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DEPARTMENT OF CONSUMER AFFAIRS
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Unlicensed Activity – Dental Procedures
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BACKGROUND:
The issue of the unlicensed practice of anesthesia free dentistry surfaced in 1988 when the Veterinary Medical Board (Board) took action against a groomer in Stockton CA who was using an ultrasonic dental scaler to clean the teeth of her client's pets. The Frequently Asked Questions below are intended to help consumers understand the history regarding "anesthesia-free" dentistry and the use of dental tools referred to as "scalers."

Frequently Asked Questions

Question: In 1989, the OAL told the Board that its policy opinion on non-veterinary teeth cleaning was an underground regulation. Is this true?

Answer: Yes. The Board concurred with the determination by OAL in 1989 and moved to codify its policy in law. CCR Section 2037 became effective in law in May 1990.

Question: In 1989, in a Writ of Mandate case involving a groomer in Stockton, a San Joaquin County Judge opined in that case that while the law was clear that the use of the ultrasonic scaler was clearly the practice of veterinary medicine, the law was not as clear on whether the use of a manual scaler could be considered the practice of veterinary medicine. The Judge also opined that the limitations in veterinary dentistry should be based on parameters of the location of the gum and whether the procedure was performed above or below the gum line. Did the Board ever consider using those parameters for determining whether dentistry is the practice of veterinary medicine?

Answer: Yes. In 1989, the Board considered the Judge's ruling and determined that the parameters of "above" and "below" the gum line were vague and confusing since gums are living tissue and are not static on the tooth due to various health factors. The Board promulgated regulations (California Code of Regulations, Title 16, Section 2037) in accordance with the requirements of the Administrative Procedures Act (Gov. Code Section 11340, et seq.) to clarify and define the parameters of veterinary medicine relative to cleaning animal's teeth and what was acceptable and what was not.

CCR Section 2037, approved by Office of Administrative Law (OAL) and effective on May 2, 1990, made it clear that the only items that an unsupervised, unlicensed person may use to clean an animal's teeth are "cotton swabs, gauze, dental floss, dentifrice, toothbrushes or similar items." In a precedent decision adopted by the board in 2005, an Administrative Law Judge stated that a dental scaler is not at all similar to the soft items listed in the regulation, but is a curved pick with a sharp point. The Board supports the position that a dental scaler is not at all similar to any item on that list; therefore, the use of a dental scaler by an unlicensed or unregistered person not under supervision of a California licensed veterinarian is unlicensed activity.

Question: In 1989, subsequent to the public hearing process and adoption of the proposed regulations, Section 2037 by the Board, the Director of the Department of Consumer Affairs (DCA), Michael Kelly, opposed the Board's proposal to implement. Can a Board implement regulations if they are opposed by the Director of DCA?

Answer: Yes. If a Director refuses to sign off on the regulatory file, the file goes back to the Board for reconsideration and a unanimous vote of a Board is required to override the Director (Business and Professions Code Section 313.1). In this case, the proposed regulations were sent back to the Board and the Board voted unanimously to move forward with the file. Thereafter, the file was sent to the State and

Consumer Services Agency, the Department of Finance and the Office of Administrative Law. The regulations were approved at all levels becoming effective as law in May 1990.

Question: It appears that the Board adopted this so called “precedent decision” twice under suspicious circumstances – once in closed session and a year later in open session. Is this true?

Answer: No. The Board considered the proposed decision in the citation case in closed session in 2004 in accordance with the Administrative Procedures Act (Gov. Code Section 11400 et seq.) and the Bagley-Keene Open Meeting Act (Gov. Code Section 11120 et seq.). All stipulated settlements and proposed decisions are considered in closed session and it was appropriate for the Board to deliberate on this case in closed session. Once the proposed decision was adopted by the Board, it became a public document. After the Board adopted the proposed decision by the Administrative Law Judge, the determination to make it a precedent case stemmed from a recommendation by the Office of the Attorney General. The Board acted on that recommendation and adopted the decision in the case as a “Precedent Decision” during its properly noticed Board meeting in October 2005.