

**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:** Telemedicine

**Sections Affected:** California Code of Regulations (CCR), Title 16, Division 20, Article 4, Section 2032.1

**Background and Problem Being Addressed:**

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, veterinary premises, and veterinary assistant controlled substance permit holders.

The use of telemedicine is becoming more prevalent in human health care, and the service has extended over into veterinary care. Telemedicine is an alternative method of care, typically carried out via telephone conversations or video-based services as opposed to in-person treatment. The increase in telemedicine in human health care has increased interest for telemedicine in animal care and the need for developing regulations surrounding telemedicine. In addition to the societal demand of implementing telemedicine into veterinary care, there are already telemedicine services offered to consumers, and clarification of how those services should be provided is imperative to protect consumers and their pets.

The Board began reviewing this issue when individuals from the University of California, Davis, School of Veterinary Medicine (UC Davis) provided public comment at the Board's July 19-20, 2011 meeting that new tools for the delivery of services through telemedicine could not be properly utilized because of the requirement to establish a veterinarian-client-patient relationship (VCPR) in person (see Tab D.1, hereto). At the Board's October 17-19, 2011 meeting, a letter from UC Davis was presented to the Board for consideration of the telemedicine issue during the Board's upcoming strategic planning discussion (see Tab D.2). The issue was subsequently referred to the Board's Multidisciplinary Advisory Committee (MDC) for discussion. At the MDC's March 14, 2012 meeting, the MDC determined that telemedicine was a high priority item (see Tab D.3, Meeting Minutes).

At the MDC's November 14, 2012 meeting, materials regarding telemedicine issues were presented and the issue was deferred to the MDC's March 2013 meeting (see Tab D.4). At the

MDC's March 12, 2013 meeting, representatives from UC Davis, Western University, and the California Veterinary Medical Association provided comment, and additional materials and questions regarding telemedicine services were presented to the MDC for consideration (see Tab D.5). Additional materials and comments were reviewed by the MDC at its November 13, 2013 meeting, and the MDC considered defining telemedicine and the types of care such as primary vs. consultant, the level of care, and level of supervision that should be required (see Tab D.6). These issues were subsequently referred to a Telehealth Subcommittee.

At the April 23, 2014 MDC meeting, the Telehealth Subcommittee presented its recommendation on proposed regulatory language to add to CCR section 2032.1 a new subdivision (e) (included in this proposal), revise CCR section 2032.15 to clarify when the VCPR may continue to exist in the absence of the client (not included in this proposal), and define "veterinary telehealth" (similar to this proposal) (see Tab. D.7). At the Board's February 19, 2015 meeting, it reviewed a proposal to revise minimum standards for veterinary practice, which included the Telehealth Subcommittee's recommendation to amend CCR 2032.1 (see Tab D.8). During the Board's Strategic Planning meeting on April 1-2, 2015, the Board reviewed and discussed a 2015 Environmental Scan prepared for the Board, which included information on the increased use of telemedicine (see Tab D.9).

Subsequently, at the Board's April 28-29, 2015 meeting, the Board reviewed and approved comprehensive revisions to the Minimum Standards regulations, which included revisions to Section 2032.1 to prohibit a person from practicing veterinary medicine in this state except within the context of a VCPR, which would not be established solely by telephonic or electronic means (see Tab D.10). These revisions were returned to the Board at its January 18-19, 2017 meeting for additional discussion on the issue of telemedicine, but the matter was held over to the next meeting due to time constraints (see Tab D.12, Meeting Minutes, p. 5).

In September of 2016, the American Veterinary Medical Association (AVMA) published a report regarding the use of telemedicine in veterinary science titled "Practice Advisors Panel – Interim Report on Telemedicine." This report was generated due to a societal demand for telemedicine services in veterinary care. The report discussed the implications of telemedicine and the need for developing regulations surrounding this service. The report also addressed the need for a VCPR and how that relationship must be established in person.

At the Board's July 26-27, 2017 meeting, the Interim Report on Telemedicine by the AVMA's Practice Advisory Panel was presented to the Board for discussion (see Tabs D.11 and 13, Agenda Item 5.B). The Interim Report provided various recommendations and guidelines for veterinary medicine. The Board heard about one proposal of a small segment of the veterinary profession that proposed to establish a VCPR through a virtual exam, rather than an in-person examination of the animal patient. The Board also discussed the differences between telemedicine offered for human patient care and telemedicine applied to animal patients, who are unable to personally express their symptoms and would have to rely on the observations of the animal's behavior and physical state as communicated by the animal patient's owner to the telemedical veterinarian. The Board also heard concern from the California Veterinary Medical

Association (CVMA) regarding the inability of consumers using telemedicine to know in what jurisdiction the veterinarian or doctor providing telemedicine is licensed. The Board deliberated on the benefits to consumers of providing access to telemedicine. The Board determined that it would be necessary to provide an exception to the in-person VCPR requirement for advice given in an emergency situation. The Board approved the addition of this exception to Section 2032.1. At the Board's October 18-19, 2017 meeting, the Board reviewed additional substantive revisions to the proposed VCPR regulation, including adding a definition of "telemedicine". The addition of this definition was intended to address the broader category of "telehealth" otherwise authorized under BPC section 686, which applies to all health arts licensees under Division 2 of the BPC. The addition of the definition of "telemedicine" would clarify the services by communication technologies that may be provided by a veterinarian (see Tab D.14., Agenda Item 6.B.iii).

At the Board's February 21-22, 2018 meeting, the Board further reviewed the telemedicine proposal to review the status of telemedicine at a national level and to formulate a response to the American Association of Veterinary State Board's (AAVSB) policy statement on telemedicine. The Subcommittee Report on Telehealth Post [AAVSB] Webinar noted that the Board's telemedicine proposal was consistent with the AVMA telemedicine policy in that a VCPR cannot be established solely by telephonic or electronic means and that telemedicine should be conducted within an existing VCPR, with exception for advice given in an emergency care situation until the patient can be seen by or transported to a veterinarian. At this meeting, the Board further revised the telemedicine proposal to remove "diagnosis" from the definition of "telemedicine," and the revised proposal was approved by the Board. The Board also authorized the Executive Officer to make any technical, non-substantive changes to the proposal.

Following the Board's approval of the proposed revisions to Section 2032.1, the Interim Executive Officer revised the proposal to make a technical change as follows. In subdivision (f) of Section 2032.1, "BPC section 4840.5" was changed to read "Section 4840.5 of the code." This change is technical in nature as it rewords the existing cross-reference to BPC section 4840.5 and merely conforms the cross-reference to what is otherwise used in the regulations, "the code," which is defined in CCR section 2002 as the Business and Professions Code.

The Board is of a similar opinion to the AVMA that regulations must be developed to regulate telemedicine. It is the belief of both the AVMA and the Board that a VCPR must be established prior to providing telemedicine services. This relationship must be established in person, so that the proper level of care can be obtained, prior to supplemental services (i.e., telemedicine) being provided. The implementation of these regulations will address the problems identified by providing additional clarification to the VCPR, and how that relationship is developed, as well as identifying the scenarios in which telemedicine is an acceptable form of treatment once a VCPR has been established.

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

### **Amend Section 2032.1 of Article 4 of Division 20 of Title 16 of the CCR: Veterinarian-Client-Patient Relationship**

#### Section 2032.1(d)

Purpose: This proposal will amend section 2032.1(d) and is necessary to conform the cross-references of the BPC to the defined term “the code” as specified in CCR section 2002.

Anticipated Benefits and Rationale: By amending section 2032.1(d), the Board will be conforming the language for consistent use of the defined terms provided by regulation, CCR section 2002, and thereby providing clarity and consistency throughout the regulations.

#### Section 2032.1(e)

Purpose: Section 2032.1 currently clarifies BPC section 4883 to provide that unprofessional conduct includes administration, prescription, dispensing, or furnishing a drug, medicine, appliance, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture or bodily injury or disease of an animal without having first established a VCPR with the animal patient and the client. Section 2032.1 further provides how the VCPR must be established. This proposal seeks to clarify the VCPR to underscore the importance of the VCPR requirement in practicing veterinary medicine and when utilizing telemedicine.

As telemedicine continues to grow in human care, it is extending into animal care. There are already instances of individuals providing telemedicine services to animals, and there is a societal demand to develop regulations that address and govern these services. Currently, there is no definition of “telemedicine” within regulations, and no parameters have been set that dictate whether a veterinarian, in or outside of California, can provide telemedicine services to animal patients in California. By developing these regulations, the Board seeks to clarify and eliminate these issues.

While telemedicine is proving to be an effective form of treatment in human health care, animals are fundamentally different and cannot benefit from telemedicine in the same aspects that humans can. Unlike people, animals are unable to communicate their sickness or symptoms. Communication is expressed solely by the animal owner, who likely has no veterinary training to properly diagnose or express a sickness or symptom of the animal.

For these reasons, it is important that the VCPR is developed in person and not based solely on telephonic or electronic means. Otherwise, the veterinarian would not be familiar with the animal’s medical history and could not effectively provide the best level of care via telemedicine. For veterinary science to be effective, it is important that the VCPR be established in person so a full physical examination can be performed and the veterinarian can get to know the animal. It is only after this relationship has been established that telemedicine may be an effective method of the continuance of treatment.

Following the lead of the AVMA, the Board determined it necessary to clarify the VCPR to underscore the importance of the VCPR requirement, even when using telemedicine. It is the belief of both the AVMA and the Board that a VCPR must be established prior to providing telemedicine services. This relationship must be established in person, so that the proper level of care can be obtained, prior to supplemental services (i.e., telemedicine) being provided. The implementation of these regulations will address the problems identified by providing additional clarification to the VCPR, and how that relationship is developed.

To address these issues, the proposal would add subdivision (e) to Section 2032.1, which is modeled after the AVMA Model Veterinary Practice Act, to clarify that in order to practice veterinary medicine on an animal patient in California, the veterinarian must first establish the VCPR. This provision is necessary to inform veterinarians, who may be physically located in another state and providing medical assessments by electronic means, that a “virtual” examination, or examination of the animal patient by electronic means, is insufficient to establish a VCPR providing telemedicine to animal patients in California. In addition, the proposal would clarify that a VCPR could not be established via telemedicine and/or solely in reliance on telephonic or electronic communication between the veterinarian and client (animal patient’s owner).

Anticipated Benefits and Rationale: By adding subsection (e) to section 2032.1, the Board seeks to clarify unprofessional conduct in terms of the requirement to establish a VCPR when telemedicine services are provided. This proposal would better define the VCPR and how that relationship must be established through in-person examination before telephone or video services can be rendered to the patient. By establishing parameters of how the required VCPR must be established, the purpose of subdivision (e) is to maintain consistency of the VCPR requirements of an examination of the animal patient, in-person, and receipt of the animal patient’s history from the client in order to provide subsequent telemedicine services to the animal patient. As most medical conditions can only be diagnosed through physical examination by a veterinarian, the addition of subsection (e) is necessary to protect consumers and their pets by only allowing veterinarians to establish VCPRs, in person. The addition of subsection (e) also protects the consumer and their pets by only allowing veterinarians with pre-established VCPR and sufficient knowledge of the animal’s medical conditions to provide telemedicine services to their animal patients. Further, by authorizing the provision of telemedicine, the proposal would provide timely access to care for the animal patients.

#### Section 2032.1(f)

Purpose: Subsection (f) would clarify that telemedicine cannot be provided until a VCPR has been established, apart from emergency situations. This subsection is modeled after the AVMA Model Veterinary Practice Act and is necessary to protect consumers and their pets by only allowing pets with an established VCPR to be treated via telemedicine, except in emergency situations. An emergency situation will be determined by review of a veterinary expert on a case-by-case basis taking into account the animal’s current health status and the incident that prompted the need for immediate medical intervention via telemedicine, as provided for under BPC section 4840.5. The provision would authorize telemedicine to be used without an established VCPR in

an emergency situation and only until the animal patient can be seen by or transported to a veterinarian.

In addition, subsection (f) would define telemedicine and provide clear parameters for the use of telemedicine to facilitate consultation, treatment, and care management of the patient. For the purpose of this subsection, the Board stated at its February 21-22, 2018 meeting its intent that the use of communication technologies refers to both telephonic and, more broadly, other electronic means of communication (see Tab D.15, Meeting Minutes).

Anticipated Benefits and Rationale: The Board believes this regulation will help provide guidelines for veterinarians to implement telemedicine into their practice while protecting California consumers and implementing safe practices for their animals. This service will also be helpful in emergency situations where the animal patient cannot be quickly moved to a veterinary premises for an in-person examination, and the consumer needs immediate medical advice for life-sustaining efforts.

#### **Underlying Data**

- July 19, 2011 Veterinary Medical Board (Board) Meeting Minutes
- October 17-19, 2011 Board Meeting Minutes
- March 14, 2012 Veterinary Medical Board, Multidisciplinary Advisory Committee (MDC) Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
- November 14, 2012 MDC Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
- March 12, 2013 MDC Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
- November 13, 2013 MDC Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
- April 23, 2014 MDC Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
- February 19, 2015 MDC Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
- April 1-2, 2015 Board Strategic Planning Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
- April 28-29, 2015 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
- September 20, 2016 American Veterinary Medical Association (AVMA), Practice Advisory Panel, Interim Report on Telemedicine
- January 18-19, 2017 Board Meeting Agenda (inadvertently dated January 18-19, 2016); Relevant Meeting Materials; and Meeting Minutes
- July 26-27, 2017 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
- October 18-19, 2017 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes

- February 21-22, 2018 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes

### **Business Impact**

The Board has made the 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. As noted in the public comment at the Board's July 19-20, 2011 meeting by Larry Cowgill, DVM, and Frank La Borte of the University of California, Davis, School of Veterinary Medicine, an interested party of this proposal, the VCPR regulation currently prohibits veterinarians from providing consultative services, rendering any treatment, or ordering/administering any drug or appliance directly via telemedicine due to the in-person examination requirement (See Tab D.2. Underlying Data, submitted herewith). This proposal would authorize the provision of telemedicine and provide guidelines for veterinarians to follow when offering telemedicine services. As such, the Board expects the proposed regulation to increase the delivery of telemedicine. In the event an individual is already providing telemedicine services prior to establishing a VCPR, the individual would be in violation of existing regulation. Accordingly, the Board does not anticipate an adverse economic impact on businesses and individuals that are currently complying with the law.

### **Economic Impact Analysis**

This regulatory proposal would have the following effects:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California. Since telemedicine would be an optional service, it does not require startup costs that all licensees will be forced to implement. This regulatory proposal does not mandate the use of specific technologies or equipment to provide telemedicine services, but a veterinary practice may need to obtain telephone and computer equipment sufficient to provide telemedicine services.

This regulatory proposal benefits the health and welfare of California residents because the proposed regulation will provide clarification regarding the use of telemedicine services in veterinary practice, as well as to further define how a veterinarian-client-patient relationship is established. By implementing these regulations, the Board seeks to ensure that consumers and their animals are provided with safe and effective care for their situation.

This regulatory proposal focuses on identifying the parameters of the use of telemedicine services and does not affect worker safety.

This regulatory proposal focuses on identifying the parameters of providing telemedicine services and does not affect the state's environment.

## **Requirements for Specific Technologies or Equipment**

This regulatory proposal does not mandate the use of specific technologies or equipment; however, in order to provide telemedicine services, a veterinary practice may need to obtain telephone and computer equipment sufficient to provide telemedicine services. Since telemedicine is an optional service, this is not a required startup cost that all licensees will be forced to implement.

## **Consideration of Alternatives**

No reasonable alternative to the regulatory proposal would be more effective in carrying out the purpose for which the regulation has been proposed or would be as effective and less burdensome to affected private persons than the proposed regulation and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are some alternatives that were considered and the reasons each alternative was rejected.

1. In 2011, UC Davis submitted a letter to the Board that provided UC Davis's position that a veterinarian could obtain sufficient knowledge about an animal through a comprehensive telemedicine veterinary visit to constitute an effective VCPR predicated by: (1) direct video, audio consultation with the consulting veterinarian, animal owner, and/or animal health caregiver, (2) video/audio evaluation of the animal(s) and animal(s) premises, and (3) digital transfer of all medical records, laboratory evaluations, imaging, pathology, and physiological patient monitoring. UC Davis proffered that when medically appropriate, the same level of care is rendered via telemedicine consultations such that a personal relationship is established and an examination is conducted, but using a different modality (see Tab D.4, Agenda Item 6; Tab D.6, Agenda Item 5.B).

This alternative was rejected in 2016 by the American Veterinary Medical Association (AVMA), which studies the issues of telemedicine through its Practice Advisory Panel. The Panel acknowledged that advances in technologies have made it easier for veterinarians to remotely gather adequate patient information for the provision of continued care that would have previously required in-person rechecks. However, the Panel concluded that remote technologies available to the profession do not fulfill the profession's needs for thorough, in-person examinations, which employ all of a veterinarian's senses and expertise and elicit animal responses, all of which are imperative because veterinary patients cannot verbally convey histories or symptoms. The Panel's Interim Report on Telemedicine, dated September 20, 2016, was reviewed by the Board at its July 26-27, 2017 meeting (see Tabs D.11 and 13, Agenda Item 5.B, submitted herewith). The Board relied on the Panel's report over the recommendation of UC Davis as the Panel studied telemedicine issues for over a year and received information and deliberation on a national, rather than a local, level. Further, the Board agreed that a VCPR must be



established following the veterinarian's in-person examination, rather than through a telemedicine consultation, to properly diagnose and treat the animal patient.

2. At its April 23, 2014 meeting, a sub-committee of the MDC presented proposed language to the MDC that included changes to CCR section 2032.1 and section 2032.15 (see Tab D.7, Agenda Item V.D). The addition of 2032.1, subdivision (e) was retained and included in the proposed language submitted with this regulatory proposal, but proposed revisions to section 2032.15 were removed. The proposed revisions to section 2032.15 would have allowed the VCPR to continue to exist in the absence of the client when another designated veterinarian, only within the same practice as the originating veterinarian, served in place of the originating veterinarian. These revisions were rejected as unnecessary; a consulting veterinarian may already be used by an originating veterinarian and that consultation does not require the consulting veterinarian to be employed in the same practice as the originating veterinarian. The concern to be resolved regarding telemedicine was the scenario when a veterinarian has not examined the animal patient, has not established a VCPR, or received information from an originating veterinarian, but the veterinarian subsequently prescribes controlled substances for use on the animal patient. Revisions to the section 2032.15 would not have resolved this concern, so those revisions were removed.
3. At its October 18-19, 2017 meeting, the Board discussed whether to use the term "telehealth", as used in the general telemedicine statute, BPC section 686, or whether to use the term "telemedicine". The Board determined that "telemedicine" was appropriate as it is typically used to describe a concentrated scope of service whereas "telehealth" involves the delivery of public health information and communication via technologies. To support its use of the term "telemedicine", the Board defined that term as the mode of delivering animal health care services via communication technologies to facilitate diagnosis, consultation, treatment, and care management of the patient (see Tab D.14, Agenda Item b.B.iii).
4. At its February 21-22, 2018 meeting, the Board decided to remove the term "the diagnosis" from the proposed language. The Board agreed that diagnosis should not be included in the proposed language because diagnosis of a patient cannot be properly performed via telemedicine and can only be performed via an in-person examination of the animal patient (see Tab D.15, Meeting Minutes).