

State of California
Department of Consumer Affairs
Veterinary Medical Board



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 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~~ a Board consultant(s) for evaluation. If the initial investigation and evaluation reveals facts indicating possible violation(s) 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 EO decides whether to: 1) close the case; 2) issue a citation; or 3) refer the case to the Office of the Attorney General.

Citation Procedures

Based on the facts of the case and the opinion of the board consultant, the EO 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 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~~ may seek other remedies.

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.

Pursuant to 4875.6 licensees who wish to appeal a citation must request and participate in the informal conference first before requesting a full administrative hearing. A veterinarian, a registered veterinary technician, or unlicensed person may, in lieu of contesting a citation pursuant to this section, transmit to the Board the amount assessed in the citation as a civil penalty, within 10 business days after receipt of the citation.

An unlicensed person may notify the Board to notify the Board and file a petition for a writ of administrative mandamus under Section 1094.5 of the Code of Civil Procedures within 30 calendar days after receipt of the citation, without engaging in an informal conference of administrative hearing. If a petition is not filed pursuant to this section, payment of any fine shall not constitute an admission of the violation charged.

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 and whether he or she is contesting the citation in full or portions thereof.

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 EO 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 EO 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 EO 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.

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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 original citation(s) will not be expanded. additional information may result in a revision of the citation.
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 EO 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 wishes to contest a final decision made after an informal conference or written appeal, the respondent must inform the EO 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 EO in a timely manner that he or she wishes to appeal the decision made after the informal conference or written appeal, the Executive Officer EO 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 5, (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.

Terms and Definitions

Negligence – A departure from the standard of care or practice. 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.

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Incompetence – A lack of knowledge, skills or ability in discharging professional obligations. ~~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.~~ 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.

Board Consultant – As used in the document, “Board Consultant” means a veterinarian, as described in Business and Professions Code sections 4875.2 and 4875.3, who has been identified as the Board’s designee.

Enforcement Analyst – The Board’s analyst/staff member assigned to review and coordinate the investigation of a complaint. The analyst is also responsible for preparing citation orders and issuing citations and fines.

Enforcement Program Manager – The supervisor/lead staff person in the Board’s Enforcement unit responsible for assigning work to enforcement staff members.

Citation and Fine Authority and Penalties

Licensees

The following guidelines outline the parameters under which the Board authorizes its EO and staff to assess 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 – Business and Professions code, Section 4883 (i)

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Level A (~~\$500 – \$3,000~~ \$2,000): for each Citation issued to licensee, \$500 for first violation within Citation; and, \$250 for each additional violation

Level B (~~\$750 \$1,000 – \$3,000~~ \$4,000): for each Citation issued, ~~\$750~~ \$1,000 for first violation within Citation; and, ~~\$350~~ \$500 for each additional violation

Level C (~~\$1,000~~ \$2,000 - \$5,000): for each Citation issued, ~~\$1,000~~ \$2,000 for first violation in Citation; and, ~~\$750~~ \$1,000 for each additional violation

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, Business and Professions Code, Section 4883(b)

Level A (~~\$250- \$3,000~~ \$2,000):for each Citation issued to licensee, \$250 for first violation within Citation ; and, ~~\$100~~ \$125 for each additional violation

Level B (~~\$500 \$1,000 – \$4,000~~): for each Citation issued to licensee, ~~\$500~~ \$1,000 for first violation within Citation; and ~~\$250~~ \$500 for each additional violation

Level C (~~\$1,000- \$2,000 - \$5,000~~): for each Citation issued to licensee, ~~\$1,000~~ \$2,000 for first violation within Citation; and \$1,000 for each additional violation

3. Violation of the provisions of the chapter, Business and Professions Code, Section 4883(c)

Level A (~~\$250 - \$3,000~~ \$2,000): for each Citation issued to licensee, \$250 for first violation within Citation; and \$100 for each additional violation

Level B (~~\$500 \$1,000 - \$4,000~~):for each Citation issued to licensee, ~~\$500~~ \$1,000 for first violation within Citation; \$250 for each additional violation

Level C (\$1,000 - \$5,000): for each Citation issued to licensee, \$1,000 for first

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violation in Citation; and \$750 for each additional violation

4. Unprofessional conduct, e.g., general violations – Business and Professions Code, Section 4883(g)

Level A (\$250 - ~~\$3,000~~ \$2,000): for each Citation issued to licensee, \$250 for first violation within Citation; and, \$100 for each additional violation

Level B (~~\$500~~ \$1,000 – \$4,000): for each Citation issued to licensee, ~~\$500~~ \$1,000 for first violation in Citation; and, \$250 for each additional violation

Level C (\$1,000 - \$5,000): for each Citation issued to licensee, \$1,000 for first violation in Citation; and, \$750 for each additional violation

5. Failure to keep premises and equipment clean and sanitary– Business and Professions Code, Section 4883 (h); Sections 4853.5 and 4854 (practice sanitation standards); California Code of Regulations, Sections 2030 - Minimum Standards

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

Level B (\$500 – \$4,000): for each Citation issued to licensee, \$500 for first violation in Citation; and \$250 each additional violation

Level C (\$1,000 - \$5,000): for each Citation issued to licensee, \$1,000 for first violation in Citation; and, \$750 for each additional violation

6. Aiding or abetting in acts which are in of violation of this chapter –Business and Professions Code, Section 4883 (j)

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

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Level B (\$500 – \$4,000): for each Citation issued to licensee, \$500 for first violation in Citation; and \$350 for each additional violation

Level C (\$1,000 - \$5,000): for each Citation issued to licensee, \$1,000 for first violation in Citation; and \$500 for each additional violation

7. Discipline of license in another state or territory – Business and Professions Code, Section 4883 (l)

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

Level B (\$500 – \$4,000): for each Citation issued to licensee, \$500 for first violation in Citation; and, \$250 for each additional violation

Level C (\$1,000 - \$5,000): for each Citation issued to licensee, \$1,000 for first violation in Citation; and \$750 for each additional violation

8. Disciplinary actions by other public agencies that relate to the practice of veterinary medicine – Business and Professions Code, Section 4883 (n)

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

Level B (\$500 – \$4,000): for each Citation issued to licensee, \$500 for first violation in Citation; and, \$250 for each additional violation

Level C (\$1,000 - \$5,000): for each Citation issued to licensee, \$1,000 for first violation in Citation; and, \$750 for each additional violation

9. Written Records, Business and Professions Code, Section 4855, 4883(o); California

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Code of Regulations Sections 2032.3 Recordkeeping and 2032.4 Anesthesia

Level A (~~\$250 - \$3,000~~ \$2,000): for each Citation issued to licensee, \$250 for first violation in Citation; and, ~~\$100~~ \$125 for each additional violation

Level B (\$500 – \$4,000): for each Citation issued to licensee, \$500 for first violation in Citation; and, \$250 for each additional violation

Level C (\$1,000 - \$5,000): for each Citation issued to licensee, \$1,000 for first violation in Citation; and \$750 for each additional violation

10. Inspection of Records and Premises, Business and Professions Code, Section 4856

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

Level B (\$500 – \$4,000): for each Citation issued to licensee, \$500 for first violation in Citation; and, \$250 for each additional violation

Level C (\$1,000 - \$5,000): for each Citation issued to licensee, \$1,000 for first violation in Citation; and, \$750 for each additional violation

11. Record Confidentiality, Business and Professions Code, Section 4857

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

Level B (\$500 – \$4,000): for each Citation issued to licensee, \$500 for first violation in Citation; and, \$250 for each additional violation

Level C (\$1,000 - \$5,000): for each Citation issued to licensee, \$1,000 for first violation in Citation; and, \$750 for each additional violation

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violation

12. Report of animal abuse or cruelty, Business and Professions Code, Section 4830.5

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

Level B (\$500 – \$4,000): for each Citation issued to licensee, \$500 for first violation in Citation; and, \$250 for each additional violation

Level C (\$1,000 - \$5,000): for each Citation issued to licensee, \$750 for first violation in Citation; and, \$500 for each additional violation

13. Aiding ~~and~~ or Abetting unauthorized health care services by RVTs or unregistered assistants. Business and Professions Code, Sections 4836, 4836.5 and 4883(j) California Code of Regulations, Sections 2034-2036.5

~~Level A (\$250 – \$3,000 \$2,000): for each Citation issued to licensee, \$500 for first violation in Citation; and, \$250 for each additional violation~~

~~Level B (\$500 – \$4,000): for each Citation issued to licensee, \$500 for first violation in Citation; and, \$750 for each additional violation~~

~~Level C (\$1,000 – \$5,000): for each Citation issued to licensee, \$1,500 for first violation in Citation; and, \$750 for each additional violation~~

Level A (\$500 – \$2,000): for each Citation issued to licensee, \$500 for first violation within Citation; and, \$250 for each additional violation

Level B (\$1,000 – \$4,000):for each Citation issued, \$1,000 for first violation within Citation; and, \$500 for each additional violation

Level C (\$2,000 - \$5,000): for each Citation issued, \$2,000 for first violation in Citation; and, \$1,000 for each additional violation

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14. Unlicensed Activity, Business and Professions Code, Section 4830.5, 4825, 4826, 4841 and California Code of Regulations, Sections 2036, 2036.5

Level A (~~\$250 - \$3,000~~ \$2,000): for each Citation issued to licensee, ~~\$350~~ \$250 for first violation in Citation; and, \$150 for each additional violation

Level B (~~\$500 - \$1,000~~ \$4,000): for each Citation issued to licensee, ~~\$500~~ \$1,000 for first violation in Citation; and, \$250 for each additional violation

Level C (~~\$1,000 - \$2,000~~ \$5,000): for each Citation issued to licensee, ~~\$750~~ \$2,000 for first violation in Citation; and \$500 for each additional violation

15. VCPR, Business and Professions code, Section 4883 (o) and California Code of Regulations, Section 2032.1

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

Level B (\$500 – \$4,000): for each Citation issued to licensee, \$500 for first violation in Citation; and, \$250 for each additional violation

Level C (\$1,000 - \$5,000): for each Citation issued to licensee, \$750 for first violation in Citation; and, \$500 for each additional violation

16. ~~Unlicensed Persons~~ Non-Licensee: 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

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Attorney.

~~1. Negligence – Business and Professions code, Section 4883 (i)~~

~~First Offense – \$1,000 – \$2,000~~

~~Second Offense – \$2,001 – \$5,000~~

~~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, Business and Professions code, Section 4883(b)~~

~~First Offense – \$1,000 – \$2,000~~

~~Second Offense – \$2,001 – \$5,000~~

~~3. Violation of the provisions of the chapter, Business and Professions code, Section 4883(c)~~

~~First Offense – \$500 – \$2,500~~

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

~~4. Aiding or abetting in acts which are in violation of this chapter – Business and Professions code, 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. Business and Professions code, Sections 4836, 4836.5 and 4883(j); California Code of Regulations, Sections 2034-2036.5~~

~~First Offense – \$1,000 – \$3,000~~

~~Second Offense – \$3,001 – \$5,000~~

~~6. Unlicensed Activity, Section 4830.5, Business and Professions code, Section, 4825, 4826, 4841 California Code of Regulations, Section 2036 and 2036.5~~

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

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

First Offense - \$2,000 - \$5,000

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