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Final 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	2/24/16

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 of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 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.

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On February 16, 2016, the Board of Veterinary Medicine amended 18VAC150-20-10 et seq., Regulations Governing the Practice 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.

Section 10 is amended to define a specialist as a veterinarian who has been awarded and maintained certification by an organization recognized by the American Board of Veterinary Specialties of the American Veterinary Medical Association. Section 140 is amended to specify that it is unprofessional conduct to use the term in your practice or in the name of the veterinary establishment unless there is at least one veterinarian who meets the definition.

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.

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.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
10	Defined a specialist as a veterinarian who had completed the requirements to become a Diplomate	Clarified that the veterinarian has been awarded and has maintained Diplomate status.	Commenters noted that there is a distinct difference between being eligible for Diplomate status and being Board Certified in a specialty, which requires passage of a certifying examination. The intent of the Board is the latter, so the definition was amended to make it clear that you can't call yourself a "specialist" unless you have been awarded that status and have maintained Board certification.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

All comments were received on Town Hall; there were no comments at the Public Hearing conducted on December 2, 2015.

Commenter	Comment	Agency response
Ann Cleland Teresa Bracy, DVM Darnice Pettigrew, DVM Jackie Jones Danielle Russ Jeff Stallings, DVM Stuart Jeffrey, DVM Bernard Flynn, DVM James McDonald, DVM Merrilee Small, Dipl ACVIM Anne Hiss, DVM	Supports the proposed language, but passage of the certifying examination and maintenance of Diplomate status should be included in the definition of "specialist."	The Board concurred with the comments and amended the regulation accordingly.
Susan Wolfe, LVT	Noted that there are 11 academies that recognize veterinary technician specialists; the definition should include them	The Board did not intend to address specialties in veterinary technology because misrepresentation to the public does not currently appear to be problematic.
Craig Reed, DVM	Limitation of term specialist overly restrictive; term "board-certified" already exists.	The term "board-certified" is not currently defined and should be synonymous with the use of the term "specialist."
Tracy Lord	Supports, but no specialty in alternative care	Board appreciates the support.
Heather Smith	Provides a number of websites	Board appreciates the comment.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. 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	The proposed change is a definition for the word "specialist" as a veterinarian who has been awarded and has maintained the status of Diplomate of a specialty organization recognized by the American Board of Veterinary Specialties of the American Veterinary Medical

		<p>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>
<p>140</p>	<p>Sets out the actions that may be cited in a case of unprofessional conduct</p>	<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>