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The Newsletter of Oklahoma State Board Of Veterinary Medical Examiners November 2001



The BOARD NEWS

BOARD:

Kenneth E. O'Hanlon, DVM	President
Lee R. Denney, DVM	Vice-President
Dwight A. Olson, DVM	Sec/Treas
Mary G. Ballenger, DVM	Member
Ronald W. Collet, DVM	Member
Ross Dewbre, Esq.	Member

STAFF:

Cathy Kirkpatrick	Executive Director
G. Dale Fullerton	Investigator
Kelly D. Rahill	Administrative Asst
Rajanna Dixon	Investigative Asst

From the Executive Director

As a licensed veterinarian, you may at any time be notified that a complaint has been filed against you. Let me take you through the process of how a complaint is handled.

The Board receives a complaint from an individual and a case number is assigned. A committee comprised of the Board's attorney (an Assistant Attorney General), the Board Secretary/Treasurer (who is a licensed veterinarian) and the investigator, meet on a regular basis to discuss the complaints received.

It is possible the committee may ask that you supply records or clarification in writing during the discovery process. The Board Investigator may also visit you at your practice to discuss the complaint and personally ask for a copy of the records. When records are requested, be sure to include the following along with your medical history of the

patient: radiographs with the name of the pet and date taken; anesthesia log; controlled drug log; laboratory reports; client information record pre-anesthesia release forms; and any signed waivers by the client.

As the committee collects the information relative to the complaint, a decision is made by the members to determine the outcome of the case. The potential outcomes include: no violation; a confidential Letter of Concern, that is issued when conduct does not warrant formal disciplinary action by the Board, but does warrant written notice that the licensee's action raises a serious question about a violation of the Act or Rules; a citation and fine; or a full Board hearing.

If you have any questions concerning the complaint process, please contact myself or Dale Fullerton, Investigator for the Board, at the board office and we will be happy to assist you.

Cathy Kirkpatrick

Officers Elected

Annual elections for Board officers were conducted at the June meeting. Dr. Kenneth O'Hanlon was re-elected as President; Dr. Lee Denney was re-elected as Vice-President and Dr. Dwight Olson was elected as Secretary/Treasurer.

Download the Practice Act at
www.okvetboard.com

Agency Mission

The primary responsibility and obligation of the Oklahoma Board of Veterinary Medical Examiners as specified in Title 59 Sec. 698.1 et seq. and Title 775 of the Oklahoma Administrative Code is to protect the public from the unprofessional, improper, incompetent and unlawful practice of veterinary medicine. Laws, rules and regulations governing the granting and subsequent use of the privilege to practice veterinary medicine are conferred on the Board by the citizens of the State of Oklahoma, acting through their elected representatives. Additionally, the duties of proceeding against the unprofessional and unlawful practice of veterinary medicine and enforcing the Veterinary Practice Act is also delegated to the Board as specified in the above referenced statutes and administrative codes.

Board Meetings

All Board meetings are held at the Board office located at 201 N.E. 38th Terrace, Suite 1, Oklahoma City, OK.

December 14, 2001	4:00pm
January 11, 2002	7:00pm
January 12, 2002	8:30am

A complete list is available on our website.

Attorney General Opinion

01-45

QUESTION ASKED: Do Sections 6 through 8 of Senate Bill 466 (2001 OK Sess. Laws ch. 400, §§ 6-8, effective November 1, 2001, amending 59 O.S. Supp.2000, §§ 353.1, 353.13, 353.24) allow wholesalers or distributors of veterinary prescription drugs to dispense such drugs directly to a veterinarian's client?

I. INTRODUCTION

The question relates to dispensing veterinary prescription drugs. We addressed this issue earlier in Attorney General Opinion 01-21, and in part stated that a feed store or wholesale distributor may not sell or ship a veterinary prescription drug directly to a client. *Id.* at 105. You ask what effect, if any, this recent legislation has on the questions addressed in that Opinion.

In A.G. Opinion 01-21, we answered:

1. Only a pharmacist or veterinarian may lawfully fill and dispense a prescription, or an order, for a veterinary prescription drug which falls within the Pharmacy Act's definitions of "dangerous drugs," "legend drug" or "prescription drug." 59 O.S. Supp.2000, §§ 355,355.1(A), 353.18(A); OAC 535:15-3-11(a)(1996).

4. Neither a drug wholesaler nor a feed or farm store is authorized to sell a veterinary prescription drug directly to the public. 59 O.S. Supp.2000, §§ 353.1(15), 355.1(A), 353.24(4); OAC 530:20-7-1 thru 20-7-9 (1996).

Id. at 105.

Senate Bill 466 becomes effective on November 1, 2001. This bill changes the law relating to the distribution, i.e. the sale, of veterinary prescription drugs.

II. SENATE BILL 466 AMENDMENTS

In general, the State law which governs dispensing drugs, whether human or animal, is the Oklahoma Pharmacy Act, 59 O.S. 1991 & Supp.2000, §§ 355-366 ("Pharmacy Act"). Senate Bill 466 amended the Pharmacy Act's definition of "wholesaler" or "distributor" as follows:

"Wholesaler" or "Distributor" means a person engaged in the business of distributing dangerous drugs or medicines at wholesale to pharmacies, hospitals, practitioners, government agencies, or other lawful drug outlets permitted to sell or use drugs or medicines, or as authorized in subsection G of Section 353.13 of this title.

2001 Okla. Sess. Laws ch. 400 § 6(15) (amending 59 O.S. Supp.2000, § 353.1(15)). Senate Bill 466, § 7 (G) added Section 353.13 (G) as follows:

Nothing in the Oklahoma Pharmacy Act shall prevent veterinary prescription drugs from being shipped directly from a wholesaler or distributor to a client; provided, such drugs may be dispensed only on prescription of a licensed veterinarian and only when an existing veterinary-client-patient relationship exists.

2001 Okla. Sess. Laws ch. 400 § 7(G) (amending 59 O.S. Supp.2000, § 353.13). Also, Senate Bill 466 amended Section 353.24 as follows:

It shall be unlawful for any person, firm or corporation to:

4. Enter into any arrangement whereby prescription orders are received, or prescriptions delivered at a place other than the pharmacy in which they are compounded and dispensed. However, nothing in this paragraph shall prevent a pharmacist or his employee from personally receiving a prescription or delivering a legally filled prescription at a residence, office or place of employment of the patient for whom the prescription was written. Nothing in this paragraph shall prevent veterinary prescription drugs from being shipped directly from a wholesaler or distributor to a client; provided, such drugs may be dispensed only on prescription of a licensed veterinarian and only when an existing veterinary-client-patient relationship exists[.]

2001 Okla. Sess. Laws ch. 400 § 8 (amending 59 O.S. Supp.2000, § 353.24). These amendments modify Oklahoma law by authorizing a "wholesaler" or "distributor" of veterinary prescription drugs to ship the veterinary prescription drugs directly to the client.¹ These amendments do not change or modify the requirement that veterinary prescription drugs must be prescribed by a veterinarian pursuant to a valid veterinary-client-patient relationship.²

¹ *Oklahoma Administrative Rules describe the manner in which controlled dangerous substances and veterinary prescription drugs may be dispensed. Such drugs may be dispensed only on "order" or "written order" of a veterinarian and only when an existing veterinary-client-patient relationship exists. OAC 775:25-1-3(a),(c),(d) (2000). The Rules further provide that such drugs for use in food, or for administration to a food or commercial animal, may be shipped directly from the wholesaler to the client provided certain labeling conditions are met. OAC 775:25-1-3(d) (2000).*

² A "veterinarian-client-patient relationship" is defined at 59 O.S. Supp.2000, § 698.2(10) as:

a. [T]he licensed veterinarian has assumed the responsibility for making medical judgments regarding the health of an animal or animals and the need for medical treatment, and the client, owner or other caretaker has agreed to follow the instructions of the licensed veterinarian; and

b. there is sufficient knowledge of the animal or animals by the licensed veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal or animals in that:

(1) the licensed veterinarian has recently seen or is personally acquainted with the keeping and care of the animal or animals, or

(2) by medically necessary and timely visits to the premises where the animal or animals are kept or both, and

c. the licensed veterinarian is readily available for follow-up in case of adverse reactions or failure of the regimen of therapy, or has arranged for emergency medical coverage, and

d. would conform to applicable federal law and regulations[.]

Id.

III. FEDERAL LAW DOES NOT PROHIBIT A WHOLESALER OR DISTRIBUTOR FROM SHIPPING A VETERINARY PRESCRIPTION DRUG DIRECTLY TO A CLIENT

The Sixth Circuit addressed the issues of prescribing and dispensing veterinary prescription drugs in the case of *United States v. Colahan*, 811 F.2d 287 (6th Cir. 1987). There, the Sixth Circuit made it clear that under federal law a veterinarian must issue a prescription or order for a veterinary prescription drug. *Id.* at 294. However, if allowed by a particular state law, that prescription or order could be filled by a non-pharmacist. *Id.*

The appellants in *Colahan* argued that in 21 C.F.R. § 201.105(a)(1), the use of the phrase "prescription or other order of a licensed veterinarian" allowed greater flexibility in the distribution of veterinary prescription drugs than human prescription drugs.

Letter From The Assistant Attorney General

Re: Certification of Veterinary Drugs

Dear Ms. Kirkpatrick:

It is my understanding that following the issuance of Attorney General Opinion 01-45, the following question arose:

May a “wholesaler” or “distributor” of veterinary prescription drugs, dispense a veterinary prescription drug directly to a veterinarian’s client when the veterinary prescription drug has never been “certified” by a pharmacist or other licensed practitioner?

This question arose because of the recent legislation which allows a “wholesaler” or “distributor” of veterinary prescription drugs to dispense such drugs directly to a veterinarian’s client.¹ The legislation further provides that veterinary prescription drugs may be shipped directly to a veterinarian’s client “only on prescription of a licensed veterinarian and only when an existing veterinary-client-patient relationship exists.” 2001 Okla. Sess. Laws ch. 400 § 8 (amending 59 O.S.Supp.2000, § 353.24). Likewise, the new legislation does not prohibit the veterinarian’s client from paying the “wholesaler” or “distributor” directly for the veterinary prescription drugs.

Stated more generally, the question is whether any employee of a “wholesaler” or “distributor” may fill and dispense a veterinary prescription drug – even if that employee is not a registered pharmacist. The answer is no.

The Oklahoma Pharmacy Act requires a registered pharmacist or assistant pharmacist to “certify the finished prescription” before “delivery to the patient or the patient’s agent or caregiver.” 59 O.S.Supp.2000, § 353.13(A). The Pharmacy Board’s rules define the term “certify a prescription” as follows:

[T]he confirmation by the supervising pharmacist of the accuracy and completeness of the acts, tasks or functions undertaken by pharmacy technicians or supportive personnel to assist the pharmacist in the practice of pharmacy. This process shall be completed before the prescription is given to the patient. OAC 535:15-13-3.

The recent legislation, Senate Bill 466, did not amend or otherwise effect the Pharmacy Act’s requirement that a pharmacist must certify a finished prescription prior to the delivery to the patient.

Please note that in addition to a pharmacist, a veterinarian may fill and dispense a prescription for a veterinary prescription drug to that veterinarian’s patient where a valid veterinarian-client-patient relationship exists. 59 O.S.Supp.2000, § 355.1 and OAC 775:10-5-30(f)(3). For a complete discussion on the issue of the dispensing of prescription drugs by a veterinarian, see Attorney General Opinion 00-46.

This letter is not an official Attorney General’s Opinion. Rather, this letter expresses the opinion of the undersigned after careful consideration and review of the issue presented. If you have any questions, please feel free to call me.

Very truly yours,

Gretchen Zumwalt-Smith
Assistant Attorney General

¹Senate Bill 466 amended the terms “wholesaler” or “distributor” 59 O.S.Supp.2000, §353.1(15). See, 2001 Okla.Sess.Laws ch. 400 § 6(15).

Calahan, 811 F.2d at 293. However that greater flexibility was limited. The Court stated that the phrase “order of a licensed veterinarian” was used “so as not to interfere with the practice, legal in several states, for food stores, animal health stores, and other outlets who do not employ pharmacists to sell restricted drugs on veterinarians’ orders.” *Id.* at 294. The Court went on to explain that “the difference between prescription and order was intended to accommodate the difference between pharmacist and nonpharmacist vendors and not to indicate a relaxation in the manner in which the veterinarian’s order could be communicated.” *Id.* (citation omitted).

Accordingly, with the new amendments in the Pharmacy Act as provided for in Senate Bill 466, a “wholesaler” or “distributor,” as those terms are defined by Section 6(15) of Senate Bill 466, may sell a veterinary prescription drug directly to a veterinarian’s client, provided such drugs are dispensed only on a valid prescription of the licensed veterinarian. 2001 Okla. Sess. Laws ch. 400 § 6(15) (amending 59 O.S. Supp.2000, § 353.1(15)). A feed store is not a “wholesaler” or “distributor” unless it is “engaged in the business of distributing dangerous drugs or medicines at wholesale to pharmacies, hospitals, practitioners, government agencies, or other lawful drugs outlets permitted to sell or use drugs or medicines.” *Id.*

It is, therefore, the official Opinion of the Attorney General that:

- 1. Senate Bill 466 allows a veterinary drug “wholesaler” or “distributor,” as those terms are defined by Section 6(15) of Senate Bill 466, to sell veterinary prescription drugs directly to a veterinarian’s client, provided such drugs are dispensed only on prescription of the licensed veterinarian and only when an existing veterinary-client-patient relationship exists. 2001 Okla. Sess. Laws ch. 400 §§ 6-8 (amending 59 O.S. Supp.2000, §§ 353.1, 353.13, 353.24).**
- 2. Attorney General Opinion 01-21 accurately reflects the law until November 1, 2001.**
- 3. On November 1, 2001, the amendments of Senate Bill 466 take effect. Consequently, after November 1, 2001, a pharmacist or veterinarian may lawfully fill and dispense a prescription or an order for a veterinary prescription drug which falls within the Pharmacy Act’s definitions of “dangerous drugs,” “legend drug” or “prescription drug.” 59 O.S. Supp.2000, §§ 355.355.1(A), 353.18(A); OAC 535:15-3-11(a) (1996). A licensed veterinarian, however, may not dispense a prescription drug to an individual without a valid veterinarian-client-patient relationship. 59 O.S. Supp.2000, § 355.1; OAC 775:10-5-30(f)(3) (2000). As of November 1, 2001, a drug “wholesaler” or “distributor,” as those terms are defined by Section 6 of Senate Bill 466, may sell a veterinary prescription drug directly to a veterinarian’s client, provided such drugs are dispensed only on prescription of the licensed veterinarian. 2001 Okla. Sess. Laws ch. 400 § 6(15) (amending 59 O.S. Supp.2000, § 353.1(15)). A feed store is not a “wholesaler” or “distributor” unless it is “engaged in the business of distributing dangerous drugs or medicines at wholesale to pharmacies, hospitals, practitioners, government agencies, or other lawful drug outlets permitted to sell or use drugs or medicines.” *Id.***

Disciplined
Doctors
Apr 01 – Nov 01

OSBVME is not responsible for the misinterpretation of any of the following summaries of disciplinary Board Orders, which may be caused by any error of miswording or by the misspelling, inclusion or exclusion of any word or words.

DEBORAH WYSOCKI, DVM

\$500 penalty
Ordered to reimburse \$1,493.56 costs
Take and pass OK jurisprudence exam

Violation: 59 O.S. Supp. 2000, §698.14a(E)(18)

CHERYL JOHNSON, DVM

\$1,000 penalty

Violations: Title 59, O.S. §698.16a; OAC 775:25-1-2(a); OAC 775:25-1-4(e); OAC 775:25-1-4(f)

J. KEVIN GIBBS, DVM

5 years suspension

Violations: Title 59, O.S. §698.14a (e)(1) and Title 59, O.S. §698.14(E) (16)

RON WALLIS, DVM

\$500 fine
Take and pass jurisprudence exam within ninety (90) days

Violation: Title 59, O.S. §698.14a(E)(1).

SHIRLEY AHERN, DVM

One (1) year probation
\$50/mo probation fees
Twenty (20) hours additional CE
Random, unannounced inspections
Take and pass OK jurisprudence within ninety (90) days
\$500 penalty
\$750 investigation costs
Five (5) page typed report on sterilization procedures

Violations: OAC 775:10-5-30(m); OAC 775:20-1-3(a); OAC 775:20-1-3(d); OAC 775:20-1-4(a); OAC 775:20-1-4(b); OAC 775:20-1-4(c); Title 59, O.S. Supp. 2000 § 698.14a(E)(22)

The Pharmacy Board
Re: Prescriptions: sid vs. qid

The Pharmacy Board is advising pharmacists to be cautious when filling prescriptions from veterinarians. The veterinarian may use an abbreviation "SID" which means "once daily". It could and has been mistaken for "QID" which would result in a four-fold overdose.

The following is taken from the Veterinary Drug Handbook (Third Edition), by Donald C. Plumb, Pharm.D.

A warning and the strange case of S.I.D.:

Although prescription abbreviations are used throughout and they are fairly well recognized, they do increase the potential for mistakes to occur. When writing a prescription, this author recommends writing out the directions in plain English and avoiding the use of abbreviations entirely. If abbreviations are used, definitely avoid q.d., q.o.d., and s.i.d because they can be easily confused with other abbreviations.

S.I.D. is virtually unknown to health professionals outside of veterinary medicine and the vast majority of pharmacists have never seen it used. S.I.D. should be eliminated from all veterinary usage.

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