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**Subject:** Animal Rehabilitation Task Force Follow-Up  
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**Attachments:** [VMB - Animal Rehab Presentation.6.20.16.pptx](#)

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Annemarie, after your review, would you kindly send this message to the Task Force members:

Good morning, Task Force members.

Some follow-up on Monday's meeting:

- 1) The 'lost' presentation. Please find the presentation regarding statutes and regulations attached. Sorry about the confusion at the meeting.
- 2) The Bigger Picture. As the Veterinary Medical Board's (Board) and Task Force counsel, I respectfully suggest that it may prudent to focus more directly on the policy objective that the Task Force was tasked with and not so much on the mechanism to effectuate that policy objective. Remember, here is what the Legislature suggested:

***“Legislative Staff Recommendation: The Board should create a task force comprised of stakeholders including veterinarians, RVTs, animal rehabilitation and related animal industry professionals, consumers, and representatives from the legislature to further examine the issue and present a recommendation to the Board by January 1, 2017.”***

As counsel, I do not read the above as a limitation that only a regulatory approach can invoked or whether a particular practice act is not to be disturbed. In any event, as the Task Force will make a recommendation to the Board and the Board will need to respond to the Legislature, the entity charged by the California Constitution to enact and revise laws, it stands to reason that the Task Force's recommendation may very well contain proposed revisions to existing statute as well as regulatory amendments.

- 3) *North Carolina* case. Toward the end of the meeting, it was suggested that a presentation on this case may be helpful. So as to maximize the Task Force's time, here are some links to important resources:
  - a. The case itself: [http://www.supremecourt.gov/opinions/14pdf/13-534\\_19m2.pdf](http://www.supremecourt.gov/opinions/14pdf/13-534_19m2.pdf)
  - b. Federal Trade Commission's guidance: [https://www.ftc.gov/system/files/attachments/competition-policy-guidance/active\\_supervision\\_of\\_state\\_boards.pdf](https://www.ftc.gov/system/files/attachments/competition-policy-guidance/active_supervision_of_state_boards.pdf)
  - c. California Office of the Attorney General Opinion: [https://oag.ca.gov/system/files/opinions/pdfs/15-402\\_0.pdf?](https://oag.ca.gov/system/files/opinions/pdfs/15-402_0.pdf?)

Task force members may want to review these documents prior to the next meeting.

- 4) Certifications and Licensure. As the meeting was wrapping up, there were some comments on certifications and licensure. Generally speaking, expanding a licensee's scope of practice with a certification – which usually means additional training, education, and perhaps an examination – is somewhat common. Under this type of regulation, the certification expands the scope of practice. There are advanced practice registered nurses, extended practice auxiliary dental personnel and even some smog check stations that have

special vehicle emission testing privileges. Please note, however, that the fundamental building block of this approach is the license itself; in other words, a specially certified licensee is authorized to provide those services authorized by the basic license and the achieved certifications. It would be unusual, however, to require certification to perform a task or service authorized by the license itself.

Members, thanks for your attention to this message. Please contact me if you have any questions.

***Kurt Heppler***  
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***Department of Consumer Affairs***  
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# Welcome to the Veterinary Medical Board's

Task Force on Animal  
Rehabilitation

# Some Basic Information

- The Veterinary Medical Board (VMB) is part of the Department of Consumer Affairs
- As a licensing agency, it has three main functions:
  - Issuing licenses to qualified applicants
  - Providing regulatory oversight
  - Investigating complaints and taking appropriate enforcement actions

# Statutes

- Enacted by the Legislature
- Legislature is the chief policy making organ of the state
- Statutes are the mechanism by which agencies like VMB are granted the authority to act. Examples:
  - Issue Licenses or Registrations (§ 4808, 4841.4, & 4846.4.)
  - Suspend or Revoke a License or Registration (§ 4837, 4883.)
  - Promulgate Regulations ( § 4808.)
  - Express and Implied Powers

# Regulations

- Adopted by the Agency in accordance with the rulemaking process
- Subordinate to statute
- Purpose is to implement, interpret or make specific statute
- Fills the gap in statute
- Forms, procedures, and details are in regulation

# What Can't A Regulation Do?

- Enlarge, restrict or impair statute
- A regulation must be consistent and not in conflict with statute and reasonably necessary to carry out the statute's purpose (Gov. Code, § 11342.2.)
- Go beyond the authority of the agency

# Turning Towards VMB

## VMB

- Issues one license for veterinarians
  - A plenary license authorizing the practice of veterinary medicine
- Does not license by specialty
- Scope of Practice is defined by statute:
- "A person practices veterinary medicine, surgery, and dentistry, and the various branches thereof, when he or she does any one of the following:
  - (a) Represents himself or herself as engaged in the practice of veterinary medicine, veterinary surgery, or veterinary dentistry in any of its branches.
  - (b) Diagnoses or prescribes a drug, medicine, appliance, application, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of animals.

# More of the Scope of Practice

- (c) Administers a drug, medicine, appliance, application, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of animals, except where the medicine, appliance, application, or treatment is administered by a registered veterinary technician or a veterinary assistant at the direction of and under the direct supervision of a licensed veterinarian subject to Article 2.5 (commencing with Section 4832) or where the drug, including, but not limited to, a drug that is a controlled substance, is administered by a registered veterinary technician or a veterinary assistant pursuant to Section 4836.1. However, no person, other than a licensed veterinarian, may induce anesthesia unless authorized by regulation of the board.
- (d) Performs a surgical or dental operation upon an animal.
- (e) Performs any manual procedure for the diagnosis of pregnancy, sterility, or infertility upon livestock or Equidae.
- (f) Uses any words, letters, or titles in such connection or under such circumstances as to induce the belief that the person using them is engaged in the practice of veterinary medicine, veterinary surgery, or veterinary dentistry. This use shall be prima facie evidence of the intention to represent himself or herself as engaged in the practice of veterinary medicine, veterinary surgery, or veterinary dentistry.

# The Main Job of VMB?

- Protect the public, to wit:
- “Protection of the public shall be the highest priority for the Veterinary Medical 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.”  
(§ 4800.1.)

# Physical Therapy Board of California

- Part of DCA
- Issues licenses and enforces the Physical Therapy Practice Act
- Same obligation, as follows:
- “ Protection of the public shall be the highest priority for the Physical Therapy Board of California 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.” (§ 2602.1.)
- Has rulemaking authority. (§ 2615.)

# Scope of Practice

- “Physical therapy means the art and science of physical or corrective rehabilitation or of physical or corrective treatment of any bodily or mental condition **of any person** by the use of the physical, chemical, and other properties of heat, light, water, electricity, sound, massage, and active, passive, and resistive exercise, and shall include physical therapy evaluation, treatment planning, instruction and consultative services. The practice of physical therapy includes the promotion and maintenance of physical fitness to enhance the bodily movement related health and wellness of **individuals** through the use of physical therapy interventions. The use of roentgen rays and radioactive materials, for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term “physical therapy” as used in this chapter, and a license issued pursuant to this chapter does not authorize the diagnosis of disease.” (§ 2620.)(Emphasis added.)

# Questions?

- [Kurt.Heppler@dca.ca.gov](mailto:Kurt.Heppler@dca.ca.gov)

# The Open Meeting Act

- The Use of A Mnemonic Device
  - Like Roy. G Biv or Homes
  - Instead, We'll Use POPCORN

# The P is for Public

- The Public Has These Rights:
  - Right to attend and record (without being disruptive)
  - Right to comment on the actions
  - Right to copy and inspect records

# O is for Open Session

- Business conducted in open session unless closed session authorized by law
- Reasons for closed session
  - Matters under the Administrative Procedure Act
  - Examinations—prepare, grade, approve, or administer
  - Executive Officer Personnel Matters
  - But Not Because an Item is Controversial or Embarrassing

# P is for Penalty

- What Happens if the Task Force Does Not Follow the Rules?
  - Decision or Action Invalidated
  - Misdemeanor

# C is for Communication

- Task Force Decisions Are Made at Task Force Meetings
- Can't use serial or 'hub-and-spoke' communication methodologies to discuss, deliberate or take action on Task Force business
- The OMA permits contacts or communications between a member of a state body and one other person

# O is for One plus Two is a Meeting of a State Body

- Definition of a Meeting: “Includes any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.”
- Exception – Advisory Committee with less than three persons without any delegated authority
- We have more than three members

# R is for Roadmap aka an Agenda

- Brief but specific description of the matters to be considered
- The Reasonable Test
- No “Old or New Business”
- A sword and a shield
- General Rule – If an item isn’t on the agenda, the Task Force can’t talk about it or take action on it

# N is for Notice

- Posted at least 10 days in advance of the meeting
- Set forth the time and location of the meeting, as well a contact person in the event more information is needed.
- For a teleconference meeting, locations must be specified and these locations must be accessible to the public and ADA-compliant

# Questions

- [Kurt.Heppler@dca.ca.gov](mailto:Kurt.Heppler@dca.ca.gov)