



MEMORANDUM

DATE January 22, 2013

TO Veterinary Medical Board

FROM Sue Geranen Executive Officer
DCA/Veterinary Medical Board

SUBJECT Administration of Drugs/Certification of Veterinary Assistants

Background:

SB 1839 Chapter, 239, "Administration of Drugs," was chaptered on 9/7/2012. The bill amends Business and Professions Code 4836.1 to authorize veterinarians to delegate administration of drugs to RVTs or laypersons under direct or indirect supervision, and it changes the term "unregistered assistant" to "veterinary assistant" throughout the practice act. "Veterinary assistants" are laypersons working in a veterinary hospital – meaning anyone other than the licensees. Effective January 1, 2013, AB 1839 requires background checks for all unlicensed employees ("veterinary assistants") who have access to controlled substances.

A sunset date of January 1, 2015, was inserted into Section 4836.1 at the request of the DCA for the purposes of further discussions on the extent of a background check and/or whether the Board should require all who have access to controlled substances to be fingerprinted. The options for the Board to consider include:

- Researching the possibility and impact of a state certification program to require fingerprinting of unlicensed persons who have access to controlled substances, or
- Creating a definition of the criteria for a background check either in statute or regulations.

The Board representatives who will be testifying during the Sunset Review Legislative hearings in March should be prepared to respond to questions regarding the Board position on this issue. The specific bill language regarding access to controlled substances is listed below and there is a copy of the bill itself behind this memo in the Board meeting packet:

(b) Access to controlled substances by veterinary assistants under this section is limited to persons who have undergone a background check and who, to the best of the licensee manager's knowledge, do not have any drug or alcohol related felony convictions.

There has been some consideration of defining the term "access" in order to implement, interpret, or make specific AB 1839 once it is in effect. However, because the term "Access," is a common term with a common, broad and generally understood definition (i.e., "The right to enter or make use of"), it is not possible to craft an alternate definition for the purposes of this law.

Fingerprinting by the Board of all persons having access to controlled substances would be one option. However, the Board does not have the authority to fingerprint assistants because they are not licensees or registrants with the Board. In order to have the authority to perform

fingerprinting, the Board would need to create a new registration program for veterinary assistants.

Logistically, there would be impact on the Board to create the program and fingerprint assistants. The ratio of lay persons to licensed staff has been identified at somewhere between two and four to one. There are approximately 8,600 licensed veterinarians in California, so even if the more conservative number is used that would mean that there would be no less than 17,200 and possibly 34,400 lay person working in veterinary hospitals in California. So, if half of those had access to controlled substances, that would be 8,600 to 17,200 lay persons who would need to be certified. Conservatively speaking that would require almost double the Board's existing staff and space to create such a program.

Another option may be to define the required parameters of what the Board would consider an acceptable "background check" as required in the statute for unlicensed persons who would have access to controlled substances. Outlining the parameters of a background check for the purposes of determining whether an unlicensed person had any felony convictions relating to either drugs or alcohol might be a way to avoid having to create a whole new bureaucracy to certify and fingerprint many thousands of lay persons currently working in veterinary hospitals.

The requirement for a background check for non-licensed person who have access to controlled substances is not a new law. It is a law that has been in effect for many years within the Federal laws administered by the Drug Enforcement Agency (DEA). The law requires licensees to do background checks and restrict access to controlled substances to persons who have felony drug convictions. The Board has not seen a pattern of abuse of the law or of diversion by law persons.

Action Requested:

- 1) Discussion of issues involved in creating such a certification program for unlicensed persons
- 2) Explore the feasibility of defining criteria for background checks
- 3) Propose a motion to indicate in the sunset report that the Board is willing to explore the feasibility of such a program, but that it recognizes that there are many issues that need to be discussed fully before the Board can make a recommendation.



AB-1839 Veterinary medicine: veterinary assistants. (2011-2012)

Assembly Bill No. 1839

CHAPTER 239

An act to amend Sections 4826, 4826.2, 4833, 4836, 4836.1, 4836.5, 4840, 4840.2, 4840.7, and 4840.9 of the Business and Professions Code, relating to veterinary medicine.

[Approved by Governor September 07, 2012. Filed Secretary of State September 07, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1839, Ma. Veterinary medicine: veterinary assistants.

Existing law, the Veterinary Medicine Practice Act, provides for the licensure and registration of veterinarians and registered veterinary technicians and the regulation of the practice of veterinary medicine by the Veterinary Medical Board. The act also permits unregistered assistants to carry out specified acts in the veterinary care and treatment of animals, and authorizes the board to regulate the veterinary care activities of unregistered assistants.

This bill would instead refer to unregistered assistants as veterinary assistants throughout the act.

Existing law authorizes, until January 1, 2013, a registered veterinary technician and an unregistered assistant to administer a drug, including, but not limited to, a drug that is a controlled substance, except for the induction of anesthesia, under specified circumstances.

This bill would make these provisions operative until January 1, 2015, and would authorize veterinary assistants to administer a controlled substance only if specified requirements are satisfied, including completion of a background check. The bill would also authorize the board to limit veterinary assistants' access to specified dangerous drugs, as defined.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4826 of the Business and Professions Code is amended to read:

4826. 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.
- (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.

SEC. 2. Section 4826.2 of the Business and Professions Code is amended to read:

4826.2. Notwithstanding any other provision of law, a veterinarian, registered veterinary technician, or a veterinary assistant working under the supervision of a veterinarian, may provide veterinary care and treatment for any animal restricted pursuant to Section 2118 of the Fish and Game Code. A veterinarian, registered veterinary technician, or a veterinary assistant working under the supervision of a veterinarian, may lawfully possess one or more of the animals only for the period of time that, in his or her judgment, veterinary care and treatment are necessary. No veterinarian, registered veterinary technician, or veterinary assistant working under the supervision of a veterinarian, has a duty to advise law enforcement if he or she becomes aware that one or more of the animals is possessed in the state. For the purposes of this section, "veterinary care and treatment" does not include boarding when no veterinary care or treatment is required.

SEC. 3. Section 4833 of the Business and Professions Code is amended to read:

4833. (a) The committee shall advise and may assist the board in the examination of applicants for veterinary technician registration. The examination shall be held at least once a year at the times and places designated by the board.

(b) The committee may investigate and evaluate each applicant applying for registration as a registered veterinary technician and may recommend to the board for final determination the admission of the applicant to the examination and eligibility for registration.

(c) The committee may make recommendations to the board regarding the establishment and operation of the continuing education requirements authorized by Section 4838 of this article.

(d) The committee shall advise and may assist the board in the inspection and approval of all schools or institutions offering a curriculum for training registered veterinary technicians.

(e) The committee may advise and assist the board in developing regulations to establish animal health care tasks and the appropriate degree of supervision required for those tasks for registered veterinary technicians and for veterinary assistants.

(f) The committee may advise and assist the board in developing regulations to define subdivision (c) of Section 4840, including, but not limited to, procedures for citations and fines, in accordance with Section 125.9.

(g) This section shall become inoperative on the July 1 following the initial appointment of a registered veterinary technician to the board, and on the January 1 following that date is repealed, unless a later enacted statute, that becomes operative on or before that January 1, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 4836 of the Business and Professions Code is amended to read:

4836. (a) The board shall adopt regulations establishing animal health care tasks and an appropriate degree of supervision required for those tasks that may be performed only by a registered veterinary technician or a licensed veterinarian.

(b) The board also may adopt regulations establishing animal health care tasks that may be performed by a veterinary assistant as well as by a registered veterinary technician or a licensed veterinarian. The board shall establish an appropriate degree of supervision by a registered veterinary technician or a licensed veterinarian over a veterinary assistant for any tasks established under this subdivision and the degree of supervision for any of those tasks shall be higher than, or equal to, the degree of supervision required when a registered veterinary technician performs the task.

(c) The board may adopt regulations, as needed, to define subdivision (c) of Section 4840, including, but not limited to, procedures for citations and fines, in accordance with Section 125.9.

SEC. 5. Section 4836.1 of the Business and Professions Code is amended to read:

4836.1. (a) Notwithstanding any other provision of law, a registered veterinary technician or a veterinary assistant may administer a drug, including, but not limited to, a drug that is a controlled substance, under the direct or indirect supervision of a licensed veterinarian when done pursuant to the order, control, and full professional responsibility of a licensed veterinarian. However, no person, other than a licensed veterinarian, may induce anesthesia unless authorized by regulation of the board.

(b) Access to controlled substances by veterinary assistants under this section is limited to persons who have undergone a background check and who, to the best of the licensee manager's knowledge, do not have any drug or alcohol related felony convictions.

(c) Notwithstanding subdivision (b), if the Veterinary Medical Board, in consultation with the Board of Pharmacy, identifies a dangerous drug, as defined in Section 4022, as a drug which has an established pattern of being diverted, the Veterinary Medical Board may restrict access to that drug by veterinary assistants.

(d) For purposes of this section, the following definitions apply:

(1) "Controlled substance" has the same meaning as that term is defined in Section 11007 of the Health and Safety Code.

(2) "Direct supervision" has the same meaning as that term is defined in subdivision (e) of Section 2034 of Title 16 of the California Code of Regulations.

(3) "Drug" has the same meaning as that term is defined in Section 11014 of the Health and Safety Code.

(4) "Indirect supervision" has the same meaning as that term is defined in subdivision (f) of Section 2034 of Title 16 of the California Code of Regulations.

(e) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 6. Section 4836.5 of the Business and Professions Code is amended to read:

4836.5. The board shall take action pursuant to Article 4 (commencing with Section 4875) of this chapter against any veterinarian licensed or authorized to practice in this state who permits any registered veterinary technician or veterinary assistant to perform any animal health care services other than those allowed by this article.

SEC. 7. Section 4840 of the Business and Professions Code is amended to read:

4840. (a) Registered veterinary technicians and veterinary assistants are approved to perform those animal health care services prescribed by law under the supervision of a veterinarian licensed or authorized to practice in this state.

(b) Registered veterinary technicians may perform animal health care services on those animals impounded by a state, county, city, or city and county agency pursuant to the direct order, written order, or telephonic order of a veterinarian licensed or authorized to practice in this state.

(c) Registered veterinary technicians may apply for registration from the federal Drug Enforcement Administration that authorizes the direct purchase of sodium pentobarbital for the performance of euthanasia as provided for in subdivision (d) of Section 4827 without the supervision or authorization of a licensed veterinarian.

SEC. 8. Section 4840.2 of the Business and Professions Code is amended to read:

4840.2. Registered veterinary technicians and veterinary assistants shall not perform the following health care services:

- (a) Surgery.
- (b) Diagnosis and prognosis of animal diseases.
- (c) Prescribing of drugs, medicine, and appliances.

SEC. 9. Section 4840.7 of the Business and Professions Code is amended to read:

4840.7. (a) A registered veterinary technician who has been examined by the board in the area of radiation safety and techniques may operate radiographic equipment under the indirect supervision of a licensed veterinarian.

(b) (1) A veterinary assistant who has been trained in the area of radiation safety and techniques may operate radiographic equipment under the direct supervision of a registered veterinary technician or a licensed veterinarian.

(2) The responsible managing licensee of a veterinary premises shall maintain records of the training described in paragraph (1). A veterinary assistant for whom records of this training do not exist shall not operate radiographic equipment.

(3) The training records described in paragraph (2) shall be made available to the board upon request and at the time of any inspection of the veterinary premises.

SEC. 10. Section 4840.9 of the Business and Professions Code is amended to read:

4840.9. Registered veterinary technicians and veterinary assistants may be employed by any veterinarian licensed or authorized to practice in this state or by any governmental agency which employs veterinarians. However, the employer must be fully aware of the provisions of this article as stated by regulations adopted by the board pursuant to Section 4836.