RESOLUTION NUMBER: 12 and 25 Combined  APPROVED

SOURCE: USAHA/AAVLD COMMITTEE ON DIAGNOSTIC LABORATORY AND VETERINARY WORKFORCE DEVELOPMENT COMMITTEE ON PHARMACEUTICALS

SUBJECT MATTER: CONTROLLED SUBSTANCE ACT REGULATIONS FOR AMBULATORY DOCTORS OF VETERINARY MEDICINE THAT PRACTICE IN MULTIPLE STATES

BACKGROUND INFORMATION:

The Controlled Substances Act (CSA), 21, United States Code (USC) Part 822 (e) and (f), addresses the Drug Enforcement Administration (DEA) issuance of registrations to handle controlled substances. In a June 2009 letter to the Rhode Island State Veterinarian, DEA stated that the issue of “practitioners who practice in more than one state” was under review and that proposed changes would be published in the Federal Register. No such changes have been proposed as of September 27, 2010; DEA was still in discussions as they have received “a lot of inquiries” about this subject.

It is common for veterinarians in ambulatory practices, who are on or near state borders, to hold veterinary licenses in and practice in more than one state. The United States Animal Health Association has acknowledged that there is limited access to food animal veterinarians in many areas of the country.

Equine veterinarians and other traveling veterinary practitioners (e.g. small animal surgeons, small animal house call practitioners, etc) may also deliver a substantial portion of their services in states other than that in which they primarily practice and reside.

By current DEA opinion, every veterinarian who delivers veterinary services in a state in which he or she holds a current veterinary license but does not have a physical address cannot be properly registered with the DEA. Many state boards of pharmacy and practicing veterinarians have not had the implications and limitations of the CSA on ambulatory veterinary practice adequately presented. This is evidenced by the fact that most states will still provide a DEA registration to a licensed veterinarian with an address in another state. As such, many veterinarians have been improperly registered through no fault of their own. It is likely that these veterinarians are acting on the assumption that they have a valid DEA registration.

At least one state Veterinary Medical Association and the American Veterinary Medical Association have contacted DEA to discuss a regulation change. It is questionable whether it is right or ethical to continue to let veterinarians operate when it is known that they are in violation of the CSA. DEA appears to be aware of the limitations on ambulatory veterinarians imposed by the current regulation. To date, no changes to the CSA have been made nor has a ruling or position statement from DEA clarified that this provision of the CSA does not apply to ambulatory veterinarians.

DEA regulation, 21 USC Part 822 (d), provides the Attorney General with the authority to create waivers to registration through regulation: “(d) Waiver. The Attorney General may, by regulation, waive
the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety.” By authority, the Attorney General oversees the DEA.

RESOLUTION:

The United States Animal Health Association requests that the Attorney General exercise the authority granted by the Controlled Substances Act of 1970, 21, United States Code Part 822 (d), to promulgate regulations which waive the requirement for veterinarians in ambulatory practices to have a separate United States Department of Justice, Drug Enforcement Administration registration in each state in which they are licensed or authorized to practice.

RESPONSE:

U.S. Department of Justice

DEA appreciates USAHA’s interest in ensuring that veterinarians who deliver services in multiple states do so in compliance with federal law and regulation. A DEA registration is based, in part, on the specific controlled substance authority granted to each dispenser in that state. 21 U.S.C. § 823(f). DEA addressed this topic in more detail in the Final Rule titled, Clarification of Registration for Individual Practitioners that DEA published in the Federal Register on December 1, 2006.

As DEA stated in the June 2009 letter referenced in the USAHA resolution, the DEA is reviewing the overall issue of practitioners who practice in more than one state. This is a complex issue affecting many dispensers, including veterinarians. If it is appropriate for DEA to address this issue through the regulatory process, as authorized by 21 U.S.C. § 822(d), then any changes that DEA may propose regarding this issue will be published by DEA in the Federal Register and will be open to public comment. Under the Administrative Procedure Act (APA), federal agencies are required to make available to the public, through publication in the Federal Register, substantive rules of general applicability formulated or adopted by the agency. Adherence to this APA requirement ensures fairness to all members of the public by avoiding having the agency provide legal guidance to certain individuals to the exclusion of others. DEA is unable to provide you a timeframe on when this may occur.