

STATE BOARD OF VETERINARY MEDICAL EXAMINERS

Issue 1

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

Change in Statute

- Rec. 1.1, Modified** The Commission voted to continue the State Board of Veterinary Medical Examiners for four years. The Sunset Commission staff shall limit its review of the Veterinary Board to the effectiveness of recommendations made by the Sunset Commission to the 85th Legislature. Notwithstanding this provision, in the Sunset Commission's report to the 87th Legislature, the commission may include any recommendations it considers appropriate.
- Rec. 1.2, Adopted** Update the standard Sunset across-the-board requirement related to board member training.

Issue 2

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

Change in Statute

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

Management Action

- Rec. 2.2, Modified** Direct the agency to clearly define and consistently implement its enforcement procedures. In addition, the Sunset Commission voted to direct the agency to develop and publish policies governing a complainant's access to information regarding his or her complaint. These policies should be written in plain language and easy to find on the agency website.
- Rec. 2.3, Adopted** Direct the agency 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.

Change in Statute

Rec. 3.1, Modified

Clarify statute and provide direction for the agency to monitor veterinarians dispensing and prescribing of controlled substances. Additionally, the Sunset Commission adopted a management action to ensure that if the Legislature requires wholesale pharmaceutical distributors to report their sales of controlled substances to the Pharmacy Board, then the Veterinary Board and the Pharmacy Board would be required to enter into a memorandum of understanding (MOU) to ensure the Veterinary Board has access to this information.

Rec. 3.2, Modified

Require Texas veterinarians with a DEA registration to report dispensing data to the Texas Prescription Monitoring Program (PMP). The Sunset Commission also voted to require veterinarians, beginning on September 1, 2018, to search the PMP database and review a human client's animal-related prescription and dispensing history before prescribing or dispensing certain controlled substances. A veterinarian who does not check the database before prescribing or dispensing these controlled substances would be subject to disciplinary action by the Veterinary Board. As a management action, the Veterinary Board and Pharmacy Board would enter into an MOU to develop standard querying practices for requesting animal-specific reports from the PMP database. Both boards shall consider and take into account privacy concerns of both animals and humans with regard to who has access to certain confidential information.

Additionally, the Sunset Commission adopted a management action to direct the State Board of Veterinary Medical Examiners and the Texas State Board of Pharmacy to enter into a MOU to develop standard data elements for entering dispensing information for animals into the PMP database. At a minimum, the standardized data shall include uniform reporting of the animal's name, species, estimated date of birth, and owner's name, and the data elements shall clearly

differentiate between animal and human dispensing. The agencies should also consider and include, if necessary, data elements that allow for reporting dispensing of controlled substances to large populations of animals, such as in the herd health context. The standard data elements shall be the same for all dispensing for animals, whether from a veterinary clinic or a pharmacy.

The agencies will develop and report the standard data elements to the Sunset Commission by January 31, 2017. The data elements would be included in each agency's Sunset bill to provide statutory clarification on the requirements for reporting controlled substance dispensing information for animals. Once the standard elements are established, the Pharmacy Board will update the PMP database to accept the new information.

Rec. 3.3, Modified

Require the agency to collect and track relevant data to establish a risk-based approach to onsite inspections. The Sunset Commission also adopted a management action to direct the Veterinary Board to develop and implement a strategic inspection plan to improve licensee inspections. The plan should aim to inspect all licensees at least once every eight years. The agency should prioritize inspections based on

- licensees not inspected in the past 10 years or longer;
- licensees named in substantive, jurisdictional complaints; and
- licensees whom the agency has reason to believe dispense or prescribe unusually large amounts of controlled substances.

Management Action

Rec. 3.4, Adopted

The agency should create and implement inspection guidelines with aggravating and mitigating factors to evaluate controlled substances deficiencies recorded during onsite inspections.

Rec. 3.5, Adopted

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

Issue 4

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

Change in Statute

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| Rec. 4.1, Adopted | Require the agency to conduct fingerprint-based criminal background checks of all licensure applicants and existing licensees. |
| Rec. 4.2, Adopted | Authorize the agency to provide biennial staggered license renewals for all license types. |
| Rec. 4.3, Adopted | Remove the statutory limitation currently restricting the agency's authority to lower fees. |
| Rec. 4.4, Adopted | 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 reviews to licensed veterinarians who are not board members. |

Management Action

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| Rec. 4.5, Adopted | Direct the agency to solicit and consider input from LVTs and EDPs on all rule changes and policy decisions affecting these license types. |
| Rec. 4.6, Adopted | Direct the agency to conduct continuing education audits as part of the license renewal process. |
| Rec. 4.7, Adopted | Direct the agency to evaluate jurisprudence exam questions for each license type and create question banks for its jurisprudence exams. |
| Rec. 4.8, Adopted | Direct the agency to remove the notarization requirement and evaluate other application requirements to streamline temporary license processing. |
| Rec. 4.9, Adopted | Direct the agency to improve tracking of non-jurisdictional complaints. |

Issue 5

Recent Court Decisions Exempt Animal Shelter Veterinarians From Regulation.

- Rec. 5.1, Not Adopted** 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.
- Rec. 5.2, Not Adopted** Direct the State Board of Veterinary Medical Examiners to provide the legislative committees of jurisdiction proposed statutory definitions of designated caretaker.
- Recs. 5.1, 5.2, Modified** In lieu of staff Recommendations 5.1 and 5.2, the Sunset Commission adopted a management action to direct the agency to follow the State Office of Administrative Hearing's (SOAH) current guidance on the scope of the owner and designated caretaker exemptions in its enforcement processes.

Adopted New Issues

Board Membership and Duties

Board composition. Require all current board member terms to expire on September 1, 2017. Adjust the composition of the nine-member State Board of Veterinary Medical Examiners to consist of:

- Five licensed veterinarians:
 - One of whom must be associated with an animal shelter, and
 - One of whom must have at least three years of experience practicing veterinary medicine in this state on horses, livestock, or other large animals.
- One licensed veterinary technician; and
- Three public members.

To allow for staggering of terms, the governor would make initial appointments as specified below.

- One veterinarian, one veterinary technician, and one member of the public to initial terms expiring February 1, 2019
- Two veterinarians and one member of the public to initial terms expiring February 1, 2021
- Two veterinarians and one member of the public to initial terms expiring February 1, 2023

This recommendation would preclude board members appointed before January 1, 2016 from reappointment. Existing eligibility requirements and restrictions for board membership would remain unchanged. To maintain a functioning board and conduct necessary business, board members serving on August 31, 2017 would continue to serve until the majority of new appointments are made and new members complete required training.

Board member training. Direct the agency to improve its board member training. The agency should ensure that all board members fully understand their duties and responsibilities specified by the board member training requirements in Section 801.057, Texas Occupations Code, including the agency's statute and rules, programs, functions, and budget. The agency should also ensure board members understand their authority to employ and responsibility to oversee the executive director. Training should emphasize the board's role in understanding and approving important agency documents such as large contracts and the agency's strategic plan. (Management action – nonstatutory)

Conflict of interest policies. Direct the Veterinary Board to develop and adopt conflict of interest policies regarding board member involvement in the agency's complaint investigation and enforcement processes. These policies should require board members to disclose any conflicts of interest in regard to a complaint before the board or board member, and to recuse themselves from participating in any investigation or resulting disciplinary action involving the complaint. These policies should be written in plain language, and be posted and easy to find on the agency's website. (Management action – nonstatutory)

Agency Staffing

Chief Fiscal Officer job description. Direct the agency to review and update the current job description for the Chief Fiscal Officer (CFO) position. The agency should modify the qualifications, responsibilities, and job duties as needed to ensure the job description accurately represents the actual requirements of the position. The executive director would then ensure the agency hires someone in this position who is qualified and properly trained to perform these duties. (Management action – nonstatutory)

Career ladder program. Direct the agency to develop and implement a career ladder program as required by Section 801.106(a), Texas Occupations Code. The career ladder information should be available in the employee manual or a similar document provided to all staff. (Management action – nonstatutory)

Complaint Investigations

Confidentiality of complaints. Require the Veterinary Board to maintain confidentiality of complaints, investigative reports, adverse reports, the identity of a nontestifying complainant, and other investigative information in the possession of, or received or gathered by the board or its employees or agents relating to a license holder, license application, or criminal investigation or proceeding. Require the board to protect the identity of the complainant to the extent possible. Prohibit the board from accepting anonymous complaints.

Require complaints filed with the board by an insurance agent, insurer, pharmaceutical company, or third-party administrator against a licensee to include the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator filing the complaint.

Require the board to notify, within 15 days of the complaint being filed, the licensee who is the subject of the complaint of the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator who filed the complaint, unless the notice would jeopardize an investigation.

Access to licensee response. Direct the board to modify existing rules to allow a complainant to receive all of the licensee's responses to the complaint during an investigation under Title 22, Texas Administrative Code, Section 575.28(6)–(7). (Management action – nonstatutory)

Access to investigation outcomes. Statutorily require the agency to provide a clear and easily understood summary of the outcome of a complaint investigation to the complainant. While investigatory records would remain confidential, the agency would be required to provide more information than the mere outcome of the complaint.

Also, as a management action, direct the agency to provide more information on the reasons for a complaint dismissal by revising its current case information letters, including case closing letters, to provide an explanation of the reason(s) for dismissal, as well as an explanation of the appeals process.

Access to disciplinary status of licensees. Direct the agency to ensure its website accurately reflects the disciplinary status of its licensees and make all approved disciplinary orders easily accessible and readily available on its website. The website should state the disciplinary status for a licensee as “NO” only if the licensee has not received any disciplinary action, whether formal or informal. (Management action – nonstatutory)

Agency Reporting

Quarterly reporting. Direct the Veterinary Board to provide written quarterly reports to the Sunset Commission regarding the implementation of the recommendations adopted by the commission, beginning January 31, 2017. (Management action – nonstatutory)