



# Veterinary Regulation News

Volume 17, Issue 2

## The Job Analysis for the VTNE is Officially Underway

AAVSB is pleased to announce that the Job Analysis Project for the Veterinary Technician National Examination (VTNE) is underway! The main objective of the Job Analysis Project is to update the domains, tasks, and knowledge areas that comprise the content outline for the VTNE to ensure the content outline of the exam is aligned with current practice in the veterinary technician profession. In keeping with best practices in the credentialing industry, a job analysis is conducted approximately every five years and it serves as the blueprint for exam development. The AAVSB conducted the last VTNE Job Analysis in 2006.



The Job Analysis Task Force at the October workshop

The Department of Research and Advisory Services at Professional Examination Service (PES) is working with AAVSB as the contractor on this study and they facilitated the first task force meeting on October 15-16, 2011. This meeting was held in Kansas City and involved an ad hoc committee of eleven veterinary technicians who are subject-matter experts from the United States and Canada selected to represent a broad range of practice settings. The role of the job analysis task force is to critically review the current test content outline of the VTNE and update it as appropriate to reflect contemporary practices in the veterinary technician field.

### The VTNE Job Analysis Project is comprised of three phases:

- **Phase one** involved the VTNE Committee collecting preliminary data to identify trends/changes in the profession and the task force updating the delineation of domains, tasks, and knowledge describing the work of the veterinary technician.
- **Phase two** will involve 20 subject-matter experts selected as independent reviewers to comment on a draft revision to the domains of practice, job tasks, and knowledge bases that comprise the VTNE test content outline. Reviewers will be asked to examine the document from the standpoint of clarity, comprehensiveness, and relevance to current practice in the profession; and to provide suggestions for improvement.
- **Phase three** will involve incorporating the domains, tasks, and knowledge into a survey document to be validated by 5,000 veterinary technicians in the field throughout the United States and Canada. The results of the survey will go through a final review by AAVSB's VTNE Committee in making recommendations regarding updates to the test outline for the examination.

### Inside this issue:

The Legal Corner	2 - 3
Annual Meeting Information	4
Election and Voting Results	5
Program Updates and Highlights	6
Board of Directors Updates	6 - 7

## The Legal Corner *with Dale Atkinson*

# No Vacation from Attorney's Fees

Under certain circumstances a prevailing party against a governmental entity, including a state veterinary board, may be awarded attorneys fees. The entry of such an award means the governmental defendant must pay the attorneys fees of the plaintiff. A court's authority to impose attorney's fees is set forth in statute and is intended to encourage private litigation to implement public policy. An award of attorney's fees may also act to punish the offending governmental body determined to have violated rights of the impacted plaintiff. An example of when attorney's fees can be awarded is found under the Civil Rights Attorney's Fees Awards Act of 1976 whereby "the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs... ."

Most common in litigation against a governmental entity are allegations that the state regulatory board violated a person's rights under section 1981 and/or section 1983 of the Civil Rights Act.

42 U.S.C. § 1981 provides:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution, and laws, shall be liable to the party injured in an action at law, suit

in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Thus, when a candidate for licensure as a veterinarian feels that the veterinary board unlawfully denied licensure, and such denial was based upon a discriminatory issue(s), the candidate likely will make allegations of violations of federal law under section 1981 and section 1983 of the Civil Rights Act. If deemed to be a prevailing party, the candidate may be awarded attorney's fees as part of the court order.

An applicant for licensure as a veterinarian (issued a limited license under the North American Free Trade Act) eventually sought a "permanent" license in New York. The applicant was a Canadian citizen living and working in the United States. Based upon what was to be the expiration of his limited license (not subject to renewal), the veterinarian filed litigation in federal court against the New York State Department of Education (Department) which has oversight over the veterinary board. The veterinarian argued that the portion of the New York veterinary practice act that required applicants for licensure to be either United States citizens or an alien lawfully admitted for permanent residence in the United States was unconstitutional and violated his rights under section 1981 and 1983 of the Civil Rights Act.

In June 2008, the United States District Court for the Western District of New York held that the relevant portions of the New York law were unconstitutional. As a result of the June 2008 order, the veterinary board was required to issue a license to the veteri-

*(Continued on page 3)*

## No Vacation from Attorney's Fees, cont'd from page 2

narian. Further, under a nuance of New York law, the issuance of the veterinary license could not be revoked by a reversal of the District Court opinion by an appellate court. Thus, the Department asked for a "stay of execution" of the District Court order, effectively seeking to not issue the license pending the appeal. This motion for a stay was denied and the Department issued a permanent license to the veterinarian.

In January 2009, the veterinarian moved for and was awarded in excess of \$74,000 in attorney's fees as a prevailing party. In the interim, the veterinarian applied for and received his permanent resident status. Meanwhile, the Department appealed the District Court ruling to the Second Circuit Court of Appeals. Based upon his permanent resident status and qualification for licensure, the appellate court deemed as moot the District Court ruling and dismissed the appeal and vacated the judgment.

As a result of all this activity, the Department also moved to vacate the award of attorney's fees based upon the dismissal and vacation of the District Court judgment. This request was denied by the District Court and the Department appealed to the Second Circuit Court of Appeals.

On appeal, the Department argued that because the District Court judgment had been vacated, the veterinarian was no longer a prevailing party as required under federal law and thus no longer entitled to attorney's fees. Addressing the merits of the Department's arguments, the court noted that in order to be deemed a prevailing party and qualify for attorney's fees, there must be a "judicially sanctioned change in the legal relationship between the parties."

The Department conceded that at one point in time the veterinarian was a prevailing party but that such a status changed when the appeal was dismissed and the judgment vacated. In rejecting this argument, the Court of Appeals emphasized three important factors which indicate that the veterinarian was a prevailing party. First, the court noted that the veterinarian obtained a judgment on a fully de-

veloped record, not an abbreviated proceeding such as a preliminary injunction. This fully developed record supports that fact that a party actually prevailed on the merits.

Second, the court noted the District Court opinion was not overturned or reversed, but was rather merely vacated as moot. The fact that the veterinarian received his permanent resident status rendered as moot the legal basis for the dispute and did not require nor result in a reversal of the District Court ruling.

Finally, the court held that the veterinarian did not "leave court empty handed; he 'prevailed' in June 2008 when he left with an order requiring the Department to issue him a veterinarian license." This judicially sanctioned change remains in place because, as the Department conceded, "once [veterinarian] received the license, he was entitled to keep it, even if the judgment in his favor was subsequently vacated." Thus, even if the District Court judgment was reversed, the veterinarian would still be the prevailing party because he would keep his license as a consequence of the judgment.

Based upon these factors, the Court of Appeals held that the veterinarian was and remains a prevailing party entitled to the award of attorney's fees. Veterinary boards must be aware of the potential for an award of attorney's fees in the event of a judgment in favor of a challenging plaintiff. "Prevailing party" determinations are subject to not only interpretation, but discretion of the federal court.

***Kirk v. New York State Department of Education***, 644 F. 3d. 134; 2011 U.S. App. LEXIS 13675 (2<sup>nd</sup> Circuit 2011)



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## 2011 AAVSB Annual Meeting and Conference

This year's Annual Meeting and Conference was hosted in the beautiful city of **New Orleans**. Over 120 veterinary professionals attended, including **40** Voting Delegates. Attendees and guests enjoyed networking, dining and a fabulous Second Line parade to one of New Orleans' best restaurants. The proceedings commenced Friday morning when Dr. David Ylander, AAVSB President, welcomed everyone and introduced the line-up of speakers. Over the next two days, attendees became engaged in numerous presentations regarding veterinary regulation, and Voting Delegates participated in the business meeting (election results on page 5). Dr. Ylander ran the meeting before handing the gavel over to the incoming AAVSB President, Dr. Helen Tuzio, for the closing ceremony on Saturday. Overall, the conference was a huge success. Thank you for all the effort put forth by the attendees, Committee members and AAVSB Board of Directors. We look forward to another successful event next year in **Seattle**, Washington!



*The 2011 conference summary and presentation slides can be accessed through MyAAVSB on the website. Please contact Member Services at [aavsb@aavsb.org](mailto:aavsb@aavsb.org) to set up an account.*



**Save the Date!**

*Top right (above): The Jaywalkers Second Line Jazz Band escorts attendees to dinner at Broussard's. Top, left: Dr. Gary Levy (LA) welcomes Dr. David Ylander (NE) and attendees to Louisiana. Top, right: Caitlin Pohlit, AVMA Student Liaison. Middle, left: Jess Klein and Daphne Tabbytite, AAVSB staff, welcome attendees. Middle, right: AAVSB had excellent representation from Canada, with (l-r) Dr. Tim Arthur (ON), Dr. Jennifer Willans (AB), Dr. Darrell Dalton (AB), Dr. Annabelle Denson (AB), Dr. David Lister (PEI). Bottom, left: The Bylaws Committee meets. Bottom, right: Dale Atkinson, AAVSB Legal, presents with Dr. Emilio DeBess.*

## 2011 AAVSB Annual Meeting and Conference

### 2011 AAVSB ELECTION RESULTS

The Delegates were presented with a slate of candidates put forth by the Nominating Committee. The results are shown below.

The Delegates approved the slate of candidates as follows:

#### **AAVSB Board of Directors**

President-Elect – Anne Duffy, RVT

Treasurer—John Lawrence, DVM

Director—Dan Danner, DVM

Director – Tom Kendall, DVM

Director – Frank Walker, DVM

A complete listing of the 2011-2012 AAVSB Board of Directors is located on page 8.



Front, (left-right: Dr. Dan Danner, Ms. Anne Duffy, RVT, Ms. Robyn Kendrick, Dr. Helen Tuzio, Dr. Beckey Malphus. Back, left-right: Dr. David Ylander, Dr. Tom Kendall, Dr. Frank Walker, Dr. John Lawrence

#### **AAVSB Representative to the NBVME**

Jay Hedrick, DVM

The other AAVSB representatives to the NBVME include Joyceanne Fick, Meg Glattly, DVM and Lila Miller, DVM.

#### **2012 Nominating Committee**

Maulid Miskell

Chris Runde, DVM

### 2011 AAVSB VOTING RESULTS

The Delegates also voted on five proposed Bylaws Amendments at the 2011 Annual Meeting and Conference. Results are below.

Proposed Amendment #1 - The amendment proposes the designation of a Public Member to the Board of Directors. *Not passed.*

Proposed Amendment #2 - The amendment proposes the designation of a Public Member and a Licensed Veterinary Technician to the Board of Directors. *Not passed.*

Proposed Amendment #3 - The amendment proposes adding "Associate Member" to the list of possible qualifications for representatives to the NBVME including the Public Member representative. *Passed.*

Proposed Amendment #4 - The Nominating Committee remains an essential task of the governance of AAVSB. Adding Associate Members to the list of potential qualified Nominating Committee candidates would allow for selection from a larger pool of potential qualified nominees. *Passed.*

Proposed Amendment #5 - Increasing the terms of the elected members to the Nominating Committee allows these individuals to gain further knowledge about the Association which the Bylaws Committee feels is beneficial for the nomination process. Staggering the terms of the elected positions to the Nominating Committee allows for continuity of the knowledge of the Committee and the nomination process. *Passed.*

## Meet AAVSB's President of the Board of Directors



Dr. Helen Tuzio at the 2011 Annual Meeting and Conference

Dr. Helen Tuzio became President of AAVSB at the 2011 Annual Meeting and Conference held in New Orleans, Louisiana. Dr. Tuzio has regularly attended AAVSB meetings since she was the Associate Dean and Clinical Program Director at Ross University, where she first became interested in regulatory medicine. Dr. Tuzio became more active in the AAVSB in 2004, when she joined the AAVSB Board of Directors and served as a liaison to the New York State Board for Veterinary Medicine (NYSBVM), Director, Secretary/Treasurer, and of course President-Elect in addition to her new presidency.

Known for her love of cats, Dr. Tuzio has practiced veterinary medicine for over twenty years in New York, and continues to serve as a role model for practitioners through her publications, leadership, and involvement with both local and national professional organizations. She has represented the NYSBVM at numerous AAVSB meetings, and served as their Vice-Chairperson and head Chairperson over the last four years. Dr. Tuzio has also worked with the NBVME and VTNE Committee to oversee and develop content for national exams. Dr. Tuzio's varied involvement and dedication to the veterinary profession will no doubt serve her well as she leads AAVSB for her presidential term.

[A Message From the President](#)  
 "AAVSB is not a separate entity but a conglomerate of the individual state boards, and we need participation from everyone."

## AAVSB Program Updates and Highlights

As this year ends, I want to once again thank everyone involved with the AAVSB for another remarkable and eventful year. In reflecting on 2011, there were so many things we were able to achieve through our programs and activities in support of the AAVSB mission. Some 2011 highlights include:

- Board of Directors developed new multi-year strategic priorities and a long range capital investment plan
- Successful implementation of the new Delegate Funding Program
- VTNE Job Analysis Project was launched
- Delegates from 40 jurisdictions were represented at the 2011 Annual Meeting
- VIVA transferred over 5,000 national exam scores for veterinarians and veterinary technicians
- More than 1,100 RACE programs were processed
- Over 200 PAVE certificates were issued
- Over 6,000 candidates took the VTNE
- The Board of Directors and Committees volunteered over 3,000 hours



Robyn Kendrick, AAVSB Executive Director

In addition to our regular programs, we continue to focus on outreach to our Member Boards and other AAVSB stakeholders with the goal of increasing overall awareness of the organization and participation in the programs and services, and to secure strong, active relationships with allied groups in the interest of public protection.

Best wishes for a fabulous holiday season and successful 2012! - *Robyn Kendrick*

## AAVSB Welcomes Newest Board of Directors Members

Dr. Tom Kendall grew up in Sheridan, Indiana and moved to Oakland, California after attending veterinary school at Purdue University. He quickly became the owner of a small animal practice in Sacramento, which he has maintained since 1982. Dr. Kendall is the current Vice-President of the California VMB, and strives to protect consumers by working with the California Legislature as a member of the VMB Legislative Committee. Dr. Kendall has served in the past as Chairman of the California Veterinary Medical Association Legislative Committee and also served as President in 1997-1998. In addition to working with state agencies, Dr. Kendall has reached out to his local community by appearing on television and radio programs in an effort to help educate the public on caring for their pets.



Dr. Tom Kendall with his cat, Dorrie

Dr. Kendall's other interests include management and education, and these have led him to various opportunities in teaching, supporting younger veterinarians seeking hospital ownership, and helping to educate the public. Dr. Kendall has volunteered his time teaching at UC Davis and has worked with the AAHA Board of Directors and AAHA Student Chapters - his involvement with students has spanned over three decades. He is also a Certified Veterinary Practice Manager (CVPM), and has helped young veterinarians at five small animal practices reach their goals of hospital ownership.

Dr. Frank Walker has been a member of the North Dakota Board of Veterinary Medical Examiners since July 2002, and has served as Secretary/Treasurer of the North Dakota Veterinary Medical Association since 2003. He has been active with the AAVSB since 2003 having served on the AAVSB's Constitution and Bylaws taskforce and the Nominating Committee in the past and currently serves on the By-Laws & Resolutions Committee. In 2004, Dr. Walker was elected to a six-year term on the AVMA Council on Education, representing private mixed clinical practice. He also served as the COE's liaison representative to the AVMA Committee on Veterinary Technician Education and Activities (CVTEA). Dr. Walker is retired from active mixed-animal practice, but he remains active in the veterinary profession, and in agriculture.



Dr. Frank Walker

He has a lifelong interest in cattle and maintains his own ranching operation with 165 head of cow-calf pairs. By demonstrating successful practices in his own herd he is able to assist many local operators with herd health and management issues. He is active in a variety of community organizations; serving as treasurer for a community orchestra association, member of the county emergency management committee, chair of the Eddy County Planning and Zoning Committee, and president of the Eddy County Farm Bureau. Dr. Walker is active within his local legislative district and has twice been a candidate for the state senate.

Thank you to all of our Staff, Volunteers, and Board members!



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### AAVSB MISSION

To reliably provide quality resources and accurate information for veterinary regulatory agencies and professionals and allied groups in the interest of public protection.

### AAVSB VISION

To inspire active participation of all veterinary regulatory agencies in North America and to be their collective voice.

### AAVSB VALUES

Responsive, resourceful service while striving for continuous quality improvement.

## AAVSB Board of Directors

### President

Helen Tuzio, DVM  
New York

### President-Elect

Anne Duffy, RVT  
Iowa

### Treasurer

John Lawrence, DVM  
Minnesota

### Immediate Past President

David Ylander, DVM  
Nebraska

### Directors

Dan Danner, DVM  
Oklahoma

Tom Kendall, DVM  
California

Becky Malphus, DVM  
Georgia

Frank Walker, DVM  
North Dakota

### Executive Director

Robyn Kendrick

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