

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

Final Statement of Reasons

Hearing Date: None

Subject Matter of Proposed Regulations: Telemedicine

Sections Affected: California Code of Regulations (CCR), Title 16, Division 20, Article 4, Section 2032.1

Updated Information: The Initial Statement of Reasons is included in the file. No information has been updated.

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

Small Business Impact: The Veterinary Medical Board (Board) has determined that the proposed regulations would have no significant statewide adverse economic impact directly affecting small businesses, including the ability of California businesses to compete with businesses in other states. As noted in the public comment at the Board's July 19-20, 2011 meeting by Larry Cowgill, DVM, and Frank La Borte of the University of California, Davis, School of Veterinary Medicine, an interested party of this proposal, the VCPR regulation currently prohibits veterinarians from providing consultative services, rendering any treatment, or ordering/administering any drug or appliance directly via telemedicine due to the in-person examination requirement (See Tab D.2. Underlying Data, submitted herewith). This proposal would authorize the provision of telemedicine and provide guidelines for veterinarians to follow when offering telemedicine services. As such, the Board expects the proposed regulation to increase the delivery of telemedicine. In the event an individual is already providing telemedicine services prior to establishing a VCPR, the individual would be in violation of existing regulation. Accordingly, the Board does not anticipate an adverse economic impact on small businesses and individuals that are currently complying with the law.

Benefits:

The protection of the public is the Board's highest priority when exercising its licensing, regulatory, examination, and disciplinary functions. This proposal is consistent with that priority. The proposed regulations would clarify VCPR requirements for telemedicine services for purposes of unprofessional conduct. The regulations would provide guidelines for veterinarians to implement telemedicine into their practice and define "telemedicine" in the veterinary services context. By providing a clear definition of telemedicine and the parameters of its uses, consumers will be better protected when receiving such services. The proposed regulations also benefit licensees who would better understand the appropriate use of telemedicine to avoid allegations of unprofessional conduct.

The proposed regulations are necessary to protect California consumers and their pets by ensuring they only receive telemedicine services after an appropriate VCPR has been established, thus ensuring the animals are provided with the best level of care.

Consideration of Alternatives:

No reasonable alternative to the regulatory proposal would be more effective in carrying out the purpose for which the regulation has been proposed or would be as effective and less

burdensome to affected private persons than the proposed regulation 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.

Set forth below are some alternatives that were considered and the reasons each alternative was rejected.

1. In 2011, UC Davis submitted a letter to the Board that provided UC Davis's position that a veterinarian could obtain sufficient knowledge about an animal through a comprehensive telemedicine veterinary visit to constitute an effective VCPR predicated by: (1) direct video, audio consultation with the consulting veterinarian, animal owner, and/or animal health caregiver, (2) video/audio evaluation of the animal(s) and animal(s) premises, and (3) digital transfer of all medical records, laboratory evaluations, imaging, pathology, and physiological patient monitoring. UC Davis proffered that when medically appropriate, the same level of care is rendered via telemedicine consultations such that a personal relationship is established and an examination is conducted, but using a different modality (see Tab D.4, Agenda Item 6; Tab D.6, Agenda Item 5.B).

This alternative was rejected in 2016 by the American Veterinary Medical Association (AVMA), which studies the issues of telemedicine through its Practice Advisory Panel. The Panel acknowledged that advances in technologies have made it easier for veterinarians to remotely gather adequate patient information for the provision of continued care that would have previously required in-person rechecks. However, the Panel concluded that remote technologies available to the profession do not fulfill the profession's needs for thorough, in-person examinations, which employ all of a veterinarian's senses and expertise and elicit animal responses, all of which are imperative because veterinary patients cannot verbally convey histories or symptoms. The Panel's Interim Report on Telemedicine, dated September 20, 2016, was reviewed by the Board at its July 26-27, 2017 meeting (see Tabs D.11 and 13, Agenda Item 5.B, submitted herewith). The Board relied on the Panel's report over the recommendation of UC Davis as the Panel studied telemedicine issues for over a year and received information and deliberation on a national, rather than a local, level. Further, the Board agreed that a VCPR must be established following the veterinarian's in-person examination, rather than through a telemedicine consultation, to properly diagnose and treat the animal patient.

2. At its April 23, 2014 meeting, a sub-committee of the MDC presented proposed language to the MDC that included changes to CCR section 2032.1 and section 2032.15 (see Tab D.7, Agenda Item V.D). The addition of 2032.1, subdivision (e) was retained and included in the proposed language submitted with this regulatory proposal, but proposed revisions to section 2032.15 were removed. The proposed revisions to section 2032.15 would have allowed the VCPR to continue to exist in the absence of the client when another designated veterinarian, only within the same practice as the originating veterinarian, served in place of the originating veterinarian. These revisions were rejected as unnecessary; a consulting veterinarian may already be used by an originating veterinarian and that consultation does not require the consulting veterinarian to be employed in the same practice as the originating veterinarian. The concern to be resolved regarding telemedicine was the scenario when a veterinarian has not examined the animal patient, has not established a VCPR, or received information from an originating veterinarian, but the veterinarian subsequently prescribes controlled substances for use on the animal patient. Revisions to the section 2032.15 would not have resolved this concern, so those revisions were removed.

3. At its October 18-19, 2017 meeting, the Board discussed whether to use the term “telehealth”, as used in the general telemedicine statute, BPC section 686, or whether to use the term “telemedicine”. The Board determined that “telemedicine” was appropriate as it is typically used to describe a concentrated scope of service whereas “telehealth” involves the delivery of public health information and communication via technologies. To support its use of the term “telemedicine”, the Board defined that term as the mode of delivering animal health care services via communication technologies to facilitate diagnosis, consultation, treatment, and care management of the patient (see Tab D.14, Agenda Item b.B.iii).
4. At its February 21-22, 2018 meeting, the Board decided to remove the term “the diagnosis” from the proposed language. The Board agreed that diagnosis should not be included in the proposed language because diagnosis of a patient cannot be properly performed via telemedicine and can only be performed via an in-person examination of the animal patient (see Tab D.15, Meeting Minutes).

Objections or Recommendations/Responses:

The following recommendations and/or objections were made regarding the proposed action. The Board’s responses to the recommendations and/or objections are included below.

- Summary of comment one (1): Rolan Tripp, DVM, CABC, requested the Board delay revising the VCPR and telemedicine regulation pending further discussion of the benefits to the veterinarian, veterinary profession, the public, and animals. In summary, Dr. Tripp argued that many aggressive pets cannot tolerate a “hands-on exam” in the veterinary facility, and by requiring a hands-on exam, the veterinary staff could be placed in danger. Additionally, if aggressive pets are brought in for a hands-on examination, they often receive a pre-examination injection of anesthetic agents, which can increase the risk of anesthetic death in the patient. Dr. Tripp argued that due to the advancement of technology, a remote video examination allows the veterinarian to provide services in a relaxed home environment and provide the same services of a hands-on exam, without the potential of the pet masking symptoms by being stressed in a foreign environment, and telemedicine services will allow clients in remote areas to visit a veterinarian without having to travel far distances and provide for better service of care.

Board response to comment one (1):

While telemedicine is proving to be an effective form of treatment in human health care, animals are fundamentally different and cannot benefit from telemedicine in the same aspects that humans can. Unlike people, animals are unable to communicate their sickness or symptoms. Communication is expressed solely by the animal owner, who likely has no veterinary training to properly diagnose or express a sickness or symptom of the animal. For these reasons, it is important that the VCPR is developed in person and not based solely on telephonic or electronic means. Otherwise, the veterinarian would not be familiar with the animal’s medical history and could not effectively provide the best level of care via telemedicine. For veterinary science to be effective, it is important that the VCPR be established in person, so a full physical examination can be performed, and the veterinarian can get to know the animal. It is only after this relationship has been established that telemedicine may be an effective method of the continuance of treatment.

Following the lead of the American Veterinary Medical Association (AVMA), the Board determined it necessary to clarify the veterinarian-client-patient relationship (VCPR) to underscore the importance of the VCPR requirement, even when using telemedicine. It is the belief of both the AVMA and the Board that a VCPR must be established prior to providing telemedicine services. This relationship must be established in person, so that the proper level of care can be obtained, prior to supplemental services (i.e., telemedicine) being provided. The implementation of these regulations will address the problems identified by providing additional clarification to the VCPR, and how that relationship is developed.

While the Board is sensitive to the dangers of aggressive animals to veterinary staff, or the difficulties of obtaining veterinary care in remote areas, telemedicine services are unable to provide an adequate diagnosis when initially establishing a VCPR, due to the lack of hands-on services, such as the ability to feel the animal, listen to heart and lungs, check the eyes and ears, etc. Telemedicine services are an acceptable form of services following the establishment of a VCPR, but for an initial diagnosis, the Board stands behind its approach that the initial VCPR must be established in person.

- Summary of comment two (2): Jerry M. Owens, DVM, disapproved of the Board's proposal and requested the Board to take the direction of the American Association of Veterinary State Boards (AAVSB), instead of proposing verbiage that would move the veterinary profession backwards. Dr. Owens argued that the regulation would make telemedicine veterinarians criminals, and perhaps the Board should look at public complaints directed at veterinarians without prior hands-on examinations and propose regulations to deal with those specific issues, rather than to blanket all practice situations.

Board response to comment two (2):

In a memorandum dated September 28, 2017, the AAVSB expressed their support for the position statement regarding telehealth, drafted by the AVMA, which identified the need for a "hands-on" exam for the initial establishment of a VCPR. After careful review by the Board, and after participating in the AAVSB's December 4, 2017 webinar on this topic, the Board expressed its concerns to the AAVSB about its draft policy and the interpretations of the policy as discussed in the webinar.

It was mentioned in the webinar that the AAVSB's draft policy statement was intentionally non-descript to allow states the flexibility to adopt policies consistent with their respective practices. The Board believes that AAVSB should be very clear and provide a framework for states to make informed decisions and formulate appropriate laws and regulations governing the use of telemedicine in practice. AAVSB should be the leader in defining where and how a VCPR is established, under what conditions the practice of telemedicine takes place, where the practitioner must be licensed, etc.

The critical public policy consideration is whether a veterinarian can establish a VCPR with a "virtual exam." The Board strongly believes that a VCPR should be established only with an in-person, hands-on examination. The Board has heard a number of reasons that a veterinarian should be able to use a "virtual exam" to establish a VCPR, however, the Board does not believe that such arguments outweigh the risks of not having a thorough in person examination of the animal patient to make an informed diagnosis. Although, a medical history is just as important in veterinary medicine as in

human medicine, the physical examination is critical in veterinary medicine because the patient cannot speak for themselves and the client often misinterprets the symptoms an animal is displaying.

Following the establishment of the initial VCPR, the VCPR is able to be transferred to a secondary veterinarian for purposes of specialty medicine. During these instances, the initial VCPR will remain intact and telemedicine services are able to be utilized. Further, the initially prescribing veterinarian is also authorized to provide telemedicine services, once an initial VCPR has been established.