

Veterinary Medical Board

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Protection of the public shall be the highest priority for the Veterinary Medical 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.

—Business and Professions Code § 4800.1

The Veterinary Medical Board (VMB) is a consumer protection agency within the state Department of Consumer Affairs (DCA). Pursuant to the Veterinary Medicine Practice Act (VMPA), Business and Professions Code section 4800 et seq., VMB licenses doctors of veterinary medicine (DVMs) and registered veterinary technicians (RVTs); establishes the scope and standards of practice of veterinary medicine; and investigates complaints and takes disciplinary action against licensees, as appropriate. VMB's regulations are codified in Division 20, Title 16 of the California Code of Regulations (CCR).

VMB also registers veterinary medical, surgical, and dental hospitals and health facilities. All such facilities must be registered with VMB and must comply with minimum standards. A facility may be inspected at any time, and its registration is subject to revocation or suspension if, following a hearing, it is deemed to have fallen short of these standards.

VMB is comprised of eight members—four veterinarians, one registered veterinary technician, and three public members. The Governor appoints all of the Board's DVM members, the RVT member, and one of the public members; the Senate Rules Committee and the Assembly Speaker each appoint one public member. Board members serve four-year terms, and are limited to two consecutive terms.

Pursuant to Business and Professions Code section 4809.8, VMB maintains a nine-member Veterinary Medicine Multidisciplinary Committee (MDC) whose purpose is to “assist, advise, and make recommendations for the implementation of rules and regulations necessary to ensure proper administration and enforcement” of the VMPA. Recent legislation has clarified that the MDC “shall serve only in an advisory capacity” to the Board, and the objectives, duties, and actions of the MDC “shall not be a substitute for or conflict with any of the powers, duties, and responsibilities” of the Board.

At its May 24, 2018 [meeting](#) in closed session, the Board [selected](#) Jessica Sieferman to serve as Executive Officer beginning July 2, 2018. Ms. Sieferman previously served as Executive Officer at the California Board of Optometry.

On October 12, 2018, Governor Brown [appointed](#) Christina Bradbury, DVM, to the Board. Dr. Bradbury has been an internist and senior veterinary associate at Vista Veterinary Specialists since 2011. Governor Brown also reappointed Kathy Bowler, political consultant at K. Bowler Group since 2009, and Jennifer Loreda, RVT, professor of animal science at Mt. San Antonio College since 2018. Both Ms. Bowler and Ms. Loreda have served on the Board since 2014.

MAJOR PROJECTS

OAL Approves Fee Increase Emergency Regulations for Additional 90 Days

On August 1, 2018, the Office of Administrative Law (OAL) [approved](#) VMB’s proposed re-adoption of its [emergency rulemaking](#) amending sections 2070 and 2071, Title 16 of the CCR, to increase licensing fees for DVMs and RVTs. The re-adoption took effect on September 5, 2018, 180 days after the [original adoption](#) on March 5. [[23:2 CRLR 107](#)] The Board requested the

emergency fee increase remain in effect an additional 90 days, the maximum allowed for re-adopted emergency regulations. The emergency regulations will expire on December 5, 2018.

According to VMB's [Finding of Emergency](#), the emergency rulemaking for the Fee Schedule was necessary to avoid the imminent shutdown of the Board's enforcement activity, the impending insolvency of the Board, and the potential for serious harm to the public and their animals should this occur. The Board noted that a variety of factors outside its control had contributed to a structural imbalance between revenues and expenditures that was impacting the Board's ability to continue its enforcement efforts and severely limited the performance of its core licensing, examination, and inspection functions. Specifically, the Board reported a 100% increase in consumer complaints from FY 2016–2017, and stated that it expects the increase to continue throughout the fiscal year. The Board also reported that costs associated with legislative mandates and implementation of the BreEZe database system, among other expenses, have also contributed to the deficit.

In petitioning for re-adoption of the emergency regulations, VMB requested the additional 90 days to file its certificate of compliance, noting that it is still working with DCA and the California Business, Consumer Affairs and Housing Agency to finalize, review and approve it.

LEGISLATION

[AB 2215 \(Kalra\)](#), as amended August 23, 2018, amends section 4883 and adds section 4884 to the Business and Professions Code regarding veterinarians' ability to discuss cannabis use with patients. New section 4884 explicitly prohibits veterinarians from dispensing or administering cannabis products to an animal patient. However, it also prohibits VMB from disciplining a veterinarian for discussing the medical use of cannabis on an animal with a client. The bill also

amends section 4883 to permit the Board to discipline a licensee who has a demonstrated conflict of interest resulting from the recommendation of a cannabis product to pets. Specifically, VMB may deny, revoke, or suspend a veterinarian's license, or impose a fine, if the veterinarian (1) discusses medicinal cannabis with a client and is employed by, or has an agreement with, a cannabis-related business, (2) accepts, solicits, or offers compensation from or to a cannabis-related business if the veterinarian or his or her family have a financial interest with that business, or (3) distributes any form of advertising for cannabis in California.

According to the author, who also sponsored this bill, “[i]t is critical for the protection of our beloved pets that veterinarians be allowed to discuss the safe-use and medicinal value of cannabis products already available to California consumers. Similar to how medical cannabis has evolved within the policy framework, the need to address its benefits within veterinary practices desperately needs our attention.” The Executive Committee of the Board wrote a letter to Kalra's office to recommend changes to the bill and supported it once amended.

The bill requires VMB to adopt guidelines for veterinarians to follow when discussing cannabis within the veterinarian-client-patient relationship by January 1, 2020. Once adopted, the guidelines must be published on the VMB website.

Governor Brown signed SB 2215 on September 27, 2018 (Chapter 819, Statutes of 2018).

[AB 710 \(Wood\)](#), as amended April 2, 2018, adds section 26002 to the Business and Professions Code, and section 11150.2 to the Health and Safety Code to allow health care providers, including veterinarians, to prescribe cannabidiol products to patients if cannabidiol is removed from Schedule I of the federal Controlled Substances Act, or if the Food and Drug Administration approves a product containing cannabidiol that is not placed on Schedule I of the Act. The bill includes the findings and declarations of the Legislature that the purpose of this bill

is to provide rapid access to treatment for those afflicted with epilepsy immediately upon approval by the federal government.

Governor Brown signed AB 710 on July 9, 2018, and because it was designated as urgency legislation it went into effect immediately (Chapter 62, Statutes of 2018).

[AB 1753 \(Low\)](#), as amended August 24, 2018, amends sections 11161.5, 11162.1, and 11165 of the Health & Safety Code to add more stringent requirements for prescription pad printing and distribution. According to the author, this bill is an effort to reduce theft and fraud that contributes to the opioid abuse epidemic. Current law requires prescription forms for controlled substance prescriptions to be obtained from security printers approved by the Department of Justice. This bill requires vendors to submit the serial numbers of prescription pads and the names of the recipient prescribers to the Department of Justice within one day of delivery.

Governor Brown signed AB 1753 on September 18, 2018 (Chapter 479, Statutes of 2018).

[AB 1776 \(Steinorth\)](#), as amended August 8, 2018, adds and repeals section 1797.10 of the Health and Safety Code to authorize San Bernardino County to conduct a pilot project to allow EMTs to transport police dogs injured in the line of duty to an animal hospital capable of providing the necessary emergency care. Specifically, the bill requires that the canine handler accompany the canine and be responsible for any first aid administered during transport. At its August 2018 [meeting](#), the Board voted to support the bill. The project will begin January 1, 2019 and continue for three years.

Governor Brown signed AB 1776 on September 6, 2018 (Chapter 272, Statutes of 2018).

[AB 2138 \(Chiu\)](#), as amended August 24, 2018, amends, repeals, and adds sections 7.5, 480, 481, 482, 488, 493, and 11345.2 of, and adds section 480.2 to, the Business and Professions Code to prevent boards within the Department of Consumer Affairs from denying licenses to

applicants solely because the applicant was convicted of a crime, if the conviction was more than seven years prior. Section 7.5 defines conviction to mean a guilty or nolo contendere plea or verdict upheld after the appeal process is exhausted. Section 480 is added to authorize VMB to deny a license on the grounds that the applicant has been formally disciplined or convicted of a crime only if the conviction was within the last seven years and the crime is “substantially related to the qualifications, functions, or duties of the business or profession for which the application is made.” However, the seven-year limitation does not apply to certain serious felonies.

Section 481 requires the Board to develop criteria “to aid it, when considering the denial, suspension, or revocation of a license” to determine whether a crime is “substantially related.” The criteria must include (1) the nature and gravity of the offense, (2) the number of years elapsed since the date of the offense, and (3) the nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed. Under new section 482, the Board must also develop criteria for determining whether an applicant is rehabilitated and must use those criteria to evaluate whether the applicant is rehabilitated before denying a license.

The VMB unanimously opposed the bill at its May 2018 [meeting](#) and requested Governor Brown veto it because of their concern that it could endanger the public.

Governor Brown signed AB 2138 on September 30, 2018 (Chapter 995, Statutes of 2018). [AB 2300 \(Maienschein\)](#), as amended June 27, 2018, amends section 4846.5 of the Business and Professions Code to allow veterinarians renewing their license to earn up to four of the required thirty-six Continuing Education hours for providing pro-bono spay and neuter services to public, humane society, or other shelters. The Board unanimously [opposed](#) this bill at its May 2018 meeting, claiming it could take away from education veterinarians need in other areas of

practice. The American Society for the Prevention of Cruelty to Animals, however, supported AB 2300.

Governor Brown signed AB 2300 on August 28, 2018 (Chapter 236, Statutes of 2018).

LITIGATION

◆ *Shenouda v. Veterinary Medical Board, 27 Cal. App. 5th 500 (2018)*. On August 27, 2018, the California Court of Appeal for the Second District held that substantial evidence supported the trial court's decision to uphold the Board's disciplinary measures against Dr. Shenouda. The Board originally licensed Dr. Shenouda in 2010. In May 2014, Annemaria Del Mugnaio, then Executive Officer of the Board, brought an accusation against Dr. Shenouda alleging eleven causes for discipline for his negligence in treating three dog patients and one cat patient. The accusation included allegations that Dr. Shenouda failed to inform the patient's owner of the limits of care available at the clinic, to receive informed consent, to document treatment, to explain the severity of a prognosis to the owner, to discuss treatment options with the owner, among others.

A hearing on the accusation was held before an administrative law judge (ALJ). Dr. David Robbins, a licensed veterinarian and expert witness for the Board, testified that the acts alleged in the accusation constituted breaches of the standard of care. The ALJ issued a proposed decision stating that Dr. Shenouda was negligent and that there was clear and convincing proof for the Board to discipline him under each of the eleven causes of action. The ALJ ordered that the Board revoke Dr. Shenouda's veterinarian license and place him on probation for five years with a 90-day suspension from practicing veterinary medicine. The Board accepted and adopted the proposed decision.

Dr. Shenouda then requested writ of administrative mandate with the Superior Court. The Superior Court exercised its independent judgement with a presumption in favor of the Board for both matters of law and fact because the Board prevailed after formal administrative hearing was held. The Superior Court found that the weight of the evidence supported the ALJ's decision, and thus denied Dr. Shenouda's request. Dr. Shenouda appealed to the Court of Appeal, which reviewed the lower court's decision under the substantial evidence test. The Court of Appeal found that Dr. Shenouda failed to meet his burden of proof on appeal mostly because he did not assert any facts or arguments not already provided to the lower courts.

RECENT MEETINGS

At its August 29, 2018 [meeting](#), the Board voted to send the issue of requiring intra-oral dental radiograph equipment at veterinary premises back to the MDC for discussion. If approved by the MDC and eventually the Board, the potential regulation would add language to section 2030(f)(4), Title 16 of the CCR requiring intra-oral radiograph dental equipment on the premises for the facility to be in compliance. Some members were concerned that such a requirement would disproportionately burden small veterinary businesses because of the cost of the radiograph equipment. Other members believe the equipment is necessary to properly diagnose and treat animal patients.