

# VETERINARY LICENSING ACT RECODIFIED

(effective September 1, 2005)



## TITLE 4, PROFESSIONS RELATED TO ANIMAL HEALTH CHAPTER 801 VETERINARIANS OCCUPATIONS CODE

TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

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**September 1, 2005**

**TITLE 4. PROFESSIONS RELATED TO ANIMAL HEALTH  
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**CHAPTER 801. VETERINARIANS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

§ 801.001. SHORT TITLE. This chapter may be cited as the Veterinary Licensing Act. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.002. DEFINITIONS In this chapter:

- (1) "Board" means the State Board of Veterinary Medical Examiners.
- (2) "Compensation" includes a fee, monetary reward, discount, or emolument, whether received directly or indirectly.
- (3) "Direct supervision" means supervision of a person by a responsible veterinarian who is physically present on the premises.
- (4) "General supervision" means supervision of a person by a responsible veterinarian who is readily available to communicate with the person.
- (5) "Practice of veterinary medicine" means:
  - (A) the diagnosis, treatment, correction, change, manipulation, relief, or prevention of animal disease, deformity, defect, injury, or other physical condition, including the prescription or administration of a drug, biologic, anesthetic, apparatus, or other therapeutic or diagnostic substance or technique;
  - (B) the representation of an ability and willingness to perform an act listed in Paragraph (A);
  - (C) the use of a title, a word, or letters to induce the belief that a person is legally authorized and qualified to perform an act listed in Paragraph (A); or
  - (D) the receipt of compensation for performing an act listed in Paragraph (A).
- (6) "Veterinarian" means a person licensed by the board under this chapter to practice veterinary medicine.
- (7) "Veterinary medicine" includes veterinary surgery, reproduction and obstetrics, dentistry, ophthalmology, dermatology, cardiology, and any other discipline or specialty of veterinary medicine. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.003. APPLICATION OF SUNSET ACT The State Board of Veterinary Medical Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2017. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999; Amended by the 79<sup>th</sup> Leg., Eff. 9/1/05

§ 801.004. APPLICATION OF CHAPTER This chapter does not apply to:

- (1) the treatment or care of an animal in any manner by the owner of the animal, an employee of the owner, or a designated caretaker of the animal, unless the ownership, employment, or designation is established with the intent to violate this chapter;
- (2) a person who performs an act prescribed by the board as an accepted livestock management practice, including:
  - (A) castrating a male animal raised for human consumption;
  - (B) docking or ear-marking an animal raised for human consumption;
  - (C) dehorning cattle;
  - (D) aiding in the nonsurgical birth process of a large animal, as defined by board rule;
  - (E) treating an animal for disease prevention with a nonprescription medicine or vaccine;
  - (F) branding or identifying an animal in any manner;
  - (G) artificially inseminating an animal, including training, inseminating, and compensating for services related to artificial insemination; and

- (H) shoeing a horse;
- (3) the performance of a cosmetic or production technique to reduce injury in poultry intended for human consumption;
- (4) the performance of a duty by a veterinarian's employee if:
  - (A) the duty involves food production animals;
  - (B) the duty does not involve diagnosis, prescription, or surgery;
  - (C) the employee is under the direction and general supervision of the veterinarian; and
  - (D) the veterinarian is responsible for the employee's performance;
- (5) the performance of an act by a person who is a full-time student of an accredited college of veterinary medicine or is a foreign graduate of a board-approved equivalent competency program for foreign veterinary graduates and who is participating in a board-approved extern or preceptor program if the act is performed under the direct supervision of a veterinarian employing the person;
- (6) an animal shelter employee who performs euthanasia in the course and scope of the person's employment if the person has successfully completed training offered by the Texas Department of Health under Section 823.004, Health and Safety Code;
- (7) a person who is engaged in a recognized state-federal cooperative disease eradication or control program or an external parasite control program while the person is performing official duties required by the program;
- (8) a person who, without expectation of compensation, provides emergency care in an emergency or disaster; or
- (9) a consultation given to a veterinarian in this state by a person who:
  - (A) resides in another state; and
  - (B) is lawfully qualified to practice veterinary medicine under the laws of that state. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

## **SUBCHAPTER B. STATE BOARD OF VETERINARY MEDICAL EXAMINERS**

§ 801.051. BOARD; MEMBERSHIP (a) The State Board of Veterinary Medical Examiners consists of nine members appointed by the governor with the advice and consent of the senate as follows:

- (1) six veterinarian members; and
  - (2) three members who represent the public.
- (b) The board may include not more than one veterinarian member who is a faculty member of a college of veterinary medicine.
- (c) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.052. MEMBERSHIP ELIGIBILITY (a) A person is eligible for appointment as a veterinarian member of the board if the person:

- (1) has resided and practiced veterinary medicine in this state for the six years preceding the date of appointment;
  - (2) is of good repute; and
  - (3) is not the holder of a special license issued under Section 801.256.
- (b) A person is not eligible for appointment as a public member of the board if the person:
- (1) is licensed by an occupational regulatory agency in the field of health care;
  - (2) is employed by or participates in the management of a business entity or other organization that:
    - (A) provides health care services;
    - (B) sells, manufactures, or distributes health care supplies or equipment; or

- (C) is regulated by or receives funds from the board;
- (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that:
  - (A) provides health care services;
  - (B) sells, manufactures, or distributes health care supplies or equipment; or
  - (C) is regulated by or receives funds from the board; or
- (4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.
- (c) A person is not eligible for appointment as a public member of the board if the person's spouse:
  - (1) is licensed by an occupational regulatory agency in the field of veterinary medicine;
  - (2) is employed by or participates in the management of a business entity or other organization that:
    - (A) provides veterinary health care services;
    - (B) sells, manufactures, or distributes veterinary health care supplies or equipment; or
    - (C) is regulated by or receives funds from the board;
  - (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that:
    - (A) provides veterinary health care services;
    - (B) sells, manufactures, or distributes veterinary health care supplies or equipment; or
    - (C) is regulated by or receives funds from the board; or
  - (4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999; Amended by the 79<sup>th</sup> Leg., Eff. 9/1/05.

§ 801.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

- (b) A person may not be a member of the board and may not be an employee of the board employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:
  - (1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or
  - (2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of veterinary medicine
- (c) A person may not be a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999; Amended by the 79<sup>th</sup> Leg., Eff. 9/1/05.

§ 801.054. TERMS; VACANCY (a) Members of the board are appointed for staggered six-year terms.  
(b) If a vacancy occurs because of the death or resignation of a board member, the governor shall appoint a replacement to fill the unexpired term. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.055. OFFICERS (a) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.  
(b) At the first meeting of the board each year, the board shall elect from its members any other officer the board considers necessary or convenient. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999; Amended by the 79<sup>th</sup> Leg., Eff. 9/1/05.

§ 801.056. GROUNDS FOR REMOVAL (a) It is a ground for removal from the board that a member:  
(1) does not have at the time of taking office the qualifications required by Section 801.052;  
(2) does not maintain during service on the board the qualifications required by Section 801.052;  
(3) is ineligible for membership under Section 801.052 or 801.053;  
(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or  
(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.  
(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.  
(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.057. TRAINING (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.  
(b) The training program must provide the person with information regarding:  
(1) the legislation that created the board and the board's programs, functions, rules, and budget;  
(2) the results of the most recent formal audit of the board;  
(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest  
(4) any applicable ethics policies adopted by the board or the Texas Ethics Commission.  
(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999; Amended by the 79<sup>th</sup> Leg., Eff. 9/1/05.

§ 801.058. PER DIEM; REIMBURSEMENT A board member is entitled to receive:



- (1) a per diem, as set by legislative appropriation, for each day that the member engages in board business; and
- (2) reimbursement for travel expenses, as prescribed by the General Appropriations Act, including expenses for meals and lodging. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.059. OATH OF OFFICE Before assuming the duties of office, each board member shall file with the secretary of state a signed copy of the constitutional oath of office taken by the member. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

### **SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL**

§ 801.101. EXECUTIVE DIRECTOR The board may employ an executive director. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.102. CERTAIN DUTIES OF EXECUTIVE DIRECTOR; SURETY BOND (a) The executive director is responsible for:

- (1) safekeeping the money collected under this chapter; and
  - (2) properly disbursing the veterinary fund account established by this chapter.
- (b) Repealed by Acts 2003, 78th Leg., ch. 285, § 31(39).

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 285, § 25, 31(39), eff. Sept. 1, 2003.

§ 801.103. PERSONNEL The board may employ personnel to administer this chapter. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.104. DIVISION OF RESPONSIBILITIES The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the board. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999; Amended by the 79<sup>th</sup> Leg., Eff. 9/1/05.

§ 801.105. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION The board shall provide as often as necessary to its members and employees information regarding their:

- (1) qualifications for office or employment under this chapter; and
- (2) responsibilities under applicable laws relating to standards of conduct for state officers or employees. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.106. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry level positions concurrently with any public posting.

- (b) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay authorized by the executive director must be based on the system established under this subsection. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.107. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to

ensure implementation of an equal employment opportunity program under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

- (1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel, that are in compliance with Chapter 21, Labor Code;
  - (2) a comprehensive analysis of the board workforce that meets federal and state guidelines;
  - (3) procedures by which a determination can be made of the significant underuse in the board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and
  - (4) reasonable methods to appropriately address those areas of significant underuse.
- (b) A policy statement prepared under Subsection (a) must be:
- (1) prepared to cover an annual period;
  - (2) updated annually;
  - (3) reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and
  - (4) filed with the governor.
- (c) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as part of other biennial reports to the legislature. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. BOARD POWERS AND DUTIES**

- § 801.151. RULES (a) The board may adopt rules as necessary to administer this chapter.
- (b) The board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.
- (c) The board shall adopt rules to:
- (1) protect the public; and
  - (2) ensure that alternate therapies, including ultrasound diagnosis and therapy, magnetic field therapy, holistic medicine, homeopathy, chiropractic treatment, acupuncture, and laser therapy, are performed only by a veterinarian or under the supervision of a veterinarian.
- (d) The board may adopt rules regarding the work of a person who:
- (1) works under the supervision of a veterinarian; and
  - (2) fulfills the requirements established by a board-approved organization for registered veterinary technicians. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.152. EXCEPTIONS TO RULE (a) The board may consider an exception to a rule adopted by the board on the request of a person subject to board regulation.

- (b) After notice and hearing, the board may approve an exception to a board rule. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.153. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING (a) The board may not adopt a rule restricting advertising or competitive bidding by a person regulated by the board except to prohibit a false, misleading, or deceptive practice by that person.

- (b) In its rules to prohibit a false, misleading, or deceptive practice, the board may not include a rule that:
- (1) restricts the person's use of any advertising medium;
  - (2) restricts the person's personal appearance or the use of the person's voice in an advertisement;

- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.154. FEES (a) The board by rule shall set fees in amounts that are reasonable and necessary so that the fees, in the aggregate, cover the costs of administering this chapter. The board may not set a fee that existed on September 1, 1993, in an amount that is less than the fee on that date.

(b) The license renewal fee set by the board under this chapter is the amount set by the board under Subsection (a) and an additional fee of \$200.

(c) Of each additional fee collected under Subsection (b), \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

(d) The additional fee under Subsection (b) does not apply to a license holder who is:

- (1) exempt from paying the renewal fee under Section 801.304; or
- (2) placed on inactive status as provided by Section 801.306. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.155. PAYMENT OF ADMINISTRATIVE COSTS Costs incurred by the board in administering this chapter, including the compensation and expenses of board members and employees, may be paid only from fees collected under this chapter. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.156. REGISTRY (a) The board shall maintain a record of each veterinarian's:

- (1) name;
- (2) residence address; and
- (3) business address.

(b) A veterinarian shall notify the board of a change of business address or employer not later than the 60th day after the date the change takes effect. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.157. PEER ASSISTANCE PROGRAM The board shall establish or approve a peer assistance program for veterinarians. The peer assistance program must comply with Chapter 467, Health and Safety Code. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.158. SUBPOENA (a) The board may request and, if necessary, compel by subpoena:

- (1) the attendance of witnesses for examination under oath; and
- (2) the production for inspection or copying of books, accounts, records, papers, correspondence, documents, and other evidence relevant to an investigation of an alleged violation of this chapter.

(b) The board, acting through the attorney general, may bring an action to enforce a subpoena issued under Subsection (a) against a person, including a corporation, organization, business trust, estate, trust, partnership, association, or other legal entity, who fails to comply with the subpoena.

(c) Venue for an action brought under Subsection (b) is in a district court in:

- (1) Travis County; or
- (2) any county in which the board may hold a hearing.

(d) The court shall order compliance with the subpoena if the court finds that good cause exists to issue the subpoena. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, § 14.421(a), eff. Sept. 1, 2001.

§ 801.159. BOARD DUTIES REGARDING COMPLAINTS (a) The board by rule shall:  
    (1) adopt a form to standardize information relating to complaints filed with the board; and  
    (2) prescribe information to be provided to a person when the person files a complaint with the board.  
(b) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.160. ANNUAL REPORT (a) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding fiscal year.  
(b) The report must be in the form and reported in the time provided by the General Appropriations Act. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§Sec. 801.161. USE OF TECHNOLOGY. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet. Added by the 79<sup>th</sup> Leg., Eff. 9/1/05

§Sec. 801.162. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION PROCEDURES.  
(a) The board shall develop and implement a policy to encourage the use of:  
    (1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and  
    (2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.  
(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.  
(c) The board shall designate a trained person to:  
    (1) coordinate the implementation of the policy adopted under Subsection (a);  
    (2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and  
    (3) collect data concerning the effectiveness of those procedures, as implemented by the board.  
Added by the 79<sup>th</sup> Leg., Eff. 9/1/05

## **SUBCHAPTER E. PUBLIC ACCESS AND INFORMATION; COMPLAINT PROCEDURES**

§ 801.201. PUBLIC INTEREST INFORMATION (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.  
(b) The board shall make the information available to the public and appropriate state agencies. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.202. PUBLIC PARTICIPATION (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.  
(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the board's programs. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.203. COMPLAINTS (a) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board.

(b) The board shall list with its regular telephone number any toll-free telephone number established under other state law for presenting a complaint about a veterinarian. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.204. RECORDS OF COMPLAINTS (a) The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint and its disposition.

(b) The board shall make information available describing its procedures for complaint and investigation and resolution.

(c) The board shall periodically notify the complaint parties of the status of the complaint until final disposition. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999; Amended by the 79<sup>th</sup> Leg., Eff. 9/1/05.

§ 801.205. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION The board shall adopt rules relating to the investigation of complaints filed with the board. The rules must:

- (1) distinguish between categories of complaints;
- (2) ensure that complaints are not dismissed without appropriate consideration;
- (3) require that the board be advised of a complaint that is dismissed and that a written explanation be given to the person who filed the complaint explaining the action taken on the dismissed complaint;
- (4) ensure that the person who filed the complaint has the opportunity to explain the allegations made in the complaint; and
- (5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§801.2051. PRIORITY OF COMPLAINTS. The board shall prioritize complaints to resolve the more serious complaints first. Added by the 79<sup>th</sup> Leg., Eff. 9/1/05

§801.2055. COMPLAINTS REQUIRING MEDICAL EXPERTISE. (a) A complaint that requires medical expertise to review must be reviewed by two or more veterinarian board members. The board members shall determine whether to dismiss the complaint or refer it to an informal proceeding under Section 801.408.

(b) If the veterinarian members do not agree to dismiss or refer the complaint to an informal proceeding, the complaint is referred to an informal proceeding under Section 801.408. Added by the 79<sup>th</sup> Leg., Eff. 9/1/05

§801.2056. COMPLAINTS NOT REQUIRING MEDICAL EXPERTISE. (a) The board may delegate to a committee of board staff the authority to dismiss or enter into an agreed settlement of a complaint that does not require medical expertise. The disposition determined by the committee must be approved by the board at a public meeting.

(b) A complaint delegated under this section shall be referred for informal proceeding under Section 801.408 if:

- (1) the committee determines that the complaint should not be dismissed or settled;

- (2) the committee is unable to reach an agreed settlement; or
- (3) the veterinarian who is the subject of the complaint requests that the complaint be referred for informal proceedings. Added by the 79<sup>th</sup> Leg., Eff. 9/1/05

§ 801.206. DISPOSITION OF COMPLAINT (a) The board shall:

- (1) dispose of each complaint in a timely manner; and
- (2) establish a schedule for conducting each phase of the complaint process that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(b) Each party to the complaint shall be notified of the projected time requirements for the complaint. Each party shall be notified of a change in the schedule not later than the seventh day after the date the change is made.

(c) The executive director shall notify the board of a complaint that is not resolved within the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.207. PUBLIC RECORD; EXCEPTION (a) Except as provided by Subsection (b), a board record is a public record and is available for public inspection during normal business hours.

(b) An investigation record of the board, including a record relating to a complaint that is found to be groundless, is confidential. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER F. LICENSE REQUIREMENTS**

§ 801.251. LICENSE REQUIRED Except as provided by Section 801.004, a person may not practice, or offer or attempt to practice, veterinary medicine unless the person holds a license issued under this chapter. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.252. ELIGIBILITY REQUIREMENTS The board shall issue a license to a person who is qualified to be licensed under this chapter. A person is qualified to be licensed if:

- (1) the person has attained the age of majority;
- (2) the person is a graduate of a board-approved school or college of veterinary medicine;
- (3) the person successfully completes the licensing examination conducted by the board; and
- (4) the board does not refuse to issue a license to the person under Section 801.401. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.253. LICENSING EXAMINATIONS (a) The board shall hold a regular meeting at least twice each year to conduct licensing examinations as provided by board rule. The board shall conduct the examination at a time and place the board determines is convenient for applicants.

(b) The board shall provide notice of a licensing examination by publication in a newspaper or periodical.

(c) The board shall examine each qualified applicant who attends the examination. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.254. CONTENT AND CONDUCT OF EXAMINATION (a) The board shall conduct the licensing examination on subjects relating to veterinary medicine, including anatomy, pathology, chemistry, obstetrics, public health, veterinary practice, veterinary jurisprudence, physiology and bacteriology, and other subjects regularly taught in reputable schools of veterinary medicine.

(b) The board may conduct a licensing examination in writing, by a practical demonstration of the applicant's skill, or by a combination of those methods. The board shall arrange for the

written portion of the examination, if any, to be validated by an independent testing professional.

(c) To pass the licensing examination, an applicant must demonstrate the standard of proficiency the board determines is essential for a qualified veterinarian. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999; Amended by the 79<sup>th</sup> Leg., Eff. 9/1/05.

§ 801.255. EXAMINATION RESULTS (a) The board shall notify each examinee of the results of the examination not later than the 30th day after the date the licensing examination is administered. If an examination is graded or reviewed by a national testing service, the board shall notify the examinee of the results of the examination not later than the 14th day after the date the board receives the results from the testing service.

(b) If the notice of the examination results graded or reviewed by a national testing service will be delayed longer than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails an examination, the board shall provide to the person an analysis of the person's performance on the examination. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§801.2555 EXAMINATION FEE REFUND. (a) The board shall refund the examination fee paid by an applicant who:

- (1) provides advance notice of the applicant's inability to take the examination; or
- (2) is unable to take the examination because of an emergency.

(b) The board shall adopt rules that establish the required notification period and the emergency situations that warrant a refund.

§ 801.256. SPECIAL LICENSE (a) The board may issue a special license to an applicant who is:

- (1) a member of the faculty or staff of a board-approved veterinary program at an institution of higher education;
- (2) a veterinarian employee of the Texas Animal Health Commission;
- (3) a veterinarian employee of the Texas Veterinary Medical Diagnostic Laboratory; or
- (4) a person licensed to practice veterinary medicine in another jurisdiction, if the board determines that the person's specialty practice is unrepresented or underrepresented in this state.

(b) An applicant is eligible for a special license if:

(1) the applicant:

(A) is at least 21 years of age and a graduate of a board-approved veterinary medicine program at an institution of higher education; or

(B) provides to the board a written affirmation by a person described under Subsection

(f) that the applicant meets a critical need for staffing at the person's institution and is certified by a nationally recognized veterinary specialty board or is eligible for that certification; and

(2) the applicant passes the jurisprudence section of the licensing examination.

(c) The board shall adopt rules relating to the issuance of a special license.

(d) A special license is valid only for the performance of duties within the scope of the special license holder's employment or practice.

(e) The board may suspend or revoke a special license if:

(1) the special license holder's employment is terminated; or

(2) the special license holder practices outside of the scope of the license.

(f) The following people may provide a statement under Subsection (b)(1)(B):

- (1) the dean of a board-approved veterinary medicine program at an institution of higher education in this state;
- (2) the executive director of the Texas Animal Health Commission; or
- (3) the executive director of the Texas Veterinary Medical Diagnostic Laboratory. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1114, § 1, eff. June 15, 2001.

§ 801.257. PROVISIONAL LICENSE (a) The board may grant a provisional license to an applicant who presents proof that the applicant:

- (1) is licensed in good standing as a veterinarian in another state that:
  - (A) has licensing requirements substantially equivalent to the requirements of this chapter; and
  - (B) maintains professional standards the board considers equivalent to the professional standards of this chapter; and
- (2) has passed a national or other examination recognized by the board relating to veterinary medicine.

(b) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this chapter to a provisional license holder if:

- (1) the provisional license holder passes the licensing examination under Section 801.253;
- (2) the board verifies that the provisional license holder has the academic and experience requirements to qualify for a license; and
- (3) the provisional license holder satisfies any other license requirement under this chapter.

(c) The board shall complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.258. TEMPORARY LICENSE The board by rule may provide for the issuance of a temporary license. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER G. LICENSE EXPIRATION AND RENEWAL**

§ 801.301. ANNUAL RENEWAL REQUIRED (a) The board shall provide for the annual renewal of a license.

(b) The board by rule may adopt a system under which licenses expire on various dates during the year.

(c) For a year in which the license expiration date is changed, license fees payable on March 1 shall be prorated on a monthly basis so that each license holder pays only that portion of the fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.302. NOTICE OF LICENSE EXPIRATION Not later than the 30th day before the expiration date of a person's license, the board shall send written notice of the impending license expiration to the person at the person's last known address according to the board's records. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.303. PROCEDURE FOR RENEWAL (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the board before the expiration



date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to the sum of 1-1/2 times the renewal fee set by the board under Section 801.154(a) and the additional fee required by Section 801.154(b).

(c) A person whose license has been expired for more than 90 days but less than one year, may renew the license by paying to the board a renewal fee that is equal to the sum of two times the renewal set by the board under Section 801.154(a) and the additional fee required by Section 801.154(b).

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999; Amended by the 79<sup>th</sup> Leg., Eff. 9/1/05.

§ 801.304. FEE EXEMPTION A license holder is exempt from the fee requirements imposed under Section 801.303 if the license holder:

(1) is on active duty with the Armed Forces of the United States and does not engage in private or civilian practice; or

(2) is permanently and totally retired. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.305. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER (a) A person who was licensed in this state, moved to another state, and is currently licensed in good standing and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination.

(b) The person must pay to the board a fee that is equal to the amount of the renewal fee set by the board under Section 801.154(a) and the additional fee required by Section 801.154(b). Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999; Amended by the 79<sup>th</sup> Leg., Eff. 9/1/05.

§ 801.306. INACTIVE STATUS The board by rule may provide for the placement of a veterinarian on inactive status. The rules adopted under this section must include a limit on the time a veterinarian may remain on inactive status. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.307. CONTINUING EDUCATION (a) The board by rule shall establish a minimum number of hours of continuing education required to renew a license.

(b) The board may:

(1) establish general categories of continuing education that meet the needs of veterinarians; and

(2) require a veterinarian to successfully complete continuing education courses.

(c) The board may require a license holder who does not complete the required number of hours of continuing education in a year to make up the missed hours in later years. Hours required to be made up in a later year are in addition to the hours normally required to be completed in that year. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999; Amended by the 79<sup>th</sup> Leg., Eff. 9/1/05.

§801.308. CONTINUING EDUCATION AUDITS. (a) The board shall monitor compliance with continuing education requirements by conducting random audits of license holders seeking renewal. The board staff may conduct an audit at any time. The board may perform additional compliance monitoring by other means. Added by the 79<sup>th</sup> Leg., Eff. 9/1/05.

- (b) A license holder who is audited shall provide proof of course completion to the board, including certificates of completion.
- (c) A list of completed continuing education courses from the license holder on one presigned form does not establish compliance.

## **SUBCHAPTER H. PRACTICE BY VETERINARIAN**

§ 801.351. EXISTENCE OF VETERINARIAN-CLIENT-PATIENT RELATIONSHIP (a) A person may not practice veterinary medicine unless a veterinarian-client-patient relationship exists. A veterinarian-client-patient relationship exists if the veterinarian:

- (1) assumes responsibility for medical judgments regarding the health of an animal and a client, who is the owner or other caretaker of the animal, agrees to follow the veterinarian's instructions;
  - (2) possesses sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the animal's medical condition; and
  - (3) is readily available to provide, or has provided, follow-up medical care in the event of an adverse reaction to, or a failure of, the regimen of therapy provided by the veterinarian.
- (b) A veterinarian possesses sufficient knowledge of the animal for purposes of Subsection (a)(2) if the veterinarian has recently seen, or is personally acquainted with, the keeping and care of the animal by:
- (1) examining the animal; or
  - (2) making medically appropriate and timely visits to the premises on which the animal is kept.
- (c) A veterinarian-client-patient relationship may not be established solely by telephone or electronic means. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999; Amended by the 79<sup>th</sup> Leg., Eff. 9/1/05.

§ 801.352. PROHIBITION AGAINST INTERFERENCE OR INTERVENTION (a) The professional services of a veterinarian may not be controlled or exploited by a person who:

- (1) is not a veterinarian; and
  - (2) intervenes between the veterinarian and the veterinarian's client.
- (b) A veterinarian may not:
- (1) allow a person who does not hold a license issued under this chapter to interfere with or intervene in the veterinarian's practice of veterinary medicine; or
  - (2) submit to interference or intervention by a person who does not hold a license issued under this chapter.
- (c) A veterinarian shall avoid a relationship that may result in interference with or intervention in the veterinarian's practice of veterinary medicine by a person who does not hold a license issued under this chapter.
- (d) A veterinarian is responsible for the veterinarian's actions. The veterinarian is directly responsible to the client and for the care and treatment of the patient. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.353. CONFIDENTIALITY; WAIVER (a) A veterinarian may not violate the confidential relationship between the veterinarian and the veterinarian's client.

- (b) A veterinarian may not be required to release information concerning the veterinarian's care of an animal, except on the veterinarian's receipt of:
- (1) a written authorization or other form of waiver executed by the client; or
  - (2) an appropriate court order or subpoena.

(c) A veterinarian who releases information as required under Subsection (b) is not liable to any person, including the client, for an action resulting from the disclosure.

(d) The privilege provided by this section is waived by the client or the owner of an animal treated by the veterinarian to the extent the client or owner places at issue in a civil or criminal proceeding:

(1) the nature and extent of the animal's injuries; or

(2) the care and treatment of the animal provided by the veterinarian.

(e) This section does not apply to an inspection or investigation conducted by the board or an agent of the board.

(f) A veterinarian does not violate this section by providing the name or address of a client to a health authority, veterinarian, or physician who requests the identity of the client to obtain information for:

(1) The verification of a rabies vaccination; or

(2) Other treatment involving a life-threatening situation. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.354. AUTHORIZED BUSINESS PRACTICES It is not a violation of this chapter for a veterinarian, or a business entity authorized under this chapter to render veterinary services, to:

(1) lease space for the purpose of providing veterinary services;

(2) pay for franchise fees or other services on a percentage-of-receipts basis; or

(3) sell, transfer, or assign accounts receivable. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.3541. LOCATION OF VETERINARY PRACTICE The premises on which a veterinary practice is located may be owned by a person or other legal entity that does not hold a license issued under this chapter. Added by Acts 2001, 77th Leg., ch. 1420, § 14.421(d), eff. Sept. 1, 2001.

§ 801.355. LEASING SPACE FROM MERCANTILE ESTABLISHMENT (a) The practice of a veterinarian who leases space from a mercantile establishment and practices veterinary medicine on the premises of the mercantile establishment must be owned by a veterinarian. The practice and the leased space must be under the exclusive control of a veterinarian.

(b) The leased space must be definite and apart from the space occupied by other occupants of the premises. The leased space must be separated from the space used by other occupants by solid and opaque partitions or walls that extend from the floor to the ceiling. The requirement of this subsection is not satisfied by the use of railings, curtains, or other similar arrangements.

(c) The leased space must have a patient's entrance that:

(1) opens to a public street, hall, lobby, corridor, or other public thoroughfare other than the aisle of a mercantile establishment; and

(2) is actually used as an entrance by the veterinarian's patients.

(d) The leased space may have an additional patient's entrance, that may be nonopaque, that opens from the inside of the mercantile establishment directly into the leased space.

(e) The practice of the veterinarian may not be conducted in any part as a department or concession of the mercantile establishment. A legend or sign that states "Veterinary Department," or that contains other words implying that the practice is not an independent veterinary practice, may not be displayed on the premises or in an advertisement for the premises. The use of the veterinarian's name must clearly indicate that the practice is independent and not under the ownership or control of the mercantile establishment.

(f) The patient and business records of the practice of the veterinarian are the sole property of the veterinarian. The mercantile establishment or a person who is not a veterinarian may not control the records, except that:

- (1) business records that are essential to the initiation or continuation of a percentage of gross receipts lease of space may be inspected by the lessor; and
- (2) a veterinarian may enter into a management agreement that permits an employee or agent of the management company to access or copy patient records as necessary to perform management functions. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.356. EXEMPTIONS FROM REQUIREMENTS RELATED TO MERCANTILE

ESTABLISHMENT (a) Section 801.355(c) does not apply to the practice of a veterinarian, or the legal successor of the practice, if the practice is operating in space that was open and operating before January 1, 1993.

(b) Section 801.355 does not prohibit the delivery of temporary limited-service veterinary activities, including preventive veterinary services such as vaccinations and testing, at a mercantile establishment that is not owned or under the exclusive control of a veterinarian if the services are periodic and delivered by a veterinarian. The board by rule may establish the conditions under which a veterinarian may provide the services described by this subsection. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.357. RESPONSIBILITY OF VETERINARIAN TOWARD ABANDONED ANIMALS (a) A veterinarian may dispose of an animal that is abandoned in the veterinarian's care if the veterinarian:

- (1) gives the client, by certified mail to the client's last known address, notice of the veterinarian's intention to dispose of the animal; and
- (2) allows the client to retrieve the animal during the 10 days after the date the veterinarian mails the notice.

(b) A veterinarian may not dispose of an animal under Subsection (a) if:

- (1) a contract between the veterinarian and client provides otherwise; or
- (2) after notice is given under Subsection (a), the veterinarian and client agree to extend the veterinarian's care of the animal.

(c) The client's contact of the veterinarian by mail, telephone, or personal communication does not extend the veterinarian's obligation to treat, board, or care for an animal unless the veterinarian and client agree to extend the veterinarian's care of the animal.

(d) An animal is considered abandoned on the 11th day after the date the veterinarian mails the notice under Subsection (a) unless an agreement is made to extend the care for the animal.

(e) Notice given by a veterinarian under Subsection (a) does not relieve a client of liability to pay for treatment, boarding, or care provided by the veterinarian. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999; Amended by the 79<sup>th</sup> Leg., Eff. 9/1/05.

§ 801.358. LIABILITY OF VETERINARIAN FOR EMERGENCY TREATMENT; EUTHANASIA PRESUMPTION (a) A veterinarian who provides emergency treatment to an ill or injured animal on the veterinarian's own initiative, or at the request of a person other than the animal's owner, is not liable to the owner for damages to the animal unless the veterinarian commits gross negligence.

(b) If the veterinarian performs euthanasia on the animal, the veterinarian is presumed to have performed a humane act necessary to relieve the animal's pain and suffering. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.3585. LIABILITY FOR REPORTING ANIMAL CRUELTY; IMMUNITY. A veterinarian who in good faith and in the normal course of business reports to the appropriate governmental entity a suspected incident of animal cruelty under Section 42.09, Penal Code, is immune from liability in a civil or criminal action brought against the veterinarian for reporting the incident; Added by the 79<sup>th</sup> Leg., Eff. 9/1/05.

§ 801.359. CONTROLLED SUBSTANCES RECORDS (a) The board shall require each veterinarian to maintain a recordkeeping system for controlled substances as required by Chapter 481, Health and Safety Code.

(b) The records are subject to review by a law enforcement agency or board representative. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.360. DEATH OF VETERINARIAN On the death of a veterinarian, the veterinarian's practice ownership and patient records become the property of the veterinarian's heirs to dispose of as necessary not later than the second anniversary of the date of the veterinarian's death. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.361. DISPOSAL OF ANIMAL REMAINS (a) In this section, "medical waste" includes animal waste, blood, gloves, sleeves, newspapers, and plastic bags, but does not include sharps.

(b) A veterinarian may dispose of the remains of an animal and medical waste associated with the animal by burial or burning if:

(1) the burial or burning occurs on property owned by the veterinarian that is located:

(A) outside the corporate boundaries of a municipality; or

(B) within the corporate boundaries of a municipality as a result of an annexation that occurs on or after September 1, 2003; and

(2) at least one of the following requirements is met:

(A) a veterinarian-client-patient relationship existed between the veterinarian, the owner or other caretaker of the animal, and the animal before the animal's death;

(B) the veterinarian diagnosed, treated, boarded, or otherwise cared for the animal before its death; or

(C) the veterinarian performed euthanasia or an autopsy on the animal.

(c) Notwithstanding any other law, the Texas Commission on Environmental Quality may not adopt a rule that prohibits conduct authorized by this section.

(d) This section prevails over any other law that authorizes a governmental entity to:

(1) prohibit or restrict outdoor burning; or

(2) abate a public nuisance. Acts 2003, 78<sup>th</sup> Leg., ch. Eff. Sept. 1, 2003

§ 801.362. AUTHORITY TO DISPENSE DRUGS PRESCRIBED BY ANOTHER VETERINARIAN IN EMERGENCY. (a) A veterinarian may dispense a drug, other than a controlled substance, prescribed by another veterinarian if:

(1) failure to dispense the drug could interrupt a therapeutic regimen or cause a patient to suffer;

(2) the prescribing veterinarian informs the dispensing veterinarian that the drug is appropriate and necessary for the animal;

(3) the quantity of the dispensed drug does not exceed a five-day supply for each animal annually;

- (4) the annual total of dosage units of drugs dispensed under this subsection is not more than five percent of the total dosage units of drugs the veterinarian dispenses in a year; and
  - (5) the veterinarian maintains records of dispensing activities under this section consistent with board rules.
- (b) A veterinarian does not violate Section 801.402 by ordering a prescription drug in compliance with this section for the treatment of an animal without first establishing a veterinarian-client-patient relationship.
- (c) The board may adopt rules to implement this section. Added by the 79<sup>th</sup> Leg., Eff. 9/1/05

## **SUBCHAPTER I. LICENSE DENIAL AND DISCIPLINARY PROCEDURES**

§ 801.401. DISCIPLINARY POWERS OF BOARD (a) If an applicant or license holder is subject to denial of a license or to disciplinary action under Section 801.402, the board may:

- (1) refuse to examine an applicant or to issue or renew a license;
  - (2) revoke or suspend a license;
  - (3) place on probation a license holder or person whose license has been suspended;
  - (4) reprimand a license holder; or
  - (5) impose an administrative penalty.
- (b) The board may take action under Subsection (a) after notice and hearing under Section 801.407 or as provided by board rule.
- (c) The board may require a license holder whose license suspension is probated to:
- (1) report regularly to the board on matters that are the basis of the probation;
  - (2) limit practice to the areas prescribed by the board; or
  - (3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.
- (d) In addition to other disciplinary actions authorized by this subchapter, the board may require a license holder who violates this chapter to participate in a continuing education program. The board shall specify the continuing education programs that the license holder may attend and the number of hours that the license holder must complete. A continuing education program specified by the board must be relevant to the violation committed by the license holder. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.402. GENERAL GROUNDS FOR LICENSE DENIAL OR DISCIPLINARY ACTION A person is subject to denial of a license or to disciplinary action under Section 801.401 if the person:

- (1) presents to the board dishonest or fraudulent evidence of the person's qualifications;
- (2) commits fraud or deception in the examination process or to obtain a license;
- (3) is chronically or habitually intoxicated, chemically dependent, or addicted to drugs;
- (4) engages in dishonest or illegal practices in, or connected with, the practice of veterinary medicine;
- (5) is convicted of a felony under the laws of this state, another state, or the United States;
- (6) engages in practices or conduct that violates the board's rules of professional conduct;
- (7) permits another to use the person's license to practice veterinary medicine in this state;
- (8) fraudulently issues a health certificate, vaccination certificate, test chart, or other form used in the practice of veterinary medicine that relates to the presence or absence of animal disease;
- (9) issues a false certificate relating to the sale for human consumption of inedible animal products;
- (10) commits fraud in connection with the application or reporting of a test of animal disease;
- (11) pays or receives a kickback, rebate, bonus, or other remuneration for treating an animal or for referring a client to another provider of veterinary services or goods;

- (12) performs or prescribes unnecessary or unauthorized treatment;
- (13) orders a prescription drug or controlled substance for the treatment of an animal without first establishing a veterinarian-client-patient relationship;
- (14) refuses to admit a board representative to inspect the person's client and patient records and business premises during regular business hours;
- (15) fails to keep the person's equipment and business premises in a sanitary condition;
- (16) commits gross malpractice or a pattern of acts that indicate consistent malpractice, negligence, or incompetence in the practice of veterinary medicine; or
- (17) is subject to disciplinary action in another jurisdiction, including the suspension, probation, or revocation of a license to practice veterinary medicine issued by another jurisdiction. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.403. FAILURE TO REPORT DISEASE The board may suspend or revoke a license, place a license holder on probation, or reprimand a license holder if the license holder knowingly fails to report a disease to the Texas Animal Health Commission as required by Section 161.101, Agriculture Code. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.404. FAILURE TO MAINTAIN RECORDS The board may suspend or revoke a license issued under this chapter or place on probation a license holder if the license holder fails to maintain records as required by Section 801.359. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.405. MENTAL INCOMPETENCE (a) The board may suspend or revoke a license if a court finds that the license holder is mentally incompetent.

(b) If a court determines that a person whose license is suspended or revoked under this section is mentally competent, the board may reinstate the person's license. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.406. REQUIRED DISCIPLINARY ACTION FOR CERTAIN FELONY CONVICTIONS (a) On conviction of a license holder of a felony under Section 485.033, Health and Safety Code, or Chapter 481 or 483 of that code, the board shall, after conducting an administrative hearing in which the fact of conviction is determined, impose a penalty as provided by Section 801.401. The board shall set the amount of the penalty to match the seriousness of the conviction.

(b) The board may reinstate or reissue a license suspended or revoked under this section only on an express determination based on substantial evidence contained in an investigative report indicating that reinstatement or reissuance of the license is in the best interests of:

- (1) the public; and
- (2) the person whose license has been suspended or revoked. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999; Amended by the 79<sup>th</sup> Leg., Eff. 9/1/05.

§ 801.407. RIGHT TO HEARING; SCHEDULE OF SANCTIONS (a) A person is entitled to a hearing before the State Office of Administrative Hearings if the board:

- (1) refuses to examine the person;
- (2) denies the person's application for a license;
- (3) revokes or suspends the person's license;
- (4) places the person on probation;
- (5) reprimands the person; or
- (6) assesses an administrative penalty against the person.

(b) A hearing conducted under this section is governed by Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall use the schedule of sanctions adopted by board rule for any sanction imposed as the result of a hearing conducted by that office.

(d) The board may conduct deliberations relating to a disciplinary action during executive session. At the conclusion of those deliberations, the board shall vote and announce its decision to the license holder in open session. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

- § 801.408. INFORMAL PROCEEDINGS (a) The board by rule shall adopt procedures governing:
- (1) informal disposition of a contested case under Section 2001.056, Government Code; and
  - (2) an informal proceeding held in compliance with Section 2001.054, Government Code.
- (b) Rules adopted under Subsection (a) must:
- (1) provide the complainant and the license holder an opportunity to be heard; and
  - (2) require the presence of the board's general counsel or a representative of the attorney general during an informal proceeding to advise the board or the board's employees.
- (c) A committee of two or more veterinarian board members and one or more public board members must be present at an informal proceeding for a complaint that requires medical expertise. The committee shall recommend enforcement action at the informal proceeding.
- (d) A committee of board staff may recommend enforcement action at an informal proceeding for a complaint that does not require medical expertise or may refer the complaint to the committee of board members under Subsection (c).
- (e) At an informal proceeding under this section, and on agreement with the license holder, the board may order the license holder to refund an amount not to exceed the amount a client paid to the license holder instead of or in addition to imposing an administrative penalty under this chapter. The board may not require payment of other damages or estimate harm under this subsection.
- (f) Before an informal disposition is effective, the board must review and approve at a public meeting an informal disposition of the complaint recommended by board members or board staff. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999; Amended by the 79<sup>th</sup> Leg., Eff. 9/1/05.

§ 801.409. TEMPORARY LICENSE SUSPENSION (a) An executive committee of the board consisting of the president and two other board members appointed by the president may temporarily suspend the license of a license holder if the executive committee determines from the evidence or information presented to the committee that continued practice by the license holder constitutes a continuing or imminent threat to the public welfare. A temporary suspension may also be ordered on a majority vote of the board.

(b) The board by rule shall adopt procedures for the temporary suspension of a license under this section.

(c) A license temporarily suspended under this section may be suspended without notice or hearing if, at the time the suspension is ordered, a hearing on whether disciplinary proceedings under this chapter should be initiated against the license holder is scheduled to be held not later than the 14th day after the date of the suspension.

(d) A second hearing on the suspended license shall be held not later than the 60th day after the date the suspension is ordered. If the second hearing is not held in the time required by this subsection, the suspended license is automatically reinstated. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.410. VENUE FOR APPEAL An appeal of an action of the board must be filed in a district court in Travis County. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.



## **SUBCHAPTER J. ADMINISTRATIVE PENALTY**

§ 801.451. IMPOSITION OF ADMINISTRATIVE PENALTY The board may impose an administrative penalty on a person, including a corporation, organization, business trust, estate, trust, partnership, association, or other legal entity, who violates this chapter or a rule adopted or order issued under this chapter. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, § 14.423(a), eff. Sept. 1, 2001.

§ 801.452. AMOUNT OF PENALTY (a) The amount of an administrative penalty may not exceed \$5,000 for each violation per day.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of any prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(c) A committee described by Section 801.408(c) or (d) shall recommend the amount of the administrative penalty based on a standardized penalty schedule. The board by rule shall develop the standardized penalty schedule based on the criteria listed in Subsection (b). Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999; Amended by the 79<sup>th</sup> Leg., Eff. 9/1/05.

§ 801.453. COMMITTEE RECOMMENDATIONS (a) On a determination by a committee described by Section 801.408(c) or (d) that a violation of this chapter or a rule adopted or order issued under this chapter occurred, the committee may issue a report to the board stating:

(1) the facts on which the determination is based; and

(2) the committee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Not later than the 14th day after the date the report is issued, the executive director shall give written notice of the committee's report to the person on whom the penalty may be imposed. The notice may be given by certified mail.

(c) The notice given under this section must:

(1) include a notice of each alleged violation;

(2) state the amount of any recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999; Amended by the 79<sup>th</sup> Leg., Eff. 9/1/05.

§ 801.454. PENALTY TO BE PAID OR HEARING REQUESTED ON COMMITTEE'S RECOMMENDATIONS (a) Not later than the 20th day after the date a person receives the notice, the person may in writing:

(1) accept the committee's determination and recommended administrative penalty; or

(2) request a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the committee's determination and recommended penalty, the board by order may:

- (1) approve the determination and impose the recommended penalty;
- (2) modify the determination or recommended penalty; or
- (3) reject the determination or recommended penalty. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999; Amended by the 79<sup>th</sup> Leg., Eff. 9/1/05.

§ 801.455. HEARING ON COMMITTEE'S RECOMMENDATIONS (a) If the person requests a hearing or fails to respond timely to the notice, the executive director shall set a hearing and give notice of the hearing to the person.

(b) A hearing set by the executive director under Subsection (a) shall be held by an administrative law judge of the State Office of Administrative Hearings.

(c) The administrative law judge shall:

- (1) make findings of fact and conclusions of law; and
- (2) promptly issue to the board a proposal for a decision as to the occurrence of the violation and the amount of any proposed administrative penalty. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999; Amended by the 79<sup>th</sup> Leg., Eff. 9/1/05.

§ 801.456. DECISION BY BOARD (a) Based on the findings of fact, conclusions of law, and proposal for a decision under Section 801.455(c), the board by order may determine that:

- (1) a violation has occurred and impose an administrative penalty; or
- (2) a violation did not occur.

(b) The notice of the board's order given to the person under Chapter 2001, Government Code, must include a statement of the person's right to judicial review of the order. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.457. OPTIONS FOLLOWING DECISION: PAY OR APPEAL (a) Not later than the 30th day after the date the board's order becomes final, the person shall:

- (1) pay the administrative penalty;
- (2) pay the penalty and file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both; or
- (3) without paying the penalty, file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

- (1) stay enforcement of the penalty by:
  - (A) paying the penalty to the court for placement in an escrow account; or
  - (B) giving the court a supersedeas bond that is approved by the court and that:
    - (i) is for the amount of the penalty; and
    - (ii) is effective until judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

- (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and stay enforcement of the penalty on finding that the alleged facts are true. The person who files the affidavit has the burden of proving that the person is financially unable to pay the penalty and to give the supersedeas bond. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.458. COLLECTION OF PENALTY If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.459. DETERMINATION BY COURT (a) If a court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that an administrative penalty is not owed. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.460. REMITTANCE OF PENALTY AND INTEREST (a) If, after judicial review, the administrative penalty is reduced or not upheld by the court, the court shall, after the judgment becomes final:

(1) order the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.461. ADMINISTRATIVE PROCEDURE (a) A proceeding under this subchapter is subject to Chapter 2001, Government Code.

(b) This subchapter does not prohibit the board from assessing an administrative penalty by using an informal proceeding under Section 801.408. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER K. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

§ 801.501. MONITORING LICENSE HOLDER The board by rule shall develop a system for monitoring a license holder's compliance with the requirements of this chapter. The rules must include procedures to:

(1) monitor for compliance a license holder who is ordered by the board to perform certain acts; and

(2) identify and monitor a license holder who represents a risk to the public. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.502. INJUNCTIVE RELIEF (a) The board, through the attorney general or a district or county attorney, may bring an action for an injunction, or a proceeding incident to an injunction, to:

(1) enforce this chapter; or

(2) enjoin a person, including a corporation, organization, business trust, estate, trust, partnership, association, or other legal entity, from practicing veterinary medicine in violation of this chapter.

(b) Venue for an action under this section is in:

(1) the county in which the person against whom the action is brought resides, if the person is an individual who resides in this state;

(2) the county of the defendant's principal office in this state if the defendant is not an individual; or

(3) Travis County, if the person:

(A) is an individual who does not reside in this state; or

(B) is an entity that does not have its principal office in this state. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, § 14.424(a), eff. Sept. 1, 2001.

§ 801.503. ASSESSMENT OF CIVIL PENALTY AGAINST PERSON NOT LICENSED (a) A person not licensed under this chapter, including a corporation, organization, business trust, estate, trust, partnership, association, or other legal entity, who violates this chapter or a rule adopted by the board under this chapter is subject to a civil penalty of \$1,000 for each day of violation.

(b) At the request of the board, the attorney general shall bring an action to recover a civil penalty authorized by this section. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, § 14.422(a), eff. Sept. 1, 2001.

§ 801.504. GENERAL CRIMINAL PENALTY (a) A person, including an entity, commits an offense if the person violates this chapter.

(b) An offense under this section is a Class A misdemeanor.

(c) Venue for the prosecution of an offense under this section that consists of the violation of Section 801.251 is in a district court in Travis County or the county in which the offense occurred. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, § 14.421(b), eff. Sept. 1, 2001; Amended by the 79<sup>th</sup> Leg., Eff. 9/1/05.

§ 801.505. BOARD MEMBER OR EMPLOYEE; FINE A board member or employee shall pay a fine of not less than \$1,000 or more than \$5,000 if the member or employee:

(1) issues a license other than as provided by this chapter; or

(2) provides to an applicant for examination a list of questions to be propounded at the examination. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.506. PROHIBITED PRACTICES RELATING TO CERTAIN ENTITIES (a) A sole proprietorship, partnership, or corporation may not engage in veterinary medicine unless the owner, each partner, or each shareholder, as appropriate, holds a license issued under this chapter.

(b) A corporation, organization, business trust, estate, trust, partnership, association, or other legal entity not owned exclusively by one or more persons licensed under this chapter may not engage in veterinary medicine.

(c) A veterinarian may not form or continue a partnership with a member of another profession or a person who is not a member of a profession if a part of the partnership employment consists of the practice of veterinary medicine. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, § 14.421(c), eff. Sept. 1, 2001.

§ 801.507. NONAPPLICABILITY OF DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT Subchapter E, Chapter 17, Business & Commerce Code, does not apply to a claim against a veterinarian for damages alleged to have resulted from veterinary malpractice or negligence. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 801.508. CEASE AND DESIST ORDER. (a) If it appears to the board that a person is engaging in an act or practice that constitutes the practice of veterinary medicine without a license under this

chapter, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Subchapter J. Added by the 79<sup>th</sup> Leg., Eff. 9/1/05

§ 801.509. ENFORCEMENT POLICY. The board shall adopt a formal policy to focus enforcement efforts toward investigating complaints. Added by the 79<sup>th</sup> Leg., Eff. 9/1/05