

**Title 16. Professional and Vocational Regulations  
Division 20. Veterinary Medical Board  
Article 4**

**Initial Statement of Reasons**

**Hearing Date:** 9 a.m. on September 10, 2015, at the offices of the Veterinary Medical Board located at 1747 N. Market Blvd., Sacramento, CA 95834.

**Subject Matter of Proposed Regulations:** Animal Rehabilitation.

**Sections Affected:** Title 16, Division 20, Article 4, California Code of Regulations (CCR) Section 2038.5.

**General Purpose of the Regulatory Proposal:**

The Veterinary Medical Board (the "Board") is proposing the following regulatory action to adopt new Section 2038.5 in order to better protect animal patients and California consumers. The Board is concerned that, currently, there are a large number of unlicensed people engaging in animal rehabilitation ("AR"), which is defined in 2038.5(a) of the proposed regulation. The practice of AR is a subset of the practice of veterinary medicine, and as such, only veterinarians may provide AR unless the proposed regulations provide for a supervised relationship where a licensed physical therapist ("PT") or registered veterinary technician ("RVT") may perform AR under the direct supervision of a veterinarian. This new section defines AR, clarifies who may practice AR, states that the practice of AR contrary to this section constitutes the unlicensed practice of veterinary medicine, or aiding and abetting the unlicensed practice of veterinary medicine, and sets forth what happens if the veterinarian, PT, or RVT terminates a supervisory arrangement in which the PT or RVT was practicing AR.

**Statutory Authority for Rulemaking:**

Business and Professions Code ("BPC") sections 4808, 4825, 4826, 4836 and 4883 establish that the Board shall regulate the practice of veterinary medicine as well as determine appropriate health care tasks for registered veterinary technicians.

**Background and Introduction:**

The California Physical Therapy Association and Board recognize that the practice of AR is a burgeoning practice, often engaged in by unlicensed individuals doing various practices, including those set forth in proposed Section 2038.5(a), as described further herein. The Board has determined that AR is the practice of veterinary medicine. As such, the Board has done extensive research on AR and its implications for the practice of veterinary medicine and protection of the public.

The Board delegated the issue to its Multidisciplinary Advisory Committee (“MDC”) in October 2010 to research AR issues and report back to the Board their findings and recommendations. The MDC, at its November 2010 meeting, agreed to work in cooperation with the California Veterinary Medical Association to establish a Task Force to discuss and recommend ways to address AR within the Veterinary Medicine Practice Act.

The Task Force reported its findings and recommendations to the MDC in February 2011 and the MDC recommended regulatory language to the Board in January 2013. The Board made changes to the language on and before their meeting in January 2015, as a result of further research and input from the public. After some subsequent fine tuning of the language, the Board approved the proposed AR language at its April 28, 2015 meeting.

**Purpose, Anticipated Benefit, and Rationale for the New Regulation:**

**Adopt § 2038.5(a):**

Purpose: This proposed language defines “animal rehabilitation”. It is defined as “the use of the physical, chemical, and other properties of thermal, magnetic, biofeedback technology, hydrotherapy (such as underwater treadmills), electricity, sound, therapeutic massage, manual therapy, and active, passive, and resistant exercise for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of animals. AR includes evaluation, treatment, instruction, and consultative services.” In this language, an attempt has been made to be as inclusive as possible of therapies that constitute AR, and therefore constitute the practice of veterinary medicine.

Anticipated Benefit: Specifying what constitutes AR serves to notify both the public and practitioners that the practices listed in this subsection are regulated by this section and practitioners of AR must follow the rules set forth in this section.

Rationale: By capturing the many therapies and practices that constitute AR, this subsection clarifies what AR includes and makes clear what the new section is regulating. By spelling out what constitutes AR, the subsection puts unlicensed practitioners of AR on notice that they are subject to Board regulation.

**Adopt § 2038.5(b):**

Purpose: This subsection states that AR may be performed only by a veterinarian or a PT or RVT working under the direct supervision of a veterinarian. This limits the types of professionals that may engage in AR under supervision, for the safety of the public and their animals.

This subsection, in its subsection (1), sets forth requirements for veterinarians to remain responsible for the clinical judgment of a patient where AR is advised or recommended. A veterinarian must have examined the animal patient and have sufficient knowledge to make a

diagnosis of medical condition of the animal, assumed responsibility for making clinical judgments regarding the health of the animal and the need for medical treatment, including a determination that AR will not be harmful to the animal patient, discussed with the owner of the animal or the owner's authorized representative a course of treatment, and is readily available or has made arrangements for follow-up evaluation in the event of adverse reactions or failure of the treatment regimen. Thus, this subsection sets forth the important pre- and post-conditions that a veterinarian must follow in order for the veterinarian to practice AR safely and effectively. Previously, veterinarians had no guidance as to protocols they should follow when practicing AR. This subsection also specifies that it is the veterinarian's responsibility to ensure that complete and accurate records of AR treatments are maintained in the patient's veterinary medical record.

This subsection, in its subsection (2), states that a PT or RVT may practice AR only under the direct supervision of a veterinarian. It goes on to set forth a protocol that defines what must happen when PTs and RVTs are working under such direct supervision:

--The veterinarian must comply with the provisions of subsection (b)(1) above prior to authorizing a PT or RVT to complete an initial evaluation of and/or perform treatment on the animal.

--The supervising veterinarian shall be physically present wherever the AR is being performed.

--After the PT or RVT has completed an initial evaluation of and/or treatment upon the animal patient, the PT or RVT shall consult with the supervising veterinarian to confirm that the AR care is appropriate, and to coordinate complementary treatment, to assure proper patient care.

These provisions create a helpful protocol that ensures patient safety by requiring a veterinarian, the professional with the greatest knowledge of veterinary medicine, to supervise a PT or RVT who is practicing AR. It specifies what "direct supervision" consists of, so that veterinarians, PTs and RVTs know what they need to do in order to lawfully practice AR.

This subsection also states the consequences for failure to observe the above-mentioned protocol. Failure to conform to this section by a veterinarian shall be deemed unprofessional conduct or aiding and abetting the unlicensed practice of veterinary medicine, while failure to conform to the provisions of this section by a PT or RVT shall be deemed the unlicensed practice of veterinary medicine.

Anticipated Benefit: This subsection enhances public safety by limiting the professionals that may engage in animal rehabilitation to only those who are qualified to do so. PTs and RVTs are allowed to perform animal rehabilitation, in recognition of their respective skills, but since animal rehabilitation is the practice of veterinary medicine (the exclusive unsupervised practice area of veterinarians), PTs and RVTs must have direct supervision by veterinarians in order to practice animal rehabilitation. This protects the public by ensuring that only persons or teams of persons with the necessary skill sets are able to practice animal rehabilitation. It is crucial that a licensed veterinarian is physically present at all AR sessions in

case an animal has an adverse reaction to the AR or proves hard to control. Currently, there are many unlicensed and unauthorized individuals and groups practicing AR. This poses a grave danger to the public and their animals, as there is no oversight of this activity and therefore no check on the quality of the services offered. An animal could be injured or killed by an unlicensed AR practitioner, and the owner would have little recourse, while appropriate licensed professionals could be reported to their respective boards for substandard AR care under the proposed regulations. In addition, stating that the veterinarian must ensure AR treatments are captured in the medical record helps provide for follow-up care and can be used as written evidence that the treatment was provided to the animal patient. Finally, stating the consequences of not following this section will provide a deterrent to those considering or already engaging in unlicensed, unauthorized AR treatments.

Rationale: The proposed language specifies who may perform AR and under what supervision parameters it may be performed. The veterinarian has the ultimate expertise and authority under the Veterinary Medicine Practice Act to determine whether the animal would benefit from AR. A supervising veterinarian also ensures that delegated treatments are captured in the medical record in order to provide for the follow-up of the delegated treatment and so that there is written evidence that the delegated treatment was to be provided to the animal patient.

#### **Adopt § 2038.5(c):**

Purpose: The proposed language requires the cessation of AR when the supervising veterinarian, PT and/or RVT terminates their supervisory relationship.

Anticipated Benefit: The proposed language will safeguard animals from any non-supervised treatment that could potentially cause harm to the animal patient.

Rationale: This proposed language supports subsection 2038.5(b), in that it makes clear that a supervisory relationship must be present at all times when a PT or RVT is performing AR on an animal patient. If the supervising veterinarian ceases to supervise, the PT or RVT must stop practicing AR.

#### **Underlying Data**

- February 2011 California Veterinary Medical Association Task Force Report
- June 2012 Veterinary Medical Board Multidisciplinary Advisory Committee Task Force Report
- Minutes of the Meeting of the Veterinary Medical Board dated January 20, 2015
- Minutes of the Meeting of the Veterinary Medical Board dated April 28, 2015

#### **Fiscal Impact Analysis in General**

The proposed adoption of § 2038.5 is an efficient and effective means of reducing the number of dangerous unlicensed practitioners who practice AR with no supervision, in the least

burdensome manner. The proposed adoption seeks to limit those who practice AR to veterinarians, PTs and RVTs. There are currently many practitioners of AR who are not any of these licensed professionals. These practitioners may be subject to imposed sanctions when the proposal is adopted. However, the Board considers these unlicensed, unauthorized practitioners to be a danger to the health and welfare of California's animals, so the potential impact of the regulation is justified. To the Board's knowledge, there is no vehicle that would as effectively and efficiently provide deterrence against the unauthorized practice of AR.

### **Economic Impact Assessment**

It is predicted that this regulatory proposal will have the following effects:

- It may create and eliminate jobs in the State of California, because unlicensed/unauthorized practitioners of AR will not be able to continue, while on the other hand the regulatory change may give rise to increased demand for AR work done in compliance with the regulation, leading to the creation of jobs.
- It may create new business and may eliminate existing businesses in the State of California for the reasons described in the previous paragraph.
- It may affect the expansion of businesses currently doing within the State of California. Unlicensed/unauthorized practitioners of AR will not be able to continue, curtailing any expansion of their businesses. Meanwhile, the regulatory change may give rise to increased demand for AR work done in compliance with the regulation, leading to the expansion of businesses featuring licensed AR practitioners operating pursuant to the proposed regulation.
- This regulatory proposal benefits the health and welfare of California residents and their pets by ensuring that only persons or teams of persons with the necessary skill sets are able to practice AR. Currently, there are many unlicensed and unauthorized individuals and groups practicing AR. This poses a danger to California residents and their pets, as a minimum standard of care cannot be established without regulatory oversight. The regulatory proposal attempts to lessen this danger.
- It will make the practice of AR safer for its workers, especially PTs. This is because a PT, who may not be familiar with dealing with animals, will benefit from the oversight of a veterinarian, who has more knowledge of how to respond to and mitigate an adverse reaction to the AR treatment or an unanticipated response by a volatile animal.
- It will not have any impact on the State's environment. The regulatory proposal deals with animal rehabilitation, which would not have any bearing on the quality of the State's air, water, or other environment.

### **Business Impact**

The Board has made the initial determination that the adoption of Section 2038.5 may have a significant statewide adverse and beneficial impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the prediction that many currently unlicensed/unauthorized

practitioners of AR may be subject to imposed sanctions unless their current business model is adapted to the new regulations, while licensed veterinarians, PTs and RVTs may see demand rise for their AR services, which should create jobs and businesses.

### **Requirements for Specific Technologies or Equipment**

This regulation does not mandate the use of specific technologies or equipment.

### **Consideration of Alternatives**

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the regulation has been proposed. No reasonable alternative which was considered would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost-effective to affected private persons, or would be equally effective in implementing the statutory policy or other provision of law.

The alternative to adoption of Section 2038.5, not restricting the practice of AR to veterinarians and PTs/RVTs under the direct supervision of a veterinarian, is dangerous and unacceptable. Because many practitioners of AR are currently wholly unsupervised, pet owners and their animals are at risk of being afforded services by incompetent and negligent practitioners. AR treatments are potentially harmful if they are performed without the expertise of a veterinarian to directly oversee the welfare of the animal patient, so it is important to have regulatory oversight of the people who provide these treatments.