

BOARD NOTES

Fall 2012 Issue Phone: (512) 305-7555

IN THIS ISSUE...

A Publication of the Texas State Board of Veterinary Medical Examiners **E-Mail:** <u>vet.board@tbvme.state.tx.us</u> **Website:** <u>http://www.tbvme.state.tx.us</u> Nicole Oria, Executive Director Fax: (512) 305-7556

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FROM THE EXECUTIVE DIRECTOR

Creation of Veterinarian-Client-Patient Relationships at Shelters

There has been much discussion of this topic at many of the veterinary meetings I have attended recently. The creation of a valid veterinarian-client-patient relationship is at the heart of the veterinary profession. So much so, it is set out clearly in the Veterinary Licensing Act, Chapter 801 of the Occupations Code, Section 801.351:

(a) A person may not practice veterinary medicine unless a veterinarian-client-patient relationship exists. A veterinarian-client-patient relationship exists if the veterinarian:

(1) assumes responsibility for medical judgments regarding the health of an animal and a client, who is the owner or other caretaker of the animal, agrees to follow the veterinarian's instructions;

(2) possesses sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the animal's medical condition; and

(3) is readily available to provide, or has provided, follow-up medical care in the event of an adverse reaction to, or failure of, the regimen of therapy provided by the veterinarian.

(b) A veterinarian possesses sufficient knowledge of the animal for purposes of Subsection (a) (2) if the veterinarian has recently seen, or is personally acquainted with, the keeping and care of the animal by:

(1) Examining the animal; or

(2) Making medically appropriate and timely visits to the premises on which the animal is kept.

(c) A veterinarian-client-patient relationship may not be established by telephone or electronic means.

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The Board has always stated that an examination is required to establish a veterinarian-client-patient relationship. Section (b)(2) was placed within the statute for herd livestock management. The example contemplated by that language was a livestock feedlot where the veterinarian makes medically appropriate and timely visits to the premises on which the animal is kept. This subsection does not apply to shelters in the initial presentation of the animal at the shelter as the veterinarian had not previously made medically appropriate and timely visits to the premises on which the animal was kept prior to arriving at the shelter. In fact, the shelter veterinarian does not know where the premises was where the animal was kept. After the time period for holding the animal has elapsed, usually three days and set by local ordinance, then the shelter may claim the animal is abandoned and the shelter is the owner. Under Texas law, an animal's owner or a caretaker designated by the owner can perform acts of veterinarian-client-patient relationship, because the owners and caretakers are exempt from the Veterinary Licensing Act. Until that point, in order to perform any veterinary services on that animal, including rabies vaccinations, a veterinarian must conduct an examination on that animal to establish a veterinarian-client-patient relationship.

The Board does not define an examination, but the Board's rule on maintaining the standard of care, Section 573.22, and the Board's rule on recordkeeping, Section 573.52, Title 22, Part 24 of the Texas Administrative Code, still apply. The examination must be sufficient to satisfy an average member of the local veterinary medical community that the animal is healthy enough for the prescribed treatment. A record of the examination and the information required under the recordkeeping rule to substantiate the examination is necessary no matter whether the animal is vaccinated at a shelter, a low-cost vaccination clinic or a private clinic.

The purpose of the examination, especially in the vaccination scenario, is to ensure the animal is not sick. If a vaccination is given to a sick animal, the vaccination may not be effective. This is extremely important with the rabies vaccination, in the control of zoonotic diseases.

Under Section 826.047 of the Health and Safety Code, a veterinarian performing duties under this chapter (Rabies) is not liable to the owner of an animal for the death of or injury to the animal except in the case of willful misconduct or gross negligence. This would apply in a civil suit for damages if the animal died when the veterinarian was performing duties as part of rabies vaccinations, registration, restraint and impoundment of animals. This does not address the problem of a veterinarian failing to uphold the Veterinary Licensing act and the Board's Rules of Professional Conduct by failing to establish a veterinarian-client-patient relationship prior to performing veterinary services on the animal, including vaccinating for rabies, by failing to uphold the standard of care by not examining an animal prior to treatment, or by failing to record details that substantiate the examination.

There has been no change to either the statute, any rules regarding this matter or the Board's interpretation of the Act or rules.

LICENSING EXAM DATES

2012 STATE BOARD EXAMINATION (SBE) SCHEDULE

All State Board Exams will be administered at participating ACT testing centers. Please read the deadline dates carefully. An application must be submitted to TBVME for ALL exams to determine eligibility for veterinary licensure in Texas.

Only approved applicants will be able to purchase and schedule the exam.

October 2012

Deadline for application to be received by TBVME: August 24, 2012 Window for purchasing and scheduling exam: September 1st – 17th, 2012 Window for taking the exam: October 8th – 19th, 2012

December 2012

Deadline for application to be received by TBVME: October 19, 2012 Window for purchasing and scheduling exam: November 1st – 19th, 2012 Window for taking the exam: December 3rd – 14th, 2012



CONTINUING EDUCATION OFFERINGS

Information on available CE may be obtained through the following sources. Additional offerings may be available through other sources.

<u>RACE</u>	<u>Texas A&M</u>
(<u>Registry of Approved Continuing Education</u>)	Phone: (979) 845-9102
Search for Available CE:	Fax: (979) 862-2832
http://www.aavsb.org/RACE/RaceSearch.asp	Email: ceoffice@cvm.tamu.edu
RACE requires approved providers to issue signed certificates of completion, maintain attendance records for four years and provide qualification of instructors and CE personnel who develop and implement courses.	<u>Texas Veterinary Medical Association</u> www.tvma.org 8104 Exchange Dr. Austin, TX 78754 Phone: (512) 452-4224 Fax: (512) 452-6633

ENFORCEMENT ISSUES

DISCIPLINARY ACTIONS

The following veterinarians have had disciplinary action taken against their licenses. If you would like to receive additional information regarding these or other disciplinary actions that have been imposed, please send your written request to the Texas Board of Veterinary Medical Examiners, ATTN: Open Records, 333 Guadalupe, Suite 3-810, Austin, TX 78701 or by email to vet.board@tbvme.state.tx.us.

Name	License #	City	Discipline	Date of Action
Jess Adkins, DVM	3046	Fairfield	Formal Reprimand with Additional Stipulations	July 24, 2012
James Cox, DVM	5254	Sugarland	Formal Reprimand with Additional Stipulations	July 24, 2012
Debra Garrison, DVM	4941	Spring	Formal Reprimand with Additional Stipulations	July 24, 2012
James Gibbs, DVM	2606	Brownsboro	Voluntary Surrender of License in Lieu of Penalties	July 24, 2012`
Sarah Graham, DVM	4956	San Antonio	Formal Reprimand with Additional Stipulations	July 24, 2012
Rohn Hendricks, DVM	7002	Waxahachie	Formal Reprimand with Additional Stipulations	July 24, 2012
Diana Magee, DVM	11595	Monterey, CA	Voluntary Surrender of License without Reinstatement for 5 Years	July 24, 2012
Ali Rohani, DVM	9257	Allen	Formal Reprimand with Additional Stipulations	July 24, 2012
Eddy Soranaka, DVM	10768	Ft. Hood	Formal Reprimand with Additional Stipulations	July 24, 2012
Kelli Shomette, DVM	7460	Wylie	Formal Reprimand with Additional Stipulations	July 24, 2012

CEASE & DESIST ORDERS

The following Cease & Desist Orders have been signed and approved by the Board. If you would like to receive additional information regarding these or other disciplinary actions that have been imposed, please send your written request to the Texas Board of Veterinary Medical Examiners, ATTN: Open Records, 333 Guadalupe, Suite 3-810, Austin, TX 78701 or by email to vet.board@tbvme.state.tx.us.

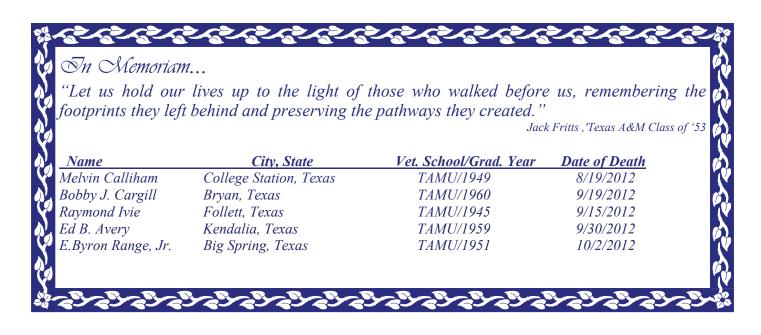
Name	City	Date of Action
Mike Grimes	Palmer	July 24, 2012
Lisa Kronz	Garland	July 24, 2012
Sheba Shechem-Bethel	Woodside, NY	July 24, 2012
Robert Tieperman	Midway	July 24, 2012
Janet Walsdorf dba Alamo Heights Kennel Club	San Antonio	Jylu 24, 2012
Brandon White	Alba	July 24, 2012

Disciplinary Actions continued...

In addition to the formal reprimands listed previously there were an additional 72 actions taken against veterinarians. If you would like to receive additional information regarding these or other disciplinary actions that have been imposed, please send your written request to the Texas Board of Veterinary Medical Examiners, ATTN: Open Records, 333 Guadalupe, Suite 3-810, Austin, TX 78701 or by email to vet.board@tbvme.state.tx.us.

Number of Licensees Disciplined	Violation Type	Sanction
6	Continuing Education	Administrative penalties and additional continuing education
4	Misuse of DEA/DPS Registration	Administrative penalties
1	Responsibility for Acceptance of Medical Care	Informal reprimand
1	Display of License	Informal reprimand and administrative penalty
1	Rabies Control	Informal reprimand
1	Adherence to Law	Informal reprimand, jurisprudence exam and administrative penalty
1	Alternate Therapies	Informal reprimand, jurisprudence exam and administrative penalty
1	Use of Prescription Drugs	Informal reprimand, jurisprudence exam and administrative penalty





ANTHRAX CASE CONFIRMED IN SHEEP IN IRION COUNTY

AUSTIN - A yearling female sheep in West Texas has been diagnosed with anthrax. This is the second confirmed case of anthrax in a Texas animal for 2012 and the first in livestock this year. The infected sheep was located near Mertzon, TX (Irion County,) which is approximately 26 miles southwest of San Angelo. The Texas Animal Health Commission (TAHC) has quarantined the premises. TAHC regulations require vaccinations of exposed livestock and proper disposal of carcasses before a quarantine can be released.

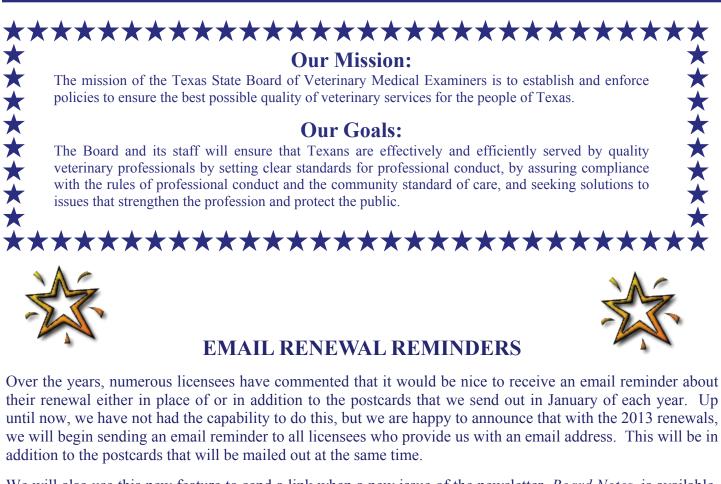
Anthrax is a bacterial disease caused by *Bacillus anthracis*, which is a naturally occurring organism with worldwide distribution, including Texas. It is not uncommon for anthrax to be diagnosed in livestock or wildlife in the southwestern part of the state. Basic sanitation precautions such as hand washing, wearing long sleeves and gloves can prevent accidental spread of the bacteria to people if handling affected livestock or carcasses.

Acute fever followed by rapid death with bleeding from body openings are all common signs of anthrax in livestock. Carcasses may also appear bloated and appear to decompose quickly. Livestock or animals displaying symptoms consistent with anthrax should be reported to a private practitioner or TAHC official.

"The TAHC will continue to closely monitor the situation for possible new cases across the state. Producers are encouraged to consult with their veterinary practitioner or local TAHC office about the disease and about preventative measures such as vaccination of livestock," Dr. Dee Ellis, State Veterinarian, said.

For more information regarding anthrax, contact your local TAHC region or 1-800-550-8242 or visit www.tahc.state.tx.us.

The Texas Animal Health Commission works to protect the health of all Texas livestock, including: cattle, swine, poultry, sheep, goats, equine animals, and exotic livestock.



We will also use this new feature to send a link when a new issue of the newsletter, *Board Notes*, is available. For any other important information that licensees should be made aware of, an email will also be sent. Please make sure that we have a current email address for you so that you will receive these email notifications.

DID YOU KNOW???	PEER ASSISTANCE
• Unless you owe for more than the current year, all licensees can renew their license online through our website.	If you or someone you know has a substance abuse problem, it is far better to voluntarily participate in the Peer Assistance Program than to run the risk of disciplinary action, up to and including license revocation. The toll free hotline number is 1-800-727-5152.
The TBVME does not discriminate on the basis of race, color, religion, sex, national origin, age or disability in employment or in the provision of services, programs or activities. Individuals requiring reasonable accommodations should contact the agency's ADA Coordinator at 333 Guadalupe, Suite 3-810, Austin, TX 78701-3998, or call (512) 305-7555 or 1-800-877-8973 (TDD). This document may be requested in alternative formats by contacting the Board offices.	ADA ACCOMODATIONS Individuals seeking ADA accommodations should contact the Board's ADA Coordinator, Loris Jones, at 512/305-7555 or by email at <u>loris.jones@tbvme.state.tx.us</u> .

FROM THE TEXAS DEPARTMENT OF PUBLIC SAFETY

PRESCRIPTION ACCESS IN TEXAS

Dear Dental and Veterinary Professionals,

In keeping with the agency goal of providing world-class services, the Texas Department of Public Safety (DPS), Regulatory Services Division (RSD) is proud to provide Prescription Access in Texas (PAT), a secure online prescription monitoring program, which will assist our Texas health care and law enforcement professionals in quickly identifying potential prescription drug abuse. PAT provides controlled substance prescription dispensing history to authorized dental and veterinary professionals, and dental and veterinary board investigators.

We encourage you to search the last 365-days worth of data, 24-hours a day, seven days a week, including:

- Patient prescription history
- Physician's own prescribing information

The Texas Prescription Program was created by the Texas Legislature to monitor Schedule II - V controlled substances. Texas Health & Safety Code, Chapter 481, restricts access to prescription data to practitioners and pharmacists who are inquiring about their patients, and to various regulatory and law enforcement personnel conducting investigations.

Future enhancements will include pharmacy dispensing summary report for the pharmacist-incharge (PIC).

DPS continues to take great pride in serving the citizens of Texas by combating terrorism and crime, enhancing public safety, strengthening statewide emergency management and providing world-class services.

Steven C. McCraw Director, DPS

RenEarl Bowie Director, RSD

URL: Prescription Access in Texas (PAT) | https://www.texaspatx.com/Login.aspx **Press Release:** http://www.dps.texas.gov/director_staff/public_information/pr080212.htm

BOARD ADOPTS CHANGES TO RULES

At the July 24, 2012 Board meeting, the Board voted to adopt the following rules. The adoption was published in the August 17, 2012 issue of the *Texas Register*. The full text of the rules can be found on the agency website <u>http://www.tbvme.state.tx.us/rules.php</u>.

Rule §575.25 Recommended Schedule of Sanctions.

The adopted amendments to §575.25 are intended to make the schedule of disciplinary sanctions apply to all licensees, veterinarians and equine dental providers alike. These amendments are necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers.

Rule §575.28 Complaints--Investigations

The Board adopts amendments to §575.28 to clarify the Board's procedure for investigating complaints by specifying the information the Board sends to respondent licensees during the course of an investigation in light of confusion among licensees and members of the public regarding the scope and meaning of the word "complaint."

The Board has traditionally interpreted "complaint" in §575.28(6) to refer only to the written narrative allegations submitted by a complainant on the Board's complaint form. The Board does not disclose to the respondent licensee any other documents submitted by the complainant at the earliest stages of the investigation process, before the respondent licensee has sent the Board his records and explained his response to the allegations against him. To preserve this process, and with it the integrity of the Board's investigations, the adopted amendment provides that the Board will send a summary of the allegations in the complaint to the respondent licensee initially with a request for a response. Under the adopted amendment, the respondent licensee has the right to request to review the entire complaint-meaning all documents or materials provided to the Board by a complainant and upon which the Board initiates a request for a response from the licenseeunless board staff determines that allowing the respondent licensee to review the complaint in its entirety would jeopardize an active investigation, as could be the case with certain documents such as investigative files from other state and federal agencies, second opinions from other licensees or specialists, and copies of patient records attached to or included with the complaint form. Accordingly, under the adopted amendment when the complainant responds to the respondent licensee's response, board staff will have the discretion to withhold from the respondent any materials submitted by the complainant that could jeopardize the investigation. These changes are intended to preserve the Board's ability to learn the respondent licensee's version of events without suggestion or influence from outside sources; this ability is a vital tool for board investigators seeking the truth.

The Board also adopts amendments to §575.28 that allow any member of Board staff to investigate a complaint, where previously only board investigators could investigate. The Board intends the amendment to give the Director of Enforcement more latitude in assigning investigation duties by allowing her to assign complaint investigations to administrative staff, as well as to investigators on staff, depending on the complexity of the case.

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The Board has also adopted an amendment to §575.28 to close an inefficient redundancy in the investigation process, which required the executive director to review all complaints that do not involve medical judgment twice —once in an initial solitary review, and again as part of the staff committee. The rule, as amended, allows the director of enforcement to refer a report of investigation for a probable violation that does not involve medical judgment directly to the staff committee. As a member of the staff committee—which is composed of the executive director, the director of enforcement, the investigating staff member and the general counsel—the executive director will still review the case and take part in deciding whether the case should go forward.

Rule §577.16 Responsibilities of Board and Staff

The Board adopts the amendment to §577.16 to include equine dentistry along with veterinary medicine as professions that the Board is responsible for regulating under the Veterinary Licensing Act. The amendment is necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers.

BOARD PROPOSES CHANGES TO RULES

At the July 24, 2012 Board meeting, the Board directed staff to post the following proposed changes in the *Texas Register* for comment, the full text of the changes can be found on the agency website.

Rule §573.10 Supervision of Non-Licensed Persons

The proposed amendment to §573.10 is intended to correct errors in subsection (h) to clarify the duties and practice limitations of Registered Veterinary Technicians.

The Board also proposes the amendment to §573.10 to create cross-references and remove redundancies with new proposed §573.19, regarding dentistry, which is also proposed in this issue of the Texas Register. In the proposed amendment to §573.10, the subsection that previously described the scope of practice for licensed equine dental providers has been removed from §573.10 and relocated to proposed new §573.19, so that all of the Board's rules regarding dentistry are consolidated to appear together in new proposed §573.19.

Rule §573.19 Dentistry

The proposed new rule defines dentistry, a term which is used in §801.002(7) of the Veterinary Practice Act, Texas Occupations Code, in the definition of "veterinary medicine" as "veterinary surgery, reproduction and obstetrics, dentistry, ophthalmology, dermatology, cardiology, and any other discipline or specialty of veterinary medicine." Under §801.251 of the Veterinary Practice Act, "a person may not practice, or offer or attempt to practice, veterinary medicine unless the person holds a license to practice veterinary medicine issued under this chapter." Thus, the Veterinary Licensing Act holds that an unlicensed person may not practice dentistry on an animal in Texas. The Veterinary Licensing Act does not, however, define "dentistry," so the Board intends proposed new §573.19 to provide that definition.

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The Board proposes the definition of dentistry with the intention to allow unlicensed individuals to brush teeth of animals and superficially clean the teeth of animals with gauze, cotton swabs, or dental floss, while preventing unlicensed individuals that are not employed and supervised by a veterinarian from performing any other more invasive treatment on an animal's teeth or gums, including but not limited to using a periodontal scaler on animal teeth to remove plaque or tartar.

It is important to note that an unlicensed employee of a veterinarian working under appropriate veterinary supervision can still perform tooth cleanings and other dental services under proposed new §573.19, with the exception of invasive dental procedures as defined under 573.80— procedures that expose the dental pulp and dental extractions. The Board does not intend proposed new §573.19 to have any impact on the procedures that an employee of a veterinarian can perform under veterinary supervision.

The Board also proposes new §573.19 to consolidate the Board's rules regarding dentistry into a single rule for clarity and ease of reference for both licensees and the general public. Proposed new §573.19 therefore includes a subsection describing the scope of practice for equine dental providers that previously appeared in §573.10, regarding the supervision of non-licensed persons. The Board has proposed a parallel amendment to §573.10, which is also published in this issue of the Texas Register, to remove the subsection on the scope of practice for equine dental providers and to create cross-references to proposed new §573.19. In the interests of clarity, proposed new §573.19 also references the prohibition that appears in §573.10 forbidding unlicensed persons from performing any invasive dental procedure as defined under §573.80, regarding definitions.

Rule §573.43 Controlled Substances Registration

The Board has recently encountered situations in which veterinarians were exempt from the requirement to obtain a controlled substance registration under either Texas Department of Public Safety (DPS) or United States Drug Enforcement Agency (DEA) rules and laws, but were concerned that they still had to obtain a controlled substance registration nevertheless in order to comply with §573.43. The Board does not intend its controlled substances registration requirements to be more stringent than that of DEA or DPS. The Board therefore proposes an amendment to §573.43 to clarify that a veterinarian does not need to have a controlled substances registration from either DPS or DEA if that registration is not required by other state or federal law.

The Board also proposes an amendment to §573.43 to correct an error in subsection (b), adding the word "substances" where it was inadvertently not included, so that the phrase now reads "to dispense controlled substances." This is not intended to alter the meaning of the rule.

Rule §573.71 Operation of Temporary Limited-Service Veterinary Services

In recent years, the Board has requested additional information from veterinarians applying to operate a temporary limited-service veterinary service, beyond the categories of information required under §573.71. The Board proposes an amendment to §573.71 to make this additional requested information required by rule, and thereby to make the rule accurately reflect current Board procedure.

Rule §573.80 Definitions

The Board proposes the amendment to §573.80 to correct a typographical error in paragraph (10), adding the prefix "non" to "veterinarian" so that the sentence reads: "Immediate Supervision--a veterinarian required to immediately supervise a non-veterinarian must be within audible and visual range of both the animal patient and the person under supervision." This change does not alter the Board's interpretation of the meaning of "Immediate Supervision."

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Rule §577.15 Fee Schedule

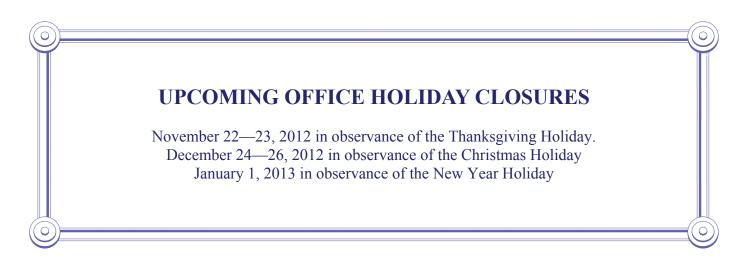
The Board proposes the amendment to §577.15 to reformat the fees to make them easier to read, to adjust veterinarian renewal fees lower to match current legislative appropriations for the 2013 fiscal year, to correct a calculation mistake in the fee for provisional veterinary licenses, to add inactive equine dental provider fees necessitated by rule changes that created inactive status for equine dental provider licensees, and to consolidate all the fixed fees that the Board charges into one schedule.

In the proposed rule, the application processing fees and examination fees, which appeared as separate line items for each initial license in the previous version of the rule, have been consolidated into the respective initial licenses, and no longer appear as separate fees. The Board proposes this change to clarify the cost of becoming initially licensed in Texas as either a veterinarian or an equine dental provider.

With regard to veterinary licenses, the proposed rule decreases veterinary license renewal fees to match the appropriations granted to the agency. The proposed rule increases the fee for provisional veterinary licenses that makes the provisional license \$50 more expensive than a regular veterinary license, to more accurately reflect the costs and staff time involved in processing and administering the two separate examinations that provisional licensees take on their way to becoming full licensees.

With regard to the new inactive fees for equine dental providers, the proposed amendment adds renewal fees and inactive status fees to the fee schedule so that in fiscal year 2013, equine dental providers who became licensed for the first time in fiscal year 2012 will have the option to renew their licenses or put their licenses on inactive status. The Equine Dental Provider Advisory Committee has reviewed these proposed fees and found by consensus that the proposed fees for equine dental provider licenses are reasonable.

The proposed amendment adds several fees to the fee schedule that previously appeared in other rules, such as the fee for duplication of license, and the reactivation fees for both veterinary and equine dental provider licenses. With the addition of these fees, the Board intends for this rule to reflect all of the fixed fees that the Board charges. It does not, however, reflect variable fees that the Board has set, such as the fees for transcripts and records of administrative hearings before the State Office of Administrative Hearings as set forth in §575.10 of this title (relating to Costs of Administrative Hearings).



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NOTICE OF ADDRESS CHANGE

Please email, fax, or mail to: Texas Board of Veterinary Medical Examiners 333 Guadalupe, Suite 3-810 Austin, Texas 78701 FAX: 512-305-7556 Email: <u>vet.board@tbvme.state.tx.us</u>

Please print or type

Name		
License Number		
Mailing Address: Street/PO Box		
City, State		
Email		
Practice Address: Practice Name		
Street		
City, State		
Phone	Fax	
Email		
Home Address: Street		
City, State	Zip Code	
Home Phone		
Email		

<u>Note:</u> The mailing address is the default address. All documents, forms and letters sent to you from this agency will be mailed to this address.

The mailing address is printed on your license renewal certificate. If you have changed your mailing address and need a duplicate renewal certificate, please indicate below.

____ Please send a duplicate renewal certificate.

Pursuant to Board Rule 573.76(a) "A veterinarian shall notify the Board of any change of any items in subsection (a) not later than the 60th day after the change takes place." Subsection (a) includes: name and license number; clinic or practice name; physical business address; mailing address; residence address; business telephone number; and residence and/or cellular telephone number.

TO CLIENTS To file a commendation or grievance concerning a veterinarian, please contact:	Texas Board of Veterinary Medical Examiners 333 Guadalupe, Tower 3, Suite 810 Austin, Texas 78701-3942 Phone: (512) 305-7555 Fax: (512) 305-7556	To obtain information about filing a complaint, you may access the Board's voicemail 24 hours a day by calling toll free: 1-800-821-3205
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