

# **BOARD OF VETERINARY MEDICAL EXAMINERS**

## **Minutes**

Date: December 12 - 13, 2007

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  
Janet Jones, L.V.M.T  
Marie Gordon, Consumer Member, Secretary  
Bryan W. Bondurant, D.V.M.  
Joseph Kendrick, D.V.M.

Members Absent: 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

Upon roll call and determination of a quorum being present, the Board meeting was called to order by Dr. Thompson at 9:14 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.

### **Welcome New Board Members**

Dr. Thompson welcomed Dr. Bryan W. Bondurant, DVM and Dr. Joseph Kendrick, DVM to the Board. Dr. Bondurant replaced Dr. Mary Welch, DVM and Dr. Kendrick replaced Dr. Tom Edmonds, DVM. Their terms expire July 31, 2012.

## **Approval of Minutes**

After reviewing the minutes from the August 22, 2007 board meeting, Ms. Jones motioned to approve the minutes as presented. Ms. Gordon seconded the motion. The motion carried.

## **Licensure Applicant Interviews**

### Adrian Anh-Tvan Dest, CAET

The Board reviewed an application for licensure as a certified animal euthanasia technician submitted by Adrian Anh-Tvan Dest. Mr. Dest answered “yes” to conviction of a felony or a misdemeanor other than a minor traffic offense. Mr. Dest was present to answer any questions from the Board. Pursuant to a review of the documentation provided by the applicant, Dr. Lyons made a motion, seconded by Dr. Bondurant, to grant the license. The motion carried.

### **Progress Report – Kevin H. Cox, DVM**

As per the terms of the Order ratified by the Board on January 31, 2007, Dr. Cox appeared before the Board to provide a status report. Dr. Cox informed the Board that Co-Op Vet Health, Inc. was not currently in operation and that he was still employed as a consultant for the Tennessee Farmer’s Co-op.

### **Progress Report – Timothy Dalpiaz, DVM**

As per the terms of the Order ratified by the Board on April 19, 2006, Dr. Dalpiaz appeared before the Board to present proof of continuing education and other requirements for maintaining licensure.

### **Progress Report – Sharon Folsom, DVM**

As per the terms of the Order ratified by the Board on December 13, 2006, Dr. Folsom appeared before the Board to present proof of completion of continuing education hours and other requirements for maintaining licensure.

### **Progress Report – Richard D. Hinson II, DVM**

As per the terms of the Order ratified by the Board on August 24, 2005, Dr. Hinson appeared before the Board to present proof of continuing education and other requirements for maintaining licensure.

### **Progress Report – Mark Roberts, DVM**

As per the terms of the Order ratified by the Board on April 19, 2006, Dr. Roberts appeared before the Board to present proof of continuing education and other requirements for maintaining licensure.

### **Progress Report – Merlin Shuck, DVM**

As per the terms of the Order ratified by the Board on December 8, 2005, Dr. Shuck appeared before the Board to present proof of continuing education and other requirements for maintaining licensure.

### **Progress Report – Jerry Truitt, DVM**

As per the terms of the Order ratified by the Board on December 13, 2006, Dr. Truitt appeared before the Board to present proof of completion of continuing education hours, staff training, and other requirements for maintaining licensure.

### **Petition for Stay of Order – Pet Care Warehouse of Tennessee, LLC**

Ms. Nicole Armstrong, Board Attorney, presented a Petition for Stay of Order received from Pet Care Warehouse of Tennessee, LLC. The Respondent was not present but was represented by Mr. Brent Nolan, Attorney, via a telephone conference call. Pet Care Warehouse of Tennessee, LLC was found guilty of unlicensed practice for microchipping privately-owned animals and assessed civil penalties and costs of the proceedings at the August 22, 2007 board meeting. Mr. Nolan argued in support of the stay based on its assessment that it would prevail on appeal to chancery court. Ms. Armstrong stated that the State was opposed to the stay of the order because Mr. Nolan did not present any substantive basis for requesting the stay. Ms. Gordon made a motion, seconded by Dr. Lyons, to deny the stay. The motion carried.

### **Petition for Declaratory Order**

Ms. Nicole Armstrong, Board Attorney, presented a request from Mr. Rodney H. Newman to grant a hearing for the consideration of a petition for a Declaratory Order regarding statutes/rules pertaining to the scope of practice of veterinary medicine as it applies to the operation of a canine underwater treadmill exercise facility. Dr. Kendrick made a motion, seconded by Dr. Bondurant, to grant a hearing for the petition. The motion carried. The hearing will take place at the April 24 – 25, 2008 meeting.

### **Discussion/Presentation – Representative Janis Sontany**

Pursuant to their appearance at the August 22, 2007 board meeting, Rep. Sontany and Ms. Judy Laudebache, Director, Metro Animal Control Services, appeared before the Board to review/discuss the changes made to proposed legislation HB1168/SB0870 and to request the Board's support of the proposed legislation. This legislation would allow a Certified Animal Control Agency (C.A.C.A.) to authorize the chemical capture of companion animals by means of sedation using approved drugs and drug administering equipment without the presence of a veterinarian. The Board again expressed their recognition and understanding of the need, at times, for the chemical capture of companion animals, and their feeling that the practice presented a substantial risk of harm to both the public and companion animals. A discussion was held regarding the protocol and drug(s) to be used for chemical capture and the responsibilities of the animal control agency and the supervising veterinarian. Dr. Matt Povlovich, DVM, Legislative Liason, Tennessee Veterinary Medical Association (TVMA) and Ms. Meagan Frazier, Esq., TVMA Lobbyist, were also present and provided input regarding the amendments

to the proposed legislation and the TVMA's support of the proposed legislation. The Board expressed their appreciation to Rep. Sontany for allowing them the opportunity to review and discuss the proposed legislation. A motion was then made and seconded to provide support of the proposed legislation. The motion carried. Rep. Sontany thanked the board members for their input and support. Upon completion, Ms. Frazier will provide the Board a copy of the final draft of the amendments to the bill.

### **Amend Position Statement – Audit of Calendar Year 2005 Continuing Education Hours**

Ms. Lampley informed the Board that the Division of Health Related Boards would be conducting an audit of continuing education hours of five (5) percent of licenses renewed each month for all professions having continuing education as a requirement for maintaining licensure. A discussion was held regarding documentation of continuing education requirements being submitted by the licensee annually or at the time of licensure renewal. The Board requested that Ms. Lampley find out what options would be available in regards to the submission of documentation of continuing education. A motion was then made by Dr. Lyons, seconded by Dr. Kendrick, to delete the specific calendar year being audited from the position statement regarding the audit of calendar year 2005 continuing education hours adopted by the Board on August 22, 2007 in order that the amended position statement would be applicable to any conducted audit of continuing education hours. The motion carried.

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

Ms. Nicole Armstrong, Board 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 fourteen (14) 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. The report indicated there are currently thirty-eight (38) 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 nineteen (19) individuals are currently being monitored for compliance with Board orders.

### **Inspection Status Report**

Dr. Robert Taylor, Board Consultant/Inspector, reviewed the inspection report. A total of seventy (70) inspections were conducted during the period of August, 2007 – November, 2007.

### **Director's Report**

Welcome to Dr. Bryan Bondurant, DVM (replacing Dr. Mary Welch, DVM) and to Dr. Joseph Kendrick, DVM (replacing Dr. Tom Edmonds, DVM). Board members were informed that Ms. Janet Jones, LVMT, had been reappointed to the Board. Their term expiration date is July 31, 2012. Appreciation was expressed to Drs. Welch and Edmonds for their hard work and

contributions while serving as members of the Board. An invitation was received from the Tennessee Veterinary Medical Association (TVMA) to participate in the upcoming Music City Veterinary Conference scheduled to be held January 4 – 6, 2008 at the Opryland Hotel in Nashville, TN. Ms. Lampley invited board members who would be in attendance at the conference to join her, if possible, at the table provided for the Board. It was noted that the opportunity to participate in the conference was greatly appreciated and looked forward to each year.

Report of Total Active Licensees as of November 30, 2007:

Veterinarians:	1,769
Veterinary Medical Technicians:	350
Veterinary Facilities:	613
Certified Animal Euthanasia Technicians:	189
Certified Animal Control Agencies:	49

It was noted that Dr. Ron Wilson remains in thoughts and updates will continue to be provided as received.

### **Financial Report**

A draft copy of the financial report was available for review. The report reflected a -\$19,573.58 Current Year Net at June 30, 2007 and a \$-149,783.36 Cumulative Carryover at June 30, 2007. The Board requested that Lisa Tittle, Director of Fiscal Services, be in attendance at the next scheduled board meeting to review the report and provide a detailed explanation of increased expenditures.

### **Continuing Education Course Approval**

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

A request from **Boehringer Ingelheim Vetmedica** for approval of two (2) continuing education hours for a presentation entitled “**Vetmedin, the Introduction of a New Cardiology Drug**” held on September 18, 2007 in Nashville, TN.

A request from **Butler Animal Health Supply LLC** for approval of two (2) continuing education hours for a presentation entitled “**Vetmedin, the Introduction of a New Cardiology Drug**” held on September 19, 2007 in Clarksville, TN.

A request from **Merial** for approval of two (2) continuing education hours for a presentation entitled “**Vaccines and Vaccinations 2007: Building the Protocol, Implementing the Guidelines**” held on June 19, 2007 in Chattanooga, TN.

A request from **Pet Wellness Clinic, Inc.** for approval of two (2) continuing education hours for a presentation entitled “**Heartworms: Revisiting the Disease and Treatment**” held on October 4, 2007 in Jackson, TN.

A request from **Pfizer Animal Health** for approval of continuing education hours for the following presentations:

November 13, 2007 - “**What’s Your Diagnosis, Case Challenge**”  
**MED34** – Antioch, TN – 2.0 hours

November 13, 2007 – “**Diagnosing and Managing the Proteinuric Patient**” **MED32**, and “**The Yellow Cat**” **MED16A** – Nashville, TN – 2.0 hours

November 15, 2007 – “**Update on Internal Feline Parasites and their Prevention**” – Nashville, TN – 2.0 hour

A request from the **Tennessee Cattlemen’s Association** for approval of six (6) continuing education hours for the **Tennessee Cattlemen’s Annual Convention** scheduled to be held January 24 – 26, 2008 in Pigeon Forge, TN.

A motion was made by Dr. Bondurant, seconded by Dr. Lyons, to approve the courses. The motion carried.

### **File Review/Ratification**

The Board reviewed an application for licensure as a certified animal euthanasia technician submitted by **Roshanda M. Johnson**. Ms. Johnson answered “yes” to conviction of a felony or a misdemeanor other than a minor traffic offense. The Board had previously reviewed the file on August 22, 2007 and requested Ms. Johnson’s appearance before the board for an interview; however, Ms. Johnson was not present at the meeting. Dr. Lyons made a motion, seconded by Ms. Jones, to deny the application based on the convictions. The motion carried.

The Board reviewed an application for licensure as a certified 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. Dr. Lyons made a motion, seconded by Dr. Bondurant, to request Ms. Risley-Loy’s appearance for an interview at the next scheduled meeting. The motion carried.

The Board reviewed an application for licensure reinstatement as a veterinarian submitted by **Andrea S. Tate, DVM**. Dr. Tate answered “yes” to disciplinary action in another state. Upon review and discussion, Ms. Jones made a motion, seconded by Ms. Gordon, to approve the application. The motion carried.

The Board reviewed an application for licensure by reciprocity as a veterinarian submitted by **Marla S. Washington, DVM**. Dr. Washington answered “yes” to disciplinary action in another state. Dr. Washington has not engaged in active veterinary practice for the previous five (5) years immediately preceding submission of the application for an average of thirty (30) hours per week as per Tenn. Comp. R. & Regs. 1730-1-04(2)(c). Upon review and discussion, Dr. Kendrick made a motion, seconded by Dr. Lyons, 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.

### **Correspondence**

The Board reviewed correspondence received from **Lisa Mabry @ White Oak Farm** requesting a refund in the total amount of \$1,500.00 on behalf of Sammy Sanders for civil penalties assessed against Mr. Sanders for unlicensed practice in a Consent Order ratified by the Board at its December 8, 2005 meeting. Upon review of 2006 Public Chapter 716 and Board rule, and upon advice of Ms. Armstrong, the Board voted to deny the request for a refund based on the following:

- No funds were specifically appropriated by the General Appropriations Act as required by 2006 Public Chapter 716; and
- The Consent Order, signed by Mr. Sanders on November 14, 2005, assessed two (2) Type A civil penalties in the amount of \$750 each, one for each year Mr. Sanders engaged in unlicensed practice in violation of the Tennessee Veterinary Practice Act (T. C. A. 63-12-101 *et seq.*). The civil penalties were not allocated in relation to the specific acts of veterinary medicine that Mr. Sanders performed, which included artificially inseminating walking horses as well as administering antibiotics, Prostin, HCG, and vaccinations to horses.

The Board reviewed all other correspondence and requested that appropriate notification be given of any action taken or any comments made.

The board recessed at 1:30 p.m.

### **December 13, 2007**

The meeting was called to order by Dr. Thompson at 9:25 a.m.

Dr. Tiffani Rogers, DVM was in attendance at the meeting on the second day.

### **Hearing – William E. Baber, DVM**

Dr. William Baber, DVM was present and was represented by John D. Pellegrin, Esq. Ms. Nicole Armstrong, Assistant General Counsel, represented the State. The proceedings were presided over by Administrative Law Judge Margaret R. Robertson. Dr. Bryan Bondurant recused himself from the hearing. Dr. Thompson and Ms. Gordon disclosed for the record they had received *ex parte* communication in this matter but each stated they felt they could be fair and impartial and were not recused from the hearing. Dr. Baber was charged with violations of the Board's laws and rules related to failing to euthanize dogs and cats in accordance with the methods required by the Non-Livestock Animal Humane Death Act (T.C.A. 44-17-301 *et seq.*).

and failing to euthanize dogs and cats in accordance with the standards of practice for veterinary medicine in the state of Tennessee.

Following opening statements from both sides, the state presented testimony from Mr. Kenneth Jones, Investigator for Health Related Boards, regarding his investigation and interviews with the Respondent. Mr. Jones testified that Dr. Baber had stated to him that euthanasia was not performed in a room separated from the other dogs and cats at the Sumner County Rabies and Animal Control Agency; that he did not weigh the animals prior to performing euthanasia; that the animals were not sedated prior to euthanasia by method of intracardial injection; and that he verified death by looking at the animal. The board reviewed the euthanasia logs obtained by Mr. Jones from the Sumner County Rabies and Animal Control Agency. Mr. Jones also testified that he had met with Mr. Mitch Davis, Private Investigator, and reviewed and obtained copies of the video filmed at the animal control agency.

Mr. Terry Wayne Hodges, a former trustee of the Sumner County Jail, testified on behalf of the State regarding Dr. Baber's performance of euthanasia at Sumner County Rabies and Animal Control Agency. Mr. Hodges stated that, while a trustee of the Sumner Co. Jail, he worked at the Sumner County Rabies and Animal Control Agency approximately seven days per week. Mr. Hodges testified that Dr. Baber did not weigh the animals prior to euthanizing; that other animals were present while euthanasia was being performed; and that euthanasia was performed by Dr. Baber via an injection into the chest area. He stated that dogs were lifted up and held by the scruff of the neck for the administration of the injection and that cats and kittens were restrained via the use of a catchpole and/or foot restraints for the administration of the injection. Mr. Hodges further testified that death was not immediate after the injection and that Dr. Baber did not verify or ensure that the death of each dog and cat was verified. The state presented a video filmed by Mr. Hodges which contained footage of the Respondent performing euthanasia at the animal control agency.

Dr. Michelle Williams, DVM, testified on behalf of the State, via telephone conference, as an expert witness on the methods of euthanasia by injection. Dr. Williams testified that she had viewed the video containing footage of the performance of euthanasia by Dr. Baber at the animal control agency. She stated the video revealed that euthanasia was not performed in a separate room; that animals were not weighed prior to being euthanized; that the method of least restraint was not utilized; that the animals shown on the video did not meet the qualifications for euthanasia via intracardial injection; that the needles were not aspirated prior to injection; that the injections were not administered properly; and that there was no verification of death of the animals. Dr. Williams testified that it was her expert opinion that the methods used in the performance of euthanasia by Dr. Baber did violate the standards of practice for veterinary medicine in Tennessee.

Testimony was then provided by William E. Baber, DVM in which he testified that the animals shown in the video were not weighed or sedated prior to euthanasia and there was no aspiration of the needle. He stated that euthanasia at the animal control agency was performed in a room on a desk for the vast majority of the dogs and that the euthanasia of cats was performed in a general area. He further stated that the quality of help he received at the shelter was varied and that the individuals assisting him at the shelter were not employed by him. Dr. Baber's testimony concluded the State's case.

Expert testimony was provided on behalf of the Respondent by Dr. Kevin D. Brummett, DVM. He testified that he very rarely performed euthanasia via method of intracardial injection and that euthanasia via intravenous injection was the preferred method. Dr. Brummett testified it was his expert opinion that failing to weigh an animal prior to the performance of euthanasia was not a violation of the standard of care for veterinary medicine in Tennessee. He further stated that he was unaware of the Non-Livestock Animal Humane Death Act (T.C.A. 44-17-301 *et seq.*)

Testimony was presented on the Respondent's behalf from Mr. Johnny Hayes, Consultant, who testified to the personal character of Dr. Baber.

Expert testimony, on behalf of the Respondent, was provided via telephone conference by Dr. John Rucker, DVM, in which he stated that he was unaware of the provisions contained in the Non-Livestock Animal Humane Death Act (T.C.A. 44-17-301 *et seq.*) and that euthanasia via intracardial injection was an appropriate and common method of euthanasia. He further stated that scales to weigh an animal were not always necessary. Dr. Rucker testified that in his expert opinion it was not a violation of the standards of care to not weigh an animal prior to performing euthanasia and it was not a violation of the standards of care to not sedate an animal prior to euthanasia via method of intracardial injection.

Dr. William Baber then testified on his own behalf regarding the performance of euthanasia at the Sumner Co. Rabies and Animal Control Agency. He stated that in August, 2005 he began working two (2) days per week at the animal control agency and then increased to three (3) days per week with an average of 200 – 400 animals per month being euthanized. He further stated that he was no longer employed at the shelter due to the investigation surrounding this hearing. Dr. Baber testified that the majority of euthanasia of animals was performed via method of intravenous injection. Dr. Baber testified that the scales at the animal control agency were inoperable and that he was capable of looking at an animal and estimating the weight of the animal. He further stated that the animals were not always weighed prior to being euthanized. Dr. Baber testified that he would sometimes take animals from the shelter and provide veterinary services at his clinic in order to help find homes for the animals. Dr. Baber stated that his work at the Sumner Co. Rabies and Animal Control Agency was very stressful. He further stated that he did not go into the practice of veterinary medicine for the purpose of causing harm and that no one likes to euthanize animals. Dr. Baber then testified to the personal and professional impact resulting from the recent activities concerning his license to practice as a veterinarian in the state of Tennessee. The testimony of Dr. Baber concluded the evidence to be presented in this case. Closing arguments were then made by both sides.

Upon deliberation, the Board found that Dr. Baber violated the Board's laws and rules by failing to euthanize dogs and cats in accordance with the provisions of the Non-Livestock Animal Humane Death Act (Tenn. Code Ann. 44-17-301 *et seq.*) and in accordance with the standards of practice for veterinary medicine in the state of Tennessee by the following acts: euthanasia not performed in a separate room; intracardial injections administered to animals that were not heavily sedated, anesthetized or comatose; necessary skill and care not exercised in the administration of injections as evidenced by the selection of injection sites and by there being no needle aspiration prior to injection; no verification of death of each animal; and falsification of euthanasia logs by falsely recording weight of each animal, method of euthanasia, dosage of sodium pentobarbital, and verification of death. The Board, therefore, found him guilty of fraud, deception, misrepresentation, dishonest or illegal practices in or connected with the practice of

veterinary medicine; ignorance, negligence or incompetence in the course of veterinary medical practice; conduct reflecting unfavorably upon the profession of veterinary medicine; and of violating provisions of the Non-Livestock Animal Humane Death Act codified at T.C.A. 44-17-301 et seq. while performing euthanasia. Dr. Kendrick made a motion, seconded by Dr. Lyons, to suspend the license of Dr. Baber to practice veterinary medicine in Tennessee until April 24, 2008, at which time Dr. Baber must personally appear before the Board and present proof of his successful completion of a Board-approved euthanasia certification course; successful completion of five (5) hours of Board-approved continuing education in the subject area of professional ethics; and proof of his attendance at a psychological counseling/therapy session with a qualified practitioner or therapist. Upon successful completion of the above requirements, Dr. Baber's license will be placed on probation for a period of five (5) years with conditions: Dr. Baber must appear annually before the board during probationary period; is prohibited from practicing veterinary medicine in an animal control agency or animal shelter setting during the probationary period; and is solely responsible for any costs associated with the probationary period. Total civil penalties in the amount of \$2,000.00 plus costs of the proceedings were also assessed. The motion carried.

### **Adjournment**

There being no further business, the Board moved to adjourn at 5:35 p.m.

**These minutes were ratified at the meeting held on April 24, 2008.**