



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Veterinary Medicine; Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18VAC150-20-10
<b>Regulation title</b>	Regulations Governing the Practice of Veterinary Medicine
<b>Action title</b>	Requirements for registration of equine dental technicians
<b>Date this document prepared</b>	7/18/07

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

House Bill 2363 of the 2007 Session of the General Assembly requires the Board of Veterinary Medicine to promulgate regulations for the registration of equine dental technicians. Proposed amendments would establish the qualifications for registration as an equine dental technician, set continuing education requirements for renewal of registration, establish fees for applications and renewals, and set out the standards of practice for equine dental technicians including the maintenance of patient records.

### 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 adopted amendments to 18VAC150-20-10 et seq., Regulations Governing the Practice of Veterinary Medicine on July 12, 2007.

## 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 the Board of Veterinary Medicine including the authority to establish qualifications for registration, levy fees and promulgate regulations.

*§ 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, licensure or the issuance of a multistate licensure privilege 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, license or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 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 requirement for registration of equine dental technicians, their scope of practice and the mandate for the Board to promulgate regulations:

*§ 54.1-3813. Registration of equine dental technicians.*

*A. As used in this section, "equine dental technician" means an individual who satisfies the criteria established by the Board for registration to perform duties relating to the care and maintenance of equine teeth in accordance with this section and regulations promulgated by the Board. A licensed veterinary technician shall practice in accordance with the requirements of § 54.1-3806 and regulations of the Board governing the practice of licensed veterinary technicians.*

*B. The Board may register a person as an equine dental technician who meets the following criteria: (i) satisfactory evidence that he is of good moral character, (ii) recommendations from at least two licensed veterinarians with practice bases that are at least 50 percent equine, and (iii) evidence that he holds current certification from the International Association of Equine Dentistry or a Board-approved certification program or has satisfactorily completed a Board-approved training program. The Board may register individuals who have not completed a Board-approved training program or do not hold a current certification from the International Association of Equine Dentistry or a Board-approved certification program if they have engaged in acts considered to be those of an equine dental technician as set forth in subsections C and D of this section for at least five years and provide the following: (i) satisfactory evidence of length of time of practice, (ii) recommendations from at least two licensed veterinarians with practice bases that are at least 50 percent equine, and (iii) proof of continued competency satisfactory to the Board.*

*C. It shall be unlawful for any person not holding a current and valid registration as an equine dental technician or a current and valid license as a veterinarian to perform the following duties:*

- 1. The planing or leveling of equine teeth using nonmotorized hand tools for routine dental maintenance;*
- 2. The planing or leveling of equine teeth using motorized tools performed for routine dental maintenance, or the extraction of wolf teeth premolars including premolars 105, 205, 305 and 405, performed under the direct supervision of a licensed veterinarian where (a) there exists an established client-patient relationship between the veterinarian and the owner, (b) the veterinarian is present, and (c) the veterinarian remains responsible for the sedation of the animal; and*
- 3. Any other task restricted pursuant to regulations promulgated by the Board. Notwithstanding the foregoing, no equine dental technician shall administer any sedative, tranquilizer, analgesic, prescription medication, or other drug under any circumstances.*

*D. The Board shall promulgate regulations in order to carry out the provisions of this section, which shall include (i) criteria and fees for application and renewal; (ii) requirements for evidence of continued competency for equine dental technicians; and (iii) standards to ensure the health, safety, and welfare of animals treated by equine dental technicians.*

**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 new regulations are mandated by Chapter 754 of the 2007 Acts of the Assembly. The goal of the regulation is to set out the minimal requirements for a person to become registered, including attestation from two veterinarians licensed in Virginia that they have observed the applicant and can attest to his skills and ability to practice as an equine dental technician. Since there are no approved schools or training programs for equine dental technicians and no examination of minimal competency, the acquisition of knowledge, skills and abilities will be obtained on the job. It is important to the health and safety of horses who will receive equine care that veterinarians whose practice is at least 50% equine will attest to the competency of the

persons registered as equine dental technicians. Since the equine community within veterinary practice is primarily concerned about the well-being of the horses they care for, it is expected that recommendations for registration will provide such assurance of competency.

### 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?*

*Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or 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.*

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The Board has adopted this proposal by a fast-track action for two reasons: 1) the language has been worked out with the proponents of the legislation in the equine dental community, the Virginia Veterinary Medical Association and members of the Boards, so it should not have objection; and 2) the law provides that no one can plane or level equine teeth unless they are a registered equine dental technician or a licensed veterinarian. There was no statutory authority to adopt emergency regulations, so the Board is attempting to fast-track the promulgation of these regulations to allow persons to become registered as soon as possible.

### 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.)*

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Proposed amendments would establish the qualifications for registration as an equine dental technician, including recommendations from at least two veterinarians licensed in Virginia who attest that at least 50 percent of their practice is equine that they have observed the applicant and can attest to his competency to be registered; and one of the following: 1) Current certification from the International Association of Equine Dentistry; 2) Completion of a board-approved certification program or training program; 3) Completion of a veterinary technician program that includes equine dentistry in the curriculum; or 4) Evidence of equine dental practice for at least five years and proof of 16 hours of continuing education in equine dentistry completed within the five years immediately preceding application for registration.

The regulations also set continuing education requirements for renewal of registration, establish fees for applications and renewals, and set out the standards of practice for equine dental technicians including the maintenance of patient records.

**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.*

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1) The primary advantage to the public is greater oversight and protection for the welfare of horses being treated by persons who do not hold a veterinary license. The disadvantage of the law (regulations can only implement the law) to the public may be the restriction on equine dental practice to only those who are registered as technicians or are licensed veterinarians. Blacksmiths and farriers who have traditionally planed or leveled equine teeth with hand tools will not be able to continue that practice unless they obtain registration from the Board.

2) There are no advantages to the agency and the Commonwealth. The Board had attempted to resolve the issue by adoption of a guidance document.

3) The remaining issue that has been raised by the equine dental technicians is the requirement for administration of sedation of a horse by a veterinarian when the planing or leveling of teeth is performed with the use of motorized tools or for the extraction of wolf teeth. The equine community objected to requiring the sedation be performed by a licensed veterinarian who is present and responsible for the animal while sedated. However, it was pointed out that the sedation requirement is explicitly stated in the law in § 54.1-3813 C, so the regulations are written to require that such equine practice be in accordance with that section of the Code. Regulations of the Board cannot authorize an act that is prohibited by the law – namely sedation of a horse by its owner in order for an equine dental technician to plane or level teeth with motorized tools or to extract wolf teeth.

**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.*

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There are no localities particularly affected.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

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<p><b>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</b></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 some one-time costs (less than \$2,000) for mailings to the Public Participation Guidelines mailing lists, conducting ad hoc committee meetings and board meetings, and a public hearing. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled.</p> <p>There will on-going expenditures related to this action in the receipt and approval of applications, the renewal of registrations, auditing for compliance with continuing education, and costs relating to investigations and adjudication of cases involving equine dental technicians. Fees for this profession are being set with the intent of covering related expenditures.</p>
<p><b>Projected cost of the regulation on localities</b></p>	<p>There are no costs to localities.</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b></p>	<p>The individuals affected by this regulation would be persons who want to be registered as equine dental technicians in order to engage in the planing and leveling of equine teeth.</p>
<p><b>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.</b> 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>It is estimated that less than 25 persons will initially comply with requirements for registration. All registrants will qualify as small businesses, since they are typically independent contractors.</p>
<p><b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b></p>	<p>The costs for affected individuals will include payment of fees as required for application for registration and renewal. One of the pathways for qualifying for registration set out in the Code is certification by the International Association Equine Dentistry. According to its website, membership in the IAED costs \$200. Costs for continuing education will vary; since there is no requirement that the Board approve CE providers, the CE may be a free workshop sponsored by the Virginia Equine Dental Association or attendance at the IAED conference in Lexington, KY with registration of \$600.</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.*

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The promulgation of regulations is mandated by Chapter 754 of the 2007 Acts of the Assembly: *The Board shall promulgate regulations in order to carry out the provisions of this section, which shall include (i) criteria and fees for application and renewal; (ii) requirements for evidence of continued competency for equine dental technicians; and (iii) standards to ensure the health, safety, and welfare of animals treated by equine dental technicians.*

Prior to the passage of legislation in the 2007 General Assembly, the Board had chosen to address the issue of equine dental practice by a guidance document that stated the practice of planing and leveling equine teeth with non-motorized tools was not the practice of veterinary medicine and did not require a license to perform. With the passage of HB2363, that guidance document is invalid, and adoption of regulations to implement the statute is required.

In order to facilitate the regulatory process, the Board re-convened an ad hoc committee on equine practice to work with representatives of the Virginia Veterinary Medical Association, the Virginia Veterinary Technicians Association and the equine dental technicians. At its meeting on June 13, 2007, the group reviewed the legislation in detail and discussed the qualifications for registration, the standards of practice, the fees and requirements for continuing education, and the grounds for unprofessional conduct. Recommendations that had consensus in the committee with input from attendees were drafted as proposed regulations for the Board's consideration at its meeting on July 12, 2007.

Since the law prohibits any planing and leveling of equine teeth after July 1, 2007 by anyone who is not a registered equine dental technician or a licensed veterinarian, the Board moved its scheduled August meeting to July to expedite the promulgation of regulations to allow persons to become registered.

## Family impact

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

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

## Detail of changes

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*



Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale								
30	n/a	Sets out the requirements for posting of licenses and keeping the board notifying of current name and address.	Amendments add the equine dental technician to requirements for other persons and entities regulated by the Board. Rather than requiring the registration to be posted at the veterinary establishment (which would not be applicable to equine dental technicians who typically work at the site where the horse is stabled), the amended rule would require equine dental technicians to have a copy of their registration available for inspection at the location where they are working.								
100	n/a	Sets the fees for applications, renewals and other functions	<p>Amendments add fees for equine dental technicians as follows:</p> <table border="0" data-bbox="857 827 1430 995"> <tr> <td>Initial registration</td> <td style="text-align: right;">\$100</td> </tr> <tr> <td>Registration renewal</td> <td style="text-align: right;">\$50</td> </tr> <tr> <td>Late renewal</td> <td style="text-align: right;">\$20</td> </tr> <tr> <td>Reinstatement</td> <td style="text-align: right;">\$120</td> </tr> </table> <p>Without certain knowledge of the expenses relating to registration, investigation, and disciplinary proceedings involving equine dental technicians, the Board determined that fees should be established at a rate less than those for veterinarians, but more than veterinary technicians who always work as employees of the veterinarian and under his supervision. Unlike vet techs, equine dental technicians will be independently employed and unsupervised, so if there is a complaint involved the care and treatment of a horse, the investigation and disciplinary case will be on the equine technician, rather than on the veterinarian in the veterinary establishment.</p> <p>The Board believes the annual renewal of \$50 is minimal to cover expenses relating to registration since there are likely less than 25 who will qualify at present time. The cost to renew a veterinarian license is \$135 and the cost to renew a veterinary technician license is \$30.</p> <p>The initial fee covers the cost of the license for at least one year (\$50) and the cost of reviewing documentation to qualify someone for registration (estimated to be about \$50). Since</p>	Initial registration	\$100	Registration renewal	\$50	Late renewal	\$20	Reinstatement	\$120
Initial registration	\$100										
Registration renewal	\$50										
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			<p>there are a number of variables that may be presented as qualification for registration, there may be a need to convene a credentials committee or to consult with board members on compliance with regulations – which would entail costs over and above the standard costs for staff review.</p> <p>The fee for late renewal is typically 1/3 the cost of the renewal fee, so that fee is set at \$20. To reinstatement a registration that has expired for more than 30 days, the applicant will have to pay \$120 to cover the renewal fee, the late fee and costs of review of the reinstatement application and accompanying documents.</p> <p>In addition, the fees listed for a one-time fee reduction in 2006 are deleted, since they are no longer applicable.</p>
140	n/a	Sets out the grounds for unprofessional conduct as required by 54.1-3807 of the Code of Virginia	<p>As appropriate, equine dental technicians are added to the grounds, as follows:</p> <p>2. Practicing where an unlicensed person has the authority to control the professional judgment of the technician.</p> <p>6. Violating any state law, federal law, or board regulation pertaining to the practice of equine dentistry.</p> <p>7. Practicing in a manner to endanger the health and welfare of patients or the public or inability to practice with reasonable skill and safety.</p> <p>10. Allowing unlicensed persons to perform acts restricted to the practice of equine dentistry.</p>
n/a	220	n/a	<p><b>Section 220 sets the requirements for obtaining and maintaining registration as an equine dental technicians.</b></p> <p>Subsection A applies to any person applying for registration as an equine dental technician and requires a recommendation from at least two veterinarians licensed in Virginia who attest that at least 50 percent of their practice is equine; and that they have observed the applicant within the past five years immediately preceding the attestation and can attest to his competency to be registered as an equine dental technician.</p> <p><i>The law requires the recommendation, but the regulation specifies that it must be from veterinarians licensed in Virginia and that they have observed the applicant and can attest to his competency. Since the training for equine dentistry is primarily learning-by-</i></p>

		<p><i>experience, it is important to know that the recommendation is based on the veterinarian’s actual knowledge of the applicant’s competency.</i></p> <p>Subsection B sets out the qualifications for registration to include documentation of one of the following:</p> <ol style="list-style-type: none"> <li>1. Current certification from the International Association of Equine Dentistry; or</li> <li>2. Completion of a board-approved certification program or training program; or</li> </ol> <p><i>The law specifies the IAED certification as a qualification for registration and authorizes the Board to accept other certifications and training programs. At this time, the Board is unaware of any other certification or of a training program that would adequately prepare an applicant in Virginia. Working with the equine dental technicians, the Board intends to develop a guidance document with criteria for acceptance of a training program, should an applicant seek such approval.</i></p> <ol style="list-style-type: none"> <li>3. Completion of a veterinary technician program that includes equine dentistry in the curriculum; or</li> </ol> <p><i>There was no provision in the statute to allow veterinary technicians to plane or level equine teeth unless they are registered as an equine dental technician. While there are very few vet techs who would engage in the practice, there may be some who have had the training in their program to work on equine teeth. If such training was included, as verified by course description, a vet tech could be qualified to be registered as an equine dental technician.</i></p> <ol style="list-style-type: none"> <li>4. Evidence of equine dental practice for at least five years and proof of 16 hours of continuing education in equine dentistry completed within the five years immediately preceding application for registration.</li> </ol> <p><i>The law allows five years of practice to serve as qualification for registration, provided an applicant can provide proof of continued competency satisfactory to the Board. By regulation, the Board has established 16 hours of CE in equine dentistry within the immediately preceding five years as proof of competency.</i></p> <p>Subsection C requires that in order to maintain an equine dental technician registration, a person must renew such registration by January 1 of each year by payment of the renewal fee and attestation of obtaining 16 hours of</p>
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			<p>continuing education relating to equine dentistry within the past 3 years.</p> <p><i>The Board is mandated by law to promulgate regulations to include criteria for renewal, so 16 hours of continuing education is required. Although the renewal is annual, the Board will allow an equine dental technician to obtain 16 hours over a three-year period. Often CE in equine dentistry involves a weekend workshop and at least 16 hours would be awarded by the provider. It should not be necessary to repeat such a workshop or intensive course every year, so the Board will allow the CE to be gained in 1 or 2 hour increments or in a longer course that will count for all the CE hours over a three-year period.</i></p> <p>Other requirements for renewal or reinstatement include:</p> <ol style="list-style-type: none"> <li>1. Equine dental technicians shall be required to maintain original documents verifying the date and subject of the continuing education program or course, the number of continuing education hours, and certification of completion from a sponsor. Original documents shall be maintained for a period of two years following renewal. The board shall periodically conduct a random audit to determine compliance. Practitioners selected for the audit shall provide all supporting documentation within 10 days of receiving notification of the audit.</li> <li>2. Registration may be renewed up to 30 days after the expiration date, provided a late fee as prescribed in 18VAC150-20-100 is paid in addition to the required renewal fee.</li> <li>3. Reinstatement of registration expired for more than 30 days shall be at the discretion of the board. To reinstate a registration, the applicant shall pay the reinstatement fee as prescribed in 18 VAC 150-20-100 and submit evidence of completion of continuing education hours equal to the number of years in which the registration has been expired, for a maximum of two years. The board may require additional documentation of clinical competency and professional activities.</li> </ol> <p><i>Requirements for maintenance of documents, response to a CE audit, payment of late fee for a lapsed registration and reinstatement are consistent with the other professions regulated by the Board.</i></p>
n/a	230	n/a	<p><b>Section 230 sets out additional application requirements including:</b> 1. Submission of a completed application and the applicable fee as specified in</p>

			<p>18VAC150-20-100; and 2. Submission of satisfactory evidence of good moral character as specified in an application provided by the board.</p> <p><i>The evidence of “good moral character” is required by law and will be implemented by questions found on all DHP applications relating to unresolved malpractice or disciplinary actions in other states, convictions, substance abuse and other conditions that might impair one’s ability to practice with skill and safety.</i></p>
n/a	240	n/a	<p><b>Section 240 sets out the standards of practice for an equine dental technician</b></p> <p>Subsection A provides for the performance of routine dental maintenance with nonmotorized hand tools. In order to further define “routine dental maintenance,” it is stated that it does not include cutting or chipping teeth or extraction of rooted teeth.</p> <p>Subsection B provides that the planing or leveling of equine teeth using motorized tools or the extraction of wolf teeth premolars shall be performed in accordance with § <a href="#">54.1-3813 C 2</a> of the Code of Virginia, which requires if the horse is sedated for an equine dental technician to perform those acts, it must be done by a licensed veterinarian who must be present and is responsible for the sedation.</p> <p>Subsection C provides a standard for recordkeeping that is similar to that of veterinarians. A record of each individual patient treated must be maintained by the equine dental technician and shall include all relevant procedures performed. Client records shall be kept for a period of three years following the last visit and shall be available for inspection.</p>