



townhall.virginia.gov

Notice of Intended Regulatory Action (NOIRA) 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	3/4/15

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*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

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

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code

of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency'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 describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of the proposed action is to 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 Veterinary Medical Association or American Board of Veterinary Specialists 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 that are being considered, the substantive changes to existing sections that are being considered, or both.

The Board will consider amendments to 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 Veterinary Medical Association, the American Board of Veterinary Specialists, or any other organization approved by the board. It will also consider an amendment to 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.”

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 in 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.

Public participation

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or at elaine.yeatts@dhp.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action 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 (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

The regulatory committee of the Board will serve as the panel to develop proposed regulations; there will not be an ad hoc committee appointed.