AAVSB & AVMA TO MEET IN DALLAS IN SEPTEMBER

AVMA has accepted AAVSB’s invitation to meet to discuss the international graduate issue and the model practice act. Three representatives from each association will attend the meeting in Dallas on September 23-24. AAVSB representatives will be the president, Dr. Sonny Corley, president-elect, Dr. Lynn Lawhon and treasurer, Dr. Tom Whitley. AVMA will be represented by the Executive Board chair, Dr. Bonnie Beaver and Executive Board members, Dr. Bud Hertzog and Dr. Roger Mahr.

The AAVSB members made it clear at the annual meeting in Boston that they want improved communication with the AVMA. Both groups have agreed on the general topics to be discussed, including improved communication. Following this meeting, AAVSB will make a full report to each member board.

Record Attendance at Annual Meeting

42 jurisdictions were represented at the Delegate Assembly in July, the largest number in recorded history. The lure of Boston and the extensive campaign conducted by the AVMA both contributed to the increased numbers. The AAVSB leaders applauded the response from the members and pledged to heed their directions. There was far more participation by delegates than in previous years.

Delegates Make Themselves Heard

Dr. Bob Gillespie, chair of the Indiana Board, and Dr. Marva Carter-Davis, Illinois Board member, both make points during the discussions.

The AAVSB Model Practice Act drew the liveliest discussion. The Task Force presented the revised document to the attendees with chair, Dr. Lila Miller, giving the
Renewed Cooperation

A reflection

By CHARLOTTE RONAN
Executive Director

I am always empowered by the commitment and ability of all of you who serve as veterinary regulatory board members. You volunteer for the job, often not knowing the extent of the work required. Yet you accept the responsibilities of the office. Most of you with whom I have talked indicate that service on a board is different from your other professional activities. Having chosen the veterinary profession as a way to help, sometimes you find the regulations of the “establishment” get in the way. Then you become board members and suddenly are a part of that establishment.

The majority of you are veterinarians - members of the profession - and it is important to recognize the different hats you wear. You are often business owners, professional association members, as well as licensing board members. I do not believe that these different hats mean that there must be confrontation between the association and the regulatory boards. The last few months have been filled with various activities and emotions. One of the boards recently sent a letter to both the AVMA and to AAVSB imploring cooperation. There are far more similarities than differences within the veterinary profession. Both the AAVSB and the AVMA want a strong, well-recognized, and well-respected profession. In order to continue working toward that goal, it is important to set high practice standards and to have veterinarians working with the lay-members on the boards regulating veterinarians. Individual veterinarians, their clients, patients, and the profession will reap the benefits of advocating for laws, rules, standards and practices that assure only qualified, competent and ethical veterinarians are allowed to practice.

That is why veterinary regulatory boards and professional veterinary organizations need to work together, even though the roles and responsibilities of each are different. The meeting later this month between the AAVSB and the AVMA offers a ray of sunshine toward improved cooperation. Both organizations offer valuable services to their constituencies. Mutual recognition of those services will go a long way toward better understanding.
AAVSB News

Office Update

AAVSB sent a Summary of the Delegate Assembly including a copy of each of the handouts to each member board office in August. The annual audit for 2000 was also sent. (The AAVSB Constitution requires that an audit be provided to members each year.)

The Directory of Licensing Requirements is now updated and available on the AAVSB Website. It includes contact information for each board. The office mailed the directory of board members to each board office last week.

The office staff is preparing a list of boards that accept RACE-approved continuing education to post on the Website. Each board is being contacted to get current information.

VIVA needs current licensee and disciplinary information. Score transfer applications often “surprise” us with licenses that we do not have in the database. The system depends on getting up-to-date information from the board offices. Thanks to all of the terrific staff who send it on a regular basis.

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FARB Leadership Conference

AAVSB belongs to FARB, the Federation of Associations of Regulatory Boards. For the past several years, FARB has conducted a leadership conference. This summer, AAVSB’s newest Executive Committee member, Dr. Georgie Ludwig, attended the session in Colorado Springs. The group focused on a generic model practice act and model application. Dr. Ludwig’s experience on the AAVSB Model Act Taskforce provided unique insight for the other participants. FARB will publish both of its models next year.

Listserve Is Live

Board Administrators: Sign up with Yahoo Groups. Board offices can have instant access to each other. The service is provided at no charge, so there are some advertisements. Board administrators can post messages, upload files/documents, bookmark links to other relevant websites or use the private chat room that will be accessible only to members of this group. The calendar feature will be helpful for AAVSB staff to know the deadline for board’s applications or when meetings are scheduled.

By editing their membership, administrators can choose how messages will be sent to them. If they want to receive one e-mail a day including all messages, they can set the system up that way. The “help” for Yahoo Groups provides excellent support. Robin Bergen, AAVSB staff, is available to assist anyone with questions.

Bulletin:

Employee Needed
AAVSB to hire a “Credentials Administrator” to oversee the VIVA program and other responsibilities. Team player wanted; beginning salary $30-35,000 with potential for advancement.

Please contact the AAVSB office. Toll-free 877-698-8482.

VTTC TO MEET

The Veterinary Technician Testing Committee meets September 27-October 1 in San Diego. Their ongoing job is to prepare the Veterinary Technician National Exam. The AAVSB representative’s term expires after this meeting. Joy Ellwanger, CAHT, former member of the Pennsylvania Board has served for the past six years and is not eligible for reappointment. A call for nominations will be sent to the board offices this fall.
If the Model Act did not provide enough fuel for discussion, there were ample other topics. Above left, Dr. Sue Chadima greets the chair of the host state, Dr. Ed Leonard; above, Dr. Lynn Lawhon, AAVSB treasurer reviews the association’s financial status. At left, Dr. Ed Epringham presents the Ontario Professional Enhancement Program to the assembly; below left, Keynoter James Sumner explains a point to Charlotte Ronan; bottom left, Dr. Sonny Corley presents a gift of appreciation to outgoing president, Dr. Wayne Rehn.
The Board Member Seminar and Administrator’s Forum also provided opportunities for sharing ideas. At left, Dr. John DeVries, delegate from New Jersey; middle left, Idaho board members, Drs. Pat Saras and Brad Williams; middle right, Board Administrators, Tom Mickey, NC (left) and Ron Allen, TX; bottom left, veterinary technicians, Barbara Pinker, PA Board delegate (left), and Linda Merrill, chair of the VTTC; and bottom right, Alabama board representatives, Dr. David Hayes, Dr. Barbara Benhart and Theresa Chandler (board administrator) along with Dr. Diane Scott, Wisconsin delegate. Dr. Scott brought cheese from her state to share with the delegates during the break.
AIL CORNER

Barn Door Closed:
Horse Already Out

By DALE ATKINSON
Atkinson & Atkinson

The procedural aspects of an administrative hearing are extremely important to provide an accused licensee with appropriate due process rights. Failure to follow certain procedural aspects may result in a reversal of the actions of the board.

A licensed veterinarian was charged by the Veterinary Medical Examining Board with professional misconduct under applicable Oregon statutes and rules. The charges stemmed from at least two incidents. One incident involved conduct which constituted "charging for services not rendered." Specifically, it was alleged that the veterinarian performed two blood draws on a horse and charged the client for labor and shipping cost, when, in fact, the veterinarian shipped the samples to the wrong address and never received the results of such tests from the laboratory.

An additional incident involved conduct which constituted gross negligence and was based upon the injection of Vitamin E and selenium to a horse without having the drug epinephrine available to counter any possible adverse reaction. The horse died of shock from an allergic reaction to the injection which, as alleged, might have been prevented through the administration of epinephrine.

At the formal hearing, several factual assertions made by the veterinarian with regard to the injection to the horse were the subject of disagreement. Accordingly, the veterinarian’s credibility became a pivotal issue. The veterinarian attempted to call a particular witness to testify on his behalf about several events upon which there was disagreement. The hearing officer attempted to call the witness to procure her testimony telephonically, but was unsuccessful. The board also contemplated calling a rebuttal witness. Therefore, and at the close of the hearing, the hearing officer set a deadline of December 28, 1998, for the receipt of additional evidence. Thereafter, certain dates were set with regard to the filing of objections or comments of any additional evidence. Subsequent to these cut-off dates, closing arguments were to be held.

On January 4, 1999, the board submitted a letter to the hearing officer received from the witness. This letter stated that the witness did not testify at the hearing because she was unsure as to the truth of certain assertions made by the veterinarian. The witness also stated that veterinarian had contacted her repeatedly urging her to testify favorable to the facts of the case, despite her lack of certainty. Upon submitting this letter to the hearing officer, the board also mailed a copy to the veterinarian. The record does not indicate that the hearing officer reopened the record to include the letter or in any way considered the letter.

After closing arguments, the hearing officer issued a proposed order in favor of the veterinarian. After reviewing the transcripts de novo, the board eventually issued a final order concluding that the veterinarian was guilty of professional misconduct. The order of the board specifically recited that it considered the witness letter and expressly found the veterinarian not credible based, in part, on the contents of such letter. Based upon its findings and conclusions, the board suspended the veterinarian’s license.

The veterinarian appealed the matter arguing that the consideration by the board of the witness letter was improper because the hearing record was closed before the letter was submitted and because the record was never reopened for its admission. The board argued that although the hearing officer set December 28 as the initial deadline for the submission of additional evidence, the record did not actually close on that date. Furthermore, the board argued that there were no administrative rules in place that regulate the receipt of evidence after the date a hearing has been closed. The board argued that the test should be whether the admission of the evidence was fair and whether the veterinarian had an opportunity to respond to the letter.

In assessing this matter, the Court of Appeals of Oregon reviewed the applicable statutes and regulations and

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history of the project and an overview of the process. She explained that AAVSB developed the act as a service to its member boards to be used as a resource and that it did not require a vote of the delegates. However, it was obvious from the extensive discussion following the presentation that many delegates expected to vote and that their boards had instructed them how to vote.

After some parliamentary maneuvering, a motion by the Michigan delegate to not accept the Model Act was defeated. The delegates passed the “Kansas motion”, which states, “The Kansas delegation moves that the AAVSB continue to dedicate its resources to the ongoing development of an AAVSB ‘Model Practice Act Resource Tool’ (“MPART”) for its member boards. Further, while the current revision of the model represents good progress toward that accomplishment, we move that the current revision shall not be considered a finished product. Instead, further development shall occur, during which ongoing, broad based input shall be utilized from outside organizations, including the AVMA, as well as representation from the public sector. Periodic progress reports shall be made to members.”

Discussion on the Model Act extended over several hours, including the lunch break, giving the delegates ample time to talk among themselves.

PAVE is AAVSB’s new program to evaluate the equivalence of foreign veterinary education and was the other big discussion topic. The PAVE Board presented information about the program to the delegates with Dr. Sue Chadima, chair, leading the panel and giving an overview. Other Board members Ron Allen and Drs. Ralph Richardson, Marv Samuelson, Tom Whitley, and Bobby Horne commented and responded to questions from the delegates. The chair of the National Board Examination Committee (NBEC), Dr. Nancy Collins, told the delegates that the new PAVE Qualifying Exam has been written and is now being reviewed by the content experts. It will be ready for delivery on January 3, 2002. The NBEC used the same process to develop this exam as it has used for the licensing exams – creating a blueprint based on an analysis of the subjects to be covered, hiring content experts to write exam items, then a thorough review of each item before completing the final forms. The passing score cannot be established until after the exam has been given.

Drs. Caroline Hughes and John Gooss (center) from the Delaware Board, discuss the Kansas motion with Drs. Tom Jernigan (right), KS chair and Dirk Hanson, KS Executive Director. Following the vote on the KS motion, Dr. Gooss moved to change the wording on the title page of the Model Act to reflect the decision of the assembly.
relative to the procedural aspects of an administrative hearing. The court emphasized that the statute specifically stated that all evidence shall be offered and made a part of the record and that no additional factual information or evidence shall be considered in the determination of the case. Furthermore, and fundamental to the due process rights of a licensee, the court emphasized that parties have the right of cross-examination of witnesses who testify and also have the right to submit rebuttal evidence. Finally, the court reviewed the procedures for ex-parte communications and the necessity of the hearing officer to provide notice and photocopies to all applicable parties regarding such ex-parte communications.

In reversing the ruling of the board, the court stated that the witness letter could not have become a part of the record without a ruling by the hearing officer on the record as to its admissibility. Because there was no ruling on the record that the hearing was reopened nor was there a ruling that letter was properly admitted into evidence, applicable Oregon statute prohibited the consideration of such letter in the deliberations.

Emphasizing the importance of fundamental due process rights, the court stated, “[t]he observance of procedural and evidentiary standards plays an important role in ensuring a fair consideration of contested fact issues.” Because the veterinarian had no notice that the letter had been included in the record, nor an opportunity to rebut it with evidence, the court held such actions by the board to be improper and in violation of Oregon law. The sanction imposed was reversed and remanded to the board for review considering only the evidence properly admitted into the record.

Veterinary Boards are encouraged to understand the applicable procedural aspects to conducting an administrative hearing. Failure to follow such fundamental procedures may result in a reversal of board actions if contested within the judiciary.

_Smith v. Veterinary Medical Examining Board_, 27 P.3d 1081 (OR App.Ct. 2001)