Agenda

VETERINARIAN PHYSICIAN LICENSING BOARD

January 16, 2014 – 9:00 a.m.
Room 474
Heber M. Wells Building
160 E. 300 S. Salt Lake City, Utah

This agenda is subject to change prior to 24 hours of the meeting.

ADMINISTRATIVE BUSINESS:
1. Sign Per Diem
2. Approval of the October 3, 2013 Board Meeting Minutes

DISCUSSION ITEMS:
3. Continuing Education for Medical Records
4. Written Opinion from the Attorney General's Office Regarding Non-Prescription Vaccines
5. Examination for Holders of Controlled Substance licenses
6. Proposed Legislation Senate Bill 120

CORRESPONDENCE
7. AAVSB Newsletter
8. NBVME Examination Updates

NEXT SCHEDULED MEETING:
June 5, 2014

Note: In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify, Dave Taylor, ADA Coordinator, at least three working days prior to the meeting. Division of Occupational & Professional Licensing, 160 East 300 South, Salt Lake City, Utah 84115, 801-530-6628 or toll-free in Utah only 866-275-3675

Posted to Web 1/14/2014 2:20 PM
Posted to Bulletin Board January 14, 2014
MINUTES

UTAH
Veterinarian Physician Licensing Board
Meeting

October 3, 2013

Room 474 - 4th Floor - 9:00 a.m.
Heber Wells Building
Salt Lake City, UT 84111

CONVENED: 9:21 a.m. ADJOURNED: 10:37 a.m.

Bureau Manager: April Ellis
Board Secretary: Yvonne King

Board Members Present: Kerry Rood, DVM, Chair
Charles Heaton, DVM
Jason L. Pozzuoli, DVM
Chad Dalton

DOPL Staff Present
Larry Gooch, Investigations
John Sims, Investigations
Laurie Noda, Attorney General's Office

TOPICS FOR DISCUSSION

ADMINISTRATIVE BUSINESS:

Approval of the January 17, 2013 Board Meeting Minutes.

Nominations for Chair

DISCUSSION ITEMS

Attorney General’s Opinion on Rabies Vaccines

Dr. Pozzuoli seconded by Mr. Dalton made a motion to approve the January 17, 2013 Board meeting minutes as written. The motion carried unanimously.

Dr. Heaton seconded by Dr. Pozzuoli made a motion to nominate Dr. Rood to remain as chair. The motion carried unanimously.

Laurie Noda from the Attorney General’s Office appeared before the Board regarding clarification on rabies vaccines being administered by staff members of an animal shelter without a licensed Veterinarian on staff.

Ms. Noda stated that under the Veterinary Practice Act...
58-28-102(11), it was the opinion of the AG's Office that rabies vaccines can only be administered under the direct supervision of a licensed Veterinarian.

The Board was concerned about other vaccines that were not required to have a prescription or could be attained by the general public. Ms. Noda then explained that there are certain exemptions such as an owner of an animal, but if a prescription is required, the exemption would not apply.

Ms. Ellis explained the new changes to the Open and Public Meetings Act where the meeting recordings, approved minutes and Board packets will now be posted on the web.

Dr. Pozzuoli suggested adding a component to the Continuing Education requirement with regards to medical records. This will be further reviewed at the next scheduled meeting.

CORRESPONDENCE:

NBVME 2012-2013 Technical Report
AAVSB Nominating Committee Report

This was reviewed with no action taken.
This was reviewed with no action taken.

NEXT BOARD MEETING:

January 16, 2014

Note: These minutes are not intended to be a verbatim transcript but are intended to record the significant features of the business conducted in this meeting. Discussed items are not necessarily shown in the chronological order they occurred.

Date Approved: 1/16/2014
Chairperson, Veterinary Physician Board: Charles F. Sheehan

Date Approved: 1/16/2014
Bureau Manager, Division of Occupational & Professional Licensing: [Signature]
MEMORANDUM

To: Veterinary Board, April Ellis Bureau Manager

From: Laurie L. Noda Assistant Attorney General, Division of Occupational and Professional Licensing

Re: Informal Opinion-- Statutory Construction Analysis of Conflicting Provisions Within the Veterinary Practice Act

Date: January 16, 2014

I

BACKGROUND

The Veterinary Practice Act, (Act), Utah Code Ann. 58-28-102(11)(b), defines the practice of veterinary medicine in part as follows:

“administer, prescribe or dispense any drug or medicine, treatment, method or practice, perform any operation or manipulation, apply an apparatus or appliance for the cure, relief, or correction of any animal disease, deformity, defect, wound, or injury, or otherwise practice any veterinary medicine, dentistry, or surgery on any animal.”
The Act, also defines “administer” under Utah Code Ann. 58-28-102(2)(b) as follows:

“the direct application of a prescription drug by injection, inhalation, or ingestion or by any other means to the body of an animal that is a patient or is a research subject.”

The definition of the practice of veterinary medicine includes the phrase administer, prescribe, or dispense any drug and as such conflicts with the definition of administer which is specifically limited to prescription drugs.

Given that there is conflict between the two provisions, the Veterinary Board is seeking an informal opinion providing an analysis as to which one prevails; the more specific or the general which is set forth below.

II
STATUTORY CONSTRUCTION ANALYSIS OF THE VETERINARY PRACTICE ACT REGARDING CONFLICT BETWEEN SPECIFIC AND GENERAL PROVISIONS

It is a general rule of statutory construction that when two statutes or two provisions within a statute are in conflict, the more specific provision will govern over the more general. The general reasoning behind the rule is that statutes or provisions should be harmonized when possible and that specific language carries more weight because it provides intent by the legislature as to the conduct that is allowed or not allowed under the statute.

This rule of statutory construction has been in place for a long period of time and has been cited by the Utah Supreme Court in numerous cases. An early case of the Utah Supreme Court referencing this general principle dates back to 1899, Neldon v. Clark, 20 Utah 282 (Utah 1899).

This rule has also been codified and is set forth in the umbrella act of DOPL Utah Code Ann. § 58-1-107 which states as follows:

“The provisions of this chapter uniformly apply to the enforcement of this title. However, unless expressly prohibited in this chapter, any provision of this chapter may be supplemented or altered by specific chapters of the title.”

The intent of the Legislature to codify this general rule of statutory construction is clear and is meant to allow the Legislature to supplement or revise chapters in the Act to provide greater specificity when necessary.

Another statutory construction principle “expressio unius” presumes that the inclusion of specific matter in a statute tends to imply a legislative intent to exclude matters not mentioned. As stated previously, the Act specifically defines “administer” to mean the administration of a
“prescription drug” and how it is to be done and in doing so omits reference to “any drug” which is set forth in the definition of the practice of veterinary medicine. The omission of the words “any drug” is given weight under this principle. Once again, this statutory construction rule also has a long history and has been cited by the Utah Supreme Court in numerous cases.

It should also be noted that there are separate provisions in the Act that reference prescription drugs and that they are only to be prescribed or dispensed by a licensed veterinarian. For example, Utah Code Ann. § 58-28-307(1) exempts a person from licensure and allows them to practice veterinary medicine, surgery or dentistry upon any animal owned by them. However, a separate provision (1)(b) states that the exemption does not apply to the administration, dispensing or prescribing of a prescription drug. Individuals who provide training for animals are also are exempted from veterinary licensure but the exemption does not include diagnosing any medical condition or prescribing or dispensing any prescription drugs. Utah Code Ann. § 58-28-307(15).

Finally, it is important to understand the legislative history of the Act which shows that the definition of the practice of veterinary medicine was amended in 2010 to include the word “dispense” which was done to allow veterinarians to dispense legend drugs which prior to that amendment was not allowed. By putting the language “dispense” into the Act under the definition of practice of veterinary medicine, it can be inferred that the legislature intended to specifically define the practice and that it should include the dispensing by a veterinarian of legend drugs.

CONCLUSION

Although the Veterinary Practice Act defines the practice of veterinary medicine in broad terms as applying to the administration, prescription and dispensing of any drug, the more specific language related to the administration of prescription drugs prevails. Support for this can be found in legislative history as well as statutory construction principles and in other provisions in the Act.

Accordingly, absent a legislative change, the Division cannot enforce the Act against persons who are administering non-prescription drugs and are otherwise not engaging in the practice of veterinary medicine.
SHELTER ANIMAL VACCINE AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott K. Jenkins

House Sponsor: ____________

LONG TITLE

General Description:

This bill amends the Veterinary Practice Act.

Highlighted Provisions:

This bill:

- exempts the following from the requirement to be licensed as a veterinarian:
  - an employee of an animal shelter who, under the indirect supervision of a veterinarian, administers to a shelter animal a rabies vaccination; and
  - an employee of an animal shelter who, without the supervision of a veterinarian, administers to a shelter animal vaccinations that promote health and prevent disease.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-28-307, as last amended by Laws of Utah 2013, Chapter 278

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 58-28-307 is amended to read:

In addition to the exemptions from licensure in Section 58-1-307 this chapter does not apply to:

(1) any person who practices veterinary medicine, surgery, or dentistry upon any animal owned by him, and the employee of that person when the practice is upon an animal owned by his employer, and incidental to his employment, except:

(a) this exemption does not apply to any person, or his employee, when the ownership of an animal was acquired for the purpose of circumventing this chapter; and
(b) this exemption does not apply to the administration, dispensing, or prescribing of a prescription drug, or nonprescription drug intended for off label use, unless the administration, dispensing, or prescribing of the drug is obtained through an existing veterinarian-patient relationship;

(2) any person who as a student at a veterinary college approved by the board engages in the practice of veterinary medicine, surgery, and dentistry as part of his academic training and under the direct supervision and control of a licensed veterinarian, if that practice is during the last two years of the college course of instruction and does not exceed an 18-month duration;

(3) a veterinarian who is an officer or employee of the government of the United States, or the state, or its political subdivisions, and technicians under his supervision, while engaged in the practice of veterinary medicine, surgery, or dentistry for that government;

(4) any person while engaged in the vaccination of poultry, pullorum testing, typhoid testing of poultry, and related poultry disease control activity;

(5) any person who is engaged in bona fide and legitimate medical, dental, pharmaceutical, or other scientific research, if that practice of veterinary medicine, surgery, or dentistry is directly related to, and a necessary part of, that research;

(6) veterinarians licensed under the laws of another state rendering professional services in association with licensed veterinarians of this state for a period not to exceed 90 days;

(7) registered pharmacists of this state engaged in the sale of veterinary supplies, instruments, and medicines, if the sale is at his regular place of business;

(8) any person in this state engaged in the sale of veterinary supplies, instruments, and
medicines, except prescription drugs which must be sold in compliance with state and federal regulations, if the supplies, instruments, and medicines are sold in original packages bearing adequate identification and directions for application and administration and the sale is made in the regular course of, and at the regular place of business;

(9) any person rendering emergency first aid to animals in those areas where a licensed veterinarian is not available, and if suspicious reportable diseases are reported immediately to the state veterinarian;

(10) any person performing or teaching nonsurgical bovine artificial insemination;

(11) any person affiliated with an institution of higher education who teaches nonsurgical bovine embryo transfer or any technician trained by or approved by an institution of higher education who performs nonsurgical bovine embryo transfer, but only if any prescription drug used in the procedure is prescribed and administered under the direction of a veterinarian licensed to practice in Utah;

(12) (a) upon written referral by a licensed veterinarian, the practice of animal chiropractic by a chiropractic physician licensed under Chapter 73, Chiropractic Physician Practice Act, who has completed an animal chiropractic course approved by the American Veterinary Chiropractic Association or the division;

(b) upon written referral by a licensed veterinarian, the practice of animal physical therapy by a physical therapist licensed under Chapter 24b, Physical Therapy Practice Act, who has completed at least 100 hours of animal physical therapy training, including quadruped anatomy and hands-on training, approved by the division;

(c) upon written referral by a licensed veterinarian, the practice of animal massage therapy by a massage therapist licensed under Chapter 47b, Massage Therapy Practice Act, who has completed at least 60 hours of animal massage therapy training, including quadruped anatomy and hands-on training, approved by the division, and

(d) upon written referral by a licensed veterinarian, the practice of acupuncture by an acupuncturist licensed under Chapter 72, Acupuncture Licensing Act, who has completed a course of study on animal acupuncture approved by the division;

(13) unlicensed assistive personnel performing duties appropriately delegated to the unlicensed assistive personnel in accordance with Section 58-28-502;

(14) (a) an animal shelter employee who administers a vaccine, other than a rabies
vaccine administered under Subsection (14)(b) to a shelter animal to promote animal health and prevent disease; and

[(a)] (b) an animal shelter employee who is acting under the indirect supervision of a licensed veterinarian; and is:

[(b)] (i) performing animal euthanasia in the course and scope of employment; [and] or

(ii) administering a rabies vaccine to a shelter animal in accordance with the Compendium of Animal Rabies Prevention and Control; and

(15) an individual providing appropriate training for animals; however, this exception does not include diagnosing any medical condition, or prescribing or dispensing any prescription drugs or therapeutics.

Legislative Review Note
as of 1-13-14 10:42 AM

Office of Legislative Research and General Counsel
(a) an application for approval to sit for the NAVLE examination;
(b) the application fee; and
(c) documentation showing the applicant has met the education requirement specified in Section R156-28-302a or will complete the education requirement at the end of the semester or quarter in which the applicant is currently enrolled. If the applicant is enrolled in the final semester or quarter before obtaining the degree, documentation of the applicant's student status shall be provided by a letter from the dean or registrar of the educational institution confirming the applicant is a student in good standing and will graduate with the next graduating class.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 28 is established by rule in Section R156-1-308a(1).
(2) Renewal procedures shall be in accordance with Section R156-1-308c.
(3) Applicants for renewal shall meet the continuing education requirements specified in Section R156-28-304.

R156-28-304. Continuing Professional Education.
In accordance with Section 58-28-306, there is created a continuing professional education requirement as a condition for renewal or reinstatement of licenses issued under Title 58, Chapter 28. The continuing professional education requirement shall comply with the following criteria.
(1) During each two year period commencing on September 30 of each even numbered year, a licensee shall be required to complete not less than 24 hours of qualified continuing professional education directly related to the licensee's professional practice.
(2) The required number of hours of continuing professional education for an individual who first becomes licensed during the two year period shall be decreased by a pro-rata amount equal to the part of that two year period preceding the date on which that individual first became licensed.
(3) Qualified continuing professional education under this section shall:
   (a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a veterinarian;
   (b) be relevant to the licensee's professional practice;
   (c) be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the program;
   (d) be prepared and presented by individuals who are qualified by education, training, and experience; and
   (e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.
(4) Credit for continuing professional education shall be recognized in accordance with the following:
   (a) Unlimited hours shall be recognized for continuing professional education as a student or presenter, completed in blocks of time of not less than one hour in formally established classroom courses, seminars, lectures, wet labs, or specific veterinary conferences approved or sponsored by one or more of the following:
      (i) the American Veterinary Medical Association;
      (ii) the Utah Veterinary Medical Association;
      (iii) the American Animal Hospital Association;
      (iv) the American Association of Equine Practitioners;
      (v) the American Association of Bovine Practitioners;
      (vi) certifying boards recognized by the AVMA;
      (vii) the Western Veterinary Conference; or
      (viii) other state veterinary medical associations or state licensing boards; or
      (ix) the Registry of Continuing Education (RACE) of the AASVB.
(b) No more than five continuing professional education hours may be counted for being the primary author of an article published in a peer reviewed scientific journal, and no more than two continuing professional education hours may be counted for being a secondary author.

(c) No more than six continuing professional education hours may be in practice management courses.

(d) Any continuing professional education where there is no instructor or where the instructor is not physically present, shall assure the licensee's participation and acquisition of the knowledge and skills intended by means of an examination. These types of continuing professional education courses include internet, audio/visual recordings, broadcast seminars, mail and other correspondence courses.

(5) A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.

(6) A licensee who is unable to complete the continuing professional education requirement for reasons such as a medical or related condition, humanitarian or ecclesiastical services, or extended presence in a geographical area where continuing education is not available, may be excused from the requirement for a period of up to three years as provided in Section R156-1-308d.


Unprofessional conduct includes:

(1) deviating from the minimum standards of veterinary practice set forth in Section R156-28-503;

(2) permitting unlicensed assistive personnel to perform duties that the individual is not competent by education, training or experience to perform; and

(3) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the Principles of Veterinary Medical Ethics of the American Veterinarian Medical Association (AVMA), as approved by the AVMA Executive Board, July 1999, revised November 2003, which are hereby incorporated by reference, except that if a licensee fails to establish the veterinarian-client-patient relationship as required in Section III A of those principles, such failure does not excuse the veterinarian from complying with all other duties that would be a part of the duties that would be imposed on a veterinarian if the veterinarian had properly established the veterinarian-client-patient relationship.


In accordance with Subsection 58-28-102(14) and Section 58-28-603, a veterinarian shall comply with the following minimum standards of practice in addition to the generally recognized standards and ethics of the profession:

(1) A veterinarian shall compile and maintain records on each patient to minimally include:

(a) client's name, address and phone number, if telephone is available;

(b) patient's identification, such as name, number, tag, species, age and gender, except for herds, flocks or other large groups of animals which may be more generally defined;

(c) veterinarian's diagnosis or evaluation of the patient;

(d) treatments rendered including drugs used and dosages; and

(e) date of service.

(2) A veterinarian shall:

(a) maintain veterinary medical records under Subsection (1) above so that any veterinarian coming into a veterinary practice may, by reading the veterinary medical record of a particular animal, be able to proceed with the proper care and treatment of the animal; and
Good Items

As I returned from the NAVLE item review meeting earlier this month (see page 3), I was once again impressed by how much work it takes to develop a good examination.

Before I started working for the NBVME, I thought the multiple-choice test questions I wrote for my veterinary students were pretty good. After I began working with editors and psychometricians, first with the Professional Examination Service and then with the National Board of Medical Examiners, I realized how naive I was. Sitting around a table with five or six content experts and hearing them analyze test questions one at a time in great detail is a fascinating experience. Each participant brings his or her unique perspective and expertise to the table. Only questions that are deemed acceptable by the reviewers are added to the item bank. All new NAVLE items are used first as pretest items. Only items with acceptable performance statistics can be used on subsequent test forms as scored items. Many times, this pretest process reveals flaws in items that may not have been evident to the reviewers. Some items might be too hard, some too easy, some may appear to have more than one possible answer, and some do not discriminate well between high and low ability candidates. The final step is form review, where each potential live item is reviewed again by another panel of content experts. The result of all this is that the items that will be used to derive a candidate's NAVLE score are, indeed, good items.

John R. Boyce, DVM, PhD
Executive Director

NBVME Employees Serve Constituents

The members of the NBVME and its executive director appreciate the excellent staff working in the office in Bismarck. These four dedicated individuals work mainly behind the scenes to provide important services to examination candidates, licensing boards, veterinary schools, NBVME constituent organizations, board and committee members, and others. In the 16 years since the NBVME office moved to Bismarck, a total of only six people have served on the staff, a remarkable record of stability.

Tonee VanderVliet was the NBVME's first support staff member. She was hired in 1998, one year after the office moved from Illinois to North Dakota. Tonee left in 2003 to start a family, and returned to the office on a part-time basis in 2005 as Examination Assistant. Tonee presently works with the NAVLE Self-Assessment program, and serves as secretary for the North Dakota Board of Veterinary Medical Examiners.

Anita Casey-Reed joined the staff in 2002 and serves as Administrative Assistant. She is the person who answers the telephone most of the time, and corresponds with people through mail@nbvme.org address. Anita works with the Qualifying Examination program, processes NAVLE candidate applications and requests for test accommodations, corresponds with licensing boards and veterinary schools, and is responsible for the species specific examination program.

Bridget Whittey is the NBVME's Executive Assistant and began working in the office in 2007. Bridget handles online NAVLE application and credit card processing, financial transactions, candidate database and web site updates, and assists with the NAVLE school score reports.

Laurie Holverson is the NBVME's newest employee, joining the staff in 2011 after Debbie Larson retired. As Office Manager, she has primary responsibility for planning and coordinating NBVME meetings. Laurie also receives and approves NAVLE candidate applications on behalf of 28 state licensing boards.

Bridget Whittey, Laurie Holverson, Anita Casey-Reed, and Tonee VanderVliet
COLLABORATION MEMO
SENT TO LICENSING BOARDS

On November 26, the NBVME office sent a detailed memo to each US state and territorial licensing board, outlining the planned collaboration between the NBVME and the National Board of Medical Examiners (NBME) regarding the NAVLE program. The memo explains why the collaboration is being initiated and how the collaboration will benefit the examination program and the licensure process.

Key points in the memo include the following:
• The purpose of the collaboration is to facilitate NAVLE enhancements, including those recommended by licensing boards.
• The NBVME and the NBME are both not-for-profit organizations that devote their resources for the public good.
• The NBVME will continue to control the NAVLE program under the collaboration, including all decisions related to test content, candidate eligibility, standard setting, score reporting, and issues related to veterinary licensure.
• The cost of the NAVLE will not increase solely as a result of the collaboration. In fact, the research and development costs associated with NAVLE enhancements will be shared by both the NBVME and the NBME.
• Licensing boards will continue to have significant input into key decisions with regard to the NAVLE program.

January NBVME Meeting

The NBVME’s next meeting will be in San Antonio January 24-25, 2014. The meeting will be chaired by Dr. Gary Gackstetter. Persons interested in attending the January meeting should contact the NBVME office for details.

NBME Collaboration
An important agenda item for the January meeting will be the planned collaborative relationship with the NBME. At the July 2013 meeting, the board unanimously approved all sections of the draft collaboration agreement, except for the section on finances. Following the meeting, the NBVME’s accountant worked with the NBME’s Chief Financial Officer to prepare illustrations of the financial aspects of the NAVLE program operated as a collaboration. That information was evaluated during a face-to-face meeting between NBVME and NBME representatives in Philadelphia on September 17. The full board will review the information with the accountant at the January meeting in San Antonio, with the goal of approving the financial section of the collaboration agreement at that time.

Examination R&D
The board will look at recommendations made last year by the Collaboration Strategic Planning Group (Co-Strat) and prioritize work on NAVLE enhancements that can be initiated as the collaboration gets underway. The NBVME’s appointees to the Collaboration Governance Committee, Drs. Meg Clatly, Rick Tubbs, and Leah Steinberg, will attend the January meeting.

New Member Orientation
NBVME legal counsel Claire Topp will present a new member orientation to the four new NBVME members who took office following the July meeting: Drs. Bob Cherenson, Karen Lehe, Bruce Louderback, and Mark Russak.

NAVLE® Pool Review
The day before the board meeting, most of the NBVME members will join members of the NBVME’s Examination Development Advisory Board (EDAB) and some former board members in a review of several hundred items from the NAVLE item bank. These reviews, which are done at least once per year, ensure that items in the active item pool are suitable for continued use on NAVLE forms. Participants will work in teams, by content area, and will be assisted by editors from the NBME’s test development department.
Fall NAVLE Item Review Meeting

Twenty-five of the 28 NAVLE item writers for 2013 met at the NBME office in Philadelphia November 11-12 to review newly-written items. Nearly 800 new items were approved for addition to the NAVLE item bank.

Each form of the NAVLE includes 300 scored items and 60 pretest items, and all new items are pretested before they are used as scored items. Pretesting ensures that items that count toward a candidate’s score have acceptable performance statistics. New items approved at the November 2013 review meeting will appear for the first time as pretest items on examination forms developed for use during the 2014-2015 NAVLE testing cycle.

Most NAVLE item writers are appointed by the members of the NBVME’s Examination Development Advisory Board, according to the main content areas of the examination. Work is now underway to finalize the list of item writers for 2014.

To date, a total of 135 veterinarians have served as NAVLE item writers.

New NBVME Member: Dr. Mark Russak

Dr. Mark Russak was named by the American Animal Hospital Association to succeed Dr. John Tait as one of the two NBVME members designated by that organization. Dr. Russak is immediate past president of AAHA. Dr. Russak took office at the close of the board’s July 2013 meeting.

A native of Paterson, New Jersey, Dr. Russak earned his DVM degree from Colorado State University in 1976, and in 1998 received a certificate in veterinary practice administration from the Krannert Graduate School of Management at Purdue University.

Dr. Russak owned and operated a multi-doctor AAHA accredited small animal practice in Kensington, Connecticut for 25 years. In 2003, he joined the faculty of the College of Veterinary Medicine at Mississippi State University, where he served as an assistant clinical professor and director of student affairs. At Mississippi State, Dr. Russak’s teaching responsibilities included primary care, veterinary practice management, leadership, and communications. He received the Dean’s Award for excellence in teaching in 2006.

In 2008, Dr. Russak was inducted into Phi Zeta, the honor society of veterinary medicine. Dr. Russak was recently credentialed as a Certified Veterinary Journalist. He has hosted a weekly television pet health show, authored a weekly newspaper pet care column, and has contributed to numerous other lay and professional publications.
School of Veterinary Medicine
The School of Veterinary Medicine at the University of Missouri-Columbia is committed to excellence in education, research, and service in the fields of veterinary medicine, animal health, and public health. The School provides a comprehensive curriculum that prepares students for careers in veterinary medicine, research, and public health.

The School of Veterinary Medicine offers a 4-year Bachelor of Science degree in Veterinary Technology and a 4-year DVM degree. The Bachelor of Science degree in Veterinary Technology is designed to prepare students for careers in veterinary technology, research, and translation. The DVM degree is designed to prepare students for careers in veterinary medicine, research, and public health.

The School of Veterinary Medicine is accredited by the American Veterinary Medical Association (AVMA) and the Higher Learning Commission (HLC). The School is also a member of the Association of American Veterinary Medical Colleges (AAVMC) and the Association of Public Health Veterinarians (APHV).
Preparing for the Future
by Robyn Kendrick, Executive Director

2013 Highlights

- Increased membership from 57 to 58 jurisdictions
- Delegates from 46 jurisdictions (an all-time high) were represented at the 2013 Annual Meeting & Conference
- Completed the 2nd Annual Member Board Profile Survey
- VIVA transferred over 5,600 national exam scores for Veterinarians and veterinary technicians
- More than 1,560 RACE programs representing nearly 30,000 hours of CE were approved as well as 156 providers
- With the addition of North Carolina in 2013, 39 jurisdictions now accept PAVE
- 2,000 PAVE certified veterinarians are practicing in the U.S., Puerto Rico & the U.S. Virgin Islands
- A new exam blueprint has been created for the VTNE

The last few years have been challenging for many organizations, but for the AAVSB they have been among some of the most successful and satisfying in our history. We have increased awareness of the AAVSB's mission, expanded Member Board participation and continuously improved the quality of our programs all while optimizing organizational performance and sustainability.

Given the AAVSB's prestigious history and significant accomplishments, one could imagine it being challenging to chart a course for the next few years. But as the Board of Directors embarks upon a strategic planning refresh in 2014, we have been charged with ensuring that the AAVSB continues to provide quality resources for our Member Boards and continues to focus on the AAVSB's core mission and vision.

This means balancing all of those elements that have been essential to making our organization exceptional, while anticipating those which the future will demand in order to sustain that level of excellence and achieve even greater heights. Back in 2007, we created our first strategic plan of the 21st century. Since then, each plan that followed was informed by, and built upon, the foundations laid by its predecessor.

Our refreshed strategic vision will be completed in early 2014 and will be the blueprint for moving the association forward. It will provide a multi-year direction and focus that will build upon current programming and resource development.

As we look to the future, we do so with the intent of building a stronger, more profound community. We approach this work knowing that our success is dependent upon gathering long time supporters and new partners alike who wish to help build our future.

As always we welcome your input and look forward to working with you in the coming year. We wish you a happy and safe New Year!
Boards of veterinary medicine are created and empowered to protect the public by regulating the profession through the enforcement of the practice act. As is evident to regulators of all professions, the resources are limited and boards must make difficult choices prioritizing how such limited resources will be expended. Administrative prosecutions and appeals thereof can create difficult decisions, in part driven by financial considerations. One hopes that important prosecutorial decisions do not depend solely on the resource issue. Further, it is imperative that significant board public protection determinations are not ignored merely for ease of disposal of the particular matter.

With that said, boards of veterinary medicine cannot always control the actions of the accused/respondent. Indeed, more licensees are engaging legal counsel to protect their interests and the investment in a license and professional practice. Counsel for a respondent can provide efficient guidance in effectively identifying the issues and assist in reasonable resolution. Counsel, at times, may also become an impediment to an efficient resolution. In the end, both prosecution and defense must make judgment calls on the pursuit and resolution of any particular case. Prosecutions and appeals can take years to resolve. Consider the following.

In May 2006, a complaint was filed against a veterinarian (Licensee) in Arkansas. The complaint alleged substandard care related to veterinary services provided to a dog. After a hearing in January 2007, the Arkansas Veterinary Medical Examining Board (Board) found the Licensee to have violated six regulations and suspended his license for a minimum of six months. The Licensee appealed this decision and the Circuit Court upheld four but reversed two of the Board findings of violations. The Circuit Court upheld the six-month suspension. That decision was appealed to the Court of Appeals that held that two of the violations (relating to recordkeeping and aiding and abetting the unlicensed practice) were indeed supported by substantial evidence, but reversed the remaining violations as not supported by the evidence. The court remanded the matter back to the Board to determine the appropriate sanctions. (Zepecki v. Arkansas Veterinary Medical Examining Board, 2010 Ark. App. 187, 375 S.W. 3d 41).

On remand, the Board scheduled a hearing for December 2010 but the proceedings were continued multiple times based upon requests from the Licensee. Finally, in November 2011 a hearing was held over the objection of the Licensee. At such hearing the Licensee again asked for a continuance due to illness of his counsel. This request was denied by the Board and the hearing proceeded with the Licensee unrepresented by counsel. At the conclusion of the hearing, the Board determined a two-month suspension was warranted and also imposed a $3,000 civil penalty for each of the two violations totaling $6,000. The Licensee appealed the matter and the Circuit Court upheld the two-month suspension, but reduced one of the civil penalties to $1,500, thus reducing the total fine to $4,500. Both parties appealed to the Court of Appeals with the Licensee arguing first that the penalties were arbitrary and capricious and second that the failure to continue the hearing violated his due process rights. On its appeal, the Board argued that the reduction of the civil penalty was in error.

Licensee first argued that nothing in the record indicated that his conduct was in willful violation of the
law and that there was no harm to the animal caused by his treatment. He further argued that the initial sanction imposed in the first case did not include any civil penalty nor continuing education requirement. Because the latest findings reduced the number of violations from six to two, the Licensee argued that the increase in the sanctions to include a civil penalty and continuing education was arbitrary and capricious.

First, the court noted “there is no requirement that a veterinarian act willfully or that an animal be injured in order for there to be a violation of the rules governing the practice of veterinary medicine.” But, the court held that there is some evidence that the Licensee’s actions were willful. In fact, the record reflects that the Licensee willfully procured the services of a chiropractor to perform chiropractic treatment on the complainant’s dog without immediate supervision by a veterinarian as required by law.

Citing a previous pharmacy case, the Licensee argued for leniency based upon his non-willful actions defense. The court rejected this argument distinguishing the pharmacy case as such case was an attempt to permanently bar a person from practicing a profession. To permanently bar licensure requires clear evidence that the licensee “embarked on a calculated course.” In the current case, the Licensee was only removed from practice for a two-month period. Examining the totality of the evidence, the court held that the sanctions imposed by the Board were not arbitrary and capricious in spite of the additional sanctions imposed.

Turning its attention to the due process argument, the court cited the fact that the Licensee has the burden to show that the Board abused its discretion and that he was prejudiced to the point of a “denial of justice.” The court reviewed the facts of the case that included numerous continuances at the behest of the Licensee and, at the last continuance, the Licensee stated that if his attorney did not show up at the November 2011 hearing he would “be here without one” and would “represent himself.” Under these circumstances, the court found that a denial of this continuance was not an abuse of discretion. Further, the court held that the Licensee failed to show that he was prejudiced by the denial of the continuance.

Finally, the court examined the cross appeal of the Board that argued the reduction of the civil penalty by the lower court was made in error. The court agreed with the Board that the $3,000 penalties for each violation was not arbitrary and capricious and, thus would be reinstated. Accordingly, the court upheld the two-month suspension and reinstated the $6,000 civil penalty.

This case involved several years of litigation and multiple appeals and remands. It presents an example of how disciplinary actions can be time consuming and costly. However, the Board elected to pursue this matter and was successful, solidifying its legal position and creating jurisprudence that will be beneficial to public protection and to all licensing boards.


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2013 ANNUAL MEETING & CONFERENCE RECAP

SEPTEMBER 19-21, 2013 ~ KANSAS CITY, MO

The 2013 Annual Meeting and Conference was held in the AAVSB’s hometown – Kansas City, Missouri. Attendance was at all-time high with 149 participants including 27 first-timers. There were 46 voting delegates, which included 37 funded delegates. Attendees and guests enjoyed networking at The American Jazz Museum located in Kansas City’s historic jazz district. The meeting commenced Friday morning when Anne Duffy, RVT, AAVSB President welcomed everybody and introduced the AAVSB Board of Directors. The slate of Board of Directors candidates was presented to the delegates and elections were held during the Saturday morning business session (see election results on pg 5). The AAVSB staff and Committee chairs reported on the year’s activities and educational sessions addressed topics relevant to veterinary regulation. Ms. Duffy presided over the meeting and on Saturday afternoon, during the closing ceremony, installed the newly elected officers. President-Elect Dr. Beckey Malphus then assumed the new role of the AAVSB President.

Thank you for all of the effort put forth by the attendees, committee members and the AAVSB Board of Directors to make the conference a major success. The 2013 Annual Meeting and Conference summary and presentation slides are posted on the AAVSB website. You may access them through your MyAAVSB account. Please contact Chrissy Bagby at cbagby@aavsb.org to set up an account.

We are eager to welcome you to coastal St. Petersburg, Florida in 2014!

Thank you to all of our Membership, volunteers, and staff!
**2013 Election & Voting Results**

AAVSB Board of Directors:

President-Elect: John Lawrence, DVM (MN)
Director: Mark Olson, DVM (KS)
Director: Roger Redman, DVM (OH)

A complete list of the 2013-2014 AAVSB Board of Directors is located on the back of this newsletter.

AAVSB Representatives to NBVME:
Bruce Louderback, DVM (CO)
The other AAVSB representatives to the NBVME include Jon Betts, DVM, Joyceanne Fick (ID) and Jay Hedrick, DVM (KS)

2014 Nominating Committee:
Joni Edwards, DVM (CO)
Nicole Oria (TX)

2013 AAVSB Voting Results:

Proposed Amendment #1: The amendment proposes modifying the qualification of a candidate to the Board of Directors to having the support of the Member Board on which they previously served.

*Not Passed*

Proposed Amendment #2: The amendment proposes that Directors ceasing to meet eligibility criteria may be eligible to serve up to two (2) additional terms on the Board of Directors.

*Not Passed*

**Do you have a MyAAVSB account?**

Having an account will give both administrators and board members of Member Boards access to exclusive members only content, forums and also allow you to upload license updates and disciplinary final action.

If you don't have an account, contact Chrissy Bagby at cbagby@avsb.org or call 1-877-698-8482.

**We're Heading to St. Petersburg... Save the Date!**

It's not too early to start planning for next year. The 2014 AAVSB Annual Meeting & Conference will be held in St. Petersburg, Florida on September 11-13. The location is the Vinoy Renaissance St. Petersburg Resort & Golf Club. Watch the AAVSB website, our Facebook page, and Twitter updates for more details.

We will see you in September!
Meet AAVSB's President of the Board of Directors

Dr. Beckey Malphus, DVM, moved from her position as President-Elect into the President position and will serve a one-year term in this role. Dr. Malphus joined the AAVSB Board as a Director in 2008 and has served on the Practice Act Model Taskforce, Conference Committee and the PAVE Committee.

With over 19 years of practice experience, Dr. Malphus is co-owner of a clinic in Thomasville, Georgia specializing in small animal practice. She also conducts herd work at several local farms. Since 1999, she has completed and qualified for the Master National AKC hunt test/retriever trials. Dr. Malphus has a special interest in soft tissue and orthopedic surgery, geriatrics, oncology and reproduction.

A member and former President of the Georgia State Board of Veterinary Medicine since 2005, she is currently licensed in good standing in Georgia and Florida. Dr. Malphus is an also active member of her Thomasville, Georgia community serving on the Thomasville-Thomas County Humane Society, the Plantation Wildlife Arts Festival Committee and the Tallahassee Hunting Retriever Club.

In 2010, Dr. Malphus won the Georgia Veterinary Medical Association, Veterinarian of the Year award.

AAVSB Welcomes Newest Board of Directors Members

Dr. Mark R. Olson

received his Bachelor of Science degree and DVM from Kansas State University after graduating from Decatur Community High School.

Dr. Olson is member of the Kansas Veterinary Medical Association, and has served as Northwest District Trustee for four years. He served as President of the Kansas Board of Veterinary Examiners (KSBVE) for two years prior to moving to Vice President to serve on a Kansas legislative task force to determine if the KSBVE should be a merged agency with the Kansas Department of Agriculture.

Dr. Olson enjoys spending time with his wife, Barbara, going to Kansas State football and basketball games, golfing, and serving as an elder at Christ Community Church.

Dr. Roger Redman

received his Bachelor of Science degree and DVM from OSU after graduating from Triway High School.

Dr. Redman was born with veterinary medicine in his blood, as his father is a retired veterinarian from the Ohio Agricultural Research and Development Center. Dr. Redman has two children, Conner and Morgan and an adopted yellow lab, Jazzy. In addition to caring for animals, he loves water skiing, wakeboarding and fresh and salt water fishing. He has a passion for flying single engine aircraft and woodworking.
At the AAVSB Annual Meeting in September, the AAVSB Board of Directors announced the development of the new Qualifying Science Examination (QSE), Step 3 of the program. The QSE blueprint has been drafted and subject matter experts in the veterinary profession are being identified to substantiate the blueprint, the content areas, and the weights assigned to the content areas. After the QSE blueprint validation in early 2014, item writers will be identified to create questions for the exam. A web-based system will be used for question submission by the item writers and will be followed by an in-person workshop for writing and reviewing. First administration of the new QSE is scheduled for September 2014.

For more information, please contact Carol Sparrow at pave@aavsb.org or 1-877-698-8482, ext. 228; or Nancy Grittman, at ngrittman@aavsb.org or 1-877-698-8482, ext. 226.

This year VIVA transferred over 5,600 national exam scores for veterinarians and veterinary technicians. Significant progress has been made on the VCET (VIVA Continuing Education Tracking) initiative which is developing a method to track and report CE for individual licensees to assist in the fulfillment of license renewal requirements. VCET will develop and maintain a repository for licensees to record completed CE programs. The licensee's record of completed CE programs will be entered through the MyAAVSB portal and be available to both licensees and AAVSB Member Boards for tracking, reporting, and auditing.

For more information, please contact Monika Whitmore, at viva@aavsb.org or 1-877-698-8482, ext. 231.

The RACE program has made strides with use of the online program, vastly improving communication between staff, consultants and RACE Committee members. The online procedure is creating efficiencies for the whole application process.

For more information, please contact Jess Klein at race@aavsb.org or 1-877-698-8482, ext. 224.

This year the VTNE saw a 16% growth in candidates from 6,000 in 2012 to over 7,000 in 2013. The program is gearing up for an even bigger year in 2014 with the addition of California candidates. More details will follow soon. This year also saw the release of a new VTNE blueprint with fewer questions for the July/August 2013 administration along with two new Practice Tests.

For more information, please contact Carol Sparrow at vettech@aavsb.org or 1-877-698-8482, ext. 228; or Nancy Grittman, at ngrittman@aavsb.org or 1-877-698-8482, ext. 226.

Chrissy Bagby joins the AAVSB staff as Member Services Coordinator in December. She is responsible for the organization’s marketing and outreach efforts, including the Annual Meeting and Conference and is the staff contact for the VIVA Task Force. Prior to joining the AAVSB, Chrissy held positions at DSK Solutions, American Association for Justice and Security Industry Association. Having graduated from Missouri State University, she holds a degree in Marketing Management. Chrissy enjoys archery, the theater and curling up with a good book.

Carol Sparrow joined the AAVSB staff in October as Program Assistant for the VTNE and PAVE Programs. She previously worked for Blue Valley High School, as a Special Education Paraprofessional. Carol provides assistance to VTNE candidates by processing applications and score transfers. She also assists veterinarians from foreign countries in navigating the process as they work toward PAVE certification. She enjoys baking, cooking, and trying out new recipes in Overland Park, Kansas with her family.
April Ellis
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