

## Comments of the Independent Regulatory Review Commission



### State Board of Veterinary Medicine Regulation #16A-5726 (IRRC #3336)

#### Euthanasia

June 1, 2022

We submit for your consideration the following comments on the proposed rulemaking published in the April 2, 2022 *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.

#### GENERAL PROVISIONS

##### 1. Section 31.102. Definitions. – Clarity.

The “supervisor of animal care services” is defined as an “individual who is **generally** onsite at the shelter facility.” [Emphasis added.] “Generally” is nonregulatory language that does not set a clear standard of compliance for an animal protection organization. The Board should clarify this definition to set a clear, enforceable standard.

##### 2. Section 31.104. Schedule of fees. – Economic or fiscal impacts; Reasonableness of requirements, implementation procedures and timetables for compliance by the public and private sectors; Need.

A euthanasia technician is required to pay an \$81 fee for an application for approval of employment change. We have four questions and concerns. First, a euthanasia technician is required to provide notice of a change in employment under Section 31.124(a)(3) (relating to reports to be filed with the Board). However, Subchapter B (relating to animal protection organizations and euthanasia technicians) does not require or set forth a procedure for a euthanasia technician to re-apply for licensure upon a change of employment. Second, Section 31.107(a)(2) (relating to authority of certificate holders to purchase, possess and administer controlled substances; limitations on authority) provides for a euthanasia technician to be under contract with an animal protection organization. Is a contracted euthanasia technician required to apply for approval for change in employment? Third, this fee may have a significant economic impact upon euthanasia technicians, given that the Board acknowledges in Regulatory Analysis Form (RAF) Question #19 that there may be a relatively high rate of turnover of euthanasia technicians due to the emotional drain of this occupation. Fourth, the process may impede a euthanasia technician from accepting a new employment opportunity. We ask the Board to

explain why the approval of employment change is needed, why the fee is reasonable and the expected economic impact on the regulated community. Further, should the Board determine that it is necessary to approve a change in employment, this requirement, along with implementation procedures, should be added in the final-form regulation.

### **CERTIFICATE OF REGISTRATION FOR ANIMAL PROTECTION ORGANIZATIONS**

#### **3. Section 31.106. Qualifications for a certificate of registration; duty to update certification information. – Economic or fiscal impacts; Need; Implementation procedures; Reasonableness.**

##### *Subsection (a)*

Subsection (a)(2) requires an animal protection organization to demonstrate that the supervisor of animal care services has completed the didactic portion of the euthanasia technician certification course. We have two issues. First, the Board does not explain in the Preamble why it is requiring unlicensed employees to complete this component of the euthanasia technician certification course. Second, the regulation does not directly require the supervisor of animal care services to take this portion of the certification course. We ask the Board to explain the need for this provision. We also ask the Board to consider clarifying the final-form regulation to require the supervisor of animal care services to complete this portion of the certification course.

This comment also applies to Section 31.108(b)(1) (relating to duties of certificate holders).

##### *Subsection (d)*

Under subsection (d), an animal protection organization will be inspected by agents of the Board during the application process to determine if the equipment and facilities are in compliance with Subchapter B. A commentator suggested that inspections be completed by the Department of Agriculture (Department) during its regular inspection process, noting that there “is a simple check list” under Section 31.109 (relating to area used for animal euthanasia; required equipment and supplies). Section 304(d) of the Animal Destruction Method Authorization Law (act) provides for the Board to “enter into a memorandum of understanding with the [D]epartment and designate the [D]epartment to act as its authorized agent for the limited purposes of inspecting and monitoring animal protection organizations.” 3 P.S. § 328.304(d).

RAF Question #13 states that the Department’s Bureau of Dog Law Enforcement inspects kennels and that the Board intends to work with the Department regarding areas of mutual interest and co-enforcement efforts. We ask the Board to explain if the Department and the Board will work together to meet the standards set forth in the act and Subchapter B. Further, should the Board and the Department enter into a memorandum of understanding, we ask the Board to review and revise Subchapter B to include the Department where necessary.

*Subsection (f)*

Under subsection (f), an application is active for 12 months from the date the application is signed and verified. The Board will deem an application withdrawn if it is dormant for more than 12 months. An applicant who wishes to continue the registration process will be required to submit a new application and application fee. The Board does not explain why it will deem an application to be dormant. We ask the Board to explain how it determined that 12 months is a reasonable time for an application to remain active, what factors it considered in determining that an application will become dormant after that time, and the fiscal impact upon applicants who will be required to pay a second application fee.

This comment also applies to the euthanasia technician application process in Section 31.122 (relating to qualifications for licensure).

*Subsection (g)*

Subsection (g) requires an applicant to update the application should information change prior to issuance of the certificate of registration. The Preamble and this provision do not include implementation procedures. Does an updated application impact the active period in subsection (f)? We ask the Board to explain the process for updating an application and the impact upon the application timeline.

**4. Section 31.107. Authority of certificate holders to purchase, possess and administer controlled substances; limitations on authority. – Clarity.**

Under subsection (b)(1), an animal protection organization may not “[p]urchase, possess or administer any controlled substance or any other legend drug which is not a drug for euthanasia.” However, the Preamble states that this paragraph does not prohibit an animal protection organization that employs a staff veterinarian from possessing drugs used for other purposes acquired under the authority of the staff veterinarian’s license and United States Drug Enforcement Administration (DEA) registration. We ask the Board to clarify this paragraph to include the allowance for an animal protection organization who employs a veterinarian.

**5. Section 31.108. Duties of certificate holders. – Possible conflict with statutes; Reasonableness; Clarity.**

*Subsection (a)(1)*

Under subsection (a)(1), an animal protection organization is required to ensure a euthanasia technician is “clinically competent to humanely administer euthanasia.” Under Section 304(c) of the act, the Board is required to determine that an applicant satisfies licensure standards, not an animal protection organization. Why is the Board requiring an animal protection organization to assess competency? We ask the Board explain why it is reasonable and necessary for an animal protection organization to make this determination. We also ask the Board to consider revising this subsection to eliminate the requirement placed upon an animal protection organization.

*Subsection (a)(6)*

Subsection (a)(6) requires an animal protection organization to provide the Board with a hard copy of the controlled substance log for drugs for euthanasia every 60 days, along with a summary report containing the notifications in subsection (b).

The House Professional Licensure Committee (Committee) seeks clarification as to why records documenting the purchase, receipt and disposal of drugs for euthanasia must be kept in hard copy. The Committee recommends the Board consider allowing an animal protection organization to maintain digital records given the requirements to provide the controlled substance log every 60 days and for records to be maintained in a readily retrievable file under Section 31.112 (relating to maintenance of records and inventories of drugs for euthanasia).

In addition, a commentator opined that the requirement to provide the controlled substance log and summary report every 60 days is burdensome. The commentator also suggested these provisions should mirror the DEA's retention requirement, which allows for an inspection by agents at any time.

We ask the Board to address the concerns expressed by the Committee and the commentator, as well as explain why the 60-day reporting requirement is reasonable and necessary. We further ask the Board to consider clarifying the record retention provisions as suggested.

*Subsection (b)*

Subsection (b)(5) requires an animal protection organization to include in the 60-day summary notification of a “[c]hange in the physical location or significant changes to shelter, and if applicable, demonstration that a new DEA Certificate of Registration has been obtained for the new address.” Subsection (a)(4) requires a separate certificate of registration from the Board and the DEA for each address where euthanasia drugs are stored or administered. Given the need for separate certificates and inspections, notification of these changes does not seem to correspond with procedures for registration as an animal protection organization. We ask the Board to revise the regulation to add procedures for when an animal protection organization changes physical locations or makes significant changes to areas used for euthanasia.

**6. Section 31.109. Area used for animal euthanasia; required equipment and supplies. – Economic or fiscal impacts; Need; Reasonableness.**

Subsection (a)(4) requires an animal protection organization to provide an area used for animal euthanasia that has “adequate ventilation to prevent the accumulation of odors, including at least one exhaust fan.” A commentator asked for an explanation of why an animal protection organization is required to provide adequate ventilation given the expense. We ask the Board to explain why this provision is needed, why it is reasonable and the fiscal impact upon animal protection organizations.

**7. Section 31.112. Maintenance of records and inventories of drugs for euthanasia. – Implementation procedures.**

Subsection (j) requires an animal protection organization who surrenders certification to send a copy of drug disposal documentation to the Board. A timeframe is not specified. We ask the Board to revise this subsection to include implementation procedures for sending documentation.

**8. Section 31.114. Grounds for refusal, suspension, revocation or imposition of other disciplinary sanction. – Implementation procedures; Need.**

Under subsection (d), the Board will discipline an animal protection organization who does not admit agents of the Department to conduct investigations or inspections. We have two concerns, similar to those addressed in Comment #3. First, Section 31.108(a)(7) only requires an animal protection organization to cooperate with the Board and its agents. Second, the Department may only need to be included in this subsection if a memorandum of understanding is entered into with the Department. We ask the Board to address these issues in the Preamble to the final-form regulation and revise this subsection as necessary.

**9. Section 31.115. Disciplinary sanctions. – Possible conflict with statutes; Clarity.**

Subsection (c) states that the Board “**may summarily revoke** the certificate” of an animal protection organization when the Department revokes a license. [Emphasis added.] Under Section 304(a)(3) of the act, when the Department “suspends or revokes a kennel license of an animal protection organization . . . the authorization to purchase, possess and administer drugs approved for euthanasia . . . **shall be immediately revoked.**” [Emphasis added.] This subsection does not meet the statutory obligation requiring the revocation of a certificate. We ask the Board to revise and clarify this subsection to delete discretionary language and align it with the requirements in Section 304(a)(3) of the act.

## **EUTHANASIA TECHNICIANS**

**10. Section 31.122. Qualifications for licensure. – Protection of the public health, safety and welfare; Implementation procedures; Reasonableness.**

Under subsection (a)(2), an applicant for a euthanasia technician license who has not received a high school diploma or an equivalent “may submit at least three letters or recommendation attesting to applicant’s ability to perform the functions of a euthanasia technician, including at least one recommendation from a veterinarian licensed in this Commonwealth or another state.” The Board explains in the Preamble that a euthanasia technician’s duties include “calculating the correct dosage of drugs to administer to animals based on the strength of the drug, the animal’s weight and condition, and the desired effect.” We have three questions and concerns. First, how will the Board evaluate the letters and recommendations to determine that the applicant has the necessary skills to perform the duties of a euthanasia technician? Second, why is it reasonable to lower the educational requirements for this license given the skills needed to perform this work? Third, how does this provision protect the public health, safety and welfare given the use of

controlled substances? We ask the Board to respond to these questions and consider revising this paragraph to delete the provision allowing for an exception to minimum education requirements.

**11. Section 31.123. Educational programs and examinations for euthanasia technicians. – Consistency with statute.**

Subsection (c)(2) lists the curriculum that must be included in a euthanasia technician certification course. This paragraph does not include “knowledge of the Commonwealth’s statutes and regulations relating to euthanasia” as required by Section 304(c)(1)(i) of the act. We ask the Board to revise this paragraph to include the statutorily required eligibility criteria.

**12. Regulatory Analysis Form – Economic or fiscal impacts.**

The Board states in RAF Question #15 that an applicant for licensure as a euthanasia technician will have to complete a euthanasia technician certification course at an estimated cost of \$225. In addition, the supervisor of animal care services is required to complete the didactic portion of the certification course. The estimates in RAF Questions #19 and 23 do not include the cost of certification courses for euthanasia technicians and supervisors of animal care services. We ask the Board to include these cost estimates in the RAF submitted with the final-form regulation.

RAF Question #20 does not include cost estimates for local governments. A municipality may be certified to operate an animal shelter. We ask the Board to provide an estimate of costs for local governments in RAF Questions #20 and 23 or explain why it is not possible to do so.

The Board states in RAF Question #21 that it will recoup the cost of implementing the regulation through fees. However, these costs are not stated in RAF Questions #21 and 23. We ask the Board to update the RAF submitted with the final-form regulation to include its costs.

**13. Miscellaneous clarity.**

- The defined term “small domestic animals” and the undefined term “animal” are used interchangeably throughout Subchapter B. We ask the Board to review and revise the regulations to ensure the consistent use of the defined term.
- Sections 31.127(b)(6) and 31.128(e) (relating to duties of euthanasia technicians; and standards for euthanasia of small domestic animals) contain different tests for confirming death. These standards should be revised to be consistent.