

# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### ENVIRONMENTAL QUALITY BOARD

[ 25 PA. CODE CH. 78 ]

#### Oil and Gas Wells

The Environmental Quality Board (Board) amends Chapter 78, Subchapter B (relating to permits, transfers and objections) by adding a new § 78.19 (relating to permit application fee schedule) as set forth in Annex A.

Notice of proposed rulemaking is omitted under section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)), known as the Commonwealth Documents Law (CDL). Paragraph (3) provides that an agency may omit the notice of proposed rulemaking if the agency finds for good cause that notice of proposed rulemaking is impracticable, unnecessary or contrary to the public interest. In this case, using the notice of proposed rulemaking procedure is contrary to the public interest for the reasons set forth in this preamble.

This order was adopted by the Board at its meeting of December 16, 2008.

#### A. *Effective Date*

The rulemaking will go into effect upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

#### B. *Contact Persons*

For further information contact Ronald Gilius, Director, Bureau of Oil and Gas Management, Rachel Carson State Office Building, 5th Floor, 400 Market Street, P. O. Box 8765, Harrisburg, PA 17105-8461, (717) 772-2199, or Scott Perry, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) web site at [www.depweb.state.pa.us](http://www.depweb.state.pa.us).

#### C. *Statutory Authority*

This final-form rulemaking is being made under the authority of section 201(d) of the Oil and Gas Act (act) (58 P. S. § 601.201(d)) which authorizes the Department to establish, by regulation, well permit fees that bear a reasonable relationship to the cost of administering the act, section 604 of the act (58 P. S. § 601.604) which directs the Board to adopt regulations necessary to implement the act, and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), authorizing and directing the Board to adopt regulations necessary for the proper performance of the work of the Department.

#### D. *Background of the Amendments*

The act was passed on December 19, 1984, and established a \$100 fee for oil and gas well permits. Section 201(d) of the act allows the Department to increase the fee by regulation. Under this provision, fees must be set at a level that "bears a reasonable relationship to the cost of administering" the act. The Department has never increased the current \$100 permit fee.

There is significant and recent interest in the development and recovery of natural gas resources in the Marcellus Shale formation that underlies much of this Commonwealth. The development of this geologic formation, which also extends beneath portions of West Virginia and New York, has long been considered prohibitively expensive. Recent advances in natural gas drilling technology and rising natural gas prices have attracted considerable interest in this previously untapped formation.

The recent technological advances that allow recovery of natural gas found in the Marcellus Shale present new and expanded environmental considerations that the Department must evaluate properly to ensure the gas is recovered in the most environmentally sensitive manner feasible. Many of the new or expanded environmental considerations are directly related to the size of the well drilling site and the use of water to recover natural gas from the Marcellus Shale formation. Extracting natural gas from the Marcellus Shale formation is enhanced by horizontal drilling within the formation after vertical drilling reaches the formation. The horizontal drilling and a process known as "hydraulic fracturing" are used to allow the natural gas to flow freely from the Marcellus Shale formation. Hydraulically fracturing the Marcellus Shale uses far greater amounts of water than traditional natural gas exploration. Large volumes of water are pumped into the formation, along with sand and other materials under high pressure, to fracture the rock surrounding the horizontal well bore. A single well can use millions of gallons of water to hydraulically fracture the rock. After the hydraulic fracturing process is completed, the wastewater must be properly managed.

The significantly greater use of water at Marcellus Shale wells creates a series of environmental issues during the drilling and development of a Marcellus Shale well. First, there are a number of considerations associated with withdrawal of water, including the need to monitor and restrict the amount of withdrawal to avoid dewatering streams and causing pollution. Under State water law, a person who withdraws water in the amounts generally associated with Marcellus Shale well development must register the withdrawal with the Department. Second, there are a number of considerations associated with the use and storage of the water used for hydraulic fracturing at the well site or at other locations. Third, there are a number of considerations associated with the proper management, treatment and discharge of the wastewater.

To address these additional environmental considerations associated with development of Marcellus Shale, the Department prepared a permit application addendum specifically for Marcellus Shale gas well development. The Department has expended considerable staff resources to review the additional information in the Marcellus Shale permit addendum. Because the Department's review of the addendum includes several water quality and quantity issues not normally associated with gas well permit application reviews, the Department needs to coordinate its Marcellus Shale permit application review among several water resource related program areas. Within the Susquehanna and Delaware River Basins, the Department also needs to coordinate its review with the Susquehanna and Delaware River Basin Commissions which have regulatory authority over water withdrawals within their respective river basins.

To properly evaluate the permit applications to recover gas from the Marcellus Shale formation, the Department has expended additional staff resources. The current \$100 per permit application fee does not have any "reasonable relationship" to the actual cost to implement this portion of the act program covering development of the Marcellus Shale. The Department needs additional resources to properly allow the development of the Marcellus Shale natural gas resources and to protect the environment. This regulatory fee increase is needed to provide the Department with the resources to perform the additional work associated with the review of Marcellus Shale gas well permit applications and with the oversight of any permits that are issued.

Use of the omission of the notice of proposed rulemaking procedures is appropriate to increase the permit application fee for Marcellus Shale well permit application under section 204 of the CDL, for the reasons set forth as follows. Under section 204(3), an agency can avoid the use of the notice of proposed rulemaking if the agency finds for good cause that the use of this procedure is unnecessary, impractical or contrary to the public interest.

The drilling for and recovery of the Marcellus Shale natural gas resources is a recent development in this Commonwealth. Recent technological improvements and higher energy prices have triggered a rush to develop this energy resource. The use of these technological improvements (hydraulic fracturing and horizontal drilling) present new environmental considerations that require prompt and thorough Department review to ensure the development of gas in this specific area occurs in an environmentally protective manner that State law requires. It is in the public interest to quickly establish and collect permit application fees from the regulated community for the review of a Marcellus Shale permit application. These higher permit application fees are necessary to support the Department's recently developed program initiative to regulate the permitting and development of Marcellus Shale natural gas wells. The public interest is served when the applicants for Marcellus Shale well permits pay application fees that cover the Department's additional program implementation costs for the review of these permit applications.

#### E. Summary of Final-form Rulemaking

This final-form rulemaking establishes oil and gas well permit fees in § 78.19. Section 78.19(a) includes a \$100 permit application fee for all applications except for Marcellus Shale permit applications. The \$100 amount is the statutory amount established by section 201 of the act.

Under § 78.19(b), Marcellus Shale well permit applicants will pay a base fee of \$900 with an additional \$100 for every 500 feet the well bore extends beyond 1,500 feet. The fees are rounded to the nearest foot interval. If the applicant drills a well longer than what was applied for, the applicant must remit the difference along with a processing fee equivalent to 10% of the correct fee amount.

Sections 78.15 is amended to include cross references to new § 78.19.

#### F. Relationship to Proposed Rulemaking to Increase Fees

This final-omit rulemaking is intended to quickly increase permit application fees for permits that are issued for the Marcellus Shale formation. For the reasons stated previously, the Department needs these higher fees

quickly. At the same meeting that the Board approved this rulemaking, the Board also approved a proposed rulemaking to increase permit application fees for other non-Marcellus Shale permits. The Board also included the new Marcellus Shale permit application fees in that proposed rulemaking to allow interested persons the opportunity to provide comments on the new Marcellus Shale fees as part of that proposed rulemaking. When that proposed rulemaking is adopted as final, the Board will make appropriate changes to the Marcellus Shale fees in that rulemaking in response to comments. The final-omitted fees will therefore only be in effect until that proposed rulemaking is adopted as final.

#### G. Benefits and Costs

##### Benefits

The residents of this Commonwealth and the regulated community will benefit from this rulemaking because the Department will be able to continue to uphold the purposes of the act. The purposes of the act are to:

(1) Permit the optimal development of the oil and gas resources of this Commonwealth consistent with the protection of the health, safety, environment and property of the citizens of this Commonwealth.

(2) Protect the safety of personnel and facilities employed in the exploration, development, storage and production of natural gas or oil or the mining of coal.

(3) Protect the safety and property rights of persons residing in areas where such exploration, development, storage or production occurs.

(4) Protect the natural resources, environmental rights and values secured by the Pennsylvania Constitution. See 58 P. S. § 601.102.

The public will benefit in two general ways. The public will benefit from a fiscal perspective when the costs of the regulatory program are imposed on the regulated community, as the act provides. For Marcellus Shale gas well development, the need for timely and special reviews has significantly increased the Department's cost of implementation of the program and it is in the public interest to impose these costs on the regulated community. The public also benefits from an environmental perspective since the review of the Marcellus Shale permit applications requires new and extensive reviews to ensure that the development of this natural gas resource occurs in an environmentally protective manner which State law requires. The higher fees will support the Department's newly developed and extensive efforts to review Marcellus Shale permit applications.

The regulated community will also benefit because the regulated community wants timely reviews of permit applications, which State law also requires. Having the staff to evaluate these Marcellus Shale permit applications in a timely and environmentally protective manner will benefit the regulated community and the public.

##### Costs

This rulemaking will not impose any additional costs on the Department. This rulemaking will help the Department offset the greater implementation costs to support new and extensive reviews of oil and gas permit applications. The new Marcellus Shale permit fee will impose a base permit fee of \$900 with an additional \$100 for every 500 feet the well bore extends beyond 1,500 feet.

##### Compliance Assistance Plan

A compliance assistance plan is not necessary because the new fee structure does not create a situation where a

well operator will be out of compliance with the regulation. Well permits that do not contain the appropriate fee will be deemed incomplete. The Department will return the application to the applicant and tell the applicant what the appropriate fee is. To minimize this circumstance from occurring, the Department will publicize the new permit fee requirements on its web site and inform potential applicants of the new fee structure at upcoming industry trainings.

#### *Paperwork Requirements*

No additional paperwork will be required as a result of this rulemaking. However, the Department will need to amend its well permit application form and instructions to incorporate and explain the new permit fee structure.

#### H. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

#### I. *Regulatory Review*

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), on February 4, 2009, the Department submitted a copy of this final-form rulemaking with notice of proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees (Committees). On the same date, the Department also submitted this rulemaking to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506). In addition to the final-form rulemaking, IRRC and the Committees were provided with a copy of a detailed Regulatory Analysis Form prepared by the Department.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on February 10, 2009, the Senate Standing Committee notified IRRC and the Department of its intent to review the rulemaking. On March 18, 2009, under section 5.1(j.2) of the Regulatory Review Act, the House Standing Committee deemed approved the Board's final-form rulemaking. Under section 5.1(e) of the Regulatory Review Act, the Commission met on March 19, 2009, and approved the Board's final-form rulemaking. Under section 7(d) of the Regulatory Review Act (71 P. S. § 745.7(d)), on April 3, 2009, this final-form rulemaking was deemed approved by the Senate Standing Committee.

#### J. *Findings of the Board*

The Board finds that:

(1) Use of the omission of notice of proposed rulemaking procedure is appropriate because the notice of proposed rulemaking procedure specified in sections 201 and 202 of the CDL is, under the circumstances, contrary to the public interest. The current permit fee of \$100 is inadequate. Absent additional permit fees, the Department will not be able to uphold the purposes of the act by permitting the optimal development of this Commonwealth's oil and gas resources while protecting the health and safety of this Commonwealth's citizens and environment.

(2) Use of the notice of proposed rulemaking procedures is not in the public interest because higher permit application fees are necessary to support the Department's recently developed program initiative to regulate the permitting and development of Marcellus Shale natu-

ral gas wells. The public interest is served when the applicants for Marcellus Shale well permits pay applications fees that cover the Department's additional program implementation cost for these permits requiring special and timely reviews.

(3) These amendments are necessary and appropriate for administration of the authorizing acts identified in section C of this preamble and in the public interest.

#### K. *Order of the Board*

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapter 78, are amended by adding § 78.19 and amending § 78.15.

(b) The Chairperson shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form as required by law.

(c) The Chairperson shall submit this order and Annex A to IRRC and the Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

JOHN HANGER,  
*Acting Chairperson*  
*Environmental Quality Board*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 1770 (April 4, 2009).)*

**Fiscal Note:** 7-430. No fiscal impact; (8) recommends adoption.

### Annex A

## TITLE 25. ENVIRONMENTAL PROTECTION PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

### Subpart C. PROTECTION OF NATURAL RESOURCES

#### ARTICLE I. LAND RESOURCES

#### CHAPTER 78. OIL AND GAS WELLS

#### Subchapter B. PERMITS, TRANSFERS AND OBJECTIONS

#### PERMITS AND TRANSFERS

#### § 78.15. Application requirements.

(a) An application for a well permit shall be submitted on forms furnished by the Department and contain the information required by the Department to evaluate the application.

(b) The permit application will not be considered complete until the applicant submits a complete and accurate plat, an approvable bond or other means of complying with section 215 of the act (58 P. S. § 601.215), the fee in compliance with § 78.19 (relating to permit application fee schedule), proof of notification, necessary requests for variance or waivers or other documents required to be furnished by law or the Department. The person named in the permit shall be the same person named in the bond or other security.

**§ 78.19. Permit application fee schedule.**

(a) Except as provided in subsection (b), an applicant shall pay a permit application fee of \$100.

(b) An applicant proposing to drill a well to produce gas from the Marcellus Shale formation shall pay a permit application fee according to the following schedule:

<i>New Marcellus Shale Wells</i>	
<i>Total Well Bore Length in Feet</i>	<i>Total Fee</i>
0 To 1,500	\$900
1,501 To 2,000	\$1,000
2,001 To 2,500	\$1,100
2,501 To 3,000	\$1,200
3,001 To 3,500	\$1,300
3,501 To 4,000	\$1,400
4,001 To 4,500	\$1,500
4,501 To 5,000	\$1,600
5,001 To 5,500	\$1,700
5,501 To 6,000	\$1,800
6,001 To 6,500	\$1,900
6,501 To 7,000	\$2,000
7,001 To 7,500	\$2,100
7,501 To 8,000	\$2,200
8,001 To 8,500	\$2,300
8,501 To 9,000	\$2,400
9,001 To 9,500	\$2,500
9,501 To 10,000	\$2,600
10,001 To 10,500	\$2,700
10,501 To 11,000	\$2,800
11,001 To 11,500	\$2,900
11,501 To 12,000	\$3,000

(c) An applicant for a Marcellus Shale well exceeding 12,000 feet in total well bore length shall pay a permit application fee of \$3,000 + \$100 for every 500 feet the well bore extends over 12,000 feet. Fees shall be rounded to the foot interval.

(d) If, when drilled, the total well bore length of a Marcellus Shale well exceeds the length specified in the permit application, the operator shall pay the difference between the amount paid as part of the permit application and the amount required by subsection (b) plus 10% of the total amount required by subsection (b).

(e) Fees are nonrefundable.

(f) At least every 3 years, the Department will provide the EQB with an evaluation of the fees in this chapter and recommend regulatory changes to the EQB to address any disparity between the program income generated by the fees and the Department's cost of administering the program with the objective of ensuring fees meet all program costs and programs are self-sustaining.

[Pa.B. Doc. No. 09-695. Filed for public inspection April 17, 2009, 9:00 a.m.]

# Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

## STATE BOARD OF VETERINARY MEDICINE

### [ 49 PA. CODE CH. 31 ]

#### Professional Conduct

The State Board of Veterinary Medicine (Board) amends §§ 31.1 and 31.21 (relating to definitions; and rules of professional conduct for veterinarians) to read as set forth in Annex A. The amendments more specifically define abuse or neglect of an animal by a veterinarian, provide details on competent practice and create mandatory reporting requirements by veterinarians of repeated acts of negligence or animal abuse or neglect by a professional colleague. Finally, the amendments further define unprofessional conduct and unethical conduct.

As published on proposed, the Board set forth amendments to Principles 1, 3 and 7. After reviewing the comments, the Board determined that it should separate its rulemaking on professional conduct from its rulemaking related to emergency services. The Board's rulemaking related to emergency services will be promulgated separately, as number 16A-5722.

*Effective Date*

The amendments will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

*Statutory Authority*

Section 21(12) of the Veterinary Medicine Practice Act (act) (63 P. S. § 485.21(12)), provides that the Board "shall suspend or revoke" a licensee or certificate holder who is found guilty of "[e]ngaging in practices in connection with the practice of veterinary medicine which are in violation of the standards of professional conduct as defined herein or prescribed by the rules of the board." Section 5(2) of the act (63 P. S. § 485.5(2)) authorizes the Board to "[a]dopt 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." These amendments update the Board's rules of professional conduct and set forth standards to maintain high standards of integrity, skills and practice in the profession.

*Summary of Comments and the Board's Response*

Notice of proposed rulemaking was published in 37 Pa.B. 1038 (March 3, 2007). The Board received comments from individual veterinarians and the Pennsylvania Veterinary Medical Association (PVMA). Both the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) provided comments as part of their review of the proposed rulemaking.

At the suggestion of the PVMA, the Board amended the definitions of "animal abuse" and "neglect" in § 31.1. The current definitions of "animal abuse" and "neglect" track those in 18 Pa.C.S. (relating to the Crimes Code). The Board amended the definitions to tailor them to conduct by its licensees. In addition, the Board added language to Principle 1(a) to provide licensees with a specific suggestion regarding improving veterinary practice in this Commonwealth. The Board also added language to Principle 1(b) to mandate that a veterinarian suggest a referral if

the care required by an animal is beyond the veterinarian's capabilities or equipment. The Board provided that a veterinarian could continue care of the animal after referral with written consent from the client. PVMA has reviewed all of the Board's amendments and indicated its support for the final-form rulemaking.

HPLC commented that the combination of discretionary and mandatory reporting requirements in Principle 1, subsection (d) was confusing. HPLC suggested that if the Board were to retain both discretionary and mandatory reporting requirements, they should be broken into separate paragraphs. IRRC commented that the use of the word "should" is inappropriate because it is nonregulatory language that indicates that the provision is optional. IRRC also commented that the subsection should indicate how a licensee should "bring the matter to the attention of the Board." Finally, IRRC commented that, as drafted, it was unclear whether the Board intended the reporting requirements for abuse and neglect to be discretionary or mandatory.

Many veterinarians, and the Board, feel strongly that the rules of professional conduct must set both aspirational goals and mandates. As a learned profession, collegiality among licensees is essential to the provision of quality care. Therefore, the Board separated the aspirational goals set forth in subsection (b) from the mandatory provisions set forth in a new subsection (c). The current subsection (c) has been redesignated subsection (d) and subsequent subsections have been redesignated accordingly. The Board has separated the elements related to accepting or continuing care when the veterinarian lacks the capability or equipment to accept or continue into separate paragraphs, as suggested by the HPLC. The Board has added instructions on how a licensee should bring matters to the attention of the Board, as requested by IRRC. Finally, as requested by IRRC, the Board has clarified that if the conduct involves animal abuse or neglect, reporting is mandatory. Reporting is also mandatory if a veterinarian cannot informally resolve an issue with another veterinarian or if a veterinarian learns of repeated deviations from the standards of acceptable practice, professional incompetence or other misconduct set forth in the act or regulations.

Regarding the preamble to Principle 3, the HPLC requested that the Board strike the phrase "but is not limited to," as redundant, asserting that the word "includes" indicates that the enumerated provisions are not exhaustive. The Board has eliminated the redundant language.

IRRC commented that Principle 3(3) should make mandatory the notation on the veterinary medical record of the reason for surgical correction of a genetic defect. The Board agrees and has made the suggested amendment.

The Board added a new paragraph (5) to address conflicts of interest for veterinarians and, at the request of the HPLC, gave additional examples of prohibited conduct related to representing conflicting interests.

Regarding Principle 3(5), which has been renumbered as 3(10), HPLC noted the presence of two conditions that made the language confusing and suggested that the paragraph be redrafted for clarity with one paragraph addressing coercion and another addressing inducement. IRRC suggested that the Board consider replacing the word "immoral" with the word "unethical." The Board has made the suggested amendments. IRRC also questioned what would constitute "undue pressure" or "attempting to

induce" an individual. The word induce has its general meaning of offering something of value in exchange for not filing or withdrawing a complaint. "Attempting to induce" would include making a payment to an individual. The Board has clarified the language in new Principles 3(10) and (11). The Board has stricken the term "undue pressure" because it is impossible to define.

The Board believes that the disciplinary process set forth in the act and the 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) should be independent of any "amicable agreements" between contracting parties such as those mentioned by IRRC. The regulation does not restrict veterinarians from providing no-cost corrective treatment to animals and has added clarifying language to the subsection.

Regarding proposed Principle 3(6), which has been renumbered 3(12), HPLC questioned whether the paragraph should be restricted to acts occurring while acting within the scope of the veterinarian's practice or extend beyond the scope of practice. IRRC commented that the section was unclear, and stated that the Board needs to define, clarify and limit the breadth and scope of this provision in the final-form regulation. The provision provides that a veterinarian may be subject to discipline for behavior that is abusive, harassing or intimidating, as those terms are in defined in common usage, toward a client, former client, colleague, associate veterinarian or employee, would constitute unprofessional or unethical conduct, subject to discipline by the Board. Because that conduct only subjects a veterinarian to discipline if it is directed at individuals in these capacities, the conduct is necessarily limited to conduct related to the profession. IRRC also asked what was meant by the term "colleague." A veterinarian's colleague is another veterinarian who is a partner in the practice, a veterinarian who does not work in the practice, or another person who has a professional relationship with the veterinarian but who is not employed by the veterinarian, such as a freelance ultrasound technician.

Regarding proposed Principle 3(7), IRRC noted that the PVMA questioned how competence is to be determined and what level of training or expertise is required to be competent in a medical procedure. IRRC commented that the Board should include the standards that will be used to make these determinations in its final-form rulemaking. The Board determined that the conduct sought to be prohibited is already prohibited under section 21(11) or (20), or both of the act; therefore, the Board has deleted this subsection.

Regarding proposed Principle 3(8), renumbered as 3(13), IRRC noted that making false or misleading statements is already prohibited under Principle 5, and questioned the need for the new language. Principle 5 prohibits false or misleading statements only in advertising. IRRC noted that the PVMA questioned how it could be proven. When the false or misleading statement was made in writing, proof would include admission of the writing. When the false or misleading statement was made orally, proof would most likely be offered in the form of testimony.

IRRC asked whether the new documentation required in the Board's recently promulgated regulation on recordkeeping includes the client's signature and stated that the Board should explain how it intends to implement or enforce this new code of conduct. The Board's recordkeeping regulation requires a veterinarian to note in the patient's veterinary medical record, the diagnostic tests and treatment options discussed with the client and

to indicate the client's consent to or rejection of the options. The regulation does not require the client to sign the veterinary medical record. Records are open to inspection by the Board as set forth in section 27.1(b)(2) of the act (63 P. S. § 485.27a(b)(2)). The provisions of the recordkeeping regulation will be enforced as are all other provisions of the practice act, in accordance with the Administrative Agency Law. Specifically, recordkeeping violations are usually charged as violations of section 21(1) of the act.

Regarding proposed Principle 3(9), renumbered Principle 3(14), related to delegation of veterinary medical services, IRRC noted that a commentator questioned the impact of the rule on shelters or animal rescue groups where unlicensed persons are often involved in providing medical care to animals and suggested that the Board carefully examine the impact of the provision on volunteers or nonprofit organizations that seek to assist stray, unwanted or abused animals. The Board is sensitive to the concerns of organizations that provide care to stray, abused and unwanted animals. The types of treatments most often performed by unlicensed persons in a nonprofit animal welfare setting involve the provision of drugs and wound care. Drugs most frequently administered in these settings include antibiotics, antimicrobials, antihelminthics and parasiticides. The public interest is served when veterinarians are involved with the care of animals, including these treatments. The Board believes that all licensed health care providers should be responsible for making a reasonable assessment of the skills of persons to whom the licensed professional delegates the performance of professional services. This paragraph has been renumbered as Principle 3(14). In addition, the Board has added a reference to veterinary technician specialists, a title recognized by the Board.

Regarding the new Principle 3(9), which prohibits a veterinarian from allowing inappropriate use of the veterinarian's signature stamp, the HPLC asked the Board to provide at least two examples of inappropriate use in the Preamble to the final-form rulemaking. A veterinarian could allow inappropriate use of a signature stamp if the veterinarian allowed the signature stamp to be used on a document that requires an original signature. A veterinarian could allow inappropriate use of a signature stamp if the veterinarian permitted others to perform examinations or immunizations that are required to be performed by the veterinarian and then verified that the veterinarian provided the services by means of signature stamp.

Regarding proposed Principle 3(10), renumbered Principle 3(15), HPLC questioned whether the paragraph should be restricted to acts occurring while acting within the scope of the veterinarian's practice or extend beyond the scope of practice. The Board intends to include the abuse or neglect of any animal as unprofessional or unethical conduct by a veterinarian. The Board grants individuals the privilege of practicing the profession and is charged with upholding the integrity of the profession and ensuring that the public has confidence in members of the profession. By virtue of their education and training, veterinarians are expected to know the proper and acceptable way to treat animals. Abuse or neglect of any animal by a veterinarian would demonstrate a shortcoming in the veterinarian that must be remedied by appropriate Board action. The HPLC and IRRC questioned whether other states prohibit the abuse or neglect of any animal by a veterinarian. The Board's research indicates that at least one-third of the states prohibit the misconduct by a veterinarian.

The Board added new Principles 3(5)—(9) at the suggestion of the PVMA. Principle 3(5) prohibits a veterinarian from representing conflicting interests without disclosure to the client. Principles 3(6)—(8) provide needed detail to the statutory prohibition related to falsifying health certificates. See, section 21(6) of the act. Finally, Principle 3(9) clarifies that it is unprofessional for a veterinarian to allow another to misuse his or her signature stamp.

Principle 3(11) clarifies the proposed rulemaking's prohibition on inducing a client to file, not file or withdraw a complaint. Principle 3(6), renumbered 3(12), is amended for clarity. The terms used in this principle are in common usage and do not require definition. Finally, Principle 3(10) was renumbered Principle 3(15) and amended for clarity by cross-referencing § 31.1 proposed.

#### *Fiscal Impact and Paperwork Requirements*

The amendments should not have any financial impact on licensees or any other State entity. The proposed amendment will have no fiscal impact on the public. The amendments may have a small fiscal impact on the Board related to additional disciplinary matters if technicians violate the regulation. There are no additional paperwork requirements associated with the rulemaking.

#### *Sunset Date*

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 1038, to IRRC and the Chairpersons of the HPLC and the Senate Consumer Protection and Professional Licensure Committee (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.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on March 18, 2009, the final-form rulemaking was approved by the HPLC. On March 18, 2009, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC approved the final-form rulemaking on March 19, 2009.

#### *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking 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 thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in this preamble.

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code §§ 31.1 and 31.21, are amended to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

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

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

THOMAS J. MCGRATH, D.V.M.,  
Chairperson

(*Editor's Note:* The proposal to amend Principle 7, included in the proposed rulemaking at 37 Pa.B. 1038, will be published as a separate final-form rulemaking.)

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 1770 (April 4, 2009).)

**Fiscal Note:** Fiscal Note 16A-5721 remains valid for the final adoption of the subject regulations.

#### 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

#### GENERAL PROVISIONS

##### § 31.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Veterinary Medicine Practice Act (63 P. S. §§ 485.1—485.33).

*Advertising*—Newspaper and periodical announcements and listings, professional cards, office and other signs, letterheads, telephone and other directory listings, and other forms of communication designed to inform the public about the availability, nature or prices of products or services.

*Animal abuse*—To do, order or aid another to do any act likely to cause unnecessary pain, injury, debility, disease or lameness, or unnecessary fright, stress, panic or hysteria in an animal.

*Approved school*—A school accredited by the American Veterinary Medical Association, including provisionally, probationally and fully accredited programs.

*Board*—The State Board of Veterinary Medicine.

*Certified veterinary technician*—A veterinary technician certified by the Board.

*Client*—A person who engages the professional services of a veterinarian for the care and treatment or the prevention, cure or alleviation of disease or injury, of an animal.

*Consultation*—A deliberation between two or more licensed veterinarians or a licensed veterinarian and other licensed professional concerning the diagnosis of an animal's condition, the care to be provided and the proper management of the case.

*Direct veterinary supervision*—A veterinarian has given either oral or written instructions to the certified veteri-

nary technician or noncertified employee, is on the premises and is easily and quickly available to assist the certified veterinary technician or the noncertified employee.

*Endorsement or testimonial*—A statement of recommendation made through a form of mass communication or correspondence by a veterinarian to the general public which is commercially rather than educationally motivated and is intended to influence attitudes regarding the purchase of a veterinary drug, device, product or procedure.

*Immediate veterinary supervision*—A veterinarian is in visual and audible range to assist the noncertified employee.

*Indirect veterinary supervision*—A veterinarian is not on the premises but is acquainted with the keeping and care of the animal by virtue of an examination of the animal or medically appropriate and timely visits to the premises where the animal is kept, and has given written or oral instructions to the certified veterinary technician for treatment of the animal patient.

*Merchandising*—Buying and selling of professional veterinary products without a veterinarian/client relationship.

*Neglect*—To abandon an animal or deprive, either personally or through one's employees or agents, an animal over which one has a duty of care, whether belonging to himself or otherwise, of necessary sustenance, drink, shelter or veterinary care appropriate to the animal's condition or access to sanitary shelter and support for an animal's basic physical and emotional needs.

*Noncertified employee*—An employee of a veterinarian who does not hold certification as a veterinary technician and whom the veterinarian deems competent to administer medication or render auxiliary or supporting assistance under direct veterinary supervision or immediate veterinary supervision.

*Professional veterinary product*—One which requires professional veterinary knowledge in the administration of or in the giving of instructions for safe and proper use of the product, including prescription drugs, biologicals, pharmaceuticals and prescription diets.

*Solicitation*—Advertising intentionally directed to specific individuals.

*VTS—Veterinary technician specialist*—A certified veterinary technician who holds current certification from a specialty organization recognized by the National Association of Veterinary Technicians in America (NAVTA).

*Veterinarian*—A licensed doctor of veterinary medicine as defined in section 3 of the act (63 P. S. § 485.3).

#### PROFESSIONAL CONDUCT

##### § 31.21. Rules of Professional Conduct for Veterinarians.

#### Preamble

The Board is empowered under section 5(2) of the act (63 P. S. § 485.5(2)) to adopt rules and regulations of professional conduct appropriate to establish and maintain a high standard of integrity, skill and practice in the profession of veterinary medicine. In accordance with this authority, the Board has determined that the following rules are necessary in the public interest to protect the public against unprofessional conduct on the part of veterinarians. The Board therefore adopts this professional conduct code for veterinarians practicing veterinary

medicine in this Commonwealth. Some of the rules of conduct are imperatives, cast in the terms, "shall" or "may not." Veterinarians who fail to adhere to these rules will be subject to professional discipline. Other rules, generally cast in the terms "may" or "should," are intended as aspirational goals and define areas under which the veterinarian has professional discretion. No disciplinary action will be taken when a veterinarian acts within the bounds of discretion. References throughout this professional conduct code to imperative conduct on the part of veterinarians also apply to applicants for licensure and temporary permit holders where these persons render services under qualified supervision.

**Principle 1. Competency.**

(a) Veterinarians should strive continually to improve their veterinary knowledge and skill, making available to clients and their colleagues the benefit of their professional attainments. A veterinarian should provide opportunities for professional colleagues who request to observe the veterinarian's practice to develop or improve a professional colleague's veterinary medical skills.

(b) Veterinarians should seek, through consultation, the assistance of other veterinarians or other licensed professionals when it appears that the quality of veterinary service may be enhanced through consultation.

(c) A veterinarian shall recommend referral to a specialist or otherwise more qualified veterinarian in any case when the care and treatment of the animal is, in the veterinarian's sound judgment, beyond the veterinarian's capabilities or equipment. In that case, a veterinarian may accept or continue care and treatment of an animal after the veterinarian has done the following:

- (1) Suggested referral.
- (2) Explained the rationale for referral.
- (3) Explained the possible complications from the veterinarian's lack of expertise or equipment.
- (4) Obtained written consent from the client.
- (d) Veterinarians shall participate in continuing education programs as provided under section 18 of the act (63 P. S. § 485.18).

(e) Veterinarians shall safeguard the public and the veterinary profession against veterinarians deficient in professional competence, professional conduct or ethical conduct as described in this chapter.

(1) When a veterinarian knows or has reason to believe that a professional colleague's actions demonstrate deviation from or failure to conform to the standards of acceptable and prevailing veterinary medical practice or professional incompetence, a veterinarian shall bring the behavior to the attention of the colleague.

(2) A veterinarian shall bring the behavior of another veterinarian to the attention of the Board by sending a written report to the Bureau of Professional and Occupational Affairs, Professional Compliance Office, P. O. Box 2649, Harrisburg, PA 17105-2649 if one or more of the following applies:

(i) The veterinarian cannot informally resolve an issue of the deviation from or failure to conform to the standards of acceptable and prevailing veterinary medical practice or professional incompetence with the other veterinarian.

(ii) The veterinarian learns of repeated deviation from or failure to conform to the standards of acceptable and prevailing veterinary medical practice, professional incompetence or misconduct.

(iii) The matter involves animal abuse or neglect.

\* \* \* \* \*

**Principle 3. Unprofessional or unethical conduct.**

A veterinarian who engages in unprofessional or unethical conduct may be subject to disciplinary action under section 21(1), (11), (12) or (20) of the act (63 P. S. § 485.21(1), (11), (12) or (20)). Unprofessional or unethical conduct includes:

(1) Placing the veterinarian's professional knowledge, attainments or services at the disposal of a lay body, organization or group for the purpose of encouraging unqualified groups or individuals to perform surgery upon animals or to otherwise practice veterinary medicine on animals that they do not own.

(2) Performing or participating in a surgical procedure when the veterinarian knows that surgery has been requested with intent to deceive a third party.

(3) Performing surgical procedures on a species for the purpose of concealing genetic defects in animals to be shown, raced, bred or sold. If the health or welfare of an animal requires correction of a genetic defect, the surgical procedures will be permitted. In these instances, the veterinarian shall clearly inform the owner of this fact and note the reason for the surgery on the veterinary medical record of the animal.

(4) Engaging in merchandising.

(5) Representing conflicting interests, except with written consent of parties known to the veterinarian given after a full disclosure of the facts. Representing conflicting interests includes being employed by a buyer to inspect an animal for sale and accepting a fee from the seller and providing veterinary medical advice regarding a common matter to multiple persons interested in the matter.

(6) Issuing any certificate attesting to the physical condition or soundness of an animal without first having personally examined the animal within a reasonable period of time and, by actual inspection and appropriate tests, determined that the animal meets the requirements for issuance of the certificate. A veterinarian may permit an employee to collect samples from animals for tests under the veterinarian's direct supervision.

(7) Failing to personally sign any official health document issued by the veterinarian unless the use of a signature stamp is authorized by law.

(8) Issuing a presigned or prestamped official health document.

(9) Allowing inappropriate use of the veterinarian's signature stamp.

(10) Engaging in conduct which a reasonable person would believe is intended to coerce, pressure or intimidate another person to file, not file or withdraw a complaint made to the Board or any law enforcement official regarding matters related to a veterinarian's practice.

(11) Offering compensation beyond continued or corrective treatment of an affected patient or the replacement value of a patient, which a reasonable person would believe was intended to induce another to file, not file or withdraw a complaint made to the Board or any law enforcement official regarding matters related to a veterinarian's practice.

(12) Abusing, harassing or intimidating a client, former client, colleague, associate veterinarian or employee in the course of professional practice.



(13) Making any false, misleading or deceptive statement or claim as defined in Principle 5(a) (relating to advertising).

(14) Delegating a veterinary medical service to a certified veterinary technician, veterinary technician specialist or individual not licensed to practice veterinary medicine that is beyond the scope of practice for that individual as defined by law or regulation or who the veterinarian knows or should know is not qualified by education, training, experience, license or certification, to perform. The veterinarian delegating a veterinary medical service shall perform a reasonable investigation of the delegatee's ability to competently perform the service before delegating the service and shall provide supervision of the service consistent with the acceptable and prevailing standards of veterinary medical practice. A veterinarian who delegates a veterinary medical service to an individual not licensed to practice veterinary medicine shall be responsible for the acts and omissions of the delegatee.

(15) Abusing or neglecting any animal, as defined in § 31.1 (relating to definitions), whether or not the animal is a patient.

(16) Failing to report a matter to the Board as required by Principle 1(e).

\* \* \* \* \*

[Pa.B. Doc. No. 09-696. Filed for public inspection April 17, 2009, 9:00 a.m.]

## Title 58—RECREATION

### GAME COMMISSION

#### [ 58 PA. CODE CH. 143 ]

#### Corrective Amendment to 58 Pa. Code § 143.12

The Game Commission (Commission) has discovered a discrepancy between the agency text of 58 Pa. Code § 143.12 (relating to hunter education training), as deposited with the Legislative Reference Bureau and published in 38 Pa.B. 1470 (March 29, 2008) and the official text which currently appears in the *Pennsylvania Code*. The amendments to § 143.12 in 38 Pa.B. 1470 were inadvertently omitted from the *Pennsylvania Code Reporter* MTS 403 (June 2008).

Therefore, under 45 Pa.C.S. § 901: The Commission has deposited with the Legislative Reference Bureau a corrective amendment to 58 Pa. Code § 143.12. The corrective amendment to 58 Pa. Code § 143.12 is effective as of June 7, 2008, the date the defective text was announced in the *Pennsylvania Bulletin*.

The correct version of 58 Pa. Code § 143.12 appears in Annex A.

JAYNE ARCHER,  
*Game Commission*

#### Annex A

#### TITLE 58. RECREATION

#### PART III. GAME COMMISSION

#### CHAPTER 143. HUNTING AND FURTAKER LICENSES

#### Subchapter A. GENERAL

#### § 143.12. Hunter education training.

(a) *Course registration fees.* Upon application for enrollment in each fee-based hunter education course, a student shall remit the associated, nonrefundable course registration fee in the form of cash, credit card, check or money order. Checks or money orders must be made payable to the "Pennsylvania Game Commission."

(b) *Training certificate.* The Commission will issue an appropriate certificate of training to each student who successfully completes an approved hunter education course. The Commission will issue a replacement hunter education training certificate to a person who provides sufficient affirmation or evidence of successful completion of that course of instruction. A \$10 fee shall be remitted by any person requesting a replacement hunter education training certificate.

(c) *Waiver.* The Director may waive any course registration fee required by this section when the waiver is determined to be consistent with the Commission's hunter education training program or the intent of the act.

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