

**STATE OF CALIFORNIA  
OFFICE OF ADMINISTRATIVE LAW**

In re:	)	
	)	
VETERINARY MEDICAL BOARD	)	DECISION OF DISAPPROVAL OF REGULATORY ACTION
	)	
REGULATORY ACTION:	)	(Gov. Code, sec. 11349.3)
	)	
Title 16, California Code of Regulations	)	
	)	OAL File No. 2008-1117-02 S
Amend sections: 2021(g), 2068.5 and 2068.6	)	
	)	
Repeal sections: 2067 and 2068	)	
	)	

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**DECISION SUMMARY**

The Veterinary Medical Board (Board) proposed to amend the California Code of Regulations, Title 16, sections 2021(g), 2068.5 and 2068.6, and to repeal sections 2067 and 2068. The regulatory action would have revised the date in the regulation indicating a change in the publication used by the California Veterinary Medical Association to evaluate internship and residency programs for approval, established new practical experience requirements that candidates for the Registered Veterinary Technician licensing examination must meet before taking the examination, and repealed the sections containing out-of-date and unnecessary eligibility categories. The Board submitted the proposed regulatory action to the Office of Administrative Law (OAL) on November 17, 2008. On January 2, 2009, OAL notified the Board that the action was disapproved because the regulations failed to meet the clarity standard of Government Code section 11349.1.

**DISCUSSION**

Any regulatory action a state agency adopts through the exercise of quasi-legislative power delegated to the agency by statute is subject to the requirements of the Administrative Procedure Act (APA) unless a statute expressly exempts or excludes the act from compliance with the APA. (Gov. Code, sec. 11346.) Regulations adopted by the Board must be adopted pursuant to the APA. No exemption or exclusion applies to the regulatory action under review. Thus, before the instant regulatory action may become effective, it is subject to a review by OAL for compliance with procedural requirements and substantive standards of the APA. (Gov. Code, sec. 11349.1(a).)

### Clarity

In adopting the APA, the Legislature found that the language of many regulations was unclear and confusing to the persons who must comply with the regulations. (Gov. Code, sec. 11340(b).) For this reason, subdivision (a)(3) of Government Code section 11349.1 requires that OAL review all regulations for compliance with the clarity standard. Government Code section 11349, subdivision (c), defines "Clarity" as meaning "... written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them." Section 16, subdivision (a)(2), of title 1 of the California Code of Regulations (CCR) further provides:

(a) A regulation shall be presumed not to comply with the 'clarity' standard if any of the following conditions exists:

- (1) ....
- (2) the language of the regulation conflicts with the agency's description of the effect of the regulation ....

Registered veterinary technicians are approved to perform animal health care services allowed by law upon meeting certain criteria and being registered with the Board. Business and Professions Code section 4841.5 establishes the eligibility criteria for taking the examination for registration:

To be eligible to take the written and practical examination for registration as a registered veterinary technician, the applicant shall:

- (a) Be at least 18 years of age.
- (b)(1) Furnish satisfactory evidence of graduation from, at minimum, a two-year curriculum in veterinary technology, in a college or other postsecondary institution approved by the board, or the equivalent thereof as determined by the board....
  - (2) For purposes of this subdivision, *education or a combination of education and clinical practice experience may constitute the equivalent of the graduation requirement imposed under this subdivision, as determined by the board.* [Emphasis added.]

Section 2068.5(g) of title 16, CCR, establishes the number of hours of clinical practice experience needed to constitute the "equivalent of the graduation requirement" of Business and Professions Code section 4841.5, subdivision (b)(1). In this rulemaking, the Board proposed to amend section 2068.5(g) as follows (strikeout indicating language to be deleted and underlining indicating language to be added):

(g) The ~~practical experience~~ directed clinical practice shall consist of ~~thirty six (36) months of experience (4,680 hours)~~ at least 4476 hours, completed in no less than 24 months directed clinical practice under the direct supervision of a California-licensed veterinarian who shall attest to the completion of that experience at the time the application is made to the board for the registered veterinary technician examination. This experience shall have been completed by the applicant within five (5) years prior to the date of the examination for registration as a registered veterinary technician.

The Board proposed a similar amendment to title 16, CCR, section 2068.6(b) that establishes the number of hours needed by those applicants whose practical experience was obtained outside of California as follows (strikeout indicating language to be deleted and underlining indicating language to be added):

(b) The applicant has obtained ~~36 months (4,680 hours) of practical experience at least~~ 4476 hours, completed in no less than 24 months, directed clinical practice, under the direct supervision of a ~~licensed~~ veterinarian licensed in the Untied States, Canada or U.S. territory.

In the rulemaking record, the Board's initial statement of reasons (ISOR) provided the following purpose and factual basis or rationale for the proposed changes to sections 2068.5 and 2068.6:

**Specific Purpose of each adoption, amendment, or repeal:**

**Section 2068.5**

Amend Section 2068.5

The specific purpose of this regulatory proposal is to amend an existing regulation to clarify the practical experience requirements for the RVT licensing examination and *to make the required hours consistent with the definition of 'full time' as per CCR, Section 2021(a).*

**Section 2068.6**

Amend Section 2068.6

The specific purpose of this regulatory proposal is to amend an existing regulation to clarify the practical experience requirements for the RVT licensing examination and *to make the required hours consistent with the definition of 'full time' as per CCR, Section 2021(a).*

**Factual Basis/Rationale**

**Section 2068.5**

Section 2068.5 outlines the eligibility requirements whereby candidates for the RVT licensing examination can obtain a specific amount of education and practical experience. The changes in this regulatory proposal clarify that the experience is to be directed by the supervising veterinarian and that *the required twenty-four (24) months or 2944 hours of full time directed clinical experience is consistent with the existing definition of 'full time' in Section 2021(a).*

**Section 2068.6**

Section 2068.5 [sic] outlines the eligibility requirements whereby candidates for the RVT licensing examination can obtain a specific amount of education and practical experience. The changes in this regulatory proposal clarify that the experience is to be directed by the supervising veterinarian and that *the required twenty-four (24) months or 2944 hours of*

*full time directed clinical experience is consistent with the existing definition of 'full time' in Section 2021(a).* [Emphasis added.]

Title 16, CCR, section 2021 states in part:

For purposes of this article and the provisions of sections 4848 and 4848.3 of the code relating to temporary licenses:

(a) 'Year of full time clinical veterinary medical practice' shall mean that the applicant for a temporary license has performed clinical veterinary medicine at least 46 weeks in a calendar year and averaged 32 hours per week....

Looking at the Board's rationale for the amendments to sections 2068.5 and 2068.6 in the ISOR, and the number of weeks in a year and the number of hours per week set forth in section 2021(a), it is apparent how the Board reached the amount of 2944 hours (46 weeks x 32 hours = 1472 hours; 1472 hours x 2 years (or 24 months) = 2944 hours). The proposed text change to sections 2068.5 and 2068.6, however, is "at least 4476 hours, completed in no less than 24 months." There is no explanation or rationale in the rulemaking record for the change in the number of hours from 2944 to 4476, nor for the requirement that the number of hours be completed in no less than 24 months. The language of the proposed amendment to sections 2068.5 and 2068.6 conflicts with the Board's description of the effect of the regulations, and therefore, fails to meet the clarity standard of Government Code section 11349.1.

### CONCLUSION

For the reasons set forth above, the OAL has disapproved the proposed amendment of sections 2021(g), 2068.5 and 2068.6, and repeal of sections 2067 and 2068 of title 16 of the California Code of Regulations.

Date: January 9, 2009

  
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