **Dr. Rosberg moved, Dr. Henry seconded and the motion passed to approve the January 26, 2012 Executive Committee Temporary Suspension hearing minutes.**

**Agenda Item 11, Approval of February 7, 2012 Enforcement Committee Minutes , regarding David Snyder, D.V.M., Temporary Suspension With Notice.** After discussion, **Dr. Clader moved, Dr. Rosberg seconded and the motion passed to approve the February 7, 2012 Enforcement Committee Temporary Suspension hearing minutes.**

**Agenda Item 12, Consideration and Approval of 2013 Board Meeting Dates.** After discussion, the following dates were chosen for calendar year 2013:

Tuesday, March 5, 2013

Tuesday, July 16, 2013

Tuesday, November 12, 2013

These dates are not final and are subject to change until posted with the Secretary of State.

**Agenda Item 14, Executive Director's Report.**

- a. **Report on Health Professions Council (HPC) Activities.** Ms. Oria discussed information on Texas Department of Public Safety criminal history background checks and the amount of time that staff is utilizing to review the information.
- b. **Report on 2012 License Renewals.** Ms. Franz discussed the renewals as of March 15, 2012.
- c. **Report on State Board Exams.** Ms. Franz discussed the results of the October 10<sup>th</sup> State Board Exam noting the 100% pass rate. Ms. Franz also discussed the December 5<sup>th</sup> through December 16<sup>th</sup> State Board Exam testing window noting the 100% pass rate. Ms. Franz also noted that the April State Board Exam is the only one administered by staff, all other exams are administered through participating ACT testing centers across the nation.
- 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.
- e. **Board Performance Update.**
  1. **Enforcement Report:** Ms. Phillips discussed the Enforcement side of the agency and noted that the investigators have been able to make on-site compliance inspections with the year to date inspections at 127. Ms. Phillips also noted that the Enforcement Division has 185 active cases.  
Ms. Moriaty discussed the Legal side of the agency, noting that the backlog of cases has decreased and there is currently 1 case at the State Office of Administrative Hearings (SOAH) with 2 cases on the list to be filed with SOAH.
  2. **Licensing and Examinations Report.** Ms. Franz discussed the statistics related to Licensing and Examinations. As of March 15, 2012 we had 7,618 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 attendance of the annual TVMA meeting and that the TVMA is in support of licensure of Registered Veterinary Technicians.

**Agenda Item 13, Discussion, recommendation and possible action on policy regarding the Criteria for Board Approval of Equine Dental Provider Schools.** Ms. Moriarty presented the Policy on Approval of Equine Dental Schools. After discussion, **Dr. Rosberg moved, Dr. Henry seconded and the motion passed to approve the policy.**

**Dr. Henry moved, Dr. Rosberg seconded and the motion passed to go into Executive Session at 6:23 p.m. for private consultation and advice of counsel concerning settlement offers, and/or disciplinary action under the authority of the Open Meetings Act, Government Code, §551.071 and Occupations Code §801.407(d); and Attorney General's Opinion No. H-484; and to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee under the authority of the Open Meetings Act, Government Code, §551.074.** Open session resumed at 6:40 p.m. and it was announced that no action was taken. A certified agenda was made.

There being no further business, the meeting was adjourned at 6:40 p.m.