

**TITLE 16 VETERINARY MEDICAL BOARD  
DEPARTMENT OF CONSUMER AFFAIRS**

**ADDENDUM TO FINAL STATEMENT OF REASONS**

**Hearing Date:** No hearing has been scheduled for the proposed action.

**Subject Matter of Proposed Regulations:** Criminal Conviction Substantial Relationship and Rehabilitation Criteria

**Sections Affected:** California Code of Regulations (CCR), Title 16, Division 20, Article 5, Sections 2040 and 2041.

**Updated Information**

On November 20, 2019, the rulemaking file was withdrawn pursuant to Government Code section 11349.3, subdivision (c). As the regulatory proposal was based on the Department of Consumer Affairs (DCA) template being used by nearly 40 DCA boards, DCA worked with OAL to resolve the substantive concerns with the regulatory proposal.

Following withdrawal of the rulemaking file, the Board modified the regulatory proposal as follows:

1. CCR, title 16, section 2040:
  - a. Subsection (a):
    - i. Add reference to BPC section 4883, subdivision (n), which authorizes the Board to deny, revoke, or suspend a license or registration for disciplinary action taken by any public agency in any state or territory for any act substantially related to the practice of veterinary medicine or the practice of a veterinary technician.
    - ii. Add new definition of “license” to make clear the proposal applies to licenses, registrations, and permits issued by the Board. This provision conforms to BPC section 23.7, which defines “license” to mean “license, certificate, registration, or other means to engage in a business or profession regulated by [the BPC].” For professions regulated under the Veterinary Medicine Practice Act (Practice Act), the Board issues veterinarian licenses, veterinary technician registrations, and veterinary assistant controlled substance permits.
  - b. Subsection (b): Insert “all of” before “the following criteria” to reflect the statutory requirement in BPC section 481, subdivision (b).

- c. Subsection (b)(3): Remove and replace “a person holding the license” with “the profession in which the applicant seeks licensure or in which the licensee is licensed” to clarify the nature and duties of the profession to be considered when determining the substantial relationship and to align with the language in new BPC section 481, subdivision (b)(3).
  - d. Subsection (c): Make technical revisions to conform the term “subsection” and the use of singular nouns throughout the section.
  - e. Authority and Reference: Make minor revisions to delete inapplicable authority sections and add statutes relevant to substantial relationship criteria.
2. CCR, title 16, section 2041:
- a. Subsection (a): Add new definition of “license” applicable to subsections (c) and (d) to make clear the proposal applies to licenses, registrations, and permits issued by the Board. This provision conforms to BPC section 23.7, which defines “license” to mean “license, certificate, registration, or other means to engage in a business or profession regulated by [the BPC].” For professions regulated under the Practice Act, the Board issues veterinarian licenses, veterinary technician registrations, and veterinary assistant controlled substance permits.
  - b. Subsection (b): Add new definition of “licensee” applicable to subsections (c) and (d) to make clear the proposal applies to Board licensees, registrants, and permit holders of the Board. This provision conforms to BPC section 23.8, which defines “licensee” to mean “any person authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by [the BPC].” Professionals regulated under the Practice Act are veterinarian licensees, veterinary technician registrants, and veterinary assistant controlled substance permit holders.
  - c. Subsection (c): Add a new heading “Denial of a license” to clarify this subsection refers to criteria for rehabilitation applicable to license applicants.
  - d. Paragraph (c)(1): Revise subsection numbering, make technical revisions, and strike “and is presently eligible for a license.” The meaning of the term “presently” was unclear to the regulated public and the phrase was determined to be unnecessary given the other clarifying modifications to the proposal.
  - e. Subparagraphs (c)(1)(A) through (E): Make technical revisions to reflect the new subsection numbering and lettering scheme.
  - f. Paragraph (c)(2): Revise subsection numbering and remove and restate the subsection to clarify the circumstances under which the Board will apply rehabilitation criteria to applicants who: have not completed a criminal sentence

without a violation; have a criminal conviction and did not make a showing of rehabilitation under paragraph (c)(1); were denied based on professional misconduct (as that term is used under new BPC section 480); or were denied based on one or more grounds specified under the Practice Act applicable to veterinarian licenses (BPC section 4883), veterinary technician registrations (BPC sections 4842, 4845.5, and 4883), and veterinary assistant controlled substance permits (VACSPs) (BPC sections 4836.2). These clarifications are necessary to inform the public, applicants, and Board staff that rehabilitation criteria will be considered for all application denials, regardless of whether the grounds for denial stem from BPC section 480. The clarifications promote equity and fairness to all applicants in keeping with the legislative intent of Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), which established the requirements of this proposal.

- g. Subparagraphs (c)(2)(A) through (C): Add “professional misconduct” for consistent use of the term in CCR section 2040 and to differentiate “professional misconduct” as a ground for denial provided under new BPC section 480, subsection (a)(2), from other “acts” that are grounds for denial provided under BPC sections 4836.2, 4842, 4845.5, and 4883.
- h. Subparagraphs (c)(2)(A) through (F): Make technical revisions to reflect the new subsection numbering and lettering scheme.
- i. Subparagraph (c)(2)(B): Strike “under Section 480 of the code” as new paragraph (c)(2) is applicable to all statutory grounds for denial, as specified, not just grounds under BPC section 480.
- j. Subsection (d): Add a new heading “Suspension or revocation of a license” to clarify this subsection refers to criteria for rehabilitation applicable to issued licenses.
- k. Paragraph (d)(1): Revise subsection numbering and clarify the conditions for applying rehabilitation criteria for suspension or revocation of a license for criminal convictions pursuant to BPC section 490 and strike “and is presently eligible for a license.” The meaning of the term “presently” was unclear to the regulated public and the phrase was determined to be unnecessary given the other clarifying modifications to the proposal.
- l. Subparagraphs (d)(1)(A) through (E): Make technical revisions to reflect the new subsection numbering and lettering scheme.
- m. Paragraph (d)(2): Revise subsection numbering and remove and restate the subsection to clarify the circumstances under which the Board will apply rehabilitation criteria to licensees who: have not completed a criminal sentence without a violation; have a criminal conviction and did not make a showing of rehabilitation under paragraph (d)(1); may be suspended or revoked based on a

disciplinary action as described in BPC section 141; or may be suspended or revoked based on one or more grounds specified under the Practice Act applicable to veterinarian licenses (BPC section 4883), veterinary technician registrations (BPC sections 4837, 4845.5, and 4883), and VACSPs (BPC section 4836.2). These clarifications are necessary to inform the public, licensees, and Board staff that rehabilitation criteria will be considered for all license suspensions and revocations, regardless of whether the grounds for discipline stem from BPC section 490. The clarifications promote equity and fairness to all licensees in keeping with the legislative intent of AB 2138.

- n. Subparagraphs (d)(2)(A) and (C): Add “disciplinary action(s)” for consistent use of the term disciplinary action under BPC section 141 provided in subsection (d)(2) and to differentiate “disciplinary action” as a ground for revocation or suspension provided under BPC section 141, from other “acts” that are grounds for revocation or suspension provided under BPC sections 4836.2, 4837, 4845.5, or 4883.
- o. Subparagraphs (d)(2)(A) through (G): Make technical revisions to reflect the new subsection numbering and lettering scheme.
- p. Subsection (e): Revise subsection numbering and correct the cross-reference to reinstatement petition evaluations applicable under the Practice Act (BPC section 4887), and clarify consideration of these criteria for petitions filed for reinstatement of a license or registration pursuant to the language used in BPC section 4887. The proposal maintains the existing requirement to consider rehabilitation criteria applicable to license denials when the Board considers a former licensee’s or registrant’s petition for reinstatement.
- q. Authority and Reference: Minor technical revisions to delete inapplicable authority section and add statutes relevant to rehabilitation criteria.

On January 30, 2020, the Board reviewed and approved the modifications to the proposed regulatory text for resubmission to OAL. At that time, concern was raised by a member of the public with regard to the proposed definition of “a substantially related crime, professional misconduct, or act” under CCR section 2040, subsection (c). More specifically, there was concern that the text “but is not limited to” (a term used in the existing regulation) was too broad and could be misused to include crimes, misconduct, and acts unrelated to the practice of veterinary medicine. Stakeholders requested the language be revised by striking “but is not limited to” to provide more certainty as to limits on the Board’s consideration of whether there is a substantial relationship of a crime, professional misconduct, or act to the practice of veterinary medicine. To resolve these issues, the Board approved the modifications to the text, as presented, and additionally approved striking “but is not limited to” from CCR section 2040, subsection (c).

On February 10, 2020, the Board issued a 15-day notice of availability of modified text, and the comment period closed on February 25, 2020.

**Summary of Comments Received During the 15-Day Notice Period**

No comments were received during the 15-day period.

**Economic Impact:**

The Board receives approximately 3,220 initial license applications (750 veterinarian, 970 Registered Veterinary Technician (RVT), and 1,500 VACSPs per year and historically denies a minimal number (range from 0 to 4) of initial license applications per year.

The Board anticipates AB 2138 to impact primarily VACSP applicants and not veterinarian or RVT applicants because the VACSP population is entry-level and has a significantly greater number of applicants with a criminal history. Because veterinarians and RVTs have greater educational and professional experience requirements to licensure and because these applicants have significantly fewer criminal convictions than VACSP applicants, the Board does not anticipate an expansion of veterinarian licensees and RVT registrants resulting from the proposed regulations.

Under the proposed regulations, the Board does not anticipate an increase in the number of veterinarian licenses and/or RVT registrations issued per year, and estimates no more than one additional VACSP applicant will be issued an initial permit per year at a cost of \$50 per year as follows:

| <b>Registration and License Type</b> | <b>Applicants Per Year</b> | <b>Fee Costs Per Year</b> |
|--------------------------------------|----------------------------|---------------------------|
| VACSP Initial                        | 1                          | \$50                      |
| <b>Total Initial Costs:</b>          |                            | \$50                      |

Licensees will also be required to pay ongoing biennial renewal fees as follows:

| <b>Registration and License Type</b> | <b>Applicants Per Year</b> | <b>Fee Costs Per Applicaton</b> |
|--------------------------------------|----------------------------|---------------------------------|
| VACSP Biennial Renewal               | Various                    | \$50                            |
| <b>Total Renewal Costs:</b>          |                            | \$50                            |

The total economic impact is estimated to be up to approximately \$250 per year and \$1,500 over a ten-year period as follows:

| AB 2138 Impact - Estimates Number of Additional Registrants and Licensees Per Year |                     |                    |               |             |              |              |              |              |              |              |              |              |                |         |
|--|---------------------|--------------------|---------------|-------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|----------------|---------|
| Registration and License Type  | Applicants Per Year | Fee Costs Per Year | Years Ongoing |             |              |              |              |              |              |              |              |              | Total          |         |
| VACSP  |                     |                    | 1             | 2           | 3            | 4            | 5            | 6            | 7            | 8            | 9            | 10           | Total          |         |
| VACSP Initial License  | 1                   | \$50               | \$50          | \$50        | \$50         | \$50         | \$50         | \$50         | \$50         | \$50         | \$50         | \$50         | \$50           | \$500   |
| VACSP Biennial License Renewal   | Various             | \$50               | -             | -           | \$50         | \$50         | \$100        | \$100        | \$150        | \$150        | \$200        | \$200        | \$200          | \$1,000 |
| <b>Total Costs:</b>  |                     |                    | <b>\$50</b>   | <b>\$50</b> | <b>\$100</b> | <b>\$100</b> | <b>\$150</b> | <b>\$150</b> | <b>\$200</b> | <b>\$200</b> | <b>\$250</b> | <b>\$250</b> | <b>\$1,500</b> |         |

**Fiscal Impact:**

The Board anticipates approximately one additional VACSP applicant will be provided licensure per year as a result of the proposed regulations. The Board indicates a Program Technician II will perform any licensing workload. Initial registration is anticipated to take approximately 30 minutes per application at a cost of \$43 per application and renewal registration approximately 15 minutes at a cost of approximately \$48 per application (licensing - \$22 plus enforcement-related - \$26).

Initial registration and renewal workload is estimated as follows:

| AB 2138 Impact - Estimates Number of Additional Registrants and Licensees Per Year |                     |               |             |             |             |              |              |              |              |              |              |                |  |
|--|---------------------|---------------|-------------|-------------|-------------|--------------|--------------|--------------|--------------|--------------|--------------|----------------|--|
| Registration and License Type  | Applicants Per Year | Years Ongoing |             |             |             |              |              |              |              |              |              | Total          |  |
| VACSP  |                     | 1             | 2           | 3           | 4           | 5            | 6            | 7            | 8            | 9            | 10           | Total          |  |
| VACSP Initial License  | 1                   | 1             | 1           | 1           | 1           | 1            | 1            | 1            | 1            | 1            | 1            | 10             |  |
| Licensing Workload (30 minutes) - Program Technician II*                           |                     | \$43          | \$43        | \$43        | \$43        | \$43         | \$43         | \$43         | \$43         | \$43         | \$43         | \$430          |  |
| <b>Total Initial Costs:</b>  |                     | <b>\$43</b>   | <b>\$43</b> | <b>\$43</b> | <b>\$43</b> | <b>\$43</b>  | <b>\$43</b>  | <b>\$43</b>  | <b>\$43</b>  | <b>\$43</b>  | <b>\$43</b>  | <b>\$430</b>   |  |
| VACSP Biennial License Renewal   |                     | -             | -           | 1           | 1           | 2            | 2            | 3            | 3            | 4            | 4            | 20             |  |
| Licensing Workload (15 minutes) - Program Technician II*                           | Various             | -             | -           | \$22        | \$22        | \$43         | \$43         | \$65         | \$65         | \$86         | \$86         | \$430          |  |
| Enforcement-related costs per licensee   | \$26                | -             | -           | \$26        | \$26        | \$52         | \$52         | \$78         | \$78         | \$104        | \$104        | \$520          |  |
| <b>Total Renewal Costs:</b>  |                     | <b>-</b>      | <b>-</b>    | <b>\$48</b> | <b>\$48</b> | <b>\$95</b>  | <b>\$95</b>  | <b>\$143</b> | <b>\$143</b> | <b>\$190</b> | <b>\$190</b> | <b>\$950</b>   |  |
| <b>Total Initial and Renewal Costs:</b>  |                     | <b>\$43</b>   | <b>\$43</b> | <b>\$91</b> | <b>\$91</b> | <b>\$138</b> | <b>\$138</b> | <b>\$186</b> | <b>\$186</b> | <b>\$233</b> | <b>\$233</b> | <b>\$1,380</b> |  |

\*Program Technician II (approximately \$86 per hour - includes DCA distributed costs)  
 Enforcement Costs (\$1,066,000)/Licensee Population (41,618) = \$26 per licensee

Any workload and costs to process the initial and renewal applications will be absorbed within existing resources. The Board further anticipates any future enforcement-related workload and costs to be minor and absorbable within existing resources.

The Board estimates annually initial and renewal license fee revenues of up to approximately \$250 per year and \$1,500 over a ten-year period, as a result of the proposed regulations.

**Nonduplication Statement - 1 CCR § 12**

The proposed regulations partially duplicate or overlap a state or federal statute or regulation which is cited as “authority” and “reference” for the proposed regulations and

the duplication or overlap is necessary to satisfy the “clarity” standard of Government Code section 11349.1, subdivision (a)(3).