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LESLIE A. LEWIS JOHNSON, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION

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

November 18, 2009

Robin J. Bernstein, Esq., Chair
State Board of Veterinary Medicine
2601 North 3rd Street
Harrisburg, PA 17110

Re: Regulation #16A-5722 (IRRC #2787)
State Board of Veterinary Medicine
Responsibility to Clients and Patients

Dear Ms. Bernstein:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable Robert M. Tomlinson, Majority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Michael P. McGeehan, Majority Chairman, House Professional Licensure Committee
Honorable William F. Adolph, Jr., Minority Chairman, House Professional Licensure Committee
Honorable Pedro A. Cortes, Secretary, Department of State
Robert A. Mulle, Esq., Office of Attorney General
Andrew Clark, Esq., Office of General Counsel

Comments of the Independent Regulatory Review Commission



State Board of Veterinary Medicine Regulation #16A-5722 (IRRC #2787)

Responsibility to Clients and Patients

November 18, 2009

We submit for your consideration the following comments on the proposed rulemaking published in the September 19, 2009 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Veterinary Medicine (Board) to respond to all comments received from us or any other source.

1. General – Clarity.

The response to Regulatory Analysis Form Question #14 states that the Board has “attached information regarding the widespread acceptance that the use of analgesia is the acceptable and prevailing standard of care.” However, no such information was attached to our copy of the proposed regulatory package. This information should be included with the final-form document submittal.

2. Section 31.21. – Rules of Professional Conduct for Veterinarians. – Protection of the public health, safety and welfare; Reasonableness; Need; Implementation procedures; Clarity.

Euthanasia

Paragraph (a)(1) references “humane euthanasia,” while other subsections simply refer to “euthanasia.” We recommend using one term throughout the regulation.

Reasonable attempt

Paragraph (a)(1) uses the phrase “reasonable attempt” twice in regard to determining the identity of the animal’s owner and contacting the owner. The phrase “reasonable attempt” is vague. We recommend that the final-form

regulation establish a clear standard for compliance by veterinarians and potential enforcement by the Board.

Proper veterinary medical judgment

Paragraphs (a)(1) and (2) require the veterinarian to exercise “proper veterinary medical judgment.” This requirement is vague. The regulation should specify what standard the Board will use to determine a violation.

Notice to the client

Paragraph (a)(2) requires the veterinarian to provide the client with notice of his or her intention to withdraw and discontinue treatment of an animal. What type of notice will the Board find acceptable to notify clients of the withdrawal? We recommend that the final-form regulation require the notice to be in writing.

Personal client information

Subsection (c) requires veterinarians and their staff to protect the personal privacy of clients and specifies the protection of “a client’s Social Security number and sensitive financial information and confidential health information about the client.” Section 31.1 of the existing regulations defines a “client” as a “person...” While this information should definitely be protected if the veterinarian possesses it, we question under what circumstances a veterinarian would obtain or need a person’s social security number or confidential health information. We request an explanation of why it would be necessary for a veterinarian to request, possess and document a person’s social security number, sensitive financial information or confidential health information.

Acceptable and prevailing standards

Subsections (d) and (f) require veterinarians to practice in accordance with “acceptable and prevailing standards.” A commentator is concerned that this term is subject to interpretation, since what is considered “acceptable and prevailing” can vary from region to region, or between general and specialty practices. We agree that it is not clear what standard the regulation sets. We recommend that the Board define this phrase or amend the regulation so that the final-form regulation sets a clear standard for compliance.

Subsection (e)

We raise three issues with this subsection.

First, this subsection requires a veterinarian to explain to a client the “significant potential risks” of treatment options. Commentators are concerned

that the term “significant” could be held to a subjective interpretation. We agree that the phrase “significant potential risks” is vague. We recommend deleting the word “significant.”

Second, this subsection requires a veterinarian to obtain written consent for euthanasia. However, if the client is not present to provide a signature, veterinarians shall obtain oral consent and subsequently obtain the client’s signature. The House Professional Licensure Committee (HPLC) questioned the signature requirements. Commentators described the subsequent request for a client’s signature, after their animal was euthanized, as unrealistic and an awkward request that could come across as inappropriate or insensitive on the part of the veterinarian. We agree. The Board should explain the need for and reasonableness of obtaining signatures in the circumstances raised by the commentators and the HPLC. If the Board believes signatures are needed, the regulation should provide guidance for the circumstances where the veterinarian acted in accordance with the regulation but, due to circumstances beyond the control of the veterinarian, the client does not provide a subsequent signature.

Finally, commentators also questioned the responsibility imposed on veterinarians if the client refuses to sign the consent form or fails to return it. Would this constitute grounds to discontinue the treatment of an animal? The regulation should also address these circumstances.

Subsection (g)

Who determines what is considered a “reasonable period of time” to forward records to a new veterinarian? The final-form regulation should set a finite time limit to forward the records.

In addition, a commentator suggests that if the original veterinarian withdraws and the client wants to consult with another veterinarian about the same case, that the records be transferred to the new veterinarian in accordance with Section 31.22(8) of the existing regulation. Has the Board considered including a cross-reference to this section?

FROM

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Phone: (717) 783-5417

Fax #: (717) 783-2664

E-mail: irrc@irrc.state.pa.us

Website: www.irrc.state.pa.us

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Tom Blackburn

Cynthia Montgomery

Agency: Department of State

Licensing Boards and Commissions

Phone: 3-7200

3-3394 (Cynthia Montgomery)

Fax: 7-0251

Date: November 18, 2009

Pages: 5

Comments: We are submitting the Independent Regulatory Review Commission's comments on the State Board of Veterinary Medicine's regulation #16A-5722 (IRRC #2787). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by:

Cynthia Montgomery

Date:

11/18/09

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