



# MEMORANDUM

<b>DATE</b>	April 7, 2021
<b>TO</b>	Multidisciplinary Advisory Committee (MDC)
<b>FROM</b>	Telemedicine Subcommittee (Subcommittee) Kristi Pawlowski, RVT, MDC Chair Richard Sullivan, DVM
<b>SUBJECT</b>	<b>Agenda Item 5. Discussion and Potential Recommendation on Section 2032.1, Article 4, Division 20, Title 16 of the California Code of Regulations (CCR) Regarding Telemedicine</b>

## Background

In May 2020, the Board voted to request the Director of the Department of Consumer Affairs (DCA) issue a temporary waiver of California Code of Regulations (CCR), title 16, section 2032.1, subsection (b)(3), to the extent it requires a veterinarian to have communicated with the client a course of treatment appropriate to the circumstance in order to establish a veterinarian-client-patient relationship (VCPR).

The Board requested the waiver be effective for the duration of the current State of Emergency issued by Governor Gavin Newsom on March 4, 2020, or until January 1, 2021, whichever date was earlier.

In addition, the Board voted to request a waiver of CCR, title 16, section 2032.1, subsection (c), to the extent it prohibits a veterinarian from prescribing a drug for a duration longer than one year from the date the veterinarian examined the animal and prescribed the drug. This temporary waiver was requested for issuance of prescriptions for a duration of no longer than 18 months from the date of last examination and prescription of the medication or until the Declaration of Emergency ends, whichever date was earlier.

Pursuant to Governor Newsom's Executive Order [N-39-20](#), on June 4, 2020, the DCA Director issued an Order Waiving Restrictions on Telemedicine and Extending Time to Refill Prescriptions ([June 4 Order](#)), which contained two waivers regarding the VCPR.

## Telemedicine Waiver

With respect to telemedicine restrictions related to the VCPR, the June 4 Order was [extended](#) on July 31, 2020, and extended [again](#) on September 17, 2020, so the waiver was in effect through December 31, 2020.

In November 2020, the Board's Executive Committee requested the DCA Director extend the waivers for 60 days, allowing for the Board to decide if it would like to further extend the waivers.

On December 15, 2020, the Director issued a new Order ([December 15 Order](#)) further extending the [June 4 Order](#) waiving, until February 28, 2021, specified telemedicine restrictions related to the VCPR.

On February 26, 2021, the Director issued a new Order (February 26 Order) further extending the June 4 Order waiver, until April 30, 2021, the specified telemedicine restrictions related to the VCPR.

### Prescriptions

For prescription refills associated with the VCPR, the [June 4 Order](#) authorized prescription refills up to 18 months for refills based on an in-person examination of an animal patient last performed by a veterinarian between June 1, 2019 and August 1, 2019. On November 25, 2020, the Director withdrew and superseded that waiver and issued an [order](#) authorizing prescription refills up to 20 months for refills based on an in-person examination of the animal patient last performed by the veterinarian between June 1, 2019 and August 1, 2019.

On July 31, 2020, the Director issued an [order](#) authorizing prescription refills up to 18 months for prescriptions that may be not be refilled between August 2, 2020, and October 1, 2020, due to the one-year time limitation for refilling a prescription from the date the veterinarian last examined the animal patient and prescribed the drug.

On September 17, 2020, the Director issued an [order](#) authorizing prescription refills up to 18 months for prescriptions that may be not be refilled between October 2, 2020, and December 31, 2020, due to the one-year time limitation for refilling a prescription from the date the veterinarian last examined the animal patient and prescribed the drug.

The [December 15 Order](#) authorizes prescription refills up to 18 months for prescriptions that may not be refilled between January 1, 2021, and February 28, 2021, due to the one-year time limitation for refilling a prescription from the date the veterinarian last examined the animal patient and prescribed the drug.

The February 26 Order extends prescription refills up to 18 months for prescriptions that may not be refilled between March 1, 2021, and April 30, 2021, due to the one-year time limitation for refilling a prescription from the date the veterinarian last examined the animal patient and prescribed the drug.

### **MDC Telemedicine Review**

During the July 2020 Board meeting, the Board directed the MDC to evaluate the telemedicine waiver and determine whether it should be made permanent. MDC Chair, Kristi Pawlowski, RVT, joined Dr. Richard Sullivan to form the Telemedicine Subcommittee to research this matter further and help facilitate the MDC's collaborative discussions during the October 21, 2020 meeting.

During the October meeting, MDC members heard from stakeholders with differing perspectives regarding the benefits and concerns of providing veterinary care through telemedicine. The MDC members asked questions of the stakeholders and engaged in a collaborative discussion. No actions were taken during this meeting.

The MDC continued its discussion on these matters during the January 27, 2021 MDC meeting. MDC members heard from the Executive Director of The College of Veterinarians of Ontario (CVO) about how they regulate telemedicine with the least restrictive requirements in North America. It was mentioned, relative to California, there are very few overall Board complaints to the CVO – only 250 per year. CVO’s Professional Practice Standard and related Guide regarding telemedicine are attached for reference. The MDC also asked to hear from the American Association of Veterinary State Board’s Virtual Veterinary Care panelist, Aaron Smiley, DVM; however, he was unable to attend.

During the January 2021 meeting, the Subcommittee discussed concerns with legislative telemedicine proposals that would change the scope or standard of practice. The Subcommittee addressed concerns with how the Board will protect consumers when some of these telemedicine services are out-of-state. Veterinarians have shared specific conditions in which they are concerned telemedicine would be very inappropriate, and in fact, could harm patients if given incorrect diagnoses via telehealth modalities. These conditions include feline urinary symptoms, heart murmurs, and generalized pain. The MDC heard numerous examples in which telemedicine could have already been legally practiced, however, the profession seemed unaware of what they could or could not do under the current laws.

Due to the number of conflicting definitions and lack of education in the California veterinary profession, and to protect consumers and animal patients, the MDC discussed the importance of providing clarity through definitions of telemedicine, telehealth, and teletriage.

The MDC discussed the pediatric telemedicine guidelines and compared them to veterinary telemedicine. Pediatric telemedicine is not provided for children under two years of age unless they have an in-person examination.

At the January 27, 2021 MDC meeting, the MDC approved a recommendation to the Board to maintain the existing VCPR condition-specific language to adequately protect consumers and animal patients in the provision of veterinary telemedicine. At its January 28, 2021 meeting, the Board [reviewed](#) and discussed the VCPR waiver orders and approved a motion to request the DCA Director to issue extensions and/or authorize the Executive Committee to approve extensions of the two VCPR waivers until the end of the State of Emergency or until the MDC provides final recommendations to the Board, whichever occurs first.

The Board is set to review the MDC’s January 27, 2021 recommendation on April 22, 2021. In the meantime, based on the Board’s January 28, 2021 discussion of VCPR issues and feedback from stakeholders regarding access to veterinary medicine through telemedicine, the Board directed the MDC to define telemedicine, telehealth, teletriage, and teleconsultation.

### **Subcommittee Recommendation**

The Subcommittee reviewed potential guidelines and descriptions of telemedicine, telehealth, teletriage, and teleconsultation from various sources including, but not limited to, American Veterinary Medical Association (AVMA), American Animal Hospital Association (AAHA), California Veterinary Medical Association (CVMA), Canadian Veterinary Medical Association, Centers for Disease Control (CDC), GuardianVets, United States Department

of Health and Human Services, Center for Connected Health Policy, American Telemedicine Association, and Veterinary Innovation Council. During the discussion on definitions, the Subcommittee reviewed the VCPR requirements and determined a VCPR is not required to diagnose a condition. A VCPR is required only if the veterinarian is administering, prescribing, dispensing or furnishing a drug, medicine, appliance, or treatment to the animal patient (except for wild or unowned animals). Part of establishing a VCPR is obtaining sufficient knowledge of the animal(s), which includes through laboratory testing, to be able to make at least a general or preliminary diagnosis of the medical condition. (CCR, tit. 16, § 2032.1, subs. (a), (b)(2).) Based upon this information, the Subcommittee was able to provide more detailed and clear definitions for telemedicine, telehealth, teletriage, and teleconsultation.

The Subcommittee prepared the attached proposed regulatory amendments to CCR, title 16, section 2032.1 to supplement the existing regulation for telemedicine, which is based on the statutory authority provided under BPC section 686 and currently references BPC section 2290.5 regarding the practice of telemedicine. Current CCR, title 16, section 2032.1, subsection (f), authorizes telemedicine to be practiced within an existing VCPR, with the exception for advice given in an emergency until the animal patient can be seen by or transported to a veterinarian. That subsection defines “telemedicine” to mean the mode of delivering animal health care services via communication technologies to facilitate consultation, treatment, and care management of the patient. Since the proposal would clarify the varying levels of veterinary practice through electronic communications, the proposal would strike portions of the previous definition in subsection (f).

The proposal would clarify that telemedicine must be conducted within an existing VCPR, with the exception for telehealth and teletriage. (Proposed CCR, tit. 16, § 2032.1, subs. (g).) The proposal would redefine telemedicine to mean the practice of veterinary medicine through the use of electronic communication by a veterinarian who has established a VCPR with the client or client’s representative. (Proposed CCR, tit. 16, § 2032.1, subs. (i).) The proposal would clarify that after the VCPR has been established, telemedicine may be used to further evaluate the patient’s progress, diagnose, and treat the specific condition for which the VCPR has been established, which is consistent with the current practice of telemedicine under CCR, title 16, section 2032.1, subsection (g). In addition, the proposal would replace the telemedicine VCPR exemption for “advice given in an ‘emergency,’” and insert telemedicine VCPR exemptions for telehealth and teletriage, as defined. As discussed below, these new exemptions are consistent with existing veterinary medicine practice and better clarify the use of electronic communications in the practice of veterinary medicine.

Telehealth would be defined to mean electronic communication to the client or client’s representative of general veterinary health information and education. (Proposed CCR, tit. 16, § 2032.1, subs. (h).) Since this definition does not include any animal treatment, telehealth could be conducted without establishing a VCPR. The proposal would also clarify that a registered veterinary technician (RVT) or veterinary assistant (VA) could provide telehealth to consumers, as long as no diagnoses of any condition is provided. This limitation is consistent with the prohibition on providing a diagnosis or prognosis of animal diseases under CCR, title 16, sections 2036, subsection (a), and 2036.5, subsection (a). The definition of telehealth would allow an RVT or VA to use telehealth to determine the seriousness of a medical situation and advise the client or client’s representative of the

urgency of the animal patient being seen, which is consistent with current practice when consumers telephone or email a veterinary clinic for advice on whether to bring in their animal for veterinary medical assistance. The definition of telehealth would also clarify a veterinarian may diagnose a condition through electronic communication, but treatment of the condition would require a VCPR, which is consistent with the existing requirements under CCR, title 16, section 2032.1, subsection (a).

Teletriage would be defined to mean electronic communication between a veterinarian and the client or client's representative to diagnose and treat a medical emergency, as defined, until the patient can be seen by, or transported to, a veterinarian. (Proposed CCR, tit. 16, § 2032.1, subs. (j).) This definition would clarify the ability of an RVT to provide emergency treatment by teletriage and is consistent with the existing RVT emergency treatment authority under BPC section 4840.5 and requirements under CCR, title 16, section 2069. The proposal also would make clear to practitioners and consumers that teletriage cannot be used for treatment of non-life threatening cases.

The proposal would also clarify teleconsultation to mean electronic communication between a California-licensed veterinarian, who has established the VCPR for the patient, and a licensed veterinarian, who provides assistance on the specific patient's case. The proposal maintains the existing limitations on veterinary consultations under BPC section 4830, subdivision (a)(2), by clarifying the role of the consulting veterinarian, who does not have a VCPR with the client, does not have direct communication with the client, and does not have ultimate authority over the care or primary diagnosis of the animal patient. To maintain consistency with BPC section 4830, subdivision (a)(2), which authorizes an out-of-state practitioner to consult with a California-licensed veterinarian, the proposal would not require the consulting veterinarian to be licensed in California to consult on the case.

In addition, the proposal would incorporate prior proposed VCPR amendments authorized by the Board in January 2019 and January 2020 to address client informed consent. (Proposed CCR, tit. 16, § 2032.1, subs. (b)(3).) The [January 2019 meeting materials](#) and [January 2020 meeting materials](#) are available on the Board's website for more background on the informed consent provision. The proposal would also make other minor, technical changes to update and streamline the regulatory language.

### **Action Requested**

The Subcommittee requests the MDC review and approve a recommendation to the Board to adopt a regulatory proposal to amend CCR, title 16, section 2032.1 to add definitions for telemedicine, telehealth, teletriage, and teleconsultation.

### **Attachments**

1. Proposed Regulation Regarding Telemedicine Definitions (CCR, Title 16, Section 2032.1)

VETERINARY MEDICAL BOARD  
PROPOSED REGULATION  
REGARDING TELEMEDICINE DEFINITIONS

Changes to the existing regulation are shown in single underline for new text and ~~single~~ ~~strikeout~~ for deleted text.

Section 2032.1 of Article 4 of Division 20 of the California Code of Regulations is amended to read:

2032.1. Veterinarian-Client-Patient Relationship.

(a) It is unprofessional conduct for a veterinarian to administer, prescribe, dispense, or furnish a drug, medicine, appliance, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, or bodily injury or disease of an animal without having first established a veterinarian-client-patient relationship (VCPR) with the animal patient or patients and the client, except where the patient is a wild animal or the owner is unknown.

(b) A ~~veterinarian-client-patient relationship~~ VCPR shall be established by the following:

(1) The client has authorized the veterinarian to assume responsibility for making medical judgments regarding the health of the animal, including the need for medical treatment,

(2) The veterinarian has sufficient knowledge of the animal(s) to initiate at least a general or preliminary diagnosis of the medical condition of the animal(s). This means that the veterinarian is personally acquainted with the care of the animal(s) by virtue of an examination of the animal or by medically appropriate and timely visits to the premises where the animals are kept, and

(3) The veterinarian has assumed responsibility for making medical judgments regarding the health of the animal and has communicated with the client ~~a course of treatment~~ medical treatment, diagnostic, and/or therapeutic plan appropriate to the circumstance.

(c) A drug shall not be prescribed for a duration inconsistent with the medical condition of the animal(s) type of drug prescribed. The veterinarian shall not prescribe a drug for a duration longer than one year from the date the veterinarian examined the animal(s) and prescribed the drug.

(d) As used herein, "drug" shall mean any controlled substance, as defined by Section 4021 of the code, and ~~any~~ "dangerous drug," as defined by Section 4022 of the code.

(e) No person may practice veterinary medicine in this state except within the context of ~~a veterinarian-client-patient relationship~~ VCPR or as otherwise permitted by law. A ~~veterinarian-client-patient relationship~~ VCPR cannot be established solely by telephonic or electronic means.

(f) Telemedicine shall be conducted within an existing ~~veterinarian-client-patient relationship~~ VCPR, with the exception for telehealth and teletriage. Telemedicine does

not include teleconsultation, advice given in an “emergency,” as defined under section 4840.5 of the code, until that patient(s) can be seen by or transported to a veterinarian. For purposes of this section, “telemedicine” shall mean the mode of delivering animal health care services via communication technologies to facilitate consultation, treatment, and care management of the patient.

(g) “Teleconsultation” means electronic communication between a California-licensed veterinarian, who has established the VCPR for the animal patient, and a licensed veterinarian, who provides assistance on the specific animal patient’s case, does not have a VCPR with the client, does not have direct communication with the client, and does not have ultimate authority over the care or primary diagnosis of the animal patient.

(h) “Telehealth” means electronic communication to the client or client’s representative of general veterinary health information and education. Telehealth provided by a registered veterinary technician or veterinary assistant shall not include a diagnosis of any condition, but may be used to determine the seriousness of a medical situation and advise the client or client’s representative of the urgency of the animal patient being seen. Telehealth provided by a California-licensed veterinarian may include a diagnosis of a condition, but treatment of whatever nature for any condition shall require a VCPR be established.

(i) “Telemedicine” means the practice of veterinary medicine through the use of electronic communication by a California-licensed veterinarian who has established a VCPR with the client or client’s representative. After the VCPR has been established, telemedicine may be used to further evaluate the patient’s progress, diagnose, and treat the specific condition for which the VCPR has been established.

(j) “Teletriage” means electronic communication between a California-licensed veterinarian and the client or client’s representative to diagnose and treat a medical emergency, as defined under Section 4840.5 of the code, until the patient can be seen by, or transported to, a veterinarian. A registered veterinary technician is authorized to provide emergency treatment as provided under Section 4840.5 of the code and in accordance with section 2069. Teletriage shall not be used for treatment of non-life-threatening cases.

Note: Authority cited: Sections 686 and 4808, Business and Professions Code.  
Reference: Sections 686, 2290.5, 4021, 4022, 4830(a)(2), and 4883, Business and Professions Code.