

**TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISION 20. VETERINARY MEDICAL BOARD**

**NOTICE OF PROPOSED REGULATORY ACTION CONCERNING:
Animal Physical Rehabilitation, § 2038.5**

NOTICE IS HEREBY GIVEN that the Veterinary Medical Board (Board) is proposing to take the action described in the Informative Digest.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request, addressed to the individuals listed under “Contact Person” in this notice, for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under “Contact Person” in this Notice, must be **received by the Board at its office no later than April 27, 2020**, or must be received by the Board at the hearing, should one be scheduled.

AVAILABILITY OF MODIFICATIONS

The Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as the Contact Person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 4808 and 4836 of the Business and Professions Code (BPC), and to implement, interpret, or make specific sections 4825, 4826, 4836, and 4883 of the BPC, the Board is considering adopting section 2038.5 of article 4 of division 20 of title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST

BPC section 4808 authorizes the Board to adopt, amend, or repeal rules and regulations that are reasonably necessary to carry into effect the Veterinary Medicine Practice Act (Act). BPC section 4836, subdivision (a) requires the Board to adopt regulations establishing animal health care tasks and an appropriate degree of supervision required for those tasks that may be performed only by a registered veterinary technician (RVT) or a licensed veterinarian. BPC section 4836, subdivision (b) authorizes the Board to establish animal health care tasks that may be performed by a veterinary assistant (VA), and requires the Board to establish an appropriate degree of supervision by an RVT or a licensed veterinarian over a VA for any tasks

established by regulation and the degree of supervision for any of those tasks must be higher than, or equal to, the degree of supervision required when an RVT performs the task.

Animal physical rehabilitation (APR) has become a rapidly expanding veterinary specialty, with some individuals who may or may not be licensed to practice physical therapy on humans, expanding their practice to animals. However, the Act requires a person who practices veterinary medicine or any branch thereof on animals to hold a valid, unexpired, and unrevoked license issued by the Board (BPC § 4825). The Act defines the practice of veterinary medicine to include the administration of 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, except where the medicine, appliance, application, or treatment is administered by an RVT or VA at the direction of and under the direct supervision of a licensed veterinarian (BPC § 4826). As each animal family and breed have different physicalities, the provision of APR must be performed in accordance with those physicalities, taking into consideration each animal's medical needs.

To protect the health, safety, and welfare of consumers and their animals, the proposal would define the practice of APR and provide the circumstances under which a person may perform APR on animals.

The Board is proposing the following changes:

Adopt CCR, Title 16, Section 2038.5 – Animal Physical Rehabilitation

Subsection (a)

The proposed regulation would set out APR as the proper term for corrective physical treatment on an animal.

Subsection (a)(1)

The proposed regulation would define APR to mean the treatment of injury or illness to address pain and improve function by means of corrective treatment.

Subsection (a)(2)

The proposed regulation would provide that APR does not include relaxation, recreational or wellness modalities, including but not limited to, massage, athletic training, or exercise.

Subsection (b)

The proposed regulation would require a veterinarian to establish a valid veterinarian-client-patient relationship (VCPR), as defined, before performing or authorizing APR.

Subsection (c)

The proposed regulation would authorize RVTs to perform APR under the degree of supervision to be determined by the veterinarian who has established the VCPR.

Subsection (d)

The proposed regulation would authorize VAs to perform APR under the direct supervision of a

veterinarian. The proposed regulation would also specify that if a VA is performing APR on an animal patient in a range setting, the supervising veterinarian would be required to be in the general vicinity of the treatment area.

Subsection (e)

The proposed regulation would specify that it does not restrict or amend the existing regulation regarding the performance of musculoskeletal manipulation (MSM) on an animal patient.

POLICY STATEMENT OVERVIEW

The policy behind the proposed regulatory adoption is consistent with the Board’s mission of protecting the public and their animals. The proposal is intended to address the growing practice of APR performed by individuals who are not licensed by the Board. Currently, licensed physical therapists and unlicensed individuals are practicing APR on animals. However, licensed physical therapists are only licensed by the Physical Therapy Board of California to perform physical therapy on humans, not animals, and persons not licensed by the Board to perform veterinary medicine on animals are considered veterinary assistants, who are not licensed or registered with the Board. The proposal would establish a clear definition of APR in the Board’s regulations, clarify who may perform APR, and clarify the circumstances under which a person may perform APR.

ANTICIPATED BENEFITS OF PROPOSED REGULATORY ACTION

The Board anticipates that consumers and their animals would benefit from the proposal as they would have information as to who is authorized to perform APR on their animals and which state agency oversees and enforces laws regarding APR treatment on animals. The Board also anticipates that veterinarians, RVTs, VAs, and licensed physical therapists will benefit from clarified terms regarding APR.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing the regulation, the Board has conducted a search of any similar regulations on this topic and has concluded that the regulation is neither inconsistent nor incompatible with existing state regulation.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies:

The Board currently enforces the unlicensed and/or unsupervised practice of veterinary medicine on animals, so the Board does not expect a significant increase in investigative or prosecution expenses as a result of the regulation.

Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 -

17630 Require Reimbursement: None

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because APR treatment is currently regulated and enforced by the Board pursuant to the Act, and any businesses that provide APR treatment are currently subject to the requirements of that Act.

Cost Impact on Representative Private Person or Business:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action, as the provision of APR treatment on animals by representative private persons or businesses is currently regulated and enforced by the Board pursuant to the Act.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that this regulatory proposal would not affect small businesses; small businesses that offer APR treatment must currently comply with the Act and the licensure and/or veterinarian supervision requirements for providing veterinary medicine services, and this regulation does not change those licensure requirements.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

The Board has made an initial determination that the proposed regulatory action may have an impact on the creation of jobs or new businesses if such jobs or new businesses intended to offer APR treatment on animals without Board licensure or veterinarian supervision; however, those jobs or new businesses are currently subject to the licensure and/or supervision requirements of the Act. The Board has made an initial determination that the proposed regulatory action will not have any impact on the elimination of jobs or existing businesses that offer APR treatment or the expansion of businesses in the State of California unless those businesses are currently offering APR treatment, or intend to expand to offer APR without Board licensure or veterinarian supervision as required under the Act.

Benefits of Regulation:

The Board has determined that this regulatory proposal would:

- The Board anticipates that consumers and their animals would benefit from the proposal as they would have information as to who is authorized to practice APR on their animals and which state agency oversees and enforces laws regarding APR treatment. The Board also anticipates that veterinarians, RVTs, VAs, and licensed physical therapists will benefit from clarified terms regarding APR.

- The proposal would not have a significant impact on worker safety because the proposal does not concern worker safety, but instead clarifies existing law regarding the provision of APR by veterinarians, RVTs, and VAs.
- The proposal would not have an impact on the state's environment because the proposal does not concern the environment, but instead clarifies existing law regarding the provision of APR by veterinarians, RVTs, and VAs.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

To date, the following options were considered by the Board and rejected:

1. Defining APR to include therapeutic massage and active, passive, and resistive exercise. The Board initially included these actions in its 2015 animal rehabilitation rulemaking, but struck these terms from the definition of APR following opposition in public comment that massage and exercise are not the practice of veterinary medicine. Opposition to the inclusion of "manual therapy" in the definition was also raised as it might conflict with the Board's existing regulation authorizing chiropractic treatment. Accordingly, "manual therapy" was stricken from the definition, and the Board added a provision clarifying that this proposal would not affect the existing chiropractic regulation, CCR, title 16, section 2038.
2. Providing a list all of the actions to be performed by a veterinarian prior to performing APR. The list of actions was stricken as it was determined to be duplicative since the veterinarian is required by regulation to establish a VCPR that lists the same actions.
3. Authorizing a California licensed physical therapist to perform APR under direct supervision of a veterinarian. In its 2015 animal rehabilitation rulemaking, the Board provided authority for a physical therapist to perform APR under the direct supervision of a veterinarian; subsequently, the term "physical therapist" was removed and replaced with "veterinary assistant," to be consistent with the use of terms for unlicensed/unregistered individuals under the Act.
4. Requiring RVTs and VAs to receive specialized training and education in APR; this was rejected as unnecessary since the proposal requires RVTs and VAs providing APR to have direct veterinarian supervision.
5. Authorizing physical therapists to perform APR with indirect veterinarian supervision; this was rejected because only licensed veterinarians and RVTs possess the knowledge and training to plan and supervise APR for animal patients and ensure proper animal handling, recognize pain and discomfort, and provide emergency care and assistance as needed in the particular field of APR.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board at 1747 North Market Blvd., Suite 230, Sacramento, California 95834.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the Contact Person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name:	Justin Sotelo, Lead Administrative & Policy Analyst
Address:	Veterinary Medical Board 1747 North Market Blvd., Suite 230 Sacramento, CA 95834
Telephone No.:	916-515-5238
Fax No.:	916-928-6849
E-Mail Address:	Justin.Sotelo@dca.ca.gov

The backup contact person is:

Name:	Timothy Rodda, Administration/Licensing Manager
Address:	Veterinary Medical Board 1747 North Market Blvd., Suite 230 Sacramento, CA 95834
Telephone No.:	916-515-5227
Fax No.:	916-928-6849
E-Mail Address:	Timothy.Rodda@dca.ca.gov

WEBSITE ACCESS: Materials regarding this proposal can be found at www.vmb.ca.gov.