PERFORMANCE AUDIT

STATE VETERINARY MEDICAL EXAMINING BOARD

Report to the Arizona Legislature
By the Auditor General
April 1984
84-2

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STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

April 26, 1984

Members of the Arizona Legislature
The Honorable Bruce Babbitt, Governor
Ms. Suzanne de Berge, Chairperson
Arizona Veterinary Medical Examining Board

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Arizona Veterinary Medical Examining Board. This report is in response to an April 27, 1983, resolution of the Joint Legislative Oversight Committee. The performance audit was conducted as a part of the Sunset Review set forth in Arizona Revised Statutes §§41-2351 through 41-2379.

This performance audit report on the Arizona Veterinary Medical Examining Board is submitted to the Arizona Legislature for use in determining whether to continue the Board beyond its scheduled termination date of July 1, 1985. The report evaluates the Board's effectiveness in regulating critical aspects of veterinary practice in Arizona.

My staff and I will be pleased to discuss or clarify items in the report.

Respectfully submitted,

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SUMMARY

The Office of the Auditor General has conducted a performance audit of the Arizona Veterinary Medical Examining Board in response to an April 27, 1983 resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Veterinary Medical Examining Board's purpose is to protect the public health, safety and welfare by ensuring that quality veterinary services are offered in Arizona. The seven-member Board licenses veterinarians and veterinary facilities, certifies veterinary technicians and enforces the statutes through its complaint investigations and disciplinary proceedings.

Premises Licensing Is Not Necessary (Pages 11-19)

Licensing veterinary facilities, or premises licensing, is not needed to protect the public. The Board has sufficient authority without premises licensing to hold licensed veterinarians responsible for treatment rendered in practices they own or in which they are employed. If the Legislature wishes to address the problem of non-licensed owners establishing potentially harmful policies in their facilities, the statutes can be amended to restrict control over medical policies and procedures to licensed veterinarians.

The Legislature should consider repealing A.R.S. §32-2271 et seq. to delete premises licensing requirements. If A.R.S. §32-2271 et seq. are repealed, the Legislature should consider amending A.R.S. §32-2232 to expand grounds for disciplinary action against individual veterinarians to include requirements now part of the premises licensing statutes.

The Board Has Been Slow To Issue Legal Documents On Several Complaints (Pages 21-25)

Although the Board resolves most complaints promptly, it has failed to issue legal documents on several complaints in a timely manner. On seven of the last eight consent orders issued, the Board delayed final action for as long as 27 months. In six of these cases the legal documents had not been prepared in a reasonable time frame. While the Attorney General's Office and the Arizona State Boards Administrative Office (ASBAO) contributed to the delays, the Board is ultimately responsible for ensuring that its actions, including legal document preparation, are completed. The Board should take steps to expedite its actions when delays are apparent.

Licensing Requirements For Out-of-State Veterinarians Are Unnecessarily Restrictive (Pages 27-31)

Veterinary Board statutes do not provide alternative means for licensing applicants who are licensed veterinarians from other states. Consequently, the Board requires all applicants to meet the same requirements for licensure, including taking both the state and national examinations. The requirement that veterinarians licensed in other states pass a state examination appears to be a reasonable measure for protecting public health, but requiring some out-of-state veterinarians to repeat the national written examination discriminates against those in practice more than five years.

The Legislature should consider amending Board statutes to eliminate the written examination requirement for applicants who are veterinarians licensed in other states, and authorize the Board to license applicants whose out-of-state licenses are in good standing and who demonstrate knowledge of Arizona health problems.

The Board Needs Authority To Discipline Individual Licensees for Poor Record Keeping

Neither the Board's statutes nor its rules and regulations contain a provision to discipline individual licensees for inadequate record keeping. The Board lost this power when it transferred control over record keeping from its general enabling statutes to those specifically concerning premises licensure. Even if premises licensing is retained, the Board lacks this authority. The Legislature should consider amending A.R.S. §32-2232 to allow the Board to discipline individual licensees for inadequate record keeping.

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INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Arizona State Veterinary Medical Examining Board in response to an April 27, 1983 resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

Arizona started regulating veterinary medicine in 1923. The Arizona Legislature established a three-member board to examine and license veterinarians to ensure that only qualified veterinarians practice in the state. The laws remained virtually unchanged until 1967, when qualifications for licensure and unprofessional conduct were further defined and a complaint-handling process was stipulated. In 1978 the Legislature provided for certification of veterinary technicians. In 1980 the Board was given the power to levy fines against its licensees and to license veterinary facilities.

Current Activities

The Board's purpose is to protect the public health, safety and welfare by assuring that veterinary services offered within the state are of high quality. It has the authority to license veterinarians and premises, certify veterinary technicians and enforce the statutes through complaint investigations and disciplinary proceedings.

Table 1 summarizes the Board's activities for fiscal years 1981-82 and 1982-83 and its projections for 1983-84.

TABLE 1

Veterinary Medical Examining Board Activity
Fiscal Years 1981-82 through 1983-84

Licenses and Permits	Actual 1981-82	Actual 1982-83	Estimated 1983-84
Veterinarians			
Issued	60	40	50
Renewals	720	711	0(1)
Temporary	17	11	10
Special (issue & renew)	6	13	12
Veterinary Technicians			
Issued	13	20	30
Renewals	57	64	0(1)
Premise			
Issue	40	25	15
Renwal	240	254	280
Activity			
Board Meetings	15	16	16
Complaints Received(2)	65	98	105
Complaints Concluded(2)	58	77	85
Investigations	58	98	105
Informal hearings	10	20	30
Formal hearings	2 (3)	2 (3)	2
Disciplinary Action Taken	14	14	-

(1) In 1982 the statutes changed to require biennial renewal of licenses in even-numbered years.
(2) These figures are based on Arizona State Boards Administrative Office estimates and reportedly included more than just the formal (written) complaints. As noted in Sunset Factor 2 on Page 6, the Board receives about 50 formal complaints annually.
(3) Both hearings were on proposed premise rules and regulations.

Source: Budget requests, fiscal year 1984-85.

Personnel and Budget

By statute, the Board consists of seven members: five from the veterinary profession, one representing the general public and one representing the livestock industry. The Board lacks statutory authority to hire personnel and currently receives support staff, one-half full-time equivalency (FTE), from the Arizona State Boards Administrative Offive (ASBAO).

The Veterinary Medical Examining Board is a 90/10 board funded by fees for examinations, licenses, temporary permits and renewals. Table 2 summarizes revenues and expenditures for fiscal years 1981-82 through 1983-84.

TABLE 2

Veterinary Medical Examining Board Revenue and Expenditures
Fiscal Years 1981-82 through 1983-84

Activity	Actual 1981-82	Actual 1982-83	Estimated 1983-84
FTE positions	-0-	-0-	-0-
Revenue:			
Revenue received by Board	$41,200	$76,000	$29,500 (1)
Less: 10% to General Fund	4,100	7,600	2,900
Total available to Board	$37,100	$68,400	$26,600
Expenditures:			
Personal services	$ 3,300	$ 4,600	$ 3,700
Employee-related	100	100	0
Professional services	31,300	37,800	36,900
Travel			
In-state	3,300	5,000	5,700
Out-of-state	0	0	0
Other operating expenditures	5,600	6,600	6,500
Equipment	700	600	0
Total	$44,300	$54,700	$52,800
End of Year Fund Balance	$23,000	$36,700	$10,500

(1) In 1982 the statutes changed to require biennial renewal of licenses on December 31 of even-numbered years. 1983-84 is not a year when veterinarians must renew licenses, so the estimated revenue for that year is lower than the previous year.

Source: Budget requests, fiscal years 1983-84 and 1984-85.

Audit Scope and Purpose

This audit was conducted to evaluate the need for and adequacy of regulation by the Veterinary Medical Examiners Board. Specifically we examined:

- The appropriateness of the current level and manner of premise licensing.
- The effectiveness of regulatory action in complaint resolution.
- The appropriateness of Board restrictions on out-of-state veterinarians applying for Arizona licenses.
- The need for strengthening and/or clarifying the statutes.

Because of time constraints we were unable to examine all potential issues identified during our preliminary audit work. The section "Areas for Further Audit Work" describes these issues.

The Auditor General and staff express appreciation to the members of the Veterinary Medical Examining Board, the ASBAO support staff and the Attorney General's Office for their cooperation and assistance during the course of our audit.

SUNSET FACTORS

In accordance with Arizona Revised Statutes (A.R.S.) §41-2354, the Legislature should consider the following 11 factors in determining whether the Arizona Veterinary Medical Examining Board should be continued or terminated.

1. Objective and purpose in establishing the Board

The enabling statutes for the Veterinary Medical Examiners Board do not contain an explicit statement of objective and purpose. 1982 session laws state that the Board's purpose

> ". . . is to provide for the licensing, certification and regulation of veterinarians and veterinary technicians in order to protect and promote the public health, safety and welfare and for the enhancement of the veterinary medical profession."

Arizona law establishes the objective of assuring competence and quality in the veterinary profession by authorizing the Board to:

- Examine, license, require continuing education of and discipline veterinarians (A.R.S. §§ 32-2204 through 32-2238);
- Examine and certify veterinary technicians (A.R.S. §§ 32-2241 through 32-2250); and
- License veterinary medical premises and take action against the licenses of the premises or the licenses of responsible parties (A.R.S. §§ 32-2271 through 32-2275).

2. The effectiveness with which the Board has met its objective and purpose and the efficiency with which it has operated

The Board generally operates effectively and efficiently. It has established a regulatory program to ensure competence and compliance with statutes. The Board licenses approximately 710 veterinarians and 270 establishments and investigates about 50 complaints annually.

3. The extent to which the Board has operated within the public interest

The Board operates in the public interest by ensuring that practicing veterinarians in Arizona meet minimum licensing standards and are disciplined when necessary. Board activities protect the public from diseases transmitted by animals and contribute to the health of livestock and pets.

However, licensing veterinary facilities is unnecessary regulation and may not be in the public interest (see Sunset Factor 11, page 10). In addition, delays on several Board actions have not been in the public interest. The Board delayed action on seven of eight consent orders, and six of these delays occurred because it failed to see that legal documents were drafted and transmitted in a timely manner (see page 23).

4. The extent to which rules and regulations promulgated by the Board are consistent with the legislative mandate

The Board's rules and regulations appear to be consistent with its legislative mandate. All rules and regulations now in effect have been reviewed by the Attorney General to ensure consistency.

However, the Board has operated without rules and regulations for premises licensure since 1980 when the authority to regulate veterinary premises was established by statute. The Board expects some premises licensing rules to become effective in April 1984. All previous Board attempts to promulgate premises licensure rules and regulations have been unsuccessful because of strong opposition from the veterinary profession and rejection by the Attorney General (see page 18).

5. The extent to which the Board has encouraged input from the public before promulgating its rules and regulations and the extent to which it has informed the public as to its actions and their expected impact on the public

The Board has complied with the Open Meeting Law on public meetings. The Board has submitted a listing of the locations of published or posted notices to the Secretary of State. According to the chairman, it has also provided notices of rules hearings to "the major newspapers within the state and to the professional association." The Board received substantial input on facility licensure rules and regulations and has kept adequate minutes of its proceedings.

6. The extent to which the Board has been able to investigate and resolve complaints within its jurisdiction

The Board has adequately investigated and resolved most complaints against licensed veterinarians. However, Board inaction resulted in excessive delays of seven of the eight consent orders considered between April 1981 and June 1983. The Board should take necessary steps to ensure that its actions are completed in a timely manner (see page 23).

7. The extent to which the Attorney General or any other applicable agency of State government has the authority to prosecute actions under enabling legislation

Full authority is available to enforce the Board's enabling statutes. A.R.S. §32-2237, subsection B, directs the County Attorney or the Attorney General to represent the Board in all legal actions. The same statute authorizes the Board to seek injunctive relief against statute violators. A.R.S. §32-2238 makes violation of any of the enabling statutes a Class 2 misdemeanor.

8. The extent to which the Board has addressed deficiencies in the enabling statutes which prevent it from fulfilling its statutory mandate

The Board has often proposed legislation to improve its ability to fulfill its objectives. Recent successful legislative proposals have allowed the Board to improve the quality of examinations, impose fines and render disciplinary action based on informal hearings. According to the Board chairman, the Board requested introduction of legislation allowing it to, among other things, hire personnel, expand the time frame for renewal of lapsed licenses, correct an error in the initial fee schedules, eliminate the requirement that licensees be U.S. citizens, and expand the Board's disciplinary authority over both individual veterinarians and premises licenses and their responsible parties.

Our research supports the Board's endeavors to correct the initial license fee schedule and eliminate the U.S. citizenship requirement.

9. The extent to which changes are necessary in the laws of the Board to adequately comply with the factors listed in the Sunset laws

Based on our audit work, we recommend the Legislature consider the following changes in the Veterinary Board statutes:

- Eliminate Article 6 of the enabling statutes (A.R.S. §32-2271 et seq.), which relates to licensure of veterinary premises (see page 11);

- Transfer responsibilities currently under facility licensure statutes to each individual veterinarian by amending A.R.S. §32-2232 to include grounds for disciplinary action presently found in A.R.S. §32-2274 (see page 12);

- Eliminate the written examination requirement for applicants who are licensed veterinarians from other states and authorize the Board to license applicants 1) whose out-of-state licenses are in good standing, and 2) who demonstrate knowledge of Arizona health problems (see page 29); and

- Add a provision to A.R.S. §32-2232 allowing the Board to discipline individual licensees for inadequate recordkeeping (see page 35).

10. <u>The extent to which the termination of the Board would significantly harm the public health, safety or welfare</u>

Terminating the Board could significantly harm public health. Because the Veterinary Board is a medical licensing board that is responsible for reviewing qualification of medical practitioners, its activities contribute significantly to public health and safety. For example, the Board regulates veterinarians' use of dangerous prescription drugs. Competent practioners are necessary to ensure that the quality of service provided to pets and livestock is high. Veterinarians also play an important role in detecting and controlling public health threats such as rabies and valley fever in animals.

11. The extent to which the level of regulation exercised by the Board is appropriate and whether less or more stringent levels would be appropriate

The Board's level of regulation for licensing veterinarians is appropriate. However, licensing veterinary facilities is unnecessary. The Board has sufficient authority without facility licensure to discipline individual veterinarians and hold facility owners who are licensed veterinarians responsible for inadequate facilities or harmful treatment rendered in their practices. In addition, the Board can address problems of non-licensed facility owners by restricting responsibility over medical procedures and policies to licensed veterinarians. This method offers sufficient protection with less regulation (see page 11).

FINDING I

PREMISES LICENSING IS NOT NECESSARY

The Veterinary Board does not need to license veterinary facilities to adequately protect the public health, safety or welfare. Premises licensing does not provide additional protection beyond licensing individual veterinarians. In fact, it may reduce protection because it redirects responsibility. In addition, licensing facilities offers minimal protection to the public because the Board lacks adequate enforcement authority.

Arizona Law Requires Licenses for Veterinary Facilities

Veterinary facilities in Arizona must now be licensed. Premises licensing was instituted to regulate multi-unit practices and practices owned by non-licensed individuals. When it was implemented the Board thought non-licensed ownership would increase. However, this did not occur.

In 1980 the Legislature amended the veterinary statutes to include premises licensing. Board members contend the Board was ". . . unable to regulate properly the multi-hospital practice under single ownership" and practices owned by non-licensed individuals. In these practices the owner was frequently absent yet determined policies and procedures affecting the level of care and treatment provided. Although there are few such practices in Arizona, several complaints were filed against veterinarians employed at these facilities. The Board felt that these hospitals had ". . . an overriding philosophy that did not allow an acceptable standard of practice." Although the Board took action against the offending veterinarians, it felt limited in its ability to act against the owners who established hospital policies, particularly the non-licensed owner over whom the Board had no statutory authority.

In the late 1970s some observers predicted an increase of non-licensed and/or corporate ownership of veterinary facilities. This trend was apparent in other medical professions and many felt it would occur in the veterinary profession too. Evidence suggested that this was an accurate prediction. Out-of-state corporations had contacted Arizona veterinarians indicating an interest in purchasing practices.

A review of ownership over the past few years, however, revealed that the predicted trends did not occur. A 1981-82 nationwide random sample of 3,000 practicing veterinarians indicates that practice ownership is remaining fairly stable. According to American Veterinary Medical Association staff, the non-licensed ownership trends found in other medical professions did not occur in the veterinary profession and non-veterinarian ownership of practices is limited nationwide.

Non-licensed ownership and multi-unit practices are rare in Arizona. Based on the Veterinary Board's premises licensing records, 99 percent of the veterinary practices in the state are owned by licensed veterinarians. Only three have non-licensed owners. Of the 272 licensed veterinary facilities only 23 (8 percent) are part of multi-hospital practices. In all 23 cases, at least one of the owners is an Arizona licensed veterinarian.

Board Can Provide Adequate Protection Without Premises Licensing

The Board can adequately protect the public without licensing veterinary premises. Premises licensing provides no additional authority to affix responsibility and may, in fact, direct responsibility away from the veterinarian rendering treatment. The Board has sufficient authority without premises licensing to hold licensed veterinarians responsible for treatment they render, regardless of who owns the premises in which they practice. In addition, premises licensing is not needed to hold an owner who is a licensed veterinarian responsible for activities within his

practice. If premises ownership by non-licensed individuals presents specific problems, the Board statutes can be amended to limit control over practice policies or restrict ownership to licensed veterinarians.

Responsibility Diffused - Contrary to the Board's attempt to focus responsibility, premises licensing may reduce accountability. Premises licensing directs responsibility away from the individual veterinarian who renders treatment. In addition, Board policy allows variation in who may be a premise's named responsible veterinarian, even though the Board's purpose was to affix responsibility on the owner when possible.

With premises licensing, responsibility may be diverted from the individual providing professional services. For example, an employed veterinarian may have a complaint filed against him regarding services he rendered. In some cases he could claim the error was a result of policies determined by the responsible veterinarian, thereby lessening his own responsibility.

Likewise, a licensed practice owner may relieve himself of responsibility by designating an employee as the responsible veterinarian. Each facility must have a designated responsible veterinarian to obtain a premises license.* However, the responsible veterinarian may be the owner (if the owner is a licensed veterinarian), the practice's managing veterinarian or an employed veterinarian. Board policy has been to accept the owner's designated responsible veterinarian, even if the owner is a licensee and names an employed veterinarian as responsible party. This appears to contradict the Board's purpose to clarify responsibility in the case of the licensed, multi-unit owner.

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* As defined in Arizona Revised Statutes §32-2201.6

> "Responsible veterinarian means the veterinarian responsible to the board for compliance by licensed veterinary premises with the laws and regulations of this state and of the federal government pertaining to the practice of veterinary medicine and responsible for the establishment of policy at such premises."

Individual Veterinarians Responsible - The Board can discipline individual veterinarians for treatment rendered, regardless of who owns the facility. Prior to premises licensing the Board did hold individual veterinarians responsible in premises-related cases. At least one other Arizona board has a similar policy. Statutory changes are needed to transfer responsibility for areas currently regulated by premises licensing to individual veterinarians.

According to a Legislative Council memorandum, the Board has the power to hold a veterinarian responsible for treatment he renders that violates the practice act:

> "The Board may hold a veterinarian responsible for complaints resulting from treatment he renders under policies set by the facility owner if he commits any of the acts which are grounds for disciplinary action."

Before premises licensing the Board resolved some premises-related cases in such a manner. The following cases illustrate Board action prior to premises licensing.*

Case 1

In this case, the Board took action against the individual veterinarian.

A veterinary clinic offering twenty-four hour care had an absentee owner. The owner employed Dr. Z to provide veterinary care and Mr. Y to serve as the business manager and live-in night attendant. A client brought a dog to the clinic for surgery. Dr. Z performed the operation and recommended the animal remain at the clinic overnight. Mr. Y

* Although the Board identified several cases that it claimed justified premises licensing, case files did not contain sufficient documentation to verify their relationship to premises licensing. The examples presented here were the only cases where a clear relationship was evident.

did not check on the animal during the night and found the dog dead in the morning. The Board held that Dr. Z ". . . failed to show due care and concern . . ." by not monitoring the dog's treatment and by not giving adequate instructions to the attendant.

Case 2

This case illustrates Board recommendations to both the individual veterinarian and the licensed owner.

Dr. A was employed by a licensed veterinarian who owned a multi-unit practice. Dr. A performed surgery on a dog that developed complications after leaving the clinic. The dog's owner returned to the clinic the following day and found the clinic closed. The dog's owner tried to call the clinic and the call was transferred to another clinic of the multi-unit practice. Numerous problems occurred because of poor communication procedures. The practice owner, not Dr. A, had established these procedures. However, the complaint was filed against Dr. A. The Board determined Dr. A's medical service was appropriate and acceptable and took no specific action. However, the Board recommended to both the owner and Dr. A that the communication system be improved and that animal owners be given more concise information.

The policy of holding a licensed professional responsible for the level of care and treatment rendered in a practice is followed by at least one other Arizona board, the Arizona Board of Medical Examiners (BOMEX). BOMEX staff said that the doctor is held ultimately responsible for total patient care and the board is not necessarily concerned with the location or ownership of a practice. If the doctor is employed by an organization that does not provide adequate facilities and equipment, BOMEX will hold

the doctor, not the organization, responsible for any error caused by the inadequacies. BOMEX contends that a doctor must maintain a facility in such a manner as to protect his professional license from disciplinary action. If conditions are unsanitary, inadequate or unsafe, the Board will cite the doctor for unprofessional conduct described in Arizona Revised Statutes (A.R.S.) §32-1401.8(o): "Any conduct or practice which is or might be harmful or dangerous to the health of the patient."

Statutory amendments are needed to clarify that licensed veterinarians are directly responsible for areas currently regulated by premises licensing. A.R.S. §32-2274 states grounds for disciplinary action against premises licenses and responsible veterinarians. According to Legislative Council, A.R.S. §32-2232, which defines unprofessional or dishonorable conduct for individual veterinarians, should be amended to include the grounds stated in A.R.S. §32-2274. Thus, each licensed veterinarian would be responsible for ensuring that these problems do not occur.

Licensed Owner Also Responsible - Without premises licensing, the Board has the authority to hold a facility owner responsible for acts committed in the facility if the owner is a licensed veterinarian. According to Legislative Council, if a veterinarian owns and/or operates a practice he is responsible for the service and care rendered by himself and by his employees. Essentially, the owner is the responsible veterinarian. Consequently, even without premises licensing the Board can hold the licensed owner responsible for inadequate or unsafe policies and practices.

Non-Licensed Owner - Although holding individual licensees responsible for their actions (regardless of ownership) should adequately protect the public, the Legislature may feel that control over non-licensed ownerss could be necessary. If so, two options are available: limiting control of medical policy making to licensed veterinarians or restricting non-licensed ownership. Of the two options, limiting policy control is less restrictive and appears to be equally effective.

Limiting control of medical policy making allows a non-licensed person to own and lease facilities or to employ veterinarians for medical services. According to Legislative Council:

> ". . . prohibiting nonlicensed persons from directing or controlling practice policies and operations which affect treatment and care of animal patients (means that) licensed veterinarians would be responsible for policies and operations which affect treatment and care of animal patients."

To limit control of medical policy making would require an amendment to the definition of practicing without a license. Legislative Council states that nothing prohibits making such an amendment to the statutes. The amended definition would restrict a non-licensed individual from directing or controlling practice policies and operations that affect the treatment and care of the patient.

In contrast, restricting ownership prohibits non-licensed individuals from owning, operating or managing a veterinary practice. This procedure is commonly used to regulate medical practices. The Arizona Dental Board explicitly prohibits non-licensed ownership, and BOMEX contends non-licensed ownership violates its statute regarding practicing without a license. Other state veterinary boards frequently restrict ownership. Of 15 states contacted, eight states restrict non-licensed ownership.

Current Form Of Licensure Offers Minimal Protection

Arizona's premises licensing requirements offer little protection to the public because the Board lacks adequate enforcement authority. The Board's licensing process does not set standards and the Board has not been able to promulgate specific rules and regulations to enforce the statutes.

Licensing process - Premises licensing offers no assurance that a licensed facility meets acceptable standards. There are no provisions for regular inspections of facilities or meaningful licensure requirements.

Facilities are not inspected before receiving or renewing a license. In fact, Arizona statutes prohibit pre-licensing or renewal inspections. A.R.S. §32-2271, subsection C, reads:

> "A veterinary premises shall not be subject to inspection by the board unless a specific investigation or proceeding conducted by the board warrants such an inspection."

Without an inspection program the Board cannot distinguish between acceptable and unacceptable facilities.

Premises licenses are easily obtained. State statutes require only that

> "[a]ny person who desires to operate, maintain or establish premises at or from which veterinary services are offered . . . file with the board an application . . . accompanied by the license fee." (A.R.S. §32-2272.A)

The application must contain the following information:

- the name and location of the premises,
- the name of the person owning the premises,
- a description of services provided at the premises or from mobile units, and
- the name and signature of the responsible veterinarian.

The Arizona State Boards Administrative Office (ASBAO) staff reviews the applications and refers any applications with discrepancies or questions to the Board. The Board has never denied a facility a license.

Rules and Regulations - The Board lacks authority for effective regulation of veterinary facilities. Effective premises licensing programs require detailed rules and regulations. The Board has not been able to promulgate the necessary rules and regulations and as a result lacks standards to enforce the statutes.

Although few state veterinary boards license veterinary premises, those with strong premises licensing programs require inspections and have detailed rules and regulations. We identified three states - Virginia, California and Florida - with strong programs. Each of these states requires a pre-license inspection and regularly inspects each facility to ensure that standards are maintained. These states also have stringent rules and regulations stipulating facility and equipment requirements.

The Board has been unable to establish adequate rules and regulations for premises licensing, at least partly because of concern that these rules may restrict competition. In 1980 the Arizona Veterinary Board proposed rules and regulations similar to those of California, Virginia and Florida. While some veterinarians favored the proposed rules and regulations, others, particularly those with rural or large-animal practices, expressed considerable opposition.

Based on public hearings the Board revised the proposals in 1981 and again in 1982. In October 1983 the Attorney General's Office denied certification for a portion of the proposed rules and regulations stating ". . . the rules do not articulate sufficiently specific standards to permit objective enforcement."

Since that time the Board has resubmitted a portion of the rules and regulations and expects Attorney General certification in April 1984. However, other than the record keeping rules and regulations, the proposed language provides limited standards. For example, the section for equipment standards requires that each facility be equipped to provide services at a level consistent with the standards of veterinary practice

within the community. Specific rules stipulate facilities for proper storage of biologics, supplies and medication; use of oxygen equipment and supplies when general anesthesia is administered to small animals; and proper sterilization of instruments and surgical packs for surgery.

The proposed rules and regulations do not address requirements for cages and stalls for facilities that hold animals, cleanliness of facilities and sanitization of surfaces such as examination and surgical tables, and adequate lighting, heating and ventilation for the animal's comfort. States with strong premises licensing programs have specific rules and regulations regarding these areas, thereby providing specific guidelines for licensees.

With present statutory language and the lack of rules and regulations, the Board says it has been limited in its ability to take action against possible premises violations. According to the board chairman, the Board rarely deals with premises licensing issues when they are revealed in complaint investigations. The Board feels that without rules and regulations the statutes do not give it sufficient legal basis to act because they lack adequate, detailed guidelines for the licensees. A review of the proposed rules and regulations does not indicate that detailed guidelines will be provided. Because the Board has not promulgated rules and regulations it is impossible to determine whether its proposals would restrict competition. However, our analysis (page 12) shows that premises licensing is unnecessary because alternatives provide sufficient protection to the public with less regulation.

CONCLUSION

Premises licensing is not needed. Placing ultimate responsibility with the licensed veterinarian would provide sufficient protection to the public. If the Legislature deems control over non-licensed owners necessary, limiting policy control would provide a less restrictive alternative than premises licensing. Statutory amendments are necessary to accomplish these tasks.

RECOMMENDATIONS

1. The Legislature should consider repealing A.R.S. §32-2271 et seq. (Article 6) to delete premises licensing requirements.

2. If A.R.S. §32-2271 et seq. are repealed, the Legislature should consider amending A.R.S. §32-2232 to clearly affix responsibility on the individual veterinarian, including as grounds for disciplinary action:

   - Failure to maintain sanitary facilities.
   - Violation of §32-2233 or any rule or regulation issued pursuant to that section.
   - Failure to maintain accurate records or reports as required by this chapter or by federal or state laws and regulations pertaining to the storing, labeling, selling, dispensing, prescribing and administering of controlled substances.
   - Failure to maintain controlled substances, surgical and other equipment in a safe, efficient and sanitary manner.
   - Failure to keep written records of all animals receiving veterinary services, failure to provide a summary of such records to the client upon request or failure to produce such records at the request of the board.

FINDING II

THE BOARD HAS BEEN SLOW TO ISSUE LEGAL DOCUMENTS ON SEVERAL COMPLAINTS

The Veterinary Board has failed to issue legal documents in a timely manner. Although the Board resolves most complaints promptly, it delayed final action for as long as 27 months on seven of the last eight consent orders issued. While the Attorney General's Office and the Arizona State Boards Administrative Office (ASBAO) contributed to the delays, the Board is still responsible for ensuring that its actions, including the preparation of legal documents, are completed promptly.

Board Action Has Not Been Timely

In seven of eight cases involving consent orders the Board took between 22 and 27 months* to complete its disciplinary actions. The excessive time taken in these cases limits the Board's ability to carry out disciplinary stipulations and may affect the veterinarians' right to due process.

The seven complaints involved were filed with the Board between March and July of 1981. The Board reached a decision to offer a consent order in each of the complaints within six months of the date received. However, the complaints remained open for an additional 17 to 26 months because the Board did not ensure timely transmittal of the consent orders to the veterinarians involved.

Table 3 contains a brief chronology of the seven complaints.

* During the 27 month period the Board issued eight consent orders and one order of censure.

TABLE 3

CHRONOLOGY OF DELAYED COMPLAINTS

Complaint	Date Received	Date Board Voted to Offer Consent Order	Date Consent Order Sent by Board	Time Elapsed (Months)
A	March 1981	April 1981	June 1983	27
B	April 1981 (1)	August 1981	June 1983	26
C	April 1981	September 1981	March 1983	23
D	April 1981	October 1981	June 1983	26
E	May 1981	October 1981	March 1983	22
F	July 1981 (2)	July 1981	June 1983	23
G	July 1981 (2)	July 1981	June 1983	23

(1) Board minutes show that the Attorney General Representative presented this consent order to the Board for approval in October 1981. The Board chairman could not recall why the Board delayed completing this action.

(2) The Board initiated these actions and no formal complaint was ever filed. Therefore, the date shown is the date the Board first discussed the complaint.

Although one case involved a second offense regarding misuse of drugs by a veterinarian, the Board did not issue a suspension order until 22 months of the 3-year suspension had elapsed. In this case the veterinarian's license had previously been suspended after conviction for the sale of dangerous drugs. During the suspension he misrepresented himself

as a licensed veterinarian from another state to obtain drugs illegally. As a result, the Board decided in August 1981 to continue his suspension for another 3 years beginning November 6, 1980.* The Attorney General representative presented the order to the Board in October 1981, but the Board did not send the consent order to the licensee until June 1983.

In a second case, the Board could no longer take action against the veterinarian as originally intended. Originally, the Board had voted to offer the veterinarian a consent order that required him, in part, to prepare an instructional manual for his assistants outlining requirements and responsibilities. However, by the time the veterinarian received the consent order 17 months later, he was employed at a different clinic and was no longer responsible for instructing the assistants at the other clinic. Thus, the actual consent order sent to the veterinarian contained no requirement to prepare the manual.

In the same case, the veterinarian cited voiced serious concern to the Board about the Board's ability to resolve complaints in a timely manner and the Board's regard for his right to due process. In a letter to the Board, the veterinarian's attorney stated:

> "I am seriously concerned about my client's right to due process, and whether the Board takes as much time to deal with all complaints as it did in this case. . . . There is nothing in the materials with which you provided me to explain the Board's silence for more than fourteen months after its investigation had apparently closed. I find this very, very disturbing."

Although four of the seven consent orders involved technical complaints such as failure to renew licenses and practicing before a temporary license was issued, the remaining three consent orders included a suspension, a censure and a probation, representing some of the strongest

* The Board made the suspension date retroactive to the last day of the previous 5-year suspension. Hence, the effective actual suspension period was 27 months.

disciplinary actions the Board has taken in resolving complaints. The Board's inability to act promptly in these cases indicates that the Board may not be able to effectively resolve some of its most serious complaints.

The Board Failed to Accept the Responsibility for Ensuring That Legal Documents Were Prepared

The excessive delays in preparing six of the consent orders occurred because the Board did not take action to ensure the timely preparation of legal documents.* Although the Board's Attorney General representative and ASBAO contributed to the delays, the Veterinary Board is ultimately responsible for the timely preparation of consent orders and should have followed up on the orders sooner.

Prior to 1982 the Attorney General's Office prepared legal documents for the Board. The Board minutes show that the Board directed its Attorney General representative to prepare the consent orders and that the Attorney General representative agreed to do so. However, some time after accepting this responsibility the Attorney General representative discontinued the practice of drafting consent orders for the Board. While documentation on this matter is scarce, Board minutes reveal that 14 months after the Board had voted to send the last of the consent orders the Board was still concerned about whether the Attorney General representative was acting sufficiently to ensure the documents' preparation.

Responsibility for preparing legal orders was unclear. The Attorney General representative contends that preparing the consent orders was the responsibility of ASBAO staff. ASBAO staff said the Attorney General representative was responsible for drafting legal documents for the Board.

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* As mentioned on page 24, the Attorney General representative prepared one of the seven consent orders two months after the Board voted to offer it. Therefore, Board delays were due to legal document preparation for six of the seven consent orders.

ASBAO's failure to maintain the status report sheet may have also contributed to the delays in transmitting the seven consent orders. During most of the time between the date the Board voted to offer a particular consent order and the date the consent order was sent, the seven complaints were not listed on the monthly status report sheet compiled for the Board by ASBAO staff. The status report sheet is an internal control device to keep a record of current or active complaints for the Board. Therefore, the Board lacked formal information on the status of the complaints.*

Ultimately, however, the Board is responsible for the execution of its regulatory duties as mandated by statute. The Board's failure to take the initiative and specifically request that the necessary documents be prepared and completed in a timely manner led to the excessive delays in the transmittal of the consent orders.

The Board chairman contends that the Board lacks sufficient control over the Attorney General representative and ASBAO staff to resolve the legal document problem. We found that when the Board did take action to resolve the problem, its action came after long delay and was limited.

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* Recently, however, ASBAO has taken the initiative to resolve the consent order problem. By reassigning existing personnel, ASBAO has been able to appoint a staff member to prepare legal documents for nine of the 10 boards it serves, including the Veterinary Board. This staff member drafts the documents and coordinates their review by the Attorney General's Office. In addition, ASBAO plans to become more involved in the investigation of complaints by coordinating the administrative duties associated with the investigations.

CONCLUSION

The Board acts responsibly in most complaints against licensed veterinarians. However, the Board's failure to accept its statutory responsibility has led to untimely delays in the drafting and transmittal of seven of the last eight consent orders issued.

RECOMMENDATION

The Board should monitor the preparation and approval of its legal orders and should take steps to expedite the delivery of orders when delays are apparent.

FINDING III

LICENSING REQUIREMENTS FOR OUT-OF-STATE VETERINARIANS ARE UNNECESSARILY RESTRICTIVE

Arizona licensing requirements for veterinarians already licensed in other states unnecessarily restrict the licensure of these veterinarians in Arizona. The Board has the same requirements for all license applicants, regardless of whether an applicant holds a valid license from another state. The requirement that veterinarians licensed in other states pass a state examination is a reasonable measure for protecting public health, but requiring some out-of-state veterinarians to repeat the national written examination discriminates against those in practice more than 5 years.

The Board Makes No Distinction Between New Applicants and Out-of-State Veterinarians

Board licensing requirements are the same for all applicants, regardless of their licensure status in other states.*

Arizona Revised Statutes (A.R.S.) §32-2212, subsection A requires applicants to pass an examination and be otherwise knowledgeable regarding veterinary medicine:

> "If the applicant satisfactorily passes the examination given by the board and demonstrates a scientific and practical knowledge of the art and science of veterinary medicine and, in addition, complies with the provisions of this chapter, the board shall issue a license to the applicant to practice veterinary medicine in this state."

* The Board's enabling statutes make no provision for licensure by reciprocity or endorsement. Endorsement is a unilateral decision by one state to allow qualified out-of-state applicants to be licensed without examination. Reciprocity is a mutual agreement between two states to license each other's licensees and is potentially more restrictive for licensees moving between states.

A.R.S. §32-2215 reiterates the examination requirement:

> "An applicant for a license issued under this chapter shall:
>
> 1. Be a citizen of United States.
> 2. Be of good moral character.
> 3. Be a graduate of verterinary college or hold a certificate issued by the educational commission for foreign veterinary graduates of the American veterinary medical association.
> 4. Satisfactorily pass the written and practical examination given by the board as provided in this chapter." (emphasis added)

The Board requires all applicants to take the national written examination and a practical examination, which consists of three parts: the nationally-based clinical competency examination and state-developed slide identification and oral questions.

The Board considers national (written) scores valid for 5 years. After passing the national examination an applicant has 5 years to pass the state examination and receive a license. This policy applies to both new applicants and those licensed in other states.

Board Policy Discriminates Against Out-of-State Veterinarians

Some testing of out-of-state veterinarians wishing to practice in Arizona is reasonable, but requiring experienced veterinarians to retake the national written examination is discriminatory. Arizona's climate and environment present unique medical problems that may be new to veterinarians from other states. However, requiring the national examination of practicing veterinarians who passed the same examination more than 5 years prior to applying for a license in Arizona is an unfair licensure restriction.

Arizona Health Problems - The Board appears to be acting to protect the public health by requiring all applicants to take the state portion of the licensure examination. Diseases indigenous to Arizona or the southwest appear to be serious enough that veterinarians licensed in Arizona should be knowledgeable about them. Such diseases include valley fever, which has a particularly high mortality rate in dogs, photosynthetization diseases and reactions to local poisonous plants and animals. Since the state portion of the examination reportedly tests applicants on their knowledge of these diseases, the Board is not unnecessarily restrictive in requiring that all applicants, including veterinarians licensed in other states, take the state portion of the examination. Of 20 states allowing alternative forms of licensure for out-of-state licensees, at least seven require the applicant to take a state examination.*

National Written Examination Requirement is Unfair - Although the Board appears justified in requiring the state examination of out-of-state veterinarians, the Board's national written examination requirement discriminates against those who have not taken the national examination in the past 5 years. Since the Board does not require the same of its resident licensees, its actions could restrict competition.

The Board requires all applicants, including those licensed in other states, to repeat the national examination if they have not taken it in the past 5 years. However, the Board does not require Arizona licensed veterinarians to repeat the national written examination every 5 years.

The Board reasons that the national written examination requirement ensures that veterinarians coming from other states have sufficient knowledge of current veterinary practices. Since veterinarians may

* These states are Arkansas, Iowa, Maryland, Massachusetts, Michigan, Oklahoma and Rhode Island.

"retire" here from other states, the Board is concerned that they may not have sufficient or current veterinary knowledge. For example, the Board said this can be a problem when veterinarians owning large-animal practices in other states move to the Phoenix or Tucson metropolitan areas and begin treating small animals.

However, the Board currently makes no additional demands on an Arizona veterinarian leaving a large-animal practice in northern Arizona and moving to the southern portion of the state to treat small animals, for example. Thus, the Board's policy regarding the national examination discriminates against out-of-state veterinarians and could restrict competition.

Benjamin Shimberg, in Occupational Licensing: A Public Perspective,* labels such examination requirements as "an almost insurmountable barrier to mature out-of-state practitioners" and states:

> "It is difficult to see how such a policy could possibly serve the residents of the state because out-of-staters seeking licensure may already be as competent and as experienced as those practicing within the state. The requirement seems to the author to be unfair because it imposes a higher standard on out-of-state practitioners than it does on those already practicing within the state. In-state practitioners who were licensed at about the same time as out-of-state applicants are not required to demonstrate that they meet current standards. If a state seriously desires to insure that all practitioners have kept up-to-date and maintained their skills, it should institute a mandatory reassessment process for all licensees." (emphasis added)

* Benjamin Shimberg, Occupational Licensing: A Public Perspective, Princeton, New Jersey: Center for Occupational and Professional Assessment, Educational Testing Service, 1982, p. 65.

The Board does not need the written examination to ensure that out-of-state veterinarians are sufficiently competent to practice in Arizona. The Board can ensure competency by licensing only applicants whose out-of-state licenses are in good standing in the states in which they are licensed and who demonstrate a satisfactory knowledge of Arizona veterinary medical problems.*

CONCLUSION

The Board's requirement that applicants who are out-of-state licensees must repeat the national examination if they passed it more than 5 years before coming to Arizona is discriminatory. Board statutes should be amended to authorize the Board to grant licensure by endorsement.

RECOMMENDATION

The Legislature should consider amending Board statutes to eliminate the written examination requirement for applicants who are veterinarians licensed in other states, and authorize the Board to license applicants whose out-of-state licenses are in good standing and who demonstrate knowledge of Arizona health problems.

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* Knowledge of Arizona medical problems is currently tested as part of the state practical examination, which includes a nationally-based clinical competency examination as well as slide identification and oral questions. Additional research is necessary to determine whether the clinical competency examination is necessary and advisable for out-of-state applicants.

FINDING IV

THE BOARD NEEDS AUTHORITY TO DISCIPLINE VETERINARIANS FOR POOR RECORD KEEPING.

Neither the Board's statutes nor its rules and regulations contain a provision to discipline individual licensees for inadequate record keeping. Board authority to take action in cases involving record keeping deficiencies is currently limited to disciplinary action against licensed premises and not individual veterinarians.

Prior to 1980 the Board's rules and regulations contained a provision for disciplining veterinarians for inadequate record keeping. In 1980 the Board attained legislation to establish premises licensing. The legislation also added a record keeping requirement to the new Article 6 on premises licensing. Arizona Revised Statutes (A.R.S.) §32-2274 (under Article 6) reads, in part:

> "The board, after notice and public hearing, may revoke, suspend, refuse to issue or refuse to renew a license or may fine the responsible veterinarian or take action as to both the license and the licensee for any of the following grounds:
>
> . . . . . .
>
> 4. Failure to maintain accurate records or reports as required by this chapter or by federal or state laws and regulations pertaining to the storing, labeling, selling, dispensing, prescribing and administering of controlled substances.
>
> . . . . . .
>
> 6. Failure to keep written records of all animals receiving veterinary services, failure to provide a summary of such records upon request to the client or failure to produce such records at the request of the board."

When the Board attempted to promulgate rules and regulations for premises licensing it deleted the general record keeping rule with the intention of including it under the premises licensing rules and regulations. The Board expects its record keeping rule for premises licensing to become effective in April 1984.*

However, regardless of whether premises licensing is retained, the Board still lacks authority to discipline individual veterinarians for record keeping problems. The Board chairman said that the Board intended the language in A.R.S. §32-2274 (part of the premises licensing statutes) to cover both individual licenses and premises licenses. The current language does not accomplish this goal. First, the statute limits the Board's action regarding specific individual licensees to the premises' named responsible veterinarian. Second, the statute does not clearly explain who is referred to in the phrase ". . . take action as to both the license and the licensee. . . ." (emphasis added).

Board members feel that control over record keeping is a necessity because several veterinarians keep poor records of their patients. In at least one instance the Board was unable to discipline a licensee for his poor record keeping. The case involved the death of a cat, allegedly caused by negligence.

CONCLUSION

Board statutes contain no provision for disciplining individual licensees for poor record keeping. Regardless of whether premises licensing is retained, Board statutes should be revised to provide sufficient disciplinary authority to the Board regarding this matter.

RECOMMENDATION

The Legislature should consider adding a provision to A.R.S. §32-2232 that would allow the Board to discipline individual licensees for inadequate record keeping.

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* See Finding I, page 11, for further discussion of premises licensing rules and regulations.

OTHER PERTINENT INFORMATION

The Veterinary Board has expressed concern over its statutory inability to hire personnel. Recent dissatisfaction with the level and control of service from Arizona State Boards Administrative Office (ASBAO) has prompted the Board to seek legislation that will enable it to hire an executive secretary.

The Board feels that it requires a more professional level of service than ASBAO is currently capable of providing. ASBAO now provides clerical services to the Veterinary Board, including preparation of meeting minutes and board correspondence, issuing licenses and receiving and filing consumer complaints. The Board believes that it needs an executive secretary to administer the Board's regulatory functions and ensure timely and consistent completion of its actions.

The Board is also concerned with its inability to exercise direct control over ASBAO staff assigned to the Board. Although ASBAO provides services to the Board, ASBAO employees are responsible to the Department of Administration. The Board contends that this lack of control contributed to past problems of slow preparation of legal documents by the ASBAO staff member assigned to the Veterinary Board. The Board believes the problem of control will be solved if it is empowered to employ an executive secretary.

ASBAO is currently undergoing staff reorganization in an attempt to upgrade services. The ASBAO director said ASBAO plans to provide such professional services as preparation of legal documents, coordination of administrative functions in complaint investigations and substitution of staff as needed.

Beyond the reorganization proposed by ASBAO, additional changes have been made in other states to increase the level of service. Many states are creating umbrella agencies to provide services to occupational licensing

boards. Powers and duties generally given to these agencies include: appointing an executive secretary for each licensing board, receiving applications for a license or certificate, mailing and processing license renewals on a staggered basis, training new board members, maintaining central records, promulgating rules and regulations to implement licensing laws, scheduling disciplinary hearings, and inspecting licensee facilities.

As long as Arizona relies on ASBAO to serve the Veterinary Board the Board may never achieve the degree of control it desires over ASBAO staff and services. Beyond the Board's lack of administrative control over ASBAO staff, a written agreement outlining the duties and services ASBAO is to provide to the Board is not presently enforced. According to ASBAO staff, a previous agreement for services between the Board and ASBAO is outdated and does not reflect current services or costs. ASBAO is drafting a new contract but no specific completion date has been planned.

Hiring its own staff could substantially increase Veterinary Board costs. In fiscal year 1984 the Board will pay $23,200, 44 percent of its operating budget, to ASBAO. Salaries and employee-related expenditures for executive secretaries employed by other boards with a comparative number of licensees range from about $29,700 to $30,900.* If the Board employed its own executive secretary it would still have to pay for services such as accounting, word processing and rent, which are presently provided by ASBAO.

We do not have sufficient data to determine which alternative for administrative services would be most beneficial to the Veterinary Board and the state. Either alternative may increase costs. Further analysis will be necessary to determine which alternative is more cost effective.

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* These boards are Chiropractic, Osteopathic, and Structural Pest Control.

AREAS FOR FURTHER AUDIT WORK

During the course of our audit we identified potential problems requiring further audit work in several areas related to the Veterinary Medical Examining Board. Due to time and staffing constraints we were unable to review these areas. These potential issues are:

1. Does the state need to certify veterinary technicians?

2. Is the Veterinary Board's state examination valid?

3. Is it necessary to require the clinical competency examination of applicants who hold valid licenses from other states?

4. What is the most cost-effective staffing arrangement for the Veterinary Board?

Arizona State Veterinary Medical Examining Board

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APR 1984
AUDITOR GENERAL

April 25, 1984

Mr. Douglas R. Norton
Auditor General
111 W. Monroe, Suite 600
Phoenix, AZ 85003

Dear Mr. Norton:

Enclosed please find the Response of the Arizona State Veterinary Medical Examining Board to your agency's revised draft report on the Board's Sunset Review Audit.

I sincerely appreciate the cooperation extended by your staff, and especially the small extension granted in the allotted time for preparation of this Response. As I'm sure you are aware, this Board has no administrative staff to prepare such a Response on its behalf, and it is time-consuming to elicit input from Board members scattered throughout the state.

Should you have any questions or need further input from myself or the Board, please do not hesitate to contact me.

Sincerely,

Suzanne de Berge

Suzanne de Berge
Chairperson

SdB:clf

Enclosure

INTRODUCTION

The Arizona Veterinary Medical Examining Board has been scrutinized by the Arizona Auditor General's Office under the "Sunset Review" process in 1981 and in 1983. In both of these recent audits, the Audit Teams have reached the general conclusion that the Board of Veterinary Medical Examiners has acted and continues to act in the public interest.

The Audit completed in 1981 recommended that a number of changes, statutory, regulatory and administrative, be made to improve the efficiency, fairness, and cost of the Board's activities. The Board implemented most of the recommended statutory changes in the 1982 legislative session, effective during mid-1982. Administrative changes were made more rapidly; changes to rules and regulations took longer.

The process of statutory, administrative and regulatory change is not complete. The Legislature has passed House Bill 2051, and a number of rules and regulations have been certified by the Attorney General's Office. Many of the concerns addressed in this Audit report have been obviated by passage of the legislation and certification of the rules.

Certain of the administrative concerns noted in this report have not been addressed or remedied as yet, largely because the State Boards Administrative Office does not offer administrative support. The positions allotted to ASBAO include only clerical and secretarial personnel, no administrative personnel, and thus ASBAO cannot meet this Board's administrative support needs.

SUNSET FACTORS

The material in "Sunset Factors" (pgs 5 - 10) generally summarizes topics covered in detail in the "FINDING" sections. However, there are a few references which bear discussion.

The Board is concerned with the statement found in Sunset Factor #4, "All previous Board attempts to promulgate premises licensure rules and regulations have been unsuccessful **because of strong opposition from the veterinary profession and rejection by the Attorney General** (see page 18)" [emphasis added]. This clearly implies both repeated attempts to promulgate rules, and continued opposition from the veterinary profession, both circumstances being untrue.

The Board held two public hearings on the "package" of rules and regulations it had prepared both to modernize and better organize its existing rules, and for premise licensing. On the basis of these hearings, written input received, and discussions at the Board's regular meetings, a single package of rules was submitted to the Attorney General's Office. A portion of these were deemed uncertifiable, thus forcing rejection of the entire package (the Attorney General's Office is not structured to permit partial certification of such submittals). In a letter responding to our submittal, the Attorney General stated: "We have determined that rules R3-11-04, R3-11-52, R3-11-70, R3-11-73, R3-11-76 are in proper form and within the Board's authority to adopt, and we will certify such rules if submitted independently..." These were resubmitted and have been certified. Work continues on the rejected portion.

Further, the Board has enjoyed the support of the veterinary profession in its 1983 legislative efforts, and objects to this Report's implication that there remains strong opposition within the profession to premises licensing.

Other statements in the Sunset Factors section of the Report with which the Board disagrees include the first three "bulletted" items under Sunset Factor #9 (pg 9). These three items relate to premises licensing and to licensing requirements for applicants already licensed in another state and are discussed in detail in FINDINGS I and III. The fourth bulletted item has been obviated by certification of the current rules submittal in the Attorney General's Office.

The Board also disagrees with the Audit Team's conclusions regarding premises licensing reflected in Sunset Factor #11, but will address these on a finding by finding basis. And, although a small point, the Board notes the apparent discrepancy between the number of complaints investigated annually as listed in Sunset Factor #2 (pg 6) and the number of complaints investigated annually as displayed in TABLE 1 (pg 2).

FINDING I: PREMISES LICENSING

The Board strongly disagrees not only with the Audit Team's conclusion that premises licensing is unnecessary, but with the arguments utilized in this report to support the Team's conclusion. Further, it is apparent that the Audit Team fails to grasp the complexity of the issue and of the nature of services provided at veterinary premises. In an effort to compare the Veterinary Board with the "BOMEX model", the Audit Team has ignored significant differences between the nature of medical doctors' practices and veterinary premises and between the range and variety of boards and agencies which oversee actions and premises related to human medicine.

In addition, the solutions offered by the Audit Team are simplistic, and neglect to address areas of concern raised by Board members in the exit conference and draft response conference, either from the standpoint of preserving the public interest or with regard to anti-competitive matters.

The paragraphs in this report beginning on page 11 under the heading "Arizona Law Requires Licenses for Veterinary Facilities" and continuing through the first three paragraphs of page 12 fairly accurately outline, in brief, the circumstances resulting in the Board seeking premises licensing. To state the Board's position most simply, too many cases were arising in which the individual veterinarian rendering treatment had only limited, if any, responsibility for the circumstances causing a public complaint to arise.

In reviewing available information on trends of multiple-premise ownership and non-licensee ownership, the Board determined that a premises license which clearly identified the licensee accepting responsibility to the Board for compliance was the most suitable way to proceed. Premises licensing, open to licensees and non-licensees, raises neither anti-trust nor anti-competitive questions. The Board believes responsibility is thus correctly assigned: for matters of specific treatments rendered, responsibility is with the individual licensee. For matters of policy and facility compliance, responsibility lies with the premise owner and/or "responsible veterinarian".

The Audit Team reports that contrary to expected trends, veterinary premise ownership remained relatively stable during 1981-82. It is worth noting that at least one reason for the reported stability of practice ownership during that period is the generally poor economy. Investors were not investing as freely as they might have during better times, and faced with diminishing financial profiles, owners likely didn't seek (or could not find) suitable buyers. Thus, it is not suprising that anticipated changes in ownership patterns did not arise.

The balance of the material presented under Finding I is unsupported by fact; is characterized by statements of opinion which could as easily be made to support the converse; demonstrates failure to comprehend the complexity of the problem as perceived by the Board; and ignores the invalidity of comparisons between veterinarians and dentists, or veterinarians and medical doctors. Further, although Legislative Council's opinions on interpretation and enforcement of the statutes which appear throughout the Audit Report are interesting, the Board must rely on the opinions of the agency which has the responsibility of providing the Board's legal services, that is, the Attorney General's Office.

Diversion Of Responsibility

It is categorically untrue that "premises licensing may direct responsibility away from the veterinarian rendering treatment", as is alleged by the Audit Report. This statement clearly indicates a failure to grasp the intent of the Board with regard to premises licensing, which was, and is, to be able to hold accountable a premise owner and responsible veterinarian for policies and conditions within a premise, when the individual licensee rendering treatment could not reasonably be held responsible.

The suggestion that a licensed practice owner may "relieve himself of responsibility by **designating** an employee as responsible veterinarian" (emphasis added) is completely false and underscores the failure of the Audit Team to study the premise license documents. It is clearly stated on forms for identifying the "responsible veterinarian" that this licensee must sign and by so signing swear that he or she is personally responsible to the Board for the compliance of that premise with the laws and regulations of the state and federal governments pertaining to veterinary medicine, and responsible for the establishment of policy at such premises.

There is no mechanism for a premise owner to "designate" an unsuspecting employee as responsible veterinarian. If a veterinarian employee has been given sufficient authority over the premise to willingly sign and swear as described above, then that employee is rightly the responsible veterinarian the Board holds accountable for conditions and policies within the premise.

Nothing in premises licensing relieves individual licensees of responsibility for the quality of their own medical treatment or for premise conditions clearly under their control. And, the Report's contention that the Board already has sufficient authority to properly discipline in "premises-related" matters is without merit.

The cases selected to support the Audit Team's conclusion that the Board has previously acted against an individual's license in "premises-type" situations (and therefore does not need premise licensing), prove to the contrary.

Case 1, described on page 14, did not result in discipline of the individual licensee for premise-related violations, but for that licensee's individual responsibity in the case for failing to personally monitor the dog's treatment and for not giving adequate instructions to the attendant. The premise-related violations were not addressed by the Board.

Case 2, as described on page 15 accurately states that the Board determined the individual licensee's medical service was appropriate and acceptable and took no specific action. The description further states, "However, the Board recommended to both the owner and Dr. A that the communication system be improved and that animal owners be given more concise information." If it is the Audit Team's contention that a recommendation by the Board to a premise owner over which it had not the slightest power constitutes proof that the Board is sufficiently empowered to handle premises-related matters without premise licensing, they vastly misconstrue the weight of such a "recommendation".

"BOMEX" Model

While it may be true that BOMEX holds its licensees ultimately responsible for total patient care, the Veterinary Medical Examining Board does not find this a valid means of dealing with its licensees or the public interest in relation to the care of livestock and pets. Human medical facilities generally are regulated, licensed and supervised by a number of agencies, although individual doctors' offices are apparently not supervised. Unlike a doctor's office where services are largely limited to examination and diagnosis, in veterinary premises, services may range from simple boarding (hotel functions), to the most complex and specialized surgeries and post-operative care, including emergency treatment. Although the BOMEX model may be suited to the medical profession, it is not suited to the veterinary profession.

Prohibitions on Non-Licensed Onwers

The Audit Team suggests that in the case of non-licensed premise owners, medical policy-making be limited to licensees. Further, Legislative Council is quoted to the effect that prohibiting non-licensed persons from these activities would mean that licensees were responsible for same. If we understand this correctly, non-licensed persons (over whom the Board has no statutory power) would be prevented from acting in medical policy

areas, and that employed licensees would be permitted by such non-licensed owners to make all decisions relating to "policies and operations which affect treatment and care of animal patients".

In order to provide the Board with authority to limit medical policy-making to licensees, the Report suggests statutory amendment to include as a definition of practicing veterinary medicine without a license, attempting to control policies and operations affecting the treatment and care of animals. Practicing veterinary medicine without a license, with passage of HB 2051, is a Class One misdemeanor. Any cases of this nature are referred to the appropriate County Attorney, since the Board has jurisdiction only over licensees. The prosecution of Class One misdemeanors by County Attorneys is notoriously lacking. Many more serious violations occupy their time and budgets. Thus, if any non-licensed owner acted in premise-related policy areas, an employeed licensee's only recourse would be to immediately resign employment to protect his license, and the Board's only recourse would be to notify the appropriate County Attorney. Such cases would disappear into an overtaxed system, and consumer involving premise issues complaints would go unresolved.

In addition, the Board fails to understand how, under the suggested structure, it would determine which among several employee veterinarians is responsible to the Board for such policy-making functions. Non-licensee owners could in no way be required to designate an employee veterinarian as responsible for policy.

Rules and Regulations

The regulatory process is never finite, and if an agency is doing its job, rules and regulations are constantly undergoing change and updating. The Board expended considerable effort in preparing the first rules submittal, however, scrutiny by the Attorney General's Office detected insufficiencies. As these are being addressed, new situations will arise requiring modification, addition and elimination of rules already certified. The rules and regulations denied certification by the Attorney General, although approved by the Governor's Regulatory Review Committee, were the first submitted by this Board in interpreting and delineating a completely new program. If our agency were supplied with an administrator, the preparation of rules and regulations might proceed more rapidly. Nevertheless, we are proceeding, and we think it is not yet timely to judge the merit of the entire program.

FINDING II: ISSUANCE OF LEGAL DOCUMENTS

The Board does not dispute the lengthy delays in the cases noted by the Audit Report. We would hasten to point out several of factors overlooked by the Audit Team, however.

1. Of the seven documents listed in TABLE 3 (pg 24) four were of a technical nature relating to untimely renewal, failure to secure sufficient Continuing Education credits for renewal, etc. All of these violations were cured within days of the Board's determination and the issuance of documents was a formality. In none of these cases was the public interest at risk.

2. Contrary to the implications of this Report, the Board did not simply ignore these delays. A budgetary "over-sufficiency" during 1982 enabled the Board to hire a law clerk through the Attorney General's office to, among other tasks, help finalize preparation of the legal documents in question.

3. The Audit Team has categorized as "outside the audit period" other actions taken on a timely basis by the Board which were of a similarly serious nature. The Board has been unable to clearly determine the period of its acitivity defined by the Audit Team as "the Audit Period". In reviewing Board actions over a wider time frame, it is apparent these represent anomolous instances in the Board's history of complaint resolution.

4. The Audit Report fails to take note of the fact that most of these documents were originally approved by the Board (pending negotiation, if any, and preparation) during the time of the prior Sunset Review, when the inquiries of the previous Audit Team were occupying a great deal of time of Board members and those persons in the State Board's Office and the Attorney General's Office who provide support to the Board's activities.

5. The Board experienced a significant turn-over of members during 1982 and the new members wished to review in detail the cases which the documents referred to in order to satisfy themselves that they would affix their signatures. This was especially true in regard to the two substantive, or non-technical cases.

FINDING III: LICENSURE REQUIREMENTS FOR OUT-OF-STATE LICENSEES

The Board very strongly disagrees with the conclusion of the Audit Team that the Board unnecessarily restricts licensure in Arizona of other states' licensees. This entire section of the report is based on generalizations and invalid comparisons. No documentation is provided that any competent applicant licensed in another state has gone unlicensed in Arizona. The Audit Report provides no figures on failure by such applicants licensed in other jurisdictions compared to unlicensed applicants, nor any figures on what portion of the examination (National or Arizona) was failed by such licensed applicants.

The suggestion that the Board license by endorsement applicants who are licensed in other states, may have the practical effect of Arizona becoming a state through which marginally qualified practitioners can easily secure a license as "insurance" against loss of licensure elsewhere.

Licensing by endorsement would require the Arizona Board to assume that:

1. other states actively enforce quality standards to the same degree that we do;

2. other states require similar levels of Continuing Education that we do, and that other states' associations make the same quality of Continuing Education programs readily available as does Arizona's;

Further, the criterion of "good standing" in another state is not adequate. Disclosure and privacy considerations may prevent state boards from revealing that a license "in good standing" may be under investigation or subject to other proceedings. Previous experience has shown that licensees under investigation or threat of discipline often remove themselves to other states, especially states with lenient licensure practices. Thus, they leave a state while their license is "in good standing".

Other state boards may then fail to complete their actions due to cost or other considerations, not the least of which is that <u>their</u> problem has disappeared. Even if information later reaches this Board that action is impending or has been taken against a licensee in another jurisdiction, if this Board had already licensed by endorsement, it can as a practical matter take no action against the subject licensee even if very serious veterinary misconduct were involved. The costs of "re-hearing" the case in our state, investigating, transporting witnesses, and so forth, not to mention the concommitant time delays would prohibit the Arizona Board from adequately protecting the public interest in this regard.

Non-Veterinary Members

In 1979 the State Legislature determined that lay persons should serve on professional licensing boards, in part to serve as watchdogs of the public interest so that professions could not have a free hand in restricting competition or the entry into Arizona of qualified co-professionals. The reader may find it enlightening that both non-veterinarians on the Board are completely opposed to licensure by endorsement. One of the non-veterinarian members of this Board, when first appointed, was wholeheartedly in favor of the concept of reciprocal licensing. However, personal experience in the ten examinations which have been held during this member's tenure have resulted in a categorical shift. This shift to strict opposition to licensure by endorsement or other form of reciprocal licensure has arisen from repeatedly being presented with licensees of other states who were plainly no longer competent to provide veterinary services.

Arizona Practitioners

The Audit Report, however suggests that since "older" Arizona licensees are not subjected to periodic examinations, our procedures discriminate against incoming veterinarians. The Board disagrees. Throughout their tenure of practice within this state, Arizona licensees have been subject to both Continuing Education requirements for license renewal, and potentionals. The reader may find it enlightening that both non-veterinarians on the Board are completely opposed to licensure by endorsement. One of the non-veterinarian members of this Board, when first appointed, was wholeheartedly in favor of the concept of reciprocal licensing. However, personal experience in the ten examinations which have been held during this member's tenure have resulted in a categorical shift. This shift to strict opposition to licensure by endorsement or other form of reciprocal licensure has arisen from repeatedly being presented with licensees of other states who were plainly no longer competent to provide veterinary services.

Arizona Practitioners

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The Board has in the past offered re-examination as an alternative to being forced to relinquish a license subsequent to a competency hearing. Additionally, in cases resulting in disciplinary action related to reduced competency, the Board often makes it a condition of its discipline that the subject licensee study specific areas of veterinary medicine over and above the Continuing Education credits required for renewal. Thus, although the application of quality standards is somewhat different in execution for licensees practicing for some time in Arizona compared to veterinarians applying for licensure after some years of practice elsewhere, each group is treated in a manner consistent with the Board's statutory purpose, and we believe, fairly.

Further, one of the Board's recent legislative requests (1982) sucessfully tightened statutory language on renewal of licenses allowed to lapse. Previously, any veterinarian once licensed in Arizona who allowed this license to lapse could reinstate simply by paying a "late penalty" and the current renewal fee, regardless of how long the license had lapsed, or whether the veterinarian had been practicing or maintaining suitable Continuing Education elsewhere. Under the old statute, there was substantial question whether the Board could have prohibited such reinstatement even if the licensee had during the lapse acted in a manner which would have resulted in suspension or revocation of the license.

FINDING IV: AUTHORITY TO DISCIPLINE FOR POOR RECORDKEEPING

Rules pertaining to recordkeeping were certified by the Attorney General's Office on April 24, 1984. Since these were adopted pending certification, they will be effective immediately upon filing with the Secretary of State's Office.

The specific rule, R3-11-52, appears in Article 5, Professional Ethics and Standards and thus permits the Board to discipline individual veterinarians. Further, through HB 2051 the Board has amended statutory language in 32-2274 with regard to premises licensing to eliminate any potential confusion as referred to in the Report (pg 36). Note further that the statements contained in the first paragraph that this rule would apply only to premises are incorrect, which a brief perusal of the rules submittal would have revealed.

OTHER COMMENTS

Audit Timing

In approximately June of 1981, a Sunset Review was begun on the Board of Veterinary Medical Examiners. The Report arising from this review was presented to the Joint Committee of Reference during November of 1981. In addition the necessary reinstatement legislation, a number of statutory changes were sought by the Board in response to the Review. The 1981 Sunset Review did not evaluate premise licensing, therefore the 1982 legislation also set the next Sunset Review for an unusually short time frame and scheduled the Board to terminate on June 30, 1985.

Among the changes made in response to the 1981 Sunset Review were a move to bi-annual licensing; addition of the ability to take certain restricted types of disciplinary action on the basis of informal Board hearings; use of a professionally-prepared, nationally-administered Clinical Competency examination; and procedural changes in relation to our state examination.

Approximately 12 months following the institution of most of the 1981 Audit Team's recommendations, the discovery period of the second Audit began. Thus, it appears that with regard to general criteria, the 1983 Audit covered a period of from approximately mid-1981 to the end of 1983, a relatively short period of time. When it is considered that the effective date of recommended changes may have been as late as mid- to late-1982, the period reviewed by the 1983 Audit Team which could be expected to reveal Board actions as based on changes instituted after the prior Audit, shrinks even further.

Considering that the Board had been so recently reviewed, it would have been more appropriate to schedule this present audit to begin during 1984. The due date for presentation of this report to the Joint Committee of Reference is October 1, 1984; thus the Audit could have started in 1984 and still have been completed prior to the due date. This would have allowed the Board additional time to administer and utilize changes instituted as a result of the prior Audit. And, the present Audit could have covered a longer period, thereby providing a more accurate picture of the Board's activities under the new statutes, regulations and administrative changes.

Ability to Respond

The general timeline alloted for the Audit procedure is not made known to the subject agency except (as noted above) in regard to that agency's allowed response times. As a small 90/10 agency, with support services provided solely by employees of the State Boards Administrative Office, the Sunset Review process is quite burdensome.

Personnel of the State Boards Office are shared by ten separate agencies. In this Board's case, ASBAO provides approximately one-half of a secretary, a portion of a bookkeeper's time, and some clerical support.

Board members live throughout the state, and the Board meets only once a month. Since Board members cannot be expected to keep complete files other than the central files maintained by ASBAO, response to Audit Team inquiries, usually required "on the spot" whether by phone or in person, are from memory and consultation of files is not permitted by the process. Members not living in Phoenix are largely prevented from participating in the Board's response, since response periods are limited to ten working days.

Other Personnel Matters

Both this response and the Audit Report make reference to the fact that the Board is not happy with the level of services the State Boards Office is presently capable of providing. Due in part perhaps to the nature of veterinary medicine and the emotional attachments of clients to their pets, the Board receives a disproportionate number of complaints to the number of licensees it governs. Therefore, although it is a "small Board" it has administrative needs beyond those of similarly small boards.

The shared employees within ASBAO are classified as secretaries, clerks and bookkeepers; none are administrators. The monthly meetings Board members are able to volunteer away from their practices and businesses should largely be spent on policy matters. However, the bulk of this time is spent administering much of the basic business of the Board, and only limited time is available to devote to policy matters.

Some Boards served by ASBAO continue to office there, and receive clerical and bookeeping support, but provide their own administrative personnel. Other Boards have chosen to sever their relationship with ASBAO. The Board's most recently passed legislation for the first time empowers it to hire personnel other than an investigator. The Board will now begin to evaluate how it might best improve its ability to function in relation to this new empowerment.

Cost Effectiveness

The Auditor General's budget outline for this recent Audit provides $23,500 for the salaries, benefits and expenses of employees at the Audit Team level and above. The dollar vallue allotted for agency overhead and secretarial support is not included. It is not possible to calculate the cost to the subject agency in terms time expended by Board members, by Attorney General's Office employees, or by the various employees of the State Boards Office whose time is shared by this Board.

However, using simply the $23,500 figure, the 1983 Audit budget constitutes over half of what it is projected that the Board's annual expenditure for fiscal 1983/84 will be. At the end of the third fiscal quarter, the Board has so far utilized $33,098 of its appropriation. Even considering the upcoming expense of a hearing in Northern Arizona, it is difficult to imagine that the Board will spend as much as $45,000 in this fiscal year.

No where in the Audit Report are there any findings or suggested programs which would provide savings or generate revenues approaching the economic value of the funds expended in this Audit. Further, as a 90/10 agency, the Board provides ten percent of its annual revenues to the General Fund. Because of the Board's bi-annual licensure it is necessary to look at a two-year period to derive an estimated annual figure. Combining actual income for fiscal 1982/83 and anticipated revenues for fiscal 1983/84, Board annual revenue for fiscal 1982/83 and 1983/84 should average $61,800. Thus the General Fund can anticipate an averaged annual receipt from the Board this year of $6,180, or far less than the $23,500 figure.

As was the case in the 1981 Audit Report, this recent Audit Report generally gives the Board positive marks. Suggested legislative and other changes have been promptly initiated. In fact, some of the legislative and regulatory changes recommended in this recent Report were anticipated by the Board by more than two years. This current Report includes the following statements characterizing the Board:

1. "generally operating effectively and efficiently..."

2. "operates in the public interest by ensuring practicing veterinarians...meet minimum licensing standards and are disciplined when necessary."

3. "rules and regulations appear to be consistent with its legislative mandate."

4. "has complied with Open Meeting Law on public meetings."

5. "has adequately investigated and resolved most complaints..."

6. "(has) full authority...available to enforce the Board's enabling statutes."

7. "terminating the Board could significantly harm public health."

8. "level of regulation for licensing veterinarians is appropriate."

It seems appropriate to suggest at this point that the State Legislature may wish to review the guidelines utilized for Sunset Review of small agencies, particularly 90/10 agencies.