



SUNSET EVALUATION REPORT
VETERINARY MEDICINE
Chapter 471, Hawaii Revised Statutes

A Report to the Governor and the Legislature of the State of Hawaii

Submitted by the
Legislative Auditor of the State of Hawaii

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FOREWORD

Under the "sunset law," licensing boards and commissions and regulated programs are terminated at specified times unless they are reestablished by the Legislature. Nationally, the first sunset law was passed in 1976. Within three years, 30 more states had enacted similar legislation. The rapid spread of sunset legislation reflects increasing public concern with what it sees as unwarranted government interference in everyday activities.

Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, terminated 38 occupational licensing programs over a six-year period. These programs are repealed unless they are specifically reestablished by the Legislature. In 1979, the Legislature assigned the Office of the Legislative Auditor responsibility for evaluating each program prior to its repeal.

This report evaluates the regulation of the practice of veterinary medicine under Chapter 471, Hawaii Revised Statutes. It presents our findings as to whether the program complies with the Sunset Law and whether there is a reasonable need to regulate veterinarians to protect public health, safety, or welfare. It includes our recommendation on whether the program should be continued, modified, or repealed.

Our approach to the evaluation of the regulation of the practice of veterinary medicine is described in Chapter 1 of this report under "Framework for Evaluation." That framework also serves as the framework for conducting other sunset evaluations. We used the policies enunciated by the Legislature in the Sunset Law to develop our framework for evaluation. The first and basic test we apply is whether there exists an identifiable potential danger to public health, safety, or welfare arising from the conduct of the occupation or profession being regulated. If the program does not meet this first test, then the other criteria for evaluation are not applied. However, if potential harm to public health, safety, or welfare exists, then the other evaluation criteria, as appropriate, are applied.

We acknowledge the cooperation and assistance extended to our staff by the Board of Veterinary Examiners, the Department of Regulatory Agencies, and other officials contacted during the course of our examination.

Clinton T. Tanimura
Legislative Auditor
State of Hawaii

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TABLE OF CONTENTS

<i>Chapter</i>		<i>Page</i>
1	INTRODUCTION	1
	Objective of the Evaluation	1
	Scope of the Evaluation	1
	Organization of the Report	1
	Framework for Evaluation	2
2	BACKGROUND	7
	The History of Veterinary Medicine	7
	The Statute and the Licensing Requirements	8
3	EVALUATION OF THE REGULATION OF VETERINARY MEDICINE	11
	Summary of Findings	11
	The Need for Regulation	11
	The Requisite Training	12
	The Examination	13
	Handling Consumer Complaints	18
	Conclusions and Recommendations	21

Chapter 1

INTRODUCTION

The Hawaii Regulatory Licensing Reform Act of 1977, or Sunset Law, repeals statutes concerning 38 state licensing boards and commissions over a six-year period. Each year, six to eight licensing statutes are scheduled to be repealed unless specifically reenacted by the Legislature.

In 1979, the Legislature amended the law to make the Legislative Auditor responsible for evaluating each licensing program prior to its repeal and to recommend to the Legislature whether the statute should be reenacted, modified, or permitted to expire as scheduled. This is our evaluation of Chapter 471, Hawaii Revised Statutes, on the licensing of veterinarians, which statute is scheduled by the Sunset Law to expire on December 31, 1980.

Objective of the Evaluation

The objective of the evaluation is: To determine whether, in light of the policies set forth in the Sunset Law, the public interest is best served by reenactment, modification, or repeal of Chapter 471.

Scope of the Evaluation

This report examines the history of the statute on licensing of veterinarians and the public health, safety, or welfare that the statute was designed to protect. It then assesses the effectiveness of the statute in preventing public injury and the continuing need for the statute.

Organization of the Report

This report consists of three chapters: Chapter 1, this introduction and the framework developed for evaluating the licensing program; Chapter 2, background information on the regulated profession and the enabling legislation; and Chapter 3, our evaluation and recommendation.

Framework for Evaluation

Hawaii's Regulatory Licensing Reform Act of 1977, or Sunset Law, reflects rising public antipathy toward what is seen as unwarranted government interference in citizens' lives. The Sunset Law sets up a timetable terminating various occupational licensing boards. Unless reestablished, the boards disappear or "sunset" at a prescribed moment in time.

In the Sunset Law, the Legislature established policies on the regulation of professions and vocations. The law requires that each occupational licensing program be assessed against these policies in determining whether the program should be reestablished or permitted to expire as scheduled. These policies are:

1. The regulation and licensing of professions and vocations shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose must be the protection of the public welfare, not that of the regulated profession or vocation.

2. Even where regulation is reasonably necessary, government interference should be minimized; if less restrictive alternatives to full licensure are available, they should be adopted.

3. Regulation shall not be imposed except where necessary to protect relatively large numbers of consumers who, because of a variety of circumstances, may be at a disadvantage in choosing or relying on the provider of the service.

4. Evidence of abuses by providers of the service shall be accorded great weight in determining whether government supervision is desirable.

5. Regulation which artificially increases the costs of goods and services to the consumer should be avoided.

6. Regulation should be eliminated where its benefits to consumers are outweighed by its costs to taxpayers.

7. Regulation shall not unreasonably restrict entry into professions and vocations by all qualified persons.

We translated these policy statements into the following framework for evaluating the continuing need for the various occupational licensing statutes.

Licensing of an occupation or profession is warranted if:

1. There exists an identifiable potential danger to public health, safety, or welfare arising from the operation or conduct of the occupation or profession.
2. The public that is likely to be harmed is a substantial portion of the consuming public.
3. The potential harm is not one against which the public can reasonably be expected to protect itself.
4. There is a reasonable relationship between licensing and protection of the public from potential harm.
5. Licensing is superior to other optional ways of protecting the public from the potential harm.
6. The benefits of licensing outweigh its costs.

The potential harm. For each regulatory program under review, the initial task is to identify the purpose of regulation and the dangers from which the public is intended to be protected.

Not all potential dangers warrant the exercise of the State's licensing powers. The exercise of such powers is justified only when the potential harm is to public health, safety, or welfare. "Health" and "safety" are fairly well understood. "Welfare" means well-being in any respect and includes physical, social, and economic well-being.

This policy that the potential danger be to the public health, safety, or welfare is a restatement of general case law. As a general rule, a state may exercise its police power and impose occupational licensing requirements only if such requirements tend to promote the public health, safety, or welfare. Under particular fact situations and statutory enactments, courts have held that licensing requirements for paperhangers, housepainters, operators of public dancing schools, florists, and private land surveyors could not be justified.¹ In Hawaii, the State Supreme Court in 1935 ruled that legislation requiring photographers to be licensed bore no reasonable relationship to public health, safety, or welfare and constituted an unconstitutional encroachment on the right of individuals to pursue an innocent profession.² The court held that mere interest in

1. See discussion in 51 *American Jurisprudence*, 2d., "Licenses and Permits", Sec. 14.

2. *Terr. v. Fritz Kraft*, 33 Haw. 397.

maintaining honesty in the practice of photography or in ensuring quality in professional photography did not justify the use of the State's licensing powers.

The public. The Sunset Law states that for the exercise of the State's licensing powers to be justified, not only must there be some potential harm to public health, safety, or welfare, but also the potential harm must be to the health, safety, or welfare of that segment of the public consisting mainly of consumers of the services rendered by the regulated occupation or profession. The law makes it clear that the focus of protection should be the consuming public and not the regulated occupation or profession itself.

Consumers are all those who may be affected by the services rendered by the regulated occupation or profession. Consumers are not restricted to those who purchase the services directly. The provider of services may have a direct contractual relationship with a third party and not with the consumer, but the criterion set forth here may be met if the provider's services ultimately flow to and adversely affect the consumer. For example, the services of an automobile mechanic working for a garage or for a U-drive establishment flow directly to his employer, but his workmanship ultimately affects the consumer who brings a car in to his employer for repairs or who rents a car from his employer. If all other criteria set forth in the framework are met, the potential danger of poor workmanship to the consuming public *may* qualify an auto mechanic licensing statute for reenactment or continuance.

The law further requires that the consuming public that may potentially be harmed be relatively large in number. This requirement rules out those situations where potential harm is likely to occur only sporadically or on a casual basis.

Consumer disadvantage. The consuming public does not require the protection afforded by the exercise of the State's licensing powers if the potential harm is one from which the consumers can reasonably be expected adequately to protect themselves. Consumers are expected to be able to protect themselves unless they are at a disadvantage in selecting or dealing with the provider of services.

Consumer disadvantage can arise from a variety of circumstances. It may result from a characteristic of the consumer or from the nature of the occupation or profession being regulated. Age is an example of consumer characteristic which may cause the consumer to be at a disadvantage. Highly technical and complex nature of the occupation is an illustration of occupational character that may result in the consumer being at a disadvantage. Medicine and law fit into the latter illustration. Medicine and law were

the first occupations to be licensed on the theory that the general public lacked sufficient knowledge about medicine and law to enable them to make judgments about the relative competencies of doctors and lawyers and about the quality of services provided them by the doctors and lawyers of their choice.

However, unless otherwise indicated, consumers are generally assumed to be knowledgeable and able to make rational choices and to assess the quality of services being provided them.

Relationship between licensing and protection. Occupational licensing cannot be justified unless it reasonably protects the consumers from the identified potential harm. If the potential harm to the consumer is physical injury arising from possible lack of competence on the part of the provider of service, the licensing requirement must ensure the competence of the provider. If, on the other hand, the potential harm is the likelihood of fraud, the licensing requirements must be such as to minimize the opportunities for fraud.

Alternatives. Depending on the harm to be protected against, licensing may not be the most suitable form of protection for the consumers. Rather than licensing, the prohibition of certain business practices, governmental inspection, the posting of bond, or the inclusion of the occupation within some other existing business regulatory statute may be preferable, appropriate, or more effective in providing protection to the consumers. Increasing the powers, duties, or role of the consumer protector is another possibility. For some programs, a nonregulatory approach may be appropriate, such as consumer education.

Benefit-costs. Even when all other criteria set forth in this framework are met, the exercise of the State's licensing powers may not be justified if the costs of doing so outweigh the benefits to be gained from such exercise of power. The term, "costs," in this regard means more than direct money outlays or expenditure for a licensing program; "Costs" includes opportunity costs or all real resources used up by the licensing program; it includes indirect, spillover, and secondary costs. Thus, the Sunset Law asserts that regulation which artificially increases the costs of goods and services to the consumer should be avoided; and regulation should not unreasonably restrict entry into professions and vocations by all qualified persons.

Chapter 2

BACKGROUND

Under Chapter 471, HRS, with few exceptions, no person may practice veterinary medicine, either gratuitously or for pay, without having a valid unrevoked license to do so. The practice of veterinary medicine is defined as the diagnosis or treatment for the prevention, cure, or relief of, or the giving of advice concerning, a disease, pain, injury, deformity, or other physical condition of an animal, or a change of a physical characteristic of an animal for cosmetic or utility purposes. The definition includes medical, surgical, and dental care of animals.

The History of Veterinary Medicine

The earliest record of veterinary service in the United States is found in a 1625 document referring to a "cow doctor" in Virginia.¹ However, it was not until the mid-19th century that veterinary medicine came to be recognized as a profession. This was so even though by the end of the 18th century, 20 veterinarian schools had been established in a dozen European countries.

The first college of veterinary medicine in the United States was founded in New York in 1856. It was established in response to a growing need for expert care of farm animals. Farming was then becoming a profitable business, and landowners looked to veterinarians for improvements in livestock production.²

Significant advances in veterinary medicine were made in the mid-1930's. Today veterinarians are responsible for protecting the health of pets and of food animals. They also inspect the processing and distribution of food products for control of diseases which may be transmitted from animals to man. To become a veterinarian now requires extensive education and training.

Veterinarians are licensed in all 50 states. Twenty-six states have reciprocity agreements with other states. In these instances, veterinarians from one state may be licensed to practice in another state without undergoing the entire licensing procedure. Hawaii does not have a reciprocity agreement with any other state.

1. National Academy of Science, *New Horizons for Veterinary Medicine*, Washington, D.C., 1972.

2. Robert Swope, *Opportunities in Veterinary Medicine*, New York, 1973, pp. 16-17.

There are currently 103 licensed veterinarians in the State. At one time, the majority of veterinarians in Hawaii were government employees. Most of the veterinarians in private practice today have small-animal practices.

The Statute and the Licensing Requirements

Hawaii law on licensing veterinarians was first enacted in 1905.³ The law as then enacted required the licensing of veterinarians practicing only in towns with a population of over 5000 inhabitants. This provision was found to be unconstitutional by the Territorial Supreme Court in 1908,⁴ and the limitation has since been deleted from the law.⁵

The law was extensively revised in 1949.⁶ The current statute is substantially the law as revised in 1949.

The Board of Veterinary Examiners. The power to issue licenses to engage in the practice of veterinary medicine is vested in the Board of Veterinary Examiners. The board consists of seven members, five of whom are required to be veterinarians and two of whom must be public members.⁷ The board is placed within the Department of Regulatory Agencies (DRA) for administrative purposes. It receives staff support from an executive secretary and personnel in the licensing and examination branches of DRA.

The board not only issues licenses, but is also responsible for giving examinations to determine the qualification and fitness of applicants for license to practice veterinary medicine. It also has the power to revoke or suspend the license of any veterinarian for professional misconduct, gross negligence or manifest incapacity; for violating the law; for making false representations or promises; or for any other cause enumerated in the statute. The board is required to give notice and opportunity for hearing in every case where it is proposed to refuse to grant, renew, reinstate, or restore a license or to revoke or suspend a license.

The board has the authority to adopt, amend, or repeal rules and regulations to effectuate the purposes of the law.

3. Act 40, SLH 1905.

4. *Territory of Hawaii vs. Pottie*, 19 Haw. 99 (1908).

5. See Act 71, SLH 1911.

6. Act 280, SLH 1949.

7. The two public members were added to the board by Act 208, SLH 1978.

The board meets two or three times each year. The meetings are usually held at those times when the licensing examinations are given. The board meets before and after each examination.

The board spends most of its time on matters related to licensing examinations. Occasionally, it deals with complaints and other matters.

The licensing requirements. To be licensed to practice veterinary medicine, an applicant must pass an examination of qualification and fitness given by the Board of Veterinary Examiners. To be eligible to take the examination, he must be at least 18 years of age and of good moral character; and a graduate of a veterinary college accredited by the American Veterinary Medical Association (AVMA) or have actively practiced veterinary medicine for 10 out of 12 years immediately preceding the date of application in a state having licensing standards comparable to those of Hawaii.

Although the statute is silent on the matter, the board has required that for an applicant who has graduated from a veterinary school in a foreign country to be eligible to take the examination, he must submit evidence of graduation, a certificate from the AVMA's Educational Commission for Foreign Veterinary Graduates (ECFVG), which attests to the fact that the applicant has met certain AVMA standards, and proof of internship at an AVMA-accredited veterinary college or hospital.

The statute provides that the examination shall be composed of written and oral questions and practical demonstrations. The subject matter of the examination must embrace the subjects and demonstrations of practical ability normally covered in the curricula of American veterinary colleges.

Chapter 3

EVALUATION OF THE REGULATION OF VETERINARY MEDICINE

This chapter contains our evaluation of the need for regulation of veterinarians and our recommendation concerning regulation.

Summary of Findings

Our findings are as follows:

1. There is still sufficient public interest in licensing veterinarians.
2. There is some question concerning the need for applicants to pass a Hawaii-devised examination as well as a national board examination to qualify for a license.
3. The Board of Veterinary Examiners must become more responsive to consumer complaints.

The Need for Regulation

Like medicine, veterinary medicine deals with the prevention and treatment of diseases. The public interest in licensing veterinarians arises from this fact.

Animals are capable of transmitting diseases to humans and to other animals, and improper diagnosis and treatment of animal diseases can result in public health problems, as well as severe economic losses. These matters are most evident in the case of animals that are raised for human consumption (e.g., poultry, cattle, swine). A disease in such a case can be transmitted to humans through consumption, and the economic loss can be staggering if a disease spreads through a whole flock or herd.

Most of the veterinarians in Hawaii are in small-animal practice and care for household pets. But, the potential for diseases to be transmitted from animals to humans and for economic losses to be sustained (particularly by owners of pedigreed animals) if animal diseases are not properly diagnosed and treated, is decidedly present even in the case of small animals and household pets.

The potential hazards here are hazards to public health, safety, or welfare, and the public is sufficiently large as to justify the licensing of veterinarians to ensure their

competence. The public in this instance encompasses the consumers of locally processed animal products and the owners of household pets, which according to a study include about one half of the households in Hawaii.¹

The Requisite Training

The objective of the program to license veterinarians is to ensure their competence. Chapter 471, HRS, seeks to achieve this objective by imposing two basic requirements. *First*, every applicant for a license to practice veterinary medicine must produce proof of education or training in veterinary medicine. *Second*, every applicant must pass examinations on qualification and fitness to practice veterinary medicine.²

There does not appear to be much difficulty with the educational and training requirement. There is a reasonable relationship between education and training, on the one hand, and competence, on the other.

The statute requires that every applicant for a license to practice veterinary medicine be a graduate of a veterinary college accredited by the American Veterinary Medical Association, or have 10 years of active practice in veterinary medicine during the 12 years immediately preceding application for a Hawaii license in a state having licensing standards comparable to those of Hawaii. However, nearly all applicants apply for licenses via the college route.

Generally, veterinary colleges require a minimum of three years of undergraduate work. Most students, however, complete a four-year baccalaureate program before entering a veterinary college. Thus, an applicant for a veterinarian's license usually has eight years of higher education.

A bachelor's degree is usually taken in a science, such as biology, zoology, chemistry, biochemistry, or animal science. The veterinary college curriculum generally consists of basic courses in veterinary medicine in the first two years, courses on diseases of the various anatomical systems in the third year, and a practicum in the fourth year.

1. University of Hawaii, College of Tropical Agriculture, *Veterinary Digest*, No. 44, March-April 1974.
2. Other minor requirements are that the applicant be at least 18 years of age and of good moral character.

The Board of Veterinary Examiners has allowed, on its own motion, graduates of foreign veterinary schools to take the examination for veterinary license, provided they produce proof of graduation from such colleges, be certified by the AVMA's Educational Commission for Foreign Veterinary Graduates that they have met certain AVMA standards, and have interned at an AVMA-accredited veterinary college or hospital.

The requirements on education and training appear reasonably to assure that the applicants for licenses possess the requisite knowledge to practice veterinary medicine in a manner calculated to promote public health, safety, or welfare.

The Examination

Although the educational or experience requirements of the law appear to pose no particular difficulty, the same cannot be said for the examination requirement.

Each applicant for a license to practice veterinary medicine must pass two examinations: (1) the national board examination and (2) the Hawaii board examination. The question raised here concerns the suitability of the Hawaii board examination in determining competence to practice veterinary medicine.

The national board examination (NBE). The NBE is a nationally standardized examination developed by the AVMA's National Board of Veterinary Medical Examiners in collaboration with the Professional Examination Service (PES). It has been used by state examining boards since 1954.³

Before 1980, the examination required a day and a half to complete, and it was administered nationally in May, June, and December, although in Hawaii it was given only in May and December. The examination consisted of 435 multiple-choice questions, divided into three parts. The questions were largely theoretical, covering topics such as anatomy, pharmacology, chemistry, pathology, bacteriology, and parasitology.

Beginning in 1980, the format of the NBE will change. The number of questions will be reduced to 360, and the examination will be structured so that it can be completed in one day. The new test will emphasize clinically oriented practice. The examination will be given only once each year in June. The new test is deemed to be a better test of entry-level competence than the one given before 1980.

3. Professional Examination Service, *Information for Candidates on the National Veterinary Medical Licensing Examination*.

The Board of Veterinary Examiners requires that every applicant take and pass the national examination before the applicant takes the Hawaii board examination. It recognizes a passing score on the NBE for two years. This means that an applicant must pass the Hawaii board examination within two years of passing the NBE. Otherwise, the applicant will have to retake the NBE.

The Hawaii board examination. The Hawaii board examination was formerly called the "Oral-Practice Examination." It is prepared, administered, and graded by the five board members who are veterinarians. At one time the examination included an oral interview and a demonstration of the candidate's skill in spaying a dog. Today, the examination is a written examination only.⁴ The examination is supposed to assess the candidate's knowledge of small-animal medicine, small-animal surgery, clinical pathology and radiology, large-animal medicine, animal diseases which affect humans, public health, large-animal surgery, and radiology.

The percentage of applicants who pass the Hawaii board examination has generally been low. Table 3.1 shows the pass/fail rates since 1973. Of the 84 candidates examined since April 1973, only 44, or 52 percent, have passed.

This low passage rate is symptomatic of the problem with the Hawaii board examination. It needs to be remembered that all (but one)⁵ of the 84 candidates who took the Hawaii board examination since 1973 had successfully passed the national board examination. To justify the giving of the Hawaii board examination, in addition to requiring passage of the NBE, board members say that prospective veterinarians should be familiar with indigenous toxic plants and be aware, for example, that Hawaii is free of rabies and has a high incidence of heartworm, buffo poisoning, and parasites. However, except for a few questions on local issues, the Hawaii board examination is purportedly similar to the national board examination.

In recent years, even the members of the Board of Veterinary Examiners have been concerned about the low passage rate on the Hawaii board examination. The board has taken no definitive action on the recurring problem, but the minutes of the board meetings reflect that the board from time to time pondered whether the Hawaii board examination was indeed measuring the competence of the applicants. For instance, the board minutes of October 24, 1974 show that the board discussed the failure of all

4. This is so even though the statute expressly provides for written and oral questions and practical demonstrations (Hawaii Revised Statutes Section 471-8).

5. For the June 1979 examination, several candidates who had not yet received their results from the NBE were allowed to take the Hawaii board examination. One of the candidates failed the NBE examination.

Table 3.1

Pass/Fail Rates for Examinations Given by the
Veterinary Examiners During 1973–1979

Date	Total applicants	No. failing	No. passing	Percent passing
April 1973	6	4	2	33%
September 1973	6	2	4	67
April 1974	5	4	1	20
September 1974	4	4	0	0
April 1975	3	2	1	33
September 1975	5	0	5	100
April 1976	5	2	3	60
September 1976	9	5	4	44
April 1977	6	4	2	33
September 1977	7	2	5	71
April 1978	3	2	1	33
September 1978	10	3	7	70
January 1979	1	1	0	0
June 1979	<u>14</u>	<u>5</u>	<u>9</u>	<u>64</u>
Total	<u>84</u>	<u>40</u>	<u>44</u>	<u>52%</u>

candidates to pass the Hawaii board examination that was given in September 1974 and debated the need to revise the criteria for licensing. Then, the minutes of the board meeting of March 19, 1977 show that the board asked the executive secretary to "place on the agenda of the next meeting, an item for review of the procedure for preparation and grading of the practical examination." (The matter was neither on the agenda nor discussed at the next meeting.) The minutes of the August 7, 1978 meeting reveal that a board member expressed concern regarding the administration of the board examination. The matter was discussed but was put off as "it was decided to retain the present format until there has been time to thoroughly consider these matters."

The board members' anxiety over the low passage rate is also indicated by the action they took on the results of the September 1978 examination. The board has set 75 as the passing score. Initially, eight of ten candidates failed the examination. This resulted in a pass rate of only 20 percent. The board, disturbed by this low pass rate, consulted a measurement specialist at the Department of Education. The measurement specialist suggested a range of points that could be added to the original scores. Depending on the number of points added, the passing percentage could be raised from 20 percent to 70 percent. The board considered the various approaches at a special meeting and voted to approve the alternative that added 4.64 to each score, thereby raising the percentage passing to 70 percent.

Table 3.2 compares the original scores made by the candidates with the scores resulting after adding 4.64 to each score.

With the addition of 4.64 points, five more candidates passed the examination. One missed passing by only 0.7 points and another by 1.7 points. The board's decision to raise the points of every applicant by 4.64 in order that at least 70 percent of the applicants would pass was, of course, arbitrary. The decision had nothing to do with measuring competence. It does, however, reflect the board's concern about whether the Hawaii board examination is doing the job it is supposed to be doing—measuring competence.

We believe that the Board of Veterinary Examiners must take positive action to resolve this matter of the Hawaii board examination. In addition to determining whether the Hawaii board examination is measuring the competence of the applicants for license to practice veterinary medicine, and if not, how to correct it, the board should address itself to the question whether it is necessary to give a Hawaii board examination at all.

The only rationale that conceivably could justify the giving of a Hawaii board examination, in addition to requiring passage of the national board examination, appears to be either that the NBE fails to examine the applicants on all relevant phases of veterinary medicine or that there is a need to examine applicants on matters peculiar to Hawaii, which, because of their local applicability only, are not covered by the NBE.

However, as noted above, the Hawaii board examination appears to be similar to the NBE, with only a few questions that might be said to be of local applicability only. Further, we are informed that the AVMA recently developed a multiple-choice test which could be used in lieu of state tests. This test is called the clinical competency test, and it deals with 10 patient management problems. It is designed to measure problem-solving, as well as cognitive and diagnostic, skills. It is purported to be a reliable and valid examination.

Table 3.2
Results of the Hawaii Board Examination
September 1978

Candidate No.	Original Score	Final Score*
1	82.08	86.72 (passed)
2	77.70	82.34 (passed)
3	74.42	79.06 (passed)
4	73.10	77.74 (passed)
5	72.32	76.96 (passed)
6	71.80	76.44 (passed)
7	70.54	75.18 (passed)
8	69.66	74.30 (failed)
9	68.66	73.30 (failed)
10	37.36	42.00 (failed)
% passing	20%	70%

*Final score after adding 4.64 points to the original score of each applicant.

In its review of the Hawaii board examination, it would seem that the board should consult with experts in the field of testing. The Hawaii board examination has been put together by the veterinarians serving on the board. These members of the board are not necessarily experts in testing. The problem that the board now faces with the Hawaii board examination may well stem from this fact.

Handling Consumer Complaints

The statutory responsibility of the Board of Veterinary Medicine includes investigating complaints against veterinarians. This responsibility flows from its power to revoke or suspend the license of any veterinarian for professional misconduct, gross negligence, or manifest incapacity, for making false representations or promises, and for other causes set forth in the statute.

This power to revoke or suspend licenses is a corollary of the power to grant licenses. Like the power to grant licenses, the power to revoke or suspend licenses is grounded on the need to ensure competency in the practice of veterinary medicine. The investigation of complaints is then a mechanism to determine whether veterinary medicine is being practiced in a competent manner. The board, however, does not discharge this responsibility to investigate complaints in the way it should. It is, in the main, quite unresponsive to consumer complaints.

In a three-year period, between January 1977 and December 1979, 15 complaints were filed with the board. These complaints generally charged veterinarians with neglect or misconduct, resulting in injury to pets. Below are two examples.

A complainant alleged that a veterinarian performed an unnecessary or incorrect operation on his dog. The animal had a slight limp in the left rear leg. The veterinarian diagnosed it as a knee problem and performed surgery. Six months later, the dog still could not walk and appeared to be in considerable pain.

A veterinarian performed surgery on the complainant's dog which was lame in the rear leg. The complainant alleged that surgery had been poorly performed and that the dog continued to be in pain and unable to walk after the operation. The complainant further alleged that X rays showed that there was a razor bone spur which the veterinarian failed to remove and that a second operation by another veterinarian was necessary to remove the spur.

These and other complaints have been handled by the board by a procedure that is marked by delays and inappropriate disposition of cases.

Delays. The delays in handling consumer complaints arise primarily because the board fails to meet, except generally at the time of the giving of the Hawaii board examination. Thus, the board meets only two or three times each year. This means that it may be six months before a complaint is even seen by the board members. The process is lengthened even further if the board decides to refer the complaint to DRA's Regulated Industries Complaints Office for investigation. The board makes such referrals from time to time. The entire process from the date of the complaint to the date the complainant is notified of its disposition can take as long as 13 months. Most of the complaints take at least several months to be disposed of. At the time of our field work, three complaints, which had been on file for 10, 6, and 5 months, were still pending.

The board members are aware of this problem and agree that meetings should be held more frequently to handle complaints. However, there has yet been no positive movement to do so.

Inappropriate disposition of cases. The manner in which the board disposes of complaints is highly unsatisfactory. It fails to make or cause to be made full and complete investigation of the complaints, and it often attempts to divert responsibility for deciding complaints from itself to others.

Of the 15 complaints lodged with the board between January 1977 and December 1979, the board sent only seven to DRA's Regulated Industries Complaints Office for investigation. It handled the remaining eight in various ways. The board dismissed one case of alleged malpractice, saying it had no jurisdiction. The board closed another case by accepting the veterinarian's version without notifying the complainant.

The board also referred certain complaints and complainants to the Hawaii Veterinary Medical Association, and having done so, closed the cases so referred and made no followup. The Hawaii Veterinary Medical Association, of course, has no disciplinary powers, except to revoke association membership. It cannot revoke or suspend a veterinarian's license.

In all the years of operation of the board, there does not appear to have been a single case where the license of any veterinarian was either suspended or revoked.

A large part of the reason for the unsatisfactory way in which the board disposes of

the complaints is that the board is composed almost entirely of veterinarians, and veterinarians are a close professional group. There are only 103 licensed veterinarians in the State. Each veterinarian knows virtually every other veterinarian. Two members of the Board of Veterinary Examiners are officers of the Hawaii Veterinary Medical Association. Under these circumstances, there is a tendency for board members to hesitate in reviewing complaints against and in passing judgment on work performance of their fellow veterinarians.

In addition to the foregoing, the generally poor manner in which the board disposes of consumer complaints is attributable in part to the fact that the veterinarian members of the board themselves or their associates in the practice of veterinary medicine are frequently the subjects of complaints. Four of the 15 complaints filed between January 1977 and December 1979 were against board members or their associates. The most recent complaint was against the chairman of the board.

The above two reasons also account for why the board, although recognizing the need to do so, has not taken positive action to speed up the handling of consumer complaints.

The need for improvement. It is apparent that consumer complaints must be handled more equitably than they are now being managed. One way to do this is to remove peer review and to place the power to investigate complaints and to take action on the complaints, including the suspension and revocation of licenses, in the hands of those who are not veterinarians. Whether or not this course should be followed presents a policy question.

If the power to investigate complaints and to suspend or revoke licenses is to be retained in the board consisting mainly of veterinarians, then it would appear that the board should equip itself with such mechanism as would minimize the impact of the fraternal relationship that exists between the members of the board and their fellow veterinarians. To this end, it seems that the board should make greater utilization of DRA's Regulated Industries Complaints Office to make investigations of complaints and employ a hearings officer or officers to conduct formal hearings on the complaints and make findings and recommendations to the board for its final action.

In addition, the board should, by rules, establish reasonable time periods within which complaints must be investigated, hearings had, and the complaints disposed of.

The rules should further provide for the handling of those complaints directed against members of the board.

Conclusions and Recommendations

There is a continuing need to license veterinarians. Licensing in this case promotes public health, safety, and welfare. There is, however, some doubt about the efficacy of the requirement that all applicants for license to practice veterinary medicine take and pass the Hawaii board examination. The relevancy of the examination to ensure competency is not clearly shown.

The board's procedure for handling consumer complaints lodged against veterinarians requires improvement. The complaints need to be handled much more speedily and the board needs to take more definitive and positive actions on these complaints.

Recommendations. We recommend as follows:

1. *Chapter 471, HRS, be reenacted.*
2. *The Board of Veterinary Examiners conduct an in-depth review of the Hawaii board examination to determine its relevance in measuring competence to practice veterinary medicine in Hawaii. The need for this examination should be reviewed in light of the national board examination and the recently developed AVMA clinical competency test. In this task, we recommend that the board engage the assistance of an expert or experts in the field of testing.*
3. *The Board of Veterinary Examiners develop definitive rules and mechanisms on the handling of consumer complaints. In this regard, a more extensive use of DRA's Regulated Industries Complaint Office and the employment of a hearings officer or officers to conduct hearings on complaints should be fully explored.*