

Proposed Regulatory Changes - 1/2013

**Title 16. Professional and Vocational Regulations
Division 20. Veterinary Medical Board**

Animal Rehabilitation.

(a) The practice of veterinary medicine includes Animal Rehabilitation (AR) which is the physical or corrective rehabilitation of any animal by the use of the physical, chemical and other properties of heat, light, water, electricity, sound, massage, and active, passive, and resistive exercise for the prevention, cure or relief of a wound, fracture, bodily injury, or disease of animals. AR includes physical rehabilitation evaluation, treatment planning, instruction and consultative services.

(b) Only a California licensed physical therapist ("Physical Therapist") in good standing or registered veterinary technician in good standing may perform animal rehabilitation under a California licensed veterinarian's direct supervision, pursuant to California Code of Regulations, Section 2034(e) and Section 2035, under the following criteria:

(1) The veterinarian, in consultation with the licensed physical therapist or registered veterinary technician has determined that AR care is appropriate, and

(2) The supervising veterinarian ensures that accurate and complete records of AR treatments are maintained in the patient's veterinary medical record.

(c) Once the supervising veterinarian ceases the relationship with a physical therapist or registered veterinary technician who is performing AR treatment, the physical therapist shall immediately terminate treatment.

(d) A physical therapist or registered veterinary technician who fails to conform to the provisions of this section when performing AR shall be deemed to be engaged in the unlicensed practice of veterinary medicine.

(e) A veterinarian who fails to conform to the provisions of this section when authorizing a physical therapist or registered veterinary technician to evaluate or perform AR treatments shall be deemed to have engaged in unprofessional conduct.

(f) This section shall remain in effect only until January 1, 2017 and as of that date is repealed.

NOTE: Authority cited: Section 4808 and 4836, Business and Professions Code. Reference: Section 4825, 4826 and 4883, Business and Professions Code.

Excerpts from January 2013 Board Meeting Minutes

Animal Rehabilitation

i. Animal Rehabilitation – Proposed Language

Dr. Grant reported that the MDC held two full meetings just on information gathering and listening to all concerned parties and then several meetings to review the information. At the last meeting, legal counsel presented an opinion that physical therapy on animals is considered the practice of veterinary medicine and may only be performed by a California licensed veterinarian or under direct supervision of a California licensed veterinarian. As the law exists today, animal rehabilitation is the practice of veterinary medicine.

He stated that the MDC reviewed the regulations governing physical therapy and the proposal submitted to the Board by the MDC is very similar to the MSM provision currently in regulations. Dr. Grant reported that physical therapy has greater scope than chiropractic in that physical therapists (PT) are allowed to use electromyography and topical medications that may be different in humans than with animals. One issue the MDC discussed was who would be responsible if something goes wrong. Testimony submitted during the hearings substantiated the need for a veterinarian to be present in case there is an emergency situation.

Allowing a veterinarian to determine the level of supervision is problematic because the potential for harm is greater than it is for chiropractic manipulations (MSM) and there are existing regulations specifying that MSM must be done under direct supervision. There are a number of facilities where veterinarians and PTs are working together. Dr. Grant stated that the MDC and the Board need to consider what is best for the consumer. He supported reevaluating these regulations in three to five years and possibly modifying the regulation, but the recommendation for now is creating a new law and new authority is direct supervision.

Ms Aguiar voiced concerns about the fact that there were no animal anatomy education requirements for the PTs in the proposed language. Dr. Grant responded that there is training available, but there were no education requirements because the veterinarian is the responsible party. Ms Aguiar asked about the logistics of requiring direct supervision in a large animal practice. Dr. Grant stated that the direct supervision was that the supervisor was in the immediate vicinity and that it was already required under current law. Legal counsel stated that under current law it was the responsibility of the supervising veterinarian to determine competency. Dr. Grant restated that the MDC's recommendation is a first step and he agreed that taking another look in two to three years would be beneficial.

Ms Aguiar asked whether, like in human medicine, the consumer could go direct to the PT and then have the PT report back to the veterinarian. Dr. Grant responded that the big difference is that humans can talk and animals cannot. Also, during the process of animal rehabilitation things change including medications and dosages that require the input from the veterinarian.

Dr. Johnson had some of the same concerns as Ms Aguiar and we should require training for PTs, veterinarians and RVTs. In reviewing the Board's strategic plans, it is consistently stated that RVTs be included in this process. His other concerns were access and cost to the consumer now there are two doctorate level people and possibly an RVT and an assistant involved.

He stated that as the proposal as it stands is a good proposal, but he would like the Board to immediately start the process of review and possibly include a two year sunset clause so that in two years the Board would have something more similar to the models in Nevada and Colorado.

Dr. Waterhouse supported the value of animal rehabilitation, but had concerns about possible harm if it was done outside a veterinary hospital. Dr. Sullivan stated that he visited a veterinary hospital where physical therapy is done under direct supervision and it works well. He stated that both the veterinarian and the PT working with the veterinarian in that hospital supported the direct supervision model. In his opinion the direct supervision model is what protects the consumer and their animal best because animals cannot tell us if something is wrong.

Ms Mancuso stated that there were many good points stated but has no personal experience with animal rehabilitation and had not considered the fact that animals cannot tell you if something is wrong. She supported credentialing for anyone doing animal rehabilitation.

Ms Geranen stated that the proposed regulation was intended to define the relationship, if any, between a licensed California veterinarian and a licensed California physical therapist. It does not preclude the veterinarian from delegating to an RVT or requiring additional education of the PT. Under the proposed language, whether the supervision is direct or indirect, all the responsibility for treatment prescribed and performed lies with the veterinarian, but having a law in place would give the Board more authority to take action against unlicensed activity.

Diann Sokoloff, DAG, stated that because PTs are not “licensed” under the Board’s Practice Act, there is no jurisdiction to require them to take classes.

There was testimony from the representatives from the California Physical Therapy Association that they believe in consumer protection and the Board should amend the language to only give authority to “animal” PTs, who have training to work on animals. They are also working on a specialty certification for Animal Physical Therapists and have put together the parameters for becoming certified as an Animal PT. There are animal rehabilitation schools in Florida, Tennessee and Colorado and there are two different tracks – one for veterinarians and PTs and one for RVTs and PT assistants. They agreed with Dr. Johnson that it would be cost prohibitive to do it under direct supervision and have two PhD level persons present and they mentioned that they were concerned about unlicensed activity too and the fact that it is escalating.

Ms Mancuso asked whether the Board could amend the proposed language to require education. Dr. Kendall stated that the question of education is not before the Board. Dr. Johnson stated that the Board can adopt or non-adopt the language.

Dr. Sullivan suggested that since the Board asked the MDC to work on the issue, the Board should listen to its recommendation. He stated that having two high level professionals in the same practice is not cost prohibitive. He also stated that there are many states that have adopted the direct supervision model for animal rehabilitation including Louisiana and Ohio.

Nancy Ehrlich, RVT, CARVTA, stated that the role of the MDC as a committee of the Board is to make recommendations to the Board and then it is up to the Board to decide whether to move forward with regulations as written or to amend the regulations. She also stated that the supervision of a PT could not be less than that of an RVT and suggested that under the current model there could be less supervision for a lay person than a PT. She suggested allowing PTs to work under direct or indirect supervision of a licensed veterinarian or under direct supervision of an RVT.

Ron Kelp, DVM, testified that the CVMA supports the language as presented by MDC with the direct supervision provision. Dr. Scanlon stated that she supports the additional training for both PTs and veterinarians and that until the extra training can be required for all parties, physical therapy should only be done under direct supervision.

Following the lengthy discussion, Dr. Sullivan proposed an amendment to the proposed language to add RVTs and veterinary assistants as persons who could perform animal rehabilitation under direct supervision of a veterinarian. Dr. Kendall stated that there first needs to be a motion on the proposed language and then there can be discussion.

Motion: Ms Williams made a motion and Ms Mancuso seconded it to reject the MDC proposed language. After discussion, the motion was withdrawn.

Dr. Johnson asked Dr. Kendall to explain the Board’s options at this point. Dr. Kendall stated that the option was to accept the language as presented by the MDC and then discuss an amendment. Legal

counsel suggested that the Board make amendments first and then adopt it or not once the amendments are stated. Dr. Sullivan suggested adding RVTs and veterinary assistants to the language

Motion: Dr. Sullivan made a motion to accept the language for purposes of making amendments, Ms Aguiar seconded the motion.

Discussion: The proposal to amend the language to include RVTs and veterinary assistants was discussed. Ms Mancuso stated that she is opposed to adding the additional authority without requiring additional training. Ms Sokoloff stated that the Board only has jurisdiction over its licensees - veterinarians and RVTs. Ms Mancuso stated that the veterinary assistant should not be included.

Dr. Johnson stated that the Board could change the law to be like the Colorado model where the Board would have jurisdiction over PTs performing animal rehabilitation.

Point of order: Dr. Sullivan stated that his proposed amendment to add both RVTs and veterinary assistants should be made globally within the language.

Vote: the amendment to add both RVTs and veterinary assistants was defeated 3 to 4: Williams, Sullivan and Waterhouse – aye; Johnson, Mancuso, Aguiar and Kendall – nay.

Motion: Ms Williams made a motion to add “only RVT” globally after PT as the only other licensee able to do animal rehabilitation under direct supervision of a licensed California veterinarian to the language. Dr. Sullivan seconded the motion.

Discussion: The Board discusses adding language to designate that “only” PTs and RVTs can perform animal rehabilitation under direct supervision of a veterinarian. Dr. Johnson suggested that the Board appears to be split on the issue and he is not convinced that it is where it should be. He proposed that the Board table it for today and review other state models and bring the issue back to the Board.

Dr. Grant stated that California is a leader and the MDC did look at the models from other States and the fact that it is done differently in other states is not a good reason to do it that way here. He stated that the Board is trying to do a last minute fix and that is not a good idea. He stated that he thought Dr. Johnson’s recommendation for a sunset clause was a good idea and including RVTs needs to be thought out. He stated that if the Board does not want to adopt the language today that it should send it back to the MDC for further discussion.

Legal counsel stated that adding RVT to this language is just restating current law, but in the meantime, there is a lack of definition in law outlining who can do animal rehabilitation in California which leads to unlicensed activity. Valerie Fenstermaker, CVMA, stated that the CVMA recommended direct supervision three years ago and that in light of the unlicensed activity that is happening right now, it would be disappointing if the Board did not adopt this language.

Dr. Johnson asked about withdrawing the original motion to allow a vote on proposal as written. Dr. Sullivan called for a vote on the amendment.

Vote: Motion on amendment to globally add RVTs in addition to PTs and the proviso that “only” RVTs and PTs can perform the animal rehabilitation under direct supervision to the proposed language carried 4/3: Sullivan, Waterhouse, Williams and Kendall – aye; Johnson, Mancuso and Aguiar – nay.

Ms Mancuso stated that she wanted another amendment on the language to add a sunset clause. Dr. Grant suggested a three year sunset but stated that the MDC could start looking at the issues. Dr. Johnson asked Ms Geranen if the Board could change the language between now and the time the regulations go forward. Ms Geranen stated that once the Board votes on a proposed regulatory change, that directs staff to move forward with the proposed language to a public hearing. Once it is noticed, the Board could amend its own language during the public hearing, but those changes would have to be re-

noticed. Substantive changes would require another 45 day notice and non-substantive changes would require a 15-day notice.

Motion: Ms Mancuso made a motion to add a three year sunset clause from date of implementation to the proposed language and Ms Aguiar seconded the motion.

Discussion: Dr. Sullivan suggested five years. The three years would be from the date of implementation.

Vote: Motion on amendment to add three year sunset clause from date of implementation carried 6/1 with Dr. Sullivan voting no.

Vote: The Board voted on the main motion to adopt the proposed language as presented by the MDC with three amendments 1) adding RVT, 2) adding the “only” proviso for RVTs and PTs and 3) inserting a three year sunset clause from date of implementation. Motion passed unanimously.