



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Veterinary Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC150-20-10 et seq.
Regulation title	Regulations Governing the Practice of Veterinary Medicine
Action title	Changes to equine dentistry requirements
Document preparation date	11/30/07

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Board's intent is to modify or clarify its regulations for the qualifications leading to registration of equine dental technicians and scope of practice for such registrants. The goal of the amended regulation is to address comments that were received on the fast-track regulations that became effective November 29, 2007. Fast-track regulations were promulgated to expedite the registration of equine dental technicians since the law that became effective July 1, 2007 specified that it was unlawful for anyone other than a registered equine dental technician or a licensed veterinarian to plane or level equine teeth. Since the statutory provisions for stopping a fast-track action were not met, the Board voted on November 13, 2007 to proceed with the fast-track regulation, to allow registration of equine dental technicians to begin and to address some of the comments by publication of a NOIRA.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Chapter 24 of Title 54.1 establishes the general powers and duties of the Board of Veterinary Medicine including the authority to establish qualifications for registration, levy fees and promulgate regulations.

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

- 1. To establish the qualifications for registration, certification, licensure or the issuance of a multistate licensure privilege in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify, license or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 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...*

Chapter 38 of Title 54.1 establishes the requirement for registration of equine dental technicians, their scope of practice and the mandate for the Board to promulgate regulations:

§ 54.1-3813. Registration of equine dental technicians.

A. As used in this section, "equine dental technician" means an individual who satisfies the criteria established by the Board for registration to perform duties relating to the care and maintenance of equine teeth in accordance with this section and regulations promulgated by the Board. A licensed veterinary technician shall practice in accordance with the requirements of § 54.1-3806 and regulations of the Board governing the practice of licensed veterinary technicians.

B. The Board may register a person as an equine dental technician who meets the following criteria: (i) satisfactory evidence that he is of good moral character, (ii) recommendations from at least two licensed veterinarians with practice bases that are at least 50 percent equine, and (iii) evidence that he holds current certification from the International Association of Equine Dentistry or a Board-approved certification program or has satisfactorily completed a Board-approved training program. The Board may register individuals who have not completed a Board-approved training program or do not hold a current certification from the International Association of Equine Dentistry or a Board-approved certification program if they have engaged in acts considered to be those of an equine dental technician as set forth in subsections C and D of this section for at least five years and provide the following: (i)

satisfactory evidence of length of time of practice, (ii) recommendations from at least two licensed veterinarians with practice bases that are at least 50 percent equine, and (iii) proof of continued competency satisfactory to the Board.

C. It shall be unlawful for any person not holding a current and valid registration as an equine dental technician or a current and valid license as a veterinarian to perform the following duties:

- 1. The planing or leveling of equine teeth using nonmotorized hand tools for routine dental maintenance;*
 - 2. The planing or leveling of equine teeth using motorized tools performed for routine dental maintenance, or the extraction of wolf teeth premolars including premolars 105, 205, 305 and 405, performed under the direct supervision of a licensed veterinarian where (a) there exists an established client-patient relationship between the veterinarian and the owner, (b) the veterinarian is present, and (c) the veterinarian remains responsible for the sedation of the animal; and*
 - 3. Any other task restricted pursuant to regulations promulgated by the Board.*
- Notwithstanding the foregoing, no equine dental technician shall administer any sedative, tranquilizer, analgesic, prescription medication, or other drug under any circumstances.*

D. The Board shall promulgate regulations in order to carry out the provisions of this section, which shall include (i) criteria and fees for application and renewal; (ii) requirements for evidence of continued competency for equine dental technicians; and (iii) standards to ensure the health, safety, and welfare of animals treated by equine dental technicians.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

In the promulgation of amended regulations for the registration of equine dental technicians, the Board will consider requests from organizations that commented on the fast-track regulation that became effective on November 30, 2007. Changes that were recommended include:

In 220 B, veterinary technicians whose educational program included equine dentistry would be qualified for registration as equine dental technicians (EDT) if they also meet other requirements. The commenters requested an amendment that would specify that the veterinary technician program include “comprehensive instruction in both theory and the practical skills of equine dentistry in the curriculum equivalent to other board-approved EDT training programs.” While the Board will consider more specificity in the criteria for registration, it would be problematic to require equivalency to board-approved EDT training programs, since there are no board-approved programs.

In 220 B, there is a provision for board approval of EDT training programs, but there are no criteria or procedures established for such approval. To address the issue, the commenters recommend a written examination to all applicants to test their knowledge and competency in equine dentistry, but to also test their knowledge of Virginia law, including drug laws and

sedation. The Board will consider the request for a written examination but would be constrained by the high cost of developing a professional and legally-defensible exam. Such cost, which can exceed \$250,000, would have to be incorporated into the costs of examination administration and borne by a small number of applicants. The use of a jurisprudence examination on Virginia law would be less costly, but the Board has eliminated such an exam for other applicants for licensure as veterinary technicians or veterinarians. The Board may consider language similar to current regulations in which the applicant is required to sign a statement attesting that he has read, understands and will abide by the statutes and regulations governing practice in Virginia.

In 240 A, the commenters requested clarification of “routine dental maintenance” with nonmotorized hand tools to include the removal of unrooted molars including deciduous caps.

In 240 B, the commenters requested that equine dental technicians be allowed “chipping or cutting of teeth or the extraction of rooted molars” under the direct supervision of a licensed veterinarian where (a) there exists an established client-patient relationship between the veterinarian and the owner, (b) the veterinarian is present, and (c) the veterinarian remains responsible for the animal for the duration of the procedure. When the Board adopted regulations on the scope of practice for equine dental technicians, it did so with the advice and concurrence of the equine community, and at that time, “cutting or chipping teeth or extraction of rooted teeth” was expressly excluded. However, at the request of the commenters, the Board will consider this expansion of practice.

As with human beings, the health and welfare of horses can be substantially impacted by poor dental health. Therefore, the Board will consider those amendments that are within the law and that may positively affect the quality and availability of equine dentistry in the Commonwealth.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

Comments on the fast-track regulation were received from the Virginia Veterinary Medical Association, the Virginia Equine Dental Technicians Association, the Virginia Association of Equine Practitioners, and Delegate Edward Scott, patron of House Bill 2363 that amended the Code of Virginia to authorize the Board to register equine dental technicians. Comments for the veterinary organizations were virtually identical, and some of those comments were echoed by the Delegate.

First, there was concern expressed that there is no provision in regulation for persons to gain experience in the planing and leveling of equine teeth under the mentorship or supervision of a veterinarian or a equine dental technician. Consequently, it will not be possible for a potential applicant to learn his skills and qualify for certification or experience necessary for registration. The commenters noted that after the effective date of the *regulations*, it will be unlawful for an unregistered person to demonstrate his skills.

While there does appear to be a need for unregistered, unlicensed persons to learn the trade of equine dentistry by hands-on practice, it is not possible for the regulation to make such a provision when it is expressly prohibited by law. Subsection C of § 54.1-3813 states: “*It shall be unlawful for any person not holding a current and valid registration as an equine dental technician or a current and valid license as a veterinarian to perform the following duties:*

1. *The planing or leveling of equine teeth using nonmotorized hand tools for routine dental maintenance;*
2. *The planing or leveling of equine teeth using motorized tools performed for routine dental maintenance, or the extraction of wolf teeth premolars...*

There are no exceptions in the Code of Virginia for persons receiving training or working under the supervision of a registered or licensed persons. Therefore, the Board is unable to address the most problematic aspect of the registration program, unless and until the law is amended by the General Assembly.

Second, there was concern expressed that there is no provision in regulation to allow licensed veterinary technicians to plane or level equine teeth under the direct supervision of the veterinarian who employs the technician.

Prior to the passage of HB2363, the Board of Veterinary Medicine had issued a guidance document stating that the planing and leveling of equine teeth with non-motorized tools was not the practice of veterinary medicine and therefore could be performed by an unlicensed person. With the passage of HB2363, it became unlawful for anyone who was not a registered equine dental technician or a licensed veterinarian to plane or level equine teeth. There are no exceptions provided for persons who are being trained in equine dentistry or for licensed veterinary technicians working under the direct supervision of a licensed veterinarian.

Staff of the Board and the Department of Health Professions has expressed a willingness to provide Del. Scott or any other member of the General Assembly with legislative language that would amend the Code of Virginia and address the primary concerns of the commenters.

Family impact

Assess the potential impact of the proposed 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 potential impact of the proposed regulatory action on the institution of the family and family stability.