

ADOPTED BOARD RULES

During the July 21, 2015 Board meeting, the TBVME adopted the following changes to agency rules. These rules went into effect on August 17, 2015.

- 573.23 Board Certified Specialists
- 573.28 Observance of Confidentiality
- 573.60 Prohibition Against Treatment of Humans
- 573.71 Operation of Temporary Limited-Service Veterinary Services
- 573.76 Notification of Licensee Addresses
- 573.79 Maintenance of Sanitary Premises
- 575.30 Contested Case Hearing at SOAH

22 TAC §573.23

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.23, concerning Board Certified Specialists, without changes to the proposed text as published in the June 12, 2015, issue of the *Texas Register* (40 TexReg 9789). The adopted rule therefore will not be republished.

The Board amends Rule 573.23 to require board certified specialists to make information verifying their certification or recognition as a specialist available to the Board, Board staff, and the public. The information must be available upon request. This amendment simply clarifies the Board's current practice. Board staff has become aware that at least one certifying entity allows the specialist veterinarians to elect to have the certifying entity keep their information confidential; therefore, the Board could not easily verify a specialist veterinarian's status as a specialist. Requiring the specialist to make such information available allows both the Board and the public to better verify a specialist veterinarian's qualifications.

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

§573.23 BOARD CERTIFIED SPECIALISTS

- (a) Standard of Care for Specialist. Specialists are held to a higher standard of care than non-specialist veterinarians, notwithstanding §573.22 of this title (relating to Professional Standard of Care).
- (b) Complaints against Specialists. Board investigations of complaints alleging substandard care by a Specialist in his/her area of specialty will include consultations with one or more Specialists licensed by the Board practicing the same specialty on the species involved in the complaint. The Board, at its sole discretion, may consult with Specialists from outside of Texas. If the Board determines an informal conference is warranted, both complainant and respondent may, at their own expense, present oral or written commentary by a Specialist practicing the same specialty on the species involved in the complaint.
- (c) Verification of Specialist Status. Specialists must make information verifying their certification or recognition as a specialist available to the Board, Board staff, and the public. This information must be available upon request.

22 TAC §573.28

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.28, concerning Observance of Confidentiality. The amendment is adopted with changes to the proposed text as published in the June 12, 2015, issue of the *Texas Register* (40 TexReg 3616) and will be republished.

Currently, Rule 573.28 allows a veterinarian, without authorization by the client, to disclose information contained in a rabies certificate to a governmental entity only for purposes related

to the protection of public health and safety. The Board proposes this amendment to also permit the disclosure of information regarding communicable diseases for the protection of public health and safety. The Board made a nonsubstantive change to the proposed rule. Specifically, the word “reportable” is added prior to “communicable diseases” to make clear that the Board is not requiring the reporting of any disease but rather allowing the reporting, if otherwise required.

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

§573.28 OBSERVANCE OF CONFIDENTIALITY

- (a) A veterinarian shall not violate the confidential relationship between the veterinarian and a client.
- (b) Except as provided in subsection (c) of this section, a veterinarian shall not disclose any information concerning the veterinarian's care for an animal except:
 - (1) on written or oral authorization or other form of waiver executed by the client;
 - (2) on receipt by the veterinarian of an appropriate court order or subpoena; or
 - (3) as necessary to substantiate and collect on a debt incurred by a client for veterinary services.
- (c) A veterinarian may, without authorization by the client, disclose information contained in a rabies certificate or any information regarding reportable communicable diseases to a governmental entity only for purposes related to the protection of public health and safety.

22 TAC §573.60

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.60, concerning Prohibition Against Treatment of Humans, without changes to the proposed text as published in the June 12, 2015, issue of the *Texas Register* (40 TexReg 3616). The adopted rule therefore will not be republished.

Currently, Rule 573.60 provides that a veterinarian shall not provide care or treatment of humans including dispensing prescription medication for personal use by a human. The Board proposes this amendment to clarify and reflect how the Board has always interpreted this rule. Specifically, the amendment adds that a veterinarian shall not prescribe prescription medication, in addition to dispensing it, and that personal use includes personal use by the veterinarian and/or another human.

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

§573.60 PROHIBITION AGAINST TREATMENT OF HUMANS

A veterinarian shall not provide care and treatment of humans including prescribing and/or dispensing prescription medication for personal use by the veterinarian and/or another human.

A veterinarian may render first aid or emergency care to a human if such action is without expectation of compensation in response to an emergency or disaster situation.

22 TAC §573.71

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.71, concerning Operation of Temporary Limited-Service Veterinary Services, without changes to the proposed text as published in the June 12, 2015, issue of the *Texas Register* (40 TexReg 3617). The adopted rule therefore will not be republished.

The Board adopts the amendment to remove the ability for a veterinarian to notify the Board of the operation of temporary limited-service veterinary services by facsimile. This type of notification has become difficult for staff to maintain as it is generally duplicative of notices received via electronic transmission or mail. The Board will continue to accept notification by electronic transmission or mail.

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

RULE §573.71 OPERATION OF TEMPORARY LIMITED-SERVICE VETERINARY SERVICES

- (a) Requirements for operation. Veterinarians operating temporary limited service clinics shall:
- (1) maintain sanitary conditions at the clinic site, including, but not limited to, removal of animal solid waste and sanitizing/disinfecting of urine and solid waste sites;
 - (2) provide injections with sterile disposable needles and syringes;
 - (3) utilize a non-porous table for examining and/or injecting small animals;
 - (4) maintain biologics and injectable medications between temperature ranges of 35 to 45 degrees Fahrenheit;
 - (5) perform and complete blood and fecal examinations before dispensing relevant federal legend medications;
 - (6) maintain rabies vaccination records and treatment records for five years, indexed alphabetically by the client's last name and by vaccination tag numbers, if issued; and
 - (7) provide clients with a printed form that contains the identity of the administering veterinarian and the address of the places where the records are to be maintained.
- (b) Required notification to the Board prior to operation. Before any temporary limited-service clinic may be operated, the veterinarian is required to provide notification to the Board office at least 48 hours before the clinic begins operation. Notice must include the veterinarian's full name, license number, and daytime phone number; the date the clinic will be held, the specific location of where the clinic will be held, and times of operation; and the permanent address where records for the clinic will be kept. Notice may be by electronic transmission or mail. Mailed notice will be considered to have met the notification requirement if the written notice is postmarked at least five days prior to the operation of the clinic.

22 TAC §573.76

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.76, concerning Notification of Licensee Addresses, without changes to the proposed text as published in the June 12, 2015, issue of the *Texas Register* (40 TexReg 3618). The adopted rule therefore will not be republished.

Rule 573.76 provides which addresses licensees must report to the Board. The Board proposes this amendment to clarify the address that a veterinary with a relief practice must provide to the Board. Specifically, the amendment requires a relief veterinarian to provide the address of the clinic where he or she conducts the largest percentage of his or her work. If the relief veterinarian does not have one clinic location where most of his or her work exists, then the relief veterinarian must use the physical address of one of the locations where he or she works. If the relief veterinarian is not actively working, then he or she may provide his or her physical residence address. The Board further proposes this amendment to clarify that any reference to a physical address in this rule may not include a post office box address. This amendment ensures that the Board is able to conduct proper inspections of licensees.

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

RULE §573.76 NOTIFICATION OF LICENSEE ADDRESSES

- (a) Each licensee shall report to the Board the licensee's:
 - (1) name and license number;
 - (2) clinic or practice name;
 - (3) physical business address;
 - (4) mailing address;
 - (5) residence address;
 - (6) business telephone number; and
 - (7) residence and/or cellular telephone number.
- (b) A mailing address may be a post office box number. A physical business address shall be a physical location and shall not be a post office box number. If a remote practice location does not have a physical business address, the licensee must provide as the physical business address sufficient directions as to how the practice location may be found.
- (c) A relief veterinarian's physical business address shall be the physical business address where the relief veterinarian regularly conducts the largest percentage of his or her relief work at one clinic. If the relief veterinarian does not have one clinic where he or she conducts the largest percentage of his or her work, then the relief veterinarian shall use the physical address of one of the locations where he or she works. If the relief veterinarian is not actively working, then the relief veterinarian may use his or her physical residence address, which shall not be a post office box number.
- (d) A licensee shall notify the Board of any change of items required under subsection (a) of this section not later than the 60th day after the change takes place.

22 TAC §573.79

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.79, concerning Maintenance of Sanitary Premises. The amendment is adopted with changes to the proposed text as published in the June 12, 2015, issue of the *Texas Register* (40 TexReg 3619) and will be republished.

Rule 573.79 provides that licensees must maintain their offices/clinics/hospitals in a clean and sanitary condition. The Board proposes this amendment to clarify current interpretation that licensees must maintain the offices/clinics/hospitals in which they work in clean and sanitary conditions and not just those offices/clinics/hospitals that they personally own. The Board made a nonsubstantive change to the proposed rule to provide that the terms “offices/clinics/hospitals” include mobile facilities.

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

RULE §573.79 MAINTENANCE OF SANITARY PREMISES

Licensees must maintain their offices/clinics/hospitals and the offices/clinics/hospitals in which they work, including mobile facilities, in a clean and sanitary condition without any accumulation of trash, debris, or filth. Such premises shall be maintained in full compliance with all health requirements of the city or county in which located and in conformity with the health laws of the State of Texas; further, they shall use properly sterilized instruments and clean supplies.

22 TAC §575.30

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §575.30, concerning Contested Case Hearing at SOAH without changes to the proposed text as published in the June 12, 2015, issue of the *Texas Register* (40 TexReg 3619). The adopted rule therefore will not be republished.

Rule 575.30 currently provides the process and procedures for contested case hearings before the State Office of Administrative Hearings (“SOAH”). The Board proposes this amendment to clarify its current practice and procedures. Specifically, once a case is filed with SOAH, the investigation file becomes the legal file as the investigation is complete. The Board must be able to file cases and related evidence with SOAH. To do so, the files must be classified as not investigative but rather legal.

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

§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.