

BEFORE THE IOWA BOARD OF VETERINARY MEDICINE

IN THE MATTER OF THE PETITION)	
FOR WAIVER BY:)	
)	
Nilson Ribas, 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 Nilson Ribas' (hereinafter, "Petitioner") Petition for Waiver (hereinafter, "Petition").

COURSE OF PROCEEDINGS

1. On October 17, 2022, the Board received Petitioner's completed Petition requesting a waiver of 811 IAC 9.1(2)(b) relating to the limitation on the number temporary permits to practice veterinary medicine that may be issued to one person. Specifically, the rule limits the number of temporary permits to three (3). Petitioner is requesting a second waiver of the rule to allow for the issuance of a fifth temporary permit from February 1, 2023 to August 1, 2023.
2. The Board considered the petition for waiver at its November 17, 2022, meeting.

ALLEGED FACTS

3. The Board has previously issued three temporary permits to Petitioner.
4. The Board previously granted a waiver of 811 IAC 9.1(2)(b) and issued a fourth temporary permit to Petitioner for the period of February 15, 2022 through July 15, 2022.
5. Petitioner's request states, in part:
 - a. Petitioner graduated in 2009 with a degree in veterinary medicine from a university in Brazil, and has 12 years of experience in the field of equine reproduction;
 - b. Petitioner has performed over 1,800 embryo transfers, bred over 5,000 mares, froze semen on over 500 stallions, and have aspirated over 100 mares for Intracytoplasmic Sperm Injection (ICSI);
 - c. Petitioner is registered as a certified veterinarian by the Federal Board of Veterinary Medicine in the country of Brazil;
 - d. Petitioner is currently in the process of obtaining certification as a Diplomat of the American College of Theriogenologists (ACT);

- e. Petitioner is currently in a post-doctoral program at Washington State University and is on track to sit for national boards in January of 2023.
- f. Petitioner has been instructing post-doctoral students about equine reproduction in Brazil for 5 years; and
- g. Due to a severe shortage of veterinarians, Dr. Charles Abraham needs Petitioner's expertise at Dr. Abraham's equine clinic.

SUMMARY OF LAW

6. Iowa Code section 169.11(2) provides that the Board may issue, without examination, a temporary permit to practice veterinary medicine in this state to a nonresident veterinarian validly licensed in a foreign country. The temporary permit can only be issued for 180 days and the Board cannot issue more than one permit to a person in a calendar year.

7. 811 IAC 9.1(2)(b) provides:

The temporary permit shall be issued for a period of no more than 180 days, and no more than one permit shall be issued to a person during each calendar year. The temporary in-state practice permit allows the permit holder to act as a licensed veterinarian in this state. A person may not obtain more than three temporary permits.

8. 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.

9. 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:

10. Petitioner has presented "clear and convincing evidence" that application of the rule would impose an undue hardship. Petitioner meets all other qualifications for the temporary permit and is in the process of becoming fully licensed in Iowa through diplomat status, but without the waiver, Petitioner cannot practice in Iowa and assist Dr. Abraham's equine clinic.

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

11. 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 obtain a second additional temporary permit to practice veterinary medicine. In addition, the waiver will allow Petitioner to use his expertise on equine reproduction to assist horses in Iowa that otherwise may not be able to obtain a similar level of care because of the shortage of veterinarians in that practice area with this expertise.

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

12. The provisions of 811 IAC 9.1(2)(b) 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:

13. 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 obtain a second additional temporary permit to practice veterinary medicine.

IT IS THEREFORE ORDERED:

14. The provision of 811 IAC 9.1(2)(b) limiting the number of temporary permits to practice veterinary medicine a person can obtain shall be waived as it relates to Petitioner Nilson Ribas. This waiver is only valid for the calendar year 2023, and only allows Petitioner to obtain a second additional temporary permit (bringing Petitioner's total to 5 temporary permits). All

other requirements under Iowa Code chapter 169 and Iowa Administrative Code chapter 811 shall still apply to Petitioner.

Dated this 17th day of November 2022


BOARD CHAIR