

Department of Legislative Services
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FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 189

(Senators Gallion and Bailey)

Education, Health, and Environmental Affairs

Environment and Transportation

**State Board of Veterinary Medical Examiners – Cease and Desist Orders and
Civil Penalties**

This bill authorizes the State Board of Veterinary Medical Examiners (SBVME), on review and approval of the Secretary of Agriculture, or the Secretary’s designee, to issue a cease and desist order or impose a civil penalty against a person for specified reasons, including (1) practicing, attempting to practice, or offering to practice veterinary medicine without being licensed; (2) taking an action for which SBVME determines there is a preponderance of evidence of grounds for discipline under specified existing provisions; or (3) taking an action that poses a serious risk to the health, safety, and welfare of an animal patient. The bill also establishes procedural requirements and other provisions related to the cease and desist order and civil penalty authority.

Fiscal Summary

State Effect: General fund revenues and special fund expenditures may increase relatively minimally each fiscal year, beginning in FY 2021.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill authorizes SBVME, on review and approval of the Secretary of Agriculture, or the Secretary’s designee, to issue a cease and desist order against a person who:

- practices, attempts to practice, or offers to practice veterinary medicine in violation of specified existing prohibitions, including practicing veterinary medicine without being licensed, registered, and otherwise authorized to engage in the practice; or
- takes an action (1) for which SBVME determines there is a preponderance of evidence of grounds for discipline under § 2-310 of the Agriculture Article (Standards of Conduct and Ethics; Grounds for Refusal, Suspension, or Revocation of License) or § 2-313 of the Agriculture Article (Prohibited Acts) or (2) that poses a serious risk to the health, safety, and welfare of an animal patient.

In lieu of a cease and desist order, SBVME may impose a civil penalty of up to (1) \$5,000 for a first offense and (2) \$10,000 for a second or subsequent offense. In setting the amount of a civil penalty, SBVME must consider (1) the seriousness of the violation; (2) the harm caused by the violation; (3) the good faith of the violator; (4) any history of previous violations by the violator; and (5) any other relevant factors. Before a civil penalty is imposed, the board must provide a person notice of the alleged violation and an opportunity for a hearing.

A person against whom a cease and desist order is issued or a civil penalty is imposed may seek review of the order or penalty under the Administrative Procedure Act.

An action for a cease and desist order or a civil penalty is in addition to, and not instead of, (1) existing authorized disciplinary actions against a veterinarian or veterinary practitioner or (2) an action for injunctive relief.

SBVME must adopt regulations to carry out the provisions of the bill, including hearing procedures and sanctions for violations of a cease and desist order. The sanctions established by regulations may include a civil penalty consistent with the civil penalty authority established under the bill.

Any penalties collected are paid into the State general fund.

Current Law:

Section 2-313 of the Agriculture Article (Prohibited Acts)

With the exception of specified acts or omissions in giving emergency veterinary aid, care, or assistance, a person may not:

- practice veterinary medicine unless the person is licensed, registered, and authorized to engage in the practice by SBVME;

- practice veterinary medicine under a name other than the one on the person's license and registration, or induce any person to so practice in violation of State law governing SBVME and the practice of veterinary medicine;
- practice veterinary medicine unless the person's license and registration are displayed in the person's regularly established office and place of practice;
- own, maintain, conduct, operate, or manage a veterinary office, veterinary dental office, veterinary hospital, or a dog, cat, or animal hospital, unless (1) the person is a licensed veterinarian or (2) the office or hospital is under the direct supervision and control of a licensed and registered veterinarian and a license or registered veterinarian is employed in the office or hospital;
- advertise any veterinary office, veterinary dental office, veterinary hospital, or a dog, cat, or animal hospital except in accordance with rules and regulations of SBVME;
- subject to exceptions, practice veterinary medicine and sell or dispense any medication, which is not in the original manufacturer's container;
- advertise as an SBVME registered veterinary technician unless registered with the board; or
- practice as a veterinary technician unless employed by a veterinary practitioner.

Specific penalties are not established for violations of these prohibitions; however, the board may bring an action for an injunction against a person who violates the statutory provisions governing SBVME and the practice of veterinary medicine (within which the prohibitions are included). The prohibitions are also within the Agriculture Article, and a violation of any provision of the Agriculture Article is a misdemeanor and subject to fines and/or imprisonment specified under Title 12 of the article.

Section 2-310 of the Agriculture Article (Standards of Conduct and Ethics; Grounds for Refusal, Suspension, or Revocation of License)

SBVME may refuse, suspend, or revoke any application or license, and censure or place on probation any licensee after a hearing, if the veterinarian or veterinary practitioner:

- is unable to practice veterinary medicine competently due to a physical or mental disability;
- is convicted of a violation of specified State or federal drug-related laws;
- is convicted of a felony, or of a crime involving moral turpitude;
- is convicted of (1) violating any provision of State law governing SBVME and the practice of veterinary medicine; (2) any unlawful or fraudulent practice; or (3) any fraudulent, misleading, or deceptive representation or advertising concerning the veterinarian's or veterinary practitioner's professional qualifications or the quality

of materials or drugs used by them in their professional work or in the treatment of animals;

- has a final judgment entered against them in a civil malpractice case involving gross personal negligence;
- obtains the license by fraud or misrepresentation, either in the application, or in passing the examination;
- is guilty of employing or permitting to practice veterinary medicine any person who does not hold a license to practice veterinary medicine in the State;
- fails to comply with SBVME rules or regulations after receiving a license;
- is grossly negligent or deliberately cruel to an animal;
- is determined by four members of the board to be professionally incompetent as a veterinary practitioner;
- is disciplined by a licensing authority of another state, including the suspension or revocation of a license to practice veterinary medicine, for an act that would be grounds for disciplinary action under Maryland law; or
- fails to comply with specified animal cruelty or animal fighting reporting requirements.

Penalties in Lieu of or in Addition to Suspension or Revocation

In lieu of or in addition to suspension of a license, and in addition to revocation of a license, SBVME may impose a penalty of up to \$5,000 for a first offense. In addition to suspension or revocation of a license, the board may impose a penalty of up to \$10,000 for a second or subsequent offense. Any penalties collected are paid into the general fund.

Background: With respect to the existing prohibition against practicing veterinary medicine without a license, SBVME periodically receives complaints about non-veterinarians who are practicing veterinary medicine but views its primary recourse to be to refer incidents to the State's Attorney or law enforcement for whom the complaints can be a low priority. The board has the authority to seek injunctive relief in court but has not used that option. The authority under the bill to issue a cease and desist order or impose a civil penalty on a person who practices, attempts to practice, or offers to practice veterinary medicine without a license will give the board another enforcement option that is expected to be more efficient and effective than its existing options.

SBVME indicates that the ability under the bill to also issue cease and desist orders to licensed veterinarians gives the board another enforcement option if a veterinarian is engaging in a practice the board finds harmful but may be better addressed by preventing continuation of that specific practice (*e.g.*, a type of surgery for which the veterinarian does not have a sufficient skill level) rather than the full suspension or revocation of the veterinarian's license.

State Revenues: General fund revenues may increase relatively minimally each fiscal year, beginning in fiscal 2021, to the extent civil penalties are imposed under the bill. SBVME indicates that it does not expect that there will be an overwhelming number of cases of unauthorized practice of veterinary medicine that it will need to pursue, and civil penalties may not be imposed in every case. It also does not expect the civil penalty authority under the bill to materially change the amount of civil penalties imposed on veterinarians and veterinary practitioners in comparison to what is currently imposed under existing authority.

State Expenditures: Special fund expenditures may increase relatively minimally each fiscal year, beginning in fiscal 2021, to the extent hearings need to be conducted as a result of the issuance of a cease and desist order or the imposition of a civil penalty. SBVME indicates that hearings may cost \$3,000 to \$5,000 per hearing, but does not expect hearings to occur frequently.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 545 (Delegate Griffith, *et al.*) - Environment and Transportation.

Information Source(s): Maryland Department of Agriculture; Department of Legislative Services

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