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INDEPENDENT REGULATORY REVIEW COMMISSION

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

April 28, 2010

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

Re: Regulation #16A-5723 (IRRC #2788)
State Board of Veterinary Medicine
Biennial Renewal Fees

Dear Ms. Bernstein:

The Independent Regulatory Review Commission disapproved your regulation on April 22, 2010. Our order is enclosed and will be available on our website at www.irrc.state.pa.us.

Within 40 days of receipt of our order, Section 7(a) of the Regulatory Review Act requires you to select one of the following options: (1) proceed with promulgation under Section 7(b); (2) proceed with promulgation under Section 7(c); or (3) withdraw the regulation. If you do not take any action within this period, the regulation is deemed withdrawn.

If you or your staff have any questions, please contact me at 783-5506.

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 Julie Harhart, Minority Chairman, House Professional Licensure Committee
Honorable Pedro A. Cortes, Secretary, Department of State

**INDEPENDENT REGULATORY REVIEW COMMISSION
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held April 22, 2010

Arthur Coccodrilli, Chairman
George D. Bedwick, Vice Chairman
S. David Fineman, Esq.
Silvan B. Lutkewitte, III
John F. Mizner, Esq.

Regulation No. 16A-5723 (#2788)
State Board of Veterinary Medicine
Biennial Renewal Fees

On September 2, 2009, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the State Board of Veterinary Medicine (Board). This rulemaking amends 49 Pa. Code § 31.41. The proposed regulation was published in the September 19, 2009 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on March 11, 2010.

This rulemaking would provide for incremental biennial license renewal fee increases for veterinarians and veterinary technicians for the next six biennial renewal cycles. The current renewal fee for veterinarians is \$300 and the current renewal fee for veterinary technicians is \$75. The renewal fees at the end of the 2020-2022 biennial period will be \$590 for veterinarians and \$140 veterinary technicians.

Subsections 13 (a), (b) and (c) of the Veterinary Medicine Practice Act (Act) (63 P.S. § 485.13 (a), (b) and (c)) establish the Board's authority for setting and raising fees. Those sections state the following:

- a) The board shall, by regulation, fix the fees required for examination, licensure, certification, registration, renewal of licenses and registrations, renewal of certificates and temporary permits.
- (b) If the revenues raised by fees, fines and civil penalties imposed pursuant to this act are not sufficient to meet expenditures **over a two-year period**, the board shall increase those fees by regulation so that the projected revenues will meet or exceed projected expenditures. (Emphasis added.)
- (c) If the Bureau of Professional and Occupational Affairs determines that the fees established by the board pursuant to subsections (a) and (b) are inadequate to meet the minimum enforcement efforts required by this act, then the bureau, after consultation with the board, shall increase the fees by regulation so that adequate revenues are raised to meet the required enforcement effort.

In our comments on the proposed rulemaking, we asked the Board to explain how the increases conform to the intent of the General Assembly and Section 13 of the Act. We also questioned the Board's statutory authority for automatic fee increases that may or may not be needed to meet expenditures ten years in the future. The Board responded, "Section 13 (b) does not limit the Board to looking only 2 years into the future when projecting a budget surplus." In

addition, we asked the Board if its financial condition improves, will the fees be decreased accordingly? The Board responded, "The Board will carefully monitor its expenditures and will stabilize or decrease the fees by regulation if they are needed."

Based on this response and the Board's explanation at our public meeting, we have concluded that this regulation is not consistent with the intention of the General Assembly. We do not believe the Board's proposal for incremental biennial renewal fees over six renewal cycles is consistent with the intent of the Act. By imposing a two-year time period in statute, we believe the General Assembly's intent was to require the Board to evaluate its revenues and expenditures, *and adjust those revenues and expenditures*, more frequently than once every ten years. In addition, we believe that the two-year statutory time period reflects the General Assembly's intent that Board fee adjustments be reviewed by this Commission and by the General Assembly more frequently than once every ten years. Accordingly, we believe that a regulatory scheme of incremental fee increases over any period beyond two years is a decision that should be made by the General Assembly.

In addition, we find promulgation of this regulation is not in the public interest because of the potential fiscal impact it could have on the regulated community. Based on numerous factors, the projections that formed the basis for this proposed rulemaking could be understated or overstated. If they are overstated, the fees collected could lead to a large surplus and the Board has no statutory obligation to readjust the fees in favor of the regulated community. While we commend the Board for committing to monitoring its expenditures and adjusting the fees accordingly, we believe any potential surplus should be in the hands of the veterinarians and veterinary technicians instead of the Board.

BY ORDER OF THE COMMISSION:

The regulation # 16A - 5723 (IRRC # 2788) from the State Board of

Veterinary Medicine; Biennial Renewal Fees

was disapproved on April 22, 2010




Arthur Coccodrilli, Chairman