

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 1399 (Friedman) – As Amended March 16, 2023

SUBJECT: Veterinary medicine: veterinarian-client-patient relationship and veterinary telemedicine.

SUMMARY: Expands the authority of a licensed veterinarian to establish a veterinarian-client-patient relationship and practice veterinary medicine through the use of telehealth.

EXISTING LAW:

- 1) Enacts the Veterinary Medicine Practice Act, outlining the licensure requirements, scope of practice, and responsibilities of individuals practicing veterinary medicine in California. (Business and Professions Code (BPC) §§ 4811 *et seq.*)
- 2) Establishes the Veterinary Medical Board (Board) under the jurisdiction of the Department of Consumer Affairs, responsible for enforcing the provisions of the Veterinary Medicine Practice Act, and regulating veterinarians, registered veterinary technicians, veterinary assistant substance controlled permit holders, and veterinary premises. (BPC § 4800)
- 3) Provides that protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. (BPC § 4800.1)
- 4) Declares that it is unlawful to practice veterinary medicine in California unless a person holds a valid, unexpired, and unrevoked license issued by the Board, with certain exceptions. (BPC § 4825)
- 5) Defines “diagnosis” as the act or process of identifying or determining the health status of an animal through examination and the opinion derived from that examination. (BPC § 4825.1)
- 6) Defines the practice of veterinary medicine, surgery, and dentistry when a person engages in various acts, including representing themselves as a veterinarian; diagnosing or prescribing a drug, medicine, appliance, application, or treatment; performing a surgical or dental operation or manual procedure for diagnosis; or collecting blood. (BPC § 4826)
- 7) Requires a veterinarian who initially prescribes, dispenses, or furnishes a dangerous drug to an animal patient in an outpatient setting to offer a consultation containing specified information about that dangerous drug and its use. (BPC § 4829.5)
- 8) Outlines the requirements for obtaining a veterinarian license, which includes passing three examinations: a licensing examination that is administered on a national basis; a California state board examination; and an examination on California statutes and regulations of the Veterinary Medicine Practice Act. (BPC § 4848)
- 9) Requires all premises where veterinary medicine, dentistry and surgery is practiced to be registered with the Board; defines “premises” to include a building, kennel, mobile unit, or vehicle, and specifies that every registration of veterinary premises must include the name of the responsible licensee manager for the licensed premises. (BPC § 4853)

- 10) Authorizes the Board to withhold, suspend or revoke the registration of veterinary premises when the licensee manager listed on the application ceases to become responsible for management of the registered premises and is not subsequently replaced, or the licensee manager has had their license revoked or suspended. (BPC § 4853.6)
- 11) Prohibits a veterinarian from disclosing any information concerning an animal receiving veterinary services, the client responsible for the animal receiving veterinary services, or the veterinary care provided to an animal, except under specified circumstances. (BPC § 4857)
- 12) Specifies a list of prohibited activities for individuals licensed under the Board, such as fraud, misleading advertising, and cruelty to animals; provides that the Board may deny, revoke, or suspend a license or registration, or assess a fine, if any a person under its jurisdiction is found to have engaged in prohibited activities. (BPC Section §§ 4883 *et seq.*)
- 13) Authorizes healing arts licensees to provide services via telehealth in compliance with certain standardized requirements and definitions, their professional practice act, and the regulations adopted by their regulatory board pursuant to that practice act. (BPC § 686)
- 14) Requires a veterinarian to order any medically important antimicrobial drug they administer through a prescription or veterinary feed directive, pursuant to a veterinarian-client-patient relationship. (Food and Agricultural Code § 14401)

THIS BILL:

- 1) Prohibits a person from practicing veterinary medicine outside the context of a veterinarian-client-patient relationship, except to provide advice in an emergency.
- 2) Defines “veterinarian-client-patient relationship” as a relationship in which all of the following conditions are met:
 - a) The veterinarian and client agree to the veterinarian assuming responsibility for making medical judgments regarding the health of the animal patient;
 - b) The veterinarian has sufficient knowledge of the animal patient to initiate at least a general or preliminary diagnosis of the medical condition of the animal through a recent observation and examination, either in-person or using real-time video communication, or through medically appropriate and timely visits to the premises where the animal, or the group of animals of which the patient is a part, is kept;
 - c) The veterinarian is readily available or has provided for followup care in case of adverse reactions or failure of treatment.
- 3) Prohibits a veterinarian-client-patient relationship from being established solely by audio-only communication or by means of a questionnaire.
- 4) Defines “veterinary telemedicine” as the mode of delivering veterinary medicine via electronic communication technologies to facilitate the diagnosis, consultation, care management, or treatment of an animal patient, and includes, but is not limited to, real-time video and audio communication; real-time, two-way audio communication; and electronic transmission of images, diagnostics, data, and medical information.

- 5) Provides that real-time video communication is not required for the delivery of care via veterinary telemedicine after a veterinarian-client-patient relationship has been established, unless the veterinarian determines that it is necessary in order to provide care consistent with prevailing veterinary medical practice.
- 6) Provides that any person who holds a current license to practice veterinary medicine in California is authorized to practice veterinary telemedicine, and that practice shall be deemed to occur at the premises where the patient is located at the time that the veterinarian practices veterinary medicine.
- 7) Requires a veterinarian to obtain informed consent from the client prior to delivering care via veterinary telemedicine, including acknowledgment that the same standards of care will apply as in-person veterinary medical services and the client has the option to choose an in-person visit from a veterinarian at any time.
- 8) Requires a veterinarian who practices veterinary medicine to do all of the following:
 - a) Ensure that the technology, method, and equipment used to provide veterinary telemedicine services comply with all current privacy protection laws.
 - b) Have historical knowledge of the animal by obtaining and reviewing the patient's relevant medical history, and records. If medical records exist from a previous in-person visit and are available to the client, the client may transmit those records, including any diagnostic data contained therein, to the veterinarian electronically.
 - c) Employ sound professional judgment to determine whether using veterinary telemedicine is an appropriate method for delivering medical advice or treatment to the patient and providing quality of care consistent with prevailing veterinary medical practice.
 - d) Be able to refer the client to a veterinarian who may be able to see the patient in person upon the request of the client.
- 9) Authorizes a veterinarian that practices veterinary telemedicine to order, prescribe, or make available drugs for up to six months following each in-person or telemedicine examination.
- 10) Allows for a veterinarian to use veterinary telemedicine without establishing a veterinarian-client-patient relationship in order to provide advice in an emergency.
- 11) Makes various conforming changes to the Veterinary Medicine Practice Act and other statutes to reflect that veterinarians may deliver care through veterinary telemedicine.

FISCAL EFFECT: Unknown; this bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is co-sponsored by the **American Society for the Prevention of Cruelty to Animals** and the **San Diego Humane Society**. According to the author:

“During the pandemic, we saw how effective telemedicine can be for human healthcare, so why not apply this working model to veterinary care where there is a huge shortage?”

Telemedicine is a proven, safe means for delivering care. With this bill, we can prevent thousands of animals from needlessly suffering.”

Background.

Telemedicine Generally. California first formally recognized the advent of new telehealth technologies in 1996 when the Legislature enacted SB 1665 (Thompson), the Telemedicine Development Act. This bill set standards for the use of what was then called “telemedicine” by health care practitioners and insurers. The bill prohibited health insurers from requiring face-to-face contact between a health care practitioner and patient for services appropriately provided through telemedicine. The bill also exempted out-of-state practitioners from the Medical Practice Act when consulting either within California or across state lines, with a licensed practitioner in California; however, it prohibited the out-of-state practitioner from having ultimate authority over the care or primary diagnosis of a patient in California.

Much of the Telemedicine Development Act was subsequently repealed and replaced in 2011 through the enactment of AB 415 (Logue), which established the Telehealth Advancement Act to revise and update existing law to facilitate the advancement of telehealth as a service delivery mode in managed care and the Medi-Cal Program. The vernacular shift from “telemedicine” to “telehealth” reflected a general consensus among policymakers that telehealth is not itself a form of medicine, but simply a tool to deliver health care outside a traditional office visit. In California there is no distinction between in-person care and telehealth in terms of either the standard of care or the expectations of a physician-patient relationship.

The following year in 2012, the author of the Telehealth Advancement Act introduced AB 1733 (Logue) to further effectuate the changes to the state’s telehealth laws. This bill updated a number of code sections to replace the term “telemedicine” with “telehealth” and expand the potential for the use of telehealth. AB 1733 also added a statute that expressly requiring any health care practitioner who provides services via telehealth to comply with the revised requirements and definitions set forth in the Telehealth Advancement Act, as well as any additional requirements contained in the practice act relating to the practitioner’s licensed profession and any regulations adopted by the practitioner’s licensing board pursuant to that practice act.

Veterinary Telemedicine. The Veterinary Medicine Practice Act requires a veterinarian to establish and maintain a veterinarian-client-patient-relationship before providing care to an animal patient. Among other requirements, this relationship is established when the client has authorized the veterinarian to make medical judgements, and when the veterinarian has gained sufficient knowledge of the animal to make a diagnosis, generally through an in-person examination. The Board’s regulations effectuating the veterinarian-client-patient-relationship requirement additionally state the following:

“(e) No person may practice veterinary medicine in this state except within the context of a veterinarian-client-patient relationship or as otherwise permitted by law. A veterinarian-client-patient relationship cannot be established solely by telephonic or electronic means.”

This provision was added by the Board in 2019. During that rulemaking process, the Board acknowledged that it had been asked by various stakeholders including the University of California, Davis, School of Veterinary Medicine to expand the authority of veterinarians to practice through telehealth since 2011, the year the Telehealth Advancement Act was passed.

However, while the Board considered presentations on potential alternative options to expand veterinary telemedicine, it ultimately chose to proceed with what stakeholders had characterized restrictive language. In its Final Statement of Reasons, the Board provided the following in response to one veterinarian's comment requesting that the Board delay its regulations until a more flexible approach could be negotiated:

“While telemedicine is proving to be an effective form of treatment in human health care, animals are fundamentally different and cannot benefit from telemedicine in the same aspects that humans can. Unlike people, animals are unable to communicate their sickness or symptoms. Communication is expressed solely by the animal owner, who likely has no veterinary training to properly diagnose or express a sickness or symptom of the animal. For these reasons, it is important that the VCPR [*veterinarian-client-patient relationship*] is developed in person and not based solely on telephonic or electronic means. Otherwise, the veterinarian would not be familiar with the animal's medical history and could not effectively provide the best level of care via telemedicine. For veterinary science to be effective, it is important that the VCPR be established in person, so a full physical examination can be performed, and the veterinarian can get to know the animal. It is only after this relationship has been established that telemedicine may be an effective method of the continuance of treatment.”

Then Board's regulations effectively prohibit the use of veterinary telemedicine in cases where the veterinarian-client-patient relationship has not already been established through an in-person examination. Additionally, it is generally understood that another in-person examination is required to reestablish the veterinarian-client-patient relationship prior to any subsequent diagnosis or treatment of a new medical condition for the animal. The regulations do authorize telemedicine to be conducted without a preexisting relationship in an emergency; however, that authority only extends to the length of time until the patient can be seen or transported to a veterinarian.

Generally speaking, the Board's regulations on the delivery of veterinary care through telehealth are substantially stricter than the requirements of the Telehealth Advancement Act or requirements specified for other health care practitioners. However, AB 1733 made it clear that each healing arts board has the authority to promulgate additional requirements through the adoption of regulations that are consistent with its governing practice act. The author and sponsors of this bill further allege that California is one of the least flexible states in terms of how and when veterinary telemedicine may be practiced.

The Board's regulations were somewhat loosened during the State of Emergency declared in response to the COVID-19 pandemic. On March 30, 2020, Governor Newsom signed Executive Order N-39-20, which established a process under the Department of Consumer Affairs for regulatory boards to request a waiver of professional licensing requirements, including requirements related to the practice and permissible activities. On June 4, 2020, the Director of Consumer Affairs issued an order granting the Board's request to temporarily waive its regulations to the extent they required veterinarians to perform an in-person examination of the animal in order to diagnose a new or different medical condition. A number of additional extensions of the waiver were subsequently issued, with the final order extending the waiver until October 31, 2021, at which time it was allowed to expire.

During the Board's most recent joint legislative sunset review in 2021, Issue #23 in the oversight hearing background paper authored by the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions, and Economic Development posed the following question: "Should existing law be amended to increase access to veterinary services via telehealth?" The background paper noted that Board's MDC had "acknowledged the need for clarity in statutes and regulations around the definitions of telehealth and telemedicine" and that a plan was underway to convene stakeholder discussions. The background paper recommended that the Board provide an update on those discussions "and advise if there are statutory changes that could facilitate increased access to services while maintaining high standards of veterinary care."

In the midst of these discussions, the San Francisco Society for the Prevention of Cruelty to Animals (SPCA) filed a lawsuit against the Board in the United States District Court for the Eastern District of California, challenging the constitutionality of the Board's regulations restricting the practice of veterinary telemedicine. In their complaint, the plaintiffs argued that the Board's regulations violated the First Amendment by unduly restricting a veterinarian's right to exercise their freedom of speech by providing care and advice through telehealth. While the lawsuit was initially filed on May 3, 2021, the case was still pending as of April 4, 2023, when it was reassigned to a new district judge.

In January 2023, the Board voted to pursue a legislative proposal that would have amended the Veterinary Medicine Practice Act to statutorily recognize the use of veterinary telemedicine. This proposal would have largely codified the Board's existing regulations in that it would still require an in-person examination to establish a veterinarian-client-patient relationship prior to providing care for an animal or diagnosing or treating a new medical condition. The proposal would have allowed for some expanded exceptions and codified the use of "teletriage" for life-threatening cases in an emergency. Ultimately, the proposal was not introduced as legislation.

Partly in response to the Board's efforts to codify its current veterinary telemedicine policy, the author and sponsors of this bill are now seeking to enact legislation that would preempt the Board's regulations and allow for much more expansive use of veterinary telemedicine. This bill would expressly provide that a veterinarian-client-patient relationship may be established either in-person or using real-time video communication, regardless of whether the veterinarian has examined the animal patient and regardless of whether it was for the same condition. Veterinary care provided after the veterinarian-client-patient relationship has been established would not require real-time video communication, unless the veterinarian determines that it is necessary.

Additionally, this bill would enact several requirements for veterinarians that practice veterinary telemedicine. First, the veterinarian is required to ensure that the technology, method, and equipment used to provide veterinary telemedicine services comply with all current privacy protection laws. The veterinarian would also be required to have historical knowledge of the animal by obtaining and reviewing the patient's relevant medical history and any available medical records. The veterinarian would be required to employ sound professional judgment to determine whether using veterinary telemedicine is an appropriate method for delivering medical advice or treatment to the patient and providing quality of care consistent with prevailing veterinary medical practice. Finally, the veterinarian would be required to be able to refer the client to a veterinarian who may be able to see the patient in person upon the request of the client.

If enacted, this bill would significantly expand the use of telehealth technologies in the practice of veterinary medicine. The author and sponsors believe that this expansion would significantly improve access to care, particularly for animals and clients in rural communities. As with any legislation seeking to increase the use of new technologies in health care practice, discussion of this bill will include consideration of how to appropriately balance the goal of expanding access to care while continuing to protect the welfare of animal patients.

Current Related Legislation. AB 814 (Lowenthal) would authorize a licensed physical therapist to be registered with the Veterinary Medical Board as an authorized animal physical therapist and to provide animal physical rehabilitation. *This bill is pending in this committee.*

AB 1369 (Bauer-Kahan) would authorize an eligible out-of-state physician and surgeon to practice medicine in California without a license if the practice is limited to delivering health care via telehealth to an eligible patient who has a disease or condition that is immediately life-threatening. *This bill is pending in the Assembly Committee on Appropriations.*

Prior Related Legislation. AB 1535 (Committee on Business and Professions, Chapter 631, Statutes of 2021) extended the sunset date for the Veterinary Medical Board and made additional changes resulting from the sunset review process.

AB 415 (Logue, Chapter 547, Statutes of 2011) enacted the Telehealth Advancement Act.

SB 1665 (Thompson, Chapter 864, Statutes of 1996) enacted the Telemedicine Development Act.

ARGUMENTS IN SUPPORT:

A coalition of animal welfare groups that includes the co-sponsors of this bill, the **American Society for the Prevention of Cruelty to Animals (ASPCA)** and the **San Diego Humane Society**, along with the **California Animal Welfare Association**, **Social Compassion in Legislation**, and **Best Friends Animal Society**, is in support of this bill. The coalition writes: “AB 1399 will expand the use of veterinary telemedicine for licensed California veterinarians and significantly reduce animal suffering, alleviate financial and logistical barriers to veterinary care, improve pet retention, and extend the capacity of animal shelters to serve animals and their communities.” The coalition further argues that “AB 1399 offers a lifeline to pet owners who face financial, geographic, or logistical obstacles to accessing veterinary care. While finances are a primary obstacle for all pet owners seeking veterinary care, many people live in underserved urban or rural, remote areas with few or no veterinary services available. More flexible access to telemedicine can help address these challenges and others, such as preventing unnecessary time off work for pet owners and ameliorating the difficulty of bringing pets to the clinic by many Californians, including seniors, disabled individuals, and those without transportation or those with anxious, potentially aggressive, chronically ill, or large animals.”

ARGUMENTS IN OPPOSITION:

The **California Veterinary Medical Association (CVMA)** and the **American Veterinary Medical Association (AVMA)** write jointly in opposition to this legislation, stating: “The CVMA and AVMA believe that telemedicine has its place in veterinary medicine and supports California’s current law, which permits its use to manage care of established patients through follow-up consultation, prescriptions, and triaging critical cases. However, this bill proposes completely eliminating the initial in-person examination or premise visit for an animal(s), which

is deeply concerning. Our opposition to this measure is rooted in several critical areas. First and foremost, animals, unlike people, cannot speak to express what they are feeling, and in fact instinctively hide pain and illness. Pet owners, despite their best intentions, very often miss or misinterpret signs and symptoms of trouble in their animals. Thus, relying on pet owners to provide the information that a veterinarian would otherwise collect when examining a pet in-person—especially relative to new medical conditions—can result in inaccurate diagnoses and erroneously prescribed treatments, risking adverse consequences for the animal patient.”

POLICY ISSUE(S) FOR CONSIDERATION:

As discussed, the Telemedicine Development Act first set standards for the use of “telemedicine” in California in 1996. However, fifteen years later, the Telehealth Advancement Act made numerous changes to California law to reflect a more modern understanding of how communication technologies were expected to coexist with more traditional practice. One arguably technical yet still important change was the replacement of the term “telemedicine” with references to medicine being practiced “via telehealth.”

While much of this bill’s language references or borrows from provisions of law recast by the Telehealth Advancement Act, the term “veterinary telemedicine” is used throughout, in some instances suggesting that a different form of veterinary medicine is being practiced. It should be noted that the bill is clear that the same standards of care apply to veterinary telemedicine services and in-person veterinary medical services. However, it may still be appropriate to align the provisions of this bill with more recently accepting terminology used when describing the use of telehealth in providing care.

In addition, this bill currently states that “a person who holds a current license to practice veterinary medicine in this state is authorized to practice veterinary telemedicine.” The bill then mirrors language found in the Telehealth Advancement Act by providing that the practice shall be deemed to occur at the premises where the patient is located at the time that the veterinarian practices veterinary medicine. However, the bill is not entirely clear that its intention is to require any veterinarian who provides care via telehealth to a patient who is located at the time in California to hold a license in California from the Board. The author may wish to clarify this provision.

AMENDMENTS:

- 1) To align terminology used in the bill with the Telehealth Advancement Act, replace various references to “veterinary telemedicine” with “veterinary medicine via telehealth,” and make similar conforming changes.
- 2) Clarify that only a veterinarian who holds a current license in California may provide veterinary care to an animal located in California.

REGISTERED SUPPORT:

American Society for the Prevention of Cruelty to Animals (*Co-Sponsor*)
San Diego Humane Society (*Co-Sponsor*)
Best Friends Animal Society
California Animal Welfare Association
Humane Society of the United States

Humane Society Veterinary Medical Association
Michelson Center for Public Policy (UNREG)
San Francisco SPCA
Social Compassion in Legislation
Veterinary Virtual Care Association

REGISTERED OPPOSITION:

American Veterinary Medical Association
California Veterinary Medical Association

Analysis Prepared by: Robert Sumner / B. & P. / (916) 319-3301