

**TITLE 16
VETERINARY MEDICAL BOARD**

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING

**Delegation of Certain Functions, § 2003
Mental or Physical Examination of Fitness for Licensure, § 2017
Grounds for Discipline, § 2042
California Code of Regulations**

NOTICE IS HEREBY GIVEN that the Veterinary Medical Board (hereafter, "Board") is proposing to take the action described in the Informative Digest. No public hearing on the proposed regulations is scheduled; however, if any interested person requests, no later than 15 days prior to the close of the written comment period, that a hearing be held on these regulations, the Board will schedule a hearing. A hearing may be requested by making such a request in writing addressed to the individuals listed under "Contact Person" in this Notice.

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 22, 2019**. Oral comments should be made at the hearing, if any.

AVAILABILITY OF MODIFICATIONS

The Board, upon its own motion or at the insistence 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 fifteen (15) days prior to its adoption from the person designated in this Notice as a contact person, and will be mailed or emailed 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 CITATIONS

Pursuant to the authority vested by sections 4804.5 and 4808 of the Business and Professions Code (the "Code"), and to implement, interpret, or make specific sections 107, 141, 475, 480, 490, 820, 4804.5, 4808, 4836.2, 4837, 4853.5, 4853.6, 4856, 4875, 4875.3, and 4883 of said Code, and sections 11415.60, 11500, 11501, 11502, 11503,

11504, 11504.5, 11505, 11506, 11507, 11507.3, 11507.5, 11507.6, 11507.7, 11508, 11509, 11511, 11511.5, 11511.7, 11512, 11513, 11514, 11515, 11516, 11517, 11518, 11518.5, 11519, 11519.1, 11520, 11521, 11522, 11523, 11524, 11526, 11527, and 11528 of the Government Code, the Board is considering amending California Code of Regulations, Title 16, Division 20, Article 1, section 2003, adopting new section 2017 of the California Code of Regulations, Title 16, Division 20, Article 2, and adopting new section 2042 of the California Code of Regulations, Title 16, Division 20, Article 5, as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board's highest priority is protection of California consumers. Section 4800.1 of the Code 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.

In response to a number of media articles, the Department of Consumer Affairs ("DCA") reviewed the existing enforcement processes of its boards and bureaus and found systemic problems that limit the boards' abilities to investigate and act on cases in a timely manner. These problems range from legal and procedural challenges to inadequate resources. In response, the DCA launched the Consumer Protection Enforcement Initiative ("CPEI") to overhaul the enforcement process at the healing arts boards and reduce the average enforcement completion timeline. DCA encouraged 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 main purpose of the proposed language is to provide the Board with the means to expedite the licensure and enforcement process by: (1) delegating to the Board's executive officer settlement agreement authority, applicant investigation and evaluation, and license issuance; (2) permitting the Board to require the examination of an applicant who may be impaired by a physical or mental illness affecting competency; and (3) further defining grounds for discipline. These changes have been proposed to provide the Board with greater ability to protect the public by receiving more timely information from licensees and quicker disciplinary resolution. These changes are also being proposed to provide quicker applicant investigations and subsequent license, registration, and permit issuance. The Board is proposing the following changes:

Amend Section 2003 of Article 1 of Division 20 of Title 16 of the California Code of Regulations (Delegation of Certain Functions):

This proposal amends section 2003 to provide the Board's executive officer the ability, through designation by the Board, to: approve settlement agreements for the surrender or interim suspension of a license, registration, or permit; investigate and evaluate each applicant for licensure, registration, or permit under the Veterinary Medicine Practice Act (Act); and issue a license, registration, or permit in conformance with the provisions of the Act and its regulations.

Adopt Section 2017 of Article 2 of Division 20 of Title 16 of the California Code of Regulations (Mental or Physical Examination of Fitness for Licensure):

This proposal adopts a new section 2017 to provide the Board the authority to require an examination of an applicant by a physician and surgeon, or psychologist if it appears the applicant may be unable to safely practice due to a mental illness or a physical illness that affects competency.

Adopt Section 2042 of Article 5 of Division 20 of Title 16 of the California Code of Regulations (Grounds for Discipline):

The proposal adopts new section 2042 to specify the following acts that would be grounds for discipline:

- Failure to report to the Board within 30 days any disciplinary action taken by another licensing entity or other specified agency; and
- Failure or refusal to comply with a court order to release records to the Board.

The benefits from these proposed regulations will be providing efficient enforcement of disciplinary actions through settlement agreements and providing proactive measures for license and registration applicants whose competency may be impaired due to mental or physical illness for increased protection to California consumers. Additionally, the proposed regulations will make the gathering of adverse information from a licensee or registrant timelier, resulting in quicker enforcement proceedings to better protect California consumers.

Consistency and Compatibility with Existing State Regulations

After reviewing existing state regulations relating to or affecting this regulatory proposal, the Board has determined that this proposed regulatory action is neither inconsistent nor incompatible with existing state regulations.

FISCAL IMPACT ESTIMATES

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

The Board may incur some expenses from prosecuting behavior by applicants, licensees, registrants, and permit holders that does not conform to the standards of the regulations, including the new grounds for discipline and refusal to submit to a physical or mental health examination. Some individuals may request an administrative hearing with the Office of Administrative Hearings, and, if so, there would be costs associated with the Attorney General providing legal services before and during hearings. However, such costs should be consistent with existing enforcement costs annually as the regulations do not alter the procedural remedies available to applicants, licensees, registrants, or permit holders. In addition, amended section 2003 would create savings for the Board by allowing the Executive Officer to approve stipulated surrenders and suspensions and thereby avoid using time and resources for mail votes or closed session deliberation by the Board. The Board may also incur minor costs to pay for a mental or physical examination to ensure applicants are qualified to practice veterinary medicine.

Non-Discretionary Costs or Savings Imposed Upon Local Agencies

The Board has determined that this regulatory proposal will not create any non-discretionary costs or savings imposed on local agencies.

Local Mandate

None.

Costs to Local Agencies or School Districts Requiring Reimbursement

The Board has determined that this regulatory proposal will create no cost to any local agencies or school districts requiring reimbursement pursuant to Government Code section 17500 *et seq.*

Cost or savings in federal funding to the state:

None.

Business Impact

The Board has made the initial determination that the regulatory proposal will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Representative Private Person or Business

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Board are costs associated with legal representation if the individual or business is represented by legal counsel. The impact of a disciplinary order varies and could include the loss of employment income, if a license is surrendered or suspended.

Effect on Housing Costs

The proposed action will have no effect on housing costs.

EFFECT ON SMALL BUSINESS:

The Board has determined that the proposed regulations may affect a small number of small businesses. Small businesses that are owned or managed by licensees whose licenses are surrendered or suspended, or licensees who engage in conduct constituting grounds for discipline, may need to find a new owner or managing licensee in order to stay in business.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/New Businesses

The Board has determined that this proposed regulatory action will not have a significant adverse impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California. By way of its impact on the available workforce, the proposed regulatory action only affects relatively few individual licensees or applicants for licensure who may be unable to practice veterinary medicine safely due to physical or mental illness, who have engaged in unprofessional conduct as defined in the proposed regulations, or have otherwise violated the Board's rules. Except as noted above, the regulations only affect licensees, registrants, permit holders, and applicants who are subject to disciplinary action.

Benefits of Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Board has determined that this regulatory proposal will benefit the health and welfare of California residents who seek the services of the Board's licensees, registrants, and permit holders. Health and welfare is increased by improving the efficiency of the enforcement process, and by making clarifications and additions to enforcement provisions to address current weaknesses in the regulation for those who may have engaged in conduct that is deemed grounds for discipline or places the public at risk. The proposal will have no effect on worker safety or the state's environment.

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 as effective in implementing the statutory policy or other provisions of law.

Any interested person may present statements in writing and orally at any hearing relevant to the above determinations during the comment period.

REFERENCE TO TEXT OF PROPOSAL AND INITIAL STATEMENT OF REASONS

An Initial Statement of Reasons explaining the reasons for the proposed action shall be available to the public upon request. The express terms of the proposed action and all information upon which that proposal is based are also available upon request. To request these materials, please contact the contact person listed herein.

AVAILABILITY AND LOCATION OF FINAL STATEMENT OF REASONS AND RULEMAKING FILE

The Board will prepare a Final Statement of Reasons after all public comments have been received and all substantially related comments have been incorporated into the proposed text. Copies of the Final Statement of Reasons, when available, may be obtained from the contact person whose information is listed herein. Copies of all

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

CONTACT PERSON

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

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The backup contact person is:

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WEBSITE ACCESS

Materials regarding this proposal can be found at: <http://www.vmb.ca.gov>.