

AMERICAN ASSOCIATION OF
VETERINARY STATE BOARDS

**Veterinary Medicine and Veterinary
Technology Practice Act Model
with Comments**

Veterinary Medicine Practice Act Model with Comments created 2001

Latest revisions in 2014

380 West 22nd Street
Suite 101
Kansas City, MO 64108



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Introduction

The American Association of Veterinary State Boards (AAVSB) is a not-for-profit, 501(c)(3) association comprised of 59 veterinary licensing boards from the United States, six provinces in Canada, the U.S. Virgin Islands and Puerto Rico. The AAVSB is committed to serving these veterinary regulatory agencies (its Member Boards) by providing quality, relevant programs and services they can rely on to carry out their statutory responsibilities in the interest of public protection.

The AAVSB Member Boards have direct input and formally set policy and direction for the AAVSB by submitting nominations, Bylaws amendments and resolutions, and appointing a Delegate from their jurisdiction to attend the annual Delegate Assembly. Voting delegates elect the AAVSB Board of Directors and vote on important matters at the annual Delegate Assembly. The AAVSB Board of Directors is responsible for governing the association and fulfilling the mission and strategic priorities of the organization.

The American Association of Veterinary State Boards (AAVSB) is pleased to present the AAVSB Veterinary Medicine and Veterinary Technology Practice Act Model. At the 2000 AAVSB annual meeting in Salt Lake City, the AAVSB Member Boards were presented with a “generic” model practice act for comment and discussion. After receiving several constructive comments, and based upon the will of the membership, the AAVSB Executive Committee convened a Model Act Task Force. The Task Force was convened in July 2000 and met twelve times between September 2000 and June 2001. During its meetings, Task Force members argued passionately their points of view and studied research, information, and other regulatory schemes. Such healthy debate led to the draft, which was disseminated for comment on March 7, 2001. The AAVSB endeavored to disseminate its draft Model Act to all interested organizations. To this end, it was also posted on the the AAVSB web site to provide access to the entire public. Comments were received from over fifty organizations and individuals from across the country. All comments were extensively reviewed by the Model Act Task Force in subsequent meetings from the public protection perspective. Where appropriate, constructive comments resulted in modifications to the act and/or commentary.

In July 2001, the Delegates to the AAVSB Delegate Assembly in Boston approved the Veterinary Practice Act Model as a resource document available for use by Member Boards. Because it is a “living document”, the Assembly also directed the Practice Act Model Task Force to continue their work by adding statutory language regarding the regulation of veterinary technicians.

The purpose of the AAVSB Practice Act Model is to provide a resource to its Member Boards, many of which regulate the practice of veterinary technology as well as veterinary medicine. This document reflects a national perspective and was developed by the AAVSB consistent with its public protection mission. The AAVSB Practice Act Model reflects the most current thinking on professional regulation. An additional goal is to facilitate greater standardization of terminology and regulation

among jurisdictions. It is hoped that such uniformity will begin to allow jurisdictions to provide for increased public protection through effective regulation as well as facilitating mobility of veterinary professionals from jurisdiction to jurisdiction through the licensure process. Such developments are advantageous to the public by clarifying the role of veterinary medical regulatory boards while creating valid and accurate expectations for veterinary medical services. Increased mobility will also provide the public with greater access to qualified veterinarians to perform important services.

The AAVSB Practice Act Model was not drafted to protect professional territory or to define or secure specific job descriptions for veterinarians or veterinary technicians. While professional promotion may be an important activity of professional associations, societies, and other professional veterinary medicine membership groups, the sole concern of the AAVSB Practice Act Model is the protection of the public.

From the perspective of the Practice Act Model Task Force, and as reflected by the comments, the most challenging issues included the scope of practice, exemptions from licensure, board powers and responsibilities, the title protection of the term “veterinarian”, and mandatory reporting. Several additional comments also addressed other aspects of the Practice Act Model. While the Practice Act Model commentary contains explanations for most of the issues raised by individuals and entities who provided written comments to the original document, certain challenging issues are worthy of discussion in this Introduction. It is also worth noting that virtually the entire AAVSB Practice Act Model is law at least in part in one or more jurisdictions. Thus, the Model is not a departure from what already exists in several jurisdictions.

First, the Scope of Practice is probably one of the most important clauses within the legislation. Accordingly, it was extensively discussed by the Task Force and also was the subject of comments as well. The AAVSB is of the opinion that section 104 of the Practice Act Model reflects an appropriate reference to both generalities and the specifics of the practice of veterinary medicine. The AAVSB believes that the broadness and flexibility within the definitions of the practices of veterinary medicine are necessary in order to most effectively protect the public. Similarly, section 105 reflects an appropriate reference to tasks which may be performed by a veterinary technician under the supervision of a licensed veterinarian.

Also subject to various comments were the Exemptions contained in section 106. These exemptions have been redefined as “Special Provisions” in the 2014 revision to recognize that such activities fall within the scope of practice but do not require licensure, rather than attempting to exempt them or formulate the scope of practice to not include such activities. The commentary to sections 106 and 107 further address these issues.

The Powers and Responsibilities as set forth in section 213 were the subject of rigorous review and comments. Specifically, section 213 (a)(5) grants authority to the board to determine the standards for recognition and approval of degree programs of schools and colleges of veterinary medicine and veterinary technology for purposes of determining licensure eligibility. As has been addressed in the

commentary to this particular section, the AAVSB respects the 10th Amendment of the United States Constitution which bestows upon the states the authority to provide regulation within their borders. Furthermore, the AAVSB also recognizes the legal doctrine of improper delegation, which prohibits the legislatures and boards from delegating to outside private entities their authority to determine criteria necessary for licensure as a veterinarian. The AAVSB believes that such decision-making must be maintained by the regulatory board, through the legislative process, based upon its accountability to the public and public protection mission. Delegation analysis involves constitutional principles and prohibits unequivocal reliance in licensure decision-making upon outside private entities that are not accountable to the public and over whom the legislature and regulatory board have no rights of participation. Again, this concept is fully discussed in the commentary to section 213 (a)(5). Furthermore, a similar legal analysis applies to sections 302 (a)(4) and (5) and 302 (b)(4) and (5) Qualifications for Licensure by Examination, as well as section 303, Educational Equivalence, and section 304, Examinations.

Regarding the protection of the title “Veterinarian” and “Veterinary Technician,” the AAVSB believes that the use of such terms should be limited to those legally able to practice veterinary medicine and veterinary technology. This position is not only consistent with federal law but also provides the maximum public protection by minimizing the misconceptions of the consumers over individuals who are and are not able to practice veterinary medicine. Additionally, several states already limit the use of the term veterinarian to only licensees; however, since not all states regulate veterinary technicians, the term may not always be protected. The AAVSB believes that an administrative enforcement mechanism must be vested in the regulatory board in order to best protect the public. The AAVSB also believes that limiting enforcement of protecting the title “veterinarian” through the civil sector (after harm has occurred) or through the District Attorney’s office (if criminal statutes are implicated) does not satisfactorily protect the public. Again, interested parties are encouraged to read the comments to section 301 (b), Unlawful Practice.

The AAVSB intends that the Practice Act Model provide a basis for information on the regulation of veterinary medicine and veterinary technology. Consistent with other regulatory schemes, the Practice Act Model does not contain specific references to the administrative procedures used in the disciplinary process. Each jurisdiction has an Administrative Procedures Act that addresses the “due process” rights to which licensees are entitled in the administrative investigative and disciplinary processes. Also, the federal and state constitutions address the procedural rights bestowed upon licensees. To avoid inconsistencies with such other laws and regulations, the AAVSB has not addressed these specific rights in the Practice Act Model.

Although the AAVSB Practice Act Model includes language authorizing a board to regulate veterinary facilities, it does not have recommended standards of practice for facilities. Many jurisdictions currently regulate facilities, so this area of concern to the legislatures and boards is one that the AAVSB has begun to address in section 311 in the 2014 revisions.

The AAVSB Practice Act Model was developed and is available to the AAVSB Member Boards as a resource containing contemporary language regarding the regulation of veterinary medicine and

veterinary technology. It was drafted to withstand legal scrutiny and provide maximum public protection. While distancing itself from undue influence from professional associations to avoid legal and practical allegations of the “profession protecting its own,” the AAVSB welcomes input from these organizations, their state chapters, individual practitioners, academia, and others in formulating this document. The association appreciates all those who provided constructive comments to the original document. It is important to note the AAVSB Practice Act Model is a fluid document which will always be subject to modifications and, thus, can never be “final.” The AAVSB looks forward to continued dialogue on its Practice Act Model whereby Member Boards can comment and fully discuss issues impacting the regulation of veterinary medicine, veterinary technology and the mission of public protection. The AAVSB Practice Act Model is an example of the resources that can be made available to AAVSB Member Boards when diverse interests work together toward a common goal.

The AAVSB invites comments from all interested persons on the revised and retitled Veterinary Medicine and Veterinary Technology Practice Act Model. Like the original, it has been formatted to include the Model legislation in the left-hand column with corresponding commentary in the right-hand column. In an attempt to provide the rationale and thought processes behind several portions of the Practice Act Model, readers are encouraged to read the commentary as well as the Act to receive a complete perspective.

Acknowledgments

The American Association of Veterinary State Boards is very grateful to Dr. Lila Miller, chair of the original Practice Act Model Task Force and to Marilyn Cute, LVT, Barbara Pinker, CAHT, Georgianne Ludwig, DVM, Bob Gillespie, DVM, and Joe Gordon, DVM, subsequent Task Force members and consultants who worked so hard and devoted so much time to developing the AAVSB Veterinary Medicine and Veterinary Technology Practice Act Model.

The AAVSB would also like to thank the veterinary regulatory boards, professional organizations, and individuals who took the time to review and comment on this original model during its creation and hopes that many will comment on this draft. Input from these groups is an extremely important part in the development of this document.

Revisions

- Veterinary Medicine Practice Act Model with Comments created 2001
- Veterinary Medicine and Veterinary Technology Practice Act Model with Comments revised 2002
- Articles I and III revised 2005
- Article I revised 2009
- All articles revised 2014

Article I

Title, Purpose, and Definitions

Model Law**Comments****Article I. Title, Purpose, and Definitions**

An ACT concerning the regulation of the practices of veterinary medicine and veterinary technology.

Be it enacted...

Section 101. Title of Act

This Act shall be known as the “(Name of State) Veterinary Medicine and Veterinary Technology Practice Act.”

Section 102. Legislative Declaration

The practices of veterinary medicine and veterinary technology in the state of _____ are declared professional practices affecting the public health, safety, and welfare and are subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practices of veterinary medicine and veterinary technology, as defined in the Act, merit and receive the confidence of the public and that only qualified Persons be permitted to engage in the practice of veterinary medicine or veterinary technology in the state of _____. This Act shall be liberally construed to carry out these objectives and purposes.

Introductory Comment to Article I

The AAVSB believes that the public interest must be the central precept of any professional regulatory act and its administration, and that state regulatory Boards must constantly strive to ensure that this basic principle is upheld. These beliefs are clearly articulated in the Veterinary Medicine and Veterinary Technology Practice Act Model (“Act”).

Article I of the Act states that safeguarding the public interest is the most compelling reason for regulating the practices of veterinary medicine and veterinary technology, and identifies the activities included within the practices. Definitions of other terms used throughout the Act are also included in this article.

Section 102. Legislative Declaration

Veterinary medicine and veterinary technology are learned professions affecting public health and welfare and should be declared as such by the legislature.

Model Law**Comments****Section 103. Statement of Purpose**

- (a) It is the purpose of this Act to promote, preserve, and protect the public health, safety, and welfare by and through the effective control and regulation of Persons, residing in or out of the state who practice veterinary medicine or veterinary technology within this state.
- (b) (1) The purpose of this Act is to fully occupy the field of veterinary medicine and provide a uniform state-wide regulatory scheme to be enforced by the Board of Veterinary Medicine as defined in the scope of practice. As such, no city or county shall prohibit a Veterinarian, as defined, from engaging in any act or performing any procedure that falls within the professionally recognized scope of practice of licensure as a Veterinarian, including but not limited to the scope of practice set forth in this Act.
- (2) Nothing in this section 103(b) shall prohibit any city or county from:
- (i) levying a business license tax solely for revenue purpose, or
- (ii) levying a license tax solely for the purpose of covering the cost of regulation.

Section 103. Statement of Purpose

The Statement of Purpose defines the general scope of the veterinary medicine and veterinary technology Practice Act. A Board must have full knowledge of the Persons practicing veterinary medicine and veterinary technology within its Jurisdiction, and must effectively protect the public through regulation. This section provides for the regulation of both practices and the licensure of Veterinarians and Veterinary Technicians engaged in these practices, and also stipulates that the regulation of the practices of veterinary medicine and veterinary technology extends to all Veterinarians and Veterinary Technicians practicing in the state, regardless of their actual state of residency.

Model Law**Comments****Section 104. Practice of Veterinary Medicine**

The Practice of Veterinary Medicine means:

Any Person practices veterinary medicine with respect to Animals when such Person performs any one or more of the following:

- (a) Directly or indirectly consults, diagnoses, prognoses, corrects, supervises, or recommends treatment of an Animal, for the prevention, cure or relief of a wound, fracture, bodily injury, disease, physical or mental condition;
- (b) Prescribes, dispenses or administers a drug, medicine, biologic, appliance, application or treatment of whatever nature;
- (c) Performs upon an Animal a surgical or dental operation or a Complementary or Alternative Veterinary Medical procedure;
- (d) Performs upon an Animal any manual procedure for the diagnosis and/or treatment of pregnancy, sterility, or infertility;
- (e) Determines the health, fitness, or soundness of an Animal;
- (f) Represents oneself directly or indirectly, as engaging in the practice of veterinary medicine; or
- (g) Uses any words, letters or titles under such circumstance as to induce the belief that the Person using them is qualified to engage in the practice of veterinary medicine, as defined. Such use shall be prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine.

Section 104. Practice of Veterinary Medicine

The definition of the practice of veterinary medicine is one of the most important – and most-discussed – clauses in the AAVSB Veterinary Medicine and Veterinary Technology Practice Act Model. Veterinary Medicine is a dynamic profession, particularly over the past several years, and any definition of practice needs to contain a degree of flexibility that will allow the Board to make necessary adjustments from time to time to meet a changing veterinary medicine environment, an evolving practice, and the ongoing needs of consumers. The definition in Section 104 is purposely broad in order to provide substantial latitude to the Board in the adoption and implementation of rules. However, the definition does specifically identify a range of acceptable activities. The rules process would function as an important tool in the Board's efforts to adapt the definition to the needs of its state, since any new or amended rules that the Board may implement would be promulgated within the requirements of the state's Administrative Procedures Act, and would afford all interested parties an opportunity to provide review and comment.

Model Law**Comments****Section 105. Practice of Veterinary Technology**

The Practice of Veterinary Technology means:

Any Person practices veterinary technology with respect to Animals when such Person performs any one or more of the following:

- (a) Provides professional medical care, monitors and treats Animals, under supervision of a Veterinarian;
- (b) Represents oneself directly or indirectly, as engaging in the practice of veterinary technology; or
- (c) Uses any words, letters or titles under such circumstance as to induce the belief that the Person using them is qualified to engage in the practice of veterinary technology, as defined. Such use shall be prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary technology. Nothing in this section shall be construed to permit a Veterinary Technician to do the following:
 - (1) surgery;
 - (2) diagnose;
 - (3) prognose; and
 - (4) prescribe.

Regulations defining tasks of Veterinary Technicians:

The Board shall adopt regulations establishing Animal health-care tasks and an appropriate degree of supervision required for those tasks that may be performed only by a Veterinary Technician or a Veterinarian.

Section 106. Special Provisions (formerly Exempt Persons or Activities)

The requirements of the Act shall not apply to the following:

- (a) Any veterinary medical officer serving in the United States armed forces or in the federal or

Section 105. Practice of Veterinary Technology

See comment to Section 107 (z) regarding the protection of the title and the licensed profession.

Section 106. Special Provisions (formerly Exempt Persons or Activities)

The AAVSB recognizes that some states include additional special provisions relating to the spaying, neutering, dehorning, castration, emasculation, or docking of cattle, horses, sheep, goats, or swine in the course or exchange of work for which no monetary

Model Law**Comments****Section 106. Cont'd.**

state government performing veterinary medical services within the scope of official duties, provided such veterinary medical services are limited to the period of their military service;

- (b) Any Animal care specialist serving in the United States armed forces or in the federal or state government performing veterinary technology services within the scope of official duties, provided such veterinary technology services are limited to the period of their military service;
- (c) Any Person offering gratuitous services in cases of emergency;
- (d) Any veterinarian who is licensed in another Jurisdiction or country, or any Person whose expertise, in the opinion of the Veterinarian licensed in this state, would benefit an Animal, and who is consulting with a Veterinarian licensed in this state provided such service is limited to such Consultation;
- (e) Any Person in this state other than a Veterinarian whose expertise, in the opinion of a veterinarian licensed in another Jurisdiction or country, would benefit an Animal, and who is consulting with such Veterinarian provided such service is limited to such Consultation;
- (f) Any intern or resident who practices veterinary medicine in an Approved Veterinary Medical Program and who is a graduate of an Approved Veterinary Medical Program in any Jurisdiction or country, provided such practice is limited to such duties as intern or resident and is under the Direct Supervision of a Veterinarian or faculty under Section 106(11);
- (g) Any student enrolled and in good standing in an Approved Veterinary Medical Program who engages in practice at a veterinary teaching hospital or under the Direct Supervision of a Veterinarian under this article; provided however, that only such students who have completed at least _____ [time period

Section 106. Cont'd.

compensation is paid, or to artificial insemination and the collection of semen as well as additional services. Due to the potential for harm to the public/Animal(s), it is the intent of the Act to include Persons performing such activities as professionals who must be licensed. Accordingly, these particular activities are intentionally absent from the list of special provisions and such activities are included in the practice definition.

The special provision for students who engage in practice at a veterinary teaching hospital or under the Direct Supervision of a Veterinarian is intended to be restricted to those students who have completed some basic clinical courses. After much discussion and review of the comments, the AAVSB chose to leave the time period blank. The states should determine the requisite time period which can be reflected in hours, percentages or years. Similarly, states should determine the appropriate prerequisites to be completed before veterinary technology students are permitted to engage in the practice of veterinary technology.

As drafted, the special provision is intended to restrict the practice of veterinary technology to those students who have completed some basic courses and are pursuing completion of the experience component of the program.

In all cases the special provision is intended to apply only to students practicing under the appropriate supervision as determined by the Board. With regard to faculty, the AAVSB noted that several Jurisdictions already require licensure of faculty who teach clinical curriculum. Others require faculty licenses or institutional licenses. The AAVSB feels strongly that veterinary medicine faculty involved in direct, clinical relationships with the public and its Animals are engaged in practice and, thus, should be licensed, particularly when a Veterinarian-Client-Patient Relationship exists.

Through the Practice Act Model comment process, however, concerns were voiced regarding the practical implications such a licensure requirement would have on the education, recruitment of faculty and the

Model Law**Comments****Section 106. Cont'd.**

may be reflected in course hours, percentage of completion of curriculum or years] in an Approved Veterinary Medical Program may assist in diagnosis, prognosis, treatment and surgery in such practice, subject to the following limitations:

- 1) assistance in diagnosis and surgery must be under the Immediate Supervision of such Veterinarian; and
 - 2) assistance in treatment must be under the Indirect Supervision of such Veterinarian;
- (h) Any student enrolled and in good standing in an Approved Veterinary Technology Program approved by the Board who engages in the practice of veterinary technology in pursuance of the required experience component of the program under Direct Supervision of a Veterinarian or at a veterinary teaching hospital under Direct Supervision of veterinary faculty;
- (i) An Animal Shelter employee or volunteer who provides care and performs euthanasia for the shelter's Animals in the course and scope of the Person's employment or duties if the Person has successfully completed training acceptable to the Board and is acting under the Direct or Indirect Supervision of a Veterinarian or in accordance with the written guidelines of a Veterinarian. Such Persons shall not diagnose, prognose, prescribe or perform surgery;
- (j) Any Persons engaged in bona fide scientific research that reasonably requires experimentation involving Animals and is conducted in a facility or with a company that complies with federal regulations regarding Animal welfare;
- (k) Any Person or that Person's employee, who treats Animals belonging to that Person, providing that ownership is not transferred for the purpose of circumventing this Act;

Section 106. Cont'd.

undertaking of research and other important projects related to the educational process. In recognition of the practical implications such a requirement might have on educational institutions, the AAVSB Practice Act Model, provides a faculty license to provide for public protection, see Section 306.

To protect the public and to prevent Persons from circumventing the licensure requirements, the faculty license is limited to recognized faculty members who teach courses in Approved Veterinary Medical Programs.

A special provision is granted in the model statute to Animal Shelter employees who provide care and perform euthanasias. The Task Force acknowledges that many Jurisdictions have adopted more specific language requiring that shelter Animals be euthanized by certified euthanasia technicians when a Veterinarian or Veterinary Technician is not available.

A variety of certification methods have emerged through the rules process. To train euthanasia technicians, some Boards have established guidelines to certify euthanasia technicians whereas other Boards have little involvement.

Shelters, private and government agencies often respond to disasters and large scale cruelty such as dog fighting and puppy mill cases by setting up temporary shelters to provide care and shelter for rescued victims. In disaster cases, the Animals needing care and shelter often number well into the hundreds. In order to provide appropriate care for these Animals, it may be necessary to recruit Veterinarians from outside the state. In cruelty cases, law enforcement often depends upon assistance from Veterinarians with expertise in forensics, diagnosing, prognosing and treating Animal in large scale cruelty and fighting cases. They should not be limited in their ability to effectively enforce state criminal laws or render needed veterinary care due to jurisdictional constraints on veterinary practice.

Model Law**Comments****Section 106. Cont'd.**

- (l) Any veterinarian or veterinary technician who is licensed in good standing in another Jurisdiction or country and is providing veterinary services in response to an emergency, disaster (natural or man-made) or a case involving Animal cruelty or fighting, provided a request for such assistance is received from a government, law enforcement, or Animal protection agency;
- (m) Any veterinarian who is licensed in good standing in another Jurisdiction or country and is providing a continuing education course or training at an Approved Veterinary Medical or Veterinary Technology Program or in connection with an Approved Program of Continuing Education.

Section 106. Cont'd.

There needs to be a special provision that would allow them to practice temporarily in response to a call from a government, law enforcement or Animal protection agency that does not require a written Examination or other qualifications.

Model Law**Comments****Section 107. Definitions**

When used in this Act, these words and phrases shall be defined as follows:

- (a) **Animal** means any member of the Animal kingdom other than humans, whether living or dead.
- (b) **Animal Shelter** means a public or private humane society, Animal Shelter, society for the prevention of cruelty to Animals, Animal protection or control agency, rescue group, etc, that provides shelter and care for homeless Animals.
- (c) **Approved Provider of Continuing Education** means any Person, professional association, university or college, corporation or other entity that has met the requirements of the Board to provide educational courses that are designed to assure continued competence in the practice of veterinary medicine or veterinary technology.
- (d) **Approved Program of Continuing Education** means an educational program approved by the Board or offered by an Approved Provider of Continuing Education.
- (e) **Approved Veterinary Medical Program** means a school of veterinary medicine or a veterinary medical education program that has been approved by the Board.
- (f) **Approved Veterinary Technology Program** means a school of veterinary technology or a veterinary technology education program that has been approved by the Board.
- (g) **Board of Veterinary Medicine** means the Board of Veterinary Medicine created under this Act.
- (h) **Client** means an entity, Person, group or corporation that has entered into an agreement with

Section 107. Definitions

The Practices of Veterinary Medicine and Veterinary Technology are defined in Sections 104 and 105.

Section 107(c) and (d). Approved Provider and Approved Program of Continuing Education.

See comment to Section 213(a) regarding Board's role in the approval process of programs and providers.

Section 107(g). Board of Veterinary Medicine

Some Jurisdictions may select the title, Board of Veterinary Medicine and Veterinary Technology.

Model Law**Comments****Section 107. Cont'd.**

a Veterinarian for the purposes of obtaining veterinary medical services.

- (i) **Complementary and Alternative Veterinary Medicine [Therapies]** means a heterogeneous group of preventive, diagnostic, and therapeutic philosophies and practices that are not considered part of conventional veterinary medicine. These therapies include but are not limited to veterinary acupuncture, acuthery, and acupressure; veterinary homeopathy; veterinary manual or manipulative therapy (i.e., therapies based on techniques practiced in osteopathy, chiropractic medicine, or physical medicine and therapy); veterinary nutraceutical therapy; and veterinary phytotherapy.
- (j) **Consultation** means when a Veterinarian receives advice or assistance in Person, telephonically, electronically, or by any other method of communication, from a veterinarian or other Person whose expertise, in the opinion of the Veterinarian, would benefit an Animal. Under any circumstance, the responsibility for the welfare of the Animal remains with the Veterinarian receiving Consultation.
- (k) **Continuing Education** means training which is designed to assure continued competence in the practice of veterinary medicine or veterinary technology.
- (l) **Continuing Education Contact Hour** means a fifty (50) minute clock hour of instruction, not including breaks or meals.
- (m) **Conviction** means Conviction of a crime by a court of competent jurisdiction and shall include a finding or verdict of guilt, whether or not the adjudication of guilt is withheld or not entered on admission of guilt, a no consent plea, a plea of nolo contendere, or a guilty plea.

Section 107. Cont'd.

Model Law**Comments****Section 107. Cont'd.**

- (n) **Examination** means an Examination approved by the Board.
- (o) **Felony** means a criminal act as defined by this state or any other state or by definition under federal law.
- (p) **Informed Consent** means the Veterinarian has informed the Client or the Client's authorized representative, in a manner understood by the Client or representative, of the diagnostic and treatment options, risk assessment, and prognosis, and has provided the Client with an estimate of the charges for veterinary services to be rendered and the Client has consented to the recommended treatment.
- (q) **Jurisdiction** means any commonwealth, state, or territory, including the District of Columbia, of the United States of America, or any province of Canada.
- (r) **Licensee** means a Person duly licensed under this Act.
- (s) **Licensure Transfer** means the method whereby a veterinarian or a veterinary technician currently licensed in another Jurisdiction can also become licensed as a Veterinarian or Veterinary Technician in this Jurisdiction.
- (t) **Person** means any individual, firm, partnership, association, joint venture, cooperative, corporation, or any other group, legal entity or combination acting in concert; and whether or not acting as a principal, trustee, fiduciary, receiver, or as any kind of legal or Personal representative, or as the successor in interest, assignee, agent, factor, servant, employee, director, officer, or any other representative of such Person.
- (u) **Premises** means any place where the animal is located and where veterinary medicine is

Section 107. Cont'd.**Section 107(s). Licensure Transfer**

The phrase "Licensure Transfer" is intended to provide a mechanism for a licensee from another Jurisdiction to also become licensed in the model state through a process which recognizes certain already established qualifications.

The AAVSB has elected to use "Licensure Transfer" rather than Licensure by Endorsement or Reciprocity because of the confusion existing in regulation between such terms. "Licensure Transfer" is intended to allow for the possession of multiple licenses.

Model Law**Comments****Section 107. Cont'd.**

being practiced.

(v) **Supervision**-related terms are defined as follows:

(1) **Supervising Veterinarian** means a Veterinarian who assumes responsibility for the professional veterinary care given to an Animal by a Person working under his or her direction. The Supervising Veterinarian must have examined the Animal at such time as acceptable veterinary medical practice requires consistent with the particular delegated Animal healthcare task.

(2) **Immediate Supervision** means the Supervising Veterinarian is in the immediate area and within audible and visual range of the Animal patient and the Person treating the patient.

(3) **Direct Supervision** means the Supervising Veterinarian is on the premises where the Animal is being treated and is quickly and easily available.

(4) **Indirect Supervision** means a Supervising Veterinarian need not be on the premises but has given either written or oral instructions for the treatment of the Animal.

(w) **Veterinarian** means an individual who is duly licensed to practice veterinary medicine under the provisions of this Act.

(x) **Veterinarian Manager** is a Veterinarian who registers to assume responsibility for the management and operation of a veterinary facility.

Section 107. Cont'd.**Section 107(v)(3). Direct Supervision**

Boards may want to define “premises” to include ranches, racetracks, farms or other venues in which veterinary care may be provided.

Section 107(v)(4). Indirect Supervision

The AAVSB contemplates that this definition of Indirect Supervision includes and incorporates the technological advancements and the ability of Persons to communicate through electronic and other means as a form of supervision. Of course, such supervision must maintain the necessary “contacts” to be as effective as the Veterinarian deems appropriate, using professional judgment.

Section 107 (w). Veterinarian

To maintain consistency with the regulations promulgated by the Food and Drug Administration, Department of Health and Human Services with regard to Animal Drugs, Feed and Related Products (21 C.F.R. §530.3) which define Veterinarian and the Veterinarian-Client-Patient Relationship, the AAVSB defines Veterinarian as a Person who is duly licensed under the

Model Law**Comments****Section 107. Cont'd.**

(y) **Veterinary Facility** means any place or mobile unit from which the Practice of Veterinary Medicine is conducted.

Section 107 (w). Veterinarian. Cont'd.

provisions of the Act. The AAVSB also strongly believes that limiting the use of the title Veterinarian to individuals able to perform veterinary services better protects the public. Not only is this position consistent with many Jurisdictions which also limit the use of the title Veterinarian to Licensees, such is also consistent with most professions. Currently, at least thirteen states have a similar definition of Veterinarian. It must be emphasized that the title restriction does not prevent anyone from referencing a valid educational degree (i.e. DVM) or other recognized credential (i.e. VMD). See also the comment to section 301(b) of the Act. Several comments addressed this issue, saying the term Veterinarian belonged to individuals by virtue of the receipt of a degree. While this is understandable from an academic perspective, the AAVSB reasoned that the Code of Federal regulations and the potential for confusion to the public, mandate limitation of use of the term "Veterinarian" to Licensees. In that case, there would be no violation and enforcement would be left up to criminal prosecution through the state's attorney or through civil litigation, involving deceptive trades practices or other applicable remedies. The AAVSB determined this approach does not adequately protect the public as the state lacks the resources or incentives to criminally prosecute such offenses or, alternatively, injured parties must pursue matters through an expensive civil process. The AAVSB has chosen to affirmatively address the issue, rather than pass the enforcement to other entities.

Section 107(y). Veterinary Facility

"Veterinary Facility" is defined with the intention that Jurisdictions license or otherwise register facilities or issue facility permits as a mechanism for protecting the public, especially when such facilities are owned by non-veterinarians, see Section 311. Regulatory Boards can thereafter establish standards and monitor qualifications of such facilities. Indeed, at least thirty-one Jurisdictions in veterinary medicine already provide for such regulation. It is the intention of the AAVSB to continue to develop this important area of regulation by formulating the model standards by which such facilities will be recognized.

Model Law**Comments****Section 107. Cont'd.****Section 107(y). Veterinary Facility, Cont'd.**

The AAVSB recommends that regulatory Boards consider delineating the various specific Veterinary Facilities within its *rules*. Differing facilities can be defined within the rules which can identify minimum standards and the allowable practices in an effort to insure public protection. The AAVSB initially identified the following categories of Veterinary Facilities:

- (1) Veterinary or Animal hospital or clinic means a facility that meets or exceeds all physical requirements and minimum standards as established by Board rule for Veterinary Facilities; provides examination, diagnostic and health maintenance services for medical and surgical treatment of Animals and is equipped to provide housing and nursing care for Animals during illness or convalescence.
- (2) Specialty practice or clinic means a facility that provides complete specialty service by a Veterinarian who has advanced training in a specialty and is a diplomate of an approved specialty board. A specialty practice or clinic shall meet all minimum standards which are applicable to a specialty as established by Board rule.
- (3) Central hospital means a facility that meets all requirements of a veterinary or Animal hospital or clinic as defined in paragraph (1) of this subdivision and other requirements as established by Board rule, and which provides specialized care, including but not limited to the availability of nursing care during specified hours and specialty Consultation on a permanent or on-call basis. A central hospital shall be utilized primarily on referral from area veterinary hospitals or clinics.

The AAVSB recognizes the different references to emergency facilities/central hospitals and offers the above definition as a starting point, understanding the numerous variations of requirements within these specific facilities including hours of operation, emergency services provided, on-call basis and referrals.

Model Law**Comments****Section 107. Cont'd.**

- (z) **Veterinarian-Client-Patient Relationship (VCPR)** exists when the Veterinarian has assumed responsibility for making medical judgements regarding the health of the Animal(s) and the need for medical treatment.

Section 107(y). Veterinary Facility, Cont'd.

- (4) **Satellite, outpatient, ambulatory clinic** means a supportive facility, including but not limited to humane societies, vaccine clinics and limited service clinics, owned by or associated with and having ready access to a full-service veterinary hospital or clinic or a central hospital, providing all mandatory services, including Examination, diagnostic, preventative medicine, and minor surgical services for Animals not requiring confinement or hospitalization, and meeting all physical requirements and minimum standards as established by statute or rule.

Section 107(z). Veterinarian-Client-Patient Relationship (VCPR)

After much consideration, the AAVSB determined that the establishment of the VCPR must be specified through general statutory language. Under certain circumstances, the failure to establish the VCPR may severely hinder the Boards' ability to prosecute or pursue administrative disciplinary actions against Licensees.

Certain comments suggested referencing the definition of VCPR set forth in the Code of Federal Regulations (CFR) within the statute. The AAVSB carefully reviewed the CFR and determined that the above definition was broad enough to encompass the more specific references in the CFR. Furthermore and respecting the rights of states to regulate within the police powers set forth in the 10th Amendment of the United States Constitution, the AAVSB did not want to bind the states to a federal definition, should the state wish to be more stringent than the federal government. Also, the AAVSB did not want to bind the states to a federal definition which, if changed, would necessitate subjecting the practice act to modifications and additional scrutiny by the legislature. Finally, the AAVSB determined that the specifics of the VCPR should be contained in the standards of practice/codes of conduct and promulgated through the rule/regulations, a process which is easier to modify, if necessary. Below are comments to the act which provide suggested language to be in-

Model Law**Comments****Section 107. Cont'd.****Section 107(z). Veterinarian-Client-Patient Relationship (VCPR), Cont'd.**

incorporated in the regulations. This suggested language incorporates the requirements of the CFR.

Due to the importance of the recognition of the establishment of the VCPR, the AAVSB strongly recommends that at least the following attributes of this relationship be recognized in the standards of practice/codes of conduct adopted in the Board rules/regulation, rather than in the definition of the VCPR. When promulgating such rules/regulations at least the following attributes should be incorporated:

- (1) The Veterinarian must have sufficient knowledge of the Animal(s) to initiate at least a general or preliminary diagnosis of the medical condition of the Animal(s). This means that the Veterinarian has seen the Animal(s) within the last year and is personally acquainted with the care of the Animal(s) by virtue of a physical examination of the Animal or by medically appropriate and timely visits to the premises where the Animal is kept;

In cases involving operations with several Animals, such as encountered at farms, laboratories or in shelters, the sufficient knowledge component of the VCPR can be met by:

 - (a) examination of health, laboratory or production records;
 - (b) consultations with owners, managers, directors, caretakers or other supervisory staff who oversee the health care management program;
 - or
 - (c) information regarding the local epidemiology of diseases for the appropriate species;
- (2) The Veterinarian has obtained Informed Consent and the Client has agreed to follow the instructions; and

Model Law**Comments****Section 107. Cont'd.****Section 107(z). Veterinarian-Client-Patient Relationship (VCPR), Cont'd.**

(3) The Veterinarian is readily available or has arranged for emergency coverage or follow-up evaluation in the event of adverse reaction or the failure of the treatment regiment.

It is essential for the VCPR to be easily established in order to require the Veterinarian to assume accountability for the veterinary medical services rendered. Furthermore, as standards of practice and codes of conduct change over time, it is easier to promulgate new rules incorporating such changes rather than adopting legislative modifications.

Section 107. Con't.

(aa) **Veterinary Technician** means an individual who is duly licensed to practice veterinary technology under the provisions of this Act.

Section 107(aa). Veterinary Technician

The AAVSB believes that the title “Veterinary Technician” and the practice of veterinary technology should be protected as a licensed profession, and this is reflected in the Act. However, the Practice Act Model Task Force recognizes that states have chosen various methods of regulating veterinary technicians. Some states have created other titles such as veterinary assistant or veterinary employee to define the roles of staff who may perform tasks not relegated to Veterinary Technicians.

Other states have chosen to either not regulate technicians or to use alternative titles such as registered or certified technicians. In all cases, states are strongly encouraged to specify the roles of each designated title (in the rules), recognizing that all veterinary employees must be supervised by a licensed Veterinarian.

Article II

Board of Veterinary Medicine

Model Law**Comments****Article II. Board of Veterinary Medicine****Introductory Comment to Article II****Section 201. Designation**

The responsibility for enforcement of the provisions of this act is hereby vested in the Board of Veterinary Medicine (Board). The Board shall have all of the duties, powers, and authority specifically granted by or necessary for the enforcement of this Act, as well as such other duties, powers, and authority as it may be granted from time to time by applicable law.

Before it can regulate the practice of veterinary medicine or veterinary technology, the state must first establish and empower the Board. Accordingly, Article II of the Act defines and creates the Board by specifying elements necessary to its formation, organization, and operation. Each of the sections contained in this article covers elements which the AAVSB felt necessary to the proper formation and efficient operation of the Board. Several of these sections, especially those which contain innovative or infrequently utilized provisions, are supplemented by individual explanatory comments.

Among the sections of Article II that may be of particular interest to users of the Act are the following: Section 202 and 203(c), pertaining to the inclusion of public members as Board members; Section 207, which provides grounds and procedures for removal of Board members, and Section 213(b)(2), which enables Boards to avail themselves of research and study grants and other non-state monies without having to deposit such funds in state general revenue accounts (thereby losing control over the expenditure of such funds).

It is also important to note that Section 212 specifically empowers the Board to make such rules as are necessary to fully administer and implement the Act. This is a most significant feature of the Act. The underlying philosophy of this approach is that the statute should create goals, guidelines, and policies in general areas, and permit the Board to provide the specifics in its rules. This approach recognizes that it is impossible for state legislatures to enact comprehensive provisions regarding all of the matters with which a Board may be confronted or to anticipate the rapidly changing conditions of the professions and the delivery of veterinary medical services. Consequently, the AAVSB recommends that Boards have adequate power to adopt and amend rules with the greatest possible flexibility and autonomy. Section 212 of this Act is designed to accomplish this objective.

Model Law**Comments****Section 202. Membership**

The Board shall consist of _____ members, [at least one (1) of whom shall be a representative of the public, and the remainder] [each] of whom shall be Veterinarians or Veterinary Technicians, who possess the qualifications specified in Section 203. At all times, at least fifty percent (50%) of the members of the Board shall be Veterinarians who are actively engaged in the practice of veterinary medicine in this state.

Section 203. Qualifications

- (a) Board members shall at all times maintain eligibility to serve on the Board by avoiding relationships which would interfere with the Board mission of public protection. Board members must be especially cognizant of issues of conflict of interest.
- (b) Each Veterinarian or Veterinary Technician member of the Board shall at all times as a Board member:
- (1) Be a resident of this state for not less than two years;
 - (2) Be currently licensed and in good standing to engage in the practice of veterinary medicine or veterinary technology in this state; and

Section 202. Membership

The number of Board members should be determined by each individual state according to its particular requirements. Individual states may wish to consider Board composition which represents the diversity of practice types and interests within a state. Variable factors, such as state population, number of Veterinarians, and other local considerations, may all be relevant in determining the number of Board members needed to most effectively enforce the Act. Since the mission of the Board is public protection, the AAVSB strongly recommends that the Board have at least one public member. In the event a state prefers to limit the Board membership to Veterinarians and Veterinary Technicians, the bracketed language pertaining to a public member should be deleted, as should Section 203(c) and the alternative “each” should be selected.

Section 203. Qualifications

Conflict of interest issues provide a legal basis for challenging the actions of a regulatory Board. As has been determined by the United States Supreme Court, a conflict need not be actual, but merely the appearance of an impropriety can create the basis for legal challenges. The AAVSB strongly suggests regulatory Board members not participate as an officer or in a policy-making position of a local, state or national professional association.

Section 203(b). Qualifications

Section 203(b) of the Act requires that Veterinarians and Veterinary Technicians be licensed to practice at all times while serving as Board members and have at least five (5) years of experience in the practice of veterinary medicine or veterinary technology prior to appointment. Since the practice of veterinary medicine is defined in Section 104 in broad terms, it renders a Veterinarian actively engaged in almost any phase of practice eligible for appointment. This provides for

Model Law**Comments****Section 203(b). Qualifications, Cont'd.**

- (3) Have had at least five (5) years of experience in the practice of veterinary medicine or veterinary technology.
- (c) The public member(s) of the Board shall be a resident of this state who has attained twenty-one (21) years of age and shall not be, nor shall ever have been, a Veterinarian, Veterinary Technician or the immediate family member of a Veterinarian or Veterinary Technician, or a Person who has ever had any material financial interest in the provision of veterinary services or who has engaged in any activity directly related to the veterinary profession.

Section 204. Appointment

The Governor shall appoint the members of the Board in accordance with the provisions of this Article and the state constitution.

Section 205. Terms of Office

- (a) Members of the Board shall be appointed for a term of ___ years, except as provided in subsection (b) and except that members of the Board who are appointed to fill vacancies which occur prior to the expiration of a former member's full term shall serve the unexpired portion of such term.
- (b) The terms of the members of the Board shall be staggered, so that the terms of no more than three (3) members shall expire in any year. Each member shall serve until a qualified successor is appointed.
- (1) The present members of the Board shall serve the balance of their terms.

Section 203(b). Qualifications, Cont'd.

the eligibility of candidates who have divergent backgrounds and experiences and who are knowledgeable in the affairs of the profession and who represent different geographic areas of the state.

Section 203(c). Qualifications

Specific qualifying criteria for the public member have been deliberately omitted from this section. Reliance has been placed in the Governor to determine what attributes a Person should possess in order to meaningfully serve on a Board. In order to help assure that such a member would be truly independent in judgments, those Persons who have a possible substantial relationship with the profession are rendered ineligible by this section.

Section 204. Appointment

The AAVSB recognizes that there may be other appointing authorities in some Jurisdictions. Accordingly, Jurisdictions with an appointing authority other than the Governor should insert the appropriate reference to such authority within this section of the Act.

Model Law**Comments****Section 205. Terms of Office, Cont'd.**

- (2) Any present Board members appointed initially for a term of less than ____ years shall be eligible to serve for two (2) additional full terms.
- (c) No member of the Board shall serve more than two (2) consecutive full terms. The completion of the unexpired portion of a full term shall not constitute a full term for purposes of this section.

Section 206. Vacancies

Any vacancy which occurs in the membership of the Board for any reason, including expiration of term, removal, resignation, death, disability, or disqualification, shall be filled within six (6) months as prescribed by Section 204. Failure to fill a vacancy within the six (6) month period shall divest the Governor of the appointment authority for such vacancy and vest such authority in the state senate.

Section 207. Removal

- (a) A Board member may be removed pursuant to the procedures set forth in subsection (b) herein, upon one or more of the following grounds:
- (1) The refusal or inability for any reason of a Board member to perform the duties as a member of the Board in an efficient, responsible, and professional manner;
- (2) The misuse of office by a member of the Board to obtain financial or material gain or advantage personally or for another through such office;

Section 205. Terms of Office, Cont'd.

(2) Any present Board members appointed initially for a term of less than ____ years shall be eligible to serve for two (2) additional full terms.

(c) No member of the Board shall serve more than two (2) consecutive full terms. The completion of the unexpired portion of a full term shall not constitute a full term for purposes of this section.

Section 206. Vacancies

Based upon several experiences within veterinary medicine and other professions whereby vacancies on regulatory Boards have not been timely appointed, the AAVSB provided for a time period whereby the governor (or other appointing authority) can fill such vacancies. Failure to make such appointments within the six-month period divests the governor of the appointment authority and empowers the Senate in this regard. It is hoped that this time period will provide incentives to the governor to make such appointments in a timely fashion.

Section 207. Removal

In certain Jurisdictions, there may be general statutory provisions that establish the procedures and grounds for the removal of appointed public officials. In these Jurisdictions, disregard Section 207. Specific grounds may be addressed in the regulations, to include failure to attend meetings and any other parameters established by the Board.

Model Law**Comments****Section 207. Removal, Cont'd.**

- (3) A final adjudication by a recognized body including the courts that there has been a violation of the laws governing the practice of veterinary medicine or veterinary technology; or
 - (4) Other just and reasonable causes as determined solely by the Board pursuant to applicable law.
- (b) Removal of a member of the Board shall be in accordance with the Administrative Procedures Act of this state, or other applicable laws.

Section 208. Organization

- (a) The Board shall elect from its members a Chairperson and such other officers as it deems appropriate and necessary to conduct its business. The Chairperson shall preside at all meetings of the Board, shall be responsible for the performance of all of the duties and functions of the Board and shall perform those duties customarily associated with the position and such other duties assigned from time to time by the Board.
- (b) Officers elected by the Board shall serve terms of one (1) year commencing with the day of their election and ending upon election of their successors and shall serve no more than three (3) consecutive full terms in each office to which they are elected.
- (c) The Board shall employ an Executive Director who shall be responsible for the performance of the administrative functions of the Board and such other duties as the Board may direct.

Section 207. Removal, Cont'd.**Section 208(c). Organization**

The AAVSB urges that every Board have a permanent administrative official (Executive Director) to perform and supervise the administrative duties and functions for which the Board is responsible on a day-to-day basis. The responsibilities of the Executive Director should include the hiring of necessary staff to assist in fulfilling the responsibilities of the Board. The position title may vary from Jurisdiction to Jurisdiction.

Model Law**Comments****Section 209. Compensation of Board Members**

Each member of the Board shall receive as compensation the sum of \$_____ per day for each day on which the member is engaged in performance of the official duties of the Board, and shall be reimbursed for all reasonable and necessary expenses incurred in connection with the discharge of such official duties.

Section 210. Meetings

- (a) The Board shall meet at least once every _____ month(s) to transact its business. The Board shall meet at such additional times as it may determine. Such additional meetings may be called by the Chairperson of the Board or by two-thirds (2/3) of the members of the Board.
- (b) The Board shall meet at such place as it may from time to time determine. The place for each meeting shall be determined prior to giving notice of such meeting and shall not be changed after such notice is given without adequate prior notice.
- (c) Notice of all meetings of the Board shall be given in the manner and pursuant to requirements prescribed by the Administrative Procedures Act.
- (d) A majority of the members of the Board shall constitute a quorum for the conduct of a Board meeting and, except where a greater number is required by the Act or by any rule of the Board, all actions of the Board shall be by a majority of a quorum.
- (e) All Board meetings and hearings shall be open to the public. The Board may, in its discretion and according to law, conduct any portion of its meeting in executive session, closed to the public.

Section 209. Compensation of Board Members**Section 210(a). Meetings**

The AAVSB strongly recommends that Boards of veterinary medicine meet at least four times per year. This is a minimum standard that would help Boards maintain an adequate level of efficiency and responsiveness.

Section 210(e). Meetings

Many states have adopted “sunshine” laws which provide for open meetings. Section 210(e) may not be necessary or may need revision to eliminate or to curtail the use of executive sessions.

Model Law**Comments****Section 211. Employees**

The Board may, in its discretion, employ Persons in addition to the Executive Director in such other positions or capacities as it deems necessary to the proper conduct of Board business and to the fulfillment of the Board's responsibilities as defined by the Act.

Section 212. Rules

The Board shall make, adopt, amend, and repeal such rules as may be deemed necessary by the Board for the proper administration and enforcement of this Act. Such rules shall be promulgated in accordance with the procedures specified in the Administrative Procedures Act.

Section 213. Powers and Responsibilities

- (a) The Board shall be responsible for the control and regulation of the practices of veterinary medicine and veterinary technology in this state including, but not limited to, the following:
- (1) Licensure by Examination, by Licensure Transfer, by temporary or provisional recognition, by issuance of a faculty license, or the renewal of licenses of individuals who are qualified to engage in the practice of veterinary medicine or veterinary technology

Section 211. Employees

Inspectors employed by the Board may be Veterinarians or Veterinary Technicians. Boards may wish to consider whether or not investigators must be Veterinarians.

Section 212. Rules

The legislative authority granted to a Board to adopt, amend and repeal rules is an extremely important power. Boards are encouraged to fully exercise this authority by adopting rules, where necessary, to more specifically address regulatory issues. This rule-making authority is not only beneficial for the protection of the public, but also benefits the Board when it is necessary to interpret the Act. As membership on the Board changes, these rules become increasingly more important in an effort to maintain consistency in the application of the Act. Generally, the rule-making process is governed by an Administrative Procedures Act (APA) or other applicable law which provides for public disclosure and comments prior to promulgation. These processes are designed to provide for public input and the necessary checks and balances upon the regulatory Board. Of course, any action undertaken by the Board must be to enhance the Board authority and public protection.

Section 213(a)(1). Powers and Responsibilities

See Section 107(r) and Section 306 and the corresponding comments for a definition and explanation of "Licensure Transfer."

Model Law**Comments****Section 213. Powers and Responsibilities, Cont'd.**

- under the provisions of this Act;
- (2) Licensure and renewal of licensure or registration of facilities under provisions of this Act;
 - (3) The establishment and enforcement of standards or criteria of programs or other mechanisms to insure the continuing competence of Licensees;
 - (4) The establishment and enforcement of compliance with minimum standards for the registration of Veterinary Facilities, and minimum standards and codes of conduct for Licensees engaged in the practice of veterinary medicine or veterinary technology. A *Bill of Rights* may be included concerning the disclosures a Client may expect in regard to the qualifications of the Licensee, Informed Consent, and the provision of veterinary medical services;
 - (5) The determination and issuance of standards for recognition and approval of degree programs of schools and colleges of veterinary medicine and veterinary technology whose graduates shall be eligible for licensure in this state;

Section 213(a)(3)(4) and (5). Powers and Responsibilities

Great care should be exercised by the Boards with respect to these Sections. Many states have statutes or rules which provide, for example, that approved degree programs of schools or colleges of veterinary medicine are those accredited by the Council on Education (COE) of the AVMA. Similarly, with regard to accredited Veterinary Technician programs, many states have statutes or rules which provide that approved programs are those accredited by the Committee on Veterinary Technician Education and Activities (CVTEA) of the AVMA. Furthermore, some Boards through their regulation/rules, rely upon the standards of practice or codes of ethics of private outside entities like the professional associations. As is emphasized by this Practice Act Model and Comments and for reasons stated below, the legislatures and/or regulatory Boards are encouraged to adopt, by statute or through the rule making process, the actual standards or criteria of the private outside entity in an attempt to avoid allegations of improper delegation.

It is a well-established rule of administrative law that any delegation of governmental power (through statute or by rule) must carry with it appropriate limitations and procedural safeguards for affected individuals. For example, a direct, unequivocal grant of the accreditation function to a private organization, such as AVMA COE, by the legislature through a practice act or by the Board through the rule making process, might be deemed an unauthorized, improper, and invalid delegation of legislative or Board authority. Similarly, a direct reliance upon standards of practice or a code of conduct of a private outside body over which the legislature or Board has no control may constitute an unconstitutional delegation of authority. This doctrine is based upon the simple premise that regulatory decisions impacting an individual's property right (i.e. a license) must be made by Boards that have been created and empowered to protect the public and are answerable to the general public. Further, regulatory Boards in veterinary medicine have no control over AVMA activities. A review of this legal doctrine reveals case law invalidating legislation and rules that, without

Model Law**Comments****Section 213. Powers and Responsibilities, Cont'd.****Section 213. Powers and Responsibilities, Cont'd.**

limitation, rely upon these outside entities without public accountability. See Garces v. Department of Registration and Education, 254 N.E.2d 622 (Ill.App., 1969); Gumbhir v. Kansas State Board of Pharmacy, 618 P. 2d 837 (Ks 1980); Coffman v. State Board of Examiners in Optometry, 50 N.W. 2d 322 (MI 1951); FM Properties Operating Co. v. City of Austin, 22 S.W. 3d 868 (TX 2000), Balian v. Board of Licensure in Medicine, 722 A. 2d 364 (ME 1999).

The AAVSB recommends that the statutory language grant the Board the authority to approve veterinary medical programs and veterinary technology programs. Boards thereafter may adopt in their rules the standards, criteria and policies of accreditation established from time to time by the COE or the CVTEA, the nationally recognized accrediting agencies for veterinary medical degree programs and veterinary technology programs. Thereafter, the regulatory Boards can annually adopt in their minutes the list of accredited veterinary medicine programs using the AVMA COE list. A similar process can take place by the Board should it wish to rely upon others in determining the standards of practice or codes of conduct. This will allow the legislatures and Boards to utilize the expertise of such private outside entities without improperly delegating such authority to an organization over whom the Boards have no control and which is not accountable to the public.

Section 213(a)(4). Powers and Responsibilities

To avoid improper delegation allegations as referenced above, the standards of practice and codes of conduct should be a product of the Board. Again, the Board may rely upon the expertise of outside private entities by adopting those standards which the Board deems acceptable. The “Bill of Rights” is intended to provide legislative or regulatory guidance to practitioners regarding the information to be made available to Clients/patients during the establishment of the professional relationship. Included would be information regarding the qualifications of Licensees (licensure status, specialty certification), the regulatory Board

Model Law**Comments****Section 213. Powers and Responsibilities, Cont'd.**

- (6) The enforcement of those provisions of the Act relating to the conduct or competence of Licensees practicing in this state, registration of Veterinary Facilities and the suspension, revocation, or restriction of licenses to engage in the practice of veterinary medicine or veterinary technology;
- (7) The Board shall maintain jurisdiction over individuals, irrespective of their licensure status, (i.e., active, inactive, expired, lapsed, surrendered or disciplined) relative to acts, omissions, complaints and investigations which occurred during the licensure period. The Board shall also maintain jurisdiction over registered facilities, irrespective of their registration status, relative to acts, omissions, complaints and investigations which occurred during the registration period. Such jurisdiction shall be for purposes of enforcement of all the provisions of this Act and any regulations duly promulgated hereunder, including the assessment and collection of fines, costs, and attorneys fees. Jurisdiction of the Board shall also extend to individuals engaging in the unauthorized practice of veterinary medicine or veterinary technology. It is the intent of this subsection that Licensees cannot divest the Board of jurisdiction by changing or relinquishing licensure or registration status.

Section 213. Powers and Responsibilities, Cont'd.

and contact information in the event of a complaint, billing policies, Informed Consent and the like. The “Bill of Rights” should be consistent with standards of practice, codes of ethics and regulations that the Board has adopted under the Act to avoid inadvertently expanding the role and the responsibilities of the Licensee through the establishment of such a “Bill of Rights”.

Model Law**Comments****Section 213. Powers and Responsibilities, Cont'd.**

- (8) The Board may issue an order directing an applicant or Licensee to undergo a mental or physical examination or chemical dependency evaluation, with probable cause that the applicant or Licensee has engaged in conduct prohibited by this Act or a statute or rule enforced by the Board. For the purpose of this Section, every applicant or Licensee is considered to have consented to undergo a mental and/or physical examination or chemical dependency evaluation when ordered to do so, in writing, by the Board and to have waived all objections to the admissibility of the examiner's or evaluator's testimony or reports on the grounds that the testimony or reports constitute a privileged communication;
- (9) The collection of data necessary to carry out the provisions of this Act;
- (ii) Such funds are expended for the pursuit of the objective for which they are awarded;
- (iii) Activities connected with or occasioned by the expenditures of such funds do not interfere with the performance of the Board's duties and responsibilities and do not conflict with the exercise of the Board's powers as specified by this Act;
- (iv) Such funds are kept in a separate account; and
- (v) Periodic reports are made concerning the Board's receipt and expenditure of such funds.

Section 213(a)(8). Powers and Responsibilities

This section allows a Board to order mental or physical examinations or chemical dependence evaluations upon a showing of probable cause. This power should be used judiciously, only when the Board has reason to believe that there may be a connection between a mental and/or physical condition and the alleged conduct. This power is necessary to ensure to the public that an applicant or Licensee's ability to practice veterinary medicine or veterinary technology safely and competently is not impaired.

Model Law**Comments****Section 213. Powers and Responsibilities, Cont'd.**

- (10) The investigation of any Person or facility, including facility inspection, during customary business hours for the purpose of determining if any provisions of the Act governing the practice of veterinary medicine or veterinary technology are being violated. The Board, its officers, inspectors, and representatives shall cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to the practice of veterinary medicine or veterinary technology.
- (b) The Board shall have such other duties, powers, and authority as may be necessary to the enforcement of this Act and to the enforcement of duly adopted Board rules which shall include, but are not limited to, the following:
- (1) The Board may join such professional organizations and associations organized exclusively to promote the improvement of the standards of the practices of veterinary medicine and veterinary technology for the protection of the health and welfare of the public and/or whose activities assist and facilitate the work of the Board.
- (2) The Board may receive and expend funds, in addition to its [annual/biennial] appropriation, from parties other than the state, provided:
- (i) Such funds are awarded for the pursuit of a specific objective which the Board is authorized to accomplish by this Act, or which the Board is qualified to accomplish by reason of its jurisdiction or professional expertise;

Section 213. Powers and Responsibilities, Cont'd.

Model Law**Comments****Section 213. Powers and Responsibilities, Cont'd.**

- (3) Any investigation, inquiry, or hearing which the Board is empowered to hold in accordance with applicable law may be held by or before any member(s) of the Board and the order of such member(s) shall be deemed to be the order of said Board when approved and confirmed as noted in Section 210(d).
- (4) The Board shall report any violation of this Act which also is deemed as violative of applicable criminal statutes to the Attorney General [State's Attorney] to cause appropriate proceedings to be instituted in the proper court without delay and to be prosecuted in the manner required by law. It is the duty of the Attorney General [State's Attorney] to prosecute such violations. Nothing in this paragraph shall be construed to require the Board to report violations whenever the Board believes that the public's interest will be adequately served in the circumstances by a suitable written notice or warning.
- (5) The Board shall have the power to subpoena Persons and documents for purposes of depositions and testimony, or both, in the same manner as prescribed in civil cases in the courts of this State. Any member of the Board, hearing officer, or administrative law judge shall have power to administer oaths to witnesses at any hearing which the Board is authorized to conduct, and any other oaths authorized in any Act administered by the Board

Section 213. Powers and Responsibilities.

The legislative process provides a system of checks and balances to ensure that the Board acts within the scope of its authority and in accordance with all other applicable laws, such as the Administrative Procedures Act.

Model Law**Comments****Section 213. Powers and Responsibilities, Cont'd.**

(6) In addition to the fees specifically provided for herein, the Board may assess additional reasonable fees for services rendered to carry out its duties and responsibilities as required or authorized by this Act or duly adopted rules. Such services shall include but not be limited to the following:

(i) Issuance of duplicate certificates or identification cards;

(ii) Mailing lists, or reports of data maintained by the Board;

(iii) Copies of any documents;

(iv) Certification of documents;

(v) Notices of meetings;

(vi) Licensure Transfer;

(vii) Examination administration to a licensure applicant; and

(viii) Examination materials.

(7) Cost Recovery.

(i) In any order issued in resolution of a disciplinary proceeding before the Board, the Board may request the Administrative Law Judge/Hearing Officer (ALJ/HO) to direct any Person or Veterinary Facility found guilty of a charge involving a violation of any laws or rules, to pay to the Board a sum not to exceed the reasonable costs, including attorneys' fees, of the investigation and prosecution of the case.

Section 213. Powers and Responsibilities, Cont'd.**Section 213(b)(7). Cost Recovery**

The ALJ/HO interspersed throughout this section refer to the terms: "administrative law judge," or "hearing officer" as determined by individual states.

Model Law**Comments****Section 213. Powers and Responsibilities, Cont'd.**

(ii) In the case of a Person or Veterinary Facility, the order permissible under (i) above may be made as to the corporate owner, if any, and as to any Veterinarian, manager, officer, owner, or partner of the practice or facility who is found to have had knowledge of or have knowingly participated in one or more of the violations set forth in this section.

(iii) The costs to be assessed shall be fixed by the ALJ/HO and shall not be increased by the Board; where the Board does not adopt a proposed decision and remands the case to a(n) ALJ/HO, the ALJ/HO shall not increase any assessed costs.

(iv) Where an order for recovery of costs is made and timely payment is not made as directed in the Board's decision, the Board may enforce the order for payment in the _____ Court in the county where the administrative hearing was held. This right of enforcement shall be in addition to any other rights the Board may have as to any Person directed to pay costs.

(v) In any action for recovery of costs, the Board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

- (8) Except as otherwise provided to the contrary, the Board shall exercise its duties, powers, and authority in accordance with the Administrative Procedures Act.

Section 213. Powers and Responsibilities, Cont'd.

Article III

Licensing

Article III. Licensing.**Introductory Comment to Article III.**

Article III of this Act sets out the requirements for initial licensure of Veterinarians and Veterinary Technicians, and registration of veterinarian facilities, as well as Licensure Transfer, renewal, and provisional, temporary or faculty licensure. As in other parts of the Act, this Article establishes basic criteria and delegates the authority for implementing those criteria to the Board. The Board exercises this authority by promulgating specific rules and utilizing appropriate enforcement mechanisms. For example, in the area of initial licensure, the Act would be implemented by the Board's approval of Veterinarian or Veterinary Technician degree programs specifications of the Examinations to be used, and establishment of all other prerequisites that must be met by each applicant to whom it issues a license.

This article, as well as the entire Act, also reflects the AAVSB's efforts to develop and continue uniform standards for the transfer of licensure. The veterinary medical profession has become increasingly mobile, and Boards need to examine the ways in which differing standards between states may be affecting the public's access to qualified Licensees.

Section 301. Unlawful Practice.**Section 301. Unlawful Practice.**

- (a) Except as otherwise provided in this Act, it shall be unlawful for any Person to engage in the Practice of Veterinary Medicine or Veterinary Technology, unless duly licensed under the applicable provisions of this Act.

Section 301 establishes the basis for this Article by making it unlawful for any unlicensed Person to engage in the practice of veterinary medicine or veterinary technology, and by enabling the Board to impose penalties for unlawful practice. See Sections 104 and 105 for the definitions of the Practice of Veterinary Medicine and Veterinary Technology.

Boards are often confronted with the issue of preventing unlicensed Persons from engaging in practice. Most practice acts do not give the Board jurisdiction and authority to take action against individuals other than those who are licensed or seeking licensure. Thus, Boards must rely on the difficult task of persuading local prosecutors to take criminal action against Persons not licensed to practice. This gap in jurisdictional

Model Law**Comments****Section 301. Cont'd.**

- (b) (1) No Person shall use the designation Veterinarian, Licensed Veterinarian or any other designation indicating licensure status, including abbreviations, or hold themselves out as a Veterinarian unless duly licensed as such.
- (2) No Person shall use the designation Veterinary Technician, Licensed Veterinary Technician or any other designation indicating licensure status, including abbreviations, or hold themselves out as a Veterinary Technician unless duly licensed as such.

Section 301. Cont'd.

authority makes it difficult to effectively prevent unlawful practice.

This section is intended to empower the Board with jurisdiction over Persons engaged in unlicensed practice. The regulation of the practices of veterinary medicine and veterinary technology, including jurisdiction over unlicensed practice in the professions, has a reasonable and rational relation to public health, safety, and welfare. See, e.g., State v. Wakeen, 57N.W.2d 364 (Wis., 1953). cf. State v. VanKeegan, 113 A.2d141 (Conn., 1955), and Williamson v. Lee Optical of Oklahoma, 348 U.S. 483 (1955). For this reason, vesting power in the Board to regulate illegal practice would not appear to violate constitutional due process requirements. Because monetary fines are not generally considered criminal sanctions, it can be strongly argued that there are no constitutional barriers that would restrict the imposition of fines by a Board. See, e.g., Helvering v. Mitchell, 303 U.S. 376 (1938); City of Waukegan v. Pollution Control Boards, 311 N.E.2d 146 (Ill., 1974); County Council for Montgomery County v. Investors Funding Corp., 312 A.2d 225 (Md., 1973); and Roday v. Hollis, 500 P.2d 97 (Wash., 1972).

Section 301(b). Unlawful Practice.

This provision is intended to restrict the use of the terms Veterinarian and Veterinary Technician to those who are duly licensed under the provisions of this Act and is not intended to prevent accurate use of initials or abbreviations, such as DVM, VMD or any corresponding degree initials for Veterinary Technicians, indicating academic achievement. This Act is also not intended to prevent other licensed professionals from practicing within other "allied scopes." However, it is important to recognize the Veterinarian and Veterinary Technician titles, and link this name recognition to licensure. This link protects the public through an assurance that there is regulatory consistency associated with the veterinary medicine and veterinary technology identity. See also the Comments to Section 107(w), defining the term Veterinarian.

Model Law**Comments****Section 301. Cont'd.**

- (c) It shall be unlawful for any Person who is not licensed in this state to provide veterinary medical services from any state to a Client or patient in this state through telephonic, electronic or other means.

Section 301(c). Unlawful Practice.

A license shall be required for any Veterinarian who provides veterinary medical services to a patient or Client in this state through telephonic, electronic or other means. Many factors, including technological advancements, increase the likelihood of the practice of veterinary medicine via electronic means and without physical presence, both intrastate and interstate. While the judiciary may have the final word on regulating professions across state lines, this section is designed to specifically address the issue of where practice takes place. The AAVSB believes veterinary medicine practice takes place where the Client/patient is located when receiving services. Because the Board's central mission is to protect the public in its state, it must make every effort to regulate the practice of veterinary medicine being received in that state, regardless of the location of the Veterinarian providing the services. Arguments can also be made which identify the location of the practice under these circumstances as occurring in both Jurisdictions; that is where the Client/patient is located and where the Veterinarian is located.

Veterinarians in this state may wish to utilize the services of other veterinarians not licensed to practice in this state or other Persons. Consultations are defined in Section 107j, and there are special provisions in section 106, numbers 4 and 5 for Consultations with other veterinarians and Persons. The responsibility for the welfare of the animal remains with the Veterinarian in this state.

Model Law**Comments****Section 301. Cont'd.**

(d) Any Person who, after a hearing, shall be found by the Board to have unlawfully engaged in the Practice of Veterinary Medicine or Veterinary Technology shall be subject to a fine to be imposed by the Board, not to exceed \$ _____ for each offense, and cost recovery as set forth in this Act. The Board may also seek to issue an order, obtain an injunction or take other administrative, civil or criminal court action against any Licensee or Person to restrain said Persons from violating the provisions of this Veterinary Practice Act. Each such violation of this Act or the rules promulgated hereunder pertaining to unlawfully engaging in the Practice of Veterinary Medicine or Veterinary Technology shall also constitute a _____ (misdemeanor/Felony) punishable upon Conviction as provided in the criminal code of this state.

(e) Nothing in this Act shall be construed to prevent members of other professions from performing functions for which they are duly licensed. However, such other professionals must not hold themselves out or refer to themselves by any title or description stating or implying that they are licensed or otherwise entitled to engage in the practice of veterinary medicine or veterinary technology.

Section 302. Qualifications for Licensure by Examination.

(a) To obtain a license to engage in the practice of veterinary medicine, an applicant for licensure by Examination shall bear the burden of substantiating to the Board that the following criteria have been met:

- (1) Submission of a written application in the form determined by the Board;
- (2) Attainment of twenty-one (21) years of age;

Section 301(d). Unlawful Practice

It is a common belief that the veterinary practice act allows Boards to take action against Licensees only. However, a survey of the state Boards revealed that about 60% of the Boards are empowered to take action against unlicensed practice. In states without this authorization, whenever non-veterinarians are illegally engaged in veterinary activities, the Board must rely upon the Attorney General or other legal authorities to take action against these individuals. Sadly, in many cases, illegal veterinary practice is seen as a low-level criminal activity that seldom gets a response from law enforcement agencies. Unfortunately, the undertaking of criminal proceedings against unlicensed practice may be beyond the ability of many Boards with limited resources, and if undertaken, caution is advised because the criminal code will come into play and the due process rights granted the accused increase significantly based upon the rights at stake. The Oklahoma Practice Act has language that allows the Board to take more direct action against unlicensed practice. Some Boards may want to adopt this language. The ability to take action against unlicensed practice should be delineated in the actual Practice Act, whereas the administrative process and specific actions to be taken should be outlined in the administrative code.

Model Law**Comments****Section 302. Cont'd.**

- (3) Possession of good moral character;

Section 302(a)(3). Qualifications for Licensure by Examination.

Legislatures have generally agreed that “good moral character” is a proper requirement for licensure of Veterinarians and Veterinary Technicians. Defining precisely what constitutes good or bad character has caused regulatory Boards and courts considerable difficulty, and a review of applicable case law reveals a considerable variance in the judicial opinions concerning the interpretation of good character requirements. Nevertheless, the courts have uniformly enforced such requirements, reasoning that because regulatory Boards are composed primarily of members of the profession being regulated, they are capable of applying character standards to their professions with relevance and specificity.

While specific character requirements may vary from state to state, and may even appear to vary from case to case, the purpose of these requirements remains constant. The public has the right to expect the highest degree of integrity from members of the veterinary medical profession. Boards have a duty to ensure that these expectations are realized. From this perspective, requirements of good moral character for licensure can be expected to be sustained by the courts so long as their enforcement is reasonably related to protection of the public health, safety, and welfare.

When grounded in public protection, issues involving moral character may lead to concerns about the potential for this qualification to be misused by Boards. Although there are many legal ways to ensure that the good moral character issue is not misapplied, including state and federal civil rights legislation, when making character judgments Boards need to be extremely sensitive. Practice act provisions that bear a reasonable relationship to the purpose of protecting the public welfare will generally be regarded as constitutionally acceptable by most courts, so long as the enforcement by Boards is reasonably related to the protection of the public.

Model Law**Comments****Section 302. Cont'd.**

- (4) Graduation and receipt of a doctorate degree in veterinary medicine from an Approved Veterinary Medical Program;
- (5) Within the five (5) years preceding application, successful completion of an Examination(s) approved by the Board; and
- (6) Payment of all applicable fees specified by the Board relative to the licensure process.

(b) To obtain a license to engage in the practice of veterinary technology, an applicant for licensure by Examination shall bear the burden of substantiating to the Board that the following criteria have been met:

- (1) Submission of a written application in the form determined by the Board;
- (2) Attainment of eighteen (18) years of age;
- (3) Possession of good moral character;
- (4) Graduation and receipt of a degree in Veterinary Technology from an Approved Veterinary Technology Program;
- (5) Within the five (5) years preceding application, successful completion of an Examination(s) approved by the Board; and
- (6) Payment of all applicable fees specified by the Board relative to the licensure process.

Section 302(a)(4). Qualifications for Licensure by Examination.

The AAVSB anticipates that Boards will approve those programs whose standards are at least equivalent to the minimum standards required by the AVMA's Council on Education. See Comment to Section 213(a) for a discussion of the Board's role in the approval process.

Section 302(b) Qualifications for Licensure by Examination

Recognizing that different Jurisdictions have varying requirements for Veterinary Technicians, this section provides the basis for standardized requirements that Boards may wish to work toward.

Section 302(b)(4). Qualifications for Licensure by Examination.

The AAVSB anticipates that Boards will approve those programs whose standards are at least equivalent to the minimum standards required by the AVMA's Committee on Veterinary Technician Education and Activities. See Comment to Section 213(a) for a discussion of the Board's role in the approval process.

Model Law**Comments****Section 303. Educational Equivalence.**

By rule, the Board may set forth a procedure for applicants who have graduated from a veterinary medical program/school which is not approved by the Board to petition the Board for an equivalency determination. At a minimum, the criteria shall include:

- (a) A certified transcript from such program/school;
- (b) Successful completion of an equivalency Examination(s) and/or assessment mechanism designed to evaluate educational equivalence, including clinical competencies;
- (c) Successful completion of a communication ability Examination(s) designed to assess communication skills, including a command of the English language; and
- (d) Any other reasonable assessment mechanism designed to ensure an applicant possesses the educational background necessary to protect the public health and safety.

Successful completion of the criteria set forth herein and by the Board under this section shall establish educational equivalence as one of the criteria for licensure set forth in this Act. Candidates under this Section must also meet all other statutory criteria for licensure prior to the issuance of any such license.

Section 303. Educational Equivalence.

One of the most difficult tasks for regulatory Boards is to assess the educational equivalence of graduates of veterinary programs outside the United States and Canada that have not been evaluated by a recognized accrediting body under specific standards and criteria. There are currently 2 programs designed to measure educational equivalence, the AAVSB Program for the Assessment of Veterinary Education (PAVE) and the AVMA Educational Commission for Foreign Veterinary Graduates (ECFVG) program. As an entity with public protection as its primary mission and whose membership consists of veterinary Boards who share in this mission, the PAVE program was designed by the AAVSB in response to a request from its member Boards to assist them in the accurate and timely assessment of educational equivalence of foreign graduates. Boards are encouraged to adopt the standards and criteria of PAVE through their rule making process rather than through the statutes or regulations to reduce the likelihood of allegations of improper delegation. The adoption of PAVE is also recommended to avoid concerns about a conflict of interest associated with the professional association controlling entry into the profession through the ECFVG program. Details of the PAVE program can be found on the AAVSB website.

Model Law**Comments****Section 304. Examinations.**

- (a) Any Examination for licensure required under this Act, shall be given by the Board at least two (2) times during each year. The Board shall approve the content and subject matter of each Examination, the place, time, and dates of administration of the Examination.
- (b) The Examinations shall be prepared to measure the competence of the applicant to engage in the practice of veterinary medicine or veterinary technology. The Board may employ, cooperate, and contract with any organization or consultant in the preparation, administration and grading of an Examination, but shall retain the sole discretion and responsibility for determining which applicants have successfully passed such an Examination.

Section 305. Qualifications for a Provisional License or Temporary Practice.

- (a) The Board may issue a provisional license to practice veterinary medicine or veterinary technology only under the Direct Supervision of a Veterinarian to a nonlicensed Person who meets all statutory criteria for licensure under this Act with the exception of an applicable jurisprudence Examination. The provisional license shall be issued under procedures set forth by the Board but under no circumstances shall such provisional license be granted for a period exceeding one (1) year from date of issuance. Such a provisional license may also contain restrictions as to time, place, or supervision, which the Board deems appropriate and may be summarily revoked by a majority vote of the Board without a hearing.

Section 304. Examinations.

As has been emphasized throughout this document and comments, the AAVSB recommends that the authority to make decisions directly impacting the licensure process be specifically vested in the Board. On a similar note, the discretion to determine the content and subject matter of each Examination and the passing score necessary to indicate minimum competence for purposes of licensure belongs solely to the Board. The Board, of course, may rely upon the expertise of the Examination entity in determining the content areas and “cut” scores, however, the Board must be the ultimate decision-maker. That is, statutes and/or rules cannot blindly, and without limitations, delegate the decision to the outside entity. See the Comments to Section 213(a) for a more complete explanation.

Section 305(a). Qualifications for a Provisional License.

The procedures established by the Board should include an application form and requirements to register and take the jurisprudence Examination within a certain period of time.

Model Law**Comments****Section 305. Cont'd.**

- (b) Any Person licensed to practice veterinary medicine or veterinary technology in another Jurisdiction may, upon prior written application to the Board, practice in this Jurisdiction within the scope of practice designated by such license for no more than _____ days per year without applying for a license. Practice privileges under this paragraph shall apply only if the requirements for licensure in such other Jurisdiction are substantially similar to the requirements for licensure in this Jurisdiction. Such Person shall not be eligible to practice under this provisional license until the date the Board receives the written application and shall be deemed to have submitted to the Jurisdiction of the applicable Board and be bound by the laws of this state.

Section 305(b). Qualifications for Temporary Practice.

With the advent of technological advancements leading to increased mobility of Veterinarians, Veterinary Technicians and practice itself, it may be prudent to anticipate and address practice by Persons not physically located within the state. Rather than attempting to define “telepractice” or create a limited license to address sporadic practice, it is recommended that legislatures address these technologically driven practice issues through a temporary practice approach. This temporary practice language is intended to address sporadic practice within the state irrespective of whether it is electronically rendered or rendered in Person. The privilege of practicing temporarily is only granted to individuals duly licensed to practice veterinary medicine or veterinary technology in another Jurisdiction. Based upon the uniformity in accredited educational programs and the uniform national Examination(s), it is perceived that minimum competence in one Jurisdiction is reasonably equated to minimum competence in another Jurisdiction. Furthermore, practice privileges apply to such individuals only if the requirements for licensure in the state of licensure are substantially similar to the requirements for licensure in this state.

By design, the language of the temporary practice references a “written application” to be submitted to the Board prior to engaging in practice under this section. It is up to each individual Board to determine the extent of the application and whether the Board will actually “approve” the ability to practice or merely maintain a file on the Person for future reference.

The unspecified time period is also, by design, left to the interpretation of a Board whether such period is consecutive or how the period is to be determined.

Finally, Veterinarians and Veterinary Technicians providing services under this temporary practice privilege are deemed to have submitted to the jurisdiction of the applicable Board and agree to be bound by the laws thereof. It is recommended that the written application as determined by the Board contain various language which verifies the submission of the Person to

Model Law**Comments****Section 305. Cont'd.**

- (c) Any Person licensed to practice veterinary medicine or veterinary technology in another Jurisdiction who is providing services within the scope of practice designated by such license and in response to a disaster declared by the appropriate authority or governor of the state may, upon prior written notice to the Board, provide such services in this Jurisdiction for a period of time not to exceed ___ consecutive days per year without applying for a license. Such Person shall be deemed to have submitted to the Jurisdiction of the applicable Board and be bound by the laws of this state.

Section 305. Cont'd.

the jurisdiction and the applicability of the laws of the state. It is believed that this process provides solutions to legal issues confronting alternatives which attempt to address telepractice. It provides the Boards with important information as to who is practicing (through the written application). It also provides the Board with appropriate waivers relative to Jurisdiction and the applicability of the laws of the state. Finally, it provides a privilege which can be removed by the Board through the disciplinary process, reported to the databank, and, if state laws allow, have an eventual impact upon the actual license in the state of licensure.

Section 305(c). Qualifications for Temporary Practice.

See comments to 305(b) relative to the overall rationale for temporary practice and the applicability of Jurisdictional and other legal issues. Similar rationale applies to this particular section as well. In addition, temporary practice in the case of a declared disaster is left to the Board to determine.

Again, this provides the Board with valuable information as to who is practicing within the Jurisdiction in the event of a reported complaint or wrongdoing. Written notice can be determined by the Board, but it is suggested it be limited to a simple statement as to the fact that a disaster has been declared, the Person is practicing relative to the disaster, submits him/herself to the jurisdiction of the Board and will abide by the applicable laws of the state. It is not anticipated any such notice will be subject to approval by the Board, thus eliminating the time-consuming Board approval process due to the emergency nature of the situation.

Alternatively, rather than issue a temporary license, Boards may choose to use the special provisions approach for veterinarians providing services during disasters and other large scale events found in Section 106.13

Model Law**Comments****Section 306. Faculty Licensure.**

The Board may issue a faculty license to an applicant who is a member of the faculty at an Approved Veterinary Medical Program in this state, is involved in the instruction of veterinary medicine students and is engaged in the practice of veterinary medicine. Holders of a faculty license are permitted to practice veterinary medicine while engaged in the performance of his or her official duties as a faculty member only.

- (a) Applicants for a faculty license shall perform all of the following:
- (1) Complete the application form provided by the Board. If the applicant is licensed in another Jurisdiction or country, he or she shall disclose if they have been convicted of a Felony or been the recipient of a disciplinary action by a veterinary Board within the last 5 years;
 - (2) Provide proof of graduation from an Approved Veterinary Medical Program;
 - (3) Provide proof of an appointment to the faculty of an Approved Veterinary Medical Program teaching veterinary students, including a description of their faculty responsibilities; and
 - (4) Take and pass any Examinations as directed by the Board.
- (b) The license issued pursuant to this subsection authorizes the Licensee to practice veterinary medicine only while engaged in the performance of his or her official duties as a faculty member and is confined to clinical and hospital units or field services units, or both, of the Approved Veterinary Medical Program where employed. A faculty Licensee may not use a faculty license to practice veterinary medicine outside of his or her faculty responsibilities.

Section 306. Faculty Licensure

All members of faculty at a college or school of veterinary medicine should have a license if they practice on Client-owned Animals in direct association with their employment at the Approved Veterinary Medical Program. Veterinary colleges have indicated that flexibility in licensure is needed in employing eminent scholars from around the world, especially those who practice a sub specialty and may not want to or be able to pass the comprehensive American national licensing exam that cover all species and topics. Yet if faculty are practicing veterinary medicine, a mechanism must be in place to assure public protection if a complaint arises regarding veterinary incompetence or a violation of the Practice Act. The school or college does not have a mission of public protection and it is not their responsibility nor can responsibility be delegated to them to investigate or take appropriate action regarding a complaint. The primary purpose of the faculty license is to allow Approved Veterinary Medical Programs a procedure to bring much desired talent to the faculty while the state can still ensure public protection subject to this article.

Model Law**Comments****Section 306. Faculty Licensure. Cont'd.**

- (c) Faculty Licensees must abide by all the laws governing the practice of veterinary medicine in the state and are subject to the same disciplinary action as any other Veterinarian licensed in the state. The faculty license issued pursuant to this subsection may be disciplined, suspended or revoked in accordance with this Act.
- (d) The faculty license must be renewed at an interval to be determined by the Board.
- (e) The license issued pursuant to this subsection shall be revoked by the Board upon receipt of information that the holder of the license is no longer employed as faculty of an Approved Veterinary Medical Program. Faculty Licensees must notify the Board of termination of employment within _____ days of termination

Section 307. Qualifications for License Transfer.

- (a) In order for a veterinarian or veterinary technician currently licensed in another Jurisdiction to obtain a license as a Veterinarian or Veterinary Technician by license transfer in this state, an applicant shall bear the burden of substantiating to the Board that the following criteria have been met:

Section 306. Cont'd.**Section 307. Qualifications for License Transfer.**

The AAVSB recommends regulatory Boards adopt uniform language which references eligibility through Licensure Transfer because the terms “endorsement” or “reciprocity” may be confusing. Should the state wish to create a reciprocity statute whereby Veterinarians or Veterinary Technicians can transfer licensure into one state only if reciprocal Licensure Transfer is allowed, it may adopt language such as:

No applicant shall be eligible for license transfer unless the state in which the applicant was initially licensed as a Veterinarian or Veterinary Technician also grants Licensure Transfer to Veterinarians and Veterinary Technicians duly licensed by Examination in this state, under like circumstances and conditions.

Additionally, Boards are encouraged to develop extensive applications designed to elicit the information

Model Law**Comments****Section 307. Cont'd.**

- (1) Submission of a written application in the form prescribed by the Board;
- (2) Possession of good moral character;
- (3) Possession at the time of initial licensure of all qualifications necessary to have been eligible for licensure at that time in this state;
- (4) Active engagement in the practice of veterinary medicine or veterinary technology for at least _____ hours during the three (3) years prior to application;
- (5) Presentation to the Board of proof of initial licensure by Examination and proof that such license is in good standing;
- (6) Presentation to the Board of proof that any other veterinary medical or veterinary technology license granted to the applicant by any other state has not been suspended, revoked, or otherwise restricted for any reason (except nonrenewal or failure to obtain the required Continuing Education credits in any state where the applicant is currently licensed but not engaged in practice), nor subject to any discipline, however the Board shall have the discretion to assess the magnitude of any such disciplinary action and determine the licensure eligibility of such applicant;

Section 307. Cont'd.

necessary to assess the eligibility of license transferring candidates. Applications should include not only inquiries regarding adverse actions against the Licensee, but also pending investigations, pending disciplinary proceedings, or other matters that may not have been completed. In this regard, Boards may wish to refer to the Model Licensure/Renewal/Reinstatement Application developed by the Federation of Associations of Regulatory Boards (FARB).

Section 307(a)(4). Qualifications for License Transfer.

The AAVSB recommends applicants for Licensure Transfer under this section have engaged in at least 3000 hours of veterinary medical practice during the three (3) years prior to application. The 3000-hour figure represents approximately half-time employment. The AAVSB feels strongly that active engagement in practice is an important criterion in determining eligibility for licensure under this section. The model law does not contain a specific numeric requirement leaving such determination to each Jurisdiction.

Section 307(a)(6). Qualifications for License Transfer.

The AAVSB maintains its Veterinary Information Verification Agency (VIVA) which is a databank of primary source verified information on Veterinarians accessible only to the AAVSB Member Boards. Included within VIVA is the AAVSB Practitioner Databank which includes final adverse actions reported by Member Boards. VIVA and its Practitioner Databank lessen burdens on regulatory Boards and Veterinarians by providing a single source of information that can be confidentially disseminated to regulatory Boards in veterinary medicine upon request by the Veterinarian. VIVA relieves the Veterinarian who wishes to become licensed in an additional Jurisdiction(s) from the responsibility of personally obtaining primary source verified documentation from multiple sources (such as transcripts, licensure status, etc.) in support of such application(s) for licensure. VIVA details can be found on www.aavsb.org.

Model Law**Comments****Section 307. Cont'd.**

- (7) Successful completion of the state Examination, if applicable; and
- (8) Payment of the fees specified by the Board.

Section 308. Continuing Competence.

The Board shall, by rule, establish requirements for Continuing Education in veterinary medicine and veterinary technology, including the determination of acceptable program content. The Board shall adopt rules necessary to carry out the stated objectives and purposes and to enforce the provisions of this Section and the continuing competence of Licensees.

Section 307(a)(7). Qualifications for License Transfer.

Section 307(a)(7) is applicable to those Jurisdictions that utilize a state specific Examination as part of the licensure process.

Section 308. Continuing Competence.

The issue of how best to ensure and assess continuing competence is an on-going concern. Numerous options are being considered by a number of national organizations, including self-assessment tools, continuing competence Examinations, Continuing Education, and others, but no single model has emerged as the single most effective way to ensure continuing competence.

The AAVSB considered a number of alternatives to mandated Continuing Education, the method currently used by most states. These alternatives ranged from simply stating that Licensees will maintain continuing competence as a standard of practice, to requiring retesting at periodic intervals. The AAVSB recognized that while some of these alternatives might better evaluate the continuing competence of Licensees, it might be premature to recommend an alternative to mandated Continuing Education.

Continuing Education has been widely used as an acceptable method for ensuring the continued competence of Licensees. Many Boards mandate that Licensees obtain a specified number of hours of Continuing Education within a licensure renewal period. Some Boards specify that Licensees must obtain Continuing Education in certain practice areas. However, most Boards require that Continuing Education consist of more general content areas in veterinary medicine or veterinary technology. The AAVSB recommends that Boards require Licensees to complete a specified number of Continuing Education hours in each licensure renewal period.

Lending credibility to Continuing Education hours is imperative to the Board's mission of assessing the continuing competence of Licensees.

Model Law**Comments****Section 308. Cont'd.****Section 308. Cont'd.**

Rather than rely upon the expectation that Continuing Education programs chosen by the Licensee will meet the criteria of the Board, it is recommended that an assessment mechanism of programs or providers of CE be examined. Evaluation of programs or providers of CE by experts can assist veterinary Boards by relieving them of time-consuming administrative responsibilities while providing content expertise and uniformity.

To this end, the AAVSB has instituted the Registry of Approved Continuing Education (RACE) program whereby the Association, on behalf of its Member Boards, approves providers and programs of Continuing Education. As set forth in the Definitions, an “Approved Program of Continuing Education” means an educational program approved by the Board or offered by an “Approved Provider of Continuing Education.” The AAVSB has adopted stringent criteria utilized in its RACE program in determining Approved Providers and Approved Programs. This criteria was developed based upon an analysis of requirements currently used by the AAVSB Member Boards, along with a review of other organizations which also approve Continuing Education (CE) providers or programs.

At their option, the AAVSB Member Boards may wish to recognize the AAVSB RACE approved providers or programs as “approved” within their Jurisdictions for purposes of accepting CE for licensure renewal.

Such a process will save the administrative burdens placed upon the Board in assessing CE providers or programs while at the same time promoting the mission of the AAVSB to bring uniformity to the licensure and renewal processes. To avoid allegations of improper delegation of authority (see Comments, Section 213(a)), Boards are encouraged to adopt such criteria as established from time to time by the AAVSB RACE Program as the criteria of such Board. This “two-step” process will insure that the Board maintains the ultimate decision making authority and avoids the legal pitfalls of improper delegation. Details about RACE can be found at www.aavsb.org.

Model Law**Comments****Section 309. Licensure Renewal Requirements.**

- (a) Licensees shall be required to renew their license at the time and in the manner established by the Board. Under no circumstances, however, shall the renewal period exceed ____ years;
- (b) As a requirement for licensure renewal, each Licensee shall provide evidence satisfactory to the Board that such Licensee has completed at least ____ Continuing Education hours of an Approved Program of Continuing Education during the renewal period; and
- (c) Veterinary Facilities shall be required to renew their registrations, permits or licenses at the time and in the manner established by the Board. Under no circumstances, however, shall the renewal period exceed ____ years.

Section 310. Requirements for Reinstatement of an Expired License.

- (a) A Licensee who allows a license to expire due to non-renewal or for failure to submit the required Continuing Education hours or pay the applicable renewal fees shall be treated as having an expired license and shall be ineligible to practice. An expired license may be reinstated, at the discretion of the Board, as follows:
 - (1) Reinstatement petitions submitted within 120 days of the expiration date may be reinstated upon substantiation by the applicant of all renewal requirements set forth within this Act, along with the payment of any applicable fees, including a late fee to be determined by the Board;

Section 309. Licensure Renewal Requirements.

The AAVSB determined that inactive status was not necessary, however, the following language regarding inactive status is provided for reference:

- (a) Any Licensee who is in good standing with the Board and who has ceased the practice of veterinary medicine or veterinary technology may apply for inactive status. The Board, in its discretion, may place the Licensee on an inactive list and thereafter the inactive Licensee shall not practice veterinary medicine or veterinary technology, nor be required to pay the annual license renewal fee or required to earn Continuing Education credits.
- (b) Any inactive Licensee who desires to be reinstated or to resume the practice of veterinary medicine or veterinary technology may be reinstated within the discretion of the Board upon written application and the determination that the inactive Licensee has paid the required license renewal fee for the current year in which the application is filed; and that the Licensee earned the required Continuing Education credits in an appropriate timeframe as determined by the Board.

Section 310(a). Requirements for Reinstatement of an Expired License.

The term “expire” is used in this model. Some Jurisdictions use the term “lapse”. In the interest of furthering greater understanding of terms, the AAVSB recommends the use of expire when referring to the status of a license that is not renewed by the required date.

Model Law**Comments****Section 310. Requirements for Reinstatement of an Expired License. Cont'd.**

- (2) Reinstatement petitions submitted after 120 days after the expiration date but within two (2) years of such expiration date may be reinstated upon substantiation by the applicant of all renewal requirements set forth within this Act, including completion of all Continuing Education credits required to have been completed during the inactive status period, along with a renewal fee to be determined by the Board;
- (3) Reinstatement petitions submitted two years or more after the expiration date may be reinstated upon substantiation by the applicant of all eligibility requirements set forth in either Article III Section 302 or Section 307;
- (4) Under any circumstances, the Board may impose additional reasonable requirements deemed necessary to fulfill its public protection mission;
- (5) Furthermore, the Board may also consider extenuating circumstances of petitioners who can demonstrate hardship, so long as the Board maintains its public protection mission in considering such petitions.

Section 311. Registration of Veterinary Facilities

- (a) All facilities where veterinary medicine is being practiced shall be registered with the Board.
- (b) Facilities for the purpose of this section shall include a building or mobile unit. Mobile units shall be exempted from independent registration with the Board when they are operated from a building or facility that is registered with the Board, and the registration identifies and declares the use of the mobile unit.

Section 310. Requirements for Reinstatement of an Expired License. Cont'd.**Section 311. Registration of Veterinary Facilities**

Many states choose to regulate the practice of veterinary medicine by registering facilities with the Board. This is also known in some states as a facility or premise permit. A Veterinarian who registers to be responsible for the operation and management of the facility is known as the Veterinarian or Veterinarian Manager. Minimum standards of practice, recordkeeping, and sanitation, etc., are some of the guidelines defined by the Board, usually through rules, as well as a time for inspections and renewal of the

Model Law**Comments****Section 311. Registration of Veterinary Facilities. Cont'd.**

- (c) Each application to register a facility must identify the Veterinarian Manager who is responsible for the operation and management of the facility. The applicant must not have been convicted of a Felony, must not be currently on probation or the subject of any active professional disciplinary action taken by any public agency, and must not have violated any of the provisions of this Act.
- (d) The Board shall promulgate rules that determine the minimum standards for the facility, including guidelines for applicants, inspection, sanitation, etc.
- (e) The Board may cause the closure of a facility and impose a penalty against any Veterinarian Manager operating a facility in violation of this section or in violation of any of the rules of the Board.
- (f) An application for renewal of that registration shall be made_____. The Board may, as part of the renewal process, make necessary inquiries of the applicant, conduct an investigation or inspect the facility in order to determine if cause for disciplinary action exists.
- (g) Suspension or revocation of facility registration
- (1) The Board may withhold, suspend or revoke the registration of a veterinary facility or assess a fine
- (i) when it has been determined by the Board that the Veterinarian Manager has failed to meet all the minimum facility standards as provided for in the rules of this Act;

Section 311. Registration of Veterinary Facilities. Cont'd.

registration. The Veterinarian Manager is responsible for ensuring that all veterinary standards of care are met by the facility; failure to do so can result in the loss of registration, closure of the facility or other penalties. In some Jurisdictions, inspection is required before a new facility opens or if an application for a new Veterinarian Manager is received. Facility registration is particularly useful in states that permit corporate or non-veterinarian ownership of practices; some of these states permit the manager of the practice to be a non-veterinarian to allow for discipline or corrective action to be taken against a non-Licensee.

Boards may want to consider whether or not to place a limit on the number of facilities a Veterinarian can register to manage, or whether or not to require their physical presence for a designated period of time at the facility. In addition, the Board may use its discretion to waive the restrictions for an applicant to be a Veterinarian Manager upon receipt of a detailed description of any probationary or disciplinary actions against their license or any other violations of the Act.

Some states include standards of practice in the rules for registering a facility. California is an example of a state that has extensive minimum standards of practice in the regulations pertaining to veterinary premise inspection.

Model Law**Comments****Section 311. Registration of Veterinary Facilities.
Cont'd.**

- (ii) when the Veterinarian Manager set forth in the application ceases to be responsible for management of the registered facility and no substitution of the responsible Veterinarian Manager has been made by application

- (iii) when the Veterinarian Manager is currently on probation or the license to practice veterinary medicine has been revoked or suspended by the Board.

**Section 311. Registration of Veterinary Facilities.
Cont'd.**

Article IV

Discipline

Model Law**Comments****Article IV. Discipline.****Introductory Comment to Article IV.**

The enforcement power of the Boards is at the very heart of any practice act. In order to fulfill its responsibilities, the Board must have authority to discipline Persons or Licensees who violate the act or its rules, including the ability to prohibit these Persons from continuing to harm the public. The Board must be able to stop wrongdoers, discipline them, and where appropriate, guide and assist them in continued competence and/or re-education and rehabilitation.

This Act's disciplinary provisions were drafted with the purpose of granting the Board the widest possible scope within which to perform its disciplinary functions. The grounds for disciplinary actions were developed to ensure protection of the public while giving Boards the power to expand or adapt them to changing conditions. The penalties outlined under the Act give the Board the flexibility to tailor disciplinary actions to individual offenses.

Section 401. Grounds, Penalties, and Reinstatement.**Introductory Comment to Section 401. Grounds, Penalties, and Reinstatement.**

Under this section, Boards are granted authority over both Licensees and applicants. General powers are phrased in such a way as to allow the Board a wide range of actions, including the refusal to issue or renew a license, and the use of license restrictions or limitations. Similarly, the penalties outlined in this section give the Board wide latitude to make the disciplinary action fit the offense. Please refer to the Board powers of Section 213 for additional authority. Any "reasonable intervals," such as in 401(c), would be determined by the Board.

The AAVSB recommends that Boards develop clear policies regarding the reporting of disciplinary actions taken against Licensees, subject to confidentiality and to the applicable laws of the state. It is strongly recommended that Boards make public as much disciplinary action information as state law allows, and that all Boards participate in the AAVSB Veterinarian Information Verification Agency (VIVA), a national databank that allows Boards to review veterinary

Model Law**Comments****Section 401. Grounds, Penalties, and Reinstatement. Cont'd.**

- (a) The Board may refuse to issue or renew, or may suspend, revoke, censure, reprimand, restrict or limit the license or registration of or fine any Person or facility, whether or not licensed, pursuant to the Administrative Procedures Act or the procedures set forth in Section 402 herein below, upon one or more of the following grounds as determined by the Board:

- (1) Unprofessional conduct as determined by the Board;

Section 401. Grounds, Penalties, and Reinstatement. Cont'd.

licensure candidates for past disciplinary actions from other Jurisdictions.

Section 401(a).

This section must be examined in light of other applicable laws. Some Jurisdictions, for example, restrict the circumstances under which a license may be denied to an individual who has committed a Felony. Additionally, an individual who has been convicted of a Felony or an act of gross immorality and who has paid the debt to society has restored constitutional protections. These protections may curtail a strict application of Section 401(a) to this individual.

These potential issues make it essential for Boards to promulgate rules that make the grounds for disciplinary action specific, understandable, and reasonable. Boards must ensure that these rules are published for the benefit of all Licensees. Taking these steps will assure the Board of the authority to make effective and meaningful disciplinary actions that will not be overturned by the courts.

Section 401(a)(1).

Boards must be specific when defining the grounds for revoking or suspending a license. The term “unprofessional conduct” is particularly susceptible to judicial challenge for being unconstitutionally vague. Each offense included in this term must be capable of being understood with reasonable precision by the Persons regulated. If this standard is met, the Licensees will be able to conform their professional conduct accordingly, and Boards will be able to readily enforce this provision, and rely upon it during disciplinary proceedings. Other terms sometimes used in statutes include unethical, immoral, improper or dishonorable conduct. Generally, courts have recognized as appropriate the use of unprofessional conduct when challenged legally. See *Chastev v. Anderson*, 416 N.E.2d 247 (Il.1981); *Stephens v. Penn. State Bd. of Nursing*, 657 A.2d 71 (Pa. 1995).

Model Law**Comments****Section 401. Grounds, Penalties, and Reinstatement. Cont'd.**

- (2) Practicing outside the scope of practice authorized by this Act;
- (3) Conduct violative of any of the provisions of this Act or rules adopted pursuant to this Act, including the failure to cooperate with the Board in the inspection or investigative process within a reasonable time period;
- (4) Incapacity or impairment, for whatever reason, that prevents a Licensee from engaging in practice with reasonable skill, competence, and safety to the public;
- (5) Conviction of a Felony (as defined under state or federal law);
- (6) Any act involving moral turpitude or immorality;

Section 401. Grounds, Penalties, and Reinstatement. Cont'd.**Section 401(a)(3). Grounds, Penalties and Reinstatement.**

This subsection allows the Board to take disciplinary action against a violation of any portion of this Act. While not specifically enumerated in this subsection, many activities, such as failure to report under the mandatory reporting provisions in Article VI constitutes actionable conduct.

Section 401(a)(4). Grounds, Penalties and Reinstatement.

[See also Comment to Section 401(b) regarding participation in an impairment program.] This section does not identify specific impairments in order to allow for broad application and the potential for expansion. It is intended to cover incapacity and impairments due to drug and alcohol abuse, mental and physical health conditions, and others.

It is important to note that the authority of the Board to refuse to issue or renew a Licensee, as well as its ability to discipline a Licensee for various incapacities or impairments should not be limited by the ADA Amendments Act of 2008 (ADAAA). Board action must be based on the protection of the public—the ultimate goal of the practice act. The ADAAA is designed to provide opportunities to otherwise qualified individuals with disabilities. It does not mandate licensure where public protection might be compromised.

Section 401(a)(5). Grounds, Penalties and Reinstatement.

Boards must also be aware of how the definition of “Felony” may impact its actions. See Rothstein v. Dept. of Professional and Occupational Regulation, 397 So.2d 305 (App. Ct. Fla. 1981), where the Florida Felony definition differed from the federal definition.

Model Law**Comments****Section 401. Grounds, Penalties, and Reinstatement. Cont'd.**

- (7) Violations of the laws, rules and regulations of this state, any other state, or the federal government, pertaining to any aspect of the practice of veterinary medicine or veterinary technology;
- (8) Being found by the Board or any court of competent jurisdiction to have engaged in acts constituting cruelty or abuse of Animals;
- (9) Misrepresentation of a fact by an applicant or Licensee;
 - (i) In securing or attempting to secure the issuance or renewal of a license;
 - (ii) In statements regarding the Licensee's skills or value of any treatment provided or to be provided or using any false, fraudulent, or deceptive statement connected with the practice of veterinary medicine or veterinary technology including, but not limited to, false or misleading advertising;
- (10) Fraud by a Licensee in connection with the practice of veterinary medicine or veterinary technology including engaging in improper or fraudulent billing practices;
- (11) Engaging in, or aiding and abetting any Person engaging in practice without a license, or falsely using the title of Veterinarian, or Veterinary Technician or a derivative thereof;

Section 401. Grounds, Penalties, and Reinstatement. Cont'd.

Model Law**Comments****Section 401. Grounds, Penalties, and Reinstatement. Cont'd.**

- (12) Failing to conform to accepted minimum standards of practice or failing to maintain a Veterinary Facility at accepted minimum standards for facilities;
- (13) Failing to pay the costs assessed in a disciplinary matter or failing to comply with any stipulation or agreement involving probation or settlement of any disciplinary matter with the Board or with any order entered by the Board;
- (14) (i) Conduct which violates the security of any examination materials, including, but not limited to:
- (a) removing from the examination room any Examination materials without authorization;
 - (b) the unauthorized reproduction by any means of any portion of the actual Examination;
 - (c) aiding by any means the unauthorized reproduction of any portion of the actual Examination;
 - (d) paying or using professional or paid examination-takers for the purpose of taking or reconstructing any portion of the Examination;
 - (e) obtaining examination questions or other examination material, except by specific authorization either before, during or after an Examination;
 - (f) using any examination questions or materials which were improperly removed or taken from any Examination; or

Section 401. Grounds, Penalties, and Reinstatement. Cont'd.**Section 401(a)(12).**

Veterinary Boards are encouraged to adopt specific standards of practice and codes of conduct into the rules/regulations to provide Licensees with reasonable guidance as to acceptable practice activities. Failure to adopt such standards may impede the Board from enforcement should a Licensee be accused of sub-standard practice. Reliance on standards adopted by an outside entity such as the professional association without formal adoption by the Board may encourage improper delegation arguments as well as a failure to provide Licensees with the appropriate parameters of acceptable practice. This, of course, does not preclude the Board from formally adopting the standards that may already be in existence within these other associations.

Model Law**Comments****Section 401. Grounds, Penalties, and Reinstatement. Cont'd.**

(g) selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered Examination;

(ii) Communicating with any other examinee during the administration of an Examination;

(iii) Copying answers from another examinee or permitting one's answers to be copied by another examinee;

(iv) Having in one's possession during the administration of the Examination any books, equipment, notes, written or printed materials, or data of any kind, other than the Examination materials distributed, or otherwise authorized to be in one's possession during the Examination; or

(v) Impersonating any examinee or having an impersonator take the Examination on one's behalf;

(15) Failure of a Licensee or applicant to report to the Board any information as required under Article VI of this Act; and

(16) Being the subject of a disciplinary sanction, adverse action, revocation, suspension, or surrender of a veterinary or veterinary technology license, facility registration or premise permit in another Jurisdiction or country, including the failure to report such adverse action to the Board.

Section 401. Grounds, Penalties, and Reinstatement. Cont'd.

Model Law**Comments****Section 401. Grounds, Penalties, and Reinstatement. Cont'd.**

- (b) The Board may defer action with regard to an impaired Licensee who voluntarily signs an agreement, in a form satisfactory to the Board, agreeing not to practice veterinary medicine or veterinary technology and to enter an approved treatment and monitoring program in accordance with rules duly promulgated by the Board, provided that this Section shall not apply to a Licensee who has been convicted of, pleads guilty to, or enters a plea of nolo contendere to a Felony or a Conviction relating to a controlled substance in a court of law of the United States or any other state, territory, or country or a Conviction related to sexual misconduct.

Section 401. Grounds, Penalties, and Reinstatement. Cont'd.**Introductory Comment to Section 401(b). Grounds, Penalties and Reinstatement.**

This section addresses the impaired professional and outlines the Board's flexibility when dealing with such professional through investigations and disciplinary actions.

Section 401(b). Grounds, Penalties and Reinstatement.

Veterinary Boards may wish to consider the following for rules/regulations relative to the impaired Licensee to specify the contractual expectations of individuals requesting participation in the program:

- (1) A Licensee who is physically or mentally impaired due to addiction to drugs or alcohol may qualify as impaired and have disciplinary action deferred and ultimately waived only if the Board is satisfied that such action will not endanger the public and the Licensee enters into an agreement with the Board for a treatment and monitoring plan approved by the Board, progresses satisfactorily in such treatment and monitoring program, complies with all terms of the agreement and all other applicable terms of subsection (b)(2). Failure to enter such agreement or to comply with the terms and make satisfactory progress in the treatment and monitoring program shall disqualify the Licensee from the provisions of this Section and the Board may activate an immediate investigation and disciplinary proceedings. Upon completion of the rehabilitation program in accordance with the agreement signed by the Board, the Licensee may apply for permission to resume practice upon such conditions as the Board determines necessary.

The AAVSB encourages Boards to explore options for the effective monitoring of impaired Licensees. Once the Board has identified an impaired Licensee, there

Model Law**Comments****Section 401. Grounds, Penalties, and Reinstatement. Cont'd.****Section 401. Grounds, Penalties, and Reinstatement. Cont'd.**

are many resources available to Boards that can assist in the monitoring and rehabilitation process.

- (2) The Board may require a Licensee to enter into an agreement which includes, but is not limited to, the following provisions:
- (i) Licensee agrees that the license shall be suspended or revoked indefinitely under Section (1);
 - (ii) Licensee will enroll in a treatment and monitoring program approved by the Board;
 - (iii) Licensee agrees that failure to satisfactorily progress in such treatment and monitoring program shall be reported to the Board by the treating professional who shall be immune from any liability for such reporting made in good faith; and
 - (iv) Licensee consents to the release of treatment and monitoring reports to the Board. The Board shall determine the format and intervals of such reports. Any personnel reporting to the Board under this section shall be immune from liability when such reports are made in good faith.

It is the intention of the AAVSB that the regulatory language of “treating professional” under section (2)(iii) above shall include supervisors and others involved in the treatment and monitoring program. Readers may also refer to Section 608, Immunity, within the Act.

- (3) The ability of an impaired Licensee to practice may be restored and charges dismissed when the Board is satisfied by the reports it

Model Law**Comments****Section 401. Grounds, Penalties, and Reinstatement. Cont'd.****Section 401. Grounds, Penalties, and Reinstatement. Cont'd.**

has received from the approved treatment program that the Licensee can resume practice without danger to the public.

- (4) The impaired Licensee who has enrolled in an approved treatment and monitoring program and entered into an agreement with the Board in accordance with the _____ Veterinary Medicine and Veterinary Technology Practice Act shall have the license suspended or revoked but enforcement of this suspension or revocation shall be stayed by the length of time the Licensee remains in the program and makes satisfactory progress, complies with the terms of the agreement, and adheres to any limitations on the practice imposed by the Board to protect the public. Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment and monitoring program shall disqualify the Licensee from the provisions of this Section and the Board shall activate an immediate investigation and disciplinary proceedings.

- (5) Any Licensee who has substantial evidence that another Licensee has an active addictive disease for which the other Licensee is not receiving treatment under a program approved by the Board pursuant to an agreement entered into under this Section, is diverting a controlled substance, or is mentally or physically incompetent to carry out the duties of the license, shall make or cause to be made a report to the Board. Any Person who reports pursuant to this Section in good faith and without malice shall be immune from any liability arising from such reports. Failure to provide such a report within a reasonable time from receipt of knowledge may be considered grounds for disciplinary action against the Licensee so failing to report.

Model Law**Comments****Section 401. Grounds, Penalties, and Reinstatement. Cont'd.**

- (c) Subject to an order duly entered by the Board, any individual whose license to practice veterinary medicine or veterinary technology in this state has been suspended or restricted pursuant to this Act, whether voluntarily or by action of the Board, shall have the right, at reasonable intervals, to petition the Board for reinstatement of such license. Such petition shall be made in writing and in the form prescribed by the Board. Upon investigation and hearing, the Board may, in its discretion, grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications. The Board, also in its discretion, may require such individual to pass an Examination(s), complete Board imposed Continuing Education requirements, or any other sanctions deemed appropriate by the Board for reentry into the practice of veterinary medicine or veterinary technology.
- (d) The Board may issue a cease and desist order to stop any Person from engaging in unauthorized practice or violating or threatening to violate a statute, rule, or order which the Board has issued or is empowered to enforce. The cease and desist order must state the reason for its issuance and give notice of the Person's right to request a hearing under applicable procedures as set forth in the Administrative Procedures Act. Nothing herein shall be construed as barring criminal prosecutions for violations of this Act.
- (e) All final decisions by the Board shall be subject to judicial review pursuant to the Administrative Procedures Act.
- (f) Any Veterinarian or Veterinary Technician whose license is revoked, suspended, or not renewed shall return such license to the offices of the Board within ten (10) days after notice of such action.

Section 401(c). Grounds, Penalties and Reinstatement.

A Licensee who is under investigation, or who has been charged with a violation of the _____ Veterinary Medicine and Veterinary Technology Practice Act may agree to voluntarily surrender his or her license. When this occurs, the Board should formally enter stipulated findings and an order describing the terms and conditions of the surrender, including any agreed-upon time limits. This important step establishes statutory grounds that will support any disciplinary action, and prevents a Licensee who has surrendered a license from applying for (or receiving) reinstatement within a time frame unacceptable to the Board. In the case of a Veterinarian, final adverse action by the Board also triggers a report to the AAVSB Veterinary Information Verification Agency (VIVA) to inform other Jurisdictions of the sanction. The AAVSB encourages Boards to review local law regarding disciplinary sanctions, and distinguish between revocation, suspension, and rights and conditions of reinstatement. See Flanzer v. Board of Dental Examiners, 271 Cal.Rptr. 583 (1990) (Board empowered to impose conditions of reinstatement); Jones v. Alabama State Board of Pharmacy, 624 So.2nd 613 (Ala. App.Ct. 1993) (revoked license carries no right of reinstatement); and Roy v. Medical Board of Ohio, 655 N.E.2d (Ohio App.Ct.1995) (authority to revoke a license to practice includes the authority to revoke permanently).

The AAVSB also recognizes the importance of appropriately drafted Board orders which include at least the following: findings of fact, conclusions of law, sanctions, reinstatement rights (if any) and notice of publication (newsletter, website, etc). It is imperative that Board orders contain such specificity in order to provide enough information to the disciplined Licensee, current Board, as well as future Board members, as to the licensure status and/or eligibility for re-licensure of the individual.

Model Law**Comments****Section 401. Grounds, Penalties, and Reinstatement. Cont'd.**

- (g) The Board is authorized to make public as much disciplinary information about Licensees as the law allows.

Section 402. Summary Suspension.

Notwithstanding any provisions of the state Administrative Procedures Act, the Board may, without a hearing, temporarily suspend a license or facility registration for not more than sixty (60) days if the Board finds that a Licensee is in violation of a law or rule that the Board is empowered to enforce, and if continued practice by the Licensee would create an imminent risk of harm to the public. The suspension shall take effect upon written notice to the Licensee specifying the statute or rule violated. At the time it issues the suspension notice, the Board shall schedule a disciplinary hearing to be held under the Administrative Procedures Act within ___ days thereafter. The Licensee shall be provided with at least ___ days notice effective from the date of issuance of any hearing held under this subsection.

Section 401(g). Grounds, Penalties and Reinstatement.

See the Introductory comment in Section 401 regarding the disclosure of disciplinary actions to the public.

Section 402. Summary Suspension.

In many states, an Administrative Procedures Act determines the procedures that must be followed before disciplinary action can be taken. The Practice Act Model was drafted on the assumption that an Administrative Procedures Act is in effect.

Summary suspension as defined in this section describes an action that can be taken against a Licensee. Jurisdictions that permit the ownership or registration of veterinary practices by non-veterinarians are advised to develop separate language that enables them to enact the summary suspension of a veterinary facility registration, permit or license.

Article V

Confidentiality

Model Law**Comments****Article V. Confidentiality.****Introductory Comment to Article V.**

This section is intended to establish the confidentiality requirements for Licensees, based on the professional relationship between practitioner and Client. Although “confidentiality” and “privileged communication” are related terms, there are important differences between the two concepts. “Confidentiality” is a broad term, and describes the intention that information exchanged between a Licensee and a Client is to be maintained in secrecy, and not disclosed to outside parties. “Privileged communication” is a more narrow term that describes the legal relationship between Licensee and Client when a law mandates confidentiality.

This article is titled “Confidentiality” rather than “Privileged Communication” or “Confidentiality/Privileged Communication” because confidentiality provisions include privileged communications, and it is intended to give Boards the widest possible latitude.

Section 501. Confidential Communications and Exceptions.

- (a) No Licensee shall disclose any information acquired from persons consulting the Licensee in a professional capacity, except that which may be voluntarily disclosed under the following circumstances:
- (1) In the course of formally reporting, conferring or consulting with colleagues or consultants, in which instance all recipients of such information are similarly bound to regard the communication as privileged;
 - (2) With the consent of the Client;
 - (3) In case of death or disability of the Client, with the consent of a personal representative or other authorized Person;
 - (4) When a communication reveals the commission of, or intended commission of, a crime or harmful act or Animal abuse and such disclosure is

Section 501 (a)(2).

The AAVSB considered requiring “written” consent of the Client as a prerequisite to disclosure of information. After discussion, the written requirement was removed. However, the AAVSB encourages written consent where available and deemed appropriate by the Veterinarian.

Model Law**Comments****Section 501. Confidential Communications and Exceptions. Cont'd.**

judged necessary by the Licensee to protect any Person or Animal from a clear, imminent risk of serious mental or physical harm or injury, or to forestall a serious threat to the public safety;

- (5) When the Person waives the privilege by bringing any public charges against the Licensee;
 - (6) When, in the Licensee's professional judgment, there is reasonable cause to suspect that a Person or Animal has been or is being abused; or
 - (7) When the Person is a minor under the laws of this State and the information acquired by the Licensee provides a reason to suspect or indicates that such minor was the victim or subject of a crime, the Licensee may be required to testify in any judicial proceedings in which the commission of that crime is the subject of inquiry and when, after an in camera review of the information that the licensee acquired, the court determines that the interests of the minor in having the information held privileged are outweighed by the requirements of justice, the need to protect the public safety or the need to protect the minor.
- (b) Any Person having access to records or anyone who participates in providing veterinary medical services or who is supervised by a Veterinarian is similarly bound to regard all information and communications as confidential in accordance with the section.

Section 501. Confidential Communications and Exceptions. Cont'd.

Article VI

Mandatory Reporting

Model Law**Comments****Article VI. Mandatory Reporting.****Section 601. Responsibility to Report.**

A Licensee who has knowledge of any conduct by an applicant or a Licensee which may constitute grounds for disciplinary action under this Act or the rules of the Board or of any unlicensed practice under this Act, shall report the violation to the Board.

Section 602. Professional Societies or Associations.

A national, state or local professional society or association for Licensees shall forward to the Board any complaint received concerning the ethics or conduct of the practice which the Board regulates. The society or association shall forward a complaint to the Board upon receipt of the complaint. The society or association shall also report to the Board any disciplinary action taken against a member.

Introductory Comments to Article VI.

Licensees are in a unique position to know of and evaluate the conduct of other Licensees. This section establishes a Licensee's legal responsibility to report activities that may be harmful to Clients, including incompetence, negligence and unethical practice.

Recently, consumer groups and others have voiced concerns that health care professionals often protect each other – either through remaining silent when made aware of substandard practice, or through outright denial of this substandard practice – to the detriment of the public. This perception undermines the public's confidence in professional regulation. The inclusion of mandatory reporting provisions provides assurance that professional "protection" that puts the public at risk is itself a violation of the practice act.

While not specifically delineated in this article, it is expected that institutions will report relevant disciplinary actions to the Board. Mandatory reporting requirements placed upon institutions are necessary to protect the public. However, it is likely that the Board does not maintain jurisdiction over such institutions, and, thus could not legally enforce any such requirements on these institutions.

Section 602. Professional Societies or Associations.

The intent of this section is to address conduct that constitutes grounds for discipline under the Act. This section is not intended to cover other conduct issues that may be addressed in the Code of Ethics of such a professional society or association.

Model Law**Comments****Section 603. Licensees and Applicants.**

- (a) Licensees and applicants shall report to the Board information related to the following conduct by an applicant or a Licensee:
- (1) Failure to make reports as required by this law;
 - (2) Impairment in the ability to practice by reason of illness, use of alcohol, drugs, or other chemicals, or as a result of any mental or physical condition;
 - (3) Fraudulent billing practices;
 - (4) Fraud in the licensure application process, examination process, or any other false statements made to the Board;
 - (5) Conviction of any Felony or any crime reasonably related to the practice of veterinary medicine or veterinary technology; and
 - (6) A violation of any Board order.
- (b) Licensees and applicants shall also report to the Board information on any other conduct by an applicant or a Licensee that constitutes grounds for disciplinary action under this Act or the rules of the Board.
- (c) Failure of a Licensee or applicant to report to the Board any information as required in subsection (a) or (b) above shall constitute grounds for discipline by the Board.

Section 603. Licensees and Applicants. Cont'd.

Model Law**Comments****Section 604. Reporting Other Licensed Professionals.**

A Licensee or applicant shall report to the applicable Board conduct by a licensed health professional which would, in the Licensee's or applicant's best judgment, constitute grounds for disciplinary action under the chapter governing the practice of the other licensed health professional and which is required by law to be reported to the applicable Board.

Section 605. Courts.

The court administrator of the district court or any other court of competent jurisdiction shall report to the Board any judgment or other determination of the court that adjudges or finds that an applicant or a Licensee is mentally ill, mentally incompetent, guilty of a Felony, guilty of a violation of federal or state narcotics laws or controlled substances act, or guilty of any crime reasonably related to the practice of veterinary medicine or veterinary technology, or that appoints a guardian of the applicant or Licensee or commits an applicant or Licensee pursuant to applicable law.

Section 606. Self-Reporting.

An applicant or Licensee shall report to the Board any personal action that would require that a report be filed pursuant to this Act.

Section 607. Deadlines, Forms.

Reports required by this Act must be submitted not later than 30 days after the occurrence of the reportable event or transaction. The Board may provide forms for the submission of reports required by this section, may require that reports be submitted on the forms provided, and may adopt rules necessary to assure prompt and accurate reporting.

Section 604. Reporting Other Licensed Professionals.

The AAVSB has determined that Licensees under this Act should report indiscretions to other Boards. Accordingly, the legislature mandates that other licensees shall report conduct which violates the provisions of another Practice Act. For instance, information of wrongful dispensing of a controlled substance by a pharmacist shall be reported to the Pharmacy Board. Similarly, the AAVSB feels strongly that other disciplines should have similar provisions in their Practice Act so that communication among regulatory Boards enhances the Board's ability to protect the public.

Model Law**Comments****Section 608. Immunity.**

Any person is immune from liability or prosecution for submitting in good faith a report under Article VI or for otherwise reporting, providing information, or testifying about violations or alleged violations of this Act. The identity of any Person that submits a report shall be confidential.

Article VII

Other

Model Law**Comments****Article VII. Other.****Section 701. Severability.**

If any provision of this Act is declared unconstitutional or illegal, or the applicability of this Act to any Person or circumstance is held invalid by a court of competent jurisdiction, the constitutionality or legality of the remaining provisions of this Act and the application of this Act to other Persons and circumstances shall not be affected and shall remain in full force and effect without the invalid provision or application.

Section 702. Effective Date.

This Act shall be in full force and effect on _____ (insert date).