

BEFORE THE BOARD OF VETERINARY MEDICINE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.225.410 record-keeping) PROPOSED AMENDMENT
standards, 24.225.420 inspection and)
sanitation, 24.225.511 continuing)
education, and 24.225.550)
unprofessional conduct)

TO: All Concerned Persons

1. On December 18, 2013, at 2:00 p.m., a public hearing will be held in Room 430, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Veterinary Medicine (board) no later than 5:00 p.m., on December 11, 2013, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdrvvet@mt.gov (board's e-mail).

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.225.410 RECORD-KEEPING STANDARDS (1) The required standards of practice of veterinary medical ~~record-keeping~~ record-keeping are as follows:

(a) remains the same.

(b) When appropriate, licensees may substitute the words "herd," "flock," or other collective term in place of the word "patient" of this section. Records to be maintained on these animals may be kept in a daily log; or in the billing records, provided that the treatment information that is entered is adequate to substantiate the identification of these animals and the medical care provided. In no case does this eliminate the requirement to maintain drug records as specified by state and federal law and board rules.

(c) remains the same.

(i) name, address, and phone number of owner or agent;

(ii) description, sex (if readily determinable), breed, and age of or description of group;

(iii) date animal or group was seen, admitted, and discharged;

(iv) results of examination, condition, and diagnoses suspected;

(v) all medication, treatment, prescriptions, or prophylaxis given, including amount and frequency for both inpatient and outpatient care; and

(vi) remains the same.

(d) Veterinarians who practice with other veterinarians shall indicate by recognizable means on each patient's or animal group's medical record any treatment ~~he/she~~ the licensee has performed, or which ~~he/she~~ the licensee has directed support personnel to perform.

(e) All radiographs shall be permanently labeled to identify the veterinarian or premises, the patient, the owner, the date, and anatomical orientation.

(f) and (g) remain the same.

(h) Veterinary medical records and images are the property of the practice and the practice owner. Information within veterinary medical records is privileged and confidential, and may not be released to anyone other than the owner of the patient, persons authorized by the owner, or other veterinarians involved with the treatment and care of the patient. Information must be released upon consent of the owner or authorized person(s). Consent may be in written, electronic, or other form of waiver, and must be documented in the patient's medical file. Confidentiality is waived under the conditions of (j).

(i) When requested by the owner, or person(s) authorized by the owner, as per (h), copies or summaries of the veterinary medical records and images must be provided within a reasonable time period, and as promptly as required by medical necessity. The veterinary practice may charge a reasonable fee for the preparation of summaries and copying of the records and images.

(j) Veterinary medical information may be disclosed without consent of the owner or person(s) authorized by the owner as follows:

(i) when required by court order or subpoena;

(ii) when the owner has made the veterinarian's care and treatment an issue in civil or criminal proceedings;

(iii) upon request for statistical or scientific research, as long as the information is abstracted and de-identified; or

(iv) upon request of public health officials, animal health officials, federal, state, or local officials, or agricultural authorities when it is deemed necessary to protect the welfare of the animal, and/or to protect public health and safety.

(k) A veterinarian who reasonably and in good faith reports or discloses records in accordance with (j) shall not be considered to be engaging in unprofessional conduct.

(l) Except for liens authorized by 71-3-1201, MCA, a veterinarian may not retain an animal or refuse to release records for failure to pay veterinary bills.

(m) A veterinarian practice owner terminating practice, retiring, relocating, or selling a practice shall notify clients within 30 days by local newspaper, in writing, or via other electronic means that they are no longer available to patients, and shall offer clients the opportunity to obtain a copy of their veterinary records, and shall specify who the new records owner is, when applicable, and where the medical records can be obtained. A failure to comply with this subsection may lead to disciplinary action.

(n) A veterinarian may not remove, copy, or use any part of any veterinary medical records without the express permission of the practice owner or as stated in (h).

(o) If a veterinarian, based upon his or her medical opinion, is willing to dispense medication, then the veterinarian must also provide a prescription in place of said medication should the owner request a prescription. If a veterinarian, based upon his or her medical opinion, is not willing to dispense medication, then the licensee should deny a request for a prescription.

AUTH: 37-1-131, 37-1-319, 37-18-202, MCA

IMP: 37-1-131, 37-1-316, 37-1-319, MCA

REASON: The board determined it is reasonably necessary to amend veterinarian record-keeping standards as both the board and compliance staff have received an increased number of inquiries from the public and licensees, as well as complaints filed concerning these standards. The board is amending this rule to clearly set forth the processes for records release with the incorporation of newer electronic record-keeping systems, confidentiality of patient medical files, situations where patient medical files must be released, public notice for termination of practice, and provision of prescriptions. Additional amendments eliminate gender-specific references, and correct grammar and punctuation in accordance with ARM formatting requirements.

24.225.420 INSPECTION AND SANITATION (1) The board may perform, or have performed in its behalf, inspections of any licensed veterinarian's premises at any time to verify provide uniform standards of sanitation and cleanliness in the public interest subsequent to a complaint being filed or during an investigation.

~~(2) The premises of any veterinarian may be evaluated on the following items~~ premises inspection may include, but is not limited to:

~~(a) office and reception area, practice vehicle, small and large animal exam room, housing and surgery areas, waste disposal, insect control, grounds, and odor;~~
~~(b) the board may add or delete in these inspection items as conditions and problems change.~~

~~(3) Inspections and sanitation check reports shall be supplied to each licensed veterinarian who has been inspected, with the board's recommendations.~~

~~(4) The board shall allow adequate time for their recommendations to be implemented by the licensed veterinarian.~~

~~(5) Should progress not be reported in removing items from the unsatisfactory category by the second inspection, the board shall direct the licensed veterinarian to appear before the board at the next meeting, or have him write a letter of explanation.~~

~~(6) If, in the opinion of the board, the licensee has not made satisfactory progress or if the explanation is unsatisfactory, it shall issue a letter of warning to the licensed veterinarian to immediately start placing his premises in a clean and sanitary condition. Failure to do so may serve as cause for initiating suspension or revocation of license provided under 37-18-311, MCA.~~

AUTH: 37-1-131, 37-18-202, MCA
IMP: 37-1-131, 37-18-102, 37-18-311, MCA

REASON: The board has determined that it is reasonably necessary to amend and update this rule to properly reflect the board's current premises inspection process, which is initiated by a filed complaint or as a result of an investigation. Prior to 1986, inspections were conducted on behalf of the board by an outside entity, and the process described in the current rule is no longer utilized.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule, provide the complete sources of the board's rulemaking authority, and delete reference to a repealed statute.

24.225.511 CONTINUING EDUCATION (1) Each veterinarian licensed shall be required to obtain every two years a minimum of 20 credit hours of continuing education approved by the board. The credit hours must be obtained within the 24 months prior to renewal, on the date set by ARM 24.101.413 of the even-numbered years. Licensees licensed less than two full calendar years, but more than one full calendar year on their first continuing education reporting date, shall be required to submit ten hours of continuing education.

(a) remains the same.

(i) Proof of continuing education attendance must be in the form of a list of agenda sessions attended and a certificate of completion ~~and/or program~~ containing the following information:

(A) through (1)(c) remain the same.

(2) Credit hours shall be earned by a one-hour credit for each hour of attendance at or participation in meetings and programs approved by the board. Board-approved programs include, but are not limited to, those sponsored by the American Veterinary Medical Association, American Animal Hospital Association, western states veterinary conferences, veterinary college conferences, state association meetings, Registry of Approved Continuing Education (RACE)-approved programs, and any other affiliated association, society, etc., related to veterinary medicine that have specific topics for veterinarians. Programs shall be of a professional veterinary nature to qualify, with the number of practice management hours reported not to exceed 25 percent of the total required continuing education hours.

(3) remains the same.

(4) The board will randomly audit two percent of the licensees and all licensees requesting a grace period each continuing education year. Certificates of completion ~~and/or programs~~ and a list of agenda sessions attended must be submitted upon request of the board.

(5) and (6) remain the same.

AUTH: 37-1-131, 37-1-319, 37-18-202, MCA
IMP: 37-1-131, 37-1-141, 37-1-306, MCA

REASON: The board is amending this rule to clarify that both certificates of completion and a list of agenda sessions attended will be required during a

continuing education audit. Following recent audits, the board concluded that both documents are necessary for the board to determine the appropriateness of courses submitted in an audit. A certificate often does not list all subject matter covered or the method of course delivery, which may prevent the board from determining the number of internet courses, or whether courses are in the restricted category of "practice management." This amendment will inform licensees that they need to retain both types of documents in preparation for continuing education audits.

Additional amendments correct grammar and punctuation in accordance with ARM formatting requirements.

24.225.550 UNPROFESSIONAL CONDUCT (1) through (1)(b) remain the same.

(c) incompetence, negligence, or use of any practice or procedure in the practice of the profession, which creates an unreasonable risk of physical harm or serious financial loss to the client;

(d) through (g) remain the same.

(h) offering, undertaking, or agreeing to cure or treat disease or affliction by a secret method, procedure, treatment, or the treating, operating, or prescribing for any health condition by a method, means, or procedure ~~which~~ that the licensee refuses to divulge upon demand from the board;

(i) through (k) remain the same.

(l) cruel or inhumane treatment of animals; ~~or~~

(m) abandoning, neglecting, or otherwise physically abusing a patient once the veterinarian has undertaken treatment of the patient-;

(n) violation of the veterinarian/client/patient relationship by making public any information about, or photos of, the owner or patient, without consent of the owner or person(s) authorized by the owner;

(o) violation of professional ethical standards by making public false or misleading negative information about another veterinarian's professional standing or reputation; or

(p) identifying oneself as a member of an American Veterinary Medical Association (AVMA)-recognized specialty organization if such certification has not been awarded and maintained, or using terms implying a specialty in a false and misleading manner.

AUTH: 37-1-131, 37-1-319, 37-18-202, MCA

IMP: 37-1-131, 37-1-141, 37-1-316, 37-1-319, MCA

REASON: The board is amending this rule to update the behavior considered to be unprofessional conduct to include social media issues, misrepresentation of specialty credentials, and public misstatements regarding other veterinarians. After considering these issues in recent complaints, the board concluded that it is reasonably necessary to update the definition of unprofessional conduct accordingly.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box

200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdrvvet@mt.gov, and must be received no later than 5:00 p.m., December 26, 2013.

5. An electronic copy of this notice of public hearing is available at www.vet.mt.gov (department and board's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdrvvet@mt.gov; or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.225.410 will significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.225.420 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.225.511 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.225.550 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdrvvet@mt.gov.

9. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF VETERINARY MEDICINE
JEAN LINDLEY, DVM, PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 18, 2013