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Veterinary Medicine and Veterinary Technology Practice Act Model (PAM) with Commentary

As approved by the AAVSB Delegate Assembly in September 2023

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Introduction

The American Association of Veterinary State Boards (AAVSB) is a not-for-profit, 501(c)(3) association whose membership is comprised of 63 veterinary regulatory boards, including all 50 United States, the District of Columbia, the U.S. Virgin Islands and Puerto Rico Territories, and all 10 provinces in Canada. The AAVSB is committed to serving these veterinary regulatory agencies (its Member Boards) by providing quality, relevant programs and services they can rely on to carry out their statutory responsibilities in the interest of public and animal protection.

In 2000, based upon the will of the membership, the AAVSB Board of Directors convened a task force to create a veterinary Practice Act Model (PAM) as a resource document available for use by its Member Boards. The PAM is a fluid document subject to amendment through action of the membership. The purpose of the AAVSB PAM is to provide a resource to its Member Boards, many of which regulate the practice of Veterinary Technology as well as the practice of Veterinary Medicine. This document reflects an international perspective. The AAVSB respects the differing governance structures within the regulation of the profession and encourages the use of language that best fits each Jurisdiction's needs. The PAM, with its accompanying Model Regulations, suggests regulatory language for complex emerging trends in Veterinary Medicine and Veterinary Technology.

An additional goal of the PAM is to facilitate greater standardization of terminology and regulation among Jurisdictions. It is hoped that such uniformity will allow Jurisdictions to provide for increased public protection through effective regulation and facilitate licensure mobility. Such developments are advantageous to the public by clarifying the role of veterinary medical regulatory boards while creating valid and accurate expectations for veterinary medical services. Increased mobility will also provide the public with greater access to qualified Veterinarians and Veterinary Technicians for their services.

The AAVSB PAM is drafted to withstand legal scrutiny and provide public and animal protection. It is not drafted to protect professional territory or to define or secure specific job descriptions for Veterinarians or Veterinary Technicians. While professional promotion may be an important activity of professional associations, societies, and other professional Veterinary Medicine membership groups, the primary purpose of the AAVSB PAM is the protection of the public and animals. While distancing itself from undue influence from professional associations to avoid legal and practical allegations of the "profession protecting its own," the AAVSB welcomes input from these organizations, their state chapters, individual practitioners, academia, and others in formulating this document.

It is important to note the AAVSB PAM is a living document subject to review at least every five (5) years. Modifications may be made to reflect changes in technology and professional regulation and, thus, can never be “final.” The AAVSB looks forward to continued dialogue on its PAM whereby Member Boards can comment and fully discuss issues affecting the regulation of Veterinary Medicine, Veterinary Technology, and the mission of public protection. The AAVSB PAM is an example of the resources that can be made available to AAVSB Member Boards when diverse interests work together toward a common goal.

Acknowledgments

The American Association of Veterinary State Boards is very grateful to current and past volunteers who have spent countless hours on the AAVSB Practice Act Model.

Revisions

- Veterinary Medicine Practice Act Model with Comments created in 2001
- Veterinary Medicine and Veterinary Technology Practice Act Model with Comments revised in 2002
- Articles I and III revised in 2005
- Article I revised in 2009
- All articles revised in 2014
- All articles revised in 2018
- Definition of VCPR revised in 2019 and 2023
- All articles revised in 2023

Structure and Format

The AAVSB Practice Act Model is structured to mimic Member Boards' existing statutes. It is formatted to include the model language with corresponding commentary. To provide the rationale and thought processes behind several portions of the PAM, readers are strongly encouraged to read the commentary as well as the Act to receive a complete perspective.

Article I. Title, Purpose, and Definitions.

An ACT concerning the regulation of the practices of Veterinary Medicine and Veterinary Technology.

Commentary: **Article I. Introductory Comment to Article I.**

The AAVSB believes that the public interest must be the central precept of any professional regulatory act and its administration, and that Jurisdiction regulatory boards must constantly strive to ensure that this basic principle is upheld. These beliefs are clearly articulated in the Veterinary Medicine and Veterinary Technology Practice Act Model (“Act”).

Article I of the Act states that safeguarding the public interest is the most compelling reason for regulating the practices of veterinary medicine and veterinary technology, and identifies the activities included within the practices. Definitions of other terms used throughout the Act are also included in this article.

Section 101. Title of Act.

This Act shall be known as the “(Name of Jurisdiction) Veterinary Medicine and Veterinary Technology Practice Act.”

Section 102. Legislative Declaration.

- (a) Veterinary Medicine and Veterinary Technology in the Jurisdiction of _____ are declared professional practices affecting the public health, safety, and welfare and are subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practices of Veterinary Medicine and Veterinary Technology, as defined in the Act, merit and receive the confidence of the public and that only qualified individuals be permitted to practice Veterinary Medicine or Veterinary Technology in the Jurisdiction of _____. This Act shall be liberally construed to carry out these objectives and purposes.
- (b) It is further declared that the intent of this legislation is to regulate the Veterinary Medicine and Veterinary Technology professions and will result in displacing competition by restricting licensure to practice Veterinary Medicine and Veterinary Technology, as such practices are defined and interpreted by the Board, to Persons determined by the Board to be qualified under this Act.
- (c) It is further declared that any such restriction on competition is outweighed by the broader interest in protection of public health, safety, and welfare. It is understood that the regulatory structure calls for Veterinarians, Veterinary Technicians, and public members to serve on the Board and this legislation recognizes the need for professional expertise provided by

Veterinarians and Veterinary Technicians serving the public interest.

- (d) This Act is intended to provide active Jurisdictional oversight and supervision through its legislative enactment, the promulgation of enabling regulations, the appointment of Board members by the Governor or legislature, legal representation of the Board by the office of the State Attorney General, legislative appropriation of monies to support the Board, and Board engagement in a periodic review process.

Commentary: Article I. Section 102. Legislative Declaration.

Veterinary Medicine and Veterinary Technology are learned professions affecting public health and welfare and should be declared as such by the legislature.

Section 103. Statement of Purpose.

- (a) It is the purpose of this Act to promote, preserve, and protect the public health, safety, and welfare by and through the licensure and regulation of individuals, whether within or outside of the Jurisdiction, who practice Veterinary Medicine or Veterinary Technology within this Jurisdiction. In furtherance of this purpose, this Act creates the Board of Veterinary Medicine and Veterinary Technology whose members, functions, and procedures shall be established in accordance with the provisions of this Act.
- (b)
 - (1) The purpose of this Act is to fully occupy the fields of Veterinary Medicine and Veterinary Technology and provide a uniform Jurisdiction-wide regulatory scheme to be enforced by the Board of Veterinary Medicine and Veterinary Technology as defined in the scope of practice. As such, no municipality shall prohibit a Veterinarian or Veterinary Technician, as defined in this Act, from engaging in any act or performing any procedure that falls within the professionally recognized scopes of practice of licensure as a Veterinarian or Veterinary Technician, including but not limited to the scopes of practice set forth in Section 105 and 106 of this Act.
 - (2) Nothing in this section 103(b) shall prohibit the municipality from:
 - (i) levying a business license tax solely for revenue purpose, or
 - (ii) levying a license tax solely for the purpose of covering the cost of regulation.

Commentary: Article I. Section 103. Statement of Purpose.

The Statement of Purpose defines the general scope of the Act. A Board must have full knowledge of the Persons practicing Veterinary Medicine and Veterinary Technology within its Jurisdiction and must effectively protect the public through regulation. This section provides for the regulation of both practices and the licensure of Veterinarians and Veterinary Technicians engaged in these practices and stipulates that the regulation of the practices of Veterinary Medicine and Veterinary Technology extends to all Veterinarians and Veterinary Technicians practicing in the Jurisdiction, regardless of their actual Jurisdiction of residency.

Section 104. Definitions.

When used in this Act, these words and phrases shall be capitalized and are defined as follows:

- (a) **Animal(s) or group of Animals** means any member of the Animal kingdom other than humans, whether living or dead.
- (b) **Animal Shelter** means a public or private humane society, Society for the Prevention of Cruelty to Animals, Animal protection shelter or control agency, rescue group, or like entity, that provides shelter and care for homeless Animals.
- (c) **Applicant** means a Person who submits an application for licensure or registration, whether complete or not, to the Board.
- (d) **Approved Provider of Continuing Education** means any Person that has met the requirements of the Board to provide educational courses that are designed to ensure continued competence in the practice of Veterinary Medicine or Veterinary Technology.
- (e) **Approved Program of Continuing Education** means an educational program approved by the Board or offered by an Approved Provider of Continuing Education.
- (f) **Approved Veterinary Medical Program** means a Veterinary Medicine or a veterinary medical degree education program that has been approved by the Board.
- (g) **Approved Veterinary Technology Program** means a Veterinary Technology or veterinary nursing degree education program that has been approved by the Board.
- (h) **Board** means the Board of Veterinary Medicine and Veterinary Technology created under this Act.
- (i) **Client** means a Person who has entered into an agreement with a Veterinarian for the purposes of obtaining veterinary medical services.
- (j) **Complementary and Alternative Veterinary Medicine** means a heterogeneous group of preventive, diagnostic and therapeutic philosophies and practices that are not considered

part of conventional Veterinary Medicine. These therapies include, but are not limited to, veterinary acupuncture, acuthery, and acupressure; veterinary homeopathy; veterinary manual or manipulative therapy (i.e., therapies based on techniques practiced in osteopathy, chiropractic medicine, or physical medicine and therapy); veterinary nutraceutical therapy; and veterinary phytotherapy.

- (k) **Consent** See Informed Consent
- (l) **Consultation** means when a Veterinarian receives advice or assistance, from a Veterinarian or other Person whose expertise, in the opinion of the Veterinarian, would benefit a Patient. Under any circumstance, the responsibility for the welfare of the Patient remains with the Veterinarian receiving Consultation.
- (m) **Continuing Education** means training that is designed to ensure continued competence in the practice of Veterinary Medicine or Veterinary Technology.
- (n) **Continuing Education Contact Hour** means a fifty (50) minute clock hour of instruction, not including breaks or meals.
- (o) **Conviction** means conviction of a crime by a court of competent jurisdiction and shall include a finding or verdict of guilt, whether or not the adjudication of guilt is withheld or not entered on admission of guilt, a no consent plea, a plea of nolo contendere, or a guilty plea.
- (p) **Declared Emergency** means a governmentally-determined situation, such as in times of natural or man-made disaster, disease or other extraordinary circumstances.
- (q) **Emergency Care** means care rendered to a Patient(s) that has a life-threatening condition and immediate treatment is necessary to sustain life, or alleviate or end suffering.
- (r) **Examination** means an Examination approved by the Board.
- (s) **Felony** means a criminal act as defined by any Jurisdiction or by definition under federal law.
- (t) **Informed Consent** means the Veterinarian has informed the Client or the Client's authorized representative, in a manner understood by the Client or representative, of the diagnostic and treatment options, risk assessment, and prognosis, and the Client has consented to the recommended treatment.
- (u) **Jurisdiction** means any commonwealth, state, or territory, including the District of Columbia, of the United States of America, or any province of Canada.
- (v) **Licensee** means a Person licensed under this Act.
- (w) **Licensure Transfer** means the method whereby a Veterinarian or a Veterinary Technician currently licensed in another Jurisdiction can also become licensed as a Veterinarian or

- Veterinary Technician in this Jurisdiction.
- (x) **Mobile Unit** means a type of Veterinary Facility that is a vehicle in or from which a Licensee may engage in the practice of Veterinary Medicine or Veterinary Technology.
 - (y) **Patient** means any Animal(s) or group of Animals receiving veterinary care from a Veterinarian or Veterinary Technician.
 - (z) **Person** means any individual, firm, partnership, association, joint venture, cooperative, corporation, governmental body, or any other group, legal entity or combination acting in concert; and whether or not acting as a principal, trustee, fiduciary, receiver, or as any kind of legal or personal representative, or as the successor in interest, assignee, agent, factor, servant, employee, director, officer, or any other representative of such Person.
 - (aa) **Premises** means any place where a Patient(s) is located when Veterinary Medicine and Veterinary Technology is being practiced.
 - (bb) **Supervision**-related terms are defined as follows:
 - (1) **Supervising Veterinarian** means a Veterinarian who assumes responsibility for the veterinary care given to a Patient by an individual working under their direction. The Supervising Veterinarian must have examined the Patient pursuant to currently acceptable standards of practice.
 - (2) **Immediate Supervision** means the Supervising Veterinarian is in the immediate area and within audible and visual range of the Patient and the individual treating the Patient.
 - (3) **Direct Supervision** means the Supervising Veterinarian is readily available on the Premises where the individual is treating the Patient(s).
 - (4) **Indirect Supervision** means a Supervising Veterinarian need not be on the Premises but has given either written or oral instructions for the treatment of the Patient and is readily available for communication.
 - (cc) **Veterinarian** means an individual who is licensed to practice Veterinary Medicine under the provisions of this Act.
 - (dd) **Veterinarian-Client-Patient Relationship (VCPR)** is established when:
 - 1) Both the Veterinarian and Client agree for the Veterinarian to assume responsibility for making medical judgments regarding the health of the Patient(s); and
 - 2) The Veterinarian has sufficient knowledge of the Patient(s) to initiate at least a general or preliminary diagnosis of the medical condition; and

- 3) The Veterinarian has provided the Client with information for obtaining timely follow up care.
- (ee) **Veterinary Facility** means any building, place, or Mobile Unit from which the practice of Veterinary Medicine and Veterinary Technology is conducted.
- (ff) **Veterinary Facility Registrant** means the registered owner of a Veterinary Facility.
- (gg) **Veterinarian Manager** is a Veterinarian who registers to assume responsibility for the Veterinary Facility registration, management, and operation of a Veterinary Facility.
- (hh) **Veterinary Student** means an individual currently enrolled in any Approved Veterinary Medical Program.
- (ii) **Veterinary Technician** means an individual who is licensed to practice Veterinary Technology under the provisions of this Act.
- (jj) **Veterinary Technician Student** means an individual currently enrolled in any Approved Veterinary Technology Program.

Commentary: Article I. Title, Purpose, and Definitions. Section 104(d, e, g, h).

Section 104. Definitions.

The practice of Veterinary Medicine and Veterinary Technology are defined in Sections 105 and 106.

Section 104(d) and (e). Approved Provider and Approved Program of Continuing Education.

See comment to Section 213(a) regarding the Board's role in the approval process of programs and providers.

Section 104(g). Approved Veterinary Technology Program.

While the Board is delegated authority by the legislature to determine the licensing requirements for Veterinary Technicians, the AAVSB recommends that formal education resulting in a degree be required for licensure to uphold licensing standards leading to public protection.

Section 104(h). Board.

Some Jurisdictions may select the title Board of Veterinary Medicine and Veterinary Technology if they regulate both professions.

Commentary: Article I. Title, Purpose, and Definitions. Section 104. (continued)

Section 104(s). Felony.

Boards may adjust this language based upon what distinctions exist in their criminal justice systems. For example, Canadian provinces distinguish among summary, indictable, and hybrid crimes, whereas the US recognizes a system of felonies and misdemeanors.

Section 104(u) Jurisdiction.

When not capitalized, jurisdiction means authority.

Section 104(w). Licensure Transfer.

The AAVSB has elected to use “Licensure Transfer” rather than Licensure by Endorsement or Reciprocity because of the confusion existing in regulation between such terms. “Licensure Transfer” is intended to allow for the possession of multiple veterinary and veterinary technology licenses. In Canada, this process is known as Labour Mobility.

Section 104(aa) Premises.

Boards may want to define “Premises” to include ranches, racetracks, farms, or other venues in which veterinary care may be provided.

Section 104(bb)(2). Immediate Supervision.

The AAVSB recommends that the Boards define through regulations tasks that Veterinary Technicians can perform with or without Immediate Supervision.

Section 104(bb)(4). Indirect Supervision.

The AAVSB contemplates that this definition of Indirect Supervision includes and incorporates the technological advancements and the ability of Persons to communicate through electronic and other means as a form of supervision. Of course, such supervision must maintain the necessary contact to be as effective as the Veterinarian deems appropriate.

Section 104(cc). Veterinarian.

To maintain consistency with the regulations promulgated by the Food and Drug Administration, Department of Health and Human Services with regard to Animal Drugs, Feed and Related Products (21 C.F.R. §530.3) which define Veterinarian and the Veterinarian-Client-Patient Relationship, the AAVSB defines Veterinarian as an individual who is licensed under the provisions of the Act. The AAVSB recognizes that there may be special limitations to the use of the title of Veterinarian and has defined Special Provisions in Section 107. The AAVSB also strongly believes that limiting the use of the title Veterinarian to individuals licensed to perform veterinary services better protects the public. It must be emphasized that the title restriction does not prevent anyone from referencing a valid educational degree (i.e. DVM) or other recognized credential (i.e. VMD). See also the comment to Section 301(b) of the Act. Several comments addressed this issue, saying the term Veterinarian belongs to individuals by virtue of the receipt of a degree. While this is understandable from an academic perspective, the AAVSB reasoned that the U.S. Code of Federal Regulations (CFR) and the potential for confusion to the public, mandate limitation of use of the term “Veterinarian” to Licensees. In that case, there would be no violation and enforcement would be left up to criminal prosecution through the state’s attorney or through civil litigation, involving deceptive trade practices or other applicable remedies. The AAVSB determined this approach does not adequately protect the public because many Jurisdictions lack the resources or incentives to criminally prosecute such offenses or, alternatively, injured parties must pursue matters through an expensive civil process. The AAVSB has chosen to affirmatively address the issue, rather than pass the enforcement to other entities.

Commentary: **Article I. Title, Purpose, and Definitions. Section 104. (continued)**

Section 104(dd). Veterinarian-Client-Patient Relationship (VCPR). The AAVSB determined that the establishment of the VCPR must be specified through general statutory language. Under certain circumstances, the failure to establish the VCPR may severely hinder the Board’s ability to prosecute or pursue administrative disciplinary actions against Licensees.

The VCPR as defined by the CFR under Title 21-Food and Drugs- applies only to the prescribing and dispensing of drugs and is not a federal requirement for the practice of veterinary medicine. Therefore, Jurisdictions may or may not require it, and may modify it when requiring it to practice. The AAVSB carefully reviewed the CFR and determined that the above definition was broad enough to encompass the more specific references in the CFR. Also, the AAVSB did not want to bind the Jurisdiction to a federal definition which, if changed, would necessitate subjecting the Practice Act to modifications and additional scrutiny by the legislature. Finally, the AAVSB determined that the specifics of the VCPR should be contained in the standards of practice/codes of conduct and promulgated through the rule/regulations, a process which is easier to modify, if necessary.

The AAVSB recommends that each jurisdiction promulgate appropriate regulations clarifying how to establish a VCPR and who may be included within the scope of a single VCPR such as a Veterinarian or another Veterinarian within the same practice group with access to medical records. The AAVSB recommends incorporation of the separate “**Model Regulations: Establishment and Maintenance of a Veterinarian-Client-Patient Relationship.**” It is essential for the VCPR to be easily established to require the Veterinarian to assume responsibility for the veterinary medical services rendered. Furthermore, as standards of practice and codes of conduct change over time, it is easier to promulgate new rules incorporating such changes rather than adopting legislative modifications.

Section 104(ee). Veterinary Facility. “Veterinary Facility” is defined with the intention that Jurisdictions license or otherwise register facilities or issue facility permits as a mechanism for protecting the public, especially when such facilities are owned by non-veterinarians (see Section 309). Boards of Veterinary Medicine and Veterinary Technology can thereafter establish standards and monitor qualifications of such facilities. Indeed, most Jurisdictions already provide for such regulation.

The AAVSB recommends that Boards of Veterinary Medicine and Veterinary Technology consider delineating the various specific Veterinary Facilities within its rules (e.g., clinic, hospital, specialty or referral hospital, etc.). Differing facilities can be defined within rules that can identify minimum standards and the allowable practices to ensure public protection.

Section 104(ii). Veterinary Technician. The AAVSB believes that the title “Veterinary Technician” and the practice of Veterinary Technology should be protected as a licensed profession, and this is reflected in the Act. Jurisdictions have created other titles such as veterinary assistant or veterinary employee to define the roles of staff who may perform tasks not relegated to Veterinary Technicians. The AAVSB strongly believes that there should be uniform degrees and title for Veterinary Technicians and veterinary nurses. The AAVSB recognizes that there are some Jurisdictions that have, or are considering, protecting the title of veterinary nurse. Especially when the latter term is being used to circumvent the regulation of Veterinary Technology, the AAVSB recommends that each Jurisdiction consider whether there is a need to protect the title veterinary nurse within their Act or regulations to co-exist with Veterinary Technician. The process should involve a review and consideration of any existing legal protections of use of the term veterinary nurse that may exist in parallel human health legislative frameworks.

Section 105. Practice of Veterinary Medicine.

(a) The practice of Veterinary Medicine means:

An individual practices Veterinary Medicine when performing any one or more of the following on a Patient(s):

- (1) Directly or indirectly consults, diagnoses, prognoses, corrects, supervises, recommends, or performs medical, dental, or surgical treatment, including Complementary and Alternative Therapies, for the diagnosis, prevention, cure, or relief of a wound, defect, deformity, fracture, bodily injury, disease, physical, behavioral, or mental condition;
- (2) Prescribes, dispenses, or administers a drug, medicine, anesthetic, biologic, appliance, apparatus, application, or treatment;
- (3) Performs any manual procedure for the diagnosis and/or treatment of pregnancy, sterility, or infertility; or
- (4) Makes a determination of the health, fitness, or soundness of a Patient(s);

(b) Subject to exceptions set forth in law, a VCPR must be established prior to engaging in the practice of Veterinary Medicine.

- (1) An exception to this requirement is that Emergency Care may be performed by a Veterinarian prior to the establishment of a VCPR.

Commentary: Article I. Section 105. Practice of Veterinary Medicine.

Most Jurisdictions require the establishment of a VCPR to engage in the practice of Veterinary Medicine. Failure to establish a VCPR may constitute grounds for charges of professional misconduct in many Jurisdictions. The Board should promulgate regulations for the establishment and maintenance of a VCPR. Refer to the **AAVSB's Model Regulations: Establishment and Maintenance of a VCPR**.

Section 105. Practice of Veterinary Medicine (continued).

The practice of Veterinary Medicine or the scope of practice is one of the most important and most-discussed definitions in the AAVSB Veterinary Medicine and Veterinary Technology Practice Act Model. Veterinary Medicine is a dynamic profession, particularly over the past several years with the adoption of Telehealth, and any definition of practice needs to contain a degree of flexibility that will allow the Board to make necessary adjustments from time to time to meet a changing Veterinary Medicine environment, an evolving practice, and the ongoing needs of consumers. For model regulatory language for Telehealth and Telemedicine, see the **AAVSB's Model Regulation: Telehealth and the Virtual Practice of Veterinary Medicine and Veterinary Technology**. The definition in Section 105 is purposely broad to provide substantial latitude to the Board in the adoption and implementation of rules.

Commentary: Article I. Section 105. Practice of Veterinary Medicine. (continued)

However, the definition does specifically identify a range of acceptable activities. The rules process would function as an important tool in the Board's efforts to adapt the definition to the needs of its Jurisdiction, since any new or amended rules that the Board may implement would be promulgated within the requirements of the Jurisdiction's Administrative Procedures Act and would afford all interested parties an opportunity to provide review and comment.

Section 106. Practice of Veterinary Technology.

(a) The practice of Veterinary Technology means:

An individual practices Veterinary Technology when performing any one or more of the following on a Patient(s):

- (1) Provision of professional medical care, monitoring, and treatment under Supervision of a Veterinarian;
- (2) Representation of oneself directly or indirectly, as engaged in the practice of Veterinary Technology; or
- (3) Nothing in this section shall be construed to permit a Veterinary Technician to do the following:
 - (i) perform surgery;
 - (ii) diagnose;
 - (iii) prognose; and
 - (iv) prescribe.

(b) Regulations defining tasks of Veterinary Technicians:

The Board shall promulgate regulations establishing Patient health care tasks and an appropriate degree of Supervision required for those tasks that may be performed by a Veterinary Technician or a Veterinarian.

- (1) Subject to exceptions set forth in law, a VCPR must be established prior to engaging in the practice of Veterinary Technology under a Veterinarian's orders and Supervision.
 - (i) An exception to this requirement is that Emergency Care may be performed by a Veterinary Technician prior to receiving a Veterinarian's Supervision.

Commentary: Article I. Section 106. Practice of Veterinary Technology.

See comment to Section 104 (ii) regarding the protection of the title and the licensed profession.

Section 107. Virtual Practice of Veterinary Medicine and Veterinary Technology.

- (a) The practice of Veterinary Medicine or Veterinary Technology in this Jurisdiction through electronic or other technological means, regardless of the location of the practitioner, shall constitute the practice of Veterinary Medicine or Veterinary Technology and shall be subject to regulation under this Act.
- (b) The practice of Veterinary Medicine or Veterinary Technology by a practitioner in this Jurisdiction through electronic or other technological means, regardless of the location of the Client(s)/Patient(s), shall constitute the practice of Veterinary Medicine or Veterinary Technology and shall be subject to regulation under this Act.
- (c) Veterinarians and Veterinary Technicians shall take all necessary measures to ensure compliance with relevant practice standards.

Commentary: Section 107. Virtual Practice of Veterinary Medicine and Veterinary Technology.

See also: **AAVSB Model Regulations: Telehealth and the Virtual Practice of Veterinary Medicine and Veterinary Technology.**

Section 108. Special Provisions.

The licensure requirements of the Act shall not apply to the following:

- (a) Any veterinary medical officer employed by a governmental body practicing Veterinary Medicine within the scope of official duties, provided such Veterinary Medicine is limited to the period of employment;
- (b) Any Animal care provider employed by a governmental body practicing Veterinary Technology within the scope of official duties, provided such Veterinary Technology is limited to the period of employment;
- (c) Any individual offering gratuitous services in cases of emergency;
- (d) Any veterinarian who is licensed in another Jurisdiction or country, or any Person whose expertise, in the opinion of a Veterinarian would benefit an Animal, and who is consulting with the Veterinarian, provided such service is limited to the Consultation;

- (e) Any Veterinary Student who practices Veterinary Medicine under the appropriate supervision level of a Veterinarian as part of the curriculum of an Approved Veterinary Medical Program;
- (f) Any Veterinary Technician Student who practices Veterinary Technology under the appropriate supervision level of a Veterinarian as part of the curriculum of an Approved Veterinary Technology Program;
- (g) An Animal Shelter employee or volunteer who provides care and performs euthanasia for the shelter's Animals in the course and scope of the individual's employment or duties if the individual has successfully completed training acceptable to the Board and is acting under the Supervision of a Veterinarian or in accordance with the written guidelines of a Veterinarian. Such individuals shall not diagnose, prognose, prescribe or perform surgery;
- (h) Any Persons engaged in scientific research that reasonably requires experimentation involving Animals and is conducted in a facility that complies with federal and jurisdictional regulations regarding Animal welfare;
- (i) Any Person or that Person's employee, who, subject to the Jurisdiction's anti-cruelty laws, treats Animals belonging to that Person, providing that ownership is not transferred for the purpose of circumventing this Act;
- (j) Any veterinarian or veterinary technician who is licensed in good standing in another Jurisdiction or country and is providing veterinary services in response to a Declared Emergency or a case involving Animal cruelty or fighting, provided a request for such assistance is received from a government, law enforcement, or Animal protection agency;
- (k) Any veterinarian who is licensed in good standing in another Jurisdiction or country and is providing a Continuing Education course or training at an Approved Veterinary Medical Program or Approved Veterinary Technology Program or in connection with an Approved Program of Continuing Education.

Commentary: **Article I. Section 108. Special Provisions.**

The AAVSB recognizes that some Jurisdictions include additional special provisions relating to the spaying, neutering, dehorning, castration, emasculation or docking of cattle, horses, sheep, goats, or swine in the course or exchange of work for which no monetary compensation is paid, or for artificial insemination and the collection of semen as well as additional services. Due to the potential for harm to the public/Animal(s), it is the intent of the Act to include Persons performing such activities as professionals who must be licensed. Accordingly, these activities are intentionally absent from the list of special provisions and such activities are included in the practice definition.

The special provision for students who practice at a veterinary teaching hospital or under the Immediate or Direct Supervision of a Veterinarian is intended to be restricted to those students who have completed some basic clinical courses. After much discussion and review of the comments, the AAVSB chose to leave the time period blank. The Jurisdictions should determine the requisite time period, which can be reflected in hours, percentages or years. Similarly, Jurisdictions should determine the appropriate prerequisites to be completed before Veterinary Technology students are permitted to practice Veterinary Technology.

As drafted, the special provision also restricts the practice of Veterinary Technology to those students who have completed some basic courses and are pursuing completion of the experience component of the program.

In all cases the special provision is intended to apply only to students practicing under the appropriate supervision as determined by the Board. With regards to faculty, the AAVSB noted that several Jurisdictions already require full licensure of faculty who teach clinical curriculum. Others require faculty licenses or institution licenses. The AAVSB feels strongly that Veterinary Medicine faculty involved in direct, clinical relations with the public and its Patients are engaged in practice and, thus, should be licensed, particularly when a VCPR exists.

Through the AAVSB PAM comment process, however, concerns were voiced regarding the practical implications such a licensure requirement would have on the education, recruitment of faculty and the undertaking of research and other important projects related to the educational process. In recognition of the practical implications such a requirement might have on educational institutions, the AAVSB PAM, provides a faculty license to provide for public protection in Section 306.

To protect the public and to prevent Persons from circumventing the licensure requirements, the faculty license is limited to bona fide faculty members who teach courses in Approved Veterinary Medical Programs.

Commentary: Article I. Section 108. Special Provisions. (continued)

A special provision is granted in the PAM to Animal Shelter employees who provide care and perform euthanasia. The AAVSB acknowledges that many Jurisdictions have adopted more specific language requiring that shelter Animals be euthanized by certified euthanasia technicians when a Veterinarian or Veterinary Technician is not available. Furthermore, Jurisdictions may wish to restrict the delegation of veterinary responsibilities to care designed to prevent disease transmission-i.e., vaccinations, prophylactic control of endo and ectoparasites, diagnostic testing and euthanasia.

A variety of certification methods have emerged through the rules process. To train euthanasia technicians, some Boards have established guidelines to certify euthanasia technicians whereas other Boards have little involvement.

Shelters, private organizations, and government agencies often respond to disasters and large-scale cruelty such as dog fighting and puppy mill cases by setting up temporary shelters to provide care and shelter for rescued victims. In disaster cases, the Animals needing care and shelter often number well into the hundreds. To provide appropriate care for these Animals, it may be necessary to recruit Veterinarians from outside the Jurisdiction. In cruelty cases, law enforcement often depends on assistance from veterinarians with expertise in forensics, diagnosing, prognosing and treating Animals in large scale cruelty and fighting cases. They should not be limited in their ability to effectively enforce a Jurisdiction's criminal laws or render needed veterinary care due to Jurisdictional constraints on the practice of Veterinary Medicine.

See section 305. Qualifications for Temporary License and Emergency Practice that would allow veterinarians and veterinary technicians to practice temporarily in response to a Declared Emergency.

Continuing Education that involves client-owned Animals may require the Supervision of a Veterinarian.

Article II. Board of Veterinary Medicine.

Commentary: Introductory Comment to Article II.

Before it can regulate the practices of Veterinary Medicine or Veterinary Technology, the Jurisdiction must first establish and empower the Board. Accordingly, Article II of the Act defines and creates the Board by specifying elements necessary to its formation, organization, and operation. Each of the sections contained in this article cover elements that the AAVSB feel it necessary to the proper formation and efficient operation of the Board. Several of these sections, especially those that contain innovative or infrequently utilized provisions, are supplemented by individual explanatory comments.

Among the sections of Article II that may be of particular interest to users of the Act are the following: Sections 202 and 203(c), pertaining to the inclusion of public members as Board members; Section 207, which provides grounds and procedures for removal of Board members, and Section 213(b)(2), which enables Boards to avail themselves of research and study grants and other non-Jurisdiction monies without having to deposit such funds in the Jurisdiction's general revenue accounts (thereby losing control over the expenditure of such funds).

It is also important to note that Section 212 specifically empowers the Board to make such rules as are necessary to fully administer and implement the Act. This is a very significant feature of the Act. The underlying philosophy of this approach is that the statute should create goals, guidelines, and policies in general areas, and permit the Board to provide the specifics in its rules. This approach recognizes that it is impossible for legislatures to enact comprehensive provisions regarding all the matters with which a Board may be confronted or to anticipate the rapidly changing conditions of the professions and the delivery of veterinary medical services. Consequently, the AAVSB recommends that Boards have adequate power to adopt and amend rules with the greatest possible flexibility and autonomy. Section 212 of this Act is designed to accomplish this objective.

Section 201. Designation.

The responsibility for enforcement of the provisions of this act is hereby vested in the Board of Veterinary Medicine and Veterinary Technology (Board). Under active oversight and supervision by the Jurisdiction, the Board shall have all of the duties, powers, and authority specifically granted by or necessary for the enforcement of this Act, as well as such other duties, powers, and authority as it may be granted from time to time by applicable law.

Section 202. Membership.

The Board shall consist of X members, of which at least one (1) shall be a representative of the public, and the remainder shall be Veterinarians or Veterinary Technicians, who possess the qualifications specified in Section 203. At all times, at least fifty percent (50%) of the members of the Board shall be Veterinarians who are actively engaged in the practice of Veterinary Medicine in this Jurisdiction.

Commentary: Article II. Section 202. Membership.

The number of Board members should be determined by each individual Jurisdiction according to its requirements. Individual Jurisdictions may wish to consider Board composition that represents the diversity of practice types and interests within a Jurisdiction. Variable factors, such as Jurisdiction population, number of Veterinarians, and other local considerations, may all be relevant in determining the number of Board members needed to most effectively enforce the Act. Since the mission of the Board is public protection, the AAVSB strongly recommends that the Board have at least one (1) public member.

The AAVSB also strongly recommends that the Board have at least one (1) Veterinary Technician member.

Section 203. Qualifications.

- (a) Board members shall at all times maintain eligibility to serve on the Board by avoiding relationships that would interfere with the Board mission of public protection. Board members shall be especially cognizant of issues of conflict of interest.
- (b) Each Veterinarian or Veterinary Technician member of the Board shall at all times:
 - (1) Be a resident of this Jurisdiction for not less than X years;
 - (2) Be currently licensed in good standing and without restriction to engage in the practice of Veterinary Medicine or Veterinary Technology in this Jurisdiction; and
 - (3) Have had at least X years of experience in the practice of Veterinary Medicine or Veterinary Technology.
- (c) The public member(s) of the Board shall be a resident of this Jurisdiction who is at least X years old and shall not be, nor shall ever have been, a Veterinarian, Veterinary Technician or the immediate family member of a Veterinarian or Veterinary Technician, or an individual who has ever had any material financial interest in the provision of veterinary services, or who has engaged in any activity directly related to the veterinary profession.

Commentary: Article II. Section 203.

Section 203. Qualifications.

Conflict of interest issues provide a legal basis for challenging the actions of a regulatory board. As has been determined by the United States Supreme Court, a conflict need not be actual, but merely the appearance of an impropriety can create the basis for legal challenges. The AAVSB strongly suggests Board members not participate as an officer or in a policy-making position of a local, Jurisdiction or national professional association.

Section 203(b). Qualifications.

Section 203(b) of the Act requires that Veterinarians and Veterinary Technicians be licensed to practice at all times while serving as Board members. Although AAVSB recommends that Board members should have at least five (5) years of experience in the practice of Veterinary Medicine or Veterinary Technology prior to appointment, it believes the number of years of experience should be determined by each Board. Since the practice of Veterinary Medicine is defined in Section 105 in broad terms, it renders a Veterinarian actively engaged in almost any phase of practice eligible for appointment. This provides for the eligibility of candidates who have diverse backgrounds and experiences, who are knowledgeable in the affairs of the profession, and who represent different geographic areas of the Jurisdiction.

Section 203(c). Qualifications.

Specific qualifying criteria for the public member have been deliberately omitted from this section. Reliance has been placed in the Governor to determine what attributes a person should possess to meaningfully serve on a Board. To help ensure that such a member would be truly independent in judgments, those persons who have a possible substantial relationship with the profession are rendered ineligible by this section. The AAVSB also recommends that a public member of the Board be at least twenty-one (21) years old.

Section 204. Appointment.

In accordance with the principle of separation of powers and to provide for sufficient oversight by the respective branches of government, the Governor shall appoint the members of the Board in accordance with the provisions of this Article or other applicable laws.

Commentary: Article II. Section 204. Appointment.

The AAVSB recognizes that there may be other appointing authorities in some Jurisdictions. Accordingly, Jurisdictions with an appointing authority other than the Governor should insert the appropriate reference to such authority within this section of the Act.

Section 205. Terms of Office.

- (a) Members of the Board shall be appointed for a term of X years, except as provided in subsection (b) and except that members of the Board who are appointed to fill vacancies that occur prior to the expiration of a former member's full term and who shall serve the unexpired portion of such term.

- (b) The terms of the members of the Board shall be staggered, so that the terms of no more than X members shall expire in any year. Each member shall serve until a qualified successor is appointed.
 - (1) The current members of the Board shall serve the balance of their terms.
 - (2) Any current Board members appointed initially for a term of less than X years shall be eligible to serve for X additional full terms.
- (c) No member of the Board shall serve more than X consecutive full terms. The completion of the unexpired portion of a full term shall not constitute a full term for purposes of this section.

Commentary: Article II. Section 205. Terms of Office.

The AAVSB recommends that the terms are staggered so that the terms of no more than three (3) members will expire in any year. However, this number may vary based on the number of board members. In addition, because Jurisdiction populations vary so dramatically, rather than recommend specific lengths of terms or term limits, the AAVSB believes each Jurisdiction should make its own determination.

Section 206. Vacancies.

Any vacancy which occurs in the membership of the Board for any reason, including expiration of term, removal, resignation, death, disability, or disqualification, shall be filled within six (6) months as prescribed by Section 204. Failure to fill a vacancy within the six (6) month period shall divest the Governor of the appointment authority for such vacancy and vest such authority in the state senate.

Commentary: Article II. Section 206. Vacancies.

Based upon several experiences within Veterinary Medicine and other professions whereby vacancies on regulatory boards have not been timely appointed, the AAVSB provided for a time period wherein the Governor (or other appointing authority) must fill such vacancies. The AAVSB recommends that failure to make such appointments within the six-(6) month period should divest the Governor of the appointment authority for that vacancy and empower the State Senate in this regard for said vacancy. It is hoped that this time period will provide incentives to the Governor to make such appointments in a timely fashion. However, each individual Jurisdiction will have to consider proposed language to ensure such does not conflict with other laws. This is a model act for Jurisdictions to consider and, obviously, they may not enact it verbatim. That being said, while Boards might not be able to enforce these mandates, including such provisions will at the very least offer guidance to legislatures and courts as to how to ensure public safety by cooperating with and helping regulatory boards.

Section 207. Removal.

- (a) A Board member may be removed by the Governor. In addition, pursuant to the procedures set forth in subsection (b) herein, a board member may be removed by a three-quarter ($\frac{3}{4}$) majority vote of the Board upon one or more of the following grounds:
 - (1) The refusal or inability for any reason of a Board member to perform the duties as a member of the Board in an efficient, responsible, and professional manner;
 - (2) The misuse of office by a member of the Board to obtain financial or material gain or advantage personally or for another;
 - (3) A final adjudication by a recognized body including the courts that the Board member is in violation of the laws governing the practice of Veterinary Medicine or Veterinary Technology; or
 - (4) Other just and reasonable causes as determined solely by the Board pursuant to applicable law.
- (b) Removal of a member of the Board shall be in accordance with the Administrative Procedures Act of this Jurisdiction, or other applicable laws.

Commentary: Article II. Section 207. Removal.

In certain Jurisdictions, there may be general statutory provisions that establish the procedures and grounds for the removal of appointed public officials. In these Jurisdictions, disregard Section 207. Specific grounds may be addressed in the regulations, such as failure to attend meetings, and any other parameters established by the Board.

Section 208. Organization.

- (a) The Board shall elect from its members a Chairperson and such other officers as it deems appropriate and necessary to conduct its business. The Chairperson shall preside at all meetings of the Board, shall be responsible for the performance of all the duties and functions of the Board and shall perform those duties customarily associated with the position and such other duties assigned from time to time by the Board.
- (b) Officers elected by the Board shall serve terms of X year(s) commencing with the day of their election and ending upon election of their successors and shall serve no more than X consecutive full terms in each office to which they are elected.
- (c) The Board shall employ an Executive Director who shall be responsible for the performance of the administrative functions of the Board and such other duties as the Board may direct.

Commentary: Article II. Section 208. Organization.

Section 208(b). Organization.

The AAVSB recommends one (1) year terms for officers and no more than three (3) consecutive full terms thereafter.

Section 208(c). Organization.

The AAVSB urges that every Board have a permanent administrative official (Executive Director) to perform and supervise the administrative duties and functions for which the Board is responsible on a day-to-day basis. The responsibilities of the Executive Director should include the hiring of necessary staff to assist in fulfilling the responsibilities of the Board. The position title may vary from Jurisdiction to Jurisdiction.

Section 209. Compensation of Board Members.

Each member of the Board shall receive a per diem as specified in the regulations for time engaged in performance of the official duties of the Board and shall also be reimbursed for all reasonable and necessary expenses incurred in connection with the discharge of such official duties.

Commentary: Article II. Section 209. Compensation of Board Members.

The AAVSB recognizes that many boards do not pay board members, but the AAVSB believes board members should be paid a per diem for their time as well as their travel expenses. Failure to compensate volunteers for their time may result in difficulty recruiting Board members who must travel and may also lose a day's pay.

Section 210. Meetings.

- (a) The Board shall meet at least once every X month(s) to transact its business. The Board shall meet at such additional times as it may determine. Such additional meetings may be called by the Chairperson of the Board or by two-thirds (2/3) of the members of the Board.
- (b) The Board shall give prior notice of the time and place for each meeting in a manner prescribed by the Administrative Procedures Act or other applicable laws.
- (c) A majority of the members of the Board shall constitute a quorum for the conduct of a Board meeting and, except where a greater number is required by the Act or by any rule of the Board, all actions of the Board shall be by a majority of a quorum.
- (d) All Board meetings and hearings shall be open to the public. The Board may, in its discretion and according to law, conduct any portion of its meeting in executive session, closed to the public.

Commentary: Article II. Section 210(a, c).

Section 210(a). Meetings.

The AAVSB strongly recommends that Boards meet at least four (4) times per year. This is a minimum standard that would help Boards maintain an adequate level of efficiency and responsiveness.

Section 210(c). Meetings.

The AAVSB recommends that the Boards determine if remote participation is permissible by law.

Section 211. Employees.

The Board may, in its discretion, employ individuals in addition to the Executive Director in such other positions or capacities as it deems necessary to the proper conduct of Board business and the fulfillment of the Board's responsibilities as defined by the Act.

Commentary: Article II. Section 211. Employees.

Inspectors employed by the Board may be Veterinarians or Veterinary Technicians. Boards may wish to consider whether investigators must be Veterinarians.

Section 212. Rules.

The Board shall make, adopt, amend, and repeal such rules as may be deemed necessary by the Board for the proper administration and enforcement of this Act. Such rules shall be promulgated in accordance with the procedures specified in the Administrative Procedures Act.

Commentary: Article II. Section 212. Rules.

The legislative authority granted to a Board to adopt, amend and repeal rules is an extremely important power. Boards are encouraged to fully exercise this authority by adopting rules, where necessary, to more specifically address regulatory issues. This rule-making authority is not only beneficial for the protection of the public, but also benefits the Board when it is necessary to interpret the Act. As membership on the Board changes, these rules become increasingly important to maintain consistency in the application of the Act. Generally, the rule-making process is governed by an Administrative Procedures Act (APA) or other applicable law which provides for public disclosure and comments prior to promulgation. These processes are designed to provide for public input and the necessary checks and balances upon the regulatory Board. Of course, any action undertaken by the Board must be to enhance the Board authority and public protection.

Section 213. Powers and Responsibilities.

- (a) Under active Jurisdiction oversight and supervision, the Board shall be responsible for the control and regulation of the practices of Veterinary Medicine and Veterinary Technology in this Jurisdiction including, but not limited to, the following:
 - (1) Licensure by Examination, or Transfer, or issuance of temporary, emergency or faculty license, or the renewal of licenses of individuals who are authorized to practice Veterinary Medicine or Veterinary Technology under the provisions of this Act;
 - (2) Registration and renewal of registration or licensure of Veterinary Facilities under provisions of this Act;
 - (3) Establishment and enforcement of standards or criteria of programs, or other mechanisms to ensure the continuing competence of Licensees;

- (4) Establishment and enforcement of compliance with requirements for the registration of Veterinary Facilities, minimum standards of practice and codes of conduct for Licensees who practice Veterinary Medicine or Veterinary Technology;
- (5) The creation of a Bill of Rights concerning what veterinary services a Client may expect to receive;
- (6) The determination and issuance of standards for recognition and approval of degree programs of schools and colleges of Veterinary Medicine and Veterinary Technology whose graduates shall be eligible for licensure in this Jurisdiction;
- (7) The enforcement of those provisions of the Act relating to the conduct or competence of Applicants, Licensees practicing in this Jurisdiction, registration of Veterinary Facilities and the suspension, revocation, or restriction of licenses to practice Veterinary Medicine or Veterinary Technology;
- (8) The maintenance of jurisdiction over the following:
 - (i) Persons, irrespective of their licensure status, (i.e., active, inactive, expired, lapsed, surrendered, or disciplined) relative to acts, omissions, complaints, and investigations which occurred during the licensure period;
 - (ii) Veterinary Facilities, irrespective of their registration status, relative to acts, omissions, complaints, and investigations which occurred during the registration period. Such jurisdiction shall be for purposes of enforcement of all the provisions of this Act and any regulations promulgated hereunder, including the assessment and collection of fines, costs, and attorneys' fees;
 - (iii) Persons engaging in the unauthorized practice of Veterinary Medicine or Veterinary Technology. It is the intent of this subsection that Licensees cannot divest the Board of jurisdiction by changing or relinquishing licensure or registration status;
- (9) Issuance of an order directing an Applicant or Licensee to undergo a mental or physical examination or chemical dependency evaluation, when probable cause exists that the Applicant or Licensee has engaged in conduct prohibited by this Act, or a statute or rule enforced by the Board. For the purpose of this section, every Applicant or Licensee is considered to have consented to undergo a mental and/or physical examination or chemical dependency evaluation when ordered to do so, in writing by the Board, and to have waived all objections to the admissibility of the examiner's or evaluator's testimony or reports on the grounds that the testimony or reports constitute a privileged communication;
- (10) The collection of data and funds necessary to carry out the provisions of this Act, provided:

- (i) Such funds are expended for the pursuit of the objective for which they are awarded;
 - (ii) Activities connected with or occasioned by the expenditures of such funds do not interfere with the performance of the Board's duties and responsibilities and do not conflict with the exercise of the Board's powers as specified by this Act;
 - (iii) Such funds are kept in a separate account; and
 - (iv) Periodic reports are made concerning the Board's receipt and expenditure of such funds.
- (11) The investigation of any Person, or Veterinary Facility, including Veterinary Facility inspection, during customary business hours for the purpose of determining if any provisions of the Act governing the practice of Veterinary Medicine or Veterinary Technology are being violated. The Board, its officers, inspectors, employees, and representatives shall cooperate with all agencies charged with the enforcement of applicable laws relating to the practice of Veterinary Medicine or Veterinary Technology.
- (b) The Board shall have such other duties, powers, and authority as may be necessary to enforce this Act and Board rules, including but not limited to, the following:
 - (1) The Board may join professional organizations and associations organized to promote Veterinary Medicine and Veterinary Technology for the protection of the health and welfare of the public and Animals or whose activities assist and facilitate the work of the Board;
 - (2) The Board may receive and expend funds, in addition to its [annual/biennial] appropriation, from parties other than the Jurisdiction, provided that such funds are used in the pursuit of a specific objective that the Board is authorized to accomplish by this Act, or which the Board is qualified to accomplish by reason of its jurisdiction or professional expertise;
 - (3) Any investigation, inquiry, or hearing that the Board is empowered to hold in accordance with applicable law may be held by or before any member(s) of the Board and the order of such member(s) shall be deemed to be the order of said Board when approved and confirmed as noted in Section 210(d);
 - (4) The Board shall report any violation of this Act which also is deemed as violative of applicable criminal statutes to the Attorney General [State's Attorney] to cause appropriate proceedings to be instituted in the proper court without delay and to be prosecuted in the manner required by law. It is the duty of the Attorney General [State's Attorney] to prosecute such violations. Nothing in this paragraph shall be

construed to require the Board to report violations whenever the Board believes that the public's interest will be adequately served in the circumstances by a suitable written notice or warning;

- (5) The Board shall have the power to subpoena Persons and documents for purposes of depositions and testimony, or both, in the same manner as prescribed in civil cases in the courts of this Jurisdiction. Any member of the Board, hearing officer, or administrative law judge shall have power to administer oaths to witnesses at any hearing that the Board is authorized to conduct, and any other oaths authorized in any Act administered by the Board;
- (6) In addition to the fees specifically provided for in this Act, the Board may assess additional reasonable fees for services rendered to carry out its duties and responsibilities as required or authorized by this Act or Board rules. Such services shall include but not be limited to the following:
 - (i) Issuance of duplicate certificates or identification cards;
 - (ii) Mailing lists, or reports of data maintained by the Board;
 - (iii) Copies of any documents;
 - (iv) Certification of documents;
 - (v) Notices of meetings;
 - (vi) Licensure Transfer;
 - (vii) Examination administration to an Applicant; and
 - (viii) Examination materials.
- (7) Cost Recovery.
 - (i) In any order issued in resolution of a disciplinary proceeding before the Board, the Board may request the Administrative Law Judge/Hearing Officer (ALJ/HO) to direct any Person or Veterinary Facility found to have violated the Act or Board rules, to pay to the Board a sum not to exceed the reasonable costs, including attorneys' fees, of the investigation and prosecution of the case;
 - (ii) The costs to be assessed shall be fixed by the ALJ/HO and shall not be increased by the Board; where the Board does not adopt a proposed decision and remands the case to a(n) ALJ/HO, the ALJ/HO shall not increase any assessed costs;

- (iii) Where an order for recovery of costs is issued and timely payment is not made as directed by the Board, the Board may enforce the order for payment in the _____ Court in the municipality where the administrative hearing was held. This right of enforcement shall be in addition to any other rights the Board may have as to any Person or Veterinary Facility directed to pay costs; and
 - (iv) In any action for recovery of costs, the Board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.
 - (8) Except as otherwise provided to the contrary, the Board shall exercise its duties, powers, and authority in accordance with the Administrative Procedures Act.
- (c) Oversight of the Board through an annual report.

As a means to provide continued and active oversight, the Board shall file with the Governor an annual report outlining the activities of the Board.

Commentary: **Article II. Section 213. Power and Responsibilities.**

Section 213. Powers and Responsibilities.

The AAVSB strongly recommends that Boards provide training for new members on their powers and responsibilities.

Section 213(a)(1). Powers and Responsibilities.

See Section 104(w) and Section 307 and the corresponding comments for a definition and explanation of "Licensure Transfer."

Section 213(a)(3)(4)(5)(6). Powers and Responsibilities.

Great care should be exercised by the Boards with respect to these sections. Many Jurisdictions have statutes or rules which provide, for example, that approved degree programs of schools or colleges of Veterinary Medicine are those accredited by the Council on Education (COE) of the American Veterinary Medical Association (AVMA). Similarly, with regard to accredited Veterinary Technology programs, many Jurisdictions have statutes or rules that provide that approved programs are those accredited by the Committee on Veterinary Technician Education and Activities (CVTEA) of the AVMA. Furthermore, some Boards through their regulation/rules, rely upon the standards of practice or codes of ethics of private outside entities like the professional associations. As is emphasized by this PAM and Comments and for reasons stated below, the legislatures and/or regulatory boards are encouraged to adopt, by statute or through the rule making process, the actual standards or criteria of the private outside entity to avoid allegations of improper delegation.

It is a well-established rule of administrative law that any delegation of governmental power (through statute or by rule) must carry with it appropriate limitations and procedural safeguards for affected individuals. For example, a direct, unequivocal grant of the accreditation function to a private organization, such as AVMA COE, by the legislature through a practice act or by the Board through the rule making process, might be deemed an unauthorized, improper, and invalid delegation of legislative or Board authority.

Commentary: Article II. Section 213. Power and Responsibilities. (continued)

Section 213(a)(3)(4)(5)(6). Powers and Responsibilities.

Similarly, a direct reliance upon standards of practice or a code of conduct of a private outside body over which the legislature or board has no control may constitute an unconstitutional delegation of authority. This doctrine is based upon the simple premise that regulatory decisions affecting an individual's property right (i.e. a license) must be made by boards that have been created and empowered to protect the public and are answerable to the general public. Further, regulatory boards in Veterinary Medicine and Veterinary Technology have no control over AVMA activities. A review of this legal doctrine reveals case law invalidating legislation and rules that, without limitation, rely upon these outside entities without public accountability. See Garces v. Department of Registration and Education, 254 N.E.2d 622 (Ill. App., 1969); Gumbhir v. Kansas State Board of Pharmacy, 618 P. 2d 837 (Ks 1980); Coffman v. State Board of Examiners in Optometry, 50 N.W. 2d 322 (MI 1951); FM Properties Operating Co. v. City of Austin, 22 S.W. 3d 868 (TX 2000), Balian v. Board of Licensure in Medicine, 722 A. 2d 364 (ME 1999).

The AAVSB recommends that the statutory language grant the Board the authority to approve Veterinary Medicine and Veterinary Technology programs. Boards thereafter may adopt in their rules the standards, criteria and policies of accreditation established from time to time by the COE or the CVTEA, the nationally recognized accrediting agencies for Veterinary Medicine degree programs and Veterinary Technology programs. Thereafter, the regulatory boards can annually adopt in their minutes the list of accredited Veterinary Medicine and Technology programs using the AVMA COE and CVTEA list. A similar process can take place by the Board should it wish to rely upon others in determining the standards of practice or codes of conduct. This will allow the legislatures and boards to utilize the expertise of such private outside entities without improperly delegating such authority to an organization over which the boards have no control, and which is not accountable to the public.

Section 213(a)(4)(5). Powers and Responsibilities.

To avoid improper delegation allegations as referenced above, the standards of practice and codes of conduct should be a product of the Board. Again, the Board may rely upon the expertise of outside private entities by adopting those standards which the Board deems acceptable.

The "Bill of Rights" is intended to provide legislative or regulatory guidance to practitioners regarding the information to be made available to Clients, preferably during the establishment of the professional relationship. Included would be information regarding the qualification of Licensees (licensure status, specialty certification), the regulatory Board and contact information in the event of a complaint, billing policies, Informed Consent and the like. The "Bill of Rights" should be consistent with standards of practice, codes of ethics and regulations that the Board has adopted under the Act to avoid inadvertently expanding the role and the responsibilities of the Licensee through the establishment of such a "Bill of Rights".

Commentary: **Article II. Section 213. Power and Responsibilities. (continued)**

Section 213(a)(9). Powers and Responsibilities.

This section allows the Board to order mental or physical examination or chemical dependence evaluations upon showing probable cause. This power should be used judiciously, only when the Board has reason to believe that there may be a connection between a mental and/or physical condition and the alleged misconduct. This power is necessary to ensure to the public that an Applicant or Licensee's ability to practice Veterinary Medicine or Veterinary Technology safely and competently is not impaired.

The legislative process provides a system of checks and balances to ensure that the Board acts within the scope of its authority and in accordance with all other applicable laws, such as the Administrative Procedures Act.

Section 213(b)(7). Cost Recovery

The ALJ/HO interspersed throughout this section refer to the terms: "administrative law judge," or "hearing officer" as determined by individual Jurisdictions.

Section 213(c). Powers and Responsibilities.

The AAVSB recommends that in addition to including reference to the effectiveness and efficiencies of the Board, the annual report shall through numeric statistics at a minimum, identify the number of Licensees, Applicants, renewals, complaints, and disposition of such complaints, along with the number of Board meetings, and all financial data relevant to Board operations.

Article III. Licensing and Veterinary Facility Registration.

Commentary: Introductory Comment to Article III.

Article III of this Act sets out the requirements for initial licensure of Veterinarians and Veterinary Technicians, and registration of Veterinary Facilities, as well as Licensure Transfer, renewal, and emergency, temporary or faculty licensure. As in other parts of the Act, this Article establishes basic criteria and delegates the authority for implementing those criteria to the Board. The Board exercises this authority by promulgating specific rules and utilizing appropriate enforcement mechanisms. For example, regarding initial licensure, the Act would be implemented by the Board's approval of Veterinarian or Veterinary Technician degree programs, specifications of the Examinations to be used, and establishment of all other prerequisites that must be met by each Applicant to whom it issues a license.

This article, as well as the entire Act, also reflects the AAVSB's efforts to develop uniform standards for the transfer of licensure. The veterinary medical profession has become increasingly mobile, and boards need to examine the ways in which differing standards among Jurisdictions may be affecting the public's access to qualified Licensees.

Section 301. Practice Requirements and Restrictions.

- (a) The practice of Veterinary Medicine and Veterinary Technology in this Jurisdiction is subject to enforcement by the Board. Except as otherwise provided in this Act, it shall be unlawful for any Person to practice Veterinary Medicine or Veterinary Technology in this Jurisdiction through any means, unless licensed under the applicable provisions of this Act.
- (b) Veterinary Medicine and Veterinary Technology shall only be practiced in or from a Veterinary Facility registered with and regulated by the Board, or by Licensees identified as being affiliated with such facilities pursuant to Section 309.
- (c)
 - (1) No Person shall use the designation Veterinarian, Licensed Veterinarian or any other designation indicating licensure status, including abbreviations, or hold themselves out as a Veterinarian unless licensed as such.
 - (2) No Person shall use the designation Veterinary Technician, Licensed Veterinary Technician or any other designation indicating licensure status, including abbreviations, or hold themselves out as a Veterinary Technician unless licensed as such.
 - (3) No Person or entity shall indicate or hold itself out to be a Veterinary Facility unless such facility is registered with the Board.
- (d) The practice of Veterinary Medicine or Veterinary Technology through electronic or other means in this Jurisdiction shall constitute the practice of Veterinary Medicine or Veterinary

Technology subject to licensure and enforcement by the Board.

- (e) Any Person who, after a hearing, is found by the Board to have unlawfully engaged in the practice of Veterinary Medicine or Veterinary Technology, may be subject to a fine imposed by the Board, which may include cost recovery as set forth in this Act or Board rules. The Board may issue an order, obtain an injunction, or seek other administrative, civil, or criminal court action to restrain any Person from violating the provisions of this Act. Each violation of this Act or Board rules pertaining to unlawfully engaging in the practice of Veterinary Medicine or Veterinary Technology shall also constitute a (misdemeanor/Felony) punishable upon conviction as provided in the criminal code of this Jurisdiction.
- (f) Any Person who, after a hearing, is found by the Board to have unlawfully engaged in the practice of Veterinary Medicine or Veterinary Technology at a facility that is not registered with the Board as a Veterinary Facility, may be subject to a fine to be imposed by the Board, which may include cost recovery as set forth in this Act or Board rules. The Board may issue an order, obtain an injunction, or seek other administrative, civil or criminal court action to restrain any Person from violating the provisions of this Act. Each violation of this Act or Board rules pertaining to engaging in the practice of Veterinary Medicine or Veterinary Technology at a facility that is not registered with the Board shall also constitute a (misdemeanor/Felony) punishable upon conviction as provided in the criminal code of this Jurisdiction.
- (g) Nothing in this Act shall be construed to prevent members of other professions from performing functions for which they are licensed. However, such other professionals must not hold themselves out or refer to themselves by any title or description stating or implying that they are licensed or otherwise authorized to practice Veterinary Medicine or Veterinary Technology.

Commentary: **Article III. Section 301.**

Section 301. Practice Requirements and Restrictions

Section 301 establishes the basis for this Article by making it unlawful for any unlicensed Person to engage in the practice of Veterinary Medicine or Veterinary Technology, and by enabling the Board to impose penalties for unlawful practice. See Sections 105 and 106 for the definitions of the practice of Veterinary Medicine and Veterinary Technology.

Boards are often confronted with the issue of preventing unlicensed Persons from engaging in practice. Most practice acts do not give the boards jurisdiction and authority to act against individuals other than those who are licensed or applicants seeking licensure. Thus, Boards must rely on the difficult task of persuading local prosecutors to take criminal action against Persons not licensed to practice. This gap in Jurisdictional authority makes it difficult to effectively prevent unlawful practice.

This section is intended to empower the Board with jurisdiction over Persons engaged in unlicensed practice. The regulation of the practices of Veterinary Medicine and Veterinary Technology, including jurisdiction over unlicensed practice in the professions, has a reasonable and rational relation to public health, safety, and welfare. See, e.g., State v. Wakeen, 57N.W.2d 364 (Wis., 1953). cf. State v. VanKeegan, 113 A.2d141 (Conn., 1955), and Williamson v. Lee Optical of Oklahoma, 348 U.S. 483 (1955). For this reason, vesting power in the Board to regulate illegal practice would not appear to violate constitutional due process requirements. Because monetary fines are not generally considered criminal sanctions, it can be strongly argued that there are no constitutional barriers that would restrict the imposition of findings by a Board. See, e.g., Helvering v. Mitchell, 303 U.S. 376 (1938); City of Waukegan v. Pollution Control Boards, 311 N.E.2d 146 (Ill., 1974); County Council for Montgomery County v. Investors Funding Corp., 312 A.2d 225 (Md., 1973); and Roday v. Hollis, 500 P.2d 97 (Wash., 1972).

Section 301(c). Practice Requirements and Restrictions.

This provision is intended to restrict the use of the terms Veterinarian and Veterinary Technician to those who are licensed under the provisions of this Act and is not intended to prevent accurate use of initials or abbreviations, such as DVM, VMD, or any corresponding degree initials for Veterinary Technicians, indicating academic achievement. This Act is also not intended to prevent other licensed professionals from practicing within other “allied scopes.” However, it is important to recognize the Veterinarian and Veterinary Technician titles and link this name recognition to licensure. This link protects the public through an assurance that there is regulatory consistency associated with the Veterinary Medicine and Veterinary Technology identity. See also the Comments to Section 104(cc), defining the term Veterinarian.

Commentary: Article III. Section 301. (continued)

Section 301(d). Practice Requirements and Restrictions.

A license shall be required for any Veterinarian or Veterinary Technician who provides veterinary medical services to a Patient or Client in this Jurisdiction through in-person, telephonic, electronic, or other means. Many factors, including technological advancements, increase the likelihood of the practice of Veterinary Medicine via electronic means and without physical presence, both intrastate and interstate. While the judiciary may have the final word on regulating professions across Jurisdictional lines, this section is designed to specifically address the issue of where practice takes place. The AAVSB believes the practice of Veterinary Medicine takes place where the Patient is located when the VCPR is established. Because the Board's central mission is to protect the public in its Jurisdiction, it must make every effort to regulate the practice of Veterinary Medicine in that Jurisdiction, regardless of the location of the Veterinarian providing the services. Arguments can also be made that identify the location of practice under these circumstances as occurring in both Jurisdictions; that is where the Patient is located and where the Veterinarian is located.

Veterinarians in this Jurisdiction may wish to utilize the services of other veterinarians not licensed to practice in this Jurisdiction or other Persons. Consultations are defined in Section 104, and there are special provisions in Section 108(d) for Consultations with other veterinarians and Persons. The responsibility for the welfare of the Patient(s) remains with the Veterinarian in this Jurisdiction.

Section 301(e). Practice Requirements and Restrictions.

It is a common belief that the veterinary practice act allows Boards to act against Licensees only. However, a survey of the AAVSB Member Boards revealed that about 60% of them are empowered to act against unlicensed practice. In Jurisdictions without this authorization, whenever non-Veterinarians are illegally engaged in veterinary activities, the board must rely upon the Attorney General or other legal authorities to act against these individuals. In many cases, illegal veterinary practice is considered a low-level criminal activity that seldom gets a response from law enforcement agencies. The undertaking of criminal proceedings against unlicensed practice may be beyond the ability of many Boards with limited resources, and if undertaken, caution is advised because the criminal code takes effect and the due process rights granted the accused increase significantly based upon the rights at stake. The Oklahoma Practice Act has language that allows the Board to take more direct action against unlicensed practice.

“Act to halt the unlicensed or illegal practice of veterinary medicine and seek administrative, criminal and civil penalties against those engaged in such practice”.

Some boards may want to adopt this language. The ability to act against unlicensed practice should be delineated in the actual Practice Act, whereas the administrative process and specific actions to be taken should be outlined in the administrative code.

Section 302. Qualifications for Licensure by Examination.

- (a) To obtain a license to practice Veterinary Medicine, an Applicant for licensure by Examination shall bear the burden of substantiating to the Board that the following criteria have been met:
- (1) Submission of a completed application in the form approved by the Board;
 - (2) Attainment of twenty-one (21) years of age;
 - (3) Is of good moral character. As one element of good moral character, the Board shall require each Applicant for licensure to submit a full set of fingerprints for the purpose of obtaining criminal records checks, pursuant to _____ (insert authorizing Jurisdiction's statute) and applicable federal law. All good moral character information, including the information obtained through the criminal background checks, shall be relevant to licensure eligibility determinations to the extent permitted by law.
 - (4) Graduation and receipt of a doctorate degree in Veterinary Medicine from an Approved Veterinary Medical Program;
 - (5) Successful completion, within the X years preceding application, of an Examination(s) approved by the Board; and
 - (6) Payment of all applicable fees specified by the Board relative to the licensure process.
- (b) To obtain a license to practice Veterinary Technology, an Applicant for licensure by Examination shall bear the burden of substantiating to the Board that the following criteria have been met:
- (1) Submission of a completed application in the form approved by the Board;
 - (2) Attainment of eighteen (18) years of age;
 - (3) Is of good moral character. As one element of good moral character, the Board shall require each Applicant for licensure to submit a full set of fingerprints for the purpose of obtaining criminal records checks, pursuant to _____ (insert authorizing Jurisdiction's statute) and applicable federal law. All good moral character information, including the information obtained through the criminal background checks, shall be relevant to licensure eligibility determinations to the extent permitted by law.
 - (4) Graduation and receipt of a degree from an Approved Veterinary Technology Program;
 - (5) Successful completion, within the X years preceding application of an Examination(s) approved by the Board; and
 - (6) Payment of all applicable fees specified by the Board relative to the licensure process.

Commentary: Article III. Section 302.

Section 302(a)(3). Qualifications for Licensure by Examination.

Legislatures have generally agreed that “good moral character” is a proper requirement for licensure of Veterinarians and Veterinary Technicians. Defining precisely what constitutes good or bad character has caused regulatory Boards and courts considerable difficulty, and a review of applicable case law reveals a considerable variance in the judicial opinions concerning the interpretation of good character requirements. Nevertheless, the courts have uniformly enforced such requirements, reasoning that because regulatory boards are composed primarily of members of the profession being regulated, they are capable of applying character standards to their professions with relevance and specificity.

While specific character requirements may vary from Jurisdiction to Jurisdiction and may even appear to vary from case to case, the purpose of these requirements remains constant. The public has the right to expect the highest degree of integrity from members of the veterinary medical and technology professions. Boards have a duty to ensure that these expectations are realized. From this perspective, requirements of good moral character for licensure can be expected to be sustained by the courts so long as their enforcement is reasonably related to protection of the public health, safety, and welfare.

When grounded in public protection, issues involving moral character may lead to concerns about the potential for this qualification to be misused by Boards. Although there are many legal ways to ensure that the good moral character issue is not misapplied, including Jurisdictional and federal civil rights legislation, Boards need to be extremely sensitive when making character judgments. Practice act provisions that bear a reasonable relationship to the purpose of protecting the public welfare will generally be regarded as constitutionally acceptable by most courts, so long as the enforcement by boards is reasonably related to the protection of the public.

Section 302(a)(4). Qualifications for Licensure by Examination.

The AAVSB anticipates that boards will approve those programs whose standards are at least equivalent to the minimum standards required by the AVMA’s Council on Education. See Comment to Section 213(a)(3)(4)(5)(6) for a discussion of the Board’s role in the approval process.

Section 302(a)(5). Qualifications for Licensure by Examination.

The AAVSB believes that, for public protection, boards should limit the amount of time to five (5) years that Applicants can wait after passing the licensing exam to obtain an initial license because entry level skills may not be retained long term without ever practicing.

Section 302(b). Qualifications for Licensure by Examination.

Recognizing that different Jurisdictions have varying requirements for Veterinary Technicians, this section provides the basis for standardized requirements that Boards may wish to work toward.

Section 302(b)(4). Qualifications for Licensure by Examination.

The AAVSB anticipates that Boards will approve those programs whose standards are at least equivalent to the minimum standards required by the AVMA’s Committee on Veterinary Technician Education and Activities (CVTEA). See Comment to Section 213(a)(3)(4)(5)(6) for a discussion of the Board’s role in the approval process.

Section 303. Educational Equivalence.

By rule, the Board may set forth a procedure for Applicants who have graduated from a program/school that is not approved by the Board for an equivalency determination related the educational component of licensure.

Commentary: Section 303. Educational Equivalence.

One of the most difficult tasks for regulatory boards is to assess the educational equivalence of graduates of veterinary programs outside the United States and Canada that have not been evaluated by a recognized accrediting body under specific standards and criteria. There are currently two (2) programs designed to measure educational equivalence, the AAVSB Program for the Assessment of Veterinary Education Equivalence (PAVE) and the AVMA Educational Commission for Foreign Veterinary Graduates (ECFVG) program. As an entity with public protection as its primary mission and whose membership consists of veterinary boards who share in this mission, the PAVE program was designed by the AAVSB in response to a request from its Member Boards to assist them in the accurate and timely assessment of educational equivalence of foreign graduates. Boards are encouraged to adopt the standards and criteria of PAVE through their rule-making process rather than through the statutes. Details of the PAVE program can be found on the AAVSB website. Details of the ECFVG program can be found on the AVMA website.

Section 304. Examinations.

- (a) Any Examination for licensure required under this Act, shall be given by the Board at least two (2) times during each year. The Board shall approve the content and subject matter of each Examination, as well as the place, time and dates of administration of the Examination.
- (b) The Examinations shall measure the entry level competence of the Applicant to practice Veterinary Medicine or Veterinary Technology. The Board may employ, cooperate, and contract with any organization or consultant in the preparation, administration, and grading of an Examination, but shall retain the sole discretion and responsibility for determining which Applicants have successfully passed such an Examination.

Commentary: Section 304. Examinations.

As has been emphasized throughout this document and comments, the AAVSB recommends that the authority to make decisions directly impacting the licensure process be specifically vested in the Board. On a similar note, the discretion to determine the content and subject matter of each Examination and the passing score necessary to indicate minimum competence for purposes of licensure belongs solely to the Board. The Board, of course, may rely upon the expertise of the Examination owner in determining the content areas and pass/fail scores, however, the Board must be the ultimate decision-maker. That is, statutes and/or rules cannot blindly, and without limitations, delegate the decision to the outside entity. See the Comments to Section 213(a) for a more complete explanation.

Section 305. Qualifications for a Temporary License and Emergency Practice.

- (a) **Temporary License:** The Board may issue a temporary license to practice Veterinary Medicine and Veterinary Technology to an individual licensed in good standing in another Jurisdiction upon approval of an application to the Board. Practice in this Jurisdiction must fall within the scope of practice designated by such license, is permitted for no more than X days per year without applying for a license and is subject to restrictions deemed appropriate by the Board. Such an individual shall not be eligible to practice under this temporary license until the date the Board approves the application, shall be deemed to have submitted to the jurisdiction of the Board and shall be bound by the laws of this Jurisdiction.
- (b) **Emergency Practice:** Any individual licensed in good standing to practice Veterinary Medicine or Veterinary Technology in another Jurisdiction may, upon written notice to the Board and during a Declared Emergency, provide services within the scope of practice designated by such license. Such individual shall be deemed to have submitted to the jurisdiction of the Board and be bound by the laws of this Jurisdiction.

Commentary: Article III. Section 305.

Section 305(a). Qualifications for a Temporary License.

The privilege of practicing temporarily is only granted to individuals licensed and in good standing to practice Veterinary Medicine or Veterinary Technology in another Jurisdiction. Based upon the uniformity in accredited educational programs and licensure examinations, it is perceived that minimum competence in one Jurisdiction is reasonably equated to minimum competence in another Jurisdiction. Furthermore, practice privileges apply to such individuals only if the requirements for licensure in the Jurisdiction of licensure are substantially similar to the requirements for licensure in this Jurisdiction.

By design, the language of the temporary license references an “application” to be submitted to the Board prior to engaging in practice under this section. It is up to each individual Board to determine the extent of the application.

The unspecified time period is also, by design, left to the interpretation of a Board as to how the period is to be determined.

Finally, Veterinarians and Veterinary Technicians providing services under this temporary license are deemed to have submitted to the jurisdiction of the Board and agree to be bound by the laws of the Jurisdiction thereof. It is recommended that the Board’s application contain language that verifies the submission of the Person to the Jurisdiction and the applicability of the laws of the Jurisdiction. The application provides the Boards with important information about who is practicing. It also provides the Board with appropriate waivers relative to Jurisdiction and the laws of the Jurisdiction. Finally, it provides a privilege which can be removed by the Board through the disciplinary process, reported to a databank, such as AAVSB’s Veterinary Information Verifying Agency (VIVA), and, if Jurisdictional laws allow, have an eventual impact upon the actual license in the Jurisdiction of licensure.

Section 305(b). Qualifications for Emergency Practice.

See comments to 305(a) relative to the overall rationale for a temporary license and the applicability of jurisdictional and other legal issues. Similar rationale applies to this section as well. In addition, emergency practice in the case of a Declared Emergency is left to the Board to determine.

Again, this provides the Board with valuable information as to who is practicing within the Jurisdiction in the event of a reported complaint or wrongdoing. Written notice can be determined by the Board, but it is suggested it be limited to a simple statement as to the fact that an emergency has been declared, the Person has a license in good standing and is practicing relative to the Declared Emergency, submits themselves to the jurisdiction of the Board and will abide by the applicable laws of the Jurisdiction. It is not anticipated any such notice will be subject to approval by the Board, thus eliminating the time-consuming Board approval process due to the emergency nature of the situation.

Alternatively, Boards may choose to use the special provisions approach for veterinarians providing services during disasters and other emergencies found in Section 108(c).

Section 306. Faculty Licensure.

The Board may issue a faculty license to an Applicant who is a member of the faculty at an Approved Veterinary Medical or Veterinary Technology Program in this Jurisdiction, is actively and currently involved in the instruction of students and is engaged in the practice of Veterinary Medicine or Veterinary Technology. Holders of a faculty license are permitted to practice Veterinary Medicine or Veterinary Technology while engaged in the performance of his or her official duties as a faculty member only.

- (a) To obtain a faculty license, an Applicant shall bear the burden of substantiating to the Board that the following criteria have been met:
 - (1) Completion of the application form approved by the Board. If the Applicant is licensed in another Jurisdiction or country, he or she shall disclose if they have been convicted of a Felony or been the recipient of a disciplinary action by a veterinary board within the last X years;
 - (2) Proof of graduation and receipt of a degree from an Approved Veterinary Medical or Veterinary Technology Program;
 - (3) Proof of employment at or an appointment to the faculty of an Approved Veterinary Medical or Veterinary Technology Program teaching students, including a description of their faculty responsibilities; and
 - (4) Proof of successful completion, within the X years preceding application, of an Examination(s) approved by the Board.
- (b) A faculty license authorizes the Licensee to practice Veterinary Medicine or Veterinary Technology only while engaged in the performance of his or her official duties as a faculty member and is confined to clinical, hospital or field services units, of the Approved Veterinary Medical or Veterinary Technology Program where employed.
- (c) Faculty Licensees must abide by all the laws governing the practice of Veterinary Medicine or Veterinary Technology in this Jurisdiction and are subject to the same disciplinary action as any other Licensee.
- (d) The faculty license may be renewed at an interval to be determined by the Board.
 - (1) A faculty license shall expire upon receipt by the Board of information that the holder of the license is no longer employed as faculty of an Approved Veterinary Medical or Veterinary Technology Program.
 - (2) Faculty Licensees must notify the Board of termination of employment or appointment within X days of termination.

Commentary: Article III. Section 306. Faculty Licensure.

Section 306. Faculty Licensure.

The AAVSB believes all members of faculty at a college or school of Veterinary Medicine or Veterinary Technology should have a license if they practice on Client-owned Animals in direct association with their employment at the Approved Program. Veterinary colleges have indicated that flexibility in licensure is needed in employing eminent scholars from around the world, especially those who practice a subspecialty and may not want to or be able to pass the comprehensive American national licensing exam that covers all species and topics. Yet if faculty are practicing Veterinary Medicine, a mechanism must be in place to ensure public protection if a complaint arises regarding veterinary incompetence or a violation of the Act. The school or college does not have a mission of public protection and it is not their responsibility nor can responsibility be delegated to them to investigate or take appropriate action regarding a complaint. The primary purpose of the faculty license is to allow Approved Programs a procedure to bring much desired talent to the faculty while the Jurisdictions can still ensure public protection subject to this article.

Section 306(a)(4). Faculty Licensure.

The faculty licensure examination may be a jurisprudence examination, or any other examination deemed appropriate for this specific purpose, not to be confused with the North American Veterinary Licensing Examination (NAVLE).

Section 307. Qualifications for Licensure Transfer.

- (a) In order for a Veterinarian or Veterinary Technician currently licensed in another Jurisdiction to obtain a license as a Veterinarian or Veterinary Technician by Licensure Transfer in this Jurisdiction, an Applicant shall bear the burden of substantiating to the Board that the following criteria have been met:
 - (1) Submission of a completed application in the form approved by the Board;
 - (2) Is of good moral character. As one element of good moral character, the Board shall require each Applicant for licensure to submit a full set of fingerprints for the purpose of obtaining criminal records checks, pursuant to applicable law. All good moral character information, including the information obtained through the criminal background checks, shall be relevant to licensure eligibility determinations to the extent permitted by law;
 - (3) Active practice of Veterinary Medicine or Veterinary Technology for at least X hours during the X years preceding application;
 - (4) Proof that a Veterinary or Veterinary Technician license is current, unrestricted and in good standing;

- (5) Proof that any other Veterinary or Veterinary Technology license granted to the Applicant by any other Jurisdiction has not been suspended, revoked, or otherwise restricted for any reason nor subject to any corrective action or discipline; however, the Board shall have the discretion to assess the magnitude of any such disciplinary action and determine the licensure eligibility of such Applicant;
- (6) Successful completion of the Jurisdiction Examination, if applicable; and
- (7) Payment of the fees specified by the Board.

Commentary: Article III. Section 307(a)(6). Qualifications for License Transfer.

Section 307(a)(6) is applicable to those Jurisdictions that utilize a Jurisdiction-specific Examination as part of the licensure process.

Section 308. Continuing Education.

The Board shall, by rule, establish requirements for Continuing Education in Veterinary Medicine and Veterinary Technology including the determination of acceptable program content. The Board shall adopt rules necessary to carry out the stated objectives and purposes and to enforce the provisions of this section and the continuing competence of Licensees.

Commentary: Article III. Section 308. Continuing Education.

The issue of how best to ensure and assess continuing competence is an ongoing concern. Numerous options are being considered by several national organizations including self-assessment tools, continuing competence examinations, Continuing Education, and others, but no single model has emerged as the most effective way to ensure continuing competence.

The AAVSB considered several alternatives to mandated Continuing Education, the method currently used by most Jurisdictions. These alternatives ranged from simply stating that Licensees will maintain continuing competence as a standard of practice, to requiring retesting at periodic intervals. The AAVSB recognized that while some of these alternatives might better evaluate the continuing competence of Licensees, it might be premature to recommend an alternative to mandated Continuing Education.

Commentary: Article III. Section 308. Continuing Education. (continued)

Continuing Education has been widely used as an acceptable method for ensuring the continued competence of Licensees. Many boards mandate that Licensees obtain a specified number of hours of Continuing Education within a licensure renewal period. Some boards specify that Licensees must obtain Continuing Education in certain practice areas. However, most boards require that Continuing Education consist of more general content areas in Veterinary Medicine or Veterinary Technology. The AAVSB recommends that boards require Licensees to complete a specified number of Continuing Education hours in each licensure renewal period and develop a method for ensuring compliance such as random audits.

Lending credibility to Continuing Education hours is imperative to the Board's mission of assessing the continued competence of Licensees.

Rather than rely upon the expectation that Continuing Education programs chosen by the Licensee will meet the criteria of the Board, it is recommended that an assessment mechanism of programs or providers of CE be adopted. Evaluation of programs or providers of CE by experts can assist veterinary boards by relieving them of time-consuming administrative responsibilities while providing content expertise and uniformity.

To this end, the AAVSB has instituted the Registry of Approved Continuing Education (RACE) program whereby the Association, on behalf of its Member Boards, approves providers and programs of Continuing Education. As set forth in the Definitions, an "Approved Program of Continuing Education" means an educational program approved by the Board or offered by an "Approved Provider of Continuing Education." The AAVSB has adopted stringent criteria utilized in its RACE program in determining Approved Providers and Approved Programs. This criterion was developed based upon an analysis of requirements currently used by the AAVSB Member Boards, along with a review of other organizations that also approve Continuing Education (CE) providers or programs.

At their option, the AAVSB Member Boards may wish to recognize the AAVSB RACE approved providers or programs as "approved" within their Jurisdictions for purposes of accepting CE for licensure renewal.

Such a process will save the administrative burdens placed upon the Board in assessing CE providers or programs while at the same time promoting the mission of the AAVSB to bring uniformity to the licensure and renewal processes. To avoid allegations of improper delegation of authority (see Comments, Section 213(a)), Boards are encouraged to adopt such criteria as established from time to time by the AAVSB RACE Program as the criteria of such Board. This "two-step" process will ensure that the Board maintains the ultimate decision-making authority and avoids the legal pitfalls of improper delegation. Details about RACE can be found on the AAVSB website.

Section 309. Registration of Veterinary Facilities.

Any building, place, or Mobile Unit from which the practice of Veterinary Medicine and Veterinary Technology is conducted must register with the Board.

- (a) To register a facility to be a Veterinary Facility, the Applicant for registration shall bear the burden of substantiating to the Board that the following criteria have been met:
 - (1) Submission of a completed application in the form approved by the Board;
 - (2) Payment of applicable registration fees;
 - (3) Notation of the type of business entity seeking the Veterinary Facility Registration;
 - (4) Identity of the governance structure of the entity seeking Veterinary Facility Registration and its responsible party or Board of Directors;
 - (5) Identities of Licensees employed by or affiliated with the Veterinary Facility; and
 - (6) Identity of the designated Veterinary Manager who, at all times when acting as a Veterinary Manager, must:
 - (i) hold a license in good standing;
 - (ii) be responsible for the operation and management of the Veterinary Facility; and
 - (iii) notify the Board in writing immediately when no longer serving as the Veterinary Manager.
- (b) Mobile Units that operate under the registration of a Veterinary Facility must be identified with the Veterinary Facility registration but are exempt from independent registration with the Board. Mobile Units that do not operate under the registration of a Veterinary Facility must independently register with the Board under conditions set forth by the Board in rule.
- (c) A Veterinary Facility Registrant and its Veterinary Manager are responsible for the following:
 - (1) Compliance with the Act and all rules promulgated by the Board;
 - (2) Prohibiting non-veterinary or unlicensed persons to control or intervene in the practice of Veterinary Medicine or Veterinary Technology;
 - (3) Written notification to the Board within ____ days of:
 - (i) Change in the designation of Veterinarian Manager;
 - (ii) Permanent closing of the Veterinary Facility;

- (iii) Change of ownership, management, name, or location of the Veterinary Facility;
 - (iv) Changes in the identities of Licensees employed by or affiliated with the Veterinary Facility; and
 - (v) Any knowledge of a Conviction of any Licensee employed by, operating within, affiliated with, or other person within the control group of a Veterinary Facility Registrant.
- (e) The Board shall promulgate rules including but not limited to the following:
 - (1) Identifying categories for types of Veterinary Facilities;
 - (2) Setting minimum standards for Veterinary Facilities;
 - (3) Determining parameters of inspections;
 - (4) Preventing interference by non-veterinary registrants or unlicensed persons in the practice of Veterinary Medicine or Veterinary Technology within the Veterinary Facility; and
 - (5) Setting forth an appeals process for denial of registration.
- (f) The Board is authorized to enforce this Act by taking any action it deems appropriate against a Registrant or Veterinarian Manager, including ordering closure of the Veterinary Facility, on any of the following grounds:
 - (1) Any of the grounds set forth in Article IV, Section 401 of this Act; or
 - (2) The Board or its agents are denied access to conduct an inspection or investigation, or;
 - (3) Registrants are exercising control over, interfering with, or attempting to influence the professional judgement of a Licensee in any manner, including through coercion extortion, inducement, collusion, or intimidation; or
 - (4) The Board or its agents are denied access to conduct an inspection or investigation; or
 - (5) The holder of a registration does not pay any and all prescribed fees or monetary penalties; or
 - (6) There is no Veterinarian Manager identified.

- (g) An application for renewal shall be made every X years.

Commentary: Article III. Section 309. Registration of Veterinary Facilities.

In Jurisdictions that allow corporate or non-veterinarian ownership of practices, Veterinary Facility registration provides a means for the Board to have authority over non-licensed entities.

Some Jurisdictions identify and regulate separate categories of Veterinary Facilities that require different minimum standards (e.g. small animal practice, house call, large animal practice, specialty practice, etc.).

The AAVSB recommends notification within 14 days of a change in the designation of Veterinary Manager. Boards may want to consider whether to place a limit on the number of facilities a Veterinarian can register to manage, or whether to require their physical presence for a designated period of time at the Veterinary Facility.

The term Registrants is not intended to include shareholders.

Section 310. Licensure Renewal Requirements.

- (a) Licensees shall be required to renew their license at the time and in the manner established by the Board. Under no circumstances, however, shall the renewal period exceed X years;
- (b) As a requirement for licensure renewal, each Licensee shall provide evidence satisfactory to the Board that the Licensee has completed at least X Continuing Education hours of an Approved Program of Continuing Education during the renewal period;
- (c) Veterinary Facilities shall be required to renew their registrations, at the time and in the manner established by the Board. Under no circumstances, however, shall the renewal period exceed X years.

Commentary: Article III. Section 310. Licensure Renewal Requirements.

The AAVSB determined that an inactive license status was not necessary as Section 311 allows for reinstatement of an expired license. However, the following language regarding inactive status is provided for reference:

- (a) Any Licensee who is in good standing with the Board and who has ceased the practice of Veterinary Medicine or Veterinary Technology may apply for inactive status. The Board, in its discretion, may place the Licensee on an inactive list and thereafter the inactive Licensee shall not practice Veterinary Medicine or Veterinary Technology, nor be required to pay the annual license renewal fee or required to earn Continuing Education credits.
- (b) Any inactive Licensee who desires to be reinstated or to resume the practice of Veterinary Medicine or Veterinary Technology may be reinstated at the discretion of the Board upon application and the determination that the inactive Licensee has paid the required license renewal fee for the current year in which the application is filed; and that the Licensee earned the required Continuing Education credits in an appropriate timeframe as determined by the Board.

Section 311. Requirements for Reinstatement of an Expired License.

The Board shall promulgate rules for reinstatement of an expired license for failure to renew within X amount of time.

Commentary: Article III. Section 311. Requirements for Reinstatement of an Expired License.

The term “expire” is used in this model. Some Jurisdictions use the term “lapse”. In the interest of furthering greater consistency and understanding of terms, the AAVSB recommends the use of “expire” when referring to the status of a license that is not renewed by the required date.

The AAVSB believes that Boards should establish time limits for Licensees to renew their licenses. Recommendations include:

- a) 120 days allowed for lateness if all other renewal requirements have been met and possible late fees have been paid,
- b) 2 years allowed if Applicant fees, Continuing Education requirements, and other renewal requirements have been met.

Section 312. Source of Data.

In making determinations under this Article III and to promote uniformity and administrative efficiencies, the Board shall be authorized to rely upon the expertise of and verified data gathered and stored by not-for-profit organizations that share in the public protection mission of this Board, including the American Association of Veterinary State Boards (AAVSB).

Article IV. Discipline.

Commentary: Introductory Comment to Article IV. Discipline.

The enforcement power of the Boards is at the very heart of any practice act. To fulfill its responsibilities, the Board must have authority to discipline Persons or Licensees who violate the Act or its rules, including the ability to prohibit these Persons from continuing to harm the public. The Board must be able to stop wrongdoers, discipline them, and where appropriate, guide and assist them in continued competence and/or re-education and rehabilitation.

This Act's disciplinary provisions were drafted with the purpose of granting the Board the widest possible scope within which to perform its disciplinary functions. The grounds for disciplinary actions were developed to ensure protection of the public while giving boards the power to expand or adapt them to changing conditions. The penalties outlined under the Act give the Board the flexibility to tailor disciplinary actions to individual offenses.

Section 401. Grounds, Penalties, and Reinstatement.

- (a) The Board may refuse to issue or renew, or take any action deemed appropriate including suspend, revoke, reprimand, restrict or limit the license or registration of or assess costs or fine any Person or Veterinary Facility, whether or not licensed, pursuant to the Administrative Procedures Act or the procedures set forth in Section 402 herein below, upon one or more of the following grounds:
- (1) Unprofessional conduct as determined by the Board;
 - (2) Practicing Veterinary Medicine or Veterinary Technology outside the scope of practice authorized by this Act;
 - (3) Conduct that violates any of the provisions of this Act or rules adopted pursuant to this Act, including the failure to cooperate with the Board in the inspection or investigative process within a reasonable time period;
 - (4) Impairment that prevents a Licensee from practicing Veterinary Medicine or Veterinary Technology with reasonable skill, competence, and safety to the public.
 - (5) Conviction of a Felony (as defined under Jurisdictional or federal law);
 - (6) Any act involving moral turpitude or immorality;
 - (7) Violations of any law, rule or regulation applicable to the practice of Veterinary Medicine or Veterinary Technology;

- (8) Failure to provide medical records in a timely fashion upon proper request by the Client, law enforcement, the Board or other regulatory agency;
- (9) Unauthorized disclosure of confidential information;
- (10) Being found by the Board or any court of competent jurisdiction to have engaged in acts of cruelty or abuse of Animals;
- (11) Misrepresentation of a fact by an Applicant or Licensee;
 - (i) In securing or attempting to secure the issuance or renewal of a license; or
 - (ii) In statements regarding the Licensee's skills or value of any treatment provided or to be provided or using any false, fraudulent, or deceptive statement connected with the practice of Veterinary Medicine or Veterinary Technology including, but not limited to, false or misleading advertising;
- (12) Fraud by a Licensee in connection with the practice of Veterinary Medicine or Veterinary Technology including engaging in improper or fraudulent billing practices;
- (13) Engaging in, or aiding and abetting any individual engaging in the practice of Veterinary Medicine or Veterinary Technology without a license, or falsely using the title of Veterinarian, or Veterinary Technician or a derivative thereof;
- (14) Failing to conform to currently accepted standards of practice;
- (15) Failing to maintain a Veterinary Facility at accepted minimum standards as defined by Board rules;
- (16) Failing to pay the costs assessed in a disciplinary matter or failing to comply with any stipulation or agreement involving probation or settlement of any disciplinary matter with the Board or with any order entered by the Board;
- (17) Conduct which violates the security of any licensure Examination, including, but not limited to:
 - (i) Removing from the Examination room any Examination materials without authorization;
 - (ii) Unauthorized reproduction by any means of any portion of the actual Examination;
 - (iii) Aiding by any means the unauthorized reproduction of any portion of the actual Examination;
 - (iv) Paying or using professional or paid examination-takers for the purpose of taking

- or reconstructing any portion of the Examination;
 - (v) Obtaining Examination questions or other Examination material, except by specific authorization either before, during or after an Examination;
 - (vi) Using any Examination questions or materials that were improperly removed or taken from any Examination; or
 - (vii) Selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered Examination;
 - (viii) Communicating by any means with any other examinee during the administration of an Examination;
 - (ix) Copying answers from another examinee or permitting one's answers to be copied by another examinee;
 - (x) Having in one's possession during the administration of the Examination any books, equipment (e.g., cell phones, tablets, computers, cameras or other electronic devices), notes, written or printed materials, or data of any kind, other than the Examination materials distributed, or otherwise authorized to be in one's possession during the Examination; or
 - (xi) Impersonating any examinee or having an impersonator take the Examination on one's behalf;
- (18) Failure of a Licensee or Applicant to report to the Board any information as required under Article VI of this Act; and
- (19) Being the subject of a disciplinary action, revocation, suspension, or surrender of a Veterinarian or Veterinary Technician license or Veterinary Facility registration or premise permit in another Jurisdiction or country, including the failure to report such adverse action to the Board.
- (b) The Board may defer action with regard to an impaired Licensee who voluntarily signs an agreement, in a form satisfactory to the Board, to enter an approved treatment and monitoring program in accordance with rules promulgated by the Board, provided that this section shall not apply to a Licensee who has been convicted of, pleads guilty to, or enters a plea of nolo contendere to a Felony or a Conviction relating to a controlled substance in a court of law of the United States or any other Jurisdictions, territory, or country, or a Conviction related to sexual misconduct.

- (c) Subject to an order entered by the Board, any Licensee or Facility Registrant whose license or registration has been denied, suspended, or restricted pursuant to this Act, whether voluntarily or by action of the Board, shall have the right, at reasonable intervals as determined by the Board, to petition the Board for issuance or reinstatement of such license or registration. Such petition shall be made in a form approved by the Board. Upon investigation and hearing, the Board may, in its discretion, grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications. The Board may require such individual to pass an Examination(s), complete Board imposed Continuing Education requirements, or any other sanctions deemed appropriate by the Board for reentry into practice.
- (d) The Board may issue a cease-and-desist order to stop any Person from engaging in unauthorized practice or violating or threatening to violate a statute, rule, or order that the Board has issued or is empowered to enforce. The cease-and-desist order must state the reason for its issuance and give notice of the Person's right to request a hearing under applicable procedures as set forth in the Administrative Procedures Act. Nothing herein shall be construed as barring criminal prosecutions for violations of this Act.
- (e) All final decisions by the Board shall be subject to judicial review pursuant to the Administrative Procedures Act.
- (f) Any Veterinarian or Veterinary Technician whose license is revoked, suspended, or not renewed shall return such license to the offices of the Board within X days after notice of such action.
- (g) The Board is authorized to make public as much disciplinary information about Licensees as the law allows.

Commentary: Article IV. Section 401. Grounds, Penalties, and Reinstatement. (continued)

Section 401. Grounds, Penalties, and Reinstatement.

Under this section, Boards are granted authority over both Licensees and Applicants. General powers are phrased in such a way as to allow the Board a wide range of actions, including the refusal to issue or renew a license, and the use of license restrictions or limitations. Similarly, the penalties outlined in this section give the Board wide latitude to make the disciplinary action fit the offense. Please refer to the Board powers of Section 213 for additional authority. Any "reasonable intervals," such as in 401(c), would be determined by the Board.

The AAVSB recommends that Boards develop clear policies regarding the reporting of disciplinary actions taken against Licensees, subject to confidentiality and to the applicable laws of the Jurisdictions. It is strongly recommended that boards make public as much disciplinary action information as Jurisdictional law allows, and that all Boards participate in the AAVSB Veterinarian Information Verification Agency (VIVA), a national databank that allows boards to review veterinary licensure candidates for past disciplinary actions from other Jurisdictions.

Commentary: Article IV. Section 401. Grounds, Penalties, and Reinstatement. (continued)

Section 401(a). Grounds, Penalties, and Reinstatement.

This section must be examined in light of other applicable laws. Some Jurisdictions, for example, restrict the circumstances under which a license may be denied to an individual who has committed a Felony. Additionally, an individual who has been convicted of a Felony or an act of gross immorality and who has paid the debt to society has restored constitutional protections. These protections may curtail a strict application of Section 401(a) to this individual.

These potential issues make it essential for Boards to promulgate rules that make the grounds for disciplinary action specific, understandable, and reasonable. Boards must ensure that these rules are published for the benefit of all Licensees. Taking these steps will assure the Board of the authority to make effective and meaningful disciplinary actions that will not be overturned by the courts.

Section 401(a)(1). Grounds, Penalties, and Reinstatement.

Boards must be specific when defining the grounds for revoking or suspending a license. The term “unprofessional conduct” is particularly susceptible to judicial challenge for being unconstitutionally vague. Each offense included in this term must be capable of being understood with reasonable precision by the Persons regulated. If this standard is met, the Licensees will be able to conform their professional conduct accordingly, and boards will be able to readily enforce this provision and rely upon it during disciplinary proceedings. Other terms sometimes used in statutes include un-ethical, immoral, improper, or dishonorable conduct. Generally, courts have recognized as appropriate the use of unprofessional conduct when challenged legally. See Chastev v. Anderson, 416 N.E.2d 247 (Il.1981); Stephens v. Penn. State Bd. of Nursing, 657 A.2d 71 (Pa. 1995).

Section 401(a)(3). Grounds, Penalties and Reinstatement.

This subsection allows the Board to take disciplinary action against a Person for violation of any portion of this Act or Board rules. While not specifically enumerated in this subsection, many activities, such as failure to report under the mandatory reporting provisions in Article VI constitutes actionable conduct.

Section 401(a)(4). Grounds, Penalties and Reinstatement.

[See also Comment to Section 401(b) regarding participation in an impairment program.] This section does not identify specific impairments to allow for broad application and the potential for expansion. It is intended to cover incapacity and impairments due to drug and alcohol abuse, mental and physical health conditions, in addition to other disabilities as defined by the Americans with Disabilities Act Amendments Act of 2008 (ADAAA). Board action must be based on the protection of the public, the goal of the practice act. The ADAAA is designed to provide opportunities to otherwise qualified individuals with disabilities. It does not mandate licensure where public protection might be compromised. Boards are encouraged to seek legal advice on this matter.

Commentary: **Article IV. Section 401. Grounds, Penalties, and Reinstatement. (continued)**

Section 401(a)(5). Grounds, Penalties and Reinstatement.

Boards must also be aware of how the definition of “Felony” may impact its action. See *Rothstein v. Dept. of Professional and Occupational Regulation*, 397 So.2d 305 (App. Ct. Fla. 1981), where the Florida Felony definition differed from the federal definition.

Veterinary Boards are encouraged to adopt specific standards of practice and codes of conduct into the rules/regulations to provide Licensees with reasonable guidance as to acceptable practice activities. Failure to adopt such standards may impede the Board from enforcement should a Licensee be accused of substandard practice. Reliance on standards adopted by an outside entity such as the professional association, without formal adoption by the Board, may encourage improper delegation arguments as well as a failure to provide Licensees with the appropriate parameters of acceptable practice. This, of course, does not preclude the Board from formally adopting the standards that may already be in existence within these other associations.

Section 401(b). Grounds, Penalties and Reinstatement.

This section addresses the impaired Licensee and outlines the Board’s flexibility when dealing with such Licensee through investigations and disciplinary actions.

Veterinary boards may wish to promulgate regulations relative to the impaired Licensee to specify the contractual expectations of Licensees requesting participation in the program. Refer to the **AAVSB Model Regulation for a Safe Haven Program**.

The AAVSB encourages Boards to explore options for the effective monitoring of impaired Licensees. Once the Board has identified an impaired Licensee, there are many resources available to the Board that can assist in the monitoring and rehabilitation process.

It is the intention of the AAVSB that the regulatory language of “treating professional” shall include supervisors and others involved in the treatment and monitoring program. Readers may also refer to Section 605, Immunity, within the Act.

Section 401(c). Grounds, Penalties and Reinstatement.

A Licensee who is under investigation, or who has been charged with a violation of the Act may agree to voluntarily surrender their license. When this occurs, the Board should enter findings of fact and an order describing the terms and conditions of the surrender. This important step establishes statutory grounds that will support any disciplinary action and prevents a Licensee who has surrendered a license from applying for reinstatement within a time frame unacceptable to the Board. In the case of a Licensee, final adverse action by the Board also triggers a report to the AAVSB VIVA to inform other Jurisdictions of the action.

Commentary: **Article IV. Section 401. Grounds, Penalties, and Reinstatement. (continued)**

Section 401(c). Grounds, Penalties, and Reinstatement. (continued)

The AAVSB encourages boards to review local law regarding disciplinary sanctions, and distinguish between revocation, suspension, and rights and conditions of reinstatement. See Flanzer v. Board of Dental Examiners, 271 Cal.Rptr. 583 (1990) (Board empowered to impose conditions of reinstatement); Jones v. Alabama State Board of Pharmacy, 624 So.2nd 613 (Ala. App.Ct. 1993) (revoked license carries no right of reinstatement); and Roy v. Medical Board of Ohio, 655 N.E.2d (Ohio App.Ct.1995) (authority to revoke a license to practice includes the authority to revoke permanently).

The AAVSB also recognizes the importance of appropriately drafted Board orders that include at least the following: findings of fact, conclusions of law, sanctions, reinstatement rights (if any) and notice of publication (newsletter, website, etc.). It is imperative that Board orders contain such specificity in order to provide enough information to the disciplined Licensee, current Board, as well as future Board members, as to the licensure status and/or eligibility for re-licensure of the individual.

Section 401(g). Grounds, Penalties and Reinstatement.

See the Introductory comment in Section 401 regarding the disclosure of disciplinary actions to the public.

Section 402. Summary Suspension.

Notwithstanding provisions of any applicable law, the Board may, without a hearing, temporarily suspend a license or Veterinary Facility registration for not more than X days if the Board finds that a Licensee or Veterinary Facility is in violation of a law or rule that the Board is empowered to enforce, and if continued practice by the Licensee or operation of the Veterinary Facility would create an imminent risk of harm to the public or an Animal. The suspension shall take effect upon written notice to the Licensee specifying the law violated. At the time it issues the suspension notice, the Board shall schedule a disciplinary hearing to be held under the Administrative Procedures Act within X days thereafter. The Licensee shall be provided with at least X days' notice effective from the date of issuance of any hearing held under this subsection.

Commentary: **Article IV. Section 402. Summary Suspension.**

Section 402. Summary Suspension.

In many Jurisdictions, an Administrative Procedures Act determines the procedures that must be followed before disciplinary action can be taken. The PAM was drafted on the assumption that an Administrative Procedures Act is in effect.

Summary suspension as defined in this section describes an action that can be taken against a Licensee. Jurisdictions that permit the ownership or registration of veterinary practice by non-veterinarians are advised to develop separate language that enables them to enact the summary suspension of a Veterinary Facility registration, permit or license.

Article V. Medical Records and Confidentiality.

Commentary: Introductory Comment to Article V. Medical Records & Confidentiality.

This Article is intended to establish the need for complete and accurate medical records. Incomplete or inaccurate medical records are among the most common grounds for disciplinary action by regulatory boards. This Article also addresses confidentiality requirements for Licensees, based on the professional relationship between practitioner and Client. Although “confidentiality” and “privileged communication” are related terms, there are important differences between the two concepts. “Confidentiality” is a broad term, and describes the intention that information exchanged between a Licensee and a Client is to be maintained in secrecy, and not disclosed to outside parties. “Privileged communication” is a narrower term that describes the legal relationship between Licensee and Client when a law mandates confidentiality.

Section 501. Medical Records.

- (a) Each Veterinarian who practices Veterinary Medicine shall maintain accurate electronic or legibly written medical records that include the identity of the Veterinarian or authorized representative who makes the entry.
- (b) Veterinary medical records are the property of the Veterinary Facility where they are created.
- (c) All records required by law to be kept by a Veterinarian shall be open to inspection by the Board or its authorized representatives during a routine inspection or investigation of a complaint, and a copy provided immediately upon request.
- (d) Veterinary medical records must be safeguarded against loss, tampering or use by unauthorized Persons, readily available, and contain sufficient information to permit any veterinarian to proceed with the care and treatment of the Patient by reading the medical record. They must include, but are not limited to the following information:
 - (1) Patient identification;
 - (2) Client identification;
 - (3) A record of every encounter and Consultation regarding the Patient;
 - (4) All written records and notes, radiographs, sonographic images, video recordings, photographs or other imaging and laboratory reports;
 - (5) Any information received as the result of a Consultation, including the date, name and contact information of the consultant; and

- (6) Any authorizations, details of conversations, releases, waivers, Patient discharge instructions or other related documents.
- (e) The Client is entitled to a complete copy of the veterinary medical records.
 - (1) Original Patient records must be retained by the Veterinary Facility that created them and be readily retrievable for a period of X years following the last Patient encounter.
 - (2) The Veterinary Facility may require that the request be in writing and may charge a reasonable fee for copying the requested veterinary medical record.
 - (3) Copies of the record should be provided to the Client, designated Veterinarian or authorized representative within X days after receipt of a proper request, or sooner in accordance with the Patient's medical condition.
 - (4) Failure to provide the medical records in a timely fashion upon proper request shall be considered unprofessional conduct.
- (f) A Patient's veterinary medical record and medical condition is confidential and may not be furnished to or discussed with any Person other than the Client or other Veterinarians involved in the care or treatment of the Patient, except upon authorization of the Client or as below.
 - (1) A Patient's veterinary medical records and information about the medical condition may be furnished without Client authorization under the following circumstances:
 - (i) Access to the records is specifically required by law.
 - (ii) In response to a court order, or subpoena and notice to the Client or the Client's legal representative.
 - (iii) For statistical and scientific research, if the information is abstracted in a way as to protect the identity of the Patient and the Client.
 - (iv) As part of an inspection or investigation conducted by the Board or an agent of the Board.
 - (v) As part of a formal verbal or written request from a regulatory, or public health authority.
 - (vi) To verify a rabies vaccination of an Animal; or (b) to investigate a threat to human or Animal health, (c) for the protection of individual Animal, human or public health and welfare.
 - (vii) As a part of an Animal cruelty report or an abuse investigation by a law enforcement or appointed animal welfare or governmental agency.

- (viii) As part of a criminal investigation by a law enforcement agency.
 - (ix) When the Client cannot be reached to obtain authorization to release the records to another Veterinarian in a medical emergency.
 - (x) In the course of a Consultation as defined in Article I section 104 (l).
- (g) A Veterinarian shall not, with fraudulent intent, create a false record, make a false statement, alter or modify any medical record, document, or report concerning treatment of a Patient. When correcting a medical record, the original content should be readable, and the alteration must be clearly identified with the reason, date and author's name.

Commentary: Article V. Section 501. Medical Records.

Section 501(d)(3). Medical Records.

Encounters with the Patient include in person visits, telephone conversations or any telehealth interactions between the Veterinarian and the Client.

Section 501(e). Medical Records.

The dispensing of veterinary prescription drugs or controlled substances requires that the records be maintained in accordance with applicable laws.

Section 501(f)(1)(ix). Medical Records.

The Jurisdiction should determine which agencies or Persons in their Jurisdiction should be authorized to release medical records information without Client authorization.

Section 502. Confidential Information and Exceptions.

- (a) No Licensee shall disclose any information acquired from Persons consulting the Licensee in a professional capacity, except that which may be disclosed under the provisions of Section 501(f) and the following circumstances:
 - (1) In the course of formally reporting, conferring or consulting with colleagues or consultants, in which instance all recipients of such information are similarly bound to regard the information as confidential;
 - (2) With the consent of the Client;
 - (3) In case of death or disability of the Client, with the consent of a personal representative or other authorized Person;
 - (4) When a communication reveals the commission of, or intended commission of a crime or harmful act or Animal abuse and such disclosure is judged necessary by the Licensee to protect any Person or Animal from a clear, imminent risk of mental or physical harm or injury, or to forestall a threat to public safety; or

- (5) When the Person waives the confidentiality by bringing any public charges against the Licensee.
- (b) Any Person having access to Patient medical records, or anyone who participates in providing veterinary medical services or who is supervised by a Veterinarian is similarly bound to regard all information and communications as confidential in accordance with the section.

Commentary: Article V. Section 501(a)(2). Confidential Information and Exceptions.

The AAVSB encourages written consent where available or deemed appropriate by the Veterinarian.

Article VI. Mandatory Reporting.

Commentary: Introductory Comments to Article VI. Mandatory Reporting.

Licensees are in a unique position to know of and evaluate the conduct of other Licensees. This section establishes a Licensee's legal responsibility to report activities that may be harmful to Clients, Animals or the public, including incompetence, negligence and unethical practice.

Recently, consumer groups and others have voiced concerns that health care professionals often protect each other either by remaining silent when made aware of substandard practice, or through outright denial of this substandard practice to the detriment of the public. This perception undermines the public's confidence in professional regulation. The inclusion of mandatory reporting provisions provides assurance that professional "protection" that puts the public at risk is itself a violation of the Act.

While it may not be mandated by law and may not fall within the authority of the Board, it is hoped that professional associations, courts, and other entities will report relevant information or conduct to the Board.

Section 601. Responsibility to Report.

- (a) A Licensee or Applicant who has knowledge of any conduct by a Licensee or Applicant that may constitute grounds for disciplinary action under this Act or the rules of the Board, or of any unlicensed practice of Veterinary Medicine or Veterinary Technology under this Act, shall report the violation to the Board.
- (b) Failure of a Licensee or Applicant to report to the Board any information as required in this section 601 shall constitute grounds for discipline by the Board.

Section 602. Courts.

The administrator of any court of competent jurisdiction shall report to the Board:

- (a) a Licensee's or Veterinary Facility Registrant's Conviction of a Felony, a controlled substances law, or any crime reasonably related to the practice of Veterinary Medicine or Veterinary Technology;
- (b) a legal determination that a Licensee has a medical condition or diagnosis that adversely affects a Licensee's ability to safely practice Veterinary Medicine or Veterinary Technology; or
- (c) an adjudication of incapacity pursuant to a guardianship or conservatorship.

Section 603. Self-Reporting.

A Licensee or Applicant shall report to the Board any personal action that would require a report be filed pursuant to this Article VI.

Section 604. Deadlines, Forms.

Reports required by this Article VI must be submitted not later than X days after the occurrence of the reportable event or transaction. The Board may provide forms for the submission of reports, may require that reports be submitted on the forms provided, and may adopt rules necessary to assure prompt and accurate reporting.

Commentary: **Section 604. Deadlines, Forms.**

The AAVSB recommends that reports be submitted no later than 30 days after the occurrence of the reportable event.

Section 605. Immunity.

Except for self-reporting, a Person is immune from any liability or prosecution for submitting in good faith a report under Article VI, or for otherwise reporting, providing information, or testifying about violations or alleged violations of this Act.

Article VII. Other.

Section 701. Severability.

If any provision of this Act is declared unconstitutional or illegal, or the applicability of this Act to any Person or circumstance is held invalid by a court of competent jurisdiction, the constitutionality or legality of the remaining provisions of this Act and the application of this Act to other Persons and circumstances shall not be affected and shall remain in full force and effect without the invalid provision or application.

Section 702. Effective Date.

This Act shall be in full force and effect on [insert date].