

SUBJECT: Continuing the State Board of Veterinary Medical Examiners

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 4 ayes — T. King, González, C. Anderson, Burrows

1 nay — Rinaldi

2 absent — Cyrier, Stucky

SENATE VOTE: On final passage, April 20 — 31-0

WITNESSES: *On House companion bill, HB 2967:*

For — None

Against — None

On — Ken Levine and Danielle Nasr, Sunset Advisory Commission; Rudy Calderon, Texas Board of Veterinary Medical Examiners; Elizabeth Choate, Sam Miller, and Dan Posey, Texas Veterinary Medical Association; Judy Santerre; Jodi Ware; (*Registered, but did not testify:* Gay Dodson, Texas State Board of Pharmacy)

BACKGROUND: The State Board of Veterinary Medical Examiners (TBVME) was created by the Legislature in 1911 to establish and enforce policies to ensure the best possible quality of veterinary and equine dental provider services for the people of Texas. The agency determines eligibility, processes license applications and renewals, and administers jurisprudence exams for veterinarians, veterinary technicians, and equine dental providers. It conducts licensee compliance inspections, investigates complaints, and takes disciplinary actions when necessary.

**Funding.** During fiscal 2015, the agency operated on a budget of about \$1.1 million, with 64 percent spent on enforcement and 21 percent spent on licensing. It generated \$3.3 million in revenue, of which \$1.4 million came from a professional fee that was discontinued in 2015. For fiscal

2016, TBVME expected to bring in \$300,000 more from fees than budgeted.

**Board structure and staffing.** The board is made up of nine governor-appointed members serving staggered six-year terms. Six members must be veterinarians who have practiced in Texas for at least six years preceding their appointment, and the remaining three are members of the public. Occupations Code, ch. 801 provides that only one veterinarian may be a faculty member of a college of veterinary medicine and sets eligibility requirements for public members of the board. The agency employs 20 staff who perform enforcement, licensing, finance, and legal functions.

**Inspections, complaints, and enforcement.** TBVME initiates investigations from complaints received from the public and from problems found during inspections of licensees. Depending on the investigation results, the complaint may be closed or referred to an informal conference or a staff conference.

Disciplinary action taken by the board may include an administrative fine; a formal or informal reprimand; license probation, suspension, or revocation; continuing education; a disciplinary jurisprudence exam; or a combination. A licensee who does not agree with the action taken may request a hearing at the State Office of Administrative Hearings.

The State Board of Veterinary Medical Examiners would be discontinued on September 1, 2017, if not continued in statute.

DIGEST: SB 319 would continue the State Board of Veterinary Medical Examiners (TBVME) until September 1, 2021.

**Board structure, training.** SB 319 would alter the composition and appointment process of the TBVME. The number of veterinarian members would be reduced from six to five. Of those five members, one would have to be associated with an animal shelter and one would have at least three years of experience practicing veterinary medicine in Texas on

horses, livestock, or other large animals. One board member would be a licensed veterinary technician. These new requirements would be implemented as terms of current board members expired.

The bill would expand the current board member training program. The executive director of the board would create a training manual with the additional information and distribute a copy annually to each board member. Board members would sign and submit a statement acknowledging receipt of the manual. Current board members would have to complete any additional training required in the bill prior to participating in board activities on or after December 1, 2017.

**License terms and renewal.** Each type of license would be valid for a one- or two-year term. The board would have to prorate license fees on a monthly basis for a year in which the license expiration date was changed. The board no longer would have to limit the time a license holder could remain on inactive status.

The board would have to conduct criminal history record information checks on each applicant for a license. A new applicant would have to submit a complete and legible set of fingerprints, as would a renewal applicant unless the applicant already had done so, to the board or to the Department of Public Safety (DPS) for the purpose of obtaining criminal history record information from DPS and the FBI. The board could not issue an initial license to someone who did not comply with the fingerprinting requirement or could administratively suspend or refuse to renew a person's license.

**Complaints, sanctions.** The board could not accept anonymous complaints, and a complaint that required medical expertise would have to be reviewed by one or more veterinarians designated by the board, rather than by two or more veterinarian board members. Reviewers would have to determine whether to dismiss the complaint or refer it to an informal proceeding. If the determination was dismissal of the complaint, it would have to be approved by the board at a public meeting. If the reviewers did not agree, the complaint would be referred to an informal proceeding. A

veterinary board member who reviewed a complaint could not participate in any subsequent disciplinary proceeding related to the complaint.

Each complaint and all other investigative information in the possession of or received or gathered by the board relating to a license holder, an application for license, or a criminal investigation or proceeding would be privileged and confidential. These records would not be subject to discovery, subpoena, or other legal compulsion for release to anyone other than the board or its agents involved in discipline of a license holder. The board would have to protect the identity of a complainant to the extent possible.

The board would provide a license holder who was the subject of a formal complaint with access to all information it intended to offer into evidence at the contested hearing within 30 days of receiving a written request for the information. This would not constitute a waiver of privilege or confidentiality.

The board would promptly notify the complainant of the final disposition of the complaint, including any public sanctions imposed, and an explanation of each reason that the conduct alleged in the complaint did or did not constitute grounds for the imposition of a penalty, disciplinary action, or other sanction.

The board by rule would have to adopt a schedule of penalties, disciplinary actions, and other sanctions and ensure that the severity of a sanction was appropriate to the type of violation or conduct being disciplined. The disciplinary action and penalty would be based on the seriousness of the violation, the hazard created, the economic harm, the history of previous violations, efforts to correct, and other matters.

**Prescription monitoring.** The board, in coordination with the Texas State Board of Pharmacy, would have to determine what conduct constituted potentially harmful prescribing or dispensing patterns or practices. The board would have to periodically check the prescribing and dispensing information submitted to the pharmacy board to determine if a

veterinarian was engaging in potentially harmful patterns or practices. If the board suspected harmful behavior, the board could notify the veterinarian or initiate a complaint against a veterinarian.

The board could conduct risk-based inspections of a veterinarian's practice based on information obtained from the veterinarian or another source concerning the veterinarian's use, handling, prescribing, dispensing, or delivery of controlled substances.

**Effective date.** The bill would take effect September 1, 2017, and would only apply to complaints filed, applications or renewals submitted, or conduct that occurred on or after this date.

**SUPPORTERS  
SAY:**

SB 319 would provide for a short, four-year continuation of the State Board of Veterinary Medical Examiners. This would provide oversight of the agency and quickly ensure that current struggles with administrative functions, as well as inconsistencies in the agency's enforcement process, were being addressed.

**Board structure, training.** Changing the composition of the board would ensure that the board members adequately reflected the diverse group of licensees it regulates. Requiring the agency to develop a training manual would ensure that board members knew the rules and regulations under which they operate and would provide clarity on the scope and limitations of the board's rulemaking authority.

**License terms and renewal.** Allowing the license renewal term to be every two years would ease the administrative burden on the agency without compromising oversight of the licensees and would allow staff to dedicate more time to other licensing functions. Requiring fingerprint-based criminal history record checks is common for most occupational licensing agencies and is an identified best practice.

**Complaints, sanctions.** Requiring the agency to both develop and adopt a schedule of sanctions and establishing clearly defined enforcement procedures would address several concerns discovered during Sunset

review. While the board devotes most of its budget and almost half of its staff to its enforcement functions, inconsistencies can result in unequal treatment of licensees, which can be exacerbated by poor communication between the agency and licensees and complainants. Ensuring the confidentiality of the investigation is in line with Sunset recommendations and would protect both the complainant and the licensee from unnecessary public harm.

Requiring the agency to review and create a schedule of sanctions to ensure that disciplinary actions related appropriately to the nature and seriousness of any offense committed would be a significant improvement on the current enforcement procedures. Investigators reported a wide degree of flexibility in how they conduct inspections, which has led to variable treatment of licensees and complaints.

**Prescription monitoring.** SB 319 would establish a method of monitoring Texas veterinarians who dispense controlled substances, which is important because Texas veterinarians are at a high risk for diversion of these substances, especially through theft or loss.

OPPONENTS  
SAY:

SB 319 would not do enough to protect the public. Making all information relating to a license holder privileged and confidential, not even subject to legal discovery, would be inconsistent with the theme of transparency that prevailed during the Sunset review. The public has a right to know about these investigation procedures.

The bill would add new, onerous requirements in the form of mandatory fingerprinting and background checks, which is unnecessary for this type of agency and would infringe upon the rights of license holders.

While the bill would modify the composition of the board, more improvements could be made. Currently, public citizens who provide health care services, or whose spouses provide veterinary health care services, are ineligible for board membership under Occupations Code, sec. 801.052. These citizens may be among the most qualified for membership on the board and should be eligible to hold seats. Reducing

the number of veterinarians on the board also could overburden the remaining veterinarians.

OTHER  
OPPONENTS  
SAY:

The purpose of the board is to ensure the best possible quality of veterinary services for the people of Texas. To truly accomplish this, the board should be composed only of qualified members of the public and no veterinarians, which would eliminate the possibility of bias. Medical reviews could be conducted by third parties.

NOTES:

A companion bill, HB 2967 by Raymond, was considered in a public hearing of the House Committee on Agriculture and Livestock on April 19 and left pending.