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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF VETERINARY MEDICINE
116 PINE STREET, P.O. BOX 2649
HARRISBURG, PENNSYLVANIA 17105-2649
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June 17, 1998

The Honorable Mario J. Civera, Jr., Majority Chairman
House Professional Licensure Committee
PENNSYLVANIA HOUSE OF REPRESENTATIVE
315 D Main Capitol
Harrisburg, Pennsylvania 17120

Re: Proposed Rulemaking of the State Board of Veterinary Medicine Pertaining to
Professional Conduct (Advertising) (16A-576)

Dear Representative Civera:

Enclosed is a copy of a proposed regulation of the State Board of Veterinary Medicine pertaining to
professional conduct (advertising) (16A-576).

The State Board of Veterinary Medicine, as always, will be pleased to provide your Committee with
any assistance it may require during the course of its review of this regulation.

Sincerely,


Jeffrey M. Ott, V.M.D., Chairman
State Board of Veterinary Medicine

JMO/DBE:eco
Enclosures

c: Kim Pizzigrilli, Deputy Secretary for Regulatory Programs
Department of State
David M. Williams, Executive Assistant
Department of State
Dorothy Childress, Commissioner
Bureau of Professional and Occupational Affairs
Deborah M. Griffiths, Regulatory Review Officer
Department of State
Deborah B. Eskin, Counsel
State Board of Veterinary Medicine
State Board of Veterinary Medicine
Joyce McKeever, Deputy Chief Counsel
Department of State

The State Board of Veterinary Medicine (Board) proposes to amend 49 Pa. Code, Chapter 31, Section 31.21, Principle 5. Advertising, pertaining to necessary information when advertising emergency services, as set forth in Annex A.

A. Effective Date

The amendments will be effective upon publication of final form regulations in the Pennsylvania Bulletin.

B. Statutory Authority

The amendment is proposed under the dual authority of Sections 5(1) and (2) of the Veterinary Medicine Practice Act, the Act of December 27, 1974, P.L. 995, as amended, 63 P.S. §485.5(1) and (2). Section 5(1) of the Act empowers the Board to adopt reasonable rules and regulations governing the practice of veterinary medicine as are necessary to enable it to carry out and make effective the purpose and intent of the Act. Section 5(2) of the Act empowers the Board to adopt rules and regulations of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the profession of veterinary medicine.

C. Background and Purpose

The purpose of the proposal is to amend Principle 5 of the Rules of Professional Conduct for Veterinarians pertaining to "Advertising", requiring that veterinarians advertising emergency or 24 hour veterinary services include in such advertisements the hours when services will be provided and whether a veterinarian is "on the premises" or "on call".

The Rules of Professional Conduct for veterinarians were amended March 18, 1994 (24 Pa. B. 1481). Since that date, the Board has received suggestions that it require advertisements for emergency or 24 hour veterinary care to specify the type of veterinarian availability provided to avoid client confusion. The Pennsylvania Veterinary Medical Association and Priority Veterinary Consultants advocate adoption of the regulation.

The Board believes that veterinarians have a special professional responsibility when advertising the availability of emergency services which takes into account when clients are most likely to use such advertising. First, except for teaching hospitals and clinics, veterinary establishments are the sole source of emergency treatment. Most establishments have arrangements for current clients. However, many owners may not be

a client of a veterinary establishment, or may be out of the establishment's service area when an emergency arises. The Board believes that in many cases owners are able to assess the nature of the emergency and whether they should seek the services of a veterinarian who will be immediately available at the veterinary establishment. In the case of a life-threatening emergency this information may be invaluable to the owner in evaluating the appropriateness of a facility. For these reasons the Board believes that veterinarians should provide this information.

D. Description of Proposed Amendments

Principle 5, "Advertising", of the Rules of Professional Conduct for Veterinarians currently proscribes false and misleading conduct and contains guidelines for the use of testimonials and endorsements. It is amended to require veterinarians advertising emergency services or 24 hour veterinary services to include in such advertisements the hours when services will be provided and whether a veterinarian is "on the premises" or "on call".

E. Compliance with Executive Order 1996-1

In accordance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the regulation, the Board solicited input from the regulated community as well as the Pennsylvania Veterinary Medical Association, the Regional Veterinary Medical Associations, the Veterinary Technicians and Assistants Association of Pennsylvania, the Animal Health Commission, the University of Pennsylvania, and the Pennsylvania Association of Veterinary Technician Education. The Board reviewed and considered all comments in drafting the proposed regulation.

F. Fiscal Impact and Paperwork Requirements

The proposed amendment will have no fiscal impact on the Commonwealth or its political subdivisions. Veterinarians who advertise emergency services or 24 hour veterinary care may incur additional costs in amending their advertisements if the advertisements do not list the hours during which the emergency/24 hour services will be provided and indicate whether there is a veterinarian "on premises" or "on call". These costs may ultimately be passed on to the public.

G. Sunset Date

The Board continually monitors its regulations. Therefore, no sunset date has been assigned.

H. Regulatory Review

Under §5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19), (71 P.S. §§745.1-745.15), the agency submitted a copy of this proposed regulation on June 17, 1998 to the Independent Regulatory Review Commission and the Chairmen of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. In addition to submitting the regulation, the Board has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation". A copy of this material is available to the public upon request.

If the Commission has any objections to any portion of the proposed regulation, it will notify the Board by _____ (30 days after the close of the public comment period). Such notification shall specify the regulatory review criteria which have not been met by that portion. The Act specifies detailed procedures for review, prior to final publication of the regulation, by the agency, the General Assembly and the Governor, of objections raised.

I. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Deborah B. Eskin, Board Counsel, State Board of Veterinary Medicine, P.O. Box 2649, 116 Pine Street, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS
PART I. DEPARTMENT OF STATE
Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS
CHAPTER 31. STATE BOARD OF VETERINARY MEDICINE

PROFESSIONAL CONDUCT

§31.21. Rules of Professional Conduct for Veterinarians.

Principle 5. Advertising.

(c) Advertising for emergency veterinary services shall provide information: as to whether a veterinarian is on the premises, or on call, and as to any limitation on hours during which emergency services may not be available. For the purposes of this section "on the premises" means that a veterinarian is physically present in the veterinary establishment and immediately available and "on call" means that the veterinarian is available within a reasonable time.

Regulatory Analysis Form

This space for use by IRRC

(1) Agency

Department of State, Bureau of Professional and
Occupational Affairs, State Board of Veterinary
Medicine

(2) I.D. Number (Governor's Office Use)

16A-576

IRRC Number:

(3) Short Title

Professional Conduct for Veterinarians: Advertising

(4) PA Code Cite

49 Pa. Code §31.21

(5) Agency Contacts & Telephone Numbers

Primary Contact: Deborah B. Eskin, Counsel.

State Board of Veterinary Medicine

(717) 783-7200

Secondary Contact: Joyce McKeever, Deputy Chief
Counsel, Department of State

(717) 783-7200

(6) Type of Rulemaking (check one)

☒ Proposed Rulemaking

☐ Final Order Adopting Regulation

☐ Final Order, Proposed Rulemaking

☐ Omitted

(7) Is a 120-Day Emergency Certification
Attached?

☒ No

☐ Yes: By the Attorney General

☐ Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The regulation would govern veterinarians who advertise the availability of emergency/24 hour services by establishing a standard of conduct. The standard would require that veterinarians disclose in all advertisements the hours during which the services will be provided and indicate whether a veterinarian is on premises or on call.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The amendments are authorized under Sections 5(1) and (2) of the Veterinary Medicine Practice Act (Act), Act of December 27, 1974, P.L. 995, as amended, 63 P.S. §485.5(1) and (2).

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is not mandated.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Principle 5(c) is proposed to require veterinarians to include specific information in their advertisements concerning the availability of emergency or 24 hour veterinary services to more accurately inform the public as to what types of services are available at their veterinary establishments. This will enable pet owners to make more informed decisions when emergency care is needed for their animals.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

The advertising requirements in Principle 5(c) will more accurately inform the public of the specific veterinary services available. Without this regulation, advertising will result in less information being provided to the public and may result in unnecessary delays for clients with animals in need of emergency services.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Owners of pets and stock animals are expected to benefit from more specific information as to the availability of veterinarians in emergency situations. Pets or stock animals can receive emergency treatment only in veterinary facilities. These facilities are regulated only through the regulations of licensed veterinarians by the Veterinary Board.

The Board has no statistics on the number of animals whose owners seek emergency treatment through advertisement. However, the benefits to be derived from the regulation are generally related to the ability of animal owners to make informed decisions when they need emergency care for their animals. In life threatening emergencies owners will need to know that a veterinarian is available on the premises, whilst in others a veterinarian on call would be sufficient.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

Some veterinarians may experience an adverse effect (as additional costs) from the advertising regulation in Principle 5(c) if their advertisements do not already include the additional information concerning emergency or 24 hour veterinary care.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All veterinarians who advertise the availability of emergency or 24 hour veterinary services will be required to comply with the advertising regulation.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Board sought input from the public by disseminating drafts of the proposed regulations to the regulated community as well as the Pennsylvania Veterinary Medical Association, the Regional Veterinary Medical Associations, the Veterinary Technicians and Assistants Association of Pennsylvania, the Animal Health Commission, the University of Pennsylvania, and the Pennsylvania Association of Veterinary Technician Education.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

No legal, accounting or consulting costs are anticipated as a result of the advertising regulation. However, veterinarians who advertise emergency or 24 hour veterinary services may incur some additional advertising costs if their advertising of such services does not already contain the hours during which the services will be provided and whether there is a veterinarian on premises or on call.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Local governments would not be affected by this regulation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

Aside from the administrative costs of promulgating the regulation, no additional legal, accounting or consulting activities are anticipated.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY.	FY +1	FY +2	FY +3	FY +4	FY +5
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

The Board, state and local government will incur no costs in implementing the regulation. Veterinarians who advertise emergency services will be required to add some additional information but this should not increase advertising costs.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs

Costs and benefits cannot be quantified, however, the public will benefit from having accurate information available.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No nonregulatory alternatives were considered since the Board already has a regulation concerning advertising found at Principle 5(a) and (b). The logical approach is to add the new advertising requirement to the Board's current advertising regulations.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

See paragraph 22 above.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No federal licensure standards apply.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

This regulation is similar to one enacted in California approximately 19 years ago which has been very successful. No competitive disadvantage is anticipated.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation adds Principle 5(c) to 49 Pa. Code §31.21, expanding current advertising requirements.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Board will consider comment from the public on these regulatory amendments during the course of its regularly scheduled meetings. Meetings are held in the Board offices at 116-124 Pine Street, Harrisburg, PA. Written comments will be reviewed at these meetings.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No special provisions have been developed or anticipated.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will be effective on publication of the final form regulation in the Pennsylvania Bulletin.

(31) Provide the schedule for continual review of the regulation.

As part of its annual review process pursuant to Executive Order 1996-1, the Board will review the effectiveness of the deletion of this regulation.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

DATE:

SUBJECT: Significant Legal and Policy Issues Presented by the
State Board of Veterinary Medicine's Proposed Rulemaking
Relating to Advertising #16A-576

TO: Gregory E. Dunlap, Deputy General Counsel
Office of General Counsel

FROM: Deborah B. Eskin, Counsel
State Board of Veterinary Medicine

No significant legal or policy issues appear to be presented by the State Board of Veterinary Medicine's proposed rulemaking relating to advertising.

The proposed regulation amends the Rules of Professional Conduct for Veterinarians, requiring that veterinarians advertising emergency or 24 hour veterinary services include in such advertisements the hours when services will be provided and whether a veterinarian is "on the premises" or "on call." The amendment should more accurately inform the public as to the availability of veterinarians providing emergency or 24 hour services. The Pennsylvania Veterinary Medical Association, and Priority Veterinary Consultants have supported the regulation.

The regulation is within the Board's rulemaking authority under Section 5(1) and (2) of the Veterinary Medicine Practice Act, 63 P.S. §§485.5(1) and (2).

I certify that the information set forth in the Preamble, Annex and Regulatory Analysis Form is correct and accurate to the best of my knowledge.

DBE:bjd