



MEMORANDUM

DATE	October 5, 2017
TO	Members Veterinary Medical Board
FROM	Tara Welch Attorney III Legal Affairs Division, Department of Consumer Affairs
SUBJECT	Cannabis Treatment for Animal Patients

Questions Presented

1. How do federal and state laws regarding the use of cannabis affect veterinarians and their treatment of animal patients?
2. Can a veterinarian discuss with a client the use of cannabis treatment on animal patients?
3. Should the Veterinary Medical Board (Board) recommend statutory revisions or promulgate regulations to address cannabis treatment for animal patients?

Short Answers

1. A veterinarian is prohibited under both federal and state law from prescribing, dispensing, administering, or recommending or approving the use of cannabis on animal patients.
2. Although a veterinarian may lawfully discuss and administer treatment for cannabis toxicity, it is unclear whether a veterinarian is protected from DEA discipline or prosecution during discussions with a client regarding the use of cannabis treatment on an animal patient.
3. Due to the lack of extensive research regarding the effects of cannabis use on animals and increasing exposure of animal patients to cannabis products, the Board may wish to recommend statutory proposals to require animal cannabis treatment research and protection for veterinarians discussing animal cannabis treatment issues with a client.

Discussion

This memorandum reviews the federal and state laws affecting veterinarians relative to cannabis treatment on animal patients, compares physician and veterinarian authority regarding cannabis treatment of patients, discusses the legality of veterinarian discussions with clients regarding cannabis treatment of animal patients, and provides possible Board recommendations to address the issues raised herein.

A. Background

At the Board's July 26, 2017 meeting, the Board discussed the legality of prescribing or administering cannabis¹ to animal patients and heard public testimony in support of authorizing veterinarians to use cannabis treatments on animal patients. Several issues were raised, including the increased exposure of animals to cannabis products due to use by animal owners of medicinal and recreational cannabis products, the ability of a veterinarian to lawfully treat animal patients for cannabis toxicity, and the lack of medical research regarding cannabis treatments for animals. Following the discussion, the Board requested research by legal counsel of the federal and state laws regarding cannabis treatment of animals.

B. Federal and state laws regarding medical cannabis treatment

The federal Controlled Substances Act (CSA) (21 USC § 801 et seq.) and the California Uniform Controlled Substances Act (CUCSA) (Health & Saf. Code, § 11000 et seq.) regulate the manufacture, importation, possession, use, and distribution of certain substances. The purpose of these laws is to track the movement of controlled substances to reduce the instance of drug abuse.

The CSA requires a veterinarian, who prescribes, dispenses, or administers any controlled substance, to obtain registration from the United States Department of Justice, Drug Enforcement Administration (DEA). (21 USC §§ 802(2)(A), (10), (21), (22), and 822(a)(2).) The CUCSA authorizes a veterinarian to prescribe, furnish, or administer controlled substances to animal patients. (Health & Saf. Code, § 11210.) Controlled substances are listed on five different schedules according to their accepted medical use in treatment, relative abuse potential, and likelihood of causing dependence when abused.

Schedule I drugs are characterized as having a high potential for abuse, have no currently accepted medical use in treatment in the United States, and lack accepted safety for use under medical supervision. (21 USC § 812(b)(1).) Only Schedule II through V drugs may be prescribed or administered by a veterinarian upon receiving DEA registration approval. (Health & Saf. Code, § 11164.) Cannabis and its derivatives, classified as hallucinogenic substances, are listed as Schedule I drugs and prohibited from being prescribed, furnished, or administered to patients. (21 CFR § 1308.11(d)(23), (31), (58); Health & Saf. Code, § 11054, subds. (d)(13), (20).) A violation of federal or state law regarding controlled substances is grounds for licensure discipline under the Veterinary Medicine Practice Act. (Bus. & Prof. Code, § 4883, subd. (g)(3).) Accordingly, a veterinarian who prescribes, furnishes, or administers cannabis to animal patients, or conspires for or aids and abets the prescription, furnishing, or administration of cannabis to animal patients, is in violation of federal and state law. The veterinarian's DEA registration and/or California license would be subject to discipline.

C. Recommendation or approval of cannabis treatment for human patients vs. animal patients

Like veterinarians, physicians are required to register with the DEA to prescribe, dispense, or administer a controlled substance. However, only physicians have authority under state law to recommend or approve the use of medical cannabis by human patients.

¹ As of June 27, 2017, all references to "marijuana" under the California Uniform Controlled Substances Act (except those in the Medical Marijuana Program (Health and Saf. Code §11362.7 et seq.)) were changed to "cannabis," which is defined under Business and Professions Code section 26001(f). (See Senate Bill (SB) 94 (Comm. on Budget and Fiscal Review, Ch. 27, Stats. 2017).)

In 1996, California voters approved Proposition 215, the California Compassionate Use Act of 1996, which authorized physicians to recommend or approve of the use of medical marijuana treatment of human patients. (Health & Saf. Code, § 11362.5.) In 1999, the Legislature established the Marijuana Research Act of 1999, a three-year research program, initially referred to as the California Marijuana Research Program, to determine the safety and efficacy of marijuana as a therapeutic drug for use by human patients. (See SB 847 (Vasconcellos, Ch. 750, Stats. 1999); Health & Saf. Code, § 11362.9.)

In 2015, as part of a package of bills that provided a comprehensive licensing and statutory framework for the oversight of marijuana cultivation, manufacture, transportation, storage, distribution, and sales, the Legislature enacted requirements for physician recommendation of medical cannabis to human patients. (See SB 643 (McGuire, Ch. 719, Stats. 2015); Bus. & Prof. Code, § 2525 et seq.; Assembly Bill (AB) 266 (Bonta, Ch. 689, Stats. 2015; Bus. & Prof. Code, § 19300 et seq.; AB 243 (Wood, Ch. 688, Stats. 2015); Bus. & Prof. Code, § 19331 et seq.) Following the passage of those bills, collectively referred to as the Medical Cannabis Regulation and Safety Act (MCRSA), Proposition 64 (the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA)) was approved by voters and legalized recreational use of marijuana by adults age 21 and older. (Health & Saf. Code, § 11362.1.) In 2017, the medicinal use of cannabis (MCRSA) and recreation use of marijuana (AUMA) laws were integrated under SB 94 (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2017) to provide for a single regulatory structure for both medicinal and adult-use cannabis. Although the cultivation, distribution, and human use of cannabis is legal in California, cannabis remains an illegal Schedule I controlled substance under federal law.

Other states, like Colorado, have similarly legalized medical and/or recreational use of cannabis. Out of a recognition that increased human exposure to cannabis products results in increased animal exposure to cannabis products, veterinarians at Colorado State University, College of Veterinary Medicine and Biomedical Sciences, are researching and performing clinical trials regarding the use and effects of cannabis products for animals. (L. Kogan, P. Hellyer, N. Robinson, *Consumers' Perceptions of Hemp Products for Animals*, Journal of the American Holistic Veterinary Medical Assoc. (Spring 2016), <https://www.ahvma.org/wp-content/uploads/AHVMA-2016-V42-Hemp-Article.pdf> [as of Sept. 14, 2017]; N. Coltrain, *Not yet pot for pets: CSU starts study of cannabis extract*, Coloradoan (May 6, 2017) <http://www.coloradoan.com/story/news/2017/05/06/csu-vet-school-starts-study-cannabis/306650001/> [as of Sept. 14, 2017].) In California, extensive research on cannabis treatment of human patients continues through the California Cannabis Research Program, and California's Legislature has enacted comprehensive oversight of human cannabis use and treatment; however, California has not yet studied or enacted legislation to address cannabis use or treatment for animal patients.

D. Discussions with clients and lawful treatment of animal patients

Pursuant to the Veterinary Practice Act, a veterinarian may diagnose or prescribe a drug, medicine, appliance, application, or treat an animal to prevent, cure, or relieve a wound, fracture, bodily injury, or disease. (Bus. & Prof. Code, § 4826(b).) As discussed above, a veterinarian may not prescribe, administer, or recommend or approve the use of cannabis for treatment of any condition. If the animal patient presents as having cannabis toxicity, the veterinarian may diagnose and treat the animal patient to prevent, cure, or relieve bodily injury due to the ingestion of or exposure to cannabis or cannabis products. However, as expressed by the Board members at the July 27, 2017 board meeting, without research on the effects of cannabis treatment and overdoses, it is difficult for veterinarians to know what to advise their clients regarding toxicity treatment.

Further, it is uncertain as to whether a veterinarian may also discuss cannabis treatment options with the client. Following California's enactment of physician cannabis treatment recommendation authority under Proposition 215, case law determined that physicians would not place their DEA registrations in

jeopardy for discussing cannabis treatment options with their patients. In *Conant v. Walters* (2002) 309 F.3d 629, the United States Court of Appeals, Ninth Circuit, determined that an integral part of the practice of medicine is the frank and open communication between a patient and doctor because barriers to full disclosure by the patient to the physician would impair diagnosis and treatment. The court held that physician speech with a patient regarding cannabis treatment is entitled to First Amendment protection because of the significance of the doctor-patient relationship. Accordingly, the federal government could not justify revoking a physician's DEA registration for merely recommending medical use of cannabis.

As with the physician-patient relationship, a veterinarian-client-patient relationship depends upon open and frank communication for the proper treatment of the animal patient. However, legal protection of veterinarians and their discussions with clients of cannabis treatment for animal patients has yet to be codified in statute or challenged in court.

E. Possible Board recommendations

California consumers have increased access to cannabis products following the enactment of medical and recreational cannabis use statutes. Consequently, more animals are being exposed to cannabis products in the household. Additionally, consumers are turning to cannabis to treat their pets' medical conditions. As such, it appears that veterinarians, consumers, and animal patients would all benefit from statutory or regulatory provisions that would address animal cannabis treatment.

With respect to regulatory provisions, the issues to be resolved concern CUCSA Schedule I drug research and DEA registration requirements under the Health and Safety Code. As such, it does not appear that the Board has authority to promulgate regulations to provide protection from DEA enforcement for veterinarians discussing animal cannabis treatment or require a state entity to perform research of a Schedule I drug. Instead of regulations, the Board may wish to consider recommending to the Legislature two proposals to revise the CUCSA statutes for the protection of consumers and animal patients, as follows.

First, to address concerns regarding the lack of sufficient research and study of cannabis treatment on animals, the Board may wish to recommend to the Legislature that cannabis treatment on animals be studied in a manner similar to the study required for cannabis treatment on humans under the CUCSA and performed by the University of California through the California Cannabis Research Program. (See Health & Saf. Code, § 11362.9.)

Second, to provide protection similar to that given to physicians recommending cannabis to a patient for medical purposes, the Board may wish to recommend to the Legislature a revision to the CUCSA that protects veterinarians from DEA discipline or prosecution for having discussions within the veterinarian-client-patient relationship regarding cannabis treatment. Notably, the CUCSA statute providing physician protection for cannabis treatment recommendations states: "Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes." (Health & Saf. Code, § 11362.5, subd. (c).) Until cannabis treatment for animals has been researched, a limited protection for discussing cannabis treatment, without recommendation of use on an animal patient, could be crafted to prohibit the punishment of a veterinarian, or denying any right or privilege, for discussions regarding cannabis treatment had between the veterinarian and client within the veterinarian-client-patient relationship.

Conclusion

Veterinarians are not authorized to prescribe, administer, or recommend or approve of the use of cannabis to treat animal patients. It is unclear whether veterinarians have any protection from DEA discipline or prosecution for having discussions with clients regarding cannabis treatment of animal patients. Due to the increasing exposure of animals to cannabis products and the need for veterinarians to properly treat animal patients suffering from cannabis toxicity or medical maladies for which animal owners are treating with cannabis products, the Board may wish to recommend legislative proposals to address these issues.