



MEMORANDUM

DATE July 10, 2013

TO Veterinary Medical Board

FROM Sue Geranen Executive Officer
DCA/Veterinary Medical Board

SUBJECT **CPEI Proposed Regulations**

Background:

This item was referred to the Enforcement Committee for discussion and additional research. DCA Legal Counsel provided a list of recommended changes for the Board to consider for enforcement process improvement with the understanding that regulatory changes would be required for the proposed options.

On April 23, 2013 the Enforcement Committee met with legal counsel and staff regarding the CPEI proposed regulations and determined the following:

- Items 1 (Board delegation to Executive Officer regarding stipulated settlements to revoke or surrender license) and 9 (Failure to report an arrest, conviction, etc. is unprofessional conduct) were viable options for proposed regulations.
- Items 4, 5, 6, and 8 had little impact or presented legal due process issues.
- The committee was not able to discuss items 2, 3, and 7 and tabled those items for a future meeting.

Dr. Johnson has provided background information for your review and will report at the Board meeting on the committee's discussion.

Action Requested:

Review and consider CPEI recommendations for proposed regulations.

Consumer Protection Enforcement Initiative
(CPEI)

Background/Rationale

Enforcement Committee met prior to the Newport Beach Board Meeting.

Present: Paul Sanchez
Sandra Monterrubio
Patti Aguiar
Richard Johnson, DVM
Rebecca Bon

We discussed the proposed changes through regulations recommended by the Department of Consumer Affairs (DCA). The changes following failure of SB1111 to be enacted into law and became known as Consumer Protection Enforcement Initiative (CPEI). The Department encouraged the healing arts boards to pursue regulatory action to assist the boards with investigating and prosecuting complaints in a timely manner and to provide the boards with tools to improve the enforcement process and ensure patient safety. Most of the healing arts boards have already implemented proposed regulatory amendments.

1) Business and Professions Code:

1. **720.2(b) – Board delegation to Executive Officer regarding stipulated settlements to revoke or surrender license:** Permit the Board to delegate to the Executive Officer the authority to adopt a “stipulated settlement” if an action to revoke a license has been filed and the licensee agrees to surrender the license, without requiring the Board to vote to adopt the settlement.

Recommend: Amend 16 CCR 1403.0

Background/Rationale:

Existing law requires that the Board, itself, vote to adopt all stipulated settlements, agreements, proposed to be entered into by the Board’s Executive Officer. Government Code Section 11415.60 (c) provides for delegation of this function. Under existing law, the Executive officer has the authority to pursue administrative action against a licensee or registrant who has violated the law. Ultimately it is the Board that votes on all decisions, including proposed decisions rendered by an Administrative Law Judge (ALJ), and stipulated settlements. This proposal would delegate to the Boards Executive officer the authority to adopt settlement agreements

(stipulated decisions) for revocation, surrender, or interim suspension of a license or registration.

Authorizing the Board's Executive Officer to approve stipulated settlements resulting in revocation, surrender of a license or registration or interim suspension will allow the Board to focus on more pressing disciplinary matters and will shorten the timeline for Stipulated Surrender cases to take effect, thus adding to consumer protection by allowing the orders to become effective in a more timely manner. This would also reduce the time to resolution of many disciplinary cases consistent with CVMA's request letter at Sunset Hearing. Included in the language would be a requirement for Executive Officer to report all actions taken to the Board.

2. **720.10 –Revocation for sexual misconduct:** Require an Administrative Law Judge (ALJ) who has issued a decision finding that a licensee engaged in any act of sexual contact with a patient or who has committed or been convicted of sexual misconduct to order revocation which may not be stayed. **Recommend: Amend regulations/disciplinary guidelines.**

Would not apply to Veterinary Medicine.

3. **720.12 – Denial of application for registered sex offender:** Require the Board to deny a license to an applicant or revoke the license of a licensee who is registered as a sex offender. **Recommend: Amend the regulations pertaining to applicant requirements and disciplinary guidelines.**

Would not apply to Veterinary Medicine.

4. **712.14 – Confidentiality agreements regarding settlements:** Confidentiality agreements regarding settlements can cause delay and thwart a Board's effort to investigate possible cases of misconduct, thereby preventing the Board from performing its most basic function – protection of the public. **Recommend: Define in regulation that participating in confidentiality agreements regarding settlements is unprofessional conduct.**

Some Boards adopted a regulation prohibiting regulatory gag clauses but that is not needed now because AB2570 (Hill) passed in 2012. This bill would prohibit a licensee who is regulated by the DCA...or a person acting as an authorized agent of a licensee, from including or permitting to be included a provision in agreement to settle a civil dispute that prohibits the other party in that dispute from contacting, filing a complaint with, or cooperating with the department board, bureau, or

program, or that requires the other to withdraw a complaint from the department, board.....

Full text: Section 1 Section 143.5 Business and Profession Case.

5. **720.16 (d) and (f) – Failure to provide documents and 718(d) – Failure to comply with court order:** Require a licensee to comply with a request for medical records or a court order issued to enforcement of a subpoena for medical records. **Recommend: Define in regulation that failure to provide documents and noncompliance with a court order is unprofessional conduct.**

Background/Rationale:

Several of the proposals recommended to further define in regulation Unprofessional Conduct. Many of the Boards have completed proposed regulatory amendments to their Unprofessional Conduct sections (Dental, Behavioral Sciences, and Psychology) in an effort to improve enforcement processes and reduce the time to prosecute licensees. This would be consistent with California Veterinary Medical Association request, at Sunset Review, to investigate and act on cases in a timely manner.

Proposed Changes:

- a. Failure of a licensee to provide records requested by the Board within 15 days constitutes unprofessional conduct unless the licensee is unable to comply for good cause. “Good Cause” is specified to include physical inability to access the requested records in the time allowed due to an illness or travel.
- b. Failure of the licensee to provide information regarding the bringing of an indictment or the charge of a felony against the licensee to the Board within 30 days constitutes unprofessional conduct.
- c. Failure of licensee to provide information regarding the conviction of the licensee to the Board within 30 days constitutes unprofessional conduct. The conviction of a licensee includes any verdict of guilty, please of guilty, or no contest of any felony or misdemeanor.
- d. Failure of a licensee to provide information regarding disciplinary action taken by another professional licensing entity, an authority of the state or of another state, an agency of the federal government, or the United States military to the Board within 30 days constitutes unprofessional conduct.
- e. Performing or holding herself or himself out as able to perform professional services beyond his or her field or fields of competence as established by his or her education, training and/or experience.

6. **720.32 – Psychological or medical evaluation of applicant:** Authorize the Board to order an applicant for licensure to be examined by a physician or psychologist if it appears that the applicant may be unable to safely practice the licensed profession due to a physical or mental illness: authorize the Board to deny the application if the applicant refuses evidence of the applicant’s ability to safely practice. **Recommend: Amend regulations pertaining to applicant requirements that a psychological or medical evaluation may be required.**

Presented some concerns for Due Process of Applicant.

7. **726(a) & (b) – Sexual misconduct:** Currently defined in B&P Code 726. **Recommend: Define in regulation that sexual misconduct is unprofessional conduct.**

Would not apply to Veterinary Medicine.

8. **737 – Failure to provide information or cooperate in an investigation:** Make it unprofessional conduct for a licensee to fail to furnish information in a timely manner or cooperate in a disciplinary investigation. **Recommend: Define in regulation that failure to provide information or cooperate in an investigation is unprofessional conduct.**

See 5 above.

9. **802.1 – Failure to report an arrest, conviction, etc.:** Require a licensee to report to the Board any felony indictment or charge or any felony or misdemeanor conviction. **Recommend: Define in regulation that failure to report an arrest, conviction, etc. is unprofessional conduct.**

See 5 above.