

NOTICE PUBLICATION/REGULATION SUBMISSION

REGULAR

Instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2020-0701-04	REGULATORY ACTION NUMBER 2021-1112-02S	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

OFFICE OF ADMIN. LAW  
2021 DEC 21 AM 8:19

ENDORSED - FILED  
in the office of the Secretary of State  
of the State of California

DEC 22 2021

1:27 pm

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY Veterinary Medical Board	AGENCY FILE NUMBER (If any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE 7/17/2020	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Disciplinary Guidelines	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	ADOPT
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	AMEND 2006
TITLE(S) 16	REPEAL

3. TYPE OF FILING	<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
	<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
	<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify)		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) 5/27/2021 - 6/11/2021; 7/28/2021 - 8/12/2021; 10/21/2021 - 11/5/2021

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)	<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY	<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
	<input checked="" type="checkbox"/> Other (Specify) Kimberly Kirchmeyer, Director, Department of Consumer Affairs <i>Kimberly Kirchmeyer</i>		

7. CONTACT PERSON Timothy Rodda	TELEPHONE NUMBER 916-318-6369	FAX NUMBER (Optional) (916) 928-6849	E-MAIL ADDRESS (Optional) Timothy.Rodda@dca.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Jessica Siefeman</i>	DATE 12/17/2021
TYPED NAME AND TITLE OF SIGNATORY Jessica Siefeman, Executive Officer, Veterinary Medical Board	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

DEC 22 2021

Office of Administrative Law

# REGULAR

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-2020-0707-04	2021-1112-025	

For use by Office of Administrative Law (OAL) only	
NOTICE	REGULATIONS

OFFICE OF ADMIN. LAW  
2021 NOV 12 AM 10:39

AGENCY WITH RULEMAKING AUTHORITY Veterinary Medical Board	AGENCY FILE NUMBER (if any)
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### A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
<b>OAL USE ONLY</b>	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2020, 29-Z	PUBLICATION DATE 7/17/2020

### B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Disciplinary Guidelines	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
16	AMEND 2006
TITLE(S)	REPEAL

3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)  
11/19/2020 - 12/4/2020; 7/28/2021 - 8/12/2021; 10/21/2021 - 11/5/2021

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input checked="" type="checkbox"/> Other (Specify) <u>Kimberly Kirchmeyer, Director, Department of Consumer Affairs</u>			

7. CONTACT PERSON Justin Sotelo	TELEPHONE NUMBER (916) 282-6911	FAX NUMBER (Optional) (916) 928-6849	E-MAIL ADDRESS (Optional) justin.sotelo@dca.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 10/8/2021
TYPED NAME AND TITLE OF SIGNATORY Jessica Sieferman, Executive Officer, Veterinary Medical Board	

For use by Office of Administrative Law (OAL) only

**VETERINARY MEDICAL BOARD**  
**FINAL STATEMENT OF REASONS**

**Subject Matter of Proposed Regulations:** Disciplinary Guidelines

**Section(s) Affected:** Title 16, Division 20, Article 1, of the California Code of Regulations (CCR)<sup>1</sup> section 2006.

**Updated Information:**

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

The 45-day public comment period began on July 17, 2020 and ended on August 31, 2020. The Veterinary Medical Board (Board) did not hold a hearing. There were no comments received during the 45-day public comment period. However, in response to additional issues raised by Board staff, proposed modifications to 16 CCR section 2006 and the Disciplinary Guidelines were approved by the Board on January 28, 2021.

**First Modified Text**

These proposed modifications: updated the latest revision date of the Disciplinary Guidelines (January 2021); clarified that a respondent (probationer) who provides veterinary services as a relief veterinarian shall notify each individual or entity with whom respondent is employed or contracted of a disciplinary decision; made necessary revisions to the Supervised Practice Optional Term; clarified the process of submitting supervision reports to the Board; modified the frequency of required supervisor reports submitted to the Board; separated and created a new Optional Term of Medical Records Review and eliminated the term “indirect supervision” to reflect what a medical records reviewer does; modified the requirement pertaining to the volume of medical records required to be reviewed by a medical records reviewer; and made changes to eliminate the use of gendered pronouns.

These changes were made for the following reasons:

(1) **Notice to Employer (Standard Term No. 8):** A recent probationer asserted he did not have to provide notice to any “employer” of his disciplinary decision because he provided veterinary services as a contract relief veterinarian, not as an employee. As such, he asserted he did not need to notify anyone that he was on probation. To resolve this issue, Board staff recommends this term be modified to clarify the Board’s intent to require respondents to notify an employer, individual, or entity contracting for the provision of veterinarian services by the respondent as a relief veterinarian.

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<sup>1</sup> All CCR references are to title 16 unless otherwise noted.

(2) Supervision vs. Medical Chart Review (Optional Terms No. 6 and No. 7): The provision for “indirect supervision” in Optional Term No. 6 for Supervised Practice creates confusion, as it conflicts with the definition of “indirect supervision” in California Code of Regulations, title 16, section 2034, subsection (f). In addition, the term “supervision” may appear to refer to some sort of physical supervision of the probationer’s practice. Since “indirect supervision” in the Supervised Practice term and conditions specifically refers to patient record reviews, the Board proposes separating Medical Chart Review from Supervised Practice, placing it within a new term for Medical Records Review (new Term No. 7) and revising it to eliminate the term “indirect supervision” to reflect what a medical records reviewer does, rather than continuing to use the term “indirect supervision.”

(3) Supervisor’s Conclusions, Opinions, and Patient Chart Reviews (Optional Term No. 6): The fourth paragraph of Supervised Practice states the following:

Respondent's supervisor shall file monthly reports with the Board. These reports shall be in a form designated by the Board and shall include a narrative section where the supervisor provides his or her **conclusions and opinions concerning the issues described above and the basis for his or her opinions**. Additionally, the supervisor shall maintain and submit with his or her monthly reports a log designating the patient charts reviewed, the date(s) of service reviewed, and the date upon which the review occurred. [Emphasis added.]

When this probationary term is placed in a Stipulated Settlement, there are no “issues described above.” Assuming this provision is referring to either a Proposed Decision or issues outlined in the Accusation or Statement of Issues, the Board does not need an opinion from the supervisor on what has already occurred. Instead, the supervisor should ensure and regularly report, going forward, that the causes for discipline are not being repeated. As a result, the words “the issues described above” are being struck and the words “his or her” replaced with the words “the supervisor’s” and “those conclusions” to make this clearer.

In addition, it is unclear why a supervisor would need to perform monthly patient chart reviews for RVT and VACSP probationers when the treating veterinarians are responsible for their patients’ medical records. Since veterinarian chart reviews are already covered under paragraph 10 of Supervised Practice, this proposal would strike the following sentence: “Additionally, the supervisor shall maintain and submit with his or her monthly reports a log designating the patient charts reviewed, the date(s) of service reviewed, and the date upon which the review occurred.”

(4) Supervised Practice and Medical Records Review (Optional Terms Nos. 6 & 7): Board staff conducted a review of all disciplinary orders containing the Supervised Practice term and conditions upon noticing some concerns with supervision reports received in the last fiscal year. After this review, and with the assistance of legal counsel, the Board believes this term should be modified to implement a new process in

the Supervised Practice and Medical Review terms. Specifically, the supervisor or approved reviewer shall submit the required reports directly to the Board within seven (7) days after the end of the preceding quarter, and the reports cannot be sent through, or by, the probationer. It would also state the supervisor or reviewer (not the probationer) shall select the medical records to be reviewed at random, and for medical reviewers, the records shall correlate to the animal patient or other issues identified in the disciplinary action that resulted in the Board’s decision. In the Board’s experience, seven (7) days is sufficient time for these reports to be provided by the supervisor or reviewer and allow the Board sufficient advance notice of any practice issues.

In addition, the Board staff believes the current supervision reports are inadequate. Most supervisor reports submitted to the Board include a “Satisfactory” Supervision Review Log, and the Board rarely receives “Unsatisfactory” Supervision Review Logs. Yet, recent probation inspections have discovered most medical records maintained by the probationers continue to be out of compliance. As a result, this proposed modification would require the supervisor to notify the Board of the dates and location where Respondent rendered services during each month covered by the supervisor’s report.

Moreover, Board staff also has concerns with the volume of medical records required to be reviewed. The volume of records to be reviewed under the current regulatory proposal would have three tiers:

- Substantial – 75% • Moderate – 50% • Partial – 25%

It is estimated that a veterinarian sees around 200-250 patients per month, depending on the size of the clinic. At the lowest tier (Partial – 25%), the medical records reviewer would be required to review 50 records per month for a probationer. As a result, for the medical records review term, the proposed modification would replace the tiered review with a minimum percentage (e.g., 10%) or set number of patient records (15 patient records, whichever is greater) that must be reviewed for a minimum of twelve (12) times a year.

Board staff further recommended re-evaluating the requirement for supervisors to submit monthly reports. With 90 to 100 probationers at any given month, Board staff is unable to adequately keep up with the volume of supervision reports (roughly 1,080 to 1,200) being sent to the Board each year. As a result, the Board modified the regulatory proposal to change the supervisor’s report frequency (conformed the medical records reviewer reporting term) from monthly to quarterly, which will align with the probationers’ quarterly reports. This should make it easier for supervisors or reviewers to comply, as follows:

<b>Reporting Time Period</b>	<b>Due No Later</b>
January 1 to March 31 (Quarter I)	April 7
April 1 to June 30 (Quarter II)	July 7
July 1 to September 30 (Quarter III)	October 7
October 1 to December 31 (Quarter IV)	January 7

The Board issued a 15-day Notice of Modified Text on May 27, 2021 to make these changes, and that public comment period closed on June 11, 2021. During the 15-day public comment period, the Board received one written comment with recommendations. On July 22, 2021, the Board approved responses to the written comment with recommendations and approved additional modifications to address some of the recommendations (as discussed below) and to make other necessary and technical revisions to the regulation and the Disciplinary Guidelines.

## **Second Modified Text**

The proposed second modifications: updated the latest revision date of the Disciplinary Guidelines (July 2021); added the optional term and condition of “medical records review” to the appropriate penalties for specified statutes to correspond with a previous modification adding this optional term; struck the optional term and condition of “supervised practice” from the list under Business and Professions Code (BPC) section 4855 to correspond with a previous modification; added language to specified Standard and Optional terms, indicating that those terms and conditions shall not be tolled; amended language under Standard Term No. 10 (Tolling of Probation) to address the maximum time probation can be tolled before a license is cancelled and the exception to the two-year limit to tolling of probation for a respondent who is residing in, practicing in, and is on active probation with another state in the U.S.; amended the title of Standard Term No. 11 to reflect correct terminology; amended language under Optional Term No. 6 (Supervised Practice) to address a supervisor’s access to respondent’s animal patient records and that a supervisor may evaluate all aspects of a respondent’s practice; added language under Optional Term No. 7 (Medical Records Review) to clarify that if a respondent’s terms of probation include Supervised Practice, that supervisor may also serve as the medical records reviewer; amended language under Optional Term No. 9 (No Management) to clarify that a “Respondent shall not function as the responsible licensee manager for any veterinary hospital for the duration of Respondent’s probation” and to cite to BPC section 4853, subdivision (c), which defines “responsible licensee manager”; and made other minor, technical revisions to the Disciplinary Guidelines.

These changes were made for the following reasons:

1. To correspond to the date the Board authorized the change, update the date of the Disciplinary Guidelines incorporated by reference in Title 16, California Code of Regulations section 2006 to “July 2021.”
2. To ensure that the Board’s “Medical Records Review” term may be used effectively to address practice issues in disciplinary actions, add the optional term and condition of “medical records review” to the appropriate penalties sections of the Disciplinary Guidelines for Business and Professions Code (BPC) sections 4883, subdivisions (d) and (e), 4883, subdivision (i) – Negligence, 4883, subdivision (i) – Incompetence, 4855, and 4856 on pages 3 through 11. This

corresponds with the change made by the Board's First Modified Text, which added new Optional Term No. 7 (Medical Records Review).

3. To avoid confusion for users of the Guidelines, strike the optional term and condition of "supervised practice" from BPC section 4855 on page 10 to correspond with the previous modification, which revised Optional Term No. 6 (Supervised Practice) and add new Optional Term No. 7 (Medical Records Review).
4. Add language to the following Standard and Optional Terms on pages 14 through 24, specifying those terms and conditions shall not be tolled. An explanation as to why each term shall not be tolled is provided below:

Standard Term No. 1 (Obey all Laws): Probationers should be required to obey all laws, regardless of the probationer's physical location or whether the probationer is practicing veterinary medicine. Requiring probationers to comply with the law is not a burdensome requirement for probationers or for the Board while the probationer otherwise is in tolling status.

Standard Term No. 3 (Interview with the Board): At times, probationers begin probation and immediately go into tolling status. Requiring the probationer to have an initial interview with Board staff to explain the terms and conditions of probation, regardless of the probationer's tolling status, will ensure the probationer understands the probation requirements and the effect of tolling. After the initial interview, it would be extremely rare for the Board's probation monitor to request an interview with a probationer during the tolling period. However, on the rare occasion when concerns regarding the probationer arise, the Board's probation monitor should have the ability to interview the probationer during tolling status.

Standard Term No. 10 (Tolling of Probation): This term regulates the period of probation. If the tolling condition itself is tolled, then tolling would not apply; the tolling condition would essentially cancel itself out. To ensure the safe practice of veterinary medicine on the public's animals, a probationer should not be able to claim tolled status without proving they can practice safely through probation compliance. Accordingly, the Board needs the ability to extend probation during tolling periods, so this term should not be tolled.

Standard Term No. 11 (Maintain a Current and Active License): A probationer can comply with this term, regardless of location and practice, and compliance is not a burdensome requirement for probationers. To ensure the probationer's return to safe practice of veterinary medicine on the public's animals, a probationer must maintain a current and active license during tolling status.

Optional Terms No. 18 (Submit to Drug Testing), 19 (Abstain from Controlled Substances), and 20 (Abstain from Alcohol Use): Once a respondent has been

determined to have a substance abuse problem, probationary terms to abstain from controlled substances and alcohol are necessary for consumer protection. Tolling these terms would provide a loophole that would allow probationers to leave the state and/or practice less than 24 hours per week and continue to abuse controlled substances and/or alcohol, which endangers the public. By requiring compliance with these terms during tolling status, the Board can continue to monitor the probationer's abstention from controlled substances and/or alcohol.

5. Amend language under Standard Term No. 10 (Tolling of Probation) on page 16 to address the maximum time probation can be tolled before a license is cancelled (if Respondent's periods of temporary or permanent residence or practice outside California totals two years), and the exception to the two-year limit to tolling of probation for a respondent who is residing in, practicing in, and is on active probation with another state in the US (since probationers will have effective oversight by another state agency). As written, tolling can last indefinitely, even though many probationers in tolling status may never intend to practice in California again. Monitoring probationers in a tolling status requires Board resources and should not continue indefinitely.
6. Amend the title of Standard Term No. 11 from "Maintain a Valid License" to "Maintain and Current and Active License" on page 17 to reflect the correct terminology for the actual license status.
7. Amend language under Optional Term No. 6 (Supervised Practice) on pages 19 and 20 to require a supervisor's access to respondent's animal patient records and that a supervisor may evaluate all aspects of a respondent's practice. The amended language also would clarify that a supervisor must be physically present full time when respondent provides treatment or consultation to an animal patient during the first quarter of respondent's probation, and quantifies the accepted levels of supervision as required by the Board or its designee (Full Time – 100%, Substantial – 75%, Moderate – 50%, or Partial – 25%). This change is proposed in response to public comment recommendations as described below.
8. Add language under Optional Term No. 7 (Medical Records Review) on page 20 to clarify that if a respondent's terms of probation include Supervised Practice, that supervisor may also serve as the medical records reviewer. This change is proposed in response to public comment recommendations as described below.
9. Amend language under Optional Term No. 9 (No Management) on page 21 to: clarify that a "Respondent shall not function as the responsible licensee manager for any veterinary hospital for the duration of Respondent's probation"; and cite to BPC section 4853, subdivision (c), which defines "responsible licensee manager." This change is proposed in response to public comment recommendations as described below.



The Board issued a second 15-day Notice of Modified Text on July 28, 2021 to make these changes, and that public comment period closed on August 12, 2021. There were no comments received during this public comment period. On July 22, 2021, the Board delegated to the Executive Officer the authority to adopt the proposed second modified text, as written, if no adverse comments were received and delegated to the Executive Officer the authority to make any technical or non-substantive changes that may be required in completing the rulemaking file.

### Third Modified Text

The proposed third modifications: amended paragraph three of Standard Term No. 10 (Tolling of Probation) of the Disciplinary Guidelines document to remove language about a license being automatically cancelled, without a hearing, for the probation violation of non-practice in California for two years, as follows [additions are in bold italics]:

~~Respondent's license shall be cancelled~~ ***It shall be considered a violation of probation if Respondent's periods of temporary or permanent residence or practice outside California total two years. However, Respondent's license shall not be cancelled as long as it shall not be considered a violation of probation if Respondent is residing and practicing in another state of the United States and is on active probation with the licensing authority of that state, in which case the two-year tolling limitation period shall begin on the date probation is completed or terminated in that state.***

This change was made for the following reason:

Upon reviewing the final regulatory package, the Department of Consumer Affairs raised an issue due to a case involving the Medical Board of California in which the court held that automatic cancellation of a license, without a hearing, is not a reasonable condition of probation (*Mao v. Super. Ct. Sacramento County* (Nov. 25, 2008, C058547 [nonpub. opn.]).

The above-noted revision would afford respondents a hearing opportunity after notice by the Board in a petition to revoke probation or accusation alleging such a violation of probation in accordance with the Administrative Procedure Act (Gov. Code, §§ 11500 and following), and should resolve any potential notice and hearing concerns with the proposed text.

The proposed third modifications also updated the revision date of the Disciplinary Guidelines to October 2021.

On October 21, 2021, the Board approved third modifications to the proposed language to address these issues and delegated to the Executive Officer the authority to adopt the proposed third modified text, as written, if no adverse comments were received and

delegated to the Executive Officer the authority to make any technical or non-substantive changes that may be required in completing the rulemaking file.

The Board issued a third 15-day Notice of Modified Text on October 21, 2021 to make these changes, and that public comment period closed on November 5, 2021.

During the third 15-day public comment period, the Board received one written comment. However, the comment did not pertain to the third modifications to the proposed language, and the Board is therefore not required to respond to the comment.

### **Local Mandate:**

A local mandate is not imposed on local agencies or school districts.

### **Fiscal Impact:**

The proposed regulations do not result in a fiscal impact to the state in the form of federal funding or any cost or savings to any state agency. They do not change the fines for violations, but provide a more accurate overview of the Board's processes in formal disciplinary actions, which will provide greater clarity to licensees, consumers, the Board, the Office of Attorney General, and the Office of Administrative Law Judges by outlining relevant and transparent standards directly related to violations outlined in law. The Board will continue to be required to ensure compliance with the regulations.

### **Consideration of Alternatives:**

No reasonable alternative to the regulatory proposal that was considered as identified in the Board meeting minutes or responses to comments or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective or less burdensome to affected private persons than the proposed regulation, or would be more cost-effective to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific. All recommendations provided during this rulemaking were considered by the Board (discussed below).

### **Summary of Comments and Responses**

No objections were received; however, some recommendations for alternative approaches were received during the first 15-day comment period.

#### **45-day comment period:**

There were no comments received during the 45-day public comment period.

#### **Comments received during the first 15-day comment period:**

One letter with recommendations regarding the Modified Text was received from Bonnie Lutz, Esq., Klinedinst, PC. Some text changes were made in response to these

recommendations. The summarized recommendations and Board responses are as follows:

Summary of Recommendation One (1):

In the Introduction of the Disciplinary Guidelines, Ms. Lutz requests that the last sentence of the last paragraph be revised to read, "The Board may consider sending copies of written communications sent to respondent to respondent's private counsel, if respondent requests that copies be sent and identifies the name and contact information for private counsel. However, the respondent must continue to communicate directly with the Board staff notwithstanding the involvement of private counsel." Ms. Lutz states that this revision would allow a respondent's private counsel to be informed as to what is happening as far as a respondent's compliance with the terms and any possible misconceptions or miscommunications.

Board Response to Recommendation One (1):

The Board sends communications directly to the respondent, and it is the respondent's responsibility to inform their private counsel. Requiring the Board, when requested, to also send copies of Board communications to private counsel imposes additional tracking and mailing workload on staff and unnecessary costs to the Board. During proceedings, a respondent may change attorneys by hiring new private counsel and not notify the Board. This could require even more burdensome tracking and mailing of duplicate copies of written communications by Board staff. Accordingly, the Board is rejecting the request to add or revise language in the Introduction of the Disciplinary Guidelines regarding the distribution of written communications to respondent's private counsel.

Summary of Recommendation Two (2):

Under Standard Term No. 4 (Cooperation with Board Staff) of the Disciplinary Guidelines, Ms. Lutz requests that the same language, provided above, be added after the second sentence in paragraph one.

Board Response to Recommendation Two (2):

For the reasons explained above, the Board is again rejecting the request to add or revise language under Standard Term No. 4 (Cooperation with Board Staff) regarding the distribution of written communications to respondent's private counsel.

Summary of Recommendation Three (3):

Under Optional Terms No. 6 (Supervised Practice) and No. 7 (Medical Records Review) (referred to as "Sections 5 and 6" in Ms. Lutz's letter), Ms. Lutz states that these sections appear to separate "direct" and "indirect" supervision. She asks if there is a way to clarify this, if the supervisor for "direct" supervision needs to review records, and if it can be clarified that the terms will include either No. 6 or No. 7. Additionally, she states that administrative law judges might not understand that these are alternative provisions leading to the situation where a veterinarian needs to hire two supervisors.

**Board Response to Recommendation Three (3):**

The Board agrees that these two sections, Optional Terms No. 6 (Supervised Practice) and No. 7 (Medical Records Review), should be clarified to address the questions and concerns raised by Ms. Lutz in her comment. [changes were approved by the Board on July 22, 2021, and made in the Second Modified Text to 16 CCR section 2006 and the Disciplinary Guidelines as described above.]

**Summary of Recommendation Four (4):**

Under Optional Term No. 9 (No Management), Ms. Lutz suggests a revision of "Respondent shall not manage" to read, "Respondent shall not function as the responsible licensee manager for any veterinary hospital for the duration of Respondent's probation. Responsible licensee manager for the purposes of this section is defined in Business and Professions Code section 4853(c)." She states that she makes this suggestion in response to numerous veterinarians on probation who questioned this provision and requests that it be clarified.

**Board Response to Recommendation Four (4):**

The Board agrees that Optional Term No. 9 (No Management) should be clarified to address the recommendation suggested by Ms. Lutz in her comment. [changes were approved by the Board on July 22, 2021, and made in the Second Modified Text to 16 CCR section 2006 and the Disciplinary Guidelines described above.]

**Second 15-day comment period:**

There were no comments received during the second 15-day public comment period.

**Third 15-day comment period:**

One written comment was received from [nmorales@email.com](mailto:nmorales@email.com). The Board was not required to respond to the comment, as it was outside the scope of the specific adoption, amendment, or repeal being proposed in the Third Modified Text. Accordingly, the Board is not modifying the proposed regulations to accommodate the comment.

**Incorporation by Reference**

The incorporation by reference method was used because it would be impractical and cumbersome to publish the disciplinary guidelines in the California Code of Regulations (CCR). The guidelines are intended to assist administrative law judges, attorneys, licensees, and others involved in the disciplinary process. The guidelines were developed to establish consistency and impose the most appropriate penalty in administrative disciplinary actions for similar offenses on a statewide basis. They are extensive and have been printed booklet-style. If the guidelines were incorporated into the CCR, it would increase the size of Division 20 and may cause confusion to the user. The guidelines were made available to the public and were posted on the Board's website.