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Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

(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-5721

IRRC Number: 2594

(3) Short Title

Professional Conduct

(4) PA Code Cite

49 Pa. Code § 31.1 and 31.21

(5) Agency Contacts & Telephone Numbers

Primary Contact: **Teresa Lazo, Counsel**
State Board of Veterinary Medicine (717) 783-7200
Secondary Contact: **Joyce McKeever,**
Deputy Chief Counsel (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 Board proposes to amend its Rules of Professional Conduct, specifically Principle 31, related to competency and Principle 3, relating to unprofessional conduct. The amendments would provide needed clarification of conduct the Board deems to be unprofessional or unethical and establishes and clarifies a veterinarian's duties to clients and patients.

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

Section 5(2) of the Veterinary Medicine Practice Act (63 P.S. § 485.5(2)) authorizes 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.

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 rulemaking is not mandated by any federal or state law, regulation or court order.

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

The regulation would update the Board's professional conduct regulations to ensure that veterinarians conduct themselves in accordance with current standards.

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

The public may be harmed by absence of appropriate regulation in the area of professional and ethical conduct. The public should not be subject to unprofessional or unethical conduct and the Board's licensees are entitled to a clear statement of the standards of conduct to which they are held.

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

The general public and regulated practitioners will benefit from a regulation that more clearly sets forth the Board's expectations for veterinary professional conduct.

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.)

The Board has not identified any group or subgroup that will be adversely affected by the regulation.

(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.)

There are approximately 3,325 licensed veterinarians in the Commonwealth. All veterinarians will be expected to comply with the regulation; however, the Board believes that the majority of its licensees are already adhering to the standards identified in the rulemaking.

(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 received extensive input from the Pennsylvania Veterinary Medical Association and other interested parties.

(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.

Because the Board believes that its licensees will adhere to the standards, no additional costs related to disciplinary actions are anticipated.

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(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 rulemaking.

(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.

State government would not be affected by this rulemaking.

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.

	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011
SAVINGS:	\$NA	\$NA	\$NA	\$NA	\$NA	\$NA
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:	0	0		0		0
Regulated Community	0	0	0	0	0	0
Local Government						
State Government						
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:	NA	NA	NA	NA	NA	NA
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

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

No costs are associated with this rulemaking.

Regulatory Analysis Form

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

Program	FY -01-02	FY -02-03	FY -03-04	Budgeted 04-05
State Board of Veterinary Medicine	359,780.14	397,604.84	423,064.31	457,000.00

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

The rulemaking benefits the public by ensuring that veterinarians conduct themselves in accordance with standards of professional conduct appropriate for professionals.

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

No non-regulatory approaches were considered because section 27.1 of the Veterinary Medicine Practice Act (63 P.S. §485.27a) requires a regulatory approach.

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

The Board considered multiple variations of a permissive or mandatory duty to report negligence, abuse or neglect. It has been suggested that mandatory reporting may result in increased investigation and prosecution costs. The Board believes that any increase in legitimate complaints filed, investigated and prosecuted, fulfills its mission to protect the public.

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.

There are no provisions in the rulemaking that are more stringent than federal standards.

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

The rulemaking is comparable to regulation of professional conduct in other states and will not put Pennsylvania at a competitive disadvantage.

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

No.

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

The Board provides an opportunity for public input into its activities, including its rulemaking proposals, at its regulatory scheduled monthly meetings. The dates, times and places of the Board's meetings are available at the Department of State's website, www.dos.state.pa.us. In addition, the Board has met with legislative staff members to address concerns raised by the public and has extended the time for public comment on its draft rulemaking in order to fully address all concerns.

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.

The rulemaking does not change existing recordkeeping or paperwork requirements. The rulemaking requires veterinarians to report certain categories of misconduct to the Board.

(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.

The Board has not identified any groups that have particular needs in relation to the rulemaking.

(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 amendment 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, the Board will review the effectiveness of this regulation.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

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REVIEW COMMISSION

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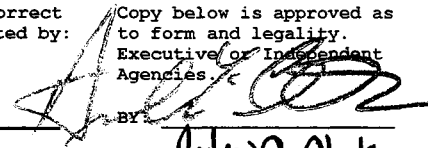
Copy below is hereby approved as to form and legality. Attorney General

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Copy below is approved as to form and legality. Executive or Independent Agencies.

BY: _____
(DEPUTY ATTORNEY GENERAL)

State Board of Veterinary Medicine
(AGENCY)

BY: 
Andrew C. Clark

DOCUMENT/FISCAL NOTE NO. 16A-5721

SEP 26 2008

DATE OF APPROVAL

DATE OF ADOPTION: _____

DATE OF APPROVAL

BY: 
Thomas J. McGrath, D.V.M.

(Deputy General Counsel
~~Chief Counsel,~~
Independent Agency
~~Strike inapplicable~~
title)

TITLE: Chairman
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

- Check if applicable. Copy not approved. Objections attached.
- Check if applicable. No Attorney General approval or objection within 30 day after submission.

FINAL RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF VETERINARY MEDICINE
49 PA. CODE, §§ 31.1 and 31.21
PROFESSIONAL CONDUCT

The State Board of Veterinary Medicine (Board) amends §§ 31.1 (relating to definitions) and 31.21 (relating to rules of professional conduct for veterinarians) to read as set forth in Annex A. The amendments more specifically define abuse or neglect of an animal by a veterinarian, provide details on competent practice and create mandatory reporting requirements by veterinarians of repeated acts of negligence or animal abuse or neglect by a professional colleague. Finally, the amendments further define unprofessional conduct and unethical conduct.

As published on proposed, the Board set forth amendments to Principles 1, 3 and 7. After reviewing the comments, the Board determined that it should separate its rulemaking on professional conduct from its rulemaking related to emergency services. The Board's rulemaking related to emergency services will be promulgated separately, as number 16A-5722.

Effective Date

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

Statutory Authority

Section 21(12) of the Act (63 P.S. § 485.21(12)), provides that the Board "shall suspend or revoke" a licensee or certificate holder who is found guilty of "[e]ngaging in practices in connection with the practice of veterinary medicine which are in violation of the standards of professional conduct as defined herein or prescribed by the rules of the board." Section 5(2) of the Veterinary Medicine Practice Act (63 P.S. § 485.5(2)) authorizes the Board to "[a]dopt 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." These amendments update the Board's rules of professional conduct and set forth standards to maintain high standards of integrity, skills and practice in the profession.

Summary of Comments and the Board's Response

Notice of proposed rulemaking was published on March 3, 2007, at 37 Pa.B. 1038. The Board received comments from individual veterinarians and the Pennsylvania Veterinary Medical Association (PVMA). Both the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) provided comments as part of their review of the proposed rulemaking.

At the suggestion of the PVMA, the Board amended the definitions of animal abuse and neglect in § 31.1. The current definitions of animal abuse and neglect track those in the Crimes Code. The Board amended the definitions to tailor them to conduct by its licensees. In addition, the Board added language to Principle 1(a) to provide licensees with a specific suggestion regarding improving veterinary practice in the Commonwealth. The Board also added language to Principle 1(b) to mandate that a veterinarian suggest a referral if the care required by an animal is beyond the veterinarian's capabilities or equipment. The Board provided that a veterinarian could continue care of the animal after referral with written consent from the client. PVMA has reviewed all of the Board's amendments and indicated their support for the final rulemaking.

HPLC commented that the combination of discretionary and mandatory reporting requirements in Principle 1, subsection (d) were confusing. HPLC suggested that if the Board were to retain both discretionary and mandatory reporting requirements, they should be broken into separate paragraphs. IRRC commented that the use of the word "should" is inappropriate because it is nonregulatory language that indicates that the provision is optional. IRRC also commented that the subsection should indicate how a licensee should "bring the matter to the attention of the Board." Finally, IRRC commented that, as drafted, it was unclear whether the Board intended the reporting requirements for abuse and neglect to be discretionary or mandatory.

Many veterinarians, and the Board, feel strongly that the rules of professional conduct must set both aspirational goals and mandates. As a learned profession, collegiality among licensees is essential to the provision of quality care. Therefore, the Board separated the aspirational goals set forth in subsection (b) from the mandatory provisions set forth in a new subsection (c). The current subsection (c) has been redesignated subsection (d) and subsequent subsections have been redesignated accordingly. The Board has separated the elements related to accepting or continuing care when the veterinarian lacks the capability or equipment to accept or continue into separate paragraphs, as suggested by the HPLC. The Board has added instructions on how a licensee should bring matters to the attention of the Board, as requested by IRRC. Finally, as requested by IRRC, the Board has clarified that if the conduct involves animal abuse or neglect, reporting is mandatory. Reporting is also mandatory if a veterinarian cannot informally resolve an issue with another veterinarian or if a veterinarian learns of repeated deviations from the standards of acceptable practice, professional incompetence or other misconduct set forth in the act or regulations.

Regarding the preamble to Principle 3, the HPLC requested that the Board strike the phrase "but is not limited to," as redundant, asserting that the word "includes" indicates that the enumerated provisions are not exhaustive. The Board has eliminated the redundant language.

IRRC commented that Principle 3(3) should make mandatory the notation on the veterinary medical record of the reason for surgical correction of a genetic defect. The Board agrees and has made the suggested amendment.

The Board added a new subsection (5) to address conflicts of interest for veterinarians and, at the request of the HPLC, gave an additional examples of prohibited conduct related to representing conflicting interests.

Regarding Principle 3(5), which has been renumbered as 3(10), HPLC noted the presence of two conditions that made the language confusing and suggested that the paragraph be redrafted for clarity with one paragraph addressing coercion and another addressing inducement. IRRC suggested that the Board consider replacing the word "immoral" with the word "unethical." The Board has made the suggested amendments. IRRC also questioned what would constitute "undue pressure" or "attempting to induce" an individual. The word induce has its general meaning of offering something of value in exchange for not filing or withdrawing a complaint. "Attempting to induce" would include making a payment to an individual. The Board has clarified the language in new Principles 3(10) and 3(11). The Board has stricken the term "undue pressure" because it is impossible to define.

The Board believes that the disciplinary process set forth in the Act and the Administrative Agency Law (2 Pa. C.S. § 101 et seq.) should be independent of any "amicable agreements" between contracting parties such as those mentioned by IRRC. The regulation does not restrict veterinarians from providing no-cost corrective treatment to animals and has added clarifying language to the subsection.

Regarding Principle 3(6), which has been renumbered 3(12), HPLC questioned whether the paragraph should be restricted to acts occurring while acting within the scope of the veterinarian's practice or extend beyond the scope of practice. IRRC commented that the section was unclear, and stated that the Board needs to define, clarify and limit the breadth and scope of this provision in the final-form regulation. The provision provides that a veterinarian may be subject to discipline for behavior that is abusive, harassing or intimidating, as those terms are in defined in common usage, toward a client, former client, colleague, associate veterinarian or employee, would constitute unprofessional or unethical conduct, subject to discipline by the Board. Because such conduct only subjects a veterinarian to discipline if it is directed at individuals in these capacities, the conduct is necessarily limited to conduct related to the profession. IRRC also asked what was meant by the term "colleague." A veterinarian's colleague is another veterinarian who is a partner in the practice, a veterinarian who does not work in the practice, or another person who has a professional relationship with the veterinarian but who is not employed by the veterinarian, such as a freelance ultrasound technician.

Regarding Principle 3(7), IRRC noted that the PVMA questioned how competence is to be determined and what level of training or expertise is required to be competent in a medical

procedure. IRRC commented that the Board should include the standards that will be used to make these determinations in its final-form rulemaking. The Board determined that the conduct sought to be prohibited is already prohibited under section 21(11) and/or 21(20) of the Act; therefore, the Board has deleted this subsection.

Regarding Principle 3(8), renumbered as 3(13), IRRC noted that making false or misleading statements are already prohibited under Principle 5, and questioned the need for the new language. Principle 5 prohibits false or misleading statements only in advertising. IRRC noted that the PVMA questioned how it could be proven. Where the false or misleading statement was made in writing, proof would include admission of the writing. Where the false or misleading statement was made orally, proof would most likely be offered in the form of testimony.

IRRC asked whether the new documentation required in the Board's recently promulgated regulation on recordkeeping includes the client's signature and stated that the Board should explain how it intends to implement or enforce this new code of conduct. The Board's recordkeeping regulation requires a veterinarian to note in the patient's veterinary medical record, the diagnostic tests and treatment options discussed with the client and to indicate the client's consent to or rejection of the options. The regulation does not require the client to sign the veterinary medical record. Records are open to inspection by the Board as set forth in section 27.1(b)(2) of the Act, 63 P.S. § 485.27a(b)(2). The provisions of the recordkeeping regulation will be enforced as are all other provisions of the practice act, in accordance with the Administrative Agency Law. Specifically, recordkeeping violations are usually charged as violations of section 21(1) of the Act (63 P.S. § 485.21(1)).

Regarding Principle 3(9), renumbered Principle 3(14), related to delegation of veterinary medical services, IRRC noted that a commentator questioned the impact of the rule on shelters or animal rescue groups where unlicensed persons are often involved in providing medical care to animals and suggested that the Board carefully examine the impact of the provision on volunteers or nonprofit organizations that seek to assist stray, unwanted or abused animals. The Board is sensitive to the concerns of organizations that provide care to stray, abused and unwanted animals. The types of treatments most often performed by unlicensed persons in a nonprofit animal welfare setting involve the provision of drugs and wound care. Drugs most frequently administered in these settings include antibiotics, antimicrobials, antihelminthics and parasiticides. The public interest is served when veterinarians are involved with the care of animals, including these treatments. The Board believes that all licensed health care providers should be responsible for making a reasonable assessment of the skills of persons to whom the licensed professional delegates the performance of professional services. This section has been renumbered as Principle 3(14). In addition, the Board has added a reference to Veterinary Technician Specialists, a title recognized by the Board.

Regarding the new Principle 3(9), which prohibits a veterinarian from allowing inappropriate use of the veterinarian's signature stamp, the HPLC asked the Board to provide at least two examples of inappropriate use in the Preamble to final rulemaking. A veterinarian could allow inappropriate use of a signature stamp if the veterinarian allowed the signature stamp to be used on a document that requires an original signature. A veterinarian could allow inappropriate use of a signature stamp if the veterinarian permitted others to perform examinations or immunizations that are required to be performed by the veterinarian and then verified that the veterinarian provided the services via signature stamp.

Regarding Principle 3(10), renumbered Principle 3(15), HPLC questioned whether the paragraph should be restricted to acts occurring while acting within the scope of the veterinarian's practice or extend beyond the scope of practice. The Board intends to include the abuse or neglect of any animal as unprofessional or unethical conduct by a veterinarian. The Board grants individuals the privilege of practicing the profession and is charged with upholding the integrity of the profession and ensuring that the public has confidence in members of the profession. By virtue of their education and training, veterinarians are expected to know the proper and acceptable way to treat animals. Abuse or neglect of any animal by a veterinarian would demonstrate a shortcoming in the veterinarian that must be remedied by appropriate Board action. The HPLC and IRRC questioned whether other states prohibit the abuse or neglect of any animal by a veterinarian. The Board's research indicates that at least one-third of the states prohibit such misconduct by a veterinarian.

The Board added new Principles 3(5) through 3(9) at the suggestion of the PVMA. Principle 3(5) prohibits a veterinarian from representing conflicting interests without disclosure to the client. Principles 3(6) through 3(8) provide needed detail to the statutory prohibition related to falsifying health certificates. See, section 21(6) of the Act (63 P.S. § 485.21(6)). Finally, Principle 3(9) clarifies that it is unprofessional for a veterinarian to allow another to misuse his or her signature stamp.

Principle 3(11) clarifies the proposed rulemaking's prohibition on inducing a client to file, not file or withdraw a complaint. Principle 3(6), renumbered 3(12), is amended for clarity. The terms used in this principle are in common usage and do not require definition. Finally, Principle 3(10) was renumbered Principle 3(15) and amended for clarity by cross-referencing section § 31.1 of the regulations.

Fiscal Impact and Paperwork Requirements

The amendments should not have any financial impact on licensees or any other state entity. The proposed amendment will have no fiscal impact on the public. The amendments may have a small fiscal impact on the Board related to additional disciplinary matters if

technicians violate the regulation. There are no additional paperwork requirements associated with the rulemaking.

Sunset Date

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

Regulatory Review

Under Section 5(a) of the Regulatory Review Act, (71 P.S. §745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 1038 (March 3, 2007), to IRRC and the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on _____, 2009, the final-form rulemaking was approved by the HPLC. On _____, 2009, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC approved the final-form rulemaking on _____, 2009.

Findings

The Board finds that:

1. Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240), (45 P.S. §§ 1201 – 1202), and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 – 7.2.
2. A public comment period was provided as required by law and all comments were considered.

3. This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in this Preamble.

The Board, acting under its authorizing statute, orders that:

- (A) The regulations of the Board at 49 Pa. Code §§ 31.1 and 31.21 are amended to read as set forth in Annex A.
- (B) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.
- (C) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (D) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

Thomas J. McGrath, D.V.M.
Board Chairman

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**

GENERAL PROVISIONS

§ 31.1. Definitions.

~~Animal abuse – The wanton or cruel treatment of an animal, including overworking, beating or otherwise neglecting an animal.~~ TO DO, ORDER OR AID ANOTHER TO DO ANY ACT LIKELY TO CAUSE UNNECESSARY PAIN, INJURY, DEBILITY, DISEASE OR LAMENESS, OR UNNECESSARY FRIGHT, STRESS, PANIC OR HYSTERIA IN AN ANIMAL.

~~Neglect– To abandon an animal or deprive, EITHER PERSONALLY OR THROUGH ONE’S EMPLOYEES OR AGENTS, an animal over which one has a duty of care, whether belonging to himself or otherwise, of necessary sustenance, drink, shelter or veterinary care APPROPRIATE TO THE ANIMAL’S CONDITION or access to sanitary shelter which will protect the animal against inclement weather, preserve the animal’s normal temperature and keep it dry~~ AND SUPPORT FOR AN ANIMAL’S BASIC PHYSICAL AND EMOTIONAL NEEDS.

PROFESSIONAL CONDUCT

§ 31.21. Rules of Professional Conduct for Veterinarians.

Principle 1. Competency.

(a) Veterinarians should strive continually to improve their veterinary knowledge and skill, making available to clients and their colleagues the benefit of their professional attainments. A VETERINARIAN SHOULD PROVIDE OPPORTUNITIES FOR PROFESSIONAL COLLEAGUES WHO REQUEST TO OBSERVE THE VETERINARIAN'S PRACTICE IN ORDER TO DEVELOP OR IMPROVE A PROFESSIONAL COLLEAGUE'S VETERINARY MEDICAL SKILLS.

(b) Veterinarians should seek, through consultation, the assistance of other veterinarians or other licensed professionals when it appears that the quality of veterinary service may be enhanced through consultation.

(c) A VETERINARIAN SHALL RECOMMEND REFERRAL TO A SPECIALIST OR OTHERWISE MORE QUALIFIED VETERINARIAN IN ANY CASE WHERE THE CARE AND TREATMENT OF THE ANIMAL IS, IN THE VETERINARIAN'S SOUND JUDGMENT, BEYOND THE VETERINARIAN'S CAPABILITIES OR EQUIPMENT. IN SUCH A CASE, A VETERINARIAN MAY ACCEPT OR CONTINUE CARE AND TREATMENT OF AN ANIMAL AFTER THE VETERINARIAN HAS

(1) SUGGESTED REFERRAL,

(2) EXPLAINED THE RATIONALE FOR REFERRAL,

(3) EXPLAINED THE POSSIBLE COMPLICATIONS
FROM THE VETERINARIAN'S LACK OF EXPERTISE
OR EQUIPMENT, AND

(4) HAS OBTAINED WRITTEN CONSENT FROM THE
CLIENT.

~~(e)~~(D) Veterinarians shall participate in continuing education programs as provided under section 18 of the act. (63 P.S. § 485.18).

~~(d)~~(E) Veterinarians shall safeguard the public and the veterinary profession against veterinarians deficient in professional competence or ~~ethical~~ , PROFESSIONAL conduct OR ETHICAL CONDUCT as described in this chapter.

(1) When [veterinarians know or have] a veterinarian knows or has reason to believe that a professional colleague's actions [reflect] demonstrate DEVIATION FROM OR FAILURE TO CONFORM TO THE STANDARDS OF ACCEPTABLE AND PREVAILING VETERINARY MEDICAL PRACTICE OR professional incompetence, ~~neglect or animal abuse~~; [veterinarians having first hand knowledge of these activities] a veterinarian should [attempt to resolve the issue informally by bringing] bring the behavior to the attention of the [veterinarian] colleague. and, if the matter is not resolved, should bring the matter to the attention of the Board. [When a veterinarian cannot deal with the situation informally, the veterinarian should] If the conduct is grossly incompetent, or involves

~~neglect or animal abuse, the veterinarian shall bring the matter to the attention of the Board by [wiring to the Complaints Office of] filing a complaint with the Bureau of Professional and Occupational Affairs, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649.~~

(2) A VETERINARIAN SHALL BRING THE BEHAVIOR OF ANOTHER VETERINARIAN TO THE ATTENTION OF THE BOARD BY SENDING A WRITTEN REPORT TO THE BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS, PROFESSIONAL COMPLIANCE OFFICE, P.O. BOX 2649, HARRISBURG, PA 17105-2649 IF:

(I) THE VETERINARIAN CANNOT INFORMALLY RESOLVE AN ISSUE OF THE DEVIATION FROM OR FAILURE TO CONFORM TO THE STANDARDS OF ACCEPTABLE AND PREVAILING VETERINARY MEDICAL PRACTICE OR PROFESSIONAL INCOMPETENCE WITH THE OTHER VETERINARIAN, OR

(II) THE VETERINARIAN LEARNS OF REPEATED DEVIATION FROM OR FAILURE TO CONFORM TO THE STANDARDS OF ACCEPTABLE AND PREVAILING VETERINARY MEDICAL PRACTICE, PROFESSIONAL INCOMPETENCE OR MISCONDUCT, OR

(III) THE MATTER INVOLVES ANIMAL ABUSE OR NEGLECT.

Principle 3. ~~[[Professional behavior]~~ Unprofessional OR UNETHICAL conduct.

A veterinarian who engages in unprofessional or ~~immoral~~ UNETHICAL conduct is MAY BE subject to disciplinary action under section 21(1) ~~of the act~~ , 21(11), 21(12) OR 21(20) OF THE ACT (63 P.S. § 485.21(1), (11), (12) OR (20)) ~~and may also be subject to discipline under section 21(11) or 21(20) of the act.~~ Unprofessional or ~~immoral~~ UNETHICAL conduct includes, but is not limited to:

[(a) Veterinarians may not place their] (1) Placing the veterinarian's professional knowledge, attainments or services at the disposal of a lay body, organization or group for the purpose of encouraging unqualified groups or individuals to perform surgery upon animals or to otherwise practice veterinary medicine on animals that they do not own.

[(b) Veterinarians may not perform or participate] (2) Performing or participating in a surgical procedure when [they know] the veterinarian knows that surgery has been requested with intent to deceive a third party.

[(c) Veterinarians may not perform] (3) Performing surgical procedures on a species for the purpose of concealing genetic defects in animals to be shown, raced, bred or sold. If the health or welfare of an animal requires correction of a genetic defect, the surgical procedures will be permitted. In these instances, the veterinarian ~~should~~ SHALL clearly inform the owner of this fact and note the reason for the surgery on the veterinary medical record of the animal.

- [(d) Veterinarians may not engage] (4) Engaging in merchandising.
- (5) REPRESENTING CONFLICTING INTERESTS, EXCEPT WITH WRITTEN CONSENT OF PARTIES KNOWN TO THE VETERINARIAN GIVEN AFTER A FULL DISCLOSURE OF THE FACTS. REPRESENTING CONFLICTING INTERESTS INCLUDES BEING EMPLOYED BY A BUYER TO INSPECT AN ANIMAL FOR SALE AND ACCEPTING A FEE FROM THE SELLER AND PROVIDING VETERINARY MEDICAL ADVICE REGARDING A COMMON MATTER TO MULTIPLE PERSONS INTERESTED IN THE MATTER.
- (6) ISSUING ANY CERTIFICATE ATTESTING TO THE PHYSICAL CONDITION OR SOUNDNESS OF AN ANIMAL WITHOUT FIRST HAVING PERSONALLY EXAMINED THE ANIMAL WITHIN A REASONABLE PERIOD OF TIME AND, BY ACTUAL INSPECTION AND APPROPRIATE TESTS, DETERMINED THAT THE ANIMAL MEETS THE REQUIREMENTS FOR ISSUANCE OF THE CERTIFICATE. A VETERINARIAN MAY PERMIT AN EMPLOYEE TO COLLECT SAMPLES FROM ANIMALS FOR TESTS UNDER THE VETERINARIAN'S DIRECT SUPERVISION.
- (7) FAILING TO PERSONALLY SIGN ANY OFFICIAL HEALTH DOCUMENT ISSUED BY THE VETERINARIAN UNLESS THE USE OF A SIGNATURE STAMP IS AUTHORIZED BY LAW.
- (8) ISSUING A PRE-SIGNED OR PRE-STAMPED OFFICIAL HEALTH DOCUMENT.

(9) ALLOWING INAPROPRIATE USE OF THE VETERINARIAN'S SIGNATURE STAMP.

~~(5) Attempting to influence through coercion, undue pressure or intimidation, or attempting to induce an individual to file, not file or withdraw a complaint with the Board.~~

(10) ENGAGING IN CONDUCT WHICH A REASONABLE PERSON WOULD BELIEVE IS INTENDED TO COERCE, PRESSURE OR INTIMIDATE ANOTHER PERSON TO FILE, NOT FILE, OR WITHDRAW A COMPLAINT MADE TO THE BOARD OR ANY LAW ENFORCEMENT OFFICIAL REGARDING MATTERS RELATED TO A VETERINARIAN'S PRACTICE.

(11) OFFERING COMPENSATION BEYOND CONTINUED OR CORRECTIVE TREATMENT OF AN AFFECTED PATIENT OR THE REPLACEMENT VALUE OF A PATIENT, WHICH A REASONABLE PERSON WOULD BELIEVE WAS INTENDED TO INDUCE ANOTHER TO FILE, NOT FILE, OR WITHDRAW A COMPLAINT MADE TO THE BOARD OR ANY LAW ENFORCEMENT OFFICIAL REGARDING MATTERS RELATED TO A VETERINARIAN'S PRACTICE.

~~(6) Abusing a client, former client, colleague, associate or employee, including verbal abuse, harassment or intimidation.~~

(12) ABUSING, HARASSING OR INTIMIDATING A CLIENT, FORMER CLIENT, COLLEAGUE, ASSOCIATE VETERINARIAN OR EMPLOYEE IN THE COURSE OF PROFESSIONAL PRACTICE.

~~(7) Performing a veterinary medical act incompetently or performing a veterinary medical act that the licensee knows or has reason to know he is not competent to perform.~~

~~(8)~~ (13) Making any false, misleading or deceptive statement or claim as defined in Principle 5(a).

~~(9)~~ (14) Delegating a veterinary medical service to a certified veterinary technician, VETERINARY TECHNICIAN SPECIALIST or unlicensed person INDIVIDUAL NOT LICENSED TO PRACTICE VETERINARY MEDICINE THAT IS BEYOND THE SCOPE OF PRACTICE FOR THAT INDIVIDUAL AS DEFINED BY LAW OR REGULATION OR who the licensee VETERINARIAN knows or should know is not qualified by education, training, experience, license or certification, to perform. The licensee VETERINARIAN DELEGATING A VETERINARY MEDICAL SERVICE shall perform a reasonable investigation of the delegatee's skills ABILITY TO COMPETENTLY PERFORM THE SERVICE before delegating a veterinary medical THE service and shall provide supervision of the service consistent with the acceptable and prevailing standards of veterinary medical practice. A VETERINARIAN WHO DELEGATES A VETERINARY MEDICAL SERVICE TO AN INDIVIDUAL NOT LICENSED TO PRACTICE VETERINARY MEDICINE SHALL BE RESPONSIBLE FOR THE ACTS AND OMISSIONS OF THE DELEGATEE.

~~(10) Inhumanely treating or abusing any animal, whether or not the animal is a patient.~~

(15) ABUSING OR NEGLECTING ANY ANIMAL, AS DEFINED IN § 31.1 (RELATING TO DEFINITIONS), WHETHER OR NOT THE ANIMAL IS A PATIENT.

(11)(16) Failing to report a matter to the Board as required by Principle ~~1(d)~~ 1(E).

EDITOR'S NOTE: AMENDMENTS TO PRINCIPLE 7 OF THE BOARD'S REGULATIONS, PUBLISHED WITH THIS RULEMAKING AS PROPOSED RULEMAKING, WILL BE SEPARATELY PUBLISHED.

(9) A book to record sales and transfers of Schedule V controlled substances and poisons. This paragraph does not apply to an institutional pharmacy servicing only inpatients.

(10) An adequate supply of filter paper and powder papers and an adequate supply of empty capsules, prescription containers, prescription and poison and other applicable identification labels used in dispensing of prescription drugs and medication.]

A refrigerator, used solely for the storage of drugs requiring refrigeration, equipped with a thermometer or a temperature monitoring device.

[(11)] (2) * * *

[(12)] (3) * * *

[(13)] (4) * * *

(5) Additional equipment and supplies necessary to enable the pharmacy to properly prepare and dispense prescriptions consistent with its scope of practice.

[(14)] (6) * * *

* * * * *

§ 27.16. Construction and equipment requirements.

* * * * *

(b) Building standards. The following apply to building standards:

* * * * *

(5) Sanitary facilities. [Except for pharmacies operating as central processing centers, pharmacies] Pharmacies shall be equipped with a sink within the prescription area to be used solely for pharmaceutical purposes. [The sink must measure at least 200 square inches exclusive of drainboard area.] The sink must be connected properly to supply hot and cold water. Restroom facilities for employees of the pharmacy shall be provided reasonably close to, but outside of the prescription area.

* * * * *

IPa.B. Doc. No. 07-351 Filed for public inspection March 2, 2007, 9:00 a.m.]

STATE BOARD OF VETERINARY MEDICINE

[49 PA. CODE CH. 31] Professional Conduct

The State Board of Veterinary Medicine (Board) proposes to amend § 31.21 (relating to Rules of Professional Conduct for Veterinarians) to read as set forth in Annex A. The amendments to Principle 1 (relating to competency) would mandate that a veterinarian report to the Board certain conduct regarding issues of professional competency of another veterinarian. Amendments to Principle 3 (relating to professional behavior) would state more comprehensively conduct that is unprofessional. In addition, the Board proposes to amend Principle 7 (relat-

ing to veterinarian/client relationships) to specify limits on refusal or discontinuation of treatment.

Effective Date

The proposed rulemaking would become effective upon final-form publication in the *Pennsylvania Bulletin*.

Statutory Authority

Section 5(1) of the Veterinary Medicine Practice Act (act) (63 P. S. § 485.5(1)) authorizes the Board "[a]dopt 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 this statutory law." Section 5(2) of the act authorizes the Board to "[a]dopt 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."

Background and Need for Amendment

The Board's proposed amendments arise from the Board's ongoing review and commitment to keeping its regulations consistent with current standards of veterinary medicine practice, from disciplinary matters that have come before the Board and from input from the public regarding the need to regulate in particular areas of professional conduct.

Description of Proposed Rulemaking

The Board proposes to amend Principles 1, 3 and 7 as follows:

Proposed Amendment to Principle 1

Subsections (a)—(c) concern the duty of veterinarians to maintain the aspirational goals of competency in the veterinarian's individual practice. Current subsection (d) concerns a veterinarian's responsibility concerning issues regarding the professional competency of another veterinarian.

The Board proposes to amend subsection (d) to make mandatory a veterinarian's duty to report to the Board when a veterinarian has been unable to informally resolve with another veterinarian an issue of gross professional incompetence. The Board's current regulation is aspirational. The Board proposes to make the duty to inform the Board mandatory. In a related amendment, the Board proposes to amend Principle 3 by adding subsection (k) to provide that unprofessional conduct includes failing to report a matter described in Principle 1(d) to the Board.

Proposed Amendments to Principle 3

The Board proposes to maintain Principle 3(a)—(d) and add subsections (e)—(l). The Board has amended Principle 3 to clarify that a licensee may be disciplined for unprofessional conduct under section 21 of the act (63 P. S. § 485.21). Specifically, a licensee may be disciplined under section 21(1) of the act for willful or repeated violations of any of the rules and regulations of the Board. A licensee may be disciplined under section 21(20) of the act for professional incompetence. This proposed rulemaking clarifies this statutory term. Some of the examples of incompetent, unprofessional or immoral conduct may also subject a licensee to discipline under other subsections of section 21 of the act. For example, the Board believes that fraudulently issuing a health certificate is immoral conduct. This conduct may also be disciplined under section 21(6) of the act.

Proposed subsection (e) would prohibit a veterinarian from attempting to induce or attempting to influence,

through coercion, undue pressure or intimidation, a person to file, not file or withdraw a complaint before the Board. Licensees subject themselves to the jurisdiction of the Board, including the statutory and regulatory rules of conduct and processes for disciplining professional licenses. This process includes the ability of the public to file a complaint against a professional licensee, to have that complaint investigated and, when appropriate, to have formal charges brought against the licensee in accordance with the licensing act and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law). A licensee who attempts to induce or inappropriately influence a member of the public to file, not file or withdraw a complaint has attempted to undermine the disciplinary process of the Board. The Board concludes that this conduct is unprofessional.

Proposed subsection (f) would prohibit a veterinarian from abusing a client, former client, colleague, associate or staff, including verbal abuse, harassment or intimidation. The proposed language adds necessary specificity to allow the Board to discipline licensees for certain misconduct.

Proposed subsection (g) relates to section 21(11) of the act, which authorizes the Board to discipline a licensee for "[i]ncompetence, gross negligence or other malpractice, or the departure from, or failure to conform to, the standards of acceptable and prevailing veterinary medical practice." Proposed subsection (g) also relates to section 21(20) of the act, which authorizes the Board to discipline a licensee for "[p]rofessional incompetence." Proposed subsection (g) would clarify that the two statutory prohibitions against incompetence encompass both performing a task incompetently and performing a task the licensee knows or was reason to know he is not competent to perform. Subsection (g) is consistent with the Commonwealth Court's opinion of conduct prohibited by section 21(11) and (20) of the act.

Proposed subsection (h) prohibits a veterinarian from making a false, deceptive or misleading statement or claim as defined in Principle 5(a) (relating to advertising). While Principle 5 applies only to advertising, the Board believes that veterinarians should be prohibited from making false, deceptive or misleading statements or claims in all aspects of context professional practice, such as in a conversation with a client.

Proposed subsection (i) would prohibit a veterinarian from delegating a veterinary medical service to a certified veterinary technician or unlicensed person who the veterinarian knows or should know is not qualified by education, training, experience, license or certification to perform the service. In addition, the new subsection requires a veterinarian to make a reasonable investigation of the delegatee's education, training, experience, license or certification before delegating a veterinary medical service. Finally, the proposed subsection requires the veterinarian to provide appropriate supervision to the delegatee.

Proposed subsection (j) prohibits a veterinarian from inhumanely treating or abusing an animal, whether or not the animal is a patient. This provision is consistent with the acceptable and prevailing ethical standards of the profession and with many states' practice acts and regulations.

Proposed subsection (k) prohibits a veterinarian from failing to report another licensee to the Board when the veterinarian knows or has reason to believe the licensee has engaged in incompetent practice, unprofessional conduct or animal neglect or abuse.

Proposed Amendments to Principle 7

As with the proposed amendments to Principle 3, the proposed amendments to Principle 7 clarify and expand existing provisions. Consistent with the statutory amendments of December 2002, defining the "veterinarian-client-patient relationship" in section 3 of the act (63 P. S. § 485.3), Principle 7 will be renamed "veterinarian-client-patient relationships" to mirror statutory language and reflect the duties required to both the client/owner and the patient/animal. The Board proposes two amendments to provide additional clarity to existing subsection (a).

The Board proposes to add exceptions to the general rule that veterinarians may choose whom they will serve to account for circumstances in which a veterinarian is presented with an animal in a life-threatening condition that is physically presented to the veterinarian during the veterinarian's regular business hours. The proposed amendment provides that a veterinarian shall, at a minimum, triage the animal (evaluate the need for immediate treatment in light of the other cases currently requiring treatment by the veterinarian), assess the animal, determine the animal's prognosis, and provide basic life support or euthanasia. This provision places on veterinarians a minimal duty that will allow an owner to determine whether further treatment should be sought. The amendment recognizes that a sole practitioner who may be in the middle of surgery when an animal is brought into the veterinary facility in a life-threatening condition may not always be able to step away from the surgery to attend to the emergent animal. The proposed language requiring the veterinarian to triage the animal ensures that the animal will be taken care of in the proper order of medical necessity.

The proposed rulemaking permits a veterinarian to provide care to an animal in a life-threatening condition without the owner's consent if the owner is unknown or cannot be reached for consultation. This provision would allow a veterinarian to provide emergency treatment to, for example, a dog hit by a car that is brought in by a bystander without first having to find the owner. This provision would also allow a veterinarian to euthanize an animal brought to the veterinary facility in a life-threatening condition without the owner's consent if, in the veterinarian's professional judgment, euthanasia is the only appropriate option.

The Board proposes to require a veterinarian to give notice to a client if the veterinarian determines that he can no longer provide veterinary services to an animal and to allow the client reasonable time to obtain alternate veterinary care. This provision protects the public by ensuring that the public will have a reasonable time to find another veterinarian.

The Board proposes to amend subsection (b) to make mandatory the veterinarian's duty with regard to balancing a client's ability to pay for veterinary services and alleviating or ending an animal's suffering. The proposed amendments to subsection (b) are related to the proposed amendments to subsection (a), in that, read together, the provisions require a veterinarian to provide limited emergency care or medically appropriate euthanasia without regard to a client's ability to pay. These provisions do not limit the veterinarian from seeking, after the services have been provided, remuneration for the services through an appropriate judicial forum.

The Board proposes to delete the current text of subsection (d). As with a similar provision that the Board

proposes to delete from subsection (a), the Board believes that the concept is self-evident and does not need to be set forth in regulation.

The Board proposes significant amendments to current subsection (e), which will become subsection (d). An individual approached the Board with the suggestion that the Board mandate that veterinarians inform clients of the contraindications and possible side effects of nonsteroidal anti-inflammatory drugs (NSAIDs). The individual suggested that the Board mandate that veterinarians provide a "client information sheet" whenever the veterinarian dispenses an NSAID. The Board is aware that some drugs of this class have been documented to cause adverse reactions in dogs. In addition, as with all drugs, NSAIDs are not indicated for use in animals with certain health problems or for animals receiving certain other drug therapies.

The Board believes that its regulations should provide broad protection to the public in relation to veterinary medical diagnosis and treatment rather than focusing on one narrow class of drugs. The Board addressed this concern in proposed subsections (d) and (e) and in a separate rulemaking package with proposed amendments to § 31.22(d) (relating to recordkeeping rationale). The Board finds that the public protection will be advanced by requiring veterinarians to be aware of drug contraindications, to inform clients of the benefits, risks and side effects of all recommended treatments, from surgeries to drug therapies, and to document client consent or rejection of treatment, including drug therapy, in the animal's veterinary medical record. The Board proposes the following amendments to ensure that consumers of veterinary medical services are well informed:

(d) Veterinarians shall familiarize themselves with advancements in veterinary medicine, including new techniques, drugs and scientific research that may affect treatment decisions. Veterinarians shall be familiar with the pharmacologic properties and contraindications of drugs and biologics used in their practice.

(e) Veterinarians shall explain the benefits, risks and side effects of treatment alternatives to clients.

In addition, in a separate rulemaking, the Board is proposing the following amendment to § 31.22(d):

The veterinary medical record shall document all communication with the client, including the client's consent to or rejection of recommended diagnostic testing and treatment, including drugs. A veterinarian in production animal practice may document client communication at the veterinarian's discretion.

The Board's proposal, because it also applies to biologics, would require veterinarians to be familiar with and to inform clients of the risks and possible side effects of vaccines. The proposed rulemaking, because it applies to all veterinary medical treatments, would require a veterinarian to explain the pros and cons of all treatments. For example, a veterinarian presented with an animal with a broken limb would be required to explain the benefits, risks and side effects of a range of treatment options, such as surgery and internal reduction and fixation, external reduction and fixation through use of a cast, or, where there is a good potential for a successful outcome, external reduction and fixation through use of some type of splint. Principle 4 (relating to fees) already provides that a veterinarian must clearly explain fees for professional services in advance of billing. This provision, together with the Board's proposed amendments to Prin-

ciple 7 and its recordkeeping regulation, would require a veterinarian to also inform the client of the cost of the various treatment options. The Board finds that this broader regulation provides more protection to the public than the suggestion that veterinarians provide clients with a "client information sheet" when the veterinarian dispenses an NSAID.

Dr. Paul Kneply, chairperson of the Department of Agriculture's Animal Health and Diagnostic Commission, submitted comments to the Board on its draft rulemaking. In his comments, Dr. Kneply asked about the implications of proposed subsection (f) for "normal farming activities and practices used in production animal medicine, such as castration and dehorning." Dr. Kneply noted: "A veterinarian may not normally administer anesthesia for these practices," and asked whether the proposed language would "prohibit 'normal animal agricultural practices' without anesthesia and pain medication." The Board is aware that the acceptable and prevailing standard of veterinary medical practice in production animal medicine does not always include the administration of anesthesia or analgesia for the performance of procedures that, if performed on a companion animal, would require the administration of anesthesia or analgesia, or both. For this reason, the Board has amended the draft language of subsection (f) and now proposes the following: "Veterinarians shall serve as patient advocates especially as regards alleviation of pain and suffering, consistent with the acceptable and prevailing standards of veterinary medical practice. Veterinarians must remain abreast of analgesic drugs, dosages, treatment intervals and combination therapies proven to be safe and effective in different species and in various conditions of age, illness or injury."

Fiscal Impact and Paperwork Requirements

The proposed rulemaking should not have financial impact on licensees, the Board or any other State entity. The proposed rulemaking will have no fiscal impact on the public. There are no additional paperwork requirements associated with the proposed rulemaking.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 21, 2007, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this pro-

posed rulemaking to Robert Kline, State Board of Veterinary Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, www.dos.state.pa.us/vet within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

THOMAS J. MCGRATH, D.V.M.,
Chairperson

Fiscal Note: 16A-5721. No fiscal impact; (8) recommends adoption.

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 1. Competency.

* * * * *

(d) Veterinarians shall safeguard the public and the veterinary profession against veterinarians deficient in professional competence or ethical conduct as described in this chapter. When [veterinarians know or have] a veterinarian knows or has reason to believe that a professional colleague's actions [reflect] demonstrate professional incompetence, neglect or animal abuse, [veterinarians having first hand knowledge of these activities] a veterinarian should [attempt to resolve the issue informally by bringing] bring the behavior to the attention of the [veterinarian] colleague and, if the matter is not resolved, should bring the matter to the attention of the Board. [When a veterinarian cannot deal with the situation informally, the veterinarian should] If the conduct is grossly incompetent, or involves neglect or animal abuse, the veterinarian shall bring the matter to the attention of the Board by [writing to the Complaints Office of] filing a complaint with the Bureau of Professional and Occupational Affairs, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649.

* * * * *

Principle 3. [Professional behavior] Unprofessional conduct.

A veterinarian who engages in unprofessional or immoral conduct is subject to disciplinary action under section 21(1) of the act (63 P. S. § 485.21(1)) and may also be subject to discipline under section 21(11) or 21(20) of the act. Unprofessional or immoral conduct includes, but is not limited to:

[(a) Veterinarians may not place their] (1) Placing the veterinarian's professional knowledge, attainments or services at the disposal of a lay body, organization or group for the purpose of encouraging unqualified groups or individuals to perform surgery upon animals or to otherwise practice veterinary medicine on animals that they do not own.

[(b) Veterinarians may not perform or participate] (2) Performing or participating in a surgical procedure when [they know] the veterinarian knows that surgery has been requested with intent to deceive a third party.

[(c) Veterinarians may not perform] (3) Performing surgical procedures on a species for the purpose of concealing genetic defects in animals to be shown, raced, bred or sold. If the health or welfare of an animal requires correction of a genetic defect, the surgical procedures will be permitted. In these instances, the veterinarian should clearly note the reason for the surgery on the veterinary medical record of the animal.

[(d) Veterinarians may not engage] (4) Engaging in merchandising.

(5) Attempting to influence through coercion, undue pressure or intimidation, or attempting to induce an individual to file, not file or withdraw a complaint with the Board.

(6) Abusing a client, former client, colleague, associate or employee, including verbal abuse, harassment or intimidation.

(7) Performing a veterinary medical act incompetently or performing a veterinary medical act that the licensee knows or has reason to know he is not competent to perform.

(8) Making any false, misleading or deceptive statement or claim as defined in Principle 5(a) (relating to advertising).

(9) Delegating a veterinary medical service to a certified veterinary technician or unlicensed person who the licensee knows or should know is not qualified by education, training, experience, license or certification, to perform. The licensee shall perform a reasonable investigation of the delegatee's skills before delegating a veterinary medical service and provide supervision of the service consistent with the acceptable and prevailing standards of veterinary medical practice.

(10) Inhumanely treating or abusing any animal, whether or not the animal is a patient.

(11) Failing to report a matter to the Board as required by Principle 1(d) (relating to competency).

* * * * *

Principle 7. Veterinarian/client/patient relationships.

(a) [Veterinarians] Except as provided in this section, veterinarians may choose whom they will serve. [Once they have undertaken the care of an animal, however, they may not neglect the animal.]

(1) During a veterinarian's regular business hours, a veterinarian may not refuse to treat an animal which is in a life-threatening condition at the time the animal is physically presented to the veterinarian at the veterinarian's facility. The minimum veterinary medical services that shall be provided include triage of the presenting emergency and other patients present at the facility, assessment of the animal's condition, evaluation of the animal's prognosis and provision of basic life support or euthanasia, as medically appropriate. A veterinarian may provide care for an animal under this paragraph notwithstanding the lack of a

veterinarian/client/patient relationship and if the owner is unknown or cannot be reached, without consent of the owner.

(2) If a veterinarian deems it necessary to discontinue the treatment of an animal with which the veterinarian has a veterinarian/client/patient relationship, the veterinarian shall give notice to the client of the intention to withdraw and provide reasonable time to allow the client to obtain necessary veterinary care for the animal.

(b) [In their relations with clients, veterinarians should] Veterinarians shall consider first the welfare of the animal for the purpose of relieving suffering and disability while causing a minimum of pain or fright. [Benefit to the animal should] Alleviating or ending suffering for the animal shall transcend personal advantage or monetary gain in decisions concerning therapy.

* * * * *

(d) [Veterinarians shall be fully responsible for their actions with respect to an animal from the time they accept the case until the animal is released from their care.

(e) In the choice of drugs, biologics or other treatments, veterinarians should use their professional judgment in the interests of the animal, based upon their knowledge of the condition, the probable effects of the treatment and the available scientific evidence that may affect these decisions.]

Veterinarians shall familiarize themselves with advancements in veterinary medicine, including new techniques, drugs and scientific research that may affect treatment decisions. Veterinarians shall be familiar with the pharmacologic properties and contraindications of drugs and biologics used in their practice.

(e) Veterinarians shall explain the benefits, risks and side effects of treatment alternatives to clients.

(f) Veterinarians shall serve as patient advocates especially as regards alleviation of pain and suffering, consistent with the acceptable and prevailing standards of veterinary medical practice. Veterinarians shall remain abreast of analgesic drugs, dosages, treatment intervals and combination therapies proven to be safe and effective in different species and in various conditions of age, illness or injury.

(g) If a client desires to consult with another veterinarian about the same case, the first veterinarian shall readily withdraw from the case, indicating the circumstances on the veterinary medical record of the animal, and shall forward copies of the animal's veterinary medical records to other veterinarians who request them.

[(g)] (h) * * *

[Pa.B. Doc. No. 07-352. Filed for public inspection March 2, 2007, 9:00 a.m.]

16A-5721 Professional Conduct Public Commentators

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF VETERINARY MEDICINE

Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7134

February 6, 2009

The Honorable Arthur Coccodrilli, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

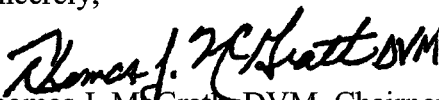
Re: Final Regulation
State Board of Veterinary Medicine
16A-5721: Professional Conduct

Dear Chairman Coccodrilli:

Enclosed is a copy of a final rulemaking package of the State Board of Veterinary Medicine pertaining to Professional Conduct. The package was previously delivered on November 13, 2008. The House Professional Licensing Committee communicated some concerns to the Board, and the Board withdrew the rulemaking. The Board now redelivers the rulemaking package, which addresses the House Professional Licensing Committee's concerns.

The Board will be pleased to provide whatever information the Committee may require during the course of its review of this regulation.

Sincerely,


Thomas J. McGrath, DVM, Chairperson
State Board of Veterinary Medicine

TJM:TAL:apm

Enclosure

cc: Basil Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Peter V. Marks, Sr., Executive Deputy Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel & Senior Counsel in Charge
Department of State
Teresa Lazo, Counsel
State Board of Veterinary Medicine
State Board of Veterinary Medicine

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-5721
 SUBJECT: State Board of Veterinary Medicine - Professional Conduct
 AGENCY: DEPARTMENT OF STATE

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

INDEPENDENT REGULATORY
REVIEW COMMISSION

2009 FEB - 6 AM 10: 31

RECEIVED

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2/6/09	<i>Madelene Hemmel</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE <i>Michael McBehan</i>
2/6/09	<i>Julie Lybren</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE <i>Robert Tomlinson</i>
2/6/09	<i>Kenny Coops</i>	INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL LEGISLATIVE REFERENCE BUREAU