

Preliminary Evaluation of the State Board of Veterinary Medical Examiners

Recommendation:	Full Evaluation
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Date Established:	1894
Most Recent Prior Evaluation:	Preliminary Evaluation, 2008 Extended termination date by 10 years to July 1, 2021 (enacted by Chapter 123 of 2009); required follow-up report by October 1, 2009 (submitted)
Composition:	Seven members (five veterinarian members and two members who cannot be veterinarians)
Staff:	Four full-time (executive director, assistant director for field operations, licensing administrator, and administrative specialist) Other shared personnel support the board (assistant Attorney General and two inspectors)
Regulated Entities:	Veterinarians, veterinary hospitals, registered veterinary technicians, and animal control facilities
Authorizing Statute:	Title 2, Subtitle 3, Agriculture Article
Evaluation Completed by:	Cristen Flynn, Department of Legislative Services, 2018

Overview of Regulatory Activity

The State Board of Veterinary Medical Examiner'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 and animal control facilities under its jurisdiction, when warranted; and (3) adoption of reasonable standards for the practice of veterinary medicine in the State of Maryland.

The board regulates just over 3,000 veterinarians, just over 600 veterinary hospitals, and approximately 376 registered veterinary technicians. Veterinarians and veterinary hospitals must be licensed by the board. Veterinarians who are licensed to practice in the State and veterinary hospitals that are licensed to operate in the State must also register annually with the board. A person may register with the board as a veterinary technician.

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. The committee 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 at the discretion of the board.

The board is housed within the Maryland Department of Agriculture's (MDA) Office of Marketing, Animal Industries, and Consumer Services. The staff of the board consists of an executive director, an assistant director for field operations (who is a full-time investigator), a licensing administrator, an administrative specialist, two inspectors who split their time evenly between the board and the Maryland Horse Industry Board (one of whom assists with investigations), an investigator, and a part-time (60%) assistant Attorney General. The board further advises that an assistant Attorney General who supervises the assistant Attorney General assigned to the board also provides advice and counsel to the board, when necessary.

As a special funded entity, the board must set, by regulation, reasonable fees necessary to carry out its responsibilities. The board's fee structure includes application, examination, licensing, and registrations fees. All fees charged by the board are deposited into the State Board of Veterinary Medical Examiners Fund to be used exclusively to cover the direct and indirect costs of the board.

Legislative Activity Since Last Evaluation

At the time of the last evaluation, State law limited the amount of a monetary penalty the board could impose to \$5,000. However, Chapter 30 of 2010 changed the board's penalty authority by authorizing the board to, in lieu of or in addition to suspension of a license, or in addition to revocation of the license, impose a penalty of up to \$5,000 for a first offense. For a second or

subsequent offense, in addition to suspension or revocation of the license, the board may impose a penalty of up to \$10,000.

Chapter 267 of 2016 required, among other things, an animal shelter to establish and make publicly available by January 1, 2017, a specified written veterinary care protocol for dogs and cats and a specified written protocol for reclaiming animals from the shelter. In an effort to address concerns regarding regulatory oversight and enforcement under Chapter 267, Chapter 409 of 2017 required MDA, by January 1, 2018, to adopt specified minimum standards of care for dogs and cats in (1) certain animal control facilities; and (2) private animal shelters that have received funding from the Spay/Neuter Fund (which funds programs that facilitate and promote the provision of spay and neuter services for cats and dogs) during the previous year and MDA tasked the board with developing these regulations.

Appendix 1 summarizes these and other recent legislative changes since the last evaluation that have affected the board and the practice of veterinary medicine.

Licensing and Registration Activity

The board is responsible for licensing and registering veterinarians, licensing and inspecting veterinary hospitals, registering veterinary technicians, and licensing animal control facilities to administer drugs needed to sedate, euthanize, or sedate and euthanize animals. In fiscal 2018, the board issued 2,871 registrations and 188 new veterinary licenses. The number of new veterinary licenses issued each year has been relatively consistent over the past five fiscal years, ranging from 178 to 194 new licenses. The number of hospital licenses issued in fiscal 2018 was 633. Veterinary technician registrations, which are voluntary, are renewed every three years, with 46 registrations issued in 2018; the board advises that there are approximately 376 registered veterinary technicians in Maryland. **Appendix 2** shows the numbers of licenses and registrations issued by the board over the last five fiscal years.

Animal Control Facility License

The last evaluation noted that the board was beginning to license animal control facilities to administer sedation and perform euthanasia pursuant to Chapter 697 of 2008. The license replaced permits the board had previously issued to animal control facilities to use sodium pentobarbital, a euthanasia drug. As there are only about 30 such animal control facilities, the board does not view issuing animal control facility licenses in place of the sodium pentobarbital permits as significantly affecting its administrative workload.

Veterinary Technician Registration Remains Limited

Similar to a finding in the last evaluation, veterinary technician registration is limited in Maryland, with approximately 376 registered veterinary technicians. Although not required, a person may apply to the board to register as a veterinary technician in the State. There are two options for making an application to the board. First, an applicant may submit a final transcript from a veterinary technician program approved by the American Veterinary Medical Association

(AVMA) to the board. Second, if an applicant has not graduated from an AVMA veterinary technician program, the applicant may submit a final transcript that shows the applicant holds an associate degree or higher and satisfactory completion of specified course work, along with:

- a technical skill set assessment;
- proof of completion of 10,000 hours of work experience;
- proof of completion of at least 24 hours of veterinary technician continuing education; and
- proof of completion of at least 24 hours of emergency work experience.

All applicants must pass the Veterinary Technician National Exam; pay an application fee; and submit a completed application. A registered veterinary technician must renew the registration with the board every three years and is subject to continuing education requirements. The procedures that may be performed by a registered veterinary technician are prescribed by the board by regulation.

As was the case during the last evaluation period, there is only one AVMA-accredited veterinary technician program in the State, at the Essex Campus of the Community College of Baltimore County. While an applicant may qualify for registration by submitting a diploma or transcript from an AVMA-accredited distance learning program or other approved bachelor's or master's degree program, the last evaluation indicated that establishing an additional accredited program or programs in Maryland may help to increase the number of registered veterinary technicians in the State. However, the last evaluation also identified the cost of establishing an additional program or programs as an obstacle to adding more programs in the State.

The last evaluation recommended that the board submit a follow-up report to the Legislative Policy Committee (LPC) to discuss any actions the board determines could be taken to establish additional veterinary technician programs in the State, including incentives for encouraging participation in veterinary technician programs. The 2009 follow-up report to LPC indicated the board's president was interested in the possibility of collaborating with the Maryland Veterinary Medical Association to establish a scholarship fund for individuals interested in pursuing a veterinary technology degree. However, a financial assistance program has not been developed, and no new veterinary technician programs have been established in the State since the last evaluation. Although the board's current president does not believe establishing additional veterinary technician programs is within the scope of the board's authority, the board's current president would strongly encourage the development of additional AVMA-accredited veterinary technician programs at community colleges in Maryland.

Complaints and Enforcement

Complaint Resolution Process

The board is responsible for investigating consumer complaints and, when appropriate, taking disciplinary action against veterinarians, registered veterinary technicians, and veterinary hospitals. From fiscal 2014 through 2018, the board handled 333 new cases, which were either initiated by a consumer complaint or the board. The number of new cases has remained relatively consistent in recent years, with a low of 57 new cases in fiscal 2017 and a high of 72 new cases in fiscal 2015. As shown in **Appendix 3**, the board may take a variety of actions to address disciplinary matters, including issuing civil penalties, probations, and suspensions (formal actions) and issuing letters of advice or letters of admonishment (informal actions). Appendix 3 also indicates that, although most cases are dismissed, many are accompanied by a letter of advice or a letter of admonishment. Board regulations define both a letter of advice and a letter of admonishment as a nonpublic document that is issued as an informal action. The board further advises that these documents are not subject to disclosure under the Maryland Public Information Act.

Board regulations establish standards for imposing a civil penalty on a licensed veterinarian, as shown in **Appendix 4**. The board imposed a total of \$55,800 in penalties in fiscal 2014, \$15,950 in fiscal 2015, \$12,350 in fiscal 2016, \$9,200 in fiscal 2017, and \$26,900 in fiscal 2018. Penalties collected by the board are paid into the general fund of the State.

The board advises that it seeks to maintain the integrity of the veterinary profession by ensuring that veterinarians adhere to a minimum standard of care. Therefore, the board takes formal disciplinary action only in cases where a veterinarian provided care that did not meet the minimum standard. The board does not provide a definition for “minimum standard”; however, board regulations prescribe standards for professional judgment and practice, including requiring veterinarians to conform to minimum standards of care and treatment that are customary among veterinarians in Maryland. Generally, the board does not revoke a license if the veterinarian makes an error in judgment, and instead is more likely to order the veterinarian to undergo additional training and education or meet other conditions to improve the veterinarian’s skill level.

Consumers Raise Concerns Regarding Complaint and Disciplinary Process

Several members of the public contacted the Department of Legislative Services (DLS) to express concern regarding the board’s complaint and disciplinary process. Those concerns encompass:

- whether the board is applying the regulatory standard of care when evaluating complaints, which includes requiring veterinarians to conform to minimum standards of care and treatment that are customary among veterinarians in the State;

- whether a minimum standard of care is the appropriate standard of care to apply when evaluating a complaint regarding substandard care;
- whether the board reviews appropriate evidence when evaluating whether the standard of care has been met;
- whether the board takes appropriate disciplinary action when the standard of care has not been met;
- whether the board’s disciplinary actions are sufficient to address and deter substandard care, and in particular, address and deter repeat or egregious behavior;
- that the board does not provide sufficient findings or rationale to the complainant after a complaint has been dismissed; and
- the limited availability of information on the board’s website regarding formal disciplinary actions.

Performance Measures Not Met

The primary purpose of the board is to protect public and animal health and welfare. In its Managing for Results (MFR) Strategic Plan, MDA identifies the following consumer protection goals: (1) maintain the processing of completed registration applications, including all necessary supporting documents, and issue registrations within 30 days of receipt; (2) 100% of all veterinary hospitals licensed in the State will pass inspection annually; and (3) make a determination on 90% of cases within 120 days from obtaining knowledge of an alleged violation of the Veterinary Practice Act (VPA). The most recent MFR data submitted to the Department of Budget and Management (DBM) indicates that the second and third measures have not been met.

Percentage of Cases Determined within 120 Days

The board is not making a determination on 90% of cases within 120 days from obtaining knowledge of an alleged violation. As shown in **Appendix 5**, the MFR data indicates that the determination of cases within 120 days has decreased significantly since fiscal 2014 – from a high of 99% in fiscal 2014 to a low of 8% in fiscal 2017. This decline is attributable, in part, to staffing-related issues. In April 2016, the board’s longtime executive director retired. The board then had three executive directors between April 2016 and January 2017. During this time, staffing responsibilities shifted and a backlog of cases accrued. In addition, the board’s longtime assistant Attorney General retired in December 2017, which may have contributed to slower processing times due to a lack of experience with VPA and associated regulations. The board’s staff has since stabilized.

The executive director advises that under an MFR data request the board is asked for the percentage of complaints that have been “reviewed” rather than “determined” within 120 days from obtaining knowledge of an alleged violation, which causes confusion over whether the data

should reflect the number of cases closed or the number of cases that have been investigated and presented to the board. As shown in Appendix 5, the MFR data does not align with the data provided for cases closed within 120 days. The board's executive director further advises that it is not clear how the previously reported MFR data was calculated but indicated that the data may be based on the amount of time a complaint was investigated and presented to the board for a decision rather than how long the complaint took to resolve, which could extend for several weeks or months beyond when it is presented. However, this could not be verified due to limitations of the board's current database system.

Decrease in the Percentage of Hospitals Passing Inspection

Although State law requires each veterinary hospital to be inspected every two years, the board advises it strives to inspect each veterinary hospital at least once every 18 months. As shown in **Appendix 6**, hospital inspection passing rates fall short of achieving a 100% passing rate. The board's executive director advises that the rate for passing inspection may further decrease due to recent efforts to address the opioid epidemic. During fiscal 2017, the board instructed its inspectors to review more closely how veterinary hospitals manage medications and controlled dangerous substances. Initially, the board sought to educate veterinary hospitals to bring the hospitals into compliance with new protocols. However, at this time, the board anticipates an increase in the number of sanctions issued for poor recordkeeping and for violations of other drug management protocols, thus likely leading to an increase in the percentage of hospitals failing inspection.

Expansion of Board's Inspection Responsibilities

The board indicates that its inspection responsibilities have increased since the last evaluation. The board advises that it recently began inspecting animal control facilities to ensure that the facilities follow the minimum standards of care for dogs and cats adopted under Chapter 409 of 2017; the board estimates approximately 35 facilities not previously subject to the board's inspection authority will require inspection. In addition, the board advises that approximately 30 new limited use facilities (which will replace 6 existing mobile units) are anticipated to be opened in the State. Further, as mentioned previously, the board is taking measures to address the opioid epidemic by more closely reviewing the management of medications and controlled dangerous substances by veterinary hospitals, which has increased the time it takes to inspect veterinary hospitals. In November 2018, the board, in coordination with the Maryland Horse Industry Board, reclassified its lead investigator to an assistant director to coordinate the inspections and investigations of all field staff for efficiency purposes.

Finances

As a special funded entity, the board must set, by regulation, reasonable fees necessary to carry out the board's responsibilities. This includes covering both direct and indirect costs; the latter represents costs charged by MDA for services provided to the board, including, for example, financial and human resource services. The board last raised its fees in 2012. In 2015, Governor Larry Hogan announced a plan to reduce or eliminate a number of fees across State Government. As a result, the board reduced multiple fees, including (1) the initial registration fee for newly licensed and newly reinstated veterinarians; (2) the annual registration renewal fee;

(3) the triennial veterinary technician registration fee; and (4) the annual hospital license fee. This reduction was anticipated to decrease special fund revenue by \$213,825 annually beginning in fiscal 2017. As shown in **Appendix 7**, although revenues did decrease in fiscal 2017 and 2018, the impact of the fee reductions on the board's revenues was less significant than originally estimated. Appendix 7 also shows that, in the years prior to the fee increase, the board was operating with a healthy revenue surplus that exceeded its expenditures by up to 33%. While new revenues in fiscal 2017 did not cover the board's expenses that year, the expenditure gap was covered by its fund balance. In fiscal 2018, the board's revenues were once again higher than its expenditures.

The board has accumulated a significant fund balance since the last evaluation, totaling \$841,082 by the end of fiscal 2018 (\$250,000 of which is encumbered for a new database and online services). In light of the board's operating expenses gradually increasing in recent years, while maintaining relatively consistent revenues, it is possible that the board's annual revenues may eventually fall below its annual expenditures. The accumulated fund balance is large enough to supplement revenue deficiencies in the immediate future. However, as the fund balance is spent down due to rising costs, the board may find it necessary to raise fees in the near future.

Public Outreach

The topic of public outreach has been discussed in the previous two preliminary evaluations and, prior to that, in the previous two full sunset evaluations, highlighting the importance for consumers to have access to the board in order to report potential violations of State law or board regulations by a veterinarian, veterinary technician, or veterinary hospital. Since the last evaluation, the board has taken steps to expand its public outreach efforts, including providing the board's telephone number, facsimile number, and web address on all licenses and registrations; requiring by regulation that registrations and licenses be posted in a conspicuous location that is readily visible to the public, such as at or near a receptionist's desk; and developing a logo specifically for the board that is used on certificates, hospital inspection forms, and inspection apparel.

More recently, in July 2018, and in an effort to manage consumer expectations, the board published guidance on its website regarding the filing of a consumer complaint, including information on the board's authority, goals, and complaint resolution process, including possible outcomes. Among other things, the board notes that (1) the board does not have the authority to award damages; (2) the board does not represent the consumer and any resulting disciplinary case is between the board and the veterinarian; (3) by law, a complainant does not have a right to request a hearing and may not appeal any decision of the board; (4) most board records related to complaints are not public documents and may not be disclosed to the complainant; (5) after an investigation is complete, the board will make a decision on how to proceed during a meeting that is closed to the public; and (6) the board has discretion to resolve matters with or without formal hearings or orders.

The board further specifies on its website that, in considering whether to move forward with a case or to resolve a case through formal agreement and order, the board weighs the strength of the evidence supporting a violation against the MDA's burden of proof, including any expert opinions offered, and considers (1) the motives or biases of the complainant or witnesses and the

credibility of each witness; (2) the harm, if any, caused by the alleged violation; (3) the veterinarian's prior disciplinary history; (4) the likelihood of similar harm in the future; and (5) a cost-benefit analysis of prosecuting a case through a hearing and final order and/or appeal.

Online Services and Database Upgrade

In 2012, the board began accepting online registration renewals for veterinarians, veterinary hospitals, and registered veterinary technicians; applicants may either print their renewal certificate or request a renewal certificate be sent via mail. MDA reported in its 2012 annual report that the online renewal system reduced the amount of time that staff spends processing registration certificates and reduced costs associated with mailing renewal certificates.

The board is in the process of upgrading its outdated database system, and funds have been encumbered for that purpose. The executive director advises that data management is a concern but the upgrade is anticipated to facilitate the effective management of data.

As part of the database upgrade, by January 2019, the board anticipates offering new online services to facilitate the initial licensing of veterinarians and veterinary hospitals, licensing of veterinary hospitals that undergo a change in ownership or location, initial registration of registered veterinary technicians, filing complaints, tracking of continuing education requirements by veterinarians and registered veterinary technicians, and public tracking of formal disciplinary actions.

Conclusion and Recommendations

The board plays an important role in regulating veterinary medical professionals and facilities, and its existence is necessary for the public interest. During the course of this evaluation, DLS found the board to be handling its licensing responsibilities appropriately. DLS also found the board to be responsive to requests for information and committed to carrying out its responsibilities. However, DLS notes that there are unresolved questions about whether the board is fully achieving its purpose of protecting the public and animal health and welfare. **Therefore, DLS recommends a full evaluation of the State Board of Veterinary Medical Examiners to be conducted during the 2019 interim.** The full evaluation should evaluate the following issues (which are listed in no particular order):

- **Administrative Workload and Personnel:** As the board has a substantial fund surplus, the full evaluation should examine whether additional personnel are needed for the board to adjudicate ongoing complaints and eliminate the complaint backlog, conduct inspections of veterinary and animal control facilities, and manage administrative duties related to the board.
- **Complaints and Enforcement:** The full evaluation should examine whether the board's complaint resolution and disciplinary processes are adequate for carrying out the board's mission to protect consumer interests. Among other factors, it should examine whether the standards of practice for which licensees are held accountable are appropriate and/or

sufficiently rigorous, and whether the disciplinary process maintains the appropriate balance between transparency and protecting the confidentiality of the parties involved.

- **Performance Measures:** The full evaluation should examine whether the MFR data submitted to DBM is the best measure of the board's performance and whether alternative or additional data is needed to better assess the board's performance.
- **Board Finances and Fees:** The full evaluation should examine whether the board's current fee structure is sustainable in light of rising costs of operation and any recommendations related to additional resources.
- **Online Services and Database System:** The full evaluation should evaluate the functionality of the board's new online services, including the board's searchable database of disciplinary actions. The full evaluation should also evaluate the board's new database system, including whether key historical data has been preserved and complaints are adequately tracked.
- **Potential Statutory Changes:** The full evaluation should examine whether statutory changes are needed to improve the board's functionality, including (1) whether the board should be able to impose civil penalties on registered veterinary technicians or on individuals who are not licensed by the board (but found to be practicing veterinary medicine); (2) whether the composition of the board adequately reflects consumer interests; and (3) whether the board's authority should be clarified to expressly include the inspection of animal shelters.

Appendix 1.

Major Legislative Changes Since the 2008 Sunset Evaluation

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2009	123	Extends the board's termination date by 10 years to July 1, 2021, and includes a related reporting requirement.
	20	Allows a veterinary student who has successfully completed three years of veterinary education at an institution approved by the board to practice veterinary medicine under the responsible direct supervision of a licensed veterinarian, and to have the same immunity from civil liability as a licensed veterinarian under the same circumstances.
	725	Authorizes the board to establish an annual continuing education requirement of at least 12 hours for veterinarians as a condition of license renewal.
2010	30	Modifies monetary civil penalty provisions to allow the board to (1) impose a penalty of up to \$5,000 for a first offense (in lieu of or in addition to suspension of a license, or in addition to revocation of the license) and (2) impose a penalty of up to \$10,000 for a second or subsequent offense (in addition to suspension or revocation of the license).
2011	56	Repeals a specific list of procedures registered veterinary technicians may perform under the responsible direct supervision of a veterinary practitioner and instead allows veterinary technicians to perform procedures in accordance with regulations adopted by the board.
	185	Authorizes the board to direct a veterinarian, veterinary practitioner, or applicant for a veterinary license to submit to a mental or physical examination under certain circumstances. Additionally, the Act authorizes the board to refuse an application or to take specified disciplinary action against a licensee based on an inability to practice veterinary medicine competently due to a physical or mental disability.
2016	687/688	Authorize a licensed veterinarian to dispense compounded nonsterile preparations or compounded sterile preparations to a "nonfarm animal" (as defined by the board by regulation) under specified circumstances.
2017	409	Requires MDA to adopt and enforce minimum standards of care for dogs and cats in animal shelters. (The board was tasked with developing the standards.)

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2017	417	Requires a veterinarian to report in a timely manner (1) any suspected animal cruelty or (2) any involvement in animal fighting by any animal treated by the veterinarian, to the appropriate law enforcement or county animal control agency. The board may take disciplinary action against a veterinarian that fails to comply with the reporting requirement. The board must adopt regulations establishing (1) confidentiality procedures for protecting the identity of a veterinarian making a report; (2) confidentiality procedures for protecting the substance of a report and any associated records; and (3) conditions under which the substance of a report may be disclosed.

Source: Laws of Maryland

Appendix 2. Licenses and Registrations Issued

	Fiscal 2014-2018				
	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Veterinarians					
New Licenses	186	178	194	180	188
Registrations	2,725	2,776	2,812	2,871	2,871
Veterinary Technicians					
Registrations ¹	106	87	102	88	159
Veterinary Hospitals²					
New Licenses	20	43	41	36	23
Renewal Licenses	558	565	569	596	610
Animal Control Facilities					
Licenses	28	30	25	29	27

¹ Renewed triennially.

² Hospital licenses are not transferable. The number of new licenses includes licenses issued to (1) new hospitals; (2) hospitals that have changed locations; (3) newly constructed hospitals built on the same property as an existing hospital; and (4) hospitals that have a change in ownership.

Note: The number of veterinary licenses and registrations, veterinary technician registrations, and veterinary hospital licenses reflects information provided by the State Board of Veterinary Medical Examiners and differ from the numbers provided in the Maryland Department of Agriculture's annual reports.

Source: State Board of Veterinary Medical Examiners

Appendix 3. Complaint Resolution

Fiscal 2014-2018					
	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
New Complaints¹	62	72	71	57	71
Disposition of Resolved Complaints²					
Dismissed					
Closed without Informal Action	21	41	33	19	8
Informal Letter of Advice	14	21	17	11	5
Informal Letter of Admonishment	16	16	16	3	5
Formal Action (Public)					
Civil Penalty Final Order	18	7	5	7	8
Consent Agreement (CA)	6	5	6	12	0
<i>CA with Civil Penalty</i>	5	4	5	12	0
<i>CA with Suspension</i>	3	1	4	5	0
<i>CA with Probation</i>	5	5	5	10	0
<i>CA with Continuing Education</i>	6	5	2	8	0
Censure	0	0	1	1	0
Surrender	0	1	1	0	1
Default Order	0	0	1	1	0
Formal Action (Confidential)					
Confidential Disposition Agreements	0	0	2	1	2
Unresolved as of August 2018³	0	0	0	14	42
Total Number of Complaints Closed⁴	121	45	83	55	56

¹ Complaint data includes complaints initiated by both consumers and the board.

² Disposition of Resolved Complaints refers to the disposition of complaints received in each year, regardless of timeframe for resolution; thus, it includes cases resolved in subsequent years. Further, as some complaints involve multiple veterinarians, the total number of dispositions exceeds the total number of new complaints.

³ The number of unresolved complaints includes cases considered by the board and referred to the Office of the Attorney General for legal action, which has not yet been concluded.

⁴ The total number of complaints closed for each fiscal year includes all cases closed in that year, including those that were opened in prior years.

Source: Department of Legislative Services' review of information provided by the State Board of Veterinary Medical Examiners

Appendix 4. Civil Penalty Standards

<u>Violation</u>	<u>Fine</u>
Failing to provide direct supervision for employees; practicing veterinary medicine without a current registration; operating a veterinary hospital without a license; failing to conform to minimum sanitary standards for veterinary facilities; violating professional and ethical standards; or violating a board regulation after receiving a license.	1st Violation: \$300 – \$3,000 2nd Violation: \$600 – \$6,000 3rd Violation: \$3,000 – \$10,000
Engaging in false or misleading advertising; obtaining a license by fraud or misrepresentation; or allowing an unlicensed or unregistered person to practice veterinary medicine.	1st Violation: \$600 – \$5,000 2nd Violation: \$3,000 – \$10,000 3rd Violation: \$6,000 – \$10,000
Practicing veterinary medicine without a license; conducting a veterinary practice incompetently; violating any federal or State narcotics law; or being convicted of a felony or a crime of moral turpitude, animal cruelty, or gross negligence.	1st Violation: \$3,000 – \$5,000 2nd Violation: \$6,000 – \$10,000 3rd Violation: \$8,000 – \$10,000

Source: Title 15, Subtitle 14, Chapter 11 of the Code of Maryland Regulations

Appendix 5. Determination of Cases within 120 Days

	Fiscal 2014-2018				
	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Cases Determined within 120 days (based on MFR data)	99%	50%	39%	8%	75% (estimate)
Cases Closed within 120 days ¹	50%	49%	27%	18%	39%

MFR: Managing for Results

¹ The percentage of cases closed within 120 days is calculated based on the number of cases closed each fiscal year, and of those cases, how many were closed within 120 days. This percentage does not include the total number of open cases.

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

Appendix 6. Hospital Inspection Pass Rates

Fiscal 2014-2018

	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Licensed Veterinary Hospitals	578	608	610	632	633
Hospitals Inspected	376	539	538	507	409
Inspected Hospitals Failing	8	11	18	14	13
Percentage Failing	2%	2%	3%	3%	3%
Inspected Hospitals Passing	360	487	470	452	376
Percentage Passing	96%	90%	87%	89%	92%
Percentage of Hospitals Passing per MFR ¹	98%	98%	97%	97%	97%

MFR: Managing for Results

¹The MFR data appears to subtract the percentage of hospitals failing inspection from 100%, rather than reporting the percentage of hospitals passing inspection.

Note: The number of hospitals failing and the number of hospitals passing do not equal the total number of hospitals inspected, as some hospitals may have had deficiencies (which requires a follow-up inspection) that were not resolved by the end of the reporting period. Accordingly, percentages for inspected hospitals (failing and passing) do not sum to 100.

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

Appendix 7. Financial History of the State Board of Veterinary Medical Examiners

	Fiscal 2014-2019					
	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
Authorized Positions	6.6	5.6	5.6	5.6	5.6	5.6
Starting Fund Balance	NA	\$465,465	\$637,322	\$817,765	\$741,852	\$841,082
Revenues Collected	\$795,612	\$810,310	\$826,633	\$656,045	\$769,430	\$769,430
Total Expenditures	\$596,671	\$638,453	\$646,189	\$731,958	\$670,200	\$745,534
Personnel Costs	441,748	435,063	414,523	493,907	481,525	486,888
Other Direct Costs	71,552	101,164	81,122	98,235	71,603	157,285
Indirect Costs	83,371	102,226	150,544	139,816	117,072	101,361
Revenue Surplus/(Gap)	\$198,941	\$171,857	\$180,444	(\$75,913)	\$99,230	\$23,896
Ending Fund Balance	\$465,465	\$637,322	\$817,765	\$741,852	\$841,082	\$864,978
Balance as a Percent of Expenditures	78%	100%	127%	101%	125%	116%

Notes: The board advises that \$250,000 of the fiscal 2018 ending fund balance is encumbered for the board's new database and online system. Columns may not sum due to rounding. Fiscal 2019 expenditures represent the budgeted amount for that year; the amounts reflected for fiscal 2019 revenues, revenue surplus, and ending funding balance are estimated.

Source: Department of Legislative Services' review of information provided by the State Board of Veterinary Medical Examiners and the Comptroller's General Accounting Division and provided in the Governor's Budget Books

Appendix 8.

Written Comments of the State Board of Veterinary Medical Examiners

The board reviewed a draft of this preliminary evaluation and provided these written comments. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect the final version of the report.



Maryland Department of Agriculture

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Joseph Bartenfelder, Secretary

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State Board of
Veterinary Medical Examiners

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Memo

To: Michael C. Rubenstein, Principal Policy Analyst, Department of Legislative Services (DLS)
From: David Handel, DVM, President, State Board of Veterinary Medical Examiners (SBVME)
Vanessa Orlando, Executive Director, SBVME
Cc: Cristen C. Flynn, Senior Policy Analyst, DLS
Re: Comments on the Preliminary Evaluation of the SBVME
Date: December 4, 2018

Thank you for the opportunity to provide comments on the Preliminary Report by the Department of Legislative Services (DLS). The Maryland State Board of Veterinary Medical Examiners (SBVME) appreciates the capable work of DLS and is prepared to work with you in any way that advances our mission to protect the public and animal health and welfare.

In the past decade, veterinary medicine has undergone some fundamental changes. Not long ago, veterinary practices were almost always small businesses, owned by a veterinarian or two, who provided life-long service to pets that were not always considered part of the family. Today, practices are being purchased by corporations or changing ownership frequently. Pet owners now consider pets to be beloved family members and are seeking a much higher level of care, sometimes extremely expensive care, and are visiting many different veterinarians and practices over the course of a pet's life.

Veterinary medicine, too, is becoming more specialized with more veterinarians specializing in oncology, ophthalmology, neurology, orthopedics, and the like. Pet owners who seek out specialists already have a sick or injured animal that an average veterinarian can't treat. Still, pet owners have very high expectations of success, regardless of their pet's condition.

The rise of social media and "Dr. Google" has also influenced veterinary care with a proverbial double-edged sword. Clients sometimes come to appointments with more thoughtful questions because of online resources, but more often, clients come in with arm chair diagnoses and combative accusations because of a horror story they read on a blog. The Board has seen an uptick in online complaints going viral on exaggerated evidence. The Board knows of at least two veterinarians in the last year or so who have received death threats.

In addition, as the opioid crisis consumes many Maryland communities, veterinarians have a new role to play in how they manage the prescription medications in their practices, how they handle potential abuse among their colleagues, clients and employees; and how they mitigate the risk of identity theft and misuse. Regulating this community in a meaningful and helpful way is changing as well. It is becoming more complicated.

The DLS preliminary evaluation report suggests that a full evaluation would focus on six key areas. We offer the following comments about the preliminary observations.

Administrative Workload and Personnel

The Board staff has spent considerable time discussing how resources are being deployed and whether the workload is being addressed as efficiently as possible. An initial staff reorganization plan has been difficult and time consuming to implement because there is no established process within DBM that allows programs to reorganize. Instead, reorganization has to be done piece by piece. It has taken two years to re-classify four positions. In addition, DBM has been reluctant to create new PINS, even for programs that have special funding. Instead of adding a new position, the Board is preparing to hire a contractual investigator to help address its backlog. As of December 4, 2018, the Board has 43 open complaint investigations – 20 of which were complaints submitted during the previous fiscal year. (Another 23 cases are either with the Attorney General's Office or pending before the Board for final disposition.) The Board has one full-time investigator. One of the half-time inspectors also conducts investigations to help with the workload.

The Board has also been frustrated by its inability to fill vacant positions, even though it has the funds to do so. The Administrative Specialist position, which is instrumental in gathering and organizing medical records, was left vacant for nearly 3 years because of the statewide hiring freeze. It was filled in November 2017. Since then, the Board's productivity in completing complaint investigations has improved significantly.

Inspectors have done an excellent job keeping up with their statutory requirements to inspect all hospitals at least once every two years. Their goal is to inspect them every 18 months, if possible. The ability to meet this goal, however, is compromised now for three main reasons. First, inspectors have been instructed by the Board to review Controlled Dangerous Substances (CDS) logs at veterinary hospitals to ensure prescription drugs are being managed properly – something inspectors did not do prior to 2017. This alone can add considerable time to routine inspections, even more time if they have to document violations. Secondly, inspectors are now required to inspect animal control facilities and private shelters that receive money from the State Spay and Neuter Grant Fund to ensure they comply with newly implemented standards of care. Although there is no timetable for these inspections in the law and these inspections can be complaint based, the Board has instructed inspectors to complete at least one initial inspection at each facility to ensure each is in compliance. This will require inspectors to add about 35 new inspections to their workload. Those inspections will begin after the new database (see below) is implemented in order to avoid creating new incompatible data sets. Finally, the Board expects 30 new limited use facilities to open across the state in the next few years. (Limited use facilities offer wellness checks and vaccinations, not full service care.) Licensing of these new facilities requires inspections that will have to be factored into the workload. The Board has two part-time inspectors.

The new database and licensing system (described below) will shorten the licensing time considerably for all applicants, thereby freeing up licensing staff to conduct background checks and reference checks for applicants – something we do not have the resources to do now.

Although Board members are not state employees, all of them do have full-time jobs elsewhere. Each member takes one full day off of work every month to attend Board meetings, and each contributes several hours a month to Board business in order to serve this important regulatory function. The people of Maryland are lucky to have their commitment and expertise.

Complaints and Enforcement

Although the number of complaints the Board receives every year is relatively stable, the type of complaints the Board receives now are often more complex than ever. Today, many pet owners seek care from several veterinarians, including emergency facilities and specialists – sometimes multiple specialists. Instead of obtaining one set of medical records from one hospital for the Board to consider, it is not unusual for an investigation to require records from multiple facilities and multiple veterinarians. Those records range from difficult-to-read, hand-written records that have to be transcribed to MRI images that need a veterinarian with advanced skills to interpret. In addition, the investigator interviews all participants in the case, including witnesses, other licensees, and hospital employees. A final investigative file routinely results in hundreds of pages of records and other documents that Board members need to review before making a final decision.

When a complaint is lodged against a veterinarian, that veterinarian is much more likely to have legal representation than in the past. The American Veterinary Medical Association (AVMA) offers its members veterinary license defense liability protection, making legal representation more affordable than in the past. Obviously, the more medical records, the more veterinarians, and the more lawyers involved, the longer an investigation takes.

Also, in the last two years, the Board has received several complaints about veterinarians with alleged substance abuse issues. Those complaints move to the front of the line and bring every other investigation to a halt due to the potential harm that may come to animal patients by impaired practitioners as well as concern for the health and welfare of the practitioner.

In addition to the rise in the sheer complexity of many complaint investigations, it is critically important to point out that the public's expectations are often out of sync with the Board's statutory authority. Many pet owners who lodge complaints expect the Board to immediately prosecute and punish veterinarians with long suspensions or license revocations, without regard for the sufficiency of the evidence or the circumstances of the case. The Board's mission to protect the public and animals requires administering *effective discipline to improve veterinary care*, not necessarily to dole out harsh punishments. Members of the public who ask, for example, "whether a *minimum* standard of care is the appropriate standard to apply when evaluating a complaint" illustrate that disconnect between public understanding and Board authority.

The standard of care set forth in COMAR 15.14.01.07A states: "A veterinarian, when caring and treating a patient, shall conform to the minimal standards of care and treatment which are customary among veterinarians in this State." (This is similar to how physicians define standard of care in human medicine.) The Board historically has construed this regulation to mean that - regardless of whether an actual injury occurs, a veterinarian's care must be consistent with generally accepted professional standards of care. A veterinarian who fails to provide such care is, by definition, providing substandard care. The use of the word "minimum" standard of care means the Board cannot take a formal disciplinary action against a veterinarian who could have avoided the complaint by undertaking a simple improvement in practice *if* that simple improvement is not a generally accepted professional practice. For example, some current veterinarian members of the Board refuse to do surgery without pre-operative blood work. However, the majority of veterinarians in the state do not require pre-operative blood work. In a case where a bad outcome might have been avoided if a pre-op blood test had been performed, the Board would not have legal grounds to charge the veterinarian with a standard of care violation, even though that simple test might have avoided the problem – because pre-op blood work is not a standard. In such cases, the

Board provides licensees with advice about best practices that might help them avoid unfavorable outcomes going forward. A complainant who hears this example, however, might take issue with the Board's decision because blood tests are simple and relatively inexpensive to conduct.

COMAR 15.14.01.07A is not the only regulation that the Board examines in evaluating whether a veterinarian's conduct meets acceptable standards of care. Other regulations have been adopted to more precisely define certain standards that a veterinarian must meet. For example,

- COMAR 15.14.01.10 specifies the information that a veterinarian must note in a patient's treatment record, including: (1) a short history of the animal's condition as it pertains to the animal's medical status; (2) the animal's physical condition at the beginning of custody and the initial diagnosis, if any; and (3) the animal's condition, as evidenced through a physical examination.
- COMAR 15.14.01.10-1 requires a veterinarian, in a non-emergency presentation, to inform the client, in a manner that is understandable by a reasonable person, of the diagnostic and treatment plan, and to obtain written consent to perform the procedure.
- COMAR 15.14.01.12-1 requires that there be a valid veterinarian-client-patient relationship before a veterinarian may issue a prescription.
- COMAR 15.14.01.12-1G requires a veterinarian to examine an animal at least once a year before renewing any prescription medication for a chronic condition.
- COMAR 15.14.03.04B(5) requires a positive pressure oxygen delivery system in surgical facilities.
- Other examples can be found in COMAR 15.14.01

In evaluating whether a veterinarian's care of an animal is consistent with acceptable standards, Board members do not solely use their own expertise and perspective. They review all of the information gathered, including the complaint, the veterinarian's response to the complaint, witness statements, medical records from all veterinarians who treated the animal (not just the veterinarian named in the complaint), and the investigator's report. Not infrequently, the Board requests a Board certified specialist/expert to review a complaint file and opine on the matter. That review is also taken into account.

The Board believes that its statutory and regulatory authority and its actual practice result in an appropriate evaluation of a complaint and in an appropriate decision on whether the veterinary care provided was consistent with generally accepted professional standards of care.

The Board also believes that the actions it takes when the standard of care is not met is sufficient to address and deter repeat behavior in almost every instance. Most complaints that the Board receives are first-time complaints, and each one is unique, requiring a different response. The Board has several tools in its chest to address complaints. Informal actions include confidential letters of advice and letters of admonishment. Other actions include formal public disciplinary actions, which range from issuing a censure to levying a civil (financial) penalty to revoking the veterinarian's license. It is common for the Board to order a veterinarian to take continuing education courses as part of a disciplinary action. In determining what action to take, the Board weighs several factors, including whether the veterinarian is a repeat offender, the egregiousness of the conduct, and the harm caused by that conduct.

The concern that the Board does not provide sufficient rationale to the complainant is largely the result of § 4-333 of the Public Information Act, which generally prohibits disclosure of information and findings that do not result in a formal disciplinary action. Still, the Board and staff are keenly aware that every complaint has a genuinely sad, usually angry, and often heartbroken pet owner behind it. (Most of us are pet owners as well.) When a complaint does not lead to a public disciplinary action, the pet owner who made the complaint frequently believes the Board failed to consider the case appropriately or failed to apply the appropriate standards. The Board has attempted to address the disconnect between pet owner expectations and disciplinary outcomes with more detailed information on the website and in its acknowledgement letters to complainants. In the last year, the letters the Board sends to complainants after a case has concluded have become much more explanatory and, we hope, more sympathetic, so that pet owners will understand how and why the Board reached the conclusion it did, without violating the confidentiality requirements imposed by statute.

Performance Measures

The Board welcomes with some enthusiasm an evaluation of the performance measures currently being used in the MFR to evaluate the Board's efficiency. The Board staff is currently unsure of what some performance measures are actually designed to measure, as noted in the DLS report. The Board handles complaints submitted by members of the public as well as violations the Board identifies during sanitation inspections. Both types of complaints are handled differently but appear to be evaluated with the same metrics (i.e., reviewed within 120 days). Investigations that involve specialists and outside expert reviews take considerably longer because of the complexity of the case, and yet they are judged under the same timeline as a simple investigation involving one family veterinarian. (A specialist who recently reviewed a case for the Board had to consult with two other board certified experts to develop an opinion for the Board to consider.) Although the Board strives to be efficient, it has repeatedly emphasized thoroughness as its top priority to ensure every aspect of a case has been studied and considered. The 120 day metric represents neither thoroughness nor efficiency.

The MFR also expects the Board to ensure 100 percent of all veterinary hospitals pass inspections. On one hand, such a goal could conceivably result in an overall high level of compliance in hospitals across the state – all of them adhering to every letter of the law. On the other hand, such a goal could put pressure on the Board to interpret regulations far too leniently. Veterinary hospitals range from sole practitioners who have an exam room built on the side of their home to multi-million dollar, state-of-the-art corporate-owned facilities. In recent years, the Board has more closely scrutinized regulatory violations at all of these veterinary practices, including the failure to remove expired medications from the hospital's working stock and failure to properly manage controlled dangerous substances. The Board's stricter approach has resulted in more failed inspections and more charges for these violations. In the Board's opinion, the lower hospital inspection passing rate is not evidence of a deficiency, but rather, evidence that the Board is doing its job effectively.

Board Finances and Fees

There are several ways in which the Board's finances could be impacted in the near future, other than possible personnel changes. The Board's new database requires ongoing licensing fees for every user every year. Online application fees and licensing renewal payments will require a 3 percent service charge, paid by the Board (not the user), thereby reducing our operating revenues. While these services will greatly enhance functionality and efficiency for both the user and the Board, it comes with a price that has to be considered over the long term.

As complaints become more complex and esoteric, the Board is using more outside experts to review medical records prior to making a final determination. Some of these cases involved medical procedures that did not exist just ten years ago. That process not only adds several weeks, even months, to an investigation, the cost of these services can be hefty given the high hourly rate these experts command. The Board has paid as much as \$4,500 for one review and typically pays between \$2,000 and \$3,000 for one.

In addition, the Board has asked applicants who have a history of alcohol or substance issue (such as a recent DUI) or evidence of a behavioral issue (such as anger management concerns) to be evaluated by the Maryland Healthcare Professionals Program (MHPP) to determine if they have a problem that would impact their ability to practice safely and competently. When reasonable evidence suggests that a current licensee has a substance abuse or behavior issue that renders them unable to practice competently, they have been asked or ordered to undergo an evaluation with MHPP. Each evaluation costs the Board \$5,000. Practitioners found to have a substance abuse issue immediately stand down from practice and seek treatment. When they are ready to return (as determined by MHPP), the Board enters into an agreement with MHPP for ongoing monitoring and random drug testing. That monitoring costs \$5,000 per year per person. As the opioid crisis continues, this cost is expected to increase. The Board is required by statute to pay for these evaluations and follow ups. (Note: Veterinarians who self-refer to the program are not reported to the Board). *See Section 2-307.1 (a) – (e)*

Online Services and Database System

Maryland has a dubious reputation for being a difficult state in which to become licensed because the process is cumbersome, paper-based, time consuming, and virtually impossible to expedite without breaking some protocols. As a result, the Board is undergoing a significant and expensive database overhaul and upgrade – the first database upgrade in over a decade, while also preparing to launch brand new online services for licensing applicants and renewing registrations for current licensees. This new system will significantly reduce the time it takes a typical applicant to apply for and receive a license to practice or to open a hospital – and provide more information to them about the status of their application in real time. Office staff is using some back end functionality now and the FY 2019 licensing renewals were done using a small piece of the new system; however, the full launch is scheduled for late January 2019. We expect the database upgrade to be an ongoing project for at least another year as staff members learn and fine tune the platform, clean up migrated data, and develop the template reports DLS and others regularly ask of us.

The Board's website has lists of currently licensed veterinarians and hospitals for both the public and drug companies to consult; however, it is not a real-time spreadsheet. It must periodically be updated by hand. The new database will provide the public with real-time information and searchable functionality so they can be sure they are patronizing appropriately licensed facilities and practitioners. As to disciplinary matters, the Board's website currently lists all disciplinary actions taken since 2010 and has links to the final orders for those actions handed down since July 1, 2016; however, that information is made available via a downloadable Excel spreadsheet. It is not user friendly to people unfamiliar with Excel. The new database will allow disciplinary information to be easily searchable as well; however, all disciplinary actions prior to July 1, 2016 are still in paper files and need to be scanned and uploaded before they can be available online. More historical information will be added as we have resources to scan and upload. (The public can request those records at any time.)

Potential Statutory Changes

The three areas of statutory study proposed in the DLS report are worthy areas of review. The Board would also suggest reviewing possible statutory changes related to:

- The advent of widespread corporate ownership of veterinary practices;
- The cost of long-term monitoring of licensees and applicants who have been evaluated by MHPP for some type of impairment;
- Whether the Board should have expanded authority to evaluate and impose discipline on veterinarians with a long history of disciplinary action; and
- Whether the statute should be expanded to allow disciplinary action against any licensee who is addicted to, or habitually abuses any narcotic or CDS in excess of therapeutic amounts and without a prescription or who is habitually intoxicated. This statutory change would eliminate the necessity of having to prove that a licensed veterinarian was actually impaired while providing professional services.

Other Item

Public Outreach. The DLS preliminary report also noted that public outreach is – and continues to be – an ongoing goal of the Board. In the past few years, we have:

- Partnered with the Maryland Veterinary Medical Association to provide continuing education sessions on opioids and animal cruelty reporting requirements. At least one Board member and/or staff member usually attends the MVMA regular Board meetings to enhance communication.
- The Board opened a Twitter account @MdVetBd during licensing renewal to provide licensees with the latest information about the new renewal procedures since the Board website can only be updated once an hour and to provide answers to questions on the fly. The feed remains active.
- A Board inspector presented to the Western Maryland Veterinary Medical Association about the importance of maintaining accurate CDS logs and how to do it.
- The Board website has been updated to provide much more detailed information about what an applicant needs to obtain a veterinary, hospital or technician license. The website has also been updated to provide hospitals with information about inspections and instructions on how to keep a CDS log and properly track the usage and disposition of prescription medications.
- The Board President is planning to meet with veterinary students at Virginia Tech this Spring to explain what they need to do to become licensed in Maryland and how to work most efficiently with the Board (something we have never done before).
- The inspectors regularly perform pre-inspections of new hospitals to ensure any potential problems are addressed before a new hospital plans to open. This service, which is not required, not only engenders goodwill, it ensures that businesses can open on schedule.
- The Board re-launched the RVT Committee, which had not met in over 18 months. The Board received more than 25 applications for 6 available positions. The new Committee has met twice in the last six months and has new members, new energy and new projects underway.
- The Board does not have the authority to order a veterinary practice to refund money to a client, the Board does get this request from time to time. Rather than simply turn these people away, the Board refers these complaints to the Agricultural Conflict Resolution

Service, a free mediation service within the Maryland Department of Agriculture that helps resolve disputes.

The Board will continue efforts to increase its public outreach whenever possible.

In conclusion, the Board is grateful to DLS for its attention to detail in preparing the preliminary report. Should a full evaluation be conducted, the Board is committed to cooperating actively and fully in the evaluation process to determine where operations could be improved.