



MEMORANDUM

DATE	October 7, 2021
TO	Veterinary Medical Board (Board)
FROM	Justin Sotelo, Lead Administrative & Policy Analyst
SUBJECT	Agenda Item 11.D. Section 2038.5, Article 4, Division 20, Title 16 of the California Code of Regulations (CCR) Regarding Animal Physical Rehabilitation

Background

The Board’s Animal Physical Rehabilitation (APR) regulatory proposal was last considered by the Board at its January 28-29, 2021 meeting. At that meeting, the Board was asked to consider and approve proposed responses to written and oral comments received on the [Modified Text](#), which was noticed on November 19, 2020, for inclusion in the Board’s final statement of reasons (FSR) in support of the rulemaking file. Detailed background information on the issue of APR and the regulatory proposal and summaries of and proposed responses to comments and objections to the proposal can be found in the [cover memo and related meeting materials](#) for the Board’s January 28-29, 2021 meeting. At that meeting, the Board approved all responses to written and oral comments made on the Modified Text.

Following the January 2021 meeting, Board staff prepared the final rulemaking package and, on March 5, 2021, it was submitted to the Department of Consumer Affairs (DCA) for final review. On April 17, 2021, the package was approved by the DCA Director and subsequently submitted to the Business, Consumer Services and Housing Agency (Agency) on April 20, 2021. On May 13, 2021, the package was approved by Agency. On June 9, 2021, the final rulemaking file was submitted to the Office of Administrative Law (OAL) for final review. Currently, OAL’s 30 working day review of the file has been extended 120 days (until November 22, 2021) by Governor Gavin Newsom’s executive orders extending Administrative Procedure Act deadlines.

OAL Review of Rulemaking File

In late July 2021, Board staff received questions from OAL regarding three of the provisions in proposed CCR, title 16, section 2038.5. After consulting with Board Counsel, the Board’s responses satisfied OAL’s questions, but OAL has recommended minor, non-substantive revisions to the regulatory language to clarify the veterinarian supervision under which a registered veterinary technician (RVT) may perform APR.

Specifically, OAL recommended the following non-substantive revisions to proposed CCR, title 16, section 2038.5, subsection (c) to clarify the two types of supervision, direct and indirect, which otherwise are defined under CCR, title 16, section [2034](#), subsections (e) and (f):

(c) R.V.T.s may perform APR under the degree of direct or indirect supervision ~~to be~~ determined by the veterinarian who has established the veterinarian-client-patient relationship.

These revisions to clarify the two types of supervision, direct or indirect, to be used for an RVT to perform APR are consistent with CCR, title 16, section [2036](#), which lists the animal health care tasks that may be performed by RVTs under direct or indirect supervision.

Because additional adverse comments were received during the 15-day public comment period (after the Board approved the Modified Text at its October 22-23, 2020 meeting) and non-substantive revisions to the text are necessary, the Board must approve the final proposed regulatory language, which includes the Modified Text and the non-substantive revisions noted above, in order for OAL to conclude their review of the rulemaking file. The final proposed regulatory language is provided in the attached Order of Adoption.

Action Requested

The Board is asked to consider the final proposed regulatory language and entertain a motion to approve the final proposed regulatory language to add section 2038.5 to article 4 of division 20 of title 16 of the CCR, 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 proposed regulations that may be required in completing the rulemaking file and adopt the proposed regulatory changes.

Attachment

1. Order of Adoption of CCR, Title 16, Section 2038.5

California Code of Regulations
Title 16. Professional and Vocational Regulations
Division 20. Veterinary Medical Board

ANIMAL PHYSICAL REHABILITATION

Order of Adoption

Add Section 2038.5 to Article 4 of Division 20 of Title 16 of the California Code of Regulations to read as follows:

2038.5. Animal Physical Rehabilitation.

(a) Animal Physical Rehabilitation (APR):

(1) is defined as the treatment of injury or illness to address pain and improve function by means of physical corrective treatment.

(2) does not include relaxation, recreational or wellness modalities, including but not limited to, massage, athletic training, or exercise.

(b) Prior to performing or authorizing APR, a veterinarian shall establish a valid veterinarian-client-patient relationship as defined in Sections 2032.1 or 2032.15.

(c) R.V.T.s may perform APR under the degree of direct or indirect supervision determined by the veterinarian who has established the veterinarian-client-patient relationship.

(d) Veterinary assistants may perform APR under the direct supervision of a veterinarian.

(e) Nothing in this section shall be construed to restrict or amend Section 2038 regarding the performance of MSM.

(f) This section shall not apply to wildlife rehabilitation regulated by the United States Fish and Wildlife Service or the California Department of Fish and Wildlife.

Note: Authority cited: Sections 4808 and 4836, Business and Professions Code.

Reference: Sections 4825, 4826, 4836 and 4883, Business and Professions Code.