

Administrative Procedures – Final Proposed Rule Filing

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

PLEASE REMOVE ANY COVERSHEET OR FORM NOT REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Administrative Rules for Veterinarians

/S/ James Condos

, on 3/15/2022

(signature)

(date)

Printed Name and Title:

James Condos, Secretary of State

RECEIVED BY: _____

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Minutes
- Copy of Comments
- Responsiveness Summary

1. TITLE OF RULE FILING:

Administrative Rules for Veterinarians

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

21P-030

3. ADOPTING AGENCY:

Secretary of State, Office of Professional Regulation

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Gabriel Gilman

Agency: Office of Professional Regulation

Mailing Address: 89 Main St, Montpelier, VT 05620-3402

Telephone: 802 828 - 2492 Fax: -

E-Mail: Gabriel.Gilman@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://sos.vermont.gov/veterinary-medicine/statutes-rules-resources/>

5. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Kassandra Diederich

Agency: Office of Professional Regulation

Mailing Address: 89 Main St, Montpelier, VT 05620-3402

Telephone: 802 828 - 2191 Fax: -

E-Mail: Kassandra.Diederich@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

N/A

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

N/A

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

26 V.S.A. § 2413(a)(1) (granting rulemaking authority)

3 V.S.A. § 123(a)(11) (making the Secretary of State the adopting authority for board rules.)

EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

The agency is directed by 26 V.S.A. §

8. 2413(a)(1) to "Adopt rules under 3 V.S.A. chapter 25 necessary for the performance of" the duties of the Board of Veterinary Medicine.

9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. **CONCISE SUMMARY (150 WORDS OR LESS):**

This rule adopts a definition of the Veterinarian Client Patient Relationship, including in telepractice, that is consistent with 26 V.S.A. § 2433 (Rules 1-12, 8-3, 8-4); provides for inspection (Rule 3-8); clarifies that the Board declines to require laws and rules exams (Rule 4-4); clarifies and interprets the consultation exemption (Rule 4-5); Clarifies and interprets the livestock management exemption (Rule 4-6); conforms lapsed-license reinstatement to the uniform standard at 3 V.S.A. § 135 (Rule 5-4) simplifies CE requirements (Rule 6-1); imposes clear duties to self-report certain sentinel events, consistent with other recent OPR rule updates (Rule 7-1); incorporates disease-reporting requirements found

Final Proposed Coversheet

in Titles 6 & 13 (Rule 7-2); sets distinct recordkeeping requirements for companion and non-companion animals (Rule 8-5); announces a clear delegation rule (Rule 8-9); sets a clear rule on alternative therapies (Rule 8-10); and facilitates veterinarian participation in rabies clinics (Rule 8-12).

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

This rule provides minimum necessary elaboration upon the licensing qualifications and practice standards for veterinarians. Amendment is necessary specifically to conform the rule to the statutory definition of the veterinarian-client-patient relationship at 26 V.S.A. § 2433, including in the setting of telepractice. Amendment is also necessary to reflect amendments to the law of professional regulation, 3 V.S.A. § 121 et seq., enacted since the 2012 adoption of the outgoing rule.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

Rule text has been developed in duly warned open Board meetings with stakeholders, OPR counsel and staff, and interested members of the public. The rule reflects the reasoned judgment of the board based on best practices observed in other jurisdictions, expert recommendations of stakeholders, and discussion and deliberation in meetings.

17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

Veterinarians; clients; animal shelters; rabies clinics Vermont Department of Health, Agency of Agriculture, Food & Markets.

18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

This rule is not expected to have a significant economic impact. A positive impact may be felt by veterinarians who avail themselves of relaxed continuing education requirements; these licensees may save approximately \$100 to \$300 biennially by pursuing less formal and less expensive means of ensuring continuing competency.

19. A HEARING WAS HELD.

20. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 10/30/2021

Time: 10:00 AM

Street Address: Remote Meeting (in accordance with 1 V.S.A. §§ 310-314)

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

10/29/2021

KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Veterinarians, Veterinary Medicine, VCPR,
Professional License, Licensure



**State of Vermont
Office of the Secretary of State**

Office of Professional Regulation
89 Main Street, 3rd Floor
Montpelier, VT 05620-3402
sos.vermont.gov

**James C. Condos, Secretary of State
Christopher D. Winters, Deputy Secretary
S. Lauren Hibbert, Director**

March 15, 2022

Hon. Mark McDonald, Chair Legislative
Committee on Administrative Rules c/o
Charlene Dindo, Committee Assistant Vermont
State House
Montpelier, Vermont 05602

Re: Final Proposed Rule: Veterinary Medicine [21P-030]

Dear Chairperson McDonald and Members:

Please find enclosed the final proposed rule titled *Administrative Rules for Veterinarians*. These materials have been filed in parallel with the Secretary of State today.

Accompanying this letter are:

- A. the Secretary of State's adopting memorandum;
- B. APA filing forms;
- C. the final proposed rule;
- D. written comments received;
- E. a summary of substantial arguments, agency responses, and changes to the proposed rule;
and
- F. the ICAR minutes from July 12, 2021 showing approval.

I would be happy to answer any questions the Committee may have about the proposed rule in advance of your next meeting. Please feel free to contact me at 522-7306 or via email at kassandra.diederich@vermont.gov.

Sincerely,

/S/ Kassandra Diederich

Kassandra Diederich
General Counsel

cc: Louise F. Corliss, APA Rules, Vermont Secretary of State (original documents)

Administrative Procedures – Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Administrative Rules for Veterinarians

2. ADOPTING AGENCY:

Secretary of State, Office of Professional Regulation

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

SOS Rule Log #12-017, CVR 04-030-320 Vermont Board of Veterinary Medicine Administrative Rules, July 1, 2012



INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: July 12, 2021, Physical Location: 109 State Street, 5th Floor Conference Room, Montpelier VT; Virtual Meeting: Microsoft Teams

Members Present: Chair Kristin Clouser, Dirk Anderson, Diane Bothfeld, Jennifer Mojo, John Kessler, Matt Langham, Diane Sherman

Members Absent: Ashley Berliner, Clare O'Shaughnessy

Minutes By: Melissa Mazza-Paquette and Diane Bothfeld

- 2:12 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the June 14, 2021 meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
- No public comments made.
- Note: The following emergency rules were supported by ICAR Chair Clouser:
 1. 'Access to Health Care Services Related to COVID-19' by the Department of Financial Regulation on 6/30/21.
 2. 'Interim Rules for Clinical Pharmacy' by the Secretary of State, Office of Professional Regulation on 7/7/21.
 3. PUC Emergency Rule 2.600 COVID-19 Emergency Procedures' by the Public Utility Commission on 7/9/21.
- Presentation of Proposed Rules on pages 2-7 to follow.
 1. Hemlock Woolly Adelgid Quarantine, Agency of Agriculture, Food and Markets, page 2
 2. Vermont Joint Quarantine No. 1 (Scleroderma Canker), Agency of Agriculture, Food and Markets, page 3
 3. Hospital Licensing Rule, Agency of Human Services, page 4
 4. Administrative Rules for Veterinarians, Secretary of State, Office of Professional Regulation, page 5
 5. Independent School Program Approval, State Board of Education, page 6
 6. Vermont Use of Public Waters Rules, Agency of Natural Resources, page 7
- Next scheduled meetings:
 - Wednesday, July 14, 2021 - Review of ICAR Forms with the Office of the Secretary of State
 - Monday, August 9, 2021 at 2:00 p.m. – Monthly ICAR meeting
- 3:49 p.m. meeting adjourned.

Proposed Rule: Administrative Rules for Veterinarians, Secretary of State, Office of Professional Regulation

Presented By: Gabe Gilman

Motion made to accept the rule by John Kessler, seconded by Diane Bothfeld, and passed unanimously with the following recommendations:

1. Change all 'not applicable' to 'no impact' where appropriate.
2. Proposed Rule Coversheet, #8: Change period to a semicolon in the 7th line.
3. Proposed Rule Coversheet, #9: Include the causal connection of changes to Title 3.
4. Proposed Rule Coversheet, #12: Provide more detail on the nature of the economic impact and include any neutral or positive impacts.
5. Proposed Rule Coversheet, #13-15: Host a public hearing and include information.
6. Economic Impact, #6: Quantify minor savings if possible.

Administrative Procedures – Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

Administrative Rules for Veterinarians

2. ADOPTING AGENCY:

Secretary of State, Office of Professional Regulation

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

Veterinarians and veterinary clinics may see slightly reduced overhead secondary to more flexible continuing education requirements. Public rabies clinics may see slightly reduced costs as a result of clarifications of examination requirements intended to encourage veterinarians to be comfortable participating in clinics for animals that are not regular patients.

4. **IMPACT ON SCHOOLS:**

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

No impact.

5. **ALTERNATIVES: CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.**

No impact.

6. **IMPACT ON SMALL BUSINESSES:**

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

Individual veterinarians' regulatory compliance costs, and therefore the overhead expenses of veterinary clinics, may be reduced by approximately \$100-300 biennially, per veterinarian, as a result of more flexible continuing education requirements.

7. **SMALL BUSINESS COMPLIANCE: EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.**

Clinics will enjoy more flexibility in how staff continuing competency requirements may be satisfied, improving low-cost options.

8. **COMPARISON:**

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

By comparison to no rule, the rule improves clarity around recordkeeping and interaction with ancillary providers, but does so in a manner that is likely economically neutral. Most veterinary practices are small businesses, and these rules were written with those small businesses in mind.

9. **SUFFICIENCY: EXPLAIN THE SUFFICIENCY OF THIS ECONOMIC IMPACT ANALYSIS.**

This rule will lend order and structure to the operation of veterinary clinics, but it changes nothing about the fundamental economics of veterinary practice.

Economic Impact Analysis

Consequently, more detailed economic analysis is neither necessary nor likely to offer additional insight.

Administrative Procedures – Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. TITLE OF RULE FILING:

Administrative Rules for Veterinarians

2. ADOPTING AGENCY:

Secretary of State, Office of Professional Regulation

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

No impact.

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

No impact.

5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

No impact.

6. RECREATION: *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*

No impact.

7. CLIMATE: *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*

No impact.

8. **OTHER: EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:**

The rule adopts a statutory definition of the veterinarian-client-patient relationship that was intended by federal regulators and state officials to improve accountability around the use of antibiotics in herd animals. More responsible antibiotic use will minimize the development of drug resistant microbes and may be of general benefit to the environment and the public health.

9. **SUFFICIENCY: EXPLAIN THE SUFFICIENCY OF THIS ENVIRONMENTAL IMPACT ANALYSIS.**

The only expected environmental impact is set out above. Because this rule conforms to changes in federal regulation and State law that have already been enacted, impact directly caused by this rule will be minimal, and further analysis would offer little or no additional insight.

Administrative Procedures – Public Input

Instructions:

In completing the public input statement, an agency describes the strategy prescribed by ICAR to maximize public input, what it did do, or will do to comply with that plan to maximize the involvement of the public in the development of the rule.

This form must accompany each filing made during the rulemaking process:

1. TITLE OF RULE FILING:

Administrative Rules for Veterinarians

2. ADOPTING AGENCY:

Secretary of State, Office of Professional Regulation

3. PLEASE DESCRIBE THE STRATEGY PRESCRIBED BY ICAR TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

The agency developed this rule in duly warned public meetings with stakeholders, the Board of Veterinary Medicine, and OPR staff. We maintain ongoing relationships with the Vermont Department of Health and the State Veterinarian, as well as the Vermont Veterinary Medical Association. We host evolving rule drafts on our website and we welcome public comment at a dedicated email address, sos.opr.comment@vermont.gov. Through these measures, in addition to the public hearing process prescribed by the Administrative Procedure Act, we can be confident that most interested stakeholders and members of the public have enjoyed or will enjoy an opportunity to be heard.

4. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

Outreach includes direct email to licensees and organizational stakeholders, online posting of the rule, and ongoing invitation to comment.

5. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

Public Input

The Vermont Veterinary Medical Association; the Vermont Veterinary Technicians Association; the Vermont Department of Health; the Agency of Agriculture, Food & Markets.

**Final Proposed Administrative Rules for Veterinarians:
Summary of Substantial Arguments, Agency Responses, and Amendments**

Comment:

Commenters requested that Rule 8-3 be further amended to mandate that a veterinarian-client-patient-relationship (VCPR) can only be established with an in-person, physical examination. This would prohibit the establishment of a VCPR via telemedicine. Commenter asserted that FDA rules prohibit establishment of a VCPR via telemedicine.

Response:

We disagree. The commenters' assertion that Federal authorities prohibit remote evaluation at the inception of a VCPR rests on a seven-year-old business letter from an FDA official, stating an informal interpretation. FDA suspended that interpretation in at the inception of the Covid-19 pandemic, and a return to the status quo seems unlikely. Even were it to occur, FDA's interpretation would apply only to extra label prescribing, not veterinary practice generally. A physician-patient relationship may be established remotely. We do not believe the General Assembly would want the Board to implement a stricter rule relative to veterinary medicine than to human medicine.

To address concerns that veterinary telemedicine may invite practice based upon inadequate examination or familiarity with animals, Rule 8-4 has been added to provide clear guidelines and standards for establishing a VCPR via telepractice. Whether a valid VCPR has been created turns on the "sufficiency, reliability and validity of the veterinarian's knowledge, not the means or modality by which that knowledge was obtained." Rule 8-4 also describes various means of obtaining clinical information about a patient at a distance and provides that the same standards of acceptable and prevailing practice around examination and prescribing that are applied to in-person treatment.

Subsection (b) of Rule 8-4 addresses the commenter's concerns about potential inconsistency of State and Federal statutes and regulations by stating that, "[t]his rule shall not be construed as superseding any contrary law or rule of the United States Food & Drug Administration."

Comment:

Commenter advocated that the revised Rules should not prohibit the establishment of a VCPR via telepractice, as this would restrict innovation and limit access to care, squandering opportunities created by information technology.

Response:

We agree. Rule 8-4 sets out clear standards for the establishment and maintenance of a VCPR via telemedicine modalities, but it allows the establishment of a VCPR in appropriate circumstances.

Comment:

Commenter opposed the language in Rule 6-1, regarding continued education, which stated, "Licensees are expected to identify and pursue appropriate learning opportunities in good faith." Commenter suggested that the Rules define what types of continuing education are acceptable to the Board.

Commenter also criticized the lack of express approval of the continuing learning opportunities. Commenter argued that this language improperly trusts licensees to complete the required 24 hours per year of continuing education.

Response:

We disagree with both critiques of Rule 6-1.

With regard the suggestion for clearer definition of what are acceptable continuing education opportunities, we feel that the following language in Rule 6-1(b) is sufficient, "Activities claimed under this rule shall be reasonably calculated to improve the particular professional practice of the licensee, shall be relevant, and shall be oriented toward evidence-based practice or the improvement of technical skill." More specific guidance is not needed, as we believe that licensees know better than we do what specific topics are most relevant to their diverse clinical practices.

We disagree that express approval of continuing learning opportunities should be required. We trust our licensees and do not feel that it is necessary to micromanage their continuing education learning opportunities. Rule 6-1(c) requires licensees to document their participation in professional learning activities for four years as the Board may audit continuing education compliance in the future.

Comment:

Commenter proposed striking the following language in proposed Rule 6-1(b) regarding continuing education: "Non-course-based activities, such as reading, research, presentation, or curriculum development, shall be documented by maintaining contemporaneous logs, which shall include at a minimum: applicable journal citations; applicable presentations titles, locations, dates, sponsors, and host institutions; the length of time spent on the activity; and a brief, written summary of the substantive reading, research, presentation, or curriculum developed. This documentation may be required as a condition of renewal." The reasons for this suggestion are as follows:

- Language stating that documentation of participation in professional learning activities **may** be required as a condition of renewal is too equivocal and should either be required or not be required.
- The text does not specify what volume of non-course activities is allowed.
- The content to be logged seemed burdensome to the commenter.

Commenter also criticized language in proposed Rule 6-1(c) which states "Express approval of continuing learning opportunities is not required" as being unclear whether it applies to non-course-based activities or all continuing education activities.

Response:

We revised Rule 6-1 to state that licensees shall maintain contemporaneous logs of non-course activities. "This documentation may be required as a condition of renewal" was stricken and replaced with a caution that the Board may audit continuing education compliance at any time. We also moved the language "Express approval of continuing learning opportunities is not required" to a new subsection of the Rule entitled "Relevance" to make it clear that it applies to all continuing learning opportunities.

We disagree that keeping documentation logs of non-course activities is too time consuming for licensees. We clarified with the commenter that the Board's website will be updated with a sample log offering a simple, fill-in-the-blanks template.

Comment:

Commenter requested clarification on what constitutes a “course” for purposes of proposed Rule 6-1. Specifically, the commenter questioned whether a course is a single topic immersion session that lasts a full day, or a number of separate, one-hour courses.

Response:

We do not believe that it is necessary to specify what constitutes a course for purposes of proposed Rule 6-1. The Rule clearly states that licensees must devote 24 hours to continuing professional learning opportunities in each biennial licensing period, and most readers will understand that one hour is a unit of time, as opposed to a collegiate credit hour. The Board believes that the licensees should be able to “identify and pursue appropriate learning opportunities in good faith” as stated in proposed Rule 6-1(b).

Comment:

Commenter supported the proposed revisions to proposed Rule 6-1 regarding continuing education, specifically, the broad definition in subsection (b) regarding what types of continuing learning activities are appropriate given that veterinarians have differing continuing education needs.

Response:

We agree.

Comment:

Commenter was concerned that Rule 8-10(g) (now Rule 8-11(g)), Integration of Complementary Care Providers, could be interpreted to require the physical presence or availability of the delegating veterinarian. Commenter felt that this would require the veterinarian to be available 24/7 which seemed unnecessary and unattainable.

Response:

We agree. The intent of the original language was to ensure that the delegating veterinarian be available for consultation by phone and able to arrange intervention in case of a mishap. Subsection (g) was accordingly revised to state that “an appropriately qualified veterinarian is available to consult and arrange for intervention in the event of complications.”

Comment:

Commenter argued that Rule 8-11, which allows veterinarians to delegate veterinary treatments to non-veterinarians (chiropractors, dentists) if certain enumerated criteria are met, conflicts with 26 V.S.A. § 2402(a)(1), which prohibits the unlicensed practice of veterinary medicine.

Response:

We disagree. The language of Rule 8-11 permits veterinarians to delegate veterinary treatment to non-veterinarians only if very specific criteria are met, including having an appropriately qualified veterinarian available to consult and arrange for intervention if any complications arise. Rule 8-11 does not permit non-veterinarians to practice or hold oneself out as practicing veterinary medicine. However, “Chiropractors, acupuncturists, dentists and physical therapists and other care providers” was replaced with “Non-veterinarian providers,” as the rule applies equally to all non-veterinarians. The rule now numbered 8-9 sets clear lines concerning the permissibility of delegation.

Comment:

Comments regarding Rule 8-11 (now Rule 8-12), Rabies Vaccination; VCPR Not Required, expressed confusion about the recordkeeping requirements pertaining to rabies clinics. These are governed by a related rule of the Agency of Agriculture, Food & Markets.

Response:

We agree that excerpting sections from the existing Agency of Agriculture, Food & Markets rule made for confusing reading. The rule has been revised to clarify that veterinarians participating in a rabies vaccination clinic who comply with the records requirements set forth in the Agency of Agriculture, Food & Markets rules are excused from the recordkeeping requirements that would apply to care of a veterinarian's regular patients. Additionally, "Minimal Recordkeeping" was added to the title of Rule 8-12.

Alger, Kelsi

From: Dr. Ashley Morgan <AMorgan@avma.org>
Sent: Sunday, October 31, 2021 12:12 PM
To: SOS - OPR Comments
Cc: Dr. Ashley Morgan
Subject: RE: Comments on proposed revisions to Administrative Rules for Veterinarians
Attachments: AVMA letter_VT VCPR regulatory proposal 10282021.pdf

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.
Hi, Gabe,

I realized that the comments I sent on Friday did not have the additional reference merged onto that document. Please find the complete version attached. My apologies for the mistake and we appreciate the consideration.

Best,
Ashley

Ashley S. Morgan, DVM, CAE
Director | Division of State Advocacy
American Veterinary Medical Association
o: 202.289.3210 | c: 703.517.1196

From: SOS - OPR Comments <sos.opr.comments@vermont.gov>
Sent: Friday, October 29, 2021 11:03 AM
To: Dr. Ashley Morgan <AMorgan@avma.org>; SOS - OPR Comments <sos.opr.comments@vermont.gov>
Subject: RE: Comments on proposed revisions to Administrative Rules for Veterinarians

Dr. Morgan,

I want to confirm that your written comments have been received and added to the administrative record. We are grateful to have AVMA as an expert resource in the field, and we appreciate your time assisting us in developing the best possible next-generation rules.

Yours,
Gabe

Gabriel M. Gilman
General Counsel

State of Vermont
Office of Professional Regulation
89 Main Street, 3rd Floor
Montpelier, Vermont 05620-3602
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From: Dr. Ashley Morgan <AMorgan@avma.org>
Sent: Friday, October 29, 2021 10:05 AM
To: SOS - OPR Comments <sos.opr.comments@vermont.gov>
Cc: Dr. Ashley Morgan <AMorgan@avma.org>
Subject: Comments on proposed revisions to Administrative Rules for Veterinarians

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.
Good morning,

Please find our feedback on proposed revisions to Vermont's Administrative Rules for Veterinarians. If I could receive acknowledgement of receipt, I would appreciate it.

Thank you!
Ashley

Ashley S. Morgan, DVM, CAE
Director | Division of State Advocacy
American Veterinary Medical Association
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October 28, 2021

Dr. Drexel Wheeler, Chair
Vermont Board of Veterinary Medicine
Vermont Office of Professional Regulation
89 Main Street Third Floor
Montpelier, VT 05602
Via email to SOS.OPR.Comments@vermont.gov

Re: Proposed revisions to Administrative Rules for Veterinarians

Dear Dr. Wheeler:

On behalf of our nation's veterinarians, who are dedicated to promoting and protecting animal health and welfare and public health, we are providing feedback on proposed revisions to Vermont's Administrative Rules for Veterinarians (Rules). Specifically, we ask that the proposed revisions to the Rules be further amended to make it clear that an examination used to establish a veterinarian-client-patient relationship (VCPR) must be in-person and physical, and that a VCPR may not be established electronically.

Having a VCPR in place is critical whenever practicing veterinary medicine, and how that VCPR is created is tremendously important. The AVMA believes establishing a VCPR should require an in-person examination of individual patients, or regular premise visits for groups of animals, with the exception of advice given in an emergency until the patient can be seen by a veterinarian.

An in-person visit by the veterinarian serves to protect patients and clients by assuring that animals have been appropriately evaluated (e.g., physical examination/timely and medically appropriate visit, results of any necessary diagnostic tests) and that a treatment plan has been formulated that reflects the results of the information gained during that evaluation. Eliminating the requirement for an in-person evaluation can present substantial risks for patients, clients, and practices. These include insufficient information leading to suboptimal diagnosis and treatment, misinterpretation of animals' clinical signs by owners/caretakers, overprescribing, animal disease risks associated with transport of livestock for which an in-person evaluation was not conducted prior to issuing a Certificate of Veterinary Inspection (CVI), public health risks associated with delayed or missed diagnosis of zoonotic disease, and claims of malpractice.

AVMA is supported in its concerns and recommendation by Federal statute and regulations, which require an in-person examination or premise visits to establish the VCPR when using drugs in an extralabel manner; issuing Veterinary Feed Directives (VFD); using compounded products; and using certain biologics, including prescription platform product biologics and those that are manufactured by veterinarians for use in their specific patients (see attachment titled "Federal requirements for the veterinarian-client-patient relationship"). These are very common occurrences in the day-to-day practice of veterinary medicine. The federal government pays special attention to veterinary medicine and the use of drugs in animals, in part, because veterinarians are key to maintaining a healthy, safe, and wholesome food supply and to protecting public health. Veterinarians must comply with federal

VCPR requirements where they apply, regardless of whether state laws or regulations are more lax. Accordingly, conflicting state and federal VCPR definitions (e.g., allowing the VCPR to be established electronically) can cause significant confusion for veterinarians and additional investigatory and enforcement challenges for veterinary state boards.

Among the responsibilities veterinarians have in protecting public health is the judicious use of antimicrobials. Many of the antimicrobials that veterinarians have in their toolbox have been identified as those that are medically important for human patients and, because of concerns around the development of antimicrobial resistance, access to them for veterinary use is increasingly being restricted. More recently, similar concerns have been expressed around the emergence of resistance in antiparasitics. Key to retaining veterinarians' ability to access these drugs is confidence in veterinary stewardship and an important recognized component of veterinary stewardship is an appropriately established VCPR. Weakening the VCPR, by allowing it to be established electronically, has tremendous potential to severely reduce legislators' and regulators' confidence in veterinary oversight and result in reduced veterinary access to medications that are critical for our patients' care. The importance of the in-person examination/premise visit to establish the VCPR has already been recognized at the federal level when it comes to judicious use. At the state level, and on more than one occasion, this same requirement has helped us to preserve veterinary access to important antimicrobials.

To address the aforementioned concerns, we recommend the following edits to provision 8-3(b) that encompass use of FDA-approved human drug products and over-the-counter products, which veterinarians are legally allowed to use under the federal Animal Medicinal Drug Use Clarification Act of 1994 (AMDUCA). In addition, we suggest deleting "valid" as an adjective modifying the VCPR in provision 8-3. The AVMA made a similar change to our Model Veterinary Practice Act to make it clear that the VCPR exists or does not; there is no third option.

8-3 The Veterinarian-Client-Patient Relationship.

The three elements of a VCPR—responsibility, familiarity, and availability—are defined more particularly at 26 V.S.A. § 2433, together with important related principles not restated in these Rules. A valid VCPR:

- (a) should exist prior to the provision of any veterinary care, other than in a rabies clinic or an emergency; and
- (b) must exist prior to issuance of a veterinary feed directive or any activity relative to the provision, administration, authorization, or prescribing of FDA-approved animal and human veterinary prescription drugs (including extralabel use of over-the-counter medications); and
- (c) may not be established solely by telemedicine.

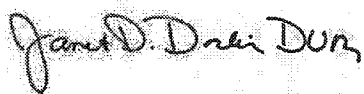
In sharing our thoughts, we want to be clear that AVMA fully supports the responsible application of telehealth technologies, including—but not limited to—telemedicine, and recognizes their potential for improving clinical outcomes and contributing to continuity of care. For this reason, we have invested considerable time and financial resources in the development of associated guidance, including the *AVMA Guidelines for the Use of Telehealth in Veterinary Practice*, our online telehealth resource center, and online and in-person continuing education.

Thank you for your consideration. We look forward to continuing to work together to promote animal health, animal welfare, and public health in Vermont.

About the AVMA

The AVMA is the nation's leading representative of the veterinary profession, speaking for more than 97,000 member veterinarians across the United States who care passionately about protecting animal health, animal welfare and human health. Informed by its members' unique scientific training and knowledge, the AVMA advocates for policies that advance the practice of veterinary medicine and support the crucial work of veterinarians nationwide.

Sincerely,

A handwritten signature in cursive script that reads "Janet D. Donlin".

Janet D. Donlin, DVM, CAE
Executive Vice President and CEO

Alger, Kelsi

From: lamusoon@aol.com
Sent: Wednesday, October 27, 2021 9:31 PM
To: SOS - OPR Comments; Gilman, Gabriel; brad@trellisvets.com
Subject: Fwd: Importance of a Virtual VCPR
Attachments: Guidelines for Telehealth.pdf; PracticeActModel(1).pdf; State of Michigan Veterinary Telehealth regulations.docx

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

See below. Sending same message from second email address as the first sometimes has issues. Please let me know if you received this email, the one from trellisvets.com, or both.

Thanks so much,
Brad

-----Original Message-----

From: Brad Burrington <brad@trellisvets.com>
To: SOS.OPR.Comments@vermont.gov; gabriel.gilman@vermont.gov
Cc: lamusoon@aol.com
Sent: Wed, Oct 27, 2021 9:26 pm
Subject: Importance of a Virtual VCPR

Dear Attorney Gilman and the Office of Professional Regulation (OPR) staff:

I appreciate the resent opportunity you provided for public comments regarding the proposed changes to the administrative rules governing the practice of veterinary medicine in the state of Vermont. I am hopeful that my input at that meeting will have provided a basis for a review of the rules and some impetus to alter the language such that the pet owners in the state can have access to telehealthcare whenever it is needed and appropriate. To further the discussion, I have attached several documents that I hope the OPR finds useful. I would welcome any opportunity to assist with this important work.

Vermont is not the first state to consider the ramifications of telehealthcare in the veterinary field. Several states have already allowed for the establishment of a veterinary-client-patient-relationship (VCPR) with telemedicine. Recently, Michigan's veterinary board created an excellent set of rules to govern the use of telemedicine in that state. Interestingly, and perhaps tellingly, the Michigan Veterinary Medical Association opposed this rule and became involved with a plan to create a law that would require a hands-on visit and exam to be performed prior to delivering any virtual veterinary care. The logic supporting these sorts of rules is faulty and lacks any scientific support. The question that should be asked is, are there veterinary health care problems that can effectively and safely be treated with telemedicine? If the answer to that question is yes, and pet owners and pets would benefit from having these issues addressed virtually, then one must question why veterinary medical associations would ever place unnecessary constraints on the delivery of this care.

The Covid pandemic created a perfect opportunity to test, in real-time, the benefits of telemedicine in the veterinary field. As a result, there is now excellent evidence to support the use of veterinary telehealthcare for many skin conditions, behavioral problems, some minor gastrointestinal issues, simple urinary tract infections, and for the delivery of some preventative health care. Some states and provinces of Canada had already implemented telehealthcare standards prior to Covid, and these locations provide additional valuable insight as to how the delivery of veterinary telemedicine should be regulated. For emphasis, I will point out here that it makes no sense to say that a pet's skin problem noted in October can only be treated if the veterinarian saw the patient in-person and administered vaccines in January. This, however, is the premise proposed by those veterinarians who do not believe that telemedicine can be effective without first physically touching the patient in the last year. Logic also fails when the position of those against the use of telehealthcare suggest that as long as someone in the veterinary hospital has seen the pet in the last year, then anyone else in the building can perform telemedicine, but anyone outside the building cannot.

Again, the extensive use of veterinary telehealthcare over the last 18 months or so has provided the bases for one of the simplest experiments one could run to address the safety and usefulness of virtual care. One only has to ask if after the massive increase in the use of telehealthcare in Vermont and nationwide, did the number of complaints to regulatory bodies increase? Was the care provided virtually more prone to failure or to the creation of a dissatisfied pet owner? Was there an increase in reports to the veterinary board of problems or complaints about telehealthcare during the pandemic?

Monitoring these types of complaints could provide insight into the weaknesses of any new technology. So, an excellent question for the Vermont Veterinary Board would be, how many telemedicine failures, or reports of abuse, or calls from pet owners for more regulation occurred over the last 18 months? I do not know the answer to this question for Vermont, but I suspect it is likely comparable to the experience of the province of Ontario, Canada. After over three years of allowing a VCPR to be established virtually, there were no reports of malpractice or abuse to the regulatory agencies responsible for oversight of the veterinary profession in Canada. Similar data has been generated by several European countries, including England, and the results are the same—veterinary telehealthcare delivery can be done safely and effectively for many disease conditions without having to physically touch the pet. If asked, I stand ready to provide examples of this important data to the OPR for your review.

Most of the veterinarians whose interests are represented by both the Vermont Veterinary Medical Association (VVMA), and the American Veterinary Medical Association (AVMA) currently either work for or own a brick and mortar practice. Interestingly, both of these organizations hire lobbyists to influence the legislative process, and both play a role in helping to craft legislation. It is laudable that these organizations look out for the best interest of their members, and that includes the financial interests of most veterinarians. If we are honest, that means it is possible for the organizations protecting the veterinary profession's financial interests could have a potential conflict of interest relative to the interests of pets and pet owners. Many of the protectors of the historical need to physically touch a patient in order to establish a VCPR do so out of an honest belief that such a rule benefits the pet. Plus, for some, there is tradition, which creates inertia that is sometimes difficult to overcome. My hope is that science and research and data can be used to make the best decisions on how to govern the use of veterinary telehealthcare in Vermont. I firmly believe the data supports allowing the creation of a VCPR virtually for many pet health care needs.

I, too, have my biases; I want to start a telehealthcare company separate and distinct from a brick and mortar practice. I am also concerned about the possible role large corporate entities with technology expertise can play in the veterinary arena, and I believe companies like Chewy can be a potential competitor in the growing telehealthcare market. I have a plan on how best to compete with those entities for my small local start-up company, but it does not include trying to constrain telehealthcare revenues to existing brick and mortar facilities.

Disruptive innovation is a critical part of the existing economic system we employ in our country. Veterinarians worried when the online pharmacies created an innovative way to deliver pet medications to pet owners. Those entities did indeed pose a threat to the revenue stream in traditional veterinary hospitals. I know this because for most of the last three decades I owned veterinary hospitals. In the end, the market adjusted, and many pet owners benefited from the cost savings and convenience of online pharmacies, and traditional veterinary hospitals continued to thrive.

The same result is likely to occur with online companies offering to provide telehealthcare to pet owners. Many pet owners will find the cost savings and convenience of telehealthcare to be very appealing; many will not, and all will learn of the limitations of telehealthcare and the need to still have access to a traditional veterinary practice. Brick and mortar veterinary hospitals will continue as critical locations for the delivery of important pet care, and many of those hospitals will come to realize that the profit margins of telehealthcare make it difficult to deliver from a traditional setting. Those innovative brick and mortar facilities will come to embrace the ability of online virtual pet care providers to assist with many simple problems that pet owners encounter regularly. Government agencies and professional boards should not create rules that prohibit the use of telehealthcare, or limit its use to veterinarians inside a traditional hospital. Rather, they should implement sound, scientifically based, rules to oversee the correct use of veterinary telehealthcare.

I strongly urge the Vermont Veterinary Board, and the Office of Professional Regulation to consider the use of the language suggested by the American Association of State Veterinary Boards, or the language adopted by the veterinary board in Michigan in regards to the use of telehealthcare in Vermont (both are attached to this email). I think veterinarians should be allowed to determine if a pet can benefit from care, including prescription medication, via a virtual telehealthcare visit. We trust veterinarians every day to assess if they have the skills and the technology to assist a pet in need. Sometimes, the answer is no, and the pet is referred to a tertiary care facility with more skills and equipment. The same will hold true for telehealthcare. If a veterinarian determines that a pet's problem cannot be solved with a virtual visit, then the vet will send the case to a brick and mortar facility. Critical to the success of this system is the use of informed consent. As an aside, I think the language on informed consent in the proposed regulations also has much value. Pet owners should be provided information on the pros and cons of all types healthcare they receive regardless of whether it is delivered virtually or in-person at a traditional hospital.

Again, I thank you for the opportunity to be heard on this important subject. As already stated, I stand ready to assist either the veterinary board or the OPR in any way I can in crafting language that allows for the implementation of a VCPR with a telehealthcare visit while creating the rules that insure that the public benefits from the best virtual care possible. The two issues are not mutually exclusive. Good regulations will make veterinary telehealthcare safe and accessible to a large group of pets and pet owners in Vermont.

Best regards,
Brad

PS I would appreciate confirmation that you received this email. Thanks

Brad Burrington, D.V.M.
Trellis

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AAVSB RECOMMENDED GUIDELINES FOR THE APPROPRIATE USE OF TELEHEALTH TECHNOLOGIES IN THE PRACTICE OF VETERINARY MEDICINE

Introduction

When telehealth is used within the confines of state and provincial regulations, it provides valuable tools to augment the delivery and availability of high quality veterinary care. According to the Center for Connected Health Policy, “Telehealth encompasses a broad variety of technologies and tactics to deliver virtual medical, health, and education services. Telehealth is not a specific service, but a collection of means to enhance care and education delivery.”¹ Advancements in communication and information technology provide opportunities for new approaches to the delivery of veterinary medicine.

The American Association of Veterinary State Boards (AAVSB) charged the AAVSB Regulatory Policy Task Force to draft proactive guidelines that provide an appropriate balance between enabling access to veterinary care while ensuring patient safety. This document provides guidance to AAVSB Member Boards for regulating the use of telehealth technologies in the practice of veterinary medicine. Key components of the document include: definitions, veterinarian-client-patient relationship (VCPR), licensure, evaluation and treatment of the patient, continuity of care, medical records, emergency services, prescribing medication, and telemedicine service requirements.

Veterinary medical boards face complex regulatory challenges and patient and public safety concerns in adapting regulations and standards historically intended for the hands-on provision of veterinary medical care to new delivery models involving telehealth technologies. Challenges include determining when a VCPR is established, assuring confidentiality and privacy of client and patient data, guaranteeing creation and maintenance of appropriate medical records, proper diagnosis and treatment of the patient, and limiting the prescribing and dispensing of certain medications.

These guidelines should be used in conjunction with the AAVSB Practice Act Model and in no way be construed to alter the scope of practice of any veterinarian or veterinary technician or

¹ The Center for Connected Health Policy (www.cchpca.org)

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authorize the delivery of veterinary medical services in a setting or in a manner that is not otherwise authorized by law. In fact, these guidelines support a consistent standard of care and scope of practice. Veterinarians and veterinary technicians must review and understand the laws, regulations, and policies of each jurisdiction where they practice.

The veterinarian must employ sound professional judgment to determine whether using telehealth is suitable each time veterinary services are provided and only furnish medical advice or treatment via telemedicine when it is medically appropriate. A veterinarian using telemedicine must take appropriate steps to establish the VCPR, obtain informed consent from the client, and conduct all necessary patient evaluations consistent with currently acceptable standards of care. Some patient presentations are appropriate for the utilization of telemedicine as a component of, or in lieu of, hands-on medical care, while others are not.

Definitions

When used in these guidelines, these words and phrases shall be capitalized and are defined as follows:

- **Animal** means any member of the animal kingdom other than humans, whether living or dead.
- **Client** means a Person who has entered into an agreement with a Veterinarian for the purposes of obtaining veterinary medical services in-person or by any means of communication.
- **Consultation** means when a Veterinarian receives advice or assistance in-person, or by any method of communication, from another veterinarian or other Person whose expertise, in the opinion of the Veterinarian, would benefit a Patient. Under any circumstance, the responsibility for the welfare of the Patient remains with the Veterinarian receiving Consultation.
- **Informed Consent** means the Veterinarian has informed the Client or the Client's authorized representative, in a manner understood by the Client or representative, of the diagnostic and treatment options, risk assessment, and prognosis, and the Client has consented to the recommended treatment.
- **General Advice** means any advice provided by a Veterinarian or Veterinary Technician via any method of communication within or outside of an established VCPR that is given in general terms and is not specific to an individual Animal, group of Animals, diagnosis, or treatment.
- **Jurisdiction** means any commonwealth, state, or territory, including the District of Columbia, of the United States of America, or any province of Canada.
- **Patient** means any Animal or group of Animals receiving veterinary care from a Veterinarian or Veterinary Technician.



- **Person** means any individual, firm, partnership, association, joint venture, cooperative, corporation, governmental body, or any other group, legal entity or combination acting in concert; and whether or not acting as a principal, trustee, fiduciary, receiver, or as any kind of legal or personal representative, or as the successor in interest, assignee, agent, factor, servant, employee, director, officer, or any other representative of such Person.
- **Telehealth** is the overarching term that encompasses all uses of technology geared to remotely deliver health information or education. Telehealth encompasses a broad variety of technologies and tactics to deliver virtual medical, health, and education services. Telehealth is not a specific service, but a collection of tools which allow Veterinarians to enhance care and education delivery. Telehealth encompasses both Telemedicine and General Advice.
- **Telemedicine** is the remote delivery of healthcare services, such as health assessments or consultations, over the telecommunications infrastructure. It allows Veterinarians to evaluate, diagnose and treat patients without the need for an in-person visit.
- **Teletriage** means emergency Animal care, including Animal poison control services, for immediate, potentially life-threatening Animal health situations (e.g., poison exposure mitigation, Animal CPR instructions, other critical lifesaving treatment or advice).
- **Veterinarian** means an individual who is duly licensed to practice Veterinary Medicine under the Jurisdiction's practice act. When not capitalized, means an individual who is duly licensed to practice Veterinary Medicine in another Jurisdiction.
- **Veterinarian-Client-Patient Relationship (VCPR)** exists when:
 - 1) Both the Veterinarian² and Client agree for the Veterinarian to assume responsibility for making medical judgments regarding the health of the Animal(s); and
 - 2) The Veterinarian has sufficient knowledge³ of the Animal(s) to initiate at least a general or preliminary diagnosis of the medical condition of the Animal(s); and
 - 3) The practicing Veterinarian is readily available for follow-up in case of adverse reactions or failure of the regimen of therapy.
- **Veterinary Technician** means an individual who is duly licensed to practice Veterinary Technology under the Jurisdiction's practice act.

² AAVSB recommends that each jurisdiction promulgate appropriate regulations clarifying who may be included within the scope of a single VCPR such as a Veterinarian or another Veterinarian within the same practice group with access to medical records, or a veterinarian with whom he/she is consulting.

³ AAVSB recommends that each jurisdiction promulgate appropriate regulations defining how to establish sufficient knowledge, including the following:

- A. A recent examination of the Animal or group of Animals, either physically or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically; or
- B. Through medically appropriate and timely visits to the premises at which the Animal or group of Animals are kept.



Guidelines for the Appropriate Use of Telehealth Technologies in Veterinary Medical Practice

Licensure

A Veterinarian or Veterinary Technician must be licensed by, or under the authority of, the Board of Veterinary Medicine in the Jurisdiction where the VCPR is established (location of Patient at time of VCPR establishment)⁴.

Any veterinarian who is licensed in another Jurisdiction, or any Person whose expertise, in the opinion of the Veterinarian with an established VCPR, would benefit an Animal, and who is consulting with the Veterinarian, is exempt from licensure in this Jurisdiction, provided such service is limited to such Consultation.

Evaluation and Treatment of the Patient(s)

The Veterinarian must employ sound professional judgment to determine whether using Telehealth is suitable each time veterinary services are provided and only furnish medical advice or treatment via Telemedicine when it is medically appropriate. A Veterinarian using Telemedicine must take appropriate steps to establish the VCPR, obtain Informed Consent from the Client, and conduct all necessary Patient evaluations consistent with currently acceptable standards of care. Some Patient presentations are appropriate for the utilization of Telemedicine as a component of, or in lieu of, hands-on medical care, while others are not.

The Veterinarian must take appropriate precautions to safe guard the confidentiality of a Client's or Patient's records. Such includes ensuring that technology and physical settings used as part of Telemedicine services are compliant with Jurisdictional or federal requirements.

The Veterinarian must ensure that the Client is aware of the Veterinarian's identity, location and Jurisdiction's license number and licensure status. Evidence documenting Informed Consent for the use of Telemedicine must be obtained and maintained in the medical record.

Continuity of Care/Medical Records

Veterinarians must maintain appropriate medical records⁵ that contain sufficient information for continued care and are compliant with Jurisdictional requirements. Documentation of the Telemedicine encounter should be readily available upon request by the Client.

⁴ Arguments can also be made that identify the location of practice under these circumstances as occurring in both Jurisdictions; that is where the Patient is located and where the Veterinarian is located.

⁵ See the AAVSB Practice Act Model Article V for suggested language.



Emergency Services

Teletriage may be performed by a Veterinarian or Veterinary Technician without establishing a VCPR or obtaining Informed Consent to provide emergency, potentially life-saving Telemedicine services.

Prescribing Medications

Prescribing medications in-person or via Telemedicine requires a VCPR and is at the professional discretion of the Veterinarian. The indication, appropriateness, and safety considerations for each prescription issued in association with Telemedicine services must be evaluated by the Veterinarian in accordance with all Jurisdictional and federal laws⁶ and standards of care.

Telemedicine Service Requirements

A provider of Telemedicine services must ensure that the Client is aware of the Veterinarian's identity, location and Jurisdiction's license number and licensure status, and should provide to Clients a clear mechanism to:

1. Access, supplement and amend Client-provided contact information and health information about the Patient; and
2. Register complaints with the appropriate Board of Veterinary Medicine or other regulatory body.

⁶ The Federal definition of the VCPR must be followed when issuing prescriptions in accordance with the Veterinary Feed Directive (VFD) and Animal Medicinal Drug Use Clarification Act (AMDUCA) of 1994.



VETERINARY MEDICINE AND VETERINARY TECHNOLOGY PRACTICE ACT MODEL (PAM) WITH COMMENTARY

As approved by the AAVSB Member Boards in September 2019

LOCATED AT

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Section 307. Qualifications for Licensure Transfer.....	42
Section 308. Continuing Education.....	43
Section 309. Registration of Veterinary Facilities.....	45
Section 310. Licensure Renewal Requirements.....	46
Section 311. Requirements for Reinstatement of an Expired License.....	47
Section 312. Source of Data.....	48
Article IV. Discipline.....	49
Section 401. Grounds, Penalties, and Reinstatement.....	49
Section 402. Summary Suspension.....	56
Article V. Medical Records and Confidentiality.....	58
Section 501. Medical Records.....	58
Section 502. Confidential Information and Exceptions.....	60
Article VI. Mandatory Reporting.....	62
Section 601. Responsibility to Report.....	62
Section 602. Courts.....	63
Section 603. Self-Reporting.....	63
Section 604. Deadlines, Forms.....	63
Section 605. Immunity.....	63
Article VII. Other.....	64
Section 701. Severability.....	64
Section 702. Effective Date.....	64

Boards can comment and fully discuss issues impacting the regulation of Veterinary Medicine, Veterinary Technology and the mission of public protection. The AAVSB Practice Act Model is an example of the resources that can be made available to AAVSB Member Boards when diverse interests work together toward a common goal.

Acknowledgments

The American Association of Veterinary State Boards is very grateful to current and past volunteers who have spent countless hours on the AAVSB Practice Act Model.

Revisions

Veterinary Medicine Practice Act Model with Comments created 2001

Veterinary Medicine and Veterinary Technology Practice Act Model with Comments revised 2002

Articles I and III revised 2005

Article I revised 2009

All articles revised 2014

All articles revised in 2018

Definition of VCPR revised in 2019

Article I. Title, Purpose, and Definitions.

An ACT concerning the regulation of the practices of Veterinary Medicine and Veterinary Technology.
Be it enacted...

Commentary

Introductory Comment to Article I.

The AAVSB believes that the public interest must be the central precept of any professional regulatory act and its administration, and that jurisdiction regulatory boards must constantly strive to ensure that this basic principle is upheld. These beliefs are clearly articulated in the veterinary medicine and veterinary technology practice act model ("act").

Article I of the act states that safeguarding the public interest is the most compelling reason for regulating the practices of veterinary medicine and veterinary technology, and identifies the activities included within the practices. Definitions of other terms used throughout the act are also included in this article.

Section 101. Title of Act.

This Act shall be known as the "(Name of Jurisdiction) Veterinary Medicine and Veterinary Technology Practice Act."

Section 102. Legislative Declaration.

- (a) Veterinary Medicine and Veterinary Technology in the Jurisdiction of _____ are declared professional practices affecting the public health, safety, and welfare and are subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practices of Veterinary Medicine and Veterinary Technology, as defined in the Act, merit and receive the confidence of the public and that only qualified individuals be permitted to practice Veterinary Medicine or Veterinary Technology in the Jurisdiction of _____. This Act shall be liberally construed to carry out these objectives and purposes.
- (b) It is further declared that the intent of this legislation is to regulate the Veterinary Medicine and Veterinary Technology professions and will result in displacing competition by restricting licensure to practice Veterinary Medicine and Veterinary Technology, as such practice is defined and interpreted by the Board, to Persons determined by the Board to be qualified under this Act.
- (c) It is further declared that any such restriction on competition is outweighed by the broader interest in protection of the public health, safety, and welfare. It is understood that the regulatory structure calls for Veterinarians, Veterinary Technicians and public members to serve on the Board and this legislation recognizes the need for professional expertise provided

Section 104. Definitions.

When used in this Act, these words and phrases shall be capitalized and are defined as follows:

- (a) **Animal** means any member of the Animal kingdom other than humans, whether living or dead.
- (b) **Animal Shelter** means a public or private humane society, Society for the Prevention of Cruelty to Animals, Animal protection shelter or control agency, rescue group, etc., that provides shelter and care for homeless Animals.
- (c) **Applicant** means a Person who submits an application for licensure or registration, whether complete or not, to the Board.
- (d) **Approved Provider of Continuing Education** means any Person, that has met the requirements of the Board to provide educational courses that are designed to assure continued competence in the practice of Veterinary Medicine or Veterinary Technology.
- (e) **Approved Program of Continuing Education** means an educational program approved by the Board or offered by an Approved Provider of Continuing Education.
- (f) **Approved Veterinary Medical Program** means a school of Veterinary Medicine or a veterinary medical education program that has been approved by the Board.
- (g) **Approved Veterinary Technology Program** means a school of Veterinary Technology or a Veterinary Technology or Veterinary Nursing education program that has been approved by the Board.
- (h) **Board of Veterinary Medicine** means the Board of Veterinary Medicine created under this Act.
- (i) **Client** means a Person who has entered into an agreement with a Veterinarian for the purposes of obtaining veterinary medical services in-person or by any means of communication.
- (j) **Complementary and Alternative Veterinary Medicine [Therapies]** means a heterogeneous group of preventive, diagnostic and therapeutic philosophies and practices that are not considered part of conventional Veterinary Medicine. These therapies include, but are not limited to, veterinary acupuncture, acuthery, and acupressure; veterinary homeopathy; veterinary manual or manipulative therapy (i.e., therapies based on techniques practiced in osteopathy, chiropractic medicine, or physical medicine and therapy); veterinary nutraceutical therapy; and veterinary phytotherapy.
- (k) **Consultation** means when a Veterinarian receives advice or assistance in-person, or by any method of communication, from a veterinarian or other Person whose expertise, in the

(x) **Supervision**-related terms are defined as follows:

- (1) **Supervising Veterinarian** means a Veterinarian who assumes responsibility for the veterinary care given to a Patient by an individual working under his or her direction. The Supervising Veterinarian must have examined the Patient pursuant to currently acceptable standards of care.
- (2) **Immediate Supervision** means the Supervising Veterinarian is in the immediate area and within audible and visual range of the Patient and the individual treating the Patient.
- (3) **Direct Supervision** means the Supervising Veterinarian is readily available on the Premises where the Patient is being treated.
- (4) **Indirect Supervision** means a Supervising Veterinarian need not be on the Premises but has given either written or oral instructions for the treatment of the Patient and is readily available for communication.

(y) **Veterinarian** means an individual who is licensed to practice Veterinary Medicine under the provisions of this Act.

(z) **Veterinarian-Client-Patient Relationship (VCPR)**

exists when:

- 1) Both the Veterinarian and Client agree for the Veterinarian to assume responsibility for making medical judgments regarding the health of the Animal(s); and
- 2) The Veterinarian has sufficient knowledge of the Animal(s) to initiate at least a general or preliminary diagnosis of the medical condition of the Animal(s); and
- 3) The Veterinarian has provided the client with information for obtaining timely follow up care.

(aa) **Veterinarian Manager** is a Veterinarian who registers to assume responsibility for the Veterinary Facility registration, management and operation of a Veterinary Facility.

(bb) **Veterinary Facility** means any building, place or mobile unit from which the practice of Veterinary Medicine and Veterinary Technology is conducted.

Commentary

Section 104. Definitions. (continued)

Section 104(y). Veterinarian - To maintain consistency with the regulations promulgated by the Food and Drug Administration, Department of Health and Human Services with regard to Animal Drugs, Feed and Related Products (21 C.F.R. §530.3) which define Veterinarian and the Veterinarian-Client-Patient Relationship, the AAVSB defines Veterinarian as an individual who is duly licensed under the provisions of the Act. The AAVSB recognizes that there may be special limitations to the use of the title of Veterinarian and has defined Special Provisions in Section 107. The AAVSB also strongly believes that limiting the use of the title Veterinarian to individuals licensed to perform veterinary services better protects the public. It must be emphasized that the title restriction does not prevent anyone from referencing a valid educational degree (i.e. DVM) or other recognized credential (i.e. VMD). See also the comment to Section 301(b) of the Act. Several comments addressed this issue, saying the term Veterinarian belonged to individuals by virtue of the receipt of a degree. While this is understandable from an academic perspective, the AAVSB reasoned that the Code of Federal regulations and the potential for confusion to the public, mandate limitation of use of the term "Veterinarian" to Licensees. In that case, there would be no violation and enforcement would be left up to criminal prosecution through the state's attorney or through civil litigation, involving deceptive trade practices or other applicable remedies. The AAVSB determined this approach does not adequately protect the public because many Jurisdictions lack the resources or incentives to criminally prosecute such offenses or, alternatively, injured parties must pursue matters through an expensive civil process. The AAVSB has chosen to affirmatively address the issue, rather than pass the enforcement to other entities.

Section 104(z). Veterinarian-Client-Patient Relationship (VCPR) – Most Jurisdictions require the establishment of a valid VCPR to provide Patient care and prescribe medication. Failure to establish a valid VCPR may constitute grounds for charges of professional misconduct in many Jurisdictions. The qualifying characteristics of this relationship vary from Patient to Patient and, for a particular Patient, may also vary from situation to situation. For example, the AAVSB recognizes that in cases involving stray animals without an identified owner, emergency care may be rendered without establishment of a formal VCPR. The AAVSB determined that the establishment of the VCPR must be specified through general statutory language. Under certain circumstances, the failure to establish the VCPR may severely hinder the Boards' ability to prosecute or pursue administrative disciplinary actions against Licensees.

Certain comments suggested referencing the definition of VCPR set forth in the Code of Federal Regulations (CFR) within the statute. The VCPR as defined by the CFR under Title 21-Food and Drugs- applies only to the prescribing and dispensing of drugs and is not a federal requirement for the practice of veterinary medicine. Therefore, Jurisdictions may or may not require it, and may modify it when requiring it to practice. The AAVSB carefully reviewed the CFR and determined that the above definition was broad enough to encompass the more specific references in the CFR. Also, the AAVSB did not want to bind the Jurisdiction to a federal definition which, if changed, would necessitate subjecting the practice act to modifications and additional scrutiny by the legislature. Finally, the AAVSB determined that the specifics of the VCPR should be contained in the standards of practice/codes of conduct and promulgated through the rule/regulations, a process which is easier to modify, if necessary. Below are comments to the act which provide suggested language to be incorporated in the regulations.

Commentary

Section 104(cc). Veterinary Technician - The AAVSB believes that the title “Veterinary Technician” and the practice of Veterinary Technology should be protected as a licensed profession, and this is reflected in the Act. Jurisdictions have created other titles such as veterinary assistant, or veterinary employee to define the roles of staff who may perform tasks not relegated to Veterinary Technicians.

The AAVSB strongly believes there should be uniform degrees and titles for veterinary technicians or veterinary nurses. Regardless, in all cases, Jurisdictions are strongly encouraged to specify the roles of each designated title (in the rules), recognizing that all veterinary employees must be Supervised by a Veterinarian.

Section 106. Practice of Veterinary Technology.

The Practice of Veterinary Technology means:

Any individual practices Veterinary Technology when performing any one or more of the following on an Animal:

- (a) Provision of professional medical care, monitoring and treatment under Supervision of a Veterinarian;
- (b) Representation of oneself directly or indirectly, as engaged in the practice of Veterinary Technology; or
- (c) Use of any words, letters or titles under such circumstance as to induce the belief that the individual using them is authorized to practice Veterinary Technology under this Act. Such use shall be prima facie evidence of the intention to represent oneself as engaged in the practice of Veterinary Technology. Nothing in this section shall be construed to permit a Veterinary Technician to do the following:
 - (1) surgery;
 - (2) diagnose;
 - (3) prognose; and
 - (4) prescribe.

Regulations defining tasks of Veterinary Technicians:

The Board shall promulgate regulations establishing Animal health care tasks and an appropriate degree of Supervision required for those tasks that may be performed only by a Veterinary Technician or a Veterinarian.

Commentary**Section 106. Practice of Veterinary Technology.**

See comment to Section 104 (cc) regarding the protection of the title and the licensed profession.

Section 107. Special Provisions.

The licensure requirements of the Act shall not apply to the following:

- (a) Any veterinary medical officer employed by a governmental body performing Veterinary Medicine services within the scope of official duties, provided such Veterinary Medicine services are limited to the period of employment;
- (b) Any Animal care provider employed by a governmental body performing Veterinary Technology services within the scope of official duties, provided such Veterinary Technology

- (j) Any Person or that Person's employee, who, subject to the Jurisdiction's anti-cruelty laws, treats Animals belonging to that Person, providing that ownership is not transferred for the purpose of circumventing this Act;
- (k) Any veterinarian or veterinary technician who is licensed in good standing in another Jurisdiction or country and is providing veterinary services in response to an emergency, disaster (natural or man-made) or a case involving Animal cruelty or fighting, provided a request for such assistance is received from a government, law enforcement, or Animal protection agency;
- (l) Any veterinarian who is licensed in good standing in another Jurisdiction or country and is providing a Continuing Education course or training at an Approved Veterinary Medical Program or Approved Veterinary Technology Program or in connection with an Approved Program of Continuing Education.

Commentary

Section 107. Special Provisions.

The AAVSB recognizes that some Jurisdictions include additional special provisions relating to the spaying, neutering, dehorning, castration emasculation or docking of cattle, horses, sheep, goats, or swine in the course or exchange of work for which no monetary compensation is paid, or to artificial insemination and the collection of semen as well as additional services. Due to the potential for harm to the public/Animal(s), it is the intent of the Act to include Persons performing such activities as professionals who must be licensed. Accordingly, these activities are intentionally absent from the list of special provisions and such activities are included in the practice definition.

The special provision for students who practice at a veterinary teaching hospital or under the Immediate or Direct Supervision of a Veterinarian is intended to be restricted to those students who have completed some basic clinical courses. After much discussion and review of the comments, the AAVSB chose to leave the time period blank. The Jurisdictions should determine the requisite time period which can be reflected in hours, percentages or years. Similarly, Jurisdictions should determine the appropriate prerequisites to be completed before Veterinary Technology students are permitted to practice Veterinary Technology.

As drafted, the special provision also restricts the practice of Veterinary Technology to those students who have completed some basic courses and are pursuing completion of the experience component of the program.

In all cases the special provision is intended to apply only to students practicing under the appropriate supervision as determined by the Board. With regard to faculty, the AAVSB noted that several Jurisdictions already require full licensure of faculty who teach clinical curriculum. Others require faculty licenses or institution licenses. The AAVSB feels strongly that Veterinary Medicine faculty involved in direct, clinical relations with the public and its Patients are engaged in practice and, thus, should be licensed, particularly when a VCPR exists.

Article II. Board of Veterinary Medicine.

Commentary

Introductory Comment to Article II.

Before it can regulate the practice of Veterinary Medicine or Veterinary Technology, the Jurisdiction must first establish and empower the Board. Accordingly, Article II of the Act defines and creates the Board by specifying elements necessary to its formation, organization, and operation. Each of the sections contained in this article covers elements that the AAVSB felt necessary to the proper formation and efficient operation of the Board. Several of these sections, especially those that contain innovative or infrequently utilized provisions, are supplemented by individual explanatory comments.

Among the sections of Article II that may be of particular interest to users of the Act are the following: Section 202 and 203(c), pertaining to the inclusion of public members as Board members; Section 207, which provides grounds and procedures for removal of Board members, and Section 213(b)(2), which enables Boards to avail themselves of research and study grants and other non-Jurisdiction monies without having to deposit such funds in Jurisdiction general revenue accounts (thereby losing control over the expenditure of such funds).

It is also important to note that Section 212 specifically empowers the Board to make such rules as are necessary to fully administer and implement the Act. This is a most significant feature of the Act. The underlying philosophy of this approach is that the statute should create goals, guidelines, and policies in general areas, and permit the Board to provide the specifics in its rules. This approach recognizes that it is impossible for State legislatures to enact comprehensive provisions regarding all the matters with which a Board may be confronted or to anticipate the rapidly changing conditions of the professions and the delivery of veterinary medical services. Consequently, the AAVSB recommends that Boards have adequate power to adopt and amend rules with the greatest possible flexibility and autonomy. Section 212 of this Act is designed to accomplish this objective.

Section 201. Designation.

The responsibility for enforcement of the provisions of this act is hereby vested in the Board of Veterinary Medicine (Board). Under active oversight and supervision by the Jurisdiction, the Board shall have all of the duties, powers, and authority specifically granted by or necessary for the enforcement of this Act, as well as such other duties, powers, and authority as it may be granted from time to time by applicable law.

Commentary

Section 203. Qualifications.

Conflict of interest issues provide a legal basis for challenging the actions of a regulatory Board. As has been determined by the United States Supreme Court, a conflict need not be actual, but merely the appearance of an impropriety can create the basis for legal challenges. The AAVSB strongly suggests regulatory Board members not participate as an officer or in a policy-making position of a local, Jurisdiction or national professional association.

Section 203(b). Qualifications.

Section 203(b) of the Act requires that Veterinarians and Veterinary Technicians be licensed to practice at all times while serving as Board members. Although AAVSB recommends that board members should have at least five (5) years of experience in the practice of Veterinary Medicine or Veterinary Technology prior to appointment, it believes the number of years of experience should be determined by each Board. Since the practice of Veterinary Medicine is defined in Section 105 in broad terms, it renders a Veterinarian actively engaged in almost any phase of practice eligible for appointment. This provides for the eligibility of candidates who have divergent backgrounds and experiences, who are knowledgeable in the affairs of the profession, and who represent different geographic areas of the Jurisdiction.

Section 203(c). Qualifications.

Specific qualifying criteria for the public member have been deliberately omitted from this section. Reliance has been placed in the Governor to determine what attributes a Person should possess to meaningfully serve on a Board. To help assure that such a member would be truly independent in judgments, those Persons who have a possible substantial relationship with the profession are rendered ineligible by this section. The AAVSB also recommends that a public member of the Board be at least twenty-one (21) years old.

Section 204. Appointment.

In accordance with the principle of separation of powers and to provide for sufficient oversight by the respective branches of government, the Governor shall appoint the members of the Board in accordance with the provisions of this Article or other applicable laws.

Commentary

Section 204. Appointment.

The AAVSB recognizes that there may be other appointing authorities in some Jurisdictions. Accordingly, Jurisdictions with an appointing authority other than the Governor should insert the appropriate reference to such authority within this section of the Act.

Commentary

Section 206. Vacancies.

Based upon several experiences within Veterinary Medicine and other professions whereby vacancies on regulatory Boards have not been timely appointed, the AAVSB provided for a time period whereby the Governor (or other appointing authority) must fill such vacancies. The AAVSB recommends that failure to make such appointments within the six-(6) month period should divest the Governor of the appointment authority for that vacancy and empower the State Senate in this regard for said vacancy. It is hoped that this time period will provide incentives to the Governor to make such appointments in a timely fashion. However, each individual jurisdiction will have to consider proposed language to ensure such does not conflict with other laws. This is a model act for jurisdictions to consider and, obviously, they may not enact it verbatim. That being said, while boards might not be able to enforce these mandates, including such provisions will at the very least offer guidance to legislatures and courts as to how to ensure public safety by cooperating with and helping regulatory boards.

Section 207. Removal.

- (a) A Board member may be removed by the Governor. In addition, pursuant to the procedures set forth in subsection (b) herein, a board member may be removed by a three-quarter ($\frac{3}{4}$) majority vote of the board upon one or more of the following grounds:
- (1) The refusal or inability for any reason of a Board member to perform the duties as a member of the Board in an efficient, responsible, and professional manner;
 - (2) The misuse of office by a member of the Board to obtain financial or material gain or advantage personally or for another through such office;
 - (3) A final adjudication by a recognized body including the courts that the Board member is in violation of the laws governing the practice of Veterinary Medicine or Veterinary Technology; or
 - (4) Other just and reasonable causes as determined solely by the Board pursuant to applicable law.
- (b) Removal of a member of the Board shall be in accordance with the Administrative Procedures Act of this Jurisdiction, or other applicable laws.

Section 209. Compensation of Board Members.

Each member of the Board shall receive a per diem as specified in the regulations for time engaged in performance of the official duties of the Board and shall also be reimbursed for all reasonable and necessary expenses incurred in connection with the discharge of such official duties.

Commentary**Section 209. Compensation of Board Members.**

AAVSB recognizes that many boards do not pay board members, but the AAVSB believes board members should be paid a per diem for their time as well as their travel expenses. Failure to compensate volunteers for their time may result in difficulty recruiting Board members who must travel and may also lose a day's pay.

Section 210. Meetings.

- (a) The Board shall meet at least once every X month(s) to transact its business. The Board shall meet at such additional times as it may determine. Such additional meetings may be called by the Chairperson of the Board or by two-thirds (2/3) of the members of the Board.
- (b) The Board shall give prior notice of the time and place for each meeting in a manner prescribed by the Administrative Procedures Act or other applicable laws.
- (c) A majority of the members of the Board shall constitute a quorum for the conduct of a Board meeting and, except where a greater number is required by the Act or by any rule of the Board, all actions of the Board shall be by a majority of a quorum.
- (d) All Board meetings and hearings shall be open to the public. The Board may, in its discretion and according to law, conduct any portion of its meeting in executive session, closed to the public.

Commentary**Section 210(a). Meetings.**

The AAVSB strongly recommends that Boards of Veterinary Medicine meet at least four (4) times per year. This is a minimum standard that would help Boards maintain an adequate level of efficiency and responsiveness.

Section 210(c). Meetings.

The AAVSB recommends that the Boards determine if remote participation is permissible by law.

Section 213. Powers and Responsibilities.

- (a) Under active Jurisdiction oversight and supervision, the Board shall be responsible for the control and regulation of the practices of Veterinary Medicine and Veterinary Technology in this Jurisdiction including, but not limited to, the following:
- (1) Licensure by Examination, or Transfer, or issuance of temporary, emergency or faculty licenses, or the renewal of licenses of individuals who are authorized to practice Veterinary Medicine or Veterinary Technology under the provisions of this Act;
 - (2) Registration and renewal of registration or licensure of facilities under provisions of this Act;
 - (3) The establishment and enforcement of standards or criteria of programs or other mechanisms to insure the continuing competence of Licensees;
 - (4) The establishment and enforcement of compliance with minimum standards for the registration of Veterinary Facilities, minimum standards of care and codes of conduct for Licensees who practice Veterinary Medicine or Veterinary Technology;
 - (5) The creation of a Bill of Rights concerning what veterinary services a Client may expect to receive;
 - (6) The determination and issuance of standards for recognition and approval of degree programs of schools and colleges of Veterinary Medicine and Veterinary Technology whose graduates shall be eligible for licensure in this Jurisdiction;
 - (7) The enforcement of those provisions of the Act relating to the conduct or competence of Applicants, Licensees practicing in this Jurisdiction, registration of Veterinary Facilities and the suspension, revocation, or restriction of licenses to practice Veterinary Medicine or Veterinary Technology;
 - (8) The maintenance of jurisdiction over Persons, irrespective of their licensure status, (i.e., active, inactive, expired, lapsed, surrendered or disciplined) relative to acts, omissions, complaints and investigations which occurred during the licensure period. The Board shall also maintain jurisdiction over registered facilities, irrespective of their registration status, relative to acts, omissions, complaints and investigations which occurred during the registration period. Such jurisdiction shall be for purposes of enforcement of all the provisions of this Act and any regulations duly promulgated hereunder, including the assessment and collection of fines, costs, and attorneys' fees. Jurisdiction of the Board shall also extend to Persons engaging in the unauthorized practice of Veterinary Medicine or Veterinary Technology. It is the intent of this subsection that Licensees cannot divest the Board of jurisdiction by changing or relinquishing licensure or registration status;

authorized to accomplish by this Act, or which the Board is qualified to accomplish by reason of its jurisdiction or professional expertise;

- (3) Any investigation, inquiry, or hearing that the Board is empowered to hold in accordance with applicable law may be held by or before any member(s) of the Board and the order of such member(s) shall be deemed to be the order of said Board when approved and confirmed as noted in Section 210(d);
- (4) The Board shall report any violation of this Act which also is deemed as violative of applicable criminal statutes to the Attorney General [State's Attorney] to cause appropriate proceedings to be instituted in the proper court without delay and to be prosecuted in the manner required by law. It is the duty of the Attorney General [State's Attorney] to prosecute such violations. Nothing in this paragraph shall be construed to require the Board to report violations whenever the Board believes that the public's interest will be adequately served in the circumstances by a suitable written notice or warning;
- (5) The Board shall have the power to subpoena Persons and documents for purposes of depositions and testimony, or both, in the same manner as prescribed in civil cases in the courts of this Jurisdiction. Any member of the Board, hearing officer, or administrative law judge shall have power to administer oaths to witnesses at any hearing that the Board is authorized to conduct, and any other oaths authorized in any Act administered by the Board;
- (6) In addition to the fees specifically provided for in this Act, the Board may assess additional reasonable fees for services rendered to carry out its duties and responsibilities as required or authorized by this Act or Board rules. Such services shall include but not be limited to the following:
 - (i) Issuance of duplicate certificates or identification cards;
 - (ii) Mailing lists, or reports of data maintained by the Board;
 - (iii) Copies of any documents;
 - (iv) Certification of documents;
 - (v) Notices of meetings;
 - (vi) Licensure Transfer;
 - (vii) Examination administration to a licensure Applicant; and
 - (viii) Examination materials;

Commentary

Section 213. Powers and Responsibilities. (continued)**Section 213(a)(3)(4)(5)(6). Powers and Responsibilities.**

Great care should be exercised by the Boards with respect to these Sections. Many Jurisdictions have statutes or rules which provide, for example, that approved degree programs of schools or colleges of Veterinary Medicine are those accredited by the Council on Education (COE) of the American Veterinary Medical Association (AVMA). Similarly, with regard to accredited Veterinary Technology programs, many Jurisdictions have statutes or rules that provide that approved programs are those accredited by the Committee on Veterinary Technician Education and Activities (CVTEA) of the AVMA. Furthermore, some Boards through their regulation/rules, rely upon the standards of practice or codes of ethics of private outside entities like the professional associations. As is emphasized by this Practice Act Model and Comments and for reasons stated below, the legislatures and/or regulatory Boards are encouraged to adopt, by statute or through the rule making process, the actual standards or criteria of the private outside entity to avoid allegations of improper delegation.

It is a well-established rule of administrative law that any delegation of governmental power (through statute or by rule) must carry with it appropriate limitations and procedural safeguards for affected individuals. For example, a direct, unequivocal grant of the accreditation function to a private organization, such as AVMA COE, by the legislature through a practice act or by the Board through the rule making process, might be deemed an unauthorized, improper, and invalid delegation of legislative or Board authority. Similarly, a direct reliance upon standards of practice or a code of conduct of a private outside body over which the legislature or Board has no control may constitute an unconstitutional delegation of authority. This doctrine is based upon the simple premise that regulatory decisions impacting an individual's property right (i.e. a license) must be made by Boards that have been created and empowered to protect the public and are answerable to the general public. Further, regulatory Boards in Veterinary Medicine have no control over AVMA activities. A review of this legal doctrine reveals case law invalidating legislation and rules that, without limitation, rely upon these outside entities without public accountability. See Garces v. Department of Registration and Education, 254 N.E.2d 622 (Ill. App., 1969); Gumbhir v. Kansas State Board of Pharmacy, 618 P. 2d 837 (Ks 1980); Coffman v. State Board of Examiners in Optometry, 50 N.W. 2d 322 (MI 1951); FM Properties Operating Co. v. City of Austin, 22 S.W. 3d 868 (TX 2000), Balian v. Board of Licensure in Medicine, 722 A. 2d 364 (ME 1999).

The AAVSB recommends that the statutory language grant the Board the authority to approve Veterinary Medicine programs and Veterinary Technology programs. Boards thereafter may adopt in their rules the standards, criteria and policies of accreditation established from time to time by the COE or the CVTEA, the nationally recognized accrediting agencies for Veterinary Medicine degree programs and Veterinary Technology programs. Thereafter, the regulatory Boards can annually adopt in their minutes the list of accredited Veterinary Medicine and Technology programs using the AVMA COE and CVTEA list. A similar process can take place by the Board should it wish to rely upon others in determining the standards of practice or codes of conduct. This will allow the legislatures and Boards to utilize the expertise of such private outside entities without improperly delegating such authority to an organization over whom the Boards have no control, and which is not accountable to the public.

Article III. Licensing.

Commentary

Introductory Comment to Article III.

Article III of this Act sets out the requirements for initial licensure of Veterinarians and Veterinary Technicians, and registration of Veterinary Facilities, as well as Licensure Transfer, renewal, and emergency, temporary or faculty licensure. As in other parts of the Act, this Article establishes basic criteria and delegates the authority for implementing those criteria to the Board. The Board exercises this authority by promulgating specific rules and utilizing appropriate enforcement mechanisms. For example, regarding initial licensure, the Act would be implemented by the Board's approval of Veterinarian or Veterinary Technician degree programs, specifications of the Examinations to be used, and establishment of all other prerequisites that must be met by each Applicant to whom it issues a license.

This article as well as the entire Act, also reflects the AAVSB's efforts to develop uniform standards for the transfer of licensure. The veterinary medical profession has become increasingly mobile, and Boards need to examine the ways in which differing standards between Jurisdictions may be affecting the public's access to qualified Licensees.

Section 301. Unlawful Practice.

- (a) The practice of Veterinary Medicine and Veterinary Technology in this Jurisdiction is subject to enforcement by the Board. Except as otherwise provided in this Act, it shall be unlawful for any Person to practice Veterinary Medicine or Veterinary Technology in this Jurisdiction through any means, unless duly licensed under the applicable provisions of this Act.
- (b)
 - (1) No Person shall use the designation Veterinarian, Licensed Veterinarian or any other designation indicating licensure status, including abbreviations, or hold themselves out as a Veterinarian unless duly licensed as such.
 - (2) No Person shall use the designation Veterinary Technician, Licensed Veterinary Technician or any other designation indicating licensure status, including abbreviations, or hold themselves out as a Veterinary Technician unless duly licensed as such.
- (c) The practice of Veterinary Medicine or Veterinary Technology through electronic or other means in this Jurisdiction shall constitute the practice of Veterinary Medicine or Veterinary Technology subject to licensure and enforcement by the Board.

Commentary

Section 301. Unlawful Practice. (continued)**Section 301(b). Unlawful Practice.**

This provision is intended to restrict the use of the terms Veterinarian and Veterinary Technician to those who are duly licensed under the provisions of this Act and is not intended to prevent accurate use of initials or abbreviations, such as DVM, VMD or any corresponding degree initials for Veterinary Technicians, indicating academic achievement. This Act is also not intended to prevent other licensed professionals from practicing within other "allied scopes." However, it is important to recognize the Veterinarian and Veterinary Technician titles and link this name recognition to licensure. This link protects the public through an assurance that there is regulatory consistency associated with the Veterinary Medicine and Veterinary Technology identity. See also the Comments to Section 104(y), defining the term Veterinarian.

Section 301(c). Unlawful Practice.

A license shall be required for any Veterinarian or Veterinary Technician who provides veterinary medical services to a Patient or Client in this Jurisdiction through telephonic, electronic or other means. Many factors, including technological advancements, increase the likelihood of the practice of Veterinary Medicine via electronic means and without physical presence, both intrastate and interstate. While the judiciary may have the final word on regulating professions across Jurisdiction lines, this section is designed to specifically address the issue of where practice takes place. The AAVSB believes the practice of Veterinary Medicine takes place where the Patient is located when the VCPR is established. Because the Board's central mission is to protect the public in its Jurisdiction, it must make every effort to regulate the practice of Veterinary Medicine being received in that Jurisdiction, regardless of the location of the Veterinarian providing the services. Arguments can also be made that identify the location of practice under these circumstances as occurring in both Jurisdictions; that is where the Patient is located and where the Veterinarian is located.

Veterinarians in this Jurisdiction may wish to utilize the services of other veterinarians not licensed to practice in this Jurisdiction or other Persons. Consultations are defined in Section 104, and there are special provisions in Section 107(c) and (d) for Consultations with other veterinarians and Persons. The responsibility for the welfare of the animal remains with the Veterinarian in this Jurisdiction.

Section 302. Qualifications for Licensure by Examination.

- (a) To obtain a license to practice Veterinary Medicine, an Applicant for licensure by Examination shall bear the burden of substantiating to the Board that the following criteria have been met:
- (1) Submission of a completed application in the form approved by the Board;
 - (2) Attainment of twenty-one (21) years of age;
 - (3) Is of good moral character. As one element of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining criminal records checks, pursuant to applicable law. All good moral character information, including the information obtained through the criminal background checks, shall be relevant to licensure eligibility determinations to the extent permitted by law.
 - (4) Graduation and receipt of a doctorate degree in Veterinary Medicine from an Approved Veterinary Medical Program;
 - (5) Successful completion, within the X years preceding application, of an Examination(s) approved by the Board; and
 - (6) Payment of all applicable fees specified by the Board relative to the licensure process.
- (b) To obtain a license to practice Veterinary Technology, an Applicant for licensure by Examination shall bear the burden of substantiating to the Board that the following criteria have been met:
- (1) Submission of a completed application in the form approved by the Board;
 - (2) Attainment of eighteen (18) years of age;
 - (3) Is of good moral character. As one element of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining criminal records checks, pursuant to applicable law. All good moral character information, including the information obtained through the criminal background checks, shall be relevant to licensure eligibility determinations to the extent permitted by law.
 - (4) Graduation and receipt of a degree from an Approved Veterinary Technology Program;
 - (5) Successful completion, within the X years preceding application of an Examination(s) approved by the Board; and
 - (6) Payment of all applicable fees specified by the Board relative to the licensure process.

Section 303. Educational Equivalence.

By rule, the Board may set forth a procedure for Applicants who have graduated from a program/school that is not approved by the Board for an equivalency determination related the educational component of licensure.

Commentary**Section 303. Educational Equivalence.**

One of the most difficult tasks for regulatory Boards is to assess the educational equivalence of graduates of veterinary programs outside the United States and Canada that have not been evaluated by a recognized accrediting body under specific standards and criteria. There are currently two (2) programs designed to measure educational equivalence, the AAVSB Program for the Assessment of Veterinary Education Equivalence (PAVE) and the AVMA Educational Commission for Foreign Veterinary Graduates (ECFVG) program. As an entity with public protection as its primary mission and whose membership consists of veterinary Boards who share in this mission, the PAVE program was designed by the AAVSB in response to a request from its member Boards to assist them in the accurate and timely assessment of educational equivalence of foreign graduates. Boards are encouraged to adopt the standards and criteria of PAVE through their rule making process rather than through the statutes. Details of the PAVE program can be found on the AAVSB website. Details of the ECFVG program can be found on the AVMA website.

Section 304. Examinations.

- (a) Any Examination for licensure required under this Act, shall be given by the Board at least two (2) times during each year. The Board shall approve the content and subject matter of each Examination, the place, time and dates of administration of the Examination.
- (b) The Examination shall measure the entry level competence of the Applicant to practice Veterinary Medicine or Veterinary Technology. The Board may employ, cooperate, and contract with any organization or consultant in the preparation, administration and grading of an Examination, but shall retain the sole discretion and responsibility for determining which Applicants have successfully passed such an Examination.

Commentary**Section 304. Examinations.**

As has been emphasized throughout this document and comments, the AAVSB recommends that the authority to make decisions directly impacting the licensure process be specifically vested in the Board. On a similar note, the discretion to determine the content and subject matter of each Examination and the passing score necessary to indicate minimum competence for purposes of licensure belongs solely to the Board. The Board, of course, may rely upon the expertise of the owner of the Examination in determining the content areas and pass/fail scores, however, the Board must be the ultimate decision-maker. That is, statutes and/or rules cannot blindly, and without limitations, delegate the decision to the outside entity. See the Comments to Section 213(a) for a more complete explanation.

Commentary

Section 305(a). Qualifications for a Temporary License.

The privilege of practicing temporarily is only granted to individuals duly licensed and in good standing to practice Veterinary Medicine or Veterinary Technology in another Jurisdiction. Based upon the uniformity in accredited educational programs and the uniform national Examination(s), it is perceived that minimum competence in one Jurisdiction is reasonably equated to minimum competence in another Jurisdiction. Furthermore, practice privileges apply to such individuals only if the requirements for licensure in the Jurisdiction of licensure are substantially similar to the requirements for licensure in this Jurisdiction.

By design, the language of the temporary license references an "application" to be submitted to the Board prior to engaging in practice under this section. It is up to each individual Board to determine the extent of the application.

The unspecified time period is also, by design, left to the interpretation of a Board as to how the period is to be determined.

Finally, Veterinarians and Veterinary Technicians providing services under this temporary practice privilege are deemed to have submitted to the jurisdiction of the applicable Board and agree to be bound by the laws of the Jurisdictions thereof. It is recommended that the application determined by the Board contain language that verifies the submission of the Person to the Jurisdiction and the applicability of the laws of the Jurisdiction. It provides the Boards with important information about who is practicing (through the application). It also provides the Board with appropriate waivers relative to jurisdiction and the laws of the Jurisdiction. Finally, it provides a privilege which can be removed by the Board through the disciplinary process, reported to the databank, and, if Jurisdiction laws allow, have an eventual impact upon the actual license in the Jurisdiction of licensure.

Section 305(b). Qualifications for Emergency Practice.

See comments to 305(a) relative to the overall rationale for a temporary license and the applicability of jurisdictional and other legal issues. Similar rationale applies to this section as well. In addition, emergency practice in the case of a declared disaster is left to the Board to determine.

Again, this provides the Board with valuable information as to who is practicing within the Jurisdiction in the event of a reported complaint or wrongdoing. Written notice can be determined by the Board, but it is suggested it be limited to a simple statement as to the fact that a disaster has been declared, the Person has a license in good standing and is practicing relative to the disaster, submits him/herself to the jurisdiction of the Board and will abide by the applicable laws of the Jurisdiction. It is not anticipated any such notice will be subject to approval by the Board, thus eliminating the time-consuming Board approval process due to the emergency nature of the situation.

Alternatively, Boards may choose to use the special provisions approach for veterinarians providing services during disasters and other emergency found in Section 107(c).

Commentary

Section 306. Faculty Licensure.

The AAVSB believes all members of faculty at a college or school of Veterinary Medicine should have a license if they practice on Client-owned Animals in direct association with their employment at the Approved Veterinary Medical Program. Veterinary colleges have indicated that flexibility in licensure is needed in employing eminent scholars from around the world, especially those who practice a sub specialty and may not want to or be able to pass the comprehensive American national licensing exam that covers all species and topics. Yet if faculty are practicing Veterinary Medicine, a mechanism must be in place to ensure public protection if a complaint arises regarding veterinary incompetence or a violation of the Practice Act. The school or college does not have a mission of public protection and it is not their responsibility nor can responsibility be delegated to them to investigate or take appropriate action regarding a complaint. The primary purpose of the faculty license is to allow Approved Veterinary Medical Programs a procedure to bring much desired talent to the faculty while the Jurisdictions can still ensure public protection subject to this article.

Section 306(a)(4). Faculty Licensure.

The faculty licensure examination may be a jurisprudence examination, or any other examination deemed appropriate for this specific purpose, not to be confused with the North American Veterinary Licensing Examination (NAVLE).

Section 307. Qualifications for Licensure Transfer.

- (a) In order for a veterinarian or veterinary technician currently licensed in another Jurisdiction to obtain a license as a Veterinarian or Veterinary Technician by Licensure Transfer in this Jurisdiction, an Applicant shall bear the burden of substantiating to the Board that the following criteria have been met:
- (1) Submission of a completed application in the form approved by the Board;
 - (2) Is of good moral character. As one element of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining criminal records checks, pursuant to applicable law. All good moral character information, including the information obtained through the criminal background checks, shall be relevant to licensure eligibility determinations to the extent permitted by law;
 - (3) Active practice of Veterinary Medicine or Veterinary Technology for at least X hours during the X years preceding application;
 - (4) Proof that a Veterinary or Veterinary Technician license is current, unrestricted and in good standing;