



SB 697 (Negrete-McLeod) - Enforcement Authority over Illegal, Unlicensed Activity April 2011

SB 697 is not a new concept, nor is it designed to single out any particular individual or group. Last year, Senator Negrete-McLeod authored a bill, SB 1111, meant to strengthen the enforcement powers of all licensing boards within the Department of Consumer Affairs. Although the bill died in committee, the Senator and the Senate Business, Professions and Economic Development Committee encouraged boards and bureaus within the Department of Consumer Affairs (DCA) to move forward to strengthen their enforcement authority wherever possible for violations involving both licensed and unlicensed persons.

Currently, illegal, unlicensed activity is a major topic of discussion because of the impact on consumers and their animals as well as the negative impact that underground activities have on California's economy. Over the past few years, the Veterinary Medical Board (Board) has seen an increase in unlicensed activity involving treatment of animals in the areas of dentistry, chiropractic, physical therapy, etc. It is difficult for the Board to prosecute illegal unlicensed activity cases because of the low criminal priority assigned to cases involving animals. SB 697 strengthens the Board enforcement authority over persons working on animals illegally so it can more effectively protect consumers against unlicensed persons who may harm their animals.

In addition to SB 697, the Board is moving forward with amendments to its Disciplinary Guidelines to incorporate as much from SB 1111 as possible under existing law while reviewing its regulations to eliminate unnecessary regulations, strengthen its authority over licensees and clarify the practice of veterinary medicine in existing law. One part of the discussion at the Multidisciplinary Committee's (MDC) meeting on March 16, 2011, was to recommend including the word "scaler" in Section 2037 based on the Judge's ruling in the 2004 precedent decision citation case as a part of the overall update to the minimum standards of practice in the California Code of Regulations.

Apparently there is some misinformation regarding SB 697 and the proposed regulatory amendments and the Board has been receiving a large number of emails and letters from people who are under the misconception that the use of a scaler is currently legal and that SB 697 is an attempt to make it illegal. That is not true.

Main Points

- 1) The use of a scaler by an unlicensed or unregistered person not under supervision of a California licensed veterinarian has been illegal since May 1990 when "Section 2037 Dental Operation, Defined", became effective. The law was tested in a court of law in 2004 in a citation appeal case that went to an administrative hearing before an Administrative Law Judge (ALJ). Although the citation was ultimately dismissed, the ALJ affirmed in detail that use of a scaler was clearly the practice of veterinary medicine and the case was later determined to be a precedent case.
- 2) The use of a scaler is the practice of veterinary medicine; however, the use of a scaler by an unlicensed person is not illegal **IF** it is done under the supervision of a California licensed veterinarian.
- 3) Changing the law to strengthen the Board enforcement authority over illegal activity does not put honest, legal businesses in jeopardy. SB 697 is consistent with the position taken by Senator Negrete-McLeod last year to implement laws that strengthen a licensing board's authority to take action against illegal activity whether by a licensee or unlicensed person.
- 4) The Board does not have the authority to "shut down" a person engaged in lawful activities or lawful businesses. If what the person is doing is legal, they are not at risk. Even those who are engaging in unlawful activities are not "shut down" without being provided due process to the person accused of wrong doing. Anyone accused of wrong doing always has the opportunity to respond and establish the legality of their business.