

RULES PERTAINING TO THE PRACTICE OF VETERINARY MEDICINE

TEXAS ADMINISTRATIVE CODE
TITLE 22, PART 24
CHAPTER 575



TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

333 Guadalupe, Ste. 3-810

Austin, TX 78701-3942

Phone: 512/305-7555

Fax: 512/305-7556

E-Mail: vet.board@veterinary.texas.gov

Website: <http://www.veterinary.texas.gov>

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**TEXAS ADMINISTRATIVE CODE
TITLE 22 EXAMINING BOARDS
PART 24 TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS**

CHAPTER 575 PRACTICE AND PROCEDURE

§575.1 Definitions

The definitions contained in the Veterinary Licensing Act (Chapter 801, Occupations Code) and the Administrative Procedure Act (Chapter 2001, Government Code) are hereby incorporated into this chapter, insofar as they are applicable thereto.

Source Note: The provisions of this §575.1 adopted to be effective January 1, 1976; amended to be effective July 6, 1990, 15 TexReg 3635; amended to be effective March 15, 2004, 29 TexReg 2642

§575.2 Filing of Documents

All applications, petitions, complaints, motions, replies, answers, notices, requests for exceptions, and other documents relating to any proceeding pending or set for consideration by the Board shall be filed in the office of the Texas Board of Veterinary Medical Examiners, Austin, Texas. The documents shall be deemed filed only when actually received in the office of the Texas Board of Veterinary Medical Examiners, accompanied by the filing fee, if any, required by statute or Board rules.

Source Note: The provisions of this §575.2 adopted to be effective January 1, 1976; amended to be effective March 22, 1988, 13 TexReg 1189; amended to be effective March 15, 2004, 29 TexReg 2642; amended to be effective July 13, 2008, 33 TexReg 5528

§575.3 Computation of Time

(a) Counting days. Unless otherwise required by statute, in computing time periods prescribed by this chapter or by a SOAH order, the period shall begin to run on the day after the act, event or default in question. The day of the act, event or default on which the designated period time begins to run is not included. The period shall conclude on the last day of the designated period, unless that day is a Saturday, Sunday or legal state or federal holiday, in which case the designated period runs until the end of the next day that is not a Saturday, Sunday or legal state or federal holiday. When these rules specify a deadline or a set number of days for filing documents or taking other actions, the computation of time shall be by calendar days rather than business days, unless otherwise provided in this chapter or pursuant to a SOAH or board order.

(b) Dispute. Disputes regarding computation of time for periods not specified by this chapter or by a board or SOAH order will be resolved by reference to applicable law and upon consideration of agency policy documented in accordance with the Act and Board rules.

(c) Extensions. Unless otherwise provided by statute, the time for filing any document may be extended by agreement of the parties, order of the executive director or the ALJ if SOAH has acquired jurisdiction, upon written request filed prior to the expiration of the applicable time period. This written request must show good cause for an extension of time and state that the need is not caused by the neglect, indifference or lack of diligence of the movant.

Source Note: The provisions of this §575.3 adopted to be effective January 1, 1976; amended to be effective March 22, 1988, 13 TexReg 1189; amended to be effective March 15, 2004, 29 TexReg 2643; amended to be effective July 13, 2008, 33 TexReg 5528

§575.4 Conduct and Decorum

- (a) All meetings of the Board and its committees are open to the public unless such meetings are conducted in executive session in accordance with the Chapter 551, Government Code, or Chapter 801, Occupations Code.
- (b) Each party, witness, attorney, or other representative shall conduct themselves in all proceedings with proper dignity, courtesy, and respect for the Board and all other parties. Disorderly conduct will not be tolerated. Members of the public shall not address Board members during meetings unless recognized by the Board's presiding officer pursuant to a published agenda item. Persons seeking to position microphones, video cameras or other equipment for the purposes of recording Board proceedings may not disrupt the meeting or disturb participants.
- (c) Attorneys and other representatives of parties shall observe and practice the standards of the ethical behavior prescribed for their professions.
- (d) The Board's presiding officer may exclude from a meeting any person who, after being duly warned, persists in disorderly, abusive or disruptive behavior.

Source Note: The provisions of this §575.4 adopted to be effective March 15, 2004, 29 TexReg 2643; amended to be effective July 13, 2008, 33 TexReg 5528

§575.5 Subpoenas/Witness Expenses

- (a) In any proceeding involving an alleged violation of the Veterinary Licensing Act, Chapter 801, Occupations Code, including a contested case under the Administrative Procedure Act, Chapter 2001, Government Code, the Board may compel by subpoena:
 - (1) the attendance of witnesses for examination under oath; and
 - (2) the production for inspection or copying of books, accounts, records, papers, correspondence, documents, and other evidence relevant to the alleged violation.
- (b) A party to a contested case hearing may request that the Board issue a subpoena or subpoena duces tecum, in accordance with §2001.089 of the APA, as may be hereafter amended. The requesting party must show good cause, relevancy, necessity of the testimony or documents, lack of undue inconvenience, imposition or harassment of the party required to produce the testimony or documents, and must deposit sums necessary to insure payment of expenses incident to the subpoenas. The written request shall be addressed to a sheriff or constable for service in accordance with §2001.089 of the APA.
 - (1) The party requesting the subpoena shall be responsible for the payment of any expense incurred in serving the subpoena, as well as reasonable and necessary expenses incurred by the witness who appears in response to the subpoena.
 - (2) The party requesting a subpoena duces tecum shall describe and recite with great clarity, particularity and specificity the books, records, and documents to be produced. The written request shall contain a description of the item sought, the name, address and title, if any, of the person or entity who has custody or control over the items, and the date and location at which the items are sought to be produced.
 - (3) If the subpoena is for the attendance of a witness, the written request shall contain the name, address, and title, if any, of the witness and the date and location at which the attendance of the witness is sought.

(c) A subpoena issued at the request of the Board's staff may be served personally by a Board employee, by certified mail, or by any other means authorized by law.

(d) The Board may delegate authority to issue subpoenas to the executive director.

(e) A witness, called at the request of the Board in a contested case, who is not a party to the proceeding and who is subpoenaed to appear at a deposition or hearing or to produce books, papers, or other objects, shall be entitled to receive a fee of \$25 per day and reimbursed for travel expenses in the same manner as Board employees.

(f) The pendency of a SOAH proceeding does not preclude the board from issuing an investigative subpoena at any time.

Source Note: *The provisions of this §575.5 adopted to be effective March 15, 2004, 29 TexReg 2644; amended to be effective July 13, 2008, 33 TexReg 5528; amended to be effective March 10, 2009, 34 TexReg 1608; amended to be effective November 20, 2011, 36 TexReg 7667*

§575.6 Procedures Following a Contested Case Hearing

(a) Following issuance of a proposal for decision (PFD) in a contested case referred by the Board to the State Office of Administrative Hearings (SOAH), the parties to the hearing may file exceptions and replies to exceptions to the PFD.

(b) Any party may, within 20 days after the date of service of a proposal for decision, file with the executive director of the Board and the administrative law judge (ALJ), exceptions and briefs to the PFD. Replies to the exceptions and briefs may be filed within 15 days after the date of filing of the exceptions and briefs.

(1) A request for extension of time within which to file exceptions, briefs, or replies shall be filed with the executive director of the Board and the ALJ, and a copy thereto shall be served on all other parties of record by the party making the request.

(2) The ALJ will rule on all exceptions, briefs and replies and requests for extension of time and notify the parties of their decision and any amendments they propose to the PFD.

Source Note: *The provisions of this §575.6 adopted to be effective March 15, 2004, 29 TexReg 2644; amended to be effective July 13, 2008, 33 TexReg 5528*

§575.7 Presentation of Proposal for Decision

(a) Notice of oral argument. All parties and the ALJ who has issued a proposal for decision shall be given notice of the opportunity to attend and provide oral argument concerning a proposal for decision before the board. Notice shall be sent by hand delivery, regular mail, certified mail - return receipt requested, courier service, or registered service to the ALJ's office and the parties' addresses of record.

(b) Arguments before the Board. The order of the proceeding shall be as follows:

(1) the ALJ shall present and explain the proposal for decision;

(2) the party adversely affected shall briefly state the party's reasons for being so affected supported by the evidence of record;

(3) the other party or parties shall be given the opportunity to respond;

(4) the party with the burden of proof shall have the right to close;

(5) board members may question any party as to any matter relevant to the proposal for decision and evidence presented at the hearing;

(6) at the end of all arguments by the parties, the board may deliberate in closed session and shall determine the charges on the merits and take action on a final decision in open session.

(c) Limitation. A party shall not be disruptive of the orderly procedure of the board's routines.

Source Note: *The provisions of this §575.7 adopted to be effective July 13, 2008, 33 TexReg 5528*

§575.8 Final Decision and Orders

(a) Board action. A copy of the final decision or order shall be delivered or mailed to any party and to the attorney of record.

(b) Recorded. All final decisions and orders of the Board shall be in writing and shall be signed by the president, vice-president, or secretary and reported in the minutes of the meeting. A final order shall include findings of fact and conclusions of law, separately stated.

(c) Imminent peril. If the Board finds that imminent peril to the public's health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

(d) Changes to findings of fact and conclusions of law.

(1) Reasons to change findings of fact and conclusions of law. The Board is charged by the legislature to protect the public interest, is an independent agency of the executive branch of the government of the State of Texas, and is the primary means of licensing, regulating and disciplining veterinarians, licensed veterinary technicians, and equine dental providers. Therefore, to ensure that sound veterinary medical principles govern the decisions of the Board, it is the policy of the Board to change a finding of fact or conclusion of law or to vacate or modify any proposed order of an ALJ only when the Board determines:

(A) that the ALJ did not properly apply or interpret applicable law, Board rules, written policies, or prior administrative decisions;

(B) that a prior administrative decision on which the ALJ relied is incorrect or should be changed; or

(C) that a technical error in a finding of fact should be changed.

(2) Recommendations regarding the appropriate sanction. Section 801.456(a) of the Veterinary Licensing Act requires that, after receiving the ALJ's findings of fact and conclusions of law, the Board may determine that a violation occurred and impose an administrative penalty. The Board interprets this requirement as imposing on the Board the responsibility of assessing the proper sanction. While the Board welcomes the recommendations of ALJs regarding the appropriate sanction, the Board does not consider the findings of fact and conclusions of law to be appropriate for stating such recommendations. Therefore, sanction recommendations in the form of findings of fact and conclusions of law are considered to be an improper application of applicable law and these rules.

(3) Changes stated in final order. If the Board modifies, amends, or changes the ALJ's proposed findings of fact or conclusions of law, an order shall be prepared reflecting the specific reason and legal basis for each change made.

(e) Administrative finality. A final order or Board decision is administratively final:

(1) upon a finding of imminent peril to the public's health, safety or welfare, as outlined in subsection (c) of this section;

(2) when no motion for rehearing has been filed within 20 days after the date the final order or Board decision is entered; or

(3) when a timely motion for rehearing is filed and the motion for rehearing is denied by Board order or operation of law as outlined in §575.9 of this title (relating to Motions for Rehearing).

Source Note: The provisions of this §575.8 adopted to be effective July 13, 2008, 33 TexReg 5528; amended to be effective June 20, 2012, 37 TexReg 4425; amended to be effective May 4, 2014, 39 TexReg 3429

§575.9 Motions for Rehearing

Any motions for rehearing and replies to motions for rehearing must be filed in accordance with the time periods specified in the Government Code, §2001.146. Upon request by a party, the Board may grant oral argument on motions for rehearing.

Source Note: The provisions of this §575.9 adopted to be effective July 13, 2008, 33 TexReg 5528

§575.10 Costs of Administrative Hearings

(a) Default Orders. In cases brought before SOAH, in the event that the respondent is adjudged to be in violation of the Act by default, the Board has the authority to assess, in addition to penalty imposed, costs of transcribing the administrative hearing.

(b) Mediation at SOAH. The costs of mediation shall be born equally by the parties, unless proof through affidavit and other reliable records such as tax returns show that a party is incapable of paying part of the costs of mediation.

(c) Trial on the Merits. In cases brought before SOAH, in the event that the respondent is adjudged after a trial on the merits to be either in violation of the Act or ineligible for licensure, the Board has the authority to assess, in addition to the penalty imposed, the costs of transcribing the administrative hearing.

(d) Appeal. The costs of transcribing the testimony and preparing the record for an appeal by judicial review shall be paid by the party who appeals.

Source Note: The provisions of this §575.10 adopted to be effective July 13, 2008, 33 TexReg 5528; amended to be effective May 12, 2013, 38 TexReg 2761

§575.20 Board Proceedings Relating to Licensure Eligibility

(a) Recommendations by the Executive Director.

(1) The executive director may review applications for licensure and determine whether an applicant is eligible for licensure or refer an application to a committee of the Board for review.

(2) To promote the expeditious resolution of any licensure matter, the executive director may recommend that the applicant be eligible for a license, but only under certain terms and conditions, and present a proposed agreed licensure order to the applicant.

(A) If the proposed agreed licensure order or remedial plan is acceptable to the applicant, the applicant shall sign the agreed licensure order and the agreed licensure order shall be presented to the Board for consideration and acceptance without conducting an informal board proceeding relating to licensure eligibility.

(B) If the proposed agreed order is not acceptable to the applicant, the applicant may request review of the executive director's recommendation by a committee of the Board.

(b) Determination by a Committee of the Board. Upon a review of an application for licensure, a committee of the Board may determine that the applicant is ineligible for licensure, or is eligible for licensure with or without restrictions or conditions, or defer its decision pending further information.

(1) Licensure with Terms and Conditions.

(A) If the committee determines that the applicant should be granted a license under certain terms and conditions based on the applicant's commission of a prohibited act or failure to demonstrate compliance with provisions under the Veterinary Licensing Act (Chapter 801, Occupations Code) or board rules, the committee, as the Board's representatives, shall propose an agreed order.

(B) If the applicant agrees to the terms of the agreed order, the proposed agreed order will be presented to the Board for approval at the next board meeting.

(i) The agreed licensure order may be adopted, modified, or rejected by the Board.

(ii) If the Board approves the agreed order with or without amendments, the executive director or their designee shall mail the approved agreed order to the applicant. The applicant shall have fourteen (14) days from receipt to accept the amended agreed order by signing and returning it to the Board. If an applicant does not sign and return an amended agreed order or does not respond within the fourteen (14) days, the applicant shall be considered ineligible for licensure.

(iii) If the Board rejects the agreed order, the applicant may be scheduled for a hearing before an administrative law judge at the SOAH, or the Board may direct the executive director to take other appropriate action.

(C) If the applicant does not agree to the terms of the proposed agreed order, the applicant is considered ineligible for licensure.

(2) Ineligibility Determination.

(A) If an applicant is ineligible for licensure either through a determination by a board committee or through the applicant's failure to accept a proposed agreed order, the applicant will be notified of the determination and scheduled for a hearing before an administrative law judge at the State Office of Administrative Hearings, unless the applicant sends notice in writing to the Board that the applicant accepts the determination of ineligibility or withdraws the application for licensure.

(B) A hearing on an applicant's eligibility for licensure will be conducted in accordance with §575.30 of this chapter (relating to Contested Case Hearing at SOAH), and a final decision of the Board shall be rendered in accordance with §§575.6 - 575.9 of this chapter (relating to Procedures Following a Contested Case Hearing, Presentation of Proposal for Decision, Final Decision and Orders, and Motions for Rehearing).

(C) An applicant whose petition for licensure is denied by a final order of the Board may not file another petition for licensure until after the expiration of two years from the date of the Board's order denying the petition.

Source Note: *The provisions of this §575.20 adopted to be effective May 12, 2013, 38 TexReg 2761*

§575.22 Reinstatement of Licenses

(a) A person whose license has been surrendered or revoked, whether by voluntary action or by disciplinary action of the Board, may after five (5) years from the effective date of such surrender or revocation, petition the Board for reinstatement of the license, unless another time is provided in the surrender or revocation order, or unless no provision was made in the order for reinstatement. This section does not apply to licensees who let their licenses lapse for non-payment of renewal fees or licensees against whom a surrender or revocation proceeding is not pending before the Board or in any other jurisdiction.

(b) The petition shall be in writing and in the form prescribed by the Board.

(c) After consideration of the petition for reinstatement, the Board may:

(1) deny reinstatement of the license;

(2) reinstate and probate the licensee for a specified period of time under specified conditions;
or

(3) authorize reinstatement of the licensee.

(d) If the petition is denied by the Board, a subsequent petition may not be considered by the Board until twelve (12) months have lapsed from the date of denial of the previous petition.

(e) The petitioner or their legal representative must appear before the Board or the Board's Enforcement Committee to present the request for reinstatement of the license.

(f) The petitioner shall have the burden of showing good cause why the license should be reinstated.

(g) In considering a petition for reinstatement, the Board may consider the petitioner's:

(1) moral character;

(2) employment history;

(3) status of financial support to petitioner's family;

(4) participation in continuing education programs or other methods of staying current with the individual's area of practice;

(5) criminal history record, including felonies or misdemeanors relating to the practice of veterinary medicine, the practice of equine dentistry, and/or moral turpitude;

(6) offers of employment as a veterinarian, licensed veterinary technician, or equine dental practitioner;

- (7) involvement in public service activities in the community;
- (8) compliance with the provisions of the Board order revoking or canceling the petitioner's license;
- (9) compliance with provisions of the Veterinary Licensing Act regarding unauthorized practice;
- (10) history of acts or actions by any other state and federal regulatory agencies; and
- (11) any physical, chemical, emotional, or mental impairment.

(h) In considering a petition, the Board may also consider:

- (1) the gravity of the offense for which the petitioner's license was cancelled, revoked or restricted and the impact the offense had upon the public health, safety, and welfare;
- (2) the length of time since the petitioner's license was cancelled, revoked, or restricted, as a factor in determining whether the time period has been sufficient for the petitioner to have been rehabilitated sufficiently to be able to practice in a manner consistent with the public health, safety and welfare;
- (3) whether the license was submitted voluntarily for cancellation at the request of the licensee; and
- (4) other rehabilitative actions taken by the petitioner.

(i) If the Board grants the petition for reinstatement, the petitioner must successfully complete the Texas State Board Licensing Examination in their area of practice during the regularly scheduled examination times. The Board may also require the petitioner to complete additional testing to assure the petitioner's competency to practice.

Source Note: *The provisions of this §575.22 adopted to be effective April 1, 1992, 17 TexReg 2128; amended to be effective March 13, 2001, 26 TexReg 2025; amended to be effective July 12, 2004, 29 TexReg 6650; amended to be effective July 13, 2008, 33 TexReg 5528; amended to be effective June 20, 2012, 37 TexReg 4426; amended to be effective May 4, 2014, 39 TexReg 3429; amended to be effective November 22, 2015, 40 TexReg 8029*

§575.24 Reprimands

(a) A licensee subject to disciplinary action by the Board may be reprimanded. A reprimand:

- (1) may be formal or informal;
- (2) is contained in a written order of the Board; and
- (3) is available upon request as public information.

(b) A formal reprimand will be:

- (1) published in the Board's newsletter; and
- (2) for a veterinary licensee or a licensed veterinary technician, routinely reported to the American Association of Veterinary State Boards (AAVSB) for inclusion in the national reporting database.

(c) An informal reprimand will not be published in the Board's newsletter and will not be routinely reported to the AAVSB for inclusion in the national reporting database. A copy of an informal reprimand of a licensee will be forwarded to the AAVSB if specifically requested by that organization.

Source Note: *The provisions of this §575.24 adopted to be effective November 19, 2001, 26 TexReg 9386; amended to be effective June 20, 2012, 37 TexReg 4426; amended to be effective May 4, 2014, 39 TexReg 3429*

§575.25 Recommended Schedule of Sanctions

(a) Class A violations. Licensees considered as presenting imminent peril to the public will be considered Class A violators. In determining whether a violation is a Class A, consideration will be given to the disposition of any previously docketed cases, and to the combination of charges which might involve Class B and/or C violations.

(1) Class A violations may include, but are not limited to:

(A) conviction of a felony, including a felony conviction under the Health and Safety Code, §485.032 (formerly numbered; §485.033) relating to Delivery of an Abusable Volatile Chemical to a Minor, or Chapter 481 relating to Controlled Substances, or Chapter 483 relating to Dangerous Drugs;

(B) gross malpractice with a pattern of acts indicating consistent malpractice, negligence, or incompetence in the licensee's area of practice;

(C) revocation of a veterinary license, a veterinary technician license, or an equine dental provider license in another jurisdiction;

(D) mental incompetence found by a court of competent jurisdiction;

(E) chronic or habitual intoxication or chemical dependency, or addiction to drugs;

(F) issuance of a false certificate relating to the sale for human consumption of animal products;

(G) presentation of dishonest or fraudulent evidence of qualifications or a determination of fraud or deception in the process of examination, or for the purpose of securing a license;

(H) engaging in practices which are violative of the Rules of Professional Conduct; and/or

(I) fraudulent issuance of health certificates, vaccination certificates, test charts, or other blank forms used in the practice of veterinary medicine that relate to the presence or absence of animal disease.

(2) In assessing sanctions and/or penalties, consideration shall be given to the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public; the economic harm to property or the environment caused by the violation; history of previous violations; what is necessary to deter future violations; and any other matters that justice may require.

(3) Maximum penalties:

(A) revocation of the license;

(B) a penalty not exceeding \$5,000 for each violation per day;

(C) continuing education in a specified field related to the licensee's practice that the Board deems relevant to the violation(s). The total number of hours mandated are in addition to the number of hours required to renew the license;

(D) quarterly reporting certifying compliance with board orders; and/or

(E) Licensee sit for, and pass, the SBE, LVTE, or EDPE.

(b) Class B violations. Involves licensees who either have violated rules and/or statutes, and committed a prior Class C violation; or have violated rules and/or statutes and have not committed a prior violation, but the nature and severity of the violation(s) necessitates a greater penalty than that available for a Class C violation, but does not rise to the level of creating an imminent peril to the public. In determining whether a violation is a Class B, consideration will be given to the disposition of the previously docketed cases, and to the combination of charges which might invoke Class A and/or C violations.

(1) Class B violations may include, but are not limited to:

(A) engaging in dishonest or illegal practices in or connected with the licensee's practice;

(B) engaging in practices which are violative of the Rules of Professional Conduct;

(C) permitting or allowing another to use his/her license or certificate to practice;

(D) committing fraud in application or reporting of any test of animal disease;

(E) paying or receiving any kickback, rebate, bonus, or other remuneration for treating an animal or for referring a client to another provider of veterinary services or goods;

(F) fraudulent issuance of health certificates, vaccination certificates, test charts, or other blank forms used in the practice of veterinary medicine that relate to the presence or absence of animal disease;

(G) performing or prescribing unnecessary or unauthorized treatment;

(H) ordering prescription drugs or controlled substances for the treatment of an animal without first establishing a valid veterinarian-patient-client relationship;

(I) failure to maintain equipment and business premises in a sanitary condition; and/or

(J) refusal to admit a representative of the Board to inspect the client and patient records and business premises of the licensee during regular business hours.

(2) In assessing sanctions and/or penalties, consideration shall be given to: the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts; the hazard or potential hazard created to the health, safety, or economic welfare of the public; the economic harm to property or the environment caused by the violation; the history of previous violations; what is necessary to deter future violations; and any other matters that justice may require.

(3) Maximum penalties:

(A) one to 10-year license suspension with none, all, or part probated;

(B) a penalty not exceeding \$5,000 for each violation per day;

(C) continuing education in a specified field related to the licensee's practice that the Board deems relevant to the violation(s). The total number of hours mandated are in addition to the number of hours required to renew the license;

(D) quarterly reporting certifying compliance with board orders; and/or

(E) Licensee sit for, and pass, the SBE, LVTE, or EDPE.

(c) Class C violations. Involve licensees who have violated the rules and/or statutes, but do not have a history of previous violations. Consideration should be given to the nature and severity of the violation(s).

(1) Class C violations may include, but are not limited to, minor violations included in Class A and/or B in which there is no hazard or potential hazard created to the health, safety, or economic welfare of the public and no economic harm to property or to the environment.

(2) In assessing sanctions, consideration should be given to the good or bad faith exhibited by the cited person; evidence that the violation was willful; extent to which the cited individual has cooperated with the investigation; and the extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused.

(3) Maximum penalties:

(A) six months to one-year suspension with the entire period probated;

(B) an administrative penalty not to exceed \$500 for each violation per day; and/or

(C) Licensee sit for, and pass, the SBE, LVTE, or EDPE.

Source Note: *The provisions of this §575.25 adopted to be effective November 17, 1993, 18 TexReg 8201; amended to be effective July 17, 2006, 31 TexReg 5617; amended to be effective July 19, 2007, 32 TexReg 4398; amended to be effective November 22, 2009, 34 TexReg 8036; amended to be effective November 20, 2011, 36 TexReg 7667; amended to be effective August 26, 2012, 37 TexReg 6311; amended to be effective May 4, 2014, 39 TexReg 3429*

§575.27 Complaints--Receipt

(a) Complaints against licensees.

(1) All complaints filed by the public against Board licensees must be in writing on a complaint form provided by the Board and signed by the complainant. The Board-approved complaint form can be obtained free of charge from the Board office or downloaded from the Board's website at <http://www.veterinary.texas.gov>. If a complaint is transmitted to the Board orally or by means other than in writing and the complaint alleges facts showing a continuing or imminent threat to the public welfare, the requirement of a written complaint may be waived until later in the investigative process.

(2) The Board may file a complaint on its own initiative.

(3) Complaints by the Board's enforcement section shall be initiated by the opening of a complaint file.

(4) Anonymous written complaints will normally not be investigated, but may be investigated if sufficient information exists for the Board to file a complaint under paragraph (2) of this subsection.

(5) The Board shall utilize violation code numbers to distinguish between categories of complaints.

(6) The Board may not consider a complaint that is filed with the Board after the fourth anniversary of the latest date:

(A) the act that is the basis of the complaint occurred; or

(B) the earlier of when the complainant discovered, or in the exercise of reasonable diligence should have discovered, the occurrence of the act that is the basis of the complaint.

(7) If the Board receives multiple complaints regarding the same licensee and the same alleged facts, the Board may combine the complaints into one investigation and one file. The director of enforcement may elect to divide multiple complaints regarding the same licensee and the same alleged facts into multiple cases based upon the timing of the receipt of such complaints.

(b) Complaints against non-licensees. Complaints against persons alleged to be practicing veterinary medicine or equine dentistry without a license may be investigated and resolved informally by the executive director with the consent of the non-licensee, or the Board may utilize formal cease and desist procedures specified in §801.508, Occupations Code. Complaints not resolved by the executive director may be referred to a local prosecutor or the attorney general for legal action, as well as addressed in §801.508 of the Occupations Code.

(c) Report to the Board of dismissed complaints. The executive director or the executive director's designee shall advise the Board at each scheduled meeting of the complaints dismissed since the last meeting.

(d) Use of Private Investigators. The executive director may approve the use of private investigators to assist in investigation of complaints where the use of Board investigators is not feasible or economical or where private investigators could provide valuable assistance to the Board investigators. Private investigators may be utilized in cases involving honesty, integrity and fair dealing; reinstatement applications; solicitation; fraud; dangerous drugs and controlled substances; and practicing veterinary medicine or equine dentistry without a license. Private investigators will be utilized in accordance with existing purchasing rules of the Comptroller of Public Accounts.

Source Note: *The provisions of this §575.27 adopted to be effective July 22, 2001, 26 TexReg 5252; amended to be effective November 7, 2004, 29 TexReg 10268; amended to be effective November 8, 2005, 30 TexReg 7226; amended to be effective July 17, 2006, 31 TexReg 5618; amended to be effective March 8, 2007, 32 TexReg 1315; amended to be effective November 25, 2007, 32 TexReg 8311; amended to be effective July 13, 2008, 33 TexReg 5528; amended to be effective November 20, 2011, 36 TexReg 7668; amended to be effective June 20, 2012, 37 TexReg 4426; amended to be effective November 22, 2015, 40 TexReg 8030*

§575.28 Complaints--Investigations

Investigation of complaints.

(1) Policy. The policy of the Board is that the investigation of complaints shall be the primary concern of the Board's enforcement program, and shall take precedence over all other elements of the enforcement program, including compliance inspections.

(2) Priority. The Board shall investigate complaints based on the following allegations, in order of priority:

(A) acts or omissions, including those related to substance abuse, that may constitute a continuing and imminent threat to the public welfare;

- (B) acts or omissions of a licensee that resulted in the death of an animal;
 - (C) acts or omissions of a licensee that contributed to or did not correct the illness, injury or suffering of an animal; and
 - (D) all other acts and omissions that do not fall within subparagraphs (A) - (C) of this paragraph.
- (3) Upon receipt of a complaint, a letter of acknowledgment will be promptly mailed to the complainant unless the complainant is the Board.
- (4) Complaints will be reviewed every thirty (30) days to determine the status of the complaint. Parties to a complaint will be informed on the status of a complaint at approximately 45 day intervals.
- (5) Upon receipt of a complaint, the director of enforcement, or their designee, will review it and may interview the complainant to obtain additional information. If the director of enforcement concludes that the complaint resulted from a misunderstanding, is outside the jurisdiction of the Board, has been addressed as part of a previously filed complaint and related investigation regarding the same licensee and the same alleged facts, or is without merit, the director of enforcement shall recommend through the general counsel to the executive director that an investigation not be initiated. If the general counsel concurs with the recommendation, the complainant will be so notified. If the general counsel does not concur with the recommendations, an investigation will be initiated.
- (6) The director of enforcement will assign a member of board staff to investigate the complaint. A summary of the allegations in the complaint will be sent to the licensee who is the subject of the complaint, along with a request that the licensee respond in writing within 21 days of receipt of the request. The licensee will also be asked to provide a copy of the relevant patient records with the response. The licensee is entitled on request to review the complaint submitted to the Board unless board staff determines that allowing the licensee to review the complaint would jeopardize an active investigation.
- (7) After the licensee's response to the complaint is received, board staff shall send a copy of the licensee's response to the complainant, unless the complainant is the Board, along with notification that the complainant may submit additional comments and other evidence, if any, at any time during the investigation to the Board. Board staff shall provide any response provided by the complainant to the licensee, unless board staff determines that allowing the licensee to review the response from the complainant would jeopardize an active investigation, and provide a single opportunity for the licensee to respond to the Board within ten days of receipt. No further responses from either the licensee or the complainant will be provided to either party.
- (8) Further investigation may be necessary to corroborate the information provided by the complainant and the licensee. During the investigation, board staff shall attempt to interview by telephone the complainant, and if unable to contact the complainant shall document such in the file. Other persons, such as second opinion or consulting veterinarians, may be contacted. Board staff may request additional medical opinions, supporting documents, and interviews with other witnesses.

(9) Upon the completion of an initial investigation, board staff shall prepare a report of investigation (ROI) for review by the director of enforcement.

(A) If the director of enforcement determines from the ROI that the probability of a violation involving medical judgment or practice exists, the director of enforcement will forward the ROI to the executive director. If the executive director concurs that the probability of a violation involving medical judgment or practice exists, the director of enforcement shall forward a copy of the ROI and complaint file to two veterinary licensee board members (veterinarian members) who will determine whether or not the complaint should be closed, further investigation is warranted, or if the licensee and complainant should be invited to respond to the complainant at an informal conference at the board offices.

(B) If the director of enforcement determines from the ROI that the probable violation does not involve medical judgment or practice (example: administrative matters such as continuing education and federal and state controlled substances certificates), the director of enforcement shall forward the complaint file to a committee of the executive director, director of enforcement, member of board staff assigned to investigate the complaint, and general counsel (the "staff committee"), which shall determine whether or not the complaint should be dismissed, investigated further, or settled.

(C) If the veterinarian members determine that a violation has not occurred, the executive director or the executive director's designee, shall notify the complainant and licensee in writing of the conclusion and that the complaint is dismissed.

(D) If the veterinarian members conclude that a probable violation(s) exists, the executive director or the executive director's designee, shall invite the licensee and complainant, in writing, to an informal conference to discuss the complaint made against the licensee. If the veterinarian members cannot agree to dismiss or refer the complaint to an informal conference, the complaint will be automatically referred to an informal conference. The letter invitation to the licensee must include a list of the specific allegations of the complaint.

(E) A complaint considered by the staff committee shall be referred to an informal conference if:

- (i) the staff committee determines that the complaint should not be dismissed or settled;
- (ii) the staff committee is unable to reach an agreed settlement; or
- (iii) the licensee who is the subject of the complaint requests that the complaint be referred to an informal conference.

Source Note: *The provisions of this §575.28 adopted to be effective July 13, 2008, 33 TexReg 5528; amended to be effective November 22, 2009, 34 TexReg 8037; amended to be effective January 18, 2011, 36 TexReg 142; amended to be effective August 26, 2012, 37 TexReg 6311; amended to be effective May 12, 2013, 38 TexReg 2762; amended to be effective December 23, 2014, 39 TexReg 10019; amended to be effective November 22, 2015, 40 TexReg 8030*

§575.29 Informal Conferences

- (a) The informal conference is the last stage in the investigation of a complaint. The licensee has the right to waive his or her attendance at the conference. The licensee may be represented by counsel.
- (b) The Board may be represented at the informal conference by an enforcement committee of the executive director, the two veterinarian members and a public member of the Board, the director of enforcement, the member of board staff assigned to investigate the complaint, and the Board's general counsel. The complainant and the licensee and the licensee's legal counsel may attend the conference. Any other attendees are allowed at the discretion of the executive director. The executive director, general counsel, or the director of enforcement shall conduct the conference.
- (c) Contingency. The Board president shall appoint a third veterinary licensee board member to assume the duties of either of the veterinarian members in the complaint review and informal conference process in the event either of the veterinarian members is unable to serve in the capacity set out in this section and in §575.28 of this title (relating to Complaints--Investigations).
- (d) Procedure. Subject to the discretion of the executive director, the following procedure will be followed at the informal conference. The executive director, general counsel, or director of enforcement shall explain the purpose of the conference and the rights of the participants, lead the discussion of the allegations of the complaint, and explain the possible courses of action at the conclusion of the conference. The licensee will be asked to respond to the allegations. The complainant will be allowed to make comments relevant to the allegations. Comments of the licensee and complainant must be addressed to the person conducting the conference and not to each other. In the interest of maintaining decorum, the licensee or complainant may be asked to leave the room while the other is talking with the committee. Comments by the licensee may be used in furtherance of the current case against the licensee, any other case or investigation, and/or to initiate a new complaint or investigation. The enforcement committee members may ask questions of the licensee and complainant in order to fully develop the complaint record. The licensee or complainant may provide evidence to the enforcement committee that will be considered by the enforcement committee and become part of the investigation file.
- (e) At the conclusion of the informal conference, the enforcement committee shall determine if a violation has occurred. If the enforcement committee determines that a violation has not occurred, the enforcement committee, or their designee, will dismiss the complaint, and will advise all parties of the decision and the reasons why the complaint was dismissed.
- (f) If the enforcement committee determines that a violation has occurred and that disciplinary action is warranted, the executive director, or their designee, will advise the licensee of the alleged violations and offer the licensee a settlement in the form of an agreed order that specifies the disciplinary action and monetary penalty. With the agreement of the licensee, the enforcement committee may recommend that the licensee refund an amount not to exceed the amount the complainant paid to the licensee instead of or in addition to imposing an administrative penalty on the licensee. The executive director, or their designee, must inform the licensee that the licensee has a right to a hearing before an administrative law judge on the finding of the occurrence of the violation, the type of disciplinary action, and/or the amount of the recommended penalty.

- (g) Within the time period prescribed, the licensee must submit a written response to the Board:
 - (1) accepting the settlement offer and recommended disciplinary action; or
 - (2) requesting a hearing before an administrative law judge.
- (h) Additional negotiations may be held between board staff and the licensee or the authorized representative. In consultation with the board representatives, as available, the recommendations of the board representatives may be subsequently modified based on new information, a change of circumstances, or to expedite a resolution in the interest of protecting the public.
- (i) The board representative(s) shall be consulted and must concur with any subsequent substantive modifications before any recommendations are sent to the full Board for approval.
- (j) Board staff may communicate directly with the board representative(s) after the informal conference for the purpose of discussing settlement of the case.
- (k) If the licensee accepts the settlement offer by signing the agreed order, the agreed order will be docketed for board action at the next regularly scheduled board meeting.
- (l) The recommendations may be adopted, modified, or rejected by the Board.
- (m) If the Board approves the agreed order with amendments, the executive director, or their designee, shall mail the amended agreed order to the licensee and the licensee shall have fourteen (14) days from receipt to accept the amended agreed order by signing and returning it to the Board. If a licensee does not sign an amended agreed order or does not respond within the fourteen (14) days, the complaint will be scheduled for a hearing before an administrative law judge. If the Board rejects the agreed order, the complaint may be scheduled for a hearing before an administrative law judge, or the Board may direct the executive director to take other appropriate action.

Source Note: *The provisions of this §575.29 adopted to be effective July 13, 2008, 33 TexReg 5528; amended to be effective June 20, 2012, 37 TexReg 4427; amended to be effective May 12, 2013, 38 TexReg 2763; amended to be effective December 23, 2014, 39 TexReg 10019*

§575.30 Contested Case Hearing at SOAH

- (a) If a licensee, applicant for licensure, or unlicensed person in accordance with §575.40 of this title (relating to Cease and Desist Procedures) declines to sign a proposed agreed order or cease and desist order, or if the licensee, applicant for licensure, or unlicensed person in accordance with §575.40 of this title fails to respond timely to a proposed agreed order or cease and desist order, or if the Board rejects a proposed agreed order, the board staff may proceed with the filing of a contested case with the State Office of Administrative Hearings (SOAH). At least ten (10) days prior to a scheduled hearing, the notice of hearing shall be served on the licensee or applicant for licensure as set out in subsection (g)(1) of this section. Except in cases of temporary suspension, a notice of hearing shall be filed only after notice of the facts or conduct alleged to warrant the intended action has been sent to the licensee's, applicant for licensure's, or unlicensed person's address of record and the licensee, applicant for licensure, or unlicensed person has an opportunity to show compliance with the law for the retention of a license as provided in §2001.054 of the APA, and §801.408 of the Veterinary Licensing Act. Once a contested case is filed with SOAH, the case file is no longer considered the investigation file but rather the legal case file.
- (b) SOAH hearings of contested cases shall be conducted in accordance with the Act, the APA, SOAH rules, and board rules. In the event of a conflict, the Act shall prevail over any other statute or rule, the APA shall prevail over SOAH rules, and SOAH rules shall prevail over the rules of

the Board, except when board rules provide the Board's interpretation of the Act. If SOAH rules are silent on an issue addressed by this subchapter, the provisions of this subchapter shall be applied.

(c) The administrative law judge (ALJ) has the authority under SOAH rules, Chapter 155, to issue orders, to regulate the conduct of the proceeding, rule on motions, establish deadlines, clarify the scope of the proceeding, schedule and conduct prehearing and posthearing conferences for any purpose related to any matter in the case, set out additional requirements for participation in the case, and take any other steps conducive to a fair and efficient process in the contested case, including referral of the case to a mediated settlement conference or other appropriate alternative dispute resolution procedure as provided by Chapter 2003 of the Government Code.

(d) All documents are to be filed at SOAH after it acquires jurisdiction. Copies of all documents filed at SOAH shall be contemporaneously filed with the Board.

(e) Because of the often voluminous nature of the records properly received into evidence by the ALJ, the party introducing such documentary evidence should paginate each exhibit and/or flag pertinent pages in each exhibit in order to expedite the hearing and the decision-making process.

(f) In accordance with the provisions of the APA, §2001.058(e), a party may file an interlocutory or interim appeal to the Board requesting that the Board vacate or modify an order issued by an ALJ.

(g) Notice of SOAH hearing; continuance and default.

(1) The Board shall provide notice of the time, date, and place of the hearing to the licensee, applicant for licensure, or unlicensed person in accordance with §575.40 of this title. The notice shall include the requirements set forth in §2001.052 of the APA. The Board shall send notice of a contested case hearing before SOAH to the licensee's, applicant for licensure's, or unlicensed person's last known address as evidenced by the records of the Board. Respondent is presumed to have received proper and timely notice three (3) days after the notice is sent to the last known address as evidenced by the records of the Board. Notice shall be given by first class mail, certified or registered mail, or by personal service.

(2) If the licensee, applicant for licensure, or unlicensed person in accordance with §575.40 of this title fails to timely enter an appearance or answer the notice of hearing, the Board is entitled to a continuance at the time of the hearing. If the licensee, applicant for licensure, or unlicensed person fails to appear at the time of the hearing, the Board may move either for dismissal of the case from the SOAH docket, or request that the ALJ issue a default proposal for decision in favor of the Board.

(3) Proof that the licensee, applicant for licensure, or unlicensed person in accordance with §575.40 of this title has evaded proper notice of the hearing may also be grounds for the Board to request dismissal of the case or issuance of a default proposal for decision in favor of the Board.

(h) If a party submitted proposed findings of fact, the proposal for decision shall include a ruling on each proposed finding by the ALJ, including a statement as to why any proposed finding was not included in the proposal for decision.

(i) After receiving the ALJ's findings of fact and conclusions of law in the proposal for decision, the Board shall rule on the merits of the charges and enter an order. The Board by order may find

that a violation has occurred and impose disciplinary action, or find that no violation has occurred. The Board shall promptly advise the complainant of the Board's action.

(j) If the licensee, applicant for licensure, or unlicensed person in accordance with §575.40 of this title fails to appear for the contested case hearing at the designated time and place, the ALJ may enter an order dismissing the case on the basis of default and the Board may informally dispose of the case.

Source Note: The provisions of this §575.30 adopted to be effective July 13, 2008, 33 TexReg 5528; amended to be effective May 12, 2013, 38 TexReg 2763; amended to be effective December 23, 2014, 39 TexReg 10020; amended to be effective August 17, 2015, 40 TexReg 5155

§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.
- (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 §801.409 of the Texas Occupations Code.

Source Note: *The provisions of this §575.35 adopted to be effective July 13, 2008, 33 TexReg 5528; amended to be effective August 1, 2010, 35 TexReg 6539; amended to be effective June 20, 2012, 37 TexReg 4428; amended to be effective May 4, 2014, 39 TexReg 3430; amended to be effective May 4, 2015, 40 TexReg 2421*

§575.36 Rescission of Probation

- (a) At least 20 days prior to a hearing to rescind probation, the probationer shall be served with written notice of the allegations supporting rescission of the probation.
- (b) The hearing shall be conducted in accordance with §575.30 of this title (relating to Contested Case Hearing at SOAH).
- (c) After giving the probationer notice and an opportunity to be heard, the Board may set aside the stay order and impose the stayed discipline (revocation/suspension) of the probationer's license.
- (d) If during the period of probation, an additional allegation, accusation, or petition is reported or filed against the probationer's license, the probationary period shall not expire and shall automatically be extended until the allegation, accusation, or petition has been acted upon by the Board.

Source Note: *The provisions of this §575.36 adopted to be effective June 20, 2012, 37 TexReg 4428*

§575.38 Proceeding for the Modification or Termination of Agreed Orders and Disciplinary Orders

- (a) This rule is intended to provide a procedure whereby licensees presently subject to a board order can, if otherwise eligible, petition for the modification or termination of their board order.
- (b) The decision to modify or terminate all or any part of a board order is at the sole discretion of the Board unless otherwise specified in the licensee's order.
- (c) A request for modification or termination of an existing board order must be submitted in writing by the licensee subject to the board order. The writing must specifically detail the desired action being requested.
- (d) After receipt of the licensee's petition and an initial determination by board staff of the licensee's eligibility for a hearing to modify or terminate their board order, a date and time for an informal conference with the Board's enforcement committee to consider the licensee's petition

for modification or termination of an existing board order shall be set and the licensee shall be provided written notice.

(e) If the licensee desires to submit evidence in support of his or her petition to modify or terminate, the licensee must submit such evidence no less than seven calendar days prior to the informal conference.

(f) When considering a licensee's petition for modification or termination of a board order, the Board or the enforcement committee may consider:

- (1) evidence presented by the licensee;
- (2) the existence of any pending investigations;
- (3) past compliance with the board order;
- (4) the existence of prior board orders;
- (5) whether there has been a significant change in circumstances that indicates that it is in the best interest of the public and licensee to modify or terminate the board order;
- (6) whether there has been an unanticipated, unique hardship on the licensee as a result of the board order that goes beyond the natural adverse ramifications of the disciplinary action (i.e. impossibility of requirement, geographical problems);
- (7) whether the licensee has engaged in special activities that are particularly commendable or so meritorious as to make modification or termination appropriate; and
- (8) any other information or evidence the Board or the enforcement committee deems necessary to make an informed decision.

(g) At the conclusion of the informal conference, the enforcement committee shall determine whether to grant the licensee's modification or termination request, in whole or in part. The enforcement committee may deny the licensee's request, or recommend to the Board that the licensee's existing order be modified or terminated.

(1) If the enforcement committee determines that a licensee's order should be modified, the Executive Director, or their designee, shall offer the licensee a modified agreed order with 14 days of the informal conference. If the licensee accepts the modified agreed order, it will be presented to the Board for consideration.

(A) Additional negotiations may be held between board staff and the licensee or the authorized representative. The members of the enforcement committee shall be consulted and must concur with any subsequent substantive modifications to an offered agreed order before it is recommended to the full Board for approval.

(B) If the licensee does not accept a modified agreed order, the licensee's petition for modification or termination is considered denied.

(2) If the enforcement committee determines that a licensee's order should be terminated, the recommendation to terminate an order will be presented to the Board for consideration.

(h) The recommendations of the enforcement committee for modification or termination of an existing order may be adopted, modified or denied by the Board. If the Board approves a modified agreed order with amendments or in lieu of termination of an existing agreed order, the licensee shall have fourteen (14) days from receipt to accept the amended agreed order by signing and

returning it to the Board. If a licensee does not sign an amended agreed order or does not respond within the fourteen (14) days, the licensee's request for modification or termination is denied.

(i) If either the enforcement committee or the Board denies the licensee's petition for modification or termination, the licensee is not entitled to a contested case hearing under §575.30 of this title (relating to Contested Case Hearing at SOAH), §801.407 of the Texas Occupations Code, or Chapter 2001 of the Texas Government Code.

(j) Unless the original board order otherwise specifies, modification or termination requests may be made only once a year since the effective date of the original board order or since the effective date of any orders subsequently granting or denying modification or termination of the board order.

Source Note: *The provisions of this §575.38 adopted to be effective August 29, 2013, 38 TexReg 5492*

§575.40 Cease and Desist Procedures

(a) Purpose. The purpose of a cease and desist proceeding is to determine whether a person has engaged in acts or practices that constitute the practice of veterinary medicine or the practice of equine dentistry without a license ("respondent") in violation of Chapter 801 of the Occupations Code ("Veterinary Licensing Act") and whether the Board should issue a cease and desist order in accordance with the Veterinary Licensing Act, §801.508. The purpose of this section is to establish procedures for the handling of complaints regarding the unlicensed practice of medicine and other violations of the Veterinary Licensing Act, a rule adopted by the Board, or another statute relating to the practice of veterinary medicine or equine dentistry by a person who is not licensed by the Board in accordance with Chapter 801 of the Veterinary Licensing Act.

(b) Form of Complaint. Notwithstanding §575.27 of this title (relating to Complaints--Receipt) to the contrary, a complaint of someone practicing veterinary medicine or equine dentistry without a license does not have to be submitted on a complaint form utilized by the Board. However, a complainant must submit some form of written documentation to the Board.

(c) Staff Committee Action.

(1) Upon the Board's receipt of a complaint and after a determination that a respondent may have engaged in the unlicensed practice of veterinary medicine or the practice of equine dentistry, a staff committee as defined in §575.27 of this title may propose an agreed cease and desist order ("the order") to be presented to the respondent.

(2) If the respondent signs the order, it shall be effective and enforceable against the respondent upon receipt by the Board, but it shall not become final until approved by the Board.

(d) Informal Conference.

(1) If the Respondent chooses not to sign the order and requests a conference, or if the respondent does not respond after receipt of the order, the complaint shall be referred to an informal conference as defined by §575.27 of this title. If the conference committee determines that a violation of the Veterinary Licensing Act has occurred, it may propose an agreed cease and desist order with such settlement terms as it considers appropriate.

(2) If the respondent declines to sign the order, the Board may refer the complaint and investigative file to the State Office of Administrative Hearings for a contested case proceeding. Following the proceeding and issuance of a proposal for decision by the administrative law judge, the Board may take such action as appropriate.

Source Note: The provisions of this §575.40 adopted to be effective July 13, 2008, 33 TexReg 5528; amended to be effective June 20, 2012, 37 TexReg 4429

§575.50 Criminal Convictions

(a) In a process under Chapter 53, Occupations Code, the Board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a veterinarian, a licensed veterinary technician, or an equine dental provider. This subsection applies to persons who are not imprisoned at the time the Board considers the conviction.

(b) The Board shall revoke a license upon the imprisonment of a licensee following a felony conviction or revocation or felony community supervision, parole, or mandatory supervision. A person currently incarcerated because of a felony conviction may not sit for license examination, obtain a license under the Veterinary Licensing Act, Occupations Code, Chapter 801, or renew a previously issued license.

(c) The Board shall, in determining whether a criminal conviction directly relates to the duties and responsibilities of a licensee, consider the factors listed in the Occupations Code, §53.022.

(d) In determining the present fitness to perform the duties and discharge the responsibilities of a licensee who has been convicted of a crime, the Board shall consider, in addition to the factors referenced in subsection (c) of this section, the factors listed in the Occupations Code, §53.023.

(e) Under Occupations Code §801.402, a person is subject to denial of a license or to disciplinary action under Occupations Code §801.401 if the person engages in illegal practices connected with the practice of veterinary medicine or the practice of equine dentistry.

(f) The professional practices of veterinarians, licensed veterinary technicians, and equine dental providers place those licensees in positions of public trust. A licensee practices in an autonomous role in the treating and safekeeping of animals; preparing and safeguarding confidential records and information; accepting client funds; and, if the licensee is a veterinarian, prescribing, administering and safely storing controlled substances. The following crimes therefore relate to and are connected with the practices of veterinarians, licensed veterinary technicians, and equine dental providers because the commission of each indicates a violation of the public trust, and a lack of integrity and respect for one's fellow human beings and the community at large:

- (1) any felony or misdemeanor conviction of which fraud, dishonesty or deceit is an essential element;
- (2) any criminal violation of the Veterinary Licensing Act, or other statutes regulating or pertaining to the licensee's practice or profession;
- (3) any criminal violation of statutes regulating other professions in the healing arts;
- (4) deceptive business practices;

(5) a misdemeanor or felony offense involving:

- (A) murder;
- (B) assault;
- (C) burglary;
- (D) robbery;
- (E) theft;
- (F) sexual assault;
- (G) injury to a child or to an elderly person;
- (H) child abuse or neglect;
- (I) tampering with a government record;
- (J) animal cruelty;
- (K) forgery;
- (L) perjury;
- (M) bribery;
- (N) mail fraud;
- (O) diversion or abuse of controlled substances, dangerous drug, or narcotic; or
- (P) other misdemeanors or felonies, including violations of the Penal Code, Titles 4, 5, 7, 9, and 10, which indicate an inability or tendency of the person to be unable to perform as a licensee or to be unfit for licensure, if action by the Board will promote the intent of the Veterinary Licensing Act, Board rules, including this chapter, and the Occupations Code, Chapter 53.

(g) Notwithstanding the provisions of subsections (a) - (f) of this section, the Board shall suspend or revoke a licensee's license in accordance with the Occupations Code, §801.406, where the licensee has been convicted of a felony under the Health and Safety Code, §485.033, or the Health and Safety Code, Chapter 481 or 483.

Source Note: The provisions of this §575.50 adopted to be effective July 13, 2008, 33 TexReg 5528; amended to be effective June 20, 2012, 37 TexReg 4429; amended to be effective May 12, 2013, 38 TexReg 2764; amended to be effective December 23, 2013, 38 TexReg 9366; amended to be effective May 4, 2014, 39 TexReg 3430

§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.

Source Note: The provisions of this §575.60 adopted to be effective July 13, 2008, 33 TexReg 5528; amended to be effective May 4, 2015, 40 TexReg 2421

§575.61 Petition for Rulemaking

Any person may petition for rulemaking in accordance with §2001.021 of the Administrative Procedures Act by submitting a written request to the Board at least 30 days prior to a board meeting identifying the rule the petitioner wants the Board to change, the reasons why the petitioner believes the requested rulemaking is necessary, and attaching a copy of the rule showing the proposed changes with deletions crossed through and additions underlined.

Source Note: The provisions of this §575.61 adopted to be effective June 20, 2012, 37 TexReg 4430

§575.62 Negotiated Rulemaking

- (a) Notice of a proposed new rule or amendment of any existing rule shall be made in accordance with the provisions of §2001.023 and §2001.024 of the Administrative Procedures Act.
- (b) The board's policy is to encourage the use of negotiated rulemaking for the adoption of board rules in appropriate situations.
- (c) The board's general counsel or their designee shall be the board's negotiated rulemaking coordinator (NRC). The NRC shall perform the following functions, as required:
 - (1) coordinate the implementation of the policy set out in subsection (a) of this section, and in accordance with the Negotiated Rulemaking Act, Chapter 2008, Government Code;
 - (2) serve as a resource for any staff training or education needed to implement negotiated rulemaking procedures; and,
 - (3) collect data to evaluate the effectiveness of negotiated rulemaking procedures implemented by the board.
- (d) The board, its rules committee, or the executive director may direct the NRC to begin negotiated rulemaking procedures on a specified subject.

Source Note: The provisions of this §575.62 adopted to be effective July 13, 2008, 33 TexReg 5528

§575.63 Board Approval of Equine Dental Provider Certification Programs

- (a) The process to establish a new equine dental provider certification program shall be initiated with the Board one year prior to the anticipated start date of the certification program.
- (b) An organization that educates equine dental providers cannot own or control an equine dental provider certification program.
- (c) The individual writing the application for board approval of an equine dental provider certification program should hold a current license to practice as an equine dental provider in Texas.
 - (1) The name and credentials of the author of the application should be included in the document.
 - (2) A qualified director must be employed by the program early in the application process, and in no event shall a director be hired later than six (6) months prior to the submission of the application to the Board. The director shall:
 - (A) hold a current license to practice equine dentistry or veterinary medicine in Texas; and
 - (B) have a minimum of ten (10) years experience as a practicing equine dental provider.
 - (3) The program director must review/revise the application and agree with the components of the application as being representative of the proposed certification program that the individual will be responsible for administratively.
 - (4) If the program director changes, the director shall submit to the Board written notification of the change indicating the final date of employment, and identifying and providing information about the qualifications of a replacement director.

(5) The director shall have authority to direct the equine dental provider certification program in all its aspects and phases, including approving staff, selection of testing sites, facilities and equipment, application processes, rejection of applicants, and enforcement of policies.

(6) The director shall notify the Board immediately when there is a change in the name of the certification program or the governing organization, or when there are changes in the contact information.

(d) The application shall include the following information documenting written policies on the following required elements for a board-approved equine dental provider certification program:

(1) Documentation of financial stability, including but not limited to information on ownership, sources and amounts of financial resources and support for the first two years of operation, financial audit, and budget for the program.

(2) Policies on examiners, including but not limited to qualifications, responsibilities, performance evaluation criteria, and terms of employment.

(A) An equine dental provider certification program shall employ examiners in sufficient numbers and with the training and expertise necessary to evaluate accurately the skill and knowledge of applicants for equine dental provider licensure.

(B) All examiners must hold active Texas veterinary licenses or equine dental provider licenses.

(C) All examiners must have at least five (5) years of experience working as an equine dental provider.

(D) All examiners must be evaluated annually by the program director.

(3) Position descriptions for the director and examiners outlining their job duties and responsibilities.

(4) Requirements for examiner training, plans for examiner development and requirements for examiner continuing education.

(5) Requirements for certification, including but not limited to:

(A) Prerequisites for certification.

(B) Testing to prove competency in at least the following topic areas:

(i) Equine anatomy;

(ii) Harm and potential side effects of equine dentistry;

(iii) Sterilization and disease control;

(iv) Legal limits of equine dental provider practice, including supervision by a veterinarian.

(6) Document creation, retention, and safe storage guidelines to maintain in the official program files for five (5) years the following documents:

(A) Documentation of examiner qualifications and examiner employment;

(B) Application records for each applicant seeking certification;

(C) Examination records for each applicant seeking certification;

- (D) Certification records for each equine dental provider certified; and
 - (E) Examination materials, including copies of all test questions or areas of examination, and answer keys or grading criteria, for all examinations given, whether written and practical.
- (e) After reviewing the application, board staff may request additional information or may issue recommendations. The organization seeking approval shall provide all additional requested information and respond to all recommendations before the application is eligible for consideration by the Board.
- (f) After the application is submitted and board staff has determined that the application is complete, a survey visit may be conducted by a board representative prior to presentation to the Board. Additional survey visits may be conducted as necessary by board representatives until the Board grants full approval status. Following the survey visits, the organization seeking approval will be given a list of identified deficiencies and a specified time in which to correct the deficiencies. If the organization seeking approval fails to correct the identified deficiencies within the specified time, the application will be presented to the Board with the uncorrected deficiencies noted.
- (g) The application shall be considered by the Board at a regularly scheduled meeting of the Board. The Board may approve the application and grant approval to the certification program, may defer action on the application, or may deny further consideration of the application. In order to ensure success of newly approved certification programs, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary.
- (h) When the application is submitted, a fee shall be assessed in accordance with §577.15 of this title (relating to Fee Schedule).
- (i) An application without action for one (1) calendar year shall be inactivated and a new application and fee will be required.
- (j) If the Board denies an application, the organization seeking approval of a certification program must wait a minimum of twelve (12) calendar months from the date of the denial before submitting a new proposal to establish an equine dental provider certification program.
- (k) The director of the board-approved equine dental provider certification program shall notify the Board in writing of an intent to transfer the administrative authority of the program.
- (l) Closing a board-approved equine dental provider certification program.
- (1) When the decision to close a board-approved equine dental provider certification program is made, the director must notify the Board by submitting a written plan for closure which includes:
 - (A) reason for closing the program;
 - (B) date of intended closure; and
 - (C) provisions made for access to and safe storage of records, including application, test and certification records for all individuals certified by the organization.
 - (2) A board-approved equine dental provider certification program will be deemed closed when the program has not certified any equine dental providers for a period of two (2) years.

(m) Factors Jeopardizing Certification Program Approval Status.

(1) When a certification program demonstrates non-compliance with Board requirements, approval may be withdrawn, or the Board, in its discretion, may impose restrictions or conditions as it deems appropriate and necessary. In addition to imposing restrictions or conditions, the Board may also require monitoring of the program.

(2) A change in approval status, requirements for restrictions or conditions, or a monitoring plan may be issued by the Board for any of the following reasons:

(A) Deficiencies in compliance with the board rules;

(B) Non-compliance with the certification program's stated philosophy/mission, program design, objectives/outcomes, and/or policies;

(C) Failure to submit records and reports to the Board within designated time frames;

(D) Failure to comply with board requirements or to respond to board recommendations within the specified time;

(E) Accepting applications for certification or certifying equine dental providers without resources to support the program, including sufficient qualified examiners, and adequate testing facilities;

(F) Other activities or situations that demonstrate to the Board that a program is not meeting requirements.

(3) A program from which approval has been withdrawn may reapply for approval. A new application may not be submitted to the Board until after at least twelve (12) calendar months from the date of withdrawal of approval have elapsed.

(4) Notice of a program's approval status shall be sent to the director of the program.

Source Note: *The provisions of this §575.63 adopted to be effective December 23, 2013, 38 TexReg 9366*

§575.281 Complaints--Appeals

(a) Initiation. Following the receipt of the notice of dismissal of a complaint, the complainant may appeal the dismissal to the board. To be considered by the board, the appeal must:

(1) be in writing;

(2) be received in the Board office no later than the 60th day following the date of the complaint dismissal notification; and

(3) list the reason(s) for the appeal. The appeal should provide sufficient information to indicate that additional review is warranted.

(b) Review of an Appeal. Appeals will be considered by a veterinarian member of the board ("reviewing veterinarian"). Upon review of an appeal, the reviewing veterinarian may determine any of the following:

(1) The investigation should remain closed;

(2) Additional information needs to be obtained before a determination can be made as to whether a violation of the Act occurred;

(3) The case should be referred to an informal conference for a determination.

(c) Notice. The complainant shall be notified of the Board's decision concerning the appeal.

(d) Appeals Limited. Only one appeal shall be allowed for each complaint.

Source Note: *The provisions of this §575.281 adopted to be effective August 1, 2010, 35 TexReg 6539; amended to be effective December 23, 2014, 39 TexReg 10020*