

**Veterinary Medical Board
Department of Consumer Affairs**

Initial Statement of Reasons

Hearing Date: No hearing has been scheduled for the proposed action.

Subject Matter of Proposed Regulations: Veterinarian-Client-Patient Relationships (VCPRs)

Sections Affected: California Code of Regulations (CCR), Title 16, Division 20, Article 4, Sections 2032.15 and 2032.25¹

Background and Statement of the Problem:

Business and Professions Code (BPC) Section 4800.1 mandates that the protection of the public shall be the highest priority of the Veterinary Medical Board (Board) in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. The Board enforces the Veterinary Medicine Practice Act (Act) and oversees veterinarian licensees, registered veterinary technicians (RVTs), registered veterinary premises, and veterinary assistant controlled substance permit holders.

BPC section 4808 grants the Board the authority to adopt, amend, or repeal rules and regulations that are reasonably necessary to carry into effect the Veterinary Medicine Practice Act (Act). BPC section 4883 authorizes the Board to deny, revoke, or suspend a license or registration or assess a fine for, among other things, unprofessional conduct. CCR section 2032.1, subsection (a), provides that 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 VCPR.

If the originating veterinarian who established the VCPR with the animal patient is unavailable, CCR section 2032.15, subsection (a), allows a VCPR to continue to exist in the absence of client communication when: (1) a VCPR was established with an original veterinarian, and another designated veterinarian serves in the absence of the original veterinarian; (2) the designated veterinarian has assumed responsibility for making medical judgments regarding the health of the animal; (3) the designated veterinarian has sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal, as specified; and (4) the designated veterinarian has continued, and documented in the medical record, the medical, treatment, diagnostic and/or therapeutic plan that was set forth by the original veterinarian. For medications, existing CCR section 2032.25 authorizes a designated veterinarian to prescribe, dispense, or furnish the drug only as necessary to maintain the animal

¹ All CCR references are to title 16 unless otherwise noted.

patient until the return of the originally treating veterinarian, but in any case, no longer than 72 hours.

After CCR sections 2032.15 and 2032.25 were enacted in 2014, the Board began discussing minimum standards of veterinary practice that included issues involving a designated veterinarian's ability to diagnose and treat animals through telemedicine. In addition, questions were raised regarding the circumstances under which a designated veterinarian could refill a prescription based on the originating veterinarian's diagnosis and treatment plan. This proposal seeks to provide clarity to the regulations regarding delegated veterinarian VCPR authority.

SPECIFIC PURPOSE, ANTICIPATED BENEFIT, AND RATIONALE:

Amend Subsection (a) of Section 2032.15 of Article 4 of Division 20 of Title 16 of the CCR:

Purpose: This regulatory amendment makes minor, grammatical changes to the regulation for clarity and consistency purposes.

Anticipated Benefit: The Board anticipates that consumers and veterinarians will benefit from the clarifying revisions in this proposal.

Rationale: The amendment to this subsection is necessary to provide clarity and consistency to the regulation. The regulation currently refers to a "veterinary-client-patient relationship," which is not consistent with CCR section 2032.1, which provides the actions necessary to establish a veterinarian-client-patient relationship. To conform this subsection to CCR section 2032.1, the proposal would change three instances of the term "veterinary-client-patient relationship" to "veterinarian-client-patient relationship" found in subsection (a), (a)(1), and (a)(3).

Amend Subsection (a)(1) of Section 2032.15 of Article 4 of Division 20 of Title 16 of the CCR:

Purpose: The purpose of this proposal is to clarify that a VCPR established by an originating veterinarian can only continue to exist in the absence of client communication when the originating veterinarian designates to a second veterinarian (designated veterinarian) who is providing veterinary medical services to the animal patient at the same location where the animal patient's medical records are kept.

Anticipated Benefit: The Board anticipates that the health, safety, and welfare of consumers and their animals will benefit from the clarifying proposal. The Board also anticipates that designated veterinarians will benefit from the clarified language.

Rationale: This proposal is necessary to clarify the circumstances under which the VCPR established by the originating veterinarian can continue in effect through a designated veterinarian. At the April 23, 2014 meeting of the Board's Multidisciplinary Advisory Committee (MDC), concern was raised that a designated veterinarian could usurp the VCPR requirement

and provide diagnosis and treatment different from the originating veterinarian when the designated veterinarian is in a remote location from the animal patient. This form of veterinary medicine practice is commonly referred to as telemedicine. The intent of the regulation was not to authorize telemedicine, but to enable the consumer (client) and animal patient to receive veterinary medical services from a second veterinarian while the originating veterinarian is unavailable. To make certain the animal patient is provided safe and effective care, a veterinarian must examine the animal patient in person to determine the appropriate diagnosis and treatment of the animal. This is because animal patients are unable to communicate to the veterinarian their symptoms; a veterinarian providing diagnosis and treatment solely on the basis of the client's observations of the animal is insufficient to properly diagnose and treat the animal. To correct the unintended gap in the VCPR requirement that could be improperly used for telemedicine by a designated veterinarian who has not personally examined the animal patient and has no access to the animal patient's medical records, the proposal would require the designated veterinarian to serve at the same location where the medical records are kept.

In addition, the MDC expressed concern in situations where the animal patient is transferred from one clinic to another clinic (e.g., the animal is transferred from a general clinic to a specialty clinic for treatment). The MDC determined that appropriate animal care requires examination and establishing a VCPR. Accordingly, if the animal patient is transferred to another clinic, the original VCPR established at the first clinic should not transfer to veterinary care at a different location. To resolve the issue of animal transfer and VCPR requirements, the regulation would limit extension of the VCPR to a designated veterinarian at the same location where the medical records are kept.

Amend Subsection (a) of Section 2032.25 of Article 4 of Division 20 of Title 16 of the CCR:

Purpose: The purpose of this proposal is to clarify that prescribing, dispensing, or furnishing dangerous drugs constitutes unprofessional conduct, unless a VCPR has been established, and make minor, nonsubstantive changes to the subsection.

Anticipated Benefit: The Board anticipates that veterinarians, consumers, and their animals will benefit from the clarifying proposal.

Rationale: The proposal is necessary to clarify that prescribing, dispensing, or furnishing dangerous drugs is unprofessional conduct, unless a VCPR has been established. Section 2032.25 provides authority for veterinarians who prescribe, dispense, or furnish drugs for animal use in the absence of the originally prescribing veterinarian, who established the VCPR with the animal patient. However, the existing language is unclear because it states prescribing, dispensing, or furnishing drugs is unprofessional conduct if performed without an appropriate prior examination and a medical indication.

To establish a VCPR, the client must authorize the originating veterinarian to assume responsibility for making medical judgments regarding the health of the animal, including the need for medical treatment, the veterinarian must have sufficient knowledge of the animal to

initiate at least a general or preliminary diagnosis of the medical condition of the animal by personally examining the animal patient or by medically appropriate and timely visits to the premises where the animal is kept, and the veterinarian must assume responsibility for making medical judgments regarding the health of the animal and communicate with the client a course of treatment appropriate to the circumstance. As such, the VCPR is more robust and appropriate for the treatment of the animal patient, rather than merely requiring a subsequent veterinarian to perform an examination and diagnose a medical indication, as the regulation currently requires.

This proposal is necessary to clarify that, absent establishing a VCPR, prescribing, dispensing, or furnishing dangerous drugs constitutes unprofessional conduct. In this way, the animal patient will be better protected through appropriate diagnosis and treatment, and the regulation will conform to the VCPR requirements.

The proposal will also make clarifying and conforming revisions to the subsection. CCR section 2002 defines "Business and Professions Code" to mean "code." To conform to the proper reference established in CCR section 2002 and make the regulation consistent with the Board's other regulations, this proposal would change "Business and Professions Code" to "code."

Amend Paragraphs (1), (2), and (3) of Subsection (b) of Section 2032.25 of Article 4 of Division 20 of Title 16 of the CCR:

Purpose: The purpose of this proposal is to clarify the emergency circumstance when a subsequent veterinarian can prescribe, dispense, or furnish drugs for use on an animal patient in the absence of the originating veterinarian who established the VCPR.

Anticipated Benefit: The Board anticipates that veterinarians will benefit from the clarifying provisions in the regulation, and consumers and their animals will benefit from the expanded emergency circumstance when the consumer can obtain medication for treatment of their animal from a subsequent veterinarian.

Rationale: This proposal is necessary to clarify confusion as to the circumstances when a subsequent veterinarian can prescribe, dispense, or furnish a drug for use on an animal patient in the absence of the originating veterinarian who established a VCPR. At the MDC's April 23, 2014 meeting, concern was raised regarding the clarity of a subsequent veterinarian's ability to prescribe, dispense, or furnish medications, and that it is difficult to determine the exact circumstance that allows a veterinarian to refill a prescription without establishing a VCPR. Additional concerns raised were whether a veterinarian could act as a pharmacist by filling prescriptions written by another veterinarian and whether the veterinarian providing the prescription refill in the absence of the prescribing veterinarian has to work at the same premises and have access to the animal patient's medical records.

To establish a VCPR, the client must authorize the originating veterinarian to assume responsibility for making medical judgments regarding the health of the animal, including the

need for medical treatment, the veterinarian must have sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal by personally examining the animal patient or by medically appropriate and timely visits to the premises where the animal is kept, and the veterinarian must assume responsibility for making medical judgments regarding the health of the animal and communicate with the client a course of treatment appropriate to the circumstance. However, there are circumstances in which an animal patient needs medication and either the animal patient is traveling, or the originating veterinarian is unavailable to refill the prescription.

To address these issues and clarify the ability of a subsequent veterinarian to prescribe, dispense, and furnish medications without establishing a VCPR, the proposal would restructure the existing regulation to address circumstances when the client and animal patient are traveling and in need of emergency medication and circumstances when the original prescribing veterinarian is unavailable to authorize a refill.

Subsection (b)(1) Client and Animal Travel

The proposal would exempt a subsequent veterinarian from establishing a VCPR in order to prescribe, dispense, or furnish drugs on an emergency basis for a traveling patient only as necessary to maintain the health of the animal until they can return to the originally treating veterinarian. The proposal would remove the existing limitation that the medications provided could not be prescribed, dispensed, or furnished for use longer than 72 hours. In this way, the proposal expands the ability of a consumer to obtain emergency medication for the animal patient when the consumer and animal patient are traveling and, at the time of the need for medication, are unable to return to the originating veterinarian.

In order for the subsequent veterinarian to utilize this VCPR exemption, the veterinarian, prior to providing a prescription refill, would need to make a reasonable effort to contact the original prescribing veterinarian. This attempt to contact is necessary to ensure that the animal patient has been examined by an originating veterinarian and has been diagnosed with a condition requiring medication. This exemption is not intended to allow consumers to approach veterinarians for medications when the animal has not been properly diagnosed and no VCPR exists with an originating veterinarian. However, this exemption would allow a consumer to obtain the necessary medication for the animal's condition without having the animal reexamined, rediagnosed, and represcribed the medication, as long as the consumer had established a VCPR with an originating veterinarian. In addition, the proposal would require the subsequent veterinarian to document the communication, or attempt to communicate, in the medical record.

Subsection (b)(2) Original Prescribing Veterinarian Unavailable

The proposal would restructure the existing VCPR exemption for medication by combining subsection (b), paragraphs (2) and (3), to clarify the circumstances in which a client may obtain medication for the animal patient when the original prescribing veterinarian is unavailable. At the MDC's October 20, 2014 meeting, concern was raised over the confusion created in the existing regulation that would provide a VCPR exemption for a veterinarian who had transmitted

an order for drugs to another veterinarian or RVT when the licensee had consulted with the veterinarian or RVT who had reviewed the animal patient's records and the licensee was designated as the veterinarian to serve in the absence of the animal patient's veterinarian. The general terms "veterinarian" and "licensee" lacked clarity as to which veterinarian, the originating veterinarian who had established the VCPR, or the subsequent veterinarian refilling the prescription while the originating veterinarian was away from the premises.

To clarify the VCPR exemption for circumstances when the originating veterinarian is unavailable, the proposal strikes the unnecessary language in paragraph (2) and provides that the VCPR exemption for prescribing, dispensing, or administered drugs is available when the original prescribing veterinarian is unavailable to authorize the refill and the veterinarian authorizing the refill is working in the same practice as the original prescribing veterinarian. This provision better clarifies the two different veterinarians – the original prescribing veterinarian and the veterinarian authorizing the refill.

In addition, the proposal restructures existing paragraph (3) to also require the veterinarian authorizing the refill to be in possession of and review the animal patient's medical record, order the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refill, and enter the prescription refill in the animal patient's medical record. These requirements are necessary to ensure the animal patient is provided the appropriate medication, strength, and amount for the diagnosed condition.

Further, the veterinarian authorizing the refill would have to determine that failure to refill the prescription may interrupt the animal patient's ongoing care and have an adverse effect on the animal patient's well-being. This provision ensures that the animal patient only receives the refill from the non-originating veterinarian when the refill is necessary. Outside of these circumstances, the prescribing, dispensing, or furnishing veterinarian would have to establish their own VCPR with the client and animal patient.

Underlying Data

- April 23, 2014 Veterinary Medical Board (Board) Multidisciplinary Advisory Committee (MDC) Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
- October 20, 2014 MDC Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
- February 19, 2015 MDC Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
- April 28-29, 2015 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
- January 18-19, 2016 Board Meeting Agenda (inadvertently dated January 18-29, 2016); Relevant Meeting Materials; and Meeting Minutes
- August 29-30, 2018 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes

Business Impact

The Board has made the initial determination that the proposed regulatory action would have no significant adverse economic impact on business. The proposed regulations would authorize designated veterinarians to provide services to clients who have animals in need in the absence of the original veterinarian.

Economic Impact Analysis

This regulatory proposal would have the following effects:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California. This regulatory proposal authorizes designated veterinarians in the absence of a VCPR and the original veterinarian to provide services to California consumers and their animals if a specific set of criteria has been met.

This regulatory proposal benefits the health, safety, and welfare of California consumers and their animals because the proposed regulation would authorize designated veterinarians to provide services and medications to California consumers and their animals to aid in emergency situations, while still ensuring specific criteria are met.

This regulatory proposal focuses on identifying the exemptions to the VCPR in the absence of client communication and the originating veterinarian and does not affect worker safety or the state's environment.

The Board indicates that any requirements for veterinarians to comply with the proposal would likely be incorporated into the routine operations of the veterinary premises and are not anticipated to result in additional costs.

Overview

There are approximately 12,400 veterinarians in California. The proposal will impact all licensed veterinarians. This proposal clarifies the circumstances under which a subsequent veterinarian can provide veterinary medical care and/or medication to an animal patient in accordance with the VCPR established by the originating veterinarian. The Board estimates approximately 80 to 90 percent (2,800 to 3,150) of the approximately 3,500 veterinary premises are small businesses. The Board does not anticipate the creation or elimination of businesses as a result of the proposal.

Economic Impact Assessment of Benefits

The Board has determined the proposal would benefit the health, safety, and welfare of California consumers and their animals by improving veterinary medical care. This proposal does not affect worker safety or the state's environment. BPC section 4808 grants the Board the authority to adopt, amend, or repeal rules and regulations that are reasonably necessary to carry into effect the Veterinary Medicine Practice Act. BPC section 4883 authorizes the Board to deny, revoke, or suspend a license or registration or assess a fine for, among other things, unprofessional conduct. The proposal would implement, interpret, and make specific BPC section 4883, by clarifying unprofessional conduct in terms of VCPRs.

While difficult to quantify, this proposal improves the quality of life in California for both California consumers and their animals by ensuring animals receive quality veterinary medical care by providing safeguards when the animal's originating veterinarian is not available. The Board also anticipates that veterinarians will benefit from clarification as to the circumstances under which a subsequent veterinarian can provide veterinary medical care and/or medication to an animal patient in accordance with the VCPR established by the originating veterinarian.

Requirements for Specific Technologies or Equipment

This regulatory proposal does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the regulation has been proposed or would be as effective or less burdensome to affected private persons and effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Fiscal Impact Assessment

The proposed regulations establish requirements for veterinarians to establish a VCPR, as specified. The Board will be required to ensure compliance through its inspection programs, and any enforcement-related workload and costs to ensure compliance will be minimal and absorbable within existing resources.