MVMA Task Force Report: Practice Act Review, 2014

256 CMR 2.00 General Provisions:

2.01 Definitions

1. "Facilities": There is no definition or mention of a mobile practice. There is no definition of a "clinic" or "limited service facility" versus a "full service facility". There is no definition of a "specialty facility" (which may provide specific, limited specialty services and does not need to have all the equipment required of a full service facility). Section 5.05 lists the requirements for a "full service facility", but it may be useful to have definitions for these other forms of facility, which in some ways may not fulfill the definition of a "full service facility". Consumers should be made aware if a facility cannot or does not provide all the services of a "full service facility": requiring some form of notification to this effect may have a consumer-protection effect. For example, a specialty facility may post a sign stating that "Our practice is limited to Veterinary Dentistry. ", or the like.

2. "International Veterinary Graduate": it would be useful to have two clearly-defined terms, one of which denotes international graduates from AVMA-accredited schools and one of which denotes international graduates from non-AVMA-accredited schools, since these two groups are treated differently for licensing purposes.

3. "Supervision": there is no provision in the practice act for "indirect supervision" (in which the veterinarian is not on the premises but is in contact with staff verbally or in writing regarding the care of individual patients or a herd of animals). If the veterinarian is not on the premises (hospital, farm, etc), can the veterinarian instruct a technician or staff member to administer therapies without "immediate" or "direct" supervision by the practice? Can a facility have Standard Operating Procedures to guide staff members in dealing with emergencies when the veterinarian is not on the premises (For example, "For breathing difficulties, administer oxygen by mask and call the on-call veterinarian immediately.")? This topic is addressed in the AVMA Model Practice Act definition 18 (b). This topic coincides with CMR 8.03. We recommend adding a definition of "indirect supervision" and clarifying the circumstances in which the Board finds indirect supervision acceptable or unacceptable. We recommend clarifying whether or not animals "boarding" at a veterinary facility are treated the same as "hospitalized patients" for purposes of veterinary oversight of care by staff members.

4. "Diplomate" is suggested as the correct spelling (rather than "diplomat").

5. VCPR: we request clarification from the Board regarding VCPR: Please see the AVMA Model Practice Act Section 2 (Definitions), #20 (c), which states that an aspect of the VCPR is, "The veterinarian is readily available for follow-up evaluation or has arranged for the following: i. Veterinary emergency coverage, and ii. Continuing care and treatment." This aspect of VCPR is not covered in the current Massachusetts Practice Act. We recommend adding the wording of the AVMA Model Practice Act, Section 2 (Definitions), #20c to the Massachusetts practice act. In addition, we would appreciate clarification by the Board of a veterinarian's VCPR responsibilities for hospitalized patients in the event that a patient is hospitalized when a hospital is not open for business (For example, a patient

hospitalized over the weekend in a practice that does not see patients on Sunday, or a patient hospitalized during a holiday closure. Is a physical examination by a veterinarian required on Sunday or during the holiday in order to keep abreast of the patient's status, or can a veterinarian order treatments for the patient to be performed by staff members but without the veterinarian examining the patient?).

6. Ancillary providers: there are many non-veterinarians providing health care services for pets, sometimes with and sometimes without referral from/communication with a veterinarian. Examples include providers who have licensing boards in Massachusetts (such as chiropractors and massage therapists), and providers who do not have licensing boards in Massachusetts (such as animal physical therapists and non-veterinary holistic healers). The definition section could include a definition of such providers. Ultimately, we would like the Board to clarify, for licensed veterinarians, how and with whom we may legally refer our patients for care with ancillary providers. We would also like clarification of what limits pertain to non-veterinarians providing health care to animals, and whether veterinarians can or must report to the Board when we have knowledge of non-veterinarians providing services that constitute the practice of veterinary medicine. Concerns include:

a. If a veterinarian wants to refer to or coordinate care with a non-veterinarian provider, such as a chiropractor or physical therapist, is this allowable? What documentation is required as part of the veterinarian's medical record? How often should veterinarians be in touch with ancillary providers when the ancillary provider is providing ongoing care to the veterinarian's patient?

b. Are ancillary providers required to keep medical records on patients when working by referral from a veterinarian? Are they required to provide updates on care to the referring veterinarian?

c. Do services provided in the absence of referral from a veterinarian constitute the practice of veterinary medicine without a license? Do services provided WITH referral constitute the practice of veterinary medicine?

d. Can ancillary providers administer drugs by prescription from the veterinarian? Can ancillary providers administer drugs provided by the owner or obtained by the owner or ancillary provider without prescription from the veterinarian? For example, many equine teeth floaters reportedly acquire sedatives and administer the sedatives without coordinating care with a Massachusetts-licensed veterinarian.

e. For ancillary providers who are licensed by the Massachusetts Division of Professional Licensure, but not the Board of Registration in Veterinary Medicine (for example, Chiropractic and Massage Boards): when these licensed providers perform care on animals, are they practicing under the control of the Veterinary Board or their own Board? Which Board is in charge of establishing standards of care for these providers when they work on animal patients? Which Board is in charge of disciplinary action if a patient is injured, there is a client complaint, etc?

f. If a veterinarian becomes aware of an unlicensed provider or a provider licensed by another State Board (e.g., chiropractic or massage) who is practicing veterinary medicine, is the veterinarian obliged or

encouraged to report to the Veterinary Board, or to the other licensing Board? If the Board is not an appropriate entity for reporting, is the local District Attorney or other law enforcement entity the appropriate entity for reporting?

g. We request clarification of the Board's responsibility for these non-veterinarian providers, what penalties or sanctions apply to the unlicensed practice of veterinary medicine, and the responsibility that individual veterinarians have to ensure that consumers and patients are protected from illegal or unscrupulous providers.

256 CMR 3.00 License:

7. Please clarify or define "Board approved international veterinary graduate certificate".

8. Under "Board Statement: Approved Supervisors for Temporary Permits", we recommend this change: "Supervising veterinarian must be licensed for a minimum of four years from the date of candidate's application….." (we recommend changing the current "from" to "PRIOR TO").

256 CMR 5.00 Practice:

9. In section 5.01, we ask for clarification of the following medical record requirements:

a) Section 2 (a) requires certain information about the owner. This includes "home and work telephone numbers": changes in telephone use might be recognized as "home, cell or work telephone numbers", or "telephone contact information as provided by the owner". This section sparked a long conversation regarding "ownership" and how veterinarians can determine who is the "owner" or "duly authorized agent". We request clarification from the Board: can we accept on face value a person's claim of "ownership", and if not, how are we to determine "ownership"? What level of "proof" do we need of "ownership" or "authorized agency" in our records? What constitutes a good faith effort on the part of the veterinarian to determine "ownership", "authorized agency" or the validity of contact information?

b) Section 2 (b): We recommend wording such as "information as provided by the owner or based on physical examination by the veterinarian" regarding animal identification.

c) Section 2 (i): We recommend adding wording that explicitly says that owner consent or declining of procedures can be given by phone, email or fax if the owner is not physically present, and clarifying whether or not a witness is required for client consent/decline if given over the phone.

10. Section 5.03 (Advertising): In some instances, "advertisements" appear online or in commercial yellow pages without placement or solicitation by a licensee. In these cases, the licensee has no control over the existence or content of these "advertisements". We request a change in wording that recognizes the reality of today's more difficult-to-control media environment, such as "A licensee may, in advertisements *placed by the licensee* using print or electronic media, provide information……"

11. Section 5.05 (Requirements of Full-Service Veterinary Facility): As in #1 (above), we recommend distinguishing explicitly between a full-service facility versus a limited-service facility. Full service

facilities may be stationary, mobile or specialty practices; limited service facilities may be stationary, mobile or specialty practices. We recommend adding this wording to the beginning of this section: "A full-service facility*, whether stationary, specialty or mobile*, shall at a minimum provide the following services…". For limited-service facilities, we recommend adding wording to the practice act such as "A veterinarian who limits his/her practice to a specific area of veterinary practice must have equipment appropriate for that specific area of practice and for any emergencies that may arise from that area of practice. All services provided must be up to the standard of care in that area of practice. A limited service practice must be able to provide, either itself or by referral to a full service facility, medical and surgical services appropriate to the health needs of individual patients." We recommend that a limited service facility be required to disclose to clients that they do not meet the requirements of a full-service hospital by posting a sign or by other means determined by the Board.

12. We request clarification from the Board regarding corporately owned practices: for infractions of the practice act that have to do with the management of the practice (for example, regarding advertising, equipment, signage, etc.), is the "Medical Director/Chief of Staff" veterinarian (who is a Massachusetts licensed veterinarian) answerable to the Board and at risk of sanction, or is the corporate ownership responsible? In many cases of corporate ownership, the managing veterinarian may not be able to override decisions made by the corporation, whereas a veterinarian who owns a practice in Massachusetts has full control over these aspects of practice management.

CMR 6.00: Disciplinary Proceedings:

13. Section 6.03: We recommend adding (c) "These actions are not part of public record nor are they reported to the national disciplinary database."

14. Section 6.04: We recommend adding AVMA Model Practice Act #15 paragraphs 1-3.

CMR 7.00: Code of Professional Conduct:

15: Section 7.01 (2) (o): As in #5 (above: VPCR), we seek clarification of the situation in which a veterinarian is not physically present in a facility every 24 hours to examine any hospitalized patients: does "Provide by oral, written or posted notice….information about….24 hour attendance…." cover the situation in which a veterinarian will not be present to examine hospitalized patients at least once daily? If not, we feel that owners need to be notified in writing and by prominently-posted signage in the facility if a veterinarian will not be examining hospitalized patients and overseeing care at least every 24 hours.

16. Section 7.01 (3) (c):

a. Subsection (2): A veterinarian may refuse services "when the licensee is unable to reach agreement with an owner or other authorized person regarding services": Does this include inability to reach agreement on payment for services? If so, we recommend making this explicit by adding "….regarding services or payment for services."

b. Subsection (3): A veterinarian may refuse services “to any animal due to inadequate facilities or coverage for the animal”. Does this include emergency services? Does it include circumstances in which a veterinarian is temporarily unable to provide services he/she ordinarily provides (for example, an ambulatory veterinarian whose truck is broken, or who is unable to reach the property where the patient is housed in a timely manner)?

17. Section 7.01 (4) (a): “A licensee shall not in any way aid or abet the illegal practice of veterinary medicine”: The practice of veterinary medicine is clearly defined in Massachusetts General Laws Section 58 and illegal practice of veterinary medicine is clearly defined in Massachusetts General Laws Section 59. Board Guideline 08-04 states that if a veterinarian is “not qualified, veterinarians may incorporate individuals licensed in human alternative professions, only through referral and consultation”. We would appreciate further clarification from the Board regarding the issue of the legal and illegal practice of veterinary medicine: in Massachusetts, and in many or all other states, there are many “alternative practitioners” performing diagnosis and care of animals without referral from veterinarians.

In Massachusetts, “alternative practitioners” include massage therapist and chiropractors (who are licensed professionals in Massachusetts, but not licensed to work independently on animal patients) and unlicensed persons, such as groomers (who perform dental cleanings on small animals), equine teeth floaters (who work on horses), “holistic practitioners” (who perform “energy work”, perform acupuncture, use cold lasers and the like) and “physical therapy practitioners” (who do rehabilitative work, etc.). While there is licensure of physical therapists in Massachusetts, their practice act restricts licensed physical therapists to practice on humans. Guideline 08-04 states that veterinarians “may incorporate individuals licensed in human alternative professions, only through referral and consultation”: can the Board clarify that because massage therapists and chiropractors have their own licensing boards in Massachusetts, we may refer to massage therapists and chiropractors, but not to the other, unlicensed persons? Do veterinarians, who are aware of massage therapists or chiropractors who are practicing veterinary medicine without a proper referral/consultation from a licensed veterinarian or other persons practicing veterinary medicine in any capacity, have a duty to report (i.e., is failure to report “aiding and abetting the illegal practice of veterinary medicine”)? Are veterinarians who refer patients for care such as physical therapy or equine teeth floating “aiding and abetting the illegal practice of veterinary medicine”?

In addition, Mass General Laws Section 58 states that, “The term ‘practicing veterinary medicine’ does not include the calling into the commonwealth for consultation of duly licensed or registered veterinarians of any other state with respect to any case under treatment by a veterinarian registered under the provisions of section 5….”. There are many reports of veterinarians (especially equine veterinarians) licensed in other states coming into Massachusetts at the request of owners in order to provide care, without consultation or coordination with a Massachusetts-licensed veterinarian. Do Massachusetts veterinarians have a duty to report when they become aware of these veterinarians who are practicing illegally in the state?

These issues are very fraught for Massachusetts licensed veterinarians, and we would appreciate clarification from the Board of our reporting requirements, whether the reporting veterinarian’s identity

will be kept confidential by the Board, and whether the Board has the capacity to pursue cases of illegal practice of veterinary medicine by out-of-state veterinarians, licensed massage therapists or chiropractors who are practicing illegally, and lay people who are practicing illegally.

CMR 8.00: Supervision of Assistants and Veterinary Technicians:

18. The terms "technician" and "assistant" are used throughout, but are not defined in the practice act. The possible roles of volunteers, veterinary or technician students doing internship/externships, and the level of supervision required for them, are not addressed. This applies to Policy 08-05, as well as to CMR 8.00 in general.

19. Please see #3 (above), for suggestions regarding "indirect supervision".

20. Policy 08-04: as has been mentioned above, we request clarification of "If they themselves are not qualified, veterinarians may incorporate individuals licensed in human alternative professions, only through referral and consultation." Does this mean "state licensed" individuals or individuals with certificates attesting to training in alternative disciplines?

21. Regarding "Acts Performed Under Direct Supervision": we recommend the AAHA Dental Guidelines for Dogs and Cats as a model.

22. Nevada has passed a law (NAC 638.0525), effective as of 6/24/14, that can act as a guideline for the role of veterinary technicians in the performance of veterinary dentistry.

CMR 9.00: Continuing Education:

23. Section 9.01 (3): Please clarify whether "non-medical/non-scientific" CE (such as practice management, business management, client relations, etc.) is allowed. If so, we recommend limiting the number of allowable hours for these types of CE, similar to the limits on home-study or other mediated instruction. Due to the improved quality and availability of electronic/distance learning options, we recommend increasing the number of hours allowed for electronic/distance learning, perhaps to 8 or 10 hours per year.

24. Section 9.02 (1): Please clarify how long a veterinarian must retain documentation of continuing education.

25. Section 9.03 (2): In order to allow for additions or other changes over time, we recommend the following change: "The Board of Registration in Veterinary Medicine (Board) approved continuing education activities *include, but are not limited to,* the following…."

26. Section 9.03 (2) (e) and/or Board Policy Guidelines: Approved Providers for Continuing Education Hours, Section 1, Part D:

a. Consider adding other well-recognized national veterinary organizations that may not be AVMA-allied organizations or RVSOs (for example, the Veterinary Emergency and Critical Care Society). Also consider

adding European/International organizations (for example, those allied with the European Board of Veterinary Specialization and other similar associations).

b. Consider adding human medical/dental conferences or associations as Approved Providers: please see sample terminology used by the California Veterinary Medical Board (http://www.vmb.ca.gov/licensees/statute_providers.shtml): "Providers accredited by the Accreditation Council for Continuing Medical Education (ACCME) or approved by the American Medical Association (AMA), providers recognized by the American Dental Association Continuing Education Recognition Program (ADA CERP), and AMA or ADA affiliated state, local and specialty organizations."

Other:

27. We request a Policy Guideline for shelter and rescue practice, similar to the Policy Guideline on pet shop practice ("Joint Policy on Pet Shops", Dec, 2004).

28. "Board Policy Guidelines: Vaccination Clinics": We recommend and request that "examination" is defined explicitly in this policy in the same way that "examination" is defined in the Pet Shop Policy, so that it's clear that a meaningful examination of the animal is required before vaccination (with the exception of rabies vaccination, as already clarified in the Policy Guideline). We request clarification of record-keeping requirements for vaccination clinics: are records, including records of an examination and all other record keeping requirements listed in 5.01 Medical Records, required? Where must records be kept? How are they to be made available to the pet owner and to a veterinarian who is now providing care for a pet that has been vaccinated at a clinic? How long must records be kept? How is a "rabies clinic" defined? Does the "rabies clinic" exemption for examination of the pet also apply to a hospital "rabies clinic", or only to rabies clinics that occur outside of a hospital?

29. We request a Policy Guideline for the Board complaint process. We would like clarification of such aspects as what documentation a licensee must provide during the complaint process; what rights a licensee has to see the complainant's documents; what forms of defense a licensee may offer in addition to medical records of the event; whether complaint investigations are limited to the complaint at hand or whether the Board may choose to inspect facilities or records that are unrelated to the complaint; and in general an explanation of the process that will provide guidance to licensees regarding potential or actual complaints. It would be very helpful for licensees to have an overall understanding of the complaint process and what it may entail, and may help prevent future complaints.

30. We request a Policy Guideline on facilities inspections, so that licensees can keep their facilities in compliance.