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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

March 19, 2009

Thomas J. McGrath, DVM, Chair
State Board of Veterinary Medicine
2601 North 3rd Street
Harrisburg, PA 17110

Re: Regulation #16A-5721 (IRRC #2594)
State Board of Veterinary Medicine
Professional Conduct

Dear Mr. McGrath:

The Independent Regulatory Review Commission approved the subject regulation today. Our order is enclosed and will be available on our website at www.irrc.state.pa.us.

We appreciate the joint effort that went into producing a regulation that meets the criteria and intent of the Regulatory Review Act.

Sincerely,

Arthur Coccodrilli

Chairman

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Enclosure

cc: Honorable Robert M. Tomlinson, Chair, Senate Consumer Protection and Professional
Licensure Committee
Honorable Lisa M. Boscola, Chair, Senate Consumer Protection and Professional Licensure
Committee
Honorable Michael P. McGeehan, Chair, House Professional Licensure Committee
Honorable William F. Adolph, Jr., Chair, House Professional Licensure Committee
Honorable Pedro A. Cortes, Secretary, Department of State

**INDEPENDENT REGULATORY REVIEW COMMISSION
APPROVAL ORDER**

Commissioners Voting:

Public Meeting Held March 19, 2009

Arthur Coccodrilli, Chairman
George D. Bedwick
Nancy Sabol Frantz, Esq., by Phone
Karen A. Miller
John F. Mizner, Esq., by Phone

Regulation No. 16A-5721 (#2594)
State Board of Veterinary Medicine
Professional Conduct

On February 21, 2007, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the State Board of Veterinary Medicine. This rulemaking amends 49 Pa. Code §§ 31.1 and 31.21. The proposed regulation was published in the March 3, 2007 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on February 6, 2009.


This regulation revises and updates standards of conduct including the reporting of unprofessional conduct and medical incompetence, and adds prohibitions for “unprofessional conduct” such as verbal abuse and harassment of clients and employees. Even though this regulation is an improvement over the existing regulations, there is one remaining concern. The Board continues to use the term “should” because it asserts that rules of conduct can be both “aspirational goals and mandates.” However, the implementation and enforceability of “aspirational goals” remains both unclear and problematic. A regulation is an agency’s exercise of delegated authority to create a mandatory standard of conduct or behavior. Rules must establish binding legal requirements. See *Chimenti v. Dept. of Corrections*, 720 A.2d 205 (Pa. Cmwlth 1998), aff’d 740 A.2d 1139 (Pa. 1998). In contrast, the word “should” implies that compliance with a rule or standard may be optional. We urge the Board to revisit this issue in future rulemakings, eliminate the word “should” and promulgate binding and enforceable standards in its regulations.

We have determined this regulation is consistent with the statutory authority of the Board (63 P.S. §§ 485.5(1) and (2)) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

BY ORDER OF THE COMMISSION:

This regulation is approved.




Arthur Coccodrilli, Chairman