



## MEMORANDUM

|                |   |
|----------------|---|
| <b>DATE</b>    | October 5, 2021   |
| <b>TO</b>      | Veterinary Medical Board (Board)  |
| <b>FROM</b>    | Justin Sotelo, Lead Administrative & Policy Analyst   |
| <b>SUBJECT</b> | <b>Agenda Item 11.B. Section 2006, Article 1, Division 20, Title 16 of the California Code of Regulations (CCR) Regarding Disciplinary Guidelines</b> |

### Background

On July 17, 2020, the Board's Disciplinary Guidelines rulemaking package was [published](#) by the Office of Administrative Law (OAL). On August 31, 2020, the 45-day public comment period closed; no comments were received.

During the July and October 2020 Board meetings, the Board's probation monitor raised concerns related to Standard Term No. 8 (Notice to Employers) and Optional Term No. 6 (Supervised Practice) in the pending Disciplinary Guidelines. At the October 2020 meeting, the Board was advised that modifications to the Disciplinary Guidelines would be presented at the January 2021 meeting for consideration.

At the January 2021 meeting, the Board approved text modifications to the Disciplinary Guidelines for a 15-day public comment period to address the issues raised by staff. The modifications revised Standard Term No. 8 (Notice to Employers) and Optional Term No. 6 (Supervised Practice), and created Optional Term No. 7 (Medical Records Review). A breakdown of the modifications and issues resolved was provided in the January 2021 [cover memo](#). The Executive Officer also approved additional technical and non-substantive modifications into the Disciplinary Guidelines.

On May 27, 2021, the [modifications](#) to the Disciplinary Guidelines were [noticed](#) for 15 days. The public comment period closed on June 11, 2021, and the Board received one written comment with recommendations. To address some of the recommendations in the written comment and to make other necessary and technical revisions (discussed in the July 2021 [cover memo](#)), the Board, on July 22, 2021, approved the Second Modified Text to amend CCR, title 16, section 2006, and the Disciplinary Guidelines therein incorporated by reference. At that time, the Board also approved responses to the written comment with recommendations, and directed staff to incorporate those responses into the Final Statement of Reasons.

On July 28, 2021, the Second Modified Text to amend CCR, title 16, section [2006](#), and the [Disciplinary Guidelines](#) therein incorporated by reference, were [noticed](#) for a second 15-day public comment period. The public comment period closed on August 12, 2021, and no written comments were received.

### **Concerns Regarding Probationary Term**

On August 20, 2021, the final rulemaking package was submitted to the Department of Consumer Affairs (DCA) for final review. On September 23, 2021, Board staff was notified that the DCA Director had a concern regarding proposed modifications to Standard Term No. 10 (Tolling of Probation). More specifically, there was concern about the automatic cancellation of a license, without a hearing, for the probation violation of non-practice in California for two years. The issue was raised 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.]).

To address the DCA Director's concerns, Board staff consulted with the Board's Regulatory Counsel and Board Counsel to draft a Third Modified Text of the Disciplinary Guidelines (**Attachment 1**, see page 16). Regulatory Counsel recommended revising the language to make the two-year non-practice condition a violation of probation. If that condition is violated, the Executive Officer could enforce the terms and conditions of probation by filing a Petition to Revoke Probation, which would afford the probationer due process and a hearing. In addition, if the Board approves the Third Modified Text, the proposed regulations would update the date of the Disciplinary Guidelines to October 2021.

If the Board approves the Third Modified Text, it will be immediately noticed on October 21, 2021, for a third 15-day public comment period to meet the OAL final rulemaking file submission deadline, which is November 14, 2021. At the same time, DCA will seek to expedite approval and processing of the internal review of the package. Once the 15-day public comment period ends, and if there are no public comments, Board staff would prepare and submit the final rulemaking file for final DCA, Agency, and OAL review.

### **Action Requested**

The Board is asked to consider the proposed Third Modified Text and entertain a motion to approve the proposed Third Modified Text to amend CCR, title 16, section 2006, and the Veterinary Medical Board Disciplinary Guidelines therein incorporated by reference, and direct staff to take all steps necessary to complete the rulemaking process, including preparing the Third Modified Text for an additional 15-day comment period, and if there are no adverse comments received during that 15-day public comment period, delegate to the Executive Officer the authority to make any technical or non-substantive changes to the proposed regulations that may be required in completing the rulemaking file and adopt the proposed regulatory changes.

### **Attachment**

1. Third Modified Text of CCR, Title 16, Section 2006, and Disciplinary Guidelines

**California Code of Regulations  
Title 16. Professional and Vocational Regulations  
Division 20. Veterinary Medical Board**

THIRD MODIFIED TEXT

Proposed amendments to the regulatory language are shown in single underline for new text and ~~single strikethrough~~ for deleted text.

Modifications to the proposed regulatory language are shown in double underline for new text and ~~double strikethrough~~ for deleted text.

Second modifications to the proposed regulatory language are shown in blue double underline for new text and ~~red double strikethrough~~ for deleted text.

Third modifications to the proposed regulatory language are shown in italicized double underline for new text and ~~italicized double strikethrough~~ for deleted text.

**Amend Section 2006 of Article 1 of Division 20 of Title 16 of the California Code of Regulations to read as follows:**

**§ 2006. Disciplinary Guidelines.**

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board shall consider the disciplinary guidelines entitled: "Veterinary Medical Board Disciplinary Guidelines, ~~July 2012 November 2018 January July October 2021~~ Edition" which are hereby incorporated by reference. Deviation from these guidelines, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems.

Note: Authority cited: Sections 4808 and 4845(d), Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 141, 480, 490, 4830.5, 4830.7, 4836.2, 4836.5, 4837, 4839.5, 4842, 4845, 4845.5, 4855, 4856, 4857, 4875, 4876, 4883, and 4886, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

# Disciplinary Guidelines

~~July 2012~~~~November~~  
~~2018~~ January ~~July~~ October  
2021

## Veterinary Medical Board



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~~**DISCIPLINARY GUIDELINES**~~  
~~**VETERINARY MEDICAL BOARD**~~

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~~Kim Williams, RVT~~

~~Patti Aguiar, Public Member~~

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~~Judie Mancuso, Public Member~~

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~~*Special thanks to former Board President Stephanie Ferguson, DVM*~~

~~**Susan M. Geranen**  
Executive Officer~~

~~**Sandra Monterrubio**  
Enforcement Program Manager~~

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# Veterinary Medical Board

## Disciplinary Guidelines

### Introduction

The Veterinary Medical Board (Board) developed the Disciplinary Guidelines outlined in this manual for its Executive Officer, staff, legal counsel, administrative law judges, and other persons involved in the Board's enforcement process to be used for the purpose of creating judgment orders in formal disciplinary actions. These guidelines are published in regulations for the public and the profession so that the processes used by the Board to impose discipline are readily available and transparent.

The Board recognizes that each case is unique and that mitigating or aggravating circumstances in a particular case may necessitate variations. Therefore, the Board has developed minimum and maximum penalties to assist in determining the appropriate ~~penalty level of discipline~~. If an ~~accusation is sustained and~~ administrative law judge finds that a violation occurred but assesses less than the minimum penalty ~~is assessed for that violation~~, the Board ~~requires information from~~ requests that the administrative law judge ~~fully explain the reasons and the circumstances for the deviation that resulted in less than the minimum penalty being assessed~~. In addition, probationary conditions are divided into two categories, 1) standard terms and conditions that are used for all cases, and 2) optional terms and conditions that are used for specific violations and circumstances unique to a specific case.

The Board ~~grants licenses to veterinarians, and registers~~ grants registrations to veterinary premises and veterinary technicians, ~~and issues veterinary assistant controlled substance permits~~. If there is action taken against both the individual ~~licensee~~ and the premises ~~registration permit~~, then the disciplinary order should reflect actions against ~~both each~~. However, in some cases, minimum standard violations are so severe that it is necessary to take immediate action and ~~else~~ suspend the license of a facility. In these instances, the veterinary license and the premises ~~registration permit~~ may be disciplined separately, and the disciplinary order should reflect the separate action.

Because of the severity of cases resulting in ~~actions taken~~ by the Office of the Attorney General, the Board has established that the minimum penalty shall always include revocation or suspension with the revocation or suspension stayed and terms and conditions of probation imposed. The ~~imminent~~ threat of the revocation or suspension being reinstated helps to ~~insure~~ ensure compliance with the probationary terms and conditions. ~~It is the recommendation of the~~ The Board recommends that in any case involving a violation related to for alcohol or drug abuse related violations that, the minimum term of probation should be five years. ~~In and in addition, in any case involving a violation related to alcohol or drug abuse violations~~ the mandatory terms and conditions listed specifically for this type of case shall be imposed.

~~In cases where the penalties deviate from the minimum to maximum range without explanation of the deviation, the Board may non-adopt the Proposed Decision and review the case itself.~~

A respondent may be represented by private counsel during enforcement proceedings, up to entry of a final disciplinary order. Following entry of the final order, including, but not limited to, while the respondent is on probation, the respondent may receive the assistance of private counsel, but the respondent shall communicate directly with Board staff. Written communications from the Board will only be sent to the respondent.



**PENALTIES BY BUSINESS AND PROFESSIONS CODE SECTION NUMBER**

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|---|--|
| <b>Section</b>                          | 4883(a); 4836.2(c)(5); 4837(b); 4842(d); 480(a)(1); 490  |
| <b>Violation</b>                        | Conviction of a crime substantially related to the qualifications, functions, or duties of veterinary medicine, surgery, or dentistry, in which case the record of the conviction shall be conclusive evidence.  |
| <b>Maximum Penalty</b>                  | Revocation and a \$5,000 fine  |
| <b>Minimum Penalty (as appropriate)</b> | Revocation and/or suspension stayed<br>Two-year probation<br>\$2,000 fine<br>Standard terms and conditions<br>Optional terms and conditions including but not limited to:<br>Suspension<br>Limitations on practice<br>Supervised practice<br>No ownership of a veterinary hospital or clinic<br>No management of a veterinary hospital/no supervision of interns or residents<br>Continuing education<br>Psychological evaluation and/or treatment<br>Medical evaluation and/or treatment<br>Rehabilitation program<br>Submit to drug testing<br>Abstain from controlled substances/alcohol<br>Community service<br>Restitution<br>Ethics training |

Maximum penalties should be considered if the criminal act caused or threatened harm to an animal or the public, if there have been limited or no efforts at rehabilitation, or if there were no mitigating circumstances at the time of the commission of the offense(s).

Minimum penalties may be considered if there is evidence of an attempt(s) at self-initiated rehabilitation. Evidence of self-initiated rehabilitation includes, but is not limited to, pro bono services to nonprofit organizations or public agencies that improve the care and treatment of animals or improve generally society's interactions with animals. Self-initiated rehabilitation measures also include, but are not limited to, ~~when appropriate,~~ specific training in areas of weakness, full restitution to persons harmed by the licensee or registrant, ~~completion~~ completion of treatment or other conditions of probation ordered by the court, or ~~full-compliance with all laws since the date of the occurrence of the criminal act~~ crime.

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| <b>Section</b>         | 4883(b); 4837(d)  |
| <b>Violation</b>       | Having professional connection with, or lending the licensee's or registrant's name to, any illegal practitioner of veterinary medicine and the various branches thereof. |
| <b>Maximum Penalty</b> | Revocation and a \$5,000 fine   |

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| <b>Minimum Penalty</b>   | Revocation and/or suspension stayed<br>Two-year probation<br>Standard terms and conditions<br>\$2,000 fine<br>Optional terms and conditions including but not limited to:<br>30-day suspension for each offense<br>No ownership of a veterinary hospital or clinic<br>No management of a veterinary hospital/no supervision of interns or residents<br>Ethics training |
| <p>Maximum penalties should be considered if the acts or omissions caused or threatened harm to an animal or client, or if there are prior violations of the same type of offense.</p> <p>Minimum penalties may be considered if the acts or omissions did not cause or threaten harm to an animal or cause detriment to a client.</p> |  |

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| <b>Title-Violation</b>  | Violation or attempt to violate, directly or indirectly, any of the provisions of the chapter   |
| <b>Maximum Penalty</b>  | Revocation and a \$5,000 fine   |
| <b>Minimum Penalty</b>  | Revocation and/or suspension stayed<br>Two-year probation<br>Standard terms and conditions<br>\$1,000 fine<br>Optional terms and conditions including but not limited to:<br>Restitution<br>Ethics training |
| <p>Maximum penalties should be considered if the actions were intended to subvert investigations by the Board or in any way hide or alter evidence that would or could be used in any criminal, civil, or administrative actions.</p> <p>Minimum penalties may be considered if the acts or omissions did not cause or threaten harm to an animal or cause detriment to a client.</p> |   |

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| <b>Section</b>         | 4883(d),(e)  |
| <b>Violation</b>       | Fraud or dishonesty in applying, treating, or reporting on tuberculin or other biological tests. Employment of anyone but a veterinarian licensed in the State to demonstrate the use of biologics in the treatment of animals.  |
| <b>Maximum Penalty</b> | Revocation or suspension and a \$5,000 fine  |
| <b>Minimum Penalty</b> | Revocation and/or suspension stayed Two-year probation<br>Standard terms and conditions<br>\$5,000 fine<br>Optional terms and conditions including but not limited to:<br>30-day suspension of license and/or premises <u>registration</u> permit<br><a href="#">Medical records review</a><br>Continuing education<br>Community service |

Maximum penalties should be considered if the acts or omissions caused public exposure of reportable diseases (rabies, brucellosis or tuberculosis) or other hazardous diseases of zoonotic potential.

Minimum penalties may be considered if the acts or omissions did not cause or threaten harm to an animal or cause detriment to a client.

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| <b>Section</b>         | 4883(f)  |
| <b>Violation</b>       | False or misleading advertising  |
| <b>Maximum Penalty</b> | Revocation and/or suspension and a \$5,000 fine  |
| <b>Minimum Penalty</b> | Revocation and/or suspension stayed<br>Two-year probation<br><del>60</del> 30-day suspension<br>Standard terms and conditions<br>\$2,000 fine<br>Optional terms and conditions including but not limited to:<br>Restitution<br>Ethics training |

Maximum penalties should be considered if the advertising was deceptive, caused or threatened harm to an animal, or caused a client to be misled and suffer monetary damages. ~~One~~In that case, one of the probationary terms ~~in that case~~ should be restitution to any client damaged as a result of the violation. The more severe penalty should be considered when there are prior violations of the same type of offense.

Minimum penalties may be considered if the acts or omissions did not cause or threaten harm to an animal or cause detriment to a client.

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| <b>Section</b>         | 4883(g); <u>4836.2(c)(2), (3)</u> ; 4837(c)  |
| <b>Violation</b>       | Unprofessional conduct, that includes, but is not limited to, the following:<br>(1) Conviction of a charge of violating any federal statutes or rules or any statute or rule of this state regulating dangerous drugs or controlled substances.<br>(2)(A) The use of, or prescribing for, or administering to <del>himself or herself</del> <u>oneself</u> , any controlled substance.<br>(B)The use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages to the extent, or in any manner as to be dangerous or injurious to a person licensed or registered under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person so licensed or registered to conduct with safety the practice authorized by the license or registration.<br>(C)The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.<br>(3) A violation of any federal statute, rule, or regulation or any of the statutes, rules, or regulations of this state regulating dangerous drugs or controlled substances. |
| <b>Maximum Penalty</b> | Revocation and a \$5,000 fine  |

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| <b>Minimum Penalty</b> | Revocation and/or suspension stayed<br>Two-year probation<br>Standard terms and conditions<br>\$5,000 fine<br>Optional terms and conditions including but not limited to:<br>30-day suspension<br>Supervised practice<br>Psychological evaluation and/or treatment<br>Medical evaluation and/or treatment<br>Surrender DEA license/send proof of surrender to Board within 10 days of the effective date of the Decision.<br>No ownership, of a veterinary hospital or clinic<br>No management of a veterinary hospital/no supervision of interns or residents<br>Rehabilitation program<br>Submit to drug testing<br>Abstain from use of alcohol and drugs<br><u>Ethics training</u> |
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Maximum penalties should be considered if acts or omissions caused or threatened harm to an animal or a client, or if there are prior violations of the same type of offense.

Minimum penalties may be considered if acts or omissions did not cause harm to an animal, there are no prior violations of the same type of offense, and there is evidence of self-initiated rehabilitation.

When considering minimum penalties, the terms of probation should include a requirement that the licensee submit the appropriate medical reports (including psychological treatment and therapy), submit to random drug testing, submit to a limitation of practice, or practice under the supervision of a California licensed veterinarian as applicable on the facts of the case, and submit quarterly reports to the Board (in writing or in person as the Board directs). ~~Note: in any violation related to alcohol or drug violations the~~ The Board requires a minimum of five-years' probation for any violation related to alcohol or drug abuse.

Business and Professions Code section 4836.2(d) prohibits issuance of a VACSP to any applicant with a state or federal felony controlled substance conviction.

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| <b>Section</b>         | 4883(g)                        |
| <b>Violation</b>       | General unprofessional conduct |
| <b>Maximum Penalty</b> | Revocation and a \$5,000 fine  |

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| <b>Minimum Penalty (as appropriate)</b> | Written Public Reproval<br>Revocation and/or suspension stayed<br>Two-year probation<br>Standard terms and conditions<br>Optional terms and conditions including but not limited to:<br><del>A ten to thirty</del> 30-day suspension<br>Limitations on practice<br>Supervised practice<br>No ownership of a veterinary hospital or clinic<br>No management of a veterinary hospital/no supervision of interns or residents<br>Continuing education<br>Psychological evaluation and/or treatment<br>Medical evaluation and/or treatment<br>Rehabilitation program<br>Submit to drug testing<br>Abstain from controlled substances/alcohol<br>Community service/<br>Restitution<br>Ethics training |
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Maximum penalties should be considered if the acts or omissions caused substantial harm to an animal or a client, or if there are prior actions against violations of the licensee or registrant same type of offense.

Minimum penalties may be considered if there are no prior ~~actions~~violations, if there are mitigating circumstances such as the length of time since the offense(s) occurred, if the acts or omissions did not cause substantial harm to an animal or a client, ~~and~~or if there is evidence of a self-initiated rehabilitation.

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| <b>Section</b>         | 4883(h)   |
| <b>Violation</b>       | Failure to keep the licensee's or registrant's premises and all equipment therein in clean and sanitary condition. (Requirements for sanitary conditions are also outlined in Sections 4853.5 and 4854 (practice sanitation standards).)  |
| <b>Maximum Penalty</b> | Revocation or suspension of premises <del>registration</del> permit and a \$5,000 fine.   |
| <b>Minimum Penalty</b> | Revocation and/or suspension stayed<br>Two-year probation<br>Standard terms and conditions<br>Fine - not less than \$50 nor more than \$500 per day, not to exceed \$5,000<br>Optional terms and conditions including but not limited to:<br><del>A ten to thirty</del> 30-day suspension or suspension until compliance with minimum standards of practice is achieved.<br>Random hospital inspections |

Maximum penalties should be considered if the acts or omissions caused or threatened harm to animals or the public, if there are prior actions and/or no attempt to remedy the violations, for example, unsanitary or hazardous workplace, improper sterilization of instruments, or improper husbandry practices, or if there are prior violations of a similar nature.

Minimum penalties may be considered ~~people~~if the acts or omissions did not cause or threaten harm to animals or people, or remedial action has been taken to correct the deficiencies, ~~and there is remorse for the existing unsanitary conditions.~~

Note - A veterinary license and a premises ~~registration~~permit can be disciplined separately.

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| <b>Section</b>   | 4883(i)   |
| <b>Violation</b>   | Negligence in the practice of veterinary medicine   |
| <b>Maximum Penalty</b>   | Revocation and a \$5,000 fine   |
| <b>Minimum Penalty</b>   | Revocation and/or suspension stayed<br>Three-year probation<br>Standard terms and conditions<br>Fine - not less than \$50 nor more than \$500 per day, not to exceed \$5,000<br>Optional terms and conditions including but not limited to:<br><del>A ten to thirty</del> 30-day suspension or suspension until in-compliance with minimum standards of practice is achieved.<br>Random hospital inspections<br><a href="#">Medical records review</a><br><a href="#">Ethics training</a><br><a href="#">Continuing education</a> |
| <p>Maximum penalties should be considered if the acts or omissions caused or threatened harm to animals or the public, if there are prior actions and/or no attempt to remedy the violations.</p> <p>Minimum penalties may be considered <del>people</del> if the acts or omissions did not cause or threaten harm to animals or people, remedial action has been taken to correct the deficiencies and there is remorse for the negligent acts.</p> |   |

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| <b>Section</b>   | 4883(i)   |
| <b>Violation</b>   | Incompetence in the practice of veterinary medicine   |
| <b>Maximum Penalty</b>   | Revocation and a \$5,000 fine   |
| <b>Minimum Penalty</b>   | Revocation and/ or suspension stayed<br>Three-year probation<br>Standard terms and conditions<br>\$2,000 fine<br>Optional terms and conditions including but not limited to:<br><del>90</del> 30-day suspension<br>Supervised practice<br><a href="#">Medical records review</a><br>Hospital inspections<br>Continuing education<br>Clinical written examination<br>Community service<br>Restitution<br>Ethics training |
| <p>Maximum penalties should be considered based on the following factors: if the acts or omissions caused harm to an animal or an animal has died, there are limited or no efforts at rehabilitation, or there are no mitigating circumstances at the time of the commission of the offense(s).</p> <p>Minimum penalties may be considered if the acts or omissions did not cause substantial harm to an animal, there is evidence of rehabilitation, and there are mitigating circumstances such as no prior discipline, remorse for the harm that occurred, cooperation with the Board's investigation, etc.</p> |   |

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| <b>Section</b>         | 4883(i) <u>480(a)(2)</u>   |
| <b>Violation</b>       | Fraud and/or <del>D</del> deception in the practice of veterinary medicine |
| <b>Maximum Penalty</b> | Revocation and a \$5,000 fine  |

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| <b>Minimum Penalty</b> | Revocation and/or suspension stayed<br>Three-year probation<br>Standard terms and conditions<br>\$2,000 fine<br>Optional terms and conditions including but not limited to:<br><del>90</del> 30-day suspension<br>Hospital inspections<br>Supervised practice<br>Clinical written examination<br>Community service<br>Restitution<br>Ethics training |
|------------------------|--|

Maximum penalties should be considered based on the following factors: if the acts or omissions caused harm to an animal or an animal has died, there is limited or no evidence of rehabilitation or no mitigating circumstances at the time of the commission of the offense(s).

Minimum penalties may be considered if the acts or omissions did not cause substantial harm to an animal, there is evidence of rehabilitation and there are ~~mitigation~~mitigating circumstances such as no prior discipline, remorse for the harm that occurred, cooperation with the Board's investigation, etc.

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| <b>Section</b>         | 4883(j); <u>4836.2(c)(4)</u> ; <u>4836.5</u> <del>4839.5</del> ; <u>4842(b)</u>   |
| <b>Violation</b>       | Aiding or abetting in acts which are in violation of any of the provisions of this chapter  |
| <b>Maximum Penalty</b> | Revocation and a \$5,000 fine   |
| <b>Minimum Penalty</b> | Revocation and/or suspension stayed<br>Two-year probation<br>Standard terms and conditions<br>\$1,000 fine<br>Optional terms and conditions including but not limited to:<br>30-day suspension<br>Ethics training |

Maximum penalties should be considered if the acts or omissions caused or threatened harm to an animal or client and the acts were repeated after a prior violation of the same type of offense.

Minimum penalties may be considered if the acts or omissions did not cause or threaten harm to an animal or cause detriment to a client, there were no prior actions, and there is evidence of remorse and an acknowledgement of the violation.

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| <b>Section</b>                     | 4883(k); <u>4836.2(c)(1)</u> ; <u>4837(a)</u> ; <u>4842(c)</u>  |
| <b>Violation</b>                   | Fraud, misrepresentation, or deception in obtaining a license, <del>or</del> registration, <u>or permit</u> |
| <b>Maximum and Minimum Penalty</b> | Revocation and a \$5,000 fine   |

Note - In this instance, the gravity of the offense warrants revocation in all cases since there was no legal basis for licensure in the first place.

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|------------------------|---|
|                        | _____   |
| <b>Violation</b>       | The revocation, suspension, or other discipline by another state or territory of a license, certificate, or registration to practice veterinary medicine or as a veterinary technician in that state or territory |
| <b>Maximum Penalty</b> | Revocation  |
| <b>Minimum Penalty</b> | The penalty that would have been applicable to the violation if it had occurred in the State of California  |

|                        |   |
|------------------------|---|
| <b>Section</b>         | 4883(m)   |
| <b>Violation</b>       | Cruelty to animals or conviction on a charge of cruelty to animals, or both   |
| <b>Maximum Penalty</b> | Revocation and a \$5,000 fine.  |
| <b>Minimum Penalty</b> | Revocation and/or suspension stayed<br>Two-year probation<br>Standard terms and conditions<br>\$5,000 fine<br>Optional terms and conditions including but not limited to:<br>3060-day suspension<br>Psychological evaluation and/or treatment<br>Medical evaluation and/or treatment<br>Continuing education<br>Ethics training |

Note - While the Board believes this violation is so severe that revocation is the only appropriate penalty, it recognizes that a lesser penalty may be appropriate where there are mitigating circumstances of a significant nature.

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|------------------------|---|
| <b>Section</b>         | 4883(n); <u>141</u>   |
| <b>Violation</b>       | Disciplinary actions taken by any <u>federal, state, or territory public agency or by another country for in any state or territory of</u> any act substantially related to the practice of veterinary medicine or the practice of a veterinary technician. |
| <b>Maximum Penalty</b> | Revocation and a \$5,000 fine   |
| <b>Minimum Penalty</b> | Revocation and/or suspension stayed<br>Two-year probation<br>Standard terms and conditions<br>\$2,000 fine<br>Optional terms and conditions including but not limited to:<br>30-day suspension<br>Continuing education                                      |

Maximum penalties should be considered if the acts or omissions caused or threatened harm to an animal or the public, there is limited or no evidence of rehabilitation, and there were no mitigating circumstances at the time of the commission of the offense(s).

Minimum penalties may be considered if there is evidence of attempts at self-initiated rehabilitation taken prior to the filing of the accusation. Self-initiated rehabilitation measures include pro bono services to nonprofit organizations or public agencies that improve the care and treatment of animals or improve generally society's interactions with animals. Self-initiated rehabilitation measures also include, ~~when appropriate,~~ specific training in areas of weakness, full restitution to persons harmed by the licensee or registrant, ~~completions~~ completion of treatment or other conditions of probation ordered by the court, and full compliance with all laws since the date of the occurrence of the violation.



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|------------------------|---|
| <b>Section</b>         | 4883(o); <u>4837(e)</u>   |
| <b>Violation</b>       | Violation, or the assisting or abetting violation, of any regulations adopted by the Board pursuant to this chapter   |
| <b>Maximum Penalty</b> | Revocation and a \$5,000 fine   |
| <b>Minimum Penalty</b> | Revocation and/ or suspension stayed<br>Two-year probation<br>Standard terms and conditions<br>30-day suspension<br>\$1,000 fine<br>Optional terms and conditions including but not limited to:<br>Continuing education<br>Restitution<br>Ethics training |

Maximum penalties should be considered if the acts or omissions caused or threatened harm to the animal or the public, there was more than one offense, there is limited or no evidence of rehabilitation, and there were no mitigating circumstances at the time of the offense(s).

Minimum penalties may be considered if there is evidence of attempts at self-initiated rehabilitation. Self-initiated rehabilitation measures include pro bono services to nonprofit organizations or public agencies that improve the care and treatment of animals or improve generally society's interactions with animals. Self-initiated rehabilitation measures also include, ~~when appropriate,~~ specific training in areas of weakness, full restitution to persons harmed by the licensee or registrant, completion of treatment or other conditions of probation ordered by the court, and full compliance with all laws since the date of the occurrence of the violation.

|                        |   |
|------------------------|---|
| <b>Section</b>         | 4855  |
| <b>Title Violation</b> | Written Records   |
| <b>Maximum Penalty</b> | Revocation and a \$5,000 fine   |
| <b>Minimum Penalty</b> | Revocation and/ or suspension stayed<br>Two-year probation<br>Standard terms and conditions<br>30-day suspension<br>\$1,000 fine<br>Optional terms and conditions including but not limited to:<br><del>Supervised practice</del><br><a href="#">Medical records review</a><br>Continuing education |

Maximum penalties should be considered when there ~~are~~<sup>is</sup> a lack of records or omissions and/or alterations that constitute negligence.

Minimum penalties may be considered when there is evidence of carelessness and corrective measures have been implemented to correct the process whereby the records were created.

|                        |   |
|------------------------|---|
| <b>Section</b>         | 4856  |
| <b>Violation</b>       | Failure to permit the inspection of <del>Records</del> <u>records</u> or <del>Premises</del> <u>premises</u> by the Board |
| <b>Maximum Penalty</b> | Revocation and a \$5,000 fine   |

|   |   |
|---|---|
| <b>Minimum Penalty</b>  | Revocation and/or suspension stayed<br>Two-year probation<br>Standard terms and conditions<br>\$1,000 fine<br>Optional terms and conditions including but not limited to:<br>30-day suspension<br><a href="#">Medical records review</a><br>Ethics training |
| <p>Maximum penalties should be considered if there is a deliberate attempt to prevent access to the Board, prior discipline of the managing licensee or the premises, or no mitigating circumstances at the time of the refusal.</p> <p>Minimum penalties may be considered when there are mitigating circumstances at the time of the request for records, where there is no deliberate attempt to prevent the Board from having access to the records, or when there are no prior <del>actions</del> <u>violations of a similar nature</u>.</p> |   |

|   |  |
|---|--|
| <b>Section</b>  | 4857   |
| <b>Violation</b>  | Impermissible disclosure of information about animals and/or about clients   |
| <b>Maximum Penalty</b>  | Revocation and a \$5,000 fine  |
| <b>Minimum Penalty</b>  | Revocation and/or suspension stayed<br>Two-year probation<br>Standard terms and conditions<br>\$1,000 fine<br>Optional terms and conditions including but not limited to:<br>30-day suspension<br><u>Ethics training</u> |
| <p>Maximum penalties should be considered when <u>there is a breach of breaching confidentiality</u>, <del>puts the animals or clients in jeopardy</del>.</p> <p>Minimum penalties may be considered when the breach is inadvertent or when there is no prior action against the licensee.</p> <p>Note - The severity of violations may determine whether action taken is citation and fine or formal discipline.</p> |  |

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|------------------------|---|
| <b>Section</b>         | 4830.5  |
| <b>Violation</b>       | Duty to report staged animal fighting   |
| <b>Maximum Penalty</b> | Revocation and a \$5,000 fine   |
| <b>Minimum Penalty</b> | Revocation and/or suspension stayed<br>Two-year probation<br>Standard terms and conditions<br>\$1,000 fine<br>Optional terms and conditions including but not limited to:<br>30-day suspension<br>Continuing education<br>Ethics training |

Maximum penalties should be considered when an animal or animals have been killed or severely harmed.

Minimum penalties may be considered on a case-by-case basis.

|                        |  |
|------------------------|--|
| <b>Section</b>         | 4830.7                                 |
| <b>Violation</b>       | Duty to report animal abuse or cruelty |
| <b>Maximum Penalty</b> | Revocation and a \$5,000 fine          |
| <b>Minimum Penalty</b> | Considered on a case-by-case basis     |

|                        |   |
|------------------------|---|
| <b>Section</b>         | 4836.5; 4837  |
| <b>Violation</b>       | Disciplinary proceedings against veterinarians and registered veterinary technicians  |
| <b>Maximum Penalty</b> | Revocation and a \$5,000 fine   |
| <b>Minimum Penalty</b> | Revocation and/or suspension stayed<br>Two-year probation<br>Standard terms and conditions<br>\$1,000 fine<br>Optional terms and conditions including but not limited to:<br>30-day suspension<br>Continuing <del>Education</del> <u>education</u><br>Ethics training |

Maximum penalties should be considered if the acts or omissions caused or threatened harm to an animal or client, or the acts were repeated after a prior violation of the same type of offense.

Minimum penalties may be considered if the acts or omissions did not cause or threaten harm to an animal or client, or if there are no prior violations.

~~Note - The Practice Act is very specific on the authorized duties for RVTs that cannot be performed by unregistered assistants; therefore, these violations are more serious due to their blatant nature.~~

**Standard Orders:** The following text may be used as the introductory paragraph in the disciplinary Order:

1. **License Revoked**  
Respondent's license [registration or permit] is revoked.
2. **Revocation, Stayed, Probation**  
However, the revocation is stayed, and Respondent is placed on probation for [insert number of years] years upon the following terms and conditions.
3. **License Suspension**  
Respondent's license shall be suspended for [insert specific number of days, months]. [See specific violation for recommended time of suspension.]
4. **Application denied**  
Respondent's license [registration or permit] application is denied.
5. **Application approved, license issued**  
Respondent's license [registration or permit] application is approved, and upon completion of all prerequisites for licensure, the license [registration or permit] shall be issued to Respondent.
6. **Application granted, license issued, revoked, stayed, probation**  
Respondent's license [registration or permit] application is approved, and upon completion of all prerequisites for licensure, the license [registration or permit] shall be issued to Respondent, and immediately revoked. However, the revocation is stayed, and Respondent shall be placed on probation for [insert number of years] years upon the following conditions.
7. **Application denied, probationary registration [or VACSP] issued [RVT or VACSP holders only]**  
Respondent's registration [or VACSP] application is denied; however, the denial is stayed, and a probationary registration [or permit] shall be issued to Respondent for a term of [insert number of years] years [for RVT only, no more than 3 years per BPC section 4845] on the following conditions. Upon completion of all terms and conditions of probation, and upon completion of all prerequisites for licensure, Respondent may be issued a permanent registration [VACSP].
8. **Application for temporary veterinarian license granted, license issued, revoked, stayed, probation (veterinarian only)**  
Respondent's application for a temporary veterinarian license is approved, and upon completion of all statutory and regulatory requirements for licensure, and all conditions precedent to licensure, a temporary veterinarian license shall be issued to Respondent. Failure to successfully complete all statutory and regulatory requirements within two (2) years from the effective date shall void this decision and it will have no effect. Upon issuance of a temporary veterinarian license, said license will be immediately revoked. The revocation will be stayed, and Respondent placed on [insert number of years] years' probation (Probationary Term) on the following terms conditions. Any and all additional licenses or permits subsequently issued to Respondent during the Probationary Term shall be subject to any and all statutory and regulatory prerequisites and the specific terms and conditions specified below. The Probationary Term is cumulative and does not restart with the issuance of any additional license or permit.

**Standard Terms and Conditions of Probation (1-4115)**

The Board recommends one- to five-year probation, as appropriate, in cases where probation is part of a disciplinary order.

~~All standard terms and conditions are included in every order of probation applied to the licensee or registrant subject to discipline (Respondent).~~

**1. | Obey all Laws**

Respondent shall obey all federal and state laws and regulations substantially related to the practice of veterinary medicine. ~~Further, within~~ Within thirty (30) days of any arrest or, Respondent shall notify the Board. Within thirty (30) days of any conviction, Respondent shall report to the Board and provide proof of compliance with the terms and conditions of the court order including, but not limited to, probation and restitution requirements. [Obey all laws shall not be tolled.](#)

**2. |**

Respondent shall report quarterly to the Board or its designee, under penalty of perjury, on forms provided by the Board, stating whether there has been compliance with all terms and conditions of probation. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's license, registration or permit. ~~In addition, the Board at its discretion may request additional in-person reports of the probationary terms and conditions.~~ If the final written quarterly report is not made as directed, the period of probation shall be extended until such time as the final report is received by the Board. Respondent shall make available all patient records, hospital records, books, logs, and other documents. Any period(s) of delinquency in submission of reports as directed may be added to the Board, upon request, total period of probation.

**3. | Cooperation with Probation Surveillance — Interview with the Board**

Within 30 days of the effective date of the Decision, Respondent shall appear in person for an interview with the Board or its designee to review the terms and conditions of probation. Thereafter, Respondent shall, upon reasonable request, report or appear in person as directed. [Interview with the Board shall not be tolled.](#)

~~Respondent shall comply with the Board's probation surveillance program. All costs for probation monitoring and/or mandatory premises inspections shall be borne by Respondent.~~

~~Probation monitoring costs are set at a rate of \$100 per month for the duration of the probation. Respondent shall notify the Board of any change of name or address or address of record within thirty (30) days of the change. Respondent shall notify the Board immediately in writing if Respondent leaves California to reside or practice in another state. Respondent shall notify the Board immediately upon return to California.~~

**4. Cooperation with Board Staff**

Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of Respondent's compliance with the terms and conditions of his or her Respondent's probation. Respondent may receive the assistance of private counsel, but Respondent shall communicate directly with the Board or its designee, and written communications from the Board will only be sent to the Respondent. Respondent shall make available all patient records, hospital records, books, logs, and other documents relating to the practice of veterinary medicine to the Board, upon request.

Respondent shall claim all certified mail issued by the Board, respond in a timely manner to all notices and requests for information, and submit Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its designee. Respondent is encouraged to contact the Board's probation monitoring program representative at any time he/she Respondent has a question or concern regarding his or her the terms and conditions of Respondent's probation.

**5. Probation Monitoring Costs**

Probation monitoring costs are set at a rate of \$100 per month for the duration of the probation. These costs shall be payable to the Board on a schedule as directed by the Board or its designee.

**6. Changes of Employment or Address**

Respondent shall notify the Board, and appointed probation monitor in writing, of any and all changes of employment, location, and address within fourteen (14) calendar days of such change. This includes, but is not limited to, termination or resignation from employment, change in employment status, and change in supervisors, administrators or directors. Respondent shall also notify his or her Respondent's probation monitor AND the Board IN WRITING of any changes of residence or mailing address within fourteen (14) calendar days. P.O. Boxes are accepted for mailing purposes; however, Respondent must also provide his or her Respondent's physical residence address as well.

**47. No Preceptorships or Supervision of Students, Interns, or Residents**

Respondent shall not supervise a registered intern and shall not perform any of the duties of a preceptor students, interns, or residents.

**58 Notice to Employers**

During the period of probation, Respondent shall notify all present and prospective employers of the decision in this case Decision and the terms, conditions, and restrictions imposed on Respondent by the decision in this case. Decision, as follows:

Within thirty (30) days of the effective date of this decision Decision and within fifteen (15) days of Respondent undertaking any new employment, Respondent shall cause his or her Respondent's employers supervisor and/or managing licensee (licensee manager) to report to the Board in writing, acknowledging that the employer listed individual(s) has/have read the Accusation and decision in this case and understands Respondent's Decision, including the terms and conditions, of probation, and restrictions imposed. It shall be Respondent's responsibility to ensure that his or her Respondent's supervisor and/or licensee manager submit timely acknowledgment(s) to the Board.

If Respondent provides veterinary services as a relief veterinarians, Respondent shall notify employers immediately each individual or entity with whom Respondent is employed or contracted and require the supervisor and/or licensee manager to submit to the Board timely acknowledgement of receipt of the notice.

**69. Notice to Employees**

~~Respondent shall, upon or before the effective date of this decision. Throughout the probationary period, and in a manner that is visible to all licensed, registered, or permitted veterinary employees at the veterinary premises, Respondent shall post or circulate a notice, provided or approved by the Board, which that actually recites the offenses/violations for which Respondent has been disciplined and the terms and conditions of probation., to all registered veterinary employees, and to any preceptor, interns or extern involved in his or her veterinary practice. Within fifteen (15) days of the effective date of this decision, Respondent shall cause his/her employees to report to the Board in writing, acknowledging the employees have read the Accusation and decision in the case and understand Respondent's terms and conditions of probation.~~

**7. Owners and Officers (Corporations or Partnerships): Knowledge of the Law**

~~Respondent shall provide, within thirty (30) days after the effective date of the decision, signed and dated statements from the owners, officers, or any owner or holder of ten percent (10%) or more of the interest in Respondent or Respondent's stock, stating said individuals have read and are familiar with federal and state laws and regulations governing the practice of veterinary medicine.~~

**8.10. Tolling of Probation**

~~If Respondent resides out of state upon shall notify the Board or after effective date its designee in writing within fifteen (15) calendar days of any periods of the decision, he or she must comply with the following conditions only: quarterly reports and interviews, tolling of probation, continuing education and cost recovery non-practice lasting more than thirty (30) calendar days and shall notify the Board or its designee within fifteen (15) calendar days of Respondent's return to practice. Any period of non-practice will result in the Respondent's probation being tolled. If Respondent returns to California he or she must comply or be subject to all probationary conditions for the period of probation.~~

~~Non-practice is defined as any period of time exceeding thirty (30) calendar days in which Respondent is not engaging in the practice of veterinary medicine in California. **While tolled for residing/practicing outside of California, Respondent must comply with the following terms and conditions of probation: obey all laws, quarterly reports, interview with the Board, tolling of probation, maintain a current and active California license or registration, and cost recovery.**~~

~~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.~~

The following terms and conditions, if required, shall not be tolled:

- [Obey All Laws](#)
- [Interview with the Board](#)
- [Tolling of Probation](#)
- [Maintain a Current and Active License](#)
- [Cost Recovery](#)
- [Submit to Drug Testing](#)
- [Abstain From Controlled Substances](#)
- [Abstain From Alcohol Use](#)

~~Non-practice is also defined as any period that Respondent, during probation, shall engage in the practice of veterinary medicine in California for a minimum of 24 hours per week for six (6) consecutive months or as determined by the Board. Should Respondent fails to engage in the practice of veterinary medicine in California as set forth above, the time outside of the practice shall for a minimum of 24 hours per week for six (6) consecutive months the duration of probation (except reasonable time away from work for vacations, illnesses, etc.) or as determined by the Board. While tolled for not meeting the hourly requirement, Respondent shall comply with all terms and conditions of this Decision.~~

Any period of tolling will not apply to the reduction of the probationary terms term.

**11. | Maintain a ~~Valid~~ Current and Active License**

~~At all times while on probation, Respondent shall maintain a current and active license with the Board, including any period during which suspension or probation is tolled. If Respondent's license, by operation of law or otherwise, expires, upon renewal, Respondent's license shall be subject to any and all terms of this probation not previously satisfied.~~ Maintain a current and active license shall not be tolled.

**9-12. | Violation of Probation**

If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, or if the Attorney General's office has been requested to prepare any disciplinary action against Respondent's license, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. No petition for modification or termination of probation shall be considered while there is an accusation or petition to revoke probation pending against Respondent.

**13. | License Surrender While on Probation/Suspension**

Following the effective date of this Decision, should Respondent cease to practice veterinary medicine due to retirement or health issues, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender his or her Respondent's license to practice veterinary medicine to the Board for surrender. The Board or its designee has the discretion to grant the request for surrender or to take any other action it deems appropriate and reasonable. Upon formal acceptance of the license surrender, Respondent will no longer be subject to the terms and conditions of probation. The surrender constitutes a record of discipline and shall become a part of the Respondent's license history with the Board.

Respondent must relinquish his or her Respondent's license to the Board within ten (10) days of receiving notification from the Board that the surrender has been accepted.

**10-14. | Completion of Probation**

All costs for probation monitoring and/or mandatory premises inspections shall be borne by Respondent. Failure to pay all costs due shall result in an extension of probation until the matter is resolved and costs paid or a petition to revoke probation is filed. Upon successful completion of probation and all payment of fees due, Respondent's license will be fully restored.

**14-15. | Cost Recovery and Payment of Fines**

Pursuant to Section 125.3 of the California Business and Professions Code, within thirty (30) days of the effective date of this ~~decision~~ Decision, Respondent shall pay to the Board its enforcement costs including investigation, hearing, and ~~probationary monitoring~~ prosecution, in the amount of \_\_\_\_\_ [insert dollar amount of costs], which may be paid over time in accordance with a Board-approved payment plan, within six (6) months before the end of the probation term. Cost recovery ~~will~~ shall not be tolled. ~~or the Respondent shall make these payments as follows: \_\_\_\_\_.~~ FAILURE TO PAY THIS AMOUNT TO THE BOARD BY THE STATED DEADLINE SHALL RESULT IN AUTOMATIC REVOCATION OF THE LICENSE FORTHWITH, WITHOUT FURTHER NOTICE OR AN OPPORTUNITY TO BE HEARD.



**Optional Terms and Conditions of Probation (1-21~~23~~24)**

Note - In addition to the standard terms and conditions of probation, optional terms and conditions of probation are assigned based on violations and fact patterns specific to individual cases.

**1. | Suspension – Individual License**

As part of probation, Respondent is suspended from the practice of veterinary medicine for \_\_\_\_\_, beginning the effective date of this ~~decision~~Decision. During ~~said~~the suspension, Respondent shall not enter any veterinary hospital which is registered by the Board unless seeking treatment for one's own animal. Additionally, Respondent shall not manage, administer, or be a consultant to any veterinary hospital or veterinarian during the period of actual suspension and shall not engage in any veterinary-related service or activity.

**2. | Suspension – Premises**

As part of probation, Premises License Number \_\_\_\_\_, issued to Respondent \_\_\_\_\_, is suspended for \_\_\_\_\_, beginning the effective date of this ~~decision~~Decision. During ~~said~~the period of suspension, said premises may not be used by any party for any act constituting the practice of veterinary medicine, surgery, dentistry, and/or the various branches thereof.

**3. | Posted Notice of Suspension**

If suspension is ordered, Respondent shall post a notice of the Board's Order of Suspension, in a place clearly visible to the public. The notice, provided by the Board, shall remain posted during the entire period of actual suspension.

**4. | Limitation on Practice/~~Inspections~~**

(A) During probation, Respondent is prohibited from practicing \_\_\_\_\_ (*Type of practice*) \_\_\_\_\_.

(B) ~~During probation,~~ Respondent is prohibited from the following:

1. ~~Practicing veterinary medicine from a location or mobile veterinary practice that which~~ does not have a current premises registration permit issued by the Board; ~~and~~

**5. | Inspections**

~~2-~~If Respondent is the owner or managing licensee of a veterinary ~~practice~~premises, the following probationary conditions apply:

(~~a~~A) The location or mobile veterinary practice ~~must not only have~~shall hold a current premises registration permit issued by the Board, ~~but must also be subject to~~ and Respondent shall make the practice or location available for inspections by a Board representative to determine whether the location or veterinary practice meets minimum standards for a veterinary ~~practice~~premises. The inspections will be conducted on an announced or unannounced basis and shall be held during normal business hours. The Board reserves the right to conduct these inspections on at least a quarterly basis during probation. Respondent shall pay the Board for the cost of each inspection, which is \$500. ~~If the veterinary practice has two consecutive non-compliant inspections, Respondent shall surrender the Premises Permit within ninety (90) days from the date of the second consecutive non-compliant inspection.~~

(~~b~~B) As a condition precedent to any ~~P~~premises registration permit issued to Respondent as owner or managing licensee, the location or mobile veterinary practice for which application is made shall be inspected by a Board representative to determine whether the location or mobile veterinary practice meets minimum standards for a veterinary ~~practice~~premises. Respondent shall submit to the Board, along with any premises registration permit-application, a \$500 inspection fee.

**56. Supervised Practice**

~~Respondent shall not practice only under the supervision of veterinary medicine until a veterinarians supervisor is approved by the Board. The supervision directed may be continuous supervision, substantial supervision, partial supervision, or supervision by daily review, as deemed necessary by the Board its designee. If the supervisor terminates or is otherwise no longer available, Respondent shall not practice until a new supervisor has been approved by the Board or its designee. All Any potential costs associated involved with practice supervision shall be borne by Respondent.~~

~~Respondent shall submit to the Board or its designee, for its prior approval, the name and qualifications of one or more proposed supervisors of Respondent's choice. Each supervisor shall have been licensed in California and have held a valid California license for at least least five (5) years and not have ever been subject to any disciplinary action by the Board. The supervisor shall be independent, with no prior business or personal relationship with Respondent and the supervisor shall not be in a familiar relationship with or be an employee, partner, or associate of Respondent.~~

~~Within~~ Upon approval by the Board or its designee and within thirty (30) days of the effective date of the ~~decision~~ Decision, Respondent shall have ~~his or her~~ Respondent's supervisor submit a report to the Board in writing stating the supervisor has read the ~~decision~~ Decision in case number \_\_\_\_\_ [insert case number]. Should Respondent change employment, Respondent shall have ~~his/ or her~~ the new supervisor, within fifteen (15) days after employment commences, submit a report to the Board in writing stating the supervisor has read the ~~decision~~ Decision in case number \_\_\_\_\_ [insert case number].

~~Respondent's supervisor shall file monthly quarterly 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 the supervisor's conclusions and opinions concerning the issues described above veterinary services performed by Respondent and the basis for his or her those conclusions and 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.~~

~~Respondent's supervisor shall submit the reports directly to the Board's Probation Monitor within seven (7) calendar days after the end of the preceding quarter. The quarterly reporting periods and due dates are as follows:~~

| <b>Reporting Time Period</b>          | <b>Due No Later Than</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 supervisor shall additionally notify the Board of the dates and location where Respondent rendered services during each month covered by the supervisor's report.~~

~~The supervisor shall have full and random access to all animal patient records of Respondent. The supervisor may evaluate all aspects of Respondent's practice regardless of Respondent's areas of deficiencies.~~

~~The supervisor shall be physically present and quickly and easily available at the location. The supervision shall require an occasional random observation of the work performed by Respondent. The level of supervised practice shall be, as required by the Board or its designee:~~

Levels of Supervised Practice:

Full-Time – 100%

Substantial – 75%

Moderate – 50%

Partial – 25%

~~The following terms of supervision is optional language that apply applies to licensed veterinarians only and should be included in the Disciplinary Order on a case-by-case basis.:~~

~~The supervision shall be, as required by the Board or its designee, either direct or indirect.~~

~~Direct supervision is defined as the physical presence of the supervisor 100% of the time Respondent provides treatment or consultation to the animal patient.~~

~~Indirect supervision is defined as review and evaluation of patient records for those patients for whom Respondent provides treatment or consultation during the period of supervised practice. Levels of indirect supervision shall be established as follows:~~

~~Substantial — 75%~~

~~Moderate — 50%~~

~~Partial — 25%~~

The level of supervised practice may be modified as determined necessary by the Board or its designee. Respondent will not be eligible for a decrease in supervised practice until such time as: 1) Respondent has successfully completed at least 25% of the probationary term; 2) Respondent is deemed to be in full compliance with all terms and conditions of the probationary order; ~~and~~ 3) Respondent has consistently received favorable ~~monthly~~ quarterly supervised practice reports; and, 4) the Board has received a written recommendation by the supervisor.

### **7. Medical Records Review**

Within 30 calendar days of the effective date of this Decision, Respondent shall provide to the Board or its designee the name and qualifications of one or more proposed reviewer of the medical records of animal patients created and maintained by Respondent. [If Respondent's terms of probation include Supervised Practice, that supervisor also may serve as the medical records reviewer.](#) Each reviewer shall be a licensed veterinarian in California, have held a valid California license for at least five (5) years, and have never been subject to any disciplinary action by the Board.

The Board or its designee shall provide the approved reviewer with copies of this Decision. Within fifteen (15) calendar days of the reviewer's receipt of this Decision, the reviewer shall sign an affirmation that they have reviewed the terms and conditions of this Decision and fully understands the role of the reviewer.

If Respondent fails to obtain the Board's or its designee's approval of a reviewer within sixty (60) calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease practicing veterinary medicine within three (3) calendar days after being notified. Respondent shall cease practice until a reviewer is approved to provide medical records review services.

The reviewer shall review a minimum of ten percent (10%) of Respondent's animal patient medical records or fifteen (15) records (whichever is greater), a minimum of twelve (12) times per year. The reviewer shall determine the method of random selection of medical records to review and shall access the medical records directly from where the medical records are being kept. Review of Respondent's medical records shall not be delegated to Respondent or Respondent's staff. The reviewer's random selection of medical records shall include medical records that correlate to the animal patient care issues or other issues identified in the disciplinary action that resulted in this Decision. Respondent is required to make all animal patient medical records available for immediate inspection and copying by the reviewer at all times during business hours. The reviewer shall immediately notify the Board's Probation Monitor if Respondent fails or refuses to make the medical records available for inspection and/or copying.

Any potential costs associated with conducting the medical records review shall be borne by Respondent.

Respondent's supervisor shall, on a basis frequency to be determined by the Board, review and evaluate all or a designated portion of patient records of those patients for whom Respondent provides treatment or consultation during the period of supervised practice. The supervisor reviewer shall review/evaluate these medical records to assess: 1) The medical necessity and appropriateness of Respondent's treatment; 2) Respondent's compliance with ~~community~~ minimum standards of practice in the diagnosis and treatment of animal patients; 3) Respondent's maintenance of necessary and appropriate treatment; 4) Respondent's maintenance of necessary and appropriate records and chart entries; and, 5) Respondent's compliance with existing statutes and regulations governing the practice of veterinary medicine.

The reviewer shall submit quarterly reports to the Board on a form designated by the Board. The reports shall be submitted by the reviewer directly to the Board's Probation Monitor within seven (7) calendar days after the end of the preceding quarter. The quarterly reporting periods and due dates are as follows:

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

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 conclusions and 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. If the supervisor terminates or is otherwise no longer available, Respondent shall not practice until a new supervisor has been approved by the Board.

~~If Respondent is an employee rather than a veterinary hospital owner, the supervisor shall additionally notify the Board of the dates and locations of all employment of Respondent, during each month covered by his or her report.~~

**678. | No New Ownership**

Respondent shall not have any new legal or beneficial interest in any veterinary business, firm, partnership, or corporation currently or hereinafter licensed or registered by the Board and shall not own any veterinary hospital. for the duration of his or her Respondent's probation.

**789. | No Management or Administration**

Respondent shall not manage or function as the responsible licensee manager for or be the administrator of any veterinary hospital for the duration of ~~his or her~~ Respondent's probation. For purposes of this term, "responsible licensee manager" means the individual set forth in Business and Professions Code section 4853, subdivision (c).

**8910. | Continuing Education**

Within sixty (60) days of the effective date of this ~~decision~~ Decision, and on an annual basis thereafter, Respondent shall submit to the Board for its prior approval, an educational program or course related to Respondent's specific area(s) of weakness which shall not be less than insert hours per year], for each year of probation. Upon successful completion of the course, Respondent shall provide proof to the Board. This program shall be in addition to the Continuing Education required of all licensees for license renewal. All costs shall be borne by Respondent.

**84011. | Clinical Training**

Within sixty (60) days of the effective date of this ~~decision~~ Decision, Respondent shall submit an outline of an intensive clinical training program to the Board for its prior approval. The exact number of hours and the specific content of the program shall be determined by the Board or its designee. Respondent shall successfully complete the training program and may be required to pass an examination related to the program's contents administered by the Board or its designee. All costs shall be borne by Respondent.

**94412. Clinical or Written Examination**

Within sixty (60) days of the effective date of this ~~decision~~Decision, ~~or upon completion of the education course required above,~~ or upon completion of the clinical training programs, Respondent shall take and pass a species-specific practice (clinical/written) examination to be administered by the Board or its designee. If Respondent fails this examination, Respondent must wait three (3) months between reexaminations, except that after three (3) failures, Respondent must wait one (1) year to take each necessary reexamination thereafter. All costs shall be borne by Respondent. If Respondent fails to take and pass this examination by the end of the first year of probation, Respondent shall cease the practice of veterinary medicine until this examination has been successfully passed and Respondent has been so notified by the Board in writing.

**404213. Psychological Evaluation**

Within thirty (30) days of the effective date of this ~~Decision~~Decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more psychotherapists of Respondent's choice. Upon approval, and within sixty (60) days of the effective date of this decision~~Decision~~, and on a periodic basis as may be required by the Board or its designee, Respondent shall undergo a psychiatric evaluation by a ~~Board-appointed~~approved psychotherapist (psychiatrist or psychologist), to determine Respondent's ability to practice veterinary medicine safely, ~~while~~ The psychotherapist shall furnish a psychological report to the Board or its designee. All costs shall be borne by Respondent.

If the psychotherapist (psychiatrist or psychologist) recommends and the Board or its designee directs psychotherapeutic treatment, Respondent shall, within thirty (30) days of written notice of the need for psychotherapy, submit the name and qualification of one of more psychotherapists of Respondent's choice to the Board for its prior approval. Upon approval of the treating psychotherapist by the Board, Respondent shall undergo and continue psychotherapy until further notice from the Board. Respondent shall have the treating psychotherapist submit quarterly written reports to the Board. All costs shall be borne by Respondent.

**ALTERNATIVE: PSYCHIATRIC EVALUATION AS A CONDITION PRECEDENT TO PRACTICE.**

As of the effective date of the ~~decision~~Decision, Respondent shall not engage in the practice of veterinary medicine until notified in writing by the Board of this determination that Respondent is mentally fit to practice safely. If recommended by the psychotherapist (psychiatrist or psychologist) and approved by the Board or its designee, Respondent shall be barred from practicing veterinary medicine until the treating psychotherapist recommends, in writing, and stating the basis therefore, that Respondent can safely practice veterinary medicine, and the Board approves ~~said~~the recommendation. All costs shall be borne by Respondent.

**414314. Psychotherapy**

Within thirty (30) days of the effective date of this ~~decision~~Decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more psychotherapists of Respondent's choice. Upon approval, Respondent shall undergo and continue treatment until the Board deems that no further psychotherapy is necessary. Respondent shall have the treating psychotherapist submit quarterly status reports to the Board. The Board may require Respondent to undergo psychiatric evaluations by a Board-appointed psychiatrist. All costs shall be borne by Respondent.

If the treating psychotherapist finds that Respondent cannot practice safely or independently, the psychotherapist shall notify the Board within three (3) working days. Upon notification by the Board, Respondent shall immediately cease practice and shall not resume practice until notified by the Board or its designee that Respondent may do so. Respondent shall not thereafter engage in any practice for which a license issued by the Board is required until the Board or its designee has notified Respondent that he/she/they may resume practice. Respondent shall document compliance with this condition in the manner required by the Board.

#### **121415. Medical Evaluation**

Within thirty (30) days of the effective date of this ~~decision~~ Decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more physicians of Respondent's choice. Upon approval and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo a medical evaluation by a Board ~~appointed~~ approved physician, to determine Respondent's ability to practice veterinary medicine safely, ~~who~~ The physician shall furnish a medical report to the Board or its designee. If Respondent is required by the Board or its designee to undergo medical treatment, Respondent shall, within thirty (30) days of written notice from the Board, submit the name and qualifications of a physician of Respondent's choice to the Board for its prior approval. Upon approval of the treating physician by the Board, Respondent shall undergo and continue medical treatment until further notice from the Board. Respondent shall have the treating physician submit quarterly written reports to the Board. All costs shall be borne by Respondent.

If at any time an approved evaluating physician or Respondent's approved treating physician determines that Respondent is unable to practice safely or independently as a veterinarian, the evaluating or treating physician shall notify the Board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the Board or its designee of this determination, Respondent shall cease all practice and shall not resume practice until notified by the Board that practice may be resumed.

#### ALTERNATIVE: MEDICAL EVALUATION AS A CONDITION PRECEDENT TO PRACTICE.

As of the effective date of this ~~decision~~ Decision, Respondent shall not engage in the practice of veterinary medicine until notified in writing by the Board of its determination that Respondent is medically fit to practice safely. If recommended by the physician and approved by the Board or its designee, Respondent shall be barred from practicing veterinary medicine until the treating physician recommends, in writing and stating the basis therefore, that Respondent can safely practice veterinary medicine, and the Board approves said recommendation.

#### **131516. Rehabilitation Program –Alcohol or Drug**

Within thirty (30) days of the effective date of this ~~decision~~ Decision, Respondent shall submit in writing a(n) alcohol/drug rehabilitation program in which Respondent shall participate (for the duration of probation/for one/for two years) to the Board for its prior approval. ~~In the quarterly written reports to the Board,~~ Respondent shall provide documentary evidence in the quarterly written reports to the Board of continuing satisfactory participation in this program. All costs shall be borne by Respondent.

Components of the treatment contract shall be relevant to the violation and to the Respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random biological fluid testing, abstention from drugs and alcohol, use of worksite monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluation, and other appropriate rehabilitation or monitoring programs. All costs of participating in the program(s) shall be borne by the Respondent.

**4617. Continuing Prevention and Support Groups**

Within thirty (30) days of the effective date of this Decision, Respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) that has been approved by the Board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the Board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

**144718. Submit to Drug Testing**

Respondent shall immediately submit to drug testing, at Respondent's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and to Respondent's current employer.

Respondent shall make daily contact as directed by the Board or its designee to determine if ~~he or she~~ Respondent must submit to drug testing. Respondent shall submit ~~his or her~~ the drug test on the same day that ~~he or she~~ Respondent is notified that a test is required.

Any confirmed positive test for alcohol or any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall result in a cease practice order resulting in a period of nonpractice/suspension from work by Respondent and may be a cause for revocation of probation. Respondent may not resume the practice of veterinary medicine in any form until notified by the Board in writing. [Submit to drug testing shall not be tolled.](#)

**154819. Abstain from Controlled Substances**

Respondent shall ~~completely~~ abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act (Health and Safety Code section 11000 et seq.), and dangerous drugs as defined in ~~Section 4211 of the~~ Business and Professions Code Section 4022, except for medication when lawfully prescribed to Respondent by a licensed practitioner for a bona fide illness. Upon request of the Board or its designee, Respondent shall submit to random provide documentation from the licensed practitioner that the prescription for the drug testing during the period of probation was legitimately issued and is a necessary part of Respondent's treatment. [Abstain from controlled substances shall not be tolled.](#)

**161920. ~~Abstention~~ [Abstain](#) from Alcohol Use**

Respondent shall abstain ~~completely~~ from the use of alcoholic beverages products or beverages containing alcohol. [Abstain from alcohol use shall not be tolled.](#)

**172021. Community Service**

Within sixty (60) days of the effective date of this ~~decision~~ Decision, Respondent shall submit a community service program to the Board for its prior approval. In this program, Respondent shall provide free services on a regular basis to a community or charitable facility or agency for at least \_\_\_\_\_ [insert number of hours] per \_\_\_\_\_ [insert increment of time] for the first \_\_\_\_\_ [insert increment of time] of probation. All services shall be subject to prior Board approval.

**182122. Fine**

Respondent shall pay to the Board a fine in the amount of \_\_\_\_\_ [insert dollar amount] (not to exceed ~~five thousand dollars~~ \$5,000) pursuant to Business and Professions Code sections 4875 and 4883. Respondent shall make ~~said~~ the payments as follows: \_\_\_\_\_.

~~Pursuant to Business and Professions Code Section 125.3, enforcement costs (investigative, legal, and expert review), up to the time of the hearing, can be recovered.~~

**192223. Restitution**

Respondent shall make restitution to any injured party in the amount of \_\_\_\_\_[insert dollar amount]. Proof of compliance with this term shall be submitted to the Board within sixty (60) days of the effective date of this ~~decision~~ Decision.

~~Note - Name and address of injured party may be inserted in the body of this term.~~

**202324. Ethics Training**

Respondent shall submit to the Board for its prior approval, an ethics training course for a minimum of \_\_\_\_\_[insert number of hours] during the probationary period. ~~Upon~~ Respondent shall provide proof of successful completion of the course, ~~Respondent shall provide proof~~ to the Board. All costs shall be borne by Respondent.

**Definitions**

Negligence - A departure from the standard of care or practice. It can be an act of omission or commission. Harm or injury is not a necessary component of administrative negligence because we do not seek monetary damages (redress).

Incompetence - A lack of knowledge or ability in discharging professional obligations.

Fraud - An intentional act or omission to deceive or mislead another person by misrepresentation, deceit, or concealment of a material fact.

Deception - Any act or omission that deceives or misleads another person.

Both fraud and deception can exist despite truthful statements if the statements made, whether written or oral, have a tendency to mislead or do in fact mislead.



## **OVERVIEW GUIDE FOR DISCIPLINARY DECISIONS**

~~Most of the background information provided below is contained in the Department of Consumer Affairs Reference Manual for board members and gives an overview of part of a board's disciplinary process. Certain aspects of this overview were changed by the passage of SB 523 (Kopp, Chapter 938, Statutes of 1995). The changes were in regard to ex parte communications.~~

### **Accusation/Statement of Issues**

~~The principal responsibility of a licensing board is to protect the public. This is accomplished by determining whether a license should be issued and whether a disciplinary action should be taken against a license. The Administrative Procedure Act prescribes the process necessary to deny, suspend, or revoke a license. An action to suspend or revoke a license is initiated by the filing of an Accusation. An action to deny a license is initiated by a Statement of Issues.~~

~~In disciplinary matters, a Deputy Attorney General (DAG) acts as the Board's prosecutor and coordinates all necessary legal proceedings. If a case is referred to the Office of the Attorney General (OAG) and accepted for prosecution, the DAG assigned the matter will prepare a Statement of Issues or an Accusation. The person against whom the action is filed is called the Respondent.~~

~~Once drafted, the Statement of Issues or Accusation is forwarded to the Executive Officer (EO) for approval. Except where the preparation of administrative pleadings is voluminous and routine, the EO will normally review an Accusation or Statement of Issues for accuracy. Board staff will then assign a case number and the EO will sign it before returning it to the OAG for service on the Respondent.~~

~~The document is then served on the Respondent. The Respondent may contest the charges by filing a Notice of Defense. The DAG will then schedule a hearing before an Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH).~~

### **Administrative Hearing Process**

~~An administrative hearing is similar to a trial in a civil or criminal court. Both parties have the opportunity to introduce evidence (oral and documentary) and the Respondent has a right to confront his or her accusers. Although a board may sit with the ALJ and hear the case, most cases are heard by the ALJ alone because it is a complex procedure and may require anywhere from several days to several weeks of time.~~

~~In order to take discipline against a license issued by the Board, either a veterinarian or registered veterinary technician, it must be demonstrated by "clear and convincing evidence" that a violation of law or regulation has occurred. The clear and convincing standard is more than the "preponderance of the evidence" standard required for civil trials but less than the "beyond a reasonable doubt" standard for criminal trials.~~

~~To sustain a citation against a licensee, the allegations need only be proven to the "preponderance of the evidence" standard.~~

## **Proposed Decision**

After hearing all the witnesses and arguments and considering all of the evidence presented, the ALJ renders a Proposed Decision that contains: 1) findings of fact, 2) a determination of issues, and 3) a proposed penalty (assuming a violation is found). The Proposed Decision is then submitted to the Board for consideration and a final decision. The Proposed Decision must be acted upon by the Board within 100 days of receipt, or it becomes final by operation of law as proposed by the ALJ.

In making a decision whether to adopt the Proposed Decision as its own decision, the Board may only consider the Proposed Decision itself. The Board may not consider evidence about the case not contained in the Decision. The Board may consider advice of legal counsel regarding their options, the legal sufficiency of the Proposed Decision, and the law applicable to the case at hand. If a Board member is personally acquainted with the licensee to a degree that it affects their decision-making ability, or the Board member has received evidence about the case not contained in the Proposed Decision, the Board member should recuse him or herself from any discussion about the case and the vote on the matter.

The Board may vote on the Proposed Decision by mail ballot or at a meeting in a closed session. Although a Proposed Decision carries great weight based on the fact that the ALJ was a witness to the evidence presented at the hearing, the actual testimony of the witnesses and the demeanor of those witnesses, the Board is the final decision-maker. The Board should consider the ALJ's narrative explanation in the Decision and how the Disciplinary Guidelines were applied. If the Decision is outside the Disciplinary Guidelines, the ALJ must explain to the satisfaction of the Board, the factors that were proved that caused the ALJ to deviate from the standards.

Adopting any decision is a serious responsibility of a Board member. When considering a Proposed Decision, the Board's legal counsel is present to respond to questions about the legal parameters of the case and the Board's authority. Board members must take time to fully discuss each case and to seek clarification from legal counsel for any question they may have prior to making a final decision on the case.

When considering a Proposed Decision, the Board has three basic options:

1. adopt the Decision as written, including the proposed penalty;
2. adopt the Decision and reduce the penalty; or
3. not adopt the Proposed Decision.

## **Non-Adopt – Rejecting a Decision**

Board may choose not to adopt a Proposed Decision of an ALJ for many reasons that might be grouped generally under the following categories:

1. The Board finds the penalty or terms of probation inappropriate to the violation(s).
2. The Board disagrees with the ALJ's determination of the issue(s) in the case.

When a Proposed Decision is not adopted, the Board is required to obtain a copy of the transcript of the hearing and documentary evidence unless this requirement is waived by all parties. Each Board member must read the entire transcript and consider only that evidence presented at the hearing. The DAG and the Respondent are entitled to submit written arguments, or oral argument if the Board so orders, on the case to the Board. The Board must render its own decision after reading the transcript and arguments within 100 days from the receipt of the transcript. After the decision has been rendered, all parties will be served with the Decision After Non-Adoption.

The Board can elect to return the non-adopted decision to the OAH if it feels that additional evidence is required before the Board can render its decision. In this instance, the case is returned to the OAH and a new hearing date is scheduled. After the new hearing is complete, the ALJ, the same one as before or a new ALJ if the prior one is unavailable, will issue a new Proposed Decision and the Board will consider the Proposed Decision

anew.

### **Petition for Reconsideration**

A Respondent has a right to and may petition the Board before the effective date of the decision for reconsideration of the Board's decision. -

If a Board does vote to reconsider its decision it is equivalent to not adopting a Proposed Decision and the steps listed above apply. If the 30-day time period lapses or the Board does not act on the petition, the request for reconsideration is deemed to be denied by operation of law, and the Board no longer has jurisdiction over the matter.

### **Appeal Process – Writ of Administrative Mandamus**

A Respondent has the right to request reconsideration and if denied, file a Writ to appeal a disciplinary action imposed by a Board.

A decision rendered by a Superior Court can be further appealed to the Court of Appeals and then to the Supreme Court by either the Board or the Respondent.

### **Stipulated Agreement**

Once an Accusation has been filed, rather than proceeding to a formal hearing and prior to requesting that the Board consider settlement terms and conditions, the Respondent shall provide mitigating factors and evidence of rehabilitation. Mitigating factors include factors beyond the control of the licensee that existed for a brief period of time but no longer exists that may mitigate the need for certain types of discipline. Evidence of rehabilitation would show that Respondent has taken serious steps to improve behavior and correct actions that led to the need for disciplinary action. The parties may then stipulate (agree) to a determination of the violations charged against the Respondent and to a proposed penalty. Stipulations are negotiated and drafted by the DAG representing the Board and the Respondent and his/her legal counsel. In negotiating a stipulation, the DAG works closely with the Board's EO (or designated Enforcement Program Manager) and utilizes the Board's Disciplinary Guidelines to arrive at a stipulation that is intended to be acceptable to the Board.

The stipulation is presented to the Board for its consideration in much the same way that a Proposed Decision is presented. Once a stipulation has been signed by the licensee and his or her counsel, if any, the Board must vote to approve or disapprove the stipulation as a whole. If the Board votes to disapprove a proposed stipulation, it may send back recommendations for inclusion into any future stipulations. The Board may look beyond the mere contents of an Accusation, though it must confine its consideration to information that is relevant to the charges at hand. While there is no time limit within which a stipulation must be considered, any undue delays should be avoided.

### **Default Decisions**

Default Decisions are rare; however, in some cases, the Respondent does not respond to an Accusation by returning the Notice of Defense, fails to return the Notice of Defense in a timely manner, or fails to appear at a scheduled hearing. There is a legal obligation to respond to an Accusation and to be present at a scheduled hearing. Failure to meet the legal obligations is grounds for a Default Decision whereby the discipline is imposed based on the Respondent's failure to respond. In these cases the Board need only demonstrate that it has served the Accusation on the licensee at the licensee's address of record. This is one reason it is imperative that licensees maintain a current address of record with the Board; failure to do so can have very serious consequences if the licensee becomes subject to an Accusation but has an old address of record on file with the Board because the Board has no legal obligation to make any attempt to locate the licensee. Service of an Accusation by first class mail is all that is required to prove proper service.

The result of a Default Decision is nearly always a straight revocation of the license. If the Respondent is also a managing licensee for a premises permit, the premises permit will automatically be canceled by operation of law. If the Accusation was pled against the premises as well as the licensee, the premises permit is revoked

~~along with the license.~~

### **Definitions**

~~Negligence — A departure from the standard of care or practice. It can be an act of omission or commission. Harm or injury is not a necessary component of administrative negligence because we do not seek monetary damages (redress).~~

~~Incompetence — A lack of knowledge or ability in discharging professional obligations.~~

~~Fraud and Deception — Deception — Any act or omission that deceives or misleads another person.~~

~~Fraud — An intentional act or omission to deceive or mislead another person by misrepresentation, deceit, or concealment of a material fact.~~

~~Both fraud and deception can exist despite truthful statements if the statements made, whether written or oral, have a tendency to mislead or do in fact mislead.~~