



Fast Track Proposed Regulation 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	Unprofessional conduct; delegation
Date this document prepared	3/8/11

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

An amendment to regulations establishing grounds for unprofessional conduct (Section 140) is adopted to include “committing an act constituting fraud, deceit, or misrepresentation in dealing with the board or in the veterinarian-client-patient relationship.” An amendment to Section 172 on delegation of duties by a veterinarian is adopted to clarify that the delegation may occur by any means, either electronically, in writing or in person.

Statement of final agency 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.

The Board of Veterinary Medicine amended 18VAC150-20-10 et seq., Regulations Governing the Practice of Veterinary Medicine on January 19, 2011.

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 General Assembly chapter number(s), 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.

Chapter 24 of Title 54.1 establishes the general powers and duties of health regulatory boards including the responsibility of the Board of Veterinary Medicine to promulgate regulations and administer a licensure and renewal program.

§ 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 and Chapter 25 of this title.*

Chapter 38 of Title 54.1 establishes the specific powers of Board:

In addition to the powers granted in § [54.1-2400](#), the Board has the authority to define unprofessional conduct in regulation:

§ 54.1-3807. Refusal to grant and to renew; revocation and suspension of licenses and registrations.

The Board may refuse to grant or to renew, may suspend or revoke any license to practice veterinary medicine or to practice as a veterinary technician or registration to practice as an equine dental technician if such applicant or holder: ...

5. *Is guilty of unprofessional conduct as defined by regulations of the Board;*

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the amended regulation is to establish grounds for a finding of unprofessional conduct that involves fraud, deceit or misrepresentation. Currently, there is no such provision, which has resulted in an inability to appropriately address complaints against veterinarians in a few cases. The purpose of the amendment is to ensure the health and safety of citizens by establishing Board authority to take a disciplinary action in cases where there has clearly been fraud, deceit or misrepresentation to the Board and/or to a client.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

This regulation is appropriate for the fast-track process because there is no disagreement about whether the Board should have authority to take disciplinary action for fraud, deceit or misrepresentation. There is no controversy in clearly specifying the Board's authority or in clarifying the ability to delegate veterinary tasks.

Substance

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

An amendment to regulations establishing grounds for unprofessional conduct (Section 140) is adopted to include "committing an act constituting fraud, deceit, or misrepresentation in dealing with the board or in the veterinarian-client-patient relationship." An amendment to Section 172 on delegation of duties by a veterinarian is adopted to clarify that the delegation may occur by any means, either electronically, in writing or in person.

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 there are no disadvantages to the public or the Commonwealth, please indicate.*

- 1) The primary advantage to the public would be the ability of the Board to discipline a licensee who is found guilty of fraud, deceit or misrepresentation to the Board or to his clients. There are no disadvantages to the public, which is better protected if the Board has authority to act in such cases.
- 2) There are no advantages or disadvantages to the agency.
- 3) There are no other pertinent matters of interest.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There were no alternative regulatory methods; the current regulations are ineffective in dealing with incidents of fraud, deceit or misrepresentation, and the rule for delegation needs to be clarified.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>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</p>	<p>a) 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; b) The agency will incur only minimal costs since notification to the PPG list is by email and actions are taken at Board meetings already scheduled. There are no additional on-going costs relating to these regulations.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>None</p>
<p>Description of the individuals, businesses or</p>	<p>The entities that are likely to be affected by these</p>

<p>other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</p>	<p>regulations would be veterinarians who are guilty of fraud, deceit or misrepresentation.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There will likely be one or two veterinarians affected; they would likely be a part of a veterinary practice that would be considered a small business.</p>
<p>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>There would be no projected costs of the new regulation to veterinarians who are not in violation of the standard for unprofessional conduct. If found in violation, the cost would depend on whether a pre-hearing consent order is signed or a hearing is conducted. Depending on the egregiousness of the case, there may be a monetary penalty levied or a sanction imposed.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The Board will have grounds for disciplinary action against a practitioner guilty of unprofessional conduct.</p>

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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

In order to cite findings of fact and conclusions of law in a disciplinary case, there must be grounds for Board action. In § 54.1-3807 and 18VAC150-20-140, no such grounds exist to address cases in which there is clear and convincing evidence that the veterinarian has committed an act of fraud, deceit or misrepresentation. Therefore, there are no alternatives to the proposal considered other than an addition to provisions of Section 140.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact on the family or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Current requirement	Proposed change and rationale
140	Sets out grounds for unprofessional conduct as referenced in § 54.1-3807 (5)	The addition of #16 will expand the definition of unprofessional conduct to include “Committing an act constituting fraud, deceit, or misrepresentation in dealing with the board or in the veterinarian-client-patient relationship.” <i>The change is intended to address a concern from board members that they have been unable to take appropriate action when an investigation indicated that a veterinarian had committed fraud, deceit or misrepresentation.</i>
172	Sets out the rules for delegation of veterinary tasks to appropriate veterinary personnel	In subsection C, the regulation states that a licensed veterinarian may delegate <u>electronically</u> . Questions have been raised about whether there is also authority to delegate verbally or in writing. The amendment will clarify the intent.