

# **BOARD OF VETERINARY MEDICAL EXAMINERS**

## **Minutes**

Date: April 24, 2008

Time: 9:00 a.m., C.S.T.

Location: Iris Room  
227 French Landing, Suite 150  
Heritage Place MetroCenter  
Nashville, TN 37243

Members Present: C. Maben Thompson, D.V.M., President  
James C. Lyons, D.V.M., Vice-President  
Bryan W. Bondurant, D.V.M.  
Marie Gordon, Consumer Member, Secretary  
Joseph Kendrick, D.V.M.

Members Absent: Janet Jones, L.V.M.T  
Tiffani Rogers, D.V.M.  
Ron Wilson, D.V.M., Ex-officio Member

Staff Present: Lisa Lampley, Board Director  
Rita Buckner-Shelton, Board Administrator  
Nicole Armstrong, Board Attorney  
Robert Taylor, D.V.M., Board Consultant/Inspector  
Elizabeth Miller, Director, Health Related Boards

Upon roll call and determination of a quorum being present, the Board meeting was called to order by Dr. Thompson at 9:02 a.m.

### **Conflict of Interest Policy**

Ms. Nicole Armstrong, Board Attorney, reviewed the conflict of interest policy and stated that a signed copy of the policy was included in each member's board book.

### **Approval of Minutes**

After reviewing the minutes from the November 7, 2007; November 14, 2007; and December 12 – 13, 2007 board meetings, Dr. Kendrick motioned to approve the minutes as presented. Dr. Lyons seconded the motion. The motion carried.

### **Board Appearance – William E. Baber, DVM**

Dr. William Baber, DVM was present and was represented by John D. Pellegrin, Esq. Pursuant to the hearing held December 13, 2007, Dr. Baber's license to practice veterinary medicine was suspended and Dr. Baber was ordered to personally appear before the Board at its April 24, 2008 meeting to demonstrate his successful completion of a Board-approved euthanasia certification course; his successful completion of five (5) hours of Board-approved continuing education in the subject area of professional ethics; and his attendance at a psychological counseling/therapy session with a qualified practitioner or therapist. Upon successful completion of these requirements during the period of suspension, Dr. Baber's license to practice veterinary medicine would then be placed on probation with conditions for a period of five (5) years. Dr. Baber was also assessed two (2) Type A Civil Penalties in the amount of one thousand dollars (\$1,000) each and was assessed costs of the proceedings.

Dr. Baber presented documentation of his completion of the American Humane Association's euthanasia certification course held on February 28-29, 2008 in Birmingham, AL; documentation of his completion of six (6) hours of continuing education in the subject area of professional ethics at the Midwest Veterinary Conference held February 21 – 24, 2008 in Columbus, Ohio; a letter from the provider attesting to his attendance at a psychological counseling session; proof of payment of assessed civil penalties in the total amount of \$2,000.00; and proof of payment of costs of the proceedings in the total amount of \$9,198.35.

Pursuant to a review of the documentation provided and questions/comments by members of the Board, Dr. Kendrick made a motion, seconded by Dr. Lyons, to place Dr. Baber's license to practice veterinary medicine on probation for a period of five (5) years with the following conditions: Dr. Baber must appear annually before the Board during probationary period; Dr. Baber is prohibited from practicing veterinary medicine in an animal control agency or animal shelter setting during the probationary period; and he is solely responsible for any costs associated with the probationary period. The motion carried.

### **Progress Report – Mary Ensminger, DVM**

As per the terms of the Order ratified by the Board on April 27, 2005, Dr. Ensminger appeared before the Board to present proof of continuing education and other requirements for maintaining licensure. It was noted that, per the terms of the Order, this was Dr. Ensminger's final required appearance before the Board.

### **Agreed Order – Bob Page, Jr., DVM**

Dr. Bob Page, Jr., DVM, was not present and was represented by Attorney John C. Lyell, II. Ms. Nicole Armstrong, Assistant General Counsel, represented the State. Dr. Lyons recused himself from the proceedings. Ms. Armstrong presented an Agreed Order to the Board for ratification. Dr. Page practiced in a veterinary facility without a premise permit from July 2000 to July 2007. Dr. Page was assessed total civil penalties in the amount of \$1,500.00. Dr. Kendrick made a motion, seconded by Ms. Gordon, to reject the Agreed Order. The motion carried.

## **Agreed Order – L. Richard Smith, DVM**

Dr. L. Richard Smith, DVM, was not present and was not represented by counsel. Mr. Christopher J. Larkin, Assistant General Counsel, represented the State. Mr. Larkin presented an Agreed Order to the Board for ratification. Dr. Smith regularly inhaled Isoflurane gas and was often under the influence of alcohol while present at his veterinary facility. Dr. Smith's impairments rendered him unable to perform the routine duties of a veterinarian. The Board rejected the original Agreed Order presented to them for ratification due to lack of reporting requirements. Mr. Larkin later presented a revised Agreed Order with the following terms: Dr. Smith's license to practice veterinary medicine in Tennessee is placed on probation; he shall have an evaluation with the Tennessee Medical Foundation (TMF) within thirty (30) days of the effective date of the order and shall follow the recommendations of the evaluation; should the evaluation recommend a contract with the TMF, his license shall continue on Probation to run concurrent with said TMF contract, and will continue until such time as he complies with each and every term of the contract, but shall be no less than five (5) years in duration; should the TMF contract be extended, so shall the probationary term of the license also be extended; should Dr. Smith not be required to sign a contract with TMF, his license shall be on probation for one (1) year; should Dr. Smith fail to obtain an evaluation within thirty (30) days of the entry of this order, or should he fail to complete any term of his contract with TMF, his veterinary license will be immediately revoked; Dr. Smith shall submit a quarterly written report from the TMF to the Board's administrative office which attests to his continued participation in, and compliance with his TMF contract; he shall appear annually before the Board for the duration of his TMF contract to keep the Board apprised of his progress and compliance with his TMF contract; shall appear before the Board at the termination of his TMF contract to request that an Order of Compliance be issued; assessed total civil penalties in the amount of \$5,000.00 plus costs of the proceedings. A motion was made by Dr. Kendrick, seconded by Dr. Lyons, to accept the revised Agreed Order. The motion carried.

## **Petition for Declaratory Order Hearing**

Pursuant to the granting of the request for the consideration of a Petition for Declaratory Order at the December 12 -13, 2007 meeting, Mr. Rodney H. Newman appeared before the Board. Mr. Newman was represented by his attorney, Mr. Ross A. Barton. Ms. Nicole Armstrong, Assistant General Counsel, represented the State. The proceedings were presided over by Administrative Law Judge Ann M. Johnson.

Mr. Newman's petition for declaratory order contended that his proposed use of an underwater treadmill at a canine exercise facility tentatively called "See Spot Swim" would not fall within the "scope of practice of veterinary medicine" as defined in Tenn. Comp. R. & Regs. 1730-1-.02(1) and (2), and, therefore, would not require the direct supervision of a licensed veterinarian as contained in Tenn. Comp. R. & Regs. 1730-1-.10(2). Mr. Newman testified on his own behalf and stated that he would not be providing any hands-on treatment or physical rehabilitation. He further testified that the use of the underwater treadmill would be for exercise only and would not involve the practices of prescribing or diagnosing.

Ms. Armstrong presented the Dept. of Health's position in this matter and stated that the definition of the practice of veterinary medicine encompasses the operation of an underwater treadmill to provide physical rehabilitation to dogs and that only licensed veterinary medical

technicians, veterinary student interns, and employees of a licensed veterinarian may provide professional services under the direct supervision of a licensed veterinarian on the premises. She further stated that licensed veterinary medical technicians may perform any task or procedure for which a veterinarian exercises direct supervision and full responsibility (except those procedures requiring professional judgment or skill); unlicensed persons may administer medication or auxiliary or supporting assistance under the responsible supervision of a veterinarian.

After discussion and questions from the Board, Dr. Lyons made a motion, seconded by Ms. Gordon, to accept the State's Proposed Declaratory Order which established the conclusions of law that the operation by Mr. Newman of an underwater treadmill to provide physical rehabilitation to dogs owned by clients of "See Spot Swim" does meet the definition of the "practice of veterinary medicine" as in T.C.A. 63-12-103(9)(A) and (E); Tenn. Comp. R. & Regs. 1730-1.02(1) and (2); and Mr. Newman could not perform such physical rehabilitation even with direct supervision as set forth in T.C.A. 63-12-133(6), 63-12-135(b); and Tenn. Comp. R. & Regs. 1730-1-10(2), 1730-3-.02(1). The motion carried.

### **Financial Report**

Upon being informed that Ms. Lisa Tittle, Director of Administrative Services, would be unable to attend the meeting as scheduled, the Board postponed the discussions regarding licensure fee increases and the option to post Board newsletters electronically until the next board meeting scheduled for August 14 – 15, 2008.

### **Discussion – Proposed Rules for the Chemical Capture of Animals**

The Board reviewed HB1168/SB0870 which allows a Certified Animal Control Agency (C.A.C.A.) to authorize the chemical capture of companion animals by certified chemical capture technicians via sedation using approved drugs and drug administering equipment without the presence of a veterinarian. The effective date of the legislation is January 1, 2009. The Board discussed the needed areas to be addressed through the promulgation of rules and the various elements to be included in the rule proposal. Ms. Armstrong and Ms. Lampley will prepare and submit a draft of proposed rules to board members for review. The Board also discussed the possibility of holding an electronic board meeting to authorize a rulemaking hearing at the August 14 – 15, 2008 board meeting.

### **Amend Position Statement - Audit of Continuing Education Hours/Requirements**

Ms. Lampley provided a summary of the results from the audit of calendar year 2005 continuing education hours which indicated that a total of thirteen (13) licensees remain non-compliant with continuing education requirements pursuant to the implementation of the Board's existing position statement. The Board was informed that at the present time, a monthly audit of five percent (5%) of licenses renewed during the month is conducted for each board profession having continuing education and/or continued competency requirements as a prerequisite for maintaining licensure. Upon review and discussion of available options, the Board moved to take the following action in regards to those licensees remaining non-compliant with continuing education requirements pursuant to implementation of the Board's existing position statement: assess a civil penalty in the amount of \$50.00 per each deficient hour of continuing education; licensee must make up double the amount of hours found to be deficient and submit proof of

completion of the required hours to the Board's administrative office. These requirements are in addition to the existing number of continuing education hours required to be obtained each calendar year. Any licensee failing to comply with this policy will be referred to the Office of General Counsel for further review and/or disciplinary action.

Upon review and discussion, the Board requested that a draft of proposed rule changes be prepared and submitted for review that would require licensees to submit proof of obtaining continuing education requirements prior to renewal of their license.

### **Discussion – American Association of Veterinary State Boards (AAVSB) Conference**

Dr. Thompson was delegated to attend the Annual AAVSB Conference scheduled for September 18 – 20, 2008 at Newport Beach, CA.

### **Licensure Applicant Interviews**

#### Gina M. May, DVM

Dr. May appeared before the Board for an oral interview/examination pursuant to her request for reinstatement of a retired license. Dr. May has not been engaged in the active practice of veterinary medicine since March, 2003. Dr. May also submitted a written request for consideration of a waiver or conditioning of any or all of the required continuing education hours. Upon satisfactorily answering questions from members of the Board, Dr. Lyons made a motion, seconded by Dr. Kendrick, to grant reinstatement of the license with the following conditioning of continuing education requirements: must complete twenty (20) extra hours of continuing education for calendar years 2008 and 2009; must complete two (2) extra hours of continuing education for calendar year 2010 (extra hours may be obtained via Internet and are in addition to the current twenty (20) hour continuing education requirement); must appear annually before the Board to submit proof of completion of continuing education requirements beginning in December, 2008. The motion carried.

#### Trisha A. Risley-Loy, CAET

The Board reviewed an application for certification as an animal euthanasia technician submitted by Trisha A. Risley-Loy. Ms. Risley-Loy answered "yes" to conviction of a felony or a misdemeanor other than a minor traffic offense. The Board had previously reviewed this file at the December 12, 2007 meeting and requested Ms. Risley-Loy's appearance before the board for an interview. Pursuant to the documentation provided and the responses received during the interview, Dr. Kendrick made a motion, seconded by Ms. Gordon, to grant the license. The motion carried.

### **Office of General Counsel (OGC) Report**

Ms. Nicole Armstrong, Advisory Attorney, reviewed the report with the Board. There is currently one set of rules under review at the Office of the Attorney General. The Office of General Counsel currently has twenty-two (22) open cases pertaining to the Tennessee Board of Veterinary Medical Examiners.

## Investigations and Disciplinary Report

Ms. Juanita Stone, Disciplinary Coordinator, Office of Investigations, reviewed the reports with the Board. There are currently twenty-three (23) open complaints in the Office of Investigations. An analysis of newly filed complaints categorized by allegation and month received and by geographical area and month received was included. The disciplinary report indicated that thirty-nine (39) individuals are currently being monitored for compliance with Board orders.

## Inspection Status Report

Dr. Robert Taylor, DVM, Board Consultant/Inspector, reviewed the inspection report. A total of one hundred thirty-seven (137) inspections were conducted during the period of December, 2007 – March, 2008.

## Director's Report

Board members were informed that Ms. Elizabeth Miller has been appointed as the new Director of Health Related Boards. Ms. Miller previously served as Senior Tax Counsel at the TN Dept. of Revenue and, prior to that, was a partner at the law firm of Blackburn and McCune, P.L.L.C. Appreciation was expressed to the Tennessee Veterinary Medical Association (TVMA) for the opportunity to participate in the 2008 Music City Veterinary Conference held January 4 – 6, 2008 in Nashville, TN. The Veterinary Technician National Examination (VTNE) was administered on January 18, 2008 to seven (7) candidates with a total of three (3) candidates passing the examination. Ms. Lampley spoke about the upcoming exam and the licensure process to the graduating students of the veterinary technology program at Chattanooga State Community College on February 20<sup>th</sup>, students at Columbia State Community College on March 11<sup>th</sup>, and students at Lincoln Memorial University on April 2<sup>nd</sup> (approximately forty (40) students total). The VTNE will be administered on June 18, 2008 in the Conference Center here at Metro Center.

Status Report of Total Active Licensees as of March 31, 2008:

Veterinarians:	1,781
Veterinary Medical Technicians:	357
Veterinary Facilities:	617
Certified Animal Euthanasia Technicians:	194
Certified Animal Control Agencies:	51

## Legislative Report

The following legislation was reviewed:

**Public Chapter 639** – Clarifies that a non-livestock animal must be tranquilized if euthanasia is performed by method of intracardial injection by hypodermic needle; expands the applicability of the “Non-Livestock Animal Humane Death Act” to all persons acting as an agent on behalf of a public or private agency, animal shelter or other facility operated for the collection, care and/or euthanasia or stray, neglected, abandoned or unwanted non-livestock animals; requires any such

facility to hold a non-livestock animal for at least three (3) full business days before euthanizing the animal except in emergency situations that require immediate euthanasia of an animal.

**HB1168/SB0870** - Allows a qualified Certified Animal Control Agency to authorize the chemical capture of companion animals by means of sedation using approved drugs and drug administering equipment; Requires chemical capture to be performed by a licensed veterinarian, a licensed veterinary medical technician, or a certified chemical capture technician.

**SB3308/HB2989** - Establishes the “Tennessee Rural Veterinary Services (TRVS)” incentive program for graduates of the University of Tennessee (UT) College of Veterinary Medicine to locate their veterinary practice in underserved rural Tennessee communities.

**SB2676/HB2803** - Creates the “Tennessee Animal Abuser Registry of 2008”.

**SB2697/HB2804** – Changes the offense of intentional killing of an animal by removing the element that the offender must have the intent to deprive the owner of the right to the animal’s life, thereby requiring only that the defendant knowingly and unlawfully kills an animal of another without the owner’s effective consent.

### **Continuing Education Course Approval**

The following requests for approval of continuing education hours were reviewed:

A request from **Butler Animal Health Supply** for approval of two (2) continuing education hours for a presentation entitled “**Therapeutic Diet Inventory Management and Purina Veterinary Diet, New Research and Formulations**” held on April 10, 2008 in Clarksville, TN.

A request from the **Five Rivers Veterinary Academy** for approval of two (2) continuing education hours for a presentation entitled “**Managing Diabetes Mellitus and Treating Hypothyroidism**” held on November 1, 2007 in Morristown, TN.

A request from **Fort Dodge Animal Health** for approval of two (2) continuing education hours for a presentation on the topic of “**Broodmare Care**” held on September 4, 2007 in Knoxville, TN.

A request from **Fort Dodge Animal Health** for approval of two (2) continuing education hours for a presentation entitled “**ProMeris: The Solution to Effective Flea and Tick Control**” at the **Knox Co. Veterinary Medical Association** meeting held on March 11, 2008 in Knoxville, TN.

A request from the **Hamilton County Veterinary Medical Association** for approval of eight (8) continuing education hours for the “**Small Animal CE Program**” held on December 2, 2007 in Chattanooga, TN.

A request from **Jackson Pet Emergency Clinic LLC** for approval of two (2) continuing education hours for a presentation entitled “**Joint Health Management: Practical Use of Nutraceuticals**” to be held on April 29, 2008 in Jackson, TN.

A request from the **Middle Tennessee Academy of Equine Practitioners** for approval of two (2) continuing education hours for a presentation entitled “**Putting the Pressure on Disease - A Review of Equine Hyperbaric Therapy**” held on March 12, 2008 in Murfreesboro, TN.

A request from the **Nashville Humane Association** for approval of continuing education hours for the following presentations:

April 4, 2008 - “**Making the Connection: Animal and Human Violence**” –  
Nashville, TN – 2.0 hours

April 5, 2008 - “**Making the Connection: Animal and Human Violence**” –  
Nashville, TN – 3.0 hours

A request from **Nutramax Laboratories, Inc.** for approval of two (2) continuing education hours for a presentation entitled “**Joint Health Management: Practical Use of Nutraceuticals**” held on March 18, 2008 in Chattanooga, TN and on March 19, 2008 in Knoxville, TN.

A request has been received from **Pfizer Animal Health** for approval of one (1) continuing education hour for a presentation entitled “**SLENTROL Use in Practice: Ideas for Implementation**” to be held on May 6, 2008 in Smyrna, TN.

A request has been received from **Gayle V. Tate, DVM** for approval of continuing education hours for volunteer work at the **Iditarod 2007** during the period of March 3 – 17, 2007 in Anchorage, Alaska.

A motion was made by Dr. Lyons, seconded by Dr. Kendrick, to approve up to five (5) hours of continuing education credit for Dr. Tate’s volunteer work at the Iditarod 2007. The Board specified that this approval was applicable to this request only. The motion carried. A motion was made by Dr. Kendrick, seconded by Dr. Bondurant, to approve all other courses. The motion carried.

### **File Review/Ratification**

The Board reviewed a request for temporary licensure submitted by **Gregory D. Shaw, Jr.** The application listed Ralph William Pope, D.V.M. as the Supervising Veterinarian. The Board reviewed correspondence from Dr. Pope which stated that he would only be present in the facility on the days of Monday, Friday, and Saturday. Upon review and discussion, Dr. Lyons made a motion, seconded by Dr. Kendrick, to deny the application. The motion carried.

Upon review, the Board moved to ratify all newly licensed/certified or reinstated veterinarians, veterinary medical technicians, veterinary facilities, certified animal euthanasia technicians, and certified animal control agencies and all applicant files closed pursuant to rule requirements.

### **Correspondence**

The Board reviewed all correspondence and requested that appropriate notification be given of any action taken or any comments made including approval of Dr. Dottie Diveley, D.V.M. as an

instructor of the board-approved euthanasia course entitled “Techniques in Humane Euthanasia of Animals” currently being taught by Dr. Lisa Chassy, DVM.

**Review – Chancery Court Memorandum and Order re: Bonnie Cady**

Ms. Nicole Armstrong, Board Attorney, reviewed the Order filed March 24, 2008 in Davidson Co. Chancery Court pursuant to Bonnie Cady’s appeal of two decisions by the Tennessee Board of Veterinary Medical Examiners regarding the unlicensed practice of veterinary medicine and the scope of practice of veterinary medicine as defined in Board Rule 1730-1-.02(1).

**Adjournment**

There being no further business to discuss, Dr. Lyons made a motion, seconded by Dr. Kendrick, to adjourn. The motion carried and the meeting was adjourned at 4:01 p.m.

**These minutes were ratified at the meeting held on December 11, 2008.**