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MARYLAND DEPARTMENT OF AGRICULTURE

LEGISLATIVE COMMENT

DATE: March 10, 2020

BILL NUMBER: SENATE BILL 394

SHORT TITLE: STATE BOARD OF VETERINARY MEDICAL EXAMINERS - SUNSET
EXTENSION AND PROGRAM EVALUATION

MDA POSITION: SUPPORT

EXPLANATION:

Senate Bill 394 extends the sunset date of the State Board of Veterinary Medical Examiners (Board) from July 1, 2021, to July 1, 2031.

The legislation also requires the Board to report annually to the governor and the General Assembly on the Board's disciplinary activities for the previous fiscal year.

BACKGROUND INFORMATION:

The State Board of Veterinary Medical Examiners works to protect the public and animal health and welfare by ensuring the safe and competent practice of veterinary medicine through the enforcement of the Veterinary Practice Act and related Code of Maryland regulations. To continue to do this important work, we respectfully request a favorable review of HB 549 and SB 394.

The Board fulfills its mission through four primary responsibilities:

- Ensuring that veterinary practitioners meet the qualifications set out in law by licensing veterinarians (3,000), veterinary technicians (450), veterinary hospitals (600) and animal control facilities (30).
- Inspecting veterinary hospitals to ensure they meet the minimum sanitary standards necessary to protect animal and public health. Currently, we inspect all hospitals at least once every 18 months.

- Investigating consumer complaints and initiating investigations of our own, when necessary. Currently, we have 80 active investigations underway.
- Disciplining veterinarians, veterinary technicians, and operators of veterinary hospitals, when warranted. There are currently 21 complaint investigations with charges referred to the Attorney General's Office.

The Board has recently undergone both a preliminary evaluation and a full Sunset Review by the Department of Legislative Services. The final report from DLS included eight recommendations. The Board accepts all eight recommendations and expects that six of them will be completed by the end of the current fiscal year. Recommendations #3 and #4 are more challenging and will require more thought and deliberation before they can be implemented; however, the Board has already initiated discussions about how to address them.

Growing Number of Complaints

The DLS review raised two areas of concern. The first questions why a growing number of complaints are being submitted against licensees every year; and the second questions the length of time it takes the Board to investigate and resolve those complaints.

First, we do not have one reason for the increase in complaints, but there are several factors in play.

- Pets, especially dogs and cats, mean more to people than ever before and many consider them to be part of the family. When those canine or feline family members are sick or injured, when they suffer complications, or when they die, especially if they die unexpectedly – pet owners are heartbroken. If those pet owners believe a veterinarian failed in any manner, they will advocate as passionately for their pets as they would a human loved one, which makes it more likely that they will file complaints.
- Veterinary medicine has progressed rapidly in the last generation. In the past, dogs and cats didn't live long enough to suffer cognitive decline and dementia. Animals who developed diabetes, cancer or even serious orthopedic issues may have died without a diagnosis or were put down. When emergencies arose, there were no all-night emergency hospitals or trauma specialists to help. Today, highly advanced, sophisticated, and expensive treatments are available, especially in more populated areas. When a pet owner seeks treatment from an oncologist, a neurologist, an emergency room, or other specialist and pays thousands (and sometimes tens of thousands) of dollars, and their pet dies or fails to fully recover, there is likely to be a complaint. This is especially true if the veterinarian is a poor communicator and/or the client is a poor listener. (Also, when pet owners go to a specialist, they already have a sick or injured pet, but they have no established personal relationship with the specialist, as they might with their regular veterinarian. The expectations and personalities of the client and the veterinarian become bigger factors in determining whether that encounter will be successful.)

- Concerns about opioid abuse across the state have led the Board to more closely scrutinize the way veterinary practices are tracking, storing and disposing their medications, especial Controlled Dangerous Substances. The Board has instructed inspectors to review drug logs during their routine inspections to ensure proper and lawful management of medications. This process has led to more Board-initiated charges for violations.
- The Board is taking a harder line than it did in the past when it comes to sanitation inspections of veterinary hospitals. The Board is issuing more letters of information and formal charges against hospitals, particularly those that require repeated inspections before coming into compliance. Upholding these sanitation requirements is a means of protecting public and animal health.

We do not see any indication that the number of complaints will decrease in the foreseeable future.

Timeliness of Complaint Resolutions

Another area of concern identified as a result of the DLS evaluation is the time it takes the Board to investigate and resolve complaints.

While the number of complaints and the number of cases in which the Board has taken action has increased (i.e., formal actions increased from 27 in 2018 to 40 in 2019), resources have stayed the same. The Board has only one full-time investigator who usually completes four to six complaint investigations a month. Volume is the biggest reason for the delay, but it is not, by any means, the only reason.

The type of complaints we are receiving are becoming more complicated because of the advances in veterinary medicine and the growing number of pet owners who seek help from specialists.

Complaints are also becoming more cumbersome because so many pet owners go to more than one veterinarian for even routine care.

The more complicated or cumbersome a complaint is, the more time consuming it is to obtain all necessary medical records from every veterinarian who had a hand in the incident that led to a complaint. (When we receive a complaint from a pet owner who took their pet to only one veterinarian, it can be resolved much faster; but we are getting fewer and fewer of those.)

When the Board reviews medical records in a complaint investigation, the Board does not limit its inquiry to the initial complaint, but instead considers all the care provided. The Board often finds deficiencies and acts against veterinarians not named in the complaint.

From time to time, when the Board receives a complaint against a specialist or that involves a medical condition it is unfamiliar with, the Board may seek an out-of-state expert review. This will take as long as the expert requires, which can be months.

When the Board does issue formal charges, it refers the complaint to the Attorney General's Office for handling. The veterinarian involved has the right to a hearing and other due process protections. In recent years, veterinarians who have been charged are much more likely to obtain legal counsel and fight the charge. The more lawyers involved, the slower the process.

We will continue to consider ways to expedite investigations and resolve complaints without degrading the quality of the Board's review. This month, we are interviewing for a contractual inspector/investigator, which we believe will help chip away at the current backlog.

An ongoing challenge:

Consumers who initiate complaints often want the Board to take swift and highly punitive action against a veterinarian. Often, however, the public misunderstands what the Board is, what we are legally authorized to do, what we have the discretion to do, and what standards we apply.

When considering a disciplinary case, the Board represents the state – not the veterinarian and not the consumer. In this role, the Board must determine if the care provided satisfied the standard of care, which is defined as what is customary and expected of a veterinarian in the state. If the standard is satisfied, formal disciplinary action cannot be supported, even if Board members believe that the care could have been better.

When making that final determination, the Board must look at several factors, such as the harm caused (if any), the evidence gathered, and the likelihood that the violation will occur again. Instead of formal charges, the Board may choose to issue confidential letters of advice or letters of admonishment to put practitioners on notice that their actions were suspect and should be improved. Managing the expectations of complainants has been and will remain challenging.

We understand that consumers will always want to know more than what we are permitted to share under the law. However, in recent years, the Board has tried to address this concern by incorporating much more detail and explanation into its public orders as well as in individual letters to consumers.

Despite our challenges and the changing face of veterinary medicine, the State Board and the Board staff is committed to its mission to protect the public and animal health and welfare by ensuring the safe and competent practice of veterinary medicine. We stand ready to work with the General Assembly in any way that strengthens our chance of success. Again, we respectfully request a favorable report on SB 394.

If you have additional questions, please contact Cassie Shirk, Director of Legislation and Governmental Affairs, at cassie.shirk@maryland.gov or 410-841-5886.