

# EXECUTIVE SUMMARY

## *State Board of Veterinary Medical Examiners*

**Project Manager: Danielle Nasr**

**Full Report Here**  
**[www.sunset.texas.gov](http://www.sunset.texas.gov)**

The review of the State Board of Veterinary Medical Examiners found an agency struggling after a difficult biennium that stretched its resources and abilities, almost to the breaking point. Some of these difficulties came from outside forces while many are of the agency's own making. The agency is small, with a staff of 20 and a budget of about \$1.1 million, but it has a large mission — licensing veterinarians, veterinary technicians, and equine dental providers, and regulating all aspects of veterinary medical care, including surgeries, dentistry, pharmaceuticals, and any other discipline or specialty of veterinary medicine provided to animals.

In 2015, the agency was overwhelmed by an unprecedented number of complaints — approximately 750 — against a single licensee whose grisly social media post about killing a cat with a bow and arrow resulted in a national media storm. The sheer volume of complaints and ensuing investigation required a disproportionate share of staff and resources for just one of the several hundred cases the agency investigates over the course of a year. At the same time, the agency mired itself in a legal battle after initiating enforcement action against an animal shelter veterinarian, an action the courts determined to be outside the agency's statutory authority. The results of this case have reverberated throughout the Texas veterinary profession and limited the agency's authority to regulate some of its own licensees. Issue 5 of the report recommends a process to resolve this missing authority. While these struggles have contributed to the agency's overall performance problems, they do not fully account for its administrative difficulties.

---

*External struggles do not fully account for the agency's administrative difficulties.*

---

Most concerning are the agency's significant administrative and operational challenges. Specifically, poor financial management and data reliability problems were pervasive throughout the review. The departure of the agency's tenured chief fiscal officer in October 2015 left the agency in financial disarray. The agency was unable to reliably provide basic financial information. Likewise, the review found the agency could not provide with a reasonable degree of confidence and consistency some of the most basic enforcement data such as number of licensees inspected and number of complaints resolved. These informational black holes were, at least partially, due to the agency's enforcement

database being unable to deliver reliable information that accurately reflects the agency's enforcement activities. The enforcement problems are discussed in Issue 2.

The agency and the profession have experienced growing pains as the tools and practices of veterinary medicine have expanded and changed over time. Longstanding cultural norms within the profession have not always matured with this growth. Among these changes, veterinarians are relative newcomers to the field of controlled substances oversight and regulation, the risks of which both the profession and oversight agencies have not adequately recognized or addressed. With more than 6,300 veterinarians able to dispense controlled substances, greater oversight is warranted. Issue 3 addresses this concern.

This agency could benefit from the stronger administrative support and consistent regulatory approach often realized through consolidation. However, the activities of the agency are distinct from those of human healthcare regulatory agencies, limiting opportunities for consolidation within that realm. The risk to public health and safety in regulating veterinary care does not reach the same level of public concern as the risks presented by human health care. Federal and state legal structures that govern human health care do not apply to the veterinary profession. As a result, Issue 1 recommends continuing the agency independently. Given the raft of problems identified in this report, a six-year continuation will ensure closer legislative oversight and attention to the question of whether the agency will be able to resolve its considerable management and administrative problems on its own.

The following material summarizes Sunset staff recommendations on the State Board of Veterinary Medical Examiners.

## Issues and Recommendations

### *Issue 1*

#### **The State Has a Continuing Need to Regulate the Practice of Veterinary Medicine, but the Agency Struggles Administratively.**

The State Board of Veterinary Medical Examiners regulates the practice of veterinary medicine by licensing veterinarians, veterinary technicians, and equine dental providers. Sunset staff found that Texas has a continuing need to regulate the practice of veterinary medicine to ensure Texans receive safe and quality veterinary and equine dental provider services, and that no alternative organizational structure to an independent agency is currently available. However, because of ongoing struggles with crucial administrative functions such as financial and information technology management, as well as inconsistencies in the agency's enforcement process, Sunset staff recommends continuing the agency for six years instead of the standard 12-year period.

#### **Key Recommendation**

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

## *Issue 2*

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

The State Board of Veterinary Medical Examiners devotes a majority of its budget and almost half of its staff to its enforcement functions, including inspections, investigations, disciplinary action, and legal. Sunset staff reviewed each step of the enforcement process, revealing inconsistencies that resulted in unequal treatment of licensees, exacerbated by poor communication between the agency and licensees and complainants. In addition, the minimal capabilities and lack of reliable information in the agency's database prevent the agency from knowing whether its enforcement process ensures the best quality of veterinary services in Texas.

#### **Key Recommendations**

- Require the agency to develop and adopt a schedule of sanctions in rule, and to use it in determining disciplinary actions.
- Direct the agency to clearly define and consistently implement its enforcement procedures, and to improve its enforcement data tracking systems and processes.

## *Issue 3*

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

Texas veterinarians have a high risk of controlled substances diversion, reporting the highest theft and loss of controlled substances among all practitioners over the last five years according to the Drug Enforcement Administration. More than 6,300 Texas veterinarians have the authority to administer, dispense, and prescribe controlled substances, but Texas only collects data on what veterinarians prescribe through pharmacies, not what they directly dispense to clients. The State Board of Veterinary Medical Examiners is directly responsible for licensing and regulating these veterinarians, including protecting the public from improper use and diversion of controlled substances. Without veterinary dispensing data and improved onsite inspection processes, the agency cannot adequately assess and target enforcement efforts to combat diversion of controlled substances in the veterinary profession.

#### **Key Recommendations**

- Clarify statute and provide direction for the agency to monitor veterinarians dispensing and prescribing controlled substances.
- Require Texas veterinarians with a Drug Enforcement Administration registration to report dispensing data to the Texas Prescription Monitoring Program.
- Require the agency to collect and track relevant data to establish a risk-based approach to onsite inspections.

## ***Issue 4***

### **Key Elements of the State Board of Veterinary Medical Examiners' Statutes, Rules, and Policies Do Not Conform to Common Licensing Standards.**

In reviewing the agency's regulatory authority, Sunset staff found that certain administrative and licensing processes do not match model standards or common practices observed through Sunset staff's experience reviewing regulatory agencies. Specifically, the agency's licensing and renewal processes are burdensome for both the licensees and the agency, and nonstandard enforcement policies and practices detract from the agency's ability to effectively regulate the practice of veterinarian medicine.

#### **Key Recommendations**

- Require the agency to conduct fingerprint-based background checks of all licensure applicants and licensees.
- Authorize the agency to provide biennial staggered license renewals.
- Prohibit a board member who reviews a standard of care investigation from participating in any resulting disciplinary proceeding, and allow the board to delegate medical review to licensed veterinarians who are not board members.
- Direct the agency to conduct continuing education audits as part of the license renewal process.

## ***Issue 5***

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

Recent court decisions by the State Office of Administrative Hearings and the Third Court of Appeals have effectively exempted veterinarians that work with shelter animals and animal rescue groups from the Veterinary Licensing Act and regulation by the State Board of Veterinary Medical Examiners — including standard of care measures and use of controlled substances. The decisions stem from an outdated statutory exemption that has not kept pace with the modern state of veterinarian medicine, specifically the “no-kill” movement that shifted animal shelters from primarily euthanizing stray animals to address public health concerns to emphasizing treating and rehoming these animals. The current statutory exemption creates a gap in the agency's ability to regulate veterinarians and the practice of veterinary medicine in animal shelters and rescue group settings. The state would benefit from updating the approach to veterinary medical services in Texas by clearly defining the scope and limits of the exemption to make clear to licensees and the public which populations are exempt from the Veterinary Licensing Act and in what circumstances.

#### **Key Recommendations**

- 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.
- Direct the State Board of Veterinary Medical Examiners to provide the committees several proposed statutory definitions of designated caretaker no later than January 31, 2017.

## Fiscal Implication Summary

Overall, two recommendations in this report could have a cost to the agency. However, the costs could not be estimated, as discussed below.

*Issue 2* — The recommendation to update the agency’s database would have a fiscal impact. The agency may need to contract for additional database management services, but the costs will depend on the needs identified through the staff analysis and the technological complexity of the solutions.

*Issue 4* — If the agency chooses to contract with licensed veterinarians or hire an on-staff veterinarian to conduct medical reviews a cost to the agency would result. The costs of medical reviews at other licensing agencies that contract for these services vary widely, ranging from \$100–\$300 per case, \$5,000 per year, or up to \$100 per hour, and the annual salary of a veterinarian can range from about \$53,000 to \$158,000, so the costs could not be estimated.