

TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

BOARD MEETING MINUTES

October 18, 2016

The Texas Board of Veterinary Medical Examiners met for a regularly scheduled meeting on Tuesday, October 18, 2016, in Room #2-225 of the William P. Hobby, Jr. Building, 333 Guadalupe, Austin, Travis County, Texas. Roland Lenarduzzi, DVM, Board President, called the meeting to order at 9:17 a.m. Board Members present were, Dan Craven, DVM, Vice-President; Joe Mac King, DVM, Secretary; Janie Carpenter, DVM; Lynn Criner, DVM; James McAdams; Keith Pardue; Jessica Quillivan, DVM and Chad Upham. Board Staff present were: Nicole Oria, Executive Director; Rudy Calderon, General Counsel; Karen Phillips, Director of Enforcement; Michelle Griffin, Staff Attorney; Marilyn Hartman, Director of Licensing; Loris Jones, Executive Assistant; and Teresa Long, Chief Fiscal Officer.

Agenda Item 2, Consideration and Approval of the July 19, 2016 Minutes. Dr. Carpenter moved, Dr. Quillivan seconded and the motion passed to approve the July 19, 2016 minutes.

Agenda Item 3, Introduction of new staff members. Ms. Oria introduced Rudy Calderon, General Counsel; Elaine Crease, Legal Secretary; and Dora Gonzales, Purchaser.

Agenda Item 4, Citizens Comments. Dr. Lenarduzzi called for citizen comments. Paula Fiedler, Misty Christo, and Zandra Anderson addressed the Board regarding the disciplinary action of Kristen Lindsey, DVM.

Agenda Item 12, Presentation by Texas A&M on telemedicine. Mark Cushing, founding partner of Animal Policy Group and Eleanor Green, DVM, DABVP, DACVIM, Dean of Texas A&M College of Veterinary Medicine made a presentation regarding the North American Veterinary Community's upcoming Veterinary Innovation Council's pilot telemedicine project.

Agenda Item 7, Discussion, recommendation and possible action on Proposal for Decision on Kristen Lindsey, DVM. Brian Bishop was present representing Dr. Lindsey who did not appear. Michelle Griffin represented the Board. Judges Pratibha Shenoy and Thomas Walston from the

State Office of Administrative Hearings appeared and presented the Proposal for Decision (PFD) and explained the findings. Ms. Griffin presented a summary of the case history and the staff's recommendation. Brian Bishop, attorney for Dr. Lindsey, spoke on behalf of Dr. Lindsey.

Dr. Craven moved, Dr. Quillivan seconded and the motion passed to go into Executive Session at 11:03 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 11:48 a.m. and it was announced that no action was taken. A certified agenda was made.

After discussion, **Dr. Lenarduzzi and Mr. Upham were recused from the case, Mr. McAdams moved, Dr. Criner seconded to consider the case.** After further discussion, **Mr. McAdams moved and Mr. Pardue seconded, and the motion passed to withdraw the motion to consider.** **Dr. Carpenter moved, Dr. King seconded and the motion passed to accept the Proposal for Decision and adopt a final order with the following sanctions: five (5) year suspension with four (4) years probated, quarterly reporting during the four (4) year probated period; monitoring by a licensed veterinarian approved by the executive director; and she must take six (6) hours of continuing education in animal welfare in addition to the annual requirement of seventeen (17) hours.**

Agenda Item 5, Consideration and approval of Agreed Orders. After discussion, **Dr. Craven moved, Dr. Quillivan seconded and the motion passed to approve the agreed orders on the following licensees: Joel Akin, DVM; N. Elizabeth King, DVM; Ovidiu Craciun, DVM; Thomas Beckett, DVM; Dean Layh, DVM; R. Kent Oakley, DVM; Michael Vogt, DVM; Jeremiah Moorer, DVM; Jon Michler, DVM; Anne Kulp, DVM and Todd Murphy, DVM.** **Dr. Lenarduzzi, Dr. Carpenter and Mr. McAdams were recused from voting on these agreed orders.**

After discussion, **Dr. Craven moved, Mr. Pardue seconded and the motion passed to approve the agreed order on the following licensee:** *Cherie Nazzal, DVM*. **Dr. King and Mr. Upham were recused from voting on this agreed order.**

After discussion, **Dr. Craven moved, Mr. Pardue seconded and the motion passed to approve the agreed orders on the following licensees:** *Randy Bullard, DVM; Eunice Ohashiegbula-Iwunze, DVM; Justin Cavitt, DVM; Lamon Custer, DVM; Sarah Matak, DVM; Suzanne Hahn, DVM; Mary De Bie, DVM; Steven Bell, DVM; Stacey Hendershott, DVM; Jay Benton, DVM; Ilonna Brown-Norris, DVM; Janet Bowen, DVM; Gianna Crouch, DVM; Thomas House, DVM; Debra Garrison, DVM; Leanne Parker, DVM; Erin Smith, DVM; Jennifer Renner, DVM; Jannette Vaughan, DVM; Nicholas Millington, DVM; Casey Vire, DVM; Heidi Shipp, DVM; Sarah Blanton, DVM; Lesley Chandler, DVM; Brady Hanson, DVM; Thomas Granger, DVM; George Pope, DVM; Scott Seymour, DVM; Stephanie Adian, DVM; Harold Krug, DVM; Joshua Smith, DVM; Bradley Clary, DVM; Jay Meyer, DVM; Mallory Routh, LVT Applicant; Lauren Campbell, LVT; Kevin Beam, DVM; Dean Burns, DVM; M. Clint Calvert, DVM; Cristina Danks, DVM; Cal Davis, DVM; Brandon Dutton, DVM; Daniel Finch, DVM; Paul Finley, DVM; Jeffrey Foland, DVM; Roman Garza, DVM; Derek Grant, DVM; Rusty Hall, DVM; Bruce Hebbert, DVM; Justin High, DVM; Patrick Jarrett, DVM; Sharon Joslin, DVM; Paul Keating, DVM; Jean Kendall, DVM; Mary King, DVM; James Koschmann, DVM; Mark Lenox, DVM; Paul Loe, DVM; Gabrielle Martin, DVM; Tyler Martin, DVM; Jacob McCabe, DVM; Darryl McEndree, DVM; Jill McNeal, DVM; Lisa Morgan, DVM; Randall Murray, DVM; Frank Nelson, DVM; Michael Norton, DVM; Robin Parker, DVM; David Pool, DVM; Heath Qualls, DVM; Michael Rainey, DVM; Roberto Ramos, II, DVM; Justin Ritthaler, DVM; Danielle Snyder, DVM; Misty Solis, DVM; Christine Sutherland, DVM; Jacqueline Talley, DVM; Michael Ward, DVM; Ronald Weich, DVM; Monte White, DVM; Gabriel Young, DVM; and Margarita Zavala, DVM.*

Agenda Item 6, Consideration and approval of Cease and Desist Orders. After discussion, **Dr. Carpenter moved, Dr. Quillivan seconded and the motion passed to approve the Cease and Desist Orders on the following individuals:** *Edye Lucas, Skye Reed, and Katrina Turcotte, DC.*

Agenda Item 8, Consideration and approval of cases dismissed at Staff Conference. Ms. Oria presented information on cases that were dismissed at Staff Conference. After discussion, **Mr. McAdams moved, Dr. Carpenter seconded, and the motion passed to approve the dismissal on case numbers: CP16-004, CP16-018, CP16-019, CP16-020, CP16-021, CP16-100, CP16-101, CP16-137, CP16-181, CP16-242, CP16-244, CP16-245, CP16-246, CP16-247, CP16-250, CP16-262, CP16-256, CP16-257, CP16-274, CP16-315, CP16-334, CP16-345, CP16-229, and CP16-353.**

Agenda Item 9, Report from the Rules Committee.

- a. **Public Hearing, consideration and possible action on rules to be adopted.** Ms. Griffin presented the changes proposed at the July 19, 2016 meeting regarding changes to the following rules: §§573.80, 577.5, 577.15, and 577.18. After discussion, **Dr. Carpenter moved, Dr. Criner seconded and the motion passed to adopt the amendments to §§573.80, 577.5, 577.15, and 577.18.**
- b. **Discussion, recommendation and possible action on proposed rules.** Ms. Griffin presented changes to proposed rules §§571.1, 571.15, 571.22, 573.51, and 573.64. After discussion, **Dr. Criner moved, Dr. Carpenter seconded and the motion passed to publish the proposed preamble and amendments to §§573.80, 577.5, 577.15, and 577.18 in the *Texas Register* in accordance with law for public comment.**
- c. **Discussion, recommendation and possible action on proposed Rule Review of Chapter 575.** Ms. Griffin presented information about the rule review of Chapter 575. After discussion, **Dr. Quillivan moved, Dr. Carpenter seconded and the motion passed to publish the proposed Rule Review in the *Texas Register* in accordance with law for public comment.**

Agenda Item 10, Appointment of Committees. Dr. Lenarduzzi appointed members to the following committees:

Executive Disciplinary Committee: Dr. Lenarduzzi, Dr. King, and Mr. Upham. Dr. Criner will serve as the licensee alternate and Mr. McAdams will serve as the public member alternate.

Enforcement Committee: Dr. Craven, Dr. Carpenter, and one public member on a rotating basis. Dr. Quillivan will serve as the licensee alternate.

Rules Committee: Dr. Carpenter, Dr. Criner, Dr. Quillivan, and Mr. Pardue.

Agenda Item 11, Election of Officers. All members present agreed that all officers should remain the same, President – Roland Lenarduzzi, DVM; Vice-President – Dan Craven, DVM; and Secretary – Joe Mac King, DVM.

Agenda Item 13, Discussion, recommendation and possible action regarding the creation of Advisory Committee for Legislative Solutions to Designated Caretaker Definition and Other Solutions to Exemptions from the Act in §801.004(1). After discussion, Dr. Quillivan moved, Dr. Craven seconded and the motion passed to grant Dr. Lenarduzzi the authority to appoint members to this advisory committee outside of a regular board meeting.

Agenda Item 14, Discussion, recommendation and possible action regarding the creation of a workgroup to review compliance inspection processes and procedures. After discussion, Dr. Quillivan moved, Dr. Craven seconded and the motion passed to grant Dr. Lenarduzzi the authority to appoint members to this workgroup outside of a regular board meeting.

Agenda Item 15, Discussion regarding compliance model of on-site inspections. Ms. Phillips presented information regarding on-site compliance inspections of licensees.

Agenda Item 16, Consideration and approval of meeting dates for calendar year 2017. After discussion, **Dr. Quillivan moved, Dr. Criner seconded and the motion passed to approve the following meeting dates for calendar year 2017:** January 24, 2017; April 18, 2017; July 11, 2017; and October 3, 2017. These dates are subject to change and are not final until posted with the Secretary of State.

Agenda Item 17, Discussion, recommendation and possible action regarding ratification of the 2018-2019 Legislative Appropriation Request. Ms. Oria discussed the Legislative Appropriation Request, explaining the process and what the agency is requesting. The exceptional items being requested are:

Retention of the 4% reduction in appropriations - This would allow the agency to continue to move forward with the improvements to the agency website to allow for applications, complaints by the public, and change of addresses to occur online, as well as upgrades to the agency's internal database. One FTE represents 5% of the agency's total personnel. Because the agency already operates quite efficiently, a 4% reduction would necessarily affect agency operations.

Investigator - The Agency is seeking an additional investigator who would be assigned full-time to conduct inspections in veterinary clinics statewide. With this additional employee, the agency anticipates being able to reduce the average time between inspections from a little above ten years (not including EDPs or LVTs) to five years. We have seen a significant increase recently with drug diversion and serious mental health issues. Some of these problems have been discovered during on-site inspections and some have been long term problems. It certainly is better for the public and the licensee to discover drug diversion, substance abuse, and serious mental health problems as early as possible from conducting on-site inspections.

Peer Assistance Contract Increase - The agency contracts with a third-party vendor to provide peer assistance services to veterinarian licensees, either as a volunteer or compelled by TBVME in an enforcement order. The cost for this contract is anticipated to increase from \$30,000 to \$45,000 in FY18. The contract is paid for by all of the veterinarian licensees as a whole in order to provide this service to those licensees who may need these services. This is a straight pass through fee from our licensees to the vendor. We have in the past only had one vendor ever bid on this contract.

Peace Officer Status - The agency is seeking peace officer status to assist with the enforcement division's investigative efforts. The board investigator needs to interact and exchange information with various state or federal law enforcement organizations, such as

DEA, USDA, DPS, and Texas Racing Commission. Currently, federal and state law enforcement agencies have difficulty providing information to board investigators due to laws prohibiting the release of criminal justice information to non-criminal justice personnel. The commissioning of board investigators would allow for the exchange of information. Board investigators involved in the investigation of serious violations concerning controlled substances have been limited in their investigations due to the aforementioned problem of confidentiality. This has delayed investigations of licensees until after final court convictions, allowing a licensee to continue to practice posing a significant risk to the public. TBVME has an increasing number of complaints regarding individuals that are Practicing Veterinary Medicine Without a License (PVMWL). In the current economic climate, this illegal activity is an extra burden on Texas veterinarians since it encroaches on their practices. There is an obvious danger to the public with untrained persons engaging in vaccinating and treating animals, some of which could pose public health risks.

Centralized Accounting and Payroll/Personnel System (CAPPS) - TBVME is scheduled to begin the switchover for CAPPS in FY18 and requests additional funding for a temporary employee for 4 days a week, 4 hours a day for the one-year period of anticipated training for the financial portion and in the following fiscal year, FY 19, for the 9-month period of anticipated training for the human resources portion.

Document Management System - TBVME is a member of the Health Professions Council and transfers funds through appropriations made to the TBVME, through an interagency contract to HPC for a prorated share of HPC's operating budget. Please refer to the HPC LAR for an exceptional item funding request necessary for Laserfiche, to allow the agency to have a document management system. TBVME supports the HPC request assuming additional appropriations are made to the TBVME for any increases.

Hobby Building Maintenance and Upkeep - TBVME also supports the Board of Nursing's request for additional funding for the maintenance and upkeep of the Hobby Building. The building is unsanitary and non-functioning in many aspects.

Agenda Item 18, Discussion regarding Sunset Report. Ms. Oria discussed the agency's draft response specifically noting that many of the recommendations that Sunset staff have made are in process by agency staff.

Agenda Item 19, Executive Director's Report

- a. **Report on Health Professions Council Activities.** Ms. Oria discussed that we continue to work with HPC, specifically mentioning the presentation by Cities Digital on the Laserfiche document management system that we are requesting funding for in our

Legislative Appropriation Request. The cost of our inclusion in the Laserfiche system is lower if we enter into this with the other HPC agencies.

b. Enforcement Report:

1. Investigations. Ms. Phillips discussed the enforcement statistics noting that as of September 30, 2016, the investigators had not gone out on any on-site inspections due to staff turnover and the Sunset review. Also as of September 30, 2016 there were a total of 116 open cases. As a result of the Sunset staff recommendations, Ms. Phillips has assigned one investigator as the primary trainer of new investigators, new guidelines for enforcement processes and procedures will be written within six (6) months, they are working on a compliance model for inspections and if the agency is given authority, they will begin target-based inspections of licensees.

Ms. Phillips read a statement on behalf of the enforcement staff. “The enforcement staff consisting of six full time employees seek relief from this board from the uncivil, unprofessional, and unfair behavior of Nicole Oria in our workplace.” Ms. Phillips asked that the statement be included in the meeting minutes verbatim.

2. Legal: Ms. Oria discussed the legal department’s activities noting that there have been three (3) days of informal conferences held since July 19, 2016, and that there are three (3) cases docketed at SOAH, eight (8) cases currently pending notice of hearing at SOAH, and two (2) cases docketed at SOAH pending hearing.

3. Peer Assistance: Ms. Oria discussed the peer assistance information stating that there are currently twenty-three (23) veterinarians in the Peer Assistance Program with nine (9) of those being by board order and fourteen (14) voluntary participants.

- c. IT Report:** Ms. Oria presented information regarding the IT items being worked on, noting that staff have met and set out a list of IT items based on the recommendations of the Sunset staff as well as items that agency staff felt would make agency processes more efficient.
- d. Finance Report:** Ms. Long presented information on the status of the budget and revenue for fiscal year 2016.
- e. Licensing Report:**

 - 1. Report on 2016 License Renewals.** Ms. Hartman discussed the statistics related to Licensing and Examinations, noting that as of August 31, 2016, the online renewals were at 94%. Ms. Harman also reported that there have been no provisional examinations and licenses given due to the ability for on demand testing. Ms. Hartman also addressed Sunset staff recommendations noting that there are now an increased number of examination questions that will be randomly chosen, licensing staff will review examination questions annually, and the licensing division will begin the continuing education audits at renewal.
 - 2. Licensing and Examinations Report.** Ms. Hartman noted that there are 10,518 licensees in all categories.
 - 3. Report on State Board Exams.** Ms. Hartman presented information on the State Board Examinations taken on demand at testing centers between January 1, 2016 and August 31, 2016, noting that out of 352 applicants, 338 passed the State Board Examination. Ms. Hartman further discussed the LVT State Board Examination noting, that out of 41 applicants, 37 passed that examination during the same time period.
- f. Report on Discussions with Texas Veterinary Medical Association.** Ms. Oria stated that discussions with TVMA are ongoing and we look forward to working with them during the upcoming legislative session.

Dr. Craven moved, Dr. Quillivan seconded and the motion passed to go into Executive Session at 4:45 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 5:18 p.m. and it was announced that no action was taken. A certified agenda was made.

Dr. Lenarduzzi spoke directly to the agency staff still in attendance at the meeting stating that the Board is concerned over staff problems and strained relations in the office. The Board then directed Mr. Calderon to evaluate the issues and concerns of the agency staff and to provide a written report directly to the board.

Dr. Craven moved, Dr. Quillivan seconded and the motion passed to go into Executive Session at 5:24 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 6:31 p.m. and it was announced that no action was taken. A certified agenda was made.

There being no further business, the meeting adjourned at 6:32 p.m.