

**TITLE 16
VETERINARY MEDICAL BOARD**

NOTICE OF PROPOSED CHANGES CONCERNING

Civil Penalties for Citation, § 2043

NOTICE IS HEREBY GIVEN that the Veterinary Medical Board (hereafter, “Board”) is proposing to take the action described in the Informative Digest. The Board has not scheduled a public hearing on the proposed changes. However, any interested person or such person’s duly authorized representative may, no later than 15 days prior to the close of the written comment period, request a hearing, at which point the Board will schedule a hearing at which any interested person may present statements or arguments orally or in writing relevant to the action proposed.

COMMENT PERIOD

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under “Contact Person” in this Notice, must be **received by the Board at its office no later than 5:00 p.m. on May 4, 2015**, or must be received by the Board at any hearing.

AVAILABILITY OF MODIFICATIONS

The Board, upon its own motion or at the instance of any requested party, may adopt the proposals substantially as described herein, or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person, and will be mailed to those persons who submit written or oral testimony related to this proposal, or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE CITATIONS

Pursuant to the authority vested by §§ 125.9, 4808, 4875.2, and 4875.4 of the Business and Professions Code (the “Code”), and to implement, interpret, or make specific § 125.9, 148 and 4875.4 of said Code, the Board is considering changes to § 2043, Article 5.5 of Division 20 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board is proposing the following amendments to existing regulations:

--Amend Section 2043 of Article 5.5, Division 20, Title 16, California Code of Regulations, as follows:

Recast the class of violations, establish new fine ranges for each class, increase the maximum amount of fine to \$5,000, and provide an administrative tool to deter unlicensed activity.

Specifically, the amendments and additions to § 2043 have the following effects:

- Amend opening paragraph: clarifies that it is the delegated authority of the executive officer to determine that a violation has occurred warranting an administrative citation and fine. Previous language referred to citations being issued, but not what sets the citation process in motion.
- Amend Paragraphs (a) – (c): recast the three categories of violations for which citations may be issued, making (a) the least serious and (c) the most serious offenses. The previous regulation had the three categories reversed. For each category of violation, the fines that may be assessed have been increased. Possible fines are now between \$250 and \$3,000 for a “class A” violation,

between \$1,000 and \$4,000 for a “class B” violation, and between \$2,000 and \$5,000 for a “class C” violation. Previous fines were between \$50 and \$500 for the least serious violations, between \$501 and \$1,000 for the middle category of violations, and between \$1,001 and \$1,500 for the most serious violations. Amended subsections (b) and (c) also provide longer “lookback” periods for prior citations, allowing regulators to factor in all citations received in the previous five years.

- Amend Paragraph (d): eliminates “the good or bad faith exhibited by the cited person” as a criterion for assessing a civil penalty.
- Adopt Paragraph (e): Makes it a “class C” violation for an unlicensed person to practice veterinary medicine.
- Adopt Paragraph (f): Makes it clear that citations issued pursuant to § 2043 are public documents, and therefore subject to inspection by the public.
- Adopt Paragraph (g): Deals with orders of abatement: what they may require and the fact that they must fix a reasonable time for abatement of the violation.

Policy Statement Overview – Objectives of Regulation

The policy behind the proposed regulatory amendments and additions is consistent with the Board’s mission of protecting the public and their animals. To that end, the proposed regulations provide greater clarity as to when citations are issued; provide added deterrence against violations of the Act in the form of greater fines for the various offenses, including unlicensed activity; allows regulators to look back five years for a history of other citations for the more serious violations; eliminate a criterion for citations that is redundant and difficult to quantify; clarifies the public nature of citations; and provides more guidance concerning abatements. Together, these proposed regulatory changes provide incentives to obey the laws and regulations governing veterinary medicine.

Benefits of Regulatory Action

In general, this regulatory action will strengthen the Board's ability to enforce its laws and regulations and protect consumers from unlicensed activity. In the first full year of the regulation, the Board expects to issue approximately 100 citations, resulting in between \$50,000 and \$300,000 in fines. In the second year of the regulation, and for all the years that follow, the Board will issue approximately 120 citations, resulting in between \$60,000 and \$360,000 in fines.

The proposed regulation would also make clear the responsibilities of licensed veterinarians and registered veterinary technicians and spell out the penalties for unlicensed activity. These regulations exist for the protection of California consumers and their animal patients, as well as to inform Board licensees of their rights and responsibilities within the scope of the practice of veterinary medicine.

The proposed regulatory action will clearly delineate the severity of violations while creating a structure to deter first offenses by the ability to levy a fine. Currently, a person could violate the Veterinary Medicine Practice Act and be subject to a fine as little as \$50. The proposed regulatory action better protects consumers by allowing the Board to levy fines that will more adequately deter the violations in the first place. Additionally, this proposed regulatory action protects the public from unlicensed activity by allowing the Board to issue a citation with a substantial fine instead of having to pursue a criminal or civil penalty through the court system.

Consistency and Compatibility with Existing State Regulations

After reviewing existing state regulations relating to or affecting this regulatory proposal, the Board has determined that this proposed regulatory action is neither inconsistent nor incompatible with existing state regulations.

LOCAL MANDATE

None.

FISCAL IMPACT ON PUBLIC AGENCIES

Cost to Local Agencies or School Districts Requiring Reimbursement

The Board has determined that this regulatory proposal will create no cost to any local agencies or school districts requiring reimbursement pursuant to Government Code Section 17500 *et seq.*

Cost or Savings to State Agencies

The Board will incur some expenses due to some cited individuals requesting an Administrative Hearing with the Office of Administrative Hearings and costs associated with the Attorney General providing legal services before and during hearings. However, the Board already incurs these expenses, and there is expected to be no material change to the expenses incurred by the Board. Roughly 21% of the Board's citation orders are appealed, most of which are settled through an informal conference process, and roughly 2.1% end up at a full administrative hearing. The Board does not anticipate that the proposed changes will increase the number of appeals. Fines are assessed in virtually all citation actions.

The following is a snapshot of citation and fine information for the past three years:

Year	No. of Citations	Informal Conferences	Formal Appeals	Fines Collected
2012	56	13	2	\$21,750
2013	121	18	3	\$23,075
2014	100	28	1	\$20,500

All costs to the Board are expected to be fully absorbed due to the collection of higher fines associated with this regulation. No other State agencies will incur costs or savings as a result of this regulatory proposal.

Non-Discretionary Cost or Savings Imposed Upon Local Agencies

The Board has determined that this regulatory proposal will not create any non-discretionary costs or savings imposed on local agencies.

Cost or Savings in Federal Funding to the State

The Board has determined that there will be no significant costs or savings in federal funding to the state as a result of this regulatory proposal.

COST IMPACT ON AFFECTED PRIVATE PERSONS

Veterinarians, Registered Veterinary Technicians, or unlicensed persons who violate the Act and therefore incur a citation and fine would be affected by the higher fine amounts set forth in the proposed action. The amount assessed for each citation, however, would not be greater than \$5,000.

The Board is not aware of any cost impact that any other representative private person or business would necessarily incur in reasonable compliance with the proposed action.

HOUSING COSTS

The proposed action will have no effect on housing costs.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations may affect small businesses. A veterinary practitioner who is also the managing licensee of a veterinary hospital may see his or her business affected by the issuance of a citation and fine. However, the regulatory proposal affects small businesses only if they are found to be in violation of any statutes or regulations enforced by the Board, which may result in the Board assessing an administrative fine of no more than \$5,000 for each violation.

RESULTS OF ECONOMIC IMPACT ASSESSMENT

Impact on Jobs/Businesses:

The Board has made an initial determination that the proposed regulatory action will not have

any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment:

In addition to the benefits listed under the Informative Digest/Policy Statement Overview above, this proposed action would ultimately make clear the responsibilities of licensed veterinarians and registered veterinary technicians and spell out the penalties for unlicensed activity. These regulations exist for the protection of California’s consumers and their animal patients. They also inform Board licensees of their rights and responsibilities within the scope of veterinary medical practice.

Adopting this regulatory proposal will assist the Board in enforcing the Act, deter harm to animal patients and consumers, and further the Board’s goal of reducing the amount of unlicensed activity in California.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

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The backup contact person is:

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REFERENCE TO TEXT AND INITIAL STATEMENT OF REASONS

An Initial Statement of Reasons explaining the reasons for the proposed action shall be available to the public upon request. The express terms of the proposed action and all information upon which that proposal is based are also available upon request.

BUSINESS IMPACT

The Board has made the initial determination that the proposed regulatory changes and adoptions would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that citations are largely issued to individuals rather than businesses, and therefore they have a negligible effect on businesses in California.

IMPACT ON JOBS/NEW BUSINESSES

The Board has made the initial determination that the proposed regulatory changes and adoptions will have no significant impact on the creation of new jobs or new businesses, the

elimination of jobs or existing businesses, or the expansion of business in the State of California. To the extent there will be any impact at all to jobs or new businesses, that impact would be as a result of violations of laws and regulations enforced by the Board.

FEDERAL MANDATE

None.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally as effective in implementing the statutory policy or other provisions of law.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The Board will prepare a Final Statement of Reasons after all public comments have been received and all substantially related comments have been incorporated into the proposed text. Copies of the Final Statement of Reasons, when available, may be obtained from the contact person whose information is listed herein.

WEBSITE ACCESS

The Veterinary Medical Board's website may be accessed at: <http://www.vmb.ca.gov>.