

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 section 4800.1

The California Veterinary Medical Board (VMB) is a consumer protection agency within the 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 is comprised of eight members—four veterinarians, one registered veterinary technician (RVT), 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. At this writing, there are no vacancies on the Board.

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. Committee members serve three-year terms and are limited to two consecutive terms. At its October 21, 2021 [meeting](#) [[Agenda Item 6](#)], the Board appointed Marie Ussery, RVT, to fill the sole vacant position on the MDC to replace Kristi Pawlowski, whose term ended on July 1, 2021. Ms. Ussery’s position will end on July 1, 2024.

HIGHLIGHTS

Board Announces Further Extension of DCA Director’s Order Waiving Restrictions on Telemedicine and Extending Time to Refill Prescriptions

On August 31, 2021, the DCA Director, Kimberly Kirchmeyer, issued Waiver Order [DCA-21-193](#), which further extends the [June 4, 2020 waiver order, DCA-20-21](#), regarding telemedicine for new or different medical conditions and prescription refills. This is the seventh time the June 4, 2020 order has been extended due to the COVID-19 pandemic.

Waiver Order DCA-21-193 impacts two critical areas of the veterinarian-client-patient relationship (VCPR): telemedicine and prescription refills. At its July 22–23, 2021 [meeting](#) [[Agenda Item 5C](#)], the Board stated that due to the potential exposure to and spread of COVID-19, consumers remain concerned with taking their animals to a veterinarian for examination, diagnosis, and treatment. Therefore, veterinary professionals worry that animals will not receive proper medical care due to fear of COVID-19.

The order waives sections 2032.1(b)(2) and (3), Title 16 of the CCR, requiring that veterinarians perform an in-person examination of an animal in order to diagnose a new or different medical condition. However, telemedicine cannot be used to establish a VCPR. The order also temporarily waives section 2032.1(c), Title 16 of the CCR, which limits veterinarians from

prescribing medicine for longer than one year from the date of examination and prescription of the drug.

During the Board's July 22–23, 2021 meeting, VMB agreed with its Multidisciplinary Advisory Committee's [recommendation](#) to request a further extension of the DCA waiver, finding that while reexamination is important for the maintenance of veterinary treatment, the danger posed by the pandemic warrants flexibility in avoiding unnecessary exposure to or transmission of COVID-19 to consumers and veterinary professionals. Accordingly, Order DCA-21-193 allows prescription refills for up to 18 months from the last date of examination and prescription, thus extending the time to reexamine the animal patient by six months.

The Director's Order expired October 31, 2021.

VMB's Executive Officer Named in Telemedicine Lawsuit Filed by the San Francisco Society for the Prevention of Cruelty to Animals

On May 3, 2021, in *San Francisco Society for the Prevention of Cruelty to Animals, et al. v. Jessica Sieferman*, Case No. 2:21-cv-00786-TLN-KJN (E.D. Cal.), plaintiffs San Francisco Society for the Prevention of Cruelty to Animals, and several veterinarians and animal owners, filed a [complaint](#) in federal court against Jessica Sieferman, in her official capacity as the executive officer of VMB. Through this lawsuit, plaintiffs seek to permanently allow telemedicine appointments for both new and existing animal patients even after the pandemic ends. Plaintiffs further state that “[t]his disparity between the rules governing speech relating to human medicine and the rules governing speech relating to veterinary medicine is entirely arbitrary and underscores the absence of any compelling state interest supporting California’s restrictions on veterinary

speech.” Plaintiffs allege that California has violated their constitutional right to equal protection of the laws by continuing this disparate treatment.

During the pandemic, VMB issued a telemedicine [waiver](#) through DCA, which permitted remote veterinary visits for existing and new medical conditions for pet patients who have a preexisting veterinarian relationship. In the complaint, plaintiffs allege the veterinarian-client-patient regulations found in section 2032.1, Title 16 of the CCRs regarding telemedicine, violates the First and Fourteenth Amendments of the U.S. Constitution by prohibiting veterinarians from using telemedicine to speak about animal patients’ health. The complaint states that the veterinarian-client speech restrictions categorically prohibit veterinarians from giving medical advice to new patients or to existing patients for new issues unless the veterinarian has performed a hands-on examination of the animal. Plaintiffs also assert that these restrictions are not in the best interests of consumers, veterinary professionals, or animal patients and present a significant barrier to providing affordable, effective, and accessible veterinary healthcare.

On May 25, 2021, the defendant filed a motion to dismiss the complaint, and the hearing was set for July 22, 2021, but later vacated. On June 4, 2021, District Judge Troy L. Nunley [ordered](#) a briefing schedule concerning the defendant’s motion to dismiss. As of this writing, the court has not yet ruled on the motion to dismiss.

At its July 23, 2021 meeting, the members [discussed](#) this piece of litigation in closed session, pursuant to Government Code section 11126(e)(1) and (2)(A) [Agenda Item 21]. At that time, the Board continued to [extend](#) the temporary allowance of telemedicine. The DCA Director’s waiver order (DCA-21-93, DCA-20-21) expired October 31, 2021.

Board Successfully Undergoes Sunset Review

On October 7, 2021, Governor Newsom signed the VMB sunset extension bill, [AB 1535 \(Committee on Business and Professions\) \(Chapter 631, Statutes of 2021\)](#), extending the Board's sunset date to January 1, 2026. This bill makes changes to the Veterinary Practice Act based on issues identified in the VMB's [Sunset Review Report](#), the legislature's [Background Paper](#), and those identified during the VMB's sunset review oversight [hearing](#) held March 3, 2021. [[26:2 CRLR 93–97](#)] On September 10, 2021, the Assembly concurred in the Senate amendments that were ultimately included in the final version of the bill. The only item not included in the final version of the bill was the Electronic Services proposal [[Agenda Item 5C](#)] approved by the Board at its July [meeting](#). Key amendments include the following:

Elimination of the California Board Examination. AB 1535 eliminates the requirement that a veterinarian completes a California state board examination and makes conforming changes to provisions related to out-of-state, temporary, and university licenses. At its January 28, 2021, [meeting](#) [[Agenda item 8](#)], the Board voted on various amendments to the examination and licensing of veterinary professionals using guidance from the DCA's Office of Professional Examination Services (OPES) [report](#). [[see 26:2 CRLR 93–94](#)] Previously, to obtain licensure as a veterinarian, an applicant needed to pass three examinations: (1) a national examination, known as the North American Veterinary Licensing Examination (NAVLE); (2) a California state board examination (CSBE); and (3) a veterinary law examination of California rules, statutes, and regulations (CVLE). As a result of AB 1535, a candidate would only need to pass a national examination and a veterinary law examination administered by the Board.

Changes to Veterinary Premises Registration. California law requires all premises where veterinary medicine, dentistry, and surgery are practiced to be registered with the Board. An

application for premises registration must contain the name of the responsible licensee manager (known as the MGL), who is to act on behalf of the licensed premises. The MGL must also submit to a criminal background check, in which the Board has the authority to deny license and registration applications for convictions and discipline by public agencies. However, existing law was unclear about who is required to be involved in the premise registration and the extent of the Board’s authority. For example, previously, the law did not require that the owner or operator of the veterinary premises be the premises registration applicant or be identified on the application at all.

To address these issues, AB 1535 implements three categories of changes related to veterinary premises registration. The bill (1) defines that the term “veterinary premises” refers to the location of an operation where veterinary medicine, dentistry, and surgery is practiced; (2) requires that any owner, operator, officer, director, shareholder, or general partner be openly identified on a premises application, and report any changes to the Board within 30 days; and (3) clarifies the Board’s enforcement authority.

Safeguards Related to the Corporate Practice of Veterinary Medicine. The current regulatory and statutory law does not explicitly prohibit general corporate ownership or operation of a veterinary medical practice. AB 1535 includes provisions for veterinary corporations to be identified on a premise permit application and prohibits a premise registration holder that is not a California-licensed veterinarian to interfere with, control, or direct the professional judgment of any California licensed veterinarian or registered veterinary technician. To enforce this provision, AB 1535 also authorizes the Board to require information necessary for regulation such as employment contracts and background checks.

Changes to the Board's Drug and Alcohol Diversion Program. AB 1535 changes the Board's Diversion Program that identifies and rehabilitates veterinarians and RVTs who suffer from alcohol or drug addiction. The Board highlighted the need for substantive changes to Diversion after their Sunset Report revealed that program participation has historically been low. Under current law, participants in the program are required to pay a flat fee of \$2,000, which can be increased to a statutory maximum of \$4,000. AB 1535 eliminates the flat registration fee and instead requires participants to pay the administrative costs for the program to sustain the Board's funds if more participants begin to enroll. AB 1535 also makes changes to the Board's Diversion Evaluation Committee (DEC), which assists in administering the program. Currently, the law requires that the Board meet and vote to appoint and dismiss members of the DEC. AB 1535 authorizes the Board's president to suspend any diversion evaluation committee member pending an investigation into allegations of existing alcohol or drug addiction and remove the member if there is evidence of relapse. The bill changes the term "diversion" to "wellness" in the context of the Board's drug and alcohol abuse recovery program, as the Board recognized the negative connotations the term "diversion" might have, thus deterring professionals from using the program.

Changes to Animal Shelter Veterinary Medicine. In the past few years, California animal shelters have reached out to the Board for guidance on the protocols for providing veterinary medicine in the absence of the supervising veterinarian. One of the more challenging requirements for animal shelters to meet, especially rural shelters, is having a licensed veterinarian maintain a physical presence within the facility at all times. AB 1535 attempts to address concerns regarding the minimum standard of care in animal shelters. The bill includes provisions authorizing public animal control agencies or shelters and humane society shelters not registered under a premises

permit to provide limited care. For example, with the passing of AB 1535, animal shelters may now administer vaccinations to prevent the spread of communicable diseases and nonprescription medications for parasites without the presence of a veterinarian. The bill requires shelters to have protocols written by a California veterinarian and that the person providing care has received proper training. Further, AB 1535 defines proper training for shelter staff providing care and requires shelters to report any adverse event resulting in significant injuries or deaths from the care provided.

All the new amendments to the Board's enabling act, section 4800, et seq. of the Business and Professions Code in AB 1535, become effective January 1, 2022.

RULEMAKING

The following is a status update on recent rulemaking proceedings initiated by VMB:

- **Fee Schedule – Certificate of Compliance:** On June 1, 2021, the Office of Administrative Law (OAL) [approved](#) VMB's proposed [amendments](#) to sections 2070 and 2071, Title 16 of the CCR to increase fees associated with veterinarian and university licensure and veterinary technician registration, and add a new \$300 fee associated with the approval of schools offering training curriculum for veterinary technicians. The Board initiated the rulemaking process on September 25, 2020. [[25:1 CRLR 75-76](#)] The regulatory changes became effective on June 1, 2021.
- **Animal Physical Rehabilitation:** On November 15, 2021, OAL [approved](#) VMB's proposal to [adopt](#) section 2038.5, Title 16 of the CCR, regarding animal physical rehabilitation (APR). According to the [final statement of reasons](#), these changes clarify the language regarding the two types of veterinarian supervision, direct and indirect, of a registered veterinary technician

(RVT) to perform APR and specify the health care tasks that can be performed. VMB originally commenced the rulemaking process on this proposal on March 13, 2020. [[25:2 CRLR 66](#)] The new regulation will go into effect on January 1, 2022.

- **Disciplinary Guidelines:** During this reporting period, VMB released modified text pertaining to its proposed amendments to section 2006, Title 16 of the CCR regarding its Disciplinary Guidelines three times for three separate 15 day public comment periods to address public comments received. The Board initially published notice of its intent to amend these Guidelines on July 17, 2020. [[26:1 CRLR 77–78](#)] At its October 21, 2021 [meeting \(Agenda Item 11.B\)](#), the Board voted to release the [Third Modified Text](#) for public comment to address the DCA Director’s concerns regarding the proposed modification to the probationary terms concerning the automatic cancellation of a license without a hearing for probation violations. The Board published [notice](#) of the third 15-day public comment the same day. The third public comment period expired on November 5, 2021. At this writing, the Board has not taken further action on this rulemaking package.

- **Drug Compounding:** On July 28, 2021, the Board published [notice](#) that it released [Second Modified Text](#) in its proposal to add sections 2090, 2091, 2092, 2093, 2094, and 2095, Title 16 of the CCR regarding drug compounding services and training requirements for a 15-day public comment period expiring August 12, 2021. The Board initially published notice of its intent to add these sections on July 17, 2020. [[26:1 CRLR 78](#)]. At its October 21, 2021 [meeting \(Agenda item 11E\)](#), the Board responded to the comments that asked for clarifying language and adoption of certain technical terms. At this writing, the Board has not taken further action on this rulemaking package.

LEGISLATION

- [AB 1535 \(Committee on Business and Professions\)](#), as amended August 26, 2021, largely amends the Board’s enabling act, section 4800, et seq., of the Business and Professions Code. AB 1535 extends the sunset date of the Board to January 1, 2026, and enacts various changes to the licensing examinations, identification requirements, and fee systems for veterinary professionals (*see* HIGHLIGHTS). Governor Newsom signed AB 1535 on October 7, 2021 (Chapter 631, Statutes of 2021)
- [AB 1282 \(Bloom\)](#), as amended August 26, 2021, and as it applies to VMB, amends section 4826, amends, renumbers, and adds section 4836.5, and adds Article 7 (commencing with section 4920) to the Business and Professions Code regarding animal blood banks. According to the author, the aim of this legislation is to minimize shortages in blood supplies and provide guidance to assist the veterinary profession with best practices for community blood banking. AB 1282 expands the use of animal community blood banks and establishes a plan to phase out and eliminate the use of captive closed colony blood banks once the community blood banks are producing enough supply of blood products. AB 1282 also requires that any importation and sale of blood in California can only be permitted if the products came from community blood banks. Under the bill, the California Department of Food and Agriculture (CDFA), in collaboration with the Board and other stakeholders, is required to publish a community animal blood banking guidance resource by March 1, 2023. Governor Newsom signed AB 1282 on October 9, 2021 (Chapter 752, Statutes of 2021).

The following bills, reported in [Volume 26, No. 2 \(Spring 2021\)](#), died in committee or otherwise failed to be enacted during the 2021 legislative session: [SB 344 \(Hertzberg\)](#), relating to

homeless shelter grants; [SB 731 \(Durazo and Bradford\)](#), relating to criminal records relief; [AB 384 \(Kalra\)](#), relating to cannabis for animals; and [SB 547 \(Glazer\)](#), relating to the animal emergency response and the California Veterinary Emergency Team program.