



BOARD NOTES

Spring 2009 Issue
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A Publication of the Texas State Board of Veterinary Medical Examiners
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FROM THE EXECUTIVE DIRECTOR

In this edition of Board Notes I'd like to talk about a question often asked by doctors who have received notice to come to an Informal Settlement Conference (ISC) here in Austin: "Should I hire an attorney to represent/protect me because the Board has already made up its' mind to discipline me?"

As you see, this is really two questions, do you need an attorney, and has the Board already made up its' mind to give you an Order. Let me address these in reverse order. While no professional ever wants to have a complaint filed against them, the odds are that at least once over the course of your career some disgruntled client will file a complaint against you for some thing they believe you did that you shouldn't have or because you didn't do something they think you should have.

As you know, if a complaint is filed and is within the jurisdiction of the Board, i.e. deals with your practice of veterinary medicine that might violate the Veterinary Licensing Act or Board rules, that complaint must be investigated. Each year, about two-thirds of all complaints received involve standard of care issues. After gathering preliminary information from you, the Board investigator puts together all the investigative information (the complaint, your response, patient records, and any other pertinent data) into a Report of Investigation (ROI). The ROI is reviewed internally for completeness and accuracy and is then sent to two veterinary Board members for their review.

In order for the case to be scheduled for an ISC, one Board member has to decide that a conference is warranted. As the data hereafter shows, this decision to conference a case does not mean that you will automatically be found to have failed to meet the standard of care or receive an Order. It simply means that at least one of your fellow veterinarians believes that there is sufficient cause to talk to you and the complainant in person. At the ISC, there are three Board members (the two veterinarians and one public Board member) who will talk with you in an informal setting. Also present will be the Executive Director, the General Counsel and the Director of Enforcement and, usually, the Investigator who worked your case. The complainant is also invited to attend.

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Important 2009 License Renewal Information



Renewal Notices:

As with renewal year 2008, the agency sent out post card renewal reminders in January for renewal year 2009. **All licensees should have renewed their license on-line at www.tbvme.state.tx.us by March 1, 2009.**

Practicing With An Expired License Is Illegal:

All licensees who did not renew their license by March 1, 2009, **must cease practicing until the license has been renewed.** The law requires that veterinarians not practice without a current license. Penalties for practicing with an expired license can include a reprimand, a \$1,000 per day fine, or other measures.

Continuing Education Requirements:

Veterinarians must have attained 17 hours of acceptable continuing education during calendar year 2008 (January 1 through December 31). Of those 17 hours, 7 must have been obtained from personal attendance at live seminars. Please remember, if you **EARNED** in excess of 17 hours during any calendar year prior to the renewal year, you may carry-over the excess hours earned.

In Memoriam...

“Let us hold our lives up to the light of those who walked before us, remembering the footprints they left behind and preserving the pathways they created.”

<u>NAME</u>	<u>CITY</u>	<u>VET. SCHOOL/GRAD YEAR</u>	<u>DATE OF DEATH</u>
Drue Ward, DVM	Fort Worth	Texas A&M 1939	December 13, 2008
Howard Corley, DVM	Houston	Texas A&M 1971	December 13, 2008

The TBVME does not discriminate on the basis of race, color, religion, sex, national origin, age or disability in employment or in the provision of services, programs or activities. Individuals requiring reasonable accommodations should contact the agency's ADA Coordinator at 333 Guadalupe, Suite 3-810, Austin, TX 78701-3998, or call (512) 305-7555 or 1-800-877-8973 (TDD). This document may be requested in alternative formats by contacting the Board offices.

ADA ACCOMODATIONS

Individuals seeking ADA accommodations should contact the Board's ADA Coordinator, Loris Jones, at 512/305-7555 or by email at loris.jones@tbvme.state.tx.us.

LICENSING EXAM DATES

State Board Exam 2009

NAVLE 2009

Exam Date	Application Deadline	Location
4/6/09	2/20/09	TAMU, MSC, College Station, TX
6/8/09	4/24/09	UT, JJ Pickle Center, Austin
8/10/09	6/26/09	UT, JJ Pickle Center, Austin
10/12/09	8/28/09	UT, JJ Pickle Center, Austin
12/7/09	10/23/09	UT, JJ Pickle Center, Austin

Exam Date	Application Deadline	Location
Nov. 11—Dec. 12, 2009	August 1, 2009	Various
April 12—April 24, 2010	January 3, 2010	Various



CONTINUING EDUCATION OFFERINGS

Information on available CE may be obtained through the following sources. Additional offerings may be available through other sources.

<p><u>RACE</u> (Registry of Approved Continuing Education) Search for Available CE: http://www.aavsb.org/RACE/RaceSearch.asp</p> <p>RACE requires approved providers to issue signed certificates of completion, maintain attendance records for four years and provide qualification of instructors and CE personnel who develop and implement courses.</p>	<p><u>Texas A&M</u> Phone: (979) 845-9102 Fax: (979) 862-2832 Email: ceoffice@cvm.tamu.edu</p>
	<p><u>Texas Veterinary Medical Association</u> www.tvma.org 8104 Exchange Dr. Austin, TX 78754 Phone: (512) 452-4224 Fax: (512) 452-6633</p>

ENFORCEMENT ISSUES

DISCIPLINARY ACTIONS

At the February 12, 2009 meeting, the Board accepted Agreed Orders in 24 docketed cases. Following are summaries of the findings of 8 of those cases. These summaries do not contain all of the facts of each case. For the full text of an Agreed Order, please submit an open records request to our office.

- **Case No. 2009-25, TBVME vs. Edward A. Todd, D.V.M., Lic.# 2223, New Caney, TX**
On February 12, 2009, the Board found that Dr. Todd violated rules §573.61, MINIMUM SECURITY FOR CONTROLLED SUBSTANCES and §573.69, REPORTING OF CRIMINAL ACTIVITY through the diversion of controlled substances to a non-licensed individual for use in equine dental procedures being performed by the non-licensed individual. **Disciplinary Action: Voluntary Surrender of Veterinary License in lieu of disciplinary action.**
- **Case No. 2009-22, TBVME vs. Michael Schmurr, D.V.M., Lic.# 7458, Lumberton, TX**
On February 12, 2009, the Board found that Dr. Schmurr violated rules §573.62, VIOLATION OF BOARD ORDER/NEGOTIATED SETTLEMENTS and §573.22, PROFESSIONAL STANDARD OF HUMANE TREATMENT, through non-compliance with the Texas Veterinary Peer Assistance Program by testing positive, providing a diluted sample and failing to appear for drug testing. Dr. Schmurr also administered Succinylcholine chloride to a feline patient for purposes of euthanasia. The use of this drug which causes skeleton-muscular paralysis with no attendant anesthesia, sedative or pain management qualities falls below the standard of humane treatment and care. **Disciplinary Action: Revocation.**
- **Case No. 2009-15, TBVME vs. Elizabeth Wills, D.V.M., Lic.# 8261, Weatherford, TX**
On February 12, 2009, the Board found that Dr. Wills violated rule §573.43, MISUSE OF DEA NARCOTICS REGISTRATION, Texas Administrative Code §§801.251, LICENSE REQUIRED, and 801.303, PROCEDURE FOR RENEWAL by not renewing her Texas Veterinary License in a timely manner, practicing veterinary medicine without a current license, and dispensing controlled substances with an expired Texas Department of Public Safety Controlled Substances Registration. **Disciplinary Action: Formal Reprimand and must pay a \$1,500 Administrative Penalty**
- **Case No. 2008-94, TBVME vs. Penny Kelso, D.V.M., Lic.# 8096, Lubbock, TX**
On February 12, 2009, the Board found that Dr. Kelso violated rule §573.4, ADHERENCE TO THE LAW by providing an altered record of continuing education hours obtained. The production of an altered document to a government agency is a violation of the Texas Penal Code, Chapter 32.21. **Disciplinary Action: Formal Reprimand and must pay a \$1,000 Administrative Penalty.**
- **Case No. 2009-17, TBVME vs. Conrad Whitfield, D.V.M., Lic.# 10317, McKinney, TX**
On February 12, 2009, the Board found that Dr. Whitfield violated rule §573.62, VIOLATION OF BOARD ORDERS/NEGOTIATED SETTLEMENTS by failure to have quarterly reports from his supervising veterinarian regarding the performance of his duties submitted in the first and second quarters of 2008. Dr. Whitfield was granted a license to practice veterinary medicine in Texas under certain terms and conditions including the requirement of quarterly reports on his performance. **Disciplinary Action: Formal Reprimand and must pay a \$250 Administrative Penalty.**

From the Executive Director continued...

During the ISC, everyone has the opportunity to say everything and anything they believe germane to the case and then the Members will decide whether they believe a violation occurred and if so what is the appropriate sanction. Now, for the data germane to the question of whether the “Board” has made up its’ mind.

STANDARD OF CARE CASES

	FY 06	FY 07	FY 08	FY 09 <i>(thru Feb. 13, 2009)</i>
# ISC Held	51	33	57	38
Violations Found	29	15	31	22
Dismissed	22	18	26	16
% with violation	57%	45%	54%	57%
% Dismissed	43%	55%	46%	43%

The three and 1/2 year average is 54% violations and 46% dismissed. In short, just over half the time (54%) a complaint against a veterinarian resulted in a disciplinary order and just under half the time (46%) the complaint was dismissed by the conference panel. I believe these data support a conclusion that the Board has not made up its’ mind and that the panel is very willing to listen to the doctor and is certainly willing to dismiss a case even when they have set it for conference.

Now as to the first question, do you need or should you have an attorney. This is a difficult question to answer, and depends, in part, on your comfort level with the case, the potential expense (insurance may, of course, offset this cost) and other factors I can’t really address. But, if you frame the question as: “Do I stand a better chance of not getting an Order if I am represented by an attorney?” we simply have not kept track of results in cases where an attorney appears and where one does not and thus have no hard data. Anecdotally, we believe there is no significant difference in outcome between represented and unrepresented licensees. We are, however, going to start keeping such data and I hope to report this data to you in future issues of *Board Notes*. At a minimum, consulting with an attorney, which is your absolute right and privilege, will provide you with a complete understanding of the process and perhaps help you marshal facts and your presentation before a panel in the best way possible.

UPCOMING BOARD MEETING DATES*



2009

June 11, 2009

October 8, 2009

*dates are not official until posted with the Secretary of State.

DID YOU KNOW???

- This publication as well as other important information is available on our website, www.tbvme.state.tx.us.
- Unless you owe for more than the current year, all licensees can renew their license online through our website.

PEER ASSISTANCE

If you or someone you know has a substance abuse problem, it is far better to voluntarily participate in the Peer Assistance Program than to run the risk of disciplinary action, up to and including license revocation. The toll free hotline number is 1-800-288-7996.

BOARD ADOPTS CHANGES TO RULES

At the February 12, 2009 meeting, the Board adopted the following changes to rules. These rules became effective March 7, 2009.

- **571.3, Eligibility for Examination and Licensure.** *The amendment corrects a typographical error.*
- **573.52, Patient Record Keeping.** *The Board, after receiving comments from the previous proposal, made substantive changes and re-filed this proposal. The amendment clarifies the rule regarding patient record keeping and what is to be maintained in the records. The amendment also requires that patient records be kept for a minimum of five years and be readily available as opposed to being maintained on the business premises.*
- **573.54, Transfer and Disposal of Patient Records.** *The Board, after receiving comments from the previous proposal, made substantive changes and re-filed this proposal. The new rule sets forth the required notification and method of notification when a licensed veterinarian discontinues the provision of veterinary services without the continuation of their practice. The Board revised the language to broaden the notification to state “written notification” (including placing a notice in the local newspaper) rather than a “letter” of notice.*
- **575.5, Subpoenas/Witness Expenses.** *The amendment provides for a \$25 per day fee for a witness called at the request of the Board as well as reimbursement of travel expenses in the same manner as Board Employees. An expert witness called at the request of the Board shall be paid a fee of \$200 per day and reimbursement for travel expenses in the same manner as Board employees.*
- **573.65, Definitions.** *The amendment defines invasive dentistry or invasive dental procedures to include exposing of the dental pulp or the performance of extractions of teeth.*

Online Continuing Education Now Available

As you know, last fall, we announced our collaboration with e-Strategy Solutions, an Austin company, to bring you an on-line system. This module is now and has been available for your use since November, 2008. Participation can yield you up to two (2) hours of acceptable continuing education (CE) credits. Please visit the following website <http://www.esslearning.com/tbvme> for this new learning module. This CE module covers the Veterinary Licensing Act (laws) and the Board Rules, with heavy concentration on three areas: general record keeping, DEA and DPS permits and the supervision of non-licensed personnel. The module will be expanded upon at a later date.

The CE hours/credits you earn are categorized in the correspondence category. Pursuant to Board Rule, §573.64 Continuing Education Requirements, you may earn up to 5 hours annually in the correspondence category. You can take as much time as you need to complete the module. Please be sure to follow the instructions, should the system “time-out” on you. Also, you must print the certificate of completion at the conclusion of the module to be able to claim the hours earned.

The cost is \$35 and payable to e-Strategy Solutions. The Board derives no financial benefits from your participation. This is strictly for you, the Texas licensed practitioner, to increase your understanding of current laws and rules as they pertain to the three categories mentioned, and to allow you to earn 2 hours of acceptable CE which you may use toward the completion of the seventeen (17) hours required annually.

Veterinary Involvement in Disasters—Part II Community Planning Tools

In the August 2008 issue of *Board Notes*, an article titled “Veterinary Involvement in Disasters” outlined the role veterinary practitioners can play in developing Animal Issues Committees (AICs) and planning for animal-related challenges in disasters. Because of the knowledge practitioners may have of the animal populations and animal industries in an area, they can be a valuable resource in both planning for and responding to animal-related disasters.

While veterinarians and veterinarian technicians perform daily tasks regarding the care, triage of injury, and diagnosis of illness in animals, developing animal-related plans that align with existing emergency plans of the local and state authorities may be a new and confusing concept to many practitioners. In order to facilitate animal-related planning, resource documents have been developed to assist participating veterinary practitioners and community planners in creating animal-related plans.

Planning for animal issues (and the resulting planning documents) can be separated into two major steps. The first step is the development of the community’s Animal Issues Committee (AIC) and its corresponding plan, titled Annex N (also known as the “AIC Plan”). This plan outlines what issues a community needs to plan for, who are the appropriate members of the AIC and what resources are available in the community to address animals in disasters. The AIC plan can be compared to an ingredient list for a recipe; it lists what a community has available to address animal issues in disasters.

The second step is to develop the Community Animal Response Plan (CARP). The CARP can be compared to the directions in a recipe. It gives the community detailed items for consideration when determining how to use its resources to respond to animal issues in a disaster. Step by step, the CARP should address every role and every task needed to develop response plans. Texas Animal Health Commission (TAHC), with the help of the Texas State Animal Resource Team (TXSART), has begun development of CARP Guides. The guides, which are divided into functions, are intended to walk the AIC through many of the planning steps they will need to consider when developing their plans. The first function now completed, is the “shelter” function, with “evacuation” and “carcass disposal” to follow. These documents are located on the TAHC “Emergency Management Department” page at www.tahc.state.tx.us.

Our Mission:

The mission of the Texas State Board of Veterinary Medical Examiners is to establish and enforce policies to ensure the best possible quality of veterinary services for the people of Texas.

Our Goals:

The Board and its staff will ensure that Texans are effectively and efficiently served by quality veterinary professionals by setting clear standards for professional conduct, by assuring compliance with the rules of professional conduct and the community standard of care, and seeking solutions to issues that strengthen the profession and protect the public.

ENFORCEMENT ISSUES CONTINUED

- **Case No. 2009-14, TBVME vs. Joel B. Akin, D.V.M., Lic.# 6921, Fort Collins, CO**
On February 12, 2009, the Board found that Dr. Akin violated rule §573.64, CONTINUING EDUCATION REQUIREMENTS by failing to obtain the required hours for calendar year 2007. **Disciplinary Action: Formal Reprimand and must complete an additional 17 hours of Continuing Education.**
- **Case No. 2009-21, TBVME vs. Joel B. Akin, D.V.M., Lic.# 6921, Fort Collins, CO**
On February 12, 2009, the Board found that Dr. Akin violated Texas Administrative Code §801.303, PROCEDURE FOR RENEWAL and Board rule §573.4, ADHERENCE TO THE LAW by practicing veterinary medicine with an expired license. **Disciplinary Action: Formal Reprimand.**
- **Case No. 2009-27, TBVME vs. Daniel Hendrix, D.V.M., Lic.# 8034, Houston, TX**
On February 12, 2009, the Board found that Dr. Hendrix violated rule §573.22, PROFESSIONAL STANDARD OF HUMANE TREATMENT by failing to perform exploratory surgery and timely diagnose blocked intestine in a canine patient resulting in misdiagnosis and complications which contributed to additional pain and suffering and ultimately the death of the patient. **Disciplinary Action: Formal Reprimand and must complete an additional 3 hours of Continuing Education in reviewing radiographs.**
- **Case No. 2007-23, TBVME vs. Justin Cerelli, D.V.M., Lic.# 8304, Edinburg, TX**
On February 12, 2009, the Board found that Dr. Cerelli violated rule §573.22, PROFESSIONAL STANDARD OF HUMANE TREATMENT by failing to diagnose and treat severe advanced peritonitis from a perforated intestine which ultimately lead to the death of the canine patient. **Disciplinary Action: Formal Reprimand.**

The remaining approved Agreed Orders consist of:

- 1 which received an administrative penalty for failure to obtain necessary continuing education hours;
- 1 which received an informal reprimand for violation of the Board's Advertising rule;
- 6 which received administrative penalties for failure to maintain their Department of Public Safety Controlled Substance Registration;
- 1 which received an informal reprimand for unauthorized treatment;
- 1 which received an informal reprimand for violation of the Board's Record Keeping rule;
- 3 which received either an informal reprimand, were ordered to pay restitution, were required to obtain additional continuing education or a combination of these for unprofessional or dishonorable conduct;
- 1 which received an informal reprimand and was required to pay restitution for unprofessional or dishonorable conduct and not properly labeling medications dispense;
- 1 which received an informal reprimand and was required to pay restitution for failure to properly supervise non-licensed employees and violation of the Board's Record Keeping rule;
- 1 which received an informal reprimand for unnecessary or unauthorized treatment; and
- 1 which received an administrative penalty for allowing an unlicensed individual to practice veterinary medicine without a license.

CEASE & DESIST ORDERS

- An individual in Midland, TX whom the Board identified as practicing veterinary medicine without a license by providing orthopedic manipulation services for equines. The individual voluntarily signed and returned the order to the Board.
- An individual in Cuero, TX whom the Board identified as practicing veterinary medicine without a license by providing equine dental services. The individual voluntarily signed and returned the order to the Board.
- An individual in Elgin, TX whom the Board identified as practicing veterinary medicine without a license by performing spays, neuters, and/or other surgical procedures on animals the do not own.

NOTICE OF ADDRESS CHANGE

Please email, fax, or mail to:

Texas Board of Veterinary Medical Examiners
333 Guadalupe, Suite 3-810
Austin, Texas 78701
FAX: 512-305-7556
Email: vet.board@tbvme.state.tx.us

Please print or type

Name _____

License Number _____

Mailing Address:

Street/PO Box _____
City, State _____ Zip Code _____

Practice Address:

Practice Name _____
Street _____
City, State _____ Zip Code _____
Phone _____ Fax _____

Home Address:

Street _____
City, State _____
Home Phone _____ Cell Phone _____
Email _____

Note: The mailing address is the default address. All documents, forms and letters sent to you from this agency will be mailed to this address.

The mailing address is printed on your license renewal certificate. If you have changed your mailing address and need a duplicate renewal certificate, please indicate below.

___ Please send a duplicate renewal certificate.

Pursuant to Board Rule 573.75(e) A veterinarian shall notify the Board of any change of name, address or name of clinic not later than the 60th day after the change takes place.