

# BOARD OF VETERINARY MEDICAL EXAMINERS

## Minutes

Date: August 22, 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: Mary Welch, D.V.M., President  
C. Maben Thompson, D.V.M., Vice-President  
Thomas Edmonds, D.V.M., Secretary  
Janet Jones, L.V.M.T  
Tiffani Rogers, D.V.M.  
Marie Gordon, Consumer Member

Members Absent: James C. Lyons, DVM  
Ron Wilson, D.V.M., Ex-officio Member

Staff Present: Lisa Lampley, Board Director  
Rita Buckner-Shelton, Board Administrator  
Nicole Armstrong, Advisory 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. Welch at 9:15 a.m.

Ms. Lampley introduced Mr. Matthew Scanlan, Special Assistant to Commissioner Cooper, to the Board. Mr. Scanlan made a few brief remarks and informed board members of his willingness and availability to discuss and/or address any concerns they might have.

### **Conflict of Interest Policy**

Ms. Nicole Armstrong, Advisory 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 April 18-19, 2007 board meeting, Dr. Thompson motioned to approve the minutes as presented. Dr. Rogers seconded the motion. The motion carried.

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

Rep. Sontany and Ms. Judy Laudebache, Director, Metro Animal Control Services, appeared before the Board to discuss proposed legislation HB1168/SB0870. 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. Rep. Sontany and Ms. Laudebache provided a brief history on Metro Animal Control Services and the need for this legislation. Ms. Laudebache discussed the required training for animal control staff to become certified to use chemical capture and the equipment available for use in chemical capture. Previously, a letter on behalf of the members of the Board had been sent to Rep. Sontany stating that while the Board recognizes and understands the need, at times, for the chemical capture of companion animals by animal control officers or other appropriately trained individuals, they also feel that the practice presents a substantial risk of harm to both the public and companion animals: potential risk of human abuse of the drugs used for chemical capture; the potential risk of serious injury to the public from equipment used in chemical capture and to the individual performing the chemical capture; and the potential risk of fatal reaction to the companion animal from the sedation drug. A discussion was held on the type/schedule of the drug(s) to be used for chemical capture and concerns about the secure storage of the drug(s). Dr. Matt Povlovich, DVM, Legislative Liaison, Tennessee Veterinary Medical Association (TVMA) provided input regarding the concerns of the TVMA about the drug(s) to be used for chemical capture, the criteria to be met by an entity requesting authorization for the use of chemical capture and the need for regulation by the Board of Veterinary Medical Examiners. Rep. Sontany and Ms. Lauderbache expressed their willingness to work with the Board on this matter and to meet any requirements that the Board feels is necessary to protect the public and the animals. Rep. Sontany and Ms. Megan Frazier, TVMA Lobbyist, reviewed the issues to be addressed in the legislation. Ms. Frazier will prepare a draft of the proposed legislation to be presented for review at the next board meeting. Rep. Sontany thanked the Board for their time and attention in this matter.

## **Licensure Applicant Interviews**

### William T. Kidd, CAET

The Board reviewed an application for licensure as a certified animal euthanasia technician submitted by William T. Kidd. Mr. Kidd 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 April 19, 2007 meeting and requested Mr. Kidd’s appearance before the board for an interview. Pursuant to the documentation provided and the responses received during the interview, Dr. Thompson made a motion, seconded by Ms. Gordon, to grant the license. The motion carried.

### Frank Lightfoot, Jr., CAET

The Board reviewed an application for licensure as a certified animal euthanasia technician submitted by Frank Lightfoot, Jr. Mr. Lightfoot was present to answer any questions from the Board. Pursuant to a review of the documentation provided by the applicant, Dr. Thompson made a motion, seconded by Ms. Jones, to grant the license. The motion carried.

Ralph C. Mickens, CAET

The Board reviewed an application for licensure as a certified animal euthanasia technician submitted by Ralph C. Mickens. Mr. Mickens was present to answer any questions from members of the Board. Pursuant to a review of the documentation provided by the applicant, Dr. Edmonds made a motion, seconded by Dr. Thompson, to grant the license. The motion carried.

Demetria L. Hogan, CAET

The Board reviewed an application for licensure as a certified animal euthanasia technician submitted by Demetria Hogan. Ms. Hogan was present to answer any questions. Pursuant to a review of the documentation provided and responses received in answer to questions by members of the Board, Dr. Rogers made a motion, seconded by Dr. Edmonds, to grant the license. The motion carried.

**Progress Report – Philip 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.

**Progress Report – Ellis Hodgson, DVM**

As per the terms of the Consent Order ratified by the Board on December 13, 2006, Dr. Hodgson appeared before the Board to present proof of continuing education; an advocacy report from the Tennessee Medical Foundation; and other requirements for maintaining licensure. A motion was made and seconded to request that the Disciplinary Coordinator review the documentation presented to determine if Dr. Hodgson is in compliance with the terms of the Consent Order in regards to the operation/ownership of the practice and the provisions for indirect supervision.

**Contested Case – Pet Care Warehouse of TN LLC, Unlicensed**

The respondent was not present and was represented by Mr. J. Brent Nolan, Attorney. Ms. Brandi Bozarth, Assistant General Counsel, represented the State. The proceedings were presided over by Administrative Law Judge Betty Springfield. Pet Care Warehouse of TN LLC was charged with inserting microchips in privately-owned animals and charging a fee for the service. The state presented testimony, via telephone, from Ms. Millie Champeau, Investigator for Health Related Boards, regarding her investigation and interviews with the Respondent. Mr. Brent Nolan, attorney for Pet Care Warehouse, presented testimony, via telephone, from Mr. Jerry Moss, LLC Member, regarding the microchipping services provided and any charges for those services. Closing arguments were then presented by both sides.

Upon deliberation, the Board found the Respondent guilty of practicing veterinary medicine without a license. A motion was made by Dr. Thompson, seconded by Ms. Gordon, to issue a cease and desist order and assess total civil penalties in the amount of \$10,000.00 plus costs of the proceedings. The motion failed. A motion was then made by Dr. Edmonds, seconded by Dr.

Rogers, to issue a cease and desist order and assess total civil penalties in the amount of \$7,000.00 plus costs of the proceedings. The motion carried with Dr. Thompson and Ms. Gordon opposed.

### **Contested Case – Abby’s Bed & Biskit, Unlicensed**

The respondent was present and was represented by Mr. Curtis M. Lincoln, Attorney. Ms. Brandi Bozarth, Assistant General Counsel, represented the State. The proceedings were presided over by Administrative Law Judge Betty Springfield. Ms. Tama Abernathy and Mr. Gary Abernathy, d/b/a Abby’s Bed and Biskit, were charged with providing Bordetella vaccinations and charging a fee for the service. The state presented testimony from Ms. Janice Jacobs, Investigator for Health Related Boards, regarding her investigation and interviews with the Respondent. Ms. Tama Abernathy and Mr. Gary Abernathy testified on their own behalf. Closing arguments were then presented by both sides.

Upon deliberation, the Board found the Respondent guilty of practicing veterinary medicine without a license. A motion was made by Dr. Thompson, seconded by Ms. Jones, to issue a cease and desist order and assess total civil penalties in the amount of \$2,000.00 plus costs of the proceedings. The motion carried.

### **Petition for Reconsideration – James W. Robinson, DVM**

Ms. Brandi Bozarth, Assistant General Counsel, presented for consideration by the Board, a petition for reconsideration submitted by James W. Robinson, DVM. Dr. Robinson was not present. Dr. Welch recused herself from the proceedings. A motion to deny the petition for reconsideration was made by Ms. Gordon. Dr. Rogers seconded the motion. The motion carried.

### **Agreed Order – Julia Sexton, Unlicensed**

Ms. Julia Sexton, Unlicensed, was not present and was not represented by counsel. Ms. Brandi Bozarth, Assistant General Counsel, presented an Agreed Order to the Board for ratification. Ms. Sexton provided distemper vaccines for a fee to animals not owned by her. Ms. Sexton was ordered to cease and desist practicing veterinary medicine and was assessed total civil penalties in the amount of \$1,000.00 and costs of the proceedings. Dr. Edmonds made a motion, seconded by Ms. Jones, to accept the Agreed Order. The motion carried.

### **Agreed Order – Woody Wyatt, Unlicensed**

Mr. Woody Wyatt, Unlicensed, was not present and was not represented by counsel. Ms. Brandi Bozarth, Assistant General Counsel, presented an Agreed Order to the Board for ratification. Mr. Wyatt regularly provides vaccinations for a fee at a booth operated at the Claiborne County Flea Market in Tazewell, TN. Mr. Wyatt was ordered to cease and desist practicing veterinary medicine and was assessed total civil penalties in the amount of \$1,000.00 and costs of the proceedings. Dr. Edmonds made a motion, seconded by Dr. Thompson, to accept the Agreed Order. The motion carried.

### **Consent Order –Deana A. Hayes, DVM**

Dr. Deana Hayes, DVM, was not present and was not represented by counsel. Ms. Brandi Bozarth, Assistant General Counsel, presented a Consent Order to the Board for ratification. Dr. Hayes operated Creekside Animal Hospital in Sweetwater, TN without a premise permit for a period of thirty-two (32) months. Dr. Hayes was assessed total civil penalties in the amount of \$1,600.00 and costs of the proceedings. Dr. Edmonds made a motion, seconded by Ms. Gordon, to accept the Consent Order. The motion carried.

### **Consent Order – John M. Byrd, DVM**

Dr. John Byrd, DVM, was not present and was not represented by counsel. Ms. Brandi Bozarth, Assistant General Counsel, presented a Consent Order to the Board for ratification. Dr. Edmonds recused himself. Dr. Byrd received a conviction for driving while impaired in May, 2003 and failed to report the conviction on his licensure renewal form. Dr. Byrd is currently under treatment for alcohol addiction. Dr. Byrd's license to practice veterinary medicine was placed on probation for three (3) years with the following conditions: must continue to attend therapy with his current treating psychiatrist and psychologist, and comply with all treatment recommendations and submit, within thirty (30) days of the filing of this Order, reports from these treatment providers affirming the competency to practice veterinary medicine; must submit quarterly reports from treating psychiatrist and psychologist attesting to competency and compliance with all treatment recommendations; must cause treating psychiatrist and psychologist to immediately submit written reports to the Board's administrative office if released from therapy; must notify Board's administrative office of current employer's name, address and phone number and report any changes to employment within thirty (30) days; must submit quarterly reports from employer attesting to satisfactory work performance and competency to practice veterinary medicine; must practice veterinary medicine only under the direct supervision of another veterinarian for the first year of the probationary period; may practice under the indirect supervision of another veterinarian for the final two (2) years of the probationary period; may not operate an independent veterinary practice during the probationary period; and must personally appear before the Board at the next scheduled Board meeting following the conclusion of the probationary period to request an Order of Compliance. Costs of the proceedings were also assessed. Dr. Thompson made a motion, seconded by Dr. Rogers, to accept the Consent Order. The motion carried.

Upon completion of disciplinary matters, Ms. Bozarth informed the Board that she would be leaving state government employment effective August 24, 2007. She praised the board's professionalism and stated her enjoyment in working with them. The Board expressed their appreciation to Ms. Bozarth for all her hard work and excellent performance of duties and wished her well in future endeavors.

### **Committee Report/Discussion – Licensed Veterinary Medical Technicians/Delegated Tasks**

A taskforce committee was formed at the April 18-19, 2007 board meeting to research the procedures performed by licensed veterinary medical technicians. The following participated on

the committee: Janet Jones, LVMT, Committee Chairperson; Nicole Armstrong, Advisory Attorney; and Lisa Lampley, Board Director. The committee reviewed and discussed information from other states on the tasks which, per their rules/statutes, could be delegated to veterinary medical technicians and the required level of supervision for the delegated tasks. Most other states provide for the direct supervision and indirect supervision of delegated tasks performed by veterinary medical technicians. Information gathered from the National Association of Veterinary Technicians in America (NAVTA) and from the Tennessee Veterinary Technician Association (TVTA) regarding the tasks to be performed only by a licensed veterinary medical technician was also reviewed and discussed. The utilization of veterinary medical technicians by the employing veterinarian and the available number of veterinary medical technicians across the state was also discussed. Ms. Armstrong advised the board that any proposed rule amendments regarding tasks to be performed by veterinary medical technicians would be limited to existing statutory language and to those items for which statutory authority has been provided to the Board. After discussion and review, a motion was made by Dr. Thompson to table this issue until such time as legislation is passed which would allow for different levels of supervision for delegated tasks performed by veterinary medical technicians and some level of supervision by technicians of tasks performed by veterinary assistants. Dr. Edmonds seconded the motion. The motion carried with Ms. Jones abstaining.

### **Audit of 2005 Continuing Education (CE) Hours**

The Board reviewed the following summary of the recently completed audit of continuing education (CE) hours obtained in calendar year 2005:

#### Veterinarians:

Total Licensees Audited:	308	(18% of Total Licensees)
Total Licensees Compliant Status:	283	(92% Compliance Rate)
Total Licensees Non-Compliant Status:	25	(8% Non-Compliance Rate)

No Response Received:	6	(24% of Non-Compliance Rate)
Deficient hours/documentation:	19	(76% of Non-Compliance Rate)

#### Veterinary Medical Technicians

Total Licensees Audited:	100	(30% of Total Licenses)
Total Licensees Compliant Status:	84	(84% Compliance Rate)
Total Licensees Non-Compliant Status:	16	(16% Non-Compliance Rate)

No Response Received:	6	(40% of Non-Compliance Rate)
Deficient hours/documentation:	10	(60% of Non-Compliance Rate)

The Board moved to adopt the following position in regards to those licensees found during the audit to be in non-compliance with 2005 continuing education requirements:

In accordance with the policy statement adopted by the Board on April 10, 2003, any licensee who provides proof of obtaining the deficient hours and the required hours of continuing education in calendar year 2006 will then be considered in compliance with 2005 continuing education requirements. Any licensee who provides documentation of obtaining 2006 required hours must make up the 2005 deficient hours by December 31, 2007 and submit proof of completion of the deficient hours, hours obtained in calendar year 2006, and 2007 required hours. Any licensee who failed to obtain the required hours in calendar years 2005, 2006 and 2007; and/or any licensee who failed to respond pursuant to notification of random audit selection via certified mail; and/or any licensee whose mail was returned due to an incorrect address on file in the Board's office, will be referred to the Office of Investigations for review and potential disciplinary action. Ms. Lampley stated that those licensees found to be in non-compliance would be notified via certified mail of the Board's position in this matter and any required action by the licensee.

### **Position Statement – Criminal Background Checks**

A motion was made by Dr. Edmonds, seconded by Ms. Gordon, to adopt a position statement regarding name-based criminal background checks. It is the Board's position that all applicants must submit readable fingerprints for the required criminal background check. Any criminal background check received as a result of a Federal Bureau of Investigation (FBI) Name Search Only check due to unobtainable prints will not be considered an acceptable criminal background check. Such applicant will be required to have their fingerprints scanned by the authorized entity in Tennessee. The motion carried.

### **Committee to Review Continuing Education Courses/Presentations**

Dr. Rogers agreed to review requests for approval of continuing education hours and make recommendations to the board regarding approval/disapproval. Dr. Rogers replaces Dr. Edmonds on the review committee.

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

Ms. Nicole Armstrong, Advisory Attorney, reviewed the report with the Board. Rules pertaining to the veterinary technician examination became effective June 6, 2007; rules pertaining to continuing education requirements for new licensees and refunds of qualifying civil penalties will become effective September 9, 2007; and rules pertaining to livestock management and stays will become effective on October 1, 2007. The Office of General Counsel currently has seventeen (17) 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 fourteen (14) 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 twenty-eight (28) individuals are currently being monitored for compliance with Board orders.

## **Inspection Status Report**

Ms. Lampley reviewed the inspection report. A total of ninety-one (91) inspections were conducted during the period of April, 2007 – July, 2007.

## **Director's Report**

Board members were informed that Ms. Christy Allen has been appointed as the Assistant Commissioner, Bureau of Health Licensure and Regulation and that Ms. Sandra Sturgis, Special Assistant to Commissioner Cooper, has been assigned to Health Related Boards (HRB) until such time as the HRB Director position is filled. Effective July 1, 2007, the Board of Pharmacy moved to the Department of Health and joined the Division of Health Related Boards. The Veterinary Technician National Examination (VTNE) was administered on June 15, 2007 to twenty-nine (29) candidates with a total of twenty-two (22) candidates passing the examination. The next testing window for the North American Veterinary Licensing Examination (NAVLE) will be November 12 – December 8, 2007 and approximately sixty (60) licensure applications have been received from candidates wishing to take the exam through our licensing board. Dr. Thompson and Ms. Lampley will be attending the upcoming American Association of Veterinary State Boards Annual Conference scheduled for September 28 - 30, 2007 in Charleston, SC. Ms. Lampley will be doing a presentation on the requirements for certified animal control agencies and certified animal euthanasia technicians at the upcoming Tennessee Animal Care and Control Conference 2007 to be held here in Nashville, TN on October 18 – 19, 2007.

Status Report of Total Active Licensees as of July 31, 2007:

Veterinarians:	1,760
Veterinary Medical Technicians:	355
Veterinary Facilities:	608
Certified Animal Euthanasia Technicians:	172
Certified Animal Control Agencies:	47

## **Financial Report**

A copy of the financial report was available for review. The report reflected a \$27,532.23 Current Year Net at December 31, 2006 and a \$-130,209.78 Cumulative Carryover at June 30, 2006.

## **Rules Status Report**

Mr. Jerry Kosten, Regulations Manager, reported that a rulemaking hearing was held on June 27, 2007 pertaining to consulting veterinarians not licensed in Tennessee; removal of redundant and inconsistent language; addition of an approved certification agency for foreign graduates; revision to requirements for documentation of education; clarification and revision to exam requirements for licensure applicants; revision to application deadlines for exams and licensure; addition to approved continuing education course providers; revisions to the “use of titles” as

relates to advertisements; and revisions to conditions imposed upon disciplined licensees. After review and discussion, a motion was made by Dr. Thompson to ratify the proposed rule changes as amended. The motion was seconded by Ms. Jones. The motion carried.

The Board reviewed the rule amendments becoming effective September 9, 2007 pertaining to continuing education requirements for new licensees and the refund of qualifying civil penalties; and rule amendments becoming effective October 1, 2007 pertaining to accepted livestock management and reconsiderations and stays.

Upon being informed of his pending retirement, the Board expressed their appreciation to Mr. Kosten and conveyed best wishes for the future.

### **Legislative Report**

The following legislation was reviewed:

Public Chapter 196 – Revises due date for civil penalty payments and authorizes the board to enter into installment payment agreements.

Public Chapter 298 – Amends controlled substance schedules.

Public Chapter 410 – Enacts the “Non-Smoker Protection Act” and provides authority to verify compliance when conducting routine inspections.

Public Chapter 529 – Requires all boards to revoke, suspend, or deny licenses to individuals who employ or recruit illegal aliens.

Public Chapter 579 – Enacts the “Tennessee Uniform Emergency Volunteer Health Practitioners Act of 2007”

### **Continuing Education Course Approval**

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

A request from Bob Linnabary, DVM, for approval of continuing education hours for **Incident Command System (ICS)** courses and other **Emergency Management Related** courses relative to credentialing by the **Tennessee Department of Agriculture (TDA) Disaster Animal Response Team (DART)** for animal disaster/emergency animal care workers.

A request from **Butler Animal Health Supply LLC** for approval of two (2) continuing education hours for the following meetings to be held December 15 – 17, 2007 in Union City, TN:

**“Vaccines and Immunology 101”** and **“Identifying and Managing Canine Osteoarthritis”** – December 15, 2007

**“Alternative Diet Choices in Disease Management”** - December 16, 2007

A request from **Merial** for approval of one (1) each continuing education hour for the following presentations:

“**Osteoarthritis**” and “**My Experience with the PET Trial**” – August 2, 2007 – Brentwood, TN

“**A New Look at Canine Melanoma**” – July 10, 2007 – Chattanooga, TN

A request from **Middle Tennessee Academy of Equine Practitioners** for approval of two (2) continuing education hours for a meeting to be held on July 31, 2007. Topics will include: “**Equioxx – An alternative medicine for osteoarthritis in the horse**”; “**Animal identification including equine passport and microchipping**”; and “**Regulatory issues/contagious diseases in horses i.e. EVA and EHV**”.

A request from **Pfizer Animal Health** for approval of two (2) continuing education hours for a presentation entitled “**Obesity Management**” to be held on May 1, 2007 in Memphis, TN.

A request from **Amy J. Funk, DVM**, for approval of seven (7) continuing education hours for a “**Workshop & Symposium on Laboratory Animal Diseases**” held April 18 – 21, 2007 in Chicago, IL.

A motion was made by Dr. Edmonds, seconded by Dr. Thompson, to approve up to five (5) hours of continuing education credit for the emergency management courses. The motion carried. A motion was made by Dr. Edmonds, seconded by Dr. Thompson, to approve all other submitted 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. Dr. Rogers made a motion, seconded by Dr. Thompson, to request Ms. Johnson’s appearance for an interview at the next scheduled meeting. 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 applicant files closed pursuant to Rule 1730-1-.07.

### **Correspondence**

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

## **2008 Board Meeting Dates**

The following 2008 board meeting dates were established:

April 24 & 25

August 14 & 15

December 11 & 12

## **Election of Officers**

A motion was made and seconded to nominate the following:

President: C. Maben Thompson, DVM

Vice-President: James C. Lyons, DVM

Secretary: Marie Gordon, Consumer

The motion carried.

## **Adjournment**

There being no further business to discuss, Dr. Welch made a motion, seconded by Dr. Rogers, to adjourn. The motion carried and the meeting was adjourned at 6:05 p.m.

**These minutes were ratified at the meeting held on December 12 – 13, 2007.**