



MEMORANDUM

DATE	October 10, 2022
TO	Veterinary Medical Board (Board)
FROM	Jessica Sieferman, Executive Officer
SUBJECT	Agenda Item 9.A. Amend BPC Section 4836.2 Regarding Veterinary Assistant Controlled Substance Permits and Felony Controlled Substance Convictions

Background

Business and Professions Code (BPC) section [4836.2](#), subdivision (b), states, in pertinent part, the following:

(b) [...] The board may deny, revoke, or suspend a veterinary assistant controlled substance permit, or, subject to terms and conditions deemed appropriate by the board, ***issue a probationary veterinary assistant controlled substance permit***, for any of the following reasons:

...

(3) The applicant or permitholder has been convicted of a state or federal felony controlled substance violation. [Emphasis added.]

However, BPC section 4836.2, subdivision (c), states the following:

“(c)The board shall not issue a veterinary assistant controlled substance permit to any applicant with a state or federal felony controlled substance conviction.”

This prohibition appears to conflict with the authority granted in BPC section 4836.2, subdivision (b).

In addition, pursuant to BPC section [480](#), the Board cannot deny a license for a criminal conviction older than seven years, unless the applicant was convicted of a serious felony, as defined in Section 1192.7 of the Penal Code or a crime for which registration is required pursuant to paragraph (2) or (3) of subdivision (d) of Section 290 of the Penal Code.

BPC section 480, subdivision (c), also prohibits the Board from denying a license for any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code, or a comparable dismissal or expungement.

Thus, the prohibition in BPC section 4836.2, subdivision (c), directly conflicts with BPC 480 if the conviction occurred over seven years ago, was dismissed, or expunged.

The conflicting statutes cause significant confusion and may result in the Board approving or denying an application for issuance of a veterinary assistant controlled substance permit (VACSP) to an individual that legally is or is not authorized to hold a VACSP.

Potential Options

To resolve these conflicts, one option the Board has is to request a legislative amendment to align BPC section 4836.2, subdivision (c), with current law as follows (proposed additions in underlined blue text; proposed deletions in ~~red-strikethrough text~~):

(c) Unless otherwise permitted under Section 480, ~~the~~ board shall not issue a veterinary assistant controlled substance permit to any applicant with a state or federal felony controlled substance conviction.

This would allow the Board to issue a VACSP to individuals who have criminal convictions that occurred over seven years ago or were dismissed or expunged. It would also align with BPC section 4836.2, subdivision (b), as probationary permits could be issued to those whose convictions fell within seven years under BPC section 480.

Another option is to request a legislative amendment to strike BPC section 4836.2, subdivision (c), completely:

~~(c) The board shall not issue a veterinary assistant controlled substance permit to any applicant with a state or federal felony controlled substance conviction.~~

Considerations

When discussing its options, the Board should consider existing consumer protection statutes and regulations in place that give the Board enforcement discretion and guidance in reviewing criminal convictions.

For example, the Board can deny, revoke, or suspend a license or registration or assess a fine for criminal convictions substantially related to the qualifications, functions, or duties of veterinary medicine, surgery, or dentistry, in which case the record of the conviction shall be conclusive evidence. (BPC, § 4883, subd. (a).)

To determine whether the conviction is substantially related, the Board uses California Code of Regulations (CCR), title 16, section 2040. Substantial Relationship Criteria. In addition, whenever deciding whether to take enforcement action based on a criminal conviction, the Board applies CCR, title 16, section 2041. Criteria for Rehabilitation. These regulations provide guidance to the Board when evaluating criminal history and using its enforcement discretion.

In addition, VACSP holders are directly or indirectly supervised by RVTs and veterinarians, which provides increased consumer protection.

Action Requested:

Please discuss the legislative options provided above and additional existing consumer protection considerations and entertain a motion to seek a legislative amendment to either align BPC section 4836.2, subdivision (c), with existing law or strike that section completely.