

**RULES
OF
TENNESSEE BOARD OF VETERINARY MEDICAL EXAMINERS**

**CHAPTER 1730-04
GENERAL RULES GOVERNING CERTIFIED ANIMAL CONTROL AGENCIES**

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1730-04-.01 DEFINITIONS.

- (1) Animal Control Agency - A county or municipal animal shelter, dog pound, or a private humane society with administrative or contractual arrangements with or support of a local government agency, or a state county or municipal law enforcement agency, or any combination thereof which temporarily houses stray, unwanted, or injured animals.
- (2) Applicant - An Animal Control Agency seeking certification by the Board that has submitted an official application and paid the application fee.
- (3) Board - The Tennessee Board of Veterinary Medical Examiners.
- (4) Certificate - Document issued to an applicant who successfully completes the certification process. The certificate takes the form of an "artistically designed" certificate as well as other versions bearing an expiration date.
- (5) Certificate Holder - Any person or facility who has been lawfully issued a certificate to operate as a Certified Animal Control Agency in the State of Tennessee.
- (6) Certified Animal Control Agency (C.A.C.A.) - A county or municipal animal shelter, dog pound or animal control agency, private humane society, state, county or municipal law enforcement agency, or any combination thereof, which temporarily houses stray, unwanted or injured animals pursuant to this chapter and T.C.A. § 5-1-120, and is certified by the Board of Veterinary Medical Examiners.
- (7) Certified Animal Euthanasia Technician (C.A.E.T.) - A person employed by a certified animal control agency who is authorized by the Board of Veterinary Medical Examiners (BVME) to humanely euthanize domestic canine and feline animals by administering such drugs as are designated by the Board for such use.
- (8) D.E.A. – United States Drug Enforcement Administration.
- (9) Department - Tennessee Department of Health.
- (10) Division - The Tennessee Department of Health, Division of Health Related Boards, from which the Board receives administrative support.

(Rule 1730-04-.01, continued)

- (11) Fee - Money, gifts, services or anything of value offered or received as compensation in return for rendering services; also the required certification fee(s).
- (12) Person - Any individual, corporation, partnership, association, governmental subdivision, or public or private organization of any character, including another agency.
- (13) Registrant - Any person who has been lawfully issued a certificate.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-101, 63-12-102, 63-12-103, 63-12-104, 63-12-105, 63-12-106, 63-12-112, 63-12-121, and 63-12-141. **Administrative History:** Original rule filed December 21, 1999; effective March 5, 2000. Amendment filed June 25, 2003; effective September 8, 2003. Amendment filed May 23, 2014; effective August 21, 2014.

1730-04-.02 NECESSITY OF CERTIFICATION. Prior to engaging in the operation of a Certified Animal Control Agency, a facility must hold a current Tennessee certificate or a valid temporary certificate from the Board.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-106, 63-12-106, and 63-12-141. **Administrative History:** Original rule filed December 21, 1999; effective March 5, 2000.

1730-04-.03 QUALIFICATIONS FOR CERTIFICATION. Entities that wish to apply to the D.E.A. for a restricted controlled substance registration certificate must be certified by the Board. To be eligible for a certificate as a Certified Animal Control Agency, an applicant must meet all of the following qualifications:

- (1) Meet the definition of a Certified Animal Control Agency contained in T.C.A. § 63-12-141 and these rules.
- (2) Employ at least one (1) Certified Animal Euthanasia Technician, except as provided in Rule 1730-05-.02
- (3) Pass an onsite inspection by the premises inspector.
- (4) Provide a copy of the Non-Livestock Animal Humane Death Act, codified at T.C.A. §§ 44-17-301 to -304, to each employee who will perform euthanasia, and maintain documentation of compliance with this paragraph.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 44-17-301, 44-17-302, 44-17-303, 63-1-106, 63-12-106, and 63-12-141. **Administrative History:** Original rule filed December 21, 1999; effective March 5, 2000. Amendment filed May 23, 2014; effective August 21, 2014.

1730-04-.04 PROCEDURE FOR CERTIFICATION OF AN ANIMAL CONTROL AGENCY.

- (1) The entity shall obtain an application from the Board's administrative office, and respond truthfully and completely to every question or request for information.
- (2) A notarized letter from a municipal or county official stating that the entity is an Animal Control Agency is required.
- (3) Notarized documentation of employment of at least one (1) Certified Animal Euthanasia Technician is required, except as provided in Rule 1730-05-.02
- (4) Pass an onsite inspection by the premises inspector.
- (5) The entity shall submit with the application, the non-refundable application fee, inspection fee, and state regulatory fee as provided in Rule 1730-04-.05.

(Rule 1730-04-.04, continued)

- (6) An entity shall disclose the circumstances surrounding any of the following:
 - (a) Conviction of any criminal law violations of any country, state, or municipality.
 - (b) The denial of certification by any other state and any disciplinary action in any state.
 - (c) Loss or restriction of certification, licensure privileges, state or federal accreditation.
 - (d) Any final or settled legal action that relates to the applicant's professional services in any profession, or, any pending legal action that relates to the applicant's professional services and to which the applicant is a party.
- (7) Application review and certification shall be governed by Rule 1730-04-.05.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-12-106, 63-12-107, 63-12-124, and 63-12-141. **Administrative History:** Original rule filed December 21, 1999; effective March 5, 2000. Amendment filed May 23, 2014; effective August 21, 2014.

1730-04-.05 APPLICATION REVIEW, APPROVAL, DENIAL.

- (1) Applications for certification will be accepted throughout the year.
- (2) Initial review of all applications to determine whether or not the application file is complete may be delegated to the Board's Unit Director, provided that approval of all applications is made and ratified by the Board.
- (3) If an application is incomplete when reviewed by the Board, a deficiency letter will be sent to the applicant notifying it of the deficiency.
 - (a) Such notification shall be sent certified mail return receipt requested from the Board's administrative office.
 - (b) For an applicant that has completed the requirements for certification, all documentation must be received in the Board's administrative office within sixty (60) days after receipt of the deficiency notification. If the requested information is not received within sixty (60) days, the file will be closed and the applicant notified.
 - (c) After an applicant file is closed, no further Board action will take place until a new application is received pursuant to the rules governing the applicable process, including another payment of all fees.
- (4) If a completed application has been denied and ratified as such by the Board, the action shall become final and the following shall occur:
 - (a) A notification of the denial shall be sent by the Board's Administrative Office by certified mail, return receipt requested, which shall contain all the specific statutory or regulatory authorities for the denial.
 - (b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures Act. (T.C.A. §§ 4-5-101, et seq.) to contest the denial and the procedure necessary to accomplish that action.
 1. An applicant has a right to a contested case hearing only if the certification denial was based on subjective or discretionary criteria.

(Rule 1730-04-.05, continued)

2. An applicant may be granted a contested case hearing if certification denial is based upon objective, clearly defined criteria only if after review and attempted resolution by the Board's administrative staff the certification application cannot be approved and the reasons for continued denial present genuine issues of fact and/or law which are appropriate for appeal. Such request must be made in writing to the Board within thirty (30) days of the receipt of the notice of denial from the Board.
- (5) Any entity furnishing false information or omitting pertinent information in such application shall be denied certification. If the applicant has already been certified before the falseness of such information has been made known to the Board, such certification shall be subject to suspension or revocation by the Board.
- (6) If the Board finds it has erred in the issuance of a certificate, the Board will give written notice by certified mail of its intent to void the certificate. The notice will allow the applicant the opportunity to meet the requirements of certification within thirty (30) days from the date of receipt of the notification.
- (7) Abandonment of Application
 - (a) An application shall be deemed abandoned and closed if the application has not been completed by the applicant within sixty (60) days after it was initially reviewed by the Board.
 - (b) A determination of abandonment must be ratified by the Board.
 - (c) An application submitted subsequent to the abandonment of a prior application shall be treated as a new application.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-301, 63-12-106, 63-12-107, and 63-12-141. **Administrative History:** Original rule filed December 21, 1999; effective March 5, 2000.

1730-04-.06 FEES.

- (1) The fees are as follows:
 - (a) Application Fee - A non-refundable fee to be paid by all applicants. It must be paid each time an application for certification is filed.
 - (b) Endorsement/Verification - Endorsement of certification to state licensure boards and government agencies will be provided at no charge on behalf of the certificate holder. A non-refundable fee is to be paid for each verification of the certificate holder to anyone other than a state licensing board or government agency.
 - (c) Late Renewal Fee - A non-refundable fee to be paid when an entity fails to timely renew a certificate.
 - (d) Certificate Renewal Fee - A non-refundable fee to be paid by all certificate holders. This fee also applies to entities who reactivate a retired or administratively revoked certificate.
 - (e) State Regulatory Fee - To be paid by all entities at the time of application and with all renewal applications.
 - (f) Inspection Fee - A non-refundable fee to be paid each time an application for certification or renewal is filed.

(Rule 1730-04-.06, continued)

- (g) Re-inspection Fee - A non-refundable fee to be paid when the certified Animal Control Agency does not pass the initial inspection or the biennial re-inspection.
- (2) All fees shall be established by the Board. Fees may be reviewed and changed at the discretion of the Board.
- (3) Fee Schedule:
- | | Amount |
|----------------------------------------------|----------|
| (a) Application | \$ 50.00 |
| (b) Endorsement/Verification | 20.00 |
| (c) Late Renewal | 80.00 |
| (d) Renewal (biennial) | 160.00 |
| (e) State Regulatory Fee (with applications) | 10.00 |
| (f) Inspection Fee/Biennial Inspection | 200.00 |
| (g) Re-inspection Fee (follow up) | 150.00 |
- (4) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division of Health Related Boards. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Tennessee Board of Veterinary Medical Examiners.

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-12-106, 63-12-128, 63-12-129, 63-12-139, and 63-12-141. **Administrative History:** Original rule filed December 21, 1999; effective March 5, 2000. Amendment filed August 18, 2003; effective November 1, 2003.

1730-04-.07 REQUIREMENTS FOR INSPECTION.

- (1) Upon receipt of a completed application packet and fees an on-site inspection will be scheduled by a premises inspector. The inspection will include the physical location where the euthanasia and/or pre-euthanasia solutions will be stored and administered, and a review of the paperwork requirements with the responsible person of the entity and/or the C.A.E.T.(s).
- (a) The euthanasia room shall be enclosed and in a separate location from other animals temporarily housed on the premises.
- (b) Cages, pens, and stalls are to be kept in a clean and orderly condition, in a well-lighted area, and in good repair to prevent injury to animals and to promote physical comfort.
- (c) Small animals housed outside must have adequate shelter and bedding if the temperature drops below fifty degrees (50°) Fahrenheit and sufficient cooling or shade if the temperature rises above eighty-five degrees (85°) Fahrenheit.
- (2) The premises inspector will provide the Board with a report of compliance or describing areas of non-compliance.
- (3) If in compliance the Board will issue a compliance certificate which allows the entity to apply to the D.E.A. for a restricted controlled substance registration certificate. The D.E.A. certificate allows the C.A.C.A. to purchase, possess and use sodium pentobarbital to be administered by a C.A.E.T. employed by the entity.
- (4) Inspection of C.A.C.A.'s will be conducted at least every two (2) years or as determined by the Board.

(Rule 1730-04-.07, continued)

Authority: T.C.A. §§4-5-202, 4-5-204, 63-12-106, 63-12-128, 63-12-129, 63-12-141, and 44-17-303.

Administrative History: Original rule filed December 21, 1999; effective March 5, 2000. Amendment filed November 2, 2005; effective January 16, 2006. Amendment filed July 27, 2006; effective October 10, 2006.

1730-04-.08 RENEWAL APPLICATION/REINSTATEMENT OF EXPIRED CERTIFICATE.

- (1) Renewal Application
 - (a) The due date for renewal is the expiration date on the C.A.C.A.'s renewal certificate.
 - (b) A renewal application form will be mailed to each C.A.C.A. registered with the Board to the last address provided to the Board. Failure to receive such notification does not relieve the C.A.C.A. of the responsibility of timely meeting all requirements for renewal.
 - (c) To be eligible for renewal, C.A.C.A. must submit to the Division of Health Related Boards on or before the expiration date all of the following:
 1. A completed Board renewal application form; and
 2. The renewal and state regulatory fees as provided in Rule 1730-04-.06; and
 3. Compliance with inspection as provided in Rule 1730-04-.07.
 - (d) Any entity submitting a renewal form or letter which is found to be untrue may be subjecting itself to disciplinary action as provided in Rule 1730-04-.12.
 - (e) Certificate holders who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their certificates processed in accordance with rule 1200-10-01-.10.
- (2) Reinstatement of an Expired Certificate
 - (a) Reinstatement of a certificate that has expired may be accomplished upon meeting the following conditions:
 1. Payment of all past due renewal and state regulatory fees; and
 2. Payment of the late renewal fee provided in Rule 1730-04-.06; and
 3. Compliance with inspection.
 - (b) Reinstatement decisions pursuant to this rule may be made administratively or reviewed by the Board.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-12-105, 63-12-106, 63-12-107, 63-12-121, 63-12-124, and 63-12-141. **Administrative History:** Original rule filed December 21, 1999; effective March 5, 2000. Amendment filed September 12, 2001; effective November 26, 2001. Amendment filed June 25, 2003; effective September 8, 2003.

1730-04-.09 RECORDKEEPING.

- (1) The following minimum standards shall apply to recordkeeping.
 - (a) Every C.A.C.A. shall keep a written report of the animals euthanized. This record shall include pertinent medical data including dates, estimated age, breed, weight, sex,

(Rule 1730-04-.09, continued)

amount and type of euthanasia and/or pre-euthanasia solution administered, and description of verification of death.

- (b) Records shall be kept for a period of three (3) years.
- (2) A separate log must be maintained for all controlled substances used by a C.A.C.A.
- (3) A C.A.C.A. shall comply within ten (10) days to requests for euthanasia records, within the provisions of T.C.A. §§ 63-2-101 and 63-2-102.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-2-101, et seq., and 63-12-103, 63-12-106, and 63-12-141.
Administrative History: Original rule filed December 21, 1999; effective March 5, 2000. Amendment filed July 28, 2003; effective October 11, 2003.

1730-04-.10 CERTIFICATE.

- (1) Issuance - Upon the Board determining that an applicant for certification has successfully met all the requirements as set forth in T.C.A. §§ 63-12-101, et seq., and these rules, the Board shall issue the applicant a certificate to operate as a C.A.C.A. in this state.
- (2) Display a Certificate - Every Animal Control Agency certified by the Board in this state shall display its certification and renewal certificate in a conspicuous place in its principal office and, whenever required, exhibit such certificate to the Board or its authorized representative.
- (3) Replacement Certificate or Renewal Certificate - A C.A.C.A. whose certificate has been lost or destroyed, may be issued a replacement document upon receipt of a written request in the Board's administrative office.
- (4) Verification - Requests for verification of certification must be made in writing to the Board's administrative office.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-109, and 63-12-103. **Administrative History:** Original rule filed December 21, 1999; effective March 5, 2000.

1730-04-.11 UNPROFESSIONAL CONDUCT. Unprofessional conduct shall include but not be limited to the following:

- (1) Failing to maintain a record of each animal euthanized, and the euthanasia and/or pre-euthanasia solution dosages, or failing to maintain a record of how the euthanasia and/or pre-euthanasia drugs were obtained.
- (2) Failing to employ a C.A.E.T. to whom euthanasia functions are delegated or assigned.
- (3) Revealing without written permission knowledge obtained in a professional capacity about animals or owners. Exceptions:
 - (a) When said information is requested during a formal investigation by representatives of the State of Tennessee; or
 - (b) Other law enforcement agencies; or when required to do so pursuant to any action in a court of law; or
 - (c) When required by law to report state or federal agencies; or
 - (d) When animals are adopted.

(Rule 1730-04-.11, continued)

- (4) Failing to cooperate with authorities investigating incompetent, unethical, or illegal practices of a C.A.C.A.
- (5) Performing euthanasia techniques or procedures without proper education and/or certification.
- (6) Engaging in acts of dishonesty which relate to the operation of a C.A.C.A.
- (7) Treating or professing to treat, or issuing any pharmaceutical to any human.
- (8) Any violation of T.C.A. §§ 63-12-124.
- (9) Violation of the provisions of the Non-livestock Animal Humane Death Act codified at T.C.A. §§ 44-17-301, et seq.
- (10) Violation of Rule 1730-04-.13 and Rule 1730-05-.14 regarding the dispensing and distribution of pharmaceuticals.

Authority: T.C.A. §§4-5-202, 4-5-204 44-17-303, 63-12-106, 63-12-124, and 63-12-141. **Administrative History:** Original rule filed December 21, 1999; effective March 5, 2000. Amendment filed July 28, 2003; effective October 11, 2003. Amendment filed July 27, 2006; effective October 10, 2006.

1730-04-.12 DISCIPLINARY ACTIONS, CIVIL PENALTIES, ASSESSMENT OF COSTS, AND SCREENING PANELS.

- (1) Upon a finding by the Board that a C.A.C.A. has violated any provision of the Tennessee Veterinary Medical Practice Act (T.C.A. §§ 63-12-101, et seq.) or the rules promulgated thereto, the Board may impose any of the following actions separately or in any combination deemed appropriate to the offense:
 - (a) Advisory Censure - This is a written action issued to the C.A.C.A. for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.
 - (b) Formal Censure or Reprimand - This is a written action issued to a C.A.C.A. for one time and less severe violations. It is a formal disciplinary action.
 - (c) Probation - This is a formal disciplinary action which places a C.A.C.A. on close scrutiny for a fixed period of time. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict activities during the probationary period.
 - (d) Suspension - This is a formal disciplinary action which suspends a C.A.C.A. owner from operating for a fixed period of time. It contemplates the reinstatement of the C.A.C.A.'s certificate previously issued. When the Board suspends a certificate, the Animal Control Agency may not continue to operate in Tennessee as a Certified Animal Control Agency during the period of suspension.
 - (e) Conditions - Any action deemed appropriate by the Board to be required of a disciplined certificate holder in any of the following circumstances:
 1. During any period of probation, suspension; or
 2. During any period of revocation after which the certificate holder may petition for an order of compliance to reinstate the revoked certificate; or

(Rule 1730-04-.12, continued)

3. As a prerequisite to the lifting of probation or suspension or as a prerequisite to the reinstatement of a revoked certificate; or
 4. As a stand-alone requirement(s) in any disciplinary order.
- (f) Civil penalty - A monetary disciplinary action assessed by the Board pursuant to paragraph (5) of this rule.
- (g) Revocation for Cause. This is the most severe form of disciplinary action which terminates the certification previously issued. The Board, in its discretion, may allow reinstatement of a revoked certificate upon conditions and after a period of time it deems appropriate. No petition for reinstatement and no new application for certification from an entity whose certificate was revoked shall be considered prior to the expiration of at least one (1) year unless otherwise stated in the Board's revocation order.
- (2) Once ordered, probation, suspension, revocation, assessment of a civil penalty, or any other condition of any type of disciplinary action may not be lifted unless and until the certificate holder petitions, pursuant to paragraph (3) of this rule, and appears before the Board after the period of initial probation, suspension, revocation, or other conditioning has run and all conditions placed on the probation, suspension, revocation, have been met, and after any civil penalties assessed have been paid.
- (3) Order of Compliance - This procedure is a necessary adjunct to previously issued disciplinary orders and is available only when a petitioner has completely complied with the provisions of a previously issued disciplinary order, including an uncertified operation of an animal control agency civil penalty order, and wishes or is required to obtain an order reflecting that compliance.
- (a) The Board will entertain petitions for an Order of Compliance as a supplement to a previously issued order upon strict compliance with the procedures set forth in subparagraph (b) in only the following three (3) circumstances:
1. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reflecting that compliance; or
 2. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued lifting a previously ordered suspension or probation; or
 3. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reinstating a certificate previously revoked.
- (b) Procedures
1. The petitioner shall submit a Petition for Order of Compliance, as contained in subparagraph (c), to the Board's Administrative Office that shall contain all of the following:
 - (i) A copy of the previously issued order; and
 - (ii) A statement of which provision of subparagraph (a) the petitioner is relying upon as a basis for the requested order; and
 - (iii) A copy of all documents that prove compliance with all the terms or conditions of the previously issued order. If proof of compliance requires testi-

(Rule 1730-04-.12, continued)

mony of an individual(s), including that of the petitioner, the petitioner must submit signed statements from every individual the petitioner intends to rely upon attesting, under oath, to the compliance. The Board's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.

2. The Board authorizes its consultant and administrative staff to make an initial determination on the petition and take one of the following actions:
 - (i) Certify compliance and have the matter scheduled for presentation to the Board as an uncontested matter; or
 - (ii) Deny the petition, after consultation with legal staff, if compliance with all of the provisions of the previous order is not proven and notify the petitioner of what provisions remain to be fulfilled and/or what proof of compliance was either not sufficient or not submitted.
3. If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
4. If the Board finds that the petitioner has complied with all the terms of the previous order an Order of Compliance shall be issued.
5. If the petition is denied either initially by staff or after presentation to the Board and the petitioner believes compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-01-.11.

(c) Form Petition

Petition for Order of Compliance
Board of Veterinary Medical Examiners

Petitioner's Name: _____
 Petitioner's Mailing Address: _____

 Petitioner's E-Mail Address: _____
 Telephone Number: _____

 Attorney for Petitioner: _____
 Attorney's Mailing Address: _____

 Attorney's E-Mail Address: _____
 Telephone Number: _____

The petitioner respectfully represents, as substantiated by the attached documentation, that all provisions of the attached disciplinary order have been complied with and I am respectfully requesting: (circle one)

1. An order issued reflecting that compliance; or

(Rule 1730-04-.12, continued)

2. An order issued reflecting that compliance and lifting a previously ordered suspension or probation; or
3. An order issued reflecting that compliance and reinstating a certificate previously revoked.

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show compliance is the testimony of any individual, including yourself, you must enclose signed statements from every individual you intend to rely upon attesting, under oath, to the compliance. The Board's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the _____ day of _____, 20_____.

Petitioner's Signature

- (4) Order Modifications - This procedure is not intended to allow anyone under a previously issued disciplinary order, including an uncertified operation of an animal control agency civil penalty order, to modify any findings of fact, conclusions of law, or the reasons for the decision contained in the order. It is also not intended to allow a petition for a lesser disciplinary action, or civil penalty other than the one(s) previously ordered. All such provisions of Board orders were subject to reconsideration and appeal under the provisions of the Uniform Administrative Procedures Act (T.C.A. §§ 4-5-301, *et seq.*). This procedure is not available as a substitute for reconsideration and/or appeal and is only available after all reconsideration and appeal rights have been either exhausted or not timely pursued. It is also not available for those who have accepted and been issued a reprimand.
 - (a) The Board will entertain petitions for modification of the disciplinary portion of previously issued orders upon strict compliance with the procedures set forth in subparagraph (b) only when the petitioner can prove that compliance with any one or more of the conditions or terms of the discipline previously ordered is impossible. For purposes of this rule the term "impossible" does not mean that compliance is inconvenient or impractical for personal, financial, scheduling or other reasons.
 - (b) Procedures
 1. The petitioner shall submit a written and signed Petition for Order Modification on the form contained in subparagraph (c) to the Board's Administrative Office that shall contain all of the following:
 - (i) A copy of the previously issued order; and
 - (ii) A statement of why the petitioner believes it is impossible to comply with the order as issued; and
 - (iii) A copy of all documents that proves that compliance is impossible. If proof of impossibility of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed and notarized statements from every individual the petitioner intends to rely upon attesting, under oath, to the reasons why compliance is impossible. No docu-

(Rule 1730-04-.12, continued)

mentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.

2. The Board authorizes its consultant and administrative staff to make an initial determination on the petition and take one of the following actions:
 - (i) Certify impossibility of compliance and forward the petition to the Office of General Counsel for presentation to the Board as an uncontested matter; or
 - (ii) Deny the petition, after consultation with legal staff, if impossibility of compliance with the provisions of the previous order is not proven and notify the petitioner of what proof of impossibility of compliance was either not sufficient or not submitted.
3. If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
4. If the petition is granted a new order shall be issued reflecting the modifications authorized by the Board that it deemed appropriate and necessary in relation to the violations found in the previous order.
5. If the petition is denied either initially by staff or after presentation to the Board and the petitioner believes impossibility of compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-01-.11.

(c) Form Petition

Petition for Order Modification
Board of Veterinary Medical Examiners

Petitioner's Name: _____
Petitioner's Mailing Address: _____

Petitioner's E-Mail Address: _____
Telephone Number: _____

Attorney for Petitioner: _____
Attorney's Mailing Address: _____

Attorney's E-Mail Address: _____
Telephone Number: _____

The petitioner respectfully represents that for the following reasons, as substantiated by the attached documentation, the identified provisions of the attached disciplinary order are impossible for me to comply with:

(Rule 1730-04-.12, continued)

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show impossibility is the testimony of any individual, including yourself, you must enclose signed and notarized statements from every individual you intend to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the _____ day of _____, 20_____.

Petitioner's Signature

(5) Civil Penalties:

(a) Purpose - The purpose of this rule is to set out a schedule designating the minimum and maximum civil penalties which may be assessed pursuant to Tennessee Code Annotated, § 63-1-134.

(b) Schedule of Civil Penalties:

1. A Type A civil penalty may be imposed whenever the Board finds the entity that is required to be certified by the Board is guilty of a willful and knowing violation of the Practice Act, or regulations pursuant thereto, to such an extent that there is, or is likely to be an imminent substantial threat to the health, safety and welfare of an individual patient or the public. For purposes of this section, a type A penalty shall include, but not be limited to, an entity that willfully and knowingly is or was operating as a C.A.C.A. without a certificate from the Board.
2. A Type B civil penalty may be imposed whenever the Board finds the C.A.C.A. is guilty of a violation of the Veterinary Practice Act or regulations pursuant thereto in such manner as to impact directly on the care of patients or the public.
3. A Type C civil penalty may be imposed whenever the Board finds the C.A.C.A. required to be certified by the Board is guilty of a violation of the Veterinary Practice Act or regulations promulgated thereto, which are neither directly detrimental to patients or the public, nor directly impact their care, but have only an indirect relationship to patient care or the public.

(c) Amount of Civil Penalties:

1. Type A civil penalties shall be assessed in the amount of not less than \$500 nor more than \$1,000.
2. Type B civil penalties may be assessed in the amount of not less than \$100 and not more than \$500.
3. Type C civil penalties may be assessed in the amount of not less than \$50 and not more than \$100.

(d) Procedures for Assessing Civil Penalties:

(Rule 1730-04-.12, continued)

1. The Division of Health Related Boards may initiate a civil penalty assessment by filing a Memorandum of Assessment of Civil Penalty. The Division shall state in the memorandum the facts and law upon which it relies in alleging a violation, the proposed amount of the civil penalty and the basis for such penalty. The Division may incorporate the Memorandum of Assessment of Civil Penalty with a Notice of Charges which may be issued attendant thereto.
 2. Civil Penalties may also be initiated and assessed by the Board during consideration of any Notice of Charges. In addition, the Board may, upon good cause shown, assess type and amount of civil penalty which was not recommended by the Division.
 3. In assessing the civil penalties pursuant to these rules the Board may consider the following factors:
 - (i) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (ii) The circumstances leading to the violation;
 - (iii) The severity of the violation and the risk of harm to the public;
 - (iv) The economic benefits gained by the violator as a result of non-compliance; and
 - (v) The interest of the public.
 4. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of T.C.A. Title 4, Chapter 5.
- (6) Informal Settlements - The Board consultant is authorized to enter into informal settlement agreements pursuant to Rule 1730-01-.19 under which a complaint against an entity may be closed without any disciplinary action. Any matter proposed for informal settlement must be subsequently ratified by the full board before it will become effective. Such agreement may include any terms deemed appropriate by the Board consultant including, but not limited to:
- (a) Mandatory education program or course attendance;
 - (b) Submission of reports, records or other appropriate documentation;
 - (c) Conditioning of the C.A.C.A.'s activities in any manner which affects its operation in Tennessee.
- (7) Assessment of costs in disciplinary proceedings shall be as set forth in T.C.A. §§ 63-1-144 and 63-12-143.
- (8) Screening Panels - Any screening panel(s) established pursuant to T.C.A. § 63-1-138:
- (a) Shall have concurrent authority with the Board and any individual appointed by the Board pursuant to Rule 1730-01-.19, to do the acts enumerated in Rule 1730-01-.19(1)(b) 1. and 2. subject to the conditions contained therein.
 1. A Screening panel(s) comprised of two (2) or more persons shall elect a chairperson prior to convening to conduct business.

(Rule 1730-04-.12, continued)

2. A screening panel(s) comprised of two (2) or more persons is required to conduct the informal hearings authorized in subparagraph (b) immediately below.
 - (b) After completion of an investigation by the Division, may upon request of either the state, or the C.A.C.A. which is the subject of an investigation with the agreement of the state, or upon request of both the C.A.C.A. and the state, conduct a non-binding informal hearing and make recommendations as a result thereof as to what, if any, terms of settlement of any potential disciplinary action are appropriate.
 1. Neither the Rules of Civil Procedure, the Rules of Mediation and Arbitration, the Rules of Evidence, or Contested Case Procedural Rules under the Administrative Procedures Act shall apply in informal hearings before the screening panel(s). However, Rule 31 of the Rules of the Tennessee Supreme Court may serve as general guidance as to the principles of mediation and alternative dispute resolution.
 - (i) Evidence may be presented or received in any manner and in whatever order agreed upon by the parties.
 - (ii) Prior to convening the panel and in the absence of an agreement of the parties, the screening panel chairperson shall determine the manner and order of presentation of evidence.
 2. Neither the state nor a C.A.C.A. which is the subject of an investigation being considered by a screening panel can be compelled to participate in any informal hearing.
 3. Proposed settlements reached as a result of any informal hearing will not become binding and final unless they are:
 - (i) Approved by a majority of the members of the screening panel which issued them; and
 - (ii) Agreed to by both the Department of Health, by and through its attorney(s), and the C.A.C.A.; and
 - (iii) Subsequently presented to and ratified by the Board.
 - (9) Reconsiderations and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-04-01-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-12-105, 63-12-106, 63-12-124, 63-12-128, and 63-12-141.
Administrative History: Original rule filed December 21, 1999; effective March 5, 2000. Amendment filed August 24, 2000; effective November 7, 2000. Amendment filed June 25, 2003; effective September 8, 2003. Amendment filed September 23, 2004; effective December 7, 2004. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed September 10, 2009; effective December 9, 2009.

1730-04-.13 DISPENSING, OR OTHERWISE DISTRIBUTING PHARMACEUTICALS.

- (1) All Federal Regulations for the use of controlled substances must be followed including storage and recordkeeping.
- (2) A record of all euthanasia and pre-euthanasia solutions administered shall be kept.

(Rule 1730-04-.13, continued)

- (3) The only drugs approved by the Board for the euthanasia of animals by a licensed veterinarian, a licensed veterinary technician employed by and functioning under the direct supervision of a licensed veterinarian, or a certified animal euthanasia technician in a certified animal control agency shall be sodium pentobarbital and all commercially available F.D.A. approved euthanasia agents containing sodium pentobarbital. The only drugs approved by the Board for the pre-euthanasia of animals by a certified animal euthanasia technician in a certified animal control agency shall be acepromazine and xylazine.

Authority: T.C.A. §§4-5-202, 4-5-204, 44-17-303, 63-12-106 and 63-12-141. **Administrative History:** Original rule filed December 21, 1999; effective March 5, 2000. Amendment filed July 28, 2003; effective October 11, 2003. Amendment filed July 27, 2006; effective October 10, 2006.