

SHORT TITLE: Veterinary medicine; requiring standard of clear and convincing evidence for certain determinations; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 308

By: Muegge

AS INTRODUCED

An Act relating to veterinary medicine; amending 59 O.S. 1991, Sections 698.7, 698.14a and 698.25, as amended by Section 5, Chapter 56, O.S.L. 1992 (59 O.S. Supp. 1996, Section 698.25), which relate to powers and duties of State Board of Veterinary Medical Examiners and disciplinary actions; requiring standard of clear and convincing evidence for certain determinations; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 1991, Section 698.7, is amended to read as follows:

Section 698.7 The State Board of Veterinary Medical Examiners shall have the powers and it shall also be its duty to regulate the practice of veterinary medicine. In addition to any other powers placed on it by statute or provided for herein, the Board, when acting in accordance with ~~this act~~ Section 698.1 et seq. of this title, shall have those powers necessary to fulfill its duties under ~~this act~~ Section 698.1 et seq. of this title. Said powers and duties shall include, but not be limited to:

1. a. setting standards for licensure or certification by examination and developing such examinations as will provide assurance of competency to practice, and

- b. employing or entering into agreements with organizations or agencies to provide examinations acceptable to the Board or employing or entering into agreements with organizations or agencies to provide administration, preparation or scoring of examinations;
2. Setting fees;
3. Prescribing the time, place, method, manner, scope and subjects of examination for licensure;
4. Preparing or selecting, conducting or directing the conduct of, setting minimum requirements for, and assuring security of licensing and other required examinations;
5.
 - a. issuing or denying licenses and certificates,
 - b. acquiring information about and evaluating the professional education and training of applicants for licensure or certification; accepting or denying applications for licensure, certification or renewal of either licensure or certification based on the evaluation of information relating to applicant fitness, performance or competency to practice,
 - c. determining which professional schools, colleges, universities, training institutions and educational programs are acceptable in connection with licensure under ~~this act~~ Section 698.1 et seq. of this title, and accepting the approval of such facilities and programs by American Veterinary Medical Association-accredited institutions in the United States and Canada,
 - d. requiring supporting documentation or other acceptable verifying evidence for any information provided the Board by an applicant for licensure or certification, and

e. requiring information on an applicant's fitness, qualification and previous professional record and performance from recognized data sources including, but not limited to, other licensing and disciplinary authorities of other jurisdictions, professional education and training institutions, liability insurers, animal health care institutions and law enforcement agencies;

6. Developing and using applications and other necessary forms and related procedures for purposes of ~~this act~~ Section 698.1 et seq. of this title;

7. a. reviewing and investigating complaints and adverse information about licensees and certificate holders,

b. conducting hearings in accordance with ~~this act~~ Section 698.1 et seq. of this title, and

c. adjudicating matters that come before the Board for judgment under ~~this act~~ Section 698.1 et seq. of this title upon clear and convincing evidence and issuing final decisions on such matters to discipline licensees and certificate holders;

8. a. imposing sanctions, denying licensure, levying reimbursement costs, seeking appropriate civil or criminal penalties or any combination of these against those who violate examination security, who attempt to or who do obtain licensure by fraud, who knowingly assist in illegal activities, or who aid and abet the illegal practice of veterinary medicine,

b. reviewing and investigating complaints and adverse information about licensees and certificate holders,

c. disciplining licensees and certificate holders,

- d. instituting proceedings in courts of competent jurisdiction to enforce Board orders and provisions of ~~this act~~ Section 698.1 et seq. of this title,
- e. establishing mechanisms for dealing with licensees and certificate holders who abuse or are dependent on or addicted to alcohol or other chemical substances, and entering into agreements, at its discretion, with professional organizations whose relevant procedures and techniques it has evaluated and approved for their cooperation or participation in the rehabilitation of the licensee or certificate holder,
- f. establishing by rules cooperation with other professional organizations for the identification and monitoring of licensees and certificate holders in treatment who are chemically dependent or addicted, and
- g. issuing conditional, restricted or otherwise circumscribed modifications to licensure as determined to be appropriate by due process procedures and summarily suspending a license if the Board has cause to believe by clear and convincing evidence such action is required to protect public health and safety or to prevent continuation of incompetent practices;

9. Adopting rules of professional conduct and requiring all licensees and certificate holders to practice in accordance therewith;

10. Performing such other duties and exercising such other powers as the provisions and enforcement of the Oklahoma Veterinary Practice Act may require including, but not limited to:

- a. acting to halt the unlicensed or illegal practice of veterinary medicine and seeking penalties against those engaged in such practice,

- b. establishing appropriate fees and charges to ensure active and effective pursuit of Board responsibilities,
- c. employing, directing, reimbursing, evaluating and dismissing staff in accordance with state procedures,
- d. establishing policies for Board operations,
- e. responding to legislative inquiry regarding those changes in, or amendments to, ~~this act~~ Section 698.1 et seq. of this title,
- f. acting on its own motion in disciplinary matters, administering oaths, issuing notices, issuing subpoenas in the name of the State of Oklahoma, including subpoenas for client and animal records, holding hearings, instituting court proceedings for contempt to compel testimony or obedience to its orders and subpoenas, taking evidentiary depositions and performing such other acts as are reasonable and necessary under law to carry out its duties,
- g. using ~~preponderance of the~~ clear and convincing evidence as the standard of proof and issuing final decisions when acting as trier of fact in the performance of its adjudicatory duties, and
- h. determining and directing Board operating, administrative, personnel and budget policies and procedures in accordance with applicable statutes;

11. Making and publishing uniform rules and regulations such as may be necessary for carrying out and enforcing the provisions of the Oklahoma Veterinary Practice Act and such as in its discretion may be necessary to protect the health, safety and welfare of the public; and

12. Determining continuing education requirements.

SECTION 2. AMENDATORY 59 O.S. 1991, Section 698.14a, is amended to read as follows:

Section 698.14a A. A range of disciplinary actions is hereby made available to the State Board of Veterinary Medical Examiners which includes, but is not limited to:

1. Revocation of licensure or certification;
2. Suspension of licensure or certification;
3. Probation of licensure or certification;
4. Reprimand, censure, agreement to voluntary stipulation of facts and imposition of terms of disciplinary action; and
5. Administrative citation.

B. The Board shall be authorized, at its discretion, to take such action as the nature of the violation requires. The Upon a determination that a violation has been committed, the Board shall, by clear and convincing evidence, have the authority to impose on the licensee or certificate holder, as a condition of any adverse disciplinary action, the payment of costs expended by the Board in investigating and prosecuting said cause, to include, but not be limited to, staff time, salary and travel expenses, witness fees and attorney fees and same shall be considered part of the order of the Board. The Board shall make report of action to any association, organization or entity deemed appropriate for transmittal of the public record but shall in no cause be held liable for the content of the reported action or be made a party to action taken as a result of the discipline imposed by the State Board of Veterinary Medical Examiners.

C. The president or secretary-treasurer of the Board may, at the discretion of the Board, issue a confidential letter of concern to a licensee or certificate holder when, though evidence does not warrant formal proceedings, there has been noted indications of possible misconduct by the licensee or certificate holder that could lead to serious consequences and formal action.

D. The Board may require an applicant for licensure or certification or a licensee or certificate holder to be examined on his or her medical knowledge and skills should the Board find, after due process, that there is probable cause to believe the licensee or certificate holder or applicant may be deficient in such knowledge and skills.

E. The Board may take disciplinary action ~~for~~ upon clear and convincing evidence of unprofessional or dishonorable conduct, which shall include, but not be limited to:

1. Fraud or misrepresentation in applying for or procuring a license or certificate to practice veterinary medicine in any federal, state or local jurisdiction;

2. Cheating on or attempting to cheat on or subvert in any manner whatsoever the licensing examination or any portion thereof;

3. The conviction of a felony, whether or not related to the practice of veterinary medicine;

4. Conduct likely to deceive, defraud, or harm the public;

5. The making of a false or misleading statement regarding his or her skill or the efficacy or value of the medicine, treatment or remedy prescribed by him or her or at his or her direction in the treatment of any disease or other condition of the animal;

6. Representing to a client that a manifestly incurable condition, sickness, disease or injury can be cured or healed;

7. Negligence in the practice of veterinary medicine as determined by the Board;

8. Practice or other behavior that demonstrates a manifest incapacity or incompetence to practice veterinary medicine;

9. The use of any false, fraudulent or deceptive statement in any document connected with the practice of veterinary medicine;

10. Failure to notify the Board of current address of practice;

11. Aiding or abetting the practice of veterinary medicine by an unlicensed, incompetent or impaired person;

12. Habitual use or abuse of alcohol or of a habit-forming drug or chemical which impairs the ability of the licensee or certificate holder to practice veterinary medicine;

13. Violation of any laws relating to the administration, prescribing or dispensing of controlled dangerous substances or violation of any laws of the federal government or any state of the United States relative to controlled dangerous substances;

14. Obtaining a fee by fraud or misrepresentation;

15. Directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered, not to preclude the legal function of a lawful professional partnership, corporation or association;

16. Failure to report to the Board any adverse action taken by another jurisdictional body, by any peer review body, health-related licensing or disciplinary jurisdiction, law enforcement agency or court for acts or conduct related to the practice of veterinary medicine;

17. Failure to report to the Board surrender of a license or other certificate of authorization to perform functions based on the holding of a license or certificate to practice veterinary medicine or surrender of membership in any organization or association related to veterinary medicine while under investigation by that association or organization for conduct similar to or the same as acts which would constitute grounds for action as defined in the Oklahoma Veterinary Practice Act;

18. Failure to furnish the Board, its staff or agents information legally requested or failure to cooperate with a lawful investigation conducted by or on behalf of the Board;

19. Failure to pay appropriately assessed fees or failure to make any personal appearance required by the Board or any of its officers; or

20. Violation of any provisions of the Oklahoma Veterinary Practice Act or the rules and policies of the Board or of an action, stipulation or agreement of the Board.

F. The Board may commence legal action to enforce the provision of the Oklahoma Veterinary Practice Act and may exercise full discretion and authority with respect to disciplinary actions; provided it does so in accordance with Article II of the Administrative Procedures Act, Section 309 et seq. of Title 75 of the Oklahoma Statutes, and other applicable laws of this state. The Board shall take appropriate disciplinary action when required, assuring fairness and due process to the defendant. The Board or its designee may hold informal conferences at its discretion to negotiate a settlement of a dispute; provided that the conference is agreed to in writing by all parties and said conference does not preclude a hearing on the same matters. The Board may not consider the agreement binding should a hearing be held subsequent to the agreement.

G. The Board may summarily suspend a license or certificate prior to a formal hearing when it has found upon clear and convincing evidence that such action is required to protect the public or when a person under the jurisdiction of the Board is convicted of a felony, whether or not related to the practice of veterinary medicine; provided such action is taken simultaneously with proceedings for setting a formal hearing to be held within thirty (30) days after the summary suspension.

H. The Board may issue an order to any licensee or certificate holder, or obtain an injunction against any person or any corporation or association, its officers, or directors, to restrain said persons from violating the provisions of the Oklahoma Veterinary Practice Act. Violations of such injunction shall be punishable as contempt of court. No proof of actual damage to any animal shall be required for issuance of an order or an injunction,

nor shall an injunction relieve those enjoined from administrative, civil or criminal prosecution for violation of the Oklahoma Veterinary Practice Act.

I. The State Board of Veterinary Medical Examiners may suspend or revoke the license or certificate of any veterinarian holding license or certificate to practice in this state for unprofessional conduct, but no such suspension or revocation shall be made, unless otherwise provided for herein, until such be cited to appear for hearing. No such citation shall be issued except upon a sworn complaint filed with the president or secretary-treasurer of said Board charging the licensee or certificate holder with having been guilty of unprofessional conduct and setting forth the particular act or acts alleged to constitute such unprofessional conduct. In the event it comes to the attention of the Board that a violation of the rules of professional conduct may have occurred, even though a formal complaint or charge may not have been filed, the Board may conduct an investigation of such possible violation, and may, upon its own motion, institute a formal complaint. In the course of such investigation, persons appearing before the Board may be required to testify under oath.

J. Upon the filing of a complaint, either by an individual or the Board, the citation shall be issued by the president or secretary-treasurer of the Board over his or her signature and seal of the Board, setting forth the particulars of the complaint, and giving due notice of the time and place of the hearing by the Board. The citation shall be made returnable at the next meeting of the Board at which hearing is set and shall be no less than thirty (30) days after issuance of the citation. The accused shall file his or her written answer under oath with notice of intent to appear or be represented within twenty (20) days after the service upon him or her of the citation. Failure to respond to the citation within the prescribed time shall constitute default and his or her license or

certificate shall be suspended or revoked if the charges ~~be deemed~~ are found, by clear and convincing evidence, sufficient by the Board; provided, ~~that~~ the president or secretary-treasurer of the Board may extend the time of answer upon satisfactory showing that the defendant is for reasonable cause, unable to answer within the prescribed twenty (20) days, but in no case shall the time be extended beyond the date of the next scheduled meeting for hearing the complaint, unless continuance thereof be granted by the Board. All citations and subpoenas under the contemplation of ~~this act~~ Section 698.1 et seq. of this title, shall be served in general accordance with the statutes of this state applying to the service of such documents, and all provisions of the statutes of this state relating to citations and subpoenas are hereby made applicable to the citations and subpoenas herein provided for. All the provisions of the statutes of this state governing the taking of testimony by depositions are made applicable to the taking of depositions under ~~this act~~ Section 698.1 et seq. of this title.

K. The attendance of witnesses may be compelled in such hearings by subpoenas issued by the president or secretary-treasurer of the Board over the seal thereof, and the president or secretary-treasurer shall in no case refuse to issue such subpoenas upon praecipe filed therefor accompanied by the fee set by the Board by rule for the issuance of such subpoenas. If any person refuses to obey such subpoena properly served upon him or her in such manner, the fact of such refusal shall be certified by the secretary-treasurer of the Board over the seal thereof to the district attorney of the county in which such service was had, and the court shall proceed to hear said matter in accordance with the statutes of this state then in force governing contempt as for disobedience of its own process.

L. It is hereby provided that the State of Oklahoma is a proper and necessary party in the prosecution of all such actions and

hearings before the State Board of Veterinary Medical Examiners in all matters pertaining to unprofessional conduct and disciplinary action and the Attorney General of the state, in person or by deputy, is authorized to appear in behalf thereof, and the defendant in such action shall have the right to be represented by counsel. The Board is empowered to enter into agreement with or employ one or more attorneys to conduct the business of the Board in the absence of representation by the Attorney General or his or her designee or in conjunction with representation by the Attorney General or his or her designee. The Board shall sit as a trial body and the rulings of the Board shall be by majority vote. Appeal to the rulings thereof shall be by petition to the district court of the district in which the hearing was held. The secretary-treasurer of the Board shall cause a record of all proceedings to be made and a transcript of the proceedings or any part thereof may be obtained by payment of actual cost of taking and preparation of transcript of such proceedings or part thereof.

M. All final disciplinary actions, license denials, related findings of fact and conclusions of law are matters of public record. Voluntary surrender of and voluntary limitations on the veterinarian's practice or license shall be public record.

N. Certificate holders or faculty of veterinary medical schools should report to the Board in writing any information ~~he has~~ that gives reason to believe a veterinarian is incompetent, guilty of unprofessional conduct or is unable to engage safely in the practice of veterinary medicine. Cause for reporting shall be for, but not limited to, the following instances:

1. Voluntary resignation from a professional partnership, corporation or practice for reason of inability to practice;
2. Malpractice claims, judgments, settlements or awards;
3. Civil or criminal convictions; or

4. Other actions that indicate inability to practice with reasonable skill and safety.

O. The Board shall consider violation of any of the Rules of Professional Conduct a violation of the Oklahoma Veterinary Practice Act section on unprofessional conduct and shall proceed with disciplinary action as set out in ~~this act~~ the Oklahoma Veterinary Practice Act.

P. 1. In addition to other penalties prescribed by ~~this act~~ the Oklahoma Veterinary Practice Act, any person who the Board has ~~been~~ determined ~~by the Board~~ by clear and convincing evidence to have violated any provisions of ~~this act~~ the Oklahoma Veterinary Practice Act, or any rule, ~~regulation~~, or order issued pursuant thereto shall be liable for an administrative penalty of not more than Five Thousand Dollars (\$5,000.00) for each day that ~~said~~ the violation continues.

2. The amount of the penalty shall be assessed by the Board pursuant to the provisions of paragraph 1 of this subsection, after notice and hearing. In determining the amount of the penalty, the Board shall, by clear and convincing evidence, include, but not be limited to, consideration of the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, the effect on ability of the person to continue to do business, and any show of good faith in attempting to achieve compliance with the provisions of ~~this act~~ the Oklahoma Veterinary Practice Act.

3. All penalties collected pursuant to the provisions of this subsection shall be deposited in the Veterinary Medical Examiners Fund.

SECTION 3. AMENDATORY 59 O.S. 1991, Section 698.25, as amended by Section 5, Chapter 56, O.S.L. 1992 (59 O.S. Supp. 1996, Section 698.25), is amended to read as follows:

Section 698.25 The State Board of Veterinary Medical Examiners may revoke or suspend the certificate of a veterinary technician or place the veterinary technician on probation, upon a determination based on clear and convincing evidence.

SECTION 4. This act shall become effective November 1, 1997.

46-1-0421 JY