

**TITLE 16  
VETERINARY MEDICAL BOARD**

**NOTICE OF PROPOSED REGULATORY ACTION CONCERNING**

**Animal Rehabilitation, § 2038.5  
California Code of Regulations**

**NOTICE IS HEREBY GIVEN** that the Veterinary Medical Board (hereafter, “Board”) is proposing to take the action described in the Informative Digest. The Board has scheduled a public hearing on the proposed regulation on September 10, 2015 at 9am at the office of the Board, located at 1747 N. Market Blvd., Suite 230, Sacramento, California, 95834. At the hearing, any interested person may present statements or arguments orally or in writing relevant to the action proposed.

**COMMENT PERIOD**

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under “Contact Person” in this Notice, must be **received by the Board at its office no later than 5:00 p.m. on September 10, 2015**, or must be received by the Board at any hearing.

**AVAILABILITY OF MODIFICATIONS**

The Board, upon its own motion or at the instance of any requested party, may adopt the proposals substantially as described herein, or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person, and will be mailed to those persons who submit written or oral testimony related to this proposal, or who have requested notification of any changes to the proposal.

**AUTHORITY AND REFERENCE CITATIONS**

Pursuant to the authority vested by §§ 4808 and 4836 of the Business and Professions Code (the “Code”), and to implement, interpret, or make specific §§ 4825, 4826, and 4883 of said Code, the Board is considering adopting a new § 2038.5, Article 4 of Division 20 of Title 16 of the California Code of Regulations as follows:

## **INFORMATIVE DIGEST**

The Board is proposing the following new regulation:

--Adopt Section 2038.5 of Article 4, Division 20, Title 16, California Code of Regulations, as follows:

Defines “animal rehabilitation” and sets parameters for who can practice and under what circumstances they can practice animal rehabilitation (“AR”), as well as setting forth consequences for not complying with this section.

Specifically, the addition of § 2038.5 has the following effects:

- New § 2038.5(a): defines “animal rehabilitation”.
- New § 2038.5(b): specifies who and under what circumstances a person can practice AR. In particular, the practitioner must either be a veterinarian; or a licensed physical therapist (“PT”) or registered veterinary technician (“RVT”) working under the direct supervision of a veterinarian. Failure to conform to § 2038.5 by a veterinarian shall be deemed unprofessional conduct or aiding and abetting the unlicensed practice of veterinary medicine; failure to conform to this section by a PT or RVT shall be deemed the unlicensed practice of veterinary medicine.
- New § 2038.5(c): specifies that if the supervising veterinarian, PT, or RVT terminates the supervisory relationship, the PT or RVT shall immediately cease AR treatment.

### **Policy Statement Overview – Objectives of Regulation**

The policy behind the proposed regulatory addition is consistent with the Board’s mission of protecting the public and their animals. To that end, the proposed regulation provides greater clarity as to what AR is and the fact that AR is the practice of veterinary medicine; who can perform AR treatments and under what circumstances; and what happens if a required supervisory relationship is terminated. This regulation also vests responsibility with all parties involved in AR by specifying that it is either unprofessional conduct/aiding and abetting the unlicensed practice of veterinary medicine (in the case of veterinarians) or the unlicensed practice of veterinary medicine (in the case of PTs and RVTs) to violate this section. Ultimately, the main objective of this regulation is to eliminate the unlicensed and/or unauthorized

practice of AR in California, which poses a threat to animals treated without the expertise of a supervising veterinarian.

### **Benefits of Regulatory Action**

In general, this regulatory action will strengthen the Board's ability to enforce its laws and regulations and protect consumers from unlicensed and/or unauthorized activity. The proposed regulation would make clear the responsibilities of licensed veterinarians, PTs and RVTs when practicing AR, and spell out the consequences of unlicensed activity or aiding and abetting it. The public will benefit from the elimination of unlicensed and unauthorized practitioners of AR, as these practitioners are currently operating without regulation or supervision and may be unknowingly violating the Veterinary Medicine Practice Act. This regulation exists for the protection of California consumers and their animal patients, as well as to inform Board licensees of their rights and responsibilities within the scope of the practice of AR.

### **Consistency and Compatibility with Existing State Regulations**

After reviewing existing state regulations relating to or affecting this regulatory proposal, the Board has determined that this proposed regulatory action is neither inconsistent nor incompatible with existing state regulations.

### **FISCAL IMPACT ESTIMATES**

#### **Cost to Local Agencies or School Districts Requiring Reimbursement**

The Board has determined that this regulatory proposal will create no cost to any local agencies or school districts requiring reimbursement pursuant to Government Code Section 17500 *et seq.*

#### **Cost or Savings to State Agencies**

The Board may incur some expenses from prosecuting unlicensed activity and the practice of AR by licensees that does not conform to the standards of the regulation. Some individuals may request an administrative hearing with the Office of Administrative Hearings, and, if so, there would be costs associated with the Attorney General providing legal services before and during hearings. It is unknown at this time how much the Board would incur in such costs.

However, the Board already enforces the unlicensed practice of veterinary medicine, and since AR is defined as a veterinary practice, unlicensed activity cases are already being addressed. The Physical Therapy Board of California may also incur an unknown amount of costs in defending or prosecuting licensees who violate the proposed regulation. No other State agencies will incur costs or savings as a result of this regulatory proposal.

### **Local Mandate**

None.

### **Non-Discretionary Cost or Savings Imposed Upon Local Agencies**

The Board has determined that this regulatory proposal will not create any non-discretionary costs or savings imposed on local agencies.

### **Cost or Savings in Federal Funding to the State**

The Board has determined that there will be no significant costs or savings in federal funding to the state as a result of this regulatory proposal.

### **Cost Impact on Affected Private Persons**

Veterinarians, PTs, RVTs, or unlicensed persons who violate the regulation would be affected by the cease and desist actions, the fines assessed, or the discipline against the licenses that are the consequences of violating the regulation. The Board is not aware of any cost impact that any other representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **BUSINESS IMPACT**

The Board has made the initial determination that the proposed regulatory adoption will have no significant statewide economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Businesses that are currently engaging in the unlicensed and/or unauthorized practice of AR may have to adjust their business models to conform with the new regulations, but any statewide adverse effect is expected to be mitigated by a statewide beneficial impact created by this regulation because

there may be an increased demand for veterinarians, PTs and RVTs who can do AR. This may result in the creation of businesses that specialize in AR done in compliance with the proposed regulation.

### **Housing Costs**

The proposed action will have no effect on housing costs.

### **EFFECT ON SMALL BUSINESS**

The Board has determined that the proposed regulation may affect small businesses. The small businesses that are currently engaging in the unlicensed and/or unauthorized practice of AR would not be able to continue without violating the law. It may affect their businesses or business model if non-veterinarians are providing AR without supervision by a licensed veterinarian. However, the Board considers these business practices to be potentially harmful to consumers, so the Board is justified in forcing these businesses to come into compliance with the proposed regulation. In addition, there may be an increased demand for veterinarians, PTs and RVTs who can do AR, potentially creating small businesses that specialize in AR done in compliance with the proposed regulation.

### **RESULTS OF ECONOMIC IMPACT ASSESSMENT**

#### **Impact on Jobs/Businesses:**

The Board has made an initial determination that the proposed regulatory action may have an impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California. As described above, the businesses that are currently engaging in the unlicensed and/or unauthorized practice of AR will have to come into compliance with the proposed regulations. This may impact some existing businesses and jobs. However, there may be an increased demand for veterinarians, PTs and RVTs who can do AR, potentially creating businesses and jobs for these categories of professionals.

**Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment:**

In addition to the benefits listed under the Informative Digest/Policy Statement Overview above, this proposed action would make clear the rights and responsibilities of licensed veterinarians, PTs, and registered veterinary technicians regarding the practice of AR. It also specifies that the practice of AR in violation of the proposed regulation is unlicensed activity, aiding and abetting unlicensed activity, or unprofessional conduct. This regulation exists for the protection of California’s consumers and their animal patients. Adopting this regulatory proposal will assist the Board in enforcing the Act, deter harm to animal patients and consumers, and further the Board’s goal of reducing the amount of unlicensed activity in California.

**CONTACT PERSON**

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Elizabeth Bynum  
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The backup contact person is:

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**REFERENCE TO TEXT AND INITIAL STATEMENT OF REASONS**

An Initial Statement of Reasons explaining the reasons for the proposed action shall be available to the public upon request. The express terms of the proposed action and all

information upon which that proposal is based are also available upon request. To request these materials, please contact the contact person listed herein.

#### **FEDERAL MANDATE**

None.

#### **CONSIDERATION OF ALTERNATIVES**

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally as effective in implementing the statutory policy or other provisions of law.

#### **AVAILABILITY OF FINAL STATEMENT OF REASONS**

The Board will prepare a Final Statement of Reasons after all public comments have been received and all substantially related comments have been incorporated into the proposed text. Copies of the Final Statement of Reasons, when available, may be obtained from the contact person whose information is listed herein.

#### **WEBSITE ACCESS**

The Veterinary Medical Board's website may be accessed at: <http://www.vmb.ca.gov>.