



MEMORANDUM

DATE	January 30, 2020
TO	Veterinary Medical Board
FROM	Jessica Sieferman, Executive Officer
SUBJECT	Agenda Item 10C. Section 2032.1, Article 4, Division 20, Title 16 of the CCR Regarding Veterinarian-Client-Patient Relationship and Informed Consent of a Client

During the January 23, 2019 Board meeting, the Board approved the attached regulatory changes, as modified, regarding Veterinarian-Client-Patient-Relationship (VCPR) and the Informed Consent of a Client. In short, the proposal was the result of Board discussion from a prior meeting regarding dental radiographs and whether clients were giving informed consent for these procedures.

The Board’s legal counsel provided an [“Informed Client Consent to Radiograph Procedures”](#) memorandum (attached), which included language to require a veterinarian to communicate the medical, treatment, diagnostic, and/or therapeutic plan to help resolve the dental radiographic question posed by the Board. Legal counsel also advised that the regulatory packages for Telemedicine and VCPR contained language that could be affected by this proposed language and advised that if the Board voted to adopt the proposed changes, they should specify that it would not impact the regulatory packages already in process.

The Telemedicine rulemaking packet was approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on November 27, 2019, with an effective date of January 1, 2020. Following enactment of the Telemedicine provisions, it is recommended the Board readopt the informed consent provisions for a cleaner OAL review. This proposal would revise only California Code of Regulations (CCR), title 16, section 2032.1 and does not revise the VCPR rulemaking, which revises CCR, title 16, sections 2032.15 and 2032.25.

Action Requested:

Please review the attached regulatory proposal and consider readopting the proposed language. If approved, please entertain a motion to approve the proposed regulatory changes, direct the Executive Officer to take all steps necessary to initiate the rulemaking process, authorize the Executive Officer to make any technical or non-substantive changes to the rulemaking package, notice the proposed text for a 45-day comment period and, if no adverse comments are received during the 45-day comment period and no hearing is requested, adopt the proposed regulatory changes, as modified.

Attachments:

1. Proposed amendments to Section 2032.1 of Article 4 of Division 20 of Title 16 of the California Code of Regulations
2. Informed Client Consent to Radiograph Procedure Memorandum, dated January 3, 2019

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

PROPOSED LANGUAGE

Proposed amendments to the regulatory language are shown in single underline for new text and ~~single strikethrough~~ for deleted text.

Amend Section 2032.1 of Article 4 of Division 20 of Title 16 of the California Code of Regulations to read as follows:

§ 2032.1. Veterinarian-Client-Patient Relationship.

(a) It is unprofessional conduct for a veterinarian to administer, prescribe, dispense or furnish 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 veterinarian-client-patient relationship with the animal patient or patients and the client, except where the patient is a wild animal or the owner is unknown.

(b) A veterinarian-client-patient relationship shall be established by the following:

(1) The client has authorized the veterinarian to assume responsibility for making medical judgments regarding the health of the animal, including the need for medical treatment,

(2) The veterinarian has sufficient knowledge of the animal(s) to initiate at least a general or preliminary diagnosis of the medical condition of the animal(s). This means that the veterinarian is personally acquainted with the care of the animal(s) by virtue of an examination of the animal or by medically appropriate and timely visits to the premises where the animals are kept, and

(3) The veterinarian has assumed responsibility for making medical judgments regarding the health of the animal and has communicated with the client a ~~course of treatment~~ medical, treatment, diagnostic, and/or therapeutic plan appropriate to the circumstance.

(c) A drug shall not be prescribed for a duration inconsistent with the medical condition of the animal(s) or type of drug prescribed. The veterinarian shall not prescribe a drug for a duration longer than one year from the date the veterinarian examined the animal(s) and prescribed the drug.

(d) As used herein, "drug" shall mean any controlled substance, as defined by Section 4021 of the code, and any dangerous drug, as defined by Section 4022 of the code.

Commented [WT1]: Proposal approved by Board in January 2019.

(e) No person may practice veterinary medicine in this state except within the context of a veterinarian-client-patient relationship or as otherwise permitted by law. A veterinarian-client-patient relationship cannot be established solely by telephonic or electronic means.

Commented [WT2]: Added in Telemedicine rulemaking; effective 1/1/20.

(f) Telemedicine shall be conducted within an existing veterinarian-client-patient relationship, with the exception for advice given in an "emergency," as defined under section 4840.5 of the code, until that patient(s) can be seen by or transported to a veterinarian. For purposes of this section, "telemedicine" shall mean the mode of delivering animal health care services via communication technologies to facilitate consultation, treatment, and care management of the patient.

Commented [WT3]: Added in Telemedicine rulemaking; effective 1/1/20.

Note: Authority cited: Sections 686 and 4808, Business and Professions Code.
Reference: Sections 686, 2290.5, 4022 and 4883, Business and Professions Code.



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MEMORANDUM

DATE	January 3, 2019
TO	Members Veterinary Medical Board
FROM	Tara Welch, Attorney III Legal Affairs Division, Department of Consumer Affairs
SUBJECT	Informed Client Consent to Radiograph Procedures

Question Presented

Whether the veterinarian-client-patient-relationship (VCPR) regulation requires a veterinarian to advise the client that the veterinarian wants to obtain radiographs of the animal patient so that the client can give informed consent to the procedure.

Short Answer

The current VCPR regulation is unclear as to whether a veterinarian is required to advise the client of the diagnostic plan, which may include radiographs, to treat the animal patient.

Discussion

At the Board's November 14, 2018 meeting, the Board requested research on whether the current VCPR regulation, California Code of Regulations (CCR), title 16, section 2032.1(b)(3), needs to be revised to require a veterinarian to advise the client of the veterinarian's diagnostic plan to make radiographs of the animal patient so the client can give informed consent.

A. VCPR Regulations

CCR section 2032.1, subsection (b)(3), the VCPR regulation, only requires the veterinarian to communicate with the client a "course of treatment appropriate to the circumstance". On the other hand, CCR section 2032.15, subsection (b), the regulation specifying the requirements of the VCPR in the absence of client communication, requires a designated veterinarian to communicate any *changes* to the medical, treatment, diagnostic, and/or therapeutic plan that differs from that which was communicate by the original veterinarian. The inclusion of the requirement to communicate changes to the medical, treatment, diagnostic, and/or therapeutic plan in the absence of a direct VCPR shows the apparent gap in CCR section

Veterinary Medical Board
Informed Client Consent to Radiograph Procedures
January 3, 2019
Page 2

2032.1, which should also explicitly require the medical, diagnostic, and/or therapeutic plans be communicated to the client by the original veterinarian. This gap in communication to the client may be widened when the animal patient is assessed by a subsequent designated veterinarian, who would only have to communicate to the client any changes from what the original veterinarian told the client.

For example, if the original veterinarian diagnoses a dog with periodontal disease and wants to see if any of the dog's teeth or bone are deteriorating, the veterinarian could get the dog owner's consent to treat the periodontal disease, but fail to advise the owner that to properly treat the periodontal disease, dental radiographs will be made of the animal patient's teeth. Dental radiographs require the animal to be placed under anesthesia, which may not be a procedure the client wants for his or her animal. If a subsequent designated veterinarian is the one who identifies that dental radiographs should be made to properly treat the animal, the designated veterinarian would not have to communicate that dental radiographs will be made before making the x-rays because the original veterinarian did not, and conceivably is not required to, document or communicate any diagnostic plan.

B. Regulatory Proposal

Given the gaps in the existing VCPR regulations described above, I would advise the Board to amend CCR section 2032.1 as follows:

(b)(3) The veterinarian has assumed responsibility for making medical judgments regarding the health of the animal and has communicated with the client a ~~course of treatment~~ medical, treatment, diagnostic, and/or therapeutic plan appropriate to the circumstance.

Please note that the Board has already submitted the telemedicine rulemaking package for DCA review that revises section 2032.1, subdivision (d), and adds new subdivisions (e) and (f). That rulemaking package has already been submitted for review by the Department of Consumer Affairs. Separately, a VCPR package was adopted by the Board on August 29, 2018, that makes substantive revisions to sections 2032.15 and 2032.25 regarding prescribing, dispensing, or furnishing dangerous drugs. Although the proposed amendment to section 2032.1 above could logically be placed in either of the rulemaking packages, I would recommend waiting to adopt any language until after the telemedicine proposal is enacted as that proposal will establish the new subdivisions to the VCPR section at issue.

Conclusion

The VCPR regulation does not explicitly require a veterinarian to communicate to the client the medical, diagnostic, and/or therapeutic plan to treat an animal patient. Accordingly, there does not appear to be any requirement for the veterinarian to advise the client about the need for radiographs to be made of the animal patient, potentially resulting in a client's lack of informed consent to radiographs. The Board may wish to amend the VCPR regulation to

Veterinary Medical Board
Informed Client Consent to Radiograph Procedures
January 3, 2019
Page 3

clarify the information required to be communicated to the client so the client receives sufficient information to give informed consent.

Attachments: Recommended Regulatory Proposal to clarify VCPR
Telemedicine Proposed Language previously approved by Board
VCPR Proposed Language previously approved by Board

RECOMMENDED PROPOSAL TO CLARIFY VCPR

PROPOSED LANGUAGE

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Amend Section 2032.1 of Article 4 of Division 20 of Title 16 of the California Code of Regulations to read as follows:

§ 2032.1. Veterinarian-Client-Patient Relationship.

(a) It is unprofessional conduct for a veterinarian to administer, prescribe, dispense or furnish 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 veterinarian-client-patient relationship with the animal patient or patients and the client, except where the patient is a wild animal or the owner is unknown.

(b) A veterinarian-client-patient relationship shall be established by the following:

(1) The client has authorized the veterinarian to assume responsibility for making medical judgments regarding the health of the animal, including the need for medical treatment,

(2) The veterinarian has sufficient knowledge of the animal(s) to initiate at least a general or preliminary diagnosis of the medical condition of the animal(s). This means that the veterinarian is personally acquainted with the care of the animal(s) by virtue of an examination of the animal or by medically appropriate and timely visits to the premises where the animals are kept, and

(3) The veterinarian has assumed responsibility for making medical judgments regarding the health of the animal and has communicated with the client a ~~course of treatment~~ medical, treatment, diagnostic, and/or therapeutic plan appropriate to the circumstance.

(c) A drug shall not be prescribed for a duration inconsistent with the medical condition of the animal(s) or type of drug prescribed. The veterinarian shall not prescribe a drug for a duration longer than one year from the date the veterinarian examined the animal(s) and prescribed the drug.

(d) As used herein, "drug" shall mean any controlled substance, as defined by Section 4021 of Business and Professions code, and any dangerous drug, as defined by Section 4022 of Business and Professions code.

Note: Authority cited: Sections 4808, Business and Professions Code. Reference: Section 4883, Business and Professions Code.

TELEMEDICINE PROPOSED LANGUAGE
(Previously approved by the Board on 2/21/18)

PROPOSED LANGUAGE

Proposed amendments to the regulatory language are shown in single underline for new text and ~~single strikethrough~~ for deleted text.

Amend Section 2032.1 of Article 4 of Division 20 of Title 16 of the California Code of Regulations to read as follows:

§ 2032.1. Veterinarian-Client-Patient Relationship.

(a) It is unprofessional conduct for a veterinarian to administer, prescribe, dispense or furnish 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 veterinarian-client-patient relationship with the animal patient or patients and the client, except where the patient is a wild animal or the owner is unknown.

(b) A veterinarian-client-patient relationship shall be established by the following:

(1) The client has authorized the veterinarian to assume responsibility for making medical judgments regarding the health of the animal, including the need for medical treatment,

(2) The veterinarian has sufficient knowledge of the animal(s) to initiate at least a general or preliminary diagnosis of the medical condition of the animal(s). This means that the veterinarian is personally acquainted with the care of the animal(s) by virtue of an examination of the animal or by medically appropriate and timely visits to the premises where the animals are kept, and

(3) The veterinarian has assumed responsibility for making medical judgments regarding the health of the animal and has communicated with the client a course of treatment appropriate to the circumstance.

(c) A drug shall not be prescribed for a duration inconsistent with the medical condition of the animal(s) or type of drug prescribed. The veterinarian shall not prescribe a drug for a duration longer than one year from the date the veterinarian examined the animal(s) and prescribed the drug.

(d) As used herein, "drug" shall mean any controlled substance, as defined by Section 4021 of ~~Business and Professions the~~ code, and any dangerous drug, as defined by Section 4022 of ~~Business and Professions the~~ code.

(e) No person may practice veterinary medicine in this state except within the context of a veterinarian-client-patient relationship. A veterinarian-client-patient relationship cannot be established solely by telephonic or electronic means.

(f) Telemedicine shall be conducted within an existing veterinarian-client-patient relationship, with the exception for advice given in an emergency care situation until that patient(s) can be seen by or transported to a veterinarian. For purposes of this section, "telemedicine" shall

Veterinary Medical Board
Informed Client Consent to Radiograph Procedures
January 3, 2019
Page 6

mean the mode of delivering animal health care services via communication technologies to facilitate consultation, treatment, and care management of the patient.

Note: Authority cited: Sections 686 and 4808, Business and Professions Code. Reference: Sections 686, 2290.5, 4021, 4022, and 4883, Business and Professions Code.

VCPR PROPOSED LANGUAGE
(Previously approved by the Board on 8/29/18)

PROPOSED LANGUAGE

Proposed amendments to the regulatory language are shown in single underline for new text and ~~single strikethrough~~ for deleted text.

Amend Sections 2032.15 and 2032.25 of Article 4 of Division 20 of Title 16 of the California Code of Regulations to read as follows:

2032.15. Veterinarian-Client-Patient Relationship in Absence of Client Communication

(a) A veterinary~~ian~~-client-patient relationship may continue to exist, in the absence of client communication, when:

(1) A veterinary~~ian~~-client-patient relationship was established with an original veterinarian, and another designated veterinarian serves at the same location where the medical records are kept in the absence of the original veterinarian, and;

(2) The designated veterinarian has assumed responsibility for making medical judgments regarding the health of the animal(s), and;

(3) The designated veterinarian has sufficient knowledge of the animal(s) to initiate at least a general or preliminary diagnosis of the medical condition of the animal(s). This means that the veterinarian is personally acquainted with the care of the animal(s) by virtue of an examination of the animal(s) or by medically appropriate and timely visits to the premises where the animal(s) is kept, or has consulted with the veterinarian who established the veterinary~~ian~~-client-patient relationship, and;

(4) The designated veterinarian has continued the medical, treatment, diagnostic and/or therapeutic plan that was set forth and documented in the medical record by the original veterinarian.

(b) If the medical, treatment, diagnostic and/or therapeutic plan differs from that which was communicated to the client by the original veterinarian, then the designated veterinarian must attempt to communicate the necessary changes with the client in a timely manner.

Note: Authority cited: Section 4808, Business and Professions Code. Reference: Section 4883, Business and Professions Code.

2032.25. Written Prescriptions in Absence of Originally Prescribing Veterinarian.

(a) Absent establishing a veterinarian-client-patient relationship (VCPR) as defined in section 2032.1, Pprescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 of the Business and Professions Code ~~code~~ without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

(b) No licensee shall be found to have committed unprofessional conduct within the meaning

Veterinary Medical Board
Informed Client Consent to Radiograph Procedures
January 3, 2019
Page 8

of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:

(1) The licensee was a veterinarian serving in the absence of the treating veterinarian and the drugs were prescribed, dispensed, or furnished on an emergency basis for a traveling patient only as necessary to maintain the health of animal patient until they can return ~~of to~~ the originally treating veterinarian, ~~but in any case no longer than 72 hours.~~ Prior to providing a prescription refill pursuant to this section, the veterinarian shall make a reasonable effort to contact the original prescribing veterinarian, and shall document the communication, or his or her attempt to contact the original prescribing veterinarian, in the medical record.

(2) The original prescribing veterinarian is unavailable to authorize the refill, and the veterinarian authorizing the refill is working in the same practice as the original prescribing veterinarian, and: ~~The veterinarian transmitted the order for the drugs to another veterinarian or registered veterinary technician and both of the following conditions exist:~~

~~(A) The licensee had consulted with the veterinarian or registered veterinary technician who had reviewed the patient's records.~~

~~(B) The licensee was designated as the veterinarian to serve in the absence of the animal patient's veterinarian.~~

~~(3) (A) The licensee was a veterinarian serving in the absence of the treating veterinarian, veterinarian authorizing the refill was in possession of and had reviewed the animal patient's records, and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refill, and entered the prescription refill in the patient's medical record.~~

~~(B) In the veterinarian's professional judgment, failure to refill the prescription may interrupt the patient's ongoing care and have an adverse effect on the patient's well-being.~~