

VETERINARY MEDICAL BOARD FINAL STATEMENT OF REASONS

Hearing Date: November 10, 2020

Subject Matter of Proposed Regulations: Fee Schedule (Certificate of Compliance)

Section(s) Affected: Title 16, Division 20, Article 7, of the California Code of Regulations (CCR)¹ sections 2070 and 2071.

Updated Information:

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

On January 10, 2020, the Veterinary Medical Board (Board) issued a Notice of Intent to File Emergency Regulations. On January 27, 2020, the emergency regulations were approved by the Office of Administrative Law (OAL) and filed with the Secretary of State and became effective immediately. Per Government Code section 11346.1(3), a full rulemaking file, known as a Certificate of Compliance, is required to be filed with OAL within 180 days after an emergency action becomes effective.

In early April 2020, after noting that an application fee for Board approval of Registered Veterinary Technician (RVT) schools and programs had not yet been established in regulation. Staff, after consulting with OAL, proposed adding that new fee under 16 CCR section 2071. On April 23, 2020, the Board approved the addition of this new fee and approved revised regulatory text for the Certificate of Compliance package.

After updating the Certificate of Compliance package, the Board was also able to invoke Governor Gavin Newsom's COVID-19 related Executive Orders, N-40-20 and N-66-20, which extend Administrative Procedure Act deadlines by a total of 120 additional days. On September 15, 2020, the package was submitted to OAL and published on September 25, 2020, initiating the 45-day public comment period. The Board received two requests for a public hearing. The public comment period closed on November 9, 2020, and the public hearing was held virtually via WebEx Events on November 10, 2020.

Concurrently, OAL recommended that the Board request a Re-Adoption of the Emergency Regulations given the Certificate of Compliance deadline. A re-adoption extends the effective date of emergency regulations by 90 days (plus two additional 60-day extensions provided per the Governor's Executive Orders cited above), giving the Board additional time to finalize and file the Certificate of Compliance package. On November 4, 2020, the Board issued a Notice of Intent to Re-Adopt Emergency Regulations and an updated Finding of Emergency. On November 12, 2020, the Board filed the request for Re-Adoption of Emergency Regulations with OAL. The Re-Adoption

¹ All CCR references are to title 16 unless otherwise noted.

of Emergency Regulations was approved by OAL on November 18, 2020 and became effective on November 25, 2020 through June 26, 2021.

During the 45-day public comment period on the Certificate of Compliance rulemaking, the Board received 57 written comments (or letters) with objections, concerns, or recommendations regarding the proposed regulations. During the public hearing, the Board heard oral testimony from four individuals and received one written comment with concerns and a recommendation.

Board staff aggregated, organized, and summarized all comments received during the 45-day public comment period, the public hearing, and the five-day public comment periods associated with the original emergency filing and the re-adoption of emergency filing. All comments were considered by the Board and proposed responses to all comments were considered and approved by the Board at the January 28, 2021 Board meeting for inclusion in the Final Statement of Reasons.

As a result of the emergency regulations that were approved in January 2020, the Board has been able to address the insolvency it was facing. Per Business and Professions Code section 4905, the Board is required to maintain a reserve of no less than three (3) months and no more than ten (10) months of annual authorized expenditures. At the January 28, 2021 meeting, it was reported that the Board's Current Year fund condition was at 5.6 months in reserve and projected to be at 5.7 months (FY 2021-22) and 5.5 months (FY 2022-23) with the permanent implementation of these regulations.

Supplemental Necessity for CCR, Title 16, Section 2071, Subsection (f):

In the Board's Fee Schedule - Certificate of Compliance package, CCR, title 16, section 2071, subsection (f), refers to a "school, institution, degree program, or practical experience and education equivalent program." The reference statutes (Business and Professions Code (BPC), sections 4842.5 and 4843) cited in the proposed regulatory text only use the terms "school or institution." CCR, title 16, section 2071, subsection (f), uses the four terms to cast as wide a net as possible in describing the types of programs that might seek Board approval for training registered veterinary technicians (RVTs). The addition of the terms "degree program" and "practical experience and education equivalent program" incorporates the terminology used in BPC section 4841.5 and in the existing regulatory framework in CCR, title 16, division 20, article 6, which concerns RVTs.

Statutory Basis: Within the Veterinary Medicine Practice Act (BPC, Div. 2, Ch. 11), Article 2.5 covers RVTs. In that Article, the term "institution" appears in three sections: the two statutes cited as reference citations for the proposed CCR, title 16, section 2071, subsection (f), and also in BPC section 4841.5.

- BPC section 4842.5 is the Board's Fee Schedule statute, and subdivision (g) of that section refers to a "school or institution offering a curriculum for training RVTs"

- BPC section 4843 is the statute pertaining to the Board’s approval of “schools or institutions offering a curriculum for training RVTs.”
- BPC section 4841.5 refers to “a college or other postsecondary institution,” and in subdivision (b)(2), states that “education or a combination of education and clinical practice experience may constitute the equivalent of a graduation requirement imposed” under that subdivision.

BPC section 4841.5 allows an alternate path that places a greater emphasis on clinical practical experience for individuals seeking to take the exam for registration as an RVT. CCR, title 16, section 2068.5 clarifies and specifies the details of such a curriculum, and how it must meet certain requirements to provide an equivalent curriculum sufficient to take the test for registration as an RVT. Adding BPC section 4841.5 as a reference citation for CCR, title 16, section 2071 would further clarify the term “practical experience and education equivalent program” in CCR, title 16, section 2071, subsection (f).

Regulatory Basis: The existing regulatory scheme for RVTs in CCR, title 16, division 20, article 6 uses the phrase “schools and/or degrees program,” and the singular “school and/or degree program” is used in 12 of the 17 sections within article 6 (See 16 CCR §§ 2064, 2065, 2065.5, 2065.6, 2065.7, 2065.8, 2065.8.1, 2065.8.2, 2065.8.3, 2065.9, 2066 and 2066.1).

The only references to “institutions” in article 6 are in sections 2065 and 2068.5.

Section 2065 pertains to “Minimum Requirements for Approved Schools or Degree Programs” and uses the term “institution” once in subsection (i), which reads: “The school or degree program shall be part of an institution that is approved by the Department of Consumer Affairs, Bureau for Private Postsecondary Education, or its successor agency,”

Section 2068.5 pertains to “Practical Experience and Education as Equivalent Curriculum” and uses the term “institution” twice. In subsection (a), the term is used in the following sentence: “The education shall be provided by a postsecondary academic institution or a qualified instructor as defined by Section 2068.5(e).” In subsection (f)(1)(B), the term is used in a sentence that reads: “A master’s or higher degree from an educational institution in an area related to the subject matter of the course.”

In developing the RVT regulations, the Board used the terms “school or degree program” to better describe (and communicate to) programs offering RVT training programs. Because of the frequent mention of “degree programs” in the RVT regulations, the Board added that term to CCR, title 16, section 2071, subsection (f), to make clear that the \$300 application fee for Board approval of curriculum applies to all types of programs offering RVT training. In addition, by using all terms currently included in statute and regulation, the regulation would ensure that all RVT training programs properly apply for Board approval before offering RVT education and training, which will eliminate potential loopholes for programs that would otherwise avoid titling

their program as a “school” or “institution.” Ensuring all RVT education and training programs are properly reviewed and Board approved makes certain that RVT students receive appropriate education and training, which protects California consumers and their animals.

Local Mandate: A mandate is not imposed on local agencies or school districts.

Small Business Impact:

The Board has initially determined that the proposed regulation will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Since there are no proposed fee increases for veterinary premises (hospitals), there is no direct economic impact anticipated for businesses. However, some businesses may pay application, licensing, or renewal fees for their veterinarian or RVT employees. The increases in initial licensure or biennial renewal fees for veterinarians and RVTs is not significant for small businesses because the impact is only \$75.00 per year for veterinarians and \$85.00 per year for RVTs. The \$200 increase in the application fee for veterinarians and RVTs is a one-time expense. Payment of the application fee for veterinarians and RVTs is a cost voluntarily assumed by only some businesses, and because small businesses have to option to not pay this one-time fee, no direct economic impact is anticipated. Schools and institutions that offer a curriculum for training registered veterinary technicians and request approval by the Board would be required to pay an application fee on a biennial basis.

The Board has determined that the proposed regulations may affect small businesses, similar to the business impact stated above.

Fiscal Impact:

The anticipated additional revenue from the proposed fee increase will increase the Board’s revenue by approximately \$2,302,020 per fiscal year ongoing.

With the new application fee for approving RVT schools/institutions, the Board will review and approve 25 California schools every two years. Additionally, some programs will be subject to on-site inspections every four years. The Board estimates the costs associated with this workload would range from between \$8,100 to \$24,000 every two years. The revenue generated from this specific application fee would be approximately \$7,500 every two years. The anticipated workload and costs related to approving RVT schools/institutions would be temporarily absorbed within existing resources until the Board pursues legislation to raise the statutory fee cap.

There are no expected costs or savings to any other state agency or costs/savings in federal funding.

Economic Impact:

The proposed rulemaking will neither create businesses or jobs nor eliminate existing businesses or jobs within California because the proposed fees are anticipated to have minimal impact on businesses. The proposed rulemaking will not affect the expansion of businesses currently doing business within the state. The impact on businesses will be minimal and absorbable as this regulation specifically affects individual licensees and specified RVT schools/institutions. This regulation may have an economic impact on private persons or businesses, specifically, veterinarian and veterinary technician applicants and licensees, and specified RVT schools/institutions. The regulation would increase fees associated with veterinarian and university licensure, and veterinary technician registration, and add a new fee associated with the approval of schools and institutions offering a curriculum for training registered veterinary technicians.

Specific annual applicant and licensee cost impacts ongoing are shown in Table 2 below.

Table 2. Cost Impact – Applicant, License, and School/Institution Population

Revenue Category	Population	Fee Increase Amount	Annual Increase Amount
Application Review - Veterinary	786	\$200.00	\$157,200
California State Board Exam	671	\$115.00	\$77,165
Initial License - Veterinary	634	\$150.00	\$95,100
Biennial Renewal - Veterinary	6,200	\$150.00	\$930,000
Temporary License - Veterinary	82	\$75.00	\$6,150
Application Review - University	75	\$225.00	\$16,875
Initial License - University	63	\$210.00	\$13,230
Biennial Renewal - University	5	\$210.00	\$1,050
Delinquent Renewal - Veterinary	225	\$15.00	\$3,375
Application Review - Veterinary Technician	914	\$200.00	\$182,800
Initial Registration - Veterinary Technician	675	\$190.00	\$128,250
Biennial Renewal - Veterinary Technician	3,600	\$190.00	\$684,000
Delinquent Renewal - Veterinary Technician	205	\$15.00	\$3,075
Approval of Veterinarian Technician School/Institution (new application fee)	25	\$300 (new)	*\$3,750
		Total	\$2,302,020

*\$3,750 is a two-year average. The new fee would occur biennially – 25 schools @ \$300 each is \$7,500 every two years.

An all-inclusive fee increase resolves a structural imbalance that would otherwise occur, allowing the Board to continue with inspections and prosecuting individuals violating the Veterinary Medicine Practice Act (VMPPA) through enforcement measures. By continuing these tasks, the Board will be protecting California consumers and their animals.

This regulatory proposal focuses on an increase in fee schedules in order to resolve the structural insolvency of the Board's Contingent Fund and does not affect worker safety or the state's environment.

Anticipated Benefits of this Proposal:

By increasing licensing and registration fees, and adding the new application fee, this proposal would generate sufficient funds for the Board to resolve its fiscal imbalance. In turn, the Board will be able to appropriate additional funds toward inspections and enforcement, which will protect California consumers and their animals by ensuring that licensees are complying with the VMPPA and allowing for the prosecution of those licensees that are violating the VMPPA. In addition to this, by amending sections 2070 and 2071, the Board will be complying with BPC section 4905, which requires the Board to maintain a reserve of at least three (3) months and no more than ten (10) months of annual authorized expenditures.

Consideration of Alternatives:

No reasonable alternative to the regulatory proposal that 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 is proposed, would be as effective or less burdensome to affected private persons than the proposed regulation, or would be more cost-effective to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific. The Board does not receive General Fund monies to support its operations. If the Board reduced its annual expenditures to mitigate the structural fund imbalance, the Board would be forced to cut mission-critical functions, which would jeopardize the public safety of California consumers. Based on the supporting data and materials in this rulemaking file, it was determined that the proposed fees were necessary in order to generate additional revenue, maintain the Board's structural solvency, and increase the statutorily mandated fund reserve.

Objections or Recommendations/Responses:

Five-Day Public Comment Periods (Emergency Filing and Re-Adoption of Emergency Filing):

The following objections, concerns, or recommendations were made regarding the proposed action and received during the five-day public comment periods associated with the original emergency filing and the re-adoption of emergency filing. All comments were considered by the Board; no changes in the text were deemed necessary in response. The summarized comments and Board responses are as follows:

Summary of Comment One (1):

The fee increases would likely contribute to decreased availability and/or quality of veterinary services in sectors that traditionally receive salaries on the lower end of the professional ranges (i.e., mixed animal practice, those who service small farms, and those located in more rural locations).

Board Response to Comment One (1):

The Board does not have data to indicate the last fee increase contributed to decreased access to specific veterinary care sectors. The Board does not anticipate a significant decrease in veterinary care or services as a result of the fee increase. The last emergency fee increase occurred in FY 2017/2018 and saw an increase in RVT and veterinarian renewals during the same year. In FY 2017/2018, the Board saw a 10% increase in active licensees compared to the prior year. In FY 2018/2019, the Board saw a 46% increase in licensees.

Summary of Comment Two (2):

The Board should raise RVT fees the same amount as veterinarian fees (percent-wise) or less.

Board Response to Comment Two (2):

In order to immediately sustain the fund, the Board had to raise all fees to their statutory cap. Throughout 2020, the Board's Multidisciplinary Advisory Committee (MDC) researched ways to raise statutory caps for veterinary premises registrations and veterinarian licenses in order to lower the fees for RVTs without negatively impacting the fund. The Board is seeking to implement a remedy through the 2021 Sunset Review.

Summary of Comment Three (3):

The Board should allow RVTs to deduct fingerprinting costs from their initial biennial renewal.

Board Response to Comment Three (3):

While the Board collects the fee for fingerprinting on initial and renewal applications, all fingerprinting revenue is forwarded to the Department of Justice and the Federal Bureau of Investigation. The Board has no control over those costs. The Board's fund could not support deducting the fingerprint costs from the renewals.

Summary of Comment Four (4):

The Board should increase the fees across the board for all who receive licenses or permits from the Board.

Board Response to Comment Four (4):

Through this rulemaking, the Board raised all fees across the board to their statutory caps.

Summary of Comment Five (5):

The Board should allow RVTs payment plans this year to allow them to renew without the \$400 burden in one month, without a delinquency fee.

Board Response to Comment Five (5):

This alternative suggests a payment plan “this” year. However, this comment was received during the initial emergency fee increase comment period in January 2020. Thus, a year has already passed since the fee increase was imposed. In addition, pursuant to Business and Professions Code (BPC) section 4846.4, RVTs shall biennially apply for renewal on or before the last day of the applicant’s birthday month. For the registration to be renewed, the fee must be paid, in full, at the time of renewal. The Board’s system is not designed to allow payment plans for license renewals. The Board is not aware if this would be a system capability. However, if the system could be designed to allow for renewal payment plans, setting up such a system would take a significant amount of time to design and test.

There were additional comments received during the five-day public comment periods that were identical or similar to those received during the 45-day public comment period. Those comments are addressed below.

45-Day Public Comment Period and Public Hearing:

The following objections, concerns, or recommendations were made regarding the proposed action and received during the 45-day public comment period and the public hearing. All comments were considered by the Board; no changes in the text were deemed necessary in response. The summarized comments and Board responses are as follows:

Summary of Grouped Comment Six (6) – see Individual Comments #4, 6, 7, 8, 10, 11, 13, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50, 55, 56, and Jasmine Matloob, DVM (public hearing):

The Board states the many factors that have led to its current financial state; however, it does not take responsibility for its failure to be proactive against any of these factors. Mismanagement of funds should not be the responsibility of licensed professionals. Alternative cost management measures have not been addressed or considered by the Board. The Board proposed raising fees without considering lowering expenses. Board staffing increases should not occur, if there is not enough money to fund current operating expenses.

The Board should: reorganize and reconsider its plan for “fixing” the deficit; and, seek help from federal or state government, or other sources of revenue or funding.

Board Response to Grouped Comment Six (6):

The Board has spent the last two years streamlining processes in its licensing, inspections, and enforcement units. In addition, the Board’s entire Enforcement Unit has been restructured to maximize efficiencies. However, due to factors beyond the Board’s control that have increased Board expenditures while not adequately increasing revenues, the Board’s core mission of consumer protection is threatened. The Board is committed to continuously seeking ways to reduce costs while not

compromising consumer protection. Further, the Board is solely funded by licensees and does not have the ability to obtain alternative funding.

Summary of Comment Seven (7) – see Individual Comment #54:

Prior to this regulatory proposal, Board fees had already been recently increased.

Board Response to Comment Seven (7):

The Board filed an emergency fee increase in 2018 and subsequently filed a regular rulemaking, effective April 2019, to conservatively raise fees in an attempt to address the Board's inadequate revenue and imminent insolvency. The Board intended to raise fees again in two years to the statutory maximum. However, the prior fee increase failed to meet the Board's expectations – it did not adequately address the decreasing fund nor bring in the anticipated revenue. In addition, the fee increase proved even more inadequate due to abrupt and significant rate increases by the Office of the Attorney General (AG), an increase in enforcement workload, and a decrease in anticipated revenue.

Summary of Grouped Comment Eight (8) – see Individual Comments #7, 8, and 16:

These fee increases will result in the opposite of what the Board is trying to accomplish; increased fees will result in less renewals, and thus, less revenue for the Board.

Board Response to Grouped Comment Eight (8):

The Board does not anticipate a significant decrease in renewals, as a result of the fee increase. The last emergency fee increase occurred in Fiscal Year (FY) 2017/2018 and the Board saw an increase in RVT and veterinarian renewals during the same year. In addition, more RVTs and veterinarians renewed their licenses the following year (FY 2018/2019) than had done so the prior renewal cycle (FY 2016/2017).

Summary of Grouped Comment Nine (9) – see Individual Comments #1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 57, Nancy Ehrlich, RVT (public hearing), Daniel Baxter/CVMA (public hearing), and Aurora Flanagan, DVM (public hearing):

The fee increase places too much of the burden on RVTs, when comparing the salaries of RVTs and veterinarians; veterinarian renewal fees are being raised \$150, while RVT fees are being raised \$190; more than doubling RVT fees is unacceptable; RVTs are relatively low-paid professionals and cannot afford higher fees; many practices do not reimburse RVTs for license and renewal fees or provide continuing education allowances; the Board is urged to review the RVT fees and consider other alternatives.

Board Response to Grouped Comment Nine (9):

The Board recognizes the fee increases disproportionately impacted the RVT community. However, without raising all fees to their statutory caps, the Board would

not raise enough revenue to sustain the fund. Throughout 2020, the Board's MDC researched ways to raise statutory caps for veterinary premises registrations and veterinarian licenses in order to lower the fees for RVTs without negatively impacting the fund. The Board is seeking to implement a remedy through the 2021 Sunset Review.

Summary of Grouped Comment Ten (10) – see Individual Comments #4, 8, 10, 14, 16, and 19:

These fee increases (i.e., for RVTs) cannot be justified when comparing them to the salaries and licensing fees of other licensed professionals, such as Registered Nurses, Professional Engineers, etc.

Board Response to Grouped Comment Ten (10):

The Board recognizes the RVT community receives significantly lower salaries compared to other licensed professionals, such as registered nurses and professional engineers. However, without raising all fees to their statutory caps, the Board would not raise enough revenue to sustain the fund. Throughout 2020, the MDC researched ways to raise statutory caps for veterinary premises registrations and veterinarian licenses in order to lower the fees for RVTs without negatively impacting the fund. The Board is seeking to implement a remedy through the 2021 Sunset Review.

Summary of Grouped Comment Eleven (11) – see Individual Comments #1, 3, 4, 5, 6, 7, 8, 10, 11, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, and Nancy Ehrlich, RVT (public hearing):

The veterinary field is already experiencing a shortage of RVTs because they cannot make a living doing the work they love; the fee increases will deter qualified individuals from pursuing careers in this field and will create a barrier to licensure for RVTs (will impact initial and renewed licenses); without RVTs working in the field, animal care, consumers, businesses, and communities will be negatively impacted; a shortage of RVTs could also result in the hiring of “unlicensed technicians” and the performance of illegal veterinary practices or tasks.

Board Response to Grouped Comment Eleven (11):

Over the past two and a half years, the Board has demonstrated its commitment to reducing unnecessary barriers to obtaining RVT registration. Most notably, the Board has eliminated the RVT state examination, resulting in \$200 cost savings for RVT applicants. In addition, the Board recently approved regulatory proposals to no longer expire education or experience and eliminated the need for applicants to reapply for examination eligibility review if the applicant fails the national examination. These changes remove barriers to RVT registration and result in direct cost savings for RVTs. The Board has no data to support the concern that the last fee increase resulted in an increase of unlicensed practice. The Board encourages the veterinary community to file complaints with the Board if unlicensed practice occurs.

Summary of Grouped Comment Twelve (12) – see Individual Comments #1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 57, Nancy Ehrlich, RVT (public hearing), Daniel Baxter/CVMA (public hearing), and Aurora Flanagan, DVM (public hearing):

Significant fee increases for RVTs will be an added burden to a profession that is already struggling with low wages, burnout, lack of recognition and career advancement, and competition with on-the-job trained assistants.

Board Response to Grouped Comment Twelve (12):

The Board recognizes the fee increases disproportionately impact the RVT community. However, without raising all fees to their statutory caps, the Board would not raise enough revenue to sustain the fund. Throughout 2020, the MDC researched ways to raise statutory caps for veterinary premises registrations and veterinarian licenses in order to lower the fees for RVTs without negatively impacting the fund. The Board is seeking to implement a remedy through the 2021 Sunset Review.

In addition, low wages, burnout, lack of recognition and career advancement, and competition with on-the-job trained assistants is outside of the Board's purview.

Summary of Grouped Comment Thirteen (13) – see Individual Comments #5, 50, 52, 53, 54, and Nancy Ehrlich, RVT (public hearing):

Some veterinary practices pay their employees' license fees, so these fee increases could have a significant impact on those practices; or, this could promote the hiring of more veterinary assistants (instead of RVTs), so that practices do not have to pay the higher fees.

Board Response to Grouped Comment Thirteen (13):

The Board recognizes that practices who pay employee license fees will be more impacted than those who do not. While practices may hire veterinary assistants to perform certain duties, veterinary assistants are prohibited from performing any of the functions or activities specified in 16 CCR section 2036, except that a permit holder under the direct or indirect supervision of a licensed veterinarian may administer a controlled substance. If a veterinary assistant performs any services listed under 16 CCR section 2036, the veterinary assistant would be conducting unlicensed practice, a misdemeanor offense, and subject to an administrative citation of up to \$5,000. In addition, if a veterinarian knowingly allows unlicensed practice, the veterinarian's license is subject to discipline. The Board encourages the veterinary community to file complaints with the Board if unlicensed practice occurs.

Summary of Grouped Comment Fourteen (14) – see Individual Comments #4, 5, 6, 8, 10, 11, 13, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 41, 42, 43, 44, 45, 46, 47, 48, and Nancy Ehrlich, RVT (public hearing):

The Veterinary Assistant Controlled Substances Permit (VACSP) program is costing more than expected and not generating the revenue predicted; however, VACSP fees were not raised to the statutory maximum; RVTs cannot be expected to subsidize the VACSP program.

Board Response to Grouped Comment Fourteen (14):

Pursuant to BPC section 4836.2, subdivision (b), the statutory cap for filing a VACSP application is \$100. 16 CCR section 2071.1, subsection (a), establishes the VACSP application fee at \$50, and subsection (b) establishes the initial VACSP fee at \$50.00; these fees total \$100 and cannot exceed the statutory cap established in BPC section 4836.2, subdivision (b). VACSP renewals and delinquency fees are already at their statutory caps.

Summary of Grouped Comment Fifteen (15) – see Individual Comments #4, 5, 6, 8, 10, 11, 13, 15, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 41, 42, 43, 44, 45, 46, 47, 48, and Nancy Ehrlich, RVT (public hearing):
AG costs have increased; however, RVTs represent an extremely small part of the Board's disciplinary caseload; RVTs cannot be expected to subsidize disciplinary cases against other licensing categories.

Board Response to Grouped Comment Fifteen (15):

The Board has authority to collect cost recovery from disciplined licensees to prevent other licensees from absorbing costs of disciplinary cases. While most disciplinary cases include cost recovery, factors outside of the Board's control often result in lower cost recovery ordered than the amount spent on each case. When that occurs, the Board absorbs those costs, which impacts all licensees, registrants, and permit holders. However, the Board has spent the last two years streamlining enforcement processes and works closely with the AG to decrease costs wherever possible.

In addition, the Board recognizes the fee increases disproportionately impacted the RVT community. However, without raising all fees to their statutory caps, the Board would not raise enough revenue to sustain the fund. Throughout 2020, the MDC researched ways to raise statutory caps for veterinary premises registrations and veterinarian licenses to lower the fees for RVTs without negatively impacting the fund. The Board is seeking to implement a remedy through the 2021 Sunset Review.

Further, it should be noted that the AG recently increased its costs charged for services, which is one of many reasons for the fee increase.

Summary of Comment Sixteen (16) – see Individual Comment #5, and Nancy Ehrlich, RVT (public hearing):

Elimination of the California RVT exam should have eliminated all of the costs associated with it; it is highly inappropriate to use funds collected for the RVT exam to underwrite other expenses; one of the motivations for eliminating the RVT exam was that the high cost of applying to become an RVT was inhibiting graduates of

RVT programs from becoming licensed; this fee increase will have the same effect; since the Board is no longer administering the RVT exam, there should be an opportunity to reduce the staff positions used to handle the exam duties, resulting in a salary savings.

Board Response to Comment Sixteen (16):

The Board is solely funded by application, examination, licensing, and renewal fees. As such, those fees will be higher than the actual cost to process the applications or administer the examinations. The Board staff did not administer the RVT examination; rather, the Board contracted with a third party to administer that examination. In addition, staff must still review each examination eligibility application for the national examination to determine license eligibility. As such, the workload associated with RVT applications has not decreased.

Summary of Grouped Comment Seventeen (17) – see Individual Comments #9, 11, 12, 49, 52, 55, 56, and Jasmine Matloob, DVM (public hearing):

The impacts of COVID-19 and the current economic climate must be considered (many veterinary professionals and practices have been and continue to be impacted); the Board should postpone any fee increases until the present pandemic is over and no longer impacting the profession; raising fees during this time is inappropriate, insensitive, and unacceptable.

Board Response to Grouped Comment Seventeen (17):

The Board's fund would become insolvent if the fee increases were postponed. In addition, veterinary professionals are considered essential workers throughout the COVID-19 pandemic and can continue providing veterinary services. Further, the Board has heard through many members of the profession that the demand for veterinary services has increased during the pandemic, due to owners spending more time at home with their pets and recognizing signs that their pets may be ill.

The following were possible recommendations offered to the Board for consideration:

Summary of Comment Eighteen (18) – see Individual Comment #3:

The Board should raise fees for those working in corporate settings.

Board Response to Comment Eighteen (18):

The Board does not track the specific work settings of each licensee. In addition, to sustain the Board's fund, the Board needed to increase all fees to their statutory cap, regardless of practice setting.

Summary of Grouped Comment Nineteen (19) – see Individual Comments #53 and 54:

The Board should: 1) increase the fees for universities from \$350-500 to over \$1,000; 2) increase the fee for Board approval of RVT schools from \$300 to over

\$1,000; 3) increase the veterinary premises fees for “big box” veterinary clinics to over \$1,000 per location, while leaving the premises fees for the individual “mom and pop” veterinary clinics as it is at \$400.

Board Response to Grouped Comment Nineteen (19):

To sustain the Board’s fund, the Board increased all fees to their statutory cap. The above-listed alternatives all require legislative changes. As directed by the Board, the MDC has researched the feasibility of increasing veterinary premises registration fees based on size, and veterinarian license fees, in order to lower the RVT fees through legislation. The MDC anticipates proposing recommendations to the Board in April 2021.

Summary of Comment Twenty (20) – see Individual Comment #51:

Most of the costs incurred by the Board appear to be related to consumer complaints, which result in expensive expert witness and attorney fees; the consumer could bear some of the cost by paying a fee to the Board when filing a complaint.

Board Response to Comment Twenty (20):

The Board is a consumer protection agency. Requiring consumers to pay a fee to file a complaint with the Board would significantly deter consumers from filing complaints, even if egregious consumer harm occurred. This alternative is counter to the Board’s mission and is not a viable option.

Summary of Comment Twenty-One (21) – see Individual Comment #14:

A cost and profit analysis should be done to determine what other areas can afford more of an increase.

Board Response to Comment Twenty-One (21):

In December 2016, the Board contracted with a third party to conduct a fee audit of all Board fees. The audit analyzed how much each license type cost and the revenue being generated. However, the audit only recommended what was needed to maintain the status quo at the time. It did not evaluate whether additional revenue would be needed to cover future expenditure increases, such as AG rate increases, intradepartmental increases, or additional staffing costs. At that time, the Board opted for a tiered fee increase approach, where fees were phased in over a two-year period. To sustain the Board’s fund, the Board increased all fees to their statutory cap through this rulemaking. As previously stated, however, the Board recognizes RVTs were disproportionately impacted by the recent fee increase. To address this concern, the Board anticipates pursuing legislation to increase fees for veterinary premises registrations and veterinarian licenses so that the Board may lower the fees for RVTs.

Summary of Grouped Comment Twenty-Two (22) – see Individual Comments # 52, 55, 56, and Jasmine Matloob, DVM (public hearing):

Incremental fee increases over time would be more acceptable.

Board Response to Grouped Comment Twenty-Two (22):

The Board initially pursued incremental fee increases in 2017. Since then, however, the Board's fund continued to deteriorate and could not be sustained without raising all fees to their statutory cap through this rulemaking.

Summary of Comment Twenty-Three (23) – see Individual Comment #9:

The Board should consider contract hiring for attorneys when there are spikes in the number of enforcement cases, and then release them when the numbers are normal.

Board Response to Comment Twenty-Three (23):

The AG is required to represent the Board in all enforcement actions. The Board does not have authority to hire outside attorneys. However, the AG only charges for services rendered. As such, the Board's AG costs already fluctuate in an unpredictable manner as disciplinary cases fluctuate.

Summary of Comment Twenty-Four (24) – see Individual Comment #6:

The Board should increase penalties/fines for individuals who commit violations and unlicensed individuals who perform illegal procedures; the Board should cite clinics that allow unlicensed technicians to perform RVT-only tasks.

Board Response to Comment Twenty-Four (24):

The Board does issue citations and fines to licensees who commit less egregious violations of the VMPA and those individuals who conduct unlicensed practice. Pursuant to BPC section 125.9, the Board cannot assess a citation and fine over \$5,000 for each inspection or investigation. The Board does not have authority to increase those fines. In addition, citations and fines are tools used to incentivize compliance with the VMPA, not to generate revenue.

Nonsubstantive Changes to CCR, Title 16, Section 2071, Subsection (f) During OAL Review:

During OAL's review of the final rulemaking file, the following nonsubstantive changes were made to CCR, title 16, section 2071, subsection (f):

- “Biennial” was added before “application fee” to be consistent with BPC 4843;
- A reference to CCR, title 16, section 2065.6 was added for the term “degree program”;
- A reference to CCR, title 16, section 2068.5 was added for the term “practical experience and education equivalent program”; and
- Minor, technical revisions.