



Fast Track Regulation Agency Background Document

Agency name	Board of Veterinary Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 150-20
Regulation title	Regulations Governing the Practice of Veterinary Medicine
Action title	Definition clarification
Document preparation date	6/2/04

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The proposed action would change the definition of “immediate and direct supervision” to require the licensed veterinarian to provide a specific order for a patient based on observation and diagnosis made within the last 36 hours. The current language provides that the observation and diagnosis must be within the last 24 hours.

The definition of “surgery” is amended to 1) clarify the meaning of a “routine dental extraction” as an extraction of single-rooted teeth; and 2) clarify what is meant by a closure that may be performed by a licensed veterinary technician by adding the word “skin” before closure.

Statement of agency final action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On May 26, 2004, the Board of Veterinary Medicine took action to amend 18 VAC 150-20-10 et seq., Regulations Governing the Practice of Veterinary Medicine, through the fast-track regulatory process to amend the definitions of “immediate and direct supervision” and “surgery.”

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board of Veterinary Medicine the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- ...*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...*

The statutory definition of what constitutes the practice of veterinary medicine is found in § 54.1-3805 and the mandate for licensure of veterinarians is found in § 54.1-3805.

§ 54.1-3800. Practice of veterinary medicine.

Any person shall be regarded as practicing veterinary medicine within the meaning of this chapter who represents himself, directly or indirectly, publicly or privately, as a veterinary doctor or uses any title, words, abbreviation or letters in a manner or under circumstances which may reasonably induce the belief that the person using them is qualified to practice veterinary medicine.

Any person shall be deemed to be practicing veterinary medicine who performs the diagnosis, treatment, correction, change, relief or prevention of animal disease, deformity, defect, injury, or other physical or mental conditions; including the performance of surgery or dentistry, the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique, and the use of any manual or mechanical procedure for embryo transfer, for testing for pregnancy, or for correcting sterility or infertility, or to render advice or recommendation with regard to any of the above.

§ 54.1-3805. License required.

No person shall practice veterinary medicine or as a veterinary technician in this Commonwealth unless such person has been licensed by the Board.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The definition of “surgery” specifies what surgery means and what it does not mean. By specifying that surgery does not include the extraction of single-rooted teeth or skin closures, the Board will clarify those acts that may be performed by a licensed veterinary technician under the direction and supervision of a veterinarian. The current regulation is unclear and open to interpretations that could place patients at risk. Clarifying what is meant by a “routine dental extraction” and a “closure” will prevent the delegation of tasks for which the technician may not be qualified and is intended to protect the health and safety of animals in veterinary practices.

The definition of “immediate and direct supervision” specifies the proximity and availability of the veterinarian in delegating and supervising the activities of a licensed veterinary technician. The current definition requires the veterinarian to have observed and written an order for a patient within the last 24 hours. The 24-hour limitation creates a problem for veterinarians who may see an animal on a weekend and leave an order for care to be followed until the veterinarian returns to the practice on Monday. The Board does not believe the 24-hour standard is necessary in order to protect patient health and safety because the licensed veterinarian must continue to be immediately available to the technician who is charged with carrying out the specific order for the patient. A 36-hour limitation for the observation, diagnosis and written order is sufficient and will be more enforceable since it provides a more realistic standard of care.

Rationale for using fast track process

Please explain why the fast track process is being used to promulgate this regulation.

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from (1) 10 or more persons, (2) any member of the applicable standing committee of either house of the General Assembly or (3) any member of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in

the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The fast-track process is being used to promulgate the amendments to definitions because the Board believes the changes are mostly clarifying and reflective of current practice and do not alter the practice of veterinary medicine in any substantive way.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The proposed fast-track action amends definitions found in 18VAC150-20-10.

The definition of "immediate and direct supervision" currently means that the licensed veterinarian is immediately available to the licensed veterinary technician, either electronically or in person, and provides a specific order based on observation and diagnosis of the patient within the last 24 hours; the amendment will require observation and diagnosis within the last 36 hours.

The definition of "surgery" currently means treatment through revision, destruction, incision or other structural alteration of animal tissue but does not include routine dental extractions or closures performed by a licensed veterinary technician upon a diagnosis and pursuant to direct orders from a veterinarian. The amendment will clarify that the routine dental extraction is of a single-rooted tooth and the closure means a skin closure.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The Board does not believe that there are any disadvantages to the public of these amendments. The practice of surgery will be safer if it is clear that only routine dental extractions of single-rooted teeth and skin closures may be delegated to a technician. Animals will continue to be protected by an amended definition of immediate and direct supervision, since the veterinarian must be available for consultation if the technician believes there is a change in the patient's condition that would necessitate a change in the written order.

There are no disadvantages to the agency or the Commonwealth; the proposed regulation will clarify terminology consistent with the Board’s interpretation and should reduce the need for licensees to seek clarification from Board staff.

There are no other pertinent matters of interest.

Economic impact

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	The agency will incur some one-time costs (less than \$2,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings. There are no ongoing expenditures related to this amendment. As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	Veterinarians, veterinary technicians and veterinary hospitals may be affected.
Agency’s best estimate of the number of such entities that will be affected	There are 643 veterinary facilities licensed as full-service facilities with the authority to perform surgery. There are 3094 licensed veterinarians and 936 licensed veterinary technicians.
Projected cost of the regulation for affected individuals, businesses, or other entities	There is no projected cost.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The alternative to the promulgation of a regulation is the issuance of a Board opinion offering the Board’s interpretation of the definition of surgery, excluding routine dental extractions and closures. While the Board could make its interpretation known through the publication of a newsletter and posting a guidance document, the rule would remain unclear and the Board’s interpretation of its meaning unenforceable. While the Board believes the proposed language in the definition of surgery is reflective of current practice in veterinary hospitals, the additional clarity should eliminate confusion and facilitate licensee compliance.

In adopting a change in the rule on the observation and writing of an order for care of a patient to be followed by a veterinary technician, the Board believes that it is also reflecting current practice. Currently, the veterinarian may see an animal on a Saturday and then does not return to the practice until Monday; it is the technician who continues the observation and care of the animal during the following 36 hours with the veterinarian available by telephone. The amended rule will be less burdensome to veterinary practices and will not jeopardize the care of animals in their care.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

There is no impact on the institution of the family and family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes.

Current section number	Current requirement	Proposed change and rationale
10	<p>The current definition of “immediate and direct supervision” requires the veterinarian to observe and write a specific order for a patient within the past 24 hours.</p> <p>The current definition of surgery specifies that it does not include routine dental extractions or closures.</p>	<p>The proposed change would allow the veterinarian to leave an order for a patient that he has seen within the last 36 hours. The change will not alleviate the veterinarian’s overall responsibility for the animal’s care but will allow a licensed veterinary technician to continue care of an animal under the written order of a veterinarian who must be immediately available, either electronically or in person.</p> <p>The Board will clarify that a “routine” dental extraction is one involving a single-rooted tooth and that what is meant by a “closure” is a “skin closure.” The clarification of this definition will provide a more consistent and clear interpretation of terminology in the regulation, which protects animals in the care of veterinarians. Clarity in the meaning of the terms will also ensure greater compliance on the part of licensees.</p>