

Summary of Proposed Changes to MVPA

Introduction

- Language added to more clearly delineate statute vs. rules
- Disclaimer regarding templates and forms added
- Updated revision process description

Preamble

- Language added in response to decision of the 2015 case of the FTC vs North Carolina Dental Board. This decision requires that challenged conduct be (a) undertaken pursuant to affirmatively expressed state policy and (b) actively supervised by the State. The second sentence of the Preamble is intended to satisfy the “affirmatively expressed state policy” prong, and covers all actions of the Board, not just licensure decisions. Language has also been added to Section 3-5 of the MVPA that is designed to satisfy the “active state supervision” prong. Outside counsel also recommended the addition of “ethically provided” because the Board should seek to advance not only competent practice, but also ethically delivered services. Finally counsel suggested that the practice of veterinary medicine was a “right”, not simply a “privilege.”
- Second paragraph contains language that restricts the ability of local governments (e.g. city, county) to restrict veterinary procedures that can be performed.

Section 1 (No changes made)

Section 2

- 2:3 - "Animal" means any ~~living~~ organism, except humans, having sensation and the power of voluntary movement and requiring for its existence oxygen and organic nutrients.
 - Acknowledges that dead animals are still animals as referred to in this Act
- 2: 5 - "Client" means the patient's owner, owner's agent, or other person ~~responsible for~~ presenting the patient for care.
 - Includes individuals presenting animal for care that are “not responsible” such as a Good Samaritan presenting an injured animal and willing to pay
- 2: 11 – “Impaired” ~~abuse of drugs or alcohol~~ substance use disorder
 - Changed to current accepted language
- 2:12 - "~~Owner~~ Consent" means the veterinarian has informed the client, ~~in a manner that would be understood by a reasonable person,~~ of the diagnostic and treatment options, risk assessment, and prognosis, ~~and has provided the client with an estimate of the fees expected for the provision of veterinary services and the client has consented to the recommended treatment~~ authorized the recommended services.
 - Consent can be given by a non-owner as defined in definition of “owner”
 - Fee estimate removed as a requirement for consent based on recommendation from PLIT.

- 2:14 – moved definition of “Livestock” from commentary section to definitions and added wording for farmed aquatic species, bees, honey, and eggs.
- 2:15 – added “licensed” in front of veterinarian to definition of “Patient”
- 2:16 – added definition of “PAVE Certification”
- 2:18 – added physical rehabilitation to definition of “Practice of veterinary medicine” because it is separate and apart from complementary, alternative, and integrative therapies.
- 2:19 – added “licensed” in front of veterinarian to definition of “Practice of veterinary technology”
- 2:21 - "Veterinarian" means a person who has received a professional veterinary medical degree from a college or school of veterinary medicine.
- 2:22 – VCPR - Changes include (also see attachment that compares old/new/federal definitions)
 - Subsection 1 – wording change to avoid the assumption on the part of the veterinarian that they might be responsible for the client following their instructions.
 - Subsection 2 – re-worded and moved (i) and (ii) to subsection 6
 - Subsection 3 – Clearly indicate that the client has only agreed to follow recommendations
 - Subsection 4, that provides for the licensed veterinarian who established the VCPR to designate other licensed veterinarians to provide reasonable continuation or changes in treatment without the need to re-establish a VCPR.
 - Added language to indicate that either the veterinarian or the client can discontinue a VCPR
 - Added language to exempt VCPR requirement in cases of emergency or urgent care
- 2:23 – added federal definition of VFD
- 2:24 – added federal definition of VFD drug
- 2:26 – added emergency facility, specialty facility, referral facility, or center to definition of “Veterinary premises” to be consistent with AVMA Guidelines for Classifying Veterinary Facilities
- 2:27 - added “licensed” in front of veterinarian to definition of “Veterinary prescription drug”
- Notable changes to Commentary to Section 2
 - Explanation of why “agent” is not defined
 - Suggestion that the term “immediate supervision” may be considered (in the same room) to allow for veterinary students and technicians/technologist to perform some procedures where direct supervision may be inadequate
 - Added language of AVMA position statement on the veterinary nurse initiative

Section 3

- Added “licensed” in front of veterinarian in 4(iii)

- Added language in 3-5 to satisfy the “active state supervision” prong of the State Action doctrine (see comments regarding Preamble revisions). Approval by the Attorney General’s office is likely the least intrusive way to achieve this objective. This language limits this requirement to those actions of the Board that could raise antitrust issues.
- Commentary to Section 3
 - Added comment on facility permits and facility licensing as a means of holding corporate owned practices and academic institutions that are owned by non-veterinarians and have non-licensed veterinarians employed liable for poor practices.
 - Added rationale for addition of language in Section 3-5.

Section 4 – no significant changes

Section 5 - added “licensed” in front of veterinarian in 1(i)

- Commentary to Section 5 – VCPR “generally cannot be adequately established by telephonic or other electronic means alone”

Section 6 -

- Commentary to Section 6
 - Language was added to clarify that this section does not exempt veterinarians or non-veterinarians employed by state or federal governments from following federal law as it relates to extra-label drug use and veterinary feed directives (VFDs). There have been attempts by state governments to indicate that veterinary or non-veterinary employees can issue prescriptions for extra-label drugs or VFDs in the absence of a proper VCPR because they are exempt from the state MVPA.
 - The following language was added “There have been concerns that government employed veterinarians exempted by this section cannot be disciplined by the state licensing board when their competence comes into question. It is the position of the AVMA that if a veterinarian holds a license issued by the state, that the licensing board has authority to act on that license, even if the veterinarian was working under this exemption. If the veterinarian loses his/her state license, they would still be able to perform their official duties without being licensed by the state. It would then be up to the governmental entity to determine if the veterinarian was still fit to perform those official duties. The veterinarian who had his/her license revoked would not be able to practice outside the scope of their government job.”

Section 7 – added “credentialed” in front of veterinary technician because only credentialed technicians are subject to the practice act.

Section 8 – no significant changes

Section 9 – added PAVE to section 1

Section 10 – no changes

Section 11 – License by Endorsement

- Added “good moral character” to be consistent with the technician requirement in subsection 2
- Changed practice requirement to include non-clinical veterinary experience

Section 12 – added “PAVE”

Section 13 – no changes

Section 14 - Discipline of Licensees

- Subsection 9 – Knowingly aiding the unlicensed unlawful practice of veterinary medicine or veterinary technology.
- Subsection 10 - substance use abuse of drugs or alcohol disorder
- Subsection 17 – added “veterinary feed directive drug”
- Commentary to Section 14
 - This subsection mentions “comprehensive patient records”. States may want to consider further defining in administrative rule what constitutes appropriate patient/medical records. 21CFR530.5 contains language required for a medical record in the context of extralabel drug use and a VFD. The veterinary medical record serves as a basis for planning patient care and as a means of communicating among members of the veterinary practice. The records furnish documentary evidence of the patient’s illness, hospital care and treatment and serve as a basis for review, study and evaluation of the care and treatment rendered by the veterinarian. A veterinary medical record shall be legible and kept in a reasonable and appropriate format given the circumstances that allows a veterinarian, by reading the record, to proceed with care and treatment of the patient and allow the Board or other agency to determine the advice and treatment recommended and performed. This section does not apply to laboratory animal practice.

Section 15 – Commentary section added language:

- The program of care, counseling, or treatment should include a written schedule of organized treatment, care, counseling, activities, or education satisfactory to the Board, designed for the purposes of restoring an impaired person to a condition whereby the impaired person can practice veterinary medicine or veterinary technology with reasonable skill and safety of a sufficient degree to deliver competent patient care. The program of care, counseling, or treatment should be credentialed, such as a program run by a Joint Commission on Accreditation of Healthcare Organizations (JCAHO) accredited facility, or run by licensed mental health counselors. Subsection 15-3: This subsection requires reporting (in good faith) of any suspected impaired licensed veterinarian or credentialed veterinary technician/technologist. It should be noted that Section 20 provides for immunity from liability for such reporting.

Section 16 – no changes

Section 17 – no changes

Section 18 – no changes

Section 19 - Veterinarian-Client Confidentiality

- Subsection 1 – added “witnessed verbal” in addition to written or electronic as a means of client approving release of information on recommendation of PLIT and Judicial Council
- Subsection 3 – added “witnessed verbal”
- Subsection 8 (and other affected subsection) – removed mention of “appropriate court order” as all court orders should be considered appropriate

Section 20 – no significant changes

Section 21 – added “neglect” to cruelty

Section 22 – no significant changes

Section 23 – no significant changes

Section 24 – no changes

Section 25 – no changes