

**State of California  
Office of Administrative Law**

**In re:**

**Veterinary Medical Board**

**Regulatory Action:**

**Title 16, California Code of  
Regulations**

**Adopt sections: 2064, 2066, 2066.1  
Amend sections: 2065, 2065.5,  
2065.6, 2065.7, 2065.8, 2065.8.1,  
2065.8.2, 2065.8.3, 2065.9.**

**DECISION OF DISAPPROVAL OF  
REGULATORY ACTION**

**Government Code Section 11349.3**

**OAL File No. 2013-1205-02S**

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**DECISION SUMMARY**

On December 5, 2013, the Veterinary Medical Board (Board) submitted to the Office of Administrative Law (OAL) the proposed adoption of sections 2064, 2066, and 2066.1 and the proposed amendment of sections 2065, 2065.5, 2065.6, 2065.7, 2065.8, 2065.8.1, 2065.8.2, 2065.8.3 and 2065.9 in Article 6 of Division 20 of Title 16 of the California Code of Regulations (CCR) regarding registered veterinary technician school approval.

On January 21, 2014, OAL notified the Board that OAL disapproved the proposed adopted and amended regulations for failure to comply with specified standards and procedures of the California Administrative Procedure Act (APA). The reasons for the disapproval are summarized below:

A. the proposed regulations fail to comply with the necessity standard of Government Code sections 11349(a), 11349.1(a)(1) and 11346.2(b)(1) and Title 1 CCR section 10(b);

B. the proposed regulations fail to comply with the clarity standard of Government Code sections 11349(c) and 11349.1(a)(3); and

C. the agency failed to comply with various procedural requirements of the Administrative Procedure Act and its implementing regulations regarding:

(1) the failure to include in the record minutes of the public hearing that fully and accurately reflected all proceedings applicable to the rulemaking action;

(2) the failure to include in the record an estimate of the fiscal effect on local government of reasonable compliance with the regulations;

(3) the failure to include in the record a copy of all public comment letters;

(4) the failure to use underline and strikeout to indicate additions to and deletions from the CCR;

(5) the failure of the Informative Digest to include a concise and clear summary of the effect of the proposed amendments to sections 2065(b), (b)(5), (b)(11), (b)(14), (b)(16), (f)(2), (g), (i), and (k), and the proposed adoption of sections 2065.6(c), 2066(b), and 2066.1;

(6) the failure to include in the record-an accurate statement of mailing of the notice of the proposed action;

(7) the failure to include in the record an economic impact assessment of the proposed amendments to sections 2065(b), (b)(5), (b)(11), (b)(14), (b)(16), (f)(2), (g), (i), and (k), and the proposed adoption of sections 2065.6(c), 2066(b), and 2066.1;

(8) the failure of the Initial Statement of Reasons to include factual support for the Board's initial determination that the proposed amendments to sections 2065(b), (b)(5), (b)(11), (b)(14), (b)(16), (f)(2), (g), (i), and (k), and the adoption of proposed sections 2065.6(c), 2066(b), and 2066.1 will not have a significant adverse economic impact on business;

(9) the failure to include in the record confirming statements regarding the mailing, if any, of the agency's notices of availability of modified text and of documents added to the rulemaking file; and

(10) the failure of the agency to transmit to the OAL the text of proposed section 2066(a) as modified by the Board in this rulemaking proceeding.

All issues must be resolved prior to OAL approval of any resubmission of these regulations. Upon resubmission, OAL reserves the right to review these regulations for compliance with all standards of Government Code 11349.1(a) and all procedural requirements of the APA.

## BACKGROUND

The Board conducted this rulemaking action primarily to establish that in-state and out-of-state registered veterinary technician schools and degree programs which are accredited by the American Veterinary Medical Association (AVMA) are accepted by the Board as approved educational programs. The action also amends regulations specifying the minimum requirements for Board approval of schools and degree programs that are and are not AVMA approved and that are provisionally AVMA approved and regarding exemption from inspection for AVMA approved schools and degree programs. The action specifies the minimum examination eligibility requirements for candidates who completed minimum educational requirements at in-state or out-of-state schools and degree programs which are not Board approved. The action also makes other minor and non-substantive changes to the affected sections of Title 16 of the CCR.

## DISCUSSION

Any regulation amended or adopted by a state agency through its exercise of quasi-legislative power delegated to it by statute to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, is subject to the APA unless a statute expressly exempts the regulation from APA review. Government Code sections 11340.5 and 11346. OAL reviews regulatory actions for compliance with the standards for administrative regulations in Government Code section 11349.1. Generally, to satisfy the standards, a regulation must be legally valid, supported by an adequate record, and easy to understand. In its review, OAL may not substitute its judgment for that of the rulemaking agency with regard to the substantive content of the regulation. OAL review is an independent executive branch check on the exercise of rulemaking powers by executive branch agencies and is intended to improve the quality of regulations that implement, interpret, and make specific statutory law, and to ensure that required procedures are followed in order to provide meaningful public opportunity to comment on regulations before they become effective.

### A. NECESSITY.

OAL must review regulations for compliance with the necessity standard of the APA in accordance with Government Code section 11349.1(a)(1). Government Code section 11349(a) provides that "necessity" means that the record of the rulemaking proceeding demonstrates by substantial evidence the need for the regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. Necessity is explained primarily in the agency's Initial Statement of Reasons ("ISR"). Government Code section 11346.2(b)(1) requires that the ISR include a statement of the specific purpose of each adoption and amendment, the problem the agency intends to address, and the rationale for the determination by the agency that each adoption and amendment is reasonably necessary to carry out the purpose and address the problem for which it is proposed. Title 1 CCR section 10(b) requires that the rulemaking

record include a statement of the specific purpose of each adoption, amendment, or repeal and information explaining why each provision of the adopted regulation is required to carry out the described purpose of the provision.

In this action, the purpose, problem, and necessity for the amendments to recognize all AVMA-accredited schools and degree programs as California approved is included in the ISR and amended ISR. However, the ISR and Amended ISR fail to include such explanations for the proposed amendments to sections 2065(b), (b)(5), (b)(11), (b)(14), (b)(16), (f)(2), (g), (i), and (k), and for the adoption of proposed sections 2065.6(c), 2066(b), and 2066.1.

Prior to any resubmission of this rulemaking action to OAL for review, the Board must prepare an addendum to the ISR or supplemental statement of reasons which includes the required purpose, problem, and necessity explanations for the above-listed provisions and make the document available to the public for at least 15 days pursuant to Government Code section 11347.1.

## **B. CLARITY.**

In adopting the APA, the Legislature found that the language of many regulations was unclear and confusing to persons who must comply with the regulations. Government Code section 11340(b). Government Code section 11349.1(a)(3) requires that OAL review all regulations for compliance with the clarity standard. Section 11349(c) of the Government Code defines "clarity" to mean "...written or displayed so that the meaning of the regulations will be easily understood by those persons directly affected by them." As a result of its review, OAL found that several proposed provisions will not be easily understood by persons directly affected by them.

### **(1) Proposed section 2065(i).**

As proposed to be amended, section 2065(i) requires a school or degree program to be part of an institution which is approved by the Bureau for Private Postsecondary Education [hereafter "Bureau"] unless otherwise exempted from Education Code section 94800 et seq. The amendment is unclear because the requirement of Bureau approval is in Business and Professions Code section 4841.5(b). It is unclear, without a more specific citation than "Education Code section 94800 et seq.," and in the absence of an explanation of the problem, purpose, and necessity of this amendment in the ISR, how exemption from Education Code section 94800 et seq. exempts schools and programs from the requirement of Bureau approval in Business and Professions Code section 4841.5(b).

### **(2) Proposed section 2065(k).**

As proposed to be amended, section 2065(k) requires that facilities which host externs shall have current and unrestricted premise permits issued by the Board or be otherwise exempt. These amendments are not easily understood by persons directly affected by

them without cross reference(s) to the statutes and/or regulations containing both the process and criteria for obtaining unrestricted premise permits and the process and criteria for exemption from this requirement. Comprehension of the meaning of these amendments is not aided by the lack of an explanation of the purpose, problem and necessity for the amendments in the ISR.

Prior to any resubmission of this rulemaking action to OAL for review, the Board must revise section 2065(i) and (k) to clarify the ambiguities described above and make the revised text available to the public for at least 15 days pursuant to Government Code section 11346.8.

### **C. PROCEDURAL REQUIREMENTS OF THE APA.**

**(1) The Board failed to include in the record of the rulemaking proceeding a transcript, recording, or minutes of the public hearing of January 30, 2013, which fully and accurately reflected all proceedings applicable to the rulemaking action.**

OAL could not determine from the minutes of the January 30, 2013 public hearing whether the Board adopted revised text at that meeting and directed staff to initiate a 15-day notice period, as the third paragraph of the minutes of this item would indicate, or whether the Board delegated staff to amend the originally proposed text and to initiate a 15-day notice, as the fourth paragraph of the minutes would indicate. The rulemaking record does not contain evidence that the Board adopted any revised text subsequent to January 30, 2013, such that the Board complied with Government Code section 11346.8(c) by making the revised text available to the public for 15 days before it adopted the resulting regulation. Moreover, OAL cannot determine that the text transmitted to it for filing with the Secretary of State, pursuant to Government Code section 11343(a), is that which was adopted by the rulemaking entity, i.e., the Board.

Prior to any resubmission of this rulemaking action to OAL for review, the Board must, pursuant to Government Code section 11347.3(b)(8) and Title 1 CCR section 90, add to the rulemaking record sufficiently complete minutes of the January 30, 2013 meeting, or any subsequent Board meeting, which establish that the Board adopted the resulting final regulation.

**(2) The Board failed to include in the record of the rulemaking proceeding an estimate, prepared in accordance with instructions adopted by the Department of Finance, of the fiscal effect on local government of reasonable compliance with the regulations.**

The Std. 399 submitted by the Board with this rulemaking file does not indicate whether the proposed amendments and adoptions are estimated to have any fiscal effect on local government agencies. Prior to any resubmission of this rulemaking action to OAL for review, the Board must, pursuant to Government Code sections 11347.3(b)(5) and

11346.5(a)(6), and State Administrative Manual section 6604, include in the record an Std. 399 which corrects this deficiency.

**(3) The Informative Digest within the notice of the proposed rulemaking action failed to include a concise and clear summary of the effect of the proposed amendments to sections 2065(b), (b)(5), (b)(11), (b)(14), (b)(16), (f)(2), (g), (i), and (k), and the adoption of proposed sections 2065.6(c), 2066(b), and 2066.1.**

Prior to any resubmission of this rulemaking action to OAL for review, the Board must, pursuant to Government Code section 11346.5(a)(3)(A), revise, and make available to the public for at least 15 days, an Updated Informative Digest for this rulemaking action which includes a concise and clear summary of the effect of the above-listed amended and adopted provisions together with any other updates necessarily resulting from changes to the originally noticed text of the regulations or additions of documents to the rulemaking file.

**(4) The Board failed to include in the record of the rulemaking proceeding an economic impact assessment of whether and to what extent the proposed amendments to sections 2065(b), (b)(5), (b)(11), (b)(14), (b)(16), (f)(2), (g), (i), and (k), and the adoption of proposed sections 2065.6(c), 2066(b), and 2066.1 will affect the creation or elimination of jobs, the creation of new or the elimination or expansion of existing businesses, and the benefits of these proposed amendments and adoptions to the health and welfare of California residents, worker safety, and the state's environment.**

Prior to any resubmission of this rulemaking action to OAL for review, the Board must, pursuant to Government Code section 11346.3(b)(1), include, in an addendum to its ISR or supplemental statement of reasons, or in a separate document, the assessment described above and make the document available for public comments for at least 15 days pursuant to Government Code section 11347.1.

**(5) The Initial Statement of Reasons failed to include facts, evidence, documents, etc., on which the agency relied to support its initial determination that the proposed amendments to sections 2065(b), (b)(5), (b)(11), (b)(14), (b)(16), (f)(2), (g), (i), and (k), and the adoption of proposed sections 2065.6(c), 2066(b), and 2066.1 will not have a significant adverse economic impact on business.**

Prior to any resubmission of this rulemaking action to OAL for review, the Board must, pursuant to Government Code section 11346.2(b)(5)(A), include, in an addendum to its ISR or supplemental statement of reasons, the support described above and make the document available for public comments for at least 15 days pursuant to Government Code section 11347.1.

**(6) Miscellaneous APA Procedural Deficiencies Otherwise Noted by OAL.**

(a) The rulemaking record fails to include a copy of a March 29, 2012 public comment letter pursuant to Government Code section 1347.3(b)(6);

(b) The text of proposed section 2066 fails, pursuant to Government Code 11346.2(a)(3) and Title 1 CCR section 8, to use underline and strikethrough to indicate additions to and deletions from the heading and from the authority and reference citation note for that section of the CCR as they currently appear.

(c) The rulemaking record includes a statement of mailing of the notice of the proposed action which indicates the notice was mailed on August 19, 2013. This date appears to be incorrect based on the contents of the rulemaking file. The statement must be revised to include the actual date of mailing pursuant to Title 1 CCR section 86.

(d) The mailing statements for the August 19, 2013 availability of modified text and of documents added to the rulemaking file fail to include either Title 1 CCR section 44(c) and Government Code section 11347.1(f) statements, respectively, indicating that the Board had no one to whom to mail these notices, or, in the alternative, to indicate that the Board mailed these notices to every person who has filed a request for notice of regulatory actions by the Board pursuant to Government Code section 11346.4(a). The statements are, therefore, ambiguous as to what occurred regarding the mailing of these notices.

(e) The final text of adopted section 2066(a) reverts to the text of that section as originally proposed despite the Board changing the term "approved" to "accredited" and making the modification available for 15 days. The Board must either change the final text to that which was made available for 15 days or explain in its Final Statement of Reasons the decision to return to the text as originally proposed.

All items listed above shall be corrected in any resubmission of this rulemaking action to OAL for review.

**CONCLUSION**

For the foregoing reasons, OAL disapproves the above-referenced rulemaking action. Pursuant to Government Code section 11349.4(a), the Board may resubmit revised regulations within 120 days of the Board's receipt of this Decision of Disapproval. The Board shall make all substantial regulatory text changes which are sufficiently related to the original text, and all documents added to the rulemaking file upon which it relied in proposing this action, available for at least 15 days for public comment pursuant to Government Code section 11346.8 or 11347.1, as the case may be.

Date: January 28, 2014

  
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Dale Mentink  
Senior Counsel

Original: Susan Geranen  
Copy: Karen Robison