

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF VETERINARY MEDICINE

[49 PA. CODE CH. 31]

Certified Veterinary Technicians and Veterinary Assistants

The State Board of Veterinary Medicine (Board) amends §§ 31.1, 31.31, 31.32, 31.34—31.36, 31.38, 31.39 and 31.41 to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Section 5 of the Veterinary Medicine Practice Act (act) (63 P.S. § 485.5) authorizes the Board to adopt reasonable rules and regulations governing the practice of veterinary medicine as are necessary to enable it to carry out and make effective the purpose and intent of the act. Further, section 11 of the act (63 P.S. § 485.11) provides that it is the responsibility of the Board to promulgate by regulation the qualifications and requirements for the certification and regulation of veterinary technicians, including grounds for disciplinary action.

Background and Purpose

According to the Commissioner of Occupational Affairs' "Review of State Professional and Occupational Licensure Board Requirements and Processes" report issued on June 12, 2018, as required by Executive Order 2017-3, Pennsylvania is one of only two states (along with Delaware) within the Northeast region, in which the Board of Veterinary Medicine either imposes automatic suspension of or refusal to grant licensure for convictions of drug-related offenses. Further, Pennsylvania is the only state that extends this proscription by regulation to a class (that is, certified veterinary technicians) that is not expressly required by the relevant provision of the act. As a result, Governor Tom Wolf recommended the Board consider promulgating amendments to the regulations to repeal those provisions extending the automatic 10-year bar to certified veterinary technicians who have been convicted of a felony under The Controlled Substance, Drug, Device and Cosmetic Act (Drug Act) (35 P.S. §§ 780-101—780-144). This final-form rulemaking implements the Governor's recommendation.

In addition, the Board recognizes that in many licensed professions, students nearing completion of their educational program may sit for all or a portion of the National licensure examination prior to graduation. National trends for the licensure of veterinary technicians embrace this practice, and the Pennsylvania Association of Veterinary Technicians requested that the Board consider allowing students of this Commonwealth to follow this practice. After examining the issue, the Board determined that students in the final half of their educational programs at approved schools should be authorized, should they choose, to take the examination prior to graduation. Individuals who take the examination prior to graduation would still be required to graduate prior to licensure. Therefore, this final-form rulemaking authorizes students in their final year of a program at an

approved school to take the Veterinary Technician National Examination prior to graduation, provided they have completed at least half of the credits required for completion of the program.

Additionally, by amending the definition of "direct veterinary supervision" in § 31.1 (relating to definitions), this final-form rulemaking clarifies the level of supervision required under § 31.21 (relating to Rules of Professional Conduct for Veterinarians), Principle 6(b) regarding professional relationships, which allows veterinarians to seek the assistance of other licensed professionals to enhance the quality of veterinary medical services provided and which requires other licensed professionals to be under the direct supervision of the attending veterinarian when providing services to animals. In § 31.38 (relating to code of ethics for certified veterinary technicians), this final-form rulemaking also sets out further ethical conduct rules for certified veterinary technicians that mirror existing provisions for veterinarians in § 31.21.

Summary of Comments; the Board's Response; and Description of Amendments to the Final-form Rulemaking

The Board published the proposed rulemaking at 48 Pa.B. 7313 (November 24, 2018) for thirty days of public comment. No public comments were received. Neither the House Professional Licensure Committee (HPLC) nor the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) commented as part of their review of the proposed rulemaking. On January 23, 2019, the Independent Regulatory Review Commission (IRRC) submitted its comments to the Board for consideration. The Board reviewed IRRC's comments and offer the following in response.

Initially, IRRC noted that the Board is amending the definition of "direct veterinary supervision" by adding "other licensed professionals" to the list of professionals that may provide care to animals with direct veterinary supervision. IRRC suggested the Board add language to the definition of "direct veterinary supervision" clarifying that the Board's reference to "other licensed professionals" in the definition directly relates to the licensed professionals referenced in § 31.21, Principle 6(b). In response, the Board has added a cross reference to Principle 6(b) to the definition in this final-form rulemaking.

Next, IRRC noted the Board has proposed changes to § 31.34 (relating to qualification for examination) to allow veterinary technician students to sit for the Veterinary Technician National Examination (VTNE) when they are in the final year of an approved program and have completed at least half of the credit hours required for completion of the program. IRRC suggested the reference to an "approved program" be amended to "a program at an approved school," in order to improve the clarity of the regulation, as "approved school" is defined in § 31.1 of the regulations, whereas "approved program" is not. In response, the Board has made the suggested amendment.

IRRC also noted that at § 31.35(c)(3) (relating to examinations), the Board proposes to amend the language permitting the waiver of the examination for individuals licensed, registered or certified as an animal health technician or veterinary technician in another state whose qualifications are "at least equal to those of the Commonwealth" by deleting the quoted language, but not replacing it with similar language. The Board's intent

was to provide specific details about what is meant by the phrase “at least equal to those of the Commonwealth.” The Board currently requires completion of an approved education program and passage of the VTNE for certification as a veterinary technician in this Commonwealth. In response, the Board has decided to replace the deleted phrase with “at least equal to those required by the Board for certification as a veterinary technician in this Commonwealth, including successful completion of an approved program for the training and education of veterinary technicians and successful completion of the VTNE or a comprehensive examination equivalent to the VTNE if the examination was taken before the VTNE was offered” to provide greater clarity.

IRRC also noted that the newly-drafted § 31.35(d) would require applicants applying by reciprocity to submit a copy of their credential from the other state and “proof of current good standing.” IRRC suggested that the clarity of this subsection would be improved if it used language found in § 31.32(a)(4) (relating to certification) which uses the phrase “a letter of good standing from the licensure board.” In response, the Board has replaced the phrase “proof of current good standing,” with “a letter of good standing from that state’s certifying or licensing authority.” This language was chosen because not every state requires licensure or credentialing of veterinary technicians by a licensure board; at least twelve states allow veterinary technicians to be credentialed by associations, according to the American Association of Veterinary State Boards.

Fiscal Impact

The Board does not anticipate any fiscal impact relating to these amendments to the general public or the Board. The only fiscal impact to the regulated community in these amendments is related to the elimination of the notarized affidavit requirement for applicants seeking reactivation of a license or certificate.

Paperwork Requirements

This final-form rulemaking does not create additional paperwork for the Board, the regulated community or the general public. This final-form rulemaking streamlines and simplifies the process for applying for reactivation by eliminating the need for a notarized affidavit.

Sunset Date

The Board continuously monitors the effectiveness of its regulations on a fiscal year and biennial basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on November 7, 2018, the Board submitted a copy of the proposed rulemaking, published at 48 Pa.B. 7313 and a copy of the Regulatory Analysis form to IRRC and to the Chairpersons of the SCP/PLC and the HPLC. A copy of this material is available to the public upon request.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC are to be provided with copies of all comments received during the public comment period as well as other documents when requested. In preparing this final-form rulemaking, the Board has considered all comments received from IRRC, SCP/PLC and the HPLC.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on November 20, 2019, the final-form rulemaking was deemed approved by the HPLC and

the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)), IRRC met on November 21, 2019, and approved the final-form rulemaking.

Additional Information

Further information may be obtained by contacting Michelle Roberts, Board Administrator, State Board of Veterinary Medicine, P.O. Box 2649, Harrisburg, PA 17105-2649, or RA-VETERINARY@pa.gov.

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—1202), and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).
- (2) A public comment period was provided as required by law.
- (3) This final-form rulemaking does not include any amendments that would enlarge the scope of the proposed rulemaking published at 48 Pa.B. 7313.
- (4) This final-form rulemaking is necessary and appropriate for administering and enforcing the Veterinary Medicine Practice Act (63 P.S. §§ 485.1—485.33).

Order

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

- (a) The regulations of the Board at 49 Pa. Code Chapter 31 are amended by amending §§ 31.1, 31.31, 31.32, 31.34—31.36, 31.38, 31.39 and 31.41 to read as set forth in Annex A.
- (b) The Board shall submit this order to the Office of General Counsel and the Office of Attorney General for approval as required by law.
- (c) The Board shall submit this order to IRRC, the HPLC and the SCP/PLC for review as required by law.
- (d) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (e) This final-form regulation shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

THOMAS GARG, VMD,
Chairperson

(Editor’s Note: See 49 Pa.B. 7256 (December 7, 2019) for IRRC’s approval order.)

Fiscal Note: Fiscal Note 16A-5727 remains valid for the 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:

AAVSB—The American Association of Veterinary State Boards or its successor organization.

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

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Direct veterinary supervision—A veterinarian has given either oral or written instructions to the certified veterinary technician, veterinary assistant, or other licensed professional as set forth in Principle 6(b) of § 31.21 (relating to Rules of Professional Conduct for Veterinarians), and the veterinarian is on the premises and is easily and quickly available to assist the certified veterinary technician, veterinary assistant or other licensed professional.

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

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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.

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.

VTNE—The Veterinary Technician National Examination or its successor examination—An examination owned and administered by the AAVSB used to evaluate the competency of entry-level veterinary technicians.

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).

Veterinary assistant—An employee of a veterinarian who does not hold certification as a veterinary technician and whom the veterinarian deems competent to perform the tasks set forth in § 31.31(b) (relating to scope of practice) under direct veterinary supervision or immediate veterinary supervision.

CERTIFIED VETERINARY TECHNICIANS AND VETERINARY ASSISTANTS

§ 31.31. Scope of practice.

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(b) *Veterinary assistants.* Veterinary assistants may perform the duties enumerated in this subsection under direct veterinary supervision or immediate veterinary supervision, as indicated. While some of the enumerated duties may be applicable primarily to small animal practices, the intended scope of this subsection is both large and small animal practices. This subsection does not prohibit a veterinary assistant from administering medication or rendering auxiliary or other supporting assistance which is not listed in this subsection if the

service is within the veterinary assistant’s skills and is requested by the supervising veterinarian. The veterinarian bears ultimate responsibility for assuring that the veterinary assistant to whom a duty is assigned is competent to perform it.

(1) A veterinary assistant may do the following under direct veterinary supervision:

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(2) A veterinary assistant may do the following only under immediate veterinary supervision:

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(3) Emergency treatment by veterinary assistants is permitted without veterinary supervision when an animal has been placed in a life-threatening condition and immediate treatment is necessary to sustain the animal’s life. The veterinary assistant shall immediately take steps to secure the direct supervision of a veterinarian. Emergency treatment may only consist of those duties enumerated under paragraphs (1) and (2)(i)—(iv).

(c) *Prohibited acts.* Neither certified veterinary technicians nor veterinary assistants may do the following:

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§ 31.32. Certification.

(a) As a prerequisite to original certification as a veterinary technician, an applicant shall submit the following documentation to the Board:

- (1) A completed and signed application for veterinary technician certification.
- (2) Evidence of satisfactory performance on the VTNE as determined by the Board.
- (3) Evidence of satisfactory completion of a program at an approved school for the training and education of veterinary technicians.
- (4) A letter of good standing from the licensure board of each state where the applicant has held a license as a veterinary technician, if any, reporting the outcome of disciplinary actions taken against the applicant in that state.
- (5) Other relevant documents, as requested by the Board.

(b) The fee for application for certification is as specified in § 31.41 (relating to schedule of fees).

§ 31.34. Qualification for examination.

An applicant for examination shall be a graduate of an approved school or be a student enrolled in the final year of a program at an approved school for the training and education of veterinary technicians provided that the student shall have completed at least half of the credit hours required for completion of the program.

§ 31.35. Examinations.

(a) The examination required for certification as a veterinary technician is the VTNE.

(b) An applicant failing to pass an examination for which the applicant has previously qualified may be reexamined at the applicant’s request by submitting a new application and by paying the required fee, in accordance with the policies of the AAVSB.

(c) The Board may waive the VTNE if an applicant satisfies the following requirements:

- (1) Has met all requirements provided for in the act.
- (2) Has filed the required application as provided in § 31.33 (relating to applications).

(3) Has been issued a license, registration or certificate as an animal health technician or a veterinary technician in another state whose requirements are at least equal to those required by the Board for certification as a veterinary technician in this Commonwealth, including successful completion of a program at an approved school for the training and education of veterinary technicians and successful completion of the VTNE or a comprehensive examination equivalent to the VTNE if the examination was taken before the VTNE was offered.

(d) Applicants applying under subsection (c) shall include with their application a copy of their state credential (license, registration or certificate) and a letter of good standing from that state's certifying or licensing authority.

§ 31.36. Renewal of certification, inactive status and reactivation of certification.

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(c) *Reactivation of certification.* Certified veterinary technicians who desire to reactivate certification may do so by complying with the continuing education requirements in effect at the time of reactivation, paying the current renewal fee and submitting an affidavit to the Board setting forth the period of time in which the certificate holder did not practice in this Commonwealth. Certified veterinary technicians who seek to reactivate certification will not be assessed a late renewal fee for the preceding biennial renewal periods in which the certificate holder did not engage in practice in this Commonwealth.

§ 31.38. Code of ethics for certified veterinary technicians.

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(c) A certified veterinary technician may not compromise the confidentiality of the veterinarian-client-patient relationship.

(d) A certified veterinary technician who communicates directly with a client shall notify the client that the certificate holder is a certified veterinary technician.

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(g) A certified veterinary technician may not make a false, deceptive or misleading statement or claim. A false, deceptive or misleading statement or claim includes the statements and claims defined in Principle 5(a) of § 31.21 (relating to Rules of Professional Conduct for Veterinarians) and any representation that the certified veterinary technician is a specialist, or a VTS, unless the certified veterinary technician holds current certification from a specialty organization recognized by the National Association of Veterinary Technicians in America or its successor organization.

(h) A certified veterinary technician shall not engage 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 the certified veterinary technician's practice.

(i) A certified veterinary technician shall not abuse, harass or intimidate a client, former client, colleague or associate in the course of professional practice.

(j) A certified veterinary technician shall not abuse or neglect any animal, as defined in § 31.1 (relating to definitions), whether or not the animal is a patient.

(k) A certified veterinary technician shall report to the Board any veterinary technician or veterinarian deficient in professional competence, professional conduct or ethical conduct as described in this chapter, in accordance with the rules set forth in § 31.21, Principle 1(e) (relating to Rules of Professional Conduct for Veterinarians).

§ 31.39. Grounds for disciplinary proceedings.

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(b) Certified veterinary technicians and veterinary assistants 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 veterinary assistants 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.

FEES

§ 31.41. Schedule of fees.

An applicant for a license, certificate or service shall submit a payment at the time of the request under the following fee schedule:

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Veterinarian biennial renewal:

Biennial renewal fee \$360
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Certified veterinary technician fees for services:

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Certified veterinary technician biennial renewal:

Biennial renewal fee \$100

[Pa.B. Doc. No. 19-1940. Filed for public inspection December 27, 2019, 9:00 a.m.]