

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SENATE BILL 1400

By: Crain

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5
6 AS INTRODUCED

7 An Act relating to professions and occupations;
8 amending 59 O.S. Sections 698.7, as amended by
9 Section 2, Chapter 172, O.S.L. 2002, 698.12, as last
10 amended by Section 1, Chapter 172, O.S.L. 2005,
11 698.14a, and 698.19A (59 O.S. Supp. 2009, Sections
12 698.7 and 698.12), which relate to the Oklahoma
13 Veterinary Practice Act; adding authority of Board to
14 purchase motor vehicles for certain purpose; adding
15 authority of Board to donate confiscated drugs to
16 certain entities for certain purposes; adding
17 authority for Board to appoint reserve investigators;
18 setting maximum hours for reserve investigators;
19 requiring CLEET training for reserve investigators;
20 exempting prescribing or dispensing prescription
21 drugs to certain state and federal agencies for
22 certain purpose; allowing entry of certain judgment
23 in district under certain circumstance; construing
24 satisfaction of payment for certain penalty; allowing
the Office of the Attorney General to assist with
certain collection of penalty; granting recovery of
certain attorney fees for collection of penalties;
increasing minimum fine amount for certain violation;
defining term; stating fee for certification as
equine teeth floater; authorizing limited term
certification for certain teeth floaters; prohibiting
dispensing sedatives; prohibiting teeth floating
without certification; providing for codification;
providing an effective date; and declaring an
emergency.

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

2 SECTION 1. AMENDATORY 59 O.S. 2001, Section 698.7, as
3 amended by Section 2, Chapter 172, O.S.L. 2002 (59 O.S. Supp.
4 2009, Section 698.7), is amended to read as follows:

5 Section 698.7 The State Board of Veterinary Medical Examiners
6 shall have the powers and it shall also be its duty to regulate the
7 practice of veterinary medicine. In addition to any other powers
8 placed on it by the Oklahoma Veterinary Practice Act or as otherwise
9 provided by law, the Board shall have the power and duty to:

- 10 1. a. set standards for licensure or certification by
11 examination and develop such examinations as will
12 provide assurance of competency to practice, and
13 b. employ or enter into agreements with organizations or
14 agencies to provide examinations acceptable to the
15 Board or employ or enter into agreements with
16 organizations or agencies to provide administration,
17 preparation or scoring of examinations;
- 18 2. Set fees;
- 19 3. Prescribe the time, place, method, manner, scope and
20 subjects of examination for licensure;
- 21 4. Prepare or select, conduct or direct the conduct of, set
22 minimum requirements for, and assure security of licensing and other
23 required examinations;

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- 1 5. a. issue or deny licenses and certificates and renewals
2 thereof,
- 3 b. acquire information about and evaluate the
4 professional education and training of applicants for
5 licensure or certification; and accept or deny
6 applications for licensure, certification or renewal
7 of either licensure or certification based on the
8 evaluation of information relating to applicant
9 fitness, performance or competency to practice,
- 10 c. determine which professional schools, colleges,
11 universities, training institutions and educational
12 programs are acceptable in connection with licensure
13 pursuant to the Oklahoma Veterinary Practice Act, and
14 accept the approval of such facilities and programs by
15 American-Veterinary-Medical-Association-accredited
16 institutions in the United States and Canada,
- 17 d. require supporting documentation or other acceptable
18 verifying evidence for any information provided the
19 Board by an applicant for licensure or certification,
20 and
- 21 e. require information on an applicant's fitness,
22 qualification and previous professional record and
23 performance from recognized data sources including,
24 but not limited to, other licensing and disciplinary

1 authorities of other jurisdictions, professional
2 education and training institutions, liability
3 insurers, animal health care institutions and law
4 enforcement agencies;

5 6. Develop and use applications and other necessary forms and
6 related procedures for purposes of the Oklahoma Veterinary Practice
7 Act;

8 7. a. review and investigate complaints and adverse
9 information about licensees and certificate holders,

10 b. conduct hearings in accordance with the Oklahoma
11 Veterinary Practice Act and the Administrative
12 Procedures Act, and

13 c. adjudicate matters that come before the Board for
14 judgment pursuant to the Oklahoma Veterinary Practice
15 Act upon clear and convincing evidence and issue final
16 decisions on such matters to discipline licensees and
17 certificate holders;

18 8. a. impose sanctions, deny licenses and certificates and
19 renewals thereof, levy reimbursement costs, seek
20 appropriate administrative, civil or criminal
21 penalties or any combination of these against those
22 who violate examination security, who attempt to or
23 who do obtain licensure or certification by fraud, who
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- 1 knowingly assist in illegal activities, or who aid and
2 abet the illegal practice of veterinary medicine,
- 3 b. review and investigate complaints and adverse
4 information about licensees and certificate holders,
- 5 c. discipline licensees and certificate holders,
- 6 d. institute proceedings in courts of competent
7 jurisdiction to enforce Board orders and provisions of
8 the Oklahoma Veterinary Practice Act,
- 9 e. (1) establish mechanisms for dealing with licensees
10 and certificate holders who abuse or are
11 dependent on or addicted to alcohol or other
12 chemical substances, and enter into agreements,
13 at its discretion, with professional
14 organizations whose relevant procedures and
15 techniques it has evaluated and approved for
16 their cooperation or participation in the
17 rehabilitation of the licensee or certificate
18 holder,
- 19 (2) establish by rules cooperation with other
20 professional organizations for the identification
21 and monitoring of licensees and certificate
22 holders in treatment who are chemically dependent
23 or addicted, and
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1 f. issue conditional, restricted or otherwise
2 circumscribed modifications to licensure or
3 certification as determined to be appropriate by due
4 process procedures and summarily suspend a license if
5 the Board has cause to believe by clear and convincing
6 evidence such action is required to protect public or
7 animal health and safety or to prevent continuation of
8 incompetent practices;

9 9. Promulgate rules of professional conduct and require all
10 licensees and certificate holders to practice in accordance
11 therewith;

12 10. Act to halt the unlicensed or illegal practice of
13 veterinary medicine and seek administrative, criminal and civil
14 penalties against those engaged in such practice;

15 11. Establish appropriate fees and charges to ensure active and
16 effective pursuit of Board responsibilities;

17 12. Employ, direct, reimburse, evaluate and dismiss staff in
18 accordance with state procedures;

19 13. Establish policies for Board operations;

20 14. Respond to legislative inquiry regarding those changes in,
21 or amendments to, the Oklahoma Veterinary Practice Act;

22 15. Act on its own motion in disciplinary matters, administer
23 oaths, issue notices, issue subpoenas in the name of the State of
24 Oklahoma, including subpoenas for client and animal records, hold

1 hearings, institute court proceedings for contempt or to compel
2 testimony or obedience to its orders and subpoenas, take evidentiary
3 depositions and perform such other acts as are reasonable and
4 necessary under law to carry out its duties;

5 16. Use clear and convincing evidence as the standard of proof
6 and issue final decisions when acting as trier of fact in the
7 performance of its adjudicatory duties;

8 17. Determine and direct Board operating, administrative,
9 personnel and budget policies and procedures in accordance with
10 applicable statutes;

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

15 19. Determine continuing education requirements;

16 20. Establish minimum standards for veterinary premises;

17 21. Establish standards for veterinary labeling and dispensing
18 of veterinary prescription drugs and federal Food and Drug
19 Administration-approved human drugs for animals which would conform
20 to current applicable state and federal law and regulations;

21 22. Promulgate rules such as may be necessary for carrying out
22 and enforcing provisions relating to certification of animal
23 euthanasia technicians and approval of drugs to be used for
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1 euthanasia of animals in an animal shelter pursuant to the
2 requirements of Section 502 of Title 4 of the Oklahoma Statutes;

3 23. Shall conduct a national criminal history records search
4 for certified animal euthanasia technicians:

5 a. the applicant shall furnish the Board two completed
6 fingerprint cards and a money order or cashier's check
7 made payable to the Oklahoma State Bureau of
8 Investigation,

9 b. the Board shall forward the fingerprint cards, along
10 with the applicable fee for a national fingerprint
11 criminal history records search, to the Bureau, and

12 c. the Bureau shall retain one set of fingerprints in the
13 Automated Fingerprint Identification System (AFIS) and
14 submit the other set to the Federal Bureau of
15 Investigation (FBI) for a national criminal history
16 records search;

17 24. Establish standards for animal chiropractic diagnosis and
18 treatment. The standards shall include but not be limited to a
19 requirement that a veterinarian who holds himself or herself out to
20 the public as certified to engage in animal chiropractic diagnosis
21 and treatment shall:

22 a. carry at least One Million Dollars (\$1,000,000.00) of
23 additional malpractice coverage to perform animal
24 chiropractic diagnosis and treatment, and

1 b. have appropriate training in animal chiropractic
2 diagnosis and treatment. The Veterinary Examining
3 Board shall have the authority to establish
4 educational criteria for certification standards in
5 animal chiropractic diagnosis and treatment. The
6 Veterinary Examining Board shall work in conjunction
7 with the Board of Chiropractic Examiners to establish
8 comparable standards for the practice of animal
9 chiropractic diagnosis and treatment for both medical
10 professions within thirty (30) days after the
11 effective date of this act. The Board shall certify
12 any licensed veterinarian wishing to engage in animal
13 chiropractic diagnosis and treatment who meets the
14 standards established by the Board pursuant to this
15 paragraph. Upon request, the Board shall make
16 available to the public a list of licensed
17 veterinarians so certified; ~~and~~

18 25. Perform such other duties and exercise such other powers as
19 the provisions and enforcement of the Oklahoma Veterinary Practice
20 Act may require;

21 26. Notwithstanding any other provisions of state law,
22 purchase, maintain or sell passenger motor vehicles and related
23 equipment for official state use by investigators, reserve
24 investigators, the Executive Director and any other employee

1 authorized by the Board, in the same manner as other state agencies
2 authorized by law to purchase passenger motor vehicles;

3 27. Donate confiscated veterinary prescription drugs or
4 medications to a bona fide nonprofit entity or shelter that provides
5 food, care and shelter to animals or to state-recognized educational
6 institutions, such as colleges, universities or vocational schools
7 for training and educational purposes; and

8 28. In addition to regular full time investigators, appoint
9 reserve investigators. Reserve investigators shall have the same
10 powers, duties and functions as regular full-time investigators for
11 the Board, except a reserve investigator shall serve on a part-time
12 basis of not more than twenty-five (25) hours per week. Reserve
13 investigators must comply with the Council on Law Enforcement
14 Education and Training certification standards applicable to reserve
15 peace officers.

16 SECTION 2. AMENDATORY 59 O.S. 2001, Section 698.12,
17 as last amended by Section 1, Chapter 172, O.S.L. 2005 (59 O.S.
18 Supp. 2009, Section 698.12), is amended to read as follows:

19 Section 698.12 The Oklahoma Veterinary Practice Act shall not
20 be construed to prohibit:

21 1. Acts of dehorning, branding, tagging or notching ears,
22 pregnancy checking, collecting semen, preparing semen, freezing
23 semen, castrating, worming, vaccinating, injecting or artificial

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1 insemination of farm animals; or the acts or conduct of a person
2 advising with respect to nutrition, feeds or feeding;

3 2. The owner of an animal or the owner's employees or helpers
4 from caring for or treating animals belonging to the owner; provided
5 that, the acts of the owner's employees or helpers otherwise
6 prohibited by the Oklahoma Veterinary Practice Act are only an
7 incidental part of the employment duties and for which no special
8 compensation is made;

9 3. Acts of a person in lawful possession of an animal for some
10 other purpose than practicing veterinary medicine; provided that, no
11 charge may be made or included in any other charge or fee or
12 adjustment otherwise made of any charge or fee for acts performed
13 pursuant to this subsection unless the acts are performed by a
14 licensed veterinarian as provided by the Oklahoma Veterinary
15 Practice Act;

16 4. Acts of auction markets and other shippers of food animals
17 in preparing such animals for shipment;

18 5. Acts of a person who is a student in good standing in a
19 veterinary school, in performing duties or functions assigned by
20 the student's instructors, or working under the direct supervision
21 of a licensed veterinarian for each individual case and acts
22 performed by an instructor or student in a school of veterinary
23 medicine recognized by the Board and performed as a part of the
24 educational and training curriculum of the school under the direct

1 supervision of faculty. The unsupervised or unauthorized practice
2 of veterinary medicine even though on the premises of a school of
3 veterinary medicine is prohibited;

4 6. Acts of any employee in the course of employment by the
5 state or federal government or acts of a veterinarian practicing on
6 property and persons outside the jurisdiction of the State of
7 Oklahoma;

8 7. A veterinarian currently licensed in another state from
9 consulting with a licensed veterinarian of this state;

10 8. Acts of vocational-agriculture instructors or students while
11 engaged in regular vocational-agriculture instruction in programs
12 approved by the Oklahoma Department of Career and Technology
13 Education; provided that said acts are under the supervision of
14 instructors and are carried out in the usual course of instruction
15 and not as independent practice by an unlicensed veterinarian
16 without supervision;

17 9. Any person employed by a licensed veterinarian who is
18 assisting with the professional duties of the licensed veterinarian
19 and who is under the direct supervision of the licensed veterinarian
20 from administering medication or rendering auxiliary or supporting
21 assistance under the direct supervision of such licensed
22 veterinarian, provided that the practice is conducted in compliance
23 with all laws of this state and rules of this Board;

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1 10. Any chiropractic physician licensed in this state who is
2 certified by the Board of Chiropractic Examiners to engage in animal
3 chiropractic diagnosis and treatment from practicing animal
4 chiropractic diagnosis and treatment;

5 11. Any chiropractic physician licensed in this state who is
6 not certified to practice animal chiropractic diagnosis and
7 treatment by the Board of Chiropractic Examiners from providing
8 chiropractic treatment to an animal referred to such chiropractic
9 physician by a licensed veterinarian; ~~or~~

10 12. Any individual that is certified in animal massage therapy
11 and acquires liability insurance from engaging in animal massage
12 therapy after referral from a licensed veterinarian; or

13 13. Acts of a veterinarian in prescribing and dispensing
14 prescription drugs to state or deferral wildlife conservation
15 agencies for use in sedating or tranquilizing dangerous or wild
16 animals.

17 SECTION 3. AMENDATORY 59 O.S. 2001, Section 698.14a,
18 is amended to read as follows:

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

- 22 1. Revocation of licensure or certification;
- 23 2. Suspension of licensure or certification;
- 24 3. Probation of licensure or certification;

1 4. Refusal to renew a license or certification;

2 5. Injunctions and other civil court actions;

3 6. Reprimand, censure, agreement to voluntary stipulation of
4 facts and imposition of terms of disciplinary action;

5 7. Administrative citation and administrative penalties; and

6 8. Prosecution through the office of the district attorney.

7 B. 1. The Board may take such action as the nature of the
8 violation requires.

9 2. Upon a determination that a violation has been committed,
10 the Board shall, by clear and convincing evidence, have the
11 authority to impose upon the alleged violator, the payment of costs
12 expended by the Board in investigating and prosecuting the cause, to
13 include, but not be limited to, staff time, salary and travel
14 expenses, witness fees and attorney fees and same shall be
15 considered part of the order of the Board.

16 3. The Board shall make report of action to any association,
17 organization or entity deemed appropriate for transmittal of the
18 public record but shall in no cause be held liable for the content
19 of the reported action or be made a party to action taken as a
20 result of the sanction imposed by the State Board of Veterinary
21 Medical Examiners.

22 C. The president or secretary-treasurer of the Board may issue
23 a confidential letter of concern to a licensee or certificate holder
24 when, though evidence does not warrant formal proceedings, there has

1 | been noted indications of possible misconduct by the licensee or
2 | certificate holder that could lead to serious consequences and
3 | formal action.

4 | D. The Board may require an applicant for licensure or
5 | certification or a licensee or certificate holder to be examined on
6 | the applicant's or holder's medical knowledge and skills should the
7 | Board find, after due process, that there is probable cause to
8 | believe the licensee or certificate holder or applicant may be
9 | deficient in such knowledge and skills.

10 | E. The Board may take disciplinary action or other sanctions
11 | upon clear and convincing evidence of unprofessional or dishonorable
12 | conduct, which shall include, but not be limited to:

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

16 | 2. Cheating on or attempting to cheat on or subvert in any
17 | manner whatsoever the licensing or certificate examination or any
18 | portion thereof;

19 | 3. The conviction of or entry of a guilty plea or plea of nolo
20 | contendere involving a felony in this or any other jurisdiction,
21 | whether or not related to the practice of veterinary medicine;

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

23 | 5. The making of a false or misleading statement regarding
24 | one's skill or the efficacy or value of the medicine, treatment or

1 remedy prescribed by the licensed veterinarian or at the licensed
2 veterinarian's direction in the treatment of any disease or other
3 condition of the animal;

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

6 7. Negligence in the practice of veterinary medicine;

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

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

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

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

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

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

21 14. Obtaining a fee by fraud or misrepresentation;

22 15. Directly or indirectly giving or receiving any fee,
23 commission, rebate or other compensation for professional services
24 not actually and personally rendered, not to preclude the legal

1 function of a lawful professional partnership, corporation or
2 association;

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

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

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

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

22 20. The practice of veterinary medicine in the absence of a
23 bona fide veterinarian-client-patient relationship. The preclusion
24 of a veterinarian-client-patient relationship by a veterinarian who

1 in good faith renders or attempts to render emergency care to a
2 victim pursuant to a Good Samaritan application shall not constitute
3 grounds for discipline pursuant to the Oklahoma Veterinary Practice
4 Act;

5 21. Providing vaccinations or elective surgical procedures on
6 skunks, namely *Mephitis mephitis* (striped), *Conepatus mesoleucus*
7 (hog-nosed), and *Spilogale putorius* (spotted), unless the animal is
8 under the custody and care of a recognized zoological institution,
9 research facility, or person possessing an appropriate and current
10 wildlife permit issued by the Oklahoma Department of Wildlife
11 Conservation or Oklahoma Department of Agriculture; or

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

15 F. 1. The Board may commence any legal action to enforce the
16 provision of the Oklahoma Veterinary Practice Act and may exercise
17 full discretion and authority with respect to enforcement actions.
18 Administrative sanctions taken by the Board shall be made in
19 accordance with Article II of the Administrative Procedures Act, the
20 Oklahoma Veterinary Practice Act, and other applicable laws of this
21 state. The Board shall take appropriate enforcement action when
22 required, assuring fairness and due process to the defendant.

23 2. The Board or its designee may hold informal conferences to
24 negotiate a settlement of a dispute; provided that the conference is

1 | agreed to in writing by all parties and said conference does not
2 | preclude a hearing on the same matters. The Board shall not
3 | consider the agreement binding should a hearing be held subsequent
4 | to the agreement.

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

14 | H. 1. The Board may issue an order to any licensee or
15 | certificate holder, obtain an injunction or take other
16 | administrative, civil or criminal court action against any person or
17 | any corporation or association, its officers, or directors, to
18 | restrain said persons from violating the provisions of the Oklahoma
19 | Veterinary Practice Act.

20 | 2. Violations of an injunction shall be punishable as contempt
21 | of court. No proof of actual damage to any animal shall be required
22 | for issuance of an order or an injunction, nor shall an injunction
23 | relieve those enjoined from administrative, civil or criminal
24 | prosecution for violation of the Oklahoma Veterinary Practice Act.

1 I. 1. The State Board of Veterinary Medical Examiners may
2 suspend, revoke or refuse to renew the license or certificate of any
3 person holding license or certificate to practice veterinary
4 medicine in this state or place such person on probation for
5 unprofessional conduct, but no such suspension or revocation or
6 refusal to renew, or probation shall be made, unless otherwise
7 provided for herein, until such be cited to appear for hearing. No
8 such citation shall be issued except upon a sworn complaint filed
9 with the president or secretary-treasurer of said Board charging the
10 licensee or certificate holder with having been guilty of
11 unprofessional conduct and setting forth the particular act or acts
12 alleged to constitute such unprofessional conduct.

13 2. In the event it comes to the attention of the Board that a
14 violation of the rules of professional conduct may have occurred,
15 even though a formal complaint or charge may not have been filed,
16 the Board may conduct an investigation of such possible violation,
17 and may, upon its own motion, institute a formal complaint. In the
18 course of such investigation, persons appearing before the Board may
19 be required to testify under oath.

20 J. 1. Upon the filing of a complaint, either by an individual
21 or the Board, the citation shall be issued by the president or
22 secretary-treasurer of the Board over such officer's signature and
23 seal of the Board, setting forth the particulars of the complaint,
24 and giving due notice of the time and place of the hearing by the

1 Board. The citation shall be made returnable at the next meeting of
2 the Board at which hearing is set and shall be no less than thirty
3 (30) days after issuance of the citation;

4 2. The accused shall file a written answer under oath with
5 notice of intent to appear or be represented within twenty (20) days
6 after the service of the citation. Failure to respond to the
7 citation within the prescribed time shall constitute default;

8 3. The license or certificate of the accused shall be
9 suspended, revoked or not renewed if the charges are found, by clear
10 and convincing evidence, sufficient by the Board; provided, the
11 president or secretary-treasurer of the Board may extend the time of
12 answer upon satisfactory showing that the defendant is for
13 reasonable cause, unable to answer within the prescribed twenty (20)
14 days, but in no case shall the time be extended beyond the date of
15 the next scheduled meeting for hearing the complaint, unless
16 continuance thereof be granted by the Board; and

17 4. All citations and subpoenas under the contemplation of the
18 Oklahoma Veterinary Practice Act shall be served in general
19 accordance with the statutes of this state applying to the service
20 of such documents. All provisions of the statutes of this state
21 relating to citations and subpoenas are hereby made applicable to
22 the citations and subpoenas herein provided. All the provisions of
23 the statutes of this state governing the taking of testimony by
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1 depositions are made applicable to the taking of depositions
2 pursuant to the Oklahoma Veterinary Practice Act.

3 K. The Executive Director, secretary-treasurer, designee, or
4 prosecuting attorney for the Board, during the course of any lawful
5 investigation, may order or subpoena the attendance of witnesses,
6 the inspection of records, and premises and the production of
7 relevant records, books, memoranda, documents, radiographs, or other
8 papers or things for the investigation of matters that may come
9 before the Board.

10 L. 1. The attendance of witnesses may be compelled in such
11 hearings by subpoenas issued by the president or secretary-treasurer
12 of the Board over the seal thereof, and the president or secretary-
13 treasurer shall in no case refuse to issue subpoenas upon praecipe
14 filed therefor accompanied by the fee set by the Board by rule for
15 the issuance of such subpoenas.

16 2. If any person refuses to obey a subpoena properly served
17 upon such person or in the manner, the fact of such refusal shall be
18 certified by the secretary-treasurer of the Board over the seal
19 thereof to the district attorney of the county in which such service
20 was had, and the court shall proceed to hear said matter in
21 accordance with the statutes of this state then in force governing
22 contempt as for disobedience of its own process.

23 M. 1. The State of Oklahoma is a proper and necessary party in
24 the prosecution of all such actions and hearings before the Board in

1 all matters pertaining to unprofessional conduct and disciplinary
2 action. The Attorney General of the state, in person or by deputy,
3 is authorized to appear in behalf thereof. The defendant in any
4 such actions shall have the right to be represented by counsel.

5 2. The Board is empowered to enter into agreement with or
6 employ one or more attorneys to conduct the business of the Board in
7 the absence of representation by the Attorney General or designee or
8 in conjunction with representation by the Attorney General or
9 designee.

10 3. The Board shall sit as a trial body and the rulings of the
11 Board shall be by majority vote. Appeal to the rulings thereof
12 shall be by petition to the district court of the district in which
13 the hearing was held. The secretary-treasurer of the Board shall
14 cause a record of all proceedings to be made and a transcript of the
15 proceedings or any part thereof may be obtained by payment of actual
16 cost of taking and preparation of transcript of such proceedings or
17 part thereof.

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

22 O. Certificate holders or faculty of veterinary medical schools
23 shall report to the Board in writing any information that gives
24 reason to believe a veterinarian is incompetent, guilty of

1 unprofessional conduct or is unable to engage safely in the practice
2 of veterinary medicine. Cause for reporting shall be for, but not
3 limited to, the following instances:

- 4 1. Voluntary resignation from a professional partnership,
5 corporation or practice for reason of inability to practice;
- 6 2. Malpractice claims, judgments, settlements or awards;
- 7 3. Civil or criminal convictions; or
- 8 4. Other actions that indicate inability to practice with
9 reasonable skill and safety.

10 P. The Board shall consider violation of any of the Rules of
11 Professional Conduct a violation of the Oklahoma Veterinary Practice
12 Act section on unprofessional conduct and shall proceed with
13 disciplinary action as set out in the Oklahoma Veterinary Practice
14 Act.

15 Q. 1. In addition to other penalties prescribed by the
16 Oklahoma Veterinary Practice Act, any person who the Board has
17 determined by clear and convincing evidence to have violated any
18 provisions of the Oklahoma Veterinary Practice Act, or any rule or
19 order issued pursuant thereto shall be liable for an administrative
20 penalty of not more than Five Thousand Dollars (\$5,000.00) for each
21 day that the violation continues.

22 2. The amount of the penalty shall be assessed by the Board
23 pursuant to the provisions of paragraph 1 of this subsection, after
24 notice and hearing. In determining the amount of the penalty, the

1 Board shall, by clear and convincing evidence, include, but not be
2 limited to, consideration of the nature, circumstances, and gravity
3 of the violation and, with respect to the person found to have
4 committed the violation, the degree of culpability, the effect on
5 ability of the person to continue to do business, and any show of
6 good faith in attempting to achieve compliance with the provisions
7 of the Oklahoma Veterinary Practice Act.

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

11 R. 1. An order of the Board issued with findings of fact and
12 conclusions of law, after a hearing on the matter or upon default
13 after an opportunity for a hearing or a final order resulting from a
14 Field Citation, shall become final and binding on all parties unless
15 appealed to the district court in the manner and within the
16 requisite time period as provided in the Administrative Procedures
17 Act. If an appeal is not made, any order which requires a
18 respondent to pay a fine, penalty, cost or expense may be entered on
19 the judgment docket of the district court in a county in which the
20 respondent has property and thereafter enforced in the same manner
21 as an order of the district court for collection actions;

22 2. Payment in full of a fine or penalty, including any costs or
23 expenses assessed in connection therewith, shall be full and
24

1 complete satisfaction thereof for which the Board's order was
2 issued; and

3 3. The Office of the Attorney General, at the request of the
4 Executive Director, may assist the Board in the assessment and
5 collection of any fine, penalty, cost or expense assessed in an
6 order of the Board, and the Board shall be entitled to recover
7 reasonable attorney fees and costs incurred in any collection action
8 taken by the Office of the Attorney General pursuant to the
9 provisions of this section.

10 SECTION 4. AMENDATORY 59 O.S. 2001, Section 698.19A,
11 is amended to read as follows:

12 Section 698.19A A. 1. If, upon completion of an
13 investigation, the Executive Director of the State Board of
14 Veterinary Medical Examiners has probable cause to believe that a
15 licensed veterinarian or any other person has violated provisions of
16 the Oklahoma Veterinary Practice Act or rules promulgated thereto,
17 the Executive Director may issue a field citation to the licensed
18 veterinarian or other person, as provided in this section. Each
19 field citation shall be in writing and shall describe with
20 particularity the nature of the violation, including but not limited
21 to a reference to the provision of the Oklahoma Veterinary Practice
22 Act alleged to have been violated.

23 2. In addition, each field citation may contain an order of
24 abatement fixing a reasonable time for abatement of the violation,

1 and may contain an assessment of an administrative penalty not to
2 exceed ~~Five Hundred Dollars (\$500.00)~~ Two Thousand Five Hundred
3 Dollars (\$2,500.00) for a first offense and not to exceed Five
4 Thousand Dollars (\$5,000.00) for a second or each subsequent
5 offense. Each day such violation continues shall constitute a
6 separate offense.

7 3. The field citation shall be served upon the licensed
8 veterinarian or other person personally or by any certified mail,
9 return receipt requested.

10 B. Before any field citation shall be issued to any licensed
11 veterinarian, the Executive Director shall have submitted the
12 alleged violation for the review and examination to a probable cause
13 committee, comprised of the Board's attorney, an investigator, and a
14 veterinarian licensed in the state of Oklahoma. The probable cause
15 committee, during its review, may contact the licensed veterinarian
16 to discuss and resolve the alleged violation. Upon conclusion of
17 the probable cause committee's review, the committee shall prepare
18 findings of fact and a recommendation. If the committee concludes
19 that probable cause exists that the veterinarian has violated any
20 provisions of the Oklahoma Veterinary Practice Act or rules
21 promulgated thereto, an administrative penalty shall be assessed
22 upon the licensed veterinarian.

23 C. 1. If a licensed veterinarian or other person who has been
24 determined by the Board or agent thereof to have violated any

1 provision of the Oklahoma Veterinary Practice Act or rules
2 promulgated or issued pursuant thereto desires to contest a field
3 citation or the proposed assessment of an administrative penalty
4 therefore, the licensed veterinarian or other person shall, within
5 ten (10) business days after service of the field citation, notify
6 the Executive Director in writing, requesting an informal conference
7 with the probable cause committee.

8 2. The probable cause committee shall hold, within sixty (60)
9 days from the receipt of the written request, an informal
10 conference. After the conclusion of the informal conference, and
11 based on recommendations thereof, the Executive Director may affirm,
12 modify or dismiss the field citation or proposed assessment of an
13 administrative penalty and the Executive Director shall state with
14 particularity in writing the reasons for the action, and shall
15 immediately transmit a copy thereof to the licensed veterinarian or
16 other person and the person who submitted the complaint.

17 D. 1. If the veterinarian or person desires to contest
18 administratively, a decision made after the informal conference, the
19 licensed veterinarian or other person shall inform the Executive
20 Director in writing within thirty (30) calendar days after such
21 person receives the decision resulting from the informal conference.

22 2. If the licensed veterinarian or other person fails to
23 request an informal conference within the time specified in this
24 section, the field citation, the proposed assessment of the

1 administrative penalty or the decision made after an informal
2 conference shall be deemed a final order of the Board and shall not
3 be subject to further administrative reviews.

4 E. If a fine is paid to satisfy an assessment based on the
5 findings of a violation, payment of the fine shall be represented as
6 satisfactory resolution of the matter for the purposes of public
7 disclosure.

8 F. A veterinarian or other person, in lieu of contesting a
9 field citation pursuant to this section, may transmit to the Board
10 the amount assessed in the citation as an administrative penalty,
11 within thirty (30) days after service of the field citation. If a
12 hearing is not requested pursuant to this section, payment of any
13 fine shall not constitute an admission of the violation charged.

14 G. 1. If a veterinarian or other person has notified the
15 Executive Director within ten (10) working days of the issuance of
16 the assessment or field citation that such veterinarian or other
17 person intends to contest the decision made after the informal
18 conference, the Board shall hold a hearing to be held in accordance
19 with the Administrative Procedures Act and adjudicating such matters
20 for judgment only upon clear and convincing evidence as required by
21 the Oklahoma Veterinary Practice Act with the Board having all of
22 the powers granted therein.

23 2. After the hearing, the Board shall issue a decision based on
24 findings of the fact, affirming, modifying or vacating the citation,

1 or directing other appropriate relief which shall include, but need
2 not be limited to, a notice that the failure of the veterinarian or
3 other person to comply with any provision of the Board's decision
4 may subject such veterinarian or person to the imposition of the
5 sanctions authorized by the Oklahoma Veterinary Practice Act.

6 H. After the exhaustion of the review procedures provided for
7 in this section, the Board may bring an action for judicial review
8 and administrative penalty and obtain an order compelling the cited
9 person to comply with any order issued pursuant to this section.

10 I. Failure of a licensee to pay a fine within thirty (30) days
11 of the date of assessment, unless the field citation is being
12 appealed may result in action being taken by the Board. When a
13 citation is not contested and a fine is not paid, the full amount of
14 the assessed fine shall be added to the fee for the renewal of the
15 license. A license shall not be renewed without payment of the
16 renewal fee and fine.

17 J. The Board shall promulgate rules covering the issuance of
18 field citations, the assessment of administrative penalties and
19 other duties specified by this section pursuant to this section
20 which give due consideration to the appropriateness of the penalty
21 with respect to the following factors:

- 22 a. the gravity of the violation,
- 23 b. the good faith of the person being charged, and
- 24 c. the history of previous violations.

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 698.27A of Title 59, unless
3 there is created a duplication in numbering, reads as follows:

4 A. As used in this section, "equine teeth floater" means an
5 individual who satisfies the criteria established by the State Board
6 of Medical Examiners for certification to perform duties relating to
7 the care and maintenance of equine teeth in accordance with this
8 section and regulations promulgated by the Board.

9 B. The application fee to become certified as an equine teeth
10 floater shall be Two Hundred Dollars (\$200.00), payable to the
11 Board.

12 C. For a limited period of time not to exceed one year from the
13 date this section becomes effective, the Board may certify a person
14 as an equine teeth floater who meets the following criteria:

15 1. Satisfactory evidence that the person is an Oklahoma
16 resident for the previous two (2) years;

17 2. Satisfactory written recommendations from at least two
18 licensed veterinarians;

19 3. Satisfactory evidence that the person holds certification
20 from a Board approved certification program in equine teeth
21 floating;

22 4. Take and pass a written or practical examination, or both,
23 as determined by the Board;

24

1 5. Provide written proof of liability insurance coverage for
2 the performance of equine teeth floating from an insurance company
3 duly licensed to conduct business in the State of Oklahoma with the
4 Oklahoma Insurance Commission. Such liability insurance shall be in
5 the amount of at least One Hundred Thousand Dollars (\$100,000.00)
6 per occurrence.

7 D. Under no circumstance shall an equine teeth floater
8 administer any sedative, tranquilizer, analgesic, prescription
9 medication, or other drug in connection with equine teeth floating.

10 E. Only after receiving a written referral from an Oklahoma-
11 licensed veterinarian may an individual certified by the Board as an
12 equine teeth floater under this section perform the flotation or
13 dressing of equine teeth consisting of the removal of enamel points
14 and the removal of deciduous incisor and premolar teeth or caps of
15 equine.

16 SECTION 6. This act shall become effective July 1, 2010.

17 SECTION 7. It being immediately necessary for the preservation
18 of the public peace, health and safety, an emergency is hereby
19 declared to exist, by reason whereof this act shall take effect and
20 be in full force from and after its passage and approval.

21

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