

## COMMENTS FOR 2020 SUNSET BOARD MEMBERS REGARDING TBVME

I submitted public comments that are posted on Sunset's website and I hope you have read them.

In the words of the U.S. Department of Justice, antitrust laws "...prohibit business practices that unreasonably deprive consumers of the benefits of competition, resulting in higher prices for inferior products and services."

According to James C. Cooper, et. al., "State Licensing Boards, Antitrust, and Innovation", released by the Regulatory Transparency Project of the Federalist Society, November 13, 2017 <https://regproject.org/wp-content/uploads/RTP-Antitrust-Consumer-Protection-Working-Group-Paper-Occupational-Licensing.pdf>

"The problem is that, today, occupational licensing requirements often fail to focus upon the goal of enhancing consumer outcomes and, instead, perversely seek to protect incumbents from competition....economists estimate between 25 and 30% of American occupations now require a license to operate. Exacerbating the sheer increase in scope is the problem of self-interested regulators. In many instances, the governing entity is not an independent group of elected officials directly accountable to the public, but rather a board of appointed practitioners whose primary job remains operating in the very same market they are regulating." Cooper et al conclude this type of state agency "...is a threat to consumer welfare" and question whether "the licensing restrictions in fact enhance consumer outcomes." In the case of the TBVME, the answer is an emphatic no.

The TBVME is in place to protect the public (consumers) via licensing restrictions and regulatory oversight; however, I would argue that instead it deprives us of the benefits of competition, resulting in higher costs for inferior products and services, contributing to the deaths of companion animals people love as family members. The TBVME allies with the TVMA to aid and abet licensees. This special interest group of about 10,000 veterinarians (a tiny number versus the millions of Texan families that include pets) is coddled by the state, allowing it to stifle all competition and pursue in the courts any veterinarian who dares to challenge the system in the best interests of pets and their people. The TBVME also blocks public access to knowledge of who the bad veterinarians are by dismissing most standard of care complaints and not publishing the board orders of the veterinarians who have them. Incompetent veterinarians who harm companion animals are not avoidable because the public doesn't know who they are. The TBVME is not protecting the public.

As a result of zero competition and the failure to remove bad actors, our pets lead shorter and sicker lives. Profits take priority over patient care. This is an industry with deceptive practices and no accountability.

While the State is required to actively supervise the TBVME (North Carolina State Board of Dental Examiners vs Federal Trade Commission), they do not seem to be doing so effectively. The TBVME willfully ignores Sunset requirements. The TBVME pursues legal action in cases that are not in the public's best interest. The public pays much higher veterinary costs for lower quality services and many suffer the injuries and/or wrongful deaths of their beloved pets. Pet owners in distressed areas of the state who cannot afford veterinary care are forced to turn their injured or sick pets into shelters or face possible animal cruelty charges.

Veterinarians are a leading cause of companion animal deaths, but there is little information available to pet owners about this issue. There appears to be an organized effort to mislead the public and cover up the extent of veterinary malpractice, including planted opinion influencing articles. In Texas, victims of veterinary malpractice may be contacted (as I was) and offered pay-off settlements with non-disparagement clauses to effectively silence them. The TBVME also makes it harder for the public to find out if their veterinarian is competent by hiding disciplinary board orders. The result is a lot of dead pets and grieving Texas families who are shocked to learn the veterinarian they trusted who killed their pet is being protected by the agency they thought was protecting them. Although the prevalence of veterinary malpractice is unknown, the fact the industry is making such efforts to cover up pet deaths suggests it is extensive.

Instead of fiercely advocating for protection of the pet-owning public, as is its duty, the TBVME is now asking for even more leniency to dismiss guilty veterinarians from their negligence and malpractice in spite of the procedural statutes enacted in response to the last Sunset review. The TBVME asks you to allow them to dismiss complaints without board action, thereby minimizing any record of the malpractice, further cloaking harmful practices.

The TBVME also asks to be free of any supervision or accountability for another eight years.

The anticompetitive behavior by veterinarians is exacerbated by the exemption of veterinary negligence and malpractice under the Texas Deceptive Trade Practices Act by SB 1497, 70th Legislature, 1987. Please revisit that bill. There must be consequences for veterinarians who harm and kill our pets above and beyond the "education" and "voluntary compliance" the TBVME openly admits it prioritizes over meaningful disciplinary action.

The ways veterinarians may harm people and their pets are too many to list, but include economic harms (e.g., with no payer restrictions it is possible to overcharge for services, pet foods - particularly “prescription” pet foods - and products, prescribing and dispensing medications that have harmful side effects including flea and tick preventatives often without warning pet owners, administering general anesthesia for many procedures that do not require it in humans (e.g., diagnostics such as radiographs and other imaging, certain treatments such as dental cleanings, intra articular injections, radiation therapy) - even worse is that people perceive it is just like human anesthesia when it carries far more risk - dogs are  $\approx$ 170 times, cats are  $\approx$ 240 times, and horses are  $\approx$ 1,900 times more likely to die under anesthesia (this is probably due to the fact that specialists and monitoring equipment to keep our pets safe during anesthesia are expensive and very few clinics have them), allowing staff to do a veterinarian’s job, unnecessary diagnostic tests and surgeries, giving non-core vaccinations to pets who do not need them and are harmed by them especially older pets and small pets for whom vaccine dosages are not always proportionally given (<https://kfoxtv.com/news/special-assignments/over-vaccinating-pets-can-lead-to-serious-injury>), not reporting adverse events directly to the FDA, EPA or USDA (not reporting means dangerous products are not timely withdrawn despite unacceptable harm to pets, yet veterinarians are not required to report adverse events, and they continue to sell those products), using pets as guinea pigs to test a novel procedure or implant without informed consent from the pet owner, abusing drugs or alcohol and practicing under the influence, hiding criminal histories, changing medical records or noting their records incorrectly or not at all to cover their malpractice, and lying to owners regarding the cause of pet deaths and injuries.

Financial costs for veterinary services can be thousands of dollars and even tens of thousands of dollars, far more than most people expect or can afford, resulting in the need to take on credit card debt or high cost loans offered during times of vulnerability by some predatory veterinary clinics. Pet insurance is unregulated, expensive, and premiums are rising because cost limits are not imposed so long as diagnostics and interventions are prescribed by a licensed veterinarian. The burden of unregulated veterinary care can be tremendous and far beyond economic. Pets, owners, and even veterinarians pay the price. Pets suffer. Owners spend unpaid time out of work and, in many cases, tragically lose their beloved family members. Noble veterinarians suffer severe burnout. The costs to the public for the lack of regulation and oversight of veterinarians is enormous, all for the benefit of this small special interest group.

Despite all of these issues, the TBVME is focused on the minor problem of non-veterinary professionals practicing without a license. While I suspect the TBVME

is exaggerating this problem in order to promote their campaign for their own police department, which Governor Abbott fortunately vetoed in 2018, this is occurring in depressed areas of the State because the cost of veterinary care is now out of reach for many people. A police department for the TBVME is not in the best interest of the public. A better approach to this issue is to promote reasonably priced veterinary services, but the TBVME has stridently acted to eliminate any competition. It sued Dr. Ellen Jefferson of Austin Pets Alive (she is also Emancipet's founder), which might have terminated the no-kill shelter efforts, but fortunately the TBVME lost. The TBVME also sued Dr. Ron Hines, who was using his professional speech to assist clients online, but after years of arguments in the courts, Dr. Hines recently won his First Amendment appeal in the US Court of Appeals for the Fifth Circuit. (Veterinary telemedicine is promising because it offers a lower cost and broader reach option for pet owners. It is an opportunity to encourage desperately needed competition.) The TBVME was also ordered by the FTC to cease and desist when it tried to eliminate equine dental providers by calling teeth floating veterinary care. The TBVME responded by requiring licenses for teeth floating, despite finding no instances of horses injured by equine dental providers. Proposals to restrict the services provided by Emancipet fortunately failed in the 2018 legislative session after a huge public outcry. As one speaker stated, he doesn't know of any veterinarians who are hurting. Removing low cost options will not force citizens to more expensive options. It just removes veterinary care for many pets. These actions are clearly not for public benefit. These acts by the TBVME are solely to control their market and suppress competition. This is a market-participant controlled agency whose board members are chosen by the TVMA (veterinary lobbyists) and approved by Governor Abbott. People and our pets are paying the high price.

The 2019 TBVME Board Member Training Manual includes a single paragraph regarding antitrust, but it pertains to mitigating risks to its licensees, not the public the TBVME is supposed to serve. The ethics course provided to TBVME staff is disturbingly named "Mission to Mars" and I hope that is not a reference to Mars, Incorporated which owns and controls a large portion of veterinary clinics and pet food manufacturers.

John Helenberg states he wants a group of independent veterinarians to review complaints because unpaid board member veterinarians are being kept too busy. A solution more appropriate for the public is to remove all veterinarians from the TBVME board and use a rotating list of veterinarians solely for standard of care case reviews. This would also remove the rampant conflicts of interest that currently

exist. Veterinarians are not needed for administrative work. Bear in mind that it makes no difference who reviews complaints if the majority are dismissed.

Roughly 60% of Texas families have pets. True rates of harm, deaths, and financial losses due to veterinary malpractice are unknown. Costs of veterinary care have been rising dramatically with zero oversight. The industry should not be allowed to continue to prey on the public unchecked. The TBVME must regulate. The State must ensure that happens.

Please legislate to make the TBVME work for millions of Texas pets and their people. Please review the TBVME again in two years (a full review) to ensure it is making progress on needed changes. Please actively supervise this agency. Please ensure the TBVME does nothing to interfere with lower cost veterinary telemedicine following the Dr. Ron Hines victory (history tells us they will try.) This industry is depriving the public at large of the benefits of competition, resulting in higher prices for inferior products and services. Patient care must be prioritized. Transparency is badly needed along with accountability. Please do not reward this agency with eight years of zero oversight while it continues to harm the public.

Thank you for reading.

Judy C. Santerre

My comments are made in memory of my beloved horse, Harvey, brutally killed by gross veterinary malpractice.

**From:** [Elizabeth Jones](#)  
**To:** [Trisha Linebarger](#)  
**Subject:** FW: Public Input Form for Agencies Under Review (Public/After Publication)  
**Date:** Wednesday, December 2, 2020 3:04:14 PM

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From: sunset@sunset.texas.govOn Behalf Of Texas Sunset Commission  
Sent: Wednesday, December 2, 2020 3:03:29 PM (UTC-06:00) Central Time (US & Canada)  
To: Sunset Advisory Commission  
Subject: Public Input Form for Agencies Under Review (Public/After Publication)

Agency: STATE BOARD VETERINARY MEDICAL EXAMINERS

First Name: Judy

Last Name: Santerre

Title:

Organization you are affiliated with:

Email:

City: Wimberley

State: Texas

Your Comments About the Staff Report, Including Recommendations Supported or Opposed:

The Sunset Advisory Commission staff's 2020 review of the TBVME reports no improvement in the TBVME since the 2016 review, when Senator Kirk Watson's scathing assessment caused three of its board members to quit. Yet Sunset staff states the TBVME should be extended for another eight years, an incongruous and troubling conclusion. Sunset staff reports the TBVME cannot come up with data because its attempts at new computer technology have repeatedly failed over the last four years.

Data collection, tracking, and analysis is nonexistent. The word used by Sunset staff in its report is "anecdotes" and not facts, so there were no data for Sunset staff to review, the same complaint made by the Sunset Commission in 2016.

At no time during the last four years has the TBVME published all of its board orders so the public knows which veterinarians have been disciplined.

In fact, judging from the dropping numbers of complaints, most victims of veterinary malpractice are contacted (as I was) and offered pay-off settlements with non-disparagement clauses to effectively silence them, so the prevalence of veterinary malpractice in Texas is unknown.

The TBVME was to implement an interface with the Prescription Monitoring Program in order to obtain information on controlled substances prescribed by veterinarians. This appeared to be a top concern for Sunset in 2016 following its finding that veterinarians lost nine times more controlled substances than all Texas medical doctors combined. While Sunset staff reports this was accomplished, the only time the TBVME reviews veterinarian purchasing of controlled substances is prior to an inspection, which is only done approximately every ten years, and during inspections the controlled substance logs are reviewed. Given the reported IT issues, it is unclear whether the TBVME is reviewing this information and if the targeted inspections which were intended are taking place. This occurred with the

2018 change in rule no longer permitting anonymous complaints. The people in the best position to notice problems with a veterinarian early, before harm can happen to either the public, their pets, or the veterinarian, are the veterinary technicians and staff who work in the clinics. As it now stands, employees must risk their jobs and careers to do the right thing. The only people protected by not reviewing anonymous complaints are dangerous veterinarians. Please restore investigation of anonymous complaints so staff in veterinary clinics can safely report problems early.

The TBVME requires continuing education hours but only checks for them during rare inspections. They could easily and more cheaply be doing this online the same way attorneys and pharmacists do.

The TBVME also stopped the board notes that were issued quarterly to inform both veterinarians and the public of the agency's activities, including disciplinary actions taken. This lack of transparency is at odds with Sunset's requirements.

Sunset points out legal structures that govern human healthcare do not apply to the veterinary profession because veterinarians treat animal patients, however, in the absence of that legal structure, consumer protections apply, and in the abuse of companion animals for money, a ton of ethics considerations as well. Deceptive practices in veterinary medicine are prevalent. People with pets are unaware of the dangers they face in a veterinary clinic. The TBVME not only does nothing to correct these abuses, they support them, including ignoring and dismissing gross violations of veterinary malpractice, including animal cruelty, to the shock and dismay of victims who have lost beloved pets to veterinarians they trusted. Roughly 60% of Texas families have pets. True rates of harm and losses due to malpractice are unknown to Sunset or the public. At the same time, costs of veterinary care have been rising dramatically with zero oversight.

The TBVME has been assisting in criminal investigations for other agencies and local law enforcement, but there is no data to report how often. While Sunset states this is not "out of line" with its mission, they admit they don't have data on those either. The TBVME isn't meeting its own duties, so it should not be expanding its scope to others. Neither Sunset staff nor the TBVME reports the status of the Dr. Ron Hines case, which the TBVME pursued to the Supreme Court to block this veterinarian from practicing telemedicine, which is now legal in human and veterinary medicine. It seems a waste of public resources and taxpayer money.

Following Senate Bill 1497 from the 70th Legislature in 1987, which approved the exemption of both veterinarian negligence and veterinarian malpractice from the Deceptive Trade Practices Act, protecting citizens and their pets from both became manifest. If the State exempts malfeasance from special interest groups, it must legislate to ensure those special interest groups are not victimizing the public and harming companion animals.

The guilt or innocence of a veterinarian matters, but it takes ethical government. There are many things the State could be doing to protect the public from less than quality veterinary care. The State should consider the following:

(1) Adopt informed consent so people can make good decisions for their pets.

When we take our car in for repairs, the mechanic will diagnose the problem and let us know what's wrong and how much it will cost to fix it. We either agree or take the car elsewhere. By law, our pets are consumer products. Informed consent means "the veterinarian has informed the client, in a manner that would be understood by a reasonable person, of the diagnostic and treatment options, risk assessment and prognosis and has provided the client with an estimate of the charges for veterinary services to be rendered and the client has consented to the recommended treatment"

(State of Mississippi.) The TBVME should require informed consent for all interventions, not just select "alternative" ones. Our pets are more important to us than our cars. We consider them our family members. Included with informed consent should be advising pet owners of the difference between human anesthesia and pet anesthesia so they can make informed decisions about its use, particularly for elective procedures like teeth cleaning. People assume human and pet anesthesia are the same, but there is dramatically more risk for animals.

(2) Revise the vaccination laws to follow the AAHA Guidelines and include an allowance for titers in lieu of vaccines so pets with immunity don't have to risk another vaccination they don't need. The State of Delaware has accepted titers in lieu of rabies vaccination earlier this year, the first state to do so.

(3) Require veterinarians to report adverse events directly to the appropriate federal agency so dangerous products are timely withdrawn. Given the lack of informed consent statute, dangerous products may be sold without appropriate risk and benefit discussions with pet owners.

Good veterinarians already follow a lot of these practices.

The last Sunset was supposed to correct a lot of the problems that were exposed in 2016, but instead of becoming more transparent and responsive to the public the TBVME serves, the opposite has occurred. The TBVME is less transparent and has gone further to block veterinary malpractice victims' access to any information on their cases. The new complaint process is not even on the TBVME website. The website says the pamphlet will be sent with the complaint form, but when the public clicks on the space provided, only the complaint form comes up. Apparently, the public has to know to file a public information request to get the complaint pamphlet, and that may take weeks to fulfill.

The TBVME cut the statute of limitations for complaints from four years to two years with no public comment

period, cutting off victims from timely filing. The TBVME continues to dismiss obvious cases of malpractice. The board meetings have been shortened, the agendas hidden from the public (they are on the Secretary of State's website, not the TBVME's website), no board meeting materials whatsoever are available prior to or at meetings, and public comments have been moved to the end of the meetings.

The TBVME has been dismissing guilty veterinarians for so many years, there are a lot of bad actors practicing. On the rare occasions when the TBVME issues a board order, the public can't see it. Since the COVID pandemic, only one public meeting was held online while other agencies continued operations and veterinary clinics remained open. Most clinics have separated pets from their owners, making strict oversight even more vital.

Please legislate to make the TBVME work for the citizens of Texas. Please review the TBVME again in two years to ensure it is making progress on needed changes. Patient care must be prioritized. Transparency is badly needed along with accountability.

My comments are made in memory of my beloved horse, Harvey, brutally killed by gross veterinary malpractice.

Thank you for your consideration.

Judy C. Santerre

Any Alternative or New Recommendations on This Agency: Please see comments above.

My Comment Will Be Made Public: I agree