

**Veterinary Medical Board
Department of Consumer Affairs**

Initial Statement of Reasons

Hearing Date: No hearing has been scheduled for the proposed action.

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.

Background and Introduction/Statement of the Problem:

The Veterinary Medical Board's (Board) highest priority is protection of California consumers. Business and Professions Code (BPC) section 4800.1 mandates that the protection of the public shall be the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. The Board enforces the Veterinary Medicine Practice Act (Act) and oversees veterinary licensees, veterinary technician registrants, and veterinary assistant controlled substance permit holders.

In 2009, various media articles reported that most Department of Consumer Affairs (DCA) healing arts boards were taking more than three years to complete investigations and take appropriate disciplinary action against licensees. Most healing arts boards faced significant complaint investigation backlogs and processing delays.

The DCA reviewed the existing enforcement process and found systemic problems that limited the boards' abilities to investigate and act on cases in a timely manner. These problems ranged from legal and procedural challenges to inadequate resources. In response, the DCA developed the Consumer Protection Enforcement Initiative (CPEI) (updated January 21, 2010) to overhaul the enforcement process at the healing arts boards and reduce the average enforcement completion timeline.

DCA also sponsored legislation, Senate Bill 1111 (Negrete McLeod), during the 2009-2010 Legislative Session to codify many of the recommendations contained within the report. However, the bill failed to be enacted.

DCA then encouraged the healing arts boards to pursue regulatory action 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.

The DCA CPEI recommendations were brought to the Board at its April 18, 2011 meeting. The CPEI recommendations were further discussed and deliberated at multiple board and

committee meetings. At the Board's July 23-24, 2013 meeting, the Board considered a revised version of the CPEI regulations as recommended by the Board's Enforcement Committee. At the Board's July 22-23, 2014 meeting, the Board considered and voted on each item of the DCA's CPEI recommendations. The Board's Executive Officer provided additional information and updates to the Board on the CPEI recommendations at the Board's October 21-22, 2014 meeting, and the Board approved the revised CPEI proposal. The CPEI proposal was again presented to the Board at its April 19-20, 2017 meeting with suggested revisions for the Board's consideration, which the Board adopted. Additional revisions to the CPEI proposal were made and adopted by the Board at its February 21-22, 2018 meeting and the January 23-24, 2019 meeting.

This proposed regulatory action responds to DCA's request and is intended 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.

SPECIFIC PURPOSE, ANTICIPATED BENEFIT, AND FACTUAL BASIS/RATIONALE:

Amend Section 2003 of Article I of Division 20 of Title 16 of the CCR: Delegation of Certain Functions.

Purpose: This regulatory amendment adds a new subsection (b) which delegates to the Board's Executive Officer (EO) the authority to approve settlement agreements for the surrender or interim suspension of a license, registration, or permit, to investigate and evaluate each applicant for licensure under the Act, and to issue a license in conformance with the provisions of the Act and its regulations.

Under existing law, BPC section 4804.5 authorizes the Board to appoint an EO to exercise the powers and perform the duties delegated by the Board. BPC section 4808 authorizes the Board to issue all licenses to practice veterinary medicine and all veterinary technician registrations, and section 4836.2 authorizes the Board to issue a veterinary assistant controlled substance permit (VACSP). Under 16 CCR section 2003, the Board has delegated to the EO the ability to: receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing and perform other functions necessary to the business-like dispatch of the business of the Board in connection with proceedings under the provisions of sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; and certify and deliver or mail copies of decisions under section 11518 of that code.

The Board has traditionally retained for itself the authority to render decisions on proposed decisions prepared by administrative law judges (ALJ) and settlement agreements negotiated by staff through deputy attorneys general (DAG) and licensees or applicants. The ALJ's proposed decision is issued after a licensee has had an opportunity to dispute the charges at an administrative hearing. The licensee and the DAG, with approval of Board staff, may, and often

do, negotiate a settlement agreement to resolve the case prior to the hearing. In a settlement agreement, the licensee usually admits specific charges and agrees to a proposed disciplinary action. Board members then must vote to approve proposed decisions and settlement agreements.

Consistent with the administrative adjudication provisions of the Administrative Procedures Act, the regulatory proposal would enable the Board's EO to approve settlement agreements for the surrender or interim suspension of a veterinary license, registered veterinary technician registration, or veterinary assistant controlled substance permit. Because, in these proceedings, the licensee willingly and voluntarily admits to the charges and agrees to a proposed disciplinary action that is the severest the Board can impose in that proceeding, there is little discretion for the Board's EO to exercise in terms of optional sanctions. The Board still reserves for itself the approval of settlements where a higher degree of discretion is exercised, such as decisions staying revocation and imposing probation conditions.

The regulatory proposal would also give authority to the Board's EO to investigate and evaluate each applicant for licensure under the Act, which ensures a streamlined license application process. In addition, the Board's EO may issue a license in conformance with the provisions of the Act and its regulations, which results in consumers having quicker access to veterinary medical services from qualified licensees.

Anticipated Benefit and Rationale: Delegating to the Board's 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 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.

Amend Authority and Reference Sections of Section 2003.

Purpose/Anticipated Benefit/Rationale. This proposal would amend the authority section of the regulation to add a citation to BPC section 4804.5. This amendment reflects the Board's statutory authority provided under section 4804.5 that states: "The board may appoint a person exempt from civil services who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter." As this section authorizes the Board to appoint an executive officer, and implicitly authorizes these regulations, adding the authority of this statute provides clarity for the regulation that describes the functions delegated by the Board to its executive officer.

The proposal would also amend the reference section of the regulation to add citations to BPC sections 4804.5, 4808, 4836.2, 4837, 4853.5, 4853.6, 4875, 4875.3, and 4883, and Government Code sections 11415.60 and 11500 through 11528. These sections should be added to the regulation in order to provide clarity of which statutes the regulation is implementing, interpreting, and making specific.

BPC section 4804.5 authorizes the Board to delegate powers and duties to its executive officer; this regulation makes clear those delegated powers and duties. BPC section 4808 authorizes the Board to issue licenses and registrations. This rulemaking expressly delegates that function to the executive officer. BPC section 4836.2 authorizes the Board to suspend or revoke the VACSP permit of a veterinary assistant in accordance with the APA procedures. BPC sections 4837, 4835.5, 4853.6, 4875, 4875.3, and 4883 similarly authorizes the Board to deny, revoke, or suspend registrations and licenses of other individuals under the Board's licensing authority. Accordingly, all of these statutes should be added to the reference section of the regulation in order to provide proper reference to the statutes that this regulation is implementing, interpreting, and making specific. In addition, Government Code sections 11415.60 and 11500 through 11528 authorizes the Board to engage in formal disciplinary proceedings against licensees; as the Board is delegating specified functions to its executive officer in this regulation, these Government Code sections should be added to provide proper reference to the statutes that are clarified by this regulation.

By providing the proper authority and reference citations, the regulation will be clarified for licensees, consumers, and those involved in disciplinary functions.

Adopt Section 2017 of Article 2 of Division 20 of Title 16 of the CCR: Mental or Physical Examination of Fitness for Licensure.

Purpose: This proposed regulatory action authorizes 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 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. The Board is required to pay for the examination. The evaluation report shall be made available to the applicant. Failure to comply with the examination requirement will render the application incomplete. 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.

Pursuant to BPC section 820, the Board can compel a licensee to submit to a physical and/or mental health examination if the licensee's ability to practice in a competent manner may be impaired due to physical or mental illness. The determination of the licensee's physical or mental illness is grounds for license revocation or suspension pursuant to BPC section 822. According to BPC section 480, subparagraph (a)(3)(A), the Board may deny a license on the grounds the applicant has done any act that if done by a licentiate, would be grounds for suspension or revocation of license. Rather than issue the license, registration, or permit to the applicant, then

subsequently order a psychological or medical evaluation, this regulation would permit the Board to obtain the evaluation prior to licensure, when the Board is considering approval of the application.

Anticipated Benefit and Rationale: This provision is necessary to ensure that applicants who would be subject to discipline immediately upon granting a license, due to the person's impairment and inability to competently practice veterinary medicine, will not obtain licensure at the outset. 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.

Adopt Section 2042 of Article 5 of Division 20 of Title 16 of the CCR: Grounds for Discipline.

Purpose: BPC sections 141, 475, 480, 490, 4856, 4875, and 4883 authorize the Board to deny, revoke, or suspend a license or registration or assess a fine, and define acts that constitute grounds for discipline. This regulatory proposal specifies additional acts that constitute grounds for denial and discipline, as follows:

Section 2042(a): Failure to report to the board within 30 days disciplinary action taken by any public agency in any state or territory or any licensing entity or authority of this state or another state or territory, any agency of the federal government or United States military or a foreign country.

Pursuant to BPC section 141 and section 4883, subdivisions (l) and (n), an applicant, licensee, registrant, or permit holder is subject to Board denial or discipline for (1) any discipline by another state or territory of a license, certificate, or registration to practice veterinary medicine or as a veterinary technician in that state or territory, or (2) for disciplinary action taken by any foreign country, agency of the federal government, or United States military, or public agency in any state or territory for any act substantially related to the practice of veterinary medicine or the practice of a veterinary technician. Accordingly, as part of the licensing and renewal process, applicants, licensees, registrants, and permit holders are required to report discipline of his or her professional licenses by any licensing entity or government agency. However, the Board does not always receive reports of licensing or government agency discipline in a timely manner and the self-reporting requirement is every two years upon license renewal, resulting in a potential significant delay in Board awareness of out of state discipline. Requiring applicants and licensees

to report the required information within 30 days of any out-of-state disciplinary action will provide the Board with an additional and more timely resource for information that is the basis for discipline.

Section 2042(b): Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

BPC section 4856 requires licensed veterinarians to maintain records and make the records available to the Board for inspection. In the event the veterinarian refuses to make the records available to the Board and the Board seeks and obtains a court order directing production of the records, the failure or refusal to comply with a court order mandating the release of records to the Board has an adverse impact upon the Board's ability to conduct investigations in a timely manner. Making this a violation of the Board's regulations creates an incentive for licensees to cooperate.

Anticipated Benefit and Rationale: Regarding section 2042(a), the regulatory provisions will make the gathering of adverse information on an applicant or licensee faster. The more timely the information is received, the more quickly any decision regarding licensure and pursuing further discipline can be made. Quicker decisions regarding these grounds will better protect California consumers. Regarding section 2042(b), making it grounds for denial or discipline to fail or refuse to comply with a court order mandating the release of records to the Board will help motivate licensees to cooperate with Board investigations. Delays in the investigative process place consumers at risk and deprives the Board of critical information needed to complete investigations and take appropriate action.

Underlying Data

- Department of Consumer Affairs, Consumer Protection Enforcement Initiative, updated January 21, 2010
- Senate Bill 1111 (Negrete McCloud, 2010) as Amended April 12, 2010
- April 18, 2011 Veterinary Medical Board (Board) Meeting Minutes
- September 5, 2012 Board Meeting Minutes
- October 16-17, 2012 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
- January 29-31, 2013 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
- April 23, 2013 Veterinary Medical Board, Enforcement Committee Meeting Agenda; and Relevant Meeting Materials
- July 23-24, 2013 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
- July 22-23, 2014 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
- October 21-22, 2014 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes

- April 19-20, 2017 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
- February 21-22, 2018 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
- January 23-24, 2019 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes

Business Impact

The Board has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting 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.

Economic Impact Analysis

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the proposed regulations do not impose any new requirements on a licensee, registrant, permit holder, or applicant who is not subject to disciplinary action. Further, applicants required by the Board to be examined by a physician and surgeon and/or psychologist will not incur any fiscal impact. The Board is responsible for the full cost of the examination.
- It will not create new business or eliminate any existing business within the State of California because the proposed regulations would apply only to those individuals who apply for or receive licensure who have engaged in acts specified in the proposal.
- It will not affect the expansion of businesses currently doing business within the State of California because the proposed regulations would apply only to those individuals who apply for or receive licensure who have engaged in acts specified in the proposal.
- This regulatory proposal benefits the health and welfare of California residents because the proposed regulation will provide the Board with the means to expedite the enforcement process by delegating to the Board's EO the authority to pursue certain enforcement functions, and by creating new grounds for discipline. The proposed regulations also give the Board the ability to require the examination of an applicant who may be impaired by a physical or mental illness that may affect competency to practice veterinary medicine. These changes have been proposed to allow the Board the ability to provide better public protection.

- This regulatory proposal may improve worker safety as it would allow the Board to require, prior to licensure and subsequent practice, a mental or physical examination of fitness if an applicant may be unable to practice veterinary medicine safely. The proposal also speeds up the disciplinary process by authorizing the Executive Officer to approve settlement agreements for the surrender or interim suspension of a license, registration, or permit, which helps remove dangerous practitioners from workplaces.
- This regulatory proposal focuses on disciplinary process and does not affect the state's environment.

Specific Technologies or Equipment

This regulatory proposal does not mandate the use of specific technologies or equipment.

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 SB 1111:
 - a. 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.