

**VETERINARY MEDICAL BOARD**  
**FINAL STATEMENT OF REASONS**

**Subject Matter of Proposed Regulations:** RVT Emergency Animal Care

**Section(s) Affected:** Title 16, Division 20, Article 6, of the California Code of Regulations (CCR)<sup>1</sup> section 2069.

**Updated Information:**

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

The 45-day public comment period began on June 5, 2020 and ended on July 20, 2020. The Veterinary Medical Board (Board) did not hold a hearing. The Board received two comments in support of the proposal, and one comment on June 9, 2020 from Stephanie Schneider, DVM, raising concerns. At its October 22, 2020 meeting, the Board considered and rejected the concerns raised in Dr. Schneider's letter, discussed below.

**Local Mandate:**

A local mandate is not imposed on local agencies or school districts.

**Small Business Impact:**

While the Board estimates that 80 to 90 percent (2,800 to 3,150) of the approximately 3,500 veterinary premises are small business, the Board has determined that this rulemaking proposal would not affect small businesses. The proposal clarifies existing law regarding a Registered Veterinary Technician's (RVT) ability to administer drugs and controlled substances to animals in emergency situations.

**Economic Impact:**

The Board has determined that this regulatory proposal will not have any economic impact directly effecting businesses. This regulatory proposal authorizes RVTs to administer drugs and controlled substances after direct communication or in accordance with written instructions established by a supervising veterinarian in emergency situations. This proposal may benefit worker safety as the proposal provides for an RVT to administer drugs or controlled substances to an animal in pain or to sedate an

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<sup>1</sup> All CCR references are to title 16 unless otherwise noted.

animal, who may be dangerous to itself, as well as to rodeo and sporting event workers and veterinary medical personnel.

**Anticipated Benefits of this Proposal:**

This regulatory proposal protects consumers and animals through the development and maintenance of professional standards. This regulatory proposal clarifies the authority of an RVT to administer drugs and controlled substances to animals in need in emergency circumstances, while ensuring the RVT is still receiving the proper level of supervision and communication for the emergency services. This regulatory proposal allows for animals in immediate danger to receive the appropriate level of care and to have their suffering alleviated.

**Consideration of Alternatives:**

Except as noted below under summary of comments and responses, no reasonable alternative to the regulatory proposal that was considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective or less burdensome to affected private persons than the proposed regulation, or would be more cost-effective to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

**Summary of Comments and Responses Received during public comment period:**

During the initial 45-day comment period, the Board received two public comments in support, one from the California Veterinary Medical Association and one from the California Registered Veterinary Technicians Association. The Board thanks each for their supportive comments.

The Board also received a June 9, 2020 letter from Dr. Stephanie Schneider, with the following concerns:

- There are no definitions of the terms "emergency" and "direct communication."
- The proposal creates a legal bypass to the veterinarian-client-patient relationship (VCPR) and any form of examination or consultation with a licensed veterinarian by giving the RVT the legal authority to perform an examination, establish a diagnosis, develop and implement a treatment plan, and prescribe controlled substances.
- The proposal allows for the business model of an absentee veterinarian.

- The consumer would be making a non-informed decision regarding treatment, including, but not limited to, pain management and euthanasia.
- The proposal would pave the way for the following scenarios:
  - at-home euthanasia services to send RVTs to perform euthanasia following communication with veterinarian;
  - at-home euthanasia services to have RVTs answering phones, and if "unable to communicate" with the veterinarian, the RVT goes out to perform the euthanasia in accordance with written protocols;
  - national home-euthanasia services would be able to employ RVTs throughout the state, instead of veterinarians, to perform their services;
  - physical therapy establishments could have an absentee veterinarian, provided written protocols exist.

Dr. Schneider's comment also asserted that an RVT should not have the ability to diagnose and prescribe because the consumer deserves the protection against improper diagnosis and prescriptions by having those services provided only by a licensed veterinarian.

### **Board Response**

Pursuant to Business and Professions Code (BPC) section 4840.5, an RVT is authorized to provide lifesaving aid and treatment to an animal patient under conditions of an emergency. BPC section 4840.5 defines "emergency" to mean that "the animal has been placed in a life-threatening condition where immediate treatment is necessary." Pursuant to BPC section 4840.5, the Board adopted CCR section 2069 to prescribe the lifesaving aid and treatment that may be provided by an RVT.

Prior to 2017, BPC section 4840.5 authorized an RVT, under conditions of an emergency, to render lifesaving aid and treatment as may be prescribed under regulations adopted by the Board. "Emergency" was defined to mean the animal has been placed in a life-threatening condition where immediate treatment is necessary to sustain life. However, in Senate Bill (SB) 547 (Hill, Chapter 429, Statutes of 2017), the California State Legislature broadened the scope of emergency treatment an RVT could provide by deleting the term "to sustain life."

The proposed amendments revise CCR section 2069 to further clarify the lifesaving aid and treatment that an RVT may provide in an emergency. CCR section 2069 currently begins with the phrase "Under conditions of an emergency as defined in Section 4840.5," and this proposal only clarifies that reference to mean BPC section 4840.5. Since "emergency" is defined in the statute this regulation currently cross-references,

the Board found it unnecessary to reiterate a definition of “emergency” in the proposed text.

Subdivision (a)(2) of the existing regulation requires that the RVT attempt to establish direct communication with a licensed veterinarian or veterinarian authorized to practice in California before the RVT can administer pharmacological agents to prevent or control shock. The phrase “direct communication” has been in regulation without raising any concerns that clarification is needed since at least 1984. When the Board’s Multidisciplinary Advisory Committee (MDC) deliberated and approved the recommendation on July 25, 2017, the Board had not received any reports of RVTs in an emergency situation improperly bypassing the VCPR. Further, when the Board reviewed the proposal at their October 2017, February 2018, and May 2018 meetings, there were no reports of RVTs improperly bypassing the VCPR under the existing regulation. Rather, the proposal was intended to address the California State Legislature’s recommendation that the Board address the lack of veterinary care available at rodeo events.

To address the lack of veterinary care available at rodeo events, the California State Legislature recommended to the Board authorizing an RVT to be present at a rodeo event, with the supervising veterinarian on-call. At its April 20, 2016 meeting, the Board discussed the Legislature’s recommendation, and the Board’s ability to influence access to veterinary care at rodeos, which are regulated primarily by local jurisdictions where the rodeos are held. Rodeo animal advocates presented a number of findings of rodeo injuries that went untreated by a veterinarian, many of which were not reported to the Board as required under BPC section 4830.8. Advocates argued that the injuries suffered by the rodeo animals were emergencies requiring immediate veterinary treatment.

As animals involved in rodeo events may experience more than shock, as currently provided for under the existing regulation, but may also experience pain and suffering, the regulation proposes amendments to allow an RVT to render emergency treatment in those additional circumstances. In addition, one of the potential treatments for injured rodeo animals is euthanasia, which may be necessary to perform immediately to relieve the suffering of a critically injured animal. The Board discussed at their October 2017 and February 2018 meetings the potential to authorize an RVT to provide euthanasia services in such an emergency. It was noted that CCR sections 2036 and 2069 already provide authority to an RVT to administer controlled substances under the indirect supervision of a veterinarian. With the authority in CCR section 2036, coupled with the amendments to CCR section 2069 relative to emergency animal care at a rodeo or other sporting event, the proposal is intended to address situations where an RVT needs to be able to administer controlled substances necessary to euthanize an animal

injured at a rodeo or other sporting event pursuant to the responsible veterinarian's instructions. The proposal is also necessary to address the California State Legislature's recommendation to the Board to address the lack of veterinary care available at rodeo events.

The rulemaking proposal clarifies existing law that authorizes an RVT to administer aid or treatment without the presence of a veterinarian under conditions of an emergency, as defined in statute. The rulemaking does not create a legal bypass to the VCPR and any form of examination or consultation with a licensed veterinarian by giving the RVT the legal authority to perform an examination, establish a diagnosis, develop and implement a treatment plan, or give the RVT the ability to prescribe controlled substances. Rather, the authority for RVTs to act as set out in the statute, BPC section 4840.5, is the basis for the rulemaking.

The rulemaking does not allow for a new business model of an absentee veterinarian, because the proposal does not change the other statutory and regulatory requirements that an RVT be supervised by a veterinarian, who must examine the animal patient before designating an animal health care task to an RVT. (BPC sections 4836, 4836.1, and 4840, subd. (a); CCR section 2035, subs. (c).) The proposal clarifies the existing statutory authority that an emergency situation must exist for the RVT to render lifesaving aid or treatment without the presence of a veterinarian. To administer drugs or controlled substance treatment, the RVT first must establish direct communication with the supervising veterinarian. If the RVT is unable to establish that communication, the RVT may perform the task in accordance with written instructions established by the veterinarian. These provisions provide a sufficient safeguard against improper use of the proposed regulation. If an RVT or veterinarian attempted to misuse the proposed regulation to establish a new business model for absentee veterinarian practice, both the veterinarian and RVT would be subject to discipline under the Practice Act, on a case-by-case basis and depending upon the statutes and/or regulations alleged to be violated.

The proposal does not require a consumer to utilize an RVT in an emergency situation. Rather, the proposal, by clarifying the existing emergency animal care statute, authorizes an RVT to act when the veterinarian is not personally present to provide care to the animal patient. In this way, the proposal supports the ability of consumers in an emergency situation to access additional veterinary staff to assist an animal patient. If the consumer wants additional information on which to base their decision regarding treatment, the consumer could contact the veterinarian directly or transport the animal patient to a facility where a veterinarian could examine the animal and provide an assessment of the animal's condition. Importantly, the statute, and this proposal, are

intended to provide emergency treatment for an ailing animal when transport of the animal for veterinarian examination is not possible or advisable.

With respect to the assertion that the proposed regulation will pave the way for at-home euthanasia services to utilize RVTs to perform euthanasia on animals instead of veterinarians, the use of an RVT instead of a veterinarian could only be justified in an emergency situation. Emergency situations are determined on a case-by-case basis, rather than determined on a general basis. As discussed above, an RVT is required to be supervised by a California licensed veterinarian; thus, a service attempting to utilize RVTs without veterinarians likely would be providing those services in violation of the Practice Act. An RVT performing euthanasia services without veterinarian supervision subjects their Board registration to disciplinary action. The Board has not reviewed any disciplinary actions alleging such practices.

The concern raised that the regulatory proposal would pave the way for physical therapy establishments to have an absentee veterinarian appears misplaced relative to this proposal. The regulatory proposal addresses emergency treatment by an RVT supervised by a licensed veterinarian. There is no provision in the proposal to authorize physical therapy establishments to have an absentee veterinarian. In order to perform physical therapy on animal patients, the establishment must be registered with the Board as a premises with a licensed veterinarian identified as the responsible licensee manager who is to act for and on behalf of the premises. (BPC § 4853.) Accordingly, existing statutes prohibit a physical therapy establishment not registered with the Board from operating without a licensed veterinarian managing the premises; this proposal does not alter these limitations.

Further, existing law requires veterinarian supervision for an RVT to perform animal health care tasks and administer controlled substances. (BPC sections 4836, 4836.1, and 4840, subd. (a); CCR section 2036). Except for an RVT administering sodium pentobarbital for euthanasia of animals by an RVT employed by an animal control shelter or its agencies or humane society (see BPC sections 4827, subd. (d) and 4840, subd. (c)), an RVT only has access to controlled substances under a supervising veterinarian's license issued by the federal Drug Enforcement Agency (DEA). If an RVT attempts to practice veterinary medicine without direct or indirect supervision of a veterinarian or prescribe and administer controlled substances obtained from a source other than the supervising veterinarian, the RVT would be in violation of the Practice Act and be subject to discipline.

Based on the above, no changes to the text are required from any of the comments presented.

**Fiscal Impact:**

The proposed regulations do not result in a fiscal impact to the state. The Board will ensure compliance through its current inspection programs and regimen. As a result, the Board does not anticipate additional workload or costs from the proposed regulations.