

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

A Bill

HOUSE BILL 2417

5 By: Representative D. Elliott
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS SECTIONS OF THE
10 VETERINARY MEDICAL PRACTICE ACT; TO CLARIFY
11 MEMBERSHIP ON THE VETERINARY MEDICAL EXAMINING
12 BOARD; TO ADOPT A NEW LICENSING EXAMINATION; TO
13 CLARIFY THE GROUNDS FOR CENSURE; AND FOR OTHER
14 PURPOSES.

Subtitle

16 AN ACT TO AMEND VARIOUS SECTIONS OF THE
17 VETERINARY MEDICAL PRACTICE ACT.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. Arkansas Code 17-101-102 is amended to read as follows:
24 17-101-102. Definitions.

25 As used in this chapter, unless the context otherwise requires:

26 (1) "Animal" means any animal, other than man, and includes fowl,
27 birds, fish, and reptiles, whether wild or domestic, living or dead;

28 (2) "Practice of veterinary medicine" means:

29 (A) The diagnosis, treatment, correction, change, relief, or
30 prevention of animal disease, deformity, defect, injury, or other physical or
31 mental condition, including the prescribing or administration of any
32 prescription drug, medicine, biologic, apparatus, application, anesthetic, or
33 other therapeutic or diagnostic substance or technique, on any animal,
34 including, but not limited to, acupuncture, dentistry, animal psychology,
35 animal chiropractic, theriogenology, surgery, including cosmetic surgery, any
36 manual, mechanical, biological, or chemical procedure for testing for

1 pregnancy or for correcting sterility or infertility, or to tender service or
2 recommendations with regard to any of the above;

3 (B) To represent, directly or indirectly, publicly or privately,
4 an ability and willingness to do any act described in subdivision (2)(A) of
5 this section;

6 (C) The use of any title, words, abbreviation, or letters in a
7 manner or under circumstances which induce the belief that the person using
8 them is qualified to do any act described in subdivision (2)(A) of this
9 section. Such use shall be prima facie evidence of the intention to
10 represent oneself as engaged in the practice of veterinary medicine; and

11 (D) Collecting blood or other samples for the purpose of
12 diagnosing disease or other conditions. This shall not apply to unlicensed
13 personnel employed by the United States Department of Agriculture or the
14 Arkansas Livestock and Poultry Commission in disease control programs carried
15 out under the authority of the United States Department of Agriculture or the
16 State of Arkansas. This shall not apply to veterinary technicians or
17 assistants acting under the direct supervision of a veterinarian as set forth
18 in § 17-101-306(b) and (e) except for collecting blood for state or federal
19 tests requiring that the licensed veterinarian draw the sample;

20 (3) "Veterinarian" means a person who has received a professional
21 degree from a college of veterinary medicine or any person who is now
22 licensed to practice veterinary medicine in this state;

23 (4) "Licensed veterinarian" means a person who is validly and
24 currently licensed to practice veterinary medicine in this state as a general
25 practitioner or in a specialty area as the board may by regulation provide;

26 (5) "Accredited or approved college of veterinary medicine" means any
27 veterinary college or any division of a university or college that offers the
28 degree of Doctor of Veterinary Medicine, or its equivalent, and that conforms
29 to the standards required for accreditation or approval by the American
30 Veterinary Medical Association;

31 (6) "Board" means the Veterinary Medical Examining Board;

32 (7) "Veterinary technician" means a person who has received a diploma
33 or its equivalent from a college-level program accredited by the American
34 Veterinary Medical Association and provides veterinary services under the
35 supervision and direction of a licensed veterinarian who is responsible for
36 the performance of that technician;

1 (8) "Educational Commission for Foreign Veterinary Graduates
2 certificate" means a certificate issued by the American Veterinary Medical
3 Association Educational Commission for Foreign Veterinary Graduates
4 indicating that the holder has demonstrated knowledge and skills equivalent
5 to those possessed by a graduate of an accredited or approved college of
6 veterinary medicine;

7 (9) "Veterinary medicine" includes veterinary surgery, theriogenology,
8 dentistry, acupuncture, animal psychology, chiropractic, and all other
9 branches or specialties of veterinary practice;

10 (10) "Veterinary premises" means any place or unit from which the
11 practice of veterinary medicine is conducted;

12 (11) "Veterinarian-client-patient relationship" means:

13 (A) The veterinarian has assumed the responsibility for making
14 medical judgments regarding the health of the animal and the need for medical
15 treatment, and the client, that is, the owner or caretaker, has agreed to
16 follow the instruction of the veterinarian;

17 (B) There is sufficient knowledge of the animal by the
18 veterinarian to initiate at least a general or preliminary diagnosis of the
19 medical condition of the animal. This means that the veterinarian has
20 recently seen and is personally acquainted with the keeping and care of the
21 animal, by virtue of an examination of the animal or by medically appropriate
22 and timely visits to the premises where the animal is kept; and

23 (C) The practicing veterinarian is readily available for follow-
24 up in case of adverse reactions or failure of the regimen of therapy; ~~and~~

25 (12) "Person" means any individual, firm, partnership, association,
26 joint venture, cooperative, or corporation, or any other group or combination
27 acting in concert, and whether or not acting as principal, trustee,
28 fiduciary, receiver, or as any kind of legal or personal representative, or
29 as the successor in interest, assigning agent, factor, servant, employee,
30 director, officer, or any other representative of such person;

31 (13) "Immediate supervision" means observation, in the immediate
32 vicinity, with the opportunity for the supervising veterinarian to advise or
33 physically intervene in each procedure; and

34 (14) "Direct supervision" or "direct personal supervision" means the
35 veterinarian must be on-site and instantly available for consultation.

36

SECTION 2. Arkansas Code 17-101-201 is amended to read as follows:

17-101-201. Creation - Members - Organization.

(a) There is created the Veterinary Medical Examining Board.

(b) The board shall consist of five (5) members appointed by the Governor for terms of five (5) years.

(1) Four (4) members shall be licensed to practice veterinary medicine in the State of Arkansas and shall be in good standing and members of the Arkansas Veterinary Medical Association and shall be graduates of an accredited or approved college of veterinary medicine or holders of an Educational Commission for Foreign Veterinary Graduates certificate and shall be actively engaged in the practice of veterinary medicine in this state and shall have at least five (5) years of experience in the practice of veterinary medicine.

(2) One (1) member shall be a public member who shall be a resident of this state who has attained the age of majority and shall not be, nor shall ever have been, a veterinarian or the spouse of a veterinarian, or a person who has ever had any material financial interest in the provision of veterinarian services or who has engaged in any activity directly related to the practice of veterinary medicine.

(c)(1) A board member's term of office shall expire on March 1 of the last year of the term of appointment.

(2) Each member shall serve until his successor has been appointed and qualified.

(d) The board shall elect from its membership a chairman and a secretary-treasurer.

(e) A majority of the members of the board constitutes a quorum for the transaction of business, except that the vote of four (4) members is required for suspension or revocation of a license.

(f) The members of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

SECTION 3. Arkansas Code 17-101-301 is amended to read as follows:

17-101-301. Veterinarians - Application - Qualifications.

(a) Any veterinarian or licensed veterinarian desiring a license to practice veterinary medicine in this state may make written application to the board showing that he is:

- 1 (1) At least twenty-one (21) years of age; and
- 2 (2) A person of moral integrity and acceptable ethical
- 3 standards.

4 (b) The application for licensure to practice veterinary medicine in
 5 the State of Arkansas shall be written, signed by the applicant, and
 6 submitted to the board at least thirty (30) days prior to the exam,
 7 including, but not limited to, the information set forth below and
 8 accompanied by a nonrefundable application fee established by the board:

- 9 (1) A current photograph of the applicant;
- 10 (2) A certified transcript of the applicant's veterinary school
- 11 records;
- 12 (3) A copy of the applicant's diploma from an accredited
- 13 veterinary school or an affidavit from the dean of such veterinary school
- 14 certifying the applicant's ability to graduate if he has not graduated at the
- 15 time of application, but a copy of the diploma must be submitted upon
- 16 availability and before the exam date;
- 17 (4) Educational Commission on Foreign Veterinary Graduates
- 18 Certificate or an equivalent program approved by the board, if applicable;
- 19 (5) National Board Exam score and Clinical Competency Test score
- 20 ~~from the national testing agency~~ or the North American Veterinary Licensing
- 21 Examination score, or its future equivalent reported through the Veterinary
- 22 Information Verification Agency, or its future equivalent. The Clinical
- 23 Competency Test is not required for a poultry specialty license.

24 (c)(1) The board, by regulation, may require that all applicants for
 25 licensure by examination complete a preceptorship program during their senior
 26 year under the supervision of a veterinarian licensed and ~~and~~ in good
 27 standing in any state, territory, or district of the United States.

28 (2) The supervising veterinarian shall submit an affidavit to
 29 the board stating that the applicant has satisfactorily completed the
 30 preceptorship.

31 (d)(1) If the board finds that the applicant possesses the proper
 32 qualifications, it shall admit him to the next examination.

33 (2) If an applicant is found unqualified to take the examination
 34 or to receive a license without examination, the board shall immediately
 35 notify the applicant in writing of its findings and the grounds for same.

36

1 SECTION 4. Arkansas Code 17-101-302 is amended to read as follows:
2 17-101-302. Veterinarians - Examinations.

3 (a) The board, at such times as it may designate, shall conduct an
4 examination of applicants for license to practice veterinary medicine in the
5 State of Arkansas. All examinations shall be in writing, supplemented by
6 oral interviews and practical examinations as the board may deem necessary,
7 and shall be so conducted as to ensure absolute impartiality in grading.

8 (b) The board hereby adopts the National Board Examination, ~~or its~~
9 ~~future equivalent,~~ and the Clinical Competency Test, ~~or its future~~
10 ~~equivalent,~~ or the North American Veterinary Licensing Examination, or its
11 future equivalent, as a basis for licensure in the State of Arkansas, along
12 with a written examination conducted by the board.

13 (c) The board requires that all applicants for licensure to practice
14 veterinary medicine in the State of Arkansas shall pass the National Board
15 Examination, ~~or its future equivalent,~~ and the Clinical Competency Test, ~~or~~
16 ~~its future equivalent,~~ or the North American Veterinary Licensing
17 Examination, or its future equivalent, in addition to any and all state
18 examinations, written examinations, oral interviews, and practical
19 demonstrations as the board may request or require.

20 (d) All applicants are required to complete a written examination
21 conducted by the board composed of, but not limited to, the Arkansas
22 Veterinary Medical Practice Act, § 17-101-101 et seq., state and federal
23 statutes relating to prescription and controlled drugs, ethics of veterinary
24 medicine, and rules and regulations of the Arkansas Livestock and Poultry
25 Commission, the United States Department of Agriculture, Animal and Plant
26 Health Inspection Service, and Rabies Control.

27 (e) Poultry specialty applicants shall sit for a written examination
28 conducted by the board on poultry veterinary medicine. A license will be
29 issued to poultry specialty applicants with a seventy percent (70%) or better
30 score on the state board examination and a passing score on the National
31 Board Examination or its equivalent.

32 (f) Provided, that the provisions of this section shall not be deemed
33 to apply to those persons who are duly licensed under the laws of this state
34 to practice veterinary medicine on April 19, 1993, it being the intention
35 hereof to allow such license holders to continue in the practice of their
36 profession and to approve and confirm all licenses so held on April 19, 1993.

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SECTION 5. Arkansas Code 17-101-305 is amended to read as follows:

17-101-305. Veterinarians - Denial, suspension, or revocation of license.

(a) Upon written complaint by any person or on the board's own motion and after notice and hearing as prescribed in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the board may deny, suspend for a definite period, or revoke the license of any veterinarian, and/or impose a civil penalty for:

(1) Fraud, misrepresentation, or deception in obtaining a license or permit;

(2) Adjudication of insanity;

(3) Use of advertising or solicitation which is false, misleading, or otherwise deemed unprofessional under regulations promulgated by the board;

(4) Conviction of a felony, or other crime involving moral turpitude. A copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence;

(5) Incompetence, gross negligence, or other malpractice in the practice of veterinary medicine;

(6) Having professional association with or employing any person practicing veterinary medicine unlawfully;

(7) Fraud or dishonesty in the application or reporting of any test for disease in animals;

(8) Failure to maintain professional premises and equipment in a clean and sanitary condition in compliance with regulations promulgated by the board;

(9) Dishonesty or gross negligence in the inspection of foodstuffs or in the issuance of health or inspection certificates;

(10) Cruelty to animals;

(11) Unprofessional conduct by violation of a regulation promulgated by the board under this chapter;

(12) Being unable to practice as a veterinarian with reasonable skill and safety to patients because of illness, ~~drunkenness, excessive or~~ the use of drugs, alcohol, narcotics, or chemicals, or as a result of any mental or physical condition;

1 (13) Revocation, suspension, surrender or other disciplinary
2 sanction of a license to practice veterinary medicine by another state,
3 territory, or district of the United States on grounds other than nonpayment
4 of a registration fee or suspension of privileges by any other regulatory
5 agency including the failure to report any such adverse action to the board
6 within sixty (60) days of the final action;

7 (14) The use, prescription, or sale of any veterinary
8 prescription drug, or the prescription of an extra-label use of any over-the-
9 counter drug in the absence of a valid veterinarian-client-patient
10 relationship;

11 (15) Overtreating patients or charging for services which did
12 not occur unless the services were contracted for in advance, or for services
13 which were not rendered or documented in the patient's records, or charging
14 for services which were not consented to by the owner of the patient or the
15 owner's agent;

16 (16) Failing to furnish details of a patient's medical records
17 to another treating veterinarian, hospital, clinic, owner, or owner's agent,
18 upon proper request or waiver by the owner or owner's agent, or failing to
19 comply with any other law relating to medical records; except, X rays
20 prepared by the licensed veterinarian shall remain the property of the
21 veterinarian and shall be returned upon request or as otherwise agreed
22 between the veterinarian and client;

23 (17) Failure of any applicant or licensee to cooperate with the
24 board during any investigation, if such investigation does not concern the
25 applicant or licensee;

26 (18) Failure to comply with any subpoena or subpoena duces tecum
27 from the board, or an order of the board;

28 (19) Failure to timely pay license or registration renewal fees
29 as specified in § 17-101-309;

30 (20) Violating a probation agreement with the board or any other
31 licensing authority of this state, another state or territory of the United
32 States, or a federal agency; or

33 (21) Violating any informal consent agreement for discipline
34 entered into by an applicant or licensee with the board or any other
35 licensing authority of this state, another state or territory of the United
36 States, or a federal agency.

1 (b) Any person whose license is suspended or revoked by the board
2 under this section may, at the discretion of the board, be relicensed or
3 reinstated by the board at any time upon written application to the board
4 showing cause to justify relicensing or reinstatement.

5 (c)(1) Upon suspension or revocation of a license, the actual license
6 certificate must be surrendered to the board within thirty (30) days of the
7 board's order unless the action is appealed and a stay is issued.

8 (2) If the board prevails upon appeal or the stay is lifted, the
9 license certificate shall be surrendered within ten (10) days of the final
10 order of the court.

11
12 SECTION 6. Arkansas Code 17-101-307 is amended to read as follows:
13 17-101-307. License required - Exemptions.

14 (a) No person may practice veterinary medicine in this state who is
15 not a licensed veterinarian or the holder of a valid temporary permit issued
16 by the board.

17 (b) This chapter shall not be construed to prohibit:

18 (1) Employees of the federal, ~~or state, or local~~ government, or
19 employees of local government who are certified by an agency approved by the
20 board to perform euthanasia from performing their official duties;

21 (2) Regular students in a veterinary school or college from
22 performing duties or actions assigned by the school or college or working
23 under the direct personal supervision of a ~~licensed~~ veterinarian licensed in
24 the State of Arkansas;

25 (3) Reciprocal aid of neighbors in performing routine accepted
26 livestock management practices without compensation;

27 (4) Any veterinarian licensed in any foreign jurisdiction from
28 consulting with a licensed veterinarian;

29 (5) The owner of an animal, his consignees, and their employees
30 from performing routine accepted livestock management practices in the care
31 of animals belonging to the owner;

32 (6) A member of the faculty of a veterinary school from
33 performing his regular functions, or a person from lecturing or giving
34 instruction or demonstration at a veterinary school or in connection with a
35 continuing education course or seminar for licensed veterinarians or
36 registered technicians;

1 (7) A person from engaging in bona fide scientific research
2 which reasonably requires experimentation involving animals;

3 (8)(A) Any act, task, or function performed by a veterinary
4 technician at the direction of and under the supervision of a licensed
5 veterinarian, when:

6 (i) The technician is certified by and annually
7 registered with the board as one qualified by training or experience to
8 function as an assistant to a veterinarian;

9 (ii) The act, task, or function is performed at the
10 direction of, and under the supervision of, a licensed veterinarian in
11 accordance with rules and regulations promulgated by the board; and

12 (iii) The services of the veterinary technician are
13 limited to assisting the veterinarian in the particular fields for which the
14 assistant has been trained, certified, and registered.

15 (B) Subdivision (b)(8)(A) of this section shall not limit
16 or prevent any veterinarian from delegating to a qualified person any acts,
17 tasks, or functions which are otherwise permitted by law, but which do not
18 include diagnosis, prescribing medication, or surgery;

19 (9) Any chiropractor licensed in this state and certified by the
20 American Veterinary Chiropractic Association from performing chiropractic
21 upon animals so long as the chiropractic is performed under the immediate
22 supervision of an Arkansas licensed veterinarian.

23
24 SECTION 7. Arkansas Code 17-101-308 is amended to read as follows:

25 17-101-308. Veterinary technicians - Denial, suspension, or revocation
26 of certificate.

27 (a) The board may deny or suspend any registration or deny or revoke
28 any certificate of qualification upon the grounds that the applicant or
29 veterinary technician is guilty of:

30 (1) Soliciting patients for any practitioner of the veterinary
31 healing arts;

32 (2) Soliciting or receiving any form of compensation from any
33 person other than his registered employer for performing as a veterinary
34 technician;

35 (3) Willfully or negligently divulging a professional secret or
36 discussing a veterinarian's diagnosis or treatment without the express

1 permission of the veterinarian;

2 (4) Any offense punishable by incarceration in the Department of
3 Correction or federal prison. A copy of the record of conviction, certified
4 by the clerk of the court entering the conviction, shall be conclusive
5 evidence;

6 (5) Being unable to practice as a veterinary technician with
7 reasonable skill and safety to patients because of illness, ~~drunkenness,~~
8 ~~excessive or the~~ use of drugs, alcohol, narcotics, or chemicals, or as a
9 result of any mental or physical condition;

10 (6) Fraud or misrepresentation in applying for or procuring a
11 certificate of qualification to perform as a veterinary technician in
12 Arkansas, or in applying for or procuring an annual registration;

13 (7) Impersonating another person registered as a veterinary
14 technician, or allowing any person to use his certificate of qualification or
15 registration;

16 (8) Aiding or abetting the practice of veterinary medicine by a
17 person not licensed by the board;

18 (9) Gross negligence in the performance of duties, tasks, or
19 functions assigned to him by a licensed veterinarian;

20 (10) Manifesting incapacity or incompetence to perform as a
21 veterinary technician; or

22 (11) Conduct unbecoming a person registered as a veterinary
23 technician or detrimental to the best interests of the public.

24 (b) Any person whose certificate of qualification is suspended or
25 revoked by the board under this section may, at the discretion of the board,
26 be recertified or reinstated by the board at any time upon written
27 application to the board showing cause to justify recertification or
28 reinstatement.

29

30 SECTION 8. Arkansas Code 17-101-314 is amended to read as follows:
31 17-101-314. Practicing without a license - Board penalties.

32 (a)(1)(A) If, upon completion of an investigation, the executive
33 secretary of the board has probable cause to believe that a veterinarian or
34 an unlicensed person acting as a veterinarian has violated the provisions of
35 this chapter, he or she may issue a citation to the veterinarian or
36 unlicensed person, as provided in this section.

1 (B) Each citation shall be in writing and shall describe
2 with particularity the nature of the violation, including a reference to the
3 provision of this chapter alleged to have been violated.

4 (C) Each citation may also contain an order of abatement
5 fixing a reasonable time for abatement of the violation, and may contain an
6 assessment of a civil penalty not to exceed five thousand dollars (\$5,000).

7 (2) The citation shall be served upon the veterinarian or
8 unlicensed individual personally or by any type of mailing requiring a return
9 receipt.

10 (b)~~(1)~~ Before any citation may be issued, the executive secretary
11 shall submit the alleged violation for review to at least one (1) member of
12 the board.

13 ~~(2) Such review shall include attempts to contact the~~
14 ~~veterinarian or unlicensed individual to discuss and resolve the alleged~~
15 ~~violation.~~

16 (c)(1) Upon conclusion of the board designee's review, the designee
17 shall prepare a finding of fact and a recommendation.

18 (2) If the board designee concludes that the veterinarian or
19 unlicensed person has violated any provision of this chapter, a civil
20 citation shall be issued to the veterinarian or unlicensed person.

21 (d)(1) If a veterinarian or unlicensed person desires to
22 administratively contest a civil citation or the proposed assessment of a
23 civil penalty, he or she shall, within ten (10) business days after service
24 of the citation, notify the executive officer in writing of his or her
25 request ~~for an informal conference with the executive secretary and the board~~
26 ~~designee.~~

27 ~~(2) The informal conference shall be held within twenty (20)~~
28 ~~days from the receipt of the request. Upon receipt of the request a hearing~~
29 ~~on the matter shall be scheduled before the board.~~

30 ~~(3) At the conclusion of the informal conference, the board~~
31 ~~designee may affirm, dismiss, or modify the citation or proposed assessment~~
32 ~~of a civil penalty, and he or she shall state with particularity in writing~~
33 ~~his or her reasons for the actions, and shall immediately transmit a copy~~
34 ~~thereof to the board, the veterinarian or unlicensed person, and the person~~
35 ~~who submitted the complaint.~~

36 (e) ~~If the veterinarian or unlicensed person desires to~~

1 ~~admini-strati-vely con-test a deci-sion made af-ter the in-formal con-fer-ence, he or~~
2 ~~she shall in-form the ex-ecutive se-cretary in writ-ing with-in five (5) busi-ness~~
3 ~~days af-ter he or she re-ceive the deci-sion re-sult-ing from the in-formal~~
4 ~~con-fer-ence.~~

5 ~~(f)(e)~~ Any admi-ni-strative hear-ing con-ducted sub-sequent to the in-formal
6 ~~con-fer-ence~~ shall be gov-erned by the Arkan-sas Admi-ni-strative Pro-cedure Act, §
7 25-15-201 et seq.

8 ~~(g)(f)~~ In ad-dition to the pen-al-ties pro-vided in this sec-tion, the
9 board may in-sti-tute legal pro-ceed-ings to en-join the vi-o-la-tion of the
10 pro-visions of this chap-ter or the rules of the board in any court of
11 com-petent ju-ris-dic-tion, and the court may grant a tem-por-ary or per-manent
12 in-junc-tion re-strain-ing the vi-o-la-tion there-of.

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