

# SUNSET ADVISORY COMMISSION

## STAFF REPORT

### *State Board of Veterinary Medical Examiners*



2016–2017  
85TH LEGISLATURE

# SUNSET ADVISORY COMMISSION

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*Cover Photo: The iron perimeter fence was installed in the 1890s, a few years after the completion of the Texas State Capitol. The fence surrounds approximately 22 acres of the Capitol Grounds but only on the east, west, and south sides due to the addition of the Capitol Extension to the north in the early 1990s. Photo Credit: Janet Wood*

# **STATE BOARD OF VETERINARY MEDICAL EXAMINERS**

**SUNSET STAFF REPORT  
2016-2017  
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## ***HOW TO READ SUNSET REPORTS***

Each Sunset report is issued *three times*, at each of the three key phases of the Sunset process, to compile all recommendations and action into one, up-to-date document. Only the most recent version is posted to the website. (**The version in bold is the version you are reading.**)

### 1. SUNSET STAFF EVALUATION PHASE

Sunset staff performs extensive research and analysis to evaluate the need for, performance of, and improvements to the agency under review.

**FIRST VERSION: The *Sunset Staff Report* identifies problem areas and makes specific recommendations for positive change, either to the laws governing an agency or in the form of management directives to agency leadership.**

### 2. SUNSET COMMISSION DELIBERATION PHASE

The Sunset Commission conducts a public hearing to take testimony on the staff report and the agency overall. Later, the commission meets again to vote on which changes to recommend to the full Legislature.

SECOND VERSION: The *Sunset Staff Report with Commission Decisions*, issued after the decision meeting, documents the Sunset Commission's decisions on the original staff recommendations and any new issues raised during the hearing, forming the basis of the Sunset bills.

### 3. LEGISLATIVE ACTION PHASE

The full Legislature considers bills containing the Sunset Commission's recommendations on each agency and makes final determinations.

THIRD VERSION: The *Sunset Staff Report with Final Results*, published after the end of the legislative session, documents the ultimate outcome of the Sunset process for each agency, including the actions taken by the Legislature on each Sunset recommendation and any new provisions added to the Sunset bill.

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# **SUMMARY OF SUNSET STAFF RECOMMENDATIONS**



# SUMMARY

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.

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

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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.

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# AGENCY AT A GLANCE





# AGENCY AT A GLANCE

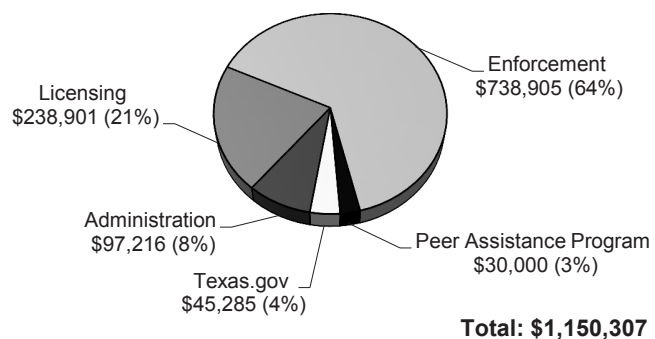
The Legislature created the State Board of Veterinary Medical Examiners in 1911 to regulate the practice of veterinary medicine, surgery, and dentistry. The agency's mission is to establish and enforce policies to ensure the best possible quality of veterinary and equine dental provider services for the people of Texas. To fulfill this mission, the agency carries out the following key activities:

- Licenses veterinarians, veterinary technicians, and equine dental providers
- Sets standards for the practice of veterinary medicine and equine dental services
- Enforces the Veterinary Licensing Act by investigating and resolving complaints against licensees and taking disciplinary action when necessary

## Key Facts

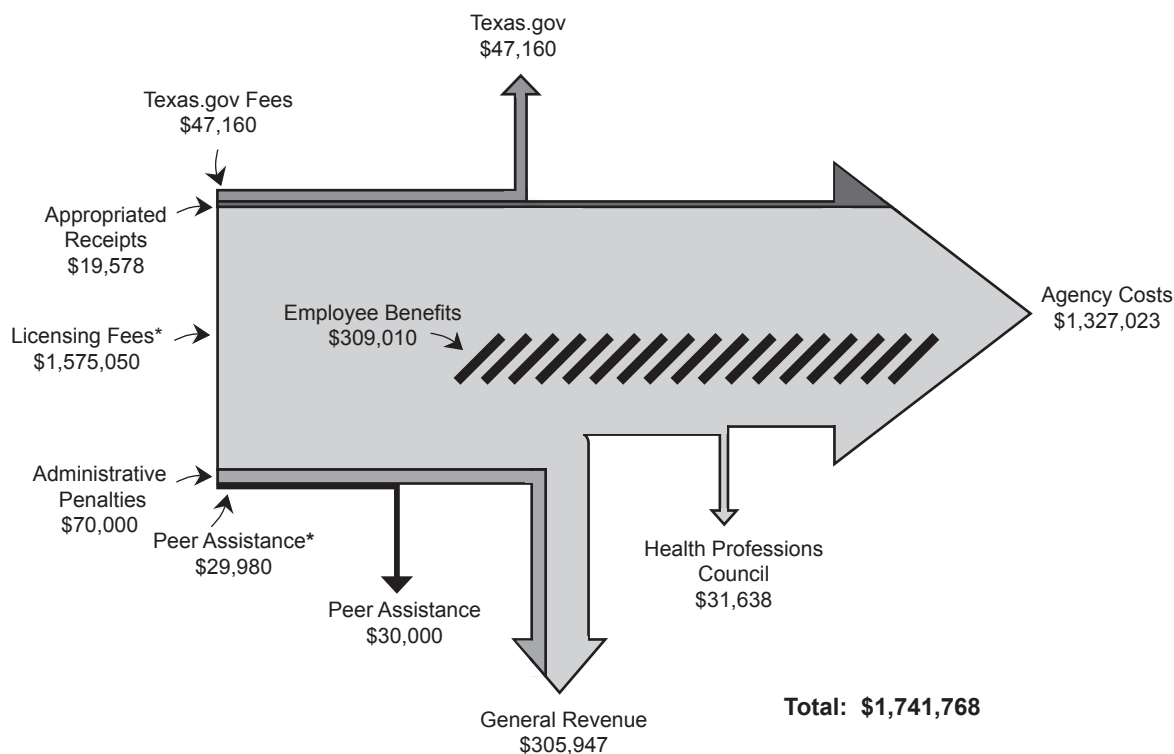
- **State Board of Veterinary Medical Examiners.** The board consists of nine governor-appointed members — six veterinarians and three members of the public — who serve staggered six-year terms. The governor appoints the presiding officer. Veterinarian members of the board must have been practicing veterinary medicine in Texas for at least six years preceding their appointment.
- **Funding.** In fiscal year 2015, the agency operated on a budget of about \$1.1 million, with a majority of revenue coming from professional and licensing fees paid by veterinarians, licensed veterinary technicians, and equine dental providers. The pie chart, *State Board of Veterinary Medical Examiners Expenditures*, breaks out the agency's spending by major program areas.

**State Board of Veterinary Medical Examiners  
Expenditures – FY 2015**



The agency generates revenue through fees in excess of what is needed to cover agency expenditures. In fiscal year 2015, the agency generated revenue of \$3.3 million, including \$1.4 million from the professional fee paid by veterinarians directly to the General Revenue Fund and the Foundation School Fund. Although the Legislature discontinued this professional fee in 2015, the agency still expected to bring in about \$300,000 more from fees in fiscal year 2016 than budgeted to run the agency and pay for employee benefits as shown in the chart on the following page, *Flow of State Board of Veterinary Medical Examiners Revenue and Expenditures*. Additionally, the agency's revenue was affected in 2016 by the change to a birth-month renewal process rather than renewing all licenses between January 1 and March 1 of every year. This offset three months of revenue into fiscal year 2017 for licensees born after September 1. A description of the agency's use of historically underutilized businesses in purchasing goods and services for fiscal years 2013 to 2015 is included in Appendix A, *Historically Underutilized Businesses Statistics*.

**Flow of State Board of Veterinary Medical Examiners  
Revenue and Expenditures  
FY 2016 (Budgeted)**



\* The agency changed to a birth-month renewal process, which offset collection of some fees into fiscal year 2017.

- Staffing.** The agency employs 20 staff who work in the agency's office in downtown Austin. The agency's largest division is enforcement, which has seven staff members including an enforcement director and five investigators. Other staff members perform licensing, finance, and legal functions. A comparison of the agency's workforce composition to the percentage of minorities in the statewide civilian workforce for the past three fiscal years is included in Appendix B, *Equal Employment Opportunity Statistics*. Additionally, the agency is a member of the Health Professions Council, which provides supplementary information technology staffing for the agency and other health professions licensing agencies as described in Appendix C, *Health Professions Council*.
- Licensing.** The agency determines eligibility, processes license applications and annual renewals, performs criminal history checks, and administers jurisprudence exams for three occupations.

**Veterinarians.** Doctors of Veterinary Medicine must be licensed by the agency to practice veterinary medicine in Texas, as defined by the Veterinary Licensing Act.<sup>1</sup> In addition to other requirements, applicants must graduate from an accredited school or college of veterinary medicine, or provide proof of equivalence; complete a criminal history background check; and pass both the national licensing examination and state jurisprudence exam to qualify for licensure.

Licensed Veterinary Technicians (LVTs). The state began licensing LVTs in 2013. LVTs assist veterinarians in animal care and veterinary tasks, such as taking basic vital information, suturing, and inducing anesthesia. By virtue of their license, LVTs may conduct these tasks with a lower level of veterinary supervision than unlicensed veterinary assistants or technicians. LVT applicants must graduate from an accredited veterinary technician program and pass both the national licensing examination and state jurisprudence exam.

Equine Dental Providers (EDPs). The state began licensing EDPs in 2011. EDPs may perform a statutorily defined set of dental procedures on equine animals under the general supervision of a licensed veterinarian. Applicants must complete an agency-approved equine dentistry certification program and pass the state jurisprudence exam. The agency has a statutory equine dental provider advisory committee to advise and assist the board in adopting rules and determining disciplinary actions related to equine dental providers.

The table, *State Board of Veterinary Medical Examiners Licensees and Fees*, shows the number of licensees and amounts of certain licensing fees at the end of fiscal year 2016.

**State Board of Veterinary Medical Examiners  
Licensees and Fees – FY 2016**

License Type	Number of Licensees	Initial Application Fee	Renewal Fee
Veterinarian	8,852	\$515 <sup>2</sup>	\$166.85
EDP	56	\$100	\$65
LVT	1,589	\$50	\$65

- Inspections and enforcement.** Enforcement staff conducts compliance inspections of licensees and investigate possible violations of the Texas Veterinary Licensing Act and related rules by licensed and unlicensed individuals. The agency receives complaints from licensees and members of the public, and initiates its own complaints from compliance inspection reports. If the agency finds a violation, it may impose a sanction or combination of sanctions. The table, *State Board of Veterinary Medical Examiners Enforcement Data*, details basic complaint and disposition data for fiscal year 2015. In the same year, the agency averaged 221 days to resolve its complaints. The agency reported to the Legislative Budget Board it resolved 566 complaints in fiscal year 2015. However, over the course of the Sunset review, the agency provided five different numbers for this single data point, ranging from 525 to 596, and Sunset staff could not verify any of the reported numbers with a suitable degree of confidence.
- Peer assistance.** The agency contracts for peer assistance services for licensees who may be impaired by substance abuse or dependence, or mental illness. Through this program, licensees

**State Board of Veterinary Medical Examiners  
Enforcement Data – FY 2015**

Complaints Received	
From the public	319
Initiated by staff	151
Total	470
Subjects of Complaints Received	
Standard of care	152
DPS registration for controlled substances	56
Practicing veterinary medicine without a license	45
Record keeping <sup>3</sup>	32
Reinstated investigations <sup>4</sup>	23
Continuing education violation	17
Substance abuse	4
Other or multiple <sup>5</sup>	109
Non-jurisdictional	32
Disciplinary Actions Taken <sup>6</sup>	
Administrative penalty	140
Formal reprimand	82
Continuing education	36
Cease-and-desist	27
Informal reprimand	24
Suspension	12
Probation	9
Voluntary surrender	2
Revocation	1

are evaluated to determine if they are safe to practice, and if not, may be subject to treatment and monitoring before being allowed to practice. In fiscal year 2015, 21 licensed individuals participated in the peer assistance program.

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- <sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.state.tx.us/>. Chapter 801, Texas Occupations Code.
- <sup>2</sup> Fees listed for veterinarians apply to the regular veterinary license and not special, temporary, or inactive licenses.
- <sup>3</sup> Includes patient records and controlled substance records.
- <sup>4</sup> Complainants who are dissatisfied with the results of an investigation may request that the agency re-investigate a complaint once.
- <sup>5</sup> Includes child support defaults, student loan defaults, fraud, sanitation, unnecessary or unauthorized treatment, and other enforcement actions.
- <sup>6</sup> One complaint may have multiple disciplinary actions.

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# ISSUES





# ISSUE 1

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

### Background

The Legislature created the State Board of Veterinary Medical Examiners in 1911 to regulate the practice of veterinary medicine, surgery, and dentistry. The Legislature authorized the agency to license and regulate equine dental providers (EDPs) in 2011, and licensed veterinary technicians (LVTs) in 2013.

The agency's mission is to establish and enforce policies to ensure the best possible quality of veterinary and equine dental provider services for the people of Texas. At the end of fiscal year 2016, the agency licensed 8,852 veterinarians, 1,589 LVTs, and 56 EDPs. The agency sets standards for the practice of veterinary medicine and equine dental services and ensures adherence to these standards by inspecting licensees, investigating and resolving complaints against licensees, and taking disciplinary action when necessary. In fiscal year 2015, the agency reported completing 657 licensee inspections, resolving approximately 566 complaints, and issuing 163 disciplinary orders and 27 cease-and-desist orders.<sup>1</sup>

### Findings

#### **The state has a continuing need to regulate the practice of veterinary medicine.**

Veterinarians diagnose illness; perform surgeries; prescribe drugs, including controlled substances; treat disease and injury; and administer therapeutic care to a broad range of animals. Although the patients treated by veterinary medicine are not human, veterinarians' clients — animal owners — do not have the expertise to ensure proper and quality veterinary care when obtaining these services. Regulation of veterinary medicine affects not only companion animals, but also all industries that rely on the health of animals, from agriculture to racing to human medical research.

The agency licenses veterinarians, LVTs, and EDPs to ensure their competence to provide veterinary services, many of which could have serious consequences if performed incorrectly. To ensure the safe practice of veterinary medicine, the agency confirms veterinarians graduate from an accredited college of veterinary medicine and pass the national licensing exam, creates the Texas jurisprudence exam, performs criminal background checks, and oversees continuing education. Regulation addresses the risk to the public by defining a reasonable standard of veterinary medical care and disciplining or removing veterinarians from practice who do not meet this standard. All 50 states regulate the practice of veterinary medicine.

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*All 50 states  
regulate  
veterinary  
medicine.*

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## The agency struggles to successfully accomplish some of its crucial administrative functions.

The State Board of Veterinary Medical Examiners is a small agency, with 20 staff and an annual budget of \$1.1 million. In addition to its primary licensing and enforcement functions, the agency must use its limited budget and staff to fulfill the basic administrative requirements of typical state agencies such as budgeting, accounting, information technology, and human resources. The review found problems in the operations of the agency as discussed below, raising questions as to how best to carry out needed regulation of veterinary medicine in the future.

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*The agency never finished closing out its fiscal year 2015 books.*

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- **Poor management of agency finances and budget.** The departure of the agency's tenured Chief Fiscal Officer (CFO) in October 2015 left the agency in financial disarray. In the 11 months since the departure, four other people have held the CFO position. The agency is still suffering the effects of this consequential turnover and a lack of institutional knowledge, which has hindered its ability to adequately manage its finances. Throughout the Sunset review, the agency has had difficulty identifying and locating basic financial documents and regularly provided numbers that conflicted or varied widely.

Agency staff often provided conjecture without certainty in answering questions about the agency's finances. When asked for fiscal year 2015 information, the agency reported it never finished closing out its fiscal year 2015 books and could not provide detailed expenditure information for the last month of the year. Sunset staff also found that during this month, the agency paid \$20,000 through an improperly executed contract, detailed below, for scanning equipment and document management services. Although the contract was discussed with the board, the expenditure did not appear in the agency's budget documents.

The agency has amended its fee schedule erratically over the past five years, suggesting a limited understanding of its financial needs. For example, the board has proposed and adopted three increases and two decreases to the veterinary license renewal fee since November 2011. In November 2015, the agency reduced fees based on incorrect revenue calculations, an error identified only after the board adopted the fee reduction. This fee decrease contributed to an unanticipated revenue shortfall in fiscal year 2016. The agency recently proposed another increase to several of its renewal fees, including approximately \$5 for timely veterinarian license renewals. If adopted, the fee increases would go into effect January 1, 2017 to cover the shortfall in the second year of the biennium.

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*The agency entered into a 60-month \$104,340 contract without a competitive procurement.*

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- **Improper contracting.** In August 2015, without conducting a competitive procurement, the agency entered into a 60-month contract, valued at a minimum of \$104,340, for scanning equipment, customized document management software, and related services. Agency staff asserted that the agency did not engage in a competitive procurement because the vendor

was a Department of Information Resources (DIR) approved vendor. However, the contract included items that were not DIR-authorized purchases, including customized software explicitly prohibited by the DIR contract and a microfiche scanner priced at \$20,000 in the contract terms. Additionally, the contract terms reveal the agency paid more than the listed DIR maximum rates for the approved items in the purchase, including a copier at 66 percent more than the DIR price. The vendor has failed to deliver the document management services outlined in the contract and to date the agency has only spent the initial \$20,000 payment on the contract. The agency is currently in the process of terminating the contract.

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*The agency contracted for customized software explicitly prohibited by DIR contract terms.*

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- **Poor information technology management.** The agency has limited resources to dedicate to information technology. While the agency participates in the Health Professions Council (HPC), it only receives basic technological support. For the agency's more significant technological needs, primarily its licensing and enforcement database, the agency chose to develop its own database, SugarCRM, rather than using the system developed by HPC, which would have been more expensive, but also would have provided more functionality. However, the Sunset review found that the contractor built SugarCRM on top of existing open source code and did not thoroughly customize it. For example, the current database retains stock menus and options from the open source code that do not apply to the agency.

Additionally, SugarCRM sometimes obstructs or obfuscates agency processes. For example, the database cannot provide comprehensive information about complaints that move from enforcement into the legal division, which sometimes leads to different departments entering conflicting information in different parts of the database about the same case. Issue 2 of this report describes additional problems with the database in more detail.

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*The agency's database cannot provide comprehensive information about complaints.*

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Additionally, the agency has identified a need for a sufficient document management system. The agency currently has two contracts for document management: a limited service used only by the licensing department, and the problematic contract described above, which has failed to deliver on any of its document management terms. The agency is now planning to enter into a third contract with other HPC agencies, for which it has requested an \$11,443 exceptional item over the next biennium in its 2016 Legislative Appropriations Request.

**While the agency's administrative difficulties support consolidating the agency under an umbrella structure, suitable options are not currently available to justify such a significant change.**

While the agency shares similar functions with regulatory agencies and could benefit from stronger administrative support, consolidating the agency into an umbrella structure is not justified at this time. An umbrella structure can

offer advantages in terms of objective, professional regulation. By specializing staff along functional lines, umbrella agencies can provide improved long-term efficiency over smaller, single-shot agencies. In addition, umbrella agencies can provide administrative efficiencies by ensuring sufficient staff and resources to accomplish administrative functions successfully. Larger umbrella agencies can also provide more avenues for developing and retaining staff, helping to insulate them against the institutional loss and disruption that can result from the departure of key personnel in small agencies.

However, the regulatory activities of the agency's licensees are distinct from those of other regulated healthcare professionals such as physicians, dentists, podiatrists, nurses and chiropractors, and the regulation of veterinary medicine does not involve the same level of risk to public health and safety. Agencies regulating human healthcare professionals protect the public by regulating the practitioners who directly treat their clients. This agency regulates practitioners whose clients are actually the owners of their patients. Additionally, federal and state legal structures that govern human healthcare often do not apply to the veterinary profession. For example, laws governing human healthcare costs, insurance, medical facilities, patient confidentiality, and patient medical records, among others, either differ significantly or do not apply to veterinarians, limiting the benefit of regulating veterinarians in an umbrella structure with human healthcare occupations that share these concerns and rules.

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*Regulation of veterinary medicine does not involve the same level of risk as that of human health care.*

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### **The agency's statute does not reflect updated requirements for board member training.**

The agency's statute contains standard language requiring board members to receive training and information necessary for them to properly discharge their duties. However, statute does not contain a newer requirement that the agency create a training manual for all board members or specify that the training must include a discussion of the scope of and limitations on the board's rulemaking authority.

## **Recommendations**

### **Change in Statute**

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

This agency has significant operational challenges. With special effort, the agency has the potential to resolve its problems. However, given these concerns, a shorter, six-year Sunset date would provide quicker oversight of the agency. This recommendation would allow the Legislature to evaluate the agency's implementation of changes needed to improve the agency sooner than the standard 12-year period. The Sunset review in six years would focus on evaluating whether the agency has addressed the problems identified in this report, specifically its financial management, contracting practices, and technological needs. The review would also specifically address whether the agency should continue as an independent agency or would benefit from consolidation. This recommendation would also continue the statutory equine dental provider advisory committee.



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

This recommendation would require the agency to develop a training manual that each board member attests to receiving annually, and require existing board member training to include information about the scope of and limitations on the board's rulemaking authority. The training should provide clarity that the Legislature sets policy and boards have rulemaking authority necessary to implement legislative policy.

## **Fiscal Implication**

These recommendations would not have a fiscal impact to the state.

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<sup>1</sup> The agency reported to the Legislative Budget Board it resolved 566 complaints in fiscal year 2015. However, over the course of the Sunset review, the agency provided at least five different numbers for this single data point, ranging from 525 to 596, and Sunset staff could not verify any of the reported numbers with a suitable degree of confidence. Likewise, the agency provided several different figures for the number of licensee inspections ranging from 648 to 657, and Sunset staff could not verify any of the reported numbers with a suitable degree of confidence.



# ISSUE 2

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

### Background

The State Board of Veterinary Medical Examiners devotes almost two-thirds of its budget and about half of its staff to its enforcement functions. The agency enforces the Veterinary Licensing Act by conducting unannounced inspections of licensees, investigating complaints, and, as necessary, taking disciplinary action. The agency initiates investigations from jurisdictional complaints received from the public and from problems found during its inspections of licensees. In fiscal year 2015, the agency received 319 complaints from the public and conducted approximately 657 unannounced onsite inspections.<sup>1</sup> The agency opened 438 complaint investigations from these two sources. Depending on the results of the investigation, the complaint can be closed, or referred to an informal conference or a staff conference, described in the textbox, *State Board of Veterinary Medical Examiners Disciplinary Proceedings*.

#### ***State Board of Veterinary Medical Examiners Disciplinary Proceedings***

**Informal conference** – A meeting where three board members discuss the facts of the case with agency staff, the complainant, and the respondent. The board members decide whether to take disciplinary action or close the case.

**Staff conference** – An alternative meeting for cases not involving medical review. This meeting consists only of agency staff — an enforcement staff member, the general counsel, and the executive director — that discuss the case and decide whether to close it or take disciplinary action.

Disciplinary action may include an administrative fine; a formal or informal reprimand; license probation, suspension, or revocation; continuing education; a disciplinary jurisprudence exam; or some combination of these. If the licensee does not agree with the disciplinary action, he or she may request a hearing at the State Office of Administrative Hearings (SOAH). In fiscal year 2015, the agency issued 140 administrative penalties, 106 formal and informal reprimands, nine license probations, 12 license suspensions, and one license revocation. SOAH conducted one hearing in fiscal year 2015 and three in fiscal year 2016 for the agency.

### Findings

#### **Inconsistencies throughout the agency's inspection and enforcement processes can lead to unequal treatment of licensees.**

- **Inconsistent inspection processes.** Investigators report a wide degree of flexibility in how they conduct inspections, which leads to variable treatment of licensees. Investigators learn how to conduct inspections, primarily through shadowing other investigators, with few written protocols and guidelines. The agency's main inspection tool, the inspection form, is vague and provides limited guidance and direction to investigators and licensees being inspected. The form contains no citations to agency rules or statutes. Sunset staff observed some investigators choose to print copies

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*Investigators learn how to conduct inspections with few protocols and guidelines.*

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*Licensees do not always know what rules and standards are being enforced.*

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of the relevant rules to use and provide to licensees during inspections, while others do not, indicating not all licensees are given a clear idea of what rules and standards are being enforced. Investigators do not complete the inspection form consistently, often ignoring notation guidelines or failing to complete all required information. The inspection form requires investigators to determine whether a licensee's practices are "acceptable," "unacceptable," or "N/A." While some of these items are easily determined, the form includes a general checkbox for "sanitation" without further detail. The agency's sanitation rule requires use of "properly sterilized instruments," but not all investigators ask for practice information or inspect equipment related to sterilization. Applying rules inconsistently can result in the agency disciplining some licensees and not others for the same practice. Issue 3 of this report details additional inconsistencies in the inspection process related to controlled substances.

- **No guidelines on when to refer an inspection for further investigation.** Investigators do not have clear direction or guidelines governing when they should refer deficient inspections for potential complaint investigation. Under agency practice, if investigators feel the results of an inspection merit opening a complaint investigation, they submit a memo to the director of enforcement who determines whether to open a full investigation or not. While extreme cases make for easy judgments, a wide range of cases with minor to moderate deficiencies exists, and as described previously, the basis on which the investigators determine whether a deficiency exists is questionable. Also, because no one reviews the inspection forms investigators choose not to forward, the agency has no way of knowing whether investigators are consistently referring cases with similar inspection results for investigation and whether potentially serious cases are not being investigated as a result.
- **Failure to use the existing schedule of sanctions.** Although the agency's board has adopted a schedule of sanctions in rule, it does not use this schedule in making decisions when imposing sanctions.<sup>2</sup> The schedule of sanctions includes three classes of violations based on severity, establishes mitigating and aggravating factors, and provides for maximum penalties. However, agency staff and board members do not reference or use the violation classes or the schedule when discussing and assessing disciplinary action, instead relying on precedent sheets made by the agency's legal counsel before each discussion. If the tool created to ensure consistency is ignored, inconsistent and unfair treatment results for licensees being disciplined. For example, Sunset staff reviewed the following two similar 2015 cases with disparate outcomes.

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*The agency does not use its schedule of sanctions in making disciplinary decisions.*

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Case 1: The agency inspected a veterinarian with no prior disciplinary action and discovered a recordkeeping violation for two controlled substances in a shared drug log used by all veterinarians in the practice. This veterinarian worked part-time, three days a week, at the clinic. The agency and the veterinarian signed an agreed order, providing a formal reprimand and a \$1,000 administrative penalty.

Case 2: The agency inspected a veterinarian with prior disciplinary action for a controlled substances issue earlier in 2015 and discovered a recordkeeping violation for three controlled substances in the veterinarian's own, unshared drug log. This veterinarian owned the clinic. The agency and the veterinarian signed an agreed order, providing a formal reprimand and no administrative penalty.

The dispositions of these two cases do not appear to conform to the guidelines in the schedule of sanctions. The schedule defines Class C violations as those involving licensees with no previous violations and presenting no hazard to the public, with a maximum fine of \$500 per day. Meanwhile, Class B violations include more egregious violations and licensees with prior violations with a maximum penalty of \$5,000 per day. The veterinarian in Case 1, with no disciplinary history, committed a lower class of violation with more mitigating factors than the veterinarian in Case 2 and yet received a higher penalty. Additionally, the agency uses sanctions not contained in its schedule of sanctions. The schedule does not provide for two of the agency's most used disciplinary actions, formal and informal reprimands, but the agency issued 106 reprimands in fiscal year 2015.

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*The agency's schedule of sanctions does not include its most used disciplinary actions.*

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### **Poor communication exacerbates licensees' and complainants' frustrations with the agency's investigation and enforcement processes.**

Licensing agencies should provide sufficient information to licensees and complainants about a complaint investigation, including the steps in the process, progression of the investigation, and resolution of the complaint. When initiating an investigation, the agency sends an opening letter to the complainant and respondent explaining the complaint investigation and resolution process, including estimated timeframes for each step. The agency's database automatically generates notification letters every 45 days informing both the complainant and respondent that the investigation is ongoing, but these form letters contain no information other than the fact that the case is still open. The letters do not indicate which step of the process the complaint investigation is in, such as medical or staff review, and in at least one case, the agency sent the 45-day notification letter before sending the initial opening letter informing the licensee a complaint had been filed against them and an investigation had been opened.

Participants on both sides of the process reported difficulty getting basic information about their individual cases from agency staff, stating agency staff is non-responsive to inquiries about the status of their cases and consider the enforcement process to be a "waiting game." One complainant reported receiving inaccurate or misleading information regarding the medical review process for a standard of care case. Although the agency strives to be responsive by telephone and to provide publicly available information, several participants reported being denied or referred to the agency's public information officer for

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*Individuals reported difficulty getting basic information about complaint investigations.*

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basic inquiries about their own cases. In one case, a complainant reported the agency would not divulge the identity of the board members who reviewed their complaint, although this information is open and obtainable according to both statute and rule.

**The agency lacks the data necessary to know whether its enforcement process ensures the best possible quality of veterinary services for the people of Texas.**

*The agency collects no data about which steps of the enforcement process take the longest and why.*

Over the course of the review, the agency provided Sunset staff with several different numbers for basic enforcement data such as number of complaints resolved in a year, number of licensees inspected in a year, and number of disciplinary orders issued in a year. The agency explained these discrepancies by pointing to missing or incorrect data entry by staff in its database, SugarCRM, and other clerical issues. While occasional errors in data entry are unavoidable, these types of data reliability problems were pervasive throughout the agency, its database, and the review. This lack of reliable data significantly limits the agency's ability to have a complete, reliable picture of its enforcement program. This data is crucial not only for legislatively required performance measures, which the agency's appropriations are based on, but also for accurately assessing the agency's effectiveness to make needed adjustments to best carry out its mission, serve its licensees, and protect the public.

Sunset staff also requested basic information regarding the number, type, and progression of complaints through the enforcement process for fiscal year 2015 and found the agency tracks minimal timeline and case flow information. While

**Sunset Case File Review**

Sunset staff reviewed a sample of 51 cases and found many exceeded the typical investigatory timeframe of three to five months with no explanation or reason provided.

- In a case regarding a standard of care complaint submitted to the agency in March 2015, the investigator finished gathering evidence in May 2015, but did not refer the investigation report to the director of enforcement for review until January 2016.
- In another case, an investigator accepted a licensee's second response nearly three months after the 10-day deadline had passed.

Other case files indicated similar activity gaps of three to six months in which cases did not appear to progress at all.

the agency's database contains each case's open and close date — which the agency needs to report its performance measures — the agency collects no other data, through the database or any other means, that indicates which steps of the enforcement process take the longest and why. The agency could only provide some of this information by devoting significant investigator time to manually go through each physical case file to locate relevant dates. Sunset staff also conducted a targeted review of several case files with lengthy resolution times, described in the textbox, *Sunset Case File Review*, finding no explanation or reason for the delays. Without more complete case flow data, it is impossible to conclude why the agency's enforcement cases languish.

The agency cites several possible causes for case lags, including investigator turnover and a rule that allows parties an opportunity to file an additional response to a complaint, but has no data to determine where and why the lags actually occur. Likewise, the agency recently added an additional board



meeting every year, claiming this would improve case resolution times, but the agency has no available data to suggest the board approval stage of the process contributes significantly to delays.

### **The agency's database significantly impedes its enforcement processes.**

The agency contracted to create its own database, SugarCRM, in 2013, after determining the Versa database system offered by the Health Professions Council was too expensive and not customizable enough for the agency's needs. However, the review found SugarCRM suffers from limited customization and is rife with problems. The database's design, combined with the inconsistent way staff use it, does not provide useful or reliable information that accurately reflects the agency's enforcement activities.

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*The agency's enforcement database is rife with problems.*

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- **Problematic design.** Although SugarCRM is a custom database, the agency's enforcement and legal divisions report its design is not well tailored to their processes and needs. The database contains features and menus that are duplicative, ambiguous, or inapplicable to the agency, hampering the enforcement process. For example, when recording inspections in SugarCRM, investigators must choose responses from two drop down menus — "Inspection Open" allows investigators to choose "Yes" or "No," while "Inspection Status" allows inspectors to choose "Open," "Closed," "Pending," or "Compliant," among others. These duplicative menus create the opportunity for investigators to enter conflicting or ambiguous information. Additionally, no agreed definition exists among staff for the status menu options. Different investigators waiting for a licensee to provide additional information after an inspection, such as continuing education documentation, use "Open," "Pending," or "Compliant," all to indicate this same situation. Compounding the design issues, staff has difficulty requesting and receiving changes to fix design flaws. Staff tasked with maintaining the database took several months to implement a usable case numbering system and was unable to implement a change to alphabetize licensees by last name rather than first name.

These inconsistencies, among others, mean the agency cannot get a clear picture of its enforcement data, negating the usefulness of the database for aggregate information and data tracking. Moreover, licensees may receive inaccurate or conflicting information about their inspection results due to these inconsistencies, which is of particular concern in light of the high turnover of enforcement division staff. The agency employs five investigators, but six investigators have left the division since the beginning of fiscal year 2015. As a result, investigators frequently take over investigations initiated by other staff. Without clear or consistent procedures, investigators are more likely to miss evidence or duplicate efforts.

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*The agency employs five investigators, but six investigators have left since fiscal year 2015.*

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- **Incorrect data.** Due to technical limitations, the database is populated with bad data that hinders the agency's enforcement functions. At any given time, the database cannot show where all licensees are practicing, resulting

in missed inspections and inconsistent enforcement. The section of the database containing information about licensees' practice locations is full of duplicated, junk, or outdated information. Addresses from Texas.gov do not always import correctly, leading the database to display clinics in the wrong location. For example, an investigator planning an inspection trip in the Bastrop area may enter a Bastrop area zip code and search for all clinics within 20 miles. However, because of badly imported data, this search may return addresses of clinics in Dallas, and may miss clinics in Bastrop — effectively exempting licensees with incorrectly imported address from inspection. Additionally, SugarCRM is not capable of recording more than one practice address per licensee, despite the fact that many licensees own or regularly practice at more than one clinic. In fact, if a licensee owns multiple clinics and no other licensees report these clinics as their primary practice, the agency would have no way of knowing all these clinics even exist.

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*Badly imported data effectively exempts some licensees from inspection.*

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In addition to data from Texas.gov, the database also contains data incorrectly imported from older databases that the agency has never corrected. For example, some licensee profiles state archaic or nonsensical inspection dates, including at least one that cited the licensee's last inspection date as 1907, four years before the 32nd Legislature enacted the first Veterinary Licensing Act. Short of relying on the licensee's memory, there is no way for the agency to determine the actual date of the licensee's previous inspection, making them susceptible to multiple inspections in a short time frame while others with correctly recorded inspection dates are not.

## Recommendations

### *Change in Statute*

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

Statute does not require the agency to have or use a schedule of sanctions and while the agency has developed and adopted one in rule, it does not use it. Under this recommendation, the agency would review its current schedule of sanctions and adjust it to match the agency's current functions so that disciplinary actions relate appropriately to the nature and seriousness of the offense. The agency would then propose any rule amendments necessary to enact a detailed and useful schedule of sanctions. The revised schedule of sanctions would better ensure consistency and fairness in the agency's enforcement process and resulting disciplinary decisions.

### *Management Action*

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

At a minimum, the agency's procedures should address the following:

- **Inspections.** The agency should establish procedures to ensure investigators conduct inspections consistently, including creating guidelines for what constitutes "acceptable" and "unacceptable" for



each item on the inspection form, and uniform procedures for when to refer an inspection for further review or full investigation.

- **Documentation practices and case management.** The agency should establish a uniform procedure for managing case files to ensure that investigation related files are easily accessible and interpretable by all staff. Additionally, the agency should decide on and promulgate a uniform system for recording information in its database so enforcement staff use drop down menus and fields throughout the database the same way.
- **Investigations.** By working with their team of investigators, the agency needs to identify and resolve areas of inconsistency in investigatory practices and interpretation of rules. The agency should implement processes to hold investigators accountable for consistency, such as periodic review of inspection forms, case files, and documentation.
- **Internal coordination.** The agency should encourage regular communication between all staff involved in the complaint resolution process. Enforcement and legal staff should coordinate to achieve consistent understanding of agency rules and ensure relevant and necessary facts and evidence are shared, so cases can be resolved as fairly and expediently as possible.
- **Communication with licensees and complainants.** The 45-day case update letters should provide additional information to complainants and licensees about the status of a case. At a minimum, the letter should indicate which stage of the investigative process a case is in currently. Investigators brief the director on each of their cases weekly, so this information should be readily available, and the letter update could occur as part of this weekly review process.

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

Under this recommendation, the agency should ensure it has the ability to systematically track enforcement data and establish a system for doing so. The agency should establish uniform case management procedures that clearly set out what information the agency needs to record and keep. This includes monitoring all stages of its complaint resolution process to identify where delays occur and how best to meet its performance measures. The agency should also establish consistent definitions and processes for data entry to ensure any aggregate information provided by the database is reliable and meaningful.

The agency should also systematically determine which of the database's weaknesses most critically affect the agency's functions and develop a plan to resolve these problems in a reasonable timeframe. Enforcement and legal division staff would work together with the agency's system analyst to agree on solutions that are technologically reasonable but do not obstruct the agency's crucial functions.

Among other issues, the agency should repair problems with the licensee address functions. The database should receive necessary functionality to handle multiple addresses for one licensee no later than September 1, 2018. Additionally, once the system incorporates such information, the agency should require all licensees to report all clinics or practices they own or practice at on a regular basis. This would help ensure the agency could locate all licensees and is aware of all operating veterinary clinics in the state.

## Fiscal Implication

The recommendation to update the agency's database would have a fiscal impact. The agency currently employs one full-time systems analyst who conducts database management. Additional contracts may be necessary, but the costs would depend on the needs identified through the staff analysis and the technological complexity of the solutions.

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<sup>1</sup> Over the course of the Sunset review, the agency provided several different figures for the number of licensee inspections ranging from 648 to 657, and Sunset staff could not verify any of the reported numbers with a suitable degree of confidence.

<sup>2</sup> 22 T.A.C. Section 575.25.

# ISSUE 3

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

### Background

The nationwide epidemic of prescription drug abuse, including drug diversion, is attributable to more than 40 deaths per day in the United States, outpacing the overdose deaths from heroin and cocaine combined.<sup>1</sup> Controlled prescription drugs, or controlled substances, are highly addictive, legal medications with increased potential for abuse, commonly prescribed for pain relief or sedation. Drug diversion — the abuse, illegal distribution, or unintended use of prescription drugs — may occur at any stage in the drug delivery process, and may contribute directly to addiction, death, illness, and economic harm to healthcare systems and local communities.<sup>2</sup> While practitioner prescribing is a major source of diversion, other forms include theft, forgery, employee pilferage, illicit prescribing, illegal sales, and personal substance abuse by practitioners themselves.<sup>3</sup>

The State Board of Veterinary Medical Examiners licenses more than 8,500 veterinarians — 75 percent of which have authority to administer, dispense, and prescribe controlled substances — and plays an important role in protecting the public from improper use of controlled substances, including diversion.

To understand how to best identify and combat diversion, state and federal regulatory agencies, including the Drug Enforcement Administration (DEA), need comprehensive data to understand to how controlled substances move from practitioner to the client, whether through prescriptions or by directly administering or dispensing to clients. The textbox, *Key Controlled Substances Terms*, describes the important differences between administering, dispensing, and prescribing controlled substances. The state's primary method for tracking and monitoring prescriptions of controlled substances is the Texas State Board of Pharmacy's Prescription Monitoring Program (PMP), a statewide database that collects information on every controlled substance dispensed through pharmacies in Texas. Statute allows prescribers, pharmacists, and related regulatory agencies to check the database.<sup>4</sup> While the PMP collects information from pharmacies, practitioners — such as physicians, dentists, and veterinarians — have a legal responsibility under both federal and state controlled substances acts and rules to maintain accurate and up-to-date records of administering, dispensing, and prescribing all controlled substances; provide adequate security of and limited employee access to drug inventory; and report theft, loss, and destruction of controlled substances.<sup>5</sup>

#### **Key Controlled Substances Terms**

- “Administer” means to directly apply a controlled substance to a patient’s body by injection, inhalation, ingestion, or other means by a practitioner or an assistant.
- “Dispense” means the delivery of a controlled substance to the patient or client.
- “Prescribe” means the act of a practitioner to authorize a pharmacist to dispense a specific controlled substance to an ultimate user.

## Findings

### **The state and the agency do little to monitor veterinarians' use of controlled substances.**

*No state or federal agency tracks veterinary dispensing in Texas.*

In Texas, veterinarians receive little oversight of their use of controlled substances from any state or federal agency. Veterinarians are unique among practitioners. While most practitioners write prescriptions to be filled by pharmacies, veterinarians also have the ability to dispense medications directly to their clients. Currently, Texas does little to track or monitor veterinary use of controlled substances. In fact, no state or federal agency could provide Sunset staff with any data to reflect overall veterinary dispensing activity in Texas. The Texas Veterinary Licensing Act requires the State Board of Veterinary Medical Examiners to develop procedures to identify and monitor license

#### **Examples of Information to Assess Risk of Diversion in Veterinary Clinics**

- type of practice (large, small, mixed animals)
- number of veterinarians vs. non-veterinarians
- number of DEA registrants
- client volume
- established protocols to supervise and limit employee access to controlled substances
- ordering information, such as receipts or DEA forms, showing which veterinarian(s) order for the clinic
- range of scheduled controlled substances in inventory

holders who represent a risk to the public, but does not provide clear authority or direction to collect controlled substances data as part of this process leaving a data and oversight gap.<sup>6</sup> The textbox, *Examples of Information to Assess Risk of Diversion in Veterinary Clinics*, provides several examples of additional information the agency could collect during onsite inspections. Without this data, the agency is extremely limited in its ability to fully understand and adequately evaluate a veterinarian's diversion risk level and compliance with controlled substances regulations; trends in controlled substance deficiencies from inspections; and how to adjust agency enforcement efforts to better protect the public.

The agency pays for access to the PMP, but does not use it to assess risk or monitor licensees. For example, recent PMP data shows veterinarians make up 124 of the top 300 practitioners prescribing barbiturates in Texas in fiscal year 2015.<sup>7</sup> Of the 124 veterinarians on this list, 15 had prior board orders or disciplinary action, and of these, seven had prior controlled substance violations. The agency could have used this data to help plan more targeted inspections and to know when to conduct more robust complaint investigations of practitioners prescribing large amounts of controlled substances. As of September 1, 2016, improvements in the PMP should allow the agency to review more detailed trend data.

*Over 6,300 veterinarians in Texas are not required to report to the PMP.*

### **The state's Prescription Monitoring Program data is incomplete without controlled substances dispensing data from more than 6,300 DEA-registered veterinarians.**

The Texas PMP provides valuable information to practitioners and regulatory agencies about prescribing practitioners; the dispensing pharmacy; the quantity and dosage of the controlled substance prescribed; and identifying client information. However, unlike pharmacies, over 6,300 DEA-registered

veterinarians are not required to report similar dispensing data to the PMP. Other practitioners, such as medical doctors, can dispense controlled substances directly to patients only in limited quantities to fulfill an immediate need until the patient can access a pharmacy.<sup>8</sup> Veterinarians, however, have no additional limitations on the amount of controlled substances they can administer, dispense, or prescribe.

At least 16 other states, including California, New York, and Oklahoma, require veterinarians and other practitioners to report controlled substance dispensing information to their respective state PMPs. For example, the state of Oklahoma requires all practitioners, including veterinarians, to electronically report to the state's PMP within five minutes of dispensing a scheduled drug.<sup>9</sup> The Oklahoma State Board of Veterinary Medical Examiners uses PMP data to regularly investigate complaints against veterinarians regarding controlled substances, and receives PMP notifications of suspicious dispensing and prescribing trends as an additional way to monitor licensees.

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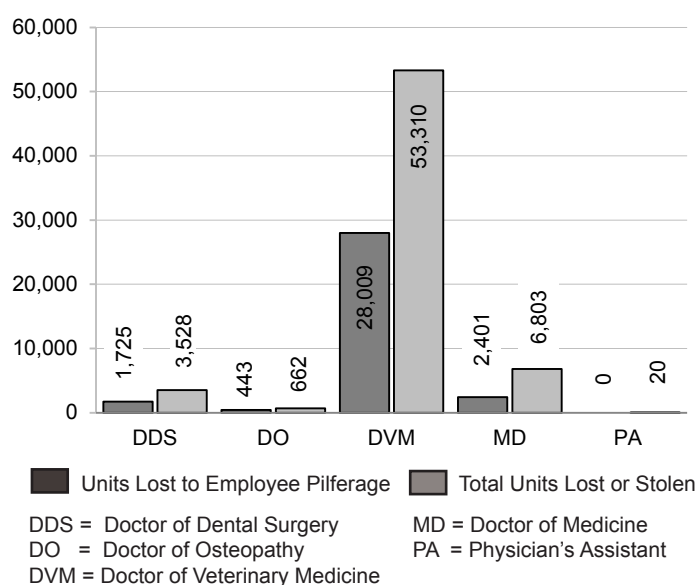
*Veterinarians have no limitations on the amount of controlled substances they can dispense.*

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### **Texas veterinarians have a high risk of diversion, reporting the highest theft and loss of any controlled substances over the last five years.**

Texas veterinarians dispensing controlled substances are at a high risk of diversion, especially through theft or loss, because unlike other practitioners, they can keep a fully stocked inventory of most controlled substances in their clinics. Currently, the DEA is the only agency tracking theft or loss of controlled substances for Texas veterinarians. The graph, *Dosage Units Reported Lost or Stolen in Texas*, based on DEA data, illustrates the clear problem Texas veterinarians have with theft and loss of controlled substances, especially through employee pilferage.<sup>10</sup> Compared to other practitioners — not including pharmacies — veterinarians reported the highest dosage units lost or stolen for any single type of controlled substance, with over 30,000 dosage units of tramadol reported lost or stolen during the same period.<sup>11</sup> Various sources place the Texas street value of one 50-milligram tramadol pill at \$2.00–\$5.00, meaning in the past five years at least \$60,000, but as much as \$150,000 worth of tramadol was diverted directly from Texas veterinarians.<sup>12</sup>

***Dosage Units Reported Lost or Stolen in Texas, FYs 2012–2016***



Source: U.S. Department of Justice, Drug Enforcement Administration, August 2016

**The agency does not adequately inform veterinarians about the significant diversion problem in the Texas veterinary profession.**

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*Veterinarians in Texas do not believe there is a problem with diversion.*

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Sunset staff observations and comments from stakeholders responding to a Sunset staff survey indicate many veterinarians do not believe diversion of controlled substances is a problem in the Texas veterinary profession, contrary to the position of the Texas Legislature, State Board of Veterinary Medical Examiners, and DEA. However, data gathered through this review demonstrates veterinarians are at significant risk of contributing to drug diversion.

Facing this pervasive apathy, the agency struggles to adequately communicate to licensees the liabilities, responsibilities, and risks when keeping an inventory of controlled substances under a DEA registration. Unlike the Texas State Board of Pharmacy, which also enforces controlled substance regulations, the State Board of Veterinary Medical Examiners does not provide significant educational opportunities or materials to help licensees understand their obligations. Opportunities available to pharmacists include agency sponsored continuing education courses, in-person presentations, webinars, educational materials such as videos and slide presentations, and newsletters explaining rule and statute changes in plain language. In contrast, the State Board of Veterinary Medical Examiners generally relies on state and local veterinary associations to educate or update the licensee population on controlled substance regulations.

**The agency's current inspection process does not adequately identify or prevent diversion of controlled substances.**

In fiscal year 2015, the agency conducted approximately 657 unannounced onsite inspections of veterinarians. One of the primary purposes of veterinary inspections is to monitor and enforce licensees' compliance with laws and rules for prescribing and dispensing controlled substances, including DEA registration requirements, drug labeling, record keeping, and drug inventory security. However, the agency does not use best practices to conduct consistent, effective, and efficient inspections of controlled substances, leaving the public at risk.

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*The agency does not use a risk-based inspection process.*

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- **No risk-based inspections.** As a best practice, inspections are usually risk-based, requiring agencies to establish specific risk factors, focus staff resources, and use available data to inspect licensees with the most risk of public harm. The State Board of Veterinary Medical Examiners does not use a risk-based process to plan its inspections. Investigators plan their own compliance inspections, choosing a group of licensees in the same geographic region of the state who have not been inspected within the past five years. They do not consider other important risk factors, such as PMP prescribing history or previous disciplinary action, when choosing which licensees to inspect.

Importantly, the agency misses two significant opportunities to better select whom it inspects. The agency does not use the PMP to monitor



veterinarians' prescribing habits nor does it request controlled substance theft and loss reports or other data from the DEA to help target inspections to licensees who may be at risk of diversion. Investigators also do not choose the geographic regions of the state for inspections based on risk of diversion or drug diversion data. In fact, according DEA data, Bexar, Collin, Dallas, Harris and Tarrant Counties reported several of the highest theft or loss reports of controlled substances for veterinarians, which overlap with the counties the Texas Department of Public Safety identifies having the largest opioid problems. While the agency regularly inspects veterinarians in highly populated areas, such as Harris County, it does not access state or federal drug abuse data to help target its inspections. Using this data would help the agency focus inspections on the riskiest practitioners and regions, including those most susceptible to drug diversion.

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*The agency does not focus inspections on the riskiest practitioners and regions.*

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- **Lack of uniform controlled substances inspection standards and procedures.** Since diversion can occur in a number of different ways for veterinarians, investigators need to be diligent and consistent when inspecting controlled substances. Current practice requires investigators to inspect the licensee's DEA registration, controlled substance records, and the security of controlled substances inventory, and compare the balance-on-hand to the licensee's logbook. Sunset staff reviewed 100 inspection forms from fiscal year 2015, representative of different investigators and regions throughout the state, and identified significant concerns with the inspection process, as discussed below.

Security of controlled substances. Veterinarians have the highest rates of theft and employee pilferage among practitioners in Texas, but the agency's inspection process does not fully address controlled substances security and, in practice, focuses only on physical security. Agency rules require minimum standards for adequate security of controlled substances, including establishing a protocol for limiting inventory access to authorized personnel only, and keeping physical inventory in a substantially constructed cabinet or safe. The agency's investigators do not routinely inspect internal security protocols, such as how many employees have unfettered access to the controlled substances or other systems for monitoring inventory. In comparison, the DEA uses 14 factors to determine substantial compliance with security controls and operating procedures, listed in the textbox, *DEA Compliance Factors*.<sup>13</sup>

#### **DEA Compliance Factors**

- type of activity conducted
- type of form of controlled substance
- quantity of controlled substance
- location of premises vs. security needs
- type of building construction/general characteristics
- type of safes/vaults, secure enclosures
- key and lock control, alarm systems
- public access
- supervision of employees
- guest/visitor procedures
- local police/security force
- adequacy of internal systems for monitoring controlled substances

Drug logbooks and records. Both the DEA and the Texas Controlled Substances Act require veterinarians to keep accurate, complete, and timely logs of controlled substances, separated by drug and schedule, and readily

available for inspection.<sup>14</sup> The textbox, *Controlled Substances Record Keeping Requirements*, shows the agency's minimum requirements for all controlled

### ***Controlled Substances Record Keeping Requirements***

Records must contain the following information for each controlled substance administered or dispensed by the veterinarian for five years:

- Date of acquisition
- Quantity purchased
- Date administered or dispensed
- Name of the client and patient receiving the drug(s)
- Total balance-on-hand of the scheduled drug

substances record keeping for veterinarians.<sup>15</sup> Investigators inspect licensees' logs to ensure they contain the correct information, but do not take uniform action when problems are identified. For example, if an investigator finds the records are not current, the licensee may be allowed to calculate and update the log during the inspection. This practice varies between investigators, who make judgment calls during inspections as to whether to allow the licensee to fix the problem. For example, if a log were more than a week behind, there is no agency requirement to record this as a deficiency.

Further, investigators compare and record estimated measurements of the actual balance-on-hand of the drugs in the clinic to the balance recorded in the logbook. When the balance-on-hand fails to match the logbook, investigators may or may not ask questions or provide constructive feedback on how to keep better records. However, the agency has no guidelines for which drugs investigators should prioritize for inspection, such as risk of potential abuse, known diversion risk, or previous disciplinary action. Instead, each investigator chooses which drugs to inspect based on personal experience from previous inspections. Additionally, inaccurate record keeping may or may not trigger further investigation.

- **Undefined standards to evaluate controlled substances deficiencies.** Best practices encourage regulatory agencies to use a set of relevant and flexible factors, guidelines, or standards to evaluate whether licensees comply with state laws and rules effectively and fairly. The agency has not established written factors, guidelines, or standards to use when assessing and evaluating controlled substances deficiencies. Without these, investigators are left to determine the level of a licensee's compliance themselves, resulting in inconsistent and potentially unfair inspections.

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*Lack of standards leads to inconsistent and potentially unfair inspections.*

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The agency also lacks clear standards on the level of compliance licensees must meet to pass an inspection, which results in potentially unfair enforcement and inconsistent disciplinary action. After an inspection, investigators use their own judgment to determine whether to recommend for further investigation and potential disciplinary action. The director of enforcement also does not have any written factors, guidelines, or standards for deciding whether to open an investigation based on a report of a deficient inspection.



## **Clear authority and direction could strengthen the agency's monitoring of controlled substances.**

All agencies should have clear statutory authority to engage in their operations. Diversion of controlled substances is an increasing problem, but the agency lacks clear statutory authority and legislative direction to proactively monitor licensees' prescribing and dispensing patterns, establish risk areas, and subsequently inspect or investigate suspicious patterns.

Research has shown proactive monitoring of prescribing patterns has a positive effect on curbing prescription drug abuse and misuse.<sup>16</sup> Using PMP data would strengthen the agency's inspection process by allowing the agency to use targeted searches to identify areas of risk, and investigate and possibly discipline veterinarians who improperly prescribe controlled substances. Other agencies use the PMP to establish risk areas for more effective compliance monitoring of licensees and to help prevent diversion of controlled substances. For example, the Texas Board of Nursing uses a PMP report to identify licensees who are in the list of the top 100 prescribers of controlled substances. Staff reviews prescription histories on each licensee identified on the list and looks for trends or other types of red flags, such as the environment in which the licensee works, the type of drugs prescribed, and the dosages. If the information reveals potential problems or suspicion of diversion, the agency opens an investigation.

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*Using PMP data would allow the agency to proactively monitor licensees.*

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## **Recommendations**

### ***Change in Statute***

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

This recommendation would clarify the agency's authority to proactively monitor the PMP for improper dispensing and prescribing of controlled substances by veterinarians, and pursue necessary enforcement action. The agency would conduct any necessary investigations based on a search of the database, and take any appropriate action, including notifying the veterinarian about the potentially dangerous prescribing pattern or pursuing necessary enforcement action. The agency, in its monitoring efforts, should consider the overall volume or combinations of the four classes of drugs the Legislature recognizes as those most likely to be abused (opioids, benzodiazepines, barbiturates, and carisoprodol), as well as additional controlled substances and dangerous combinations of drugs identified by the agency as commonly used by veterinarians.<sup>17</sup>

This recommendation requires the agency to regularly use the PMP to monitor licensees, establish red flags, and conduct risk-based inspections or investigations. Such actions are similar to the Texas Board of Nursing's current use of the PMP for inspections and investigations. For example, the agency could begin requesting and receiving regular reports on the top prescribing and dispensing veterinarians and target risk-based inspections accordingly. By using the PMP, the agency would not only be able to better monitor licensees for risks of diversion, but also collect important data to assess diversion in the veterinary practice.

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

This recommendation would amend statute to require Texas veterinarians to report dispensing information of all Schedule II-V controlled substances to the PMP beginning September 1, 2018. The dispensing information required would be the same information the PMP already requires of pharmacies with prescriptions.

Information provided by the veterinarian:

- Date issued
- Controlled substance prescribed
- Quantity of controlled substance prescribed
- Intended use of the controlled substance or the diagnosis for which it is prescribed and instructions for use
- Practitioner's name, address, and Federal Drug Enforcement Administration number issued for prescribing a controlled substance in this state
- Name, address, and birthday or age of the person for whom the controlled substance is dispensed<sup>18</sup>

Pharmacies currently provide this information to the PMP for all prescriptions, including those written by veterinarians for animals. Veterinarians reporting dispensing information should strive to do so in substantially the same way pharmacists currently report veterinary prescriptions. Veterinarians would report dispensing information to the PMP within same period as pharmacies after dispensing controlled substances.<sup>19</sup> Veterinarians would report electronically through the PMP Clearinghouse portal, which allows for bulk or manual data uploading. Similar to pharmacies, veterinarians who fail to report timely dispensing data would be subject to sanctions. Requiring veterinarians to report controlled substances dispensing information to the PMP would provide valuable and much needed controlled substances dispensing data, similar to the data reported by pharmacies to assist the agency, as well as DEA and the state in protecting the public and helping prevent diversion of controlled substances in Texas. This recommendation would not require veterinarians to check the PMP before dispensing, and only requires veterinarians to report what they dispense.

As part of the required reporting transition, the agency would work with the Texas State Board of Pharmacy to educate veterinarians on how to register and report controlled substance dispensing data to the PMP. In addition to developing a PMP educational program, the agency should provide information about controlled substance diversion and the role of the PMP; any corresponding statute and rules, including any penalties for failure to report to the PMP; and how veterinarians can use the PMP to monitor the use of their DEA registration number.

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

This recommendation would clarify the agency's authority to collect data directly from licensees and others on the use of controlled substances, and to use this data to establish a risk-based approach to onsite controlled substance inspections. Collecting and using this type of data, combined with the relevant PMP and DEA data, would allow the agency to better protect the public with a data-driven understanding of the profession's use of controlled substances, as well as better information to target enforcement efforts

in problem areas. Additionally, the agency should establish objective and well-defined criteria to inform the inspection risk-assessment, taking into account the kinds of red flags and risk factors established by similar state agencies, such as the Texas Board of Nursing and the Texas State Board of Pharmacy, as well as the DEA. Additionally, the agency should record and track the data already being collected by investigators in compliance inspection forms. This would likely require investigators to improve the level of detail recorded during inspections to ensure accuracy and usefulness of information.

## **Management Action**

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

Under this recommendation, the agency should create and implement a set of guidelines to use in inspecting and investigating controlled substances cases. The agency should examine and consider DEA guidelines as well as guidelines from other agencies responsible for enforcing the Texas Controlled Substances Act. The guidelines should resolve the inconsistency of the inspection process and arbitrary evaluation of whether to open an investigation based on inspection results. Use of the guidelines would improve consistency among investigators, and consistency of overall inspection outcomes.

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

Under this recommendation, the agency should develop a robust education process to regularly communicate information about controlled substance diversion, including clear explanations of relevant statutes and rules, similar to materials provided by the Texas State Board of Pharmacy. The agency could accomplish this through agency sponsored continuing education courses, the agency's website, in-person or online presentations, or regular emails to licensees including explanations of relevant rule and statutory changes, and best practices for dispensing and storing controlled substances. For example, the agency could provide limited visual examples of best practices, such as proper sample drug logs or drug labels that meet minimum standards.

## **Fiscal Implication**

The recommendations to better monitor and consistently enforce existing laws regarding dispensing and prescribing controlled substances are intended to make the agency's practices more consistent, fair, and effective, but should not require additional resources to implement. The agency should work with the Texas State Board of Pharmacy to ensure that the reporting structure for veterinarians matches the reporting structure for pharmacies to avoid any programming costs.

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- <sup>1</sup> U.S. Department of Health and Human Services, Center for Medicare & Medicaid Services, *The Role of a Prescription Drug Monitoring Program in Reducing Prescription Drug Diversion, Misuse, and Abuse*, accessed July 19, 2016, <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/drugdiversion-drugmonitoring-factsheet.pdf>, 1; U.S. Department of Justice, Drug Enforcement Administration, *2015 National Drug Threat Assessment Summary*, accessed July 19, 2016, <https://www.dea.gov/docs/2015%20NDTA%20Report.pdf>, 13, 17.
  - <sup>2</sup> Michael Wright, “Ending Texas’ opioid crisis,” McAllen Monitor, September 22, 2016, [http://www.themonitor.com/opinion/columnists/commentary-ending-texas-oid-crisis/article\\_23eb4944-8046-11e6-b56d-a9a2fe7b72e.html](http://www.themonitor.com/opinion/columnists/commentary-ending-texas-oid-crisis/article_23eb4944-8046-11e6-b56d-a9a2fe7b72e.html).
  - <sup>3</sup> U.S. Department of Health and Human Services, Center for Medicare & Medicaid Services, *Prescription Drug Diversion Resource Guide*, accessed July 19, 2016, <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/drugdiversion-prescriptiondrugdiversion-resourceguide.pdf>, 1.
  - <sup>4</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.state.tx.us/>. Section 481.076, Texas Health and Safety Code.
  - <sup>5</sup> Controlled Substances Act (21 U.S.C. Section 801 et seq.); Texas Controlled Substances Act (Chapter 481, Texas Health and Safety Code).
  - <sup>6</sup> Section 801.501, Texas Occupations Code.
  - <sup>7</sup> Data provided by the Texas Department of Public Safety.
  - <sup>8</sup> Chapter 158, Texas Occupations Code; 22 T.A.C. Sections 169.2(6) and 169.4.
  - <sup>9</sup> Oklahoma Anti-Drug Diversion Act, 63 O.S. Section 2-309.
  - <sup>10</sup> Data provided by the Drug Enforcement Administration.
  - <sup>11</sup> Ibid.
  - <sup>12</sup> Data provided by the Texas State Board of Pharmacy.
  - <sup>13</sup> U.S. Department of Justice, Drug Enforcement Administration, *Controlled Substances Security Manual*, accessed July 19, 2016, [https://www.dea diversion.usdoj.gov/pubs/manuals/sec/general\\_sec.htm#substantial](https://www.dea diversion.usdoj.gov/pubs/manuals/sec/general_sec.htm#substantial); Title 21 C.F.R. Sections 1307.72 to 1301.76.
  - <sup>14</sup> 21 U.S.C. Sections 827(a) and (b); Section 481.067(c), Texas Health and Safety Code; Section 801.359, Texas Occupations Code; 22 T.A.C. Section 573.50.
  - <sup>15</sup> 22 T.A.C. Section 573.50.
  - <sup>16</sup> Ronald Simeone and Lynn Holland, *An Evaluation of Prescription Drug Monitoring Programs*, accessed September 30, 2016, <http://simeoneassociates.com/simeone3.pdf>; Research and Policy Analysis Group of Carnevale Associates, LLC, *Prescription Drug Monitoring Information Brief*, accessed September 30, 2016, [http://www.carnevaleassociates.com/pdmp\\_info\\_brief-\\_2007.pdf](http://www.carnevaleassociates.com/pdmp_info_brief-_2007.pdf).
  - <sup>17</sup> Section 168.001(1), Texas Occupations Code.
  - <sup>18</sup> Section 481.075(e), Texas Health and Safety Code.
  - <sup>19</sup> Section 481.074(q), Texas Health and Safety Code.

# ISSUE 4

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

### Background

The mission of the State Board of Veterinary Medical Examiners is to establish and enforce policies to ensure the best possible quality of veterinary and equine dental services for the people of Texas. To accomplish this mission, the agency licenses veterinarians, veterinary technicians, and equine dental providers; and enforces the Veterinary Licensing Act by conducting inspections, investigating complaints, and taking disciplinary action when necessary.

The Sunset Advisory Commission has a long history of evaluating licensing agencies, as the increase in occupational regulation was an impetus behind the Commission's creation in 1977. Since then, the Sunset Commission has completed more than 100 licensing agency reviews, documenting standards in reviewing licensing programs to guide future reviews of licensing agencies. While these standards provide a guide for evaluating a licensing program's structure, they are not intended for blanket application. Sunset staff continues to refine and develop standards, reflecting additional experience and different or changing needs, circumstances, or practices in licensing agencies. The following material highlights where Sunset staff found licensing and enforcement processes in the agency's statutes and rules differ from model standards and common practice by comparable agencies, and describe the potential benefits of conforming to standard practices.

### Findings

#### **Licensing provisions in the agency's statutes and rules do not follow model licensing practices and potentially affect the fair treatment of applicants, licensees, and the public.**

- **Lack of input from non-veterinarian licensees.** Governing bodies of regulatory agencies should use advisory committees as needed to provide special expertise and fill representational gaps on the board. While the agency currently issues three license types, the board membership only comprises licensed veterinarians and members of the public. Although advisory committees exist to represent the interests and perspectives of Licensed Veterinary Technicians (LVTs) and Equine Dental Providers (EDPs), the board does not regularly consult them for input during policymaking and rulemaking. Each of these advisory committees has only met once, just after the establishment of the respective license.

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*The board does not regularly consult its advisory committees.*

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In fiscal year 2015, the board adopted at least 10 rule changes that affected all licensees, including requiring all licensees to report if they suspect another licensee is impaired, and passed multiple updated fee schedules, including some that only affected fees for EDPs and LVTs. The board

did not convene the LVT or EDP advisory committees to obtain and ensure consideration of their perspectives in adopting these rules, nor did it specifically request input from anyone representing these populations. Ensuring the board solicits and considers input from all affected licensees would broaden its policy perspective and enable greater representation in policymaking.

- **Inefficient auditing of continuing education compliance.** Licensing agencies should require continuing education to ensure licensees keep up with advances in their field, and generally audit and ensure compliance with continuing education requirements as part of the license renewal process. While veterinarians, LVTs, and EDPs must indicate whether they are current on their continuing education on their license renewal application, the agency does not audit compliance upon renewal, although Sunset recommended doing this in its last review of the agency in 2005. Instead, the agency continues to have its investigators audit continuing education compliance during costly unannounced onsite inspections, slowing down the enforcement process.

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*Onsite continuing education audits are costly and inefficient.*

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Agency rule requires veterinarians to maintain four years of proof of continuing education compliance at their primary place of business. During inspections, investigators spend a significant amount of time auditing documentation of this proof. This time-consuming process includes ensuring the licensee obtained the proper number of continuing education hours by reviewing course materials and agendas, and verifying that courses were agency approved. If a licensee is unable to provide the information immediately, the licensee has 30 days to send proof to the agency in Austin with no penalty, effectively eliminating the need to perform this audit onsite. Requiring licensees to provide this documentation as part of the license renewal process would allow staff to more efficiently audit continuing education compliance without having to travel, and would allow investigators to focus their onsite inspections on more critical requirements, such as oversight of controlled substances.

- **Vulnerable jurisprudence examinations.** Licensing agencies should ensure licensees are familiar with state laws and regulations that have a significant impact on their licensure requirements, standards of conduct, disciplinary procedures, and scope of practice. The agency ensures familiarity with these laws and regulations by requiring applicants to pass a jurisprudence exam. Agencies have discretion to choose the testing method for the jurisprudence exam, including open book and no-fail exams. Currently, the State Board of Veterinary Medical Examiners uses a written jurisprudence exam for each of the three licensee types, consisting solely of true/false questions — 100 questions for veterinarians; 50 questions for veterinary technicians; and 33 questions for equine dental providers. The agency offers on-demand computerized jurisprudence exams and provides an opportunity for Texas A&M students to sit for a written administration of the veterinary exam each spring.



Agency staff does not review or revise exam questions unless a change in law or rule would affect an answer choice. For example, between June 2013 and August 2015, 88 of the 100 questions in the veterinarian exam remained the same. The agency does not regularly review and evaluate its exam questions to determine the effectiveness and statistical validity of its exams. The agency does not have a question bank or pool of questions for any of the exams, whether written or electronic. While the computerized exams display the questions in a random order, each exam consists of the same complete set of questions and the written exam includes the same questions in the same order for every examinee. Although unverified, some responses to a Sunset staff survey about the agency indicated students might be in possession of old copies of the written exam, allowing them to take advantage of the exam's stagnancy.

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*The agency's jurisprudence exam does not provide an acceptable level of rigor.*

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Administering a stagnant exam gives applicants the opportunity to memorize the correct answer selections needed to get a passing score rather than actually learning the content. If a board's jurisprudence exam does not provide an acceptable level of rigor, the board does not have a valid tool capable of assessing whether a passing score means the applicant understands the state laws and regulations that govern their profession. Creating a question bank to randomize questions on both the written and electronic exams, as well as instituting a regularly scheduled review of exam questions would better ensure the validity of the exams.

- **Insufficient criminal background checks.** Licensing agencies in Texas commonly conduct criminal background checks using the Department of Public Safety's (DPS) fingerprint system, which accurately identifies the applicant or licensee, and provides automatic updates on an applicant or licensee's criminal history. The agency only requires applicants and renewing licensees to self-disclose if they have a criminal history, and the agency staff only searches DPS records for criminal history information matching the names of those who do disclose. Reliance on self-disclosure and following up with name-based checks does not fully assess an applicant's or licensee's history to ensure their safety to practice, as the system does not capture all local or out-of-state records. Requiring fingerprint-based background checks for applicants and renewing licensees would ensure the agency fully assesses criminal history.
- **Burdensome license renewal process.** A regulatory agency should have a license renewal process that helps ensure adequate oversight of persons or activities regulated. The agency's statute requires annual renewal of all license types. Several other licensed health professionals, including doctors, nurses, dentists, and pharmacists, renew licenses every two years. Changing the license renewal to every two years would ease the administrative burden on the agency's small staff without compromising oversight of the licensees, and allow staff to dedicate more time to other licensing functions.

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*Reliance on self-disclosure and name-based criminal background checks is insufficient.*

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*Some renewal fees are set below the statutory floor.*

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*Requirements for a non-emergency temporary license are onerous.*

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- **Restrictive fee authority.** A licensing agency should have authority to set its own licensing and renewal fees. Setting a fee floor in statute limits the agency's ability to lower fees in line with the agency's actual cost to adequately regulate a program. The agency's statute currently includes a fee floor, which requires the board to set fees at or above amounts established in 1993.<sup>1</sup> However, the board has since reduced its fees and currently charges \$241.85 for renewal of licenses delinquent for less than 90 days, which is less than the \$250 fee floor, and charges \$316.85 for renewal of licenses delinquent for more than 90 days but less than one year, which is less than the \$400 fee floor.<sup>2</sup> Removing the statutory fee floor would improve the agency's fee management authority to ensure a funding structure that funds needed operations while also being fair to licensees.
- **Burdensome non-emergency temporary licensing process.** Application forms should be simple, straightforward, and only require information necessary and appropriate for the agency to determine the applicant's eligibility for each type of license offered. The agency currently issues temporary licenses to allow veterinarians to practice in Texas for a period of 30 days for a specific purpose, such as to attend a continuing education course, under the supervision of a Texas licensee. However, the requirements for obtaining a temporary license in non-emergency situations are onerous, making traveling to Texas to attend or teach certain practical continuing education courses difficult for out-of-state practitioners. Stakeholders and respondents to a Sunset staff survey reported this process limited continuing education options and created difficulty in hosting conferences.

For example, a spay/neuter continuing education course involving instruction of new surgical techniques may require veterinarians to participate in the spay/neuter surgeries under supervision of the course instructor. To perform these surgeries in the class, licensed veterinarians in good standing in other states must complete and notarize the full temporary license application, including providing certified school transcripts, a certified birth certificate, and proof of 17 hours of agency-approved continuing education. These arduous requirements discourage out-of-state practitioners from attending these types of courses in Texas and course providers from holding such courses in Texas.

As a best practice, an agency should not place unnecessarily high burdens on practitioners operating in a limited capacity. The public derives no clear benefit from the agency requiring a notarized application, and state law already prohibits a person from knowingly making a false entry in a government record.<sup>3</sup> Other bureaucratic hurdles, such as certified birth certificates, may be similarly unnecessary when other requirements, such as being in good standing in another jurisdiction and under the supervision of a Texas licensee, more readily ensure protection.



## **Nonstandard enforcement policies and practices detract from the agency's ability to effectively regulate the practice of veterinary medicine.**

- **Undesirable overlap of investigatory and disciplinary functions.** In general, board members should not be involved in both the investigation of complaints and determining disciplinary action; ideally, complaint investigation should be a staff function. However, if a board member is involved in an investigation, as a best practice, that board member should not be involved in any resulting disciplinary proceedings related to the complaint such as an informal conference or a full board vote on the matter. In-depth exposure to the complaint could result in the board member developing biases about the complaint's validity that could prejudice the outcome of later disciplinary action.

After staff has completed the investigation of a standard of care complaint, statute requires two or more licensed veterinarian board members to use their medical expertise to review the complaint to determine whether to dismiss the complaint or refer it to an informal proceeding. In fiscal year 2015, the agency received 438 jurisdictional complaints and sent 194, or 44 percent, to board members for medical review. Of these 194, board members referred 50 to informal conference. Statute requires the presence of two or more veterinarian board members and one or more public board member at informal conferences. Contrary to best practice, both board members who conducted the medical review participate in the informal conference and make disciplinary recommendations. The agency views informal conferences as an extension of the investigation process, rather than part of the disciplinary process so the board members use these conferences to conduct additional fact-finding on the cases they reviewed.

Also contrary to best practice, the same board members who conduct the medical review and participate in the informal conference also vote on the final orders resulting from the informal conference at the next full board meeting rather than recusing themselves. According to agency staff, if the board votes on an individual case, the board members involved in the informal conference typically recuse themselves from the final board vote. However, the board votes on the vast majority of final orders en masse and board members do not recuse themselves in these instances. The agency should prohibit a board member involved in investigating a complaint from participating in the resulting informal conference, and should prohibit board members involved in an informal conference from voting on the final order to eliminate the possibility of any bias in determining disciplinary action and promote impartial disciplinary proceedings.

- **Inadequate tracking of non-jurisdictional complaints.** Regulatory agencies should track non-jurisdictional complaints to have a full picture of the public's problems and concerns within a given regulatory area. While the agency currently tracks the number of non-jurisdictional complaints it receives, it does not collect other information about these complaints,

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*44 percent of complaints went through medical review by board members.*

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*Board involvement in the investigation and disciplinary process may lead to bias.*

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which could help the agency better identify trends. For example, the agency closes complaints referred to law enforcement, complaints referred to other agencies, and complaints outside its statutory authority such as those relating to animal shelters, all as “non-jurisdictional.” Collecting and tracking information on non-jurisdictional complaints would help the state better identify trends in complaints and in the profession, as well as enhance the agency’s coordination with law enforcement and other agencies.

## Recommendations

### *Change in Statute*

#### **4.1 Require the agency to conduct fingerprint-based criminal background checks of all licensure applicants and existing licensees.**

This recommendation would replace the agency’s current name-based checks with fingerprint-based criminal background checks through DPS. The DPS system provides automatic updates, eliminating the need for additional background checks when investigating a complaint or conducting an audit. Applicants would provide fingerprints at the time of application, and existing licensees would provide fingerprints upon renewal. Applicants and licensees would use the state’s fingerprint vendor to collect and submit fingerprints and pay the one-time \$40 approximate cost.

#### **4.2 Authorize the agency to provide biennial staggered license renewals for all license types.**

This recommendation would allow for biennial renewal for licensees by the agency. The agency would determine whether and when to start biennial renewals. This recommendation would reduce staff time spent on renewals and allow the agency to streamline licensing processes without compromising agency oversight of licensees.

#### **4.3 Remove the statutory limitation currently restricting the agency’s authority to lower fees.**

This recommendation would remove the fee floor currently listed in statute. The agency would have greater discretion to set its fees, thus giving the agency increased autonomy to lower fees if the cost of administering regulation decreases.

#### **4.4 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.**

The agency could continue to use one or two veterinary board members to conduct a medical review of a complaint investigation if necessary, but would not be required to. These board members would be prohibited from participating in the disciplinary process. Alternatively, this recommendation authorizes the board to contract with outside veterinarians to provide medical reviews, a practice used by several other health licensing agencies. Board members conducting medical case reviews would be prohibited from participating in an informal conference regarding the complaint and would continue to be required to recuse themselves if the matter advances to the full board for final disciplinary action. Additionally, any

board members who participate in an informal conference should also recuse themselves from the final board vote on the resulting action. These changes would remove any appearance of bias, and promote impartiality and a fair investigation and enforcement process.

This recommendation could present a problem for the board if not properly implemented. A majority of board members would have to recuse themselves from a vote on a final order in a standard of care case if they use board members for both medical reviews and informal settlement conferences. However, this problem is preventable by allowing the board to delegate medical reviews to a licensed veterinarian on agency staff; or to a contracted licensed veterinarian not on the board.

## ***Management Action***

### **4.5 Direct the agency to solicit and consider input from LVTs and EDPs on all rule changes and policy decisions affecting these license types.**

Under this recommendation, the board should request input from the LVT and EDP advisory committees on any policymaking decisions affecting their respective licensee populations. Additionally, the board should make a concerted effort to solicit the perspectives and concerns of these licensees and the relevant stakeholder groups and listen to their general concerns on all matters affecting them.

### **4.6 Direct the agency to conduct continuing education audits as part of the license renewal process.**

Under this recommendation, the agency should cease conducting continuing education audits as a part of the onsite inspection process. Instead, the agency should require licensees to submit proof of continuing education compliance as part of the license renewal process. The agency would have the discretion to audit an appropriate number of licensees for continuing education compliance, but the audit would not necessarily have to be conducted by an investigator. If desirable and technologically feasible, the agency could choose to have licensees self-report continuing education compliance through a website portal.

### **4.7 Direct the agency to evaluate jurisprudence exam questions for each license type and create question banks for its jurisprudence exams.**

This recommendation would direct the agency to regularly review and evaluate exam questions for each exam type at least once every biennium. The agency could accomplish this either by establishing an exam review panel of agency staff and board members, an advisory committee representing each exam type, or by contracting with an independent body to evaluate and ensure consistency and validity of exams. Additionally, the agency should create a question bank with at least 25 percent more questions than currently tested per exam type and ensure that questions rotate for written and electronic exams.

### **4.8 Direct the agency to remove the notarization requirement and evaluate other application requirements to streamline temporary license processing.**

This recommendation would direct the agency to remove the requirement for applicants to have their temporary license applications notarized. Current provisions of the Penal Code that make falsifying a government record a crime would continue to apply to these applications. This recommendation would remove an unnecessary step in the temporary application process, making the process less burdensome for applicants and more efficient for agency staff.

The recommendation would also direct the agency to evaluate the current temporary veterinary license application procedures in their rules and on the current application form and make changes to simplify

the process.<sup>4</sup> For example, the agency should evaluate the need for certified copies of transcripts and birth certificates and proof of continuing education in light of other qualifications that protect the public. Creating an appropriate and efficient evaluation process for temporary license applicants, while still protecting the public, would alleviate a significant amount of work for the agency and applicant that serves little purpose.

#### **4.9 Direct the agency to improve tracking of non-jurisdictional complaints.**

This recommendation would direct the agency to document and track the subject matter of non-jurisdictional complaints, including non-jurisdictional complaints referred to other agencies, rather than just tracking the number of non-jurisdictional received and closed. Proper tracking of non-jurisdictional complaints would enable the agency to better identify trends and potential areas of regulatory concern while enhancing greater coordination with other agencies to better protect the public.

### **Fiscal Implication**

Requiring fingerprint-based criminal background checks would require licensees to pay a one-time fee of approximately \$40 to a DPS approved fingerprint vendor to cover the cost of fingerprint checks and would not have an impact to the state. The agency may need to conduct more criminal history investigations if the checks identify more criminal histories as expected, but this could not be estimated.

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. Other licensing agencies contract with licensed reviewers for a flat rate per case reviewed, but costs could not be estimated at this time. Contracts for these types of services vary widely in Texas regulatory agencies, including costs of \$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.

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.state.tx.us/>. Section 801.154, Texas Occupations Code.

<sup>2</sup> 22 T.A.C. Section 577.15.

<sup>3</sup> Section 37.10, Texas Penal Code.

<sup>4</sup> 22 T.A.C. Section 571.15.

# ISSUE 5

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

### Background

Recent decisions by the State Office of Administrative Hearings (SOAH) and the 3<sup>rd</sup> Court of Appeals have created a gaping hole in the regulation of veterinarians that work with animal shelters and rescue groups. In effect, these decisions have exempted these veterinarians from the Veterinary Licensing Act (the Act) and regulation by the State Board of Veterinary Medical Examiners. The textbox, *Ellen Jefferson, D.V.M. v. Texas State Board of Veterinary Medical Examiners*, describes the case that resulted in these decisions.

#### ***Ellen Jefferson, D.V.M. v. Texas State Board of Veterinary Medical Examiners***

In 2013, the agency proposed disciplinary action against Dr. Ellen Jefferson, a licensed veterinarian, with relation to her treatment of a dog owned by San Antonio Pets Alive!, a shelter owned by Dr. Jefferson. The agency alleged Dr. Jefferson was in violation of the Veterinary Licensing Act requirement to establish a veterinarian-client-patient relationship with an animal before diagnosing and prescribing it medication. In this specific case, Dr. Jefferson had diagnosed and prescribed antibiotics for a dog in foster care only via text messages exchanged with a shelter volunteer in contact with the person fostering the dog that later died.

Dr. Jefferson, as the owner and employee of the shelter, asserted that she fell within the statutory owner exemption for her treatment of all animals in the shelter, and was therefore exempt from all provisions of the Veterinary Licensing Act, including the veterinarian-client-patient relationship and standard of care requirements. An Administrative Law Judge at SOAH agreed and dismissed the agency's disciplinary case against Dr. Jefferson. Meanwhile, civil courts deferred to SOAH on the question of the agency's regulatory authority over Dr. Jefferson, but found the definition of "designated caretaker" in agency rule conflicted with the owner exemption and therefore invalidated it.

The decisions stem from an outdated statutory exemption, described in the textbox, *Veterinary Licensing Act Exemption*, that has not kept pace with the modern state of veterinary medicine.<sup>1</sup> Since the inception of the exemption in 1953, the landscape and practice of veterinary medicine have changed significantly. Specifically, the "no-kill" movement, which gained traction in the early 1990s, sought to shift animal shelters from a model in which the primary goal was to euthanize stray animals to address public health concerns, to a model emphasizing treating and rehoming these animals. San Francisco became the country's first no-kill city in 1994 and Austin became the first city in Texas to qualify for no-kill status in 2010.

#### ***Veterinary Licensing Act Exemption***

This chapter does not apply to the treatment or care of an animal in any manner by the owner of the animal, an employee of the owner, or a designated caretaker of the animal, unless the ownership, employment, or designation is established with the intent to violate this chapter.

The statutory exemption can apply to several different types of animal caretakers and animal care, such as pet owners, ranch hands, and scientists administering veterinary medical care and treatment to their pets, livestock, or research subjects. However, based on the recent court decisions, which also invalidated the board's rule defining *Designated Caretaker* as shown in the textbox on the following page, the agency can



no longer regulate part of its licensed population.<sup>2</sup> The decisions determined animal shelters and rescue groups are the owners of all animals in their care, and that owners of and veterinarians who are employees of these entities could reasonably be considered “designated caretakers” (now undefined), making them exempt from the Act. If the agency were to investigate and take any enforcement action against these individuals, the agency would be considered acting outside the scope of its statutory authority.

In the wake of these developments, the State Board of Veterinary Medical Examiners organized and held a series of four stakeholder forums between February and March of 2016. These meetings were intended to gather information from and open dialogue with various stakeholder groups to develop a new definition of “designated caretaker” and address concerns regarding the application of this exemption. However, some stakeholder groups were dissatisfied with the agency’s handling of these meetings, citing lack of inclusion, poor communication about the meetings, and deference to the Texas Veterinary Medical Association. The meetings were ultimately unproductive, and the parties involved were unable to reach a mutually agreeable position. At its April 2016 board meeting, the board announced it would not propose new rules defining “designated caretaker,” and that any further action on the matter would be up to the Legislature.

### ***Designated Caretaker***

“a person to whom the owner of an animal has given specific authority to care for the animal and who has not been designated, by using the pretext of being a designated caretaker, to circumvent the Veterinary Licensing Act by engaging in any aspect of the practice of veterinary medicine...”

The definition also stated that a caretaker who treats an animal for a condition that was known prior to their designation as caretaker is automatically presumed to be attempting to circumvent the Act.

## **Findings**

### **Recent court decisions prevent the State Board of Veterinary Medical Examiners from regulating shelter veterinarians or veterinary medicine practiced in animal shelters.**

In light of the recent court decisions discussed above, the statutory owner exemption creates a gap in the agency’s ability to regulate veterinarians and the practice of veterinarian medicine in animal shelters and rescue group settings. Strictly interpreted, the statutory exemption means anyone who practices veterinary medicine in the context of animal shelters and rescue groups is exempt from the Veterinary Licensing Act, including standard of care measures and use of controlled substances. The impact of the decisions is already having an effect on the oversight and regulation of veterinary medicine in Texas, as the agency has begun to close all complaints against shelter veterinarians, declaring them non-jurisdictional based on the decisions.

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*The agency closes all complaints against shelter veterinarians as non-jurisdictional.*

---

Taken to the extreme and assuming the Act does not apply in the context of shelter medicine, animal shelters and rescue groups would not need to hire licensed veterinarians. If the Act does not apply to the care of these animals, any person regardless of training, education, or qualification, and regardless of their criminal or disciplinary history, would legally be able to practice veterinary medicine on shelter and rescue animals. While the criminal animal cruelty statute would still apply to these individuals, that standard is very different from the standard of care in the Act and would only affect extreme cases.

Additionally, while the agency currently licenses individuals, not facilities, the legal issues surrounding this exemption prevent the agency from exercising any authority over certain licensees based on where they practice. If the Legislature had intended to hold different licensees to different standards depending on the type of facility in which they practice, it seems likely statute would address this distinction, but it remains silent.

### **The owner exemption in the Veterinary Licensing Act does not conform to best practices.**

The Sunset Advisory Commission has documented best practice standards in reviewing licensing programs to guide reviews of licensing agencies. These standards provide a guide for evaluating a licensing program's structure. According to these standards, statutory exemptions to regulation should have a clear basis for existing and worded in a clear and unambiguous way so that the scope of practice is clear.

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*Statutory exemptions should not present a danger to the public.*

---

The statutory exemption in the Act has a clear basis for existing, particularly when it comes to exempting pet owners from charges of practicing veterinary medicine without a license, and for regulating the practice of veterinary medicine for herd animals differently than companion animals. However, the wording of the exemption, when applied to licensees practicing in animal shelters and for rescue groups led to confusion as to its applicability and ultimately resulted in litigation discussed previously.

Exemptions to regulatory schemes should also be carefully evaluated to ensure they do not constitute an unreasonable danger to the public. Based on the recent court decisions, the agency is unable to regulate veterinarians practicing on shelter and rescue animals. This regulatory gap creates the opportunity for public harm. For example, Sunset staff became aware of a Texan who paid a fee to adopt a dog from a nonprofit shelter. Shortly after the adoption, the adopter discovered the dog had undiagnosed canine parvovirus and had been spayed at four weeks old — four weeks earlier than the standard of care. As a result, the owner had to pay for costly and unforeseen medical expenses. The veterinarian who treated the dog for the shelter prior to the adoption was exempt from the Act under the owner exemption, and therefore was not required to comply with any standard of care and could not be investigated by the agency.

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*The agency is unable to regulate animal shelter veterinarians.*

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## **Recommendations**

### **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.**

Although the ability to enforce its statute affects the operations of an agency — something clearly within the scope of a Sunset review — defining the scope of practice of different types of veterinarians in Texas exceeds the mandate of a Sunset review and the professional expertise of Sunset staff. In such a circumstance, Sunset staff refrains from making recommendations without express direction from the Legislature or the Sunset Commission. However, given the significance of the owner exemption,

the recent decision in the Third Court of Appeals, and the potential implications for the practice of veterinary medicine, this is an area of concern warranting discussion in this report. The provision of veterinary medical services in Texas would benefit from a cohesive approach to make clear to licensees and the public which populations are exempt from the provisions of the Veterinary Licensing Act and in what circumstances.

The Senate Committee on Agriculture, Water, and Rural Affairs and the House Committee on Agriculture and Livestock should examine the application of the owner exemption application to animal shelters, particularly in situations where licensed veterinarians own, are employed by, or are designated caretakers for animal shelters or rescue groups. Based on this examination, the committees should update the definition of “designated caretaker” in statute to correspond with the modern state of veterinary medicine in Texas.

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

No later than January 31, 2017, the agency should provide the Senate Committee on Agriculture, Water, and Rural Affairs and the House Committee on Agriculture and Livestock no less than three distinct definitions of “designated caretaker,” ranked or unranked, with advantages and disadvantages of each. The agency should provide these suggested definitions to the Sunset Commission as well. In developing the definitions, the agency should solicit input from all relevant stakeholder organizations and hold at least one public meeting to discuss possible language and stakeholder concerns. Stakeholders could submit their own recommended definitions to the committees and the Sunset Commission as well.

## **Fiscal Implication**

These recommendations would not have a fiscal impact to the state.

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.state.tx.us/>. Section 801.004(1), Texas Occupations Code.

<sup>2</sup> 22 T.A.C. Section 573.80(2).



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## APPENDICES

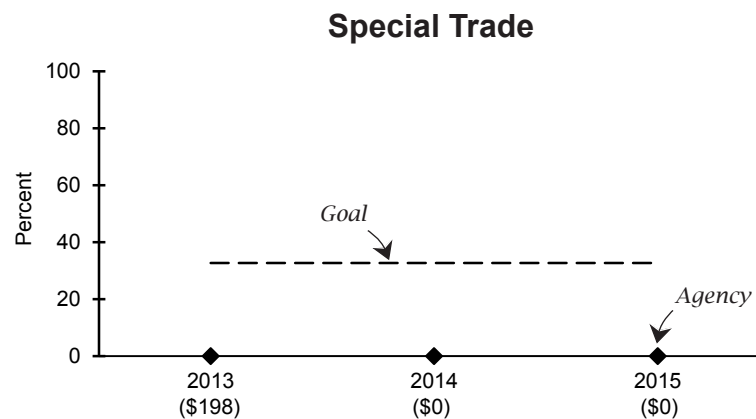


# APPENDIX A

## ***Historically Underutilized Businesses Statistics 2013 to 2015***

The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup>

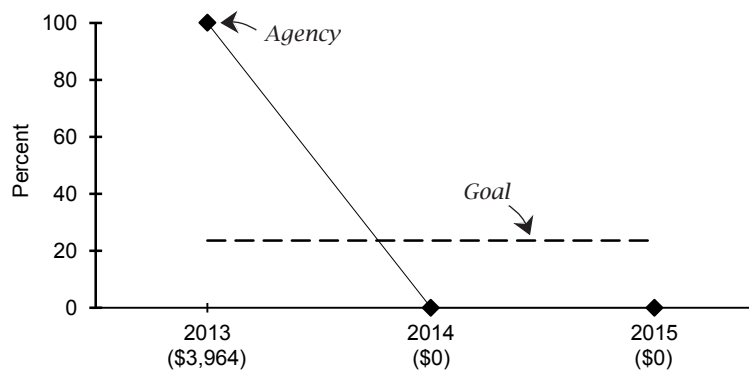
The following material shows trend information for the State Board of Veterinary Medical Examiners' use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.<sup>2</sup> In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2013 to 2015. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. The agency exceeded the statewide HUB goals for professional services, other services, and commodities in 2013, but fell short of meeting the goals for other services and commodities in 2015. The agency has neither biennial appropriations nor contracts large enough to mandate other HUB-related requirements such as creating HUB subcontracting plans for large contracts, appointing a HUB coordinator, creating a HUB forum program, and developing a mentor protégé program.



The agency fell below the statewide goal for HUB spending for special trade in 2013, but had limited spending in this category, and had no spending in this category in 2014 or 2015.

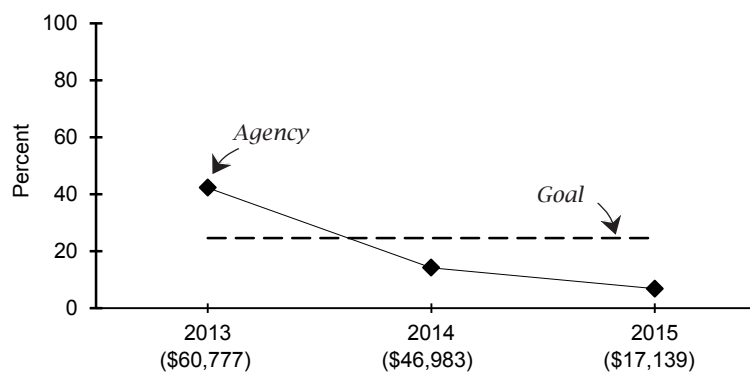
## Appendix A

### Professional Services



The agency exceeded the statewide goal for HUB spending for professional services in 2013, but had no spending in this category in 2014 or 2015.

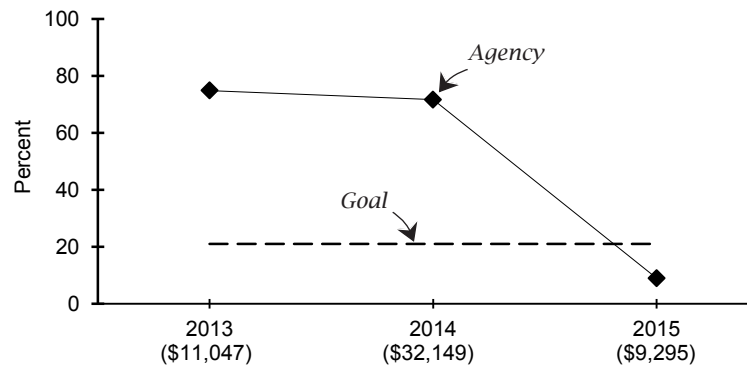
### Other Services



The agency exceeded the statewide goal for HUB spending in Other services in 2013, but fell short of the statewide goal in 2014 and 2015.

## Appendix A

### Commodities



The agency exceeded the statewide goal for HUB spending in commodities in 2013 and 2014, but fell short of the statewide goal in 2015.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.state.tx.us/>. Section 325.011(9)(B), Texas Government Code.

<sup>2</sup> Chapter 2161, Texas Government Code.

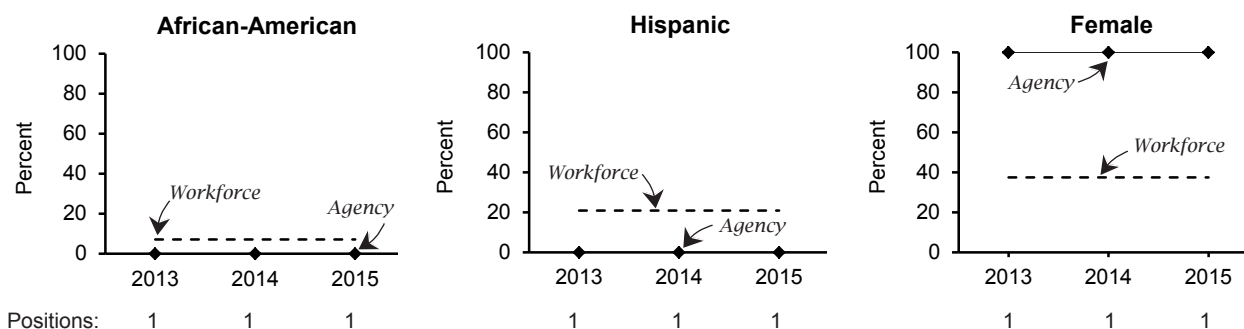


# APPENDIX B

## *Equal Employment Opportunity Statistics 2013 to 2015*

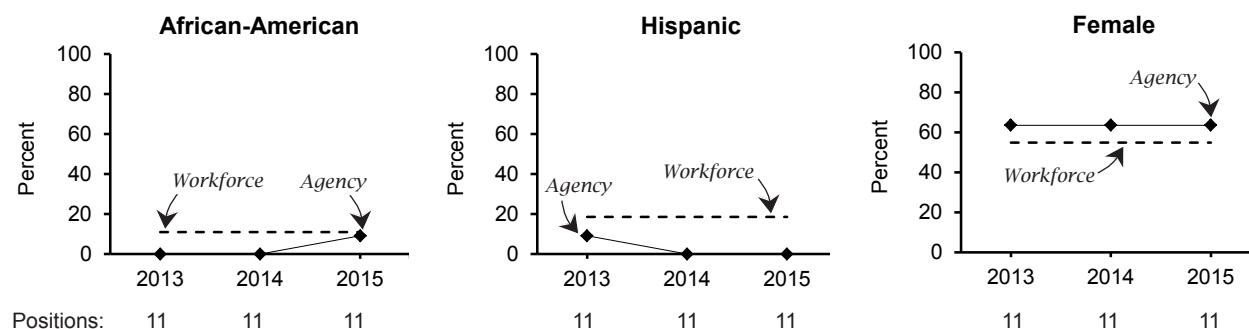
In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the State Board of Veterinary Medical Examiners'.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category.<sup>3</sup> These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2013 to 2015. The agency only has 20 employees and therefore has difficulty meeting statewide percentage targets, but exceeded the statewide civilian workforce percentages for females in all job categories.

### Administration



The agency did not meet the civilian workforce percentages for minorities in the last three fiscal years, but has only one employee in this category.

### Professional<sup>4</sup>

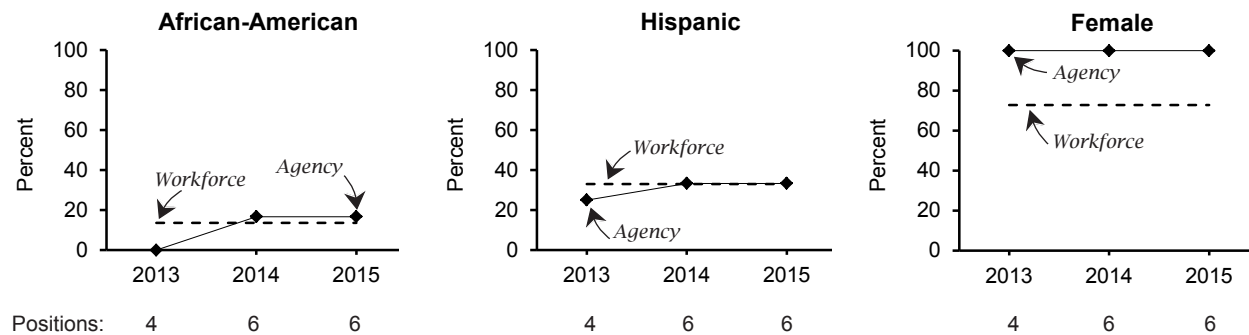


The agency fell below the civilian workforce percentages for minorities in the last three fiscal years, but exceeded the percentages for females in the last three fiscal years.



## Appendix B

### Administrative Support



The agency fell below the civilian workforce percentages for African-Americans and Hispanics in 2013, but met or exceeded them in 2014 and 2015. The agency exceeded the civilian workforce percentages for females in the last three fiscal years.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.state.tx.us/>. Section 325.011(9)(A), Texas Government Code.

<sup>2</sup> Section 21.501, Texas Labor Code.

<sup>3</sup> Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.

<sup>4</sup> The professional category includes both professionals and para-professionals.

# APPENDIX C

## *Health Professions Council*

In 1993, the 73rd Legislature created the Health Professions Council (HPC) to increase efficiency across member agencies by providing administrative support services. The council consists of representatives from 12 independent licensing boards and the Department of State Health Services Professional Licensing and Certification Unit (PLCU), as reflected in the table, *HPC Member Agencies*.

### *HPC Member Agencies – FY 2016*

Agency	Licenses (at start of FY16)	Funds Transferred to HPC in FY16
Texas Board of Chiropractic Examiners	6,537	\$20,361
State Board of Dental Examiners	31,280	\$257,118
Texas Funeral Service Commission	4,811	\$43,845
Texas Medical Board	85,244	\$32,378
Texas Board of Nursing	419,685	\$71,651
Texas Board of Occupational Therapy Examiners	13,985	\$33,527
Texas Board of Physical Therapy Examiners	24,412	
Texas Optometry Board	4,409	\$27,715
Texas State Board of Pharmacy	113,806	\$331,400
Texas State Board of Podiatric Medical Examiners	1,162	\$13,401
Texas State Board of Examiners of Psychologists	9,512	\$52,774
Department of State Health Services – PLCU	175,140	\$11,846
State Board of Veterinary Medical Examiners	9,770	\$31,038
<b>Non-Member Agencies Receiving Limited Services</b>		
Texas Board of Professional Geoscientists receives information technology support services		\$13,000
Texas Board of Professional Land Surveying receives database administration and support		\$11,808
Texas State Board of Plumbing Examiners receives database administration and support		\$130,658
Office of Public Insurance Counsel receives information technology support services		\$6,641
<b>Total</b>		<b>\$1,089,161</b>

- **Funding and staffing.** The council's funding comes from transferred appropriations from member agencies, with each agency paying for services it receives. Council members elect a chair and vice chair to preside over the council for two-year terms. The council has seven employees to perform its main functions and occasionally uses staff from member agencies to carry out specific programs. For

## ***Appendix C***

example, an Optometry Board staff member provides added technology support to the eight smallest member agencies, and a Board of Nursing staff member offers new employee Equal Employment Opportunity (EEO) training to all member agencies.

- **Services.** HPC offers the following services to member agencies:
  - Website, information technology, and document imaging software support
  - Shared regulatory database and database administration
  - Purchasing, payroll, and human resources support
  - Trainings relating to state finance, accounting, auditing, and EEO guidelines
  - Shared toll-free telephone line for consumer complaints

# APPENDIX D

## ***Staff Review Activities***

During the review of the State Board of Veterinary Medical Examiners, Sunset staff engaged in the following activities that are standard to all sunset reviews. Sunset staff worked extensively with agency personnel; attended board meetings; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research.

In addition, Sunset staff also performed the following activities unique to this agency:

- Reviewed agency enforcement case files
- Surveyed interest groups, licensees, consumers of veterinary medicine, and other stakeholders
- Observed inspections of veterinarians
- Observed informal conferences, staff conferences, and a temporary suspension hearing
- Used the agency's database to understand its functionality
- Obtained relevant controlled substance data from the Texas Department of Public Safety, the Texas State Board of Pharmacy, and the federal Drug Enforcement Administration
- Researched comparative state and federal controlled substances regulations



# Sunset Staff Review of the *State Board of Veterinary Medical Examiners*

————— *Report Prepared By* —————

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