



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

8/7/2019 12:31:54 PM

Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Veterinary Medicine TITLE-SERIES: 26-01

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Organization and Operation and Licensing of Veterinarians

CITE STATUTORY AUTHORITY: §30-10-6

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 09/08/2019 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Patricia Holstein

ADDRESS: 5509 Big Tyler Road, Suite 3

EMAIL: patricia.a.holstein@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

This Rule establishes guidelines for the organization and operation of the Board and the licensing of veterinarians by the West Virginia Board of Veterinary Medicine.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

The purpose of the Rule change is to update the Rule to be in compliance with HB118, §30-1-24. Use of criminal records as disqualification from authorization to practice.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/A

B. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

N/A

C. FISCAL NOTE DETAIL:

| Effect of Proposal                 | Fiscal Year                            |  |  |
|------------------------------------|--|--|--|
|                                    | 2019<br>Increase/Decrease<br>(use "-") | 2020<br>Increase/Decrease<br>(use "-") | Fiscal Year (Upon<br>Full<br>Implementation) |
| <b>1. Estimated Total Cost</b>     |  |  |  |
| Personal Services                  |  |  |  |
| Current Expenses                   |  |  |  |
| Repairs and Alterations            |  |  |  |
| Assets                             |  |  |  |
| Other                              |  |  |  |
| <b>2. Estimated Total Revenues</b> |  |  |  |

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

Yes

**Patricia A Holstein -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

TITLE 26  
LEGISLATIVE RULE  
WEST VIRGINIA BOARD OF VETERINARY MEDICINE

SERIES 1  
ORGANIZATION AND OPERATION  
AND LICENSING OF VETERINARIANS

**§26-1-1. General.**

1.1. Scope. -- This rule establishes guidelines for the organization and operation of the Board and the licensing of veterinarians by the West Virginia Board of Veterinary Medicine.

1.2. Authority. -- W. Va. Code 30-10-6.

1.3. Filing Date. -- ~~April 23, 2018.~~

1.4. Effective Date. -- ~~July 1, 2018.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect ~~on July 1, 2028~~ upon the expiration of 10 years from its effective date.

**§26-1-2. Definitions.**

2.1. "Board" means the West Virginia Board of Veterinary Medicine.

2.2. "Reportable contagious diseases" means all diseases currently listed by the United States Department of Agriculture and is located on the United States Department of Agriculture's website.

2.3. "Initial license" means obtaining a license in West Virginia for the practice of veterinary medicine for the first time.

2.4. "License" or "licensure" means the official authorization by the board to engage in the practice of veterinary medicine.

2.5. "Unreversed", as that term refers to a criminal conviction, means that a conviction has not been set aside, vacated, pardoned, or expunged.

**§26-1-3. The Board Procedures.**

3.1. The members of the board shall annually elect a Chairperson and a Secretary-Treasurer for a period of 1 year, both of whom shall hold their offices until their successors are elected. The Board shall hold elections each year.

3.2. A vacancy in the officers of the Board may be filled at any convened meeting of the Board.

3.3. The Board may employ an executive director, and any other administrative staff.

3.4. Before an action can be taken on any matter properly before the Board, at least a majority of the current members must be in attendance.

3.5. A member of the Board is entitled to receive compensation as specified in W. Va. Code §30-1-11.

**§26-1-4. Applications and Examinations for Veterinarians.**

4.1. Before a person may take the jurisprudence examination for a license to practice veterinary medicine, he or she shall submit an application along with the non-refundable required fees to the Board. The application shall contain the following information, which shall be retained in the applicant's file:

4.1.a. Applicant's name, address, and certified copy of the applicant's birth certificate or official record of birth;

4.1.b. Verification of US citizenship or written documentation of applicant's authority to reside and work in the United States;

4.1.c. Certified transcript showing applicant's educational qualifications, including the name, location of the school, and the date the degree was awarded;

4.1.d. Applicant shall indicate whether he or she has ever been denied a license or had a license restricted or disciplined in any other state or jurisdiction with the name of the state or jurisdiction;

4.1.e. Verification of applicant's status as a licensee from each state or jurisdiction where he or she now holds or ever held a license;

4.1.f. Certified written verifications of name changes;

4.1.g. A document provided in language other than English shall be accompanied by an English translation copy with the name and address of the translator listed;

4.1.h. A current photograph of the applicant. Applicant shall be alone in the photograph;

4.1.i. The applicant shall pay the required fees as contained in the Schedule of Fees, with the application.

4.2. The applicant shall state in the application that he or she will abide by the laws of this State regulating the practice of veterinary medicine and that he or she will abide by the rules of the Board.

4.3. The application shall be signed by the applicant.

4.4. An applicant furnishing false information in an application shall be denied the right to take the examination. If the applicant has been licensed before the Board becomes aware of the falseness of the information, the licensee is subject to disciplinary action.

4.5. An applicant who graduates from a foreign school or a school that is not accredited by the American Veterinary Medical Association must supply written verification from ECFVG or PAVE of receiving a certificate of competence and completion issued by the AVMA Education Commission for Foreign Veterinary Graduates (ECFVG) or the American Association of Veterinary State Boards Program for the Assessment of Veterinary Education Equivalence (PAVE).

4.6. Once the application is complete and all fees have been received, the Board will notify the applicant within 14 days of their eligibility to take the jurisprudence examination.

4.7. If an applicant is found not qualified to take the examination the Board shall notify the applicant in writing at the applicant's address as listed on the application, of the finding and the grounds upon which the finding is based. An applicant found not qualified may demand a hearing. The application fee of any applicant found not qualified to take the examination is non-refundable.

4.8. The applicant must complete the jurisprudence exam within 30 days of notice. The Board may waive this requirement upon written confirmation from a federal or state agency stating applicant has been called to immediate active duty.

4.9. An applicant must have a passing score on the National Board Examination (NBE) if the applicant graduated from veterinary school before 1993; the NBE and the Clinical Competency Test (CCT) if the applicant graduated 1993 through 2000 or the North American Veterinary Licensing Examination (NAVLE) if the applicant graduated after 2000. The authorized examination providers shall be the National Board of Veterinary Medical Examiners. The passing score for each of the required national veterinary exams as specified according to the graduation year of the candidate is 70 percent.

4.9.a. It is the applicant's responsibility to have the national score reporting service of the American Association of Veterinary State Boards (AAVSB) forward a copy of his or her scores directly to the Board at the applicant's expense.

4.9.b. NAVLE applicants testing through WV, shall submit a completed WV NAVLE eligibility application and payment pursuant to the Schedule of Fees.

4.10. All evidence and information described in this section may be provided through AAVSB, where available through AAVSB.

4.11. Completed verification forms must be provided directly from selected institutions to the Board and not from the applicant, except where AAVSB is providing the information directly to the Board.

**§26-1-5. Veterinarian Jurisprudence Examination Procedure.**

5.1. Jurisprudence examinations shall be taken online.

5.2. Jurisprudence examinations shall cover the laws governing veterinary medicine in the State of West Virginia.

5.3. The Board shall notify the applicant of the jurisprudence examination results the day of the examination.

5.4. If an applicant fails the examination, the test may be retaken once within 30 days and no sooner than 7 days.

5.5. Examinations are the property of the Board and shall not be duplicated in any form.

**§26-1-6. Veterinary Licenses.**

6.1. The Board shall issue a license to a qualified candidate who passes the examinations and meets the requirements of the Board to practice the profession of veterinary medicine and upon payment of the licensure fee. If any veterinarian desires that a duplicate license be issued, the Board shall issue a duplicate license upon payment of the fee as set forth in the Schedule of Fees.

6.2. The license issued by the Board shall include the licensee's full name, a license number, the Board seal, the effective date and the expiration date and shall bear the signatures of the Chairperson and Secretary-Treasurer of the Board.

**§26-1-7. Veterinary License Renewal**

7.1. The Board shall notify each licensed veterinarian that his or her license will expire on December 31 but failure to receive the notification does not exempt a licensee from meeting the requirements of this rule. The Board shall issue a certificate of renewal to all licensees renewing their license under the provisions of this rule.

7.2. A veterinarian may renew his or her license starting October 1 through December 31 of each year, renew his or her license by completing the required license renewal, paying the annual renewal fee as specified in the Schedule of Fees and certify to the Board that he or she has completed all continuing education requirements.

7.3. A license that is not renewed will automatically be placed on expired status unless a specific request was made to place the license on inactive status.

7.3.a. To renew a license up to one year after the expiration date, the applicant must complete the required license renewal, pay the late renewal fee as specified in the Schedule of Fees, and submit evidence of completion of continuing education hours.

7.3.b. To reactivate an expired license exceeding 1 year, the applicant must meet the requirements of §26-1-4, pay the late renewal fee as specified in the Schedule of Fees, and submit evidence of completion of the required continuing education hours for each year the license has been expired, for a maximum of two years. The board may require additional documentation of clinical competency and professional activities.

7.4. A licensee may request that their license be placed on inactive status by completing the required license renewal, selecting the inactive option, and paying the inactive status fee as specified in the Schedule of Fees.

7.4.a. To reactivate an inactive license, the applicant must complete the required license renewal, pay the renewal fee, and certify to the Board that he or she has completed continuing education hours for each year the license has been expired, for a maximum of two years.

7.5. A licensee shall undertake at least 18 (50 minute) units of continuing education in the field of veterinary medicine during each calendar year. A minimum of 14 hours shall be related to the practice of veterinary medicine to include scientific, laboratory, regulatory, and medical record keeping. No more than 4 hours shall be related to practice management. Classroom or online courses are permitted. No periods may be accumulated, carried forward, or held over past the calendar year in which the periods were completed.

7.5.a. Continuing Education approved providers/programs:

7.5.a.1. AVMA accredited colleges of veterinary medicine;

7.5.a.2. Board approved national veterinary associations;

7.5.a.3. AVMA approved official state veterinary associations;

7.5.a.4. State or federal government agencies;

7.5.a.5. Registry of Approved Continuing Education (RACE)

7.5.a.6. Reviewed and approved by the West Virginia Board of Veterinary Medicine once fee is received pursuant to the Schedule of Fees.

7.5.b. A Licensee is required to attest to compliance with continuing education requirements on his or her annual license renewal and is required to maintain original documents verifying the date and subject of the program or course, the number of continuing education hours or credits, and certification from an approved sponsor. Original documents must be maintained for a period of two years following renewal. The board shall conduct a random yearly audit to determine compliance. A Licensee selected for the audit shall provide all supporting documentation within 20 days of receiving notification of the audit.

7.5.b.1. If licensee is non-compliant to the continuing education audit, the board will initiate a complaint against the licensee and the licensee will be audited again the following year.

7.5.c. Continuing education hours required by disciplinary orders shall not be used to satisfy renewal requirements.

7.6. New graduates of the current year are exempt from the continuing education requirements until the beginning of the immediately succeeding reporting period after licensure.

7.7. The Board may grant continuing education hardship extensions by request of the licensee. The Board shall only consider hardship extensions from licensees who the Board determines were prevented from completing the required continuing education hours within the year due to verified medical emergencies or military obligations beyond the licensee's control. Requests for a hardship extension must be received in the Board's office by December 15.

7.8. If an extension is granted by the Board for completion of approved continuing education hours, the licensee shall file the renewal application with the renewal fee. The Board shall renew the license contingent upon the licensee completing the mandatory continuing education within a period determined by the Board from the current year's expiration date of December 31.

7.9. When a hardship license is issued, the renewal license shall be valid for the period required to complete the mandatory continuing education, and shall be extended to December 31 upon receipt of acceptable documentation of completing the continuing education. The continuing education hours completed during the extension period may not be applied toward satisfaction of continuing education in the year completed and shall be separate from continuing education requirements for current year renewal requirements.



7.10. A licensee issued a hardship extension for completion of continuing education shall submit documentation of completion prior to the end of the Board approved extension period. Continued practice past the authorized extension period without a written renewal certificate from the Board constitutes the practice of veterinary medicine without a license.

7.11. By December 31 of each year, the licensee shall certify on the renewal application that he or she has successfully completed the continuing education requirement for that calendar year. It is the responsibility of the licensee to maintain evidence of meeting the continuing education requirements for license renewal for random audit by the Board.

7.12. Upon receipt of the completed renewal application and fee, the Board shall issue a renewal license.

7.13. Licenses issued by the Board shall be posted in a place conspicuous to the public at the establishment where veterinary services are being provided.

7.13.a. Licensees who do relief or temporary work in an establishment shall carry a license with them or post it at the establishment.

7.13.b. Ambulatory veterinary practices that do not have an office accessible to the public shall carry their licenses in their vehicles.

7.14. A licensee shall notify the Board in writing or online of any change of address, conviction of a misdemeanor or felony, and/or disciplinary action by another federal or state agency no later than the 30 days from the action.

**§26-1-8. Veterinarian Disciplinary Action.**

8.1. The Board may deny, revoke or suspend a license, impose a civil penalty, place a person's license on probation, reprimand a licensee, refuse to examine an applicant or issue a license or renewal of a license, as provided by law and as provided ~~by this rule~~ in these rules if it finds an applicant or licensee:

8.1.a. Has presented to the Board false or fraudulent evidence of qualification or has been found to be guilty of fraud or deception in the process of examination, or for the purpose of securing a license;

8.1.b. Is chronically or habitually intoxicated, has a chemical dependency or is addicted to drugs;

8.1.c. Has engaged in dishonest, unethical, or illegal practices in or connected with the practice of veterinary medicine, or has been convicted of a misdemeanor related to the practice of veterinary medicine or animal abuse or neglect;

8.1.d. Has been convicted of a felony under the laws of the State of West Virginia or any other State or jurisdiction of the United States or of the federal government of the United States ~~or any other crime involving moral turpitude~~;

## 26CSR1

8.1.e. Has engaged in practices or conduct in connection with the practice of veterinary medicine which violate the standards of professional conduct as established by the Board;

8.1.f. Has permitted or allowed another to use his or her authorization to practice veterinary medicine in this or any other state;

8.1.g. Has fraudulently issued a health certificate, vaccination certificate, test chart, or other blank form used in the practice of veterinary medicine that relates to the presence or absence of animal disease;

8.1.h. Has issued a false certificate relating to the sale for human consumption of inedible animal products;

8.1.i. Has committed fraud in the application or reporting of test of animal disease;

8.1.j. Has received any kickback for treating an animal or for referring a client to another provider of veterinary services or goods;

8.1.k. Has performed or prescribed unnecessary or unauthorized treatment;

8.1.l. Has refused to admit a representative of the Board to inspect the client and patient records and business premises of the veterinarian during regular business hours;

8.1.m. Has failed to keep his or her equipment and business premises in good operation and sanitary condition;

8.1.n. Has committed gross malpractice or is guilty of a pattern of acts indicating consistent malpractice, negligence, or incompetence in the practice of veterinary medicine;

8.1.o. Has received disciplinary action in another jurisdiction, including the suspension, probation, or revocation of a license to practice veterinary medicine issued by another jurisdiction;

8.1.p. Has refused to provide a valid prescription upon request from a client;

8.1.q. Has failed to release patient records when requested by the owner; a law-enforcement entity; or a federal, state, or local health regulatory agency; or

8.1.r. fails to report a reportable contagious disease to the State Veterinarian with the West Virginia Department of Agriculture or any authorized reporting agent within twenty-four hours of diagnosis or discovery.

8.2. The Board may also suspend or revoke the license of a licensee who is found to be mentally incompetent by a court of competent jurisdiction. If the licensee is later determined to be mentally competent by a court, the Board may reinstate the license.

8.3. On conviction of or determination of conviction of a person licensed by the Board of any felony, the Board may, after an administrative hearing in which the facts of conviction are determined, suspend or revoke the person's license. The Board may not reinstate or reissue a license to a person whose license is suspended or revoked under this section except on an express determination of the Board based on substantial evidence contained in an investigative report, indicating that the reinstatement or

reissuance of the license is in the best interests of the public and of the person whose license has been suspended or revoked.

8.4. If a person violates this rule in a manner that constitutes grounds for disciplinary action by the Board, the Board may assess the costs of the investigation, hearing, hearing examiner, legal fees and all other reasonable and necessary costs incurred by or on behalf of the Board to the veterinarian who was the subject of the disciplinary action.

**§26-1-9. Petition for Licensure Eligibility Determination.**

9.1. An individual with a criminal record who has not previously applied for licensure may petition the Board at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license.

9.2. The petition shall be submitted on an application form prescribed by the Board and shall include sufficient details about the individual's criminal record to enable the Board to identify the jurisdiction where the conviction occurred, the date of the conviction, the date of the release from incarceration if applicable, and the specific nature of the conviction. Where the records are sealed, the applicant shall sign a waiver authorizing the Board to access the criminal records of the applicant in order for the Board to make the eligibility determination.

9.3. The applicant may submit with the petition evidence of rehabilitation, letters of reference, and any other information the applicant deems relevant to show fitness and the ability to practice veterinary medicine.

9.4. The Board shall provide the determination within 60 days of receiving the petition and the applicable fee from the applicant.

9.5. The fee for an applicant petitioning for a licensure eligibility determination is specified in the Schedule of Fees and upon acknowledgement of eligibility by the Board and upon the submission of an application for licensure, the eligibility fee shall be deducted from the applicable initial licensure application fee.

**§26-1-910. Criminal History Record Check**

910.1. Beginning July 1, 2018, and in addition to all of the requirements for licensure, an applicant for an initial license to practice as a veterinarian in West Virginia shall request and submit to the Board the results of a state and a national criminal history record check.

910.2. The purpose of the criminal history record check is to assist the Board in obtaining information that may relate to the applicant's fitness for licensure.

910.3. In addition to the State Police, the Board may contract with and designate a company specializing in the services required by this section instead of requiring the applicant to apply directly to the West Virginia State Police or similar out-of-state agency for the criminal history records checks; provided that any such company must utilize protocols consistent with standards established by the Federal Bureau of Investigation and the National Crime Prevention and Privacy Compact.

910.4. The applicant shall furnish to the State Police, or other organization designated by the Board, a full set of fingerprints and any additional information required to complete the criminal history record check.

910.5. The applicant is responsible for any fees required by the State Police, or other organization duly designated by the Board, for the actual costs of the fingerprinting and the actual costs of conducting a complete criminal history record check.

910.6. The Board may require the applicant to obtain a criminal history records check from a similar Board approved agency or organization in the state of the applicant's residence, if outside of West Virginia.

910.7. The applicant shall authorize the release of all records obtained by the criminal history record check to the Board. Criminal history record checks shall be verified by a source acceptable to the Board, other than the applicant.

910.8. A criminal history record check submitted in support of an application for licensure must have been requested by the applicant no earlier than twelve (12) months immediately prior to the Board's receipt of the application for licensure.

910.9. An initial licensure application is not complete until the Board receives the results of a state and a national criminal history record check conducted by the State Police or another entity duly authorized by the Board. The Board shall not grant an application for licensure submitted by any applicant who fails or refuses to submit the criminal history record check required by this section.

~~910.10. Should criminal offenses be reported on an applicant's criminal history record check, the board will consider the nature, severity, and recency of offenses, as well as rehabilitation and other factors on a case by case basis for licensure. Criminal history record checks shall be verified by a source acceptable to the Board, other than the applicant. The Board may not disqualify an applicant from initial licensure because of a prior criminal conviction unless that conviction bears a rational nexus to the practice of veterinary medicine. The Board shall consider at a minimum:~~

10.10.a. The nature and seriousness of the crime;

10.10.b. The passage of time since the commission of the crime;

10.10.c. The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities attendant to the practice of veterinary medicine; and

10.10.d. Any evidence of rehabilitation or treatment undertaken by the applicant.

910.11. The results of the state and national criminal history record check may not be released to or by a private entity except:

910.11.a. To the individual who is the subject of the criminal history record check;

910.11.b. With the written authorization of the individual who is the subject of the criminal history record check; or

910.11.c. Pursuant to a court order.

910.12. Criminal history record checks and related records are not public records for the purposes of chapter 29B of the West Virginia Code.