



MEMORANDUM

DATE	October 12, 2022
TO	Multidisciplinary Advisory Committee (MDC)
FROM	Equine Practice Subcommittee Richard Sullivan, DVM Marie Ussery, RVT
SUBJECT	Agenda Item 5. Update from Equine Practice Subcommittee

Background

During the January 2022 meeting of the Veterinary Medical Board (Board), the Board received public comment from several veterinary practitioners and the California Veterinary Medical Association (CVMA) raising concerns about how the Veterinary Medicine Practice Act was being applied to racetrack veterinarians and the equine veterinary community. To better understand the issues raised, the Board requested a presentation by CVMA and other stakeholders regarding their specific concerns with the Veterinary Medicine Practice Act and the statutes and regulations as applied to equine veterinary practices. The Board requested that CVMA offer any suggested legislative or regulatory proposals that might address their concerns.

In April 2022, CVMA submitted materials for the April Board meeting. However, the materials, which included discussion regarding pending disciplinary matters, went beyond the scope of the Board’s request, and, consequently, the Board was unable to receive that presentation at the April meeting. During and after the April meeting, the Board heard from equine practitioners and others from the equine industry expressing concern and frustration with the Board’s inability to hold such discussions.

During this time, the California Horse Racing Board (CHRB) raised concerns regarding the overlap of CHRB and Board jurisdiction at CHRB regulated facilities and potential regulatory pitfalls for practitioners. CHRB requested to work collaboratively with the Board to determine the best course going forward and provide clarity for the individual veterinarians practicing in CHRB regulated facilities.

Prior to the July 2022 Board meeting, the Board's Executive Officer and Executive Committee, consisting of Kathy Bowler, Board President, and Christina Bradbury, DVM, Board Vice President, held numerous meetings to discuss how concerns raised by the equine industry might be addressed without inadvertently jeopardizing the Board’s ability to fairly deliberate and rule on pending disciplinary items or matters.

During the July 2022 Board meeting, the Executive Committee recommended, and the Board agreed, to send this issue to the MDC and requested the MDC Chair immediately form a subcommittee and appoint two members who are not Board members. The subcommittee would begin a series of meetings with Board staff and legal counsel and solicit input from all relevant stakeholders (CVMA, CHRB, etc.) on these issues and then bring any recommendations to the Board at a future meeting

Update

Shortly after the July 2022 Board meeting, the MDC Chair reviewed which members to appoint to the subcommittee based on large animal experience and immediate availability to devote significant time to this issue. Ultimately, Marie Ussery, RVT, and Richard Sullivan, DVM, were appointed to the Equine Practice Subcommittee (Subcommittee). Ms. Ussery has over 15 years' experience in large animal medicine, a portion of which was spent at a clinic that practiced equine and food animal medicine. Because of Ms. Ussery's experience, the Subcommittee has access to several equine practitioners.

In August 2022, the Subcommittee reviewed numerous documents surrounding the issues raised, including, but not limited to CVMA's April 2022 presentation and letter, CHRB's letter of concerns, pending Accusations, the American Association of Equine Practitioners' (AAEP) [Clinical Guidelines for Veterinarians Practicing in a Pari-Mutuel Environment](#), records from a US Senate hearing regarding Medication and Performance Enhancing Drugs in Horse Racing, and the federal Horseracing Integrity and Safety Act (HISA) enforced by the [Horseracing Integrity and Safety Authority](#). The Subcommittee also spoke with representatives in the equine industry regarding the issues raised and HISA's potential impacts on veterinary practice on racetracks.

In addition, the Subcommittee met with Board staff and legal counsel to receive background on the Board's involvement in veterinary practice on racetracks and collaboration with the CHRB over the last five years.

In September 2022, Dr. Sullivan visited Keeneland Racetrack in Lexington, KY. This visit included a behind-the-scenes tour of the facility by the track's safety director and meeting host, Dr. Stuart Brown. As part of the meeting, Dr. Sullivan also attended an international sale of thoroughbred horses, a visit to a thoroughbred breeding farm, and a roundtable discussion with six leaders of the thoroughbred racing industry. The roundtable meeting included discussions about HISA, the issues in California including the past problems at the Santa Anita racetrack and Board issues, and workforce issues including recruiting and retention of equine veterinarians.

In late September, the Subcommittee held meetings with CVMA and CHRB. During the meeting with CVMA, they raised the following concerns with current California Code of Regulations (CCR):

- [CCR, Title 16, Section 2032.1. Veterinarian-Client-Patient Relationship \(VCPR\)](#)
The traditional model of establishing a VCPR tracks through veterinarian-patient-client. The herd model of establishing a VCPR tracks through veterinarian-client-patients. In traditional small animal and herd health practice models, there is one "client" who is known as the animal owner. However, the equine practice model could reflect either

the traditional or herd model, veterinarian-patient(s)-client-owner or veterinarian-client-patient-owner, and the regulation fails to account for VCPR creation through a client (trainer) rather than through the animal owner, directly. In some equine practice settings, CVMA contends the “client” should be considered the equine trainer rather than the owner, since there may be multiple owners, and equine veterinarians may never have any contact with the owner(s). To provide for equine practice, CVMA proposed adding a definition of “client.”

CVMA also raised concern about requiring a general or preliminary diagnosis to create a VCPR. However, there may be no diagnosis of disease when providing preventative or prophylactic treatment.

- CCR, Title 16, Section 2032.3. Record Keeping; Records; Contents; Transfer
CVMA raised two main issues with CCR, title 16, section 2032.3. First, CVMA noted that recordkeeping to document the VCPR in the herd model is difficult when there is a long-standing relationship with the client, rather than the individual animal patient.

Second, CVMA asserted that section 2032.3 only works for small animal/individual patient appointments, and not every item listed under CCR, title 16, section 2032.3, subsection (a)(1)-(13) is required in every practice setting for every animal patient to demonstrate adequate standard of care. Specifically, CVMA noted that subsection (a)(11) requires documentation of the “prognosis,” which is a prediction of what will happen, but it is unclear what that term means (e.g., how long will the animal patient live, which, if such prognosis is given, may be wrong or otherwise unknowable). In addition, subsection (a)(13) requires “progress” to be documented, but “progress” also is unclear in that it appears to apply to daily progress when the animal is at a veterinary facility, rather than returning or staying at the location where the animal resides.

CVMA suggested there should be two recordkeeping regulations or ways to document the VCPR: (1) a patient-centered medical record that documents the treatment on the animal patient, which is common for small animal practice; and (2) a client-centered record that reflects creation of the VCPR through the long-standing agreement between the veterinarian and client to treat the animals and documents the treatment provided to the animals at the location. This, they claim, will make it easier to show that a VCPR is established in situations involving multiple animals, such as herds. To assist with this, CVMA suggests considering examples they provided from other state veterinary boards. In addition, CVMA recommended revising the itemized requirements to better reflect the minimum standard of veterinary practice.

In addition, CVMA raised general concerns with the Board’s subject matter experts, stating that “[s]mall animal practitioners do not generally practice medicine with the idea in mind that their patients serve utilitarian purposes, whereas equine and food animal practitioners commonly do. Performance enhancement or increasing production efficiency is not necessarily equivocal to a breach of ethics. Providing medication or performing a procedure on an animal at the client’s request is not necessarily a bad thing and can comport with good practice standards.”

Further, CVMA provided historical context related to Business and Professions Code (BPC) section 4170, subdivision (a)(2), stating that “veterinarians were added in for an unrelated reason relating to the California Board of Pharmacy agreeing to oversee veterinary internet pharmacies and veterinary food animal drug retailers.” CVMA did not provide any potential solutions, but it was noted that amending the statute would require legislation.

When asked about the applicability of CVMA’s concerns to equine practice on racetracks, CVMA stated there was confusion among the equine practitioners about dual jurisdictions and commented that perhaps racetrack veterinarians should be exempt from Board oversight and solely left up to the CHRB to regulate.

During the CHRB meeting, CHRB primarily raised concerns with the Board enforcing CCR, title 4, section [1867](#), which states, in pertinent part, the following:

For purposes of this division, prohibited veterinary practices means:

...

(b) The possession and/or use on the premises of a facility under the jurisdiction of the Board of any drug, substance or medication that has not been approved by the United States Food and Drug Administration (FDA) for use in the United States.

...

The Board interprets this regulation as written. However, CHRB contends that the regulation “permits such use where non FDA-approved medications exist – a circumstance commonly present in equine practice.” Acknowledging that no such exception is actually present in the regulation, CHRB’s Executive Director stated CHRB will likely work to amend the regulation to account for this exception. In the meantime, CHRB asked the Board to stop enforcing the regulation as written.

CHRB also mirrored CVMA’s concerns as they relate to preventative medicine, the VCPR, and record keeping requirements. CHRB and the Subcommittee also discussed potential impacts of HISA on these issues. The Subcommittee looks forward to continued collaboration with CHRB to work through these issues.

Next Steps

The Subcommittee plans to take the following steps:

- Meet with University of California, Davis representatives to work through statements that recent Board actions are diametrically opposite to what they are teaching students today.
- Meet with the American Association of Regulatory State Boards (AAVSB) to discuss their thoughts/interpretations of HISA on veterinary state boards.
- Research HISA impacts on the Veterinary Medicine Practice Act.
- Research other veterinary state board recordkeeping requirements.
- Research other DCA healing arts boards’ recordkeeping requirements.
- Draft a proposed definition of “client.”
- Draft a proposed definition of “herd.”

- Continue collaboration with CVMA, CHRB and other stakeholders while crafting potential solutions for MDC/Board consideration.
- Develop educational strategy and campaign to assist licensees in understanding current statutes and regulations.