

BOARD MEETING
LOUISIANA BOARD OF VETERINARY MEDICINE
JANUARY 22, 1999

I. CALL TO ORDER

The meeting was called to order at about 9:20 a.m. by the President, Dr. Anne Guedry.

II. ROLL CALL

Those present were:

Dr. Anne Guedry	President
Dr. Dick Walther	Vice-President
Dr. George Gowan	Member
Dr. Robert Lofton	Member
Mr. Charles Mann	Executive Director
Mr. Michael Tomino, Jr.	Board General Counsel
Mr. Chris Le Grange	La. Veterinary Medical Association

[NOTE: Mr. Le Grange was not present at the start of the meeting.]

III. APPROVAL OF MINUTES - December 2, 1998

Dr. Lofton moved to approve the minutes for the December 2, 1998, meeting, seconded by Dr. Gowan, and passed unanimously by voice vote.

IV. FINANCIAL AND CONTRACT MATTERS

A. Other Revenue Resources - Letter to Attorney General

Mr. Mann reported that there was still no response to his 11/12/98 letter to the Attorney General. He also reported that he had received information that the letter may not receive a response without a request for a formal opinion. After discussion, the Board determined that a formal opinion would not be pursued at this time. Mr. Tomino was directed to contact the Attorney's General office to determine if a response to the 11/12/98 letter could be provided verbally. He was also authorized to make inquiries with the legislature about special appropriations to regulatory boards. Mr. Mann was directed to contact the Board of Dentistry to gain information about their experience with obtaining legislative relief for financial problems caused by the pursuit of disciplinary cases.

B. Purchase of Disk Drive Back-up

Mr. Mann explained that the external tape drive used to back-up all computerized information had broken and could not be repaired, and that he had to purchase a new drive. Dr. Gowan moved to approve the expenditure of \$1,100 for the purchase of a new tape drive, seconded by Dr. Lofton, and passed unanimously by voice vote.

V. POLICY, PROCEDURE AND RULES

A. **Rule Making**

1. Rule 106 - Investigative Subpoenas: Mr. Tomino presented his legal opinion concerning investigative subpoenas and the proposed rule which has been under consideration. Mr. Tomino advised that the Veterinary Practice Act should be amended to provide for the issuance of investigative subpoenas. Dr. Walther moved not to adopt the proposed amendment to Rule 106 concerning investigative subpoenas, seconded by Dr. Lofton, and passed unanimously by voice vote. Dr. Lofton moved to pursue legislation to amend the Veterinary Practice Act to allow the Board to issue investigative subpoenas, seconded by Dr. Walther, and passed unanimously by voice vote. It was noted that such subpoenas would most likely be used to obtain documents from third parties in an investigation since a licensed veterinarian usually cooperates with investigations and Rule 701 already requires a licensed veterinarian to provide patient records to the Board. It was noted that legislation related to investigative subpoenas would properly be considered within the context of other recommendations related to the disciplinary process, see VII.A. below.

2. Consideration of New Rules

a. Expired Drugs - Rule 705: The Board discussed the length of time included in the draft version of proposed rule 705(I) concerning the possession of drugs or other medical products. After discussion, the word "six" replaced the word "three" to make the rule read: "It shall be a violation of the rules of professional conduct under R.S. 37:1526(14) for a veterinarian to be in possession of drugs or other medical products which are over three months past their expiration date unless the materials are obviously removed from use and it can be documented that said drugs are in the process of being returned or otherwise disposed of." Dr. Lofton moved to authorize the executive director to begin promulgation of the rule, seconded by Dr. Walther, and passed unanimously by voice vote.

b. Rule 1053 - Corporate/Assumed Names: The Board reviewed a proposed rule amendment to Rule 1053 concerning business names. Dr. Walther moved to authorize the executive director to begin promulgation of the rule amendment, seconded by Dr. Lofton, and passed unanimously by voice vote.

The Board also reviewed a legal opinion from Mr. Tomino concerning limited liability companies. After discussion of the opinion, which included a recommendation for the

Board to amend Rule 1015 to reference limited liability companies, it was decided to review the issue of Rule 1015 at the next regular meeting.

c. Declaratory Orders: The Board reviewed draft language for a rule concerning declaratory orders. The promulgation of such a rule is required under the Administrative Procedure Act. There was much discussion about the meaning of a declaratory order. Mr. Tomino informed the Board that answers to specific questions concerning the Veterinary Practice Act and rules promulgated thereto are, in effect, declaratory statements. The proposed rule formalizes the process of reviewing such questions. Dr. Lofton moved to authorize the executive director to begin promulgation of the rule, seconded by Dr. Walther, and passed unanimously by voice vote.

d. Grounds for Rehearing: The Board deferred this matter so it could be considered in the context of Mr. Tomino's general review of the disciplinary process (see item VII.A below).

e. Review of Rule 705(A)(3): The Board reviewed a draft of a proposed amendment to Rule 705(A)(3) prepared by Mr. Tomino. The draft stated: "Any drug, medicine, chemical or controlled substance prescribed, dispensed, administered, delivered or ordered pursuant to this Rule must be intended for the use of the patient and shall not be prescribed, dispensed, administered, delivered or ordered for the use of the client or any other human." Dr. Lofton moved to authorize the executive director to begin promulgation of the proposed rule amendment, seconded by Dr. Walther, and passed unanimously by voice vote.

B. Legislation Consideration

1. CAET: The Board reviewed revised draft legislation relating to the expansion of duties which may be performed by a CAET. Mr. Mann pointed out that the draft included language relating to a "Lead CAET" who could essentially replace a licensed veterinarian as the person responsible for specified controlled substances at a particular shelter location. The Board approved of these changes. It was reiterated that Dr. Guedry has authority to meet with and discuss this legislation with other interested parties. Dr. Guedry stated that a meeting to review the legislation with other parties was scheduled for January 29, 1999. She and Dr. Walther would represent the Board.

2. RVT Fee Language: Mr. Tomino had reviewed the permissibility of setting fee ceilings in statute and setting actual fee amounts by rule, so long as the fee ceiling was approved by vote of two-thirds of the legislature. His opinion was that this was permissible. The Board then reviewed the proposed fee ceiling language in the RVT statute which it had decided to proceed with at the December 2 meeting.

VI. MISCELLANEOUS MATTERS

A. Veterinary Drug Wholesaler Permits

This matter was taken up in executive session so the Board could receive legal advice from Mr. Tomino. Motion to enter executive session was made by Dr. Walther, seconded by Dr. Gowan, and passed unanimously by voice vote. Following return to the public record on motion by Dr. Walther, seconded by Dr. Lofton, and passed unanimously by voice vote, the following action was recorded: Mr. Tomino was authorized to draft a letter to Dr. Elliott concerning his operations as a veterinary drug wholesaler and his obligations under the Veterinary Practice Act and rules promulgated thereto. Dr. Guedry and Dr. Walther were authorized to review and approve the letter prior to it being sent to Dr. Elliott.

B. 1999 Meeting Dates

The Board revised the meeting schedule for 1999 which was previously approved. Mr. Mann was directed to have Dr. Aycock review the revised dates. If she has a problem with any of the dates, the matter will be reviewed again.

VII. EXECUTIVE SESSION

It was moved by Dr. Walther to enter executive session to receive legal advice concerning the disciplinary process, including issues that may pertain to litigation and for which legal advice is needed, and to discuss the cases which are now in district court, seconded by Dr. Gowan, and passed unanimously by voice vote. Mr. Tomino excused himself from the executive session prior to discussion of the Smythe, Milazo, and LaGraize cases. Upon return to the public record by motion of Dr. Walther, seconded by Dr. Lofton, the Board took the following action:

A. Disciplinary Process

Dr. Walther moved to authorize Mr. Tomino to begin the development of any necessary rules or procedures which may be needed to implement a revised disciplinary process in accordance with his advice to the Board, including any recommendations concerning revisions to the statutes, seconded by Dr. Lofton, and passed unanimously by voice vote.

The Board also affirmed the action taken at the December 2, 1998, meeting which authorized Dr. Walther to act as the investigating board member in complaint cases; however; the Board further authorized Dr. Walther to refer cases to other Board members if he identifies a possible conflict of interest or other procedural problem.

B. Court Proceedings Updates

[NOTE: Mr. Tomino was not present for discussion of these cases.]

1. David B. Smythe v. Louisiana Board of Veterinary Medicine - No. 442537:

The Board took no formal action on this matter.

2. Nicholas J. Milazo v. Louisiana Board of Veterinary Medicine - No. 437496:

The Board took no formal action on this matter.

3. Albert LaGraize v. Louisiana Board of Veterinary Medicine - No. 451317:

The Board took no formal action on this matter.

VIII. ADJOURN

The meeting was adjourned at approximately 3:30 p.m.

APPROVED BY:

Adrienne Aycock, DVM
Secretary/Treasurer