

BOARD OF VETERINARY MEDICAL EXAMINERS

Taskforce Meeting Minutes

Date: June 3, 2015

Time: 9:00 a.m., C.T.

Location: Poplar Room
665 Mainstream Drive
Nashville, TN 37243

Taskforce Members Present: Stephen S. Galloway, D.V.M., President
R. A. Tai Federico, D.V.M., Vice-President
Stephen M. Ladd, D.V.M., Secretary
B. Ann Strong, Public Member

Staff Present: Jane Young, General Counsel
Andrea Huddleston, Chief Deputy General Counsel
Devin Wells, Deputy General Counsel
Keith D. Hodges, Assistant General Counsel
Lisa Lampley, Board Director

The meeting was called to order by Dr. Galloway at 9:05 a.m. CT.

Committee Chair

Dr. Galloway appointed Dr. Tai Federico as Chair of the Taskforce.

Conflict of Interest Statement

Mr. Keith Hodges, Board Attorney, reviewed the Conflict of Interest Policy.

Mr. Hodges stated that the purpose of the Practice Act, and by extension the purpose of the Board and related taskforces, is to protect the health, safety and welfare of the animal population and the citizens of Tennessee.

Purpose of Taskforce

Mr. Hodges reviewed T.C.A. 63-12-139(c) which reads in part "...All veterinary facilities located in retail establishments shall have an entrance into the permitted premises that is directly on a public street or public parking area, and such entrance shall be separate from the entrance used by regular retail customers. For purposes of this chapter, "retail establishment" means any

retail store in excess of two thousand five hundred (2,500) square feet that primarily sells goods not related to the practice of veterinary medicine or any veterinary facility located in an enclosed shopping mall or enclosed shopping center.”

Mr. Hodges stated the reason for this taskforce and its charge from the Board is to interpret the specific language “goods not related to the practice of veterinary medicine” found in the above statute and to make a recommendation to the Board in order that the facility inspectors know how to enforce this requirement. Mr. Hodges distributed a list of products typically found in stores which have veterinary facilities located inside them.

Discussion

The taskforce reviewed the definition of the “practice of veterinary medicine” as codified in T.C.A. 63-12-103(10). Dr. Federico asked Dr. Walter Clark, DVM, Board Consultant, to give a brief history/background of the separate entrance requirement. Dr. Clark stated the primary purpose of the requirement was to ensure the materials/goods, animals, and customers in the store were not being exposed to and/or contaminated by sick animals. It was felt that a separate entrance that opened from the parking area directly into the veterinary clinic was the best way to protect the client, the general public, and the animals. In regards to the phrase “goods not related to the practice of veterinary medicine”, Dr. Clark stated if the primary goods sold were therapeutic drugs, heartworm preventatives, prescription foods, and other items sold in the normal course of veterinary practice, that those items would not be considered retail goods. It was not felt at that time that the term “retail goods” was ambiguous.

Dr. Federico read a statement received from Claudia A. Kirk, DVM, PhD, Director of Small Animal Clinical Sciences, UT College of Veterinary Medicine that stated “from our practice the only items that can be considered veterinary practice, depending on the exact product would be certain dental, digestive, ear, eye and rehabilitation products that require a veterinarian’s prescription for dispensing or fitting to a specific animal.” “Animal care products that are considered animal husbandry or pet care products and over-the-counter products, while potentially available in a veterinary clinic, are not products used to practice veterinary medicine as intended by the T.C.A.” Dr. Kirk later joined the meeting via telephone to clarify and state her opinion that products that are generally marketed to the consumer, sold and distributed through a broad number of outlets not consistently tied to veterinary practices, and that do not need a veterinarian to direct or recommend use of, would be classified as retail products. Those products that typically require direction by a veterinarian for proper use, or are labeled for more than standard animal husbandry and health maintenance, and are used by veterinarians where their license requires a veterinarian-client-patient relationship, would fall to the definition of veterinary practice related. A large number of products sold in retail stores would not be considered the practice of veterinary medicine.

Mr. John Ferris and Mr. Mark Cushing, representing Banfield Pet Hospitals, addressed the taskforce. Mr. Cushing stated Banfield is owned by Mars Inc. and has seventeen (17) veterinary hospitals across Tennessee. They applied for and received premise permits for all locations, which included passing a physical inspection. Six of the seventeen existing veterinary hospitals have a separate entrance directly into the facility. It would not be possible to configure a

separate entrance for the other existing locations. Banfield hospitals operate in more than eight hundred fifty (850) PetSmart locations across forty-three (43) states and this is not an issue in any other state. There is no legislative guidance regarding the meaning of the phrase “goods not related to the practice of veterinary medicine”. Approximately forty-seven (47%) of products sold in PetSmarts are pet foods and ten to fifteen percent (10 - 15%) of products sold are related to flea and tick medications, food supplements, and behavioral training. Nutrition and behavior are both now boarded specialties in veterinary medicine. Mr. Cushing further stated there is nothing in the statute that talks about segregating sick pets from non-sick pets. Tennessee would be the first state to imply there is a public health issue with taking pets into retail stores. There have been no implications of disease, illness, or public health risks triggered by people taking animals into any of the PetSmart locations across the states. In summary, Mr. Cushing stated they believe T.C.A. 63-12-139(c) would not apply to veterinary clinics located in a retail store where more than a majority of the revenues stem from the sale of products or services that have a relationship to veterinary medicine. It is their contention that at least 60 – 65% of PetSmart products sold relate to at least part of the practice of veterinary medicine. Mr. Ferris briefly addressed the board regarding the definition of “related to” and the purposely ambiguous language of the statute. He suggested that the legislature’s use of this language indicated that the board should interpret “related to” in a broad manner. Mr. Ferris also requested that the taskforce make a recommendation to the board that the letter requesting compliance with the statute within a certain timeframe be suspended until such time as the Board has time to act on this matter.

Mr. Thomas Russell, representing PawsPlus, addressed the Board. Mr. Russell stated the Board’s purpose was consumer protection and pet care or pet health. Petco and Banfield serve approximately 200,000 pets in Tennessee. PawsPlus started operations in 2012 and operates kiosk-style inside Petco and Tractor Supply companies. Both companies allow pets inside their establishments. PawsPlus locations basically provide vaccinations and microchip services and do not keep animals in-house. They have over one hundred (100) locations in Tennessee and applied for and obtained premise permits for all locations which included passing a facility inspection. Mr. Russell stated PawsPlus also received a letter stating they had one year to comply with the statute requiring the separate entrance. PawsPlus filed a Petition for Declaratory Order and a hearing is scheduled for the August 12, 2015 board meeting. Mr. Russell stated if the statute is applied as it is currently being interpreted, it will shut down a two-million dollar operation, cost countless jobs, and will eliminate the low-cost veterinary services provided by PawsPlus that many people in Tennessee rely upon. In summary, Mr. Russell stated the statutory language “not related to the practice of veterinary medicine” is open to interpretation and a distinction needs to be made between “relation” and “practice of veterinary medicine”. It is their contention that Petco and Tractor Supply companies sell products which are related to the practice of veterinary medicine, and, therefore, are not retail establishments as defined in the statute and the statute is not applicable. Mr. Russell also stated that many veterinary facilities offer boarding services and there is no separation between animals at the facility to be boarded and animals at the facility for veterinary services.

Dr. Bryan Bondurant, DVM, addressed the taskforce. Dr. Bondurant is a former board member and stated he was addressing the board as an individual practitioner and not as a member of the veterinary medical association. Dr. Bondurant stated the purpose of the Board is to protect the

health, safety, and welfare of the animal population and citizens of the state of Tennessee. One of the powers of the board is to adopt rules which serve this purpose. Dr. Bondurant stated his belief that the main issue before the taskforce was the plain language in the statute which requires a separate entrance into the permitted premises directly on a public street or public parking area for all veterinary facilities located in retail establishments with a focus on the word “retail”. Dr. Bondurant reviewed the definitions of “retail” and “establishment” as defined in the dictionary. He stated his opinion that it would be the percentage of products for sale, not the percentage of sales, that would be the deciding factor in defining “retail”. In regards to the issue of the separate entrance requirement, he felt the primary interest was public health and protection of the animals. Viscous dogs, people with allergies, and sick animals were given as examples of protection of the public by use of a separate entrance. In summary, he stated the purpose of the Board was to protect the public and the animals and the Board did not have the authority to suspend the law.

Mr. Keith Hodges, Board Attorney, reviewed the statutory definition of a veterinary-client-patient relationship as found under T.C.A. 63-12-103(17). Mr. Hodges reminded members of the taskforce that their charge was to interpret the language discussed under T.C.A. 63-12-139 and not to decide whether it is a good or bad law or whether or not it should be enforced. The taskforce is to recommend a legal interpretation and must stick to the plain language of the statute.

Upon discussion, Dr. Galloway made a motion that the taskforce not consider and discuss suspension of the letter requesting compliance with the statute as that issue should come before the full Board. Dr. Ladd seconded the motion. The motion carried.

Upon discussion, Dr. Galloway made a motion, seconded by Ms. Strong, to recommend adoption of the following resolution:

It is the opinion of this taskforce, that for the purposes of interpreting T.C.A. 63-12-139(c), “goods not related to the practice of veterinary medicine” shall be interpreted to mean any good legally obtained outside a valid veterinarian-client-patient relationship as that term is defined in T.C.A. 63-12-103(17).

The motion carried.

Adjournment

Dr. Federico thanked everyone for their attendance and input. The meeting adjourned at 12:00 p.m.

These minutes were ratified at the August 12, 2015 meeting.