

**VETERINARY MEDICAL BOARD
INITIAL STATEMENT OF REASONS**

Hearing Date: The Veterinary Medical Board has not scheduled a hearing on the proposed changes. However, a hearing will be scheduled upon request by any interested party if the request is received no later than 15 days prior to the close of the written comment period.

Subject Matter of Proposed Regulations: Veterinary Assistant Controlled Substances Permit Program

Sections Affected: Title 16, Division 20, California Code of Regulations (CCR) §§2034, 2035, 2036.5, 2071.1, 2087, 2087.1, 2087.2, and 2087.3.

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

Concerns were raised by the California Veterinary Medical Association (CVMA) and the California Registered Veterinarian Technician Association (CRVTA) that the current law did not go far enough in providing the appropriate oversight of veterinary assistants and assuring that veterinary assistants, who had access to controlled substances, had proper background checks prior to being granted authorization to obtain and administer controlled substances. Therefore, the Legislature adopted Business and Professions Code (BPC) §§4836.1-4836.4 [Stats. 2013 Chapter 515, §26 (SB 304)] to prevent drug abuse and drug diversion by unlicensed and unregistered persons working within veterinary offices, clinics, or hospitals.

The regulations proposed in this rulemaking action would establish a process for veterinary assistants to apply for a Veterinary Assistant Controlled Substances Permit (VACSP) in order to be granted authority to obtain and administer controlled substances under the direct or indirect supervision of a licensed veterinarian. Compliance with the laws and regulations governing the new VACSP program serve to protect the public and their animals by requiring veterinary assistants to pass a criminal background check prior to being granted a permit.

Statutory Authority for Rulemaking: BPC §§680, 4808, 4836, 4836.1, 4836.2, 4836.3, 4836.4, and 4840.

Background and Introduction:

In accordance with the provisions of the Administrative Procedures Act, BPC §4808 authorizes the Board to adopt, amend, or repeal rules and regulations that are reasonably necessary to carry into effect the provisions of Chapter 11 of Division 2 of the BPC.

BPC §4836 authorizes the Board to establish animal health care tasks for veterinary assistants. Existing regulations provide authority to veterinary assistants to administer a controlled substance under the direct supervision of a licensed veterinarian. BPC §4836.1 requires veterinary assistants to now hold a valid VACSP in order to obtain and administer controlled substances.

BPC §§4836.2, 4836.3, and 4836.4 require the Board to develop and implement a process for veterinary assistants to apply for an initial VACSP and renewal permit, including setting application and renewal fees, requiring fingerprints processed by the Department of Justice for the purposes of a criminal background check, and establishing a process for VACSP holders to notify the Board of any mailing or employer address changes.

BPC §680 requires health care practitioners to wear a name tag or prominently display their license in an area that is accessible to the public.

2. Purpose, Anticipated Benefit, and Rationale for this Regulatory Action:

General

Anticipated Benefits:

The Board anticipates that the proposed regulations will provide protection from potential harm to animal patients and the public by requiring veterinary assistants who have access to controlled substances to pass a criminal background check. Benefits also include providing greater transparency to the public regarding the roles of the unlicensed staff working at a veterinary hospital.

The proposed regulations will also benefit consumers by providing recourse in the event a veterinary assistant, permit holder, and/or Licensee Manager of the permit holder fails to comply with the VACSP requirements.

Amend Section 2034 of Article 4 of Division 20 of Title 16 of the CCR

Purpose:

This section changes the definitions outlined in the section to apply throughout Division 20, Veterinary Medical Board (VMB), rather than limiting the changes to only Article 4 of Division 20, VMB. It clarifies existing language by changing the term “unregistered assistant” to “veterinary assistant” pursuant to amendments made throughout the statute relating to authorized services by technicians and assistants. This section adds “California” to the definition for an “R.V.T.” to specify that the terms in the division apply to veterinary technicians registered in California. The terms “Veterinary Assistant Controlled Substances Permit” and the abbreviation “VACSP” were added as a result of the new permit type. Lastly, the term “permit holder” was added to signify a veterinary assistant who is a holder of a VACSP permit.

Anticipated Benefit/Rationale:

By amending and adding new terms introduced by the VACSP program, it further defines, provides clarity, and creates consistency throughout the Veterinary Medicine Practice Act. The term “Veterinary Assistant Controlled Substances Permit” and the abbreviation “VACSP” creates a uniform title to be used throughout California when referring to the permit issued to a veterinary assistant who has met all the requirements in order to be granted authorization to obtain and administer controlled substances. The term “permit holder” provides a distinction between a veterinary assistant who is at least 18 years of age and has met the requirements for a permit, from a “veterinary assistant” who has not met the requirements for a permit and therefore, does not have authorization to obtain or administer controlled substances.

Based on feedback from CVMA and CRVTA, the term “unregistered assistant” was not being used on a national level, which led to all veterinary staff being called technicians. Therefore, the term is being updated to “veterinary assistant” to create a distinction between licensed technicians and unlicensed veterinary assistants.

The implementation of the VACSP program introduces a new permit type and a new population of applicants. Therefore, it creates new terms which affects other sections throughout the entire division.

The proposed changes to existing language are consistent with amendments made throughout BPC §4836 relating to authorized services by technicians and assistants, which changes the term “unregistered assistant” to “veterinary assistant” to align with statutory language for consistency. It is important to revise the term “unregistered assistant” since there is no registration process that exists for assistants. The term “unregistered” implies that it is possible for an assistant to be “registered.” Therefore, the new term “veterinary assistant” more accurately describes the role of the unlicensed staff person in a veterinary hospital who is authorized to perform the services of a veterinary assistant.

Amend Section 2035 of Article 4 of Division 20 of Title 16 of the CCR

Purpose:

The term “permit holder,” as defined in 16 CCR §2034, was added to this section to include all veterinary assistants authorized to obtain and administer controlled substances as a population that must receive supervision by a licensed veterinarian. It also clarifies existing language by changing the term “unregistered assistant” to “veterinary assistant” pursuant to amendments made throughout BPC §4836 relating to authorized services by technicians and assistants.

Anticipated Benefit/Rationale:

By adding new terms introduced by the VACSP program and updating old terms pursuant to amendments made in other sections of law, it provides clarity and creates consistency throughout the regulations.

The proposed changes to existing language are consistent with amendments made throughout BPC §4836 relating to authorized services by technicians and assistants, which changes the term “unregistered assistant” to “veterinary assistant” to align with statutory language. It is important to revise the term “unregistered assistant” since there is no registration process that exists for assistants. The term “unregistered” implies that it is possible for an assistant to be “registered.” Therefore, the new term “veterinary assistant” more accurately describes the role of the unlicensed staff person in a veterinary hospital who is authorized to perform the services of a veterinary assistant.

The implementation of the VACSP program introduces a new permit type and a new population of applicants. Therefore, it creates new terms which affects other sections throughout the entire division.

Amend Section 2036.5 of Article 4 of Division 20 of Title 16 of the CCR

Purpose:

The term “permit holder,” as defined in 16 CCR §2034, was added to this section to include all veterinary assistants authorized to obtain and administer controlled substances as a population authorized to perform specific animal hospital health care tasks similar to a “veterinary assistant” prior to changes in statute. It also clarifies existing language by changing the term “unregistered assistant” to “veterinary assistant” pursuant to the amendments made throughout BPC §4836 relating to authorized services by technicians and assistants.

The most substantial change made to this section was to clarify that veterinary assistants who hold a VACSP, referred to as “permit holders,” may administer a controlled substance only under the direct or indirect supervision of a licensed veterinarian. Veterinary assistants and permit holders are not required to complete education or pass a State examination in order to perform the functions or activities described in 16 CCR §2036, subsections (a), (b), and (c); therefore, veterinary assistants and permit holders are not qualified to independently make decisions or perform duties without the supervision of a licensed veterinarian.

Anticipated Benefit/Rationale:

By adding new terms introduced by the VACSP program and updating old terms pursuant to amendments made in other sections, it provides clarity and creates consistency throughout the regulations. This section aims to clarify that the administration of controlled substances is specific to veterinary assistants who hold a VACSP, otherwise known as “permit holders” in this section, and does not apply to veterinary assistants without a permit.

The proposed changes to existing language are consistent with amendments made throughout BPC §4836 relating to authorized services by technicians and assistants, which changes the term “unregistered assistant” to “veterinary assistant” to align with statutory language for consistency. It is important to revise the term “unregistered assistant” since there is no registration process that exists for assistants. The term “unregistered” implies that it is possible for an assistant to be “registered.” Therefore, the new term “veterinary assistant” more accurately describes the role of the unlicensed staff person in a veterinary hospital who is authorized to perform the services of a veterinary assistant.

The implementation of the VACSP program introduces a new permit type and a new population of applicants. Therefore, it creates new terms which affects other sections throughout the entire division.

The proposed changes are also consistent with BPC §4836.1, which authorizes permit holders to administer controlled substances under the direct or indirect supervision of a licensed veterinarian and does not allow veterinary assistants without a permit to perform these duties as previously authorized in regulation.

Adopt Section 2071.1 of Article 7 of Division 20 of Title 16 of the CCR

Purpose:

This new section aims to make specific the application and renewal fees associated with a VACSP. The application fee shall be \$50.00 and the fee for the initial VACSP will be \$50.00,

totaling \$100.00, and will be valid for one year or more from the date the initial VACSP is granted. The renewal fee shall be \$50.00 and will be valid for two years.

Generally, license and renewal fees are expected to fund Board program areas relative to the license being administered. Program areas requiring funding are staff to administer the VACSP licensing and enforcement programs, Division of Investigation expenditures, Attorney General expenditures, other operational costs (i.e. office space and equipment for staff), etc.

Anticipated Benefit/Rationale:

Revenue generated from application and renewal fees will allow the Board to be able to maintain adequate funds in its contingency fund, thus allowing the Board to continue operating and to carry out its mandated mission of consumer and animal protection by permitting VACSP holders. Additionally, the Board will have adequate funding to perform Board operations and functions in the areas of reviewing permit applications, granting permits and enforcement to support the new State mandated VACSP program.

The application and renewal fee aim to make specific Bus. & Prof. Code §4836.2 and §4836.3, relating to the VACSP application and renewal process. Specifically, Bus. & Prof. Code §4836.2 states that the Board shall set a fee for filing a VACSP application that the Board has determined is reasonably necessary to provide sufficient funds to carry out the purpose of the section, not to exceed one hundred dollars (\$100). Bus. & Prof. Code §4836.3 states that the Board shall set a fee for filing a VACSP renewal that the Board has determined is reasonably necessary to provide sufficient funds to carry out the purpose of the section, not to exceed fifty dollars (\$50).

The Board determined that the full one hundred dollar (\$100) VACSP application fee and fifty dollar (\$50) renewal fee are necessary in order to carry out the purpose of this section. The one hundred dollar (\$100) application fee is broken down into two fees: \$50.00 for the application fee and \$50.00 for the initial VACSP fee.

The Board estimates that registration of veterinary assistants will add approximately 13,600 new permit holders under the Board's oversight. In order to process the workload associated with the new VACSP licensees, the Board was granted, in its VACSP Budget Change Proposal (1110-06L), two Staff Services Analysts and three Program Technician positions in the licensing and enforcement units. Funding needed for the five staff positions will be approximately \$317,000 for FY 2015-16 and ongoing. This staff expense (\$317,000), along with other miscellaneous program and operational costs (\$265,000), including Division of Investigation expenditures, Attorney General expenditures, other operational costs (i.e. office space and equipment for staff), etc., will be funded by VACSP application and licensing fees.

The Board anticipates it will add the majority of new permit holders within the first two years of the Board accepting VACSP applications. As the program stabilizes after the initial surge of initial license applications, the Board anticipates revenues received from the VACSP program will fund staff, program and operational expenditures.

VACSP Program Workload	Year 1	Year 2	Year 3	Year 4	Year 5
Initial Apps. (\$100) Rec'd	6,800	6,800	1,000	1,050*	1,100*
Renewal Apps. (\$50) Rec'd			6,800	6,800	7,000*
Program Revenue	\$680,000	\$680,000	\$440,000	\$445,000	\$460,000
Staff Expenditures**	(\$317,000)	(\$317,000)	(\$317,000)	(\$317,000)	(\$317,000)
Misc. Pgm. Expenditures***	(\$265,000)	(\$265,000)	(\$265,000)	(\$265,000)	(\$265,000)

*Based on five percent annual growth

** Based on budgeted (BCP 1110-06L) increase to Personnel Services for VACSP

***Based on budgeted increase to Operating, Expenses, and Equipment for VACSP

Adopt Section 2087 of Article 11 of Division 20 of Title 16 of the CCR

Purpose:

The general purpose of the VACSP application is for the applicant to request a permit and authorize the Board to conduct a criminal background check to be performed. Specifically, this new section incorporates by reference the forms required during the application process for a VACSP. It also specifies that once a permit has been issued, authority to obtain and administer controlled substances will be granted to the veterinary assistant only under the direct or indirect supervision of a licensed veterinarian. It also requires the Board to review the application and notify the applicant of the final approval/denial status.

Anticipated Benefit/Rationale:

The proposed language benefits the applicant by showing current employers and/or future employers, who are looking for a veterinary assistant and who are able to obtain and administer controlled substances at their animal hospital, that they meet Board requirements in order to perform those tasks. The background check reveals the criminal history of the individual in question, including all arrests, details of the charges. Both felonies and more serious misdemeanors can be included in the report, specifically felonies related to controlled substances violations. Passing the background check communicates that the individual is clear of any controlled substance related charges which would disqualify them from being authorized to obtain and administer controlled substances.

The authorization to obtain and administer controlled substances shall only be granted to those applicants who do not have a State or Federal felony controlled substance conviction [BPC §4836.2(d)]. Controlled substances contain a high potential for abuse and also carry a high risk for distribution into the wrong hands. It is beneficial to the public to inform them that the permit holder authorized to obtain and administer controlled substances to their pet has cleared a criminal background check and has been authorized to handle controlled substances.

The Board clarifies how an unlicensed applicant may apply for a VACSP and what requirements are necessary in order to be granted a VACSP. Along the same lines, this section makes clear by application, what is expected and required of a permit holder in order to keep their permit. Additionally, by placing a requirement on the Board to review the application and respond to the applicant regarding the status should benefit the applicant by removing the need for the applicant to follow up with the Board. The most substantial change made to this section clarifies that after a veterinary assistant has been issued a VACSP, permit holders may only obtain or

administer a controlled substance under direct or indirect supervision of a licensed veterinarian. Veterinary assistants and permit holders are not required to complete education or pass a State examination in order to perform the functions or activities described in 16 CCR §2036, subsections (a), (b), and (c); therefore, veterinary assistants and permit holders are not qualified to independently make decisions or perform duties without the supervision of a licensed veterinarian.

The proposed language regarding the application process is consistent with the requirement mandated by BPC §4836.2 for the Board to furnish a form for veterinary assistants to apply for a VACSP.

Adopt Section 2087.1 of Article 11 of Division 20 of Title 16 of the CCR

Purpose:

This new section specifies forms required to be submitted to the Board by the Licensee Manager relating to the supervision of the permit holder. It explains that until the required forms are submitted and approved by the Board, a permit holder will not be allowed to perform duties authorized by a VACSP. This section also states that a Licensee Manager shall be subject to disciplinary action by the Board if he/she fails to comply with the laws and regulations relating to the supervision of permit holders.

Anticipated Benefit/Rationale:

Permit holders and Licensee Managers, with whom a permit holder has established a supervisory relationship, will have a clear understanding of the forms that are required to be submitted to the Board prior to a permit holder being allowed to perform the functions that are authorized by a VACSP. These forms are necessary because they appoint a licensed veterinarian to assume responsibility over a permit holder. Additionally, the required forms will clarify to Licensee Managers the requirements for supervision of a permit holder and also understand that they will be subject to disciplinary action by the Board if they fail to comply with the requirements.

Veterinary assistants and permit holders are not required to complete education or pass a State examination in order to perform the functions or activities described in 16 CCR §2036, subsections (a), (b), and (c); therefore, veterinary assistants and permit holders are not qualified to independently make decisions or perform duties without the supervision of a licensed veterinarian. Permit holders will understand that holding a permit does not automatically allow them to administer controlled substances. If a Licensee Manager has employed a permit holder, the Licensee Manager must notify the Board of the supervisory relationship and must assume responsibility for any animal health care task performed by the permit holder.

Adopt Section 2087.2 of Article 11 of Division 20 of Title 16 of the CCR

Purpose:

This new section adds a 10-day requirement for the Licensee Manager to notify the Board when the supervisory relationship has been terminated with the VACSP holder. The VACSP holder may not obtain or administer controlled substances until a new Licensee Manager has notified the Board of a supervisory relationship the veterinary assistant has established with a California licensed veterinarian as prescribed in 16 CCR §2087.1.

Anticipated Benefit/Rationale:

Permit holders are not authorized to obtain or administer controlled substances without a supervisory relationship with a Licensee Manager on record with the Board and direct or indirect supervision by either the Licensee Manager or a California licensed veterinarian at the same veterinary hospital. By placing a 10-day requirement for Licensee Managers to notify the Board of a terminated supervisory relationship with a permit holder, it should encourage the permit holder to actively seek supervision in order to carry out the duties authorized by a VACSP when there has been a change in the supervisory relationship. It also provides notice to the Board that the VACSP does not have a Licensee Manager and cannot practice as a VACSP. Consumers can benefit from this requirement knowing that the Board is requiring appropriate oversight of veterinary assistants authorized to administer controlled substances to their pets and that the supervising veterinarian can be subject to disciplinary action by the Board if they fail to comply with the requirements.

If a Licensee Manager has terminated a supervisory relationship with a permit holder, notification must be given to the Board of the termination; otherwise the Licensee Manager will remain on record as the supervisor of the permit holder and will be held accountable for tasks assigned to the permit holder related to their authority provided as a VACSP holder.

Adopt Section 2087.3 of Article 11 of Division 20 of Title 16 of the CCR

Purpose:

This new section adds a requirement for permit holders to prominently display their permit in a place that is easily accessible to the public or wear a name tag with their permit number. This section also states the no person may utilize the term “veterinary assistant controlled substances permit” or the abbreviation “VACSP” with the intent to represent that the person is authorized to act as a permit holder, unless that person is a permit holder and meets the requirements of the article.

Anticipated Benefit/Rationale:

The Board requires the permit holder to undergo a criminal background check in order to be granted a permit. The background check reveals the criminal history of the individual in question, including all arrests and details of the charges. Passing the background check communicates that the individual is clear of any controlled substance related charges which would disqualify them from being authorized to obtain and administer controlled substances.

The authorization to obtain and administer controlled substances shall only be granted to individuals who do not have a State or Federal felony controlled substances conviction [BPC §4836.2(d)]. The controlled substances that a permit holder will be exposed to contain a high potential for abuse and also carry a high risk for illicit distribution. It is beneficial to the public to inform them that the permit holder authorized to obtain and administer controlled substances to their pet has cleared a criminal background check and has been authorized to handle controlled substances.

In the interest of public safety, the permit display requirement was added to communicate to the public that the permit holder has completed all Board requirements in order to be granted a permit and is authorized to handle controlled substances.

Business Impact

The Board has made the initial determination that the proposed regulatory changes to 16 CCR §§2034, 2035, and 2036.5, and the proposed adoptions of 16 CCR §§2071.1, 2087, 2087.1, 2087.2, and 2087.3 will not have a significant adverse economic impact on businesses. This initial determination is based on the fact that VACSPs are issued to individuals rather than businesses, and therefore have a negligible effect on businesses in California.

Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the proposed regulations are requirements for any veterinary assistant seeking the authority to obtain and administer controlled substances under the direct or indirect supervision of a licensed veterinarian.
- It will not create new business or eliminate existing businesses within the State of California because the proposed regulations affect veterinary assistants and managing licensees providing supervision for the veterinary assistant, and place no requirements or restrictions upon businesses.
- It will not affect the expansion of businesses currently doing business within the State of California because the proposed regulations affect veterinary assistants and managing licensees providing supervision for the veterinary assistant only and place no requirements or restrictions upon businesses.
- This regulatory proposal benefits the health and welfare of California residents because the proposal allows for the Board to specify the requirements governing the VACSP program, which grants the authority to veterinary assistants to obtain and administer controlled substances to animal patients under the supervision of a licensed veterinarian. This increases protection to the health and welfare of the public and their animal patients by requiring that all VACSP applicants pass a background check prior to being granted a permit.
- This regulatory proposal benefits worker safety because it increases the requirements for veterinary assistants designated by a licensed veterinarian to obtain and administer controlled substances. Veterinary assistants must now pass a background check prior to being granted a permit and must only be allowed to administer controlled substances under the direct or indirect supervision of a licensed veterinarian.
- This regulatory proposal does not affect the state's environment because it is specific to veterinary assistants and managing licensees providing supervision for the veterinary assistant authorized to obtain and administer controlled substances to animal patients.

Specific Technologies or Equipment

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

Consideration of Alternatives

Pursuant to authority vested by BPC §4808, and to implement, interpret or make specific BPC §§4836, 4836.1, 4836.2, 4836.3, 4836.4, and 4840, the Board considered changes to 16 CCR §§2034, 2035, 2036.5, 2087, 2087.1, 2087.2, and 2087.3.

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 was proposed. No reasonable alternative which was considered would be as effective or 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 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 the alternatives which were considered and the reasons each alternative was rejected:

1. Not adopt the regulations. This alternative was rejected because it would not provide protection from potential harm to animal patients and the public by requiring veterinary assistants who have access to controlled substances to pass a criminal background check. By not adopting the regulations, it would not provide greater transparency to the public regarding the roles of the unlicensed staff working at a veterinary hospital.

2. Adopt the regulations. BPC §§4836.2, 4836.3, and 4836.4 require the Board to develop and implement a process for veterinary assistants to apply for an initial VACSP and renewal permit, including setting application and renewal fees, requiring fingerprints processed by the Department of Justice for the purposes of a criminal background check, and establishing a process for VACSP holders to notify the Board of any mailing or employer address changes. The Board determined that this alternative is the most feasible because adopting the regulations allows the Board to remain in compliance with State mandates.