

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF VETERINARY MEDICINE

[49 PA. CODE CH. 31]

Implanting Electronic Identification; Certified Veterinary Technicians

The State Board of Veterinary Medicine (Board) adopts amendments to §§ 31.1, 31.31—31.33, 31.35 and 31.38—31.41 to read as set forth in Annex A. The final-form rulemaking will permit a certified veterinary technician to implant electronic identification under indirect veterinary supervision and will permit a noncertified employee to implant electronic identification under direct veterinary supervision.

The Board also amends references in its regulations to certified animal health technicians by replacing this term with the new statutory term, certified veterinary technician, consistent with the act of December 9, 2002 (P. L. 1370, No. 167) (Act 167).

Notice of proposed rulemaking was published at 34 Pa. B. 1331 (March 6, 2004). Publication was followed by a 30-day public comment period. The Board received comments from the Pennsylvania Federation of Dog Clubs, Inc. (PFDC), and the Honorable Sheila Miller, State Representative. The House Professional Licensure Committee (HPLC) submitted one comment to the proposed rulemaking. The Senate Consumer Protection and Professional Licensure Committee made no comments. The Independent Regulatory Review Commission (IRRC) submitted two comments to the proposed rulemaking on May 5, 2004. The Board discussed the comments at its June 8, 2004, meeting.

Summary of Comments and Responses to Proposed Rulemaking

On March 10, 2004, the Honorable Sheila Miller, State Representative, addressed comments to IRRC that were forwarded to the Board. Representative Miller questioned whether the proposed rulemaking would inadvertently limit farmers and others in the animal agriculture field from applying new technologies in electronic identification to their animals. The proposed rulemaking does not restrict farmers from using electronic identification. The restriction on who may implant electronic identification is contained in the Veterinary Medicine Practice Act (act) (63 P. S. §§ 485.1—485.33) which defines the implanting of electronic identification as part of the practice of veterinary medicine. However, the act also provides that any person or the person's regular employee or agent may practice veterinary medicine on the person's own animals. This exemption would allow a farmer and a farmer's regular employees to implant electronic identification in animals owned by the farmer. In addition, if a farmer is not the owner, such as in the case of corporate ownership of farm animals, the farmer may still implant electronic identification in the animals as the agent of the corporate owner. Therefore, neither the act nor the Board's regulations will have any impact on a farmer's ability to use electronic identification.

On March 20, 2004, the PFDC sent comments to IRRC, which were forwarded to the Board. The PFDC expressed concern with a proposed provision that authorized noncertified employees of a veterinarian to implant electronic identification under direct veterinary supervision. An individual submitted comments to IRRC in support of the PFDC's position on March 25, 2004, which were also forwarded to the Board.

The Board's current regulations authorize noncertified employees to perform ear flushing; perform dental prophylaxis; perform diagnostic imaging, perform intravenous catheterization; administer immunizations which are not required by law to be administered in the presence of a licensed veterinarian; administer and apply medications and treatment by routes, including intramuscular, subcutaneous and previously catheterized vein; apply bandages; perform cardiac monitoring and perform appropriate procedures to control bleeding under direct veterinary supervision. See § 31.31(b)(1) (relating to scope of practice). The Board found that implanting electronic identification raises similar concerns in the areas of technique and sanitation as procedures that noncertified employees are already authorized to perform. Because implanting electronic identification does not require a quantitatively higher level of technical skill or a qualitatively different understanding of proper sanitation, the Board concluded that authorizing noncertified employees to implant electronic identification under direct veterinary supervision was consistent with the duties these employees are already authorized to perform. Under § 31.31(b), a veterinarian may only allow a noncertified employee to perform a procedure if it is within the noncertified employees' skills. Moreover, under § 31.31(b), the veterinarian bears ultimate responsibility for assuring that the noncertified employee to whom a duty is assigned is competent to perform the duty, and the veterinarian may be disciplined under section 21(22) of the act (63 P. S. § 485.21(22)) if the veterinarian allows an unqualified employee to provide services. Thus, the public is protected from unqualified staff of a veterinarian performing procedures, including implanting electronic identification.

The PFDC also commented that regulations promulgated by the Department of Agriculture in early 2003 were inconsistent with the act. The PFDC is correct; the Board contacted the Department of Agriculture after it promulgated these regulations and the Department amended its regulations to conform to the act published at 34 Pa. B. 6019 (November 6, 2004).

The HPLC noted a technical drafting problem in that some of the sections being amended by this rulemaking were previously amended to reflect the new terminology, "certified veterinary technician."

IRRC made two comments. First, in light of the comments submitted by the PFDC, IRRC asked the Board to further explain the basis for allowing noncertified employees to implant electronic identification. The Board believes it has further explained its reasoning. Second, IRRC noted that the Board had erroneously transcribed the amended statutory language related to grounds for disciplinary proceedings when it amended § 31.39(a)(6) to conform the disciplinary provisions for technicians to the statutory disciplinary provisions for veterinarians. The Board has amended § 31.39(a)(6) to mirror the language in section 21(15) of the act.

Statutory Authority

Section 3(10)(viii) of the act (63 P. S. § 485.3(10)(viii)) provides that the practice of veterinary medicine includes the practice by any person who “implants electronic identification, as determined by the Board.” Section 5(2) of the 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.

Fiscal Impact and Paperwork Requirements

The Board had identified no fiscal impact or paperwork requirements to State or local governments associated with the final-form rulemaking.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 24, 2004, the Board submitted a copy of the notice of proposed rulemaking, published at 34 Pa. B. 1331, to IRRC and the Chairpersons of the HPLC and the 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 from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on October 19, 2004, the final-form rulemaking was approved by the HPLC. On November 3, 2004, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 4, 2004, and approved the final-form rulemaking.

Additional Information

Individuals who need information about the regulation may contact Robert Kline, Administrative Assistant, State Board of Veterinary Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649.

Findings

The Board finds:

- (1) That public notice of intention to adopt amendments was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated under those sections at 1 Pa. Code §§ 7.1 and 7.2.
- (2) That a public comment period was provided as required by law and all comments were considered.
- (3) That this final rulemaking is necessary and appropriate for the administration of the act.
- (4) That the amendments to this final-form rulemaking do not enlarge the original purpose of the proposed rulemaking at 34 Pa. B. 1331.

Order

The Board orders that:

- (a) The regulations of the Board, 49 Pa. Code Chapter 31, are amended by amending §§ 31.1, 31.31—31.33, 31.35, 31.38, 31.40 and 31.41 to read as set forth at 34 Pa.B. 1331 and by amending § 31.39 to read as set forth in Annex A.

- (b) The Board shall submit this order, 34 Pa. B. 1331 and Annex A to the Office of the Attorney General and the Office of General Counsel for approval as required by law.

- (c) The Board shall certify this order, 34 Pa. B. 1331 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

- (d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

BRIAN V. HARPSTER, V.M.D.,
Chairperson

(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 34 Pa. B. 6292 (November 20, 2004).)

Fiscal Note: Fiscal Note 16A-5715 remains valid for the final adoption of the subject regulation.

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

CERTIFIED VETERINARY TECHNICIANS AND NONCERTIFIED EMPLOYEES

§ 31.39. Grounds for disciplinary proceedings.

(a) The Board may suspend or revoke certification of a veterinary technician or otherwise discipline a certified veterinary technician or refuse to certify an applicant, or, upon certification, restrict the practice of an applicant who is found guilty by the Board or by a court of one or more of the following:

- (1) Willful or repeated violations of the act or of §§ 31.31—31.36 and 31.38.
- (2) Fraud or deceit in procuring or attempting to procure certification or presenting to the Board dishonest or fraudulent evidence of qualifications, or fraud or deception in the process of examination for the purpose of securing certification.
- (3) Fraud, deception, misrepresentation or dishonest or illegal practices in or connected with the person’s employment.
- (4) Revocation, suspension or other discipline by another state of the certification of the person as an animal health technician or a veterinary technician on grounds similar to those which in this Commonwealth allow disciplinary proceedings, in which case the revocation, suspension or other discipline shall be conclusive evidence.
- (5) Conviction of or plea of guilty or nolo contendere to a violation of The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780.101—780.144), in which case a certified copy of the court record shall be conclusive evidence.

- (6) Conviction of a felony, a misdemeanor related to the profession or a crime of moral turpitude in the courts of this Commonwealth or of a state, territory or country which, if committed in this Commonwealth, would be deemed a felony, misdemeanor related to the profession or crime of moral turpitude and suspension, revocation or other discipline is in the best interest of the public health

and the general safety and welfare of the public. A record of conviction in a court of competent jurisdiction shall be sufficient evidence for disciplinary action to be taken as may be deemed proper by the Board.

(7) Permitting or allowing another to use his certification.

(8) Addiction to the habitual use of intoxicating liquors, narcotics or stimulants to an extent that incapacitates the certified veterinary technician from the performance of professional obligations or duties.

(b) Certified veterinary technicians and noncertified employees who deviate from the permitted scope of practice as set forth in § 31.31 (relating to scope of practice) will be subject to prosecution and the levying of a civil penalty by the Board under section 28(c) of the act (63 P. S. § 485.28(c)). Veterinarians who permit, order or direct certified veterinary technicians or noncertified employees to perform duties which are not authorized by § 31.31 will be subject to disciplinary action by the Board under section 21 of the act (63 P. S. § 485.21).

(c) Disciplinary action by the Board will be taken only after a formal hearing has been held in accordance with the act.

[Pa.B. Doc. No. 04-2230. Filed for public inspection December 17, 2004, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 111]

[Correction]

Boating

An error occurred in the heading of 58 Pa. Code § 111.56 (relating to Somerset County), which appeared at 34 Pa.B. 6333, 6334 (November 27, 2004). The section heading read Allegheny County erroneously.

The correct version of the heading is as follows, with ellipses referring to the existing text of the section.

§ 111.56. Somerset County.

* * * * *

[Pa.B. Doc. No. 04-2105. Filed for public inspection November 24, 2004, 9:00 a.m.]
