

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

**Final Statement of Reasons**

**Hearing Date:** None

**Subject Matter of Proposed Regulations:** Consumer Protection Enforcement Initiative (CPEI).

**Sections Affected:** California Code of Regulations (CCR) Title 16, Division 20: Article 1, Section 2003; Article 2, Section 2017; and Article 5, Section 2042.

**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. The regulations will only impact a small number of licensed veterinarians, registered veterinary technicians, veterinary assistant controlled substances permittees, applicants for licensure, and small businesses owned or managed by licensees.

**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 proposal would implement the Consumer Protection Enforcement Initiative (CPEI) developed by the Department of Consumer Affairs (DCA) for implementation by the healing arts boards to assist the boards with investigating and prosecuting complaints in a timely manner, and to provide the boards with tools to improve the enforcement process and ensure patient safety. With this goal, the proposal would improve the Board's enforcement process, facilitate achievement of the Board's goal to reduce delays of investigation and disciplinary actions, and thereby enhance consumer protection.

This regulatory amendment adds appropriate authority and reference citations to the regulation and a new subsection (b) to CCR, title 16, section 2003 that would allow the Board to delegate to its Executive Officer (EO) approval of settlement agreements for the surrender or interim suspension of a license, registration, or permit, to investigate and evaluate each applicant for licensure under the Veterinary Medicine Practice Act (Act), and to issue a license in conformance with the provisions of the Act and its regulations. By allowing the Board to delegate to its EO the authority to approve settlement agreements, if the agreed upon action is license, registration, or permit surrender or interim suspension, will reduce processing times and improve consumer protection by allowing orders to become effective in a more timely manner. This proposed regulatory action responds to DCA's request and is to necessary to improve the Board's enforcement process, facilitate achievement of the Board's goal to reduce delays of investigation and disciplinary actions, and thereby enhance consumer protection.

Additionally, the Act assigns the responsibility for evaluating applicants and issuing licenses to the Board. But as a practical matter, the Board implements day-to-day requirements of the Act through its employees, the chief of whom is the executive officer. The delegations are

necessary to eliminate any doubt that the executive officer is appropriately empowered to conduct these licensing functions for the Board.

Further, the proposed regulatory action would adopt new CCR, title 16, section 2017 to authorize the Board to require an applicant for a veterinary license, a registered veterinary technician registration, or a veterinary assistant controlled substances permit to undergo an examination and/or evaluation, paid by the Board, if it reasonably appears, when the Board is considering approval of an application, that the applicant may be unable to practice veterinary medicine due to mental and/or physical illness. If, after receiving the evaluation report, the Board determines that the applicant is unable to practice veterinary medicine safely, the Board may deny the application.

The authority to compel a psychological or physical examination for an applicant for licensure provides a proactive measure to protect the public, given the potential harm to public safety should an applicant, whose competency is impaired due to mental or physical illness, be issued a license. By clarifying that the Board will require the applicant to be examined by a physician or psychologist if it reasonably appears they are unable to practice veterinary medicine safely due to a mental or physical illness, the Board is clarifying when they will require the mental or physical examination. Additionally, by specifying that the evaluation be completed within 60 days of the application, the Board is providing strict time frames for the evaluation to be completed to ensure competency and provide clarification to the applicant. With the authority to compel a psychological or physical examination of a license applicant before the applicant is licensed to practice, the public and their animals will be better protected from individuals with impaired competency.

Further, the proposal would adopt CCR, title 16, section 2042 to assist the Board in gathering information on recent disciplinary actions taken by other public agencies and subpoenaed records. Delays in the investigative process place consumers and their animals at risk and deprives the Board of critical information needed to complete investigations and take appropriate action. The more timely the information is received, the more quickly any Board decision regarding licensure and pursuing further discipline can be made, which will better protect California consumers and their animals.

**Consideration of Alternatives:**

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the regulation has been proposed. No reasonable alternative which was considered would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost-effective to affected private persons, or would be equally effective in implementing the statutory policy or other provision of law.

Set forth below are the alternatives which were considered and the reason the alternative was rejected or adopted:

1. Not adopt the regulations. This alternative was rejected because the regulatory proposal is based on internal and external reviews of the enforcement process and is necessary to improve the Board's enforcement operations.
2. Adopt all nine (9) CPEI regulations as proposed by DCA. On April 23, 2013, the Board's Enforcement Committee reviewed the CPEI proposals submitted by DCA for adoption. DCA recommended all healing arts board adopt nine regulations based upon the following statutes proposed in Senate Bill (SB) 1111 (Negrete McCloud,

2010):

- a. Business and Professions Code (BPC) section 720.2(b) – Board delegation to executive officer regarding stipulated settlements to revoke or surrender license.
- b. BPC section 720.10 – Revocation of a license for sexual misconduct with a patient.
- c. BPC section 720.12 – Denial of license application for registered sex offender.
- d. BPC section 712.14 – Confidentiality agreements regarding settlements.
- e. BPC section 720.16(d) and (f) – Require a licensee to comply with a request for medical records or a court order issued for enforcement of a subpoena for medical records.
- f. BPC section 720.32 – Authorize the Board to order a license applicant to be examined by a physician or psychologist if it appears that the applicant may be unable to safely practice the licensed profession due to a physical or mental illness.
- g. BPC section 726(a) and (b) – Sexual misconduct defined as unprofessional conduct.
- h. BPC section 737 – Failure to provide information or cooperate in an investigation is unprofessional conduct.
- i. BPC section 802.1 – Require licensee to report an arrest or conviction to the Board.

The Board's Enforcement Committee prepared a July 1, 2013 report to the full Board regarding its recommendations for each of the SB 1111 statutes listed above. The Enforcement Committee recommended regulatory adoption of BPC sections 720.2(b), 720.16(d) and (f), 720.32, 737, and 802.1.

The Enforcement Committee did not recommend adoption of the following proposals as these would not apply to veterinary medicine: BPC section 720.10; 720.12; and 726(a), (b).

The Enforcement Committee did not recommend adoption of BPC section 712.14 because it was addressed in subsequent legislation.

3. Adopt regulations as revised. The Board determined that this alternative is the most feasible and helpful because the proposed regulations will enhance consumer protection by reducing the time it takes for the Board to take disciplinary action.

**Objections or Recommendations/Responses:**

The following recommendations and/or objections were made regarding the proposed action.

- Summary of comment:  
*There is a lack of resources for doctors who need mental health support. The loss of licensure results in a loss of income and health insurance, which makes obtaining help difficult. Additionally, finding therapists and other medical providers who can understand and treat the specific issues that veterinarians face is a serious challenge. The Board should include provisions to provide assistance to doctors who are cited.*
- Board response to comment:  
*While the Board understands the concerns addressed in the comment, the primary focus of the Board is the protection of California consumers and their pets. The Board does not*

*have the authority to provide mental health services. However, there are resources available for licensees through professional associations and the Board encourages licensees to utilize these resources.*

*The proposed language would adopt CCR section 2017 to authorize the Board to require a license applicant to be examined by one or more physicians and surgeons or psychologists designated by the Board, if it reasonably appears that the applicant may be unable to practice veterinary medicine safely due to mental or physical illness affecting competency. This proposal is based on the Board's existing authority to require a licensee to submit for a mental or physical examination pursuant to Business and Professions Code sections 820 and 4883. The proposed regulation provides that the Board "shall pay the full cost" of the examination. However, the Board does not have statutory authority or the funds to provide mental and physical health support for licensees or applicants at the Board's expense. Accordingly, the Board is unable to resolve this concern as it is outside the scope of the Board's authority.*