

BEFORE THE IOWA BOARD OF VETERINARY MEDICINE

IN THE MATTER OF THE PETITION)
FOR WAIVER BY:)

Dr. Jesus Diaz Bujan, DVM)

**ORDER ON PETITION
FOR WAIVER**

Pursuant to Iowa Code section 17A.9A and 811 Iowa Administrative Code chapter 14, the Iowa Board of Veterinary Medicine (hereinafter, "Board") makes the following ruling on Dr. Jesus Diaz Bujan's (hereinafter, "Petitioner") Petition for Waiver (hereinafter, "Petition").

COURSE OF PROCEEDINGS

1. On May 12, 2023, the Board received Petitioner's completed Petition requesting a waiver of 811 IAC 11.1(1) relating to the requirement that a renewal of a veterinary license requires the completion of sixty (60) hours of continuing education during the last three licensing years. Petitioner is requesting a waiver of the rule for the triennial licensing period of July 1, 2023 to June 30, 2026.
2. The Board considered the petition for waiver at its June 29, 2023, meeting.

ALLEGED FACTS

3. Petitioner's request states, in part:

I was offered and accepted a full-time Faculty position in Ophthalmology at the Iowa State University College of Veterinary Medicine, commencing July 10, 2023.

....

Additionally, as a non-US Citizen, a license is required as part of my H1B Visa petition for lawful work eligibility. I was granted a Limited Faculty license on April 7, 2023 (9158), expiring June 30, 2023. To continue to meet the conditions of employment and for my personal immigration/visa status, I was provided information on the license renewal instructions and regarding the CE requirements. Because I was recently granted the license (approximately 1 month ago) and have not yet started practice in the State of Iowa, I am unable to report 60 hours of CE, prior to June 30, 2023. The unfortunate timing of the issuance of my original license, compounded by lawful work status requiring said license, is the basis for this request. Again, I am requesting a temporary waiver of the CE requirement...

SUMMARY OF LAW

4. Iowa Code section 272C.2 requires that the Board adopt rules for continuing education requirements as a condition to license renewal.

5. 811 IAC 11.1(1) provides:

At least 60 hours of continuing education in courses approved by the board shall be completed within the last three licensing years by each licensee as a condition for license renewal.

6. 811 IAC 14.4 provides:

In response to a petition completed pursuant to rule 811—14.6(17A, 169), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would pose an undue hardship on the person for whom the waiver is requested.
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person.
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law.
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

7. 811 IAC rule 14.10(2) provides:

The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

CRITERIA FOR WAIVER

The application of the rule would create an undue hardship on the person for whom the waiver is requested:

8. Petitioner has presented “clear and convincing evidence” that application of the rule would impose an undue hardship. Petitioner meets all other qualifications for the limited license for faculty, and, had Petitioner applied for said license several months later, would not be required to submit 60 hours of CE. Petitioner was forced to apply for the license shortly before the license renewal deadline to satisfy certain immigration requirements.

The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person:

9. The Board's decision to grant the requested waiver in this case would not prejudice the substantial legal rights of any other person. Petitioner is still required to abide by all the other rules that regulate the practice of veterinary medicine in Iowa; the waiver simply allows Petitioner to practice in a limited fashion as faculty with Iowa State University College of Veterinary Medicine. Petitioner will still be required to complete the 60 hours of continuing education required for renewal at the conclusion of the next triennium.

The provisions of the rule subject to the petition for waiver are not specifically mandated by another provision of law:

10. The provisions of 811 IAC 11.1(1) are not specifically mandated by statute or other provision of law.

Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested:

11. The public health, safety, and welfare will not be compromised or otherwise placed at risk as a result of the Board's granting a waiver in this case. Petitioner is still required to abide by all the other rules that regulate the practice of veterinary medicine in Iowa; the waiver simply allows Petitioner to renew their limited license for faculty, which Petitioner was forced to apply for earlier than necessary because of certain immigration requirements.

IT IS THEREFORE ORDERED:

12. The provision of 811 IAC 11.1(1) requiring sixty (60) hours of continuing education as a condition of license renewal shall be waived as it relates to Petitioner for the next triennium. This waiver is only valid for the triennial period of July 1, 2023 to June 30, 2026. All other requirements under Iowa Code chapter 169 and Iowa Administrative Code chapter 811 shall still apply to Petitioner.

Dated this 29 day of June, 2023.


BOARD CHAIR

