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# Veterinary Medical Board

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## Citation and Fine Guidelines

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*DRAFT*

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## **1. Introduction and Statutory Authority**

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The Veterinary Medical Board (Board) developed the Citation Guidelines to assist its Executive Officer, staff and legal counsel and other persons involved in the Board's enforcement process in determining when to issue a citation versus a formal disciplinary action and when issuing a citation, how to determine the level of the fine levied and how to develop the Order of Abatement. These guidelines are published in regulations for the public and the profession so that the processes used by the Board to issue citations are readily available and transparent.

A citation is a legal means by which the Board can take action against a licensed or unlicensed individual who is found to be in violation of the Veterinary Medicine Practice Act (Practice Act). A citation does not typically involve the Attorney General, the District Attorney, or an administrative hearing unless there is an appeal.

The specific laws governing the authority and the operation of the Board citation program are contained in the Business and Professions Code, Article 4, Sections 125.9, and 4875 through 4875.6, and Title 16, California Code of Regulations, Article 5.5, Section 2043. The guidelines outlined in this manual have been established by the Board with input from its executive officer and legal counsel.

Citations contain an administrative fine and an Order of Abatement. Administrative fines depend on the nature and/or severity of the violation or violations. Fine descriptions and fine parameters are contained in Section 2043 of the California Code of Regulations, Title 16. Currently, fines range from \$ 50 to \$1,500. The Board is seeking to increase the upper limits to \$250 to \$5,000.

### **Benefits of Citation**

The citation program provides the VMB with consumer protection enforcement remedies that: (1) address violations of the law which would not normally warrant a formal disciplinary action; and (2) provide a relatively quick resolution to a complaint for both the consumer and licensee.

## **2. Board Consultants**

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### **Complaints - Initial Review**

Complaints are investigated initially by the board's enforcement unit. Once pertinent information is gathered from all parties and the file is complete, the complaint is referred to a licensee board consultant for evaluation. The Board utilizes licensees as consultants and some work in the office and some throughout the state. For the most part, in-office consultants are utilized for the initial review of complaints; however, occasionally the complaint is sent out for review.

If the initial investigation and evaluation reveals evidence of a possible violation of the practice act a preliminary letter is sent to the respondent notifying them of the possible violation and providing them with an opportunity to submit additional information. If additional information is submitted by the respondent, it goes back to the board consultant for further evaluation.

Once the board consultant makes a final determination; the Executive Officer must decide what action to take: 1) to close the case; 2) issue a citation; or 3) refer the case to the Office of the Attorney General for formal disciplinary action. These guidelines outline the procedures followed once there is a decision to issue a citation and fine.



### **3. Types of Citations**

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Citations are issued by the board based on, 1) the medical records and any supporting documents obtained during the investigation or other documents that support a violation of the California Veterinary Medicine Practice Act and 2) the opinion/recommendation of the licensee board consultant. The supporting information for issuing citations with a civil penalty must include sufficient evidence to support each violation and to justify a civil penalty for one or more violations.

### **4. Citation Procedures**

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#### **Decision to Issue a Citation**

Based on evidence in the case and the opinion of the board consultant, the Executive Officer (EO) is responsible for making the final determination regarding the issuance of a citation, taking into consideration the seriousness of the complaint, the good faith of the individual, the violations committed and prior enforcement action.

#### **Determination**

The determination to issue a citation and fine includes, but is not limited to, consideration of the following factors:

##### **1. Seriousness of the Complaint**

- Type and severity of violation
- Number and sections violated
- Number of violations

##### **2. Good Faith of the Respondent**

- Responsiveness to the complaint and VMB
- Evidence that the violation was willful

##### **3. Bad Faith of the Respondent**

- Failure to cooperate with the Board's investigation
- Failure to provide records with stated amount of time
- Alteration of medical records

##### **4. History of Previous Violations**

- Previous warnings
- Previous or current legal actions
- Length of time between legal actions

Once a decision is made to issue a citation, the enforcement analyst shall prepare the citation order and issue a citation and fine number.

#### **Statement to Cited Respondent**

The citation includes a cover letter that notifies the cited respondent of the effect of the citation, payment of the fine, his/her right to a hearing, and the appeal procedures for requesting a hearing if one is desired.

#### **Voluntary Compliance with Citation**

One option for the respondent is to pay the fine amount assessed within the stated timeframe. Payment of such fine does not constitute an admission of the violation charged. Payment of the fine represents a satisfactory resolution of the matter for purposes of public disclosure. Both the



complainant and the cited person are notified of the final disposition of a case once a citation is final.

## **Failure to Comply**

If the Respondent fails to respond to the citation within 30 days after the effective date of a final citation decision by either paying the fine or appealing the citation, the board will either place a lien hold on the renewal of the license, forward information to the Franchise Tax Board, or refer the matter to the Attorney General's office for further action.

Unless the citation is under appeal, if the respondent fails to pay the full amount of the civil penalty within 30 days of the date on the citation, the full amount assessed shall be added to the cited person's renewal fee and a registration renewal will not be issued until the registration or renewal fee and civil penalty are paid. For unlicensed person the penalty would be to refer the case to the local District Attorney or to the Franchise Tax Board.

## **Citation Appeal**

There are two levels of appeal in the citation process. The first level is an informal conference held either in the board office with the Executive Officer and staff or conducted telephonically or via written argument. The second level of appeal would be to request a formal administrative hearing with an Administrative Law Judge.

In order to appeal, the respondent must complete the appeal form and return it to the board within 10 business days after receiving the citation Order. The respondent is required to identify the scope of his or her appeal, whether he or she is contesting the citation in full or certain violations.

The citation and appeal processes are the same for licensees or unlicensed persons.

## **Informal Conference**

If a respondent requests an informal conference, it must be held within 60 days from the receipt of the Notice of Appeal/Request for an Informal Conference. The executive officer and staff conduct the informal conference and the VMB's legal counsel, enforcement analyst, board consultant or other appropriate staff person may be asked to participate.

At the conclusion of the informal conference, the executive officer will indicate that he/she will take the matter under advisement and will render a written decision within 30 days. The citation and the information provided during the informal conference is reviewed by the board consultant and then based on recommendations of the board consultant, the executive officer decides which of the following options is appropriate:

1. Affirm the Citation as written - The citation is complete and conclusive, supported by evidence and written within the established guidelines.
2. Modify the Citation – In some cases, additional information is needed and the citations are returned to the enforcement analyst for review and possible revision. If the citation is amended it is most likely that the amount of the fine will also be reduced.
3. Investigate Further - In some instances the written report is returned to the enforcement analyst for additional information or evidence required to support the recommended legal action. The executive officer is responsible for specifying the nature of the information needed to support issuance of the citation.



4. Dismiss - The evidence presented does not support the citation, the citation is dismissed and the case is closed.

## **Appeal of Final Decision**

If the respondent desires to contest a decision made after an informal conference or written appeal, he/she shall inform the executive officer in writing within 30 days after he/she receives the decision resulting from the informal conference or written appeal.

## **Administrative Hearing**

If the respondent has notified the executive officer in a timely manner that he/she desires to appeal the decision made after the informal conference or written appeal, the executive officer shall contact the Attorney General's Office and the Office of Administrative Hearings in order to arrange for an administrative hearing. The administrative law judge shall prepare a proposed decision containing Findings of Fact, and either affirming, modifying, or dismissing the citation. Thereafter, the proposed decision shall be presented to the board for its consideration. The proceedings under this section shall be conducted in accordance with the provisions of the Administrative Procedures Act, Chapter 6, (commencing with Section 11500) et seq., and the board shall have all the powers granted therein.

If, after the hearing, the citation is affirmed, the respondent shall pay the civil penalty assessed in the citation within 10 business days of the effective date of the board's decision, as well as comply with other stipulations within the citation decision, such as an Order of Abatement.

## **Unlicensed Activity**

The same three factors that apply to licensees must also be applied to unlicensed persons and considered when determining whether or not to issue a citation, the: 1) gravity of the violation(s), 2) good faith, and 3) enforcement history. Establishing "Good faith" may be difficult for an unlicensed person and will require substantial evidence.

## **5. Terms and Definitions**

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**Negligence:** A departure from the standard of practice in the community

- A. Usually, the "standard of practice in the community" is interpreted to mean in the State of California and not in the specific local town or county.
- B. Negligence can be an unintentional, i.e., a "mistake."
- C. ~~Negligence must result in harm to the animal.~~
- D. A specialist is held to a higher standard of care (the "community," in this case, would be the "specialist community" in California)
- E. ~~Although not expressly referred to in the Veterinary Practice Act, "gross negligence" is also a basis for disciplinary action and is "an extreme departure from the standard of practice in the community."~~

**Incompetence:** A lack of knowledge or ability in discharging professional veterinary medical obligations.



**Fraud and/or Deception:** Fraud and/or deception are terms that are not as amenable to brief definitions. They often overlap, so in evaluating conduct, it may not always be necessary to make a distinction between them.

**Deception:** Deception is the more expansive term, applying to any act or omission which deceives or misleads another person.

**Fraud:** Fraud, on the other hand, is an intentional act or omission with its object to deceive or mislead another person by misrepresentation; deceit, or concealment of a material fact.

**Preliminary Letter:** Once a routine initial complaint investigation is complete, which can take anywhere from six to nine months, the complaint is either closed with no further action or there is a determination of possible violations. At this point, if there are potential violations, the respondent is sent a “preliminary” letter informing him or her of the determination and providing them with the opportunity to submit additional information. If additional information is submitted, it and the original complaint are reviewed again by the consultant who reviewed it initially. Following that review, the Executive Officer makes a determination as to whether or not to close the case, issue an education letter or cease and desist, issue a citation or pursue other forms of discipline.

The processes for unlicensed persons in the Informal Conference, Final Citation, and Administrative Hearing are the same as for licensees.

## **6. Citation Authority and Penalties - Licensees**

The following guidelines outline the parameters under which the Board authorizes its Executive Officer and staff to issue citations and fines for specific violations of the California Veterinary Medicine Practice Act committed by licensees of the Board. Violation sections are listed in order of priority.

In all situations if an individual is determined to have received three or more citations in any given five year period; the next enforcement action would warrant formal discipline with the Office of the Attorney General or local District Attorney.

1. **Note:** The nature and/or severity of violations may determine whether action taken is citation and fine or formal discipline, i.e., cruelty to animals is a high priority for the Board and such violations would not be handled via a citation, but would be referred to the Office of the Attorney General for formal disciplinary action.

### **LICENSEES - Violations and Related Penalties**

#### **1. Negligence - Section 4883 (i)**

Level – A      \$250 - \$3,000  
\$500 for first violation in Order  
\$250 for each subsequent violation in same Order

Level – B      \$500 – \$3,000  
\$750 for first violation in Order  
\$350 for each subsequent violation in same Order



Level – C     \$1,000 - \$4,000  
\$1,000 first count  
\$500 for each subsequent violation in same Order

**2. 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, Section 4883(b)**

Level – A     \$250 - \$3,000  
\$ 250 for first violation in Order  
\$100 for each subsequent violation in same Order

Level – B     \$500 – \$4,000  
\$500 for first violation in Order  
\$250 for each subsequent violation in same Order

Level – C     \$1,000 - \$5,000  
\$1,000 first count  
\$750 for each subsequent violation in same Order

**3. Violation of the provisions of the chapter, Section 4883(c)**

Level – A     \$250 - \$3,000  
\$250 for first violation in Order  
\$100 for each subsequent violation in same Order

Level – B     \$500 – \$4,000  
\$500 for first violation in Order  
\$250 for each subsequent violation in same Order

Level – C     \$1,000 - \$5,000  
\$1,000 first count  
\$750 for each subsequent violation in same Order

**4. Unprofessional conduct, e.g., general violations - Section 4883(g)**

Level – A     \$250 - \$3,000  
\$250 for first violation in Order  
\$100 for each subsequent violation in same Order

Level – B     \$500 – \$4,000  
\$500 for first violation in Order  
\$250 for each subsequent violation in same Order

Level – C     \$1,000 - \$5,000  
\$1,000 first count  
\$750 for each subsequent violation in same Order



**5. Failure to keep premises and equipment clean and sanitary - B&P Section 4883 (h); Sections 4853.5 and 4854 (practice sanitation standards);CCR Sections 2030 - Minimum Standards**

Level – A     \$250 - \$3,000  
\$250 for first violation in Order  
\$100 for each subsequent violation in same Order

Level – B     \$500 – \$4,000  
\$500 for first violation in Order  
\$250 for each subsequent violation in same Order

Level –C     \$1,000 - \$5,000  
\$1,000 first count  
\$750 for each subsequent violation in same Order

**6. Aiding or abetting in acts which are in violation of this chapter - Section 4883 (j)**

Level – A     \$250 - \$3,000  
\$500 for first violation in Order  
\$250 for each subsequent violation in same Order

Level – B     \$500 – \$4,000  
\$1,000 for first violation in Order  
\$350 for each subsequent violation in same Order

Level –C     \$1,000 - \$5,000  
\$1,500 first violation in Order  
\$500 for each subsequent violation in same Order

**7. Discipline of license in another state or territory - Section 4883 (l)**

Level –A     \$250 - \$3,000  
\$250 for first violation in Order  
\$100 for each subsequent violation in same Order

Level – B     \$500 – \$4,000  
\$500 for first violation in Order  
\$250 for each subsequent violation in same Order

Level – C     \$1,000 - \$5,000  
\$1,000 first count  
\$750 fir each subsequent violation in same Order

**8. Disciplinary actions by other public agencies that relate to the practice of veterinary medicine - Section 4883 (n)**

Level – A     \$250 - \$3,000  
\$250 for first violation in Order  
\$100 for each subsequent violation in same Order



Level – B      \$500 – \$4,000  
\$500 for first violation in Order  
\$250 for each subsequent violation in same Order

Level –C      \$1,000 - \$5,000  
\$1,000 first count  
\$750 for each subsequent violation in same Order

## **9. Written Records, B&P Section 4855, 4883(o); CCR Sections 2032.3 Recordkeeping and 2032.4 Anesthesia**

Level – A      \$250 - \$3,000  
\$250 for first violation in Order  
\$100 for each subsequent violation in same Order

Level – B      \$500 – \$4,000  
\$500 for first violation in Order  
\$250 for each subsequent violation in same Order

Level – C      \$1,000 - \$5,000  
\$1,000 first count  
\$750 for each subsequent violation in same Order

## **10. Inspection of Records and Premises, Section 4856**

Level – A      \$250 - \$3,000  
\$250 for first violation in Order  
\$100 for each subsequent violation in same Order

Level – B      \$500 – \$4,000  
\$500 for first violation in Order  
\$250 for each subsequent violation in same Order

Level –C      \$1,000 - \$5,000  
\$1,000 first violation in Order  
\$750 for each subsequent violation in same Order

## **12. Record Confidentiality, Section 4857**

Level –A      \$250 - \$3,000  
\$250 for first violation in Order  
\$100 for each subsequent violation in same Order

Level – B      \$500 – \$4,000  
\$500 for first violation in Order  
\$250 for each subsequent violation in same Order

Level – C      \$1,000 - \$5,000  
\$1,000 first violation in Order  
\$750 for each subsequent violation in the same Order



## **13. Report of animal abuse or cruelty, Section 4830.5**

- Level – A     \$250 - \$3,000  
\$250 for first violation in Order  
\$150 for each subsequent violation in same Order
- Level – B     \$500 – \$4,000  
\$500 for first violation in Order  
\$250 for each subsequent violation in same Order
- Level – C     \$1,000 - \$5,000  
\$750 for first violation in Order  
\$500 for each subsequent violation in same Order

## **14. Aiding and Abetting unauthorized health care services by RVTs or unregistered assistants. B&P Sections 4836, 4836.5 and 4883(j) CCR Sections 2034-2036.5**

- Level – A     \$250 - \$3,000  
\$500 for first violation in Order  
\$250 for each subsequent violation in same Order
- Level – B     \$500 – \$4,000  
\$1,000 for first violation in Order  
\$500 for each subsequent violation in same Order
- Level – C     \$1,000 - \$5,000  
\$1,500 first violation in Order  
\$750 for each subsequent violation in same Order

## **15. Unlicensed Activity, Section 4830.5, B&P Codes, 4825, 4826, 4841 CCR 2036, 2036.5**

- Level – A     \$250 - \$3,000  
\$350 for first violation in Order  
\$150 for each subsequent violation in same Order
- Level – B     \$500 – \$4,000  
\$500 for first violation in Order  
\$250 for each subsequent violation in same Order
- Level – C     \$1,000 - \$5,000  
\$750 first violation in Order  
\$500 for each subsequent violation in same Order

## **16. VCPR, B&P Code 4883 (o); CCR 2032.1**

- Level – A     \$250 - \$3,000  
\$250 for first violation in Order  
\$150 for each subsequent violation in same Order



Level – B      \$500 – \$4,000  
\$500 for first violation in Order  
\$250 for each subsequent violation in same Order

Level – C      \$1,000 - \$5,000  
\$750 first each violation in Order  
\$500 for each subsequent violation in same Order

## **7. Citation Authority and Penalties – Unlicensed**

The following outlines the parameters under which the Board authorizes its Executive Officer and staff to issue citations and fines for specific violations of the California Veterinary Medicine Practice Act committed by unlicensed persons. Violation sections are listed in order of priority.

In all situations if an unlicensed individual is determined to have received three or more citations in any given five year period or more than one “C” level citation; the next action would be a referral for formal discipline with the Office of the Attorney General or the Office of the District Attorney.

### **UNLICENSED ACTIVITY - Violations and Related Penalties**

#### **1. Negligence - Section 4883 (i)**

Level – A      \$250 - \$3,000  
\$1,000 for first violation in Order  
\$500 for each subsequent violation in same Order

Level – B      \$500 – \$3,000  
\$1,500 for first violation in Order  
\$750 for each subsequent violation in same Order

Level – C      \$1,000 - \$4,000  
\$2,000 for first violation in Order  
\$1,000 for each subsequent violation in same Order

#### **2. 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, Section 4883(b)**

Level – A      \$250 - \$3,000  
\$500 for first violation in Order  
\$250 for each subsequent violation in same Order

Level – B      \$500 – \$4,000  
\$750 for first violation in Order  
\$500 for each subsequent violation in same Order

Level – C      \$1,000 - \$5,000  
\$1,000 for first violation in Order  
\$750 for each subsequent violation in same Order



### **3. Violation of the provisions of the chapter, Section 4883(c)**

- Level – A      \$250 - \$3,000  
\$500 for first violation in Order  
\$250 for each subsequent violation in same Order
- Level – B      \$500 – \$4,000  
\$750 for first violation in Order  
\$500 for each subsequent violation in same Order
- Level – C      \$1,000 - \$5,000  
\$1,000 for first violation in Order  
\$750 each subsequent violation in same Order

### **4. Aiding or abetting in acts which are in of violation of this chapter - Section 4883 (j)**

- Level – A      \$250 - \$3,000  
\$500 for first violation in Order  
\$250 for each subsequent violation in same Order
- Level – B      \$500 – \$4,000  
\$1,000 for first violation in Order  
\$500 for each subsequent violation in same Order
- Level – C      \$1,000 - \$5,000  
\$1,500 for first violation in Order  
\$750 each subsequent violation in the same Order

### **5. Aiding and Abeting unauthorized health care services by RVTs or unregistered assistants. B&P Sections 4836, 4836.5 and 4883(j) CCR Sections 2034-2036.5**

- Level – A      \$250 - \$3,000  
\$ 1,000 for first violation in Order  
\$500 for each subsequent violation in same Order
- Level – B      \$500 – \$4,000  
\$2,000 for first violation in Order  
\$750 for each subsequent violation in same Order
- Level – C      \$1,000 - \$5,000  
\$3,000 for first violation in Order  
\$ 1,000 each subsequent violation in same Order

### **6. Unlicensed Activity, Section 4830.5, B&P Codes, 4825, 4826, 4841 CCR 2036, 2036.5**

- Level – A      \$250 - \$3,000  
\$1,000 for first violation in Order  
\$500 for each subsequent violation in same Order



Level – B      \$500 – \$4,000

\$2,000 for first violation in Order

\$750 for each subsequent violation in same Order

Level – C      \$1,000 - \$5,000

\$3,000 first violation in Order

\$1,000 each subsequent violation in same Order