

Unprofessional Conduct in the Practice of Veterinary Medicine

I.D. No. EDU-22-22-00007-A

Amendment of section 29.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 6504, 6507, 6509, 6701 and 6702
Subject: Unprofessional Conduct in the practice of veterinary medicine.

Purpose: To establish unprofessional conduct for multi-veterinarian and solo veterinarian practices.

Text: Subdivision (a) of section 29.6 of the Rules of the Board of Regents is amended to read as follows:

(a) Unprofessional conduct in the practice of veterinary medicine shall include all conduct prohibited by section 29.1 of this Part except as provided in this section, and shall also include the following:

- (1) ...
- (2) ...
- (3) ...
- (4) ...
- (5) ...
- (6) ...
- (7) ...

(8) abandoning or neglecting an animal patient under and in need of immediate care, without making reasonable arrangements for the continuation of such care; [or]

(9) entering into an arrangement or agreement with a pharmacy for the compounding and/or dispensing of coded or specially marked prescriptions[.];

(10) for solo veterinary practices:

(i) failure to clearly identify, in the patient record, the treating veterinarian and any veterinary technician providing patient care for each patient visit, including any patient admitted as an in-patient;

(ii) failure of the veterinarian, who is managing the care of the patient, to adequately supervise both licensed and unlicensed personnel in the practice, who have been assigned to provide patient care within said practice; or

(iii) failure of the veterinarian to provide a practice setting, which includes appropriate supervision, as well as the necessary equipment, supplies, human resources, medical records, and client communication platforms and/or systems where licensed personnel can provide adequate patient care within said practice; or

(11) for multi-veterinarian veterinary practices:

(i) failure to clearly identify, in the patient record, the treating veterinarian and any veterinary technician providing patient care for each patient visit, including the veterinarian who is responsible for managing the care of any patient admitted as an in-patient;

(ii) failure of the veterinarian, who is managing the care of the patient, to adequately supervise both licensed and unlicensed personnel in the practice, who have been assigned to provide patient care within said practice; or

(iii) failure of a principal, in a multi-doctor practice, to provide a practice setting, which includes appropriate supervision, as well as the necessary equipment, supplies, human resources, medical records, and client communication platforms and/or systems where licensed personnel can provide adequate patient care within said practice.

Text of proposed rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112EB, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Data, views or arguments may be submitted to: Sarah S. Benson, Deputy Commissioner, NYS Education Department, Office of the Professions, 89 Washington Avenue, 2nd Floor EB, West Wing, Albany, NY 12234, (518) 486-1727, email: REGCOMMENTS@nysed.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions. Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and the practice of the professions. Subdivision (9) of section 6509 of the Education Law authorizes the Board of Regents to define unprofessional conduct in the professions. Section 6701 defines the practice of veterinary medicine.

Section 6702 defines the use of the title “veterinarian.”

2. LEGISLATIVE OBJECTIVES:

Veterinary practices, like others across multiple professions, are trending towards larger multi-practitioner entities, such as professional service corporations. As these practice patterns shift, there is a corresponding need to ensure that veterinarian accountability for patient care remains clear, and to establish expected procedures for ensuring such accountability.

As multi-veterinarian practices continue to expand in both number and/or size, investigations and prosecutions of veterinary disciplinary complaints involving such practices have become increasingly challenging for Department staff and the State Board for Veterinary Medicine. For example, it has become progressively more difficult to determine which veterinarians were responsible for the care and treatments administered to the patients at issue, especially in situations where multiple veterinarians cover various shifts during a patient's overnight or longer stay and the patient records are unclear as to whom was responsible for the patient at the time of an alleged adverse incident.

The proposed rule amends subdivision (a) of section 29.6 of the Rules of the Board of Regents (Regents Rules) to address this situation by clarifying that unprofessional conduct in the practice of veterinary medicine by multi-veterinarian practices includes the following misconduct: (1) failure to clearly identify, in the patient record, the treating veterinarian and any veterinary technician providing patient care for each patient visit, including the veterinarian who is responsible for managing the care of any patient admitted as an in-patient; (2) failure of the veterinarian who is managing the care of the patient to adequately supervise both licensed and unlicensed personnel in the practice, who have been assigned to provide patient care within said practice; or (3) failure of a principal(s)/owner(s), in a multi-doctor practice, to provide a practice setting, which includes appropriate supervision and the necessary equipment, supplies, human resources, medical records, and client communication platforms and/or systems where licensed personnel can provide adequate patient care within the practice.

The proposed

rule also makes similar changes to the definition of unprofessional conduct in the practice of veterinary medicine with respect to solo veterinarian practices.

3. NEEDS AND BENEFITS:

The proposed rule is consistent with the above statutory authority and necessary to amend the Regents Rules to clarify what constitutes unprofessional conduct in the practice of veterinary medicine by both multi-veterinarian and solo veterinarian practices, which will further the goal and interest of public protection.

4. COSTS:

- (a) Costs to State government: There are no additional costs to state government.
- (b) Costs to local government: There are no additional costs to local government.
- (c) Cost to private regulated parties: There are no costs to regulated parties beyond those imposed by existing statute and regulation.
- (d) Cost to the regulatory agency: There are no additional costs to the Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule does not impose any program service, duty, responsibility, or other mandate on local governments.

6. PAPERWORK:

The proposed rule does not impose any reporting, record keeping or other requirements on veterinarians or multi-veterinarian or solo veterinarian practices beyond those imposed by existing statute and regulation.

7. DUPLICATION:

The proposed rule amends subdivision (a) of section 29.6 of the Regents Rules by clarifying that unprofessional conduct in the practice of veterinary medicine by multi-veterinarian practices includes the following misconduct: (1) failure to clearly identify, in the patient record, the treating veterinarian and any veterinary technician providing patient care for each patient visit, including the veterinarian who is responsible for managing the care of any patient admitted as an in-patient; (2) failure of the veterinarian who is managing the care of the patient to adequately supervise both licensed and unlicensed personnel in the practice, who have been assigned to provide patient care within said practice; or (3) failure of a principal(s)/owner(s), in a multi-doctor practice, to provide a practice setting, which includes appropriate supervision and the necessary equipment, supplies, human resources, medical records, and client communication platforms and/or systems where licensed personnel can provide adequate patient care within the practice.

The proposed rule also makes similar changes to the definition unprofessional conduct in the practice of veterinary medicine with respect to solo veterinarian practices.

There are no other state or federal requirements on the subject matter of the proposed rule. Therefore, the proposed rule does not duplicate other existing New York State or federal requirements.

8. ALTERNATIVES:

The proposed rule is necessary to clarify what constitutes unprofessional conduct in the practice of veterinary medicine by both solo veterinarian and multi-veterinarian practices, which will further the goal and interest of public protection. There are no significant alternatives to the proposed rule available and none were considered.

9. FEDERAL STANDARDS:

Since there are no applicable federal standards, the proposed rule does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption at the September 2022 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the September 2022 Regents meeting, the proposed amendment to section 29.6 of the Regents will become effective on September 28, 2022. It is anticipated that regulated parties will be able to comply with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

(a) Small Businesses:

The proposed rule is necessary to amend the Rules of the Board of Regents (Regents Rules) to clarify what constitutes unprofessional conduct in the practice of veterinary medicine by both solo veterinarian and multi-veterinarian practices, which will further the goal and interest of public protection. Veterinary practices, like others across multiple professions, are trending towards larger multi-practitioner entities, such as professional service corporations. As these practice patterns shift, there is a corresponding need to ensure that veterinarian accountability for patient care remains clear, and to establish expected procedures for ensuring such accountability.

As multi-veterinarian practices continue to expand in both number and/or size, investigations and prosecutions of veterinary disciplinary complaints involving such practices have become increasingly challenging for Department staff and the State Board for Veterinary Medicine. For example, it has become progressively more difficult to determine which veterinarians were responsible for the care and treatments administered to the patients at issue, especially in situations where multiple veterinarians cover various shifts during a patient's overnight or longer stay and the patient records are unclear as to whom was responsible for the patient at the time of an alleged adverse incident.

The proposed rule amends subdivision (a) of section 29.6 of the Regents Rules to address this situation by clarifying that unprofessional conduct in the practice of veterinary medicine by multi-veterinarian practices includes the following misconduct: (1) failure to clearly identify, in the patient record, the treating veterinarian and any veterinary technician providing patient care

for each patient visit, including the veterinarian who is responsible for managing the care of any patient admitted as an in-patient; (2) failure of the veterinarian who is managing the care of the patient to adequately supervise both licensed and unlicensed personnel in the practice, who have been assigned to provide patient care within said

practice; or (3) failure of a principal(s)/owner(s), in a multi-doctor practice, to provide a practice setting, which includes appropriate supervision and the necessary equipment, supplies, human resources, medical records, and client communication platforms and/or systems where licensed personnel can provide adequate patient care within the practice.

All veterinarians licensed in New York State, including those employed by small businesses, and all solo veterinarian and multi-veterinarian practices will have to comply with the proposed rule's unprofessional conduct provisions.

Therefore, the proposed rule will not impose any new reporting, recordkeeping, or other compliance requirements, or have any adverse economic impact on small businesses. Because it is evident from the nature of the proposed rule that it will not adversely affect small businesses, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required, and one has not been prepared.

(b) Local Governments:

1. EFFECT OF RULE:

The proposed rule clarifies what constitutes unprofessional conduct in

the practice of veterinary medicine by both solo veterinarian and multi-veterinarian practices, which will further the goal and interest of public protection. The proposed rule amends subdivision (a) of section 29.6 of the Rules of the Board of Regents (Regents Rules) to address this situation by clarifying that unprofessional conduct in the practice of veterinary medicine by multi-veterinarian practices includes the following misconduct: (1) failure to clearly identify, in the patient record, the treating veterinarian and any veterinary technician providing patient care for each patient visit, including the veterinarian who is responsible for managing the care of any patient admitted as an in-patient; (2) failure of the veterinarian who is managing the care of the patient to adequately supervise both licensed and unlicensed personnel in the practice, who have been assigned to provide patient care within said practice; or (3) failure of a principal(s)/owner(s), in a multi-doctor practice, to provide a practice setting, which includes appropriate supervision and the necessary equipment, supplies, human resources, medical records, and client communication platforms and/or systems where licensed personnel can provide adequate patient care within the practice. The proposed rule also makes similar changes to the definition unprofessional conduct in the practice of veterinary medicine with respect to solo veterinarian practices.

In New York State, the number of licensed veterinarians is 7,163 and all of them will be subject to the proposed rule's unprofessional conduct provisions. However, the number of veterinarians who may be employed by local governments is unknown.

2. COMPLIANCE REQUIREMENTS:

The proposed rule clarifies what constitutes unprofessional conduct in the practice of veterinary medicine by both solo veterinarian and multi-veterinarian practices, which will further the goal and interest of public protection. The provided rule applies to all licensed veterinarians and solo veterinarian and multi-veterinarian practices in New York State.

3. PROFESSIONAL SERVICES:

It is not anticipated that local governments will need professional services to comply with the proposed rule.

4. COMPLIANCE COSTS:

The proposed rule does not impose any costs on local governments beyond those imposed by current statute and regulation.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule will not impose any new technological requirements on regulated parties, including local governments, and the proposed rule is economically feasible. See above "Compliance Costs" for the economic impact of the regulation.

6. MINIMIZING ADVERSE IMPACT:

The proposed rule clarifies what constitutes unprofessional conduct in the practice of veterinary medicine by both solo veterinarian and multi-veterinarian practices, which will further the goal and interest of public protection. The provided rule applies to all licensed veterinarians and solo veterinarian and multi-veterinarian practices in New York State. See above "Compliance Costs" for the minimizing adverse impact of the regulation.

7. LOCAL GOVERNMENT PARTICIPATION:

Statewide organizations representing all parties having an interest in the practice veterinary medicine, including the State Board for Veterinary Medicine and who are members of various professional associations and groups, which include state and federal employees, were consulted and provided input into the development of the proposed rule and their comments were considered in its development.

(b) Local Governments:

The proposed rule is necessary to amend the Rules of the Board of Regents (Regents Rules) to clarify what constitutes unprofessional conduct in the practice of veterinary medicine by both multi-veterinarian and solo veterinarian practices, which will further the goal and interest of public protection.

Veterinary practices, like others across multiple professions, are trending towards larger multi-practitioner entities, such as professional service corporations. As these practice patterns shift, there is a corresponding need to ensure that veterinarian accountability for patient care remains clear, and to establish expected procedures for ensuring such accountability.

As multi-veterinarian practices continue to expand in both number and/or size, investigations and prosecutions of veterinary disciplinary complaints involving such practices have become increasingly challenging for Department staff and the State Board for Veterinary Medicine.

For example, it has become progressively more difficult to determine which veterinarians were responsible for the care and treatments administered to the patients at issue, especially in situations where multiple veterinarians cover various shifts during a patient's overnight or longer stay and the patient records are unclear as to whom was responsible for the patient at the time of an alleged adverse incident.

The proposed rule amends subdivision (a) of section 29.6 of the Regents Rules to address this situation by clarifying that unprofessional conduct in the practice of veterinary medicine by multi-veterinarian practices includes the following misconduct: (1) failure to clearly identify, in the patient record, the treating veterinarian and any veterinary technician providing patient care for each patient visit, including the veterinarian who is responsible for managing the care of any patient admitted as an in-patient; (2) failure of the veterinarian who is managing the care of the patient to adequately supervise both licensed and unlicensed personnel in the practice, who have been assigned to provide patient care within said practice; or (3) failure of a principal(s)/owner(s), in a multi-doctor practice, to provide a practice setting, which includes appropriate supervision and the necessary equipment, supplies, human resources, medical records, and client communication platforms and/or systems where licensed personnel can provide adequate patient care within the practice.

The proposed rule also makes similar changes to the definition unprofessional conduct in the practice of veterinary medicine with respect to solo veterinarian practices.

The proposed rule will not impose any reporting, recordkeeping or other compliance requirements or costs or have any adverse economic impact on local governments. Because it is

evident from the proposed rule that it will not adversely affect local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for local governments is not required, and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed rule will apply to all licensed veterinarians and solo veterinarian and multi-veterinarian practices in New York State, including those located in the 44 counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed rule is necessary to amend the Rules of the Board of Regents (Regents Rules) to clarify what constitutes unprofessional conduct in the practice of veterinary medicine by both solo veterinarian and multi-veterinarian practices, which will further the goal and interest of public protection.

Veterinary practices, like others across multiple professions, are trending towards larger multi-practitioner entities, such as professional service corporations. As these practice patterns shift, there is a corresponding need to ensure that veterinarian accountability for patient care remains clear, and to establish expected procedures for ensuring such accountability.

As multi-veterinarian practices continue to expand in both number and/or size, investigations and prosecutions of veterinary disciplinary complaints involving such practices have become increasingly challenging for Department staff and the State Board for Veterinary Medicine. For example, it has become progressively more difficult to determine which veterinarians were responsible for the care and treatments administered to the patients at issue, especially in situations where multiple veterinarians cover various shifts during a patient's overnight or longer stay and the patient records are unclear as to whom was responsible for the patient at the time of an alleged adverse incident.

The proposed rule amends subdivision (a) of section 29.6 of the Regents Rules to address this situation by clarifying that unprofessional conduct in the practice of veterinary medicine by multi-veterinarian practices includes the following misconduct: (1) failure to clearly identify, in the patient record, the treating veterinarian and any veterinary technician providing patient care for each patient visit, including the veterinarian who is responsible for managing the care of any patient admitted as an in-patient; (2) failure of the veterinarian who is managing the care of the patient to adequately supervise both licensed and unlicensed personnel in the

practice, who have been assigned to provide patient care within said practice; or (3) failure of a principal(s)/owner(s), in a multi-doctor practice, to provide a practice setting, which includes appropriate supervision and the necessary equipment, supplies, human resources, medical records, and client communication platforms and/or systems where licensed personnel can provide adequate patient care within the practice.

The proposed rule also makes similar changes to the definition unprofessional conduct in the practice of veterinary medicine with respect to solo veterinarian practices.

The proposed rule will not impose any additional professional service requirements on entities in rural areas.

3. COSTS:

There are no costs to veterinarians licensed in New York State or to solo veterinarian and multi-veterinarian practices located in this State.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule is consistent with the above statutory authority and necessary to amend the Regents Rules to clarify what constitutes unprofessional conduct in the practice of veterinary medicine by both multi-veterinarian and solo veterinarian practices, which will further the goal and interest of public protection. The Education Law does not contain exceptions from its disciplinary and unprofessional conduct provisions for individuals who live or work in rural areas or veterinary practices that are located in such areas. Thus, the State Education Department has determined that the proposed rule's requirements should apply to all licensed veterinarians licensed in New York and all solo veterinarian and multi-veterinarian practices located in this State, regardless of the geographic location, to help ensure that there are consistent unprofessional conduct provisions across the State. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

5. RURAL AREAS OF PARTICIPATION:

Comments on the proposed rule were solicited from statewide organizations representing parties having an interest in the practice of veterinary medicine. These organizations included the State Board for Veterinary Medicine and professional associations representing veterinarians. These groups have members who live or work in rural areas.

Job Impact Statement

The proposed rule is necessary to amend the Rules of the Board of Regents (Regents Rules) to clarify what constitutes unprofessional conduct in the practice of veterinary medicine by both multi-veterinarian and solo veterinarian practices, which will further the goal and interest of public protection.

Veterinary practices, like others across multiple professions, are trending towards larger multi-practitioner entities, such as professional service corporations. As these practice patterns shift, there is a corresponding need to ensure that veterinarian accountability for patient care remains clear, and to establish expected procedures for ensuring such accountability.

As multi-veterinarian practices continue to expand in both number and/or size, investigations and prosecutions of veterinary disciplinary complaints involving such practices have become increasingly challenging- ing for Department staff and the State Board for Veterinary Medicine. For example, it has become progressively more difficult to determine which veterinarians were responsible for the care and treatments administered to the patients at issue, especially in situations where multiple veterinarians cover various shifts during a patient's overnight or longer stay and the patient records are unclear as to whom was responsible for the patient at the time of an alleged adverse incident.

The proposed rule amends subdivision (a) of section 29.6 of the Regents Rules to address this situation by clarifying that unprofessional conduct in the practice of veterinary medicine by multi-veterinarian practices includes the following misconduct: (1) failure to clearly identify, in the patient record, the treating veterinarian and any veterinary technician providing patient care for each patient visit, including the veterinarian who is responsible for managing the care of any patient admitted as an in-patient; (2) failure of the veterinarian who is managing the care of the patient to adequately supervise both licensed and unlicensed personnel in the practice, who have been assigned to provide patient care within said practice; or (3) failure of a principal(s)/owner(s), in a multi-doctor practice, to provide a practice setting, which includes appropriate supervision and the necessary equipment, supplies, human resources, medical records, and client communication platforms and/or systems where licensed personnel can provide adequate patient care within the practice.

The proposed rule also makes similar changes to the definition unprofessional conduct in the practice of veterinary medicine with respect to solo veterinarian practices.

It is not anticipated that the proposed rule will decrease the number of jobs to be filled because, among other things, veterinarians and both solo veterinarian and multi-veterinarian practices are already required to comply with the relevant unprofessional conduct provisions in Part 29 of the Regents Rules. Therefore, the proposed rule will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain

that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

