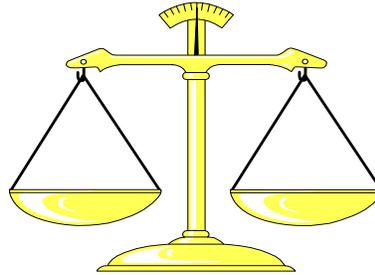


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# Citation and Fine Guidelines

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DRAFT

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**INTRODUCTION AND STATUTORY AUTHORITY**

The Veterinary Medical Board (Board) developed the Citation Guidelines to assist its Executive Officer (EO), staff, legal counsel, and other persons involved in the Board's enforcement process in determining when to issue a citation verses when to pursue a formal disciplinary action. 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 to all parties involved.

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

The specific laws governing the authority and the operation of the Board's 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.

A citation issued against a respondent contains an Order of Abatement and an administrative fine. Administrative fines depend on the nature and/or severity of the violation or violations. Fine descriptions and fine parameters are contained in Section 2043, 2043.1 and 2043.2 of the California Code of Regulations, Title 16.

A citation is not formal discipline and does not contain any admission of guilt, but it is a public enforcement action, the action remains on the public record for a period of five years and it may be posted on the Board's web site. The citation program provides the Board with a consumer protection enforcement remedy that: (1) addresses violations of the law which would not normally rise to the level necessary to warrant a formal disciplinary action such as revocation, suspension, probation of a license or criminal prosecution; and (2) provides a relatively quick resolution to a complaint for both the consumer and licensee.

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### **Complaints/Initial Board Consultant Review**

Complaints are initially investigated by the Board's enforcement unit. Once pertinent information is gathered from all parties and the file is complete, the complaint is sent to the Board consultant(s) for evaluation. If the initial investigation and evaluation reveals facts indicating possible violations of the Practice Act, a preliminary letter is sent to the respondent notifying the respondent of the possible violation and providing an opportunity to submit additional information. If additional information is submitted by the respondent, the complaint is forwarded back to the Board consultant(s) for further review.

Based on the determination by the Board consultants and the overall facts of the case, the Executive Officer decides what action to take: 1) close the case; 2) issue a citation; 3) refer the case to the Office of the Attorney General for formal action.

### **Citation Procedures**

Based on the facts of the case and the opinion of the board consultant, the Executive Officer is responsible for making the final determination regarding the issuance of a citation. Once a decision is made to issue a citation, the enforcement analyst prepares the citation order and issues a citation and fine.

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

The citation includes a cover letter that notifies the respondent of the determination of the citation, the fine assessed, payment of the fine, the 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 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**

Unless the citation is under appeal, if the Respondent fails to respond to pay the full amount of the civil penalty within **30 days** of the date on the citation, the full amount assessed is added to the cited person's renewal fee and a hold is put on the license renewal so that the renewal license is not issued until both the civil penalty and the renewal fee are paid in full.

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For an unlicensed person the consequence of not paying the citation fine would be referral of the case to the local District Attorney or to the Franchise Tax Board, or the Board could seek an injunction through the Office of the Attorney General.

### **Citation Appeal**

There are two levels of appeal in the citation process, 1) the informal conference, and 2) the formal administrative hearing. The first level informal conference is held either in the board office with the EO and staff or conducted telephonically or via written argument. The second level of appeal would be through the Office of the Attorney General and a request for a formal administrative hearing before an Administrative Law Judge.

The citation and appeal processes are the same for licensees or unlicensed persons. Pursuant to 4875.6 persons who wish to appeal a citation must request and participate in the informal conference first before requesting a full administrative hearing.

In order to appeal, the respondent must complete the appeal form and return it to the board within **10 business days** after receipt of 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 portions there of.

### **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 Board'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 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 facts 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. However, the scope of the citation(s) is not modified.

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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 facts presented do 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, the respondent must inform the Executive Officer in writing within **30 days** after receipt of the decision resulting from the informal conference or written appeal.

### **Administrative Hearing**

If the respondent notifies the Executive Officer in a timely manner the desire to appeal the decision made after the informal conference or written appeal, the Executive Officer contacts the Attorney General's Office to arrange for an administrative hearing to be held before an Administrative Law Judge. After the formal hearing, the administrative law judge prepares a proposed decision containing Findings of Fact, and either affirming, modifying, or dismissing the citation. Thereafter, the proposed decision is 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 is ordered to 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.

Cost Recovery ?

### **Terms and Definitions**

Negligence – A departure from the standard of practice.

Incompetence – A lack of knowledge, skills 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.

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**Citation and Fine 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 a respondent 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. Negligence - Section 4883 (i)

Level A (\$500 – \$3,000): for each Citation Order issued to licensee, \$500 for first violation within Citation Order; and, \$250 for each subsequent violation within the same Citation Order

Level B (\$750 – \$3,000): \$750 for first violation in Citation Order; and, \$350 for each subsequent violation within the same Citation Order

Level C (\$1,000 - \$5,000): \$1,000 for first violation in Citation Order; and, \$750 for each subsequent violation within the same Citation 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): for each Citation Order issued to licensee, \$250 for first violation within Citation Order; and, \$100 for each subsequent violation within the same Citation Order

Level B (\$500 – \$4,000): \$500 for first violation in Citation Order; and, \$250 for each subsequent violation within the same Citation Order

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Level C (\$1,000 - \$5,000): \$1,000 for first violation in Citation Order; and, \$750 for each subsequent violation within the same Citation Order

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

Level A (\$250 - \$3,000): for each Citation Order issued to licensee, \$250 for first violation within Citation Order; and \$100 for each subsequent violation within the same Citation Order

Level B (\$500 – \$4,000): \$500 for first violation in Citation Order; and, \$250 for each subsequent violation within the same Citation Order

Level C (\$1,000 - \$5,000): \$1,000 for first violation in Citation Order; and \$750 for each subsequent violation within the same Citation Order

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

Level A (\$250 - \$3,000): for each Citation Order issued to licensee, \$250 for first violation within Citation Order; and, \$100 for each subsequent violation within the same Citation Order

Level B (\$500 – \$4,000): \$500 for first violation in Citation Order; and, \$250 for each subsequent violation within the same Citation Order

Level C (\$1,000 - \$5,000): \$1,000 for first violation in Citation Order; and, \$750 for each subsequent violation within the same Citation 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): for each Citation Order issued to licensee, \$250 for first violation within Citation Order; and, \$100 for each subsequent violation within the same Citation Order

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Level B (\$500 – \$4,000): \$500 for first violation in Citation Order; and \$250 for each subsequent violation within the same Citation Order

Level C (\$1,000 - \$5,000): \$1,000 for first violation in Citation Order; and, \$750 for each subsequent violation within the same Citation Order

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

Level A (\$250 - \$3,000): for each Citation Order issued to licensee, \$500 for first violation in Citation Order; and, \$250 for each subsequent violation within the same Citation Order

Level B (\$500 – \$4,000): \$1,000 for first violation in Citation Order; and \$350 for each subsequent violation within the same Citation Order

Level C (\$1,000 - \$5,000): \$1,500 for first violation in Citation Order; and \$500 for each subsequent violation within the same Citation Order

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

Level A (\$250 - \$3,000): for each Citation Order issued to licensee, \$250 for first violation in Citation Order; and, \$100 for each subsequent violation within the same Citation Order

Level B (\$500 – \$4,000): \$500 for first violation in Citation Order; and, \$250 for each subsequent violation within the same Citation Order

Level C (\$1,000 - \$5,000): \$1,000 for first violation in Citation Order; and \$750 for each subsequent violation within the same Citation Order

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

Level A (\$250 - \$3,000): for each Citation Order issued to licensee, \$250 for first violation in Citation Order; and, \$100 for each

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subsequent for each violation within the same  
Citation Order

Level B (\$500 – \$4,000): \$500 for first violation in Citation Order; and, \$250 for each subsequent violation within the same Citation Order

Level C (\$1,000 - \$5,000): \$1,000 for first violation in Citation Order; and, \$750 for each subsequent violation within the same Citation Order

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

Level A (\$250 - \$3,000): for each Citation Order issued to licensee, \$250 for first violation in Citation Order; and, \$100 for each subsequent violation within the same Citation Order

Level B (\$500 – \$4,000): \$500 for first violation in Citation Order; and, \$250 for each subsequent violation within the same Citation Order

Level C (\$1,000 - \$5,000): \$1,000 for first violation in Citation Order; and \$750 for each subsequent violation within the same Citation Order

10. Inspection of Records and Premises, Section 4856

Level A (\$250 - \$3,000): for each Citation Order issued to licensee, \$250 for first violation in Citation Order; and, \$100 for each subsequent violation within the same Citation Order

Level B (\$500 – \$4,000): \$500 for first violation in Citation Order; and, \$250 for each subsequent violation within the same Citation Order

Level C (\$1,000 - \$5,000): \$1,000 for first violation in Citation Order; and, \$750 for each subsequent violation within the same Citation Order

11. Record Confidentiality, Section 4857

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Level A (\$250 - \$3,000): for each Citation Order issued to licensee, \$250 for first violation in Citation Order; and, \$100 for each subsequent violation within the same Citation Order

Level B (\$500 – \$4,000): \$500 for first violation in Citation Order; and, \$250 for each subsequent violation within the same Citation Order

Level C (\$1,000 - \$5,000): \$1,000 for first violation in Citation Order; and, \$750 For each subsequent violation within the same Citation Order

12. Report of animal abuse or cruelty, Section 4830.5

Level A (\$250 - \$3,000): for each Citation Order issued to licensee, \$250 for first violation in Citation Order; and, \$150 for each subsequent violation within the same Citation Order

Level B (\$500 – \$4,000): \$500 for first violation in Citation Order; and, \$250 for each subsequent violation within the same Citation Order

Level C (\$1,000 - \$5,000): \$750 for first violation in Citation Order; and, \$500 for each subsequent violation within the same Citation Order

13. 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): for each Citation Order issued to licensee, \$500 for first violation in Citation Order; and, \$250 for each subsequent violation within the same Citation Order

Level B (\$500 – \$4,000): \$500 for first violation in Citation Order; and, \$750 for each subsequent violation within the same Citation Order

Level C (\$1,000 - \$5,000): \$1,500 for first violation in Citation Order; and, \$750 for each subsequent violation within the same Citation Order

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

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Level A (\$250 - \$3,000): for each Citation Order issued to licensee, \$350 for first violation in Citation Order; and, \$150 for each subsequent violation within the same Citation Order

Level B (\$500 – \$4,000): \$500 for first violation in Citation Order; and, \$250 for each subsequent violation within the same Citation Order

Level C (\$1,000 - \$5,000): \$750 for first violation in Citation Order; and, \$500 for each subsequent violation within the same Citation Order

15. VCPR, B&P Code 4883 (o); CCR 2032.1

Level A (\$250 - \$3,000): for each Citation Order issued to licensee, \$250 for first violation in Citation Order; and, \$150 for each subsequent violation within the same Citation Order

Level B (\$500 – \$4,000): \$500 for first violation in Citation Order; and, \$250 for each subsequent violation within the same Citation Order

Level C (\$1,000 - \$5,000): \$750 for first violation in Citation Order; and, \$500 for each subsequent violation within the same Citation Order

**Unlicensed Persons**

The following outlines the parameters under which the Board authorizes its EO and staff to issue citations and fines for specific violations of the California Veterinary Medicine Practice Act committed by unlicensed persons.

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

1. Negligence - Section 4883 (i)

First Offense - \$1,000 - \$2,000

Second Offense – \$2,001 - \$5,000

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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)

First Offense - \$1,000 - \$2,000

Second Offense - \$2,001 - \$5,000

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

First Offense - \$500 - \$2,500

Second Offense -Level – \$2,500 - \$5,000

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

First Offense - \$500 - \$2,500

Second Offense - \$2,500 - \$5,000

5. 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

First Offense - \$1,000 - \$3,000

Second Offense - \$3,001 - \$5,000

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

First Offense - \$1,000 - \$3,000

Second Offense - \$3,001 - \$5,000