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
Honolulu, Hawaii

Report No. 87–5

January 1987

FOREWORD

Under the "Sunset Law," licensing boards and commissions and regulated programs are terminated at specific times unless they are reestablished by the Legislature. Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, scheduled for termination 38 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 These programs are repealed unless they are specifically reestablished by the Legislature.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 the practice of veterinary medicine to protect public health, safety, or welfare. It includes our recommendation on whether the program should be continued, modified, or repealed. In accordance with Act 136, SLH 1986, draft legislation intended to improve the regulatory program is incorporated in this report as Appendix B.

We acknowledge the cooperation and assistance extended to our staff by the Board of Veterinary Examiners, the Department of Commerce and Consumer Affairs, and other officials contacted during the course of our examination. We also appreciate the assistance of the Legislative Reference Bureau which drafted the recommended legislation.

Clinton T. Tanimura
Legislative Auditor
State of Hawaii

January 1987

TABLE OF CONTENTS

Chapter		*Page*
1	INTRODUCTION	1
	Objective of the Evaluation	1
	Scope of the Evaluation	1
	Organization of the Report	2
	Framework for Evaluation	2
2	BACKGROUND	7
	Historical Context	7
	Regulatory Framework	8
	Previous Sunset Review	11
3	EVALUATION OF THE REGULATION OF VETERINARY MEDICINE	13
	Current Findings	13
	Need for Regulation	14
	Examinations	14
	Outside Experts	18
	Board Organization and Operations	21
	Recommendations	22
Appendix A: Comments on Agency Responses		A–1
Appendix B: Proposed Legislation		B–1

Chapter 1

INTRODUCTION

The Hawaii Regulatory Licensing Reform Act of 1977, or Sunset Law, repeals statutes concerning 38 occupational licensing programs 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. In 1980, the Legislature further amended the law to require the Legislative Auditor to evaluate the effectiveness and efficiency of the licensing program, even if he determines that the program should not be reenacted.

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, Hawaii Revised Statutes.

Scope of the Evaluation

This report examines the history of the statute on the regulation of veterinary medicine 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 for evaluating the licensing program; Chapter 2, background information on the regulated industry and the enabling legislation; and Chapter 3, our evaluation and recommendations.

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 programs. Unless reestablished, the programs disappear or "sunset" on a prescribed date.

In the Sunset Law, the Legislature established policies on the regulation of professions and vocations. The law requires each occupational licensing program to be assessed against these policies in determining whether the program should be reestablished or permitted to expire as scheduled. These policies, as amended in 1980, are:

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

2. Where regulation of professions and vocations is reasonably necessary to protect consumers, government regulation in the form of full licensure or other restrictions on the professions or vocations should be retained or adopted.

3. Professional and vocational regulation shall be imposed where necessary to protect consumers who, because of a variety of circumstances, may be at a disadvantage in choosing or relying on the provider of the services.

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

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

6. Professional and vocational 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 from the operation or conduct of the occupation or profession.

2. The public that is likely to be harmed is the consuming public.

3. The potential harm is one against which the public cannot 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 alternative ways of restricting the profession or vocation to protect 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 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. 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 ruled in 1935 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 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 further states that for the exercise of the State's licensing powers to be justified, the potential harm must be to the health, safety, or welfare of that segment of the public consisting mainly of consumers of

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

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

the services provided by the regulated occupation. 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 provided by the regulated occupation. Consumers do not have to 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 is 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 the employer, but the mechanic's workmanship ultimately affects the consumer who brings a car in for repairs or who rents a car from the employer.

Consumer disadvantage. The exercise of the State's licensing powers is not warranted if the potential harm is one against which the consumers can reasonably be expected to protect themselves. Consumers are expected to be able to protect themselves unless they are at a disadvantage in selecting or dealing with the providers 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 a consumer characteristic which may cause the consumer to be at a disadvantage. The highly technical and complex nature of an occupation is an illustration of occupational characteristic that may place the consumer 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 be able to make judgments about the relative competencies and about the quality of services provided to 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 requirements 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. Licensing may not be the most appropriate method for protecting consumers. Instead, prohibiting certain business practices, governmental inspection, or the inclusion of the occupation within another existing business regulatory statute may be preferable, appropriate, or more effective in protecting 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. The term "costs" in this regard means more than direct money outlays or expenditure for a licensing program. "Costs" include opportunity costs or all real resources used up by the licensing program; they include 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

Chapter 471, Hawaii Revised Statutes, regulates the practice of veterinary medicine in Hawaii. It defines that practice 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. It includes medical, surgical, and dental care of animals."[1]

Historical Context

Although schools of veterinary medicine arose during the eighteenth century in various European countries, a veterinarian profession as such did not gain recognition in America until the mid-nineteenth century; only in 1856 was the first college for this form of medicine started in New York. By the turn of this century, licensing was gaining acceptance. Today, all 50 states regulate veterinary medicine and license veterinarians.

Initially concentrating on farm animals, veterinarians now deal with a wide range of animal concerns—including inspection of meat processing and distribution, control of those diseases (zoonoses) which can be transmitted from animals to humans, handling of zoo animals, and the care of pets as well as with larger farm

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1. Section 471-1, HRS.

animals. Qualifying as a veterinarian has evolved until it requires extensive formal education and training, normally seven or eight years at a university.

In the five years from 1981 through 1985, the number of licensed veterinarians in Hawaii rose 35 percent, from 118 to 159. During that same period, the number of professional veterinary corporations expanded at an even faster rate, from 15 to 24 or 60 percent. Most of this growth occurred in the field of "small animal" or pet care. As the costs for insurance and a completely equipped animal hospital climb steeply, the trend toward more group practices within professional corporations appears likely to continue its increase. Those accelerating costs make it more difficult for newly graduated veterinarians to begin their own individual practice today than in decades past; for some, group practice has become a necessity as well as a convenience.

Regulatory Framework

Hawaii first enacted a statute to regulate and license veterinarians in 1905. Flawed by a selectivity of coverage, it was struck down by the Territorial Supreme Court in 1908 and replaced by a statute that covered all veterinarians in 1911. By 1949 (Act 280), Hawaii's statutory provisions for veterinarians had coalesced into the form that constitutes current law. No one may practice veterinary medicine in Hawaii nor purport to be a veterinarian (such as by appending the letters "Dr." to one's name) without a valid, unrevoked license.

Since our sunset review of 1980, the Legislature has enacted only minor adjustments to Chapter 471, HRS.[2] The most significant of these: (1) permit

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2. Act 44, SLH 1984.

those veterinarians, who have fulfilled all requirements for licensing except taking and passing the Hawaii state board examination, to practice by permit under a licensed veterinarian; (2) clarify restrictions on practice here by veterinarians licensed elsewhere; and (3) confine board examinations to written questions, rather than oral and practical demonstrations, so as to ensure impartiality and standardization. These changes occurred in 1984.

Regulation over veterinary medicine is exercised through the Board of Veterinary Examiners which consists of seven members appointed for staggered four-year terms. Five of the members must be licensed, practicing veterinarians with a minimum of five years experience in Hawaii and at least ten years professional experience overall. The board has the power and responsibility to conduct public meetings and hearings, to grant licenses to those applicants who fulfill the statutorily stipulated requirements, to hear appeals in disciplinary cases, and to revoke or suspend licenses. Investigations are now conducted by the Regulated Industries Complaints Office (RICO).

Licensing requirements. Licensing now comprises the major portion of board considerations. Qualifications for licensing involve evidence that an applicant is at least 18 years of age, has either graduated from an accredited college in veterinary medicine or actively practiced veterinary medicine under a license in another state for 10 of the last 12 years, has passed both the National Board Examination (NBE) and Clinical Competency Test (CCT), and then passed the Hawaii state board examination, in addition to paying all prescribed fees. The statutes require that the State offer its board examination twice a year.[3]

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3. Section 471-8, HRS.

Both the NBE and CCT are developed, written, and validated by one of the nation's leading specialists in the field of testing, Professional Examining Services. The NBE is sponsored by the American Association of Veterinary State Boards and is the basic examination required among all 50 members (48 states plus Puerto Rico and Guam). The association meets annually to review, among other things, the NBE and the policy underlying it. The CCT may be selected by individual state boards of veterinary medicine and has gained increasing acceptance. The remaining states arrange for, or write, their own examinations as Hawaii did earlier.

Applicants who are graduates from foreign colleges of veterinary medicine must show either that their colleges were accredited by the American Veterinary Medicine Association or that the applicant has completed those requirements established by the Educational Commission for Foreign Veterinary Graduates.[4]

Subchapter 8 of the board's rules, based on the Hawaii Professional Corporation Act (Chapter 415A, HRS), calls for the board to govern professional corporations engaged in veterinary medicine. The rules require each such corporation to submit a report annually, to notify the board of changes in its officers and directors, and to carry at least a prescribed level of liability insurance. The board must approve all names for such corporations. Pursuant to Chapter 415A, the intention of these regulations is to ensure that professional corporations for veterinary medicine are owned and run only by persons licensed by the State of Hawaii to engage in veterinary medicine.

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4. Section 16-101-6, Hawaii Administrative Rules.

Previous Sunset Review

In our previous sunset evaluation report submitted to the Legislature in 1980, we made three recommendations. *First*, we recommended that Chapter 471, HRS, be reenacted because there was a continuing need to license veterinarians so as to promote public health, safety, and welfare. *Second*, we recommended that 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. *Third*, we recommended that the Board of Veterinary Examiners improve its procedures for handling consumer complaints, including making more extensive use of RICO.

Public testimony in relation to our 1980 report came only from the board, and it accepted our recommendations. The Legislature then excluded this chapter and board from sunsetting until December 31, 1987. As already indicated, some modifications have been made in the Hawaii board examinations, and investigations relating to complaints have been taken over by RICO.

Chapter 3

EVALUATION OF THE REGULATION OF VETERINARY MEDICINE

This chapter contains our updated evaluation and recommendations relating to the need for regulation of veterinarians and the conduct of such regulation.

Current Findings

1. The need for regulation remains sufficiently significant to warrant reenactment of Chapter 471, Hawaii Revised Statutes, and retention of the Board of Veterinary Examiners.

2. Some improvement has occurred in the process of developing, administering, and validating the state board examination; but serious deficiencies still remain and bring into question the need for a distinct board examination.

3. Regulation of veterinary medicine should not serve to preclude access by Hawaii residents to specialized expertise in the diagnosis and care of animals when such expertise is not available among Hawaii's licensed veterinarians.

4. A new set of rules, adopted while this sunset review was in progress, promises for the most part to enhance the implementation of Chapter 471, but the regulators overstepped their authority by implementing these new rules long before the rules were formally adopted.

5. Until mid-1986, composition of the Board of Veterinary Examiners was not consistent with statutory requirements, and member participation suffered from excessive absenteeism by the board's public members and also from inadequate orientation of new members.

Need for Regulation

The need to regulate veterinarians and veterinary medicine in Hawaii comes in several forms. One major factor concerns the protection of substantial economic interests. Large dairy and beef herds, as well as horses, pigs, poultry, and other farm animals, require reliable veterinary expertise to ensure their health and protection. For these, the general public has a large, though indirect, stake. Based on the latest available data, the market value of Hawaii's livestock, poultry, and related products sales amounts to over $100 million per year. Recent actions to eliminate all cattle on Molokai so as to eradicate bovine tuberculosis on that island illustrate the serious threat which diseases may pose to Hawaii's livestock industry.

Emotional, as well as economic, investments constitute major concerns for a sizeable portion (believed to be half) of Hawaii's residents in the form of household pets and zoo animals. These, too, require reliable, accessible expertise in the field of veterinary medicine.

In the case of this industry, the public encompasses a very large proportion of Hawaii's population, either as producers and consumers of locally processed animal products or as owners of household pets. A healthy animal population, therefore, is extremely important.

Examinations

The principal responsibility of the Board of Veterinary Examiners is ensuring that only qualified persons are licensed to practice veterinary medicine in Hawaii. A prime requisite for demonstrating that qualification lies in successfully passing the stipulated examinations. The stipulated examinations come in three forms, the first two involving general basic knowledge common to veterinarians throughout the

United States and tested by a National Board Examination and a Clinical Competency Test. (These were only under development at the time of our previous sunset report and had not been instituted here yet.) The third test is the local state board examination.

The central question of this sunset report concerns whether those two nationally developed, validated, and executed tests provide sufficient grounds for determining a veterinarian's qualification to practice in Hawaii or whether conditions in Hawaii are so unique as to necessitate an additional, distinct test focused on knowledge about Hawaii's unique conditions as they might affect the health and medical/surgical treatment of domesticated animals here.

Our 1980 sunset report recommended that the board review its state examination in light of both local needs and the new tests being developed at the national level. The only testimony to the Legislature at that time relative to sunsetting came from the board, and it promised to undertake such a review, including the use of experts in the field of testing. From information provided by board members and department staff, experts in testing were not brought in to assist, other than the head of the examination branch of the Department of Commerce and Consumer Affairs (DCCA) and then only in 1985.

Oral examinations, with their inherent possibilities for inadvertently biasing both the questions asked and their grading, have been discontinued. All tests now involve identical questions in written form for all applicants as mandated by Section 471-8(b), HRS. However, there is no systematic process for ensuring that those questions drawn from the available pool of questions do, as a whole, concentrate on aspects of veterinary medicine unique to Hawaii or even that the most significant aspects of veterinary practice in Hawaii are covered. Test

questions used could readily repeat, and actually have duplicated, areas covered on the national examinations while aspects of local importance did not appear among those questions used.

Involvement of the examination branch chief did inaugurate a pooling of test questions rather than having each board member alone provide questions for an assigned topic. To work toward a state board examination that would concentrate on Hawaii's supposedly unique needs for veterinary expertise, the examination branch chief convinced the board that it needed a "task analysis" upon which to structure future examinations. A task analysis ascertains, through a carefully structured questionnaire, what practicing professionals actually do and the relative significance of various areas of needed expertise. With that information, questions can be selected from the pool, not randomly as at present, but in terms of the relative weighting of each subject matter as they are unique to Hawaii.

No state board examination has yet followed this intended format because the task analysis has taken all of 1986 to organize, to mail out and receive back the questionnaires from practicing veterinarians, and to initiate computer analyses. The target date for such a new examination is mid-1987 at the earliest.

Pursuing this route presumes that, indeed, Hawaii has such unique diseases and health conditions for animals that the public can only be protected by prohibiting veterinary practice on the part of any applicant who has not demonstrated thorough familiarity with those unique aspects. The statutes do not, however, specify how unique those conditions must be to warrant this presumption or even that a state of uniqueness be established.

Section 471-8(b) simply specifies that written questions "shall consist of those aspects of veterinary medicine common to the State" while a subsequent

sentence requires that "subject matter of the examinations . . . embrace the subjects and demonstrations of practical ability normally covered in the curricula of American veterinary colleges." Since these are the only characteristics spelled out for veterinary examinations, they might be fully satisfied by the two national tests—unless the board can convincingly demonstrate that Hawaii is so unique as to require its own specialized test. But on that issue the profession is itself divided.

Finding no solid evidence to support a uniqueness position, we checked with the State Veterinarian, Department of Agriculture, and learned that conditions have changed over the decades. Hawaii's claim to uniqueness in terms of factors affecting animal health and productivity may no longer be valid. The burden of proving a continued justification for a distinct state board examination, therefore, now lies with the board and that proof has yet to be established.

Perhaps the results of DCCA's task analysis will reveal sufficient uniqueness to warrant a distinct state board examination and a policy of nonreciprocity. But the record up to the present time indicates that there are insufficient grounds for requiring a locally written and imposed examination. Passage of two national examinations and fulfillment of university requirements for a doctorate in veterinary medicine should provide criteria enough for judging an applicant's qualification for licensure in Hawaii.

There remains another reason for questioning the utility of a locally written examination: its quality. Since all questions are written by board members and are subject neither to scrutiny in advance of their appearing on a test nor to polishing and validation by testing experts, they can differ widely in accuracy, professionalism, and degree of difficulty. The only check on questions used now occurs *after* they have already been imposed on applicants.

After each examination, the examination branch chief runs a computer analysis of answers to flag out those questions which deserve board scrutiny; that is, those which were missed by an unusually large portion of candidates taking the test. After review, the board does throw out questions, either because the multiple choice answers provided were found debatable or not accurate, or the questions were written in a misleading way, or typographical errors rendered them unintelligible.

Between February 1980 and July 1986, 135 candidates took the state board examination. One hundred passed, for a 74 percent pass rate. There were no appeals filed by those failing. In the last four examinations for which records still exist, 75 questions were given each time with an average of 10 percent of those questions (ranging from a high of 11 to a low of 4 questions) either removed by the board from the tests of those failing or allowance made for more than one correct answer. Eliminating these ambiguous and inaccurate questions allowed candidates to pass who might otherwise have been wrongly penalized through no fault of their own.

Outside Experts

A major issue confronting the board is the question of prohibiting the practice of what is interpreted to be veterinary medicine in Hawaii by persons not licensed for that purpose here. Those cases presenting the greatest difficulty involve specialists—either from the mainland or from the University of Hawaii.

Section 471-2(5), HRS, allows a licensed veterinarian from another state to practice in Hawaii only in terms of consulting with a veterinarian licensed in Hawaii or as an employee of an enterprise with operations in both states. A Hawaii veterinarian may, then, call in a veterinarian licensed in another state; but a local

individual or corporation may not do so directly, only through a local veterinarian, unless that outside licensed veterinarian is hired full time and restricted to serving only his or her employer. The law makes no provision for persons who may be experts in particular aspects of animal health but who are not licensed anywhere as veterinarians.

Hawaii's clientele for veterinary and animal care services cannot always secure certain narrow specialties and scientific expertise from among Hawaii's licensed veterinarians. Yet, those may be available on the mainland or at the University of Hawaii. The question, then, is whether the public here is being served optimally by denying it access to such scientific and professional expertise.

The board, however, has not been consistent on this issue. At its meeting of January 13, 1984, it decided in one case to inform a California-based poultry pathologist that he would violate Hawaii's statutes and rules if he were, as alleged, to have worked for more than one client while in Hawaii. By implication, working for a single client in contradiction to the statutes would be tolerated but not for two clients. Board members continued with this mistaken interpretation for over two years until enlightened by the executive secretary in mid-1986.

Prohibiting any work by outside scientists or veterinary experts—other than to consult with professionals licensed in Hawaii—denies the public a choice and hence, appears to serve professional, more than public, interests. This restriction on veterinary services becomes even less tenable when licensed veterinarians object even to outside and nonlicensed local experts directly advising livestock growers on how to enhance production.

In an apparent attempt to curb direct access to such outside expertise, the Board of Veterinary Examiners sent out a notice on November 14, 1986, to various

horse, cattle, swine, and poultry owners; pet suppliers; animal publications; and dog, cat, horse, and bird clubs advising them that "a veterinarian or *animal specialist*, who is not licensed in Hawaii, may only work in consultation with a veterinarian who is licensed in Hawaii. [Emphasis added.]" The notice went on to state that "[f]ailure to meet the above requirement is a violation of the statutes of the Board of Veterinary Examiners and could result in a fine against the unlicensed veterinarian."[1]

We believe that the board has done its required duty if it ensures a pool of well-qualified and tested professional veterinarians who can serve the general needs of clients' animals locally. The law and rules go too far if they curtail access to expertise not available among that general pool of professional veterinarians.

There should be an appropriate statutory amendment to grant temporary permits allowing unlicensed scientists and professionals to deal directly with clients on a temporary basis for those kinds of medical and animal care problems for which comparable expertise is not available among veterinarians licensed in this State. Board rules would then need to provide the executive secretary with criteria and a procedure for granting such temporary permits without having to call a board meeting every time.

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1. This notice was also sent to the College of Tropical Agriculture and Human Resources of the University of Hawaii.

Board Organization and Operations

Board rules. Until the board held a public hearing on its new rules in September 1986 and adopted them officially, veterinary medicine was supposedly governed by its old rules. Those old rules called for two examinations. Yet, since December 1984, the board required passage of three examinations for licensure—as specified in the as yet unadopted rules.

We find no fault with the board's good intentions; the new set of national examinations does appear to constitute a definite move in the right direction. However, DCCA should not have allowed the board to operate from one set of unadopted rules while a different set remained official.

The unadopted new rules were also applied in other areas such as allowing veterinarians, who had not yet taken and passed their state board examination, to practice medicine beyond the immediate physical presence of a licensed veterinarian. While the new rule makes better sense, the fact remains that it was not legal during the year that it was enforced without authority.

Board membership. Since 1977, Section 471-3, HRS, has called for the appointment of a board consisting of four members who reside on Oahu and three residents of counties other than the City and County of Honolulu. In the interim since then, board membership has turned over twice. Yet, board appointees have continued to involve five residents of Honolulu and at most only two from other counties. For a while during 1985, six of the seven members resided on Oahu.

Lack of sufficient orientation poses a problem for effective participation by members. For more than a decade, the use of manuals by DCCA had fallen into neglect. In 1985, this useful device was resurrected. A manual can provide board members with a handy reference to forms, background on regulation, DCCA

organization, procedures, and established board policies. A manual can prove helpful even for longtime board members provided it is kept current.

According to some board members, they also need sufficient orientation by the chairperson and DCCA executive secretary to help them more quickly become contributing participants in board deliberations. For many appointees, this might be their first exposure from the inside to the intricacies of the regulatory process. For public members, the technical complexities of veterinary medicine could be intimidating without proper explanation and orientation.

Recommendations

1. Chapter 471, Hawaii Revised Statutes, should be reenacted and the Board of Veterinary Examiners should be retained.

2. Using its task analysis project and any other relevant and valid data, the Board of Veterinary Examiners should: (a) carefully evaluate whether, in fact, Hawaiian conditions are so unique as to warrant the continuation of distinct state board examinations; and (b) make a written report to the Legislature on its findings, either to justify fully the continued use of this third test or recommend that the statutes be amended to eliminate provisions for it. If Hawaii's uniqueness is so great as to necessitate a continuation of a state board examination, then the board should contract for experts in the field of testing to rewrite, validate, and organize questions in a consistent, professional manner.

3. Chapter 471 should be amended to provide the public with legitimate direct access to wider choices of veterinary medical services by scientists and specialists if comparable expertise is not available among veterinarians who are licensed in this State.

4. The Department of Commerce and Consumer Affairs and the Board of Veterinary Examiners should take continuing care to observe all requirements of the Hawaii Administrative Procedure Act and not begin implementing new rule changes until those rule changes are properly and formally adopted.

5. The Department of Commerce and Consumer Affairs should inform the Office of the Governor whenever the board's membership is not in conformance with statutory requirements. In addition, the department should provide each new board member with a thorough orientation along with an up–to–date manual.

APPENDICES

APPENDIX A

COMMENTS ON AGENCY RESPONSES

A preliminary draft of this Sunset Evaluation Report was transmitted on December 14, 1986, to the Board of Veterinary Examiners and to the Department of Commerce and Consumer Affairs for their review and comments. A copy of the transmittal letter to the board is included as Attachment 1 of this Appendix. A similar letter was sent to the department. The responses from the board and the department are included as Attachments 2, 3, and 4. There are two letters from the department, the original response dated January 14, 1987, and an update and clarification dated January 15, 1987.

The board agrees with our recommendation to take continuing care to observe all requirements of the Hawaii Administrative Procedure Act, but it disagrees with our report on two issues.

The first disagreement concerns our recommendation that the board evaluate whether the conditions in Hawaii are so unique as to warrant the continuation of distinct state board examinations. The board states that such an evaluation is not necessary and questions whether the national examinations can adequately test candidates on Hawaii's unique problems. The board considers the local examination an "additional safeguard" to protect the residents of Hawaii.

The second disagreement is over our recommendation that the statute be amended to provide the public with direct access to wider choices of veterinary medical services by scientists and specialists if comparable expertise is not

available among Hawaii's veterinarians. The board favors continuation of the current provision which allows a veterinarian licensed in another state to practice in this state when in actual consultation with local veterinarians. It fears that direct access, which would not require consultation with a local veterinarian, could permit any "visitor, drifter or quack" to operate locally.

In the department's two letters, it acknowledges the need for a thorough orientation of board members, and it indicates that the composition of the board is now in conformance with statutory requirements.

ATTACHMENT 1

THE OFFICE OF THE AUDITOR
STATE OF HAWAII
465 S. KING STREET, RM. 500
HONOLULU, HAWAII 96813

CLINTON T. TANIMURA
AUDITOR

December 15, 1986

COPY

Dr. David MacKay, D.V.M., Chairperson
Board of Veterinary Examiners
Department of Commerce and Consumer Affairs
State of Hawaii
1010 Richards Street
Honolulu, Hawaii 96813

Dear Dr. MacKay:

Enclosed are eight preliminary copies, numbered 4 through 11, of our *Sunset Evaluation Report, Veterinary Medicine, Chapter 471, Hawaii Revised Statutes.* These copies are for review by you, other members of the board, and your executive secretary. This preliminary report has also been transmitted to Robert Alm, Director of the Department of Commerce and Consumer Affairs.

The report contains our recommendations relating to the regulation of veterinary medicine. If you have any comments on our recommendations, we would appreciate receiving them by January 14, 1987. Any comments we receive will be included as part of the final report which will be submitted to the Legislature.

Since the report is not in final form and changes may possibly be made to it, we request that you limit access to the report to those officials whom you wish to call upon for assistance in your response. Please do not reproduce the report. Should you require additional copies, please contact our office. Public release of the report will be made solely by our office and only after the report is published in its final form.

We appreciate the assistance and cooperation extended to us.

Sincerely,

Clinton T. Tanimura

Clinton T. Tanimura
Legislative Auditor

Enclosures

ATTACHMENT 2

JOHN WAIHEE
GOVERNOR

ROBERT A. ALM
DIRECTOR

NOE NOE TOM
LICENSING ADMINISTRATOR

BOARD OF VETERINARY EXAMINERS

STATE OF HAWAII
PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P. O. BOX 3469
HONOLULU, HAWAII 96801

January 13, 1987

RECEIVED
JAN 14 4 17 PM '87
OFC. OF THE AUDITOR
STATE OF HAWAII

Mr. Clinton T. Tanimura, Auditor
Office of the Legislative Auditor
465 South King Street, Suite 500
Honolulu, Hawaii 96813

Dear Mr. Tanimura:

Thank you for the opportunity to comment on the recommendations contained in the preliminary sunset evaluation report relating to Chapter 471, Hawaii Revised Statutes, and the Board of Veterinary Examiners.

The board is in general agreement with the following recommendations and appreciates your comments in these areas:

(1) Retention of the board and reenactment of Chapter 471, HRS; and

(2) Adherence to the requirements of the Hawaii Administrative Procedure Act by not implementing rule changes until they are properly and formally adopted.

The board does not concur with the following recommendations in the report for reasons as indicated:

(1) The evaluation of Hawaii's conditions to determine whether, in fact, they are so unique as to warrant the continuation of distinct state board examinations;

The board feels that an evaluation of Hawaii's conditions is not necessary and takes exception to the Auditor's emphasis on the "uniqueness" of the examination. We note that the statute, in reference to the composition of the state examination, indicates that the questions, in part, "shall consist of those aspects of

veterinary medicine common to the State" (underscoring for emphasis).

The board interprets the word "common" to include veterinary aspects which are observed most frequently, as well as those which are unique in Hawaii. Hence, the recommendation to consider abolishing the written state examination, unless an item is unique, surprises the board. The justification did not seem particularly compelling or that well documented.

There are certain conditions and diseases which are prevalent and seen on almost a daily basis in Hawaii. These include Bufo toad poisoning; heartworms; cat liver fluke; certain plant poisonings; specific mineral imbalance problems; and leptospirosis. These diseases and conditions are seldom if ever found on the mainland and could be classified as unique.

It is noted that some common conditions and diseases in Hawaii are also common on the mainland. However, because they have such economic significance to Hawaii and can be life threatening or debilitating, the board feels that a working knowledge and competency is a necessity. Can we be sure that both national examinations (NBE and CCT) will adequately test the candidates on our unique problems? We think not. Can we be sure, even if our common conditions and diseases are well covered, that the candidate passed the examination by answering these specific questions well?

On national examinations, could a candidate's weaknesses in these crucial areas be overcome by a strong performance in other areas?

It would be much easier not to give a state examination. However, the board believes it is necessary to protect the residents of the State of Hawaii by means of this additional safeguard.

The board does concur with the Auditor's suggestions calling for additional professional help in preparing the examination questions, as our department's staff does appear overextended at times.

(2) Amending the statute to provide the public with legitimate direct access to wider choices of veterinary medical services by scientists and specialists, if comparable expertise is not available among Hawaii's licensed veterinarians;

The board believes that the present statute, which requires an unlicensed "specialist" to work in consultation with a licensed veterinarian, adequately addresses this situation. "Direct access" as proposed by the Auditor could, in effect, open up the State to wholesale unlicensed activity which could prove most damaging in the long run.

The net effect of the Auditor's "direct access" recommendation, which would not require a Hawaii license or consultation with a licensed veterinarian, could be to permit any free-lance visitor, drifter or quack to operate locally for quick money as a veterinary "specialist." These people could cause substantial damage to Hawaii's animals.

The board feels strongly that the potential harm that can be caused by permitting "direct access" to unlicensed veterinarians or specialists, more than offsets any benefits of such a provision.

The board also notes the very real problems involved in determining who is a so-called "specialist," and in establishing if "comparable expertise" is not available locally.

Very truly yours,

David B. Mackay, D.V.M.

DAVID B. MACKAY, D.V.M.,
Chairman of the Board

ATTACHMENT 3

JOHN WAIHEE
GOVERNOR

ROBERT A. ALM
DIRECTOR
COMMISSIONER OF SECURITIES

DEPUTY DIRECTOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
1010 RICHARDS STREET
P. O. BOX 541
HONOLULU, HAWAII 96809

January 14, 1987

RECEIVED
JAN 14 4 17 PM '87
OFC. OF THE AUDITOR
STATE OF HAWAII

Mr. Clinton T. Tanimura
Legislative Auditor
Office of the Legislative Auditor
465 S. King Street, Suite 500
Honolulu, HI 96813

Dear Mr. Tanimura:

Thank you for the opportunity to comment on your Sunset Evaluation Report on Veterinary Medicine.

We would like to address recommendation 5 made to the Department of Commerce and Consumer Affairs as follows:

"The Department of Commerce and Consumer Affairs should inform the Office of the Governor whenever the board's membership is not in conformance with statutory requirements. In addition, the department should provide each new board member with a thorough orientation along with an up-to-date manual."

With regard to the first matter on notification to the Office of the Governor on board member appointments not in conformance with the law, we appreciate this matter being brought to our attention. While board member appointments are not within the jurisdiction of the department, we will bring to the attention of those responsible for such appointments, concerns we may have.

With regard to the second matter on orientation of new board members and use of an up-to-date manual, we wish to acknowledge our desire for a thorough orientation of board members, provided resources are there for us to carry out this mission. From a practical standpoint, money, manpower, and board members availability to participate in such activity is necessary for execution. Until we are able to reach this level, we have and will continue to orientate board members through operational manuals.

There are currently two manuals available to board members: (1) a manual designed for the specific board which contains information they will need to know on their board such as the laws, rules, policies, procedures, application, examination and licensing information; and (2) a manual which covers the role of the department, information on the various support service groups to the board, Chapters 26, 26H, 91, 92, and 92E, HRS, Chapter 201, Administrative Rules of Practice and Procedure and matters concerning legislation. Further, there are memorandums from the Attorney General's office included in this manual.

The first manual is reviewed and updated on a yearly basis, more often if there has been changes in the laws and rules. The second manual will be updated as needed, although we see more of an expansion of this manual versus updating its contents.

Recognizing, as you have, the need for board members to become familiar with the intricacies of the regulatory process, the manuals we have developed intended to assist with this transition. Our staff will of course continue to assist and guide board members.

We would like to extend our appreciation for the comments as contained in your report and we will continue to give our attention to the continued improvement of our operations.

You and your staff should be commended for the thoughtful assessment of the regulation on veterinary examiners.

Very truly yours,

Robert A. Alm
Director

ATTACHMENT 4

JOHN WAIHEE
GOVERNOR

ROBERT A. ALM
DIRECTOR
COMMISSIONER OF SECURITIES

DEPUTY DIRECTOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
1010 RICHARDS STREET
P. O. BOX 541
HONOLULU, HAWAII 96809

January 15, 1987

RECEIVED
JAN 15 4 08 PM '87
OFC. OF THE AUDITOR
STATE OF HAWAII

Mr. Clinton T. Tanimura
Legislative Auditor
Office of the Auditor
465 S. King Street, Suite 500
Honolulu, HI 96813

Dear Mr. Tanimura:

We appreciate the opportunity to further clarify the issue regarding the Veterinary board member composition and its compliance with Chapter 471, HRS, specifically Section 471-3, HRS.

We have found that with new board member appointments effective July 1, 1986, the board composition met the statutory requirement of four members from the city and county of Honolulu and three members of counties other than the city and county of Honolulu.

Based on the above, we believe notification to the Governor's Office would not be necessary. However, as stated in our initial letter to you, we will make efforts to express concern to the appropriate bodies should there be appointments that do not meet statutory requirements.

Very truly yours,

Robert A. Alm
Director

DIGEST

A BILL FOR AN ACT
RELATING TO VETERINARY MEDICINE

Extends the repeal date of the law regulating veterinarians to 1993. Allows unlicensed scientists and professionals to provide veterinary-related services to clients in this State if they possess expertise in animal care that is not available among the licensed veterinarians in this State and if they have obtained temporary permits from the board.

FOURTEENTH LEGISLATURE, 1987
STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO VETERINARY MEDICINE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

"§26H-4 Repeal dates. (a) The following chapters are hereby repealed effective December 31, 1987:

(1) Chapter 458 (Board of Dispensing Opticians)

(2) Chapter 459 (Board of Examiners in Optometry)

(3) Chapter 452 (Board of Massage)

[(4) Chapter 471 (Board of Veterinary Examiners)

(5)] (4) Chapter 441 (Cemeteries and Mortuaries)

[(6)] (5) Chapter 463 (Board of Detectives and Guards)

[(7)] (6) Chapter 455 (Board of Examiners in Naturopathy)

(b) The following chapters are hereby repealed effective December 31, 1988:

(1) Chapter 465 (Board of Psychology)

(2) Chapter 468E (Board of Speech Pathology and Audiology)

(3) Chapter 468K (Travel Agencies)

Rev. 10/86

(4) Chapter 373 (Commercial Employment Agencies)

(5) Chapter 442 (Board of Chiropractic Examiners)

(6) Chapter 448 (Board of Dental Examiners)

(7) Chapter 436E (Board of Acupuncture)

(c) The following chapters are hereby repealed effective December 31, 1989:

(1) Chapter 444 (Contractors License Board)

(2) Chapter 448E (Board of Electricians and Plumbers)

(3) Chapter 464 (Board of Registration of Professional Engineers, Architects, Surveyors and Landscape Architects)

(4) Chapter 466 (Board of Public Accountancy)

(5) Chapter 467 (Real Estate Commission)

(6) Chapter 439 (Board of Cosmetology)

(7) Chapter 454 (Mortgage Brokers and Solicitors)

(8) Chapter 454D (Mortgage and Collection Servicing Agents)

(d) The following chapters are hereby repealed effective December 31, 1990:

(1) Chapter 447 (Dental Hygienists)

(2) Chapter 453 (Board of Medical Examiners)

(3) Chapter 457 (Board of Nursing)

(4) Chapter 460J (Pest Control Board)

Rev. 10/86

(5) Chapter 462A (Pilotage)

(6) Chapter 438 (Board of Barbers)

(e) The following chapters are hereby repealed effective December 31, 1991:

(1) Chapter 448H (Elevator Mechanics Licensing Board)

(2) Chapter 451A (Board of Hearing Aid Dealers and Fitters)

(3) Chapter 457B (Board of Examiners of Nursing Home Administrators)

(4) Chapter 460 (Board of Osteopathic Examiners)

(5) Chapter 461 (Board of Pharmacy)

(6) Chapter 461J (Board of Physical Therapy)

(7) Chapter 463E (Podiatry)

(f) The following chapters are hereby repealed effective December 31, 1992:

(1) Chapter 437 (Motor Vehicle Industry Licensing Board)

(2) Chapter 437B (Motor Vehicle Repair Industry Board)

(3) Chapter 440 (Boxing Commission).

(g) The following chapter is hereby repealed effective December 31, 1993:

(1) Chapter 471 (Board of Veterinary Examiners)."

SECTION 2. Section 471-2, Hawaii Revised Statutes, is amended to read as follows:

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"§471-2 License required. No person shall practice veterinary medicine, either gratuitously or for pay, or shall offer to so practice, or shall announce or advertise, publicly or privately, as prepared or qualified to so practice, or shall append the letters "Dr." or affix any other letters to the person's name with the intent thereby to imply that the person is a practitioner of veterinary medicine, without having a valid unrevoked license obtained from the board of veterinary examiners; provided that nothing in this chapter prevents or prohibits the following:

(1) Any person from gratuitously treating animals in case of emergency;

(2) The owner of any animal or animals and the owner's full-time, regular employees from caring for and treating any animals belonging to the owner;

(3) Any student enrolled in any veterinary school or college or any employee of a veterinarian from working under the direct supervision of a veterinarian;

(4) Any person from practicing veterinary medicine in the employ of the United States government while engaged in the performance of the person's official duties;

(5) Any person licensed to practice veterinary medicine in

Rev. 10/86

any state from practicing in this State when in actual consultation with veterinarians of this State; provided that the person licensed from another state shall not open an office, or appoint a place to meet patients, or receive calls within the limits of the State;

(6) Any farmer from giving to another farmer the assistance customarily given in the ordinary practice of animal husbandry;

(7) Any applicant who meets the licensing requirements of practicing veterinary medicine under a veterinarian by permit; provided the applicant applies for and takes the first examination scheduled by the board. A permit shall not be renewed[.]<u>;</u>

<u>(8) Any scientist or professional who is not licensed to practice veterinary medicine from providing veterinary-related services to clients in this State if such scientist or professional possesses expertise in animal care which is not available among the licensed veterinarians in this State and has obtained a temporary permit from the board to provide veterinary-related services on a temporary basis.</u>"

SECTION 3. Statutory material to be repealed is bracketed.

Rev. 10/86

New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY:_____

Rev. 10/86