

BOARD OF VETERINARY MEDICINE
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

MINUTES

Date: June 09, 2023

Time: 10:18 a.m.

Place: Queen Liliuokalani Conference Room
HRH King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, HI 96813

Virtual Videoconference Meeting - Zoom Webinar
(use link below) <https://dcca-hawaii-gov.zoom.us/j/91729649095>

Present: Leianne K. Lee Loy, D.V.M., Chairperson
Marcella Chock, Vice-Chairperson
Lisa Wood, D.V.M., Member
Aileen Wada, Public Member
Shari J. Wong, Esq., Deputy Attorney General (“DAG”)
Kerrie Shahan, Executive Officer
Candace Ito, Executive Officer
Kawehi Mau, Secretary
Mia Hong, Office Assistant
Johnny Li, ISCO Systems Analyst

Excused: Craig Nishimoto, D.V.M., Member
Nathaniel Lam, D.V.M., Member

Guests: Lei Fukumura, Special DAG
Seth J. Corpuz-Lahne, Staff Attorney, Regulated Industries Complaints
Office (“RICO”)
Rochelle Araki, Executive Officer

Agenda: The agenda for this meeting was posted on the State electronic calendar
as required by Hawaii Revised Statutes (“HRS”) section 92-7(b).

A brief video was played to explain procedures for this virtual meeting and
how members of the public can participate and interact with the Board
during the meeting.

Call to Order: Chair Lee Loy proceeded with roll call. All Board members confirmed they
were present. Those members joining by Zoom indicated there was no
one with them at their location. There being a quorum present, the
meeting was called to order at 10:18 a.m. by Chair Lee Loy.

Amendments to
Agenda

Chair Lee Loy asked if there were any amendments be made to the agenda.

It was moved by Ms. Wada, seconded by Vice Chair Chock, and unanimously carried to move agenda item #2 out of order to approximately 11:00 a.m. and to correct item #3.A.xii – Teddy, Lucy, to reflect that it should be listed as item # 3.A.xiii.

Approval of the
Minutes of the
March 10, 2023
Board Meeting:

Chair Lee Loy asked if any members of the public would like to provide oral testimony on this agenda item. There were none.

It was moved by Dr. Wood, seconded by Vice Chair Chock, and unanimously carried to approve the open session minutes of the March 10, 2023 meeting minutes as amended.

Applications:

Chairperson Lee Loy asked if any members of the public would like to provide oral testimony on this agenda item. There were none.

At 10:20 a.m., it was moved by Dr. Wood, seconded by Vice Chair Chock, and unanimously carried to move into Executive Session to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities in accordance with Hawaii Revised Statute ("HRS") section 92-5(a)(4).

EXECUTIVE SESSION

At 10:38 a.m. the Board returned to public session.

A. Ratification of Issued Licenses

- i. Jung, Uhiwa
- ii. Lauw, Crystal
- iii. Kimbrough, Elaine
- iv. Valdez, Jena
- v. Houser, Jessica
- vi. Sera, Patricia
- vii. Nichols, Rachel
- viii. Greene, Shawna
- ix. Carotenuto, Sarah
- x. Netisingha, Hanna
- xi. Wilwerding, Lee
- xii. Blevins, Christopher
- xiii. Teddy, Lucy

B. Approval of Restoration Application

- i. Ireifej, Shadi

- ii. Jovanovic, Svetislav
- iii. Dayton, Kylee

C. Application Review

- i. Robertson, James

It was moved by Ms. Wada, seconded by Dr. Wood, and unanimously carried to accept the above listed issued licenses, to approve the three applications under review for the State examination, and to approve the restoration application.

Examinations:

Chairperson Lee Loy asked if any members of the public would like to provide oral testimony on this agenda item. There were none.

Executive Officer Shahan provided the following exam results:

A. Results of the State Veterinary Licensing Examination Administered on March 2023

Candidates Eligible:	9
Exams Administered:	9
Successful:	5
Failed:	4
No Shows:	0

Results of the State Veterinary Licensing Examination Administered on April 2023

Candidates Eligible:	6
Exams Administered:	6
Successful:	3
Failed:	3
No Shows:	0

Results of the State Veterinary Licensing Examination Administered on May 2023

Candidates Eligible:	11
Exams Administered:	10
Successful:	5
Failed:	5
No Shows:	1

B. April 17, 2023 – Examination Candidate Review

The Board was provided the exam question challenge, along with the pertinent pages from the Candidate Information Bulletin, from an examination candidate who challenged a question on the State

examination and the topic's inclusion in any reference listed on the Candidate Information Bulletin.

Following review and deliberation of the challenged question, Vice Chair Chock made the motion, seconded by Dr. Wood, and unanimously carried to uphold the Board's exam question and answer; examination candidate's challenge was not successful.

Legislation

Chairperson Lee Loy asked if any members of the public would like to provide oral testimony on this agenda item. There were none.

Executive Officer Shahan stated there are no bills that directly affect the profession of Veterinary medicine; however, the bills listed below were being tracked. She explained that none of the three bills were passed this legislative session.

A. House Bill No. 220 – Relating to the Spaying and Neutering of Animals

Establishes a Spay and Neuter Special Fund. Allows funds from an income tax check-off to be deposited into the Spay and Neuter Special Fund. Appropriates funds.

B. Senate Bill No. 998 – Relating to the Spaying and Neutering of Animals

Establishes a Spay and Neuter Special Fund. Allows funds from an income tax check-off to be deposited into the Spay and Neuter Special Fund. Appropriates funds.

C. House Bill No. 1512 – Relating to Liability

Limits the civil liability of good Samaritans who render emergency nonmedical care and emergency nonmedical assistance to animals during an emergency.

6. Executive Officer Report

Chairperson Lee Loy asked if any members of the public would like to provide oral testimony on this agenda item. There were none.

A. AAVSB Proposed Bylaws Amendments for 2023
Executive Officer Shahan stated the proposed bylaws were distributed for informational purposes only and no action is required.

B. Member for Veterinary Technician Advisory Committee
Executive Officer Shahan stated that the terms of the previous Veterinary Technician Advisory Committee ("Committee") members have term-ed-out and she is seeking a licensed member

to volunteer from the Board to serve as a member of the Committee. She stated that it is a two-year term, but that there would be a minimal number of meetings and only on an as-needed basis. She stated that there is currently a need for the Committee to meet as there are several scope-of-practice questions that need to be addressed.

Dr. Wood volunteered to be a member of the Committee.

- C. Recognition of Outgoing Board Member
Executive Officer Shahan explained that Chair Lee Loy's term on the Board is expiring on June 30th. She thanked the Chair for her years of service on the Board.

Chair Lee Loy expressed her appreciation for the service of the other Board members.

Ch 91, HRS
Adjudicatory
Matters

Chair Lee Loy called for a recess from the meeting at 10:50 a.m. to discuss and deliberate on the following adjudicatory matters pursuant to Chapter 91, HRS. Those members and staff virtually present entered the Microsoft Teams meeting.

- A. In the Matter of the License to Practice Veterinary Medicine of Krysta M. Walters, D.V.M.; VET 2023-8-L; Settlement Agreement Prior to Filing Petition for Disciplinary Action and Board's Final Order.
- B. In the Matter of the License to Practice Veterinary Medicine of Malcom E. Hickman, Jr., D.V.M.; VET 2023-7-L; Settlement Agreement Prior to the Filing of Petition for Disciplinary Action and Board's Final Order.
- C. In the Matter of the License to Practice Veterinary Medicine of John P. Moscony, D.V.M.; VET-2021-4-L; Hearings Officer's Findings of Fact, Conclusions of Law and Recommended Order.

Following the Board's review and deliberation on these matters pursuant to Chapter 91, HRS, Chairperson Lee Loy announced that the Board reconvenes to its Chapter 92, HRS, meeting at 11:15 a.m. Virtually present Board members and staff returned to the Zoom meeting.

Ms. Shahan informed the public that the Board would be holding oral arguments regarding agenda item 3.C., in the Matter of the License to Practice Veterinary Medicine of John P. Moscony, D.V.M., VET-2021-4-L; Hearings Officer's Findings of Fact, Conclusions or Law and Recommended Order.

Seth J. Corpuz-Lahne with the Regulated Complaints Office was present.

It was noted that Dr. Moscony had not joined the meeting via Zoom.

At 11:23 a.m., a phone call was placed with a voice mail left for Dr. Moscony letting him know that the Board was ready to hear his oral arguments. Executive Officer Shahan sent an email informing Dr. Moscony informing him that staff was trying to reach him via phone and providing the Zoom link (11:25 a.m.). She sent a second email with the Zoom call-in number (11:26 a.m.). Dr. Moscony did not call back or join the Zoom meeting. At 11:26 a.m., the floor was opened to the parties to present their oral arguments.

Mr. Corpuz-Lahne introduced himself and thanked the Board for granting the petition for oral arguments on the matter of Dr. Moscony, case number VET-2021-4-L. Mr. Corpuz-Lahne stated that Petitioner (RICO) brings exceptions to the Hearings Officer Hikida's recommended order as on the basis of the evidence submitted in the hearing on the petition, the petitioner has met its burden of proof to establish that the Respondent, Dr. Moscony, did not timely respond to the Board's CE audit letter and Respondent has failed to rebut the Petitioner's evidence.

He went on to say that the purpose of the oral arguments is not for the purpose of introducing additional evidence as the record has already been established at the prior hearing in front of the Board's hearings officer, but to provide the parties the opportunity to present to the Board their reasons whether the Board should exercise its discretion as the licensing authority for veterinary medicine practitioners to accept the hearings officers recommended findings and order or enter its own findings and conclusions in accordance with the evidence entered into the record at the hearing and the statutes and rules governing the conduct of veterinarians.

Mr. Corpuz-Lahne summarized the history of the case as follows: on or about October 23, 2020, the Board sent its audit of compliance letter to Dr. Moscony. On or about March 24, 2021, the Petitioner opened its inquiry into Dr. Moscony's failure to respond to the Board's audit. On February 24, 2022, Petitioner filed a petition alleging that (1) Dr. Moscony had failed to complete his required CE as no proof of his CE has been received at the time of the petition's filing, and (2) Dr. Moscony had failed to timely respond to the Board's audit. This was 489 days after the Board's audit letter. On August 4, 2022, the petition was heard by Hearings Officer Hikida. At the outset of the hearing, Petitioner withdrew its allegations that Dr. Moscony had failed to complete his CE as in the run-up to the hearing, Dr. Moscony had indeed produced proof of completion on his CE. The hearing was 650 days after the Board's audit letter.

He stated that the question before the Board today is whether in the absence of evidence from the Respondent on his statement that he timely responded to the Board's audit letter, that Petitioner's evidence that no record exists of the Respondent's reply to the audit letter establishes that it is more likely than not, that Respondent failed to timely comply to the

continuing education audit. As noted in the Petitioner's exceptions to the Hearing Officer's findings of fact, conclusions of law, and recommended order Petitioner does not contest Hearing Officer's finding of fact. However, Petitioner takes the position that the Hearings Officer gave undue weight to Respondent's statement that he timely complied. The records of the Board should be presumed to be accurate unless or until evidence is introduced or testimony is given that the Board's records are not accurate. No such evidence or testimony was produced at the hearing. Therefore, the Board should weigh the evidence that there is no record of the Respondent's timely response to the Board's audit letter, against Respondent's bare and unsupported assertion and conclude that it is more likely than not, that Respondent did not timely respond to the Board's audit letter.

The conduct and omissions of the Respondent warrant disciplinary action and are violations under HRS sections 471-9 and 471-10(b)(2). HRS section 471-9(f) mandates a timely response from licensees to the Board's audit inquiries and pursuant to HRS section 471-10(b)(2) the Board is empowered to revoke or suspend a license or fine a licensee for violations of HRS chapter 471 or the rules pursuant thereto. Licensee's compliance with the Board audits of continuing education is central to protecting the consuming public by ensuring that veterinary practitioners have taken reasonable steps to maintain and increase their knowledge of their profession. Failure to comply with the Board audit raises serious questions of fitness to practice. He concluded, Respondent's conduct and omissions with respect to the Board of Veterinary Medicine's continuing education audit warrants an appropriate disciplinary fine.

Executive Officer Shahan sent Dr. Moscony a third email (11:30 a.m.) to inform him the Board would be available for another ten minutes if he could join. Oral arguments then proceeded with Board members' questions to Mr. Corpuz-Lahne.

Ms. Wada asked if there was a range of fines that RICO had in mind that the Board could look at so determine a fair fine? She stated that other individuals who had not done or had only partially completed the required CE was fined \$500 and was directed to take the CE. In this case the individual did take the CE courses however failed to communicate or verify that information and that is why we are here.

Mr. Corpuz-Lahne stated that RICO defers to the Board for its wisdom, however there is some case history with the Board. There is a recent case: Dennis M. Barros, VET 2023-5-L where the Respondent did not respond to the audit letter. He also didn't produce certificates and didn't actually do the continuing education, so it is distinguishable from this case. In that case the Board accepted a fine as a settlement agreement. It was \$750.00. In the context that a fine should run roughly consistent among similar violation, that would be a range. However, I would also urge the Board to consider the aggravating factor of the extremely long time it took to obtain proof of Dr. Moscony's completion of his continuing education

requirements. Frankly, over a year is an awfully long time to get that information.

Ms. Wada questioned that it is not only a violation of the statutes, but I'm reading that you are here because if he had it, it could have been produced earlier and we would not be sitting here?

Mr. Corpuz-Lahne replied that it is entirely possible, but that he could not say for sure.

Vice Chair Chock stated that this occurred during the peak of the pandemic. We know that a lot of Federal agencies were shut down or working with less staff than usual. She asked if the office had made any exceptions for that type of reasoning or was that the reason he was hanging his response on – covid?

Mr. Corpuz-Lahne stated that was an argument that he raised at the hearing. That said, a significant amount of time passed in between the initial request and the time that the petition was filed.

There were no further questions. Chair Lee Loy called for a recess from the meeting at 11:35 a.m.

Chair Lee Loy proceeded with a roll call of the Board members attending virtually in Microsoft Teams. All Board members confirmed that they were present and alone.

Following the Board's review, deliberation, and decision on these matters pursuant to Chapter 91, HRS, Chair Lee Loy announced that the Board reconvenes to its Chapter 92, HRS, meeting at 12:45 a.m.

Executive Officer Shahan stated that an individual listed as "John" had joined the Zoom meeting as an attendee at approximately 12:48 p.m. Staff attempted to confirm that it was Dr. Moscony and to add him as a panelist, but the individual exited the meeting. An email was sent to Dr. Moscony (12:50 p.m.) asking him if he had logged onto the Zoom meeting. There was no response by the end of the meeting.

- A. In the Matter of the License to Practice Veterinary Medicine of Krysta M. Walters, D.V.M.; VET 2023-8-L; Settlement Agreement Prior to Filing Petition for Disciplinary Action and Board's Final Order.

The Board approved the aforementioned Settlement Agreement Prior to Filing of Petition for Disciplinary Action and Board's Final Order.

- B. In the Matter of the License to Practice Veterinary Medicine of Malcom E. Hickman, Jr., D.V.M.; VET 2023-7-L; Settlement

Agreement Prior to the Filing of Petition for Disciplinary Action and Board's Final Order.

The Board approved the aforementioned Settlement Agreement Prior to Filing of Petition for Disciplinary Action and Board's Final Order.

C. In the Matter of the License to Practice Veterinary Medicine of John P. Moscony, D.V.M.; VET-2021-4-L; Hearings Officer's Findings of Fact, Conclusions of Law and Recommended Order.

The Board disagrees with the Hearing Officer's conclusions of law that there was insufficient evidence that the Respondent violated HRS section 471-9(f) and that HRS sections 471-10(b)(2) and 436B (19)(17) are applicable:

471-9 (f):

The board may conduct random audits of licensees to determine compliance with the continuing education requirement. The board shall provide written notice of an audit to a licensee randomly selected for audit. *Within sixty days of notification, the licensee shall provide the board with documentation verifying compliance with the continuing education requirement established by this section.*

The Board will be issuing a new proposed final order recommending a Letter of Reprimand (there will be opportunity for exceptions, statements of support and/or oral arguments).

Next Meeting:

September 8, 2023
10:00 a.m.
Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, 1st Floor
Honolulu, Hawaii 96813
(Videoconference Meeting
Zoom Webinar – TBD)

Adjournment: There being no further business to discuss at this time, the meeting was adjourned at 12:55 p.m.

Reviewed and approved by: Taken and recorded by:

/s/ Kerrie Shahan

/s/ Kawehi Mau

Kerrie Shahan
Executive Officer

Kawehi Mau
Secretary

KS:km

9/8/2023

[X] Minutes approved as is.

[] Minutes approved with changes. See minutes of