



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Veterinary Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC150-20-10 et seq.
Regulation title	Regulations Governing the Practice of Veterinary Medicine
Action title	Periodic review; clarifications
Document preparation date	5/9/07

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The intent is to update and clarify its regulations in accordance with a periodic review conducted by a committee of the Board. Issues with supervision of technicians and unlicensed persons may be addressed by amending definitions and the section on delegation of duties. Likewise, amendments may be adopted to address issues relating to preceptorships, tasks that may be assigned to preceptees and the supervision of those persons. The Board will consider amending requirements for licensure by endorsement for veterinary technicians to accept years in practice in lieu of graduation from an accredited educational program. Additional areas of continuing education may be considered to allow credit for courses in medical recordkeeping or OSHA training. Further guidance in the requirements for establishments and veterinarians-in-charge may necessitate amending sections relating to drugs, recordkeeping and facility standards. Finally, the Board will consider several additions to the grounds for disciplinary conduct in the section on unprofessional conduct.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly

chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe 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, which 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:

...

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 specific statutory mandate to regulate veterinary establishments is found in § 54.1-3804:

§ 54.1-3804. Specific powers of Board.

In addition to the powers granted in § 54.1-2400, the Board shall have the following specific powers and duties:

- 1. To establish essential requirements and standards for approval of veterinary programs.*
- 2. To establish and monitor programs for the practical training of qualified students of veterinary medicine or veterinary technology in college or university programs of veterinary medicine or veterinary technology.*
- 3. To regulate, inspect and register all establishments and premises where veterinary medicine is practiced.*

The specific statutory mandate to for licensure in order to practice veterinarian medicine is found in § 54.1-3805 and the practice of veterinary medicine is found in § 54.1-3800:

§ 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.

§ 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.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

Section 10 – Definitions

Issues have been raised relating to several words and terms defined in this section. A “preceptorship” is defined but questions about its meaning and interpretation have come from educational programs. Additionally, the term “externship” is used by schools but not defined in regulation. The term “immediate and direct supervision” is defined, but supervision is used differently in context of different regulations, so there may need to be other types of supervision defined. There was also a request to consider an expansion of the time frame for observation and diagnosis by the veterinarian from “within the last 36 hours” to within the last 60 hours. The term “surgery” excludes certain “routine” procedures, but there may need to be further clarification about what is considered “routine.”

Section 15 - Criteria for delegation of informal fact-finding proceedings to an agency subordinate

In order to more fully utilize the agency subordinate process, the Board will consider an expansion of the types of cases that may be delegated to an agency subordinate. The criteria for a subordinate may be expanded to include former members of the Board and other persons qualified to conduct administrative proceedings for this profession.

Section 30. Posting of licenses; accuracy of address

Questions have been raised by inspectors and licensees about the posting requirement for ambulatory practices and for relief veterinarians who do not regularly practice at an establishment. Guidance suggested by one of the inspectors will likely be incorporated into the regulation for ease of compliance and consistency in inspections.

Section 70. Licensure renewal requirements

To further specify the renewal requirements, the Board will consider rules stating that practice with an expired or lapsed license may be grounds for disciplinary action and that failure to receive a renewal notice does not relieve the licensee of his responsibility to renew and maintain a current license.

Requests to expand the acceptable topics of continuing education will be considered. Courses that enhance safety for patients and staff, such as OSHA courses or medical recordkeeping, may be specifically added. There is also a request to consider allowing a few of the required hours to be gained in practice management courses. In the listing of approved sponsors, the Board will consider the addition of the American Association of Veterinary State Boards and the deletion of

subdivision “k,” so the Board would not approve individual sponsors but rely on the approval of courses by sponsors listed in regulation.

Section 100. Fees

The Board will likely eliminate the subsection of this section stating the fees for the one-time fee reduction, ending October 2006.

Section 115. Requirements for licensure by examination as a veterinary technician

The Board will consider a request from the Canadian Veterinary Medicine Association to approve its accreditation of veterinary technician programs.

Section 120. Requirements for licensure by endorsement as a veterinarian or veterinary technician

To clarify the requirements for each profession, the Board will separate the endorsement requirements for veterinary technicians into a new section, 121. It will also consider a request to waive certain requirements for either graduation from an AVMA-accredited program or passage of the national examination for technicians who have been licensed or certified in another state and have been practicing for some period of time. The Board currently has authority in regulation to waive the national board exam or clinical competency test, and that provision would be retained for both veterinarians and technicians.

Section 130. Requirements for practical training in a preceptorship

In consideration of amendments to this section, the Board will review the requirements of the AVMA for accredited schools and will consider changes in education that are occurring, such as the initiation of distance learning programs for vet techs. In this section and in the Definition section, there is a need for further clarification on the supervision of preceptees and on the duties that can be performed. The regulation should specify that a preceptee can perform only those services for which he has received adequate instruction by the educational program. The regulations may also need to address mentorships or externships that occur within an education program. Clarity about practice in a preceptorship is necessary to ensure that the health and safety of animals being treated by persons who are not yet licensed to practice.

Section 150. Unprofessional conduct.

Additional grounds for unprofessional conduct that the Board will consider include: 1) misrepresentation or falsification of information on an application for licensure or employment or a renewal form; 2) failure to report animal abuse; 3) delegation of duties to persons who are not properly trained or authorized to perform such duties; or 4) failure to release a client record when such failure results in harm to the animal. Other provisions of this section will be amended for further clarify about the responsibilities of licensees.

Section 172. Delegation of duties to unlicensed veterinary personnel.

Both professional organizations in Virginia (VVMA and VALVT) has recommended some limitations on the delegation of injections by unlicensed personnel to possibly exclude anesthetic or chemotherapy drugs and to exclude such invasive tasks as the placement of IV catheters. The will consider elimination of the listing of tasks that may be delegated and add a guidance document that could more easily be changed as practice changes. To do so would likely

necessitate more explicit parameters in regulation about what sort of tasks or duties are not appropriate for delegation. It also needs to be clarified that the veterinarian remains responsible for the health and safety of the animals treated by persons under his supervision.

The Board may add a subsection on alternative treatments for animals, such as chiropractic, massage, acupuncture and physical therapy to address the prevalence of issues and questions surrounding those practices. A suggested regulation would state that they could only be performed under the direct supervision and by an order issued by a licensed veterinarian.

Section 180. Requirements to be registered as a veterinary establishment.

The Board may add the language of Guidance Document 150-2 that states microchips must be implanted within a licensed veterinary establishment, but make some exceptions for animal shelters and emergency situations.

Section 181. Requirements for veterinarian-in-charge.

An amendment may be adopted to allow a VIC to delegate the biennial inventory to another licensee, provided the VIC remains responsible for and signed off on the inventory for the facility. It should also be clarified that it is the responsibility of the VIC to ensure that the facility maintains and current and valid license.

Section 190. Requirements for drug storage, dispensing, destruction, and records for all establishments, full service and restricted

The regulation for drug destruction currently states that scheduled drugs “may” be destroyed by following the Drug Enforcement Administration instructions. In fact, drugs must be destroyed according to federal requirements, so the rule should not be optional.

Board members have recommended clarification of “working stock” of Schedule II drugs and further specification about the security requirements. It should also be specifically stated that unlicensed personnel should not have access to those drugs. Additional clarification of the drug record requirements is recommended by inspectors to ensure that the full name of the client is included, as well as the animal identification by species. The responsibility of the veterinarian for the drug log should be specified, so if someone other than the veterinarian makes an entry, that entry is subsequently initiated by the veterinarian who is responsible for the stock of drugs. The Board will consider incorporation of language from guidance documents on drug recordkeeping at shared facilities and on veterinary prescriptions.

Diversion of drugs places the public at risk, so laws and regulations on security and access are necessary for public protection.

Section 195. Recordkeeping.

The Board will consider incorporation of language in Guidance Document 150-9 on medical records into the regulation and on the release of records to a client. Other provisions of this section may be clarified as necessary for licensees to understand their responsibilities. While release of records is not a requirement of law, any failure to provide records that causes harm to an animal should not be acceptable.

Section 200. Standards for veterinary establishments.

An amendment may be necessary to specify the board’s policy of requiring separate facility permits for separate practices that share the same location. The physical and equipment

requirements will be further reviewed for continued applicability. The health and safety of animals treated at licensed veterinary establishments are dependent on maintenance of standards set by the Board, so the Board will consider the continuance of those standards as necessary.

Section 210. Revocation or suspension of a veterinary establishment permit.

Denial of access to an establishment to conduct an inspection is currently cause to revoke, suspend or take disciplinary action against a permit; the Board will add denial of access during an investigation.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

In accordance with Executive Order 36 and the Administrative Process Act, the Board has conducted a review of Chapter 20, Regulations Governing the Practice of Veterinary Medicine. A Notice of Periodic Review of Regulations was published in the *Register of Regulations* on June 26, 2006 and sent to the PPG mailing list with a request for comment until July 26, 2006.

During the review of regulations, comments were received from the Virginia Association of Licensed Veterinary Technicians, requesting an amendment to the definition of “immediate and direct supervision” to allow a technician to care for an animal for 60 hours after the veterinarian had seen the animal and entered an order (the current rule is 36 hours). The VALVT also requested: 1) the addition of hours in practice management, OSHA training and recordkeeping as acceptable for continuing education; 2) no amendment to the requirement for licensure to allow technicians who have not Virginia requirements to be licensed; 3) a prohibition on unlicensed personnel administering injections, especially anesthetic or chemotherapy drugs; 4) additional duties for licensed vet techs, to include diagnostic imaging such as ultrasound and performance of duties as home health “nurses.” The Virginia Veterinary Medical Association concurred with the comments from the VALVT, except for an extension from 36 to 60 hours for care by a vet tech without the animal being seen by the veterinarian.

An individual veterinary technician requested that the Board consider modifying its rules on endorsement of technicians to allow the waiver of Virginia requirements for persons who have been practicing in another state.

All interested parties have been encouraged to participate in the discussion of regulations at meetings of the Legislative/Regulatory Committee as each regulation and guidance document was reviewed. Following the publication of the NOIRA, the Committee will consider any additional comment in the process of promulgating amended regulations.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

There is no potential impact of the proposed regulatory action on the institution of the family and family stability.