AB 200
Virginia Mimmack, representing Dutch Pet.
Dutch Pet is in opposition to the bill as written.
Amendment is contained at the end of the document.

To Whom it May Concern:

We have proposed an amendment to NV AB200 for your review and consideration (the "*Proposed Amendment*"). You can review the text of our proposal in Section III below. The aim of the Proposed Amendment is to achieve a reasonable balance. The Proposed Amendment will allow Nevada-licensed veterinarians to establish a veterinarian-client-patient relationship ("VCPR") electronically, but also puts guardrails in place to ensure that the use of telemedicine: (1) would be limited to those circumstances when it would be appropriate for diagnosis and treatment; and (2) would require the same standard of care as an in-person visit.

Specifically, the language in the Proposed Amendment regarding the technology requirements and need for clinically relevant data, as well as the requirements that the (i) the pet's medical history that is available for review by the veterinarian; (ii) the veterinarian obtains an updated medical history; and (iii) the veterinarian conforms to the same standard of care expected of in-person care, will all function to limit the circumstances under which a VCPR could be established electronically.

Like some other states that permit a VCPR to be formed remotely, the Proposed Amendment also confirms the veterinarian would still be required to perform an exam (even if using technology to do so), and that a mere telephone call would not be sufficient to comply with the law. If the pet presents with an issue that requires an in-person physical examination, or lab tests to be run, then telemedicine would not be permitted without an initial in-person examination.

Further, the Proposed Amendment confirms that the standard of care does not change when veterinarians provide their services via telemedicine. That is, as is the case generally, the Nevada Veterinary Board would still have the ability and responsibility to discipline veterinarians who are not meeting these requirements, including any issues with the standard of care or attempting to treat conditions for which the standard of care would require an in-person examination.

I. Background and Empirical Evidence

The use of electronic communications to facilitate the diagnosis, treatment, and care of animals has not previously been addressed by statute in Nevada. However, in the human medicine field, telemedicine is routinely used by hospitals, specialty practices, long-term nursing facilities, primary care physicians, and even schools. Every state in the nation permits physicians to treat patients via some form of telemedicine, and most states do not require a prior in-person examination to establish a physician-patient relationship.

Animals are, of course, different from humans—but that reality does not make telemedicine an improper tool in the veterinarian's practice. Notably, even the American Academy of Pediatrics has endorsed the American Telemedicine Association's ("ATA") guidelines and protocols for pediatric telemedicine. Advocating against veterinary telemedicine, regulators and some veterinarians have, at times, cited the following statement in the ATA pediatric guidelines:

> Telehealth services should not be provided to children under two years of age in their home or other nonclinical setting except when the provider or their surrogate has a previously established in-person relationship with the patient or when the Patient Center Medical Home (PCMH) has referred them for subspecialty consultation.[1]

Taking the above language as an indication that the ATA cautioned against telemedicine for toddlers and infants because of that population's inability to communicate with the healthcare provider, veterinarians and regulatory boards cite the ATA position in support of maintaining a hands-on/in-person examination requirement to establish a VCPR. But the ATA guidelines *do* contemplate the use of telemedicine for patients under two years of age—in appropriate instances.

Additionally, an October 2020 *Veterinary Evidence* article confirms the attempt to limit the use of veterinary telemedicine because animals cannot verbalize their needs does not find support in the American Telemedicine Association Operating Procedures or pediatric telemedicine generally. That is, the ATA's statement quoted above regarding telemedicine care for very young children was not borne out of a concern about communication barriers. Addressing this misconception, the ATA's Pediatric Telehealth Work Group Chairperson, S. David McSwain, MD, MPH, explained as follows:

> **The ability of the patient to communicate with the provider was not a significant consideration in the development of this provision.** In most cases of pediatric telehealth, there is a guardian present during the encounter. Conversely, telehealth is a valuable tool in many situations and populations in which the patient is non-communicative for a variety of reasons, including behavioral, developmental, and other medical conditions. Access to care afforded by telehealth is particularly important for high risk populations. **The ability to intervene early and leverage the continuum of care afforded by telehealth are benefits which we would encourage all healthcare fields to consider.**

Veterinary Evidence, *Veterinary Telemedicine: A literature review*, Vol 5, Issue 4 (Oct. 30, 2020) (quoting S. David McSwain).

[1] American Telemedicine Association, Operating Procedures for Pediatric Telehealth (April 2017).

Moreover, data on the use of telehealth and telemedicine treatment—in both humans and animals—is quite positive. One example provided in the Veterinary Evidence journal article cited above is as follows:

> There are only 86 board-certified veterinary behaviourists in the world (American College of Veterinary Behaviorists, n.d.). Because of the limited numbers, it can be impossible for some owners to obtain an in- person consultation to get help for their animal. The Cummings School of Veterinary Medicine at Tufts University began offering behavioural consults via fax almost 20 years ago. Studies were performed to determine if there was a difference in remote vs. in-person consultations for the treatment of canine aggression toward owners and for the treatment of canine separation anxiety (Cottam et al., 2008; and Dodman et al., 2005). **The studies revealed significant improvement in the treatment of both owner-directed aggression and separation anxiety and further showed there was no significant difference in the results whether the consult was handled remotely or in-person.**

See id. (citing Cottam, N., Dodman, N. H., Moon-Fanelli, A. A. & Patronek, G. J. (2008). Comparison of remote versus in-person behavioral consultation for treatment of canine separation anxiety. Journal of Applied Animal Welfare Science, 11(1), 28–41. DOI: https://doi.org/10.1080/10888700701729148).

Veterinarians have successfully used technology to facilitate treatment for decades. Pet owners are also increasingly interested in this service. In a recent study of 3,258 pet owners, **21%** of US pet owners had delayed/avoided contacting a veterinary practice during the pandemic, and **15%** of US pets missed essential, routine treatments like vaccines and flea, tick, and/or worm treatments. Moreover, **25%** of pet owners who delayed or avoided taking their pet to the vet believed it would be too stressful for their dog/cat. Of the **43%** of pet owners who had a digital/remote consultation with a veterinarian, approximately **75%** of survey respondents were satisfied or extremely satisfied with the telemedicine services their pets received, and **45%** noted that the telemedicine service also led to an in-person visit. HealthforAnimals Survey Pet Owner Survey, USA findings (Nov. 2020).

Regardless of whether Nevada takes this step and permits veterinarians to use their professional judgment to determine when a VCPR may be appropriately established by electronic means, telemedicine is here to stay. Technology is not only fully integrated into the practices of numerous other healthcare professionals across the country, but increasingly non-veterinarians are offering pet owners advice and information through digital services. The Proposed Amendment offers an opportunity for veterinarians in Nevada to be at the forefront of this inevitable technological expansion, as it ensures adherence to the standard of care, requires veterinary board oversight, and ultimately provides veterinarians the ability to provide clients and patients *more* quality care.

II. Other States' Laws & Policies

We crafted the language in the Proposed Amendment after thorough review of the language other states employ to permit a VCPR to be created electronically. Although all states that have permitted a VCPR to be established via telemedicine do so in slightly different ways, the results in each case offer a limited framework for veterinary telemedicine without a prior in-person exam—if and only if the standard of care will be met. With these other states' approaches in mind, we believe this Proposed Amendment would be in the best interests of Nevadans and their pets, and would help ensure that this new legislation does not improperly limit veterinarians' ability to practice using their independent judgment and discretion regarding appropriate care for their patients.

Along those lines, the American Association of Veterinary State Boards (AAVSB) recommends that each jurisdiction promulgate appropriate regulations defining how to establish sufficient knowledge, including the following:

> A. A recent examination of the Animal or group of Animals, either physically **or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically**; or
>
> B. Through medically appropriate and timely visits to the premises at which the Animal or group of Animals are kept.

The AAVSB further recommends that prescribing medications in-person or via telemedicine after establishing a VCPR is at the professional discretion of the veterinarian[2].

Below we have included excerpts from applicable statutes, regulations, and/or licensing board policy statements showing how a few other states have opted to provide a path for establishing a VCPR via telemedicine in limited circumstances. Specifically, for ease of reference, we have highlighted the portion of each state's statute that allows for a VCPR to be established via telemedicine in blue and we have highlighted the portion of the bill that provides the various limitations on how this can be done in yellow.

A. NEW JERSEY

N.J. Stat. § 45:1-62

a. Unless specifically prohibited or limited by federal or State law, a health care provider who establishes a proper provider-patient relationship with a patient may remotely provide health care services to a patient through the use of telemedicine. A health care provider may also

[2] https://www.aavsb.org/Download?url=s/7mfd6b4ga6l6vsh/Guidelines%20for%20Telehealth.pdf

engage in telehealth as may be necessary to support and facilitate the provision of health care services to patients.

b. Any health care provider who uses telemedicine or engages in telehealth while providing health care services to a patient, shall: (1) be validly licensed, certified, or registered, pursuant to Title 45 of the Revised Statutes, to provide such services in the State of New Jersey; (2) remain subject to regulation by the appropriate New Jersey State licensing board or other New Jersey State professional regulatory entity; (3) act in compliance with existing requirements regarding the maintenance of liability insurance; and (4) remain subject to New Jersey jurisdiction if either the patient or the provider is located in New Jersey at the time services are provided.

N.J.A.C. 13:44-4A.2 (Definitions)

"Telehealth" means the use of information and communications technologies, including telephones, remote patient monitoring devices, or other electronic means, to support clinical health care, provider consultation, patient and professional health-related education, public health, health administration, and other services in accordance with the provisions of P.L. 2017, c. 117 (N.J.S.A. 45:1-61 et seq.).

"Telemedicine" means the delivery of a health care service using electronic communications, information technology, or other electronic or technological means to bridge the gap between a health care licensee who is located at a distant site and a patient who is located at an originating site, either with or without the assistance of an intervening licensee, and in accordance with the provisions of P.L. 2017, c. 117 (N.J.S.A. 45:1-61 et seq.). "Telemedicine" does not include the use, in isolation, of audio-only telephone conversation, electronic mail, instant messaging, phone text, or facsimile transmission.

N.J.A.C. 13:44-4A.3 (Standard of Care)

(a) Prior to providing services through telemedicine or telehealth, a licensee shall determine whether providing those services through telemedicine or telehealth would be consistent with the standard of care applicable for those services when provided in-person.
(b) If a licensee determines, either before or during the provision of services, that services cannot be provided through telemedicine or telehealth in a manner that is consistent with in-person standards of care, the licensee shall not provide services through telemedicine or telehealth.

(c) A licensee who determines that services cannot be provided through telemedicine or telehealth pursuant to (b) above shall advise the client to obtain services in-person for the patient.

(d) A licensee who provides a diagnosis, treatment, or consultation recommendation, including discussions regarding the risk and benefits of a patient's treatment options, through telemedicine or telehealth shall be held to the same standard of care or practice standards as are applicable to in-person settings.

N.J.A.C. 13:44-4A.4 (Licensee-client-patient relationship)

(a) Prior to providing services through telemedicine or telehealth, a licensee shall establish a licensee-client-patient relationship by:

1. Identifying the patient and the client with, at a minimum, the client's name, date of birth, phone number, and address. A licensee may also use a client's assigned identification number, Social Security number, photo, health insurance policy number, or other identifier associated directly with the client; and

2. Disclosing and validating the licensee's identity, license, title, and, if applicable, specialty and board certifications.

(b) Prior to an initial contact with a patient for the purpose of providing services to the patient using telemedicine or telehealth, a licensee shall:

1. Review the patient's history and any available records;

2. Determine whether he or she will be able to provide the same standard of care using telemedicine or telehealth as would be provided if the services were provided in-person. The licensee shall make this determination prior to each unique patient encounter; and

3. Provide the client the opportunity to sign a consent form that authorizes the licensee to release records of the encounter to the patient's primary care provider or other health care provider identified by the client.

N.J.A.C. 13:44-4A.5 (Provision of services through telemedicine or telehealth)

(a) As long as a licensee has satisfied the requirements of N.J.A.C. 13:44-4A.4, a licensee may provide health care services to a patient through the use of telemedicine and may engage in telehealth to support and facilitate the provision of health care services to patients.

(b) Prior to providing services through telemedicine or telehealth, a licensee shall determine the patient's originating site and record this information in the patient's record.

(c) A licensee providing healthcare services through telemedicine shall use interactive, real-time, two-way communication technologies, which shall include, except as provided in (e) below, a video component that allows a licensee to see a patient and client and the patient and client to see the licensee during the provision of services.

(d) A licensee providing services through telemedicine or telehealth may use asynchronous store-and-forward technology to allow for the electronic transmission of:

1. Images;
2. Diagnostics;

3. Data; and
4. Medical information.

(e) If, after accessing and reviewing the patient's records, a licensee determines that he or she is able to meet the standard of care for such services if they were being provided in-person without using the video component described in (c) above, the licensee may use interactive, real-time, two-way audio in combination with asynchronous store-and-forward technology, without a video component.

N.J.A.C. 13:44-4A.6 (Prescriptions)

(a) A licensee providing services through telemedicine or telehealth may issue a prescription to a patient, as long as the issuance of such a prescription is consistent with the standard of care or practice standards applicable to the in-person setting.

(b) A licensee shall not issue a prescription based solely on responses provided in an online questionnaire, unless the licensee has established a proper licensee-client-patient relationship pursuant to N.J.A.C. 13:44-4A.4.

(c) Notwithstanding (a) above, a licensee shall not issue a prescription for a Schedule II controlled dangerous substance unless the licensee has had an initial in-person examination of the patient and a subsequent in-person visit with the patient at least every three months for the duration of the time the patient is prescribed the Schedule II controlled dangerous substance.

B: VIRGINIA

V.A. Code § 54.1-3303 (Prescriptions to be issued and drugs to be dispensed for medical or therapeutic purposes only)
***
B. A prescription shall be issued only to persons or animals with whom the practitioner has a bona fide practitioner-patient relationship or veterinarian-client-patient relationship. If a practitioner is providing expedited partner therapy consistent with the recommendations of the Centers for Disease Control and Prevention, then a bona fide practitioner-patient relationship shall not be required.

A bona fide practitioner-patient relationship shall exist if the practitioner has (i) obtained or caused to be obtained a medical or drug history of the patient; (ii) provided information to the patient about the benefits and risks of the drug being prescribed; (iii) performed or caused to be performed an appropriate examination of the patient, either physically or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically; and (iv) initiated additional interventions and follow-up care, if necessary, especially if a prescribed drug may have serious side effects. Except in cases involving

a medical emergency, the examination required pursuant to clause (iii) shall be performed by the practitioner prescribing the controlled substance, a practitioner who practices in the same group as the practitioner prescribing the controlled substance, or a consulting practitioner.

A practitioner who has established a bona fide practitioner-patient relationship with a patient in accordance with the provisions of this subsection may prescribe Schedule II through VI controlled substances to that patient, provided that, in cases in which the practitioner has performed the examination required pursuant to clause (iii) by use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically, the prescribing of such Schedule II through V controlled substance is in compliance with federal requirements for the practice of telemedicine.

For the purpose of prescribing a Schedule VI controlled substance to a patient via telemedicine services as defined in § 38.2-3418.16, a prescriber may establish a bona fide practitioner-patient relationship by an examination through face-to-face interactive, two-way, real-time communications services or store-and-forward technologies when all of the following conditions are met:

(a) the patient has provided a medical history that is available for review by the prescriber;
(b) the prescriber obtains an updated medical history at the time of prescribing;
(c) the prescriber makes a diagnosis at the time of prescribing;
(d) the prescriber conforms to the standard of care expected of in-person care as appropriate to the patient's age and presenting condition, including when the standard of care requires the use of diagnostic testing and performance of a physical examination, which may be carried out through the use of peripheral devices appropriate to the patient's condition;
(e) the prescriber is actively licensed in the Commonwealth and authorized to prescribe….
For purposes of this section, a bona fide veterinarian-client-patient relationship is one in which a veterinarian, another veterinarian within the group in which he practices, or a veterinarian with whom he is consulting has assumed the responsibility for making medical judgments regarding the health of and providing medical treatment to an animal as defined in § 3.2-6500, other than an equine as defined in § 3.2-6200, a group of agricultural animals as defined in § 3.2-6500, or bees as defined in § 3.2-4400, and a client who is the owner or other caretaker of the animal, group of agricultural animals, or bees has consented to such treatment and agreed to follow the instructions of the veterinarian. Evidence that a veterinarian has assumed responsibility for making medical judgments regarding the health of and providing medical treatment to an animal, group of agricultural animals, or bees shall include evidence that the veterinarian (A) has sufficient knowledge of the animal, group of agricultural animals, or bees to provide a general or preliminary diagnosis of the medical condition of the animal, group of agricultural animals, or bees; (B) has made an examination of the animal, group of agricultural animals, or bees, either physically or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically or has become familiar with the care and keeping of that species of animal or bee on the premises of the client, including other premises within the same operation or production system of the client, through medically appropriate and

timely visits to the premises at which the animal, group of agricultural animals, or bees are kept; and (C) is available to provide follow-up care.…

The Virginia Veterinary Board's September 2020 Telehealth Guidelines
"Telehealth may be defined as the use of telecommunications and information technologies for delivery of veterinary medicine professional services by linking a patient (to include owner) and a veterinarian for assessment, intervention and treatment."

"Using telehealth technologies in veterinary practice is considered a method of service delivery. The current, applicable regulations apply to all methods of service delivery, including telehealth. The licensee is responsible for using professional judgment to determine if the type of service can be delivered via telehealth at the same standard of care as in-person service."

C: IDAHO

Importantly, just recently, the Idaho legislature removed the concept of "immediate supervision" and related in-person requirements connected with that concept of create a VCPR in order to allow VCPRs to be create virtually.

APA 24.38.

150. VALID VETERINARIAN/CLIENT/PATIENT RELATIONSHIP.
An appropriate veterinarian/client/patient relationship will exist when:

01. Responsibility. The veterinarian has assumed the responsibility for making medical judgements regarding the health of the animal and the need for medical treatment, and the client (owner or other caretaker) has followed the instructions of the veterinarian. (3-20-20)T

02. Medical Knowledge. There is sufficient knowledge of the animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal. This means that the veterinarian has seen the animal within the last twelve (12) months or is personally acquainted with the keeping and care of the animal, either by virtue of an examination of the animal, or by medically appropriate visits to the premises where the animals are maintained within the last twelve (12) months. (3-20-20)T

03. Availability. The practicing veterinarian or designate is readily available for follow-up in case of adverse reactions or failure of the regimen of therapy. (3-20-20)T

153. Standards of Practice.
Veterinarians shall adhere to the standards of practice including, but not limited to:
…
03. Relationship.

A veterinarian shall establish a valid veterinarian/client/patient relationship as defined by Section 150 of these rules, prior to dispensing, using, prescribing, or selling any controlled substance or legend drug, or the prescribing of an extra-label use of any drug.

D: MICHIGAN

MCL 333.16283 (Definitions)
As used in this section and sections 16284 to 16288:

(a) "Health professional" means an individual who is engaging in the practice of a health profession.
(b) "Prescriber" means that term as defined in section 17708.
(c) "Telehealth" means the use of electronic information and telecommunication technologies to support or promote long-distance clinical health care, patient and professional health-related education, public health, or health administration. Telehealth may include, but is not limited to, telemedicine. As used in this subdivision, "telemedicine" means that term as defined in section 3476 of the insurance code of 1956, 1956 PA 218, MCL 500.3476.
(d) "Telehealth service" means a health care service that is provided through telehealth.

MCL 333.16284 (Telehealth service; consent required; exception)
Except as otherwise provided in this section, a health professional shall not provide a telehealth service without directly or indirectly obtaining consent for treatment. This section does not apply to a health professional who is providing a telehealth service to an inmate who is under the jurisdiction of the department of corrections and is housed in a correctional facility.

MCL 333.16285 (Telehealth service; prescribing patient with drug; conditions; requirements)
(1) A health professional who is providing a telehealth service to a patient may prescribe the patient a drug if both of the following are met:
(a) The health professional is a prescriber who is acting within the scope of his or her practice in prescribing the drug.
(b) If the health professional is prescribing a drug that is a controlled substance, the health professional meets the requirements of this act applicable to that health professional for prescribing a controlled substance.
(2) A health professional who prescribes a drug under subsection (1) shall comply with both of the following:
(a) If the health professional considers it medically necessary, he or she shall provide the patient with a referral for other health care services that are geographically accessible to the patient, including, but not limited to, emergency services.
(b) After providing a telehealth service, the health professional, or a health professional who is acting under the delegation of the delegating health professional, shall make himself or herself available to provide follow-up health care services to the patient or refer the patient to another health professional for follow-up health care services.

In **Michigan**, the Board adopted rules to implement the statutory framework that allows all healthcare providers to provide telemedicine services. There were no comments in opposition to the proposed rules during the rulemaking process. The final rules are now pending publication and state:

R 338.4901a Telehealth services.

Rule 1a. (1) A veterinarian providing a telehealth service shall do all of the following:

(a) Ensure that the client knows the identity and contact information of the veterinarian providing the telehealth service. Upon request, the veterinarian shall provide his or her licensure information including the name of the state where he or she is licensed and his or her license number.

(b) Ensure that the technology method and equipment used to provide telehealth services complies with all current privacy-protection laws.

(c) Employ sound professional judgment to determine whether using telehealth is an appropriate method for delivering medical advice or treatment to the animal patient.

(d) Have sufficient knowledge of the animal patient to render telehealth services demonstrated by **satisfying 1 of the following:**

(i) Have recently examined the animal patient in person **or have obtained current knowledge of the animal patient through the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically.**

(ii) Have conducted medically appropriate and timely visits to the premises where the group of animal patients is kept.

(e) Act within the scope of his or her practice.

(f) Exercise the same standard of care applicable to a traditional, in-person veterinary care service.

(g) Make himself or herself readily available to the animal patient for follow up veterinary services or ensure there is another suitable provider available for follow up care.

The Board further noted to the Michigan Office of Administrative Hearings and Rules in its Regulatory Impact Statement regarding these new rules the following points:

- "Part 1 General Provisions: The rules in this part provide definitions used in the rule set and a new telehealth rule. The proposed definition rule is intended to assist a licensee or applicant in understanding the terms used in the rule set. There is no burden on an individual as a result of the proposed rule. The proposed rules include a new rule

regarding telehealth services. **This rule is required by MCL 333.16287.** The telehealth rule will advise the licensee of his or her duties when offering a telehealth service."

- "A licensee may currently render telehealth services **as provided by statute**. The new rules do not require a licensee or registrant to provide telehealth services, so there is no cost to comply with this rule."

- "The proposed rules provide requirements to licensees who chose to render telehealth services. **The requirements ensure public health and safety by limiting telehealth services offered to those within the licensee's scope of practice, consistent with in-person health care services, and based on sufficient knowledge of the animal patient** to render a telehealth service."

We hope the above examples of how other states have approached this process are useful to you in considering a solution that maintains the standard of care and still allows legitimate businesses to provide high quality vet care in a more accessible and affordable way to the pets of Nevada in some circumstances.

III. Proposed Amendment Language

Although these and other states that have permitted a VCPR to be established via telemedicine do so in slightly different ways, the results in each case offer a limited framework for veterinary telemedicine without a prior in-person exam—if and only if the standard of care will be met. With these other states' approaches in mind, we believe an amendment that is similar would be in the best interests of Nevadans and their pets, and would help ensure that the legislation does not improperly limit veterinarians' ability to practice using their independent judgment and discretion regarding appropriate care for their patients:

Sec. 3. 1. Except as otherwise provided in subsection 2, a person may not practice veterinary medicine in this State except within the context of a veterinarian-client-patient relationship.

2. A licensed veterinarian may, in good faith and without the establishment of a veterinarian-client-patient relationship, provide emergency or urgent care to an animal when a client cannot be identified.

3. A veterinarian shall be deemed to have a veterinarian-client-patient relationship concerning an animal if the veterinarian:

(a) Assumes responsibility for making medical judgments concerning the health of the animal and the need for medical treatment of the animal;

(b) Has knowledge of the present care and health of the animal sufficient to provide at least a general or preliminary diagnosis of the medical condition of the animal, which knowledge must have been acquired by:

(1) Conducting an ~~physical~~ examination of the animal either physically or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically; or

(2) Visiting, within a period of time that is appropriate for the medical issue in question, the premises where the animal is kept;

(3) Obtains an agreement with the client to follow the instructions provided by the veterinarian for the care and medical treatment of the animal;

(c) Is readily available for follow-up evaluation or, pursuant to an arrangement with another veterinarian who previously had been caring for or treating the animal, has agreed to provide:

(1) Emergency or urgent care, if required; or

(2) Continuing, reasonable and appropriate medical care and tr eatment and has access to the medical records of the animal;

(e) Provides oversight of treatment; and

(f) Maintains medical records of the animal.

4. A veterinarian-client-patient relationship ~~is not~~ may be established ~~solely~~ through veterinary telemedicine if the examination required by subsection 3(b) is performed through face-to-face interactive, two-way, real-time communications services or store-and-forward technologies using video and/or photos or other clinically appropriate data when all of the additional conditions are met:

(a) the patient has a medical history that is available for review by the veterinarian;

(b) the veterinarian obtains an updated medical history; and

(c) the veterinarian conforms to the same standard of care expected of in-person care. ~~After established through other means, a veterinarian-client-patient relationship may be maintained via veterinary telemedicine between:~~

~~(a) Medically necessary examinations; or~~

~~(b) Visits, within periods of time that are appropriate for the medical issue in question, to the premises where the animal is kept.~~

5. In the absence of a veterinarian-client-patient relationship:

(a) Except as otherwise provided in paragraph (b), any advice which is provided through electronic means must be general and not specific to a particular animal or its diagnosis or treatment.

(b) Advice and recommendations may be provided via veterinary telemedicine in an emergency, but only until the animal can be examined in person by a licensed veterinarian.

IV. Legislative Hurdles

We have been working with the Nevada Veterinary Medical Association (NVMA) and the AVMA to help craft language for this bill. While there are many things on which we agreed – most importantly, that providing high quality care is everyone's top priority – there are some issues where we did not see eye to eye, even after much discussion. We address those differences below so that the Legislature has the benefit of data when making its final determinations.

A. <u>The VCPR And Evidence on Outcomes</u>. Specifically, the NVMA opposes allowing a veterinarian to form a VCPR remotely under ***any*** circumstance. Despite the information regarding other states' approaches, the NVMA has maintained its position that a VCPR always requires an in-person examination regardless of the animal's condition. The AVMA states that "almost no research has been conducted in the veterinary space on comparative health outcomes."

This insistence on an in-person examination in every case is not supported by the evidence regarding telemedicine treatment outcomes, and the suggestion that there is no research on veterinary telemedicine is misleading. Over a series of statistically reliable methods to test the causal significance of telemedicine on health outcomes: a randomized control trial to assess disease complications differences, a survey experiment on veterinary diagnosis, and a randomized survey of professionals where virtual examinations were prohibited, the findings all supported the recommendation that veterinarians be able to exercise judgment to establish a VCPR via telemedicine.

First, a randomized controlled trial was conducted for rechecks of dogs following surgical sterilization. The control group was rechecked in the veterinary clinic whereas the experimental group was rechecked via telemedicine. The study found no disparity in health outcomes but found significant findings that the dogs in the experimental group were less stressed or fearful than they would have been for an in-clinic recheck and that the owners saved, on average, 50 minutes of travel time to and from the clinic. Bishop, G. T., Evans, B. A., Kyle, K. L. & Kogan, L. R. (2018). *Owner satisfaction with use of videoconferencing for recheck examinations following routine surgical sterilization in dogs*. Journal of the American Veterinary Medical Association, 253(9), 1151–1157.

Second, a survey method experiment was conducted to examine consistency of veterinary diagnosis when the VCPR is established in-person versus via telemedicine. The results showed that traditional-care veterinarians agreed with the telemedicine service recommendation in 82.4% of cases. Rodrigo Y. Roca and Robert J. McCarthy, *Impact of Telemedicine on the Traditional Veterinarian-Client-Patient Relationship*, 37 Topics in Companion Animal Medicine (2019) 100359.

Third, the Portuguese Veterinary Order conducted the "Policy Delphi Study" in order to consider amending its Code of Professional Conduct which prohibited virtual examinations and prescriptions. Based upon its finding that there was no significant harm to health through the use of telemedicine and evidence of its benefits, the Portuguese Veterinary Order concluded that remote consultations should be allowed for first consultations and follow-ups according to the judgment of the veterinarian. Magalhães-Sant'Ana, M., Conceição Peleteiro, M. & Stilwell, G. (2020). *Opinions of Portuguese Veterinarians on Telemedicine-A Policy Delphi Study*. Frontiers in Veterinary Science, 7. Consistent with these findings, a study conducted by the Royal College of Veterinary Surgeons (UK) found that "[w]hen asked whether certain types of veterinary medicines should be able to be prescribed without a physical examination of the animal,

however, the majority of respondents to the professional survey were in favour." RCVS, *RCVS review of the use of telemedicine within veterinary practice* (2018) at 12.

At present, the American Association of Veterinary State Board (AAVSB), which, unlike the AVMA, has actual enforcement authority over licensed veterinarians has conducted a control study of the likelihood for increased standard of care violations by veterinarians who, on the basis of state law waivers, may establish a VCPR via telemedicine. The initial results suggest that boards have not found veterinarians establishing a VCPR via telemedicine to be more likely to conduct standard of care violations.

The AVMA's statement on research is also misleading because it presumes that the Nevada Legislature regulates a veterinarian's medical judgment. It doesn't. Such judgment is a question of common law and the state veterinary licensing board's enforcement jurisdiction. In fact, a quantitative analysis of veterinarian understanding of the AVMA's own standards on telemedicine revealed a "lack of knowledge of the American Veterinary Medical Association (AVMA) definitions of telehealth and telemedicine." Watson *et al. A Survey of knowledge and use of telehealth among veterinarians*, 15 BMC Veterinary Research (2019) at 474. Instead the state of Nevada regulates the relationship between the veterinarian and the client-patient. That relationship is a question of consumer and public protection, not medical judgment. And when it comes to protecting the public, the evidence strongly supports veterinarian's being able to exercise their judgment to establish a VCPR via telemedicine for certain disease conditions. To illustrate, an April 2020 dissertation used survey research to examine the use of veterinary telemedicine for chronic disease management. *See* Nathan J. Matlock, Survey of Client Perspective On The Use of Veterinary Telemedicine For Chronic Disease Management (2020), https://dc.uthsc.edu/cgi/viewcontent.cgi?article=1071&context=hiimappliedresearch. In particular, Dr. Matlock's research design sampled rural populations of pet owners whose pets were in a chronic disease state. *Id*. at 27. Dr. Matlock found that 45.7% of respondents "strongly agree" or "agree" that telemedicine/telehealth could improve their pet's long-term health care (compared to only 11.9% of respondents who did not think their pet's healthcare would be improved via telemedicine/telehealth). *Id*. At 28. Further, 53.6% of respondents stated they did not think the use of telemedicine/telehealth would negative impact their pet's relationship with the veterinarian.

Scientific evidence shows that pets are crucial to attenuating the public health harms resulting from social isolation. See https://pubmed.ncbi.nlm.nih.gov/10717771/. For this reason, an expert letter published in the *Journal of Gerontological Social Work* has advocated that social workers be trained on how to assess human-pet interaction. Mary E. Rauktis and Janet Hoy-Gerlach, *Animal (Non-human) Companionship for Adults Aging in Place during COVID-19: A Critical Support, a Source of Concern and Potential for Social Work Responses*, 6 Journal of Gerontological Social Work (2020) at 702-705. The National Institute on Aging at the National Institutes of Health has issued a public service advertisement recommending that older adults consider adopting a pet to deal with loneliness. *See* https://www.nia.nih.gov/sites/default/files/social-isolation-infographic-508.pdf.

The fact that older adults do not have the ability to flexibly travel to a clinic for their pet's health needs is why the AARP has supported legislation that allows a veterinarian to establish a VCPR via telemedicine. And while the scientific evidence makes clear that telemedicine does not lead to negative health outcomes (quite the opposite), the inability for older adults to get telemedical care for their pets can clearly harm human health. Recently published findings on a matched case-control study of the highest-risk group for COVID-19-related fatalities found the following "[t]he prevalence of anxiety symptoms and depression symptoms and the level of stress were significantly higher among cases than among controls." Sayeed *et al*., *Mental Health Outcomes of Adults with Comorbidity and Chronic Diseases During the COVID-19 Pandemic: A Matched Case-Control Study*, 32 Psychiatria Danubina (2020) at 491-498.

B. <u>Violations of Federal Law</u>. Additionally, the AVMA states that AB200 is "consistent with the federally defined VCPR." This is misleading for two reasons. First, as the AVMA recognizes, the FDA's VCPR definition is proscribed to only certain prescription practices, not all instances where a VCPR is required. More specifically, although a VCPR cannot be formed solely through telemedicine **when issuing prescriptions for extra-label use** (e.g. prescribing human drugs to an animal), these requirements do not apply to general prescribing of drugs that are specifically authorized for animal use. Nor do these requirements apply to diagnosis and treatment via telemedicine where no drugs are prescribed. Second, and as the AVMA failed to disclose, the FDA has made a policy determination to not enforce its VCPR definition to prevent veterinarians from establishing a VCPR solely via telemedicine. Thus, the FDA has recognized that it is indeed possible—in some circumstances—for a veterinarian to establish a VCPR electronically, even when the veterinarian's recommended treatment will involve extra-label drug use.

C. <u>Changing Nevada Law</u>. It has been suggested by certain stakeholders that the Proposed Amendment would repeal decades of Nevada law. But as noted above, Nevada law is actually silent on telemedicine, and the NVMA initiated the push for AB200. Moreover, to the extent our Proposed Amendment would modify existing law, it <u>would not</u> permit telemedicine for <u>most</u> conditions that an animal might present with. It is not a replacement for in-person care. The Proposed Amendment would simply modernize the decades' old standard <u>for those situations when the condition **can** be assessed via technological examination.</u> The laws that were adopted in 1989 and the early 1990s are not good law merely because they are old. The internet may have existed decades ago, but the technology that allows contemporaneous, high-quality video and images to be exchanged through cell phones and laptops—such that a provider could look at that data and obtain clinically relevant information in a timely manner—did not exist like this in 1989. An updated examination framework is supported by data, old and new, that telemedicine is an effective service even when the patient relationship is established remotely.

If COVID showed us anything, it is that many veterinarians can successfully use telemedicine as part of their practice and there are some conditions (e.g. dermatology, anxiety) that may be able to be treated appropriately (and potentially even better in the case of behavioral health) by a veterinarian in a remote setting. By way of example, a veterinarian who is able to review videos of a pet in various scenarios (i.e., happy, calm, excited, anxious, sleeping, etc.) in addition to the pet owner's description of the situation, will actually have access to a *more comprehensive*

picture of an animal's true behavioral issues than what can be described to the vet by the owner during a singular in-person exam.

As stated above, in Veterinary Evidence, *Veterinary Telemedicine: A literature review*, Vol 5, Issue 4 (Oct. 30, 2020), in the context of behavioral health, "*The studies revealed significant improvement in the treatment of both owner-directed aggression and separation anxiety and further showed there* ***was no significant difference in the results whether the consult was handled remotely or in-person****.*" [Emphasis added]

To ignore technological advances and stick with a law simply for precedent's sake unnecessarily denies Nevadans the benefits of telemedicine, including greater access to specialized care.

Moreover, medically appropriate telemedicine offers significant benefits to the veterinary profession. Recent AVMA data indicates that the percentage of the veterinary profession under the age of 50 has declined over the last decade. The flexibility that telemedicine permits, in the appropriate case, is attractive to many younger professionals (as it is to their clients). As is the case with respect to human telemedicine, because this service is not a replacement for all in-person care, allowing vets to incorporate technology into their practices more robustly is likely to increase the quality of care and the amount of necessary care pets receive, while at the same time encouraging skilled individuals in younger generations to remain in practice or join it. This is another opportunity to change the way business has been done for years in Nevada—for the better.

D. <u>Competitive Concerns</u>. Stakeholders also suggest that the Proposed Amendment *would expose Nevada consumers to a lower standard of care for their animals.* We have not seen, and are not aware of, any evidence to back up these claims. In contrast, many states have determined that there are situations when a VCPR being created remotely could be appropriate and would allow increased access to care.[3] As we discussed above, quality of care is paramount, but an absolute prohibition on establishing a VCPR remotely—that is, insisting there is <u>never</u> a way in which it can be done appropriately or safely—is contrary to the evidence.

[3] *See, e.g.* Veterinary Evidence, Veterinary Telemedicine: A literature review, in which the authors provide the following example: "One of the most frequently recommended telemedicine techniques for veterinarians is post surgical recheck exams. Bishop et al. (2018) randomised 30 client-owned dogs into two groups for examinations following surgical sterilisation. In one group, the dogs were rechecked virtually (telemedicine group) and the dogs in the other group were rechecked in the veterinary clinic (control group). None of the dogs randomised to the telemedicine group had a surgical complication necessitating a visit to the clinic. The most common problem was a slow internet connection reducing the quality of the audio-visual feed. The rechecks were still able to be completed virtually. There were two minor surgical complications in the control group randomised for the in-clinic rechecks. Owners from both groups were satisfied with the recheck visits; however, the owners from the telemedicine group felt their dogs were less stressed or fearful than if they had taken them for the in-clinic recheck. These owners would strongly prefer to utilise telemedicine for similar appointments in the future, supporting the hypothesis owners found telemedicine visits to be a useful and satisfactory alternative to in-clinic appointments. The owners of the dogs in the telemedicine group also saved, on average, 50 minutes of travel time to and from the clinic. One of the advantages of telemedicine highlighted in this study was the ability of virtual care to reduce stress and anxiety in animal patients…."

Further, insisting on a blanket prohibition can cause questions to be asked about the reasoning behind the sudden decision to legislate restrictions related to the formation of the VCPR, when Nevada has never before addressed the issue. More specifically, because tele-veterinary services have been successfully used during COVID, there may be concern that companies providing these tele-veterinary services might create competition for brick-and-mortar veterinary clinics. Along those lines, it is important to note that some of the organizations stating that the quality of care would be lowered are run by and represent veterinarians who own brick-and-mortar veterinary locations within the state. Thus, when reviewing arguments that insist a VCPR requires a physical examination in every instance, it is important to keep in mind that these arguments reflect the concerns of specific stakeholders.

Further, professional boards have found that they can face anti-trust challenges when the stakeholders involved in passing rules and regulations had economic interests that would have been affected by allowing other providers into the state. The United States Supreme Court has considered this issue and noted the risks involved when regulators are also market participants.

Lastly, we do not believe telemedicine companies providing care in Nevada would in any way take business away from brick-and-mortar vets, as often the illnesses treated via telemedicine are very specific and/or are provided in a shelter setting; telemedicine is not intended as a replacement for in-person, hands-on care, a reality the Proposed Amendment reflects. **However, tele-veterinary medicine could potentially provide access to lower cost care to many who cannot currently afford such care. It also offers a viable solution to many pet owners living in rural locations.** Far too many animals are surrendered to shelters each year because the cost of veterinary care is too high. This raises a question: How is providing another potentiality lower cost option and/or making highly qualified specialists available to those living in rural areas, not, at least in certain limited circumstances, in the best interest of Nevada's animals? Jennifer Hobgood of the ASPCA recently stated as follows in advocating for the expansion of telehealth: "Telemedicine is especially helpful for pet owners who have difficulty accessing care due to income, transportation—you can't put a cat or a dog on public transportation—or disability, for senior citizens, for those who live in remote or underserved communities, those folks who aren't going into the clinic now and accessing this gold standard of Cadillac care."

V. Conclusion. In sum, the Proposed Amendment recognizes that some patient presentations are appropriate for the use of telemedicine in lieu of (or in some instances, together with) in-person medical care, while others are not. Accordingly, the Proposed Amendment would require, prior to a veterinarian providing treatment (including issuing prescriptions), an appropriate medical evaluation and review of relevant clinical history, commensurate with the presentation of the patient to establish diagnoses and identify underlying conditions and any contra-indications to the treatment recommended. The veterinarian must use sound professional judgement to assess whether telemedicine is appropriate in each and every case.

Based on all of the above, we ask the Legislature to fully consider this Proposed Amendment and allowing Nevada pet parents more options to obtain high-quality veterinary care. We are happy to answer any questions that you may have about the Proposed Amendment.