Veterinary Practice Acts: A Call for Reform

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NOTES AND COMMENTS

VETERINARY PRACTICE ACTS: A CALL FOR REFORM

In the past relatively little attention has been given in legal periodicals to the veterinary medical profession. As more and more Americans add pets to their households and as the need to increase food production in the form of livestock becomes imminent, the growing importance of veterinary health care in our society becomes apparent. Regular contact and dealings by consumers with veterinary doctors is occurring with greater frequency. In many homes, the family doctor is now joined by the family veterinarian.

The veterinary medical profession is a relatively small one and in the coming years will be called upon to expend its resources beyond its present (already overburdened) levels. The general practitioner is slowly giving way to the specialist and the one man practice is beginning to be replaced by the partnership and association. Whereas in former years most veterinarians rendered health care chiefly to large animals, there has been a marked shift by veterinarians toward small animal practices. Clearly, the veterinary profession is undergoing transition.

It is the author's position that state governments have not

1. For a recent commentary on veterinary malpractice and the inadequacies of administrative remedies, see Note, Veterinarians at Fault: Rare Breed of Malpractitioners, 7 U.C.D.L. Rev. 400 (1974).
2. In 1968, an estimated 45.2 percent of all U.S. households owned either a cat or dog, or both. National Academy of Sciences, New Horizons for Veterinary Medicine 24 (1972) [hereinafter New Horizons]. A more recent estimate places the figure at 57 percent of all U.S. households (36,000,000). McMillan, The Black Cat Experiment, New York News, May 5, 1974, (Magazine), at 10. If the current trends of expanding human population, higher per capita income, and increased leisure time continue, we can expect an increase in the number of companion animals and a corresponding demand for more veterinary medical services. New Horizons, supra at 24.
4. In 1970 the total number of veterinarians in the U.S. was 25,902. New Horizons, supra note 2, at 18. As of 1974, the estimate was 30,000 veterinarians compared with 121,000 dentists and 344,823 physicians. Freeman, Assessing Veterinary Manpower, 165 J.A.V.M.A. 331 (1974). It is predicted there will be 42,000 veterinarians by 1980. New Horizons, supra note 2, at 18.
5. New Horizons, supra note 2, at 21, 24-25.
6. See note 92 infra.
adequately faced the problems of the day. They have provided their constituents with legislation that neither adequately assures animal owning consumers of high quality veterinary medical services nor protects them from incompetent and unscrupulous practitioners. This note will highlight various aspects of the legislation which regulates the veterinary profession. Many of the social and legal problems presently facing veterinary practice will be discussed. Reforms that, if adopted, will ultimately benefit consumers and concerned practitioners alike will be suggested.

I. INTRODUCTION

Regulation of the veterinary profession is delegated to the states as part of their police power. During the early years of the twentieth century, many states passed their first veterinary practice acts to safeguard the public from incompetent and unscrupulous “veterinary doctors” and to protect the profession from the many charlatans who downgraded veterinary medical practice. The constitutionality of the licensing requirements of the new acts was challenged, but the courts consistently upheld the statutes. Today, every state has enacted a veterinary practice act.

Analysis of the acts reveals that, inter alia, they provide the following: (1) parameters of the practice of veterinary medicine;

7. The American veterinary profession is recognized as one of the most competent and diligent in the world. However, as in any profession, a small minority of practitioners deviate from the high standards set by their colleagues. It is the presence of this minority that necessitates many of the proposed regulatory reforms.


10. The challenges were based on the grounds that such regulation was arbitrary or a deprivation of due process of law. H. HANNAH & D. STORM, LAW FOR THE VETERINARIAN AND LIVESTOCK OWNER 28 (1959) [hereinafter cited as HANNAH]. See, e.g., Barnes v. State, 83 Neb. 443, 119 N.W. 662 (1909); cf. Dent v. West Virginia, 129 U.S. 114 (1889).

11. See, e.g., Peet Stock Remedy Co. v. McMullen, 32 F.2d 669 (8th Cir. 1929); Commonwealth v. Heller, 227 Pa. 539, 121 A. 558 (1923); Barnes v. State, 83 Neb. 443, 119 N.W. 662 (1909).

12. HANNAH, supra note 10, at 27 (stating that every state but Alaska has enacted a practice act). Alaska has subsequently adopted one. ALASKA STAT. §§ .08.98.010 et seq. (1968).
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(2) requirements for licensing and exceptions thereto; (3) a board of veterinary medicine to administer the act; (4) grounds for disciplining licensees; (5) procedures for disciplinary actions, and (6) civil and criminal sanctions for violating the act.\(^3\)

The Model Act

In 1964, the American Veterinary Medical Association\(^4\) [hereinafter AVMA] promulgated the Model Veterinary Practice Act\(^5\) [hereinafter Model Act]. The AVMA selected what it believed to be the best provisions in the various state practice acts and added a few sections of its own to form an act which it offered to the state legislatures for passage in part or in toto.\(^6\) Although no state has adopted the Model Act in its entirety, a majority of the states have amended their veterinary practice acts since 1964, and these acts reflect a large part of the Model Act’s language.\(^7\) For analytical purposes, this note will make references to the Model Act and compare it with practice acts that differ from it.

II. PREAMBLES

The preamble of the Model Act states:

This statute is enacted as an exercise of the police powers of the state to promote the public health, safety and welfare by safeguarding the people of this state against incompetent, dishonest, or unprincipled practitioners of veterinary medicine. It is hereby declared that the right to practice veterinary medicine is a privilege conferred by legislative grant to persons possessed of the personal and professional qualifications specified in this act.

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\(^3\) See also O. Sopie, AN INTRODUCTION TO VETERINARY LAW 41-42 (1962), which gives a more specific analysis of the functions of a veterinary practice act.

\(^4\) The AVMA is the largest professional association of veterinarians in America, with a membership of 25,129 veterinarians. Letter from Dr. D.A. Price, Executive Vice President of AVMA, to Donald L. Sapir, Oct. 28, 1974, on file in the office of the Hofstra Law Review.


\(^6\) The Judicial Council of the AVMA considered the Model Act as an incorporation of the essentials of an acceptable veterinary practice act and recognized that the Act would “need to be modified in each state to best fit the differing circumstances existing because of variation in the needs of the profession or the requirements of the state governments.” Delegates Notes of the 1964 Convention of the AVMA 37 (1964).

While only a handful of states include a preamble in their acts, these introductory statements of legislative intent may serve an important function. One may look at the Model Act’s preamble as being representative. More than just setting forth the purpose of the act, the preamble emphasizes the fact that the right to practice veterinary medicine is a privilege granted by state law and is subject to regulation in the public interest. This statement of public policy serves as a reminder to veterinarians, veterinary medical boards, and courts, that the veterinary practice act was adopted principally to protect the public and subsidiarily to protect the interests of the veterinary profession. Such an ordering of priorities may be of particular value when the two interests are at odds with each other.

III. "Veterinary Practice" as Defined in the Acts

The sphere of influence of a licensed veterinary practitioner is delineated in the definitions and exceptions section of a veteri-
This section is of major importance to the veterinary profession because it states those acts which can be performed solely by a licensed veterinary doctor. Limited only by enumerated exceptions, it protects the economic and professional interests of the licensed practitioners. On the other hand, animal owners receive some assurance that their pets and livestock will get competent medical care. Legislatures must maintain a careful balance between the need for quality medical treatment and the exigencies of any particular act of treatment which may or may not require the presence or expertise of a licensed veterinarian.

Almost every state veterinary practice act has a definitions section. The impact of the section depends on the definition given to the term "practice of veterinary medicine." The Model Act defines the term "broadly enough to cover all conceivable practice situations . . . ." However, it goes further than that. It is so broad that any contact with an animal that changes the animal in any manner falls within the definition. One is tempted to conclude that such a broad definition could be expected of an act drafted by a veterinary association, since it totally protects the licensee from any intrusion into his domain by others. In all fairness to the drafters, it must be stated that the Model Act lists ten exemptions to the Act to limit its far reaching scope. The exceptions, however, are not adequate to completely check the overbreadth of the definition. A strict interpretation of the definition could allow a misguided veterinary medical board to seek injunctions for several activities which should not come within the purview of a veterinary practice act.

Few states have adopted the Model Act definition of "prac-

22. See O. Swayne, supra note 13, at 41.
25. Id.
26. See MODEL ACT § 2(3)(a).
27. Id. § 3. The following exceptions are common to most statutes: (1) consulting veterinarians from other states; (2) animal owners and their employees; (3) veterinary students; (4) veterinarians employed by local, state, or federal government; (5) gratuitous services. See Hannah, supra note 10, at 30.
28. For example, some states have adopted the broad Model Act definition of "practice of veterinary medicine" and have, in accordance with the Model Act, not exempted gratuitous services. In such states a neighbor bandaging a cut sustained by his friend's dog could be prosecuted. See, e.g., Colo. Rev. Stat. Ann. §§ 145-1-3 (11), 145-1-4 (Supp. 1987).
tice of veterinary medicine." Due to such factors as a state's geographical size, animal populations, number and geographical distribution of veterinarians, and economic ambience (i.e., industrial or agricultural), each state has exempted certain procedures or services from the practice act by tailoring the definition of "veterinary practice" and/or by listing exemptions to meet its needs. Taking a realistic approach to its scope, the well drafted statute considers the problems and needs of its general citizenry as well as the economic consequences to the veterinary profession.

Among the state acts there is a wide divergence of opinion as to what types of treatment should or should not be left solely in the hands of a licensed practitioner. Considering the inherent differences between an industrial, densely populated state and an agricultural state with an essentially rural population, uniformity is hardly to be expected. For example, the Texas Veterinary Licensing Act allows laymen to perform a wide variety of operations on domestic animals and completely exempts the treatment and caring for poultry and rabbits. Wisconsin and Kentucky permit any person to treat diseases of domestic animals for compensation at any place twenty or more miles distant from the office or place of business of a licensed practicing veterinarian. New Jersey specifically prohibits all but licensees from trimming and cutting the ears or tails of dogs. Kentucky allows a non-licensee to trim and cut the ears and tails of dogs as long as "such person does not represent himself to be a veterinarian or use any title or degree pertaining to veterinary medicine."

The key to the proper scope of a veterinary practice act is a thorough investigation into the realm of veterinary medical care. Many services presently reserved to performance by the licensed veterinarian do not require the skill and knowledge acquired in veterinary school. Often, simple techniques are not even taught in veterinary school but are learned by watching other veterinarians. By limiting performance of the service to the licensed veter-

30. See O. Soave, supra note 13, at 42.
32. Id. §§ 3(1) - (4), (7).
33. Id. § 3(6).
37. For example, cropping a puppy's tail. Interview with Dr. Marc Kantrowitz, member of the Executive Board of the Veterinary Medical Association of New York City, in
inarian, the price for the service is kept at a premium level. As a possible solution state legislatures should hold hearings to determine the degree of skill and danger involved in a wide variety of animal treatments, especially those of a cosmetic nature. In addition, the relevant factors which reflect the problems and needs of the particular state should be considered. With input from the veterinary profession, farmers and ranchers, and small animal interests, such as pet store owners and dog and cat clubs, those services which do not require veterinary medical skills could be isolated and exempted from the act. As long as unlicensed persons performing the exempted medical services do not hold themselves out as licensed veterinarians or deliver any services which they are not qualified to render, the public will not be jeopardized. The watchful eyes of the public, the profession, and the veterinary medical boards have always kept violators of the act to a minimum.

IV. PARAPROFESSIONALS

With relatively few exceptions, only veterinarians who have been duly licensed by the state may practice veterinary medicine. Other persons deemed to be practicing veterinary medicine under the act are subject to fine and/or imprisonment and will be enjoined from further practice. Veterinarians who employ or associate with unlicensed veterinary practitioners are liable to discipline by the board including a possible suspension or revocation of license. These statutes were designed primarily to protect the public from the consequences of incompetent veterinary medical help delivered by the hand of an unqualified person who holds himself out to the public as a "veterinary doctor."

38. See text accompanying note 30 supra.
39. See note 133 infra and accompanying text.
40. See notes 27, 32-36 supra and accompanying text.
41. The practice of veterinary medicine has been defined broadly. See notes 23-30 supra and accompanying text.
44. See HANNAH, supra note 10, at 27. See generally E. FORGOTSON, PROFESSIONAL
though the laws are still vital to any regulatory scheme, cases involving unlicensed persons who practice veterinary medicine are rarities. 45

A more relevant problem, at present, is the regulation of the delegation of the veterinarian's duties to others who have not been so licensed by the state. The dilemma is created by a severe shortage of veterinary school graduates. 46 Under most practice acts, perfunctory veterinary medical services require the sole attention of a licensed veterinarian. 47 Practitioners, however, have been aware of the exigencies of the situation for years. The vast majority have employed lay persons, whom they have personally trained, to assist them in rendering veterinary medical care. 48

Besides functioning as receptionists, secretaries, and janitors, these assistants are often called upon to prepare patients for surgery, prepare medicaments and equipment to be used in surgery, assist in surgery, collect specimens and perform certain laboratory procedures, prepare medicaments for dispensing to clients, and apply or change wound dressings. Other duties the overburdened veterinarian may ask an assistant to perform are open to speculation. 49 It is clear that the assistants and their employers are violating the veterinary practice acts regularly. 50 For the time being, the realities of the situation compel a permissive attitude regarding these illegalities. In fact, prosecutions of assistants and disciplining of licensees are virtually nonexistent. 51

45. It is possible that the cases are not reported and are more widespread than suspected. See People v. Kaplan, Docket No. 402697 (Bronx County Crim. Ct. Mar. 22, 1974); People v. DeFreitas (N.Y. County Crim. Ct. May 15, 1974); People v. Moscove (Kings County Crim. Ct. Mar. 19, 1973) (three unreported cases where the defendants were sentenced to conditional discharges).

46. Twenty-two colleges of veterinary medicine in the United States and Canada graduated 5720 veterinarians during the 1973-74 school year. Letter from Dr. D.A. Price, supra note 14. There are nineteen AVMA accredited veterinary schools in the United States, three schools in developmental stages and one recently completed. Interview with Shomer, infra note 60.

47. Some exceptions do exist. See notes 27, 32-36 supra and accompanying text.

48. New Horizons, supra note 2, at 23.

49. For example, during surgery only the operating veterinarian and his assistant are present. Also, hospitalized animals are kept overnight.


51. Possible explanations are: (1) deference to customs and usage in the profession; (2) sympathy for the exigencies creating the illegalities; (3) use of prosecutorial manpower for other endeavors considered more urgent.
Complacency, however, is not the proper response. Remedial action is demanded. If the delegation of responsibilities is here to stay, then the legislatures must not remain aloof. New legislation is necessary to license the assistants in order to ensure their qualifications. These statutes must permit the assistants to perform to the extent of their abilities, but must not usurp those functions which require the full skill and judgment of a licensed veterinarian.

Thus far, only a small number of states have enacted provisions for animal technicians (formally educated veterinary assistants) in their practice acts. Different approaches to treating the wording of the delegation language were taken. Drafting problems abound. Different functions delegated require different degrees of supervision and control by the veterinarian.

Acts which enumerate the duties of an animal technician tend to be unduly restrictive. They do not promote optimal productivity of the veterinarian, in addition to having a built-in obsolescence by not leaving room for technological progress and changes in patterns of delivery of veterinary medical care. Statutes drafted in broad terms are so vague as to render little distinction between the duties of a licensed veterinarian vis-a-vis those of an animal technician. Practioners fear such statutes may give rise to clinics staffed by one or two veterinarians with a veritable army of technicians administering low cost veterinary health care for such bread and butter services as annual booster shots and neuterings. Consumers might welcome the reduced fees, but any statutory scheme which permits operations to be performed without reasonable supervision by a veterinarian is not adequately protecting animals and their owners.

The Model Act was amended in 1974 to exempt:

52. E.g., N.C. GEN. STAT. § 90-187.6(c) (Supp. 1974); TENN. CODE ANN. § 63-1235 (Supp. 1974).
53. For example, identifying a laboratory specimen may not require a veterinarian to even be on the premises; applying a wound dressing may call for a veterinarian’s inspection immediately afterwards or that he be in the next room in case complications arise; while any surgical assistance may require the supervising veterinarian’s presence throughout the operation. For a discussion of some analogous problems concerning physicians’ assistants, see Note, The Physician’s Assistant and the Problem of Statutory Authorization, 7 U.C.D.L. REV. 413 (1974).
55. See generally E. FORGOTSON, supra note 44, at 24.
57. Interview with Kantrowitz, supra note 37.
[a]n employee of a licensed veterinarian from performing duties other than diagnosis, prescription, or surgery under the direction and supervision of such veterinarian who shall be responsible for his or her performance. 58

The language of this section allows optimal use of the animal technician in all but the areas of diagnosis, prescription, and surgery—areas usually, but not always, requiring the full judgment and expertise of a veterinarian. The statute unnecessarily precludes technicians from any involvement whatsoever with diagnosis and surgery since technicians may be capable of performing some elementary procedures in these areas. If the statute were amended to permit board certified animal technicians receiving the amount of direction and supervision requisite for the procedure to perform acts of diagnosis or surgery which a reasonable veterinary practitioner would delegate to his technician, it would promote efficiency and flexibility.

Certainly problems would arise due to initial unfamiliarity with the “reasonableness of delegation” standard. This confusion could partially be alleviated if, concomitant to adoption of the statute, the veterinary boards issued regulations determining the degree of delegation permissible for each of several common veterinary practices. In the future, the board could give advisory opinions, 59 akin to those of other administrative agencies, for any practices on which veterinarians question them. As an intermediary between the public and the profession, the boards could best determine the reasonableness of a delegation in light of the complexity of the procedure, the expertise of properly trained technicians, and the high price of veterinary care. Of course, in all cases the courts are the final arbiters of what is reasonable and what is not.

Extremely important to any veterinary practice act incorporating the use of animal technicians is the adoption of standards for qualification. Approximately forty schools throughout the United States have established programs for animal technicians. 60 Individual states may decide either to examine graduates

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59. One state already provides a system for declaratory rulings by the board. See CONN. GEN. STAT. REV. §§ 20-196-42 to 44 (1969).

60. Interview with Dr. Robert Shomer, Secretary of the Association of American State Boards of Examiners in Veterinary Medicine, in Teaneck, New Jersey, Nov. 3, 1974. Of these curricula, five have been accredited by the AVMA Council on Education. Id.
of animal technician schools for licensing or to automatically grant the license to all graduates of board approved schools having an animal technician curriculum which has been satisfactorily passed. Either method will lend more assurance to the qualifications of veterinary paraprofessionals than we now have. A grandfather clause might be inserted exempting all persons from the animal technician degree requirement who could pass a qualifying examination and who were employed by a veterinarian for more than two years prior to the adoption of the animal technician section. If such persons have acquired the requisite knowledge through past experience, they should not be disqualified from continued practice.

The education, use, and regulation of animal technicians will be an increasingly important part of veterinary medical care in the coming years. Proper allocation of these paraprofessionals will be instrumental in solving many of the current problems plaguing the veterinary profession. The veterinary practice acts must be amended to expedite this progressive step.

V. VETERINARY MEDICAL BOARDS

The key to the effectiveness of any veterinary practice act is the regulatory body which has the duty to administer the statute. In most states a “board of veterinary medicine” or “board of veterinary medical examiners” is given this responsibility. The “board is a . . . quasi-legal body empowered to examine prospective licensees in an effort to ensure reasonable competence in those attempting to practice, to grant and revoke licenses, to investigate breaches of professional conduct, to hold hearings, and in general to function as a control on the profession as required by law.”

61. Similar grandfather clauses allowed veterinarians who had not been formally educated to continue to practice after passage of the original veterinary practice acts. See Dusaw v. State Veterinary Board, 157 Mich. 246, 121 N.W. 759 (1909) (enforcing no. 244, § 4, [1907] Mich. Laws 314 which entitled any person who practiced veterinary medicine for five years prior to passage of the act to become certified by the board).

62. See generally Note, supra note 1, at 401-04.


65. Sape, supra note 13, at 34.
Selection of Board Members

In all but a few states, the members of the veterinary medical boards are appointed by the governor. Some states require the additional consent of the senate. Several states require the input of the state veterinary medical association to aid the governor in making his appointment. The Model Act states:

Whenever the occasion arises for an appointment, . . . the state veterinary medical association may nominate three or more qualified persons and forward the nominations to the governor at least 30 days before the date set for the appointment. The governor may appoint one of the persons so nominated.

Other acts go one step further and require the governor to appoint a board member from a list of recommended candidates submitted by the state veterinary medical association. Such an arrangement leads one to suspect that in those states where the professional society dominates the selection process the board will be exclusively comprised of association members.

No doubt, members of the state veterinary medical societies are aware of the power which they wield by virtue of their ability to guide the governor in making his selection. In favor of this privilege, the societies claim to have removed politics from the board since they are in a better position to judge the qualifications of prospective board members than is the governor. They contend the governor might use his authority to pay off political debts with his appointments rather than judge solely on merit.

In addition, the drafters of the Model Act found it desirable to bring the state associations into the appointment procedure in order to promote unification of the aims of the regulatory agency with those of the professional society.


68. MODEL ACT § 4(1); accord, e.g., FLA. STAT. ANN. § 474-041 (Supp. 1974); VA. CODE ANN. § 54-778 (1974).


70. ALA. CODE tit. 46, § 313 (1958) requires that all board members be members of the State Veterinary Medical Association of Alabama.


72. Id. at 34-35.

73. MODEL ACT § 4, Drafters' Comments at 7.
The above arguments favoring strong veterinary medical society input are not entirely meritorious, however. First, while party politics may be removed from the selection process, "medical politics," the politics within the professional association itself, may come into the picture and thereby tarnish the process. "The medical societies are by no means always likely to recommend the most highly qualified people for appointment to boards. Frequently they ignore professional and educational attributes, endorsing some faithful political stalwart who has worked his way up the councils of his society." Second, the appointment to a position on the board is an unlikely political payoff. Financial remuneration of board members is nominal, responsibilities are often time consuming and arduous, and attacks from the public, the press, and professional colleagues can be fierce. Of course, with the appointment comes a certain status of leadership in the profession, but without the credentials to back up the title, little respect from others will be forthcoming. Last, although a unification of the goals of the board and the society might result from the association's participation in the appointment, such an effect is not entirely welcome. The interests of the board as an arm of the state and representative of the people can often be at odds with the interests of the profession. For example, consumer oriented regulations may be threatening to the financial security of the practitioners. It is doubtful that a suggestion to allow the commercial airlines to choose candidates for the next opening on the Civil Aeronautics Board would be widely accepted by either the federal government or the general population. Yet a number of states do allow the veterinary profession to choose the members of its regulatory board.

74. DERBYSHIRE, supra note 70, at 35.
75. Id.
76. Board members are paid on a per diem basis and only when they are actively engaged in the business of the board. Necessary expenses are allowed to board members and a small stipend may also be given to the board member who assumes the administrative duties within the board. See, e.g., COLO. REV. STAT. ANN. § 145-1-5(c)-(d) (Supp. 1967) ($35.00 per diem and $1,000 per annum for the secretary-treasurer); KANSAS STAT. ANN. § 47-819(e) (1973) ($25.00 per diem, no stipend provision). But see N.H. REV. STAT. ANN. § 332-B:3 ($75.00 per diem) (1973); N.Y. EDUC. LAW § 6508(5) (McKinney 1972) (up to $100.00 per diem). Note that the estimated average net income of veterinarians from practice activity is $23,000 per annum. Letter from Dr. D.A. Price, supra note 14. One estimate of the average gross income of a veterinarian practicing in the North Atlantic states is as high as $68,631 per annum. McMillan, supra note 2, at 13.
77. DERBYSHIRE, supra note 70, at 43.
78. Id.
79. See note 21 supra and text accompanying notes 148-49 infra.
In an area such as veterinary medicine, where a governor is likely to have little, if any, contact with the profession, it is nonsensical to cut him off from a respected and knowledgeable source of expertise when making an appointment to the veterinary medical board. While practice acts should allow the state professional societies to participate in the governor’s selection, no act should require the governor to limit his field of candidates to those proposed by the association.

**Public Input in Board Decisions**

With few exceptions, veterinary medical boards are comprised entirely of veterinarians who are charged with the duty of regulating their profession. Since the object of their regulation is to protect the welfare of the public, lay citizens should be permitted to participate on the boards. While lay board members would have to be disqualified from examining applicants due to their lack of technical expertise, they could be of inestimable value in checking any professional fraternalism that might account for the small number of consumer complaints that are brought to hearings, as well as in representing other consumer interests.

An alternative to appointing lay board members is a regulatory scheme, used by some states, whereby many professional regulatory boards are placed under departments of licensure administered by nonprofessional people. While this system has the advantage of providing a public watchdog over any nefarious self-serving conduct by veterinary medical boards, it cannot be determined if these regulatory schemes have in fact done a better job of protecting the public’s interests. However, as a matter of

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82. See note 133 infra.

83. For example, what should be tested on the examinations (e.g., in an urban state, should the examination be geared towards small animal practice); what action should the board recommend to the governor on statutes related to the profession; and against what practices should the board seek an injunction or recommend for prosecution by the district attorney’s office.


85. Compare interview with Suckenick, infra note 133 (board responsible to N.Y. Board of Regents), with letter from Boyle, infra note 133 (board responsible to governor [usual system]); and Note, infra note 133, at 402-03 (lay board member).
public policy there should be more public input, whether by lay members or by bureaus of licensure, in regulating the veterinary medical profession.

VI. LICENSURE

The board of veterinary medicine has the duty to “[e]xamine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine . . . ”

The examination procedure has provided the major vehicle for protecting animal owners from incompetent health care. Historically, standards imposed by examining boards were the greatest single force in setting minimum standards for veterinary schools.

With the ever-growing complexity of veterinary medical science, the adequacy of a regulatory scheme which tests competency only once in a career (and usually immediately after graduation from veterinary school) without any subsequent affirmative acts to ensure competency must be given a second look. Unlike the medical profession, which necessitates hospital affiliation, most veterinarians practice from offices which have all necessary facilities on the premises. Others who devote their practices to large animals (e.g., horses) provide service by transporting all required supplies and equipment in specially designed motor vehicles. Veterinarians with individual practices do not come under the professional scrutiny of their colleagues. Except

86. MODEL ACT § 4(5)(a).
87. Unfortunately, other means of seeding out the unfit are usually invoked after an animal has been harmed (e.g., malpractice suits, disciplinary charges brought by the state veterinary medical board, criminal prosecutions).
89. Veterinary practice acts contain reciprocity sections which allow a practitioner licensed in another state for a period of years (usually five) to receive a license pro forma without examination. E.g., IDAHO CODE § 54-2109(1) (Supp. 1974); N.H. REV. STAT. ANN. § 322-B:11 (Supp. 1973).
90. See NEW HORIZONS, supra note 2, at 24-25.
91. Id. at 26.
92. The concern is chiefly with small animal practices whether the practice be confined to small animals only (e.g., cats and dogs) or a mixed practice (large and small animals). Of the veterinarians engaged in private practice, 50 percent are engaged in mixed practice, and of all veterinarians, approximately 40 percent devote more than half their efforts to small animals. See NEW HORIZONS, supra note 2, at 24-25. However, letters received by the author from various state agencies (all on file in the office of the Hofstra Law Review) giving statistical breakdowns of the types of veterinary practices in their
for the watchful but uneducated eye of their clients, there is no
other force checking their proficiency and evidence of ability. 93

Reexamination

One possible solution is to test licensed veterinarians periodi-
cally. States certainly have the power to require reexamination
(although none has done so94), just as they now have the power
to require examination for initial licensure.95 If the state board
examination really is intended to protect the public from incom-
petence, it should not be given at graduation time. Rather, it
more properly should be given at regular intervals thereafter.96
Dean Krill has stated:97

Every graduate of our accredited schools of veterinary medicine
should automatically be given a license to practice in the state
of his choice. [He] should be reviewed by the board annually
for a period of five years, after which he would be granted a
lifetime license which would only be revoked for good cause.

93. Shomer, supra note 88, at 262-63.
94. Oregon requires veterinary school graduates to practice six months to one year
under the guidance of a licensed practitioner or other veterinarian after taking the licens-
95. Derbyshire, supra note 70, at 16, citing S. Shindell, The Law in Medical
Practice (1966).
96. Armistead, Veterinary Education: Problems and Prospects, 149 J.A.V.M.A. 1401,
1404 (1966).
97. Krill, State Board Examinations—Are They Necessary? No, 141 J.A.V.M.A. 604,
606 (1962).
Reexamination should be instituted in order to require veterinarians to keep up with the latest veterinary medical developments. Failure of the test, however, should not require loss of license, but attendance at selected continuing education seminars. If it were otherwise, flight of veterinarians from states with reexamination provisions might occur. Perhaps in extreme situations (e.g., failing three consecutive reexaminations) the veterinarian could be required to take the general examination given to new applicants and if he failed, his license would be revoked.\(^9\)

**Continuing Education**

An alternative to reexamination—continuing education requirements—has been incorporated into a small but growing number of veterinary practice acts.\(^9\) This trend is a reversal from the former consensus among both educators and licensing authorities that postgraduate education should be on a voluntary basis and left to the conscience of the individual.\(^10\) The requirements range from attending one educational program to sixteen hours of approved programs per annum.\(^10\) The programs approved by the boards for credit are typically sponsored by the professional societies and associations, the scientific (including veterinary) schools, and the boards themselves.\(^10\)

Unfortunately, the laws make numerous means available to circumvent the annual education requirements.\(^10\) Exceptions

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98. Reexamination raises problems of its own. For example, should the veterinary specialist be required to keep abreast of advances in all areas of veterinary medicine? One solution is to reexamine the practitioner only in those areas of specialization in which he chooses to be examined and upon passage limit his license to practice to those areas. It makes little sense to require a small animal practitioner in an urban area to keep up with the latest developments in equine or bovine medicine. Interview with Kantrowitz, supra note 37. Rather, the specialist should be allowed privileges in all aspects only if he chooses to take and passes the general examinations. Shomer, supra note 88, at 263.


100. Derbyshire, supra note 70, at 16. Although the AVMA Judicial Council has for many years discussed amending the Model Act to include a continuing education requirement, they have thus far refrained from doing so. Interview with Shomer, supra note 60.


103. See, e.g., id. § 63-1220 (2) (giving the board authority to excuse licensees: when no board approved program is conducted within the state; when a licensee submits an affidavit evidencing that he was prevented from attending for good cause; in the event of an unusual emergency; upon reaching the age of sixty-five; "[f]or other good and sufficient reason."
which do not evince grave and serious hardship should be repealed. Veterinarians who without sufficient excuse do not fulfill the annual requirement should be fined for each hour of requirement lacking. If a veterinarian does not fulfill his requirement in three consecutive years, his license should be suspended until he has demonstrated his competency in new techniques (in his own field of specialization) to the board. The above measures are not retributive, but necessary to instill in practicing veterinarians the habit of attending continuing education requirements.

Veterinary practice acts must encourage veterinarians to perform to the extent of their abilities. The statutes should contain provisions to ensure the constant upgrading of the veterinary profession. Reexaminations and continuing education requirements are two means by which the public can be assured that the competent veterinary school graduate will be a competent veterinary practitioner throughout his professional life.

VII. DISCIPLINARY PROCEDURES

Under the present statutory schemes, once a veterinarian initially becomes licensed, he enjoys the privileges of licensure by merely continuing to pay the licensing fee and, in those states where required, attending continuing education programs. Although it is probably true that no profession could survive unless an overwhelming majority of its members were diligent practitioners, the necessity of having a procedure to weed out incompetents, cheats, and others unfit to practice is beyond dispute. In veterinary medicine, this procedure takes the form of disciplinary hearings held by the state veterinary medical boards.

The quality of the medical care dispensed by a veterinarian remains unchallenged unless a formal complaint is made to the

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It is particularly unfortunate that the acts exempt practitioners over sixty-five years of age since ordinarily they are the ones who have been graduated from veterinary school the longest and are most likely to be out of touch with modern practices. See generally M. Schwartz, Update on Continuing Education Legal Problems 2, on file in the office of the Hofstra Law Review.

104. Nonpayment of the annual or biennial registration fee is a ground for not renewing a license. Veterinarians who continue to practice without renewing their licenses are guilty of practicing in violation of the act. E.g., La. Rev. Stat. §§ 37:1025 (Supp. 1974) (annual fee); N.Y. Educ. Law § 6502 (McKinney 1972) (biennial fee).

105. See notes 99-102 supra and accompanying text.

veterinary board. The practice acts enumerate the grounds over which the board has jurisdiction for the purpose of disciplining a licensee. In general, these grounds can be classified under three categories: (1) incompetence; (2) progressional dishonesty; and (3) unprofessional conduct.

**Mechanics of Disciplinary Procedures**

Before the government significantly interferes with an individual veterinarian’s license to practice his profession, due process requires that he be given reasonable notice of the grounds of any complaint against him and an opportunity to be heard. The veterinary practice acts—or the states’ administrative proce-

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109. Incompetence can be divided into two areas. Professional incompetence means not rendering high quality medical care under modern methods. Physical or mental incompetence is any physical or mental disability which renders the further practice of veterinary medicine by the licensee dangerous. See Derbyshire, supra note 70, at 87. Within these categories fall Model Act §§ 11(2),(3),(6).

Professional dishonesty is any form of deceit made in one’s capacity as a veterinarian with the intention of fooling the public. Such matters include Model Act §§ 11(1), (4), (7), (8), (10), (11); Ore. Rev. Stat. § 686.120 (2)(b) (1974) (caring for or treating an injury or deformity in such a way as to deceive the public); id. § 686.130(3) (misrepresentation of services rendered).

Unprofessional conduct is an amorphous term which may be defined as:

That which is by general opinion considered to be grossly unprofessional because immoral or dishonorable. That which violates ethical code of profession or such conduct which is unbecoming [a] member of [the] profession in good standing. It involves breach of duty which professional ethics enjoin [citations omitted].

Black’s Law Dictionary 1707 (rev. 4th ed. 1968). Concededly, any violation of the practice act committed by a licensee could come under this definition. Herein, “unprofessional conduct” includes Model Act §§ 11(4),(5),(9),(12)-(14); N.Y. Educ. Law § 6509 (3) (McKinney 1972) (practicing the profession while the ability to practice is impaired by alcohol, physical disability, or mental disability); id. § 6509(6) (refusing to provide professional service to a person because of such person’s race, creed, color, or national origin); N.J. Rev. Stat. § 45:16-6(f) (Supp. 1974) (conviction of a violation of any Federal or state law relating to narcotic drugs); Fla. Stat. Ann. § 474-31(9) (Supp. 1974) (refusing to permit a board member to inspect veterinary premises).

110. Cf., In re Ruffalo, 390 U.S. 544 (1967)(lawyer entitled to procedural due process prior to disbarment); Missouri ex rel. Hurwitz v. North, 271 U.S. 40 (1925) (notice and opportunity to be heard required when license to practice law is jeopardized); Larkin v. Withrow, 368 F. Supp. 796 (E.D.Wis. 1973), prob. juris. noted, ___ U.S. ___, 94 S.Ct. 3066 (1974)(interference with a physician’s ability to practice his profession qualifies as as an interference with a property right requiring procedural due process).

dure acts—provide the procedural safeguards that will be accor-
ded to a veterinarian when he is formally charged with a viola-
tion of the act. The extent of the procedural safeguards vary
from state to state.

The machinery for disciplining a licensed veterinarian is set
in motion with the filing of a written, signed complaint by any
member of the public. The board then notifies the accused
veterinarian of the complaint and requests a written answer tell-
ing his side of the story. If the complaint does not allege a
violation of the practice act, the board will not pursue the matter
any further. If the complaint is one over which the board has
jurisdiction, an investigator will be assigned to the case in order
to gather further facts of the case and other evidence. After the
investigator makes his report to the board there are three alterna-

112. See, e.g., COLO. REV. STAT. § 145-1-13 (Supp. 1967) (hearings conducted in con-
formity with COLO. REV. STAT. §§ 3-16-4 to 5 (1963)); HAWAIʻI REV. STAT. § 474-1 (hearings
in conformity with HAWAIʻI REV. STAT. §§ 91-1 et seq. (1968)).

113. The Supreme Court has stated:

Due process is an elusive concept. Its exact boundaries are undefinable, and
its content varies according to specific factual contexts. Thus when governmen-
tal agencies adjudicate or make binding determinations which directly affect the
legal rights of individuals, it is imperative that those agencies use the procedures
which have traditionally been associated with the judicial process . . .
Whether the Constitution requires that a particular right obtain in a specific
proceeding depends upon a complexity of factors. The nature of the alleged right
involved, the nature of the proceeding, and the possible burden on that proceed-
ing, are all considerations which must be taken into account.


Some veterinary practice acts allow the board to summarily suspend or refuse to
renew a license when the circumstances demand that the public be protected immedi-
ately. See, e.g., FLA. STAT. ANN. § 474.32(1) (Supp. 1974) (inter alia, felons in prison and
mental incompetents). Affected veterinarians are granted immediate hearings. See, e.g.,
(E.D.Wis. 1973), prob. juris. noted, ___ U.S. ___, 94 S. Ct. 3066 (1974), a medical doctor
is challenging the constitutionality of a summary action statute.

114. Compare ARIZ. REV. STAT. ANN. § 32-2234 (Supp. 1974) with KAN. STAT. ANN. §

115. See, e.g., FLA. STAT. ANN. § 474-34 (1) (Supp. 1974); N.C. GEN. STAT. § 90-187.8
(Supp. 1974).

116. Interview with Shomer, supra note 60. See Note, Veterinarians at Fault: Rare

117. See, e.g., TEX. REV. CIV. STAT. ANN. art. 7465a, § 15 (b) (1960) (investigation as
deemed necessary by the secretary-treasurer of the board); Rules of the Wyo. Bd. of Vet.
Med. ch. 3, § 4 (1974) (requiring investigation of all written complaints relative to unpro-
fessional conduct); Note, supra note 1, at 402 (investigation by California board only when
there is substance to the complaint).
tives. The board can use its discretion to end the proceeding, it can issue an informal reprimand or notice of violation, or it can formally charge the licensee with a violation of the practice act, thereby necessitating an administrative hearing.

Prior to a formal disciplinary hearing, the respondent veterinarian must receive written notice of the complaint alleging one or more statutory grounds for discipline and stating the time and place of the hearing. The licensee has the right to be heard in person and by counsel, and the right to cross-examine witnesses testifying against him. The board has the power to subpoena witnesses it wishes to call and the respondent has the right to have witnesses subpoenaed in his behalf. A stenographic record is kept of the hearing.

Although strict rules of evidence are not in effect at the hearing, any finding of guilt must be based on legally admissible evidence. While all states require at least a simple majority of the board members hearing the case to find a veterinarian guilty, some states require a greater percentage. The standard of proof necessary for conviction is not articulated in any of the acts. Board members are not, however, required to find guilt beyond a reasonable doubt. The various boards probably use standards

118. The board's discretion is similar to that of a prosecuting attorney. Interview with Harold Suckenik, Attorney for New York State Education Department, Division of Professional Conduct, in New York City, Jan. 20, 1975.
119. The warning of violation and informal reprimand are not provided for in any state veterinary practice act. But cf. MONT. ADMIN. CODE § 40-3.102 (6) - S 10250 (5) (Supp. 1974) (letter of warning to veterinarians to start placing their premises in a clean and sanitary condition or else be subject to license suspension or revocation). Nevertheless, informal disciplinary procedures are commonly used as regulatory tools by boards throughout the states. Interview with Shomer, supra note 60. See Note, supra note 1, at 403. The licensee is either asked to appear before the board at one of its meetings, or receives the warning or reprimand by post. Interview with Shomer, supra note 60. Since the reprimand is somewhat embarrassing to the veterinarian and harmful to his reputation, the procedure is invoked only if there is sufficient evidence of guilt to convict in a formal proceeding. It is most effective when the infraction is a minor one or first offense. Interview with Suckenik, supra note 118.
121. See, e.g., FLA. STAT. ANN. § 474.34(3) (Supp. 1974).
122. See, e.g., id. § 474.34(2), 434.34(8)(d).
123. See, e.g., id. § 474.34(4).
124. See, e.g., id. § 474.34(8)(b).
125. See, e.g., id. § 474.34(8)(a).
that differ from state to state and within the state from case to case.  

A licensee who is found guilty has the right to appeal to a state court. The practice acts set forth whether review by a court shall be de novo or by substantial evidence based on the record as a whole.

**Effectiveness of the Procedures**

The grounds for disciplining licensed veterinarians are numerous; formal actions taken against practitioners are few. The vast majority of complaints made against veterinarians are considered to be outside the jurisdiction of the boards' regulatory powers. They have commonly been described as a "lack of communications" or a "misunderstanding" which can be rectified by a conciliatory meeting between the veterinarian and his client. Yet, assuming arguendo that the profession is extraordinary,

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128. Veterinary medical examiners are veterinarians not lawyers. The standard of proof used probably varies with the seriousness of the charge, its concomitant punishment, and any bias board members might feel towards or against the veterinarian under scrutiny. Interview with Shomer, supra note 60.

129. See, e.g., Tax. Rav. Crv. STAT. ANN. art. 7465a, § 16(b) (Supp. 1974) (unusual in that it allows trial by jury).


131. See, e.g., FLA. STAT. ANN. § 474.00 (Supp. 1974).

132. See note 109 supra.

133. See Note, supra note 1, at 402-03 (840 investigations resulting in eight formal accusations in California during 1972); Interview with Harold Suckenik, supra note 118 (averaging less than one guilty veterinarian per year in New York); letter from Boyle, supra, note 92 (fifty complaints resulting in four formal hearings in New Jersey during April, 1973-74); letter from Clarke C. Brown, Executive Secretary of Oregon Veterinary Medical Examining Board, to Donald L. Sapir, Oct. 30, 1974, on file in the office of the Hofstra Law Review (not ascertaining the number of complaints but noting a considerable increase within the last year and accounting for two formal hearings in the last ten years).


135. Letter from Dr. Donald A. Gooss, Secretary-Treasurer of Delaware State Board of Veterinary Medical Examiners, to Donald L. Sapir, December 6, 1974, on file in the office of the Hofstra Law Review.

136. See letter from Dr. M.T. Barksdale, Secretary-Treasurer of Florida Board of Veterinary Medicine to Donald L. Sapir, Nov. 6, 1974, on file in the office of the Hofstra Law Review (stating most "complaints are actually a breakdown of communications and
narily competent and honest, it is doubtful that only the minute number of cases the boards try annually\textsuperscript{137} militate a formal hearing and subsequent discipline.

Reasons why so few veterinarians are formally charged or convicted can only be guessed. The animal owner will ordinarily be aware of the foul play only if it results in grievous consequences to his animal.\textsuperscript{138} Even if a client is aware of foul play, he may be ignorant of any recourse he has against the veterinarian via the board. Once a member of the public brings a violation of the practice act to the board’s attention he cannot force an adjudication.\textsuperscript{139} The board can use its discretion to dispose of the case through an informal procedure and does so in the vast majority of cases.\textsuperscript{140} Assuming a valid complaint is made to the board, there may still be an insurmountable evidentiary hurdle.\textsuperscript{141} Office

\textsuperscript{137} See note 133 supra.

\textsuperscript{138} It is difficult for the layperson to judge the competency of a veterinarian. An incompetent practitioner can cover up his errors with medical explanations that the average person is in no position to judge. Furthermore, there is little scrutiny of a veterinarian’s work by his colleagues. See notes 90-93 supra and accompanying text. Only after a client is so suspicious of or dissatisfied with his veterinarian’s performance that he is moved to seek out a second opinion are the veterinarian’s transgressions normally discovered. See, e.g., Thomas E. Corwin, Jr., No. 626 N.Y. Bd. of Vet. Exam. May, 1970 (dog to be spayed by veterinarian was taken to second veterinarian for examination after owners had seen no bandages and dog’s belly was not shaved subsequent to the supposed operation).

\textsuperscript{139} See Berman v. Board of Regents in Medicine, 335 Mass. 358, 244 N.E. 2d 553 (1969). But see Md. Ann. Code Agr. § 2-405 (1974) (permitting any person aggrieved by the board of veterinary medical examiners’ failure to act to appeal the decision to the Board of Review of the Department of Agriculture).

\textsuperscript{140} Interview with Shomer, supra note 60. The author requested permission to see all records of complaints and informal proceedings against veterinarians in the files of the New York State Department of Education, Division of Professional Conduct, but was told a determination by the State Attorney General’s Office did not place these records within the New York Freedom of Information Act, N.Y. Pub. Off. Law §§ 85 et seq. (McKinney Supp. 1974). The author hoped to ascertain firsthand the number and types of complaints disposed of by informal procedures. See Note, supra note 1, at 402 & n.13 for another commentator’s unsuccessful attempt in California.

\textsuperscript{141} Without any real proof, it is difficult to get a conviction. When a case comes down to the client’s unsubstantiated and uncorroborated testimony against the accused’s testimony, it will rarely be brought to a hearing. Interview with Suckenik, supra note 118.
cial investigators willing to take a bribe in exchange for a report favorable to the veterinarian under investigation are an unlikely but ever present possibility. Overburdened staffs of attorneys general may be more inclined to overlook an isolated act which results in harm to an animal than one which causes harm to a human being committed by a professional in one of the other disciplines within their jurisdiction.

Another explanation for the inordinately small number of formal disciplinary hearings may be the remedial strait jacket placed on the boards by the practice acts. Invariably, upon a finding of guilt, the board will either censure and reprimand the licensee, or suspend or revoke his license. As the censure and reprimand is a mere slap on the wrist, which in reality carries little more opprobrium than an informal reprimand or warning, the boards are probably reluctant to go through the bother, time and expense of a formal hearing—especially if the infraction is a minor or isolated one. If the violation is of a more serious nature, the alternatives are the drastic penalties of suspension or revocation.

Over 98 percent of all board members are veterinarians. They are well aware of what the consequences of a temporary or permanent loss of license means to another veterinarian. They must be extremely reluctant to mete out such harsh penalties in all but the most flagrant and serious violations of the act—ergo, the widespread use of informal disciplinary proceedings.

A simple solution to the remedial dilemma is the imposition of fines. If the veterinary medical boards were not frustrated ab initio with the extreme choices of reprimanding a professional colleague or taking away his livelihood, they might be more will-

142. Id.
143. Interview with Shomer, supra note 60.
144. See, e.g., N.J. REV. STAT. § 45:16-6 (Supp. 1974); N.Y. EDUC. LAW § 6511 (McKinney 1972). But see letter from Boyle, supra note 92 (stating two disciplinary actions were resolved by fines during April, 1973-74).
145. See notes 80-81 supra and accompanying text.
147. Note, supra note 1, at 403. In New York, pharmacists are the only professionals subject to disciplinary fines. The punishment is used effectively. Interview with Suckenik, supra note 118.
ing to press formal charges. The available sting of a substantial monetary fine (e.g., $500 - $5,000) would not only put the licensees on notice that a violation of the rules and regulations of the veterinary practice act is likely to result in more than a slap on the wrist, it would free the state boards to vigorously police the profession.

**Proposals for Reform**

The input of the veterinary medical board in handling disciplinary matters is a valuable asset due to its expertise in veterinary medical practice. However, being comprised of veterinarians there is a built-in conflict of interest when deciding cases that go through their agency. On the one hand, they must protect the public health, safety, and welfare, as well as the public’s confidence in the profession; on the other hand, they must choose the standard of conduct for their profession and decide how vigorously to enforce that standard. To guard against this inherent conflict, the boards should not have the commanding control over the disposition of disciplinary cases which they presently enjoy in most states. A party with undivided loyalty to consumer interests should be an integral part of any disciplinary procedure. Moreover, the board should not both help prosecute and hear a case but rather be given one function or the other.

If the board is to take a prosecutorial stance, it will have to work closely with the attorney general’s office. When a complaint is filed, the initial determination of jurisdiction should be made by the legal expert who can best interpret the statute. The board

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148. See notes 80-81 supra and accompanying text.


150. The extent to which an administrative agency may investigate and act upon the material facts of a case and then, consistent with due process, sit as an adjudicative body to determine those facts finally has occasioned some divergence of views. Compare Amos Treat & Co. v. SEC, 306 F.2d 260 (D.C. Cir. 1958) with Pangburn v. CAB, 311 F.2d 349 (1st Cir. 1962) and Trans World Airlines v. CAB, 254 F.2d 90 (1958).

In the licensing area, courts ordinarily will not reverse except in cases where the licensee is flagrantly prejudiced by the combination of functions. See, e.g., Mack v. Florida St. Bd. of Dentistry, 296 F. Supp. 1259 (S.D. Fla. 1969), aff’d, 430 F.2d 862 (5th Cir. 1970), cert. denied, 401 U.S. 954 (1971) (Board was kept apprised of hired investigator’s findings and attorney hired by Board to prosecute the case gave legal advice to Board pertaining to its legal rulings in the case). For a general discussion of the combination of functions in administrative hearings, see K. Davis, ADMINISTRATIVE LAW TREATISE §§ 13.01-13.11 (1958).
could be consulted to illuminate accepted veterinary practices. Investigations could be made only by the attorney general's staff (e.g., investigators in the consumer protection division) or by independent investigators retained by the board members.

As the informal disciplinary proceeding is useful to vindicate minor infractions and is a legitimate money saving device, it should be maintained. The board should make the initial determination as to what procedure should be followed in any given case, but the ultimate decision of whether to drop the case, informally reprimand, or proceed to trial is one that should be made by the attorney general. He, not the board, is more likely to act in a manner that is in the best interests of the public.

If formal charges are brought, a trial without jury should be held in the court of general jurisdiction within the state. The board would be the plaintiff, represented by the attorney general. Since many states already allow appeal from board hearings by a trial de novo, this procedure would merely eliminate an intermediate determination. Unless there is an exponential increase in the number of adjudicable complaints, this should not prove to be a burden on already congested courts. If the number of cases brought to adjudication does increase substantially with a concomitant number of convictions, the amended procedure will have achieved its purpose by proving the inadequacy of the former method.

Perhaps a superior alternative to the above would be a statute maintaining the board as arbiter of disciplinary cases but divorced from any contact with the case prior to adjudication. The attorney general would take over all prosecutorial duties. Complaints would be funneled to his office, which also would carry out investigations. Veterinary consultants could be hired when necessary. Although lacking authority to issue an informal reprimand, he could give a warning of violation, thereby placing the aberrant veterinarian on notice, and accomplishing the same result. The attorney general would have the discretion to drop the case. If he decided to proceed with a formal hearing before the

151. See note 130 supra and accompanying text.
152. See notes 132-33 supra and accompanying text.
153. Setting up a division of professional conduct to oversee all licensed professions is an efficient use of manpower and gives people in the division expertise over all practice acts within the state.
154. See generally Note, Prosecutorial Discretion at the Complaint Bureau Level, 3 Hofstra L. Rev. 81 (1975).
board, all issues of impartiality would be eliminated. Should the board render a determination adverse to the attorney general, he could appeal to the court of review provided in the statute.\textsuperscript{155}

The above proposals contain checks over the vast power presently given to some veterinary medical boards. Those statutes which grant their boards prosecutorial and judicial responsibilities may not be adequately protecting the public. Consumers who file complaints without receiving results probably lose confidence in the regulatory system. Veterinarians brought up on formal charges may not be receiving full due process procedural safeguards.\textsuperscript{156} The disciplinary procedures provided by many state practice acts should undergo scrutiny by their legislatures.

\textbf{VIII. Conclusion}

The original thrust behind the passage of state veterinary practice acts was to protect the public from the transgressions of persons practicing veterinary medicine who were not adequately trained to deliver high quality veterinary medical care. By and large, this objective has been accomplished. As a direct result of those early statutes, there are now nineteen veterinary schools in the United States which meet the strict standards of the AVMA. Veterinary school students are given an intensive four year program covering all areas of veterinary medicine. Graduation from an approved veterinary school is prerequisite to licensure. The problem is no longer one of permitting only highly educated and trained veterinarians to practice.

Today's issues concerning regulation of the veterinary profession lie elsewhere. We must get as much mileage as possible from our veterinarians. It is incumbent upon our veterinary practice acts to make sure that once a veterinarian is licensed he will not abuse the privilege of licensure. The public must be assured of receiving the highest quality veterinary health care possible.

As the regulatory focus shifted from keeping out the unqualified person to using the qualified person efficiently and keeping him qualified, the state veterinary practice acts lagged behind. Although every practice act has been amended since first


156. \textit{See} notes 113, 150 supra and accompanying text.}
adopted, only a few evidence a willingness to grapple with the issues of the 1970's. Most have remained oblivious.

Now is the time for state legislatures to review and reform their veterinary practice acts. To promote more efficient use of the veterinarian, states should license qualified animal technicians to perform duties subordinate to those of a licensed veterinary practitioner. Others without formal training should be licensed, subsequent to board examination, to perform simple operations on livestock. Towards keeping practitioners as informed of modern techniques and practices as the day they graduate from veterinary school, annual continuing education requirements should be instituted. Licensed practitioners should be given periodic reexaminations. To help prevent veterinarians from causing grievances under the statute and to help protect the public from those who do, veterinarians should post signs in their office waiting rooms giving notice of all statutory disciplinary grounds and the governmental body to whom the client can go to seek recourse for his grievances. The disciplinary procedure should lend greater sympathy to consumer complaints. States should employ full-time investigatory bodies to follow up all complaints against veterinarians. Accused veterinarians must be given full due process procedural safeguards and should have their cases determined by an impartial veterinary medical board composed of veterinarians and lay persons. Monetary fines should be within the scope of penalties available to the boards.

Promulgation of the above measures will be instrumental in bringing the veterinary practice acts up to date. Amending the acts will be a positive response to the needs of both the profession and the consumer.

Donald L. Sapir
Preamble

This statute is enacted as an exercise of the police powers of the state to promote the public health, safety, and welfare by safeguarding the people of this state against incompetent, dishonest, or unprincipled practitioners of veterinary medicine. It is hereby declared that the right to practice veterinary medicine is a privilege conferred by legislative grant to persons possessed of the personal and professional qualifications specified in this act.

Section 1—Title

This act shall be known as the (name of state) Veterinary Practice Act. Except where otherwise indicated by context, in this act the present tense includes the past and future tenses and the future tense includes the present, each gender includes the other two genders; and the singular includes the plural, and the plural the singular.

Section 2—Definitions

When used in this act these words and phrases shall be defined as follows:
1) "Animal" means any animal other than man and includes fowl, birds, fish, and reptiles, wild or domestic, living or dead.
2) "Veterinary medicine" includes veterinary surgery, obstetrics, dentistry, and all other branches or specialties of veterinary medicine.
3) "Practice of veterinary medicine" means:
   a) to diagnose, treat, correct, change, relieve, or prevent animal disease, deformity, defect, injury, or other physical or mental conditions; including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique, and the use of any manual or mechanical procedure for artificial insemination, for testing for pregnancy, or for correcting sterility, or infertility, or to render advice or recommendation with regard to any of the above.
   b) to represent, directly or indirectly, publicly or privately, an ability and willingness to do any act described in subsection (a).
4) "Veterinarian" means a person who has received a doctor's degree in veterinary medicine from a school of veterinary medicine.
5) "Licensed veterinarian" means a person who is validly and currently licensed to practice veterinary medicine in this state.
6) "School of veterinary medicine" means any veterinary college or division of a university or college that offers the degree of Doctor of Veterinary Medicine or its equivalent and that conforms to the standards required for accreditation by the American Veterinary Medical Association.
7) "Person" means any individual, firm, partnership, association, joint venture, cooperative and corporation, or any other group or combination acting in concert; and whether or not acting as a principal, trustee, fiduciary, receiver, or as any other kind of legal or personal representative, or as the successor in interest, assignee, agent, factor, servant, employee, director, officer, or any other representative of such person.
8) "Board" means the State Board of Veterinary Medicine.

Section 3—License Requirement and Exceptions

No person may practice veterinary medicine in the state who is not a licensed veterinarian or the holder of a valid temporary permit issued by the board. This act shall not be construed to prohibit:
1) An employee of the federal, state, or local government performing his official duties.
2) A person who is a regular student in a veterinary school performing duties or actions assigned by his instructors, or working under the direct supervision of a licensed veterinarian during a school vacation period.
3) A person advising with respect to or performing acts which the board by rule has prescribed as accepted livestock management practices.
4) A veterinarian regularly licensed in another state consulting with a licensed veterinarian in this state.
5) Any merchant or manufacturer selling at his regular place of business medicines, feed, appliances, or other products used in the prevention or treatment of animal diseases.
6) The owner of an animal and the owner's full-time regular employee caring for and treating the animal belonging to such owner, except where the ownership of the animal was transferred for purposes of circumventing this act.
7) A member of the faculty of a veterinary school performing his regular functions, or a per-
son lecturing, or giving instructions or demonstrations at a veterinary school or in connection with a continuing education course or seminar.

8) Any person selling or applying any pesticide, insecticide, or herbicide.

9) Any person engaging in bona fide scientific research which reasonably requires experimentation involving animals.

10) Any person approved by the Board performing artificial insemination.

Section 4—Board of Veterinary Medicine

1) A board of veterinary medicine shall be appointed by the governor, which shall consist of 5 members each appointed for a term of 5 years or until his successor is appointed, except that the terms of the first appointees may be for shorter periods to permit a staggering of terms whereby one term expires each year. Members of the veterinary board appointed under the chapter which this act replaces may continue as members of the Board until the expiration of the term for which they were appointed. Whenever the occasion arises for an appointment, under this section, the state veterinary medical association may nominate 3 or more qualified persons and forward the nominations to the governor at least 20 days before the date set for the appointment. The governor may appoint 1 of the persons so nominated. Vacancies due to death, resignation, or removal shall be filled for the remainder of the unexpired term in the same manner as regular appointments. No person shall serve 2 consecutive 5-year terms, but a person appointed for a term of less than 5 years may succeed himself.

A person shall be qualified to serve as a member of the Board if he is a graduate of a veterinary school, a resident of this state, a graduate of a veterinary school, and has been licensed to practice veterinary medicine in this state for 5 years preceding the time of his appointment. No person may serve on the Board who is, or was during the 2 years preceding his appointment, a member of the faculty, trustees, or advisory board of a veterinary school.

Each member of the Board shall be paid $— for each day or substantial portion thereof he is engaged in the work of the Board, in addition to such reimbursement for travel and other expenses as is normally allowed to state employees.

Any member of the Board may be removed by the governor after a hearing by the Board determined cause for removal.

2) The Board shall meet at least once each year at the time and place fixed by rule of the Board. Other necessary meetings may be called by the president of the Board by giving notice as may be required by rule. Except as may otherwise be provided, a majority of the Board constitutes a quorum. Meetings shall be open and public except that the Board may meet in closed session to prepare, approve, administer, or grade examinations, or to deliberate the qualification of an applicant for license or the disposition of a proceeding to discipline a licensed veterinarian.

3) At its annual meeting the Board shall organize by electing a president, a secretary-treasurer, and such other officers as may be prescribed by rule. Officers of the Board serve for terms of 1 year and until a successor is elected, without limitation on the number of terms an officer may serve. The president shall serve as chairman of Board meetings.

The duties of the secretary-treasurer shall include carrying on the correspondence of the Board, keeping permanent accounts and records of all receipts and disbursements by the Board and of all Board proceedings, including the disposition of all applications for license, and keeping a register of all persons currently licensed by the Board. All Board records shall be open to public inspection during regular office hours. The secretary-treasurer shall give a surety bond to the Board in such sum as the Board may require by rule, the cost of such bond to be paid by the Board.

At the end of each fiscal year the president and secretary-treasurer shall submit to the governor a report on the transactions of the Board, including an account of monies received and disbursed. 

4) All revenues received by the Board shall be accepted by the secretary-treasurer and deposited by him with the treasurer of the state to be credited to an account to be known as the Board of Veterinary Medicine Fund. All expenses of the Board shall be paid from the fund by voucher signed by the secretary-treasurer of the Board, and no part of the state's general fund shall be expended for this purpose. This fund shall be a continuing account and shall not be subject to reversion to the state's general fund, except to the extent that the balance in the fund at the close of any fiscal year exceeds the Board's current budget by 200%, in which case the excess shall be transferred to and becomes a part of the state's general fund.

5) The Board shall have the power to:

a) Examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine in the state.

b) Issue, renew, deny, suspend, or revoke licenses and temporary permits to practice veterinary medicine in the state or otherwise discipline licensed veterinarians consistent with the provisions of the act and the rules and regulations adopted thereunder.

c) Regulate artificial insemination by establishing standards of practice and issue permits to persons found qualified by the Board.

d) Establish and publish annually a schedule of fees for licensing and registration of veterinarians. The fee schedule shall be based on the Board's anticipated financial requirements for the year.

e) Conduct investigations for the purpose of discovering violations of this act or grounds for disciplining licensed veterinarians.
f) Hold hearings on all matters properly brought before the Board, and in connection thereto to administer oaths, receive evidence, make the necessary determinations, and enter orders consistent with the findings. The Board may require by subpoena the attendance and testimony of witnesses and the production of papers, records, or other documentary evidence and commission depositions. The Board may designate one or more of its members to serve as its hearing officer.

g) Employ full-time or part-time personnel—professional, clerical, or special—necessary to effectuate the provision of this act and purchase or rent necessary office space, equipment and supplies.

h) Appoint from its own membership one or more members to act as representatives of the board at any meeting within or without the state where such representation is deemed desirable.

i) Bring proceedings in the courts for the enforcement of this act or any regulations made pursuant thereto.

j) Adopt, amend, or repeal all rules necessary for its government and all regulations necessary to carry into effect the provision of this act, including the establishment and publication of standards of professional conduct for the practice of veterinary medicine.

The powers enumerated above are granted for the purpose of enabling the Board to effectively supervise the practice of veterinary medicine and are to be construed liberally to accomplish this objective.

--- Section 5—Status of Persons Previously Licensed ---

Any person holding a valid license to practice veterinary medicine in this state on the date this act becomes effective shall be recognized as a licensed veterinarian and shall be entitled to retain this status so long as he complies with the provisions of this act, including annual renewal of the license.

Section 6—Application for License; Qualifications

Any person desiring a license to practice veterinary medicine in this state shall make written application to the Board. The application shall show that the applicant is 21 years of age or more, a citizen of the United States or an applicant for citizenship, a graduate of a veterinary school, a person of good moral character, and such other information and proof as the Board may require by rule. The application shall be accompanied by a fee in the amount established and published by the Board.

- If the Board determines that the applicant possesses the proper qualifications, it shall admit the applicant to the next examination, or if the applicant is eligible for a license without examination under Section 8, the Board may forthwith grant him a license. If an applicant is found not qualified to take the examination or for a license without examination, the secretary-treasurer of the Board shall immediately notify the applicant in writing of such finding and the grounds therefor.

An applicant found unqualified may require a hearing on the question of his qualification under the procedure set forth in Section 13. Any applicant who is found not qualified shall be allowed the return of his application fee.

Section 7—Examinations

The Board shall hold at least one examination during each year and may hold such additional examinations as are necessary. The secretary-treasurer shall give public notice of the time and place for each examination at least 120 days in advance of the date set for the examination. A person desiring to take an examination shall make application at least 60 days before the date of the examination.

The preparation, administration, and grading of examinations shall be governed by rules prescribed by the Board. Examinations shall be designed to test the examinee’s knowledge of and proficiency in the subjects and techniques commonly taught in veterinary schools. To pass the examination, the examinee must demonstrate scientific and practical knowledge sufficient to prove himself a competent person to practice veterinary medicine in the judgment of the Board. All examinees shall be tested by a written examination, supplemented by such oral interviews and practical demonstrations as the Board may deem necessary. The Board may adopt and use the examination prepared by the National Board of Veterinary Examiners.

After each examination the secretary-treasurer shall notify each examinee of the result of his examination, and the Board shall issue licenses to the persons successfully completing the examination. The secretary-treasurer shall record the new licenses and issue a certificate of registration to the new licensees. Any person failing an examination shall be admitted to any subsequent examination on payment of the application fee.

Section 8—License Without Examination

The Board may issue a license without a written examination to a qualified applicant who furnishes satisfactory proof that he is a graduate of a veterinary school and who:

1) Has for the 5 years next prior to filing his application been a practicing veterinarian licensed in a state, territory, or district of the United States having license requirements, at the time the applicant was first licensed, which
were substantially equivalent to the requirements of this act; or
2) Has within the 3 years next prior to filing his application successfully completed the examination conducted by the National Board of Veterinary Examiners.

At its discretion, the Board may orally or practically examine any person qualifying for licensing under this section.

Section 9—Temporary Permit

The Board may issue without examination a temporary permit to practice veterinary medicine in this state:
1) To a qualified applicant for license pending examination, provided that such temporary permit shall expire the day after the notice of results of the first examination given after the permit is issued. No temporary permit may be issued to any applicant who has previously failed the examination in this state or in any other state, territory, or district of the United States, or a foreign country.
2) To a nonresident veterinarian validly licensed in another state, territory, or district of the United States, or a foreign country who pays the fee established and published by the Board, provided that such temporary permit shall be issued for a period of no more than 60 days and that no more than one permit shall be issued to a person during each calendar year.

A temporary permit may be summarily revoked by majority vote of the Board without a hearing.

Section 10—License Renewal

All licenses shall expire annually on December 31 of each year but may be renewed by registration with the Board and payment of the registration renewal fee established and published by the Board. On December 1 of each year, the secretary-treasurer shall mail a notice to each licensed veterinarian that his license will expire on December 31 and provide him with a form for reregistration. The secretary-treasurer shall issue a new certificate of registration to all persons registering under this act.

Any person who shall practice veterinary medicine after the expiration of his license and willfully or by neglect fail to renew such license shall be practicing in violation of this act. Provided, that any person may renew an expired license within 5 years of the date of its expiration by making written application for renewal and paying the current renewal fee plus all delinquent renewal fees. After 5 years have elapsed since the date of the expiration, a license may not be renewed, but the holder must make application for a new license and take the license examination.

The Board may by rule waive the payment of the registration renewal fee of a licensed veterinarian during the period when he is on active duty with any branch of the armed services of the United States, not to exceed the longer of 3 years or the duration of a national emergency.

Section 11—Discipline of Licensees

Upon written complaint sworn to by any person the Board may, after a fair hearing and by a concurrence of 4 members, revoke or suspend for a certain time the license of, or otherwise discipline, any licensed veterinarian for any of the following reasons:
1) The employment of fraud, misrepresentation, or deception in obtaining a license.
2) An adjudication of insanity.
3) Chronic inebriety or habitual use of drugs.
4) The use of advertising or solicitation which is false, misleading, or is otherwise deemed unprofessional under regulations adopted by the Board.
5) Conviction or cash compromise of a felony or other public offense involving moral turpitude.
6) Incompetence, gross negligence, or other malpractice in the practice of veterinary medicine.
7) Having professional association with or employing any person practicing veterinary medicine unlawfully.
8) Fraud or dishonesty in the application or reporting of any test for disease in animals.
9) Failure to keep veterinary premises and equipment in a clean and sanitary condition.
10) Failure to report, as required by law, or make false report of, any contagious or infectious disease.
11) Dishonesty or gross negligence in the inspection of foodstuffs or the issuance of health or inspection certificates.
12) Cruelty to animals.
13) Revocation of a license to practice veterinary medicine by another state, territory, or district of the United States on grounds other than nonpayment of registration fee.
14) Unprofessional conduct as defined in regulations adopted by the Board.

Section 12—Hearing Procedure

A hearing shall be held no sooner than 20 days after written notice to a licensed veterinarian of a complaint against him under Section 11 or, in the case of a person whose application for license is denied, no sooner than 10 days after receipt by the Board of a written request for a hearing. Notice of the time and place of the hearing, along with a copy of the complaint filed, shall be served on a licensee in the same manner required for original service of process in a civil suit.

The applicant or licensee shall have the right to be heard in person and by counsel, the right to
have subpoenaed the attendance of witnesses in his behalf, and the right to cross-examine witnesses appearing against him. Strict rules of evidence shall not apply. The Board shall provide a stenographer to take down the testimony and shall preserve a full record of the proceeding. A transcript of the record may be purchased by any person interested in such hearing on payment to the Board of the cost of preparing such transcript.

The Board shall notify the applicant or licensee of its decision in writing 10 days after the conclusion of the hearing. The secretary-treasurer in all cases of suspension or revocation shall enter the fact on the register. Any person whose license is suspended or revoked shall be deemed an unlicensed person for purposes of this act.

The fees and expenses allowed witnesses and officers shall be paid by the Board and shall be the same as prescribed by law in civil cases in the courts of this state.

Section 13—Appeal
Any party aggrieved by a decision of the Board may appeal the matter to a court of general jurisdiction within 90 days after receipt of notice of the Board's final determination. Appeals shall be taken by filing the action with the court and serving upon the secretary-treasurer of the Board a written notice of the appeal, stating the grounds therefor. The court shall review the decision of the Board as it would the decision of an inferior court. The decision of the reviewing court shall be final and no further appeal shall be taken.

Section 14—Reinstatement
Any person whose license is suspended or revoked may, at the discretion of the Board, be re-licensed or reinstated at any time without an examination by majority vote of the Board on written application made to the Board showing cause justifying relicensing or reinstatement.

Section 15—Enforcement
1) Any person who shall practice veterinary medicine without a currently valid license or temporary permit shall be guilty of a misdemeanor and upon conviction shall be fined not less than $50 nor more than $500, or imprisoned for no more than 90 days, or both fined and imprisoned; provided that each act of such unlawful practice shall constitute a distinct and separate offense.

2) No person who shall practice veterinary medicine without a currently valid license or temporary permit may receive any compensation for services so rendered.

3) The Board or any citizen of this state may bring an action to enjoin any person from practicing veterinary medicine without a currently valid license or temporary permit. If the court finds that the person is violating, or is threatening to violate, this act it shall enter an injunction restraining him from such unlawful acts.

4) The successful maintenance of an action based on any one of the remedies set forth in this section shall in no way prejudice the prosecution of an action based on any other of the remedies.

Section 16—Severability
If any part of this act is held invalid by a court of competent jurisdiction, all valid parts that are severable from the invalid part remain in effect.

Section 17—Repeal
[Repealers.]

Section 18—Effective Date
This act shall become effective on — 1st, 19—. This act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

DRAFTERS' COMMENTS
MODEL VETERINARY PRACTICE ACT
Preamble
A preamble was included in the model act to set forth the purpose of the act and emphasize the fact that the right to practice veterinary medicine is a privilege granted by state law and is, therefore, subject to regulation in the public interest. Such a preamble is included in only a handful of the existing state acts. Ideas for this preamble were derived from provisions contained in the Indiana Practice Act and in the Proposed Florida Practice Act.

Section 1
Sections such as this are commonly included in lengthy statutes for purposes of simplification and clarification. The blank left in the first line is to be filled in by the name of the state adopting this act. The second sentence in the section indicates the tense, number, person, and gender rules to be applied to the act.

Section 2
The definition section is perhaps the most important section of the Model Act. The definitions contained within this section form the framework upon which the rest of the act is constructed. An examination of definitions given the various terms used in the act discloses the breadth of the Model Act's coverage.

1) The term “animal” is intentionally defined about as broadly as possible. Only man is excluded from the definition. This definition was adapted from that contained in the Ohio Practice Act.

2) “Veterinary medicine” is drafted to convey clearly the intent that all branches of veterinary medicine are included within the coverage of
this act. This definition is somewhat similar to ones found commonly in the state acts but in great measure it is an original definition.

3) The definition of "veterinary practice" is the key to any meaningful veterinary practice act. Great care was used in formulating the definition contained within this act to assure that the practice of veterinary medicine was defined broadly enough to cover all conceivable practice situations, and yet guarantee that the definition was not so broad as to include persons or acts not intended to be regulated. The method for arriving at the definition of veterinary practice was to select the 10 best definitions contained in the various state acts and then to systematically analyze the contents of these definitions, select the best qualities of each definition, and then to reassemble the chosen portions into a new and comprehensive definition. The 10 state definitions used were from the practice acts of California, Indiana, Illinois, Kentucky, Minnesota, Michigan, Nebraska, Oregon, South Dakota, and Washington.

Of special note is the inclusion of artificial insemination as a veterinary practice. This is a very ambiguous area under most of the state practice acts. Under the scheme of the model act, artificial inseminators may obtain approval from the Board to carry on this practice. An approved artificial inseminator is then excluded from the operation of the act under Section 3.

Subsection (a) deals with direct actions which constitute veterinary practice.

Subsection (b) deals with the situation of the would-be practitioner who advertises or otherwise indicates an ability and a willingness to do veterinary acts.

Subsection (c) deals with the unauthorized use of symbols intended to convey the belief that the user is a veterinarian or is qualified to perform veterinary services. This subsection is carefully drafted to prevent inclusion of the graduate veterinarian who quite properly uses the abbreviation 'DVM' for his degree in connection with his name, but who is not directly practicing veterinary medicine under Subsections (a) or (b).

4 and 5) These two definitions draw the distinction between a "veterinarian" and a "licensed veterinarian." "Veterinarian" is limited in its usage to a person who has graduated from a school of veterinary medicine. A "licensed veterinarian" refers to a "veterinarian" who is licensed to practice in the state. These definitions are important in the examination and licensing sections of the act. The definition for "veterinarian" was adapted from the Georgia Practice Act. The "licensed veterinarian" definition is a composite of a number of states which have similar provisions. The Florida provision was most heavily relied upon.

6) "School of Veterinary Medicine" also has a narrow definition and refers only to a veterinary college or division of a university or college which offers the degree of Doctor of Veterinary Medicine or its equivalent. Also, to come within this definition the school must conform to the standards required for accreditation by the AVMA.

Reference to the AVMA accreditation standards has been the cause of litigation in several states, but it seems fairly well settled that the legislature may properly refer to the educational standards set by the professional society in the field. Most of the law suits have resulted from the attempt on the part of the board to adopt the AVMA standards by rule or regulation. This it seems is subject to some question. The definition of a "school of veterinary medicine" was principally adapted from the Oregon Practice Act.

7) The term "person" is defined about as broadly as a word can be. It is clear from this definition that any individual or business entity is a person within the meaning of this act. This definition was adapted almost verbatim from the Indiana Practice Act.

8) The choice of the title "Board of Veterinary Medicine" resulted from the drafters' desire to indicate that under this act the Board was more than an examining board.

Section 3

Section 3 declares unlawful the practice of veterinary medicine by any person not licensed or holding a temporary permit to practice in the state. The full impact of the prohibition becomes clear only by reference to the meaning of the terms "practice veterinary medicine" and "licensed veterinarian."

Section 3 also sets out 10 exceptions to the general rule that it is unlawful for a person to practice veterinary medicine without procuring a license. Again, great care was exercised both in studying the various state practice acts and the exceptions contained therein and in evaluating the possible exceptions from practice and in choosing only those 10 exceptions which the drafters felt would be consistent with the policy of a model practice act.

Exception 1 excludes from the operation of the practice act any governmental official assigned to do acts which would otherwise infringe upon the area of regulation. It was the feeling of the drafters that if the legislature at the state or local level deemed it necessary that certain nonveterinarian governmental officials perform veterinary acts, that this good judgment should be accepted. If the decision to delegate veterinary acts to a nonveterinarian is thought to be contrary to the best interests of the community, this decision should be challenged within the legislative process, but the veterinary practice act should not deny the power to make the decision. Insofar as federal employees are concerned, it is quite clear that a state prac-
practice act could not effectively regulate their conduct in any event.

Exception 2 is designed to permit a student a full range of educational experience in his preparation for the veterinary profession. This provision makes it abundantly clear that the student who is studying veterinary practice or serving as an apprentice for a licensed veterinarian during vacation periods will not be violating this act. This clause was adopted from provisions appearing in the state practice acts of Maryland and Wisconsin.

Exception 3 makes it possible for the Board to exercise its rule-making power to issue regulations prescribing accepted livestock management practices for the benefit of persons in the livestock business. This provision was adapted from a similar exception included in the Maryland Practice Act.

Exception 4 is an adaptation of an exception commonly found in the various state practice acts. This permits the entering of the state by a licensed veterinarian from another state for the purpose of consulting with a licensed veterinarian. It was the feeling of the drafters that consultation and the exchange of ideas should not be deterred by the fact that the definition of veterinary practice is so broad that it could reasonably be construed to include this type of activity.

Exception 5 was thought necessary to clarify the right of merchants and manufacturers to sell various products closely associated with veterinary practice so long as the sale takes place at the regular place of business of the seller. This provision was adapted from similar provisions appearing in the practice acts of Missouri and South Dakota.

Exception 6 is another very common provision in the state acts. It seems beyond doubt that an owner of an animal should have the right to treat his animal. This same privilege is accorded to a regular employee of the animal's owner. The term "full-time regular employee" was used to prevent extension of the exception to persons hired specifically to treat animals. Notice also that the exception is not applicable in a case where the ownership of the animal has deliberately been transferred to avoid the operation of the act. This particular section was adapted from the Indiana Practice Act.

Exception 7 is included to specifically exempt teachers and lecturers who perform veterinary acts upon animals in connection with their regular instructional duties either in the classroom or in continuing education courses in the field. The idea for this type provision comes from the Illinois Practice Act, but the provision itself is an original draft.

Exception 8 is intended to make clear that the application of various chemical pesticides, etc., is not a veterinary practice. This exception is necessary by the fact that the definition of veterinary practice is so broad that it could reasonably be construed to include this type of activity.

Exception 9 is made necessary by the substantial use of laboratory animals in scientific research. Again the definition of veterinary practice is sufficiently broad that, without a specific exception, researchers would have to obtain veterinary licenses before they could do certain acts upon their laboratory animal. It was felt by the drafters that the public interest in quality research required this exception. A number of state practice acts make such an exception. This provision was adapted from the practice acts of Illinois, Wisconsin, and Maryland.

The reason for exception 10 has already been alluded to in the discussion of the definition section. The purpose of this section is to exempt from the operation of the act artificial inseminators who have secured the approval of the Board. It was felt by the drafters that the increasing use of artificial insemination by livestock producers necessitated the inclusion of this activity as veterinary practice but that, as a practical matter, it was better to make special provisions for the approval of artificial inseminators than to require that this work be done exclusively by veterinarians.

Section 4

The Board of Veterinary Medicine is the supervisory body created to administer the practice act. The Board provided for in this act is more or less a composite of all of the best features of the various state boards. For example, 5 members is the average size of a state board.

The two features worthy of note contained in the 1st paragraph of subsection (1) are the provisions granting to the local veterinary medical association the power to nominate prospective Board members and the limitation on the number of terms that a Board member may serve. The nomination right is found in a few of the state acts, and it was felt by the drafters that bringing the state associations into the procedure in this way tends to unify the aims of the regulatory agency with those of the professional society. The limitations on the number of terms which may be served consecutively was the result of the drafters' feeling that the experience under the existing state board indicated a need for such a limitation.

The qualifications for Board membership set out in the 2nd paragraph are typical of those found in most state acts, with the exception of the 2-year retroactive limit on persons connected with veterinary schools. It was the feeling of the drafters that it was not a good policy to permit too close a connection between the veterinary schools and the examining board.

The provisions contained in the 3rd and 4th paragraphs of subsection (1) are standard provisions in almost all acts covering the compensation of Board members, reimbursement for expenses, and removal of members of the Board for cause. Although reference was made to many state acts in drafting subsection (1), particular attention was paid to the practice acts of Kentucky, Indiana, Missouri, and Ohio.
Subsection (2) and (3) set out the general procedure for the operation of the Board. Matters of detail were generally left for the Board to decide for itself by rule. Of particular interest in subsection (2) is the provision requiring Board meetings to be open to the public except for special executive sessions to grade examinations or to deliberate decisions in special hearings. This is a provision contained in only a few acts, but the drafters felt that the Board that operates openly inspires confidence in its decisions. This particular provision is an adaptation of a section of the California Practice Act.

The most important aspect of subsection (3) is the clear indication that the secretary-treasurer of the Board is to act as the administrative officer of the Board and has the general responsibility for conducting its day-by-day business. The provision requiring an annual report by the president and secretary-treasurer is generally designed to assure that the Board keeps an orderly house.

Subsection (4) is typical of the provision found in many state acts creating a special fund to support the activities of the Board. The effect of this type of provision is to make the Board entirely independent of legislative appropriations. Of course, this means that the veterinarians regulated by the act are required to pay the expenses of the Board and that fees set by the Board must be adequate to support its operations. The provision limiting the size of the Board's funds to no more than 200% of the current budget is included chiefly to make the idea of an independent Board with a separate power to procure funds acceptable to a state legislature.

Subsection (5) setting out the powers of the Board is by far the most important of the subsections dealing with the Board. It was the general intent of the drafters to empower the Board to do whatever acts are necessary to effectively administer this act. One of the problems with the existing state acts is that the Board does not have sufficient power to efficiently regulate the practice of veterinary medicine within the state.

a) The power to examine applicants for license to practice veterinary medicine in the state is found in almost all state acts. The duty of the Board to serve as veterinary examiner is, of course, one of its most primary functions. This particular provision was adapted from the state practice acts of Illinois and Indiana.

b) The second power authorizes the Board to regulate the practice of veterinary medicine within the state. By covering both licensing and disciplining, this section makes it clear that the Board is a general supervisory body and not simply an examining board. Although many state acts have provision somewhat similar to this one, this clause is essentially an original draft.

c) This provision completes the pattern of regulating artificial insemination. Under this power the Board may adopt appropriate standards for the practice of artificial insemination and then issue permits to such persons desiring to carry on such a business as the board finds qualified. This regulation of artificial insemination is deliberately left to the regulatory power of the Board to avoid complicating the general licensing and administrative provisions of the act. Because this solution to the artificial insemination problem is new, no similar provision is found in any current state act.

d) Empowering the Board to periodically establish the fees charged under the act is another new approach to a common problem of veterinary practice acts. The general pattern of fixing the fees by statute is highly inflexible. Amendment of the statute is required to change the fee. A few states have set provisions setting maximum fees but permitting the board to affix the fee schedule within the maximum limits. It was felt by the drafters that the sensible methods of handling the problem was to permit the Board to set the fees according to its needs. This provision is an original draft and finds no comparable state provision.

e) Authorizing the Board to conduct investigations is another effort to assure that the Board possesses the power to administer this act efficiently. If the Board is to be an effective policeman of the practice within the state, the power to investigate alleged irregularities is absolutely necessary. This particular provision was adapted from the Pennsylvania Practice Act.

f) The power to hold hearings on matters arising under the act is another necessary power. This provision, besides granting the power to hold hearings, also grants certain powers in connection with the hearings. These additional powers would probably be inferred from the hearings, but setting them out specifically removes any question. This provision is a composite adapted from the practice acts of Maryland, Ohio, Illinois, and Indiana.

g) The power to employ additional personnel to acquire necessary space and equipment is also consistent with the over-all aim of making the Board an effective administrative agency. Many state acts grant the power to either employ personnel or to purchase necessary supplies, but too few grant the Board both powers. This particular provision was adapted from a part of the acts of Indiana and Maryland.

h) The power to appoint one of its members to serve on committees or to represent the Board at regional or national meetings of the profession is rarely found in the current state acts. It was the feeling of the drafters that such a power would encourage the Board to be active in interstate or national meetings of persons with similar interests and problems. This particular provision was adapted from a similar provision in the Indiana Practice Act.

i) The power to bring court proceedings directly in its own name is specifically granted the Board. Without such a provision the Board...
might be required to depend upon local law enforcement officers to initiate its suits, thereby losing some of its effectiveness as a regulatory agency. This particular provision was adapted from the Indiana and North Carolina Practice Acts.

j) The final power is a catchall provision authorizing the Board to adopt all rules and regulations necessary to carry the act into effect. This provision was derived from the Ohio act. Special notice should be taken of authorization to establish standards of professional conduct. These standards once established may form the basis for the disciplining of a veterinarian under Section 11. This particular provision was adapted from sections appearing in the Texas Practice Act.

The concluding sentence in Section 4 is included to emphasize the importance of the liberal construction of the powers of the Board. Such a construction is necessary if the Board is to be an effective agency in accomplishing the goals of this model act.

Section 5

The sole purpose of this section is to clarify the status of veterinarians licensed under a former regulatory procedure. Such practitioners are authorized to practice under the new act without a special reregistration or examination. It is also clear under Section 5 that persons licensed under a former act are nevertheless subject to all of the provisions of the new act. This particular provision was adapted from a similar provision appearing in the proposed Florida Practice Act.

Section 6

Section 6 marks the beginning of the sections dealing with the licensing procedure. Section 6 specifically covers the procedure for applying for a license to practice. The qualifications required from an applicant are typical of those found in most state acts. This particular part of the section was based on the Ohio act. Of particular interest is the provision requiring the Board to notify any application whose application is rejected, specifying the grounds for the denial. A rejected application is entitled to a (Section 12) hearing on the question of his qualifications under this section. If an applicant is found qualified, he is either admitted to the examination, or, if eligible for a license without examination, he is immediately licensed by the Board.

Section 7

The examination procedure is set out in this section. The general philosophy of the drafters was to leave as many of the details concerning the examination to the discretion of the local board. Thus, it is provided that the examination shall be generally governed by rules prescribed by the Board. The subject matter of the examination and the standard for grading are only generally indicated. A written examination is specified, but further examination either through oral interviews or practical demonstrations may be given in the Board’s discretion. It is specifically provided that the Board may adopt the examination prepared by the National Board of Veterinary Examiners. Several state boards have apparently encountered difficulty in utilizing the national boards under the restrictive powers granted to them by the local practice act.

The drafters decided not to limit the number of times that an applicant may take and fail the examination, the feeling being that requiring a new application fee for each examination would be enough of a deterrent to a person repeatedly taking the examination. This section is generally a composite of the examination provisions contained in a number of state acts. The time periods relating to notice and application are based on an average derived from the state acts.

Section 8

This section deals with the situations in which the Board may issue a license without requiring an examination. Two classes of applicants may be licensed without examination. The active practitioner licensed in another state with comparable licensing requirements may be licensed by reciprocity. A person who has recently passed the national board examination may also be licensed. The reciprocity provision is based on the Michigan act. The provision authorizing the Board to issue a license to a successful examinee of the national board examination is adapted from a similar provision in the Maryland act. It is nevertheless provided that the Board may require an oral or practical examination of any person otherwise qualified for licensure under this section.

Section 9

This section authorizes the board to grant temporary permits for the practice of veterinary medicine to 2 classes of persons. Pending the examination, a qualified applicant for license may receive a temporary permit to practice. This temporary permit expires immediately after the examination and may not be issued to a person who has previously failed the examination anywhere. This part of the act was adapted from a similar provision in the Maryland Practice Act.

Provision is also made for the granting of a temporary permit to a nonresident veterinarian who is licensed in another state but who is temporarily practicing in this state. Such a permit may be issued for no more than 60 days in any calendar year. The board shall set the fee for the issuance of a temporary permit to a nonresident veterinarian. The purpose of this part of the temporary permit section is to handle the case of the “race track” veterinarian who is licensed in one state but has reason to travel to other states for...
limited periods of time. The thought of the drafters was that if this person is practicing more than 60 days in any state, he probably should have to obtain a license from that state. This provision also permits veterinarians in different states to exchange practices during vacation or the like. Notice that the temporary permit may be revoked without a hearing. It was felt by the drafters that such a summary revocation was appropriate in the case of a temporary permit.

Section 10

This section provides for annually renewing the registration of licensed veterinarians. The dates for expiration of the license were chosen somewhat arbitrarily but most of the state acts provide that the license expire annually at the end of the calendar year. Any person who practices veterinary medicine after the expiration of his license does so in violation of the act. Under this section, a person may renew an expired license at any time within 5 years after the date of expiration by simply paying all of the fees owing, but after 5 years a license is completely void and the former license holder must apply for a new license and take the examination.

The provision authorizing the Board to waive payment of the renewal fee during the period when a licensed veterinarian is in the armed forces is a common clause in many state acts. The limitation of the duration of time for which a waiver may be made is designed to prevent the re-entry to practice by a military veterinarian licensed in the state at a remote time in his professional career. Like the other fees, the registration renewal fee is annually established and published by the Board. Portions of this section are based on the provisions contained in the Colorado and Virginia Practice Acts.

Section 11

This section, along with Sections 12, 13, and 14, provides the procedure for disciplining licensed veterinarians. The procedure is set in motion by a written complaint sworn to by any person. This complaint is filed with the Board, and if the Board finds reasonable cause for believing that the accused veterinarian has been guilty of improper conduct, the Board may call a hearing, and after hearing all the evidence may, by a concurrence of 4 members, vote to revoke or suspend the license of the practitioner or otherwise discipline him. (Other discipline could include a formal reprimand or a fine.) The 14 grounds set forth in Section 11 were arrived at after exhaustive study of the various state acts. These grounds represent the numerical consensus of the state practice acts on the issue of cause for disciplining a veterinarian. It was the opinion of the drafters that these 14 grounds represented the best collection of grounds to be specified in the model act.

The grounds themselves seem relatively self-explanatory. It should be noticed that grounds 3 and 14 contemplate the issuance of regulations by the board defining unprofessional conduct. The effect of these provisions, coupled with the right granted under Section 4 (5) (f), is to permit the local board to adopt its own code of standards and to enforce the standards under this section. The 14 grounds are contained in so many different acts in approximately the same form that it was not deemed worthwhile to set out here specific state sources for each ground.

Section 12

This section sets out the procedure for the hearing guaranteed to any person complained against under Section 11 or found an disqualified applicant for license under Section 6. The principal underlying this section is that no person shall be denied the right to practice or be otherwise disciplined unless he has been granted a fair hearing on the charges against him. To have a hearing that is calculated to produce fairness, certain basic essentials are necessary. It was the intention of the drafters to incorporate these essentials in Section 12. The party to the hearing is guaranteed an adequate notice of the time and place of the hearing and of the nature of matter at issue. The applicant or licensee is guaranteed the right to appear personally and by counsel, and to have his case presented through the testimony of witnesses and the right to cross-examine witnesses appearing against him. The Board is required to have the testimony taken down and preserved so that there can be no later question as to what was said at the hearing. This record of the hearing is made available to the party upon his paying the cost of preparing a transcript of this. The Board's powers relating to hearings granted in Section 4 (5) (f) fill out the picture of hearing procedures.

The remainder of the section deals with the technical handling of the decision of the Board and with the payment of fees and expenses in connection with the hearing. This section was inspired by the hearing procedure in a number of acts. Primary reference was made to the provisions in the acts of Maryland, Ohio, Missouri, Minnesota, and Kentucky.

Section 13

This section expressly provides a right of appeal to any person dissatisfied with the decision of the Board. The procedure on appeal is self-explanatory. It is the purpose of this section to make the Board the final arbiter of the fact issues presented in the hearing. The court on appeal is to review the decision of the Board only to see if the facts presented will support the decision of the Board and that the Board did not abuse its discretion. An appeal may be taken only one step, that is that a dissatisfied party is entitled to only one court review, the decision of the reviewing court being final. Ideas for this section were drawn from the Rhode Island and Indiana Practice Acts.
Section 14

This section permits the Board to reinstate a suspended or revoked license at any time without examination. Such a section is thought to be important, but most current state acts make no provision for reinstatement of a license revoked by the Board. This provision permits the Board to review any case where a license has been revoked or suspended and, upon a showing or just cause, to reinstate the licensee as a practitioner in good standing. This provision was adapted from a portion of the Oregon Practice Act.

Section 15

Under this section a person who engages in the unlawful practice of veterinary medicine may be subject to 3 different types of penalties. A criminal action may be brought against him for his act and he may be fined or imprisoned or both. Notice that each act of unlawful practice constitutes a separate crime.

The unlawful practitioner may also be denied the right to receive any compensation for services performed in contravention of this act. Only Kentucky has such a provision in its state act, but the drafters felt that this type of sanction may be very effective against the unauthorized practitioner.

The unlawful practitioner may also be enjoined from such practice in action brought by the Board or any citizen in the state. If an injunction against the illegal practice issues, further practice by the enjoined party will make him in contempt of court.

Subsection (4) simply indicates that all of these remedies are available in any case and that enforcement of this act through one remedy does not prevent the use of other remedies.

Section 16

Section 16 is what is known as a severability clause. This section simply provides that if any part of this act should be found invalid, this finding of invalidity shall not affect any portion of the act not found invalid.

Section 17

If this model act is adopted in a state, the repeal of any existing laws superseded by the act will be necessary.

Section 18

This section sets out the effective date of the act, and provides for the handling of matters during the transition to the new procedure.