



# MEMORANDUM

<b>DATE</b>	October 8, 2021
<b>TO</b>	Veterinary Medical Board (Board)
<b>FROM</b>	Justin Sotelo, Lead Administrative & Policy Analyst
<b>SUBJECT</b>	<b>Agenda Item 11.A. Status Update on Pending Regulations</b>

The Board currently has 16 rulemaking packages that are pending in the rulemaking process. Five of those packages, which include two section 100 rulemaking packages (“changes without regulatory effect”), are in the final phase of the process, as described below and identified in the attached document. The remaining 11 packages, which include three that are being held until other legislative or regulatory changes take effect, are pending preparation by Board staff for submission to the Department of Consumer Affairs (DCA).

Updates or changes in the status of rulemaking packages since July 2021 are provided below:

## **Animal Physical Rehabilitation (APR) – CCR, Title 16, Section 2038.5**

**Update:** The final rulemaking file is pending final review and approval of the Office of Administrative Law (OAL). In late July, Board Counsel addressed questions from OAL regarding a few of the regulatory provisions. The Board responses satisfied OAL’s questions and resulted in one minor, non-substantive revision to the regulatory language. On October 21, 2021, the Board will be asked to adopt the final proposed regulatory language (discussed further under Agenda Item 11.D.), and OAL can conclude their review of the rulemaking file.

**Summary of Proposed Changes:** This proposal would: 1) establish APR as the proper term for corrective physical treatment on an animal; 2) define APR to mean the treatment of injury or illness to address pain and improve function by means of corrective treatment; 3) provide that APR does not include relaxation, recreational or wellness modalities, including but not limited to, massage, athletic training, or exercise; 4) require a veterinarian to establish a valid veterinarian-client-patient relationship (VCPR), as defined, before performing or authorizing APR; 5) authorize registered veterinary technicians (RVTs) to perform APR under the degree of supervision to be determined by the veterinarian who has established the VCPR; 6) authorize veterinary assistants to perform APR under the direct supervision of a veterinarian; 7) specify that it does not restrict or amend the existing regulation

regarding the performance of musculoskeletal manipulation on an animal patient; and 8) clarify that the regulation does not apply to wildlife rehabilitation.

### **Drug Compounding – CCR, Title 16, Sections 2090-2095**

**Update:** On July 22, 2021, the Board approved additional modifications to the proposed regulatory language in response to issues raised by the DCA Legal Affairs Division (LAD). On July 28, 2021, the Second Modified Text was noticed for another 15-day public comment period. The public comment period closed on August 12, 2021, and two comments were received. The deadline to file the final rulemaking file with OAL is November 15, 2021. Due to the looming filing deadline, on August 20, 2021, the final rulemaking package was submitted to DCA for final review, pending Board approval of responses to the two comments received on the Second Modified Text. On October 21, 2021, the Board will be asked to approve proposed responses to the comments received during the second 15-day public comment period (discussed further under Agenda Item 11.E.); additionally, the Board will be asked to direct staff to take all steps necessary to complete the rulemaking process, and delegate to the Executive Officer the authority to make any technical or non-substantive changes to the rulemaking package and adopt the Second Modified Text.

**Summary of Proposed Changes:** This proposal would: 1) define drug compounding in veterinary premises, expiration date, and office stock, and establish parameters for veterinarian and RVT drug compounding; 2) require veterinary premises engaging in compounding drug preparations to develop specified policies and procedures and maintain formula documents; 3) require specified information to be recorded in the animal patient's medical record; 4) establish requirements for drug compounding training, veterinarian supervision, and drug storage, 5) specify expiration dates for sterile and non-sterile drugs; 6) establish specified compounded drug preparation labeling requirements; and 7) require quality assurance protocols for drug compounding.

### **Disciplinary Guidelines – CCR, Title 16, Section [2006](#)**

**Update:** On July 22, 2021, the Board approved proposed responses to a written comment with recommendations received during the first 15-day public comment period. Additionally, the Board approved the Second Modified Text to amend CCR, title 16, section 2006, and the Disciplinary Guidelines therein incorporated by reference, in response to the written comment with recommendations. On July 28, 2021, the Second Modified Text was noticed for another 15-day public comment period, which closed on August 12, 2021; no comments were received. On August 20, 2021, the final rulemaking package was submitted to DCA for final review. On September 23, 2021, Board staff was notified that the DCA Director had a concern regarding the proposed modifications (discussed further under Agenda Item 11.B.). To address the concern, Board staff consulted with the Board's Regulatory Counsel and Board Counsel to draft a Third Modified Text of the Disciplinary Guidelines. If the Board approves the Third Modified Text, it will be immediately noticed on October 21, 2021, for a third 15-day public comment period to meet the OAL final

rulemaking file submission deadline, which is November 14, 2021. At the same time, DCA will seek to expedite approval and processing of the internal review of the package. Once the 15-day public comment period ends, and if there are no public comments, Board staff would prepare and submit the final rulemaking file for final DCA, Agency, and OAL review.

**Summary of Proposed Changes:** This proposal would update the Board's Disciplinary Guidelines, which are incorporated by reference under regulation, to conform the Disciplinary Guidelines to recent statutory changes and provide clarity to probation terms and conditions.

### **Uniform Standards for Substance-Abusing Licensees – CCR, Title 16, Sections 2006-2006.56**

**Update:** Although this rulemaking package is pending further development from staff following the Board's approval on October 9, 2019, the Board's Executive Officer and Board Counsel recently identified additional changes to be made to the regulatory proposal. On October 21, 2021, the Board will be asked to review and approve revisions to the regulatory proposal (discussed further under Agenda Item 11.C.).

**Summary of Proposed Changes:** This proposal would establish in Board regulations the Uniform Standards Regarding Substance-Abusing Licensees required pursuant to Business and Professions Code section [315](#).

### **Limited Term RVT Examination Eligibility Window – CCR, Title 16, Section [2068.7](#)**

**Update:** In September 2021, LAD staff assisted in preparing the section 100 proposal for submission to OAL. On September 21, 2021, the proposal was submitted to OAL for final review and approval. OAL has 30 working days to review the proposal.

**Summary of Proposed Changes:** This section 100 proposal would repeal CCR, title 16, section 2068.7, which provides requirements for applicants who apply to take the RVT State Board Examination from January 1, 2009 through December 31, 2009. Pursuant to CCR, title 16, section 2068.7, subsection (c), the regulation became inoperative on January 1, 2010. The repeal of this outdated regulation will help to avoid confusion and clean up the Board's regulations.

### **Sodium Pentobarbital/Euthanasia Training – CCR, Title 16, Section [2039](#)**

**Update:** In September 2021, LAD staff assisted in preparing the section 100 proposal for submission to OAL. On September 21, 2021, the proposal was submitted to OAL for final review and approval. OAL has 30 working days to review the proposal.

**Summary of Proposed Changes:** This section 100 proposal would update the regulation to reflect an association name update, as a result of the California Animal

Control Directors Association and the State Humane Association of California merging to form the California Animal Welfare Association.

**VCPR/Telemedicine – CCR, Title 16, Section [2032.1](#)**

**Update:** On July 22, 2021, the Board approved the regulatory proposal. The regulatory proposal will be pursued through the section 100 rulemaking process once the related legislative changes take effect. Following the July 2021 Board meeting, during which the Board also approved the related legislative proposal for Electronic Veterinary Services, Board staff submitted the legislative proposal to the California State Legislature for inclusion in the Board’s Sunset bill ([Assembly Bill \(AB\) 1535](#) (Committee on Business and Professions, 2021)). However, the legislative proposal was not included in AB 1535 since the 2021 legislative session was nearing its end. Board staff anticipate resubmitting the legislative proposal for introduction in the upcoming legislative session.

**Summary of Proposed Changes:** This section 100 proposal would strike the telemedicine and emergency advice provisions in CCR, title 16, section 2032.1, subsection (f), as they would be superseded by new electronic veterinary services statutory provisions once they are enacted. Additionally, the proposal would make other technical revisions to the regulation.

**Attachment:**

1. Status of Pending VMB Regulations – Updated October 8, 2021

**Status of Pending VMB Regulations**  
Updated 10/8/21

Rulemaking Title	Current Status	INITIAL PHASE										FINAL PHASE					Effective Date
		Concept Date(s)	Board Approval	Submitted to DCA for PRE-Review	Submitted to DCA for INITIAL Review	DCA Director Approval	Submitted to Agency/ Agency Approval	Notice Submitted to OAL/ Notice Published by OAL	45-Day Comment Period	Public Hearing (Optional)	15-Day Comment Period (Modified Text), if applicable	Submitted to DCA for FINAL Review	FINAL DCA Director Approval	Submitted to Agency/ FINAL Agency Approval	Submitted to DOF/ DOF Approval	Submitted to OAL/ OAL Approval	
Animal Physical Rehabilitation	Pending final review/approval by OAL; in late July, Board Counsel addressed questions from OAL; as a result, a non-substantive revision was made to the language; on 10/21/21, the Board will be asked to adopt the final language	Beginning in 2011	10/18/2017 10/22/20 (Modified Text)	-	3/27/2019	1/21/2020	1/23/20 3/2/20	3/3/20 3/13/20	3/13/20 - 4/27/20	8/13/2020	11/19/20 - 12/4/20  On 1/28/21, Board approved responses to 15-day comments	3/5/2021	4/17/2021	4/20/21 (Submitted) 5/13/21 (Approved)	N/A	6/9/21 (Submitted) Pending adoption of final language by the Board on 10/21/21	
Drug Compounding	On 10/21/21, Board to approve responses to comments received during 2nd 15-day public comment period and direct staff to take all steps necessary to complete the rulemaking process	10/20/2014	10/18/17 10/10/19 1/30/20  10/22/20 (1st Modified Text)  7/22/21 (2nd Modified Text)	-	3/27/2019	3/22/2020	4/20/20 6/23/20	6/30/20 7/17/20	7/17/20 - 8/31/20	N/A	1st Modified Text - 11/19/20 - 12/4/20  On 1/28/21, Board approved responses to 15-day comments  2nd Modified Text - 7/28/21 - 8/12/21  On 10/21/21, Board to approve responses to 2nd 15-day comments	4/28/2021	9/11/2021	9/13/21 (Submitted) 9/29/21 (Approved)	N/A	Will be submitted to OAL once Board approves responses to 2nd 15-day comments	
Disciplinary Guidelines	On 10/21/21, Board to consider approving 3rd Modified Text in response to DCA Director comment	1/20/2015	7/2015 10/2015 1/2017 4/2017 11/2018  1/28/21 (1st Modified Text)  7/22/21 (2nd Modified Text)  10/21/21 (3rd Modified Text) - approval pending	-	3/26/2019	4/20/2020	4/27/20 6/30/20	7/6/20 7/17/20	7/17/20 - 8/31/20	N/A	1st Modified Text - 5/27/21 - 6/11/21  2nd Modified Text - 7/28/21 - 8/12/21  3rd Modified Text - 10/21/21 - 11/5/21 (approval pending)	8/20/2021	10/7/2021	10/7/21 (Submitted)	N/A		
RVT Education	Board staff revising regulatory docs for Agency reapproval	10/20/2014	7/26/17 8/29/18  7/23/20 (Revised Text)	-	3/26/2019	5/30/2020	6/5/20 7/6/20  Pending staff revisions for resubmittal to Agency										

**Red Text** = Updates since last meeting

= Completed

= Current Status/ Pending

**Status of Pending VMB Regulations**  
Updated 10/7/21

Attachment

Rulemaking Title	Current Status	INITIAL PHASE										FINAL PHASE				
		Concept Date(s)	Board Approval	Submitted to DCA for PRE-Review	Submitted to DCA for INITIAL Review	DCA Director Approval	Submitted to Agency/ Agency Approval	Notice Submitted to OAL/ Notice Published by OAL	45-Day Comment Period	Public Hearing (Optional)	15-Day Comment Period (Modified Text), if applicable	Submitted to DCA for FINAL Review	FINAL DCA Director Approval	Submitted to Agency/ FINAL Agency Approval	Submitted to DOF/ DOF Approval	Submitted to OAL/ OAL Approval
VCPR/Informed Client Consent	Will be pursued after VCPR (Telemedicine) Section 100 changes take effect	11/14/2018	1/23/19 1/30/20	Pending												
Civil Penalties for Citations	Pending further development from staff	1/8/2020	1/30/2020	Pending												
Minimum Standards for Alternate Veterinary Premises	Pending further development from staff	4/23/2014	11/14/2018	Pending												
Shelter Minimum Standards	Pending further development from staff	2/19/2015	4/17/19	Pending												
Veterinary Student Exemption/RVT Exam Eligibility	Pending further development from staff	4/23/2014	4/2017 7/17/19	Pending												
Uniform Standards for Substance-Abusing Licensees	Pending further development from staff	4/23/2014	10/9/19 <b>On 10/21/21, Board to consider approving revisions to the proposal</b>	Pending												
Application After Failing Examination	Pending further development from staff	-	7/23/2020	Pending												
Limited Term RVT Examination Eligibility Window (Section 100)	Pending further development from staff	-	7/23/2020	N/A	9/16/2021	N/A	N/A	N/A	N/A	N/A	N/A	9/17/2021	N/A	N/A	N/A	9/21/21 (Submitted)
Eligibility Evaluation - National Veterinarian Examination	Pending further development from staff	-	10/22/2020	Pending												
Elimination of CSBE and Temporary Licensee Requirements (Section 100)	Will be pursued once legislative changes take effect	-	1/28/2021	Pending												
Sodium Pentobarbital/ Euthanasia Training (Section 100)	Pending further development from staff	-	4/22/2021	N/A	9/16/2021	N/A	N/A	N/A	N/A	N/A	N/A	9/17/2021	N/A	N/A	N/A	9/21/21 (Submitted)
VCPR/ Telemedicine (Section 100)	Will be pursued once legislative changes take effect	-	7/22/2021	Pending												