

BOARD MEETING
LOUISIANA BOARD OF VETERINARY MEDICINE
FEBRUARY 24, 1999

I. CALL TO ORDER

The meeting was called to order at about 9:30 a.m. by the President, Dr. Anne Guedry.

II. ROLL CALL

Those present were:

Dr. Anne Guedry	President
Dr. Dick Walther	Vice-President
Dr. Adrienne Aycock	Secretary-Treasurer
Dr. Robert Lofton	Member
Mr. Charles Mann	Executive Director
Michael A. Tomino, Jr.	Board General Counsel
E. Wade Shows	Board Special Counsel
Dr. Michael Strain	La. Veterinary Medical Association
Dr. Chip Price	La. Veterinary Medical Association
Mr. Chris Le Grange	La. Veterinary Medical Association

[NOTE: Dr. George Gowan, Member, was absent due to illness. Dr. Nicholas Milazo and his wife were present during his presentation to the board. The LVMA representatives were not present for the entire meeting. Mr. Shows was present for the update of court cases and discussion of the La. Association of Boards and Commissions item.]

III. APPROVAL OF MINUTES - January 22, 1999

Dr. Lofton moved to approve the minutes for the January 22, 1999, meeting, seconded by Dr. Aycock, and passed unanimously by voice vote.

IV. FINANCIAL AND CONTRACT MATTERS

A. **Financial Reports - November 1998, December 1998, & January 1999**

The Board reviewed the financial statements for November 1998, December 1998, and January 1999. Mr. Mann noted and explained those items where deficits were shown. Dr. Aycock moved to accept the financial statements as presented, seconded by Dr. Lofton, and passed unanimously by voice vote. Dr. Lofton asked Mr. Mann to investigate the current cost for the board office to obtain e-mail and internet access.

B. Amendment to 1998-99 Contract: Shows, Cali, & Burns

[NOTE: This item was deferred until disciplinary cases which are in litigation were discussed, after which this item was taken up.] Mr. Mann reported that the contract with Shows, Cali, and Burns has a maximum payable amount of \$20,000.00. Based on invoices already received, billings are expected to exceed this amount prior to the contract's end date of June 30, 1999. Mr. Mann also reported that it takes a considerable amount of time for a contract, particularly a legal services contract, or amendment to be processed through the state government approval system. He recommended an amended maximum contract amount of \$35,000.00 to insure that payments can be efficiently and legally made for services rendered. Dr. Aycock moved to amend the maximum contract amount from \$20,000.00 to \$35,000.00, seconded by Dr. Walther, and passed unanimously by voice vote, except that Dr. Lofton was not present for the vote.

C. 1999-2000 Contracts

1. Shows, Cali, & Burns: This item was deferred until the next regular meeting.
2. Greg Brown, CPA: Dr. Aycock moved to approve the 1999-2000 contract for accounting services with Greg Brown, CPA, with a maximum contract amount of \$10,000.00, seconded by Dr. Lofton, and passed unanimously by voice vote.
3. PES: This item was deferred until the next regular meeting.
4. Cajun Data and Telecom (Robert Shields): Dr. Aycock moved to approve the 1999-2000 contract for computer consulting services with Cajun Data and Telecom, with a maximum contract amount of \$4,500.00, seconded by Dr. Lofton, and passed unanimously by voice vote.

V. NICHOLAS MILAZO, DVM

- A. Remarks Regarding Milazo v. LBVM (litigation in 19th Judicial District):
Dr. Nicholas Milazo made remarks for approximately fifteen minutes concerning the disciplinary case involving him which is now on appeal in the 19th Judicial District. Dr. Milazo asked that the Board dismiss his case and reimburse him for his attorney's fees.

B. Peer Review Committee for Screening Complaints: Dr. Milazo made suggestions for a system for the Board to handle complaints. He suggested that when a complaint is filed, the executive director should call the complainant to verify the complaint and then contact the veterinarian for an explanation. The executive director would then attempt to mediate the problem; if case is resolved at that point no further action by the Board would be taken. If the case cannot be resolved by the executive director, then a peer review committee of 10 to 12 persons would consider the case. If the committee determines there is no reason for disciplinary action, the case would not go to the full Board. Dr. Milazo said that this was the process used in Tennessee.

The Board as a whole had no comments to make after Dr. Milazo's presentation. Dr. Lofton stated that the Board appreciated Dr. Milazo's comments and hoped that he would provide the Board with the respect to try to work the situation out.

Mr. Tomino stated that he had talked to Dr. Milazo for the first time on the day before the board meeting. He stated further that he was not familiar with the merits of Dr. Milazo's case except for what Milazo presented to the Board or told him on the phone. He further stated that the Board is in the process of revamping the disciplinary process and that he is recommending rule changes. Mr. Tomino also informed Dr. Milazo that the Board had asked him to review the merits of the case and that he will be more involved if the case is remanded back to the Board by court. Concerning Dr. Milazo's suggestions on peer review, Mr. Tomino stated that he was sure the Board would take the suggestions under consideration. He also said that when any rules are promulgated concerning the disciplinary process, there will be an opportunity for public comment.

VI. POLICY, PROCEDURE AND RULES

A. **Policy and Procedure**

1. Drug Testing Policy: Mr. Mann reminded the Board that it had approved the Drug Testing Policy at its December 2, 1998, meeting, pending further review by the Board's General Counsel. Since that time, Mr. Tomino has performed legal research and had conversations with the Attorney's General office and the Division of Administration. The Board was also reminded that the policy is required by Executive Order MJF 98-38.

Mr. Tomino reported on his research and conversations concerning the policy. Based on his legal research, it was his opinion that the Board's employees and Board members would not fall within the safety or security sensitive positions described in the executive order. Angelle Davis, the Deputy Commissioner of Administration in charge of the policy, told Mr. Tomino that the Governor's intent is for the drug testing policy to cover as many persons as possible. New appointees to

the Board will be required to undergo drug testing as a condition of their appointment. Ms. Davis said that one state board had resolved the issue of testing of present members by agreeing to voluntarily submit to random drug testing. Mr. Tomino then had a conversation with James Hrdlicka, Assistant Attorney General in charge of reviewing the policy, who essentially agreed with Mr. Tomino's legal opinion concerning safety and security sensitive positions. Mr. Tomino restated his legal opinion that the Board has no safety and security sensitive positions and he does not recommend mandatory random testing. After discussion, Dr. Walther moved to amend the policy to include voluntary drug testing of Board members and to amend the "Responsibility" section to provide that the Board President, in consultation with the Executive Director, will be responsible for the overall compliance with this policy, seconded by Dr. Aycock, and passed unanimously by voice vote.

2. Customer Service Plan: Mr. Mann presented a draft Customer Service Plan, which is required by Executive Order MJF 97-39. He noted that it was his intent to test the Customer Satisfaction Questionnaire by sending it to a small number of persons prior to the renewal period. The questionnaire would then be modified if necessary and included with the license renewal packets. Results would be presented to the Board in October and submitted to the Division of Administration by November 1 as required by the executive order. He also noted that a survey of satisfaction of complainants would not be done before 2000 because of the current review of the disciplinary process. The plan included a proposed amendment to the Personnel Policies relating to staff training, which is also required by the executive order. After review and discussion, Dr. Aycock moved to approve the Customer Service Plan, seconded by Dr. Walther, and passed unanimously by voice vote.

3. Coordination of CE in Disciplinary Cases: Dr. Guedry reported on a meeting she, Dr. Walther, and Mr. Mann attended with representatives from the LSU School of Veterinary Medicine concerning coordination of continuing education programs for disciplined veterinarians. It was agreed at that meeting that when the investigating board member in a disciplinary case (or the Board members involved in developing a Judgment after a public administrative hearing) reaches the conclusion that a licensee should be required to receive further education from an AVMA-accredited school of veterinary medicine, the board member will contact the Head of Clinical Sciences (presently, Dr. David Senior) to discuss whether a particular program is feasible. The details of any program will be discussed and agreed upon prior to the execution of a Consent Order or Judgment. The Board will not be able to reveal the name of the licensee subject to discipline at that point, but the educational program needed to address a particular problem could be discussed. It was further noted that if the Head of Clinical Sciences cannot be reached, the Associate Dean for Student and Public Affairs (presently, Dr. John Rhoades) would be an appropriate person to contact.

4. C.E. Documentation: The Board discussed the requirements for continuing education documentation for upcoming renewal period. The Record of Participation form was mailed to licensees in December 1998, so persons who attended CE meetings prior to December may not have proper documentation for proof of attendance at specific subjects. The example of the LVMA summer meeting was noted. Dr. Aycock moved to authorize the Board office to exercise reasonable discretion in accepting CE documentation for specific subjects during the renewal period of 7/1/99-9/30/99, seconded by Dr. Walther, and passed unanimously by voice vote. This discretion will not be needed for renewal periods in future years.

5. Adopt National Exams: Dr. Walther moved pursuant to Rule 303(A)(2) to adopt the National Board Examination and Clinical Competency Test, as prepared by the Professional Examination Service (PES), as the national examinations required to be passed to qualify for licensure in Louisiana, seconded by Dr. Aycock, and passed unanimously by voice vote.

B. Legislation Consideration

1. DVM Legislation: Mr. Tomino presented his recommendations concerning proposed amendments to the Veterinary Practice Act to assist the Board in its investigative and disciplinary procedures, which recommendations dealt with investigative subpoenas; a declaration of insanity or incompetency by a court of law as a reason for revoking or suspending a veterinarian's license, or otherwise disciplining a veterinarian; and adding "court costs" as a specific type of cost which the Board may recover in a disciplinary action. After discussion, Dr. Lofton moved to approve these recommendations, seconded by Dr. Aycock, and passed unanimously by voice vote. Mr. Mann was directed to forward the proposed amendments to the LVMA.

2. CAET Legislation: The Board reviewed the latest draft of the CAET legislation and the questions posed by Roicy Duhon, President of the Louisiana Animal Control Association, concerning the continued registration of a veterinarian at a shelter should the CAET legislation be passed and the type of chemical capture course which would be approved by the Board. The Board discussed these questions and stated that the shelter would continue to have a choice about the registration of a veterinarian or lead CAET. Dr. Guedry noted that after the legislation is passed, Rule 704(A) needs to be amended to reflect that choice. Concerning approval of chemical capture courses, the Board will review any material submitted and would work with LACA in making sure reasonable criteria are used to approve courses.

3. RVT Legislation: No changes had been made to proposed legislation previously reviewed by the Board. The proposed changes to RVT statutes pertain to fee ceilings.

C. Practice Act-Related Inquiries and Reviews

1. LLC and Professional Veterinary Medicine Corporations Act: The Board reviewed a letter prepared by Mr. Tomino regarding whether or not it is permissible for an individual who is not licensed to practice veterinary medicine to form and own an interest in a limited liability company which is created for the practice of veterinary medicine. Based on his legal research, his opinion is that a limited liability company created for the practice of veterinary medicine must be formed and owned only by individuals licensed to practice veterinary medicine in Louisiana. After discussion, Dr. Lofton moved to adopt Mr. Tomino's legal opinion as its position, seconded by Dr. Aycock, and passed unanimously by voice vote.

2. Veterinary Technician Tasks (C. Collins Inquiry)

The Board reviewed a letter which had been sent to Cindy Collins in response to her questions about tasks that a veterinary technician may perform. The Board agreed with the content of the letter. Dr. Lofton raised a concern about responding to questions from persons residing in another state. There may be issues in the other state which are not known to the Board and not presented in the person's letter. Mr. Mann noted that the normal procedure for dealing with policy or rule questions is for the executive director to confer with the Board President. If the President determines that an answer can be provided, a response letter is drafted and sent to the person asking the question. The President may also delay responding and present the question for full Board review. There was no objection to this procedure, but Dr. Lofton recommended that the Board proceed with caution in responding to questions from persons outside of the state.

D. Rule Making

1. General Update: The Board reviewed the status of proposed rule changes.

2. Adoption of Rules

a. Rule 704 - Ketamine: Dr. Lofton moved to formally adopt, with an effective date of March 20, 1999, the amendments to section 704 previously authorized for promulgation and published in a Notice of Intent in the November 20, 1998, *Louisiana Register*, seconded by Dr. Walther, and passed unanimously by voice vote.

b. Rule 710 - Veterinary Dentistry: Dr. Lofton moved to formally adopt, with an effective date of March 20, 1999, the amendments to section 710 previously authorized for promulgation and published in a Notice of Intent in the October 20,

1998, *Louisiana Register*, seconded by Dr. Walther, and passed unanimously by voice vote.

3. Consideration of New Rules

a. Rule 1015 - add LLC: The Board reviewed a proposed amendment to Rule 1015 which would make clear that in the formation of a limited liability company for the practice of veterinary medicine, no person shall be admitted as an owner who is not a member of the veterinary profession, duly licensed to practice in this state and amenable to professional discipline. Also, the proposed amendment would provide that a limited liability company created or owned by licensed veterinarians in conjunction with non-veterinarians shall not be permitted if a part of the company's function consists of the practice of veterinary medicine. After further discussion, it was determined that corporations should be added to the rule as well. Dr. Aycock moved to authorize the executive director to begin promulgation of the proposed amendment, seconded by Dr. Walther, and passed unanimously by voice vote.

b. Expired Drugs - Rule 705 (reconsideration): Based on comments received about the proposed amendment to Rule 705, the Board reconsidered the amendment it had authorized for promulgation at the January 22, 1999, meeting. After discussion, Dr. Aycock moved to amend the proposed rule to change "three months" to "six months" and to authorize the executive director to begin promulgation of the proposed rule as amended, seconded by Dr. Walther, and passed unanimously by voice vote.

c. Third Year Students and Eligibility for National Exams (Rule 303[A][4]): At the request of the LSU School of Veterinary Medicine, the Board reviewed its requirement that an examinee be currently enrolled in the fourth year of veterinary school, if not a graduate or currently enrolled in or certified by the ECFVG program. It was noted that when the North American Veterinary Licensing Exam (NAVLE) comes into effect in November 2000, the contract between the National Board Examining Committee (NBEC) and the Board will require that the exam be offered for the first time only to candidates who are within six months of graduating from veterinary school. It was also noted that the NAVLE will combine the elements of the current NBE and CCT exams. Given the pending changes, the Board found no good reason to change the requirements found in Rule 303(A)(4).

d. Recommendations Concerning Disciplinary Process: Mr. Tomino presented his recommendations concerning rules relating to the investigative and disciplinary process. He reviewed the major points of his recommendations and answered questions from the Board. Due to the length of the recommendations, the Board decided to review the written recommendations and consider the matter at the next regular meeting.

E. License Application and Renewal Issues

1. Reversal of Suspensions: Mr. Mann reported that the persons listed on Attachment A have submitted a complete license renewal package and paid all applicable fees. Dr. Lofton moved to reverse the suspensions for non-renewal of the persons indicated on Attachment A, seconded by Dr. Aycock, and passed unanimously by voice vote.

2. Refund Requests: The Board reviewed Dr. Albert LaGraize's letter of 12/11/98 requesting a refund of the late renewal fee and late C.E. fee he was required to pay. The Board considered the points raised in Dr. LaGraize's letter and noted that the continuing education symposia cited by Dr. LaGraize as satisfying his C.E. requirements had never been approved by the Board, and this lack of approval has previously been communicated to Dr. LaGraize. Dr. Lofton moved to deny Dr. LaGraize's refund request, seconded by Dr. Walther, and passed unanimously by voice vote.

VII. MISCELLANEOUS MATTERS

A. RVT Update-AAHA Program

The Board reviewed information concerning the AAHA Distance Education Institute for Veterinary Assistants. Dr. Lofton said that the program is winning widespread acceptance within the veterinary community. A question was raised as to whether the Veterinary Technology Courses which must be completed to obtain the Associate or Arts and Applied Sciences degree from Cedar Valley College can be earned through distance learning or must be completed on a college campus. Dr. Aycock said she would seek more information on this issue.

B. La. Association of Boards and Commissions

Mr. Mann reviewed the status of the fledgling Louisiana Association of Boards and Commissions. Mr. Shows, who has been assisting in the development of the association, reported that legal questions about funding the association have been raised and that a staff person for the Louisiana Senate is investigating the issue.

C. AAVSB Inquiry - Veterinary Technician Testing Committee

The Board reviewed AAVSB's call for nominations for the Veterinary Technician Testing Committee. Some possible nominations from LSU-SVM were mentioned, but the Board did not make any formal nomination.

D. Veterinary Drug Wholesaler Permits

The Board reviewed information concerning veterinary drug wholesaler permits, including specific information it had received from Melvin Elliott, DVM, who had been operating a veterinary drug wholesale business under a permit issued by the Louisiana Board of Pharmacy. Since the Board of Pharmacy ceased issuing such permits, Dr. Elliott obtained a permit from the Louisiana State Board of Wholesale Drug Distributors. The Board discussed Dr. Elliott's situation and determined that they accepted Dr. Elliott's explanation of his business operation as described in a letter received in the Board office on 2/18/99, except that Dr. Elliott must have an address for the business that is separate from the one used for his veterinary practice; his wholesale business inventory must not be stored at his veterinary practice; and the address on his permit must be changed to reflect the correct address for the wholesale business. Mr. Tomino was directed and authorized to communicate the Board's position to Dr. Elliott.

E. Other Revenue Resources

Mr. Mann reported on his conversation with Barry Ogden, Executive Director of the Louisiana Board of Dentistry, concerning that Board's history of obtaining funds from the legislature for the handling of disciplinary cases. Mr. Mann said that Mr. Ogden reported no knowledge of any special appropriation to the Board of Dentistry to assist the Board.

Mr. Tomino reported on conversations he had with the Attorney's General Office and the Chairman of the House Appropriations Committee. Mr. Tomino said the A.G.'s Office would represent the Board under contract for \$85.00 per hour. Mr. Mann noted that this was the rate paid when the A.G.'s Office provided General Counsel services to the Board. Mr. Tomino also reported that the Appropriations Chairman's position was that the Board had the legal authority to raise fees to fund its operations and that was the proper mechanism to be pursued, particularly at a time when the state general budget is facing a deficit.

F. 1999 Board Meeting Dates

The Board revised the previously approved 1999 meeting dates by changing the October 28, 1999, meeting to October 21, 1999.

VIII. EXECUTIVE SESSION

It was moved by Dr. Walther to enter executive session to discuss the personnel review of Charles Mann; licensure issues related to professional competence and physical health; investigative proceedings alleging allegations of misconduct;

litigation presently in the 19th Judicial District (Smythe, LaGraize, and Milazo cases), and for which legal advice is needed, seconded by Dr. Lofton, and passed unanimously by voice vote. Upon return to the public record by motion of Dr. Walther, seconded by Dr. Aycock, the Board took the following action:

A. Personnel Review - Charles Mann

Due to time limitations this item was deferred until the next regular meeting.

B. Licensure Issues Related to Health or Competency

There were no issues to discuss in this area.

C. Investigative Proceedings Regarding Allegations of Misconduct

There were no cases to discuss under this topic.

D. Court Proceedings Updates

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

The Board reviewed information on a settlement proposed by Dr. Smythe. The Board directed Wade Shows, Special Counsel, to proceed with appropriate legal action in this case.

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

The Board directed Wade Shows, Special Counsel, to proceed with appropriate legal action in this case.

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

The Board reviewed information on a settlement proposed by Dr. LaGraize, which had been rejected by Dr. Guedry, who has been authorized by the Board to handle litigation matters. The Board directed Wade Shows, Special Counsel, to proceed with appropriate legal action in this case.

XI. ADJOURN

The meeting was adjourned at approximately 5:00 p.m.

APPROVED BY:

Adrienne Aycock, DVM
Secretary/Treasurer