



MEMORANDUM

DATE	January 13, 2023
TO	Multidisciplinary Advisory Committee (MDC)
FROM	Marie Ussery, RVT Richard Sullivan, DVM Equine Practice Subcommittee (Subcommittee)
SUBJECT	Agenda Item 4.A. Recommendation Regarding Legislative Proposal to Amend Sections 4825.1 of Article 2 and 4875.1 of Article 4, and Add Sections 4826.01, 4826.6, and 4829.1 to Article 2, Chapter 11, Division 2 of the Business and Professions Code

Background

During the spring of 2022, the California Horse Racing Board (CHRB), the California Veterinary Medical Association (CVMA), the University of California, Davis, School of Veterinary Medicine (UCD SVM), and several equine veterinarians raised concerns to the Veterinary Medical Board (Board) about how the Veterinary Medicine Practice Act (Practice Act) was being applied to racetrack veterinarians and the equine veterinary community. CHRB had concerns about overlap of two boards regulating the practice of veterinary medicine at CHRB-regulated facilities. CVMA and equine veterinarians felt that they were being held to a companion animal standard of practice.

To avoid inadvertently jeopardizing the Board’s ability to fairly deliberate and rule on pending disciplinary items or matters, the Board’s Executive Officer and Executive Committee recommended to the Board at the July 2022 meeting that they request the Multidisciplinary Advisory Committee (MDC) immediately form a subcommittee to hold a series of meetings with Board staff and legal counsel and solicit input from all relevant stakeholders (CVMA, CHRB, etc.) on these issues and then bring any recommendations to the Board at a future meeting.

Immediately following the July 2022 meeting, the MDC Chair appointed Marie Ussery, RVT, and Richard Sullivan, DVM, to form the Subcommittee. Over the next two months, the Subcommittee met with Board staff to gain insight into the timeline and specific issues that created conflict between the Board and the equine veterinary community. The Subcommittee then met with representatives from CVMA, CHRB, and UCD SVM. The Subcommittee provided an update to the MDC at its [October 18, 2022 meeting](#).

Some of the issues raised by stakeholders involved the veterinarian-client-patient relationship (VCPR) and veterinarian examination requirements as applied to equine practice. In addition, stakeholders raised concern that the Veterinary Medicine Practice Act

(Practice Act) and supporting regulations do not define “herd,” and fail to properly resolve issues regarding animal owner, client, and animal trainer for purposes of establishing the This memorandum and attached legislative proposal are intended to address those issues.

Discussion

Following Subcommittee meetings with CVMA, CHRB, and UCD SVM, the Subcommittee reviewed the VCPR regulation, California Code of Regulations (CCR), title 16, section [2032.1](#), to see if amendments could be made to resolve issues of herd, equine practice, veterinarian examinations of herd animals and equines, and the ability of a client to designate an agent (such as an animal trainer) to form the VCPR with the veterinarian.

During this review, the Subcommittee determined the VCPR regulation should be moved into statute, which would provide the most direct and timely manner to address these issues. The Subcommittee drafted a legislative proposal to place the VCPR requirements into statute. The Subcommittee then met with CVMA to discuss the legislative proposal, and CVMA agreed placing the VCPR in statute, rather than merely revising the existing regulation, was the appropriate action. The Subcommittee notes that the legislative proposal is not intended to expand the scope of practice but adds important terms and definitions and organizes the VCPR and its requirements in one location. Due to amendment of the same statute, the legislative proposal discussed herein includes the electronic veterinary services legislative proposal previously adopted by the Board at its July 22-23, 2021 meeting ([Agenda Item 5.C.](#)), which was too late to include in the Board’s Sunset Review Report.

Subcommittee Recommendations

Attached hereto is the Subcommittee’s legislative proposal regarding the VCPR, and includes the previously Board-approved electronic veterinary services provisions, as follows. Also attached is a regulatory proposal to repeal the VCPR regulations if the VCPR legislation is enacted.

BPC Section 4825.1 (Practice Act Definitions). This section would be amended to reorganize the existing definitions included in the Practice Act, and include the electronic veterinary services definitions (prop. subds. (g)-(h)), with a technical revision in proposed subdivision (h) to remove and replace client’s “representative” with “agent” to conform to the new use of “agent” in the legislative proposal.

In addition, the amendments would establish a new definition of “client” (prop. subd. (c)) to mean the owner of the animal. The new client definition would provide strong guidance to veterinarians on the differences between the client and the client’s authorized agent and better protect the animal and veterinary treatment rights of the animal owner.

With CVMA’s input, the amendments also would establish a new definition of “herd” (prop. subd. (e)) to mean any group of animals of the same species and located at the same geographic location, which would clarify the difference between the treatment of an individual patient, such as surgery, and the treatment of a group of animals prophylactically, such as administering vaccinations or a deworming protocol. (See *also* Prop. BPC, § 4826.01, subd. (b)(2).) The new “herd” definition also would clarify the medical records

requirement for herds under CCR, title 16, [2032.3](#), as well as the proposed herd examination provision discussed below.

Proposed BPC Section 4826.01 (VCPR). The legislative proposal would add a new section of the BPC, largely copied from the current VCPR regulation, CCR, title 16, section [2032.1](#), with revisions discussed further below.

Subdivision (a). The proposal would maintain the VCPR requirement under federal law (21 USC § 360b, as defined under 21 CFR § 530.3(i)) and existing regulation (CCR, tit. 16, § [2032.1](#), subs. (a), (e)) for a veterinarian to establish a VCPR before prescribing, dispensing, or administering a drug, medicine, application, or treatment to an animal patient. The proposal also would maintain the existing VCPR components for client authorization, veterinarian knowledge, and veterinarian responsibility and communication in the existing regulation (CCR, tit. 16, § [2032.1](#), subs. (b)(1)-(3).) Proposed subsection (a)(3) would include the informed client consent provisions approved by the Board on January 30, 2020 ([Agenda Item 10.C.](#)).

Subdivision (b). The proposal would maintain the veterinarian animal knowledge requirements under existing regulation (CCR, tit. 16, § [2032.1](#), subs. (b)(2)) and restructure the provision to clarify the animal knowledge can be satisfied by recently examining the animal or, if the animal is a member of a herd being treated prophylactically to prevent diseases or treated as a group for routine husbandry procedures, by making medically appropriate and timely visits to the premises on which the herd is kept.

Subdivision (c). The proposal would establish the client ability to authorize an agent to act on the client's behalf to establish the VCPR with the veterinarian. This provision is intended to resolve CVMA's concern that the owner of the animal may have delegated animal treatment authority to a trainer or barn manager. The Subcommittee notes that the veterinarian and client would be best protected in the agent scenario when the client provides to the veterinarian a written document designating the agent. However, the Subcommittee does not recommend at this time requiring a written document in this provision to provide for instances where the client's animal needs veterinary examination, diagnosis, or treatment, the client is unable to personally deliver the animal to the veterinarian, and the client has not executed a writing designating as the client's agent the relative, friend, neighbor, or other individual who delivers the animal to the veterinarian on the client's behalf.

Subdivision (d). The proposal would maintain the existing VCPR exemption in the absence of client communication (CCR, tit. 16, § [2032.15](#), subs. (b)(2)).

Subdivision (e). The proposal would maintain the existing prohibition on establishing a VCPR solely by telephone or electronic means (CCR, tit. 16, § [2032.1](#), subs. (e)). The Subcommittee notes the other telemedicine provisions in the proposal establish various circumstances for telemedicine (see Prop. BPC, § 4826.6).

Subdivision (f). The proposal would maintain the existing VCPR exemption for wild animals and unknown owners (CCR, tit. 16, § [2032.1](#), subs. (a)) and include the exemption for rabies vaccinations approved by the Board on July 20, 2022 ([Agenda Item 5.D.](#))

Subdivision (g). The proposal would maintain the existing VCPR exemption in the absence of the originally prescribing veterinarian (CCR, tit. 16, § [2032.25](#)).

Proposed BPC Section 4826.6 (Telemedicine). As discussed above, the legislative proposal includes the previously Board-approved telemedicine provisions. The Subcommittee notes a new BPC section [4826.3](#) (name tag requirements) recently was added to the Practice Act, so the proposed section previously approved by the Board has been renumbered as new BPC section 4826.6. The Subcommittee also proposes a technical amendment to subdivision (b)(2) to remove and replace client's "representative" with "agent" to conform to the new use of "agent" in the legislative proposal.

Proposed BPC Section 4829.1 (Prescription Duration). The proposal would maintain the existing one-year prescription limitation and definition of "drug" in regulation (CCR, tit. 16, § [2032.1](#), subs. (c), (d)).

BPC Section 4875.1 (Investigation and Prosecution Priority). Since the VCPR regulatory provisions would be moved to statute, all references to the VCPR regulation, which would be repealed in a subsequent rulemaking, would need to reflect the new VCPR statute. Accordingly, BPC section 4875.1, subdivision (a)(7), would be updated to remove and replace "2032.1 of Title 16 of the California Code of Regulations." with "4826.01," the proposed new BPC section for the VCPR.

Future Regulatory Proposal to Repeal VCPR Regulations. As discussed above, the existing VCPR regulations, as revised, are proposed to be codified in statute in the Subcommittee's legislative proposal. If the VCPR legislative proposal is enacted, the Subcommittee will recommend the VCPR regulations, CCR, title 16, sections [2032.1](#), [2032.15](#), and [2032.25](#) be repealed. In addition, the Committee will recommend a conforming amendment to CCR, title 16, section [2038.5](#) to remove and replace the citation to sections 2032.1 and 2032.15 with the new VCPR statutory section (Prop. BPC, § 4826.01). The Subcommittee will recommend this rulemaking be submitted as a section 100 rulemaking as it would merely reflect the new statutes, making the existing regulations redundant and outdated.

Action Requested

The Subcommittee requests the MDC review the legislative proposal and entertain a motion to recommend to the Board submission of the legislative proposal to the California State Legislature to amend sections 4825.1 of Article 2 and 4875.1 of Article 4, and add sections 4826.01, 4826.6, and 4829.1 to Article 2, Chapter 11, Division 2 of the Business and Professions Code.

Attachment

1. Legislative Proposal Regarding Veterinarian-Client-Patient Relationship and Electronic Veterinary Services

VETERINARY MEDICAL BOARD
LEGISLATIVE PROPOSAL
VETERINARIAN-CLIENT-PATIENT RELATIONSHIP AND
ELECTRONIC VETERINARY SERVICES

Additions are indicated in single underline.

Deletions are indicated in ~~single strikethrough~~.

Amend sections 4825.1 of Article 2 and 4875.1 of Article 4, and add sections 4826.01, 4826.6, and 4829.1 to Article 2, Chapter 11, Division 2 of the Business and Professions Code as follows:

4825.1. These definitions shall govern the construction of this chapter as it applies to veterinary medicine.

(a) "Animal" means any member of the animal kingdom other than humans, and includes fowl, fish, and reptiles, wild or domestic, whether living or dead.

(b) "Diagnosis" means the act or process of identifying or determining the health status of an animal through examination and the opinion derived from that examination.

~~(b) "Animal" means any member of the animal kingdom other than humans, and includes fowl, fish, and reptiles, wild or domestic, whether living or dead.~~

(c) "Client" means the owner of the animal.

(ed) "Food animal" means any animal that is raised for the production of an edible product intended for consumption by humans. The edible product includes, but is not limited to, milk, meat, and eggs. Food animal includes, but is not limited to, cattle (beef or dairy), swine, sheep, poultry, fish, and amphibian species.

(e) "Herd" refers to any group of animals of the same species and located at the same geographic location.

(df) "Livestock" includes all animals, poultry, aquatic and amphibian species that are raised, kept, or used for profit. It does not include those species that are usually kept as pets such as dogs, cats, and pet birds, or companion animals, including equines.

(g) "Teleconsultation" means the use of electronic technology or media, including interactive audio and/or video, for communication between a California-licensed veterinarian who has established the veterinarian-client-patient relationship for the animal patient(s), and a licensed veterinarian or other person whose expertise, in the opinion of the California-licensed veterinarian, would benefit the patient(s), but who does not have a veterinarian-client-patient relationship for the patient(s), does not have direct communication with the client or client's agent, and does not have ultimate authority over the care or primary diagnosis of the animal patient(s).

Commented [WT1]: Electronic Veterinary Services provisions were previously approved by the Board at its 7/22/2021 meeting.

Commented [WT2]: Alphabetized; moved up from subdivision (b).

Commented [WT3]: Definition of client recommended by CVMA.

Commented [WT4]: Will clarify medical records requirement under CCR, tit. 16, sec. 2032.3.

To resolve CVMA's concern regarding treatment of herd animals in formulation of VCPR.

Need to discuss specific treatments to animals that should not be allowed under herd definition without personal animal exam.

Commented [WT5]: Moved to BPC sec. 4826.01(b)(2) on CVMA recommendation.

(h) "Telehealth" means the use of electronic technology or media, including interactive audio and/or video, to deliver general veterinary health information and education to the potential or existing client or client's representative agent.

Commented [WT6]: Revised to conform to the use of "agent" in BPC sec. 4829.5, subd. (a).

(i) "Telemedicine" means the use of electronic technology or media, including interactive audio and/or video, by a California-licensed veterinarian to practice veterinary medicine provided within an established veterinarian-client-patient relationship for the patient(s).

(j) "Triage" means the use of electronic technology or media, including interactive audio and/or video, to diagnose and treat a medical emergency as defined under Section 4840.5, until the animal patient(s) can be transported to, and/or seen by, a veterinarian.

4826.01. (a) A veterinarian shall not prescribe, dispense, or administer a drug, medicine, application, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of animals unless a veterinarian-client-patient relationship exists or as otherwise permitted by law. A veterinarian-client-patient relationship exists if:

Commented [WT7]: VCPR required under federal law (21 USC sec. 360b, defined under 21 CFR sec. 530.3(i)).

Commented [WT8]: CCR, tit. 16, § 2032.1(e)

(1) The client has authorized the veterinarian to assume responsibility for medical judgments regarding the health of an animal;

Commented [WT9]: See CCR, tit. 16, § 2032.1(b)(1)

(2) The veterinarian possesses sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the animal's medical condition; and

Commented [WT10]: See CCR, tit. 16, § 2032.1(b)(2)

(3) The veterinarian has assumed responsibility for making medical judgments regarding the health of the animal and has communicated with the client a medical, treatment, diagnostic, and/or therapeutic plan appropriate to the circumstance.

Commented [WT11]: See CCR, tit. 16, § 2032.1(b)(3)

Commented [WT12]: Informed Consent provisions approved by the Board 1/30/20

(b) A veterinarian possesses sufficient knowledge of the animal for purposes of paragraph (2) of subdivision (a) if the veterinarian has recently seen, or is personally acquainted with, the care of the animal by:

Commented [WT13]: Moved from CCR, tit. 16, § 2032.1(b)(2)

(1) Examining the animal; or

(2) If the animal is a member of a herd that is being treated prophylactically to prevent diseases or treated as a group for routine husbandry procedures, making medically appropriate and timely visits to the premises on which the herd is kept.

Commented [WT14]: Moved from herd definition on CVMA recommendation.

(c) For purposes of paragraphs (1) and (3) of subdivision (a), the client may authorize an agent to act on the client's behalf.

Commented [WT15]: To resolve CVMA's concern that the owner of the animal may have delegated animal treatment authority to a trainer or barn manager.

(d) For purposes of paragraph (3) of subdivision (a), a veterinarian-client-patient relationship may continue to exist in the absence of client communication when all of the following are met:

Commented [WT16]: See CCR, tit. 16, § 2032.15

(1) A veterinarian-client-patient relationship was established with an original veterinarian, and another designated veterinarian serves in the absence of the original veterinarian at the same location where the medical records are kept.

(2) The designated veterinarian has assumed responsibility for making medical judgments regarding the health of the animal patient(s).

(3) The designated veterinarian has sufficient knowledge of the animal patient(s) to initiate at least a general or preliminary diagnosis of the medical condition of the animal patient(s) through one of the following:

(A) Being personally acquainted with the care of the animal patient(s) by virtue of an examination of the animal(s).

(B) If the animal patient is a member of a herd, making medically appropriate and timely visits to the premises where the animal(s) is kept.

(C) Consulting with the original veterinarian who established the veterinarian-client-patient relationship.

(4) The designated veterinarian has continued the medical, treatment, diagnostic and/or therapeutic plan that was set forth and documented in the medical record by the original veterinarian.

(5) If the medical, treatment, diagnostic and/or therapeutic plan differs from that which was communicated to the client by the original veterinarian, then the designated veterinarian has attempted to communicate the necessary changes with the client in a timely manner.

(e) A veterinarian-client-patient relationship may not be established solely by telephone or electronic means.

(f) This section shall not apply where the animal patient is a wild animal, an animal whose owner is unknown, or receiving a rabies vaccination in the interest of protecting public health.

(g) This section shall not apply to a veterinarian prescribing, dispensing, or furnishing a refill of drugs for use on an animal patient in the absence of the originally prescribing veterinarian, who had established the veterinarian-client-patient relationship, if either of the following applies:

(1) The drugs were prescribed, dispensed, or furnished on an emergency basis for a traveling patient only as necessary to maintain the health of the animal patient until the animal patient can return to the originally prescribing veterinarian. Prior to providing a prescription refill pursuant to this paragraph, the veterinarian shall make a reasonable effort to contact the originally prescribing veterinarian, and document the communication, or the attempt to contact the originally prescribing veterinarian, in the animal patient's medical record.

Commented [WT17]: See CCR, tit. 16, § 2032.1(e)

Commented [WT18]: See CCR, tit. 16, § 2032.1(a)

Commented [WT19]: 7/20/22 Board approved VCPR exemption for rabies vaccinations.

Commented [WT20]: See CCR, tit. 16, § 2032.25

Commented [WT21]: See CCR, tit. 16, § 2032.25(b)(1)

(2) The veterinarian serves at the same location as the originally prescribing veterinarian, who was unavailable to authorize the refill, and the veterinarian authorizing the refill fulfills all of the following:

Commented [WT22]: See CCR, tit. 16, § 2032.25(b)(2)

(A) Possessed and reviewed the animal patient's records.

(B) Ordered the refill of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refill.

(C) Entered the prescription refill in the animal patient's medical records.

(D) In the veterinarian's professional judgment, determined that failure to refill the prescription might have interrupted the animal patient's ongoing care and might have had an adverse effect on the animal patient's well-being.

4826.6. (a) Telemedicine may be used by a California-licensed veterinarian to further evaluate the animal patient(s)' progress, and diagnose and treat the medical condition for which the veterinarian-client-patient relationship has been established.

Commented [WT23]: Changed BPC section number from 4826.3, previously approved by Board, due to new name tag statute implemented with that section number.

(b) Telehealth may be used as follows:

(1) By a California-licensed veterinarian and may include a general or preliminary diagnosis of the general health of the animal patient using a virtual examination of the animal patient(s), but shall not include treatment of whatever nature for any condition.

(2) By a registered veterinary technician or veterinary assistant supervised by a California-licensed veterinarian to determine the seriousness of a medical situation and advise the potential or existing client or client's representative agent of the urgency of an in-person examination of the animal patient(s), but shall not include a diagnosis or treatment of any condition.

Commented [WT24]: Revised to conform to the use of "agent" in BPC sec. 4829.5, subd. (a).

(c) Triage shall only be used for life-threatening cases. In an emergency, as defined under Section 4840.5, triage may be used as follows:

(1) By a California-licensed veterinarian to diagnose and treat the animal patient(s), until the animal patient(s) can be seen by, or transported to, a veterinarian.

(2) By a registered veterinary technician as provided under Section 4840.5.

(d) Teleconsultation may be used by a California-licensed veterinarian to obtain advice or assistance on an animal patient(s)' medical condition.

4829.1. (a) A drug shall not be prescribed for a duration inconsistent with the medical condition of the animal(s) or type of drug prescribed. The veterinarian shall not prescribe a drug for a duration longer than one year from the date the veterinarian examined the animal(s) and prescribed the drug.

Commented [WT25]: To provide for CCR, tit. 16, § 2032.1(c), (d)

(b) As used in this section, "drug" shall mean any controlled substance, as defined by Section 4021, and any dangerous drug, as defined by Section 4022.

4875.1. (a) In order to ensure that its resources are maximized for the protection of the public, the board shall prioritize its investigative and prosecutorial resources to ensure that veterinarians and registered veterinary technicians representing the greatest threat of harm are identified and disciplined expeditiously. Cases involving any of the following allegations shall be handled on a priority basis, as follows, with the highest priority being given to cases in paragraph (1):

(1) Negligence or incompetence that involves death or serious bodily injury to an animal patient, such that the veterinarian or registered veterinary technician represents a danger to the public.

(2) Cruelty to animals.

(3) A conviction or convictions for a criminal charge or charges or being subject to a felony criminal proceeding without consideration of the outcome of the proceeding.

(4) Practicing veterinary medicine while under the influence of drugs or alcohol.

(5) Drug or alcohol abuse by a veterinarian or registered veterinary technician involving death or serious bodily injury to an animal patient or to the public.

(6) Self-prescribing of any dangerous drug, as defined in Section 4022, or any controlled substance, as defined in Section 4021.

(7) Repeated acts of excessive prescribing, furnishing, or administering of controlled substances, as defined in Section 4021, or repeated acts of prescribing, dispensing, or furnishing of controlled substances, as defined in Section 4021, without having first established a veterinarian-client-patient relationship pursuant to Section ~~4826.012032.1~~ of Title 16 of the California Code of Regulations.

(8) Extreme departures from minimum sanitary conditions such that there is a threat to an animal patient or the public and animal health and safety, only if the case has already been subject to Section 494 and board action.

(b) The board may prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).

(c) The board shall annually report and make publicly available the number of disciplinary actions that are taken in each priority category specified in subdivisions (a) and (b).