



October 18, 2017

Marc Marin, DVM
President
College of Veterinarians of Ontario
2106 Gordon Street
Guelph, ON N1L 1G6

Dear Dr. Marin:

On behalf of the veterinary profession in Ontario, we appreciate the opportunity to review the College's consultation document regarding reform to the *Veterinarians Act*, entitled *Achieving a Modern Approach to the Regulation of Veterinary Medicine in Ontario*.

OVMA's Board of Directors met on September 27, 2017 to review that document in detail. The enclosed package sets out the Association's response to each proposed change, and constitutes OVMA's formal response to the College's consultation.

The Association would like to commend CVO on its efforts to solicit the profession's input on potential changes to the Act over the past two years. The process has been very inclusive, and the College has demonstrated that it is truly listening to the input received and willing to consider amendments to the proposals under consideration, where warranted.

If you have any questions regarding OVMA's comments on any of the proposed changes to the Act, please contact OVMA's Manager of Government and External Relations, John Stevens at jstevens@ovma.org or 800.670.1702, ext. 24.

Sincerely,

Kathleen Norman, DVM
President

Enclosure



***Achieving a Modern Approach
to the Regulation of Veterinary Medicine
in Ontario***

OVMA Response

As approved by the OVMA Board of Directors
September 27, 2017

Objects of the College

OVMA supports the proposed changes to the Objects of the College, as they will provide CVO with the necessary scope and flexibility to regulate the profession in the future.

Regarding proposed Object #9 (“Any other objects relating to the practice of veterinary medicine that Council considers desirable”), OVMA encourages the College to exercise caution when considering its use in the future, and to only do so after extensive consultation with the profession.

Council Composition

OVMA feels strongly that, in order for the profession to continue to be truly self-regulated, licensed veterinarians must constitute a majority of members of Council. That being said, OVMA understands the need to increase the number of public interest representatives on Council, and supports the proposed composition of CVO Council, as set out in the report.

Should it ultimately be determined that RVTs are to be regulated by CVO and RVT representatives shall be added to Council, veterinarians must still constitute a majority of all Council members. It is therefore recommended that the number of RVT representatives on Council not exceed two (2), and any technician positions added must be in addition to (not in place of) positions held by veterinarians. Given that regulation of RVTs by the College could involve significant changes to CVO’s governance, OVMA expects to be included in any future discussions on that topic.

Committees and Panel Composition

OVMA supports the College’s proposed changes to committees and panel composition.

Ministerial Powers

OVMA supports the proposed new ministerial oversight provisions set out in the document. However, the Association is concerned about the apparent confusion among Ontario veterinarians regarding this proposal, and encourages the College to provide additional details to the profession.

Scope of Practice

OVMA supports the shift to a model based on controlled acts, as it clearly sets out what constitutes veterinary medicine. It also ensures that an animal is properly assessed by a veterinarian before treatment can be provided by a non-veterinarian, with the proviso that a non-veterinarian can provide low-risk treatment or advice to a pet owner, as long as doing so would not cause harm to the animal.

While OVMA supports the proposed model, the Association is concerned about how that model will be interpreted when non-veterinarians are providing naturopathic or homeopathic care to animals. In OVMA’s view, such care could cause harm to an animal, either through incorrect advice or treatment, or by discouraging an animal owner from seeking out traditional veterinary medical care when necessary to ensure the health of the pet. OVMA therefore recommends that the College state specifically that a naturopath or homeopath may only treat diseases, disorders or dysfunctions if there has been a delegation from a veterinarian. Please see Appendix “A” for additional information.

OVMA also supports the concept of establishing a class of regulated veterinary technicians that would be formally recognized in the Act, as long as veterinarians retain the right to delegate to anyone they feel has the knowledge, skills and expertise needed to safely carry out an act.

Lastly, in a previous submission to the College, OVMA posed a number of questions which have not yet been answered by the College. They include:

- How will the College proceed with integration of RVTs into the College?
- How will rehabilitation be treated under the new model? It would benefit the profession to be able to use the term “physiotherapy”.
- How would an equine pre-purchase exam apply in this proposal?

Title Protection

OVMA supports this proposal, on the understanding that a retired veterinarian can continue to refer to her/himself as a “doctor”, provided that s/he is not holding herself/himself out as practicing veterinary medicine).

Mandatory Quality Assurance Program

OVMA supports the concept of mandatory quality assurance in principal. However, on June 30, 2016, OVMA wrote to CVO requesting “a full, detailed proposal setting out the specifics of (the College’s) proposed QA Program, including a description of the various components of the program and the rationale in terms of the need and the intended outcomes of it. The Association is unable to provide any further comment until the entire proposed QA Program can be reviewed.”

Unfortunately, a response to this request has not yet been received. OVMA is unable to provide more fulsome support for a mandatory QA program until the details of the program have been made available for review.

Single Screening Model

OVMA supports the proposed changes to the College’s complaints screening process, which would address many longstanding concerns regarding the complaints and Registrar’s investigation processes. In particular, introducing the ability for the College to more readily dismiss complaints on intake that are frivolous or vexatious will be a significant improvement to the process.

OVMA also encourages the College to amend its processes to prevent complaints that have been dismissed from being re-submitted by the complainant. In some cases, complaints have been only slightly amended after being dismissed and then resubmitted, forcing members to endure the entire process again.

Mandatory Reporting

OVMA supports the proposed mandatory reporting provision, which would help to address instances in which veterinarians who potentially pose a risk to the public are not reported, and therefore are able to move from clinic to clinic while the problem remains unaddressed.

However, given the serious implications of this proposal for the veterinarian being reported and the veterinarian doing the reporting, OVMA has several questions concerning the details of this proposal. Specifically:

- What is the definition of incapacity? Will CVO be clarifying this for the profession?
- What happens to a veterinarian who is reported to the College?
- Are the only penalties for not-reporting a veterinarian financial?
- What happens to a veterinarian if a report is made in good faith but is unfounded?
- What will the College do to ensure this policy is not abused?
- If RVTs are included in the legislation, will the mandatory reporting provision apply to them (either to be protected as reporters or to be reported)?
- Can the College prepare a standard form for a member who is making a report?

Investigator Appointments

OVMA is concerned about the proposal that an investigation can be launched based on information learned through the QA process which is then shared with the IRC. Historically, there has been a “firewall” between CVO QA initiatives and the complaints and Discipline processes, to assure veterinarians that any findings from the QA process could not be used against him/her. While OVMA understands that CVO is proposing to transition from a voluntary QA program to mandatory QA participation by all Ontario veterinarians, OVMA has serious concerns about the removal of this firewall and would like clarification regarding the ability of the IRC to initiate an investigation based on a request from the QA Committee.

Investigator Powers

OVMA recognizes the CVO needs to have sufficient powers to adequately investigate veterinarians who have come to the attention of the IRC. However, it is also important to protect veterinarians’ rights during the investigation. In that regard, OVMA feels that the following two proposed powers represent an unnecessary intrusion into the practice:

- may inspect or observe the practice of veterinary medicine performed by a member or under the supervision of a member;
- may take photographs or make audio or video records relating to the member’s practice of veterinary medicine.

An investigation should be conducted on the basis of a specific complaint relating to an action that has already occurred. This does not require ongoing observation of a veterinarian in practice.

In addition, OVMA requests clarification of the following power, “conduct tests that are reasonably necessary”. What is intended with this power? What would be tested?

Lastly, OVMA requests that CVO specify the following:

- Any documents to be copied shall be done so at the College’s expense.
- An investigator may only remove a document or object if it is not practicable to copy it in the place where it is examined, or a copy of it is not sufficient for the purposes of the investigation.

- If it is practicable to copy a document or object removed from the practice, the investigator shall return the document or object within a reasonable time.
- If a copy is not sufficient for the purposes of the investigation, the College shall provide the person who was in possession of the document or object with a copy of it within a reasonable time.
- Are CVO inspectors empowered similar to police or Ministry of Labour inspectors, or is it reasonable to delay an inspection if a practice owner is unavailable or unreachable? Reasonable limitations on the ability to enter should be considered.

Interim Suspensions

OVMA supports the proposal, which would allow the College to prevent veterinarians who pose a potential risk to clients/patients from practicing while awaiting the outcome of a potentially lengthy Discipline process. OVMA recommends that the proposal be expanded slightly, to enable the College to take action if the IRC believes that the veterinarian's conduct exposes or is "likely to expose any animal(s) or his or her client(s) or **practice employees** to serious harm or injury".

Publicizing Notice of Hearings

As previously communicated to the College, OVMA opposes the publication of hearing dates, names and allegations as part of the public registry on the grounds that including such information as part of a veterinarian's formal record could lead the public to believe that the veterinarian has been found guilty before the College's decision has been rendered.

OVMA would not object to having information pertaining to upcoming hearings listed in a separate area of the CVO website.

Expanding the Public Register

OVMA thanks the College for amending the previous proposal on this subject to remove any reference to outcomes of facility inspections, as requested by the Association. However, the Association continues to oppose the inclusion of criminal charges on the register. Only criminal convictions should be included.

OVMA would also like to reiterate the following recommendations previously submitted to CVO regarding the register:

- Where a veterinarian has been found guilty of professional misconduct, the register should include sufficient information to appropriately inform the public of the nature of the infraction. Currently, "professional misconduct" is often cited as the infraction; however there is a significant difference between a minor mistake or oversight and egregious, intentional misconduct. Both would show as "professional misconduct", but are vastly different.
- There should be a specific period (i.e. 10 years) after which items could be removed, if requested by the licensee. One minor infraction should not plague a veterinarian's entire career.
- Only criminal convictions (not charges) that take place after the new Act is enacted and while the individual is a licensed veterinarian should be included in the register.
- Convictions listed in the register should include details about conviction.

Confidentiality and Immunity

OVMA strongly supports the proposed amendments to the College's confidentiality and immunity provisions, particularly the measures to limit the use of evidence generated as part of a CVO investigation in a civil proceeding.

Annual General Meetings

OVMA neither supports nor disapproves of the proposed loss of the CVO AGM. OVMA is more concerned about how effectively the College communicates with Ontario veterinarians over the course of the year. Irrespective of what happens to the AGM, the College needs to continue to publish its annual report/audited financial statements and provide opportunities for members to discuss current developments at the College with CVO representatives.

Offences and Fines

OVMA is not opposed to the proposed increased in fines generally, as many of the fines pertain to individuals or corporations practicing veterinary medicine without a license. However, given that the mandatory reporting provisions are new to Ontario veterinarians, OVMA recommends reductions in those specific fines, as follows:

- \$10,000 for first offense
- \$25,000 for subsequent offenses

OVMA also asks the College to clarify how fines will be handled when a corporation is involved in the offense for which a fine is being levied. Specifically, can a fine be levied against both a veterinarian and a corporation in which that veterinarian is a shareholder?

OVMA Board of Directors
September 27, 2017

Appendix A

OVMA Recommendations Regarding Naturopaths and Homeopaths

OVMA is recommending that the ability of naturopaths or homeopaths who are not licensed veterinarians to practice on animals be limited, as follows:

Ability to Diagnose

Section 3 of the Ontario *Naturopathy Act* (2007) defines the practice of naturopathy as “the assessment of diseases, disorders and dysfunctions and the naturopathic diagnosis and treatment of diseases, disorders and dysfunctions using naturopathic techniques to promote, maintain or restore health”.

Section 3 of the Ontario *Homeopathy Act* (2007) defines the practice of homeopathy as “the assessment of body system disorders and treatment using homeopathic techniques to promote, maintain or restore health.”

While both naturopaths and homeopaths are, in theory, able to assess disorders and treat patients to restore health, both have very limited means of diagnosing health disorders.

The controlled acts a naturopath is authorized to perform under the *Naturopathy Act* are limited to:

1. Putting an instrument, hand or finger beyond the labia majora but not beyond the cervix.
2. Putting an instrument, hand or finger beyond the anal verge but not beyond the rectal-sigmoidal junction.
3. Administering, by injection or inhalation, a prescribed substance.
4. Performing prescribed procedures involving moving the joints of the spine beyond the individual’s usual physiological range of motion using a fast, low amplitude thrust.
5. Communicating a naturopathic diagnosis identifying, as the cause of an individual’s symptoms, a disease, disorder or dysfunction that may be identified through an assessment that uses naturopathic techniques.
6. Taking blood samples from veins or by skin pricking for the purpose of prescribed naturopathic examinations on the samples.
7. Prescribing, dispensing, compounding or selling a drug designated in the regulations.

Very few of these acts pertain to the diagnosis of the patient.

The *Homeopathy Act* is even more restrictive. That act does not contain any controlled acts that would enable the homeopath to effectively diagnose an animal.

Given the lack of diagnostic tools at their disposal, and that naturopaths and homeopaths are unlikely to have training in animal anatomy and physiology, an animal suffering from a disease, disorder or dysfunction being treated by a homeopath or naturopath could easily be at risk if that animal does not receive the treatment it would have received if there had been a thorough diagnostic work-up.

Furthermore, the proposed *Veterinarians Act* specifies that “Performing a medical assessment to determine the fitness for purpose or soundness of an animal, or group of animals, on which it is reasonably foreseeable that a person or organization will rely on the assessment” and “Making or communicating a diagnosis identifying a disease, disorder, dysfunction or condition as the cause of an animal’s signs and presentation” are both controlled acts that are restricted to veterinarians, and may not be delegated.

OVMA agrees with the College's proposal and feels strongly that homeopaths and naturopaths should not be able to undertake any activities intended to assess diseases, disorders or dysfunctions. They should only be allowed to undertake acts intended to "restore health to an affected animal", if there has been a delegation from a veterinarian. Such an approach would clearly delineate what naturopaths and homeopaths may and may not do under the new act, and help to protect them from prosecution under the proposed "Risk of Harm Clause", which would state that a non-veterinarian who "treats or advises about an animal's health where it is reasonably foreseeable that serious bodily harm to an animal may result... from an omission (of treatment or advice) could be prosecuted for the unlawful practice of veterinary medicine."

Treatment Options

The controlled acts noted above that naturopaths are authorized to perform replicate some of the controlled acts that, under the proposed *Veterinarians Act*, would only be able to be performed on animals by veterinarians. OVMA feels strongly that, with the exception of the specific amendments CVO has proposed for licensed chiropractors and pharmacists, those controlled acts should only be performed by veterinarians or those to whom a veterinarian has delegated that task, where possible. If homeopaths and/or naturopaths are to be allowed to perform any of these controlled acts (e.g. administering, by injection or inhalation, a prescribed substance), that exemption should be specified in the new *Veterinarians Act*.

Requirement to Refer

OVMA is concerned about the likelihood that a patient seen by a homeopath or naturopath would be referred to a veterinarian if that is in the best interest of the patient:

Subsection 1.9 of Regulation 17/14 under the *Naturopathy Act* states that it is professional misconduct for a naturopath to fail to "advise a patient or the patient's authorized representative to consult another member of a health profession within the meaning of the *Regulated Health Professions Act, 1991*, when the member knows or ought to know that the patient requires a service that the member does not have the knowledge, skill or judgment to offer or is beyond his or her scope of practice."

Subsection 1.9 of Regulation 315/12 under the *Homeopathy Act* contains the same wording.

OVMA is concerned that the regulations under both acts do not include a requirement to refer a patient to a health professional licensed under the *Veterinarians Act*, if the need arises. Should CVO ultimately decide to allow naturopaths or homeopaths to treat animals, such a requirement needs to be added to the regulations under their respective acts.

Note: OVMA does not have a similar concern regarding massage therapists. Section 46 of Regulation 544/94 under the *Massage Therapy Act* does not limit the requirement to refer a patient to health professionals within the meaning of the *Regulated Health Professions Act*. Instead, it indicates that it is professional misconduct for a massage therapist to fail to "refer a client to a qualified medical practitioner where the member recognizes or ought to have recognized a condition which requires medical examination."