Veterinary Medical Board

BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY • GAVIN NEWSOM, GOVERNOR
DEPARTMENT OF CONSUMER AFFAIRS • VETERINARY MEDICAL BOARD
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MEMORANDUM

DATE	July 17, 2019
TO	Veterinary Medical Board
FROM	Amanda Drummond, Administrative Programs Coordinator
SUBJECT	**Agenda Item 11C. Section 2032.1, Article 4, Division 20, Title 16 of the CCR Regarding Veterinarian-Client-Patient Relationship and Telemedicine**

Background

The regulatory language for telemedicine was approved by the Veterinary Medical Board (Board) in April of 2015, and amended in February of 2018. The regulatory package was submitted to the Department of Consumer Affairs (DCA) on May 14, 2018. The regulatory proposal for telemedicine was noticed by the Office of Administrative Law (OAL) on May 17, 2019, which began the 45-day comment period. The 45-day comment period closed on July 1, 2019, and the Board received two comments during the comment period. Following the 45-day comment period, Board staff will prepare the final rulemaking package that includes the Final Statement of Reasons, which will address all comments received during the comment period.

- Summary of comment one (1):

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 IM injection of anesthetic agents, which can increase the risk of anesthetic death in the patient. Further, 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. Telemedicine services will also allow clients in remote areas to visit a veterinarian without having to travel far distances and provide for better service of care. The new Remote Video Exam should be regulated, not prohibited. The Board is asked to delay revising the VCPR and veterinary telemedicine regulation pending further discussion of the benefits to the veterinarian, the veterinary profession, the public, and all animals.

- Board staff recommended 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):

Since California is generally recognized as a leader, it should take the direction of the American Association of American Association (AAVSB), instead of proposing verbiage that would move the veterinary profession backwards. "Telemedicine has always existed in medicine when considering the workings such as cytologists, hematologists, pathologists and radiologists. This would be true in both human medicine and veterinary medicine. Most general practitioners have not been involved with telemedicine as the nature of their practice it to have a personal relationship with their client with time to directly provide a hands-on examination of the patient." The regulation would make telemedicine veterinarians criminals; 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 staff recommended 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.

Attachments

- Comments received regarding the Telemedicine regulatory proposal.

Rolan Tripp, DVM, CABC

Author, Speaker, Consultant

Pet Perception Management™

(714) 496-9958

DrRolanTripp@gmail.com

June 28, 2019

To: California Veterinary Medical Board
Fm: Rolan Tripp, DVM
Re: Proposed regulatory action concerning redefining the VCPR

Introduction

This letter is in response to a request for public comments regarding proposed regulatory wording changes. As a California licensed veterinarian, I genuinely appreciate the notice and request for comments.

I am a strong supporter of the California Veterinary Medical Board and organized veterinary medicine in general. Here is historical evidence. I have served as:

- President of the student chapter of the AVMA while still in veterinary school at UCD
- Chair of membership for the California Veterinary Medical Association (CVMA)
- President of the Santa Clara VMA
- Volunteer author of numerous articles for the Southern California VMA
- CVMA Delegate to the AVMA
- Elected to a 6 yr term on the AVMA Council on Veterinary Service (2009-15)
- During that service, periodically consulted with Sue Geranen of the CVMB
- In 40 years of practice there has never been a public complaint lodged against me
- The CVMB worked with the Oregon and Washington State VMB when I relocated

I have a special interest in Veterinary Telecommunications.

- My first article was published in the CVMA Journal, “The California Veterinarian” January 1984 issue, Titled, “Veterinary Telecommunications”
- Two years later in 1986, I started my company in California and now a registered corporation in Washington State, called, “Veterinary Telecommunications.”
- That company has many DBA sub-entities that also are involved in some way related to Veterinary Telecommunications.
- I am the Founder of the Veterinary Future Society (www.VeterinaryFutureSociety.org.)
- In 2011 I gave the Keynote address at the CanWest International Veterinary Meeting on the title, “The Future of Veterinary Practice.”
- I was invited to lecture at both the 2018 and 2019 Veterinary Innovation Summit (VIS), on the “The Future of Televeterinary Practice.”
- After the first VIS meeting I was interviewed by Veterinary Practice News (VPN) regarding Televeterinary Practice.
- In the last year, I have published 2 articles in VPN regarding Televeterinary Practice

- As a behaviorist I am certified by the *International Assn of Animal Behavior Consultants*
- I am one of the founders and current chair and spokesperson for the Televeterinary Coalition (www.Televeterinary.org), a loosely organized volunteer group of US veterinarians who network to share an interest in the future opportunities of Veterinary Telemedicine, also referred to as **Televeterinary**.

Reasons to Oppose the Proposed Wording of the VCPR

Since CVMA and SCVMA represent predominantly veterinary facility owners, it is natural that they would support regulations that require all clinical transactions to occur at a veterinary facility. My goal here is to present tele-examination advantages to the veterinary facility owners, clinicians, clients and patients that may not have been considered.

1. As a behaviorist, I have been utilizing veterinary telecommunications since 1986 in the non-medical field of client education about behavior modification. I have consulted in over 20 states and 2 countries. The recent combination of broadband and smartphone penetration now makes it possible to see the animal and the client in real-time, high-definition via cell-webcam with speakerphone. ("A Remote Video Exam.") This is a new type of imaging of the pet at home that potentially allows dedicated clients to access direct opinions from the most knowledgeable veterinarians in the world. This new tool and opportunity should be regulated, but not prohibited.
2. Pet and people welfare are improved when fearful and/or aggressive pets do not need to enter a building that has strange people and strange pets.
3. Many fear aggressive pets cannot tolerate a "hands-on exam" in the veterinary facility anyway. Requiring taking this pet in may result in harm to the vet staff (who are part of the public) as well as harm to the pet and owner. There may even be Board liability if an owner is injured due to a Board required office visit.
4. If the fear aggressive pet is brought in, the exam often involves a pre-exam IM injection of anesthetic agents - when the pet has maximal catecholamine release. This unnecessarily and significantly increases risk of pet anesthetic death.
5. A remote video exam of the pet in the home environment allows the veterinarian to see skin lesions, gait, rashes, a pet's mental state and movement more clearly in the relaxed home setting. A "hands-on exam" has indications, just like skin scraping, blood tests and all other clinical diagnostic tests and treatments.
6. A stressed pet in the clinic may mask symptoms and make the diagnosis more difficult.
7. Clients with disabilities or those who do not drive could still get an expert DVM opinion and next steps which may or may not involve a veterinary visit.
8. Clients in remote areas may not be willing to drive the distance to see a DVM.
9. Clients able to drive should still be allowed to obtain direct consultation from any veterinary expert they wish, anywhere in the world.
10. The televeterinarian must still be able to defend any tentative diagnosis, prognosis or treatment plan. Each is licensed in their respective state or country, so the public is still protected by recourse.
11. Kaiser Permanente, the human medical field, now offers phone and video consultations, whether or not the patient as been previously seen by that doctor. Once people experience this, they often request the same for their pet, then ask, "Why not?"

12. A Veterinary Practice owner may be able to provide the public better service if working with a televeterinarian who can address client concerns more quickly and help triage or remotely monitor the DVM's clinical cases.
13. If the VCPR can be established remotely, a new pet to the practice can be prescribed calming medications to make the first veterinary visit more positive and successful.
14. A full audio-visual **recording** of the veterinary interaction with client and pet would set a higher standard of medical record for Veterinary Medical Board review.
15. Active changes in remote prescribing are happening right now in other countries.
16. The AAVSB now recommends that each jurisdiction promulgate appropriate regulations defining how to establish sufficient knowledge of the animal(s), including the following:

*"A recent examination of the animal or group of animals**, either physically or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically**; or B. Through medically appropriate and timely visits to the premises at which the animal or group of animals are kept."*

State and Federal Cooperation
I believe the state should continue as the veterinary regulating body. However, as veterinary video consultation between countries increase, complaints may come to our federal government. I contacted my Representative to the US Congress, **Jaime Herrera Beutler** who sits on the *Congressional Subcommittee on Labor, Health and Human Services*. (See attached)

My letter today to the Board is an offer to provide gratis consulting if willing to consider modifications in the regulation wording. Alternatively, perhaps the board could collaborate in a discussion on how to manage flow of complaints from other countries.

Proposal to Stall

In closing, this letter is a request for the CVMB to delay revising the VCPR and Veterinary Telemedicine regulation wording pending further discussion of the benefits to the veterinarian, the veterinary profession, the public and all animals.

Sincerely,

Rolan Tripp, DVM, CABC
California Veterinary License 7003

Addendum 1:

Excerpt from the Colorado VMB Policy on Veterinary Telehealth

- Place the welfare of patients first;
- Maintain the generally accepted standards of practice;
- Maintain medical records with regard to the Veterinarian-Client-Patient Relationship (VCPR) and Telehealth visits;
- Adhere to recognized ethical codes governing the profession;
- Accept responsibility for the supervision of technicians and staff;
- Protect client/patient confidentiality.

Addendum 2:
An example of the current rate of change related to regulation of Televeterinary.

The UK is considering allowing Rx Prescription based on remote evaluation alone.

RCVS Council agrees wide-ranging review of guidance on 'under care' and 24/7 cover

14 June 2019

Please note: we published a response to concerns arising from this Council decision on 19 June 2019.

The Council of the Royal College of Veterinary Surgeons (RCVS) yesterday gave the go-ahead for a wide-ranging review of a number of key provisions of the supporting guidance to the *RCVS Code of Professional Conduct*, following ongoing discussions around trialling the development of telemedicine services, including remote prescribing, in UK veterinary practice.

The review was recommended to RCVS Council by its Standards Committee following its lengthy and detailed exploration of the implications of new technologies for both animal health and welfare and veterinary regulation – a key strategic objective for the RCVS, first identified as part of the Vet Futures initiative in 2015.

The main areas under consideration include the provision of 24-hour emergency cover and the interpretation and application of an animal being under the care of a veterinary surgeon.

During the course of its discussions, which included numerous meetings and reports, a public consultation and examination of external legal advice, the Committee identified a number of anomalies in the College's existing guidance that could affect how the Code's provisions were applied across a range of different scenarios.

JAIME HERRERA BEUTLER
3RD DISTRICT, SOUTHWEST WASHINGTON

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SUBCOMMITTEE ON LABOR, HEALTH AND HUMAN SERVICES, EDUCATION, AND RELATED AGENCIES
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June 4, 2019

Dr. Rolan Tripp
15315 SE Evergreen Hwy
Vancouver, WA 98683-9208

Dear Dr. Tripp,

Thank you for approaching my office regarding the difficulties surrounding the delivery of remote veterinary medical care. I appreciate your willingness to meet with my staff and update me on the current status of this emerging service. Based on your account of the situation, I can certainly understand your frustrations with the current system, especially as it pertains to cross-state service hindrances and restrictions.

Following my briefing on this issue, I have made sure that my legislative team is aware of the concerns you have shared, and I will give full consideration to any proposals that will increase the efficiency of veterinary services. Going forward, please feel free to reach out again with any follow up information or potential solutions.

Sincerely,

Jaime Herrera Beutler

Jaime Herrera Beutler
Member of Congress

Drummond, Amanda@DCA

From: Jerry Owens <jowensdvm@aol.com>
Sent: Monday, July 1, 2019 4:47 AM
To: Drummond, Amanda@DCA; Sieferman, Jessica@DCA
Subject: verbiage of telemedicine legislation

Follow Up Flag: Flag for follow up
Flag Status: Flagged

[EXTERNAL]: jowensdvm@aol.com

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831 Madrone Rd.
Glen Ellen, CA 95442

June 28, 2019

California Veterinary Medical Board

Sacramento, CA.

To the California Veterinary Medical Board:

I am a concerned California veterinarian and disapprove of your current proposal to limit telemedicine in California. I believe that since California is generally recognized as a leader, that you should take the direction the AAVSB has indicated instead of proposing verbiage that would move us backwards.

I have been in private referral specialty practice in the SF Bay Area since 1976 and have provided telemedicine consultations for that entire time. I provide consultations on subjects including medical, surgical and radiological problems. My primary clients are practicing veterinarians, but I also provide consultations directly to animal owners and breeders. Ninety nine percent of the time I do not see the animal directly and therefore do not have a “hands-on” opportunity with the animal. I rarely ever see the client and in many instances do not know or even have a personal relationship with referring veterinarian. I never have felt that this is has been a problem. To my knowledge, there has never been a complaint from the public about my services or myself. I suspect this may be the case with other veterinarians as well, who have not been practicing veterinary medicine providing without a hands-on exam. Your legislation would make me and others to be criminals if we continued practicing that way. If there have been complaints from the public directed towards veterinarians who have practiced veterinary medicine in the state of California without prior hands-on examinations, perhaps we should look at those complaints and propose regulations to deal with those specific issues, rather than to blanket all practice situations.

Telemedicine has always existed in medicine when considering the workings of specialists such as cytologists, hematologists, pathologists and radiologists. This would be true in both human medicine and veterinary medicine. Most general practitioners have not been involved with telemedicine as the nature of their practice is to have a personal relationship with their client with time to directly provide a hands-on examination of the patient.

I urge that your board reconsider drafting a legal document that demands a hands-on examination before delivery of any remote veterinary medical services.

Sincerely yours,

Jerry M. Owens, DVM

Diplomate American College of Veterinary Radiology (ACVR)

Member:

AVMA, CVMA, MCVMA, REVMA

CVMA delegate to

the MCVMA

Member,

Board of Directors of the SVME (Society of Veterinary Medical Ethics)
President-elect of the AVMHS (American Veterinary Medical History Society)
Past president, American College of Veterinary Radiology
Historian, American College of veterinary Radiology
Member: Rotary International - Sonoma Valley Rotary