



**Dora**  
Department of Regulatory Agencies

**Office of Policy, Research and Regulatory Reform**

**2010 Sunset Review:  
State Board of Veterinary  
Medicine**

October 15, 2010





**Executive Director's Office**

Barbara J. Kelley  
Executive Director

Bill Ritter, Jr.  
Governor

October 15, 2010

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the State Board of Veterinary Medicine. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2011 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Article 64 of Title 12, C.R.S. The report also discusses the effectiveness of the State Board of Veterinary Medicine and staff in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Barbara J. Kelley  
Executive Director





Bill Ritter, Jr.  
Governor

Barbara J. Kelley  
Executive Director

## **2010 Sunset Review: State Board of Veterinary Medicine**

### **Summary**

#### ***What Is Regulated?***

The Veterinary Practice Act (Act) regulates the practice of veterinary medicine and veterinarians in Colorado. Veterinarians diagnose and treat diseases and dysfunctions of animals.

#### ***Why Is It Regulated?***

The General Assembly adopted the Act in 1907, to safeguard against incompetent, dishonest, and unprincipled practitioners of veterinary medicine.

#### ***Who Is Regulated?***

There are approximately 4,100 licensed veterinarians who practice within Colorado. Among those are approximately 100 licensees who are awarded academic licenses to practice as a condition of employment at an accredited Colorado veterinary school.

#### ***How Is It Regulated?***

The State Board of Veterinary Medicine (Board) is empowered by the Act to examine and license veterinarians and to supervise the practice of veterinary medicine.

#### ***What Does It Cost?***

During fiscal year 08-09, Board expenditures were \$291,429 and 1.75 full-time equivalent employees supported the Board.

#### ***What Disciplinary Activity Is There?***

During the period under review, fiscal years 04-05 through 08-09, the Board averaged 19 disciplinary actions per year. The majority of the final disciplinary actions placed a licensee on some type of practice limitation, stipulated practice, and/or probation.

#### ***Where Do I Get the Full Report?***

The full sunset review can be found on the internet at: [www.dora.state.co.us/opr/oprpublications.htm](http://www.dora.state.co.us/opr/oprpublications.htm).

## Key Recommendations

### **Continue the Veterinary Practice Act for 11 years, until 2022.**

Veterinarians perform necessary, widely varied, sometimes dangerous tasks that require highly specialized training. Most practitioners work with pet animals such as dogs and cats, others practice on birds, reptiles, exotic animals, livestock, and food animals. They handle, administer, and dispense controlled substances that have the potential for harm if mishandled. They vaccinate animals to protect both animals and the public from illness and death. Veterinarians even act as food inspectors.

The Board is established to ensure, to the greatest extent possible, that practitioners are qualified and competent, and to review cases where it, or a member of the public, questions a veterinarian's qualifications. This is a very important step in the pursuit of consumer protection.

### **Create an exemption to the Veterinarian-Client-Patient Relationship (VCPR) for the dispensing of pharmaceuticals in emergency situations and direct the Board to promulgate rules necessary to implement the exemption.**

A problem arises when a veterinarian concludes an animal needs a certain medication treatment protocol but does not have the necessary drug on-hand nor is the drug available at a local pharmacy. An implication of the Act currently is that an animal owner may have to find a different veterinarian who has the drug in stock and have the animal reexamined, incurring an additional expense, to establish a valid VCPR between the second veterinarian and the animal.

The General Assembly should create an exemption to the VCPR, that would allow a second veterinarian to dispense the necessary medication in emergency situations. The dispensing veterinarian will rely on the examining veterinarian's expertise and VCPR.

## Major Contacts Made During This Review

American Physical Therapy Association-  
Colorado Chapter  
American Society for the Prevention of Cruelty  
to Animals  
Animal Assistance Foundation  
Colorado Association of Certified Veterinary  
Technicians  
Colorado Animal Welfare League  
Colorado Board of Chiropractic Examiners  
Colorado Board of Pharmacy  
Colorado Chiropractic Association

Colorado Department of Public Health and  
Environment  
Colorado State Public Health Veterinarian  
Colorado State University-Veterinary Hospital  
Colorado State Veterinarian  
Colorado Veterinary Medical Association  
Dumb Friends League  
Next-to-Kin Foundation  
Peer Assistance Services  
Pet Animal Care and Facilities Act  
Administration

## What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:  
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*Recommendation 10 – Add language to the Act authorizing the Board to suspend a license for not complying with an order of the Board. .... 30*

*Recommendation 11 – Amend the prohibited activities in section 12-64-111(1), C.R.S., to include failure to respond to a complaint and not updating contact information. .... 30*

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## Background

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### *Introduction*

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria<sup>1</sup> and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

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<sup>1</sup> Criteria may be found at § 24-34-104, C.R.S.

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## *Types of Regulation*

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

### Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

### Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.



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While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

### Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

### Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

### Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

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Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

### *Sunset Process*

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: [www.dora.state.co.us/pls/real/OPR\\_Review\\_Comments.Main](http://www.dora.state.co.us/pls/real/OPR_Review_Comments.Main).

The regulatory functions of the Colorado State Board Veterinary Medicine (Board) relating to Article 64 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2011, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the Board pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of veterinarians should be continued for the protection of the public and to evaluate the performance of the Board and staff of the Division of Registrations (Division). During this review, the Board and the Division must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly.

### *Methodology*

As part of this review, DORA staff attended Board meetings; interviewed staff of the Board, the Division, the Board of Chiropractic Examiners, and the Pet Animal Care and Facilities Act Administration; reviewed Board records and minutes including complaint and disciplinary actions; interviewed officials with state and national professional associations; interviewed animal care professionals; reviewed Colorado statutes and Board rules; and reviewed the laws of other states.

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## *Profile of the Profession*

According to the Bureau of Labor and Statistics,<sup>2</sup> veterinarians diagnose and treat diseases and dysfunctions of animals. About 80 percent of veterinarians work in private practice. According to the American Medical Veterinary Association, 77 percent of veterinarians who work in private medical practices treat pets. About 16 percent of veterinarians work in private, mixed, and food animal practices, where they see pigs, goats, cattle, sheep, and some wild animals in addition to farm animals. A small proportion of private-practice veterinarians, about six percent, work exclusively with horses.

Some veterinarians contribute to human as well as animal health. A number of veterinarians work with physicians and scientists as they research ways to prevent and treat various human health problems. Veterinarians contributed greatly to conquering malaria and yellow fever, solved the mystery of botulism, produced an anticoagulant used to treat some people with heart disease, and defined and developed surgical techniques for humans, such as hip and knee joint replacements and limb and organ transplants. Today, some determine the effects of drug therapies, antibiotics, or new surgical techniques by testing them on animals.

Some veterinarians are involved in food safety and inspection. Veterinarians who are livestock inspectors, for example, check animals for transmittable diseases, examine slaughtering and processing plants, check live animals and carcasses for disease, and enforce government regulations regarding food purity and sanitation.

All states and the District of Columbia require that veterinarians be licensed before they can practice. The only exemptions are for veterinarians working for some federal agencies and some state governments. Licensing is controlled by the states and is not uniform, although all states require the successful completion of the Doctor of Veterinary Medicine degree (D.V.M. or V.M.D.) or equivalent education, and a passing grade on a national examination, the North American Veterinary Licensing Examination.

There are 28 accredited colleges in 26 states that meet the standards set by the Council on Education of the American Veterinary Medical Association. Colorado State University houses one of those accredited colleges.

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<sup>2</sup> Bureau of Labor and Statistics, Occupational Outlook Handbook, 2010-11 Edition, Retrieved June 16, 2010, from <http://www.bls.gov/oco/ocos076.htm>

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## Legal Framework

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### *History of Regulation*

The General Assembly adopted the Colorado Veterinary Practice Act<sup>3</sup> (Act) in 1907, to safeguard “against incompetent, dishonest, or unprincipled practitioners of veterinary medicine.”<sup>4</sup> To those ends, the State Board of Veterinary Medicine (Board) is empowered by the Act to supervise the practice of veterinary medicine.<sup>5</sup>

The last sunset review of the Act was performed in 2000. That sunset review recommended an increase in the Board size from five to seven members, to allow non-veterinarians to own practices through public service corporations, and to strengthen veterinarian record-keeping provisions. These recommendations, among others, were adopted in some form by the General Assembly.

Subsequent to the 2000 review, the Act has been amended on multiple occasions. The majority of the changes have been to the administrative system but some have been more substantial, such as:

- During 2006, the provision to issue a confidential letter of concern was added to the disciplinary powers of the Board. This allows the Board to voice displeasure with a practitioner over a minor violation rather than issuing formal public discipline. Also the penalties for practicing without a valid license were changed from a class 3 Misdemeanor, to a class 2 Misdemeanor for the first offense, and a class 6 felony for subsequent offenses.
- During 2007, several changes occurred, among them:
  - A licensure exemption for faculty members of a veterinary school was repealed and replaced with an academic license;
  - A mandate that veterinarians report suspected animal cruelty was added; and
  - The Board was given a role in the regulation of animal physical therapy.
- During 2008, an exemption to the Act was provided for animal massage.
- During 2009, the Board was given a role in the regulation of animal chiropractic.

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<sup>3</sup> § 12-64-101, et seq., C.R.S.

<sup>4</sup> § 12-64-102, C.R.S.

<sup>5</sup> § 12-64-105(11), C.R.S.

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## Colorado Statutes

The Board is a Governor-appointed, seven-member,<sup>6</sup> Type 1 board.<sup>7</sup> It consists of five veterinarians, licensed for the five years preceding their appointment, and two members of the public at large.<sup>8</sup> The Governor may remove a member for misconduct, incompetence, or neglect of duty after notice and a hearing.<sup>9</sup> The Act requires that the Board meet at least once every quarter and a simple majority constitutes a quorum at those meetings.<sup>10</sup>

Though the Board's functions are administered and policies are enforced by the Department of Regulatory Agencies' (DORA), Division of Registrations (Division),<sup>11</sup> because it is a Type 1 board, statute grants it a large degree of autonomy. Section 105 of Article 1, Title 24, Colorado Revised Statutes (C.R.S.), which authorized the placement of the Board into DORA reads, in part:

[A board transferred under a type 1 transfer] ... shall exercise its prescribed statutory powers, duties, and functions, including rule-making, regulation, licensing, and registration, the promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications, independently of the head of the principal department.

The Board may adopt, amend, or repeal all rules necessary to carry out the provisions of the Act.<sup>12</sup> The Act also directs that the Board regulate artificial insemination and ova transplantation of cattle or other animal species<sup>13</sup> and may inspect veterinary premises at any time to assure that they are clean and sanitary.<sup>14</sup>

Additionally, the Board is authorized to conduct investigations, hold hearings (hearings must be conducted in compliance with the State Administrative Procedure Act<sup>15</sup>), bring court proceedings,<sup>16</sup> and discipline licensees when appropriate.<sup>17</sup> The Act grants civil immunity to Board members and staff in Board matters. It also extends both civil and criminal immunity to witnesses and complainants pertaining to their participation in Board matters.<sup>18</sup>

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<sup>6</sup> § 12-64-105(1), C.R.S.

<sup>7</sup> § 24-1-122(3)(y), C.R.S.

<sup>8</sup> § 12-64-105(2), C.R.S.

<sup>9</sup> § 12-64-105(5), C.R.S.

<sup>10</sup> § 12-64-105(6), C.R.S.

<sup>11</sup> § 24-34-102, C.R.S.

<sup>12</sup> § 12-64-105(9)(j), C.R.S.

<sup>13</sup> § 12-64-105(9)(c), C.R.S.

<sup>14</sup> § 12-64-105(10), C.R.S.

<sup>15</sup> §§ 12-64-105(9)(f) and 12-64-112(2), C.R.S.

<sup>16</sup> § 12-64-105(9)(i), C.R.S.

<sup>17</sup> §§ 12-64-105(9)(b), and 12-64-111, C.R.S.

<sup>18</sup> § 12-64-105.5, C.R.S.

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## Licensing

Prior to practicing veterinary medicine in Colorado, a person must be a licensed veterinarian.<sup>19</sup> The Board determines the qualifications and fitness of applicants for a license to practice.<sup>20</sup> Generally, applicants for a license must:

- Be 21 years old;
- Submit a written application;
- Pay a fee;<sup>21</sup>
- Take a national examination;<sup>22</sup>
- Graduate from an approved veterinary school or an unapproved foreign veterinary school with substantially equivalent academic requirements;<sup>23</sup> and
- Provide a final transcript or other proof of education.<sup>24</sup>

The Board must administer at least one examination per year.<sup>25</sup> The National Board of Veterinary Examiners' examination is the assessment used in Colorado<sup>26</sup> and it must be passed prior to applying for a license.<sup>27</sup> The Board may exercise its discretion to examine any license applicant orally or practically.<sup>28</sup>

The Board has the discretion to reinstate a suspended or revoked veterinarian's license without requiring an examination, following a written request justifying its return.<sup>29</sup>

All veterinary students may perform veterinary duties only when working under the on-the-premises supervision of a licensed veterinarian. The supervising veterinarian is responsible for student compliance with the Act, including administration of drugs and, if qualified, surgery.<sup>30</sup>

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<sup>19</sup> § 12-64-104(1), C.R.S.

<sup>20</sup> § 12-64-105(9)(a), C.R.S.

<sup>21</sup> § 12-64-107(1), C.R.S.

<sup>22</sup> §§ 12-64-107(3),(4), and 12-64-108, C.R.S.

<sup>23</sup> § 12-64-107(3)(c), C.R.S.

<sup>24</sup> Board Rules 1.02 and 1.03.

<sup>25</sup> § 12-64-108(1), C.R.S.

<sup>26</sup> Board Rule 1.01.

<sup>27</sup> Board Rule 1.04.

<sup>28</sup> § 12-64-108(3), C.R.S.

<sup>29</sup> § 12-64-113, C.R.S.

<sup>30</sup> § 12-64-116, C.R.S.

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An academic license may be issued to a veterinarian employed at a Colorado veterinary school who practices veterinary medicine as a condition of employment.<sup>31</sup> To qualify, an applicant must prove that he or she is a veterinary school graduate and is employed at an accredited Colorado veterinary school.<sup>32</sup> Notwithstanding, a veterinarian student preceptor<sup>33</sup> may only perform veterinary medicine at the request of a supervising, on-the-premises, licensed veterinarian.<sup>34</sup>

Acquiring a license by endorsement calls for an applicant to have a license in good standing issued by another jurisdiction, and prove that he or she has qualifications and credentials substantially equivalent to those required by Colorado. Additionally, an applicant must submit evidence satisfying both educational and examination requirements.<sup>35</sup> The Board may also issue a license to a person certified by a specialty board of the American Veterinary Medical Association.<sup>36</sup>

The Act catalogs several exemptions to licensure, including:

- Government employees performing official duties;<sup>37</sup>
- People offering advice;
  - Counseling according to accepted livestock practices;<sup>38</sup>
  - Consulting by out-of-state licensed veterinarians with a Colorado-licensed veterinarian;<sup>39</sup> and
  - Lecturing or demonstrating in a continuing education course at a veterinary school;<sup>40</sup>
- Veterinary students,<sup>41</sup> scientific researchers,<sup>42</sup> and licensed artificial inseminators;<sup>43</sup>
- People who sell animal feed, appliances, and other health-related products;<sup>44</sup>
- People who sell or apply pesticide, insecticide, or herbicide;<sup>45</sup>
- Animal massage therapists<sup>46</sup> and animal chiropractors;<sup>47</sup> and
- Animal owners and their employees under certain conditions.<sup>48</sup>

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<sup>31</sup> §12-64-107.5(1), C.R.S.

<sup>32</sup> § 12-64-107.5(2), C.R.S.

<sup>33</sup> § 12-64-103(19), C.R.S. Also, An instructor. Common usage of the term is that of a skilled practitioner or veterinarian in other field of work who gives one-to-one in-service training to undergraduate students in their practices or other places of work. Answers.com, Veterinary Dictionary: preceptor. Retrieved November 10, 2009, from, <http://www.answers.com/topic/preceptor>

<sup>34</sup> § 12-64-117, C.R.S.

<sup>35</sup> § 12-64-108(4)(a), C.R.S. and Board Rule 2.00.

<sup>36</sup> § 12-64-108(4)(b), C.R.S.

<sup>37</sup> § 12-64-104(1)(a), C.R.S.

<sup>38</sup> § 12-64-104(1)(c), C.R.S.

<sup>39</sup> § 12-64-104(1)(d), C.R.S.

<sup>40</sup> § 12-64-104(1)(g), C.R.S.

<sup>41</sup> §§ 12-64-104(1)(b) and 12-64-104(1)(k), C.R.S.

<sup>42</sup> § 12-64-104(1)(i), C.R.S.

<sup>43</sup> § 12-64-104(1)(m), C.R.S.

<sup>44</sup> § 12-64-104(1)(e), C.R.S.

<sup>45</sup> § 12-64-104(1)(h), C.R.S.

<sup>46</sup> § 12-64-104(1)(o), C.R.S.

<sup>47</sup> § 12-64-104(1)(p), C.R.S.

<sup>48</sup> § 12-64-104(1)(f), C.R.S.

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The Division determines license renewal times and the Division Director is authorized to establish renewal and delinquency fees.<sup>49</sup> The Act requires completion and proof of 32 hours of Board-approved continuing education every two years for renewal eligibility, but the Board may waive this requirement in certain circumstances.<sup>50</sup> Of those hours, no more than six per licensing period may be for practice management, such as leadership training, personnel management, or communication training, and none may be finance based.<sup>51</sup>

A licensee has 60 days after the expiration date to renew a license. If not renewed during the grace period, the license lapses and must be reinstated prior to practicing.<sup>52</sup> Reinstating a license requires, at minimum, an application and fee. If a license has been lapsed for more than two years, the applicant must prove he or she completed all continuing education requirements. When a license has been lapsed for more than five years, reinstatement may require retaking the national examination and/or other measures. The Board may make exceptions for military service duty.<sup>53</sup>

Similarly, if a licensee requests a license be made inactive for three years or less, prior to reactivation a licensee must pay fees and document continuing education hours. If a license has been inactive for longer, reactivation requires retaking the national examination unless the applicant has maintained a license in good standing in another state.<sup>54</sup>

## *Discipline*

The Act conveys disciplinary power to the Board. Upon conducting a hearing according to Act provisions,<sup>55</sup> and by a concurrence of a majority of the Board members, the Board may revoke or suspend the license of, place on probation, or otherwise discipline or fine, any licensed veterinarian for a violation of the Act.<sup>56</sup>

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<sup>49</sup> § 12-64-110(2), C.R.S.

<sup>50</sup> § 12-64-110(4), C.R.S.

<sup>51</sup> Board Rule 5.04(c).

<sup>52</sup> Board Rule 5.01.

<sup>53</sup> Board Rule 5.02.

<sup>54</sup> Board Rule 5.03.

<sup>55</sup> §§ 12-64-105(9)(f) and 12-64-112, C.R.S.

<sup>56</sup> §§ 12-64-111 and 12-64-105(9)(b), C.R.S.



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The Act defines numerous violations that fall into three general categories: administrative, fraud or misrepresenting business, and standards of practice. Examples of administrative violations are failure to display a license<sup>57</sup> and practicing with an inactive license.<sup>58</sup> Fraudulent practices include, among other things, deception while obtaining a license,<sup>59</sup> practicing under a false or assumed name,<sup>60</sup> and using false or misleading advertising.<sup>61</sup> The majority of the grounds for discipline under the Act consist of substandard practice of veterinary medicine, including but not limited to incompetence, negligence, or malpractice,<sup>62</sup> conviction of cruelty to animals,<sup>63</sup> and administering or prescribing a prescription drug outside of the veterinarian-client-patient relationship.<sup>64</sup>

In addition to violations of the Act, the Board may discipline licensees for violations of the Board-adopted “Veterinary Medical Ethics and Code of Conduct”<sup>65</sup> (EC). The EC addresses veterinarian actions and concerns in the following areas:

- Primary Consideration;<sup>66</sup>
- Care;
- Twenty-four Hour Care;
- Emergency Care;
- Representations;
- Influences on Judgment;
- Veterinarian-Client-Patient Relations;
- Prescription Drugs;
- Medical Records;
- Communication;
- Advertising;
- Aiding and Abetting; and
- Environment.<sup>67</sup>

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<sup>57</sup> § 12-64-111(1)(c), C.R.S.

<sup>58</sup> § 12-64-111(1)(x), C.R.S.

<sup>59</sup> § 12-64-111(1)(b), C.R.S.

<sup>60</sup> § 12-64-111(1)(t), C.R.S.

<sup>61</sup> § 12-64-111(1)(j), C.R.S.

<sup>62</sup> § 12-64-111(1)(k), C.R.S.

<sup>63</sup> § 12-64-111(1)(o), C.R.S.

<sup>64</sup> § 12-64-111(1)(aa), C.R.S.

<sup>65</sup> Board Rule 6.00.

<sup>66</sup> Board Rule 6.01(a), Veterinarians should place the needs of the patient first in their practice of veterinary medicine. This includes the needs to relieve disease, diminish suffering, minimize pain and fear, provide palliative care where appropriate and ensure patient care to the best of their abilities.

<sup>67</sup> Board Rule 6.13. Addresses the environment in which veterinarians care for animals.

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Actions the Board may take in cases when a person practices veterinary medicine without a license are limited to issuing a cease and desist order or entering into a stipulation.<sup>68</sup> If a person fails to comply with the cease and desist order or stipulation, the Board may request formal legal action be taken by the Attorney General's office or the appropriate judicial district.<sup>69</sup> A person who practices or attempts to practice without a license commits a class 2 misdemeanor on the first offense, which could result in 12 months in prison or \$1,000 fine, or both. Subsequent infractions are class 6 felonies that carry penalties up to two years in prison and up to a \$100,000 fine.<sup>70</sup> An injunctive action preventing a person from practicing veterinary medicine, for practicing without a license may begin with the Board or any Colorado citizen.<sup>71</sup>

A licensed veterinarian who administers emergency care or treatment in a public place, without compensation, either voluntarily or at the request of a government employee, and acts in good faith, is not liable for civil damages unless acting with wanton disregard of the animal owner's rights.<sup>72</sup> Likewise, a veterinarian is not liable if an animal's owner abandons an animal in the veterinarian's care. The veterinarian must attempt to contact the owner via certified, return receipt-requested mail.<sup>73</sup>

All veterinarians practicing in Colorado must keep accurate, legible client-patient records, which "justify the assessment, diagnosis, and treatment administered or prescribed," for three years after an animal's last examination.<sup>74</sup> Records kept by all veterinarians and veterinary hospitals are available to the public unless a veterinarian-client-patient privilege exists.<sup>75</sup> Records must be made available to an animal's owner or the owner's representative or for inspection<sup>76</sup> and a licensee must provide a summary of the records upon request or copies upon payment of "reasonable costs."<sup>77</sup> Additionally, a licensee must supply records to any Bureau of Animal Protection or local law enforcement authority investigating animal cruelty or animal fighting.<sup>78</sup>

Every Colorado-licensed veterinarian is obligated to report suspected animal cruelty or fighting to the proper authorities. The veterinarian-client-patient privilege is not applicable in these cases and a reporting veterinarian is not civilly liable for reporting in good faith. Conversely, not reporting a suspected violation or making a false report is punishable by a fine of up to \$500 and six months in prison<sup>79</sup> in addition to other action taken by the Board.

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<sup>68</sup> §§ 12-64-111(6), and 12-64-111(8), C.R.S.

<sup>69</sup> § 12-64-111(9), C.R.S.

<sup>70</sup> § 12-64-114(2), C.R.S.

<sup>71</sup> § 12-64-114(3), C.R.S.

<sup>72</sup> § 12-64-118, C.R.S.

<sup>73</sup> § 12-64-115, C.R.S.

<sup>74</sup> § 12-64-120(3)(b), C.R.S.

<sup>75</sup> § 12-64-120(3)(a), C.R.S. Veterinarian-client-patient-relationship is defined in § 12-64-103(15.5), C.R.S.

<sup>76</sup> § 12-64-120(2)(a), C.R.S.

<sup>77</sup> § 12-64-120(2)(c)(I), C.R.S.

<sup>78</sup> § 12-64-120(2)(c)(II), C.R.S.

<sup>79</sup> § 12-64-121, C.R.S.

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## Program Description and Administration

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The State Board of Veterinary Medicine (Board) operates within the Department of Regulatory Agencies' (DORA) Division of Registrations (Division).

The Board is a Governor-appointed, seven-member, Type 1 board charged with the implementation of the Veterinary Practice Act (Act). It is made up of five Colorado licensed veterinarians, who reside in the State, and have been practicing for a minimum of five years, and two members of the public.<sup>80</sup> The Board independently governs the veterinary profession in Colorado.

The Act requires the Board to meet quarterly but more meetings may be called by the Board President. From the beginning of calendar year 2008 to the writing of this sunset review, the Board met every two months rather than every three months to better handle workload. All Board proceedings, with the exception of licensee discipline discussions and consultation with legal counsel, are open to the public. The Colorado Attorney General's Office has determined disciplinary discussions to be a matter of attorney-client privilege and are held in a closed executive session. However, all actions taken by the Board must be taken in an open session.

The program is cash funded. Its full-time equivalent (FTE) employees and expenditures generally vary only slightly from year to year. However, there was an increase of approximately 53 percent in expenditures and 100 percent in labor, after fiscal year 06-07. The increase is the result of a staff and workload reorganization.

**Table 1**  
**Veterinary Board**  
**Fiscal Information**<sup>81</sup>

Fiscal Year	Total Program Expenditure	FTE
04-05	\$197,110	1.2
05-06	\$186,781	1.2
06-07	\$176,572	0.9
07-08	\$270,386	1.85
08-09	\$291,429	1.75

Generally, the Board and its staff spend their time, energy, and financial resources licensing and policing the veterinary profession.

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<sup>80</sup> §§ 12-64-105(1) and (2), C.R.S.

<sup>81</sup> FTE in Table 1 does not include staffing in the centralized offices of the Division. Centralized offices include the Director's Office, Office of Investigations, Office of Expedited Settlement, Office of Examination Services, Office of Licensing, and Office of Support Services. However, the cost of those FTE is reflected in the Total Program Expenditures. The Board pays for those FTE through a cost allocation methodology developed by the Division and the Executive Director's Office of DORA.

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## Licensure

### Examination

Prior to submitting an application for a license, a candidate must successfully pass the North American Veterinary Licensing Examination (NAVLE). However, if the candidate tested prior to November 20, 2000, a passing score for both the National Board Examination (NBE) and Clinical Competency Test (CCT) are required.<sup>82</sup> That is the year the NAVLE replaced the other examinations. The NAVLE, NBE, and CCT, are all tests developed by the National Board of Veterinary Medical Examiners (NBVME). The NBVME, or one of its predecessor organizations, has been developing standardized licensing examinations for use by state licensing boards since 1948.<sup>83</sup>

The NAVLE consists of 360 clinically relevant multiple-choice questions. It is offered throughout North America at computer testing centers operated by Prometric. Colorado has four testing sites in Colorado Springs, Denver, Grand Junction, and Longmont. The NAVLE is available during a four week testing window in November-December, and a two week window in April.<sup>84</sup>

There are two steps in the examination application process:<sup>85</sup>

1. Complete the NBVME NAVLE application and pay the NAVLE fee directly to the NBVME. A candidate may complete the application on-line, or complete the paper application included in the NAVLE Candidate Bulletin. The application must be accompanied by an examination fee, which was \$550 as of spring 2010.
2. To have results issued directly to the Board, complete the Colorado state NAVLE application and submit a \$50 fee to the NBVME. All required supporting documentation must also be received in the NBVME office by the deadline date.

When requested by the applicant, the NAVLE score is sent directly to the Board for review. During the period studied for this sunset review, fiscal years 04-05 through 08-09, 929 Colorado veterinarian candidates took the NAVLE examination and 726 passed. Table 2 breaks the examinations down by year, number, and percent passing the examination.

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<sup>82</sup> Colorado Division of Registrations, Application for Original License by Examination or Score Transfer-Veterinarian.

<sup>83</sup> National Board of Veterinary Medical Examiners, History of the NBVME. Retrieved April 20, 2010, from <http://nbvme.org/?id=77>

<sup>84</sup> National Board of Veterinary Medical Examiners, *North American Veterinary Licensing Examination (NAVLE ©)*, Retrieved June 30, 2010, from <http://www.nbvme.org/?id=12>

<sup>85</sup> National Board of Veterinary Medical Examiners, NAVLE State Application Information. Retrieved April 20, 2010, from <http://nbvme.org/?id=7&page=CO%2C+FL%2C+ME%2C+MD%2C+MI%2C+NJ%2C+NY%2C+PA%2C+and+VA+N+AVLE+Candidates>

**Table 2  
Colorado NAVLE  
Examination Information**

Fiscal Year	Colorado Written Examinations Given	Colorado Pass Rate (%)	National Pass Rate (%)
04-05	197	69.5	70.1
05-06	160	66.0	69.9
06-07	132	75.0	70.6
07-08	203	85.7	81.6
08-09	237	88.6	84.2

Once an applicant successfully passes the NAVLE, he or she is eligible to apply for a Colorado veterinarian license.

### Licensing

There are various routes one may take in acquiring a Colorado veterinarian license.

#### *Original License by Examination or Score Transfer*

To obtain a Colorado veterinarian license, an applicant submits a completed application to the Division's Office of Licensing with a non-refundable application-processing fee. The fee for fiscal year 09-10 was \$170. The NAVLE score is submitted directly by the NBVME if the applicant requests its submission. However, if an applicant wishes to have a score transferred from another state, he or she must contact the American Association of Veterinary State Boards, which houses all veterinarian licensing data, for the transfer.

Other documentation that must accompany the application includes an official transcript from an approved school of veterinary medicine. If the applicant is foreign-trained, documents must include an Educational Commission for Foreign Veterinary Graduates certificate or a Program for the Assessment of Veterinary Education Equivalence certificate. Additionally, each applicant must complete and submit an Affidavit of Eligibility in which an applicant indicates that he or she is in the United States legally.<sup>86</sup>

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<sup>86</sup> Colorado Division of Registrations, Application for Original License by Examination or Score Transfer-Veterinarian.

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Veterinarian licenses are on a two-year renewal cycle and all licenses expire on October 31 of even-numbered years. If a new license is issued on or after July 1 of a renewal year, that license will be valid throughout the following license term. Any application is good for one year after receipt by the Division.<sup>87</sup> If the license is not issued within that time then the applicant must reapply.

Table 3 depicts data regarding the original licensing by examination, renewals, and total active licenses, by fiscal year for all licensing methods.

**Table 3**  
**Original and Renewed**  
**Veterinarian Licenses**

<b>Fiscal Year</b>	<b>Examination Original</b>	<b>Renewal</b>	<b>TOTAL</b>
04-05	84	3,514	3,834
05-06	78	0	4,032
06-07	116	3,515	3,869
07-08	227	0	4,242
08-09	145	3,740	3,998

*Academic License*

Beginning in fiscal year 07-08, a veterinarian employed at a Colorado veterinary school who practices veterinary medicine as a condition of employment, may qualify for an academic license.<sup>88</sup> An applicant must prove that he or she is a veterinary school graduate and is employed by an accredited Colorado veterinary school; provide a copy of the legal document verifying a name change if the name is different than that on any supporting document; and provide verification letter(s) from any state(s) that previously issued a license. However, no NAVLE scores are mandated.<sup>89</sup>

Table 4 shows that the first year academic licenses existed, fiscal year 07-08, the Division issued 118 and the following year, fiscal year 08-09, an additional 26 original academic licenses were issued and 63 were renewed.

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<sup>87</sup> *ibid.*

<sup>88</sup> § 12-64-107.5, C.R.S. Colorado State University has the only accredited school of veterinary medicine in Colorado.

<sup>89</sup> Colorado Division of Registrations, Application for Academic Veterinarian License.

**Table 4  
Academic License Activity**

<b>Fiscal Year</b>	<b>Original</b>	<b>Renewal</b>	<b>TOTAL</b>
07-08	118	0	112
08-09	26	63	105

*License by Endorsement*

Acquiring a license by endorsement requires that the applicant fulfill all of the qualifications of an original license applicant plus submit any applicable name change documentation and verification of licenses held in another state.<sup>90</sup> Table 5 depicts the number of licenses obtained by veterinarians through the endorsement process during the review period. The number of licenses issued is generally relatively steady except for an inexplicable 24 percent increase from fiscal year 05-06 to 06-07, which subsequently leveled off.

**Table 5  
License by Endorsement Activity**

<b>Fiscal Year</b>	<b>Endorsement</b>
04-05	87
05-06	92
06-07	114
07-08	112
08-09	110

***Complaints/Disciplinary Actions***

Complaints tend to come to the Board from consumers but may come from other sources or be initiated by the Board itself. Table 6 shows the number and types of complaints filed with the Board during the review period. The stream of complaints averaged approximately 84 over the first three years of the review period. However, the cases received dropped nearly 46 percent from fiscal year 06-07 to 07-08 and the fiscal year 08-09 total was down about 25 percent from the 06-07 level. The category "Violation of the Veterinarian Practice Act," is a generic violation authorized in the Act<sup>91</sup> and 49.5 percent of the complaints were recorded in the category during the period under review.

<sup>90</sup> Colorado Division of Registrations, Application for License By Endorsement-Veterinarian.

<sup>91</sup> §12-64-111(1)(a), C.R.S.

**Table 6**  
**Complaint Information**  
**Fiscal Year 04-05 through 08-09**

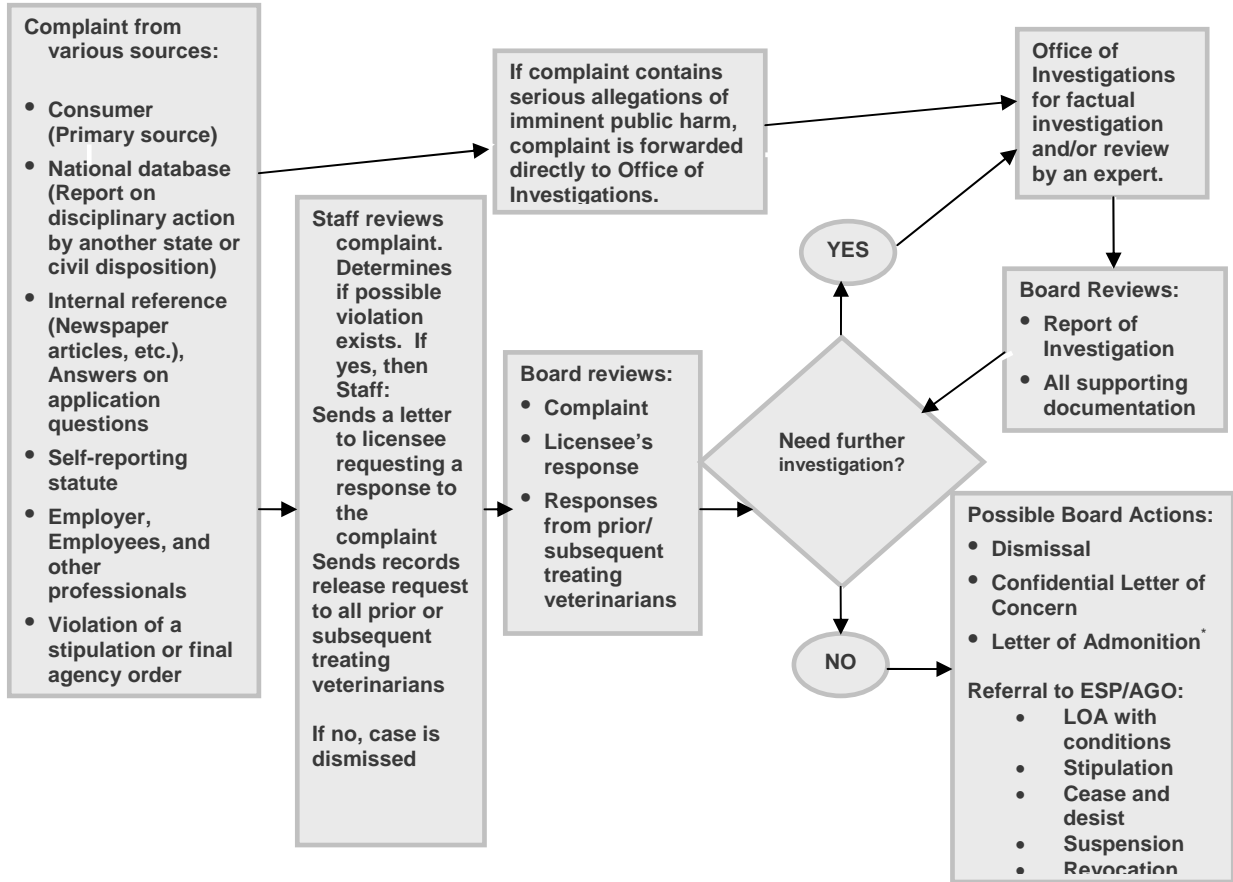
<b>Nature of Complaints</b>	<b>FY 04-05</b>	<b>FY 05-06</b>	<b>FY 06-07</b>	<b>FY 07-08</b>	<b>FY 08-09</b>
Practicing w/o a License	0	1	2	2	4
Standard of Practice/Substandard Care	59	10	52	6	7
Violation of the Veterinary Practice Act	24	75	53	38	53
Substance Abuse	0	0	2	0	1
<b>Totals</b>	<b>83</b>	<b>86</b>	<b>109</b>	<b>46</b>	<b>65</b>

Though there is variation, as Chart 1 on page 18 illustrates, complaints follow the same general path(s). When the Board receives a complaint, Board staff sends a packet to the licensee whom the complaint identifies. The packet contains the case presented by the complainant and instructs the licensee to respond. In most cases, following a licensee's reply made within 30 days, the complaint is sent to the Board for review at its next meeting. The Board first chooses whether to drop or pursue the complaint, or send the complaint to the Office of Investigations (OI) to obtain more facts. In some rare cases that pose an imminent threat, the complaint is sent directly to OI upon receipt. Once it is satisfied that it has all pertinent information, the Board acts. It must choose one of two basic options. It may dismiss the charge, with or without a confidential letter of concern (LOC) or take disciplinary action, i.e., a letter of admonition (LOA), a fine, practice monitoring, probation, license suspension, license revocation, or some combination of disciplinary actions. The licensee may choose to accept the discipline, ending the process, or contest it in a hearing.

Occasionally, the Board sends cases directly to the Attorney General's Office (AGO), to begin the hearing process. Most complaints, however, go to the Division's Office of Expedited Settlement (ESP), which confers with the licensee to resolve the disputed issues. Post negotiations, the Board and licensee may enter into a stipulated settlement. A stipulated settlement may contain one or more of the disciplinary actions available to the Board. However, if ESP and the licensee cannot reach a settlement, the Board may issue a letter of admonition or forward the case to the AGO to commence other formal disciplinary action.



**Chart 1  
Complaint and Discipline  
Flow Chart**



All Board final actions may be appealed to the Colorado Court of Appeals.<sup>92</sup>

Table 7 delineates actions taken by the Board during the review period.

<sup>92</sup> § 12-64-112(2), C.R.S.

**Table 7**  
**Veterinarian Board**  
**Final Actions**  
**Fiscal Year 04-05 through 08-09**

Type of Action	FY 04-05	FY 05-06	FY 06-07	FY 07-08	FY 08-09
Revocation / Surrender / Voluntary Relinquishment	0	1	0	0	2
Suspension	1	3	0	1	1
Probation / Practice Limitation / Stipulation	10	12	14	4	5
Letter of Admonition	4	4	4	6	11
Fines Ordered	4	5	3	0	1
Cease and Desist Orders	4	2	0	3	2
<b>Total Disciplinary Actions (Not Including Fines)</b>	<b>19</b>	<b>22</b>	<b>18</b>	<b>14</b>	<b>21</b>
Dismiss	76	68	72	47	43
Letter of Concern	30	20	8	6	7
<b>Total Dismissals</b>	<b>106</b>	<b>88</b>	<b>80</b>	<b>53</b>	<b>50</b>

Table 7 illustrates that during the time under review, there were approximately four times as many dismissals as disciplinary actions. Moreover, the Board rarely revokes a license: twice during the five year review period. On 11 occasions the Board issued a cease and desist order that prevented a person from practicing veterinary medicine.

The Act allows the Board to levy fines from \$100 to \$1,000<sup>93</sup> in addition to other forms of discipline. Even with the fining authority, as Table 8 illustrates, the Board rarely assesses fines against licensees. In fiscal year 07-08, it issued no fines despite issuance of 14 other disciplinary actions. However, the average fine assessment from fiscal year 04-05 through 08-09 was approximately \$917, close to the maximum allowed.

**Table 8**  
**Board Fines**

Fiscal Year	Number of Fines	Total of Fines Collected
04-05	4	\$2,750
05-06	6	\$7,000
06-07	4	\$3,000
07-08	0	\$0
08-09	1	\$1,000

<sup>93</sup> § 12-64-111(4), C.R.S.

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## Analysis and Recommendations

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### *Recommendation 1 – Continue the Veterinary Practice Act for 11 years, until 2022.*

The Veterinary Practice Act (Act)<sup>94</sup> regulates the practice of veterinary medicine and veterinarians in Colorado. Veterinarians diagnose and treat diseases and dysfunctions of animals. They work in private medical practices treating mainly pets, food animal practices, equine practices, in zoos, and some work with physicians and scientists as they research ways to prevent and treat various human health problems and the spread of infectious diseases.

All states and the District of Columbia require that veterinarians be licensed before they can practice. The State Board of Veterinary Medicine (Board) licenses and regulates veterinarians and each year approximately 3,935 Board-licensed veterinarians practice veterinary medicine. The Board consists of a majority of Colorado-licensed, actively practicing veterinarians who provide the expertise to police the profession and protect consumers.

Veterinarians perform necessary, widely varied, sometimes dangerous tasks that require highly specialized training. Most practitioners work with pet animals such as dogs and cats, others practice on birds, reptiles, exotic animals, livestock, and food animals. They handle, administer, and dispense controlled substances that have the potential for harm if mishandled. They vaccinate animals to protect both animals and the public from illness and death. Veterinarians even act as food inspectors.

It is the Board's main duty to determine, on a case by case basis, if a veterinarian acts according to the norms of the profession, is working in the best interest of the patients, and is fit to practice in Colorado. The Board members, both the professionals and the public members, collaborate on each case based on their own specific knowledge and experiences.

The first question asked in a sunset review is whether regulation is necessary to protect the public health, safety, and welfare. In this case, the answer is "yes."

The Board is established to ensure, to the greatest extent possible, that practitioners are qualified and competent, and to review cases where it, or a member of the public, questions a veterinarian's qualifications. This is a very important step in the pursuit of consumer protection and a successful, competent, professional workplace.

During the course of this sunset review, the Board has shown that it generally operates with efficiency in its administrative duties and with fair-mindedness and impartiality in its adjudicative duties. Therefore, the General Assembly should continue the Act for 11 years, until 2022.

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<sup>94</sup> §12-64-101, *et seq.*, C.R.S.

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***Recommendation 2 – Create an exemption to the veterinarian-client-patient-relationship for the dispensing of pharmaceuticals in emergency situations and direct the Board to promulgate rules necessary to implement the exemption.***

The Act mandates a veterinarian-client-patient relationship (VCPR) must exist when prescription drugs are administered, distributed, dispensed, or prescribed.<sup>95</sup> Establishing a VCPR means multiple things must occur, among those:

...the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of an examination of the animal or by medically appropriate and timely visits to the premises where the animal is kept...<sup>96</sup>

A problem arises when a veterinarian concludes an animal needs a certain medication treatment protocol but does not have the necessary drug on-hand nor is the drug available at a local pharmacy. An implication of current statute is that an animal owner may have to find a different veterinarian who has the drug in stock and have the animal reexamined, incurring an additional expense, to establish a valid VCPR between the second veterinarian and the animal.

The Act creates an undue burden on the animal owner that may threaten the health and wellbeing of the animal. It is therefore logical to allow for a specific, temporary, emergency-based exemption to the Act.

The General Assembly should create an exemption to the VCPR that would allow a second veterinarian to dispense the necessary medication in emergency situations. The dispensing veterinarian will be relying on the examining veterinarian's expertise and VCPR.

However, stringent criteria should be met in order to qualify for the exemption. Therefore, the General Assembly should also direct the Board to promulgate rules to implement the exemption. Such rules could include:

- Defining an emergency situation.
- Requiring a detailed record documenting the circumstances of the emergency.
  - The examining veterinarian should be required to document the emergency and the immediate need for the medicine;
  - The examining veterinarian should be required to document contacting at least one pharmacy, in the general proximity of the examination, that does not have the medicine immediately available; and
  - The veterinarian who fills the prescription should be required to document the time the prescription is filled.

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<sup>95</sup> §§ 12-64-104(1)(f) and 12-64-111(1)(aa), C.R.S.

<sup>96</sup> §21-64-103(15.5)(b), C.R.S.

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This exemption to the VCPR would eliminate a public policy obstacle and further public health, safety, and welfare.

Therefore the General Assembly should craft an exemption to the VCPR and direct the Board to promulgate rules to address the dispensing of pharmaceuticals in emergency situations.

***Recommendation 3 – Create a new, separate section devoted to business practices within the practice of veterinary medicine.***

Section 12-64-111(3), C.R.S., reads:

Nothing in this article shall be construed to prevent the practice of veterinary medicine by a professional service corporation composed of at least a simple majority of veterinarians who are licensed, active, and personally engaged in the practice of veterinary medicine in this state and who may exercise such powers and shall be subject to such limitations and requirements, so far as applicable, as are provided in section 12-36-134, C.R.S., relating to professional service corporations for the practice of medicine; except that the shareholders, directors, managers, or officers who are not veterinarians licensed, active, and personally engaged in the practice of veterinary medicine in this state shall not exercise any authority whatsoever over professional veterinarian matters.<sup>97</sup>

This section addresses very basic conditions under which a professional service corporation (PSC) to practice veterinary medicine may exist. However, the section is confusing to those who must interpret the Act because of where it is located in the Act, because of the way it is written, and because it makes a statutory reference to the Medical Practice Act that is not directly applicable to the practice of veterinary medicine.

The section is included under the heading, “Discipline of Licensees”<sup>98</sup> and as such is out of place. The section gives the Board no grounds or authority to discipline. Though the headings in the statutes have no force of law, they are included to help readers navigate and understand the laws that govern the state. The present configuration adds more confusion than clarity.

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<sup>97</sup> § 12-64-111(3), C.R.S.

<sup>98</sup> § 12-64-111, C.R.S.

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To create clarity, a separate specific section should be added to the Act to mirror those portions of section 12-36-134, C.R.S., that are applicable to the practice of veterinary medicine, including:

- Allow people to form a PSC under the “Colorado Business Corporation Act;”<sup>99</sup>
- Stipulate what must be included in the corporation’s name;<sup>100</sup>
- Allow the corporation to operate as a corporation;<sup>101</sup>
- Stipulate the liability of an heir;<sup>102</sup>
- Speak to shareholder liability;<sup>103</sup>
- Allow for certain types of compensation;<sup>104</sup> and
- Define terms.<sup>105</sup>

Other provisions will have to be adjusted to fit the practice of veterinary medicine, including:

- The reason for operating;<sup>106</sup>
- The standards for professional conduct;<sup>107</sup> and
- The limitations on professional practice.<sup>108</sup>

Additionally, this change should incorporate the few specifics currently provided in the Act, including the prerequisite that PSC composition must have, “...at least a simple majority of veterinarians who are licensed, active, and personally engaged in the practice of veterinary medicine in this state...”<sup>109</sup>

The General Assembly should amend the Act, creating a new, separate section devoted to business practices within the practice of veterinary medicine.

***Recommendation 4 - Require that every veterinary clinic has a Colorado-licensed veterinarian scheduled and responsible for all veterinary medical decisions, at all times a patient is in the facility.***

Human health care facilities are regulated. When a patient is present in a facility, there is typically a regulated professional on-site or on-call who is responsible for care. The same is not necessarily true in veterinary medicine.

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<sup>99</sup> § 12-36-134(1), C.R.S.

<sup>100</sup> § 12-36-134(1)(a), C.R.S.

<sup>101</sup> § 12-36-134(1)(c), C.R.S.

<sup>102</sup> § 12-36-134(1)(f.5), C.R.S.

<sup>103</sup> § 12-36-134(1)(g), C.R.S.

<sup>104</sup> § 12-36-134(6), C.R.S.

<sup>105</sup> § 12-36-134(6), C.R.S.

<sup>106</sup> § 12-36-134(1)(b), C.R.S.

<sup>107</sup> §§ 12-36-134(3)and(4), C.R.S.

<sup>108</sup> § 12-36-134(7), C.R.S.

<sup>109</sup> § 12-64-111(3), C.R.S.

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Consider a scenario that is not uncharacteristic of a problem. A dog is brought into a veterinary practice prior to the time when an hourly-employee veterinarian is scheduled to work. When the dog starts convulsing, an employee, who is not a licensed veterinarian, calls the company's emergency number for advice. The emergency veterinarian, who is located and licensed in another state, tells the employee what to do, the employee administers treatment, but the dog tragically dies. Who is responsible for the actions? Unfortunately, currently under the Act, no one is.

Because no Colorado-licensed veterinarian was there to direct the care, the only recourse the Board has available is to issue cease and desist orders to the on-site employee and the out-of-state veterinarian, for practicing veterinary medicine without a valid Colorado license. No other violation of the Act occurred. Only Colorado-licensed veterinarians are responsible for compliance with the Act, not lay-person employees, lay-person clinic owners, nor clinic owners who are veterinarians but unlicensed in Colorado. When a consumer brings an animal to a veterinary clinic it is only logical for that consumer to assume that he or she is placing the animal in the hands of a qualified, licensed professional. In some clinical settings, this is true only if a qualified, licensed veterinarian is "clocked in."

The solution is similar to how human hospitals, in part, deal with this issue. As a practical matter, when there is a patient in a facility, a responsible Colorado licensed professional is present on the premises or on call. The same requirement should be true for veterinary facilities. However, while the majority of the health care employees in human treatment facilities have some form of licensure, the same is not true in veterinary facilities. The veterinarian is the only professional licensed in the discipline of veterinary medicine. Therefore, responsibility for care rests solely with the veterinarian.

Requiring a licensee to be scheduled and responsible for veterinary medical care at all times an animal is present in a facility, ensures that Colorado law protects Colorado consumers and their animals.

Therefore, to protect consumers and their animals, the General Assembly should require that every veterinary clinic has a Colorado-licensed veterinarian, scheduled and responsible for all veterinary medical decisions, at all times a patient is in the facility.

***Recommendation 5 - Direct the Board to promulgate a uniform system and schedule of fines for violations of the Act.***

Currently, the Board may, "...discipline or fine, or both, licensees consistent with the provisions of this article and the rules and regulations adopted under this article."<sup>110</sup> In other words, the Board may issue fines for violations of the Act or Board rules. However, the Board rarely uses its authority to fine.

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<sup>110</sup> §12-64-105(9)(b). C.R.S.

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During the period under review, fiscal years 04-05 through 08-09, when the Board issued fines they were generally for major offenses and in conjunction with other disciplinary actions such as probation, or a stipulated agreement. However, the authority is used neither consistently nor uniformly.

The issuance of a fine can be a very effective tool to get the attention of practitioners in the case of minor violations. The violations could include administrative violations such as practicing on a lapsed license or failing to complete adequate records. The latter of these, record keeping, is an issue that often comes up during the review of cases by the Board and was also mentioned as an issue in the 2000 sunset review of the Board. These violations may not justify the suspension of a license, except in extreme or chronic cases, but there are still instances in which the Board has the authority to issue fines. Issuing a minimal, predictable fine combined with the knowledge that the fine will progressively increase with another violation, can be a major deterrent to minor violations or violations generated through apathy.

The General Assembly felt it necessary to provide this disciplinary tool to the Board. To use the tool effectively the Board should develop guidelines for its use. The fining schedule should reflect fines in lesser amounts for first violations with increasing amounts for each subsequent violation. Predictable, uniform discipline can provide both a desired deterrent to Act violations and predictability in the administration of justice.

Direct the Board to promulgate a uniform system and schedule of fines for violations of the Act.

***Recommendation 6 - Establish a peer assistance program similar to those established for other health care professions.***

Veterinarians develop chemical dependency in part because of the availability of controlled substances and habit forming drugs in the workplace. It is a violation of the Act to have an, "Addiction to, dependence on, or the habitual use or abuse of intoxicating liquors, a habit-forming drug, or a controlled substance..."<sup>111</sup>

The goal of a peer assistance program (program) established in other health care-related practice acts, Dental Practice Act, Medical Practice Act, Pharmacy Practice Act, and Nurse Practice Act, is to provide help and treatment to practitioners that are chemically dependent, or may need psychological/psychiatric assistance. A program adds an option to chemical dependent practitioners and their regulatory boards, other than the revocation or suspension of a license to practice and the possible end of a professional career.

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<sup>111</sup> §12-64-111(1)(v), C.R.S.



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The two main philosophies of a program are early intervention and acknowledging that the condition is treatable. First, the notion of early intervention contends that the treatment of a chemical dependency when it is in its infancy may render other formal disciplinary action against a practitioner's license unnecessary. Actions such as suspension or revocation for being unfit to practice are possibilities.

The second philosophy of a program is that the person needing help is afflicted with a disease. Chemical dependency is a chronic primary disease like diabetes and cancer. A chronic primary disease is an illness that persists over a long period of time, is not a symptom of another disease, and is progressive in nature. Like many diseases, there is a predictable clinical course, or pattern that the disease takes and can therefore be classified as progressive. All three, diabetes, cancer, and chemical dependence, are illnesses that cause a large degree of human suffering.

A veterinarian is a highly trained professional. As a health care provider, the public benefits from the provider's expertise and knowledge. A shortage of practitioners will limit the availability of care that the public receives because with fewer providers, some of the population may not be able to receive the care needed. By installing a peer assistance program, the Board will be able to help veterinarians receive help, whether they are chemical dependent or have psychological problems. By providing another avenue, the Board would be able to help and not just punish. The revocation or suspension of a license is, and should be, the last resort for the Board. While preventing public harm is its main concern, so is the public well being. By putting a veterinarian out of practice, the Board creates a lose-lose situation. The licensees lose because they can no longer practice and the continuation of their career is improbable. The public loses a veterinarian that could have been treated and gone on to serve the public.

There are arguments against this proposal. Some would say that a licensee who abuses drugs is a danger. The argument presented in this recommendation does not disagree with that. A veterinarian abusing a substance may not be able to provide adequate care. Chemical dependency is progressive. If left untreated it will worsen as time goes on. The goal is to be aware of the illness early so that when a veterinarian becomes a danger to the public, the Board can take the appropriate action. A program allows the Board to achieve two goals, protect the public from harm and maintain the profession's well being.

In being able to reach veterinarians, a program needs the help of the Board. The Board is able to provide the extra motivation for licensees to get the help they need. The threat of losing their license adds extra incentive to seek out treatment. The relationship between the Board and the peer assistance program is one that combines a disciplinary body and an advocacy program.

Establishment of a peer assistance program will help keep otherwise-qualified, highly trained veterinarians in the profession, and provide needed professional services to the public.

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***Recommendation 7 – Revise the grounds for discipline regarding alcohol and drug abuse.***

Section 12-64-111(1)(v), C.R.S., states a licensee may be disciplined for:

Addiction to, dependence on, or the habitual or excessive use or abuse of intoxicating liquors, a habit-forming drug, or any controlled substance as defined in 12-22-303(7).

This provision should be amended to simply prohibit the habitual or excessive use or abuse of alcohol or controlled substances, and the references to “addiction” and “dependence” should be repealed.

Addiction and dependence to alcohol or drugs is difficult to prove, and punishing someone for an addiction may be unconstitutional.

The Colorado Court of Appeals ruled in the *Colorado State Board of Nursing v. Crickenberger*,<sup>112</sup> that in order for addiction or dependency to be grounds for discipline, an addiction or dependency must be proven at the time of the hearing.

Moreover, the U.S. Supreme Court ruled in *Robinson v. California*,<sup>113</sup> that addiction is an illness, which may be contracted innocently or involuntarily, and, therefore, the State of California could not punish a person based on such grounds. While this was a criminal case, it could be argued similarly in an administrative one.

The “excessive use or abuse of alcohol” has been established as the standard for disciplinary action in Colorado, in which it is the act of excessively using or abusing that is grounds for discipline, and not the condition of being an addict.

This was supported by the Colorado Court of Appeals decision in *Colorado State Board of Medical Examiners v. Davis*,<sup>114</sup> when it ruled that disciplinary action based on excessive use of alcohol or a controlled substance does not require current addiction or use of alcohol or controlled substances at the time of the disciplinary hearing.

Thus, the General Assembly should amend the Act to remove references to “addiction” and “dependence,” and to simply make, “the habitual or excessive use or abuse of alcohol, any habit forming drug, or controlled substance” an infringement of the Act.

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<sup>112</sup> 757 P.2d 1167 (Colo. App. 1988)

<sup>113</sup> 370 U.S. 660 (1962)

<sup>114</sup> 893 P.2d 1365 (Colo. App. 1995)

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***Recommendation 8 - Modify the definition of VCPR to include arranged follow-up care.***

The definition of VCPR is essential to the practice of veterinary medicine and should be strictly adhered to by the Board and regulated community. The reason VCPR is defined is to protect and define the responsibilities of all of those involved in veterinary treatment: the caregiver or the *veterinarian*, the animal's owner or the *client*, and the animal or *patient*.

Currently, the one section of the VCPR statutory definition reads, "The practicing veterinarian is readily available for follow-up in the case of adverse reactions or failure of regimen of therapy."<sup>115</sup> This is not always practical in the present-day environment. Animal owners or veterinarians may travel great distances for treatment and often veterinary practices are business entities with more than one veterinarian on staff, to list a couple of reasons. Clients are unprotected by the VCPR when the original examining veterinarian is not available for later emergency treatment.

The definition of VCPR should be modified to include follow-up care by someone else, arranged by the examining veterinarian. The following language is suggested by the American Veterinary Medical Association and is more in line with expectations regarding the standard of care:

The practicing veterinarian is readily available, or has arranged for emergency coverage, for follow-up evaluation in the event of adverse reactions or failure of the treatment regimen.

This is more practical in the current practice climate where veterinarians partner together in clinical practice, veterinarian hospitals have multiple doctors on call, and specialty practices are more available. It adds protection for the consumer because now the VCPR with the original veterinarian is not invalidated because that veterinarian was not available for emergency follow-up.

Modify the definition of VCPR to include arranged follow-up.

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<sup>115</sup> §12-64-103(15.5)(c), C.R.S.

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***Recommendation 9 – Require veterinarians who have had their licenses revoked, or who have surrendered their licenses in lieu of disciplinary action, to wait two years to reapply.***

Generally, healthcare professionals who have had their licenses revoked, or who have surrendered their licenses in lieu of revocation, must wait two years to reapply for licensure. Dentists, midwives, podiatrists, and pharmacists, are all required to wait two years. Requiring individuals to wait a specified period before reapplying enhances public protection by assuring they possess minimal competency when they re-enter the workforce. Given the severity of the violations that result in revocation or surrender of a license, and the amount of time and resources it takes to process revocations and surrenders, two years is an appropriate waiting period.

The General Assembly should establish a two-year waiting period for veterinarians who have had their licenses revoked, or who have surrendered their licenses.

***Recommendation 10 – Add language to the Act authorizing the Board to suspend a license for not complying with an order of the Board.***

At this time, the Board must initiate a new complaint against a licensee who does not comply with a Board order, by, for example, failing to take courses deemed necessary to correct practice deficiencies. Initiating a new complaint proves to be a time consuming and costly practice. Allowing the Board to suspend the license of a veterinarian who does not comply with a Board order would be a more efficient use of legal resources.

Upon the failure of the licensee to comply with any conditions imposed by the Board, the Board should be authorized to suspend the license until such time as the licensee complies with such conditions.

***Recommendation 11 – Amend the prohibited activities in section 12-64-111(1), C.R.S., to include failure to respond to a complaint and not updating contact information.***

The Act is silent on whether the Board has the authority to formally discipline licensees for failing to respond to complaints or not updating the address on record with the Board.

When a complaint is filed against a licensed veterinarian, the Board sends the licensee a letter outlining the nature of the complaint and requires a response within 30 days of receiving the letter. Although a response is required, there is no formal authority in the Act enabling the Board to discipline the licensee for failing to respond to a complaint within 30 days.

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A response is important because, among other reasons, it gives the veterinarian an opportunity to provide information to the Board that may help it determine the merit of a complaint and whether a violation of the Act or applicable rules actually occurred. Failing to respond to a 30-day letter and not having an updated address may delay the process and increase expenditures related to the Board's directive to investigate all complaints against licensed veterinarians.

Directly tied to complaint-related correspondence between the Board and licensee is that the Board must know how to contact a licensee when a licensing issue arises. This is true whether the issue is administrative or complaint-related. If the address on record is not current, the Board has no way to contact the licensee. Considering the importance of the Board's role in protecting the public, it is vital that licensee contact information be kept current. Therefore, licensees should be required to update the contact information on record with the Board within 30 days of a change in the information.

To ensure that the regulatory process is not impeded by unnecessary delays resulting in unnecessary added time and expense, the General Assembly should include failure to respond to a complaint and failure to update contact information as prohibited activities in section 12-43-222(1), C.R.S.

***Recommendation 12 - Include the failure to properly supervise staff or students as a violation in the grounds for discipline.***

There are times when a veterinarian must be present during administration of treatment and other times when directing treatment without being present is appropriate, i.e., providing direct or indirect supervision. However, it must be clear that in either case it is the licensed practitioner who is responsible for what occurs.

There are cases when veterinarians have failed to supervise employees performing tasks that were clearly beyond the employee's level of training. There are also instances when students have taken on too much responsibility without direction or authorization. In either case, it should be clear that it is the licensee's responsibility to supervise and he or she is culpable by not protecting the client/public. In the current practice environment, when one veterinarian may supervise several people and where staff members may answer to multiple veterinarians simultaneously, knowing who is responsible for delegated activities is important.

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Under the Act currently, the Board could cite and discipline a veterinarian for, “Incompetence, negligence, or other malpractice in the practice of veterinary medicine,”<sup>116</sup> in some of these cases, but given today’s workplace conventions more specificity is desirable. Rather than citing a licensee for incompetence, the more specific violation of improper supervision is preferable. The Board has the ability to make rules and regulations to carry out all provisions of the Act.<sup>117</sup> It is an appropriate use of its authority to use that power in this circumstance.

More specificity regarding violations leads to less vagueness by veterinarians in interpreting their obligations, and results in greater patient protection. Therefore, include the failure to properly supervise staff or students as a violation in the grounds for discipline.

***Recommendation 13 – Repeal the requirement for notice and a hearing when the Governor removes a member of the Board.***

The Governor appoints the members of the Board, and members serve at the pleasure of the Governor. However, section 12-64-105(5), C.R.S., requires notice and a hearing for the Governor to remove a member of the Board for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

As members serve at the pleasure of the Governor, any requirement for notice and a hearing is unnecessary. Moreover, the requirement is inconsistent with other practice acts, including, but not limited to, the Dental Practice Act,<sup>118</sup> the Nurse Practice Act,<sup>119</sup> the Chiropractic Practice Act,<sup>120</sup> and the Medical Practice Act.<sup>121</sup>

***Recommendation 14 – Make technical changes to the Act.***

During the course of this sunset review, the Board, its staff and researchers found several places in the Act that need to be updated and clarified to reflect current practices, conventions, and technology. While recommendations of this nature generally do not rise to the level of protecting the health, safety, and welfare of the public, unambiguous laws make for more efficient implementation. Unfortunately, all of the statutes pertaining to veterinary medicine are commonly only examined by the General Assembly during a sunset review.

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<sup>116</sup> § 12-64-111(1)(k), C.R.S.

<sup>117</sup> § 12-64-105(9)(j), C.R.S.

<sup>118</sup> § 12-35-104(1)(a), C.R.S.

<sup>119</sup> § 12-38-105, C.R.S.

<sup>120</sup> § 12-33-103(1), C.R.S.

<sup>121</sup> § 12-36-103(3), C.R.S.

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The following list of such technical changes is provided as a means of illustrating examples only. It is not exhaustive of the types of technical changes that should be made:

- Make the Act gender neutral.
- Section 12-64-105(1), C.R.S. – Add, “Members of the board may remain on the board until a successor is appointed.” This allows the Board to ensure a quorum and operate for short periods of time until replacement members are seated.
- Section 12-64-105(2), C.R.S. – Strike, “on the board who are consumers of services provided by a licensed veterinarian” and replace with, “from the public at large who have no financial or professional association with the veterinary profession.” This language is consistent with other healthcare practice acts.

Therefore, the General Assembly should make technical changes to the Act.

#### ***Administrative Recommendation 1 – Define levels of supervision in rule.***

Supervision of staff, the chain of authority in veterinary care, and the premises in which veterinary medicine is practiced are key to the regulation of veterinary medicine. There are some veterinary procedures that are risky and require veterinarian presence. Others are less hazardous and a veterinarian may delegate them to an employee while still assuming responsibility.

However, the use of the word “supervision,” or more pointedly, the manner in which the Act modifies the word “supervision,” is inconsistent and confusing, making it difficult for the Board to interpret legislative intent:

- “Direct supervision” is used once;
- “On-the-premises supervision” is used twice;
- “Direct, on-the-premises supervision” is used three times; and
- “Direct, on-the-premises, personal supervision” is used once.

These phrases occur throughout the Act, however, none of them is defined. The solution to this multiple modifier problem is to define the different levels of supervision in rule based on the supervision necessary in the specific circumstance. More specifically, what is meant by supervision, direct supervision, on-the-premises supervision, or whatever terms the Boards needs to clarify to implement the Act. The Board can then be as specific as is needed in both definition and application. Clarifying these terms or defining new more explicit terms in rule, gives the Board structured latitude when determining the validity and disposition of complaints.

Therefore, the Board should define levels of supervision in rule.