

Preliminary Evaluation of the State Board of Veterinary Medical Examiners

Recommendations: Waive from Full Evaluation

Extend Termination Date to July 1, 2021

Require Follow-up Report by October 1, 2009

The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Veterinary Medical Examiners (SBVME) last underwent a full evaluation as part of sunset review during 1989. The board also underwent a preliminary evaluation in 1998. SBVME was waived from full evaluation in 1998, though a follow-up report was required to be submitted by the board by October 1, 1999, regarding its plan to computerize complaint data and expand public outreach efforts. That follow-up report was submitted in September 1999. Legislation (Chapter 531) was enacted in 1999 to reauthorize the board, extending its termination date to July 1, 2011.

In conducting its preliminary evaluation, DLS staff reviewed applicable State law and regulations, recent relevant legislative and regulatory actions, prior full and preliminary sunset reviews of the board, SBVME portions of the Maryland Department of Agriculture’s (MDA) past two annual reports, the board’s recent operating budget history, board meeting minutes, disciplinary action data, and other information provided by the board. In addition, DLS staff met with and further communicated by phone with the board’s president and executive director, attended a portion of the board’s August 28, 2008 meeting, and solicited input from representatives of the Veterinary Technician Committee (VTC) and the Maryland Veterinary Medical Association.

SBVME reviewed a draft of this preliminary evaluation and provided the written comments attached as **Appendix 1**. Appropriate factual corrections and clarifications have been made throughout the document.

The State Board of Veterinary Medical Examiners

The Maryland General Assembly created SBVME in 1894. SBVME's stated mission is to protect the public and animal health and welfare through:

- (1) effective licensure of veterinarians, veterinary technicians, and veterinary hospitals under its jurisdiction;
- (2) effective discipline of veterinarians, veterinary technicians, and operators of veterinary hospitals under its jurisdiction, when warranted; and
- (3) adoption of reasonable standards for the practice of veterinary medicine in the State of Maryland.

SBVME regulates just over 2,400 veterinarians, just over 500 veterinary hospitals, and approximately 315 registered veterinary technicians. Veterinarians and veterinary hospitals must be licensed by the board. Veterinarians must also register annually with the board. A person *may* register with the board as a veterinary technician.

SBVME consists of seven members. Five are veterinarians licensed and registered in Maryland who are Maryland residents, are in good standing, are qualified, and have actively practiced veterinary medicine for at least five years. At least two of the five veterinarian members must have practices treating predominantly large animals. The remaining two members cannot be veterinarians. The Governor appoints, with the advice and consent of the Senate, all board members. Board members may not serve more than two successive five-year terms.

A Veterinary Technician Committee operates under the jurisdiction of the board with seven members appointed by the board, subject to approval by the Secretary of Agriculture. VTC is given prescribed duties under statute, including evaluating, examining, and determining the qualifications for applicants for registration as a veterinary technician; establishing continuing education requirements for registered veterinary technicians; defining the duties and responsibilities of registered veterinary technicians; and generally assisting the board in registering and regulating veterinary technicians. The committee's duties are subject to the board's approval.

SBVME is housed within MDA's Marketing, Animal Industries, and Consumer Services Office and operates under the provisions of Title 2, Subtitle 3 of the Agriculture Article. The staff of SBVME consists of an executive director, an administrative specialist, an office secretary, two agricultural inspectors who split their time between the Maryland Horse Industry Board and

SBVME, an investigator, and a part-time assistant Attorney General.

Legislative Action Has Provided SBVME with More Resources and Flexibility

Since its last evaluation in 1998, SBVME has transitioned to being a special-funded entity pursuant to Chapter 245 of 2004. Chapter 245 established a State Board of Veterinary Medical Examiners Fund into which all fees charged by the board are deposited and from which all costs of the board are paid. SBVME has to set fees to produce funds that approximate the cost of maintaining the board. This change, along with an increase in fees in 2004, has increased the funding available to the board. With the increased funding, staff have been added – an executive director in August 2005, and more recently, a part-time assistant Attorney General and an investigator in July and November 2007, respectively.

A more recent legislative action, Chapter 58 of 2008, amended a statutory requirement that every veterinary hospital be inspected each year, instead requiring that each hospital be inspected once every two years. The change is expected to allow inspectors to conduct more follow-up inspections when needed and to better document inspections in the event they lead to enforcement actions.

Another recent legislative action, Chapter 697 of 2008, authorizes SBVME to license animal control facilities (defined as humane societies or county or municipal designated animal shelters) to administer drugs needed to sedate and/or euthanize animals. The U.S. Drug Enforcement Agency determined in 2006 that animal control facilities that did not employ a veterinarian on a full-time basis did not have the authority to prescribe sedatives considered controlled dangerous substances commonly used in the practice of euthanasia. The new license under Chapter 697 will provide board authorization for animal control facilities to use those sedatives. Under State law, a person must also be registered with the Department of Health and Mental Hygiene before dispensing (including administering) a controlled dangerous substance.

Exhibit 1 identifies these and other legislative changes since 1998 that have affected the board.

Exhibit 1
Legislative Changes Since the 1998 Preliminary Evaluation

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
1999	531	Extends the board's termination date by 10 years to July 1, 2011.
	61	Eliminates an exemption for licensed veterinarians in other states that did not have an office in the State from having to comply with Maryland's laws and regulations governing the practice of veterinary medicine, including licensure and registration requirements. Adds an exemption from the State's laws and regulations for a veterinarian licensed in another jurisdiction who consults with a veterinarian licensed in Maryland.
2002	193	Requires SBVME to adopt regulations encouraging veterinarians to report suspected animal cruelty, including animal fighting, to a local law enforcement or county animal control agency. Establishes immunity for veterinarians from civil liability resulting from such reports made in good faith.
2004	245	Establishes a State Board of Veterinary Medical Examiners Fund into which all fees charged by the board are deposited and from which costs of the board are paid, making the board a special funded agency. Requires the fees charged to be set so as to produce funds to approximate the cost of maintaining the board.
2008	58	Requires SBVME to inspect each veterinary hospital facility once every two years, rather than once each year.
	697	Authorizes SBVME to license animal control facilities to administer drugs needed to sedate and/or euthanize animals.

Source: Laws of Maryland

SBVME Regulatory Changes

SBVME has promulgated several regulatory changes since its last evaluation in 1998. The board eliminated board/Veterinary Technician Committee-administered examinations for veterinarians and veterinary technicians in 2001 and 2006, respectively. An applicant still must pass the national licensing examination and submit a notarized signature affirming that the applicant has read and comprehends applicable State laws and regulations. (Reading and comprehending applicable State laws and regulations, and signing a notarized statement attesting to having done so, is now referred to under the board's regulations as the State Board Examination for veterinarians and veterinary technicians.)

The board examination for veterinarians, at the time it was eliminated, tested an applicant's knowledge of applicable State laws and regulations. The reasoning behind the elimination of the exam, according to the recollections of the president of the board at the time, was to alleviate problems relating to the timing of the exam and the cost associated with travel across the country to take the exam that kept some candidates from following through with their applications. The examination administered by the Veterinary Technician Committee, prior to its elimination, addressed the practice of veterinary technology but was not regularly revised. The Veterinary Technician National Examination (VTNE) is regularly revised and is now considered under the board's regulations to be sufficient, along with other requirements, to qualify a veterinary technician for registration.

The board has also made changes with respect to continuing education requirements for veterinarians and veterinary technicians. Formal guidelines for the submission of continuing education credits by veterinary technicians have been established, and the extent to which credits submitted by veterinarians may be obtained through online continuing education programs (up to 50 percent of the required number of credit hours submitted each year) has been specified.

Other changes provided for alternative, more flexible, clinical experience requirements applicable to veterinarians licensed in another state or a foreign jurisdiction or veterinarians that have been outside the United States due to government service. The clinical experience requirements allow those veterinarians to qualify for licensure without having to retake the national licensing examination. Clinical experience requirements were added to the board's regulations for veterinary technicians registered in another state or a foreign jurisdiction who graduated from a program accredited by the American Veterinary Medical Association (or a comparable program approved by VTC). Similar to those for veterinarians, the clinical experience requirements allow out-of-state veterinary technicians to qualify for registration without having to take VTNE.

Further changes include the establishment and clarification of requirements for prescribing and dispensing prescription drugs and controlled dangerous substances by veterinarians, increases in fees following the board's transition to being special funded, establishment of certain advertising and customer notice requirements, modifications to professional conduct and recordkeeping requirements, and amendments to construction standards and licensing and minimum sanitary requirements for veterinary facilities.

The board has also recently promulgated emergency regulations implementing Chapter 697 of 2008. The regulations establish terms and conditions related to the newly established animal control facility license and training requirements for facility employees authorized to administer sedation and euthanasia drugs as well as the individuals responsible for the drugs. As of early October 2008, the board had issued nine animal control facility licenses and had received additional incomplete applications that the board's staff was addressing.

Licensing the Veterinary Medicine Community

SBVME is responsible for licensing and registering veterinarians, licensing and inspecting veterinary hospitals, and registering veterinary technicians. As mentioned above, SBVME is also in the process of beginning to license animal control facilities to administer sedation and perform euthanasia pursuant to Chapter 697 of 2008. The license will *replace* permits SBVME had previously issued to animal control facilities to use sodium pentobarbital, a euthanasia drug. While a significant amount of work was put into drafting the legislation enacted as Chapter 697 and the subsequent regulations, it does not appear that, on an ongoing basis, issuing animal control facility licenses in place of the sodium pentobarbital permits will significantly affect the administrative workload of the board.

In fiscal 2008, SBVME issued 2,475 veterinarian registrations and 155 new veterinarian licenses. The number of new licenses issued each year has been relatively consistent over the past five fiscal years, generally in the range of 120 to 170 new licenses. The number of hospital licenses issued in fiscal 2008 was 509. Veterinary technician new registrations and renewal registrations each totaled 46. Because these registrations are renewed every three years, SBVME advises that there are approximately 315 registered veterinary technicians in Maryland. **Exhibit 2** shows the numbers of licenses, registrations, and permits issued by the board over the last five fiscal years.

Veterinarian Requirements

To become licensed as a veterinarian in the State, an applicant has to submit a diploma or transcript from veterinary medical school, a recent North American Veterinary Licensing Examination (NAVLE) score (within five years of taking the exam), an application fee, and a complete application. The application includes a notarized signature affirming that the applicant has read and comprehends the laws and regulations governing the practice of veterinary medicine in Maryland. Foreign applicants who have graduated, or will graduate, from a school that is not approved or accredited by the AVMA also have to submit a certificate from the Educational Commission for Foreign Veterinary Graduates (ECFVG), which operates a program that assesses the educational readiness of graduates of nonaccredited schools. Applicants licensed in another state, or in a foreign jurisdiction, who graduated from an AVMA-accredited school, and whose licensing examination scores are more than five years old, may also qualify for licensure by meeting clinical experience requirements (in place of retaking the national licensing examination).

Exhibit 2
Licenses, Registrations, and Permits Issued
Fiscal 2004-2008

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
<u>Veterinarians</u>					
New Licenses	133	166	123	170	155
Registrations ¹	2,275	2,376	2,385	2,412	2,475
<u>Veterinary Technicians</u>					
New Registrations ²	N/A	N/A	45	40	46
Renewal Registrations ³	69	86	75	80	46
<u>Veterinary Hospital</u>					
Licenses	481	495	492	508	509
<u>Sodium Pentobarbital</u>					
Permits ²	N/A	N/A	27	27	30
Total Issued⁴	2,825	2,957	3,024	3,067	3,106

¹Renewed annually. The number of veterinary registrations issued represents the total number of licensed and registered veterinarians in the State in each year since all licensees must also be registered.

²Fiscal 2004 and 2005 data are not available for these items because record keeping procedures had not been established.

³Renewed triennially.

⁴The total does not include new veterinarian licenses to avoid double counting. It also does not include any new veterinary technician registrations or sodium pentobarbital permits issued in fiscal 2004 and 2005 since data are not available for those years.

Note: Sodium pentobarbital permits are issued to animal control facilities that, for the most part, do not employ full-time veterinarians.

Source: State Board of Veterinary Medical Examiners

Upon becoming licensed, a veterinarian must also register annually with the board and pay the annual registration fee. A licensed veterinarian generally has to earn 12 credit hours of continuing professional education each year to renew the registration. (The board has submitted a proposal for MDA departmental legislation for the 2009 session that will allow it to require more than 12 credit hours of continuing professional education each year. According to the board's executive director, on average, other states require 15 to 20 credit hours per year.)

An initial applicant for licensure and registration has to pay a \$175 license application fee¹ and a \$140 registration fee that must be paid initially and annually thereafter. (See **Exhibit 3** for the current fee schedule.) The current cost to take NAVLE is \$500, which is paid to the National Board of Veterinary Medical Examiners (NBVME). NBVME also charges an additional \$50 fee for processing paperwork.

Exhibit 3
SBVME Fee Schedule

Veterinarian Initial License Fee*	\$140
Veterinarian Registration Fee (annual)	\$140
Veterinarian Late Registration Fee (additional)	\$40
Veterinarian State Board Examination Fee	\$175
Veterinary Technician Application Fee	\$60
Veterinary Technician Registration Fee (triennial)	\$50
Veterinary Hospital License Fee (annual)	\$100
Veterinary Hospital Late Fee (additional)	\$40
Letter of Good Standing** Fee	\$15
Animal Control Facility License Fee	\$100

*This fee is somewhat misleading. An initial applicant for a veterinarian license and registration pays only a \$175 license application fee (referred to in the above schedule as the Veterinarian State Board Examination Fee) and a \$140 registration fee, which continues to be paid annually thereafter. An initial applicant does not pay an additional \$140 license fee.

**Issued by the board upon request, generally to be provided to boards in other states where a Maryland licensee/registrant is seeking to be licensed.

Note: Board fees were increased in 2004, just prior to the board becoming special funded, in order to provide sufficient revenue to cover the board's expected operating costs. Prior to the increase, an initial applicant for licensure and registration as a veterinarian paid a \$75 application fee and an \$80 registration fee (an applicant now pays a \$175 application fee and \$140 registration fee) and an initial applicant for registration as a veterinary technician paid a \$50 application fee (an applicant now pays a \$60 application fee and a \$50 registration fee).

Source: COMAR 15.14.12.02; Annotated Code, Agriculture Article, §2-305

¹ Referred to in the board's regulations as a State Board Examination fee; as noted above, the applicant's notarized signature affirming that the applicant has read and comprehends the laws and regulations governing the practice of veterinary medicine in Maryland, considered the State Board Examination, is included on the application.

Veterinary Technician Requirements

Veterinary technicians are not licensed by SBVME, but a person *may* register with the board as a veterinary technician through an application process similar to that applicable to veterinarians for licensure. Thus, an applicant has to submit a diploma or transcript (from a veterinary technician program approved by the AVMA, a program otherwise approved by VTC, or a bachelor's or master's degree program in an agricultural, life, or physical science), a recent passing score on VTNE (within five years of taking the exam), an application fee, and a completed application. The application includes a notarized signature affirming that the applicant has read and comprehends the laws and regulations governing registered veterinary technicians in Maryland. As for veterinarians, veterinary technicians registered in another state or foreign jurisdiction may qualify for registration by meeting clinical experience requirements with older exam scores rather than retaking VTNE.

A registered veterinary technician must renew the registration with the board every three years. A registered veterinary technician generally has to earn 24 credit hours of continuing professional education during the previous three years in order to renew registration.

An initial applicant for registration has to pay a \$60 application fee as well as a \$50 registration fee paid initially and upon renewal every three years. The cost to take VTNE is \$130, paid to SBVME, which in turn pays the American Association of Veterinary State Boards, which owns and administers the exam.

Veterinary Hospital Requirements

An owner of a veterinary hospital (defined as any building or portion of a building which is regularly used for the treatment of animals by a veterinary practitioner) or mobile veterinary clinic must apply for a veterinary hospital license each year and pay a \$100 fee. State regulations require a new veterinary hospital to pass a board inspection before a license may be issued. The owner of a hospital is required to post, in a conspicuous location in the hospital readily accessible by the public, the current registrations of its veterinarians and veterinary technicians and the hospital license.

Processing Times Are Generally Improving

According to SBVME, most of the licenses and registrations are processed from May through July (licenses and registrations expire on June 30 of the applicable year), which can be administratively challenging for the board's staff. SBVME advises that the average processing times for fiscal 2009 licenses and registrations were 5 days for veterinarian registrations, 11 days for veterinary hospital licenses, and 25 days for veterinary technician registrations. These average processing times were improved from those for fiscal 2008 licenses and registrations of 8 days for veterinarian registrations, 15 days for veterinary hospital licenses, and 45 days for veterinary technician registrations. These processing times encompass the period from receipt of an application to mailing the license or registration. Having the Veterinary Technician Committee assist the board in reviewing veterinary technician registration applications has resulted in longer processing times

for those applications, though there was a notable improvement in the processing of the fiscal 2009 registrations as compared to the fiscal 2008 registrations.

The board and VTC appear to be able to process licenses and registrations in a timely manner. Even so, the board's president and executive director would like to explore multi-year licensing for veterinarians to alleviate the administrative burden of processing annually a large number of licenses and registrations in a short time period. The board is also interested in implementing online registration for veterinarians and veterinary technicians and licensing for veterinary hospitals, which would lessen the administrative burden. Online registration has also been requested by members of the regulated community. MDA's information technology department, however, has generally indicated that it does not have the capability for an online system that would accept credit card numbers. The board does not have information on the potential cost of implementing such a system.

Veterinary Technician Registration Is Limited

In comparison to the number of licensed and registered veterinarians in Maryland, the number of registered veterinary technicians in the State is limited. The National Association of Veterinary Technicians in America (NAVTA) identifies veterinary technicians/technologists as "educated to be the veterinarian's nurse, laboratory technician, radiography technician, anesthetist, surgical nurse and client educator." NAVTA identifies graduates of two-year, AVMA-accredited programs as veterinary technicians and graduates of AVMA-accredited bachelor degree programs as veterinary technologists. Maryland law does not differentiate between applicants graduating from two-year and bachelor degree programs for the purposes of registration as a veterinary technician.

A 2004 AVMA policy on veterinary technology "recognizes the value of veterinary technicians as an integral component of veterinary medicine and urges full utilization of veterinary technicians." A 2008-2009 U.S. Department of Labor job outlook for veterinary technologists and technicians indicates that employment of veterinary technologists and technicians is expected to grow 41 percent from 2006 to 2016, much faster than the average for all occupations. However, despite the expected demand for veterinary technicians, a 2003 NAVTA survey of veterinary technicians and a recent survey of registered veterinary technicians in Maryland conducted by VTC indicate concerns among veterinary technicians of low pay, burnout, and competition with assistants trained on the job (or assistants performing registered veterinary technician duties).

Veterinary technician registration in Maryland verifies an applicant's education, requires passing scores on a licensing/registration examination, and requires that an applicant read and comprehend the laws and regulations governing registered veterinary technicians in Maryland. Members of the public may expect these sorts of qualifications of veterinary hospital employees assisting veterinarians in providing health care to their animals. However, based on the number of registered veterinary technicians (approximately 315) in comparison with the number of registered veterinarians (2,475), many assisting employees presumable are not registered veterinary technicians.

Under State law and the board's regulations, registered veterinary technicians are specifically authorized to induce anesthesia, apply casts and splints, and perform other specified procedures under the direct supervision of a licensed and registered veterinarian. They can also administer medication and render auxiliary and supporting assistance, just like other veterinary employees are authorized to do. Under the board's regulations, however, a veterinarian cannot allow certain other veterinary employees to perform the procedures that registered veterinary technicians are specifically authorized to perform. It is unclear to what extent the veterinary community adheres to the distinction between procedures registered veterinary technicians and other veterinary employees are authorized to perform.

SBVME's president has indicated the board would like to increase the number of registered veterinary technicians in the State. One obstacle to doing so, however, is that there is only one AVMA-accredited veterinary technician program in the State, at the Essex Campus of the Community College of Baltimore County, which graduates a limited number of students each year. While there are AVMA-accredited distance learning programs, and registration applicants in Maryland can also qualify with a bachelor's or master's degree in an agricultural, life, or physical science, establishing an additional accredited program or programs in Maryland seems to be an important step in increasing the number of registered veterinary technicians in the State. The board has been involved in efforts to encourage the establishment of an additional program or programs, yet the cost of establishing a program has apparently been a significant factor in limiting progress to this point.

VTC has become more involved in the registration and regulation of veterinary technicians in recent years – now assisting in reviewing registration applications. The committee also helped draft the regulations that established formal guidelines for the submission of continuing education credits by veterinary technicians and sent out a comprehensive survey to registered veterinary technicians (mentioned above), the results of which were presented to the board at its August 28, 2008 meeting. The views of VTC regarding necessary education requirements for registered veterinary technicians and the procedures registered veterinary technicians are (or should be) authorized to perform may differ somewhat from what is prescribed under State law and the board's regulations.

Hospital Inspection Rates Have Improved

Two inspectors split their time between inspections for SBVME and the Maryland Horse Industry Board. The board's investigator has also conducted inspections. As mentioned previously, Chapter 58 of 2008 relaxed the veterinary hospital inspection requirement under State law from each hospital being required to be inspected each year to, instead, every two years.

As shown in **Exhibit 4**, the board apparently had the capacity to inspect every hospital in the State in fiscal 2008. Even so, SBVME indicates that the change in the law will allow the inspectors more flexibility to conduct follow-up inspections when needed. In addition to veterinary hospitals that fail an inspection, those that pass inspection can also need follow-up for reasons such as a current license not being posted in the veterinary hospital (as required by SBVME regulations) or a renovation in progress at the time of a first inspection that would need to be inspected once the

renovation is completed. Initial inspections of new hospitals, prior to licensure, can also require follow-ups to ensure issues pointed out in the first inspection have been addressed.

Until recently, with the requirement of inspecting every veterinary hospital each year, follow-up inspections generally could not be conducted unless there was a particularly egregious violation. The inspector met with the hospital's owner or manager (or their designee) and reviewed the areas of concern with the individual, relying on the hospital owner to act in good faith to address the areas of concern. Under Chapter 58, inspectors can conduct more follow-ups to ensure areas of concern are addressed. The additional flexibility is also expected to allow the inspectors to do more comprehensive reporting to aid the board's assistant Attorney General in the event charges are drafted; occasionally, information provided by the inspectors had been insufficient to move forward with drafting charges.

Exhibit 4
Hospital Inspection Pass Rates
Fiscal 2004-2008

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Licensed Veterinary Hospitals	481	495	492 ¹	508 ¹	509 ¹
Hospitals Inspected	365	491	456	470	517
Inspected Hospitals Passing	85%	99%	98%	99%	100%

¹These numbers reflect licensing information provided by SBVME and are slightly different than total hospital numbers submitted for, or included in, the Governor's Budget Books. This causes a discrepancy in fiscal 2008, when the number of hospitals inspected is higher than the number of licensed hospitals.

Source: Governor's Budget Books; State Board of Veterinary Medical Examiners

Complaints and Formal Charges Increase

From fiscal 2004 through 2008, 332 consumer complaints were received, and the board initiated 45 additional disciplinary cases. The total number of complaints/board-initiated cases has increased in recent years, and the board has pursued formal charges in more cases as shown in **Exhibit 5**. The board reserves license suspensions/revocations for more egregious violations, which have been relatively rare in comparison to the board's use of civil penalties, stayed suspensions, and probation to discipline licensees. For example, over that five-year period, five veterinarians were ordered to serve suspensions and one veterinarian's license was revoked. The board's president indicates that suspensions in instances where a veterinarian has made a mistake or exercised bad judgment, while having a punitive effect, do not necessarily help the board in fulfilling its mission of protecting the public and animal health and welfare where the veterinarian is not deemed to be a

threat to the public or to animal health or welfare. Stayed suspensions are often imposed along with probation and serve as a consequence of a subsequent violation during the probationary period.

Exhibit 5
Resolution of Complaints Received Since Fiscal 2004
Fiscal 2004-2008

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
New Complaints	62	61	87	74	93
<i>Complaints Resolved</i>					
Within 6 Months	46	35	34	27	24
Required More than 6 Months	16	26	49	44	18
Average Months for Resolution	5-6	7-8	9-10	8-9	N/A
<i>Complaints Unresolved as of August 2008</i>	0	0	4	3	51
<i>Disposition of Resolved Complaints</i>					
Dismissed/Closed without Action	23	23	30	21	18
Dismissed with Letter of Advice	27	17	25	23	6
Letter of Admonishment/Censure*	3	6	7	2	9
Formal Charges/Consent Agreement	9	15	21	25	9

* The board recently began issuing letters of censure, rather than letters of admonishment, pursuant to its existing authorization under State law. Letters of censure are considered to be formal action and are available to the public, whereas letters of admonishment were not.

Note: Twenty-nine complaints from fiscal years prior to fiscal 2004 were pending at the start of fiscal 2004. Almost all of those complaints were resolved in fiscal 2004.

Source: Department of Legislative Services review of State Board of Veterinary Medical Examiners complaint records.

With consumer complaints, after obtaining relevant records and a response from the subject of the complaint and offering the complainant the opportunity for a rebuttal, the board reviews the complaint and generally votes for either a dismissal, dismissal with a letter of advice, letter of censure (issued when allegations are found to merit charges, but the board chooses not to draft charges for reasons such as an offense being minor or a person having a good history), or the drafting of formal charges. The board often solicits expert opinions in cases where the veterinary care provided by a licensee/registrant is questioned.

Board-initiated cases generally arise from inspections or instances where veterinarians or veterinary hospitals fail to renew their registration/license but continue to practice or operate. Not involving a complainant, the board generally addresses these cases once sufficient information/evidence regarding a violation has been gathered by the board's inspectors.

Complaint Resolution Appears to Be Improving with More Staff

The average time it has taken to resolve complaints/cases has increased since fiscal 2004, jumping from an average resolution time of 5 to 6 months for those complaints/cases received or initiated in fiscal 2004 to 9 to 10 months in fiscal 2006. The resolution time has dropped slightly more recently – to 8 to 9 months in fiscal 2007. (The average resolution time for fiscal 2008 is 5 to 6 months, but over half of those cases have not been resolved yet.) The longer time frames for resolution could be the result of factors such as higher case loads, increased complexity of complaints, and a greater number of cases in which formal charges are drafted.

Some complaints/cases take an extended period of time to resolve. Over the five-year period reviewed, 45 cases took more than one year to bring to a resolution, the majority of which resulted in formal charges. In addition, seven cases initiated in fiscal 2006 and 2007 were still pending as of August 2008 (the board had voted to dismiss one of these cases at its June 2008 meeting, but letters to be sent to involved parties were pending; another case was pending due to the serious illness of the subject veterinarian). The hiring of an investigator and part-time assistant Attorney General in fiscal 2008 has helped the board investigate complaints and serve subpoenas when needed and to bring pending cases to a resolution. For example, almost two-thirds of the 45 extended, but now resolved, cases mentioned above were resolved after the board hired its part-time assistant Attorney General.

Complaint Data Have Been Computerized

The 1998 preliminary evaluation recommended that the board computerize all complaint data, which would allow it to assess trends more quickly and comprehensively. The board's complaint data are now computerized, along with licensing and inspection information. Thus, board staff can quickly access disciplinary information for a given licensee and generate certain reports. The reports, however, relate more to issues such as disciplinary cases that are pending or registrations or licenses that have not been renewed rather than identifying trends in licensing, inspection, or complaint activity.

Transition to Special Funding Has Afforded the Board More Resources

The board's transition from a general-funded to special-funded entity in fiscal 2005, pursuant to Chapter 245 of 2004, has provided the board with more resources to fulfill its responsibilities. As shown in **Exhibit 6**, the change has allowed the board to increase its expenditures since fiscal 2004, and 2.5 positions have been added since that time (the board's executive director, investigator, and

**Exhibit 6
Fiscal History of SBVME
Fiscal 2003-2009**

	Fully Special-funded						
	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Authorized Positions	3	3	5 ¹	5	5	5	5.5
Beginning Special Fund Balance	\$0	\$0	\$0	\$173,159	\$242,552	\$314,451	\$336,623
Special Fund Revenues	2,957 ²	2,699 ²	441,051	423,292	452,643	452,562	454,070
General Fund Revenues ³	231,228	50,009 ⁴	0	0	0	0	0
Total Special Fund Revenues Available	2,957	2,699	441,051	596,451	695,195	767,013	790,693
Total Special Fund Expenditure	2,957	2,699	267,892	353,899	380,744	430,390	495,534
General Fund Expenditure	160,887	169,386	0	0	0	0	0
Direct Costs	163,844	172,085	207,892	293,899	315,744	365,390	430,534
Indirect Costs ⁵	0	0	60,000	60,000	65,000	65,000	65,000
Ending Special Fund Balance	\$0	\$0	\$173,159	\$242,552	\$314,451	\$336,623	\$295,159

¹ While two additional positions were authorized in fiscal 2005 and subsequent years, those positions were not filled until fiscal 2006 and 2008.

² Veterinary technician testing fees collected by the board from applicants and paid to the American Association of Veterinary State Boards.

³ These numbers do not account for fines imposed by the board that are paid into the general fund.

⁴ Fiscal 2004 general fund revenues are lower due to the fact that fees collected toward the end of fiscal 2004 for fiscal 2005 licenses and registrations were placed in an advanced deposit account (rather than the general fund) for the board's use in fiscal 2005, its first year as a special-funded entity.

⁵ Paid to MDA's Office of the Secretary, Central Services.

Note: The fiscal 2009 expenditures are the appropriations for that year; the fiscal 2009 revenues are estimated. The fiscal 2008 expenditures and revenues are not finalized "for closing."

Source: Maryland Department of Agriculture, State Board of Veterinary Medical Examiners; Governor's Budget Books

part-time assistant Attorney General). Prior to the change, the board's staff was made up of an administrative specialist, an office secretary, and two inspectors whose time was (and still is) shared with the Maryland Horse Industry Board.

In making the board a special-funded entity, Chapter 245 authorized the board to set its fees so as to produce funds to approximate the cost of maintaining the board. The board increased its fees in 2004 to a level expected to generate enough revenue to sufficiently fund the board for at least five years before fees would need to be raised again to keep pace with rising operating costs. The fees were also set with the expectation of adding an executive director and investigator to the board's staff. A special fund balance has accumulated since the board's transition to special funding in fiscal 2005 and the increase in fees, in part due to the fact that the board's executive director and investigator were not hired until fiscal 2006 and 2008, respectively.

As shown in Exhibit 6, the board's special fund expenditures include both the direct costs of the board (salaries, wages, benefits, contractual services, communication, travel, motor vehicle operation and maintenance, etc.) and indirect costs paid to MDA's Office of the Secretary, Central Services, accounting for the administrative overhead of MDA from which SBVME benefits (office space, utilities, accounting services, personnel services, payroll services, etc.).

By the end of fiscal 2009, the goal of funding the board for at least five years without increasing fees will have been met. However, the board's expenditures have increased, while the board's revenues have remained relatively consistent. Beginning in fiscal 2009, the board's expenditures are expected to be higher than the board's annual revenues for the first time. Thus, assuming board staffing and revenues remain consistent, the special fund balance will be spent down to cover the board's costs each fiscal year. Fees will likely need to be raised prior to fiscal 2013 (accounting for increases in personnel costs and inflation); otherwise, board expenditures could be greater than the board's available revenues in fiscal 2013. A change in board staffing, such as a vacancy or an additional position, or other change in expenditures could accelerate or delay when fees would need to be increased. The board's executive director indicates the board could use another administrative staff person to handle complaint-related work, but the board does not have office space available for this purpose.

Integrative Veterinary Therapies

The board has been confronted with the issue of integrative veterinary therapies or techniques. The AVMA's Model Practice Act defines "complementary, alternative, and integrative therapies" as:

[A] heterogeneous group of preventative, diagnostic, and therapeutic philosophies and practice, which at the time they are performed may differ from current scientific knowledge, or whose theoretical basis and techniques may diverge from veterinary medicine routinely taught in accredited veterinary medical colleges, or both. These therapies include, but are not limited to, veterinary acupuncture, acutheraPy, and

acupressure; veterinary homeopathy; veterinary manual or manipulative therapy...; veterinary nutraceutical therapy; and veterinary phytotherapy.

The Model Practice Act includes these therapies under the definition of the “practice of veterinary medicine.” This differs somewhat from Maryland law, which excludes acupuncture from the definition of the “practice of veterinary medicine,” allowing a person to practice acupuncture without being a licensed and registered veterinarian (pursuant to specific conditions including requirements for training, licensure, and certification with the State Acupuncture Board and cooperation and consultation with a veterinarian). Aside from acupuncture, however, Maryland law does not specifically address integrative veterinary therapies.

SBVME recently was a co-defendant, along with the State Board of Chiropractic Examiners, in a lawsuit brought by a massage therapist who wanted to offer horse massage as a business. The massage therapist alleged that SBVME had violated her constitutional right to earn a living. SBVME, however, had not specifically addressed the massage therapist’s activities or issued a decision with respect to whether the activities would be in violation of State law or regulations. The lawsuit was dismissed because the massage therapist had not exhausted administrative remedies; thus far, the dismissal has not been appealed.

The board also met with another massage therapist at its August 28, 2008 meeting regarding the services she sought to offer. The massage therapist had also previously met with the board’s president and executive director. Based on the information she provided in those two meetings, the board was comfortable that the services she sought to offer would not constitute the practice of veterinary medicine. The massage therapist emphasized that she did not diagnose ailments or prescribe treatments.

It appears that, at least for the time being, the board will evaluate these services on a case-by-case basis to determine whether a person could be engaging in the unlicensed practice of veterinary medicine as defined under State law. Integrative veterinary therapies, however, could invite legislative or regulatory action in the future.

Recommendations

SBVME plays an important role in regulating veterinary medical professionals and facilities, and its existence is necessary for the public interest. The board has benefited from the hiring of additional staff in recent years, yet the board’s administrative resources still appear to be utilized to their capacity. The board appears to nonetheless be effectively fulfilling its responsibilities with its current resources and, being special-funded, may have the ability to add administrative resources in the future through reasonable fee increases, if necessary. **Therefore, the Department of Legislative Services recommends that the Legislative Policy Committee waive the State Board of Veterinary Medical Examiners from full evaluation and that legislation be enacted to extend the board’s termination date by 10 years to July 1, 2021. DLS also recommends that SBVME submit a follow-up report to the Legislative Policy Committee by October 1, 2009, addressing**

the following issues:

- **Registered Veterinary Technicians:** As mentioned earlier, the establishment of additional veterinary technician programs in Maryland appears to be an important step toward increasing the number of registered veterinary technicians in the State, and the board has been involved in efforts to encourage the establishment of additional programs. The follow-up report should discuss any actions the board determines could be taken in addition to efforts to establish additional veterinary technician programs in the State, such as incentives for veterinarians/veterinary hospitals to encourage employees, through financial assistance or otherwise, to participate in veterinary technician programs (including accredited online programs).

In addition, the procedures that registered veterinary technicians are specifically authorized to perform under State law have been in place since 1994. The follow-up report should discuss the extent to which these procedures encompass the procedures registered veterinary technicians are trained to perform and whether it would be appropriate to add other procedures to that list.

- **Penalty Authority:** The board is not given specific authority under State law to impose civil penalties on a person that is not licensed by the board, but it does have the authority to seek an injunction in court against a person that violates State laws governing the practice of veterinary medicine. A person can also be subject to criminal penalties for such violations. The follow-up report should discuss the extent to which the board believes it would be beneficial to have civil penalty authority to address instances of unlicensed practice of veterinary medicine and to what extent it could utilize the authority given its existing resources available to investigate alleged instances of unlicensed practice of veterinary medicine.

In addition, it appears to be unclear under State law whether the board has the authority to impose civil penalties on registered veterinary technicians in a similar manner as it is authorized to with respect to licensed veterinarians. The board is authorized to suspend or revoke a veterinary technician's registration, reprimand and censure the veterinary technician, or place a veterinary technician on probation, but it is unclear whether the board may also impose civil penalties in lieu of or in addition to a suspension, or in addition to a revocation, as it is authorized to with respect to a licensed veterinarian. The follow-up report should discuss whether State law currently gives the board the authority to impose civil penalties on registered veterinary technicians, and if not, whether that authority would be beneficial.

- **Public Outreach:** The 1998 preliminary evaluation recommended that the board expand its public outreach efforts and mentioned including the board's phone number and availability as a resource for consumer complaints in the veterinarian listings in the phone book and

possibly at the bottom of veterinarian/veterinary hospital bills. It was noted how greatly the board depends on consumer complaints to find alleged violations of veterinary practices. The previous two sunset evaluations had also recommended that the board expand its public outreach efforts.

The board's September 1999 follow-up report to the 1998 preliminary evaluation indicated the board had re-registered its web site with various Internet search engines and was looking into including the board's information in the veterinarian listings in the phone book and on registration certificates and hospital licenses that are required to be posted in veterinary hospitals in a conspicuous location that is readily accessible by the public. The board's phone number, however, is currently not in the veterinarian listings in the phone book or printed on registration certificates and hospital licenses. The follow-up report should assess the extent of public outreach necessary to ensure consumer access to the board in instances where a veterinarian, veterinary technician, or veterinary hospital has violated State law or the board's regulations and what actions could be taken to achieve that level of public outreach.

- **Disciplinary Caseload:** With the number of complaints received/cases initiated increasing in the past few years, the expressed need for an administrative person that could handle complaint-related work, and the higher average resolution times for complaints in fiscal 2006 and 2007, the follow-up report should discuss to what extent additional resources continue to be needed for complaint work and whether that need can or will be addressed in the future, given the board's anticipated budget (assuming a fee increase as expected) and available office space.

**Appendix 1. Written Comments of the
State Board of Veterinary Medical Examiners**



Maryland Department of Agriculture

Agriculture | Maryland's Leading Industry

Office of Marketing, Animal Industries
and Consumer Services

Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor
Roger L. Richardson, Secretary
Earl F. Hance, Deputy Secretary

The Wayne A. Cawley, Jr. Building
50 Harry S Truman Parkway
Annapolis, Maryland 21401
TTY Users: Call via Maryland Relay
Internet: www.mda.state.md.us

410.841.5700 Baltimore/Annapolis
301.261.8106 Washington, D.C.
410.841.5999 Fax
800.492.5590 Toll Free

MARYLAND STATE BOARD OF VETERINARY MEDICAL EXAMINERS

Telephone: (410) 841-5862

Facsimile: (410) 841-5999

www.mda.state.md.us

Comments of the State Board of Veterinary Medical Examiners

Recommendation to waive full evaluation:

The SBVME concurs with this recommendation and respectfully requests that the Legislative Policy Committee waive the full evaluation.

Regarding lawsuit filed by massage therapist:

On November 6, 2008, a judge for the Circuit Court for Montgomery County dismissed the massage therapist's lawsuit against the SBVME for the massage therapist's "failure to exhaust Maryland Administrative remedies before initiating action in the Montgomery County Circuit Court." It is uncertain at this time if the massage therapist will seek to appeal this decision.

Registered Veterinary Technicians:

The SBVME's president is interested in exploring the creation of a scholarship fund, in conjunction with the Maryland Veterinary Medical Association (MVMA), for individuals interested in pursuing a veterinary technology degree. A portion of the revenue the SBVME currently receives in the form of civil penalties could be deposited to the fund, which would be administered by the MVMA. This financial assistance may provide an incentive to individuals who otherwise would not pursue such a degree due to limited finances.

The SBVME may consider the administration of vaccinations, intubating patients, and the taking of vital signs as procedures acceptable for an RVT to perform. In September 2008, the SBVME and other member boards of the American Association of Veterinary State Boards requested that the AA VSB perform a review of all member boards and make recommendations for national standards for veterinary technicians. Concern has been expressed by member boards across the country that standardization is strongly needed.

Penalty Authority:

The SBVME's president is interested in pursuing legislation that would grant the SBVME the authority to impose civil penalties on an individual who is not licensed by the SBVME, but is found to be practicing veterinary medicine. Although the SBVME may forward a case to the States' Attorneys Office for criminal prosecution, the SBVME is concerned that the

States' Attorneys Office may not consider such a case important enough to pursue, based on the types of cases they typically handle. Additionally, the SBVME's president believes that there may be enough unlicensed activity occurring that consumers and their pets may be at risk of being harmed by individuals claiming to possess skills or knowledge in veterinary medicine that they do not possess.

The SBVME would be interested in having the authority to impose civil penalties on RVTs. This authority would give the SBVME latitude in issuing a less severe sanction than a suspension or revocation, but more severe sanction than a reprimand or censure.

Public Outreach:

The SBVME's staff is planning to include the SBVME's telephone number, facsimile number, and web address on all licenses and registrations it will have printed in the coming year. Registrations issued to veterinarians and veterinary technicians, and licenses issued to veterinary hospitals are to be posted in a conspicuous location that is readily accessible by the public. Including the SBVME's phone number in the yellow pages of each phone book throughout the State may be cost-prohibitive, however, the SBVME may be able to have it displayed under the Internet's business listings. The SBVME is concerned that if its phone number was included at the bottom of veterinary hospital bills, consumers would be given the mistaken impression that the SBVME somehow regulates fees charged by veterinarians. The SBVME does not set fees, but it is confident that consumers would seek to file complaints about their veterinarians' fees if the number was included on the bills.

The SBVME's webpage, which is included on the Maryland Department of Agriculture's website, was revised extensively in 2007. The webpage now includes, in part, applications with instructions for completion, instructions on submitting requests for continuing education approval and licensure verifications, easy accessibility to laws and regulations, a form for filing complaints, and information about the SBVME's and VTC's members.

Disciplinary Caseload:

The SBVME's executive director is currently reviewing the complaint process in an effort to determine whether cases could be handled more expediently. A revision of this process would likely impact the duties of half of the staff, but may be necessary due to the increased number of complaints received and cases initiated by the SBVME.