

PROPOSED RULEMAKING

STATE BOARD OF VETERINARY MEDICINE

[49 PA. CODE CH. 31]

Certified Veterinary Technicians and Veterinary Assistants

The State Board of Veterinary Medicine (Board) proposes to amend §§ 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

This proposed rulemaking will be effective upon publication of the final-form rulemaking 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

On October 24, 2017, Governor Tom Wolf signed Executive Order 2017-3, requiring the Commissioner of Professional and Occupational Affairs (Commissioner) to comprehensively review and catalog the processes, fees, training requirements, criminal history policies, portability, and continuing education requirements for occupational and professional licensure within the purview of the 29 licensing boards and commissions under the Commissioner's authority. The order further directed the Commissioner to benchmark that data against regional averages from 12 states with similar or equivalent licenses that comprise the Northeast geographic region (including Ohio, West Virginia, Maryland, Delaware, New Jersey, New York, Massachusetts, Rhode Island, Connecticut, New Hampshire, Vermont and Maine) to identify requirements or functions that presented unnecessary burdens to licensure and occupational employment within this Commonwealth.

That report, issued on June 12, 2018, revealed that this Commonwealth is one of only two states (along with Delaware) within the Northeast region, in which the Board either imposes automatic suspension of or refusal to grant licensure for convictions of drug-related offenses. Further, this Commonwealth 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. The Governor therefore 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 proposed rulemaking implements the Governor's recommendation.

In addition, the Board recognizes that in many licensed professions, students nearing completion of their educa-

tional 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 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 from their educational program prior to licensure. Therefore, this proposed rulemaking would authorize students in their final year of an approved program 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.

Finally, this proposed rulemaking will replace references to "noncertified employee" with the term, "veterinary assistant" throughout the regulations. This term was changed by amendments to the act in 2002, and the Board is now making the regulations consistent with that change.

Description of Proposed Amendments

The Board proposes to amend § 31.1 (relating to definitions) to replace the definition of "noncertified employee" with a definition for "veterinary assistant" and to update the definition for "direct veterinary supervision" by replacing the outdated term "noncertified employee" and by adding to the provision a reference to "other licensed professionals." This latter amendment clarifies the supervision level already 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 requires other licensed professionals to be under the direct supervision of the attending veterinarian when providing services to animals. Likewise, the Board is amending the definition of "immediate veterinary supervision" to replace "noncertified employee" with "veterinary assistant." The Board is also adding definitions for AAUSB (American Association of Veterinary State Boards) to include a successor organization and VTNE (Veterinary Technician National Examination) to include a successor examination.

The proposed amendments to § 31.31 (relating to scope of practice) update the regulations to use the 2002 statutory term "veterinary assistant" instead of "noncertified employee."

The proposed amendments to § 31.32 (relating to certification) remove the requirement that the applicant submit a statement that applicant has not been convicted of a felony under the Drug Act, as previously set forth. Instead, the amendments would require an applicant to submit other relevant documents, as requested by the Board. For example, if an applicant had been disciplined in another state, or had been convicted of crimes related to the profession, the Board may request additional relevant documentation to permit a comprehensive review of the applicant's qualifications. The proposed amendments also provide the name of the VTNE in place of the current reference to the "proficiency examination."

The proposed amendments to § 31.34 (relating to qualification for examination) would provide veterinary technician students the ability to sit for the VTNE when they are enrolled in the final year of an approved program for the training and education of veterinary technicians and have completed at least half of the credits required for completion of the program.

The proposed amendments to § 31.35 (relating to examinations) add language to subsection (b) to clarify that an applicant failing to pass the examination may be re-examined, in accordance with the policies of the AAVSB. For example, the AAVSB has a policy that requires an applicant who has failed the examination five times to seek prior approval of the AAVSB for subsequent attempts. At § 31.35(c)(3), the Board proposes to add details related to waiver of the exam requirement for individuals licensed, registered or certified as an animal health technician or veterinary technician in another state (that is, reciprocity), to specify that requirements in another state which are “at least equal to those of the Commonwealth” include completion of an approved education program and passage of the VTNE or an examination equivalent to the VTNE if the examination was taken before the VTNE was offered. The Board proposes to add subsection (d) to require applicants applying by reciprocity to submit a copy of their credential from the other state and proof that it is currently in good standing.

The proposed amendment to § 31.36(c) (relating to renewal of certification, inactive status and reactivation of certification) would delete the requirement that a notarized affidavit of non-practice be submitted with an application to reactivate certification. Instead, each applicant is required to certify that all materials submitted in support of an application are true and correct, subject to the penalties for unsworn falsification under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) and possible disciplinary action for fraud or deceit under § 31.39 (relating to grounds for disciplinary proceedings). This is proposed to streamline and simplify the process for reactivation and to be consistent with all applications that are now being processed online through the Pennsylvania Licensing System (PALS).

In § 31.38 (relating to code of ethics for certified veterinary technicians), the Board proposes to amend subsection (c) to refer to the veterinarian-client-patient relationship, the term defined in the act instead of the current “doctor-client” relationship. At subsection (d), the Board proposes to change the requirement that a certified veterinary technician “explain” to clients that the individual is not a veterinarian with the requirement that the certified veterinary technician “notify” the client that the individual is a certified veterinary technician. The Board believes that the general public is now familiar enough with the profession that it is not necessary to explain that the individual is not a veterinarian. In subsection (g) the Board would include an amendment to provide for the possibility of a successor organization to the National Association of Veterinary Technicians in America. In addition, the Board proposes new subsections (h)—(k) in § 31.38, to set out further ethical conduct rules for certified veterinary technicians. Subsection (h) would prohibit a certified veterinary technician from 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 law enforcement officials. Subsection (i) would prohibit a certified veterinary technician from abusing, harassing or intimidating a client, former client, colleague or associate in the course of professional practice. Subsec-

tion (j) would prohibit a certified veterinary technician from abusing or neglecting any animal, as defined in § 31.1. Finally, subsection (k) would require a certified veterinary technician to report to the Board any certified veterinary technician or veterinarian who is deficient in professional competence, professional conduct or ethical conduct as described in the Board’s regulations. These provisions mirror existing regulatory provisions for veterinarians in § 31.21 at Principle 1(e) and Principle 3(10), (12), (15) and (16).

In § 31.39, the Board is proposing to amend subsection (b) to replace the outdated term “noncertified employees” with the statutory term “veterinary assistants.”

Finally, the Board proposes to delete outdated language related to the effective date of the Board’s last biennial renewal fee regulation in § 31.41 (related to schedule of fees) for veterinarians and certified veterinary technicians and to clarify that the current biennial renewal fee is \$360 for veterinarians and \$100 for certified veterinary technicians.

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 proposed rulemaking does not create additional paperwork for the Board, the regulated community or the general public. This proposed 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 this proposed regulation and a copy of the Regulatory Analysis form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to this proposed rulemaking within 30 days of the close of the public comment period. Comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations and objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Tom Davis, Board Counsel at 2601 North Third Street, P.O. Box 69523, Harrisburg, PA 17106-9523, RA-STRegulatoryCounsel@pa.gov, within 30 days of publication of this proposed rulemaking in the *Pennsylvania*

Bulletin. Reference No. 16A-5727 Certified Veterinary Technicians and Veterinary Assistants when submitting comments.

THOMAS GARG, VMD,
Chairperson

Fiscal Note: 16A-5727. No fiscal impact; (8) recommends adoption.

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 [or noncertified employee], veterinary assistant or other licensed professional, is on the premises and is easily and quickly available to assist the certified veterinary technician [or the noncertified employee] veterinary assistant or other licensed professional.

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

[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.

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) (related 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) [Noncertified employees. Noncertified employees] 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 [noncertified employee] 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 [noncertified employee's] veterinary assistant's skills and is requested by the supervising veterinarian. The veterinarian bears ultimate responsibility for assuring that the [noncertified employee] veterinary assistant to whom a duty is assigned is competent to perform it.

(1) A [noncertified employee] veterinary assistant may do the following under direct veterinary supervision:

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(2) A [noncertified employee] veterinary assistant may do the following only under immediate veterinary supervision:

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(3) Emergency treatment by [noncertified employees] 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 [noncertified employee] 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 [noncertified employees] 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 [**proficiency examination**] VTNE as determined by the Board.

(3) Evidence of satisfactory completion of an approved program 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) [**A statement from the applicant that the applicant has not been convicted of a felony under The Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. §§ 780-101—780-144), or convicted of a felony relating to a controlled substance in a court of law of the United States or any other state, territory or country within the last 10 years. An applicant convicted of such a felony more than 10 years ago shall also submit the following:**

(i) **Proof that at least 10 years have elapsed from the date of conviction.**

(ii) **Satisfactory documentary evidence that the applicant has made significant progress in personal rehabilitation since the conviction so that licensure of the applicant should not be expected to create a substantial risk of harm to the health and safety of patients or the public or a substantial risk of further criminal violations.**

(iii) **Satisfactory documentary evidence that the applicant otherwise satisfies the qualifications contained in the Board's regulations] 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 an approved program 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 [**an**] a veterinary technician is the [**Veterinary Technician National Examination (VTNE)**] VTNE.

(b) An applicant failing to pass an examination for which the applicant has previously qualified [**shall**] 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 of the Commonwealth; a copy of this certificate and proof of current good standing shall be submitted**] include 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.

(d) Applicants applying under subsection (c) shall include with their application a copy of their state credential (license, registration or certificate) and proof of current good standing.

§ 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 [**a notarized**] 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 [**doctor-client**] veterinarian-client-patient relationship.

(d) A certified veterinary technician who [**deals or**] communicates directly with a client shall [**explain to**] notify the client that the **certificate holder is a certified veterinary technician** [**is not a veterinarian**].

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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 [**noncertified employees**] **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 [**noncertified employees**] **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 [**for biennial period December 1, 2010—November 30, 2012**] **\$345**

Biennial renewal fee for biennial period December 1, 2012—November 30, 2014] **\$360**

[**Veterinary**] **Certified veterinary** technician fees for services:

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[**Veterinarian**] **Certified veterinary** technician biennial renewal:

Biennial renewal fee [**for biennial period December 1, 2010—November 30, 2012**] **\$85**

Biennial renewal fee for the biennial period December 1, 2012—November 30, 2014] **\$100**

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