# TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

During the January 27, 2015 Board meeting, the TBVME adopted the following changes to agency rules. These rules went into effect on May 4, 2015.

571.15 Temporary Veterinary License

571.52 Renewal Certificates

***This rule was repealed and licensees are no longer required to post a copy of their renewal certificate.***

573.5 Avoidance of Corruption of Others

573.20 Responsibility for Acceptance of Medical Care

573.22 Professional Standard of Care

573.35 Display of License

573.54 Patient Records Release and Charges

573.70 Reporting of Criminal Activity

573.81 Mandatory Report by Licensee

575.35 Temporary License Suspension Proceedings

575.60 Alternative Dispute Resolution

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Title 22 Examining Boards
Part 24 Board of Veterinary Medical Examiners
Chapter 571 Licensing

22 TAC §571.15

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §571.15, concerning Temporary Veterinary License, without changes to the proposed text as published in the December 19, 2014, issue of the *Texas Register* (39 TexReg 9789). The adopted rule therefore will not be republished.

Rule 571.15 currently provides that a temporary veterinary license is only valid for a "specific purpose." The Board finds that some applicants do not understand the meaning of the term "specific purpose." Therefore, the Board adopts this amendment to clarify "specific purpose" in accordance with current practice. Specifically, the amendment will replace the words "specific purpose" with "specific patient, client, continuing education course, or task."

The Board did not receive any comments on the proposed amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

This agency hereby certifies that the amendment has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

<rule>

RULE §571.15 TEMPORARY VETERINARY LICENSE

(a) The board may issue a temporary veterinary license to an applicant who:

(1) is at the age of majority; and

(2) is a graduate of a school or college of veterinary medicine that is approved by the Board and accredited by the Council on Education of the American Veterinary Medical Association (AVMA); or

(3) is a graduate of a school or college of veterinary medicine not accredited by the Council on Education of the AVMA and presents satisfactory proof to the Board that the applicant is a graduate of a school or college of veterinary medicine and possesses an Educational Commission for Foreign Veterinary Graduates (ECFVG) Certificate or a Program for Assessment of Veterinary Education Equivalence (PAVE) Certificate. The Board may refuse to issue a license to an applicant who meets the qualification criteria but is otherwise disqualified as provided in the Texas Occupations Code, §801.401; and

(4) has attained a passing score of at least 75% on:

(A) The NAVLE if an applicant sits for that examination subsequent to its inauguration date; or

(B) The national examinations referred to as the NBE (National Board Examination) and the CCT (Clinical Competency Test) required prior to the inauguration date of the NAVLE; and

(5) presents proof of a current active license in good standing in another state or jurisdiction of the United States or foreign country that has licensing requirements substantially equivalent to the requirements of the Veterinary Licensing Act, Texas Occupations Code Chapter 801; and

(6) at the time of application, is not subject to final or pending disciplinary action in any foreign country, state or jurisdiction in which the applicant is now licensed or has ever held a license; and

(7) presents proof of having earned a minimum of 17 hours of acceptable continuing education related to veterinary medicine or general scientific subjects within 12 months preceding application for temporary license.

(b) The applicant who earns the temporary veterinary license must be under general supervision of a Texas licensed veterinarian who possesses an active, current license in the state of Texas.

(c) The applicant for a temporary veterinary license shall submit to the Board a complete application in the form designated by the Board with the supporting required documentation as set out in subsection (a) of this section, as well as:

(1) A letter of good standing not older than six months from each jurisdiction in which the applicant is currently actively licensed or has been previously licensed;

(2) a certified copy of the applicant's veterinary school transcript including a graduation date;

(3) a certified copy of the applicant's birth certificate;

(4) a certified report from the official reporting service verifying that the applicant passed the national examination or the NAVLE, subject to a petition by the applicant for an exception to this requirement in accordance with §571.5(c) of this title (relating to Qualifications for Veterinary License);

(5) official verification of board certification if applicant is certified by a nationally recognized veterinary specialty board, if applicable; and

(6) an application fee in an amount set by the Board and contained in §577.15 of this title (relating to Fee Schedule).

(d) The temporary veterinary license application and all supporting documentation must be received in the board office PRIOR to being issued a temporary veterinary license. A temporary veterinary license will only be issued once the applicant's file is complete and ALL required, supporting documentation and fee has been received. The Board's Executive Director will issue a temporary veterinary license to an applicant following verification of the requirements set out in subsections (a) - (c) of this section, and receipt of the documents and fee required.

(e) The temporary veterinary license is valid only for a specific patient, client, continuing education course, or task [~~purpose~~] per issuance. A temporary veterinary license granted under this section is valid for 30 days from the date of original issue, per temporary veterinary license issued. The temporary veterinary license should be available for review at

the place of practice for the period the applicant is in Texas under the temporary veterinary license.

(f) The temporary veterinary license is not renewable nor can it be reissued. The applicant must cease and desist the practice of veterinary medicine the day after the expiration of the temporary veterinary license. Continued practice of veterinary medicine without the valid, temporary veterinary license is a violation of current laws and rules and is viewed as the practice of veterinary medicine without a license. Disciplinary action can be taken and includes, but is not limited to, the refusal of the Board to issue a second temporary veterinary license, for which the applicant may otherwise be eligible, and possibly the issuance of a future, regular license.

(g) An applicant may request a second temporary veterinary license within the same calendar year, provided no more than two temporary veterinary licenses are issued per applicant. After the second temporary veterinary license, if the applicant wishes to continue to practice in the State of Texas, he/she must seek regular licensing and must be eligible for such regular license as set out in current laws and rules governing the issuance of a regular license in the State of Texas.

Title 22 Examining Boards
Part 24 Board of Veterinary Medical Examiners
Chapter 571 Licensing

22 TAC §571.52

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §571.52, concerning Temporary Veterinary License, without changes to the proposed text as published in the December 19, 2014, issue of the *Texas Register* (39 TexReg 9791). The adopted rule therefore will not be republished.

Rule 571.52 currently requires the Board's executive director to sign all renewal certificates. This adoption repeals the current rule in its entirety. The Board will no longer issue renewal certificates as a licensee's license status is available to the public on the Board's website. Producing and mailing the renewal cards, including replacement cards and cards with changes of address, costs the Board time and resources.

The Board did not receive any comments on the proposed amendment.

The repeal is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

This agency hereby certifies that the amendment has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

<rule>

[~~RULE §571.52 RENEWAL CERTIFICATES~~
~~The executive director of the board is directed to sign all renewal certificates for current renewals, and those renewals for applicants who have permitted their license to lapse due to nonpayment of fees for a period not to exceed one year, and any other renewal as directed by the board.~~]

Title 22 Examining Boards
Part 24 Board of Veterinary Medical Examiners
Chapter 573 Rules of Professional Conduct

22 TAC §573.20

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.20, concerning Responsibility for Acceptance of Medical Care, without changes to the proposed text as published in the December 19, 2014, issue of the *Texas Register* (39 TexReg 9792). The adopted rule therefore will not be republished.

The Board adopts this amendment to permit a veterinarian to refill a prescription written by another veterinarian as long as the two veterinarians are within the same practice, clinic, or hospital; the veterinarian who wrote the original prescription has an established veterinary-client-patient-relationship (VCPR) with the specific animal; and the veterinarian refilling the prescription has access to the VCPR veterinarian's current medical records for that animal. This rule change will provide greater efficiency for providing veterinary services to the public, while still protecting the public.

The Texas Veterinary Medical Association (TVMA) and over 190 TVMA members commented in support of this rule amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter and §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

This agency hereby certifies that the amendment has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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RULE §573.20 RESPONSIBILITY FOR ACCEPTANCE OF MEDICAL CARE

(a) The decision to accept an animal as a patient is at the sole discretion of a veterinarian. The veterinarian is responsible for determining the diagnosis and course of treatment for an animal that has been accepted as a patient and for advising the client as to the diagnosis and treatment to be provided.

(b) For purposes of establishing a veterinarian-client-patient relationship under §801.351 of the Veterinary Licensing Act, Texas Occupations Code, a veterinarian can obtain sufficient knowledge of an animal by making medically appropriate and timely visits to the premises on which the animal is kept only if the animal is a member of a herd.

(c) A veterinarian must inform a client when:

(1) the client has specifically requested that the veterinarian diagnose and/or treat the client's animal; and

(2) the veterinarian reasonably believes there is a likelihood or possibility that another veterinarian may perform some or all of the diagnosis and/or treatment of the patient.

(d) Once a veterinarian-client-patient-relationship ~~patient/client/veterinarian-relationship~~ has been established, a veterinarian may discontinue treatment:

(1) at the request of the client;

(2) after the veterinarian substantially completes the treatment or diagnostics prescribed;

(3) upon referral to another veterinarian; or

(4) after notice to the client providing a reasonable period for the client to secure the services of another veterinarian.

(e) Once a veterinarian establishes a veterinarian-client-patient-relationship and prescribes medication(s), another Texas licensed veterinarian within the same clinic or hospital who has access to the patient's current medical records may refill that same prescription(s) without a veterinary-client-patient relationship.

Title 22 Examining Boards
Part 24 Board of Veterinary Medical Examiners
Chapter 573 Rules of Professional Conduct

22 TAC §573.22

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.22, concerning Professional Standard of Care, without changes to the proposed text as published in the December 19, 2014, issue of the *Texas Register* (39 TexReg 9793). The adopted rule therefore will not be republished.

Rule 573.22 currently requires licensees to exercise the same degree of humane care, skill, and diligence in treating patients as are ordinarily used in the "same or similar circumstances" by average members of the veterinary medical profession in good standing in the "locality or community" in which they practice, or in similar communities. The Board adopts this amendment to clarify the long standing policy and interpretation that the phrase "same or similar circumstances" includes consideration of the type of practice the veterinarian is practicing. Further, the Board proposes this amendment to clarify the long standing policy and interpretation of the word "community" to refer to a geographic community or locality and not a demographic community such as a type of veterinary clinic. This amendment makes clear the Board's long standing policy that a review of a veterinarian's standard of care will include a comparison to similar situated veterinarians; such that, an urban veterinarian in a shelter practice would be compared to the standard of care for other urban veterinarians in shelter practice.

The Texas Veterinary Medical Association (TVMA) and over 190 TVMA members commented in support of this rule amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which state that the Board shall adopt rules to protect the public.

This agency hereby certifies that the amendment has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

<rule>

RULE §573.22 PROFESSIONAL STANDARD OF CARE
Licensees shall exercise the same degree of humane care, skill, and diligence in treating patients as are ordinarily used in the same or similar circumstances, <u>including the type of practice,</u> by

average members of the veterinary medical profession in good standing in the locality or geographic community in which they practice, or in similar communities.

Title 22 Examining Boards
Part 24 Board of Veterinary Medical Examiners
Chapter 573 Rules of Professional Conduct

22 TAC §573.35

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.35, concerning Display of License, without changes to the proposed text as published in the December 19, 2014, issue of the *Texas Register* (39 TexReg 9794). The adopted rule therefore will not be republished.

Rule 573.35 currently requires licensees to display their most recent license renewal certificate. The Board adopts this amendment to remove the requirement to display renewal certificates as the Board will no longer issue such certificates. A licensee's renewal status is publically available on the Board's website. Licensees will continue to be required to display their original license.

The Texas Veterinary Medical Association (TVMA) and over 190 TVMA members commented in support of this rule amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

This agency hereby certifies that the amendment has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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RULE §573.35 DISPLAY OF LICENSE
Each licensee, including a relief veterinarian, shall post or display at the licensee's practice location, whether mobile or fixed, his or her Board license[~~ and the most recent license renewal certificate~~]. This [~~These~~] document [~~documents~~] must be displayed where it is [~~they are~~] visible to the public. A legible photocopy of the original document [~~documents~~] is acceptable.

Title 22 Examining Boards
Part 24 Board of Veterinary Medical Examiners
Chapter 573 Rules of Professional Conduct

22 TAC §573.5

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.5, concerning Avoidance of Corruption of Others, without changes to the proposed text as published in the December 19, 2014, issue of the *Texas Register* (39 TexReg 9791). The adopted rule therefore will not be republished.

The Board adopts this amendment to Rule 573.5 to prevent a licensee from harassing or retaliating against a complainant or witness to a complaint, including another licensee who may be providing an opinion. The Board has seen an increase in instances where licensees do harass or retaliate against such persons, including instances where the harassment is successful and the complainant no longer desires to pursue the complaint.

The Texas Veterinary Medical Association (TVMA) and over 190 TVMA members commented in support of this rule amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter and §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

This agency hereby certifies that the amendment has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

<rule>

RULE §573.5 AVOIDANCE OF CORRUPTION OF OTHERS
A licensee shall not render any service or advice directed toward the corruption of any person or persons exercising a public office or private trust, or deception, or betrayal of the public. <u>A licensee shall not harass, discriminate against, or otherwise retaliate against a complainant or witness to a complaint, including but not limited to another licensee who provides information or an opinion in the matter.</u>

Title 22 Examining Boards
Part 24 Board of Veterinary Medical Examiners
Chapter 573 Rules of Professional Conduct

22 TAC §573.54

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.54, concerning Patient Records Release and Charges, without changes to the proposed text as published in the December 19, 2014, issue of the *Texas Register* (39 TexReg 9795). The adopted rule therefore will not be republished.

Rule 573.54 currently permits a veterinarian to charge a "reasonable fee" for providing copies of patient medical records to a client. That reasonable fee includes the cost of copying and postage. The Board adopts this amendment to Rule 573.54 to allow veterinarians to withhold copies of patient medical records until the requesting client pays the reasonable fee. The amendment requires the veterinarian to provide the client with the amount of the fee within five business days of the client's request for documents. Once the client verbally or in writing accepts the charges, the veterinarian must prepare the records within ten business days and then deliver them upon payment. Records may not be withheld for payment of the reasonable fee in acute or emergency situations.

The Texas Veterinary Medical Association (TVMA) and over 190 TVMA members commented in support of this rule amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

This agency hereby certifies that the amendment has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

<rule>

RULE §573.54 PATIENT RECORDS RELEASE AND CHARGES

(a) Release of records pursuant to request. Upon the request of the client or their authorized representative, the veterinarian shall furnish a copy of the patient records, including a copy of any radiographs requested, within 15 business days of the request <u>or in accordance with subsection (f) of this section</u>, unless a longer period is reasonably required to duplicate the records.

(b) Contents of records. For purposes of this section, "patient records" shall include those records as defined in §573.52 of this title (relating to Veterinarian Patient Record Keeping).

(c) Allowable charges. The veterinarian may charge a reasonable fee for this service and, in non-emergency and non-acute situations, may withhold the records until such payment is received. A reasonable fee, shall include only the cost of:

(1) copying, including the labor and cost of supplies for copying;

(2) postage, when the individual has requested the copy or summary be mailed; and

(3) preparing a summary of the records when appropriate.

(d) Improper withholding for past due accounts. Patient records requested pursuant to a proper request for release may not be withheld from the client, the client's authorized agent, or the client's designated recipient for such records based on a past due account for care or treatment previously rendered to the patient.

(e) The veterinarian shall be entitled to the reasonable fee prior to the release of the records unless the information is requested by another veterinarian or his or her agent for purposes of emergency or acute medical care.

(f) The veterinarian must notify the requestor of records the amount of the reasonable fee within five (5) business days of the request. Once the veterinarian receives written or verbal notice from the requestor that the requestor accepts the reasonable fee and will pick up the records, the veterinarian must have the records copied and ready for delivery within ten (10) business days of receiving such notice.

Title 22 Examining Boards
Part 24 Board of Veterinary Medical Examiners
Chapter 573 Rules of Professional Conduct

22 TAC §573.70

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.70, concerning Reporting of Criminal Activity, without changes to the proposed text as published in the December 19, 2014, issue of the *Texas Register* (39 TexReg 9795). The adopted rule therefore will not be republished.

Rule 573.70 currently provides that a licensee or an applicant for a license must report to the Board if he or she is charged with, or convicted of, any misdemeanor related to the practice of veterinary medicine or equine dentistry, or any felony. Board staff has found that some licensees and applicants for licenses do not understand the crimes that they must report. The Board adopts this amendment to clarify that the crimes licensees and applicants for licensure must report includes, but is not limited to, those crimes currently provided in Rule 575.50(e).

The Texas Veterinary Medical Association (TVMA) and over 190 TVMA members commented in support of this rule amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

This agency hereby certifies that the amendment has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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RULE §573.70 REPORTING OF CRIMINAL ACTIVITY

(a) A licensee or an applicant for a license from the Board shall report to the Board no later than the 30th day after he or she is charged with, or convicted of, any misdemeanor related to the practice of veterinary medicine or equine dentistry, or any felony<u>, including but not limited to the acts enumerated in §575.50(e) of this title (relating to Criminal Convictions)</u>.

(b) On a finding by the Board that a licensee has engaged in non-drug related criminal conduct or committed a non-drug related felony or misdemeanor, other than a misdemeanor under the Uniform Act Regulating Traffic or Highways, Texas Civil Statutes, Article 6701d, or a similar misdemeanor traffic offense, the executive director shall notify the district attorney or county attorney of the county in which the licensee resides. The notice must be in writing and contain a copy of the Board's finding and any order of the Board relating to the licensee's conduct.

(c) On a finding by the Board that a licensee has engaged in drug related criminal conduct or committed a drug related felony or misdemeanor, the executive director shall notify the Narcotics Service, Texas Department of Public Safety and/or the U.S. Drug Enforcement Administration. The notice must be in writing and contain a copy of the Board's finding and any order of the Board relating to the licensee's conduct.

Title 22 Examining Boards
Part 24 Board of Veterinary Medical Examiners
Chapter 573 Rules of Professional Conduct

22 TAC §573.81

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.81, concerning Mandatory Report by Licensee, without changes in nature or scope to the proposed text as published in the December 19, 2014, issue of the *Texas Register* (39 TexReg 9796). The adopted rule therefore will not be republished.

The Board adopts this new Rule 573.81. This new rule would require all licensees to report to the Board if the licensee has reasonable cause to suspect that (1) the ability of another licensee to provide veterinary, veterinary technician, or equine dental services safely and reasonably is impaired by chemical dependency; or (2) another licensee generally poses a continuing threat to the public welfare. Such report to the Board must be in writing, signed, and include the identity of the licensee and any other information the Board may require. A licensee may not suspend or terminate the employment or otherwise retaliate against, discipline, or discriminate against a person who makes such a report to the Board or advises a licensee of the licensee's rights and obligations under this rule. The Board has seen cases where a veterinarian is a clear threat to the public welfare. However, other veterinarians working by that veterinarian's side did not alert the Board to the threat but rather allowed the behavior to continue and continued to put the public at risk.

The Board received over 190 comments from individual veterinarians and the Texas Veterinary Medical Association (TVMA) opposing this rule. The large majority of the individual comments were identical to the comments of TVMA. The comments expressed specific concern that the rule would potentially discouraging individuals experiencing substance abuse issues from seeking help and that the rule would potentially encourage a licensed employee to report his/her licensed supervisor to the Board to prevent their own termination or discipline. The comments further expressed concern over the rule's language that would protect a licensee reporting another licensee from being retaliated against for making the report.

In response to these comments, the Board incorporated into the adopted rule language from section 467.005(b) of the Texas Health and Safety Code that provides that a person who is required to report an impaired professional to a licensing authority, satisfies the obligation by reporting the person to the peer assistance program. TVMA supports this addition. Further, the Board is adopting an amendment to 22 T.A.C. 573.5 contemporaneously with this amendment to prevent the filing of reports for purposes of harassment are retaliation. Finally, the Board believes the protection against retaliation for the licensee reporting is necessary for protection of those reporting and to encourage compliance with the rule. The Board believes that this explanation and the amendment to 22 T.A.C. 573.5 address the remaining concerns expressed in the comments.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c)(1), which states that the Board may adopt rules to protect the public.

This agency hereby certifies that the amendment has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

<rule>

RULE 573.81 MANDATORY REPORT BY LICENSEE

(a) A licensee shall report to the Board in the manner prescribed under subsection (b) of this section if the licensee has reasonable cause to suspect that:

(1) the ability of another licensee to provide veterinary, LVT, or EDP services safely and reasonably is impaired by chemical dependency; or

(2) another licensee generally poses a continuing threat to the public welfare.

(b) A report by a licensee under subsection (a) must:

(1) Be in writing and signed; and

(2) Include the identity of the licensee and any additional information required by the Board.

(c) A licensee may not suspend or terminate the employment or otherwise retaliate against, discipline, or discriminate against, a person who:

(1) Reports in good faith under this section; or

(2) Advises a licensee of the licensee's rights and obligations under this section.

(d) A licensee satisfies his or her duty to report in accordance with subsection (a)(1) of this section by reporting the other licensee to the Board's approved Peer Assistance Program.

Title 22 Examining Boards
Part 24 Board of Veterinary Medical Examiners
Chapter 575 Rules of Practice and Procedure

22 TAC §575.35

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §575.35, concerning Temporary License Suspension Proceedings, without changes to the proposed text as published in the December 19, 2014, issue of the *Texas Register* (39 TexReg 9797). The adopted rule therefore will not be republished.

Rule 575.35 currently provides the process and procedures for temporary license suspension proceedings. The Board adopts this amendment to clarify its current practice and procedures in conformity with section 801.409 of the Texas Occupations Code, the Texas Veterinary Licensing Act. Specifically, this amendment clarifies that the second statutorily required hearing is the formal hearing before the State Office of Administrative Hearings. That hearing must occur no later than the 60th day after the date the executive disciplinary committee first ordered the temporary suspension.

The Board did not receive any comments on the proposed amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

This agency hereby certifies that the amendment has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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RULE §575.35 TEMPORARY LICENSE SUSPENSION PROCEEDINGS

(a) Annually, the president of the Board shall appoint a three-member executive disciplinary committee (EDC) consisting of the president, the Board secretary, and one public member, to determine whether a person's license to practice in this state should be temporarily suspended under the Occupations Code, §801.409. The president shall serve as the chairman of the EDC, except in their absence the Board secretary shall serve as chairman. If a member of the EDC is recused, or a member is unable to attend the EDC's meeting, an alternate Board member may serve in the member's place on the EDC if the alternate was previously appointed by the president of the Board and approved by the Board.

(b) The EDC shall meet to receive information on a complaint indicating that a licensee's continued practice may constitute a continuing or imminent threat to the public welfare. At the conclusion of the meeting, if the EDC concludes that the licensee's continued practice would constitute a continuing or imminent threat to the public welfare, the EDC shall suspend the licensee's license for a temporary, stated period of time.

(c) In accordance with the APA, §2001.081, the determination of the EDC may be based not only on evidence admissible under the Texas Rules of Evidence, but may be based on information of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs.

(d) In receiving information on which to base its determination of a continuing threat to the public welfare, the EDC may accept the testimony of witnesses by telephone.

(e) The EDC and the enforcement committee (EC) may receive testimony and evidence in oral or written form. Written statements may be sworn or unsworn. The committee members may question witnesses at the members' discretion. Evidence or information that is clearly irrelevant, unreliable, or unduly inflammatory will not be considered.

(f) The EDC may suspend a license under this section without notice or a hearing on the complaint, provided the Board's EC (established pursuant to §575.29(b) of this title (relating to Informal Conferences)) shall meet in an informal conference within 14 days of the date of suspension, to determine if formal disciplinary proceedings should be initiated against the licensee. The licensee must receive notice of the conference at least 72 hours prior to the conference.

(g) Following the informal conference, the EC shall take one of the following actions:

(1) Lift the temporary suspension and reinstate the license without conditions.

(2) Negotiate with the licensee an agreed settlement order that will lift the suspension, continue the suspension, or impose other sanctions as appropriate. The agreed order would be presented to the next available Board meeting for adoption.

(3) Prepare a notice of hearing setting out the details of the complaint and recommended sanctions, and forward the notice of hearing to the State Office of Administrative Hearings for setting of an administrative hearing. Following the hearing, the administrative law judge will prepare a proposal for decision for adoption, in the form of an order, by the Board.

<u>(h) If the EC determines that a notice of hearing shall be forwarded to the State Office of Administrative Hearings for an administrative hearing, that hearing must occur no later than the 60th day after the date the EDC first ordered the temporary suspension, in accordance with section 801.409 of the Texas Occupations Code.</u>

Title 22 Examining Boards
Part 24 Board of Veterinary Medical Examiners
Chapter 575 Rules of Practice and Procedure

22 TAC §575.60

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §575.60, concerning Alternative Dispute Resolution, without changes to the proposed text as published in the December 19, 2014, issue of the *Texas Register* (39 TexReg 9798). The adopted rule therefore will not be republished.

Rule 575.35 currently provides the process and procedures for alternative dispute resolution. The Board adopts this amendment to formally adopt Texas Government Code, chapter 2260 regarding alternative dispute resolution for contractual disputes.

The Board did not receive any comments on the proposed amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

This agency hereby certifies that the amendment has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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RULE §575.60 ALTERNATIVE DISPUTE RESOLUTION

(a) The board's policy is to encourage the resolution and early settlement of internal and external disputes, including contested cases, through voluntary settlement processes, which may include any procedure or combination of procedures described by Chapter 154, Civil Practice and Remedies Code. Any ADR procedure used to resolve disputes before the board shall comply with the requirements of Chapter 2009, Government Code, and any model guidelines for the use of ADR issued by the State Office of Administrative Hearings.

(b) The board's general counsel or their designee shall be the board's dispute resolution coordinator (DRC). The DRC shall perform the following functions, as required:

(1) coordinate the implementation of the policy set out in subsection (a) of this section;

(2) serve as a resource for any staff training or education needed to implement the ADR procedures; and

(3) collect data to evaluate the effectiveness of ADR procedures implemented by the board.

(c) The board, a committee of the board, a respondent in a disciplinary matter pending before the board, the executive director, or a board employee engaged in a dispute with the

executive director or another employee, may request that the contested matter be submitted to ADR. The request must be in writing, be addressed to the DRC, and state the issues to be determined. The person requesting ADR and the DRC will determine which method of ADR is most appropriate. If the person requesting ADR is the respondent in a disciplinary proceeding, the executive director shall determine if the board will participate in ADR or proceed with the board's normal disciplinary processes.

(d) Any costs associated with retaining an impartial third party mediator, moderator, facilitator, or arbitrator, shall be borne by the party requesting ADR.

(e) Agreements of the parties to ADR must be in writing and are enforceable in the same manner as any other written contract. Confidentiality of records and communications related to the subject matter of an ADR proceeding shall be governed by §154.073 of the Civil Practice and Remedies Code.

(f) If the ADR process does not result in an agreement, the matter shall be referred to the board for other appropriate disposition.

(g) ADR for breach of contract claims. Resolution of breach of contract claims brought by a contractor against the Board shall conform to the requirements of Government Code, Chapter 2260. The Board adopts by reference the Office of the Attorney General's model rules regarding the negotiation and mediation of certain contract disputes (1 Texas Administrative Code Part 3, Chapter 68). The requirements of Government Code, Chapter 2260, and the Office of the Attorney General's model rules are required prerequisites to a contractor filing suit in accordance with Civil Practice and Remedies Code, Chapter 107.