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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Board of Veterinary Medicine, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation(s)</b>	18VAC150-20-10 et seq.
<b>Regulation title(s)</b>	Regulations Governing the Practice of Veterinary Medicine
<b>Action title</b>	Periodic review changes
<b>Date this document prepared</b>	8/19/15

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Subject matter and intent

*Please describe briefly the subject matter, intent, and goals of the planned regulatory action.*

Pursuant to a periodic review of regulations, the Board intends to amend regulations to organize requirements for greater clarity, update the descriptions and requirements for veterinary establishments consistent with current practices, and specify rules in accordance with Board interpretation for ease of compliance. Amendments will make licensure by endorsement less burdensome, ensure greater accountability and security for prescription drugs in the interest of public safety, and respond to public comment about the need for more informed consent in the performance of surgery and the use of preceptees in a veterinary establishment. The goal of the planned action is to update and clarify rules in such a manner to address the concerns expressed by members of the public and the issues identified by Department inspectors and board members through the inspection and the disciplinary process.

## Legal basis

**Chapter 24 of Title 54.1** establishes the general powers and duties of health regulatory boards, including the Board of Veterinary Medicine, the responsibility to promulgate regulations:

*§ 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...*

The specific authority of the Board relating to practical training for students of veterinary medicine is found in:

**§ 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.*

Authority to regulate the professions of veterinarian, veterinary technician and equine dental technician is found in Chapter 38 of Title 54.1 of the Code of Virginia.

## Purpose

Issues relating to informed consent, practice by preceptees and the accountability of supervising veterinarians, drug security, responsibilities of a veterinarian-in-charge, and standards for veterinary establishments have been addressed during the periodic review and in the proposed amendments in this action. Concerns about patient health and safety in veterinary care and about the lack of security for prescription drugs were the major foci of the review and the regulatory language drafted by the Committee.

## Substance

The Board intends to amend the following sections:

**18VAC150-10:** Definitions are added, deleted, or modified to update terminology used in regulation.

**18VAC150-70:** Requirements for licensure renewal are amended to clarify that falsification of compliance with continuing education may subject the licensee to disciplinary action.

**18VAC150-110:** Amendments are proposed to reorganize the requirements for licensure by examination; there are no new requirements proposed.

**18VAC150-115:** Amendments are proposed to specify the examination acceptable to the Board and clarify the Board's authority to deny licensure for acts that constitute unprofessional conduct.

**18VAC150-120:** Requirements for licensure by endorsement for a veterinarian are amended to eliminate the need for an applicant to meet all the requirements for licensure by examination, so the endorsement process will be less onerous. Provisions for attestation of reading the laws and regulations and having committed no acts that would constitute unprofessional conduct are added for consistency with licensure by examination and for public safety. Other amendments are clarifying.

**18VAC150-121:** Requirements for licensure by endorsement for veterinary technicians are amended similarly to provisions for veterinarians.

**18VAC150-130:** Requirements for practical training in a preceptorship or externship are amended to: 1) specify that the supervising veterinarian must be in the operatory when a preceptee is performing or assisting in surgery; 2) that a veterinarian must disclose to owners when there is a preceptee working in the establishment; and 3) that the supervising veterinarian remains responsible for the care and treatment of the patient.

**18VAC150-140:** Regulations stating causes for unprofessional conduct are amended for clarification of certain provisions and to add a cause for action in the failure to submit evidence of correction resulting from a violation noted in an inspection within 14 days unless an extension has been granted.

**18VAC150-172:** The delegation of duties to an unlicensed assistant is amended to specify that an assistant cannot be delegated the induction of sedation or anesthesia or the monitoring of a sedated patient. Other amendments clarify current provisions.

**18VAC150-173:** A new section is proposed on informed consent for surgery to ensure that an owner is aware of the risks, benefits and alternatives; there is an exception to the informed consent when there is an emergency and a delay would likely result in imminent harm to the patient.

**18VAC150-180:** Regulations for veterinary establishments are amended to change the categories from full service or restricted service to stationery or ambulatory to be more descriptive and consistent with current practice.

**18VAC150-181:** Requirements for the veterinarian-in-charge of an establishment are amended to clarify that the VIC must be regularly on-site as often as necessary to provide oversight for patient safety and compliance with law and regulation. A new subsection is proposed to incorporate current language about patient records upon sale or closure of a practice (in Section 195) and to add a notification to the Board about the location of records and disposition of scheduled drugs.

**18VAC150-185:** The requirements for renewal of an establishment permit are amended to clarify that practicing on an expired permit may subject the permit holder or licensee to disciplinary action.

**18VAC150-190:** Requirements for drug storage, dispensing, destruction and records are amended to incorporate recommendations for strengthening the security and integrity of prescription drugs. Amendments are proposed for veterinary establishments consistent with other types of establishment in which prescription drugs are stored and dispensed. Those amendments will include: 1) clarification that only the veterinarian or licensed vet tech has access to Schedule II through V drugs; 2) specification about the storage in a securely locked cabinet or safe that is not easily movable; 3) provision to allow Schedule II through V drugs that are in direct possession of licensed personnel and necessary for use during business hours to be maintained outside of a locked container; 4) provision that all general and working stock and prescriptions dispensed but not delivered but securely stored after business hours; 5) allowance for prescriptions that have been dispensed to be maintained in a place not accessible to the public and deliverable to an owner by an unlicensed person; 6) more specificity about the process to follow if there is a loss or theft of drugs; 7) more specificity about refrigerated drugs and their security; 8) requirements for inventories and maintenance of records, including drug invoices; and 9) provisions for records of drug distribution if a limited or ambulatory practice uses the facilities of another veterinary establishment.

**18VAC150-195:** Amendments to the recordkeeping requirements will incorporate provisions related to records that are currently found in other sections. In addition, there is some more specific requirement for the content of the record.

**18VAC150-20-200:** The current terminology for “full-service” establishments is amended to “stationary” establishments to distinguish them from those that are mobile. Requirements are re-organized for ease of understanding and compliance and the specific listing of laboratory services is eliminated. A subsection is added with requirements to ensure that patients receive appropriate care at establishments that are open to the public 24 hours a day; a disclosure is required if an establishment is not open 24 hours a day and the establishment does not have continuous staffing. All stationary establishments must provide continuity of care when transferring a patient to another facility.

**18VAC150-20-201:** The current terminology for “large animal” and “small animal” establishments is amendment to “ambulatory” in the categories of “agricultural/equine” and “house call/proceduralist.” Requirements for such establishments are consistent with current requirements and with the services provided.

**18VAC-150-220:** Requirements for continuing education for equine dental technicians are amended for consistency with other regulants of the Board in the conditions for granting exemptions or exceptions and the time frame for provision of documentation.

The Board may propose other amendments as a result of public comment or in the review of its draft language resulting from the periodic review of regulations.

## Alternatives

There are no less burdensome alternatives that meet the essential purpose of the action. Regulations are being amended to make licensure by endorsement less burdensome, to ensure greater accountability and security for prescription drugs in the interest of public safety, and to respond to public comment about the need for more informed consent in the performance of surgery and the use of preceptees in a veterinary establishment.

**Public participation**

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Elaine Yeatts at Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233 or [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov) or by fax to (804) 527-4434. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

Regulatory panels or ad hoc committees were used to review the regulations for veterinary establishments and for prescription drugs. Inspectors for the Department were included in the ad hoc committee that reviewed establishment rules; the Executive Director of the Board of Pharmacy was included in the ad hoc committee on drugs. The professional associations for licensed veterinary technicians and veterinarians were also included in the ad hoc committees. The Regulatory Committee of the Board was used as the panel to review all sections of the regulations. The public was invited to comment and participate in all committee meetings.

After publication of the NOIRA, the Regulatory Committee will convene to review comments and determine whether additional changes are necessary in response. Therefore, a regulatory panel will not be appointed.

**Periodic review and small business impact review report of findings**

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Lee Henkel	Regulations are not excessive;	The Board has received the same comment

	represent under-regulation. Need additional control over academic program and practice by preceptors on and off campus.	on Action 4277 / Stage 7290 and addressed some of the concerns in the adoption of proposed regulations for preceptorships.
Elaine Becker	Owners should have informed consent and students should not practice without direct supervision.	In the current regulation, a veterinary preceptee may perform only duties for which he has received adequate instruction by the college and only under the on-premises supervision of a licensed veterinarian. A preceptee may not perform surgery without the written consent of an owner.
Edna Whittier	Should not allow training at a facility at which the veterinarian has been reprimanded until the reason for the reprimand has been corrected. Schools should be required to provide the Board with a list of practices where students are training.	A reprimand may be issued for a variety of reasons that are not directly related to the care of animals, such as failure to obtain required continuing education. Currently, veterinarians providing supervision for preceptees remain responsible for the care of an animal and may be held accountable. However, the Code provides a specific exemption for veterinarians who are employees of the state, so veterinarians who are employed at the Virginia-Maryland college at Virginia Tech are not required to be licensed by the Board.
Dostana Ljusic	Students should be trained by persons at the upper end of the curve; the current arrangement is inadequate.	See responses above.
Molly Mittens Mom	Board fails to protect the public and pets; should require informed consent and should not allow a veterinarian who has a reprimand to supervise students. Further, the commenter repeats dissatisfaction with the complaint process, the confidentiality of investigative information and the inability of the source of a complaint to appeal the result.	Responses are similar to comments above. Comments about the disciplinary process would have to be addressed by changes to the Administrative Process Act and § 54.1-2400.2 of the Code of Virginia.
Brett VanLear	The Veterinary Technology Program at Blue Ridge Community College allows preceptees to choose their practice but they must be approved by the Program and the program director personally visits each practice each year. The most recent disciplinary action against any preceptor was 12 years ago, so the Program feels there is strong supervision and training.	The Board appreciates the comment.

(1) There is a continued need for the regulation because the Board is mandated to license veterinarians and veterinary technicians, register equine dental technicians and issue facility permits to veterinary establishments.

(2) A few of the complaints or comments received concerning the regulation from the public involve the need for more regulatory control over veterinary practice, especially in the area of informed consent. This action addresses some of the concerns.

(3) The intent of this regulatory action is to reduce the complexity of the regulation relating to veterinary establishments.

(4) This regulation does not overlap, duplicate, or conflict with federal or state law or regulation.

(5) This regulation was amended in 2013 during the Regulatory Reform initiative to eliminate any unnecessary provisions and clarify existing regulations. It has been amended eight (8) times since 2009, and there are three (3) additional regulatory actions currently proposed. The periodic review action resulted from two ad hoc committees convened to reform the establishment regulations and to clarify and specify rules for prescribing and maintenance of prescription drugs.