

**Veterinary Medical Board**

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**MEMORANDUM**

DATE	July 3, 2014
TO	Veterinary Medical Board
FROM	Annemarie, Executive Officer DCA/Veterinary Medical Board
SUBJECT	CPEI Proposal

Background/Rationale

The VMB Enforcement Committee met in April 2013 and discussed the proposed changes to existing regulations as recommended by the Department of Consumer Affairs (DCA).

The nine proposed changes, known as Consumer Protection Enforcement Initiative (CPEI), were initially captured in a legislative vehicle SB 1111, which was ultimately defeated. 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. Several of the healing arts boards have already implemented some of the proposed regulatory amendments.

The Enforcement Committee discussed numbers 1, 4, 5, 6, 8, & 9 (all but 2, 3, & 7), and the recommendations it made at that time are captured below for your review and consideration:

- 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. **Committee Recommendation: Adopt language implementing this proposal.**

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. **Committee Recommendation:** Committee did not discuss, therefore has no recommendation.
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. **Committee Recommendation:** Committee did not discuss, therefore has no recommendation.
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. **Committee Recommendation: No necessity because already covered when codified in law (AB 2570 Stats 2012, now BPC § 143.5; Attached), therefore recommend do not implement.**
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. **Committee Recommendation: Did not recommend implementation because BPC § 4856 (attached) already requires licensee to provide records to the board.**

Proposed Changes: Some aspects are provided for in BPC Section 4856 (Attached)

Failure to report to the board within 30 days any of the following:

- (1) The bringing of an indictment or information charging a felony against the licensee.*
- (2) The arrest of the licensee.*
- (3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.*
- (4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.*

Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

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. **Committee Recommendation: Did not recommend implementation; legal counsel advised of concerns.**
7. **726(a) & (b) – Sexual misconduct:** Currently defined in B&P Code 726. **Committee Recommendation:** Committee did not discuss, therefore has no recommendation.
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. **Committee Recommendation: Did not recommend implementation because BPC § 4856 (attached) already mandates cooperation.**
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. **Committee Recommendation: Adopt language implementing this proposal.**

Action:

- Discuss and reach determination on these CPEI items # 1-9
- Direct staff to move forward with crafting proposed language for any approved items.

Attachments:

- BPC Sections 143.5 & 4856 and 726
- Gov. Code section 11415.60

Business and Professions Code 143.5.

(a) No licensee who is regulated by a board, bureau, or program within the Department of Consumer Affairs, nor an entity or person acting as an authorized agent of a licensee, shall include or permit to be included a provision in an agreement to settle a civil dispute, whether the agreement is made before or after the commencement of a civil action, that prohibits the other party in that dispute from contacting, filing a complaint with, or cooperating with the department, board, bureau, or program within the Department of Consumer Affairs that regulates the licensee or that requires the other party to withdraw a complaint from the department, board, bureau, or program within the Department of Consumer Affairs that regulates the licensee. A provision of that nature is void as against public policy, and any licensee who includes or permits to be included a provision of that nature in a settlement agreement is subject to disciplinary action by the board, bureau, or program.

(b) Any board, bureau, or program within the Department of Consumer Affairs that takes disciplinary action against a licensee or licensees based on a complaint or report that has also been the subject of a civil action and that has been settled for monetary damages providing for full and final satisfaction of the parties may not require its licensee or licensees to pay any additional sums to the benefit of any plaintiff in the civil action.

(c) As used in this section, “board” shall have the same meaning as defined in Section 22, and “licensee” means a person who has been granted a license, as that term is defined in Section 23.7.

(d) Notwithstanding any other law, upon granting a petition filed by a licensee or authorized agent of a licensee pursuant to Section 11340.6 of the Government Code, a board, bureau, or program within the Department of Consumer Affairs may, based upon evidence and legal authorities cited in the petition, adopt a regulation that does both of the following:

(1) Identifies a code section or jury instruction in a civil cause of action that has no relevance to the board’s, bureau’s, or program’s enforcement responsibilities such that an agreement to settle such a cause of action based on that code section or jury instruction otherwise prohibited under subdivision (a) will not impair the board’s, bureau’s, or program’s duty to protect the public.

(2) Exempts agreements to settle such a cause of action from the requirements of subdivision (a).

(e) This section shall not apply to a licensee subject to Section 2220.7.

SEC. 2.

(a) Nothing in Section 143.5 of the Business and Professions Code shall be construed as limiting the discretion of a board, bureau, or program to decline to grant a petition or adopt a regulation.

(b) Nothing in Section 143.5 of the Business and Professions Code shall be construed as prohibiting a licensee from including in an agreement to settle a civil dispute any provision that is otherwise not prohibited.

Business and Professions Code 4856.

(a) All records required by law to be kept by a veterinarian subject to this chapter, including, but not limited to, records pertaining to diagnosis and treatment of animals and records pertaining to drugs or devices for use on animals, shall be open to inspection by the board, or its authorized representatives, during an inspection as part of a regular inspection program by the board, or during an investigation initiated in response to a complaint that a licensee has violated any law or regulation that constitutes grounds for disciplinary action by the board. A copy of all those records shall be provided to the board immediately upon request.

(b) Equipment and drugs on the premises, or any other place, where veterinary medicine, veterinary dentistry, veterinary surgery, or the various branches thereof is being practiced, or otherwise in the possession of a veterinarian for purposes of that practice, shall be open to inspection by the board, or its authorized representatives, during an inspection as part of a regular inspection program by the board, or during an investigation initiated in response to a complaint that a licensee has violated any law or regulation that constitutes grounds for disciplinary action by the board.

(Amended by Stats. 1997, Ch. 642, Sec. 22. Effective January 1, 1998.)

Business and Professions Code 726

The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3.

This section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

(Amended by Stats. 1993, Ch. 1072, Sec. 1. Effective January 1, 1994.)

Government Code Section 11415.60

(a) An agency may formulate and issue a decision by settlement, pursuant to an agreement of the parties, without conducting an adjudicative proceeding. Subject to subdivision (c), the settlement may be on any terms the parties determine are appropriate. Notwithstanding any other provision of law, no evidence of an offer of compromise or settlement made in settlement negotiations is admissible in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose, and no evidence of conduct or statements made in settlement negotiations is admissible to prove liability for any loss or damage except to the extent provided in Section 1152 of the Evidence Code. Nothing in this subdivision makes inadmissible any public document created by a public agency.

(b) A settlement may be made before or after issuance of an agency pleading, except that in an adjudicative proceeding to determine whether an occupational license should be revoked,

suspended, limited, or conditioned, a settlement may not be made before issuance of the agency pleading. A settlement may be made before, during, or after the hearing.

(c) A settlement is subject to any necessary agency approval. An agency head may delegate the power to approve a settlement. The terms of a settlement may not be contrary to statute or regulation, except that the settlement may include sanctions the agency would otherwise lack power to impose.

(Amended by Stats. 1996, Ch. 390, Sec. 7. Effective August 19, 1996. Operative July 1, 1997, by Sec. 11 of Ch. 390.)