

APA-1
07/04

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control No. _____ Department or Agency: Alabama State Board of Veterinary Medical Examiners
Rule No. 930-X-1-.16
Rule Title: Disciplinary Proceedings.
_____ New X Amend _____ Repeal _____ Adopt by Reference

Would the absence of the proposed rule significantly
Harm or endanger the public health, welfare, or safety? Yes

Is there a reasonable relationship between the state's
Police power and the protection of the public health,
Safety, or welfare? Yes

Is there another, less restrictive method of regulation
Available that could adequately protect the public? No

Does the proposed rule have the effect of directly or
Indirectly increasing the costs of any goods or services
Involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public
Than the harm that might result from the absence of
The proposed rule? No

Are all facets of the rulemaking process designed solely
For the purpose of, and so they have, as their primary
Effect, the protection of the public? Yes

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by
a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama,
1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the
requirements of Chapter 22, Title 41, Code of Alabama, 1975, and that it conforms to all
applicable filing requirements of the Administrative Procedure Division of the Legislative
Reference Service.

Signature of certifying officer 

Date: August 7, 2012

(DATE FILED)
(STAMP)

APA-2
07/04

Alabama State Board of Veterinary Medical Examiners

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama State Board of Veterinary Medical Examiners

RULE NO. & TITLE: 930-X-1-.16 Disciplinary Proceedings.

INTENDED ACTION: Amend

SUBSTANCE OF PROPOSED ACTION: The Board proposes to correctly site statutory authority and clarify language.

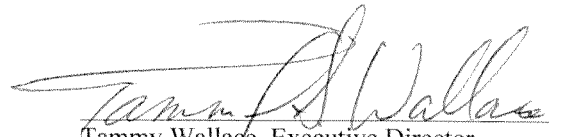
TIME, PLACE, MANNER OF PRESENTING VIEW: Written comments, views, or arguments will be received by the Alabama State Board of Veterinary Medical Examiners at 9:00 a.m. on October 10, 2012. Comments should be directed to Tammy Wallace, Executive Director, at 8 Commerce Street, Suite 910, Montgomery, AL 36130-5330, or via fax at 334-262-8716. A public hearing will be held at 9:00 a.m. on October 10, 2012 at 8 Commerce Street, Suite 910, Montgomery, AL 36104.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

October 10, 2012

CONTACT PERSON AT AGENCY:

Tammy Wallace, Executive Director
8 Commerce Street – Suite 910
Montgomery, AL 36130-5330
(334) 262-8068


Tammy Wallace, Executive Director
Alabama State Board of Veterinary Medical
Examiners

Alabama State Board of Veterinary Medical Examiners

NOTICE OF INTENDED ACTION

RULE NUMBER: 930-X-1-.16

TITLE OF RULE: DISCIPLINARY PROCEEDINGS.

(1) Powers of the Board: The Board shall exercise the powers and perform the duties conferred and imposed upon it under law including the power and duty to consider and investigate any alleged ground for discipline or alleged incapacity of any licensee or any other individual who falls under the jurisdiction of this practice act; called to its attention or upon its own motion, and may take such action with respect thereto as shall be appropriate to effectuate its purposes as prescribed by law.

(2) Disqualification of Members of the Board.

(a) If for any reason a Board member determines that personal bias or other factors make him or her unable to conduct a hearing and perform all duties in an impartial manner, he or she shall submit to the Board in writing, his or her reasons for disqualification.

(b) If for any reason any party in a contested case believes that a Board member is personally biased or otherwise unable to conduct the hearing and perform all duties in an impartial manner, the party may file a sworn, notarized affidavit with the Board.

(c) The affidavit must state all facts the party deems relevant to the disqualification of the Board member.

(d) An affidavit of disqualification will be considered timely if filed before commencement of the hearing. An otherwise untimely affidavit will be considered timely provided it is filed at the first opportunity after the party becomes aware of facts which give rise to a reasonable belief that the Board member may be disqualified under this rule.

(e) Procedure for determining disqualification follows:

1. The Board, with the advice of such assistants as it deems appropriate, shall decide whether to disqualify the challenged individual;

2. The person whose disqualification is to be determined will not participate in the decision but may be called upon to furnish information to the Board;

3. A record of proceedings and the reasons for decisions reached will be maintained as part of the contested case record.

(f) If by reason of personal interest, bias or like causes a Board member is disqualified after the hearing has begun, a new hearing will be initiated if requested by the party who filed the affidavit of disqualification. Absent such a request, the case will be resumed or continued provided a quorum is present.

(g) If for reasons other than personal interest, bias, or like causes a Board member is unable to continue the hearing, and a quorum is present, the hearing will be resumed except:

1. If continuation of the hearing would result in substantial prejudice, for whatever reasons, to the rights of the parties, either a new hearing will be

initiated or the case will be dismissed without prejudice.

(h) If a member of the Board is unable to continue the hearing either by disqualification or any other reason and the Board is unable to reach a quorum, the Governor of the State of Alabama shall appoint as many ex-officio members as is necessary to reach a quorum from a list of three persons submitted for each place by the Alabama Veterinary Medical Association. Such ex-officio members shall serve on the Board only for that hearing for which they were appointed but may be reappointed for later hearings if necessary. The hearing will be resumed except:

1. If oral testimony has already been given, and it is determined by the new ex-officio members that the viewing of such witness is an important element of the case, that part of the testimony and evidence will be repeated.

2. If continuation of the hearing would result in substantial prejudice, for whatever reasons, to the rights of the parties, either a new hearing will be initiated or the case will be dismissed without prejudice.

(i) The determination of whether continuation of the case will result in substantial prejudice is to be made by the Board.

(j) Notification of decisions of disqualification, continuation of the hearing, re-hearing of a part or all of a contested case or dismissal of a case without prejudice, together with a statement of reasons therefore, will be part of the record of the case, and communicated to all parties promptly.

(3) Notice shall be sent by certified mail, return receipt requested, to the most current address provided to the Board by the veterinarians to be notified. Notices of administrative hearings of the Board:

(a) shall give the name, position, address and telephone number of a person in the Board office to contact for further information or discussions;

(b) shall include a statement that failure to inform the Board office within twenty-one days after notice is received of intent to appear at any hearing or pre-hearing conference scheduled in the hearing notice will be deemed a waiver of the right to a hearing;

(c) shall advise the respondent that he or she is entitled to be represented by counsel, to cross-examine witnesses and to present evidence in his or her own behalf;

(d) may give notice of date and place for a pre-hearing conference, if any;

(e) may schedule the date of the hearing;

(f) may include any other information deemed relevant to informing the party or parties as to the procedure of the hearing;

(4) Failure to appear:

(a) If a party fails to appear in a contested case after proper service of notice, the Board, if no adjournment is granted, may go ahead with the hearing and make its decision in the absence of the party.

(b) Continuances, adjournments and like dispositions will be granted only in compelling circumstances.

(c) If a hearing is conducted or a decision is reached in an administrative hearing in the absence of a party, that party may file a written petition with the Board for a reopening of the case.

(d) Petitions for reopening a case will not be granted except if the petitioner can show that the reasons for his or her failure to appear were justifiable and unavoidable and that fairness requires reopening the case. Such petitions, however, will have no effect on the running of the thirty day period for seeking judicial review as provide in the Veterinary Practice Act.

(e) The decisions of the Board will be in writing and a copy will be sent to the petitioner and made a part of the record of the hearing.

(5) Simplification of issues:

(a) Except as prohibited by statute, the parties to a contested case, including the Board, may agree in advance to simplify the hearing by:

1. decreasing the number of the issues to be contested at the hearing;
2. accepting the validity of certain proposed evidence;
3. accepting the findings in some other case with relevance to the case at hand;
4. or agreeing to such other matters as may expedite the hearing.

(b) All investigations, whether upon complaint or otherwise, shall be initiated and conducted by the Board as provided in Chapter 930-X-1-.17. ~~(1) or by a local grievance committee as set forth in Chapter 930-X-1-.17. (2) hereof.~~

Author: Alabama State Board of Veterinary Medical Examiners

Statutory Authority: Code of Ala. 1975, §34-29-79.