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Proposed Regulation Agency Background Document

Agency name	Board of Veterinary Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC150-20
Regulation title(s)	Regulations Governing the Practice of Veterinary Medicine
Action title	Definition of specialist and use of the term
Date this document prepared	7/21/15

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The proposed regulatory action is in response to a Petition for Rulemaking from Mark Finkler, DVM, who requested that a definition of “specialist” be added to 18VAC150-20-10 and that it be considered unprofessional conduct to identify oneself as a specialist without the possessing the proper credentials.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

DVM = Doctor of Veterinary Medicine

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Chapter 24 of Title 54.1 establishes the general powers and duties of health regulatory boards, including the Board of Veterinary Medicine, the responsibility to promulgate regulations:

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title...

In the Veterinary Practice Act, the Board is granted authority to take disciplinary action based on a finding of unprofessional conduct as defined by regulation.

§ 54.1-3807. Refusal to grant and to renew; revocation and suspension of licenses and registrations.

5. Is guilty of unprofessional conduct as defined by regulations of the Board;

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose is to prevent misrepresentation to the public in the use of the term “specialist” or “specialty” for an individual licensee or in the name of an establishment. The proposed action will protect consumers who may choose veterinary care based on a claim by the veterinarian or the establishment of being a “specialist” or having a “specialty” when in fact there is no justification for such a claim. By defining the term “specialist”, the Board can assure that those who advertise or represent themselves as such have met the requirements of the American Board of Veterinary Specialties of the American Veterinary Medical Association for board certification. Misrepresentation or fraudulent advertising is already a cause for a finding of unprofessional conduct; this proposed regulation expands on the intent of the current regulation, which is to

protect the health, welfare and safety of animals that come under the care of a veterinarian or veterinary establishment.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

The Board has amended section 10 to define a specialist as *a veterinarian who has completed the requirements to become a Diplomate of a specialty organization recognized by the American Board of Veterinary Specialties of the American Veterinary Medical Association, or any other organization approved by the board.* It has also amended section 140 on unprofessional conduct to provide that: *Representing oneself as a "specialist" without meeting the definition set forth in 18VAC150-20-10 or using the words "specialist" or "specialty" in the name of a veterinary establishment unless there is a veterinarian on staff who meets the definition of a "specialist."*

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

- 1) The primary advantage to the public is assurance that specialty care by a veterinarian is being provided by someone who has obtained such designation by a recognized specialty board or organization. This is public protection for the consumer. There are no disadvantages to the public;
- 2) There are no advantages and disadvantages to the agency or the Commonwealth; and
- 3) There are no other pertinent matters of interest to the regulated community, government officials, and the public.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Board of Veterinary Medicine is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail to Elaine Yeatts at Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233 or elaine.yeatts@dhp.virginia.gov or by fax to (804) 527-4434. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur no additional costs for mailings to the Public Participation Guidelines mailing lists,</p>
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	conducting a public hearing, and sending notice of final regulations to regulated entities. Since most mailings to the PPG list are handled electronically, there is very little cost involved. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There are no on-going expenditures.
Projected cost of the new regulations or changes to existing regulations on localities.	None
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	Any veterinarian or veterinary establishment that is currently advertising as a specialist or a specialty practice that does not, in fact, have such specialty designation will have to discontinue such advertising.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There is no estimate of the number who may be affected.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	There are no projected costs; the amended regulation enables qualified veterinarians and veterinary establishments to correctly advertise their services to the public.
Beneficial impact the regulation is designed to produce.	The beneficial impact will be clarity in the use of "specialist" in veterinary practice, just as it is in human medicine and dentistry.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Since 1996, the Board has had a guidance document (150-7) on the use of the term "specialist" in general for use in the name of an animal facility. The document says that if a facility is using the name "specialist" or "specialty" in its name and has no Board certified specialist on staff, the Board interprets this to be false and misleading advertising and a subjective claim of superiority. While this is guidance, it is not enforceable and cannot be cited in a disciplinary case.

To achieve the goal of protecting the public from misleading advertising and representations by veterinarians who are not board-certified, there are no alternatives to amending regulations which are enforceable by the Board.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no alternative regulatory methods, such as reporting requirements or performance standards.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

There were no comments on the NOIRA; comments on the petition were supportive of the regulatory action.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact on the family.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation.

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10	Sets out definitions for words and terms used in the regulation	<p>The proposed change is a definition for the word “specialist” as a veterinarian who has completed the requirements to become a Diplomate of a specialty organization recognized by the American Board of Veterinary Specialties of the American Veterinary Medical Association, or any other organization approved by the board.</p> <p><i>The definition identifies the specialty organizations recognized by the profession but also granted the Board the authority to approve other such organizations should it be determined that they have credibility and meet professional standards.</i></p>
140	Sets out the actions that may be cited in a case of unprofessional conduct	<p>The proposed change adds as grounds for a finding of unprofessional conduct resulting in disciplinary action by the Board: <i>Representing oneself as a “specialist” without meeting the definition set forth in 18VAC150-20-10 or using the words “specialist” or “specialty” in the name of a veterinary establishment unless there is a veterinarian on staff who meets the definition of a “specialist.”</i></p> <p><i>Currently Medicine and Dentistry have similar provisions in regulation:</i></p> <p><i>Dentistry regulations state:</i></p> <p>F. The following practices shall constitute false, deceptive, or misleading advertising within the meaning of §54.1-2706 (7) of the Code of Virginia:...</p> <p>4. Publishing an advertisement which contains a claim of professional superiority, claims to be a specialist, or uses any of the terms to designate a dental specialty unless he is entitled to such specialty designation under the guidelines or requirements for specialties approved by the American Dental Association (Requirements for Recognition of Dental Specialties and National Certifying Boards for Dental Specialists, October 1995), or such guidelines or requirements as subsequently amended and approved by the dental disciplinary board, or other such organization recognized by the board; and...</p> <p><i>Medicine regulations state:</i></p> <p>D. A licensee shall disclose the complete name of the specialty board which conferred the certification when using or authorizing the use of the term “board certified” or any similar words or phrase calculated to convey the same meaning in any advertising for his practice.</p>

		<p>The Virginia Veterinary Medical Association petitioned the Board for similar protection for consumers of veterinary medicine, and the Board concurred that the restriction on use of the term was necessary.</p>
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