

1 State of Alaska
2 Department of Commerce, Community and Economic Development
3 Division of Corporations, Business and Professional Licensing
4

5 BOARD OF VETERINARY EXAMINERS
6

7 MINUTES OF THE MEETING

8 Friday, January 10th, 2020
9

10 By authority of AS 08.01.070(2), and in compliance with the provisions of AS 44.62, Article 6, a
11 scheduled meeting of the Board of Veterinary Examiners was held by video conference in
12 Conference Room B in the State Office Building, 333 Willoughby Avenue, 9th Floor, Juneau Alaska.
13

14 Friday, January 10, 2020
15

16 **Agenda Item 1** Call to Order/ Roll Call **Time 9:00 a.m.**
17

18 The meeting was called to order by Occupational Licensing Examiner, Ilsa Lund, at 9:00 a.m. as
19 the Board Chairman was absent.
20

21 Board Members present, constituting a quorum:

22 Rachel Bergartt, DVM (*Via Teleconference*)

23 Scott Flamme, DVM (*Via Teleconference*)

24 Hal Geiger, PhD — public member

25 Chris Michetti, DVM (*Via Teleconference*)
26

27 Division Staff present:

28 Ilsa Lund, Occupational Licensing Examiner (Hereafter denoted OLE)

29 Rebecca Powers, Records and Licensing Supervisor (Hereafter denoted RLS)

30 Marilyn Zimmerman, Paralegal II

31 Sher Zinn, Regulations Specialist II (Hereafter denoted RS)

32 Sara Chambers, Division Director of CBPL
33

34 Joining Telephonically:

35 Nina Akers, Investigator III (Hereafter denoted Inv.)

36 Amber Whaley, Senior Investigator III (Hereafter denoted SI)

37 Greg Francois, Chief Investigator (Hereafter denoted CI)
38

39 Some members of the public called in to the meeting, but none were present in the room.
40

41 **Agenda Item 2A** Review/ Approve Agenda **Time: 9:01 a.m.**
42

43 The agenda was unanimously approved by the board.
44

45 **Agenda Item 2B** Review/ Approve Past Meeting Minutes **Time: 9:02 a.m.**
46

47 The minutes from the November 26, 2019 Board of Veterinary Examiners meeting were
48 unanimously approved by the board as written.

49
50 **Agenda Item 3A** **Appoint a Board Chair** **Time: 9:03 a.m.**
51

52 Since Boards and Commissions have not yet confirmed any board reappointments, and the
53 current board chair may be unavailable for the rest of his term, the board took the time to appoint
54 an acting board chair.
55

56 **In a motion duly made by Scott Flamme, seconded by Chris Michetti, and passed**
57 **unanimously, it was RESOLVED to APPOINT Dr. Rachel Bergartt as acting board chair.**
58

59 **Agenda Item 3B** **Appoint a Legislative Liaison** **Time: 9:06 a.m.**
60

61 **In a motion duly made by Rachel Bergartt, seconded by Scott Flamme, and approved**
62 **unanimously, it was RESOLVED to APPOINT Dr. Rachel Bergartt as the board’s**
63 **legislative liaison for the second session of the 31st Legislature with Dr. Scott Flamme as an**
64 **alternate if Dr. Bergartt is unavailable.**
65

66 **Agenda Item 4** **Ethics Reporting** **Time 9:08 a.m.**
67

68 The board had no ethics violations or concerns to report at this time.
69

69 **Agenda Item 14** **AAVSB Board Basics & Beyond** **Time 9:09 a.m.**
70

71 Every year, the American Association of Veterinary State Boards (AAVSB) holds an interactive
72 training session designed specifically for new board members, staff, etc. where attendees acquire
73 knowledge and skills that are necessary to excel in a regulatory role. This year, this conference
74 will be held in Kansas City, Missouri from April 17-18. The deadline to apply is March 16.
75 OLE Lund spoke with a representative from the AAVSB who informed her that, this year, there
76 is enough funding for each member board to have one fully-funded delegate.
77

78 **In a motion duly made by Rachel Bergartt, seconded by Hal Geiger and approved**
79 **unanimously, it was RESOLVED to have Chris Michetti be the primary, Scott Flamme**
80 **secondary, and OLE Lund as alternate delegates to attend AAVSB’s Board Basic &**
81 **Beyond Training Conference.**
82

83 **Agenda Item 5** **Investigations** **Time: 9:15 a.m.**
84

85 Since the last report, the Investigation Division has opened 8 matters and closed 0 matters.
86

87 Dr. Michetti asked Inv. Akers what the timeframe usually is for an investigative case— from the
88 time it is opened to closure. Inv. Akers responded that it would depend on how the case was
89 resolved. If the reviewer recommended a consent agreement, that would take longer because it
90 must be agreed upon by the licensee, which could take up to two months. If the case is closed
91 with an advisement letter, that is usually sent out within a week. If the case is closed with no
92 action, that happens within a day or two.
93

94 Dr. Flamme asked specifically about Prescription Drug Monitoring Program (PDMP) violations.
95 Inv. Akers said that she did not have any cases with proven violations so she could not confirm
96 that at the time. Dr. Flamme expressed concerns about disciplinary actions related to the PDMP.
97 He asked how cases would be triaged into viable or nonviable investigations.

98

99 Inv. Akers explained the basic investigations process. The person in charge of the program (the
100 OLE) gets a report and sends it along to Investigations. Investigations opens the case and starts
101 looking into the violation. Records are requested through a subpoena. After the records are
102 obtained, reviewed, and a violation is confirmed to have happened, the licensee is contacted and
103 asked to explain the situation. Once an explanation is received, in writing, the case is presented
104 to the board for review. The board would then determine the next course of action.

105

106 Dr. Bergartt asked about the cost expenditure to the board for staff to peruse these types of
107 investigations.

108

109 Inv. Akers could not speak as to the cost of an investigation, but said that an investigation could
110 take 90-120 days to close out. She would have to get approval to issue the subpoena, then issue
111 the subpoena, obtain the records, send out notice of complaint, give the licensee 20-30 days to
112 reply. Once the reply is received, the case would then be presented to the board, the board would
113 review the case, then send it back to the investigator to move forward with. The Investigations
114 Division strives to complete investigations within six months.

115

116 Dr. Geiger asked to get some specifics about three of the open cases labeled “prohibited activity”
117 and asked if those had something to do with the PDMP. Inv. Akers responded that she could not
118 speak about ongoing investigations.

119

120 SI Whaley spoke up at this point. She did confirm that those three cases are PDMP related but
121 reiterated that, since the investigations are ongoing, she could not disclose any further
122 information at the time. SI Whaley stated that a meeting was set later in the day to discuss
123 PDMP issues with the division director and the executive administrator of the PDMP.

124

125 Previously, the board had asked the Investigations Division to discuss the disciplinary options
126 the board has when taking actions against licenses. It is the desire of the board to move away
127 from revoking licenses and towards suspending them so as to maintain jurisdiction over
128 licensees. Inv. Akers explained the investigative process in more detail, including the threshold
129 needed to consider sanctions. The reviewer does not determine guilt or innocence. They simply
130 determine whether the allegation is uncontested or if there is sufficient evidence to warrant
131 proceeding with a disciplinary action. Uncontested evidence occurs when they receive a
132 response from the respondent admitting to the allegations. If the respondent denies the
133 allegations but the reviewer sees that there is enough evidence without the admission to move
134 forward, then the reviewer has two choices —to recommend a license action, or to close the case
135 by other means. A license action would require a consent agreement. Closing a case by other
136 means involves recommending a non-disciplinary letter of advisement. The reviewing board
137 members would have to state what they would like the investigator to advise the licensee of. Inv.
138 Akers pointed out that, as of the time of the meeting the board did not have a disciplinary matrix
139 in place. Most disciplinary actions are based on precedent. This posed a unique challenge to the

140 board since there is no precedent for PDMP violation. The board would have to rely on how
141 other licensing boards handled such cases. Inv. Akers went on to explain that cases that follow a
142 disciplinary matrix precedent are resolved rather smoothly, but when a board is wanting to step
143 outside of precedent, it can take much longer for a case to be resolved. Anything outside of
144 precedent would need to be thoroughly explained. When it comes to a consent agreement, if the
145 respondent is being asked to do something, the respondent is given due process rights and a
146 hearing would be held.

147
148 Dr. Bergartt clarified that there currently is no disciplinary matrix for the Board of Veterinary
149 Examiners and asked if there was a way for one to be established. Inv. Akers confirmed that
150 having one for Investigations to work off of would be extremely helpful and said that the
151 investigations division would be happy to work with the board to come up with one. She
152 recommended that the board look at matrixes used by other boards for examples.

153
154 Dr. Bergartt asked if there was a way to access past facts and resolutions of cases to use as a
155 base for precedent in coming up with a disciplinary matrix for the board. Inv. Akers notified the
156 board that she has already compiled that data and can make it available to the board. The
157 confidential information of the cases would remain intact, but the board could certainly look at
158 the generic information.

159
160 **TASK: OLE Lund will compile data on other boards' disciplinary matrixes for this**
161 **board to review in order to create its own matrix.**

162
163 Inv. Akers was asked to provide the board information on the challenges faced with making
164 license actions public. She responded that, when it comes to closing a violation, it would depend
165 on how the board would like to proceed— by a license action or closing a case by other means.
166 If no license action is taken, the case would be closed by sending a letter of advisement, which
167 could remain confidential. If the reviewer finds a violation and doesn't think that it rises to the
168 level of license action, the letter would be sent to the respondent and not made public. The
169 respondent may have to disclose the information to other jurisdiction licensing boards, but the
170 Investigations Division would not report it. A license action, such as a consent agreement, is
171 reportable and would be made public. The information would go in the respondent's licensing
172 file and would not be confidential.

173
174 Dr. Bergartt asked if a letter of advisement must remain confidential. Mrs. Akers was not
175 entirely certain, but she is under the belief that, if no official license action is taken, that a letter
176 of advisement must remain confidential.

177
178 Dr. Geiger said that that sort of situation where it is not clear whether the letter is confidential or
179 not would make him uncomfortable. If all that was issued was a letter and the violation did not
180 rise to the level of a license action, then it puts the practitioner in a gray area, leaving the
181 practitioner uncertain on whether the investigation should be reported or not. He stated that he
182 would prefer if there was a much clearer line in place.

183
184 Inv. Akers believed that there may have been a misunderstanding. If a reviewer recommends a
185 letter of advisement due to lack of evidence, the case would be closed citing that reason and

186 would remain confidential. If a violation is present but not extremely egregious, or just a small
187 lapse in judgement (not diverting drugs or incompetence), those types of situations are
188 commonly closed with letters and not license actions. The only thing disclosable about a letter
189 of advisement would possibly be that the individual was under investigation, not what the
190 potential violation may have been or any of the contents of the letter.

191
192 CI Francois stepped in at this point to offer his services and expertise to the board for any
193 clarification that may be needed. He reiterated the information that Mrs. Akers previously
194 stated. Mrs. Akers went on to provide some data to the board: Since 2010, only six cases
195 presented to the board resulted in a license action— any other violations have resulted in an
196 advisement letter. This data does not include anything to do with continuing education.

197
198 Dr. Bergartt clarified that, when she asked for this topic to be added to the agenda, she had in
199 mind, specifically, licensee’s council mandating that anything to do with a consent agreement be
200 kept confidential. She stated that she understands that division procedure is to make license
201 actions public, but a situation such as that could be a stumbling block. If the licensee does not
202 consent to the agreement, the board could be forced to settle for a letter of advisement or pushes
203 the case into an administrative hearing, which could create financial strain on the board. She
204 said that, as a board, their duty is to the public and all license actions should be made a matter of
205 public record.

206
207 CI Francois cited statute Sec. 08.01.087 and the public records act and detailed the investigative
208 procedure. He said that every time a license action is taken by a board it is put on the website
209 and made a matter of public record. The public records act states that any citizen has the right to
210 look at records unless they are made confidential by exception.

211
212 Dr. Bergartt said that, in her experience as a reviewing board member, the thing that licensees
213 balk at the most, which lead to consent agreements not being agreed upon and not being signed
214 by both parties, is the public disclosure point. She wanted to discuss how the board could work
215 through that since it is the board’s duty to let the public know of license actions taken. She said
216 she felt that there were times where the board ended up not taking any license action because
217 they could not get the licensee to agree to the public disclosure portion.

218
219 CI Francois stated that, in his 5-year experience with the division, usually the sticking point on
220 any consent agreement is the level of discipline imposed or recommended by the board. The
221 board usually runs off case precedent: 3-5 cases of similar fact patterns. If there is a violation
222 that a board does not have any type of precedent for, investigators may go to a similar case from
223 a different but similar board to recommend a license action. He cited a previous case from the
224 Veterinary Board where a licensed chiropractor was performing chiropractic adjustment on
225 horses. Since that individual was not licensed in veterinary medicine, he was issued a temporary
226 cease and desist order which eventually became permanent. In a case such as that, if a board
227 were to recommend civic discipline, usually the sticking point is the level of discipline. CI
228 Francois said that lawyers will, most often times, try to negotiate down the length of time and fee
229 of discipline.

230

231 SI Whaley added that she knows confidentiality concerns were brought up with having license
232 actions made public. She clarified that all license actions are public. The problem is getting the
233 respondent to agree to sign the consent agreement. If they do not agree, then the division does
234 not have a license action to make public. If the consent agreement is not signed, the board would
235 be forced to drop the situation or move forward with a costly litigation hearing.

236
237 Dr. Bergartt said that, in her time on the board, there have been several instances where the
238 specific sticking point was the public nature of the consent agreement, so individuals were not
239 signing them. Then the board was left with having to issue a non-disciplinary letter of
240 advisement for violations that really should have been made public.

241
242 SI Whaley stated that she understands. She brought up another point that the Veterinary Board
243 has tended to lean towards advisement letters in the past, which are confidential. There have
244 only been a handful of consent agreements that have been adopted in the past. She stated that
245 she thinks the best resolution to address the problem would be for the board to move forward in
246 adopting a disciplinary matrix.

247
248 Dr. Bergartt agreed. She said that if precedent had been going towards non-disciplinary letters
249 of advisement, regardless of the situation, due only to the fact that the respondent would not
250 agree to and sign the consent agreement, then that would lead to a self-perpetuating cycle. She
251 said she is worried that this could lead to serious issues not being made public.

252
253 Inv. Akers offered to provide the board specific information about such cases and resolutions in
254 the past —cases that were heading towards consent agreements that did not get signed. She said
255 she believes that, in most of those cases, the reviewing board recommended the letter of
256 advisement and it was not a compromise from a consent agreement not being signed. She said
257 that, when the board steps outside of case precedent is where the trouble begins. She said it
258 helps to have history and consistency on the side of the board.

259
260
261
262 **Agenda Item 6 &7** **Paralegal Report/ Executive Session** **Time 10:00 a.m.**

263
264 **In a motion duly made by Hal Geiger, seconded by Rachel Bergartt, and with unanimous**
265 **approval in accordance with the provisions of Alaska Statute 44.62.310 (c)(2), moved to**
266 **enter executive session for the purpose of discussing subjects that tend to prejudice the**
267 **reputation and character of any person, provided the person may request a public**
268 **discussion it was:**

269 **RESOLVED to enter into executive session in accordance with AS 44.62.310 (c)(2).**

270
271 Board staff was requested to remain in the room.

272
273 *Off record for executive session a 10:01 a.m.*

274 *On record at 10:18 a.m.*

275

276 **In a motion duly made by Hal Geiger, seconded by Chris Michetti, and with unanimous**
277 **approval, it was RESOLVED to ADOPT the entry of default and suspension of**
278 **veterinarian license #100663 held by William Meyers. (Case No. 2017-000936)**
279

280 **Break 10:19 a.m. Back on record at 10:29 a.m.**

281
282 **Agenda Item 8** **Regulations Training** **Time 10:30 a.m.**

283
284 The floor was given over to Sher Zinn, Regulations Specialist, for the board to receive training
285 about the process for adopting or changing regulations. RS Zinn pointed the board's attention to
286 the document Steps in the Regulations Process included in the board packet. She said she felt it
287 was important to provide this training due to the fact that there are several new members on the
288 board. She also said that it can take some licensing examiners 2-3 years to really, fully
289 understand the regulations process. She pointed out that OLE Lund has only been with the board
290 for just shy of one year. All of the information provided comes from the Regulations Drafting
291 Manual that is produced by the department of law.

292
293 *Please see the attached annotated PDF at the end of these minutes for all information on the*
294 *regulations process.*

295
296 Dr. Geiger asked, if there is an overwhelming turnout for oral comment, but a few in attendance
297 are experts, could the board provide those few individuals more time to answer questions from
298 the board? RS Zinn responded —typically no. During oral comment, the board does not ask
299 questions but just listens. There would be a more appropriate time for the board to gather
300 information prior to oral comment.

301
302 Dr. Bergartt asked, if there is an expert who has particular knowledge of regulatory needs, may
303 the board invite the individual to provide information to the board during a public comment
304 period? She asked how the board needs to be mindful, when trying to get things accomplished
305 while not overstepping boundaries.

306
307 RS Zinn responded that that would need to be done while the board is considering regulations
308 and drafting them before public notice goes out. The board is the judge and the jury. Once those
309 regulations go out for public comment, the board moves into the role of jury considering the
310 facts. The jury is not allowed to ask questions while considering the facts. The board can no
311 longer take any information regarding those regulations after the public comment period is
312 closed. The board is not given any public comment until after the commenting period has ended,
313 intentionally, to help the board be the jury that they are supposed to be.

314
315 OLE Lund asked for some clarification. Could the board work on drafting regulations outside of
316 a board meeting as long as they discuss and explain the changes to regulations on the record
317 during a publicly noticed meeting? RS Zinn clarified that the board can assign a regulations
318 project to one of its members —to look at and come up with suggested changes. It can be done
319 by a subcommittee or individually. A subcommittee does have to be public noticed to allow the
320 public to participate. During that time is when she recommends that the board bring in experts
321 on the topic or legal counsel.

322 Dr. Geiger mentioned that the board was previously advised by an attorney that they could hold
323 subcommittee meeting that are not publicly noticed as long as the committee had only two
324 members. Dr. Bergartt confirmed this.

325
326 Director Chambers, who had recently entered the room, stepped in to add some clarification to
327 this point. She mentioned that this is a topic that is always confusing to everyone, so it is better
328 to err on the side of caution. She went on to explain that, if the board designates a committee to
329 work on a project at a more granular level, that is a meeting that does require public notice
330 because the board has established that committee. If two board members decided to meet for
331 coffee and talk about regulations, that is not a committee meeting. That instance would fall
332 under the public notice requirement if a quorum, or three members of the board, were in
333 attendance. If the Veterinary Board were to establish a regulations committee, meetings of that
334 group would need to be public noticed. A committee of the board is empowered by the board
335 and, therefore, the committee meeting need to be public noticed. A board committee could have
336 all board members on it and even non-members on it, because it is public noticed. The public
337 would need to be given the opportunity to know about the event and attend. Director Chambers
338 went on to explain that regulations have the effect of law when they are, ultimately, adopted.
339 She said that she would advise a board that, if they are working on regulations, that they allow
340 the public the opportunity to be engaged.

341
342 **Agenda Item 9** **Fiscal Report** **Time 11:30 a.m.**

343
344 The board received an Excel spreadsheet from division staff that gave board members the ability
345 to adjust different categories and review projected outcomes of fee changes. Division
346 administrative staff looked at the biennial licensing cycle and what the projected fiscal health of
347 the board would be if no increases are made. The division asks that input on fee changes be put
348 in the form of a motion —to support the division’s recommendation or to make their own
349 recommendation. It is up to the Director to make the final determination based on the board’s
350 input. The division recommended that the board implement a slight increase to vet tech license
351 fees.

352
353 The fiscal forecast for the board projects that expenditures are starting to outpace revenue. The
354 division recommends that the board have one year of expenses (based on historical data) in the
355 black. The division does not do zero-sum accounting to prevent boards from maintaining a
356 constant deficit. Based on the board’s first quarter information, the board is not in dire straits
357 financially, but the division is recommending a slight fee adjustment.

358
359 Although Dr. Hagee was not able to attend the meeting, he did submit a written statement that he
360 is strongly opposed to any fee increases.

361
362 Dr. Geiger stated that, when a fee increase proposal was brought before the board several years
363 ago, one of the main things the board wanted to protect were veterinary technicians who are on
364 the lower echelon of the veterinary field pay scale. He said that the board had also previously
365 stated that they wish to protect new veterinarians who have recently graduated and may have up
366 to quarter million dollars in student loan debt.

367

368 Dr. Bergartt seconded Dr. Geiger's statement. She stated that, based on regulations, there is
369 nothing that prohibits a non-licensed individual from doing the things that a licensed vet tech can
370 do as long as there is proper supervision by a licensed veterinarian. She stated that her fear is
371 that an increase to vet tech licensure will just encourage individuals to continue working without
372 seeking licensure. She stated that she is, personally, opposed to seeing any increase in
373 technician's fees.

374
375 Dr. Michetti added that even a \$50 increase to vet tech licensure is a huge percentage increase
376 and does not think that would be in the best interest for veterinary medicine in the state.

377
378 Dr. Flamme agreed with all of the other board members' statements and went on to say that he
379 didn't think vet techs deserved an increase in fees.

380
381 Dr. Bergartt wanted to make Director Chambers aware that, according to information she
382 received at the last AAVSB conference, Alaskan veterinarians are subject to, if not the highest,
383 one of the highest licensing fees for veterinarians in the country. Dr. Bergartt went on to say
384 that there are several things that she finds concerning. —1) To effectively work on regulations,
385 the board needs state (division) support to set up technology, meeting room, etc., which is
386 expensive. 2) The amount of time spent on subpoenas and investigating PDMP violations is
387 going to create a huge financial strain on the board. Dr. Bergartt said that she does not see an
388 effective way to decrease those costs in the immediate future. Her fear is that there would be no
389 way to avoid burdening the licensees with those costs and that practitioners and technicians may
390 just forego even coming to Alaska and getting licensed because of the, already, astronomical fees.
391 There is already a shortage of veterinarians in Alaska.

392
393 Director Chambers responded that she understands the desire to not increase fees for vet techs
394 and thinks that is reasonable. Many boards feel the same way about not increasing fees for
395 professions' most valuable junior team members. She went on to say that, as long as
396 veterinarians are still required by law to participate in the PDMP, then the state is obligated to
397 peruse those violations. She commented that, as far as she has seen, compared to other boards,
398 the Veterinary Board does not have out of control expenses from legal expenses and
399 investigations. As far as the board's financial standing currently, if a legal situation were to
400 come up, the board would not have the proper funding to address the situation. Investigations
401 can cost tens of thousands of dollars.

402
403 Director Chambers went on to explain that, under the Dunleavy administration, the division has
404 been tasked with looking at statutes and working on reducing barriers to licensure by reducing
405 unnecessary processes —cutting out steps that regularly cause delays in licensing or that are
406 increasing costs. The division is working every day on trying to find those balances by
407 automating more services, such as online applications.

408
409 Director Chambers reminded the board members that, as Alaskans, we all work on an economy
410 of scale. Under state law, the division has a system that is common to most licensing
411 mechanisms in all states that require licensees to cover 100% of the cost of regulating their
412 industry. Veterinary fees in another state are likely lower because they have thousands of

413 licensees to split costs between. Unfortunately, in Alaska, there is a smaller group of people
414 paying into the system but we have to maintain the same infrastructure as other states.
415

416 Dr. Bergartt thanked Director Chambers for her comments. Dr. Bergartt went on to point out
417 that the state of Wyoming which has, to her understanding, a similar number of veterinarians has
418 licensing fees that are half the amount that Alaska has. She went on to say that she understands
419 that costs have to be spread out, but she is concerned (as a board member as well as a licensee)
420 that the fees only seem to be increasing and the pressure on the board to spend more is
421 increasing. Yet, the board needs to remain mindful of making it accessible for people to practice
422 in Alaska.
423

424 Director Chambers responded that it is important to keep an eye on how other states are
425 regulating. She said that Wyoming is a good state to compare to because its rural nature and
426 population density are similar to Alaska. She said that time could be spent looking into
427 Wyoming to see what they are doing differently that might be keeping costs lower than Alaska's,
428 or if they have other funding sources.
429

430 Director Chambers said that the board is not in a dire situation to have to increase fees, but it is
431 in the board's best interest to have a small increase now than require a huge increase down the
432 road. She said that the division has worked really hard on the annual fee reviews to avoid the
433 rollercoaster of increasing by hundreds of dollars when a slight increase could have been made
434 incrementally earlier on. At this point, she brought the boards attention to the fiscal report.
435

436 The first quarter ended September 30th, 2019. Since then the revenue for the first quarter was
437 just over \$7,000. The division would not expect there to be a lot of income because the licenses
438 were not in a renewal year. Looking back at comparable (nonrenewal) fiscal years, revenue for
439 the entire year of FY 18 was under \$60,000 and just under \$35,000 for FY 16 and 14. This
440 shows that there was likely a fee increase. Revenues from FY 14,15, and 16 were really low,
441 which resulted in the board operating on a \$80,000 deficit at the end of FY 16.
442

443 In the new format for expenditures, investigative and non-investigative expenditures are now
444 being separated which helps the division pinpoint where exactly the money is being spent. Over
445 \$12,000 is being spent on administrative staff. The board's Investigations expenditure is
446 extremely minimal. Director Chambers recommended that the board look into what the
447 breakdown of investigative costs are —is there anything special or unusual happening. She said
448 that continuing education audits usually increase investigative fees. Since investigations are
449 complaint driven, it is hard to predict what expenditures will come up and when.
450

451 Indirect expenditures have gone up since FY 19. Indirect expenditures are costs that can't
452 directly be attributed to regulation of veterinary medicine —expenses at the division,
453 department, or state levels. The director and administrative officer are very engaged with and
454 they dig into a lot of why these expenses are as much as they are. That information is presented
455 to boards at the end of the year. The board started FY 19 with a \$38,000 deficit and ended a
456 major revenue generating year with a \$77,000 surplus.
457

458 Having finished the fiscal update, Director Chambers had some other topics that she wished to
459 discuss with the board. She received a copy of the PDMP related legislations and had been
460 talking with Barbara Barnes of Rep. Wilson's office. She wanted to make sure that everyone is
461 on the same page regarding this matter. The administration has decided that it does not have an
462 opinion about this particular legislation. The board can expect that, when the bill is introduced
463 and goes for a hearing, whomever the board has chosen to represent them in this matter will need
464 to be present, or at least available telephonically for all of the hearings to speak about the
465 concerns of the board. The division will have representatives present to answer technical
466 questions, but will remain neutral.

467
468 Dr. Bergartt asked Director Chambers about some legislation changes that were addressed at a
469 previous meeting to open up licensing in Alaska for foreign veterinary graduates. She requested
470 an update to ensure that bill is moving forward.

471
472 Director Chambers assured the board that she has been working with the governor's office and
473 they intend to introduce that change in the overall licensing reform omnibus effort. The
474 governor's office is interested in moving that bill forward. *(For more information on this bill see*
475 [SB157/ HB216.](#))

476
477 Dr. Geiger asked Director Chambers if she had any guidance for the board about contacting
478 legislators as a private citizen to comment on any of the matter that involve veterinary regulation.

479
480 Director Chambers stated that the legislative guidance packet was included in the board book for
481 the board members to reference. She went on to say that the information has not changed much,
482 so any members who have already received the training should already be familiar with the
483 policies. She elaborated that any board member can enforce the board's opinion that has already
484 been stated on the record.

485
486 Director Chambers moved on to a new topic. She said that, over the last few weeks, she had
487 been going over the board's previous meeting minutes and speaking with investigators. She
488 wanted to recognize that, as the board's partner in regulation, that in the October meeting, there
489 were a few things that happened regarding a consent agreement for a veterinarian. There were
490 quite a few missteps that happened during the board meeting. She said that she hopes everything
491 has been resolved. The board pledged to be better about restricting public comment to
492 appropriate and publicly noticed times during the meeting.

493
494 Next, Director Chambers brought up the fact that some board members had expressed an interest
495 in holding a town hall to gather public feedback about regulations projects and the PDMP
496 exemption. She reminded the board that town halls are a good option for a board to get in touch
497 with the public, but events such as those take an enormous amount of coordination and planning.
498 The board is required to make their intent know on the record in the form of a motion. There is
499 an expense and resource allocation associated with holding a town hall. If that type of event is
500 still of interest to the board, members will need to take the time to discuss their plan of action
501 and staff will work with them to make it happen.

502

503 Dr. Flamme expressed frustration with how long the process would take, as the board was
504 hoping to have a town hall before the start of legislative session. He informed the board that the
505 Interior Veterinary Medical Association had already held a town hall about the PDMP exemption
506 on January 6. He recorded the meeting and said he would make the recording available to other
507 board members and staff.

508
509 Director Chambers recommended that Dr. Flamme create a document that includes bullet points
510 of important topics and highlights of the meeting. Such a document could be provided to Dr.
511 Bergartt for use during her legislative testimony. Director Chambers also advised Dr. Flamme
512 to inform the individuals who attended the IVMA town hall that their testimonies may be used
513 and presented during legislative hearings. She went on to recommend that the IVMA could be
514 asked to write a letter stating the findings and the stance of the organization regarding the PDMP
515 exemption for veterinarians.

516
517 OLE Lund recommended that Dr. Flamme reach out to the IVMA and suggest that they appoint
518 a representative to speak on behalf of their organization, such as this board appointing Dr.
519 Bergartt, to testify during public comment during legislative hearings.

520
521 Dr. Bergartt stated that she would prefer that option as she would have reservations about
522 speaking on behalf of an organization for which she is not a member.

523
524 Director Chambers thanked the board for providing her the opportunity to meet with them to
525 discuss many important topics. She said that she would be available if anything comes up that
526 the board may need further information or clarification on.

527
528 *Madame Chair, Rachel Bergartt, called for lunch at 12:34 p.m. and instructed the members of*
529 *the board to be back by 1:10 p.m. to honor public comment scheduled for 1:15 p.m.*

530
531
532 **Agenda Item 12** **Public Comment** **Time 1:15 p.m.**

533
534 The AKVMA would like the board to know that they will be holding a town hall regarding the
535 veterinarian PDMP exemption (HB 184) on Friday, January 17th at the BP Center in Anchorage.
536 Dr. Bergartt requested that someone of the AKVMA provide highlights to the board following
537 the town hall.

538
539 **Agenda Item 11** **Correspondence** **Time 1:17 p.m.**

540
541 The board received a letter from the AKVMA regarding the ongoing Veterinarian-Client-Patient
542 Relationship (VCPR) regulation. Dr. Bergartt thanked the AKVMA for being involved in the
543 process and submitting the letter. She said it is great to have that sort of feedback from the
544 Alaskan veterinary community. At first glance, she said, one of the things the board has been
545 working on is succinct language and trying to incorporate all of the talking points in the proposed
546 recommendations made by the AKVMA. She acknowledged the breadth and depth of the
547 thought that went into drafting those suggestions that the AKVMA feels are most important to be
548 included in the VCPR regulations.

549
550 Dr. Geiger said there were two things he was looking for in the recommendations —
551 veterinarians providing or arranging for emergency care to patients and wording about timely
552 physical exams of patients. He said that those things were addressed in the letter from the
553 AKVMA. However, he said that he would continue to argue against the requirement of a timely
554 physical examination when, in this modern age, electronic records should also be included as a
555 possible way for a veterinarian to get involved in this.

556
557 Dr. Bergartt reminded Dr. Geiger that the federal Veterinary Feed Directive (VFD) requires a
558 site visit, so the requirement of a site visit will likely be included in the state VCPR regulations
559

560
561 **Agenda Item 13** **Town Hall** **Time 1:22 p.m.**

562
563 In order for the board to hold a town hall, the first step would be to make a motion on the record
564 to set a meeting date. It has been recommended that, if the board decides to move forward with a
565 town hall, the intended outcomes of the meeting be stated on the record before the event is held.
566

567 There is a consensus among board members that the idea of holding a town hall to gather public
568 opinion about the PDMP has lost its timeliness. Thankfully, other organizations that are not as
569 bound by policy and procedure have already had or have scheduled their own town halls
570 regarding this issue.

571
572 In lieu of a town hall, the board made the decision to move forward with a list serve survey to
573 licensees to gather input on the veterinarian PDMP exemption legislation.

- 574 1. Have you experienced difficulty, as a licensee, utilizing the PDMP?
575 2. Do you feel, as a practitioner, that your clients have suffered because of the PDMP
576 mandate?
577 3. Has the PDMP imposed a financial burden on you or your practice?
578 4. Do you support veterinarians being exempt from having to register with the PDMP?
579

580
581 The board drafted an official statement regarding their stance on the requirement for
582 veterinarians to register with the PDMP.
583

584 **The Board of Veterinary Examiners find that the PDMP statute was adopted without**
585 **sufficient consultation with veterinarians. The board has been put into the position of being**
586 **required to regulate veterinarians with respect to those statutes. There are a number of**
587 **practical problems standing in the way of the board accomplishing that. The board**
588 **strongly believes that veterinarians should be exempt from having to register with the**
589 **PDMP.**

- 590
591 • As of 2017, only one-third of the states require veterinarians to report to state databases.
592 • Veterinarians have no way to uniquely identify individual animals. Obviously, a person
593 desperate enough to pay for an expensive veterinary visit, and to present an injured
594 animal with the hope of gaining a limited prescription of controlled substance for

595 diversion, is a person who will be inclined to use deceit and dishonesty. A problem for
596 veterinarians is that the piece of information labeled “Animal name” cannot be verified in
597 a veterinary clinic. Animals do not have a Social Security number or any kind of unique
598 identifier.

- 599 • Veterinarians have no way to identify the true owner of an animal. Even with a family of
600 perfectly honest people, there may some disagreement as to who is the actual owner of an
601 animal. Also, the owner can change at any time for any reason. There is no way for the
602 veterinarian to link the animal presented to a unique person. In theory, a single injured
603 animal could be presented to every veterinarian in a city or town, and each veterinarian
604 could be given a different animal name and a different owner name.
- 605 • Because of the high cost of a veterinary visit and because of the uncertain prescribing
606 action of each veterinarian, presenting an injured animal seems like an unlikely and
607 uncertain way to acquire controlled drugs for diversion. Even so, currently there is no
608 way for a veterinarian to verify the information he or she is asked to enter into the PDMP
609 database.

610
611 The board acknowledged that they are required to regulate the PDMP despite the current state of
612 flux of the PDMP and the desire to conserve board resources. They do not wish to pass on
613 unnecessary expenses to the licensees who then would pass on that expense to the public.

614
615

616 **Agenda Item 14**

Board Business

Time 2:13 p.m.

617

618 At the May 24, 2019 board meeting, a CE request was submitted by a licensee pertaining to
619 animal chiropractic. At the time, the request was denied. The licensee called a few weeks ago to
620 follow up on any new developments. Dr. Bergartt reminded staff that, at that particular
621 meeting, the board decided on requirements for presenting CEs for credit. If the licensee would
622 like to submit non-RACE approved courses in the future, it is requested that all criteria of the
623 requirements be met so the board can make an informed decision on a case-by-case basis.

624

625 At the last meeting on November 26th, 2019, it was requested that OLE Lund reach out to the
626 AAVSB to see what it might take to have that organization’s attorney, Dale Atkinson, available
627 for consultation during upcoming regulations drafting projects. OLE Lund did reach out to the
628 AAVSB. The process is ongoing —with figuring out logistics and scheduling —and more
629 information will be available in the coming weeks.

630

631 With the legislative session impending, division management asked board staff to pass on
632 information to board members about expectations and etiquette in having contact with
633 legislators. Bills of interest to the board can be presented on rather short notice. There is a
634 function available through the Legislature website called the Bill Tracking Management
635 Function (BTMF) that all board members are encouraged to sign up for. It is extremely
636 important that the board convey how important the PDMP exemption legislation is to them by
637 having a representative present at all hearings pertaining to that bill.

638

639 OLE Lund has been contacted by several individuals, recently, about the lack of veterinary
640 services, particularly humane euthanasia services, in rural Alaska. In the Division of

641 Corporations, Business, and Professional Licensing (CBPL), the Euthanasia of Domestic
642 Animals Permit Program (EUT) is separate from the Board of Veterinary Examiners, but they
643 are obliquely related. While the board does not help to regulate the EUT program, OLE Lund
644 was hoping that the board could help raise awareness of this situation and work together to help
645 find some sort of resolution. As of now, there are no certified euthanasia technician training
646 programs in the state. More information is required on this topic before the board is willing to
647 take any stance on this topic.

648
649 The board was asked by the division to come up with suggestions for increasing revenue to
650 promote the financial wellbeing of the board. OLE Lund stated that, earlier in the week, she was
651 contacted about licensing requirements for veterinary assistant. As of now, the board does not
652 regulate or offer licensure for that subcategory of veterinary technician. As the board is opposed
653 to increasing or mandating fees onto their licensees that are already at the lower echelon of the
654 pay scale, they do not wish to peruse that particular option. It is the wish of the board to
655 financially protect new members of the profession as well as technicians.

656
657 Dr. Geiger brought up the fact that, at the last AAVSB conference, there was a lot of discussion
658 about mid-level positions emerging within the veterinary field. College programs are starting to
659 emerge based around those mid-level professions. The board recognizes that regulations will
660 need to be created for these new fields, but would like to see how other states are going about
661 that process before they take any official actions regarding this topic. Dr. Bergartt cited that, as
662 of now, Nebraska may be the only state that license and regulate veterinary technologists.

663
664 **In a motion duly made by Hal Geiger, seconded by Chris Michetti and approved**
665 **unanimously, the board made an official statement to the division to say:**
666
667 **If fees must be increased, our recommendation is that the cost of temporary permits be**
668 **increased. The board does not wish to impose additional financial burden on newly**
669 **graduated veterinarians or any veterinary technicians. Please do not increase licensing fees**
670 **for vet techs.**

671
672 It was brought to the board's attention that, pertaining to courtesy licenses, the statute definition
673 of "compensation" was misconstrued, leading some out-of-state veterinarians to believe that they
674 were exempt from having to seek licensure in Alaska if they were not being paid for their
675 services; for example, volunteering to work as a vet during a sled dog race event. This issue was
676 brought before the board many years ago and the members at the time defined compensation to
677 mean anything that the veterinarian did not have to pay for out-of-pocket (lodging, food, use of a
678 rental car, event merchandise, etc.). Dr. Geiger pointed out statute **Sec. 08.98.250(5)(C)**
679 "practice of veterinary medicine" (C) means to use a description title, abbreviation, or letters in a
680 manner or under circumstances tending to induce the belief that the person using it or them is
681 qualified or licensed to do any act in (A) of this paragraph whether or not for compensation."
682 Therefore, anyone who comes into the state specifically to represent themselves and act as a
683 veterinarian in any capacity is required to seek licensure through the board.

684

685 **In a motion duly made by Hal Geiger, seconded by Chris Michetti and approved**
686 **unanimously, it was requested that OLE Lund reach out to sled dog race committees to**
687 **remind them of the licensing requirements for their out-of-state veterinarian participants.**
688

689 **In a motion duly made by Chris Michetti, seconded by Scott Flamme and approved**
690 **unanimously, the board scheduled their next meeting for Monday, February 24th, starting**
691 **at 9 a.m.**

692
693 This meeting will be specifically focused on drafting regulations and the PDMP exemption bill.
694

695 *The chair adjourned the meeting at 3:16 p.m.*
696
697
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699

700 **Respectfully Submitted,**

701
702 
703 -----

704 **Ilsa Lund, Licensing Examiner**

701
702 
703 -----

704 **Date**

705

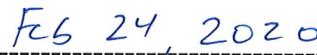
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710 **Rachel Bergartt, DVM**

711 **Board Chair, Board of Veterinary Examiners**

708
709 
710 -----

711 **Date**

REGULATIONS PROCESS TRAINING FOR BOARDS

Step 1- This is the initial step when a board/commission requests a change in its regulations, the board/commission should explain, on the record during a properly noticed public meeting, the reason for the change and give detailed information on the change requested. The staff person responsible for the meeting minutes is also responsible for relaying the board/commission's request to the regulations specialist through a draft copy of the minutes, plus any other information that explains the board/commission's request.

It is at this time that the board must complete the Regulation Changes Questionnaire. This is used by the regulations specialist to draft the FAQ page that is provided on the Board's website and the public notice system for assisting the public in understanding the changes the board is making. This form also assists staff in determining what type of administrative change may be needed if the regulations are adopted. 

Step 2- Once the regulations specialist has drafted the regulations, it is presented to the board/commission at its next scheduled board meeting. The board/commission will review the draft and make any additional changes as needed. Once the draft is complete, a motion is to be made to approve the draft regulations to go out for public noticing. It is at this time the board needs to decide if the public notice will consist of only a written notice, or include an oral public hearing. If the board does not choose to hold an oral hearing, no oral comments may be taken by a member of the public either during the public comment period, or after the public comment period is over. The board staff should give a draft copy of the minutes to the regulations specialist and provide the date, location, and time of the public hearing, if applicable.

Step 3, 4, 5- Although step 3 states the language will be reviewed and approved by the Dept. of Law, this is not the usual case. Unless it is a complicated issue and the Board has requested legal assistance in drafting the regulations, the Dept. of Law will only receive the information at the time of public noticing for opening of the file. 

The regulations specialist will prepare and distribute the public notice including providing a copy of the public notice and regulations to all board/commission members and the affected staff. The public notice is also provided to the Lt. governor, governor, and all legislators via email. Public notices are published on the Online Public Notice System, in the Anchorage Daily News, and on the Board's website.

Step 6, 7- The minimum amount of time for a public notice is 30 days, so it is essential the meeting minutes pertaining to the regulations is provided to the regulations specialist in time to notice the regulations and have the deadline at least 2-3 days prior to the next board meeting to ensure all of the written comments are received. If the next board meeting is only two months away, it can mean a time crunch depending on the regulations specialist's workload.

The board/commission is obligated to seriously consider all written comments, and oral comments if an oral hearing is held before taking final action on the regulations. To be considered, written or oral comments must be submitted as instructed in the public notice. Staff should inform anyone submitting oral comments outside of the public hearing process that the comments will not become a part of the record of the regulations process. If a board member receives comment outside of the means in the

public noticed, the board member must notify that person they need to make public comment in the manner described in the public notice. A board member may not make any comments at a meeting based on a conversation with someone outside of a meeting.

Comment letters should be addressed to the regulations specialist. If a staff member other than the regulations specialist receives a letter commenting on proposed regulations, the letter should be given to the regulations specialist immediately.

The regulations specialist accepts questions regarding the proposed regulations and will update the FAQ page if the question has not already been addressed. This is a new statute that was implemented several years ago in the Administrative Procedures Act for regulations.

Step 8- At the close of the public comment period, the regulations specialist will compile the written comments and provide them to staff for distribution to the board members in the board packet. The board chair should ensure that all members have carefully considered the public comment letters and the cost to private persons before the board takes action on the regulations.

Regulation hearings: If the board chooses to hold a hearing on proposed regulations, the information about the public hearing must be included in the original or supplemental notice of the proposed regulations. **The hearing should be done either about 20 days into the public notice process, or after the written comment period has ended at the next scheduled meeting. A board may choose to use teleconferencing sites for the regulations hearing.**

If a board has not given notice of public hearing, the board may not accept any oral comments on the regulations without having given notice of a public hearing. If the board receives oral comments, the board is required to give supplemental notice and hold a hearing at a later date to allow other interested parties to give oral comments.

The board chair often presides over the hearing. The general principle for conducting a regulations hearing is fairness. The board may impose a time limit on commenters, but each commenter must be treated equally. 

Step 9- The Board will review the written comments in an open meeting, make any minor changes, and adopt the regulations. If a significant amount of public comment has been received and the board intends to make further changes, the board may table the regulation project for adoption at a future date, or withdraw them completely for further work. If it is a particular section of the project that needs more work, the board may make a motion to adopt certain parts of the regulation project, and withdraw the other sections to be public noticed at a future date.

Only minor changes may be made to public noticed regulations. If there are questions if the changes are substantial, the regulations specialist will confer with Department of Law.

When adopting a regulations project, the board chair is to sign a certification form at the meeting, which is included with the regulations packet for the Department of Law. This shows the board adopted the regulations after considering public comment and the cost to private persons. The staff member attending the board meeting also signs an affidavit as a witness to the adoption once they have returned to the office.

Step 10, 11- Once the regulations specialist has received a copy of the minutes reflecting the adoption of the regulations, the affidavit and certification order, the regulations specialist will forward the completed project to the Department of law. A copy of the adopted regulations is provided to the governor's office, the Lt. governor and others via email. The governor has 30 days to review the regulations under AS 44.62.040(c), and return the regulation unfiled for specified reasons.

AS 44.62.040-(c) Before submitting the regulations and orders of repeal to the lieutenant governor under (a) of this section, every state agency that by statute possesses regulation making authority, except the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, the Alaska Oil and Gas Conservation Commission, the office of victims' rights, and the office of the ombudsman, shall submit to the governor for review a copy of every regulation or order of repeal adopted by the agency, except regulations and orders of repeal identified in (a)(1) and (2) of this section. The governor may review the regulations and orders of repeal received under this subsection. The governor may return the regulations and orders of repeal to the adopting agency before they are submitted to the lieutenant governor for filing under (a) of this section within 30 days if they are inconsistent with the faithful execution of the laws. The governor may not delegate the governor's review authority under this subsection to a person other than the lieutenant governor.

The agency attorney assigned to the project reviews the entire regulation to 1) confirm legality, constitutionality, and consistency with other regulations; 2) confirm the statutory authority for the regulation; 3) review for correct language, style, and format, including clarity; 4) confirm the adequacy of the public notice; 5) confirm that the proper administrative procedures were followed; 6) confirm that existing regulatory language does not need amendment to conform to current law; and 7) confirm that all necessary documents are included in the final regulation package. After the agency attorney's review is complete, the project file is forwarded to the regulations attorney for final approval.

Step 12- The final level of review is done by the Legislation and Regulations Section, with final review and approval by the regulations attorney or that person's designee. This review encompasses the same areas reviewed by the agency attorney with particular emphasis on clarity, compliance with the drafting manual, and conformity with the style and organization of the Alaska Administrative Code (AAC). If at the agency attorney review or the final level of review, the regulations have legal issues or have been disapproved, the project will be given back to the board for further work.

Step 13, 14- The Lt. governor's office reviews the regulations and files the project. The regulations become effective in 30 days unless the regulations are drafted in conjunction with a statute that will take effect at a later date, then they will become effective on that date. The Lt. governor's office will notify the regulations specialist of the filing of the regulations with the effective date. The regulations will be added to the next quarterly update of the Alaska Administrative Code.

Once the regulation is filed, the regulations specialist will post the filed version of the regulations on the Online Public Notice System and on the Board's website for 3-4 weeks. The filed version is sent via email to the board and affected staff.

Important items to remember-

1. No public comment may be taken outside of the publicly noticed requirements, including oral comments at a meeting during the public comment period. If there is a regulation project up for adoption at a meeting, the adoption of the regulations should be on the agenda prior to the public comment to keep from having this happen. If the project is scheduled for after the public comment period, the board chair should state on the record prior to taking public comment that

no oral comments may be made on the regulations that are to be adopted at the meeting. If there are comments made inadvertently, please stop that person from talking and again notify them they may not speak to the regulations. If oral comments are taken prior to the adoption of the regulations, the project will have to be re-noticed with additional time, and an oral hearing must be held to give everyone the opportunity to speak to the regulations. This will incur additional significant costs to the board.

2. No written comments may be taken after the deadline noticed, including letters sent to the board after the end of the public comment period. If a letter is written and sent to the board, staff must immediately give to the regulations specialist, it may not go into the board packet as correspondence.
3. There is a difference between approve and adopt. The approval should be only for the draft to go out for public comment, the adoption is after the public comment period and board has made a motion to 'adopt' the regulations either as written or with amendments. The amendments must be reflected in the minutes. While discussing the adoption of the regulations, the board must state on the record they have considered the public comment received, or no comment was received, and the cost to private persons.