



# AMERICAN ASSOCIATION OF VETERINARY STATE BOARDS

## **Veterinary Medicine and Veterinary Technology Practice Act Model (PAM) with Commentary**



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## Introduction

The American Association of Veterinary State Boards (AAVSB) is a not-for-profit, 501(c) (3) association whose membership is comprised of 62 veterinary licensing boards from the United States and its Territories (U.S. Virgin Islands and Puerto Rico), and 9 provinces in Canada. The AAVSB is committed to serving these veterinary regulatory agencies (its Member Boards) by providing quality, relevant programs and services they can rely on to carry out their statutory responsibilities in the interest of public and animal protection.

In 2000, based upon the will of the membership, the AAVSB Board of Directors convened a task force to create a veterinary Practice Act Model (PAM) as a resource document available for use by its Member Boards. Because it was envisioned as a “living document”, the task force continued their work by adding statutory language regarding the regulation of veterinary technicians and provided periodic updates to the document that were supported by the membership.

The purpose of the AAVSB Practice Act Model is to provide a resource to its Member Boards, many of which regulate the practice of Veterinary Medicine as well as Veterinary Technology. This document reflects a national perspective and was developed by the AAVSB consistent with its public protection mission. The AAVSB Practice Act Model reflects the most current thinking on professional regulation. An additional goal is to facilitate greater standardization of terminology and regulation among jurisdictions. It is hoped that such uniformity will begin to allow jurisdictions to provide for increased public protection through effective regulation as well as facilitating mobility of veterinary professionals from jurisdiction to jurisdiction through the licensure process. Such developments are advantageous to the public by clarifying the role of veterinary medical regulatory boards while creating valid and accurate expectations for veterinary medical services. Increased mobility will also provide the public with greater access to qualified veterinarians to perform important services.

The AAVSB Practice Act Model was drafted to withstand legal scrutiny and provide maximum public and animal protection. It was not drafted to protect professional territory or to define or secure specific job descriptions for veterinarians or veterinary technicians. While professional promotion may be an important activity of professional associations, societies, and other professional Veterinary Medicine membership groups, the sole concern of the AAVSB Practice Act Model is the protection of the public and animals. While distancing itself from undue influence from professional associations to avoid legal and practical allegations of the “profession protecting its own,” the AAVSB welcomes input from these organizations, their state chapters, individual practitioners, academia, and others in formulating this document.

It is important to note the AAVSB Practice Act Model is a fluid document that will always be subject to modifications that reflect changes in technology and professional regulation and, thus, can never be “final.” The AAVSB looks forward to continued dialogue on its Practice Act Model whereby Member Boards can comment and fully discuss issues impacting the regulation of Veterinary Medicine, Veterinary Technology and the mission of public protection. The AAVSB Practice Act Model is an example of the resources that can be made available to AAVSB Member Boards when diverse interests work together toward a common goal.

## Acknowledgments

The American Association of Veterinary State Boards is very grateful to current and past volunteers who have spent countless hours on the AAVSB Practice Act Model.

## Revisions

Veterinary Medicine Practice Act Model with Comments created 2001

Veterinary Medicine and Veterinary Technology Practice Act Model with Comments revised 2002

Articles I and III revised 2005

Article I revised 2009

All articles revised 2014

All articles revised in 2018

## Structure and Format

The AAVSB Practice Act Model has been structured to mimic Member Board's existing statutes. It has been formatted to include the model language with corresponding commentary. To provide the rationale and thought processes behind several portions of the Practice Act Model, readers are encouraged to read the commentary as well as the Act to receive a complete perspective. Commentary follows each section if appropriate.

## Article I. Title, Purpose, and Definitions.

An ACT concerning the regulation of the practices of Veterinary Medicine and Veterinary Technology. Be it enacted...

### Commentary

#### Introductory Comment to Article I.

The AAVSB believes that the public interest must be the central precept of any professional regulatory act and its administration, and that jurisdiction regulatory boards must constantly strive to ensure that this basic principle is upheld. These beliefs are clearly articulated in the veterinary medicine and veterinary technology practice act model (“act”).

Article I of the act states that safeguarding the public interest is the most compelling reason for regulating the practices of veterinary medicine and veterinary technology, and identifies the activities included within the practices. Definitions of other terms used throughout the act are also included in this article.

#### Section 101. Title of Act.

This Act shall be known as the “(Name of Jurisdiction) Veterinary Medicine and Veterinary Technology Practice Act.”

#### Section 102. Legislative Declaration.

- (a) Veterinary Medicine and Veterinary Technology in the Jurisdiction of \_\_\_\_\_ are declared professional practices affecting the public health, safety, and welfare and are subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practices of Veterinary Medicine and Veterinary Technology, as defined in the Act, merit and receive the confidence of the public and that only qualified individuals be permitted to practice Veterinary Medicine or Veterinary Technology in the Jurisdiction of \_\_\_\_\_. This Act shall be liberally construed to carry out these objectives and purposes.
- (b) It is further declared that the intent of this legislation is to regulate the Veterinary Medicine and Veterinary Technology professions and will result in displacing competition by restricting licensure to practice Veterinary Medicine and Veterinary Technology, as such practice is defined and interpreted by the Board, to Persons determined by the Board to be qualified under this Act.
- (c) It is further declared that any such restriction on competition is outweighed by the broader interest in protection of the public health, safety, and welfare. It is understood that the regulatory structure calls for Veterinarians, Veterinary Technicians and public members to serve on the Board and this legislation recognizes the need for professional expertise provided by Veterinarians and Veterinary Technicians serving the public interest.

- (d) This Act is intended to provide active Jurisdiction oversight and supervision through its legislative enactment, the promulgation of enabling regulations, the appointment of Board members by the Governor or legislature, legal representation of the Board by the office of the State Attorney General, legislative appropriation of monies to support the Board, and Board engagement in a periodic review process.

#### Commentary

##### Section 102. Legislative Declaration.

Veterinary Medicine and Veterinary Technology are learned professions affecting public health and welfare and should be declared as such by the legislature.

##### Section 103. Statement of Purpose.

- (a) It is the purpose of this Act to promote, preserve, and protect the public health, safety, and welfare by and through the licensure and regulation of individuals, whether within or outside of the Jurisdiction, who practice Veterinary Medicine or Veterinary Technology within this Jurisdiction. In furtherance of this purpose, this Act creates the Board of Veterinary Medicine whose members, functions, and procedures shall be established in accordance with the provisions of this Act.
- (b) (1) The purpose of this Act is to fully occupy the field of Veterinary Medicine and Veterinary Technology and provide a uniform Jurisdiction-wide regulatory scheme to be enforced by the Board of Veterinary Medicine as defined in the scope of practice. As such, no municipality shall prohibit a Veterinarian or Veterinary Technician, as defined in this Act, from engaging in any act or performing any procedure that falls within the professionally recognized scopes of practice of licensure as a Veterinarian or Veterinary Technician, including but not limited to the scopes of practice set forth in Section 105 and 106 of this Act.
- (2) Nothing in this section 103(b) shall prohibit municipality from:
- (i) levying a business license tax solely for revenue purpose, or
  - (ii) levying a license tax solely for the purpose of covering the cost of regulation.

#### Commentary

##### Section 103. Statement of Purpose.

The Statement of Purpose defines the general scope of the Veterinary Medicine and Veterinary Technology Practice Act. A Board must have full knowledge of the Persons practicing Veterinary Medicine and Veterinary Technology within its Jurisdiction and must effectively protect the public through regulation. This section provides for the regulation of both practices and the licensure of Veterinarians and Veterinary Technicians engaged in these practices and stipulates that the regulation of the practices of Veterinary Medicine and Veterinary Technology extends to all Veterinarians and Veterinary Technicians practicing in the Jurisdiction, regardless of their actual Jurisdiction of residency.



**Section 104. Definitions.**

When used in this Act, these words and phrases shall be capitalized and are defined as follows:

- (a) **Animal** means any member of the Animal kingdom other than humans, whether living or dead.
- (b) **Animal Shelter** means a public or private humane society, Society for the Prevention of Cruelty to Animals, Animal protection shelter or control agency, rescue group, etc., that provides shelter and care for homeless Animals.
- (c) **Applicant** means a Person who submits an application for licensure or registration, whether complete or not, to the Board.
- (d) **Approved Provider of Continuing Education** means any Person, that has met the requirements of the Board to provide educational courses that are designed to assure continued competence in the practice of Veterinary Medicine or Veterinary Technology.
- (e) **Approved Program of Continuing Education** means an educational program approved by the Board or offered by an Approved Provider of Continuing Education.
- (f) **Approved Veterinary Medical Program** means a school of Veterinary Medicine or a veterinary medical education program that has been approved by the Board.
- (g) **Approved Veterinary Technology Program** means a school of Veterinary Technology or a Veterinary Technology or Veterinary Nursing education program that has been approved by the Board.
- (h) **Board of Veterinary Medicine** means the Board of Veterinary Medicine created under this Act.
- (i) **Client** means a Person who has entered into an agreement with a Veterinarian for the purposes of obtaining veterinary medical services in-person or by any means of communication.
- (j) **Complementary and Alternative Veterinary Medicine [Therapies]** means a heterogeneous group of preventive, diagnostic and therapeutic philosophies and practices that are not considered part of conventional Veterinary Medicine. These therapies include, but are not limited to, veterinary acupuncture, acuthery, and acupressure; veterinary homeopathy; veterinary manual or manipulative therapy (i.e., therapies based on techniques practiced in osteopathy, chiropractic medicine, or physical medicine and therapy); veterinary nutraceutical therapy; and veterinary phytotherapy.
- (k) **Consultation** means when a Veterinarian receives advice or assistance in-person, or by any method of communication, from a veterinarian or other Person whose expertise, in the opinion of the Veterinarian, would benefit a Patient. Under any circumstance, the responsibility for the welfare of the Patient remains with the Veterinarian receiving Consultation.

- (l) **Continuing Education** means training that is designed to assure continued competence in the practice of Veterinary Medicine or Veterinary Technology.
- (m) **Continuing Education Contact Hour** means a fifty (50) minute clock hour of instruction, not including breaks or meals.
- (n) **Conviction** means conviction of a crime by a court of competent jurisdiction and shall include a finding or verdict of guilt, whether or not the adjudication of guilt is withheld or not entered on admission of guilt, a no consent plea, a plea of nolo contendere, or a guilty plea.
- (o) **Examination** means an Examination approved by the Board.
- (p) **Felony** means a criminal act as defined by any Jurisdiction or by definition under federal law.
- (q) **Informed Consent** means the Veterinarian has informed the Client or the Client's authorized representative, in a manner understood by the Client or representative, of the diagnostic and treatment options, risk assessment, and prognosis, and the Client has consented to the recommended treatment.
- (r) **Jurisdiction** means any commonwealth, state, or territory, including the District of Columbia, of the United States of America, or any province of Canada.
- (s) **Licensee** means a Person duly licensed under this Act.
- (t) **Licensure Transfer** means the method whereby a veterinarian or a veterinary technician currently licensed in another Jurisdiction can also become licensed as a Veterinarian or Veterinary Technician in this Jurisdiction.
- (u) **Patient** means any Animal or group of Animals receiving veterinary care from a Veterinarian or Veterinary Technician.
- (v) **Person** means any individual, firm, partnership, association, joint venture, cooperative, corporation, governmental body, or any other group, legal entity or combination acting in concert; and whether or not acting as a principal, trustee, fiduciary, receiver, or as any kind of legal or personal representative, or as the successor in interest, assignee, agent, factor, servant, employee, director, officer, or any other representative of such Person.
- (w) **Premises** means any place where the Animal is located when Veterinary Medicine is being practiced.

- (x) **Supervision**-related terms are defined as follows:
- (1) **Supervising Veterinarian** means a Veterinarian who assumes responsibility for the veterinary care given to a Patient by an individual working under his or her direction. The Supervising Veterinarian must have examined the Patient pursuant to currently acceptable standards of care.
  - (2) **Immediate Supervision** means the Supervising Veterinarian is in the immediate area and within audible and visual range of the Patient and the individual treating the Patient.
  - (3) **Direct Supervision** means the Supervising Veterinarian is readily available on the Premises where the Patient is being treated.
  - (4) **Indirect Supervision** means a Supervising Veterinarian need not be on the Premises but has given either written or oral instructions for the treatment of the Patient and is readily available for communication.
- (y) **Veterinarian** means an individual who is licensed to practice Veterinary Medicine under the provisions of this Act.
- (z) **Veterinarian-Client-Patient Relationship (VCPR)**
- exists when:
- 1) Both the Veterinarian and Client agree for the Veterinarian to assume responsibility for making medical judgments regarding the health of the Animal(s); and
  - 2) The Veterinarian has sufficient knowledge of the Animal(s) to initiate at least a general or preliminary diagnosis of the medical condition of the Animal(s); and
  - 3) The practicing veterinarian is readily available for follow-up in case of adverse reactions or failure of the regimen of therapy.
- (aa) **Veterinarian Manager** is a Veterinarian who registers to assume responsibility for the Veterinary Facility registration, management and operation of a Veterinary Facility.
- (bb) **Veterinary Facility** means any building, place or mobile unit from which the practice of Veterinary Medicine and Veterinary Technology is conducted.
- (cc) **Veterinary Technician** means an individual who is duly licensed to practice Veterinary Technology under the provisions of this Act.

## Commentary

**Section 104. Definitions.**

The Practice of Veterinary Medicine and Veterinary Technology are defined in Sections 105 and 106.

**Section 104(d) and (e). Approved Provider and Approved Program of Continuing Education** - See comment to Section 213(a) regarding Board's role in the approval process of programs and providers.

**Section 104(h). Board of Veterinary Medicine** - Some Jurisdictions may select the title, Board of Veterinary Medicine and Veterinary Technology.

**Section 104(r) Jurisdiction** - When not capitalized is referring to authority.

**Section 104(t). Licensure Transfer** - The AAVSB has elected to use "Licensure Transfer" rather than Licensure by Endorsement or Reciprocity because of the confusion existing in regulation between such terms. "Licensure Transfer" is intended to allow for the possession of multiple veterinary and veterinary technology licenses.

**Section 104(w) Premises** - Boards may want to define "premises" to include ranches, racetracks, farms or other venues in which veterinary care may be provided.

**Section 104(x)(2). Immediate Supervision** - The AAVSB recommends that the Boards define through regulations tasks that Veterinary Technicians can perform with or without Immediate Supervision.

**Section 104(x)(4). Indirect Supervision** - The AAVSB contemplates that this definition of Indirect Supervision includes and incorporates the technological advancements and the ability of Persons to communicate through electronic and other means as a form of supervision. Of course, such supervision must maintain the necessary contact to be as effective as the Veterinarian deems appropriate, using professional judgment.

## Commentary

**Section 104. Definitions. (continued)**

**Section 104(y). Veterinarian** - To maintain consistency with the regulations promulgated by the Food and Drug Administration, Department of Health and Human Services with regard to Animal Drugs, Feed and Related Products (21 C.F.R. §530.3) which define Veterinarian and the Veterinarian-Client-Patient Relationship, the AAVSB defines Veterinarian as an individual who is duly licensed under the provisions of the Act. The AAVSB recognizes that there may be special limitations to the use of the title of Veterinarian and has defined Special Provisions in Section 107. The AAVSB also strongly believes that limiting the use of the title Veterinarian to individuals licensed to perform veterinary services better protects the public. It must be emphasized that the title restriction does not prevent anyone from referencing a valid educational degree (i.e. DVM) or other recognized credential (i.e. VMD). See also the comment to Section 301(b) of the Act. Several comments addressed this issue, saying the term Veterinarian belonged to individuals by virtue of the receipt of a degree. While this is understandable from an academic perspective, the AAVSB reasoned that the Code of Federal regulations and the potential for confusion to the public, mandate limitation of use of the term “Veterinarian” to Licensees. In that case, there would be no violation and enforcement would be left up to criminal prosecution through the state’s attorney or through civil litigation, involving deceptive trade practices or other applicable remedies. The AAVSB determined this approach does not adequately protect the public because many Jurisdictions lack the resources or incentives to criminally prosecute such offenses or, alternatively, injured parties must pursue matters through an expensive civil process. The AAVSB has chosen to affirmatively address the issue, rather than pass the enforcement to other entities.

**Section 104(z). Veterinarian-Client-Patient Relationship (VCPR)** – Most Jurisdictions require the establishment of a valid VCPR to provide Patient care and prescribe medication. Failure to establish a valid VCPR may constitute grounds for charges of professional misconduct in many Jurisdictions. The qualifying characteristics of this relationship vary from Patient to Patient and, for a particular Patient, may also vary from situation to situation. The AAVSB determined that the establishment of the VCPR must be specified through general statutory language. Under certain circumstances, the failure to establish the VCPR may severely hinder the Boards’ ability to prosecute or pursue administrative disciplinary actions against Licensees.

Certain comments suggested referencing the definition of VCPR set forth in the Code of Federal Regulations (CFR) within the statute. The AAVSB carefully reviewed the CFR and determined that the above definition was broad enough to encompass the more specific references in the CFR. Also, the AAVSB did not want to bind the Jurisdiction to a federal definition which, if changed, would necessitate subjecting the practice act to modifications and additional scrutiny by the legislature. Finally, the AAVSB determined that the specifics of the VCPR should be contained in the standards of practice/codes of conduct and promulgated through the rule/regulations, a process which is easier to modify, if necessary. Below are comments to the act which provide suggested language to be incorporated in the regulations.

## Commentary

**Section 104(z). Veterinarian-Client-Patient Relationship (VCPR) (continued)**

AAVSB recommends that each jurisdiction promulgate appropriate regulations clarifying who may be included within the scope of a single VCPR such as a Veterinarian or another Veterinarian within the same practice group with access to medical records, or a veterinarian with whom he/she is consulting.

AAVSB recommends that each jurisdiction promulgate appropriate regulations defining how to establish sufficient knowledge of the Animal(s), including the following:

- A. A recent examination of the Animal or group of Animals, either physically or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically<sup>1</sup>; or
- B. Through medically appropriate and timely visits to the premises at which the Animal or group of Animals are kept.

It is essential for the VCPR to be easily established in order to require the Veterinarian to assume accountability for the Veterinary Medical Services rendered. Furthermore, as standards of practice and codes of conduct change over time, it is easier to promulgate new rules incorporating such changes rather than adopting legislative modifications.

**Section 104(bb). Veterinary Facility** - “Veterinary Facility” is defined with the intention that Jurisdictions license or otherwise register facilities or issue facility permits as a mechanism for protecting the public, especially when such facilities are owned by non-veterinarians (see Section 309). Boards of Veterinary Medicine can thereafter establish standards and monitor qualifications of such facilities. Indeed, most Jurisdictions already provide for such regulation.

The AAVSB recommends that Boards of Veterinary Medicine consider delineating the various specific Veterinary Facilities within its rules (e.g., clinic, hospital, specialty or referral hospital, etc.). Differing facilities can be defined within rules that can identify minimum standards and the allowable practices to insure public protection.

**Section 104(cc). Veterinary Technician** - The AAVSB believes that the title “Veterinary Technician” and the practice of Veterinary Technology should be protected as a licensed profession, and this is reflected in the Act. Jurisdictions have created other titles such as veterinary assistant, or veterinary employee to define the roles of staff who may perform tasks not relegated to Veterinary Technicians.

The AAVSB strongly believes there should be uniform degrees and titles for veterinary technicians or veterinary nurses. Regardless, in all cases, Jurisdictions are strongly encouraged to specify the roles of each designated title (in the rules), recognizing that all veterinary employees must be Supervised by a Veterinarian.

<sup>1</sup> – The AAVSB recommends that a guidance document be created for the use of telehealth technologies. See the *AAVSB Recommended Guidelines for the Appropriate Use of Telehealth Technologies in the Practice of Veterinary Medicine* for further guidance.

**Section 105. Practice of Veterinary Medicine.**

The Practice of Veterinary Medicine means:

Any individual practices Veterinary Medicine when performing any one or more of the following on an Animal:

- (a) Directly or indirectly consults, diagnoses, prognoses, corrects, supervises, recommends or performs medical or surgical treatment, including Complementary and Alternative Therapies for the diagnosis, prevention, cure or relief of a wound, defect, deformity, fracture, bodily injury, disease, dental, physical, behavioral or mental condition;
- (b) Prescribes, dispenses or administers a drug, medicine, anesthetic, biologic, appliance, apparatus, application or treatment;
- (c) Any manual procedure for the diagnosis and/or treatment of pregnancy, sterility, or infertility;
- (d) Determination of the health, fitness, or soundness of an Animal;
- (e) Representation of oneself directly or indirectly, as engaging in the practice of Veterinary Medicine; or
- (f) Use of any words, letters or titles under such circumstance as to induce the belief that the individual using them is authorized to practice Veterinary Medicine, under this Act. Such use shall be prima facie evidence of the intention to represent oneself as engaged in the practice of Veterinary Medicine.

#### Commentary

#### **Section 105. Practice of Veterinary Medicine.**

The practice of Veterinary Medicine or the scope of practice is one of the most important and most-discussed definitions in the AAVSB Veterinary Medicine and Veterinary Technology Practice Act Model. Veterinary Medicine is a dynamic profession, particularly over the past several years, and any definition of practice needs to contain a degree of flexibility that will allow the Board to make necessary adjustments from time to time to meet a changing Veterinary Medicine environment, an evolving practice, and the ongoing needs of consumers. The definition in Section 105 is purposely broad to provide substantial latitude to the Board in the adoption and implementation of rules. However, the definition does specifically identify a range of acceptable activities. The rules process would function as an important tool in the Board's efforts to adapt the definition to the needs of its Jurisdiction, since any new or amended rules that the Board may implement would be promulgated within the requirements of the Jurisdiction's Administrative Procedures Act and would afford all interested parties an opportunity to provide review and comment.

**Section 106. Practice of Veterinary Technology.**

The Practice of Veterinary Technology means:

Any individual practices Veterinary Technology when performing any one or more of the following on an Animal:

- (a) Provision of professional medical care, monitoring and treatment under Supervision of a Veterinarian;
- (b) Representation of oneself directly or indirectly, as engaged in the practice of Veterinary Technology; or
- (c) Use of any words, letters or titles under such circumstance as to induce the belief that the individual using them is authorized to practice Veterinary Technology under this Act. Such use shall be prima facie evidence of the intention to represent oneself as engaged in the practice of Veterinary Technology. Nothing in this section shall be construed to permit a Veterinary Technician to do the following:
  - (1) surgery;
  - (2) diagnose;
  - (3) prognose; and
  - (4) prescribe.

Regulations defining tasks of Veterinary Technicians:

The Board shall promulgate regulations establishing Animal health care tasks and an appropriate degree of Supervision required for those tasks that may be performed only by a Veterinary Technician or a Veterinarian.

Commentary
<p><b>Section 106. Practice of Veterinary Technology.</b></p> <p>See comment to Section 104 (cc) regarding the protection of the title and the licensed profession.</p>

**Section 107. Special Provisions.**

The licensure requirements of the Act shall not apply to the following:

- (a) Any veterinary medical officer employed by a governmental body performing Veterinary Medicine services within the scope of official duties, provided such Veterinary Medicine services are limited to the period of employment;
- (b) Any Animal care provider employed by a governmental body performing Veterinary Technology services within the scope of official duties, provided such Veterinary Technology services are limited to the period of employment;



- (c) Any individual offering gratuitous services in cases of emergency;
- (d) Any veterinarian who is licensed in another Jurisdiction or country, or any Person whose expertise, in the opinion of a Veterinarian would benefit an Animal, and who is consulting with the Veterinarian, provided such service is limited to the Consultation;
- (e) Any student currently enrolled and in good standing in an Approved Veterinary Medical Program who engages in a preceptorship or externship performing duties that constitute the practice of Veterinary Medicine for which she/he has received adequate instruction by the college or school, and only under the Immediate or Direct Supervision of a Veterinarian;
- (f) Any student currently enrolled and in good standing in an Approved Veterinary Medical Program who engages in practice at a veterinary teaching hospital under the Immediate Supervision of a Veterinarian under this article; provided however, that only such students who have completed at least X [time period may be reflected in course hours, percentage of completion of curriculum or years] in an Approved Veterinary Medical Program may assist in diagnosis, prognosis, treatment and surgery in such practice, subject to the following limitations:
  - 1) Assistance in diagnosis and surgery must be under the Immediate Supervision of such Veterinarian; and
  - 2) Assistance in treatment must be under the Indirect Supervision of such Veterinarian;
- (g) Any student currently enrolled and in good standing in an Approved Veterinary Technology Program approved by the Board who engages in the practice of Veterinary Technology in pursuance of the required experience component of the program under Immediate Supervision of a Veterinarian or Veterinary Technician or at a veterinary teaching hospital under Immediate Supervision of veterinary faculty;
- (h) An Animal Shelter employee or volunteer who provides care and performs euthanasia for the shelter's Animals in the course and scope of the individual's employment or duties if the individual has successfully completed training acceptable to the Board and is acting under the Supervision of a Veterinarian or in accordance with the written guidelines of a Veterinarian. Such individuals shall not diagnose, prognose, prescribe or perform surgery;
- (i) Any Persons engaged in scientific research that reasonably requires experimentation involving Animals and is conducted in a facility or with a company that complies with federal and Jurisdictional regulations regarding Animal welfare;

- (j) Any Person or that Person's employee, who, subject to the Jurisdiction's anti-cruelty laws, treats Animals belonging to that Person, providing that ownership is not transferred for the purpose of circumventing this Act;
- (k) Any veterinarian or veterinary technician who is licensed in good standing in another Jurisdiction or country and is providing veterinary services in response to an emergency, disaster (natural or man-made) or a case involving Animal cruelty or fighting, provided a request for such assistance is received from a government, law enforcement, or Animal protection agency;
- (l) Any veterinarian who is licensed in good standing in another Jurisdiction or country and is providing a Continuing Education course or training at an Approved Veterinary Medical Program or Approved Veterinary Technology Program or in connection with an Approved Program of Continuing Education.

### Commentary

#### Section 107. Special Provisions.

The AAVSB recognizes that some Jurisdictions include additional special provisions relating to the spaying, neutering, dehorning, castration emasculation or docking of cattle, horses, sheep, goats, or swine in the course or exchange of work for which no monetary compensation is paid, or to artificial insemination and the collection of semen as well as additional services. Due to the potential for harm to the public/Animal(s), it is the intent of the Act to include Persons performing such activities as professionals who must be licensed. Accordingly, these activities are intentionally absent from the list of special provisions and such activities are included in the practice definition.

The special provision for students who practice at a veterinary teaching hospital or under the Immediate or Direct Supervision of a Veterinarian is intended to be restricted to those students who have completed some basic clinical courses. After much discussion and review of the comments, the AAVSB chose to leave the time period blank. The Jurisdictions should determine the requisite time period which can be reflected in hours, percentages or years. Similarly, Jurisdictions should determine the appropriate prerequisites to be completed before Veterinary Technology students are permitted to practice Veterinary Technology.

As drafted, the special provision also restricts the practice of Veterinary Technology to those students who have completed some basic courses and are pursuing completion of the experience component of the program.

In all cases the special provision is intended to apply only to students practicing under the appropriate supervision as determined by the Board. With regard to faculty, the AAVSB noted that several Jurisdictions already require full licensure of faculty who teach clinical curriculum. Others require faculty licenses or institution licenses. The AAVSB feels strongly that Veterinary Medicine faculty involved in direct, clinical relations with the public and its Patients are engaged in practice and, thus, should be licensed, particularly when a VCPR exists.

## Commentary

**Section 107. Special Provisions. (continued)**

Through the Practice Act Model comment process, however, concerns were voiced regarding the practical implications such a licensure requirement would have on the education, recruitment of faculty and the undertaking of research and other important projects related to the educational process. In recognition of the practical implications such a requirement might have on educational institutions, the AAVSB Practice Act Model, provides a faculty license to provide for public protection in Section 306.

To protect the public and to prevent Persons from circumventing the licensure requirements, the faculty license is limited to bona fide faculty members who teach courses in Approved Veterinary Medical Programs.

A special provision is granted in the model statute to Animal Shelter employees who provide care and perform euthanasia. The Task Force acknowledges that many Jurisdictions have adopted more specific language requiring that shelter Animals be euthanized by certified euthanasia technicians when a Veterinarian or Veterinary Technician is not available. Furthermore, Jurisdictions may wish to restrict the delegation of veterinary responsibilities to care designed to prevent disease transmission-i.e., vaccinations, prophylactic control of endo and ectoparasites, diagnostic testing and euthanasia.

A variety of certification methods have emerged through the rules process. To train euthanasia technicians, some Boards have established guidelines to certify euthanasia technicians whereas other Boards have little involvement.

Shelters, private and government agencies often respond to disasters and large-scale cruelty such as dog fighting and puppy mill cases by setting up temporary shelters to provide care and shelter for rescued victims. In disaster cases, the Animals needing care and shelter often number well into the hundreds. To provide appropriate care for these Animals, it may be necessary to recruit veterinarians from outside the Jurisdiction. In cruelty cases, law enforcement often depends upon assistance from veterinarians with expertise in forensics, diagnosing, prognosing and treating Animal in large scale cruelty and fighting cases. They should not be limited in their ability to effectively enforce Jurisdiction criminal laws or render needed veterinary care due to Jurisdiction constraints on veterinary practice.

See section 305. Qualifications for Temporary License and Emergency Practice that would allow Veterinarians and Veterinary Technicians to practice temporarily in response to a declared emergency.

Continuing Education that involves client owned animals may require the Supervision of a Veterinarian.

## Article II. Board of Veterinary Medicine.

### Commentary

#### Introductory Comment to Article II.

Before it can regulate the practice of Veterinary Medicine or Veterinary Technology, the Jurisdiction must first establish and empower the Board. Accordingly, Article II of the Act defines and creates the Board by specifying elements necessary to its formation, organization, and operation. Each of the sections contained in this article covers elements that the AAVSB felt necessary to the proper formation and efficient operation of the Board. Several of these sections, especially those that contain innovative or infrequently utilized provisions, are supplemented by individual explanatory comments.

Among the sections of Article II that may be of particular interest to users of the Act are the following: Section 202 and 203(c), pertaining to the inclusion of public members as Board members; Section 207, which provides grounds and procedures for removal of Board members, and Section 213(b)(2), which enables Boards to avail themselves of research and study grants and other non-Jurisdiction monies without having to deposit such funds in Jurisdiction general revenue accounts (thereby losing control over the expenditure of such funds).

It is also important to note that Section 212 specifically empowers the Board to make such rules as are necessary to fully administer and implement the Act. This is a most significant feature of the Act. The underlying philosophy of this approach is that the statute should create goals, guidelines, and policies in general areas, and permit the Board to provide the specifics in its rules. This approach recognizes that it is impossible for State legislatures to enact comprehensive provisions regarding all the matters with which a Board may be confronted or to anticipate the rapidly changing conditions of the professions and the delivery of veterinary medical services. Consequently, the AAVSB recommends that Boards have adequate power to adopt and amend rules with the greatest possible flexibility and autonomy. Section 212 of this Act is designed to accomplish this objective.

#### Section 201. Designation.

The responsibility for enforcement of the provisions of this act is hereby vested in the Board of Veterinary Medicine (Board). Under active oversight and supervision by the Jurisdiction, the Board shall have all of the duties, powers, and authority specifically granted by or necessary for the enforcement of this Act, as well as such other duties, powers, and authority as it may be granted from time to time by applicable law.

**Section 202. Membership.**

The Board shall consist of X members, at least one (1) shall be a representative of the public, and the remainder shall be Veterinarians or Veterinary Technicians, who possess the qualifications specified in Section 203. At all times, at least fifty percent (50%) of the members of the Board shall be Veterinarians who are actively engaged in the practice of Veterinary Medicine in this Jurisdiction.

## Commentary

**Section 202. Membership.**

The number of Board members should be determined by each individual Jurisdiction according to its requirements. Individual Jurisdictions may wish to consider Board composition that represents the diversity of practice types and interests within a Jurisdiction. Variable factors, such as Jurisdiction population, number of Veterinarians, and other local considerations, may all be relevant in determining the number of Board members needed to most effectively enforce the Act. Since the mission of the Board is public protection, the AAVSB strongly recommends that the Board have at least one (1) public member.

The AAVSB also strongly recommends that the Board have at least one (1) Veterinary Technician.

**Section 203. Qualifications.**

- (a) Board members shall at all times maintain eligibility to serve on the Board by avoiding relationships that would interfere with the Board mission of public protection. Board members shall be especially cognizant of issues of conflict of interest.
- (b) Each Veterinarian or Veterinary Technician member of the Board shall at all times:
  - (1) Be a resident of this Jurisdiction for not less than X years;
  - (2) Be currently licensed in good standing and without restriction to engage in the practice of Veterinary Medicine or Veterinary Technology in this Jurisdiction; and
  - (3) Have had at least X years of experience in the practice of Veterinary Medicine or Veterinary Technology.
- (c) The public member(s) of the Board shall be a resident of this Jurisdiction who is at least X years old and shall not be, nor shall ever have been, a veterinarian, veterinary technician or the immediate family member of a veterinarian or veterinary technician, or an individual who has ever had any material financial interest in the provision of veterinary services or who has engaged in any activity directly related to the veterinary profession.

## Commentary

**Section 203. Qualifications.**

Conflict of interest issues provide a legal basis for challenging the actions of a regulatory Board. As has been determined by the United States Supreme Court, a conflict need not be actual, but merely the appearance of an impropriety can create the basis for legal challenges. The AAVSB strongly suggests regulatory Board members not participate as an officer or in a policy-making position of a local, Jurisdiction or national professional association.

**Section 203(b). Qualifications.**

Section 203(b) of the Act requires that Veterinarians and Veterinary Technicians be licensed to practice at all times while serving as Board members. Although AAVSB recommends that board members should have at least five (5) years of experience in the practice of Veterinary Medicine or Veterinary Technology prior to appointment, it believes the number of years of experience should be determined by each Board. Since the practice of Veterinary Medicine is defined in Section 105 in broad terms, it renders a Veterinarian actively engaged in almost any phase of practice eligible for appointment. This provides for the eligibility of candidates who have divergent backgrounds and experiences, who are knowledgeable in the affairs of the profession, and who represent different geographic areas of the Jurisdiction.

**Section 203(c). Qualifications.**

Specific qualifying criteria for the public member have been deliberately omitted from this section. Reliance has been placed in the Governor to determine what attributes a Person should possess to meaningfully serve on a Board. To help assure that such a member would be truly independent in judgments, those Persons who have a possible substantial relationship with the profession are rendered ineligible by this section. The AAVSB also recommends that a public member of the Board be at least twenty-one (21) years old.

**Section 204. Appointment.**

In accordance with the principle of separation of powers and to provide for sufficient oversight by the respective branches of government, the Governor shall appoint the members of the Board in accordance with the provisions of this Article or other applicable laws.

## Commentary

**Section 204. Appointment.**

The AAVSB recognizes that there may be other appointing authorities in some Jurisdictions. Accordingly, Jurisdictions with an appointing authority other than the Governor should insert the appropriate reference to such authority within this section of the Act.

**Section 205. Terms of Office.**

- (a) Members of the Board shall be appointed for a term of X years, except as provided in subsection (b) and except that members of the Board who are appointed to fill vacancies that occur prior to the expiration of a former member's full term shall serve the unexpired portion of such term.
- (b) The terms of the members of the Board shall be staggered, so that the terms of no more than X members shall expire in any year. Each member shall serve until a qualified successor is appointed.
- (1) The present members of the Board shall serve the balance of their terms.
- (2) Any present Board members appointed initially for a term of less than X years shall be eligible to serve for X additional full terms.
- (c) No member of the Board shall serve more than X consecutive full terms. The completion of the unexpired portion of a full term shall not constitute a full term for purposes of this section.

## Commentary

**Section 205. Terms of Office.**

The AAVSB recommends that the terms are staggered so that the terms of no more than three (3) members will expire in any year. However, this number may vary based on the number of board members. In addition, because Jurisdiction populations vary so dramatically, rather than recommend specific lengths of terms or term limits, the AAVSB believes each Jurisdiction should make its own determination.

**Section 206. Vacancies.**

Any vacancy which occurs in the membership of the Board for any reason, including expiration of term, removal, resignation, death, disability, or disqualification, shall be filled within six (6) months as prescribed by Section 204. Failure to fill a vacancy within the six (6) month period shall divest the Governor of the appointment authority for such vacancy and vest such authority in the state senate.

## Commentary

**Section 206. Vacancies.**

Based upon several experiences within Veterinary Medicine and other professions whereby vacancies on regulatory Boards have not been timely appointed, the AAVSB provided for a time period whereby the Governor (or other appointing authority) must fill such vacancies. The AAVSB recommends that failure to make such appointments within the six-(6) month period should divest the Governor of the appointment authority for that vacancy and empower the State Senate in this regard for said vacancy. It is hoped that this time period will provide incentives to the Governor to make such appointments in a timely fashion. However, each individual jurisdiction will have to consider proposed language to ensure such does not conflict with other laws. This is a model act for jurisdictions to consider and, obviously, they may not enact it verbatim. That being said, while boards might not be able to enforce these mandates, including such provisions will at the very least offer guidance to legislatures and courts as to how to ensure public safety by cooperating with and helping regulatory boards.

**Section 207. Removal.**

- (a) A Board member may be removed by the Governor. In addition, pursuant to the procedures set forth in subsection (b) herein, a board member may be removed by a three-quarter ( $\frac{3}{4}$ ) majority vote of the board upon one or more of the following grounds:
- (1) The refusal or inability for any reason of a Board member to perform the duties as a member of the Board in an efficient, responsible, and professional manner;
  - (2) The misuse of office by a member of the Board to obtain financial or material gain or advantage personally or for another through such office;
  - (3) A final adjudication by a recognized body including the courts that the Board member is in violation of the laws governing the practice of Veterinary Medicine or Veterinary Technology; or
  - (4) Other just and reasonable causes as determined solely by the Board pursuant to applicable law.
- (b) Removal of a member of the Board shall be in accordance with the Administrative Procedures Act of this Jurisdiction, or other applicable laws.



## Commentary

**Section 207. Removal.**

In certain Jurisdictions, there may be general statutory provisions that establish the procedures and grounds for the removal of appointed public officials. In these Jurisdictions, disregard Section 207. Specific grounds may be addressed in the regulations, such as failure to attend meetings, and any other parameters established by the Board.

**Section 208. Organization.**

- (a) The Board shall elect from its members a Chairperson and such other officers as it deems appropriate and necessary to conduct its business. The Chairperson shall preside at all meetings of the Board, shall be responsible for the performance of all the duties and functions of the Board and shall perform those duties customarily associated with the position and such other duties assigned from time to time by the Board.
- (b) Officers elected by the Board shall serve terms of X year(s) commencing with the day of their election and ending upon election of their successors and shall serve no more than X consecutive full terms in each office to which they are elected.
- (c) The Board shall employ an Executive Director who shall be responsible for the performance of the administrative functions of the Board and such other duties as the Board may direct.

## Commentary

**Section 208(b). Organization.**

The AAVSB recommends one (1) year terms for officers and no more than three (3) consecutive full terms thereafter.

**Section 208(c). Organization.**

The AAVSB urges that every Board have a permanent administrative official (Executive Director) to perform and supervise the administrative duties and functions for which the Board is responsible on a day-to-day basis. The responsibilities of the Executive Director should include the hiring of necessary staff to assist in fulfilling the responsibilities of the Board. The position title may vary from Jurisdiction to Jurisdiction.

**Section 209. Compensation of Board Members.**

Each member of the Board shall receive a per diem as specified in the regulations for time engaged in performance of the official duties of the Board and shall also be reimbursed for all reasonable and necessary expenses incurred in connection with the discharge of such official duties.

## Commentary

**Section 209. Compensation of Board Members.**

AAVSB recognizes that many boards do not pay board members, but the AAVSB believes board members should be paid a per diem for their time as well as their travel expenses. Failure to compensate volunteers for their time may result in difficulty recruiting Board members who must travel and may also lose a day's pay.

**Section 210. Meetings.**

- (a) The Board shall meet at least once every X month(s) to transact its business. The Board shall meet at such additional times as it may determine. Such additional meetings may be called by the Chairperson of the Board or by two-thirds (2/3) of the members of the Board.
- (b) The Board shall give prior notice of the time and place for each meeting in a manner prescribed by the Administrative Procedures Act or other applicable laws.
- (c) A majority of the members of the Board shall constitute a quorum for the conduct of a Board meeting and, except where a greater number is required by the Act or by any rule of the Board, all actions of the Board shall be by a majority of a quorum.
- (d) All Board meetings and hearings shall be open to the public. The Board may, in its discretion and according to law, conduct any portion of its meeting in executive session, closed to the public.

## Commentary

**Section 210(a). Meetings.**

The AAVSB strongly recommends that Boards of Veterinary Medicine meet at least four (4) times per year. This is a minimum standard that would help Boards maintain an adequate level of efficiency and responsiveness.

**Section 210(c). Meetings.**

The AAVSB recommends that the Boards determine if remote participation is permissible by law.

## Commentary

**Section 210(e). Meetings.**

Many Jurisdictions have adopted “sunshine” laws that provide for open meetings. Section 210(e) may not be necessary or may need revision to eliminate or to curtail the use of executive sessions.

**Section 211. Employees.**

The Board may, in its discretion, employ individuals in addition to the Executive Director in such other positions or capacities as it deems necessary to the proper conduct of Board business and to the fulfillment of the Board’s responsibilities as defined by the Act.

## Commentary

**Section 211. Employees.**

Inspectors employed by the Board may be Veterinarians or Veterinary Technicians. Boards may wish to consider whether investigators must be Veterinarians.

**Section 212. Rules.**

The Board shall make, adopt, amend, and repeal such rules as may be deemed necessary by the Board for the proper administration and enforcement of this Act. Such rules shall be promulgated in accordance with the procedures specified in the Administrative Procedures Act.

## Commentary

**Section 212. Rules.**

The legislative authority granted to a Board to adopt, amend and repeal rules is an extremely important power. Boards are encouraged to fully exercise this authority by adopting rules, where necessary, to more specifically address regulatory issues. This rule-making authority is not only beneficial for the protection of the public, but also benefits the Board when it is necessary to interpret the Act. As membership on the Board changes, these rules become increasingly more important to maintain consistency in the application of the Act. Generally, the rule-making process is governed by an Administrative Procedures Act (APA) or other applicable law which provides for public disclosure and comments prior to promulgation. These processes are designed to provide for public input and the necessary checks and balances upon the regulatory Board. Of course, any action undertaken by the Board must be to enhance the Board authority and public protection.

**Section 213. Powers and Responsibilities.**

- (a) Under active Jurisdiction oversight and supervision, the Board shall be responsible for the control and regulation of the practices of Veterinary Medicine and Veterinary Technology in this Jurisdiction including, but not limited to, the following:
- (1) Licensure by Examination, or Transfer, or issuance of temporary, emergency or faculty licenses, or the renewal of licenses of individuals who are authorized to practice Veterinary Medicine or Veterinary Technology under the provisions of this Act;
  - (2) Registration and renewal of registration or licensure of facilities under provisions of this Act;
  - (3) The establishment and enforcement of standards or criteria of programs or other mechanisms to insure the continuing competence of Licensees;
  - (4) The establishment and enforcement of compliance with minimum standards for the registration of Veterinary Facilities, minimum standards of care and codes of conduct for Licensees who practice Veterinary Medicine or Veterinary Technology;
  - (5) The creation of a Bill of Rights concerning what veterinary services a Client may expect to receive;
  - (6) The determination and issuance of standards for recognition and approval of degree programs of schools and colleges of Veterinary Medicine and Veterinary Technology whose graduates shall be eligible for licensure in this Jurisdiction;
  - (7) The enforcement of those provisions of the Act relating to the conduct or competence of Applicants, Licensees practicing in this Jurisdiction, registration of Veterinary Facilities and the suspension, revocation, or restriction of licenses to practice Veterinary Medicine or Veterinary Technology;
  - (8) The maintenance of jurisdiction over Persons, irrespective of their licensure status, (i.e., active, inactive, expired, lapsed, surrendered or disciplined) relative to acts, omissions, complaints and investigations which occurred during the licensure period. The Board shall also maintain jurisdiction over registered facilities, irrespective of their registration status, relative to acts, omissions, complaints and investigations which occurred during the registration period. Such jurisdiction shall be for purposes of enforcement of all the provisions of this Act and any regulations duly promulgated hereunder, including the assessment and collection of fines, costs, and attorneys' fees. Jurisdiction of the Board shall also extend to Persons engaging in the unauthorized practice of Veterinary Medicine or Veterinary Technology. It is the intent of this subsection that Licensees cannot divest the Board of jurisdiction by changing or relinquishing licensure or registration status;

- (9) Issuance of an order directing an Applicant or Licensee to undergo a mental or physical examination or chemical dependency evaluation, when probable cause exists that the Applicant or Licensee has engaged in conduct prohibited by this Act or a statute or rule enforced by the Board. For the purpose of this Section, every Applicant or Licensee is considered to have consented to undergo a mental and/or physical examination or chemical dependency evaluation when ordered to do so, in writing, by the Board and to have waived all objections to the admissibility of the examiner's or evaluator's testimony or reports on the grounds that the testimony or reports constitute a privileged communication;
  - (10) The collection of data and funds necessary to carry out the provisions of this Act, provided:
    - (i) Such funds are expended for the pursuit of the objective for which they are awarded;
    - (ii) Activities connected with or occasioned by the expenditures of such funds do not interfere with the performance of the Board's duties and responsibilities and do not conflict with the exercise of the Board's powers as specified by this Act;
    - (iii) Such funds are kept in a separate account; and
    - (iv) Periodic reports are made concerning the Board's receipt and expenditure of such funds; and
  - (11) The investigation of any Person, or Veterinary Facility, including facility inspection, during customary business hours for the purpose of determining if any provisions of the Act governing the practice of Veterinary Medicine or Veterinary Technology are being violated. The Board, its officers, inspectors, employees and representatives shall cooperate with all agencies charged with the enforcement of applicable laws relating to the practice of Veterinary Medicine or Veterinary Technology.
- (b) The Board shall have such other duties, powers, and authority as may be necessary to enforce this Act and Board rules, including but not limited to, the following:
- (1) The Board may join such professional organizations and associations organized exclusively to promote the standards of the practices of Veterinary Medicine and Veterinary Technology for the protection of the health and welfare of the public and Animals or whose activities assist and facilitate the work of the Board;
  - (2) The Board may receive and expend funds, in addition to its [annual/biennial] appropriation, from parties other than the Jurisdiction, provided:
    - (i) Such funds are used in the pursuit of a specific objective that the Board is authorized to accomplish by this Act, or which the Board is qualified to accomplish by reason of its jurisdiction or professional expertise;

- (3) Any investigation, inquiry, or hearing that the Board is empowered to hold in accordance with applicable law may be held by or before any member(s) of the Board and the order of such member(s) shall be deemed to be the order of said Board when approved and confirmed as noted in Section 210(d);
- (4) The Board shall report any violation of this Act which also is deemed as violative of applicable criminal statutes to the Attorney General [State's Attorney] to cause appropriate proceedings to be instituted in the proper court without delay and to be prosecuted in the manner required by law. It is the duty of the Attorney General [State's Attorney] to prosecute such violations. Nothing in this paragraph shall be construed to require the Board to report violations whenever the Board believes that the public's interest will be adequately served in the circumstances by a suitable written notice or warning;
- (5) The Board shall have the power to subpoena Persons and documents for purposes of depositions and testimony, or both, in the same manner as prescribed in civil cases in the courts of this Jurisdiction. Any member of the Board, hearing officer, or administrative law judge shall have power to administer oaths to witnesses at any hearing that the Board is authorized to conduct, and any other oaths authorized in any Act administered by the Board;
- (6) In addition to the fees specifically provided for in this Act, the Board may assess additional reasonable fees for services rendered to carry out its duties and responsibilities as required or authorized by this Act or Board rules. Such services shall include but not be limited to the following:
  - (i) Issuance of duplicate certificates or identification cards;
  - (ii) Mailing lists, or reports of data maintained by the Board;
  - (iii) Copies of any documents;
  - (iv) Certification of documents;
  - (v) Notices of meetings;
  - (vi) Licensure Transfer;
  - (vii) Examination administration to a licensure Applicant; and
  - (viii) Examination materials;

- (7) Cost Recovery;
- (i) In any order issued in resolution of a disciplinary proceeding before the Board, the Board may request the Administrative Law Judge/Hearing Officer (ALJ/HO) to direct any Person or Veterinary Facility found to have violated the Act or Board rules, to pay to the Board a sum not to exceed the reasonable costs, including attorneys' fees, of the investigation and prosecution of the case;
  - (ii) The costs to be assessed shall be fixed by the ALJ/HO and shall not be increased by the Board; where the Board does not adopt a proposed decision and remands the case to a(n) ALJ/HO, the ALJ/HO shall not increase any assessed costs;
  - (iii) Where an order for recovery of costs is made and timely payment is not made as directed in the Board's decision, the Board may enforce the order for payment in the \_\_\_\_\_ Court in the municipality where the administrative hearing was held. This right of enforcement shall be in addition to any other rights the Board may have as to any Person directed to pay costs; and
  - (iv) In any action for recovery of costs, the Board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.
- (8) Except as otherwise provided to the contrary, the Board shall exercise its duties, powers, and authority in accordance with the Administrative Procedures Act.
- (c) Oversight of Board through an annual report.

As a means to provide continued and active oversight, the Board shall file with the Governor an annual report outlining the activities of the Board.

#### Commentary

##### **Section 213. Powers and Responsibilities.**

The AAVSB strongly recommends that Boards provide training for new members on their powers and responsibilities.

##### **Section 213(a)(1). Powers and Responsibilities.**

See Section 104(t) and Section 307 and the corresponding comments for a definition and explanation of "Licensure Transfer."

## Commentary

**Section 213. Powers and Responsibilities. (continued)****Section 213(a)(3)(4)(5)(6). Powers and Responsibilities.**

Great care should be exercised by the Boards with respect to these Sections. Many Jurisdictions have statutes or rules which provide, for example, that approved degree programs of schools or colleges of Veterinary Medicine are those accredited by the Council on Education (COE) of the American Veterinary Medical Association (AVMA). Similarly, with regard to accredited Veterinary Technology programs, many Jurisdictions have statutes or rules that provide that approved programs are those accredited by the Committee on Veterinary Technician Education and Activities (CVTEA) of the AVMA. Furthermore, some Boards through their regulation/rules, rely upon the standards of practice or codes of ethics of private outside entities like the professional associations. As is emphasized by this Practice Act Model and Comments and for reasons stated below, the legislatures and/or regulatory Boards are encouraged to adopt, by statute or through the rule making process, the actual standards or criteria of the private outside entity to avoid allegations of improper delegation.

It is a well-established rule of administrative law that any delegation of governmental power (through statute or by rule) must carry with it appropriate limitations and procedural safeguards for affected individuals. For example, a direct, unequivocal grant of the accreditation function to a private organization, such as AVMA COE, by the legislature through a practice act or by the Board through the rule making process, might be deemed an unauthorized, improper, and invalid delegation of legislative or Board authority. Similarly, a direct reliance upon standards of practice or a code of conduct of a private outside body over which the legislature or Board has no control may constitute an unconstitutional delegation of authority. This doctrine is based upon the simple premise that regulatory decisions impacting an individual's property right (i.e. a license) must be made by Boards that have been created and empowered to protect the public and are answerable to the general public. Further, regulatory Boards in Veterinary Medicine have no control over AVMA activities. A review of this legal doctrine reveals case law invalidating legislation and rules that, without limitation, rely upon these outside entities without public accountability. See Garces v. Department of Registration and Education, 254 N.E.2d 622 (Ill. App.,1969); Gumbhir v. Kansas State Board of Pharmacy, 618 P. 2d 837 (Ks 1980); Coffman v. State Board of Examiners in Optometry, 50 N.W. 2d 322 (MI 1951); FM Properties Operating Co. v. City of Austin, 22 S.W. 3d 868 (TX 2000), Balian v. Board of Licensure in Medicine, 722 A. 2d 364 (ME 1999).

The AAVSB recommends that the statutory language grant the Board the authority to approve Veterinary Medicine programs and Veterinary Technology programs. Boards thereafter may adopt in their rules the standards, criteria and policies of accreditation established from time to time by the COE or the CVTEA, the nationally recognized accrediting agencies for Veterinary Medicine degree programs and Veterinary Technology programs. Thereafter, the regulatory Boards can annually adopt in their minutes the list of accredited Veterinary Medicine and Technology programs using the AVMA COE and CVTEA list. A similar process can take place by the Board should it wish to rely upon others in determining the standards of practice or codes of conduct. This will allow the legislatures and Boards to utilize the expertise of such private outside entities without improperly delegating such authority to an organization over whom the Boards have no control, and which is not accountable to the public.



## Commentary

**Section 213. Powers and Responsibilities. (continued)****Section 213(a)(4)(5). Powers and Responsibilities.**

To avoid improper delegation allegations as referenced above, the standards of practice and codes of conduct should be a product of the Board. Again, the Board may rely upon the expertise of outside private entities by adopting those standards which the Board deems acceptable.

The “Bill of Rights” is intended to provide legislative or regulatory guidance to practitioners regarding the information to be made available to Clients, preferably during the establishment of the professional relationship. Included would be information regarding the qualification of Licensees (licensure status, specialty certification), the regulatory Board and contact information in the event of a complaint, billing policies, Informed Consent and the like. The “Bill of Rights” should be consistent with standards of practice, codes of ethics and regulations that the Board has adopted under the Act to avoid inadvertently expanding the role and the responsibilities of the Licensee through the establishment of such a “Bill of Rights”.

**Section 213(a)(9). Powers and Responsibilities.**

This section allows a Board to order mental or physical examination or chemical dependence evaluations upon showing probable cause. This power should be used judiciously, only when the Board has reason to believe that there may be a connection between a mental and/or physical condition and the alleged misconduct. This power is necessary to ensure to the public that an Applicant or Licensee’s ability to practice Veterinary Medicine or Veterinary Technology safely and competently is not impaired.

The legislative process provides a system of checks and balances to ensure that the Board acts within the scope of its authority and in accordance with all other applicable laws, such as the Administrative Procedures Act.

**Section 213(b)(7). Cost Recovery**

The ALJ/HO interspersed throughout this section refer to the terms: “administrative law judge,” or “hearing officer” as determined by individual Jurisdictions.

**Section 213(c). Powers and Responsibilities.**

The AAVSB recommends that in addition to including reference to the effectiveness and efficiencies of the Board, the annual report shall through numeric statistics at a minimum, identify the number of Licensees, Applicants, renewals, complaints and disposition of such complaints, along with the number of Board meetings, and all financial data relevant to Board operations.

## Article III. Licensing.

### Commentary

#### Introductory Comment to Article III.

Article III of this Act sets out the requirements for initial licensure of Veterinarians and Veterinary Technicians, and registration of Veterinary Facilities, as well as Licensure Transfer, renewal, and emergency, temporary or faculty licensure. As in other parts of the Act, this Article establishes basic criteria and delegates the authority for implementing those criteria to the Board. The Board exercises this authority by promulgating specific rules and utilizing appropriate enforcement mechanisms. For example, regarding initial licensure, the Act would be implemented by the Board's approval of Veterinarian or Veterinary Technician degree programs, specifications of the Examinations to be used, and establishment of all other prerequisites that must be met by each Applicant to whom it issues a license.

This article as well as the entire Act, also reflects the AAVSB's efforts to develop uniform standards for the transfer of licensure. The veterinary medical profession has become increasingly mobile, and Boards need to examine the ways in which differing standards between Jurisdictions may be affecting the public's access to qualified Licensees.

#### Section 301. Unlawful Practice.

- (a) The practice of Veterinary Medicine and Veterinary Technology in this Jurisdiction is subject to enforcement by the Board. Except as otherwise provided in this Act, it shall be unlawful for any Person to practice Veterinary Medicine or Veterinary Technology in this Jurisdiction through any means, unless duly licensed under the applicable provisions of this Act.
- (b) (1) No Person shall use the designation Veterinarian, Licensed Veterinarian or any other designation indicating licensure status, including abbreviations, or hold themselves out as a Veterinarian unless duly licensed as such.  
  
(2) No Person shall use the designation Veterinary Technician, Licensed Veterinary Technician or any other designation indicating licensure status, including abbreviations, or hold themselves out as a Veterinary Technician unless duly licensed as such.
- (c) The practice of Veterinary Medicine or Veterinary Technology through electronic or other means in this Jurisdiction shall constitute the practice of Veterinary Medicine or Veterinary Technology subject to licensure and enforcement by the Board.

- (d) Any Person who, after a hearing, shall be found by the Board to have unlawfully engaged in the practice of Veterinary Medicine or Veterinary Technology may be subject to a fine to be imposed by the Board which may include cost recovery as set forth in this Act or Board rules. The Board may also seek to issue an order, obtain an injunction or seek other administrative, civil or criminal court action to restrain any Person from violating the provisions of this Veterinary Practice Act. Each violation of this Act or Board rules pertaining to unlawfully engaging in the practice of Veterinary Medicine or Veterinary Technology shall also constitute a (misdemeanor/felony) punishable upon conviction as provided in the criminal code of this Jurisdiction.
- (e) Nothing in this Act shall be construed to prevent members of other professions from performing functions for which they are duly licensed. However, such other professionals must not hold themselves out or refer to themselves by any title or description stating or implying that they are licensed or otherwise entitled to practice Veterinary Medicine or Veterinary Technology.

### Commentary

#### Section 301. Unlawful Practice.

Section 301 establishes the basis for this Article by making it unlawful for any unlicensed Person to engage in the practice of Veterinary Medicine or Veterinary Technology, and by enabling the Board to impose penalties for unlawful practice. See Sections 105 and 106 for the definitions of the practice of Veterinary Medicine and Veterinary Technology.

Boards are often confronted with the issue of preventing unlicensed Persons from engaging in practice. Most practice acts do not give the Board jurisdiction and authority to act against individuals other than those who are licensed or Applicants seeking licensure. Thus, Boards must rely on the difficult task of persuading local prosecutors to take criminal action against Persons not licensed to practice. This gap in jurisdictional authority makes it difficult to effectively prevent unlawful practice.

This section is intended to empower the Board with jurisdiction over Persons engaged in unlicensed practice. The regulation of the practices of Veterinary Medicine and Veterinary Technology, including jurisdiction over unlicensed practice in the professions, has a reasonable and rational relation to public health, safety, and welfare. See, e.g., State v. Wakeen, 57N.W.2d 364 (Wis., 1953). cf. State v. VanKeegan, 113 A.2d141 (Conn., 1955), and Williamson v. Lee Optical of Oklahoma, 348 U.S. 483 (1955). For this reason, vesting power in the Board to regulate illegal practice would not appear to violate constitutional due process requirements. Because monetary fines are not generally considered criminal sanctions, it can be strongly argued that there are no constitutional barriers that would restrict the imposition of findings by a Board. See, e.g., Helvering v. Mitchell, 303 U.S. 376 (1938); City of Waukegan v. Pollution Control Boards, 311 N.E.2d 146 (Ill., 1974); County Council for Montgomery County v. Investors Funding Corp., 312 A.2d 225 (Md., 1973); and Roday v. Hollis, 500 P.2d 97 (Wash., 1972).

## Commentary

**Section 301. Unlawful Practice. (continued)****Section 301(b). Unlawful Practice.**

This provision is intended to restrict the use of the terms Veterinarian and Veterinary Technician to those who are duly licensed under the provisions of this Act and is not intended to prevent accurate use of initials or abbreviations, such as DVM, VMD or any corresponding degree initials for Veterinary Technicians, indicating academic achievement. This Act is also not intended to prevent other licensed professionals from practicing within other “allied scopes.” However, it is important to recognize the Veterinarian and Veterinary Technician titles and link this name recognition to licensure. This link protects the public through an assurance that there is regulatory consistency associated with the Veterinary Medicine and Veterinary Technology identity. See also the Comments to Section 104(y), defining the term Veterinarian.

**Section 301(c). Unlawful Practice.**

A license shall be required for any Veterinarian or Veterinary Technician who provides veterinary medical services to a Patient or Client in this Jurisdiction through telephonic, electronic or other means. Many factors, including technological advancements, increase the likelihood of the practice of Veterinary Medicine via electronic means and without physical presence, both intrastate and interstate. While the judiciary may have the final word on regulating professions across Jurisdiction lines, this section is designed to specifically address the issue of where practice takes place. The AAVSB believes the practice of Veterinary Medicine takes place where the Patient is located when the VCPR is established. Because the Board’s central mission is to protect the public in its Jurisdiction, it must make every effort to regulate the practice of Veterinary Medicine being received in that Jurisdiction, regardless of the location of the Veterinarian providing the services. Arguments can also be made that identify the location of practice under these circumstances as occurring in both Jurisdictions; that is where the Patient is located and where the Veterinarian is located.

Veterinarians in this Jurisdiction may wish to utilize the services of other veterinarians not licensed to practice in this Jurisdiction or other Persons. Consultations are defined in Section 104, and there are special provisions in Section 107(c) and (d) for Consultations with other veterinarians and Persons. The responsibility for the welfare of the animal remains with the Veterinarian in this Jurisdiction.

## Commentary

**Section 301. Unlawful Practice. (continued)****Section 301(d). Unlawful Practice.**

It is a common belief that the veterinary practice act allows Boards to act against Licensees only. However, a survey of the AAVSB Member Boards revealed that about 60% of the Boards are empowered to act against unlicensed practice. In Jurisdictions without this authorization, whenever non-veterinarians are illegally engaged in veterinary activities, the Board must rely upon the Attorney General or other legal authorities to act against these individuals. Sadly, in many cases, illegal veterinary practice is considered a low-level criminal activity that seldom gets a response from law enforcement agencies. Unfortunately, the undertaking of criminal proceedings against unlicensed practice may be beyond the ability of many Boards with limited resources, and if undertaken, caution is advised because the criminal code takes effect and the due process rights granted the accused increase significantly based upon the rights at stake. The Oklahoma Practice Act has language that allows the Board to take more direct action against unlicensed practice.

“Act to halt the unlicensed or illegal practice of veterinary medicine and seek administrative, criminal and civil penalties against those engaged in such practice”.

Some Boards may want to adopt this language. The ability to act against unlicensed practice should be delineated in the actual Practice Act, whereas the administrative process and specific actions to be taken should be outlined in the administrative code.

**Section 302. Qualifications for Licensure by Examination.**

- (a) To obtain a license to practice Veterinary Medicine, an Applicant for licensure by Examination shall bear the burden of substantiating to the Board that the following criteria have been met:
- (1) Submission of a completed application in the form approved by the Board;
  - (2) Attainment of twenty-one (21) years of age;
  - (3) Is of good moral character. As one element of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining criminal records checks, pursuant to applicable law. All good moral character information, including the information obtained through the criminal background checks, shall be relevant to licensure eligibility determinations to the extent permitted by law.
  - (4) Graduation and receipt of a doctorate degree in Veterinary Medicine from an Approved Veterinary Medical Program;
  - (5) Successful completion, within the X years preceding application, of an Examination(s) approved by the Board; and
  - (6) Payment of all applicable fees specified by the Board relative to the licensure process.
- (b) To obtain a license to practice Veterinary Technology, an Applicant for licensure by Examination shall bear the burden of substantiating to the Board that the following criteria have been met:
- (1) Submission of a completed application in the form approved by the Board;
  - (2) Attainment of eighteen (18) years of age;
  - (3) Is of good moral character. As one element of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining criminal records checks, pursuant to applicable law. All good moral character information, including the information obtained through the criminal background checks, shall be relevant to licensure eligibility determinations to the extent permitted by law.
  - (4) Graduation and receipt of a degree from an Approved Veterinary Technology Program;
  - (5) Successful completion, within the X years preceding application of an Examination(s) approved by the Board; and
  - (6) Payment of all applicable fees specified by the Board relative to the licensure process.

## Commentary

**Section 302(a)(3). Qualifications for Licensure by Examination.**

Legislatures have generally agreed that “good moral character” is a proper requirement for licensure of Veterinarians and Veterinary Technicians. Defining precisely what constitutes good or bad character has caused regulatory Boards and courts considerable difficulty, and a review of applicable case law reveals a considerable variance in the judicial opinions concerning the interpretation of good character requirements. Nevertheless, the courts have uniformly enforced such requirements, reasoning that because regulatory Boards are composed primarily of members of the profession being regulated, they are capable of applying character standards to their professions with relevance and specificity.

While specific character requirements may vary from Jurisdiction to Jurisdiction and may even appear to vary from case to case, the purpose of these requirements remains constant. The public has the right to expect the highest degree of integrity from members of the veterinary medical and technology professions. Boards have a duty to ensure that these expectations are realized. From this perspective, requirements of good moral character for licensure can be expected to be sustained by the courts so long as their enforcement is reasonably related to protection of the public health, safety, and welfare.

When grounded in public protection, issues involving moral character may lead to concerns about the potential for this qualification to be misused by Boards. Although there are many legal ways to ensure that the good moral character issue is not misapplied, including Jurisdiction and federal civil rights legislation, when making character judgments Boards need to be extremely sensitive. Practice act provisions that bear a reasonable relationship to the purpose of protecting the public welfare will generally be regarded as constitutionally acceptable by most courts, so long as the enforcement by Boards is reasonably related to the protection of the public.

**Section 302(a)(4). Qualifications for Licensure by Examination.**

The AAVSB anticipates that Boards will approve those programs whose standards are at least equivalent to the minimum standards required by the AVMA’s Council on Education. See Comment to Section 213(a)(3)(4)(5)(6) for a discussion of the Board’s role in the approval process.

**Section 302(a)(5). Qualifications for Licensure by Examination.**

The AAVSB believes that, for public protection, Boards should limit the amount of time to five (5) years that Applicants can wait after passing the licensing exam to obtain an initial license because entry level skills may not be retained long term without ever practicing.

**Section 302(b). Qualifications for Licensure by Examination.**

Recognizing that different Jurisdictions have varying requirements for Veterinary Technicians, this section provides the basis for standardized requirements that Boards may wish to work toward.

**Section 302(b)(4). Qualifications for Licensure by Examination.**

The AAVSB anticipates that Boards will approve those programs whose standards are at least equivalent to the minimum standards required by the AVMA’s Committee on Veterinary Technician Education and Activities (CVTEA). See Comment to Section 213(a)(3)(4)(5)(6) for a discussion of the Board’s role in the approval process.

**Section 303. Educational Equivalence.**

By rule, the Board may set forth a procedure for Applicants who have graduated from a program/school that is not approved by the Board for an equivalency determination related the educational component of licensure.

## Commentary

**Section 303. Educational Equivalence.**

One of the most difficult tasks for regulatory Boards is to assess the educational equivalence of graduates of veterinary programs outside the United States and Canada that have not been evaluated by a recognized accrediting body under specific standards and criteria. There are currently two (2) programs designed to measure educational equivalence, the AAVSB Program for the Assessment of Veterinary Education Equivalence (PAVE) and the AVMA Educational Commission for Foreign Veterinary Graduates (ECFVG) program. As an entity with public protection as its primary mission and whose membership consists of veterinary Boards who share in this mission, the PAVE program was designed by the AAVSB in response to a request from its member Boards to assist them in the accurate and timely assessment of educational equivalence of foreign graduates. Boards are encouraged to adopt the standards and criteria of PAVE through their rule making process rather than through the statutes. Details of the PAVE program can be found on the AAVSB website. Details of the ECFVG program can be found on the AVMA website.

**Section 304. Examinations.**

- (a) Any Examination for licensure required under this Act, shall be given by the Board at least two (2) times during each year. The Board shall approve the content and subject matter of each Examination, the place, time and dates of administration of the Examination.
- (b) The Examination shall measure the entry level competence of the Applicant to practice Veterinary Medicine or Veterinary Technology. The Board may employ, cooperate, and contract with any organization or consultant in the preparation, administration and grading of an Examination, but shall retain the sole discretion and responsibility for determining which Applicants have successfully passed such an Examination.

## Commentary

**Section 304. Examinations.**

As has been emphasized throughout this document and comments, the AAVSB recommends that the authority to make decisions directly impacting the licensure process be specifically vested in the Board. On a similar note, the discretion to determine the content and subject matter of each Examination and the passing score necessary to indicate minimum competence for purposes of licensure belongs solely to the Board. The Board, of course, may rely upon the expertise of the owner of the Examination in determining the content areas and pass/fail scores, however, the Board must be the ultimate decision-maker. That is, statutes and/or rules cannot blindly, and without limitations, delegate the decision to the outside entity. See the Comments to Section 213(a) for a more complete explanation.



**Section 305. Qualifications for a Temporary License and Emergency Practice.**

- (a) Temporary License: The Board may issue a temporary license to practice Veterinary Medicine and Veterinary Technology to an individual licensed in good standing in another Jurisdiction upon approval of an application to the Board. Practice in this Jurisdiction must fall within the scope of practice designated by such license, is permitted for no more than X days per year without applying for a license and is subject to restrictions deemed appropriate by the Board. Such individual shall not be eligible to practice under this temporary license until the date the Board approves the application, shall be deemed to have submitted to the jurisdiction of the applicable Board and shall be bound by the laws of this Jurisdiction.
- (b) Emergency Practice: Any individual licensed in good standing to practice Veterinary Medicine or Veterinary Technology in another Jurisdiction who is providing services within the scope of practice designated by such license and in response to an emergency or disaster declared by the appropriate authority or Jurisdiction may, upon written notice to the Board, provide such services in this Jurisdiction for a period of time in accordance with the declared emergency, but not to exceed X consecutive days per year without applying for a license. Such individual shall be deemed to have submitted to the jurisdiction of the applicable Board and be bound by the laws of this Jurisdiction.

## Commentary

**Section 305(a). Qualifications for a Temporary License.**

The privilege of practicing temporarily is only granted to individuals duly licensed and in good standing to practice Veterinary Medicine or Veterinary Technology in another Jurisdiction. Based upon the uniformity in accredited educational programs and the uniform national Examination(s), it is perceived that minimum competence in one Jurisdiction is reasonably equated to minimum competence in another Jurisdiction. Furthermore, practice privileges apply to such individuals only if the requirements for licensure in the Jurisdiction of licensure are substantially similar to the requirements for licensure in this Jurisdiction.

By design, the language of the temporary license references an “application” to be submitted to the Board prior to engaging in practice under this section. It is up to each individual Board to determine the extent of the application.

The unspecified time period is also, by design, left to the interpretation of a Board as to how the period is to be determined.

Finally, Veterinarians and Veterinary Technicians providing services under this temporary practice privilege are deemed to have submitted to the jurisdiction of the applicable Board and agree to be bound by the laws of the Jurisdictions thereof. It is recommended that the application determined by the Board contain language that verifies the submission of the Person to the Jurisdiction and the applicability of the laws of the Jurisdiction. It provides the Boards with important information about who is practicing (through the application). It also provides the Board with appropriate waivers relative to jurisdiction and the laws of the Jurisdiction. Finally, it provides a privilege which can be removed by the Board through the disciplinary process, reported to the databank, and, if Jurisdiction laws allow, have an eventual impact upon the actual license in the Jurisdiction of licensure.

**Section 305(b). Qualifications for Emergency Practice.**

See comments to 305(a) relative to the overall rationale for a temporary license and the applicability of jurisdictional and other legal issues. Similar rationale applies to this section as well. In addition, emergency practice in the case of a declared disaster is left to the Board to determine.

Again, this provides the Board with valuable information as to who is practicing within the Jurisdiction in the event of a reported complaint or wrongdoing. Written notice can be determined by the Board, but it is suggested it be limited to a simple statement as to the fact that a disaster has been declared, the Person has a license in good standing and is practicing relative to the disaster, submits him/herself to the jurisdiction of the Board and will abide by the applicable laws of the Jurisdiction. It is not anticipated any such notice will be subject to approval by the Board, thus eliminating the time-consuming Board approval process due to the emergency nature of the situation.

Alternatively, Boards may choose to use the special provisions approach for veterinarians providing services during disasters and other emergency found in Section 107(c).

**Section 306. Faculty Licensure.**

The Board may issue a faculty license to an Applicant who is a member of the faculty at an Approved Veterinary Medical or Veterinary Technology Program in this Jurisdiction, is actively and currently involved in the instruction of students and is engaged in the practice of Veterinary Medicine or Veterinary Technology. Holders of a faculty license are permitted to practice Veterinary Medicine or Veterinary Technology while engaged in the performance of his or her official duties as a faculty member only.

- (a) To obtain a faculty license, an Applicant shall bear the burden of substantiating to the Board that the following criteria have been met:
  - (1) Completion of the application form approved by the Board. If the Applicant is licensed in another Jurisdiction or country, he or she shall disclose if they have been convicted of a Felony or been the recipient of a disciplinary action by a veterinary Board within the last X years;
  - (2) Proof of graduation and receipt of a degree from an Approved Veterinary Medical or Veterinary Technology Program;
  - (3) Proof of employment at or an appointment to the faculty of an Approved Veterinary Medical or Veterinary Technology Program teaching students, including a description of their faculty responsibilities; and
  - (4) Proof of successful completion, within the X years preceding application, of a faculty licensure Examination(s) approved by the Board.
- (b) A faculty license authorizes the Licensee to practice Veterinary Medicine or Veterinary Technology only while engaged in the performance of his or her official duties as a faculty member and is confined to clinical, hospital or field services units, of the Approved Veterinary Medical or Veterinary Technology Program where employed.
- (c) Faculty Licensees must abide by all the laws governing the practice of Veterinary Medicine or Veterinary Technology in this Jurisdiction and are subject to the same disciplinary action as any other Licensee.
- (d) The faculty license may be renewed at an interval to be determined by the Board.
  - (i) A faculty license shall expire upon receipt by the Board of information that the holder of the license is no longer employed as faculty of an Approved Veterinary Medical or Veterinary Technology Program.
  - (ii) Faculty Licensees must notify the Board of termination of employment or appointment within X days of termination.

## Commentary

**Section 306. Faculty Licensure.**

The AAVSB believes all members of faculty at a college or school of Veterinary Medicine should have a license if they practice on Client-owned Animals in direct association with their employment at the Approved Veterinary Medical Program. Veterinary colleges have indicated that flexibility in licensure is needed in employing eminent scholars from around the world, especially those who practice a sub specialty and may not want to or be able to pass the comprehensive American national licensing exam that covers all species and topics. Yet if faculty are practicing Veterinary Medicine, a mechanism must be in place to ensure public protection if a complaint arises regarding veterinary incompetence or a violation of the Practice Act. The school or college does not have a mission of public protection and it is not their responsibility nor can responsibility be delegated to them to investigate or take appropriate action regarding a complaint. The primary purpose of the faculty license is to allow Approved Veterinary Medical Programs a procedure to bring much desired talent to the faculty while the Jurisdictions can still ensure public protection subject to this article.

**Section 306(a)(4). Faculty Licensure.**

The faculty licensure examination may be a jurisprudence examination, or any other examination deemed appropriate for this specific purpose, not to be confused with the North American Veterinary Licensing Examination (NAVLE).

**Section 307. Qualifications for Licensure Transfer.**

- (a) In order for a veterinarian or veterinary technician currently licensed in another Jurisdiction to obtain a license as a Veterinarian or Veterinary Technician by Licensure Transfer in this Jurisdiction, an Applicant shall bear the burden of substantiating to the Board that the following criteria have been met:
- (1) Submission of a completed application in the form approved by the Board;
  - (2) Is of good moral character. As one element of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining criminal records checks, pursuant to applicable law. All good moral character information, including the information obtained through the criminal background checks, shall be relevant to licensure eligibility determinations to the extent permitted by law;
  - (3) Active practice of Veterinary Medicine or Veterinary Technology for at least X hours during the X years preceding application;
  - (4) Proof that a Veterinary or Veterinary Technician license is current, unrestricted and in good standing;

- (5) Proof that any other Veterinary or Veterinary Technology license granted to the Applicant by any other Jurisdiction has not been suspended, revoked, or otherwise restricted for any reason nor subject to any corrective action or discipline; however the Board shall have the discretion to assess the magnitude of any such disciplinary action and determine the licensure eligibility of such Applicant;
- (6) Successful completion of the Jurisdiction Examination, if applicable; and
- (7) Payment of the fees specified by the Board.

#### Commentary

##### **Section 307(a)(6). Qualifications for License Transfer.**

Section 307(a)(6) is applicable to those Jurisdictions that utilize a Jurisdiction-specific Examination as part of the licensure process.

#### **Section 308. Continuing Education.**

The Board shall, by rule, establish requirements for Continuing Education in Veterinary Medicine and Veterinary Technology including the determination of acceptable program content. The Board shall adopt rules necessary to carry out the stated objectives and purposes and to enforce the provisions of this Section and the continuing competence of Licensees.

#### Commentary

##### **Section 308. Continuing Education.**

The issue of how best to ensure and assess continuing competence is an on-going concern. Numerous options are being considered by several national organizations including self-assessment tools, continuing competence Examinations, Continuing Education, and others, but no single model has emerged as the single most effective way to ensure continuing competence.

The AAVSB considered several alternatives to mandated Continuing Education, the method currently used by most Jurisdictions. These alternatives ranged from simply stating that Licensees will maintain continuing competence as a standard of practice, to requiring retesting at periodic intervals. The AAVSB recognized that while some of these alternatives might better evaluate the continuing competence of Licensees, it might be premature to recommend an alternative to mandated Continuing Education.

## Commentary

**Section 308. Continuing Education. (continued)**

Continuing Education has been widely used as an acceptable method for ensuring the continued competence of Licensees. Many Boards mandate that Licensees obtain a specified number of hours of Continuing Education within a licensure renewal period. Some Boards specify that Licensees must obtain Continuing Education in certain practice areas. However, most Boards require that Continuing Education consist of more general content areas in Veterinary Medicine or Veterinary Technology. The AAVSB recommends that Boards require Licensees to complete a specified number of Continuing Education hours in each licensure renewal period and develop a method for ensuring compliance such as random audits.

Lending credibility to Continuing Education hours is imperative to the Board's mission of assessing the continuing competence of Licensees.

Rather than rely upon the expectation that Continuing Education programs chosen by the Licensee will meet the criteria of the Board, it is recommended that an assessment mechanism of programs or providers of CE be adopted. Evaluation of programs or providers of CE by experts can assist veterinary Boards by relieving them of time-consuming administrative responsibilities while providing content expertise and uniformity.

To this end, the AAVSB has instituted the Registry of Approved Continuing Education (RACE) program whereby the Association, on behalf of its Member Boards, approves providers and programs of Continuing Education. As set forth in the Definitions, an "Approved Program of Continuing Education" means an educational program approved by the Board or offered by an "Approved Provider of Continuing Education." The AAVSB has adopted stringent criteria utilized in its RACE program in determining Approved Providers and Approved Programs. This criterion was developed based upon an analysis of requirements currently used by the AAVSB Member Boards, along with a review of other organizations that also approve Continuing Education (CE) providers or programs.

At their option, the AAVSB Member Boards may wish to recognize the AAVSB RACE approved providers or programs as "approved" within their Jurisdictions for purposes of accepting CE for licensure renewal.

Such a process will save the administrative burdens placed upon the Board in assessing CE providers or programs while at the same time promoting the mission of the AAVSB to bring uniformity to the licensure and renewal processes. To avoid allegations of improper delegation of authority (see Comments, Section 213(a)), Boards are encouraged to adopt such criteria as established from time to time by the AAVSB RACE Program as the criteria of such Board. This "two-step" process will insure that the Board maintains the ultimate decision-making authority and avoids the legal pitfalls of improper delegation. Details about RACE can be found on the AAVSB website.

**Section 309. Registration of Veterinary Facilities.**

- (a) All Veterinary Facilities shall be registered with the Board.
- (b) Mobile units shall be exempted from independent registration with the Board when they are operated from a registered Veterinary Facility and the registration identifies and declares the use of the mobile unit.
- (c) Each application to register a Veterinary Facility must identify the Veterinarian Manager who is responsible for its operation and management.
  - (i) The Veterinarian Manager's license must be active and in good standing.
  - (ii) The Veterinarian Manager has the burden to notify the Board of any change in status within X days.
- (d) The Board shall promulgate rules that determine the minimum standards for the Veterinary Facility, including guidelines for application, inspection, sanitation, etc.
- (e) The Board may revoke or suspend or take other disciplinary action deemed appropriate against the registration, including ordering closure of the Veterinary Facility, on any of the following grounds:
  - (i) The Board or its agents are denied access to conduct an inspection or investigation;
  - (ii) The holder of a registration does not pay any and all prescribed fees or monetary penalties; or
  - (iii) There is no Veterinarian Manager identified.
- (f) An application for renewal shall be made every X years.

**Commentary****Section 309. Registration of Veterinary Facilities.**

Many Jurisdictions choose to regulate the practice of Veterinary Medicine by registering Veterinary Facilities with the Board. This is also known in some Jurisdictions as a Facility or premise permit. A Veterinarian who registers to be responsible for the operation and management of the Facility is known as the Veterinarian or Veterinarian Manager. Minimum standards of practice, recordkeeping, and sanitation, etc., are some of the guidelines defined by the Board, usually through rules, as well as a time for inspections and renewal of the registration. The Veterinarian Manager is responsible for ensuring that all veterinary standards of care are met by the Facility; failure to do so can result in the loss of registration, closure of the Facility or other penalties. In some Jurisdictions, inspection is required before a new Facility opens or if an application for a new Veterinarian Manager is received.

## Commentary

**Section 309. Registration of Veterinary Facilities. (continued)**

The AAVSB recommends that the statute include a provision that the Veterinarian Manager has the burden to notify the Board of any change in status of the Veterinarian Manager and should notify the Board within 14 days of such change. Facility registration is particularly useful in Jurisdictions that permit corporate or non-veterinarian ownership of practices; some of these Jurisdictions permit the manager of the practice to be a non-veterinarian and allow for discipline or corrective action to be taken against a non-Licensee.

Boards may want to consider whether to place a limit on the number of facilities a Veterinarian can register to manage, or whether to require their physical presence for a designated period of time at the facility. In addition, the Board may use its discretion to waive the restrictions for an Applicant to be a Veterinarian Manager upon receipt of a detailed description of any probationary or disciplinary actions against their license or any other violations of the Act.

Some Jurisdictions include standards of practice in the rules for registering a facility. California is an example of a Jurisdiction that has extensive minimum standards of practice in the regulations pertaining to veterinary premise inspection.

**Section 310. Licensure Renewal Requirements.**

- (a) Licensees shall be required to renew their license at the time and in the manner established by the Board. Under no circumstances, however, shall the renewal period exceed X years;
- (b) As a requirement for licensure renewal, each Licensee shall provide evidence satisfactory to the Board that the Licensee has completed at least X Continuing Education hours of an Approved Program of Continuing Education during the renewal period;
- (c) Veterinary Facilities shall be required to renew their registrations, at the time and in the manner established by the Board. Under no circumstances, however, shall the renewal period exceed X years.



## Commentary

**Section 310. Licensure Renewal Requirements.**

The AAVSB determined that an inactive license status was not necessary as Section 311 allows for reinstatement of an expired license. However, the following language regarding inactive status is provided for reference:

- (a) Any Licensee who is in good standing with the Board and who has ceased the practice of Veterinary Medicine or Veterinary Technology may apply for inactive status. The Board, at its discretion, may place the Licensee on an inactive list and thereafter the inactive Licensee shall not practice Veterinary Medicine or Veterinary Technology, nor be required to pay the annual license renewal fee or required to earn Continuing Education credits.
- (b) Any inactive Licensee who desires to be reinstated or to resume the practice of Veterinary Medicine or Veterinary Technology may be reinstated at the discretion of the Board upon application and the determination that the inactive Licensee has paid the required license renewal fee for the current year in which the application is filed; and that the Licensee earned the required Continuing Education credits in an appropriate timeframe as determined by the Board.

**Section 311. Requirements for Reinstatement of an Expired License.**

- (a) The Board shall promulgate rules for reinstatement of an expired license for failure to renew within X amount of time.

## Commentary

**Section 311(a). Requirements for Reinstatement of an Expired License.**

The term “expire” is used in this model. Some Jurisdictions use the term “lapse”. In the interest of furthering greater consistency and understanding of terms, the AAVSB recommends the use of “expire” when referring to the status of a license that is not renewed by the required date.

The AAVSB believes that Boards should establish time limits for Licensees to renew their licenses. Recommendations include:

- a) 120 days allowed for lateness if all other renewal requirements have been met and possible late fees have been paid,
- b) 2 years allowed if Applicant fees, CE requirements, and other renewal requirements have been met.

**Section 312. Source of Data.**

In making determinations under this Article III and to promote uniformity and administrative efficiencies, the Board shall be authorized to rely upon the expertise of and verified data gathered and stored by not for profit organizations that share in the public protection mission of this Board including the American Association of Veterinary State Boards (AAVSB).

## Article IV. Discipline.

### Commentary

#### Introductory Comment to Article IV.

The enforcement power of the Boards is at the very heart of any practice act. To fulfill its responsibilities, the Board must have authority to discipline Persons or Licensees who violate the Act or its rules, including the ability to prohibit these Persons from continuing to harm the public. The Board must be able to stop wrongdoers, discipline them, and where appropriate, guide and assist them in continued competence and/or re-education and rehabilitation.

This Act's disciplinary provisions were drafted with the purpose of granting the Board the widest possible scope within which to perform its disciplinary functions. The grounds for disciplinary actions were developed to ensure protection of the public while giving Boards the power to expand or adapt them to changing conditions. The penalties outlined under the Act give the Board the flexibility to tailor disciplinary actions to individual offenses.

#### Section 401. Grounds, Penalties, and Reinstatement.

- (a) The Board may refuse to issue or renew, or take any action deemed appropriate including suspend, revoke, reprimand, restrict or limit the license or registration of or assess costs or fine any Person or Veterinary Facility, whether or not licensed, pursuant to the Administrative Procedures Act or the procedures set forth in Section 402 herein below, upon one or more of the following grounds:
- (1) Unprofessional conduct as determined by the Board;
  - (2) Practicing Veterinary Medicine or Veterinary Technology outside the scope of practice authorized by this Act;
  - (3) Conduct that violates any of the provisions of this Act or rules adopted pursuant to this Act, including the failure to cooperate with the Board in the inspection or investigative process within a reasonable time period;
  - (4) Incapacity or impairment that prevents a Licensee from practicing Veterinary Medicine or Veterinary Technology with reasonable skill, competence, and safety to the public;
  - (5) Conviction of a Felony (as defined under Jurisdictional or federal law);
  - (6) Any act involving moral turpitude or immorality;
  - (7) Violations of any law, rule or regulation applicable to the practice of Veterinary Medicine or Veterinary Technology;

- (8) Failure to provide medical records in a timely fashion upon proper request by the Client, law enforcement, the Board or other regulatory agency;
- (9) Unauthorized disclosure of confidential information;
- (10) Being found by the Board or any court of competent jurisdiction to have engaged in acts of cruelty or abuse of Animals;
- (11) Misrepresentation of a fact by an Applicant or Licensee;
  - (a) In securing or attempting to secure the issuance or renewal of a license;
  - (b) In statements regarding the Licensee's skills or value of any treatment provided or to be provided or using any false, fraudulent, or deceptive statement connected with the practice of Veterinary Medicine or Veterinary Technology including, but not limited to, false or misleading advertising;
- (12) Fraud by a Licensee in connection with the practice of Veterinary Medicine or Veterinary Technology including engaging in improper or fraudulent billing practices;
- (13) Engaging in, or aiding and abetting any individual engaging in the practice of Veterinary Medicine or Veterinary Technology without a license, or falsely using the title of Veterinarian, or Veterinary Technician or a derivative thereof;
- (14) Failing to conform to currently accepted standards of practice;
- (15) Failing to maintain a Veterinary Facility at accepted minimum standards as defined by Board rules;
- (16) Failing to pay the costs assessed in a disciplinary matter or failing to comply with any stipulation or agreement involving probation or settlement of any disciplinary matter with the Board or with any order entered by the Board;
- (17) Conduct which violates the security of any licensure Examination, including, but not limited to:
  - (a) Removing from the Examination room any Examination materials without authorization;
  - (b) Unauthorized reproduction by any means of any portion of the actual Examination;
  - (c) Aiding by any means the unauthorized reproduction of any portion of the actual Examination;
  - (d) Paying or using professional or paid examination-takers for the purpose of taking or reconstructing any portion of the Examination;

- (e) obtaining Examination questions or other Examination material, except by specific authorization either before, during or after an Examination;
  - (f) using any Examination questions or materials that were improperly removed or taken from any Examination; or
  - (g) selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered Examination;
    - (i) Communicating with any other examinee during the administration of an Examination;
    - (ii) Copying answers from another examinee or permitting one's answers to be copied by another examinee;
    - (iii) Having in one's possession during the administration of the Examination any books, equipment (e.g., cell phones, tablets, computers, cameras or other electronic devices), notes, written or printed materials, or data of any kind, other than the Examination materials distributed, or otherwise authorized to be in one's possession during the Examination; or
    - (iv) Impersonating any examinee or having an impersonator take the Examination on one's behalf;
  - (18) Failure of a Licensee or Applicant to report to the Board any information as required under Article VI of this Act; and
  - (19) Being the subject of a disciplinary action, revocation, suspension, or surrender of a Veterinarian or Veterinary Technician license or Veterinary Facility registration or premise permit in another Jurisdiction or country, including the failure to report such adverse action to the Board.
- (b) The Board may defer action with regard to an impaired Licensee who voluntarily signs an agreement, in a form satisfactory to the Board, to enter an approved treatment and monitoring program in accordance with rules duly promulgated by the Board, provided that this Section shall not apply to a Licensee who has been convicted of, pleads guilty to, or enters a plea of nolo contendere to a Felony or a Conviction relating to a controlled substance in a court of law of the United States or any other Jurisdictions, territory, or country, or a Conviction related to sexual misconduct.

- (c) Subject to an order duly entered by the Board, any Licensee whose license has been suspended or restricted pursuant to this Act, whether voluntarily or by action of the Board, shall have the right, at reasonable intervals as determined by the Board, to petition the Board for reinstatement of such license. Such petition shall be made in a form approved by the Board. Upon investigation and hearing, the Board may, at its discretion, grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications. The Board, also at its discretion, may require such individual to pass an Examination(s), complete Board imposed Continuing Education requirements, or any other sanctions deemed appropriate by the Board for reentry into practice.
- (d) The Board may issue a cease and desist order to stop any Person from engaging in unauthorized practice or violating or threatening to violate a statute, rule, or order that the Board has issued or is empowered to enforce. The cease and desist order must state the reason for its issuance and give notice of the Person's right to request a hearing under applicable procedures as set forth in the Administrative Procedures Act. Nothing herein shall be construed as barring criminal prosecutions for violations of this Act.
- (e) All final decisions by the Board shall be subject to judicial review pursuant to the Administrative Procedures Act.
- (f) Any Veterinarian or Veterinary Technician whose license is revoked, suspended, or not renewed shall return such license to the offices of the Board within X days after notice of such action.
- (g) The Board is authorized to make public as much disciplinary information about Licensees as the law allows.

#### Commentary

##### **Section 401. Grounds, Penalties, and Reinstatement.**

Under this section, Boards are granted authority over both Licensees and Applicants. General powers are phrased in such a way as to allow the Board a wide range of actions, including the refusal to issue or renew a license, and the use of license restrictions or limitations. Similarly, the penalties outlined in this section give the Board wide latitude to make the disciplinary action fit the offense. Please refer to the Board powers of Section 213 for additional authority. Any "reasonable intervals," such as in 401(c), would be determined by the Board.

The AAVSB recommends that Boards develop clear policies regarding the reporting of disciplinary actions taken against Licensees, subject to confidentiality and to the applicable laws of the Jurisdictions. It is strongly recommended that Boards make public as much disciplinary action information as Jurisdiction law allows, and that all Boards participate in the AAVSB Veterinarian Information Verification Agency (VIVA), a national databank that allows Boards to review veterinary licensure candidates for past disciplinary actions from other Jurisdictions

## Commentary

**Section 401. Grounds, Penalties, and Reinstatement. (continued)****Section 401(a). Grounds, Penalties, and Reinstatement.**

This section must be examined in light of other applicable laws. Some Jurisdictions, for example, restrict the circumstances under which a license may be denied to an individual who has committed a Felony. Additionally, an individual who has been convicted of a Felony or an act of gross immorality and who has paid the debt to society has restored constitutional protections. These protections may curtail a strict application of Section 401(a) to this individual.

These potential issues make it essential for Boards to promulgate rules that make the grounds for disciplinary action specific, understandable, and reasonable. Boards must ensure that these rules are published for the benefit of all Licensees. Taking these steps will assure the Board of the authority to make effective and meaningful disciplinary actions that will not be overturned by the courts.

**Section 401(a)(1). Grounds, Penalties, and Reinstatement.**

Boards must be specific when defining the grounds for revoking or suspending a license. The term “unprofessional conduct” is particularly susceptible to judicial challenge for being unconstitutionally vague. Each offense included in this term must be capable of being understood with reasonable precision by the Persons regulated. If this standard is met, the Licensees will be able to conform their professional conduct accordingly, and Boards will be able to readily enforce this provision and rely upon it during disciplinary proceedings. Other terms sometimes used in statutes include unethical, immoral, improper or dishonorable conduct. Generally, courts have recognized as appropriate the use of unprofessional conduct when challenged legally. See Chastev v. Anderson, 416 N.E.2d 247 (Ill.1981); Stephens v. Penn. State Bd. of Nursing, 657 A.2d 71 (Pa. 1995).

**Section 401(a)(3). Grounds, Penalties and Reinstatement.**

This subsection allows the Board to take disciplinary action against a Person for violation of any portion of this Act or Board rules. While not specifically enumerated in this subsection, many activities, such as failure to report under the mandatory reporting provisions in Article VI constitutes actionable conduct.

**Section 401(a)(4). Grounds, Penalties and Reinstatement.**

[See also Comment to Section 401(b) regarding participation in an impairment program.] This section does not identify specific impairments to allow for broad application and the potential for expansion. It is intended to cover incapacity and impairments due to drug and alcohol abuse, mental and physical health conditions, in addition to other disabilities as defined by the Americans with Disabilities Act Amendments Act of 2008 (ADAAA). Board action must be based on the protection of the public, the goal of the practice act. The ADAAA is designed to provide opportunities to otherwise qualified individuals with disabilities. It does not mandate licensure where public protection might be compromised. Boards are encouraged to seek legal advice on this matter.

**Section 401(a)(5). Grounds, Penalties and Reinstatement.**

Boards must also be aware of how the definition of “Felony” may impact its action See Rothstein v. Dept. of Professional and Occupational Regulation, 397 So.2d 305 (App. Ct. Fla. 1981), where the Florida Felony definition differed from the federal definition.

## Commentary

**Section 401. Grounds, Penalties, and Reinstatement. (continued)****Section 401(a)(14). Grounds, Penalties, and Reinstatement.**

Veterinary Boards are encouraged to adopt specific standards of practice and codes of conduct into the rules/regulations to provide Licensees with reasonable guidance as to acceptable practice activities. Failure to adopt such standards may impede the Board from enforcement should a Licensee be accused of substandard practice. Reliance on standards adopted by an outside entity such as the professional association, without formal adoption by the Board may encourage improper delegation arguments as well as a failure to provide Licensees with the appropriate parameters of acceptable practice. This, of course, does not preclude the Board from formally adopting the standards that may already be in existence within these other associations.

**Section 401(b). Grounds, Penalties and Reinstatement.**

This section addresses the impaired Licensee and outlines the Board's flexibility when dealing with such Licensee through investigations and disciplinary actions.

Veterinary Boards may wish to consider the following for rules/regulations relative to the impaired Licensee to specify the contractual expectations of Licensees requesting participation in the program:

- (1) A Licensee who is physically or mentally impaired due to addiction to drugs or alcohol may qualify as impaired and have disciplinary action deferred and ultimately waived only if the Board is satisfied that such action will not endanger the public and the Licensee enters into an agreement with the Board for a treatment and monitoring plan approved by the Board, progresses satisfactorily in such treatment and monitoring program, complies with all terms of the agreement and all other applicable terms of subsection (b)
- (2) Failure to enter such agreement or to comply with the terms and make satisfactory progress in the treatment and monitoring program shall disqualify the Licensee from the provisions of this Section and the Board may activate an immediate investigation and disciplinary proceedings. Upon completion of the rehabilitation program in accordance with the agreement signed by the Board, the Licensee may apply for permission to resume practice upon such conditions as the Board determines necessary.
- (3) The Board may require a Licensee to enter into an agreement that includes, but is not limited to, the following provisions:
  - (i) Licensee agrees that the license may be suspended or revoked under Section (1);
  - (ii) Licensee will enroll in a treatment and monitoring program approved by the Board;
  - (iii) Licensee agrees that failure to satisfactorily progress in such treatment and monitoring program shall be reported to the Board by the treating professional who shall be immune from any liability for such reporting made in good faith; and
  - (iv) Licensee consents to the release of treatment and monitoring reports to the Board. The Board shall determine the format and intervals of such reports. Any personnel reporting to the Board under this section shall be immune from liability when such reports are made in good faith.



## Commentary

**Section 401(b). Grounds, Penalties, and Reinstatement. (continued)**

- (4) The ability of an impaired Licensee to practice may be restored and charges dismissed when the Board is satisfied by the reports it has received from the approved treatment program that the Licensee can resume the practice of Veterinary Medicine or Veterinary Technology without danger to the public.
- (5) The impaired Licensee who has enrolled in an approved treatment and monitoring program and entered into an agreement with the Board in accordance with this Act may have the license suspended or revoked but enforcement of this suspension or revocation shall be stayed for the length of time the Licensee remains in the program and makes satisfactory progress, complies with the terms of the agreement, and adheres to any limitations on the practice of Veterinary Medicine or Veterinary Technology imposed by the Board to protect the public. Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment and monitoring program shall disqualify the Licensee from the provisions of this Section and the Board shall activate an immediate investigation and disciplinary proceedings.
- (6) Any Licensee who has reasonable knowledge that another Licensee has an active addictive disease that affects their ability to practice, is diverting a controlled substance, or is mentally or physically incompetent to carry out the duties of the license, shall report it to the Board. Any Licensee who reports pursuant to this Section in good faith and without malice shall be immune from any liability arising from such reports. Failure to provide such a report within a reasonable time from receipt of knowledge may be considered grounds for disciplinary action against the Licensee so failing to report.

The AAVSB encourages Boards to explore options for the effective monitoring of impaired Licensees. Once the Board has identified an impaired Licensee, there are many resources available to Boards that can assist in the monitoring and rehabilitation process.

It is the intention of the AAVSB that the regulatory language of “treating professional” under section (3)(iii) above shall include supervisors and others involved in the treatment and monitoring program. Readers may also refer to Section 605, Immunity, within the Act.

**Section 401(c). Grounds, Penalties and Reinstatement.**

A Licensee who is under investigation, or who has been charged with a violation of the Veterinary Medicine and Veterinary Technology Practice Act may agree to voluntarily surrender his or her license. When this occurs, the Board should formally enter stipulated findings and an order describing the terms and conditions of the surrender, including any agreed-upon time limits. This important step establishes statutory grounds that will support any disciplinary action and prevents a Licensee who has surrendered a license from applying for (or receiving) reinstatement within a time frame unacceptable to the Board. In the case of a Veterinarian, final adverse action by the Board also triggers a report to the AAVSB Veterinary Information Verification Agency (VIVA) to inform other Jurisdictions of the sanction.

## Commentary

**Section 401(c). Grounds, Penalties, and Reinstatement. (continued)**

The AAVSB encourages Boards to review local law regarding disciplinary sanctions, and distinguish between revocation, suspension, and rights and conditions of reinstatement. See [Flanzer v. Board of Dental Examiners](#), 271 Cal.Rptr. 583 (1990) (Board empowered to impose conditions of reinstatement); [Jones v. Alabama State Board of Pharmacy](#), 624 So.2nd 613 (Ala. App.Ct. 1993) (revoked license carries no right of reinstatement); and [Roy v. Medical Board of Ohio](#), 655 N.E.2d (Ohio App.Ct.1995) (authority to revoke a license to practice includes the authority to revoke permanently).

The AAVSB also recognizes the importance of appropriately drafted Board orders that include at least the following: findings of fact, conclusions of law, sanctions, reinstatement rights (if any) and notice of publication (newsletter, website, etc.). It is imperative that Board orders contain such specificity in order to provide enough information to the disciplined Licensee, current Board, as well as future Board members, as to the licensure status and/or eligibility for re-licensure of the individual.

**Section 401(g). Grounds, Penalties and Reinstatement.**

See the Introductory comment in Section 401 regarding the disclosure of disciplinary actions to the public.

**Section 402. Summary Suspension.**

Notwithstanding provisions of any applicable law, the Board may, without a hearing, temporarily suspend a license or Veterinary Facility registration for not more than X days if the Board finds that a Licensee or Veterinary Facility is in violation of a law or rule that the Board is empowered to enforce, and if continued practice by the Licensee or operation of the Veterinary Facility would create an imminent risk of harm to the public or an Animal. The suspension shall take effect upon written notice to the Licensee specifying the law violated. At the time it issues the suspension notice, the Board shall schedule a disciplinary hearing to be held under the Administrative Procedures Act within X days thereafter. The Licensee shall be provided with at least X days' notice effective from the date of issuance of any hearing held under this subsection.

## Commentary

**Section 402. Summary Suspension.**

In many Jurisdictions, an Administrative Procedures Act determines the procedures that must be followed before disciplinary action can be taken. The Practice Act Model was drafted on the assumption that an Administrative Procedures Act is in effect.

Summary suspension as defined in this section describes an action that can be taken against a Licensee. Jurisdictions that permit the ownership or registration of veterinary practice by non-veterinarians are advised to develop separate language that enables them to enact the summary suspension of a Veterinary Facility registration, permit or license.

## Article V. Medical Records and Confidentiality.

### Commentary

#### Introductory Comment to Article V.

This Article is intended to establish the need for complete and accurate medical records. Incomplete or inaccurate medical records are among the most common grounds for disciplinary action by regulatory boards. This Article also addresses confidentiality requirements for Licensees, based on the professional relationship between practitioner and Client. Although “confidentiality” and “privileged communication” are related terms, there are important differences between the two concepts. “Confidentiality” is a broad term, and describes the intention that information exchanged between a Licensee and a Client is to be maintained in secrecy, and not disclosed to outside parties. “Privileged communication” is a narrower term that describes the legal relationship between Licensee and Client when a law mandates confidentiality.

#### Section 501. Medical Records.

- (a) Each Veterinarian who provides veterinary medical services shall maintain accurate electronic or legibly written medical records that include the identity of the Veterinarian or authorized representative who makes the entry.
- (b) Veterinary medical records are the property of the veterinary practice where they were prepared.
- (c) All records required by law to be kept by a Veterinarian shall be open to inspection by the Board or its authorized representatives during a routine inspection or investigation of a complaint, and a copy provided immediately upon request.
- (d) Veterinary medical records must be safeguarded against loss, tampering or use by unauthorized Persons, readily available, and contain sufficient information to permit any authorized veterinarian to proceed with the care and treatment of the Patient by reading the medical record. They must include, but are not limited to the following information:
  - (1) Patient identification;
  - (2) Client identification;
  - (3) A record of every encounter and Consultation regarding the Patient;
  - (4) All written records and notes, radiographs, sonographic images, video recordings, photographs or other imaging and laboratory reports;
  - (5) Any information received as the result of a Consultation, including the date, name and contact information of the consultant; or

- (6) Any authorizations, details of conversations, releases, waivers, Patient discharge instructions or other related documents.
- (e) The Client is entitled to a copy of the veterinary medical records.
- (1) Original Patient records must be retained by the veterinary practice or Veterinarian who prepared them and be readily retrievable for a period of X years following the last Patient encounter.
  - (2) The Veterinarian may require that the request be in writing and may charge a reasonable fee for copying the requested veterinary medical record.
  - (3) Copies of the record should be provided to the Client, designated Veterinarian or duly authorized representative within X days after receipt of a proper request, or sooner in accordance with the Patient's medical condition.
  - (4) Failure to provide the medical records in a timely fashion upon proper request shall be considered unprofessional conduct.
- (f) A Patient's veterinary medical record and medical condition is confidential and may not be furnished to or discussed with any Person other than the Client or other veterinarians involved in the care or treatment of the Patient, except upon authorization of the Client or as below.
- (1) A Patient's veterinary medical records and information about the medical condition may be furnished without Client authorization under the following circumstances:
    - (i) Access to the records is specifically required by law.
    - (ii) In response to a court order, or subpoena and notice to the Client or the Client's legal representative.
    - (iii) For statistical and scientific research, if the information is abstracted in a way as to protect the identity of the Patient and the Client.
    - (iv) As part of an inspection or investigation conducted by the Board or an agent of the Board.
    - (v) As part of a formal verbal or written request from a regulatory, or public health authority.
    - (vi) To verify a rabies vaccination of an Animal; or (b) to investigate a threat to human or Animal health, (c) for the protection of individual Animal, human or public health and welfare.
    - (vii) As a part of an Animal cruelty report or an abuse investigation by a law enforcement or duly appointed animal welfare or governmental agency.

- (viii) As part of a criminal investigation by a law enforcement agency.
  - (ix) When the Client cannot be reached to obtain authorization to release the records to another Veterinarian in a medical emergency.
  - (x) In the course of a Consultation as defined in Article I section 104 (k).
- (g) A Veterinarian shall not, with fraudulent intent, create a false record, make a false statement, alter or modify any medical record, document, or report concerning treatment of a Patient. When correcting a medical record, the original content should be readable, and the alteration must be clearly identified with the reason, date and author's name.

#### Commentary

##### **Section 501(d)(3). Medical Records.**

Encounters with the Patient include in person visits, telephone conversations or any telehealth interactions between the Veterinarian and the Client.

##### **Section 501(e). Medical Records.**

The dispensing of veterinary prescription drugs or controlled substances requires that, the records must be maintained in accordance with applicable laws.

##### **Section 501(f)(1)(ix). Medical Records.**

The Jurisdiction should determine which agencies or Persons in their Jurisdiction should be authorized to release medical records information without Client authorization.

#### **Section 502. Confidential Information and Exceptions.**

- (a) No Licensee shall disclose any information acquired from Persons consulting the Licensee in a professional capacity, except that which may be disclosed under the provisions of Section 501 (f) and the following circumstances:
- (1) In the course of formally reporting, conferring or consulting with colleagues or consultants, in which instance all recipients of such information are similarly bound to regard the information as confidential;
  - (2) With the consent of the Client;
  - (3) In case of death or disability of the Client, with the consent of a personal representative or other authorized Person;

- (4) When a communication reveals the commission of, or intended commission of a crime or harmful act or Animal abuse and such disclosure is judged necessary by the Licensee to protect any Person or Animal from a clear, imminent risk of mental or physical harm or injury, or to forestall a threat to public safety; or
  - (5) When the Person waives the confidentiality by bringing any public charges against the Licensee.
- (b) Any Person having access to Patient medical records, or anyone who participates in providing veterinary medical services or who is supervised by a Veterinarian is similarly bound to regard all information and communications as confidential in accordance with the section.

Commentary

**Section 502(a)(2). Confidential Information and Exceptions.**

The AAVSB encourages written consent where available or deemed appropriate by the Veterinarian.

## Article VI. Mandatory Reporting.

### Commentary

#### Introductory Comments to Article VI.

Licensees are in a unique position to know of and evaluate the conduct of other Licensees. This section establishes a Licensee's legal responsibility to report activities that may be harmful to Clients, Animals or the public, including incompetence, negligence and unethical practice.

Recently, consumer groups and others have voiced concerns that health care professionals often protect each other either through remaining silent when made aware of substandard practice, or through outright denial of this substandard practice to the detriment of the public. This perception undermines the public's confidence in professional regulation. The inclusion of mandatory reporting provisions provides assurance that professional "protection" that puts the public at risk is itself a violation of the practice act.

While it may not be mandated by law and may not fall within the authority of the Board, it is hoped that professional association, courts, and other entities will report relevant information or conduct to the Board.

#### Section 601. Responsibility to Report.

- (a) A Licensee or Applicant who has knowledge of any conduct by a Licensee or Applicant that may constitute grounds for disciplinary action under this Act or the rules of the Board, or of any unlicensed practice of Veterinary Medicine or Veterinary Technology under this Act, shall report the violation to the Board.
- (b) Failure of a Licensee or Applicant to report to the Board any information as required in this section 601 shall constitute grounds for discipline by the Board.



**Section 602. Courts.**

The administrator of any court of competent jurisdiction shall report to the Board any determination that a Licensee or Applicant is mentally ill, mentally incompetent, guilty of a Felony, guilty of a violation of any controlled substances laws, or guilty of any crime reasonably related to the practice of Veterinary Medicine or Veterinary Technology. Furthermore, the administrator shall report to the Board any appointment of a guardian to, or involuntary commitment of a Licensee or Applicant to a mental health facility pursuant to applicable law.

## Commentary

**Section 602. Courts.**

While it is unlikely that the Board has jurisdiction over the courts, and thus may not legally enforce this section, it is hoped that courts will report relevant disciplinary actions to the Board.

**Section 603. Self-Reporting.**

A Licensee or Applicant shall report to the Board any personal action that would require a report be filed pursuant to this Article VI.

**Section 604. Deadlines, Forms.**

Reports required by this Article VI must be submitted not later than X days after the occurrence of the reportable event or transaction. The Board may provide forms for the submission of reports, may require that reports be submitted on the forms provided, and may adopt rules necessary to assure prompt and accurate reporting.

## Commentary

**Section 604. Deadlines, Forms.**

The AAVSB recommends that reports be submitted no later than 30 days after the occurrence of the reportable event.

**Section 605. Immunity.**

Except for self-reporting a Person is immune from any liability or prosecution for submitting in good faith a report under Article VI, or for otherwise reporting, providing information, or testifying about violations or alleged violations of this Act.

## Article VII. Other.

### Section 701. Severability.

If any provision of this Act is declared unconstitutional or illegal, or the applicability of this Act to any Person or circumstance is held invalid by a court of competent jurisdiction, the constitutionality or legality of the remaining provisions of this Act and the application of this Act to other Persons and circumstances shall not be affected and shall remain in full force and effect without the invalid provision or application.

### Section 702. Effective Date.

This Act shall be in full force and effect on [insert date].