



info@tvma.org

Ken Levine, Director  
Texas Sunset Advisory Commission  
PO Box 13066  
Austin, TX 78711  
sunset@sunset.texas.gov

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RE: Response of the Texas Veterinary Medical Association to the Sunset Advisory Commission Staff Report on the Texas State Board of Veterinary Medical Examiners

Dear Mr. Levine,

The Texas Veterinary Medical Association (TVMA), organized in 1903, provides support to veterinarians as they practice the art and science of veterinary medicine. Today, TVMA is one of the largest state veterinary medical associations in the nation and is recognized for its leadership on important issues, innovative solutions and effective representation. TVMA represents veterinarians and licensed veterinary technicians of all specialties who practice medicine on all types of animals in the state of Texas. Our members are extremely interested and invested in the sunset review process and welcome the opportunity to provide the following comments on the contents of the staff report.

Before moving onto the contents of the report we would like to address something that we feel is often overlooked but extremely important when considering the practice of veterinary medicine. This is a true understanding of the critical big-picture role that veterinary medicine plays in protecting public health and contributing to a strong Texas economy.

Veterinarians are an important part of the front-line protection of public health due to their contributions to disease surveillance, epidemiology, control, prevention and elimination of zoonosis, food protection, management of laboratory animal facilities and diagnostic laboratories, biomedical research, health education and extension services. Veterinarians also assist in the management of domestic and wild animal populations and are available to assist in public health emergencies. Veterinarians help protect the economy of the state by monitoring and protecting the Texas livestock and poultry industries from domestic, foreign and emerging diseases while guarding the marketability of Texas livestock commodities. This is extremely important amid concerns about biological terrorism and the fact that the introduction of one specific livestock disease could devastate our economy and create a public health catastrophe.

**ISSUE 1: The State Has a Continuing Need to Regulate the Practice of Veterinary Medicine, But the Agency Struggles Administratively.**

**1.1** Continue the State Board of Veterinary Medical Examiners for six years.

**1.2** Update the standard Sunset across-the-board requirement related to board member training.

TVMA supports findings 1.1 and 1.2 of Issue 1 and deeply believes in the importance of a strong separate and independent agency that specifically focuses on regulating veterinary medicine. Indeed, veterinary medicine is just as advanced as human practice but at the same time is wholly unique from human practice in a way that does not easily lend itself to being encompassed within a human health agency. All veterinarians hold advanced degrees, and some choose to continue their education and become board specialists in certain medical areas just like human practitioners. However, even a general practice veterinarian is expected to have knowledge of every area of veterinary practice and act as many types of doctors, including but not limited to an anesthesiologist, cardiologist, clinical pathologist, dentist, dermatologist, dietician, endocrinologist, geriatrician, orthopedist, podiatrist, pharmacist, radiologist, urologist and surgeon all in one. In addition, veterinarians work on many different types of animal species, all of which have specific needs and physiologies. This is why cases and complaints against veterinarians involving the standard of care must be reviewed by other veterinary medical professionals.

**Issue 2: The Agency's Enforcement Processes Cannot Ensure Fair Treatment of Licensees and Complainants.**

**2.1** Require the board to develop and adopt a schedule of sanctions in rule and to use it in determining disciplinary actions.

**2.2** Direct the agency to clearly define and consistently implement its enforcement procedures.

**2.3** Direct the agency to improve its enforcement data tracking systems and processes.

TVMA agrees with the sunset staff regarding these recommendations and welcomes the suggested changes as necessary to improve fairness to licensees and assistance with the agency's mission to protect the public. TVMA also suggests that the agency be provided the ability to create written policies guiding inspectors in exercising discretion when evaluating minor first-time violations by licensees that do not directly endanger the public. Inspectors should be trained to allow room for the licensee to correct specifically noted deficiencies and the ability to allow a proven correction of minor first-time violations prior to the initiation of formal disciplinary action.

**ISSUE 3: The State Has an Ineffective and Inconsistent Approach to Monitoring Potential Diversion of Controlled Substances by Veterinarians.**

**3.1** Clarify statute and provide direction for the agency to monitor veterinarians' dispensing and prescribing of controlled substances.

**3.2** Require Texas veterinarians with a DEA registration to report dispensing data to the Texas Prescription Monitoring Program.

**3.3** Require the agency to collect and track relevant data to establish a risk-based approach to on-site inspections.

**3.4** The agency should create and implement inspection guidelines with aggravating and mitigating factors to evaluate controlled substances deficiencies recorded during on-site inspections.

**3.5** Direct the agency to develop a robust educational process to regularly educate licensees about controlled substances laws, rules and inspection standards.

TVMA agrees and takes very seriously the fact that there is a prescription opioid abuse epidemic in this state and across the nation. Veterinarians as prescribers and dispensers of these dangerous controlled drugs are resolutely committed to their role in preventing diversion and guarding against misuse by employees or clients. Chemical dependency is an equal opportunity disease that touches every profession, including veterinary medicine. TVMA welcomes a discussion about best practices for preventing diversion and the ways in which the profession might institute change to further guard against drug abuse. We also welcome an opportunity to further educate our members in this regard.

TVMA does believe that any new regulations should only be implemented once the legislature possesses a full understanding of how veterinary medical practice differs from human medical practice. Therefore, any regulations may need to be tailored specifically to veterinary medical practice in order to achieve the desired goal.

### **Veterinary Drug Reporting Numbers in the Staff Report**

Veterinarians do administer, dispense and prescribe what may seem like a large quantity of controlled drugs to the untrained eye. However, that in and of itself does not necessarily indicate a diversion problem. Veterinarians simply have different needs for their animal patients, and when usage numbers in veterinary medicine, particularly in large animal practice, are compared to human practice, the numbers can be skewed. This is because veterinarians care for a myriad of animals that require many different doses of different medications that cannot be rightly compared to any prescribing or dispensing patterns in human medicine. There is a high degree of variation within different types of veterinary practice, and the use of barbiturates alone will distort any individual administering, dispensing and prescribing activity numbers sought by the state. While human medical practitioners may be moving away from the use of barbiturates, they are an absolute necessity in animal practice. For example, it's likely that the needs of large animal medical practitioners alone would be skewed. This is because in large animal medicine barbiturates are often used for euthanasia purposes and doses are highly dependent on the weight of the animal. For example, it may take three milliliters (mLs) of commercially available pentobarbital for euthanasia to euthanize a small dog while it may take over 100 mLs of the same drug to euthanize a horse. Therefore, it makes sense that veterinarians, and particularly large animal veterinarians, would be at the top of any statewide list that includes human medical practitioners. Barbiturates are also the most widely used drugs to treat epilepsy in dogs. For example, if a veterinarian is treating an epileptic Labrador, they would be prescribing or dispensing what, to a human medical professional, may look like a large amount of phenobarbital. Next, the use of other controlled substances, such as ketamine, in equine practice is also likely to be much higher than in human medicine or small animal practice because a much larger quantity is needed to provide appropriate anesthesia to a horse in order to perform adequate aftercare or surgeries such as castration. To further complicate matters on small

animals, ketamine usage for "full" (versus induction for gas) anesthesia is actually ten times higher per pound body weight than for short anesthesia on horses. In addition, like in human medicine, some veterinary practices may specialize in pain management, which leads to much higher usage numbers.

Consequently, because veterinary use of controlled drugs can appear to be high when compared to human medicine and due to the fact that veterinarians actually maintain inventories of controlled drugs when other practitioners do not, it logically follows that veterinarians would report higher instances of theft or loss of controlled drugs. However, this is not necessarily indicative of a significant diversion problem in veterinary practice. Indeed, the Code of Federal Regulations, §1301.76 (b) requires practitioners to report "significant" losses to the DEA but does not provide a definition of "significant." Anecdotally, TVMA is aware of and actually assists conscientious veterinarians in reporting any losses to the DEA whether they are considered significant or not. This is because Texas veterinarians treat their responsibility for reporting so seriously.

The responsibility for maintaining accurate accountability over the use of controlled drugs in order to mitigate the potential risk of diversion is so important that the current Texas Administrative Code, Rule RULE §573.50 Controlled Substances Records Keeping for Drugs on Hand, requires veterinarians to keep a count of the total balance of the drug on hand, which creates a nearly perpetual inventory, whereas the federal law only requires a balance every two years. Veterinarians not only have a legal and moral obligation to prevent diversion but also a financial one as it is a serious financial loss to a small business when inventory is stolen from a veterinary practice.

### **Veterinarians Participation in the PMP**

TVMA agrees that something needs to be done in order to improve controlled drug monitoring in Texas. However, much more study and discussion is needed to determine which type of monitoring could best apply to veterinary practice. For example, the sunset staff report proposes to mandate reporting by veterinarians into the PMP. However, more discussion is needed to determine how to apply a PMP program specifically created for use by human medical practitioners to veterinarians because veterinary practice differs in so many key ways that simply do not translate to modern veterinary practice. For instance, the system contains no ability to determine whether an instance of dispensing or prescribing a controlled drug is for a person or an animal. The staff report notes that the name, address and birthdate of the "person for whom the controlled substance is dispensed" should be included. However, the veterinarian is not dispensing to a person but to an animal, and often animals are brought in by different animal caretakers who are not the owners of the animal. For example, adult children may bring in a pet for a parent or a trainer may be charged with the medical care of a horse. The birthdates of animals are generally unknown, and veterinarians do not routinely collect birthdates of humans as such humans are often reluctant to provide personal information to a veterinarian. However, the PMP requires the entry of a birthdate in order to function.

Mandated veterinary participation in the PMP may unintentionally skew the data relating to human prescriptions and addiction issues. If information about animal patient dispensing is

mixed in with human patient data, it will be harder to interpret the data accurately. It's also possible that the owners or caretakers of animals may be unable to obtain an appropriate medication for themselves due to having a pet's or multiple household pets' prescriptions entered into the program that may or may not be properly designated as pet prescriptions.

Of course, our members are extremely concerned about the serious workflow issues that the recommendation presents. We hope that any mandated reporting takes into account the workflow issues that such a system would present for veterinarians, who would undoubtedly be required to report at a rate that far exceeds human medical practitioners.

### **Alternatives to Full Mandated Reporting**

Texas is not the first state to consider including veterinarians in PMP programs. Of the 49 states with a PMP program, only 17 states mandate veterinary reporting, and a number of these states have less frequent and/or less strenuous reporting requirements that better suit veterinary practice than a blanket mandate. The state of Kansas initially mandated veterinary reporting but eventually eliminated the requirement after finding it ineffective at addressing the problem at hand.

The legislature might want to consider other alternatives that can be accomplished in a judicious manner and are less disruptive to a small business. The agency could require the licensing agency or the practitioners themselves to register for the program so they have the option to look up specific human clients if they have a suspicion. However, even this access must be carefully considered because veterinarians are not subject to HIPPA laws or protections and must not be placed in the untenable position of making a determination as to whether a prescription is appropriate for a human as they are prohibited by law from practicing on humans.

Any mandated use of the PMP system for the veterinary profession should only be after fundamental changes are made to the system to specially tailor it for veterinary use. We also hope that any mandate would be phased in to give practitioners time to deal with the economic consequences of potentially needing to hire new staff members or shift existing resources to comply with a one business day reporting requirement.

The stated problem that the Sunset Commission and other agencies are trying to mitigate is the opioid addiction epidemic. In light of this, if a mandate for the veterinary profession is unavoidable, the mandate could be tailored to only apply to veterinary dispensing of Schedule 2 controlled substances and not Schedules 3, 4 or 5. Reporting the dispensing of Schedule 2 drugs would serve the state's need for data on the most dangerous of all drugs, and while the reporting would be difficult, it would not be as disruptive to veterinary practice. Other less disruptive means of reporting that would provide the state with data could potentially include requirements for less frequent reporting or exemptions from reporting when dispensing only a single week's worth of dispensing of a controlled substance.

### **Issue 5: Recent Court Decisions Exempt Animal Shelter Veterinarians From Regulation.**

**5.1** Request the Senate Committee on Agriculture, Water, and Rural Affairs and the House Committee on Agriculture and Livestock to take action to clearly define the scope and limits of the statutory owner exemption in the Veterinary Licensing Act.

**5.2** Direct the State Board of Veterinary Medical Examiners to provide the legislative committees of jurisdiction proposed statutory definitions of designated caretaker.

TVMA supports the findings in the staff report and agrees this is a serious problem that merits further exploration. Our members support changes to the Texas Occupations Code to clarify that all state-licensed veterinarians (unless specifically exempted for clear and compelling reasons) are subject to the Veterinary Licensing Act (VLA) and corresponding Administrative Rules of Professional Conduct when practicing veterinary medicine on any animal, regardless of who owns the animal. No licensed veterinarian should be able to claim total exemption from the laws, rules and standards of care of their profession because they are the owner, employee of the owner or designated caretaker of the animals. Licensee exemptions are particularly concerning when such licensees have the privilege of utilizing controlled drugs. The ability to utilize controlled and prescription drugs should be indicative of the need for regulation under the Veterinary Licensing Act. In light of all of the discussion throughout this report about controlled substances it is important to note that places like animal shelters with a high degree of volunteer involvement and turnover are also likely to be avenues of drug diversion.

Veterinarians in all practice types today do not practice the same medicine they practiced the last time the sunset review process took place. In addition, the standard of care is reflective of the geographic region in which a veterinarian practices. For example, the standard of care for a group of pet cows in Austin may not be the same for a herd of cattle with specific market values in rural Texas. Likewise, the type of care that an isolated rural Texas animal shelter can provide may be very different from what a well-funded urban shelter with an established network of volunteers and adopters can provide. Statutes can be difficult to change, and science should not be halted to wait for government action. This is likely why the legislature has remained silent on the issue.

**Current Administrative Rule: RULE §573.22 Professional Standard of Care.** *Licensees shall exercise the same degree of humane care, skill, and diligence in treating patients as are ordinarily used in the same or similar circumstances, including the type of practice, by average members of the veterinary medical profession in good standing in the locality or geographic community in which they practice, or in similar communities.*

On the other hand, some types of care or procedures in veterinary medicine are not flexible regardless of the region. For example, surgical procedures should be sterile and aseptic conducted using proper recognized technique by trained individuals. The body most able to determine whether the proper medical standards in veterinary practice have been followed is the Texas State Board of Veterinary Medical Examiners. This is why our members believe that exempting shelter veterinarians from the licensing act constitutes an unreasonable danger to the public. An animal shelter is holding homeless animals in trust for the local jurisdiction in which the animals originate. Allowing untrained, unlicensed or unregulated individuals to “practice” veterinary medicine on them is inhumane and violates this public trust.

## **Important Issues Left Out of the Sunset Review Staff Report**

Our members are concerned that the sunset staff report did not address or even discuss certain issues raised by the agency as being important to the veterinary profession. These issues include outdated confidentiality provisions and the inability of the board to appropriately evaluate licensees who may be experiencing mental impairment.

TVMA has also previously submitted information to the Sunset Commission requesting that the commission address making changes to research exemptions for veterinarians and exemptions for certain medical professionals who provide services at a zoo facility on non-human primates. TVMA will follow the guidance of the staff report and request that the Senate Committee on Agriculture, Water, and Rural Affairs and the House Committee on Agriculture and Livestock look into these issues when they address other exemption-related issues as suggested in Issue 5.

TVMA representatives will be on hand to provide oral testimony to the Sunset Commission members in order to expand on any or all of these issues. If commissioners would like to question any type of veterinary expert in a particular area of veterinary medicine, please let us know, and we will endeavor to have expert members available to answer these questions. If we can clarify something for the sunset staff, please let me know, and I would be happy to assist.

Sincerely,



Sam Miller, DVM  
TVMA President