

# Disciplinary Guidelines

## January 2012

Veterinary Medical Board



2005 Evergreen Street, Suite 2250  
Sacramento, CA 95815-3138  
(916) 263-2610  
[www.vmb.ca.gov](http://www.vmb.ca.gov)

# VETERINARY MEDICAL BOARD DISCIPLINARY GUIDELINES

January 2011

Stephanie Ferguson, DVM, President

Tom Kendall, DVM, Vice President

Patti Aguiar, Public Member

Richard G. Johnson, DVM

Judie Mancuso, Public Member

Linda Starr, Public Member

Kim Williams, RVT

**Susan M. Geranen**  
Executive Officer

**Paul Sanchez**  
Assistant Executive Officer

2005 Evergreen Street, Suite 2250  
Sacramento, California 95815-3138  
(916) 263-2610 FAX: (916) 263-2621  
WEBSITE: [www.vmb.ca.gov](http://www.vmb.ca.gov)

# 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. If an accusation is sustained and less than the minimum penalty is assessed, the Board requires information from the administrative law judge on the circumstances that resulted in less than the minimum penalty being assessed. In addition, probationary conditions are divided into three categories, 1) standard conditions for all cases, 2) optional conditions that are used to address specific violations and circumstances unique to a specific case and 3) Mandatory and optional terms and conditions for any case in which drugs or alcohol abuse caused or played a role in the violation.

The Board licenses veterinarians and registers veterinary premises and veterinary technicians. If there is action taken against both the individual license and the premises registration, then the disciplinary order should reflect actions against both. However, in some cases, minimum standard violations are so severe that it is necessary to take immediate action and close down a facility. In these instances the premises permit and the veterinary license may be disciplined separately and the disciplinary order should reflect separate action.

Because of the severity of cases resulting in action by the Office of the Attorney General, the Board has established that the minimum penalty shall always include either revocation or suspension with the revocation or suspension stayed and terms and condition of probation imposed. The imminent threat of the revocation or suspension being reinstated helps to insure compliance with the probationary terms and conditions. It is the recommendation of the Board that in any case involving a violation related to alcohol or drug abuse violations that the minimum term of probation should be five years. 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 cases shall be imposed.

In cases where the penalties deviate from the minimum to maximum range and there is no explanation of the deviation, the Board may non-adopt the proposed decision and review the case itself.

## PENALTIES

### Section 4883(a); 4837(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.**

Maximum: Revocation and a \$5,000 fine

Minimum: ~~Revocation/stayed with a two a two five year probation period~~ Two year probation

Cost recovery

\$2,000 Fine

Standard terms of Probation

Optional terms and conditions including but not limited to:

1. Suspension
2. Limitations on practice
3. Supervised practice
6. No ownership of a veterinary hospital or clinic
7. No management of a veterinary hospital/no supervision of interns or residents
8. Continuing education
10. Psychological Evaluation and/or treatment
12. Medical evaluation and/or treatment
13. Rehabilitation program
14. Submit to drug testing
15. Abstain from controlled substances/alcohol
17. Community service/Restitution
20. Ethical training

Maximum penalties may be considered when the criminal act threatened the public or life of an animal, there have been very few or no efforts at rehabilitation and no mitigating circumstances at the time of the commission of the offense(s).

Minimum penalties may be considered when 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 organization or public agencies that improve the care and treatment of animals or improve generally society's interactions with animals in any way. 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 respondent, completions 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 criminal act.

Action item: Cross reference RVT sections – 4837 and 4840 and have legal counsel review and include language that defines aggravation, mitigation and rehabilitation.

### Section 4883(b); 4837(d)

**For 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.**

Maximum: Revocation and \$5,000 fine

Minimum: ~~Revocation and or suspension stayed~~

Three years probation

Standard terms of probation

Cost recovery

\$2,000 fine

Optional terms and conditions including but not limited to:

30 day suspension for each offense

No ownership, management or administration of staff or hospital duties

Ethics training

Maximum penalties should be considered if, the acts 1) endanger the life of an animal or 2) the clients were threatened in any way and 3) were repeated after a previous violation of the same type of offense.

Minimum penalties should be considered if the life of an animal was not threatened in any way and clients did not suffer any detriment as a result of the activities.

**Section 4883(c); 4837(e); 4839.5**

**Violation or attempting to violate, directly or indirectly, any of the provisions of the chapter**

Maximum: Revocation and \$5,000 fine

Minimum: ~~Revocation and/or suspension stayed~~

Three year probation

Standard terms and conditions

Cost recovery

~~\$2,000~~ \$1,000 fine

Optional terms and conditions including but not limited to:

Restitution

Ethics course

Maximum penalties should be considered when the respondent's actions were intended to subvert investigations by the Board or in any way hide or alter evidence which would or could be used in any criminal, civil, or administrative actions.

Minimum penalties are appropriate if the life of an animal was not threatened in any way and clients did not suffer any detriment as a result of the activities.

**Section 4883(d)(e)**

**(d) Fraud or dishonesty in applying, treating, or reporting on tuberculin or other biological tests.**

**(e) Employment of anyone but a veterinarian licensed in the state to demonstrate the use of biologics in the treatment of animals.**

Maximum: Revocation or suspension  
\$5,000 fine

Minimum: ~~Revocation or suspension stayed~~

Two year probation

Standard terms and conditions

Cost Recovery

\$5,000 fine

Optional terms and conditions including but not limited to:

30 day suspension of license and/or premise permit

Continuing education

Community Service

~~Surrender DEA license and send proof of surrender to Board within 10 days of effective date of decision~~

Maximum penalties include those cases where there is public exposure of reportable diseases (rabies, brucellosis or tuberculosis) or other diseases of zoonotic potential known to be of hazard to the public.

Minimum penalties are appropriate if the life of an animal was not threatened in any way and clients did not suffer any detriment as a result of the activities.

**Section 4883(f)**

**False or misleading advertising**

Maximum:     Revocation/stayed  
                  Three year probation  
                  ~~Sixty~~ 60 day suspension  
                  \$5,000 fine

Minimum:     ~~Revocation or suspension stayed~~  
                  Two year probation  
                  ~~Sixty~~ 60 day suspension  
                  Cost Recovery  
                  \$2,000 fine  
                  Optional terms and conditions including but not limited to:  
                  Restitution  
                  Ethics course

Maximum penalties should be imposed if the advertising ~~in fact deceived~~ was deceptive or caused a client ~~thereby to be defrauded misled~~ and suffer monetary damages or ~~physical~~ harm to an animal. 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 would be appropriate when there are prior violations of the same type of offense.

Minimum penalties are appropriate when violations are substantiated, but there are mitigating circumstances such as: 1) the life of an animal was not threatened in any way, and 2) clients did not suffer any detriment as a result of the activities.

**Section 4883(g); 4837(c)**

**Unprofessional conduct, that includes, but is not limited to, the following:**

- (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...**
- (2) (A) The use of or prescribing for or administering to himself or herself, any controlled substance.**
  - (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.**
  - (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...**
- (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.**

Maximum:     Revocation and a \$5,000 fine

Minimum:     ~~Revocation/stayed~~  
                  Five year probation  
                  Standard Terms and Conditions  
                  Cost recovery  
                  \$5,000 fine

Optional terms and conditions including but not limited to:

- ~~Thirty~~ 30 day suspension
- Psychological evaluation and/or treatment
- Medical evaluation and/or treatment
- Surrender DEA license/send proof of surrender to Board within 10 days of the effective date of the decision.
- Supervised practice
- No ownership, management or administration of staff or hospital duties
- Rehabilitation program
- Submit to biological sample testing
- Abstain from use of alcohol and drugs

**Maximum penalties** should be considered when there is harm to either clients or animals or great potential for harm.

**Minimum penalties** should be considered when there has been no direct harm, there are no prior actions and there is evidence that respondent is making an attempt(s) at rehabilitation.

When considering minimum penalties, the terms of probation should include a requirement that the respondent submit the appropriate medical reports (including psychological treatment and therapy), submit to random drug testing, a limitation of practice or practice under the supervision of a California-licensed veterinarian as applicable on the facts of the case. And 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 Board requires a minimum of five years probation.

#### **Section 4883(g)**

##### **Unprofessional conduct, e.g., ~~general violations~~ unprofessional conduct**

Maximum: Revocation and a \$5,000 fine

Minimum: ~~Revocation or suspension / stayed~~ Written Public Reproval  
~~Two year probation~~  
~~Cost Recovery~~  
~~\$2,000 fine~~  
Standard terms and conditions  
Optional terms and conditions including but not limited to:

Maximum penalties should be considered when there is substantial harm either to the animal patient(s) or the client ~~and,~~ or there are prior actions against the licensee.

Minimum penalties should be considered when there are no prior actions, there are mitigating circumstances such as the length of time since the offense(s) occurred, there is no substantial harm to the animal patient(s) or the client and respond making an attempt(s) at rehabilitation.

#### **Section 4883 (h)**

##### **Failure to keep the licensee's or registrant's premises and all equipment therein in a clean and sanitary condition. Requirements for sanitary conditions are also outlined in Sections 4853.5 and 4854 (practice sanitation standards)**

Maximum: Revocation/or suspension of premises permit  
\$5,000 fine.

Minimum: ~~Revocation or suspension/stayed~~  
~~Three~~ One year probation

Standard Terms and Conditions

Cost recovery

Fine - not less than \$50 nor more than \$500 per day not to exceed \$5,000

Optional terms and conditions including but not limited to:

Random hospital inspections

A ten to thirty day suspension or until in compliance with minimum standards of practice is achieved.

Maximum penalties should be considered when there is harm to animals or people or a viable threat of harm to animals and/or people, prior actions and/or no attempt to remedy the violations, for example, exposed electrical wires, animal carcasses not properly stored, etc.

Minimum penalties should be considered when there is no harm or threat of harm to animals and/or people, remedial action has been taken to correct the deficiencies and there is remorse for the existing sloppy and/or dirty conditions.

**NOTE:** A veterinary license and a premise permit can be disciplined separately. In the most severe cases, the Board may seek an Interim Suspension Order to shut premises down immediately while proceeding with formal discipline.

**Section 4883 (i)  
Negligence in the practice of veterinary medicine**

Maximum: Revocation, ~~no stay~~, and a \$5,000 fine

Minimum: ~~Revocation or suspension/stayed~~  
One year probation  
~~Standard terms and conditions~~  
Cost recovery  
\$2,000 fine  
Standard terms and conditions  
Optional terms and conditions including but not limited to:  
90 day suspension  
Supervised practice/hospital inspections  
Clinical written examination  
Continuing education  
Ethics training  
Community service  
Restitution

Maximum penalties should be considered when there is substantial harm or an animal has died and/or there is very few or no efforts at rehabilitation and no mitigating circumstances at the time of the commission of the offense(s).

Minimum penalties should be considered when there is no substantial harm to an animal, there is evidence of rehabilitation and there are mitigation circumstances such as no prior discipline, remorse for the harm that did occur, cooperation with the Board's investigation, etc.

**Section 4883 (i)  
Incompetence in the practice of veterinary medicine.**

Maximum: Revocation and a \$5,000 fine ~~for each violation~~

Minimum: ~~Revocation or suspension/stayed~~  
One year probation

Cost recovery  
\$2,000 fine  
Standard terms and conditions  
Optional terms and conditions including but not limited to:  
90 day suspension  
Supervised practice  
Hospital inspections  
Clinical written examination  
Ethics training, community service and restitution

Maximum penalties should be considered when there is substantial harm or an animal has died and/or there is very few or no efforts at rehabilitation and no mitigating circumstances at the time of the commission of the offense(s).

Minimum penalties should be considered when there is no substantial harm to an animal, there is evidence of rehabilitation and there are mitigation circumstances such as no prior discipline, remorse for the harm that did occur, cooperation with the Board's investigation, etc.

**Section 4883 (i)**  
**Fraud and/or deception in the practice of veterinary medicine.**

Maximum: ~~Revocation, no stay, and a \$5,000 fine for each violation~~

Minimum: ~~Revocation or suspension/stayed~~  
Three year probation

Cost recovery  
~~\$2,000 fine for each violation~~  
Standard terms and conditions  
Optional terms and conditions including but not limited to:  
90 day suspension  
Ethics training, community service and restitution

Maximum penalties should be considered when there is substantial physical or financial harm to the animal(s) and/or clients, prior discipline and no mitigating circumstances to offset the violation.

Minimum penalties should be considered when there are no prior actions, evidence of remorse and attempts at restitution have been made.

**Section 4883 (j); 4839.5**  
**Aiding or abetting in acts that are in violation of any of the provisions of this chapter**

Maximum: Revocation and \$5,000 fine

Minimum: ~~Revocation and/or suspension/stayed~~  
Three year probation  
Cost recovery  
\$1,000 fine  
Standard terms and conditions  
Optional terms and conditions including but not limited to:  
Ethics training  
~~Thirty~~ 30 day suspension

Maximum penalties should be considered when the acts endanger the life of an animal or the clients were

threatened in any way and the acts were repeated after a previous violation regarding the same type of offense.

Minimum penalties should be considered when the life of an animal was not threatened and no clients suffered any loss as a result of the activities, no prior actions and there is evidence of remorse and an acknowledgement of the violation.

**Section 4883 (k); 4837(a)**

**The employment of fraud, misrepresentation, or deception in obtaining a license or registration**

Maximum/Minimum: Revocation and \$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.

**Section 4883 (l)**

**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.**

Maximum: Revocation

Minimum: The penalty applicable to the violation if it had occurred in the State of California

**Section 4883 (m)**

**Cruelty to animals or conviction on a charge of cruelty to animals, or both**

Maximum: Revocation and \$5,000 fine

Minimum: ~~Revocation/stayed~~  
Five year probation  
Cost recovery  
\$5,000 fine  
Standard terms and conditions  
Optional terms and conditions including but not limited to:  
~~Thirty~~ 30 day suspension  
Psychological evaluation and/or treatment  
Medical evaluation and/or treatment  
Continuing education

NOTE: While the Board believes that this crime is so severe that revocation is the only appropriate penalty, it recognizes that there are legal restrictions outside its control that may prevent outright revocations. In those cases, the minimum penalty would be imposed. Refer to penal code 597 which refers to "intent" in committing animal cruelty.

**Section 4883 (n)**

**Disciplinary actions taken by any public agency in any state or territory of any act substantially related to the practice of veterinary medicine or the practice of a veterinary technician.**

Maximum: Revocation and \$5,000 fine

Minimum: ~~Revocation and/or suspension/stayed~~  
Three One year probation  
Cost recovery  
\$2,000 fine  
Standard terms and conditions

Optional terms and conditions including but not limited to:  
~~Thirty~~ 30 day suspension

Maximum penalties should be considered when the ~~criminal~~ act threatened the life of an animal or the public, there was more than one offense, there have been no or very few rehabilitation efforts, and there were no mitigating circumstances at the time of the commission of the offense(s).

Minimum penalties should be considered when attempts at self initiated rehabilitation are 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 society's interactions with animals in any way. Self initiated rehabilitation measures also include, when appropriate, specific training in areas of weakness, full restitution to persons harmed by the respondent, completions 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 criminal act.

### **Section 4883 (o)**

**Violation, or the assisting or abetting violation of any regulations adopted by the board pursuant to this chapter.**

Maximum: Revocation and \$5,000 fine

Minimum: ~~Revocation and/or suspension/stayed~~  
Three- One year probation  
~~Thirty~~ 30 day suspension  
Cost Recovery  
\$1,000 fine  
Standard terms and conditions  
Optional terms and conditions including but not limited to:  
Ethics training  
Restitution

Maximum penalties should be considered when the act threatened the public or life of an animal, there was more than one offense, there have been very few rehabilitation efforts, and there were no mitigating circumstances at the time of the offense(s).

Minimum penalties should be considered when measures have been taken prior to the filing of the accusation that are an attempt at self 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 in any way. Self initiated rehabilitation measures also include, when appropriate, specific training in areas of weakness, full restitution to persons harmed by the respondent, completions 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 act.

### **Section 4855**

#### **Written Records**

Maximum: Revocation and \$5,000 fine

Minimum: ~~Revocation and/or suspension/stayed~~  
One year probation  
~~Thirty day suspension~~  
Cost recovery  
\$1,000 fine  
30 day suspension  
Standard terms and conditions

Optional terms and conditions including but not limited to:  
Continuing education

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

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

Licensees are required to keep a written record of all animals receiving veterinary services and provide a summary of that record to the owner of animals receiving veterinary services when requested. Inadequate or illegible records can contribute to medical errors that threaten the life or quality of life for an animal and must be taken seriously.

**Note:** As a stand alone violation, not providing records to a client may result in a citation and fine. However, in a formal discipline, this may be one of multiple violations.

### **Section 4856**

#### **Inspection of Records by Board; Inspection of Equipment and Drugs**

Maximum: Revocation and \$5,000 fine

Minimum: ~~Revocation and/or suspension/stayed~~  
One year probation  
Cost recovery  
\$1,000 fine  
Standard terms and conditions  
Optional terms and conditions including but not limited to:  
~~Thirty-~~ 30 day suspension  
Ethics course

Maximum penalties should be considered when 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.

Minimum penalties should 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 actions.

**Note:** As a stand alone violation, refusing access to the Board may result in a citation and fine. However, this can be an egregious violation and, depending on the severity of the violations, can result in a formal discipline. Usually, it is one of multiple violations.

### **Section 4857**

#### **Limits on disclosure of information about animals or about clients responsible for them**

Maximum: Revocation and \$5,000 fine

Minimum: ~~Revocation and/or suspension/stayed~~  
~~Two~~ One year probation  
Cost recovery  
~~\$2,000~~ \$1,000 fine  
Standard terms and conditions  
Optional terms and conditions including but not limited to:

~~Thirty~~ 30 day suspension

Maximum penalties should be considered when breaching confidentiality puts the animals or clients in jeopardy.

Minimum penalties should be considered when the breach is inadvertent or when there is no prior action against the licensee.

**Note:** The severity of violations may determine whether action taken is citation and fine or formal discipline

### **Section 4830.5**

#### **Report of animal abuse or cruelty**

Maximum: Revocation and \$5,000 fine

Minimum: ~~Revocation and/or suspension/stayed~~  
~~Two~~ One year probation  
~~Thirty~~ 30 day suspension  
Cost recovery  
\$ 2,000 fine  
Standard terms and conditions  
Optional terms and conditions including but not limited to:  
30 day suspension

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

Minimum penalties should be considered when ??

### **Section 4830.7**

#### **Duty to report animal abuse or cruelty; Immunity from civil liability**

Maximum: Revocation and \$5,000 fine

Minimum: ?

### **Sections 4836.5 & 4837**

#### **Disciplinary proceedings against veterinarians and registered veterinary technicians**

Maximum: Revocation and \$5,000 fine

Minimum: ~~Revocation and/or suspension/stayed~~  
~~Two~~ One year probation  
~~Thirty~~ day suspension  
Cost recovery  
~~\$2,000~~ \$1,000 fine  
Standard terms and conditions  
Optional terms and conditions including but not limited to:  
30 day suspension  
Continuing Education  
Ethics training

Maximum penalties should be considered when the acts endanger the life of an animal or the clients were

threatened in any way and were repeated after a previous violation regarding the same type of offense.

Minimum penalties should be considered when the life of an animal or the clients were not threatened, 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 TERMS AND CONDITIONS OF PROBATION (1-12)**

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

**NOTE:** Standard terms and conditions are all included in every order

#### **1. Obey all laws**

Respondent shall obey all federal and state laws and regulations substantially related to the practice of veterinary medicine. Further, respondent shall report any arrest and/or conviction to the Board upon renewal of license and proof of compliance with the terms and conditions of the court order including, but not limited to probation and restitution requirements.

#### **2. Quarterly reports and interviews**

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. 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 to the Board, upon request.

#### **3. Cooperation with probation surveillance**

Respondent shall comply with the Board's probation surveillance program. All costs for probationary 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 within 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. No preceptorships or supervision of interns**

Respondent shall not supervise a registered intern and shall not perform any of the duties of a preceptor during the term of probation.

#### **5. Notice to employers**

Respondent shall notify all present and prospective employers of the Decision in this case and the terms, conditions, and restrictions imposed on respondent by the Decision in this case. Within thirty (30) days of the effective date of this Decision and within fifteen (15) days of respondent undertaking new employment, respondent shall cause his/her employer to report to the Board in writing, acknowledging the employer has read the Accusation and Decision in this case and understands respondent's terms and conditions of probation. Relief veterinarians notify employers immediately.

#### **6. Notice to employees**

Respondent shall, upon or before the effective date of this Decision, post or circulate a notice which actually recites the offenses for which respondent has been disciplined and the terms and conditions of probation, to all veterinary and animal health technician employees, and to any preceptor, intern or extern

involved in his/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. Relief veterinarians notify employees immediately.

#### **7. Owners and officers (corporations or partnerships): Knowledge of the law**

Respondent shall provide, within thirty 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. Tolling of probation**

If respondent resides out of state upon or after effective date of the decision, the time will be tolled and not apply towards the probationary period. However, he or she shall comply with the following conditions ~~only~~: quarterly reports and interviews, continuing education and cost recovery. If respondent returns to California he or she must comply or be subject to all probationary conditions for the period of probation.

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 fail to engage in the practice of Veterinary Medicine in California as set forth above, the time outside of the practice shall not apply to reduction of the probationary terms.

#### **9. 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.

#### **10. Completion of probation**

All costs for probation monitoring and/or mandatory premises inspections shall be borne by Respondent. Respondent shall notify the Board within 15 days of any changes to his or her practice situation or address of record while on probation. Failure to pay all costs due shall result in an extended period of probation until the matter is resolved and costs paid. Upon successful completion of probation and payment of all fees due, respondent's license will be fully restored.

#### **11. 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, respondent shall pay to the Board its enforcement costs including investigation, hearing, and probationary monitoring in the amount of \_\_\_\_\_ or the respondent shall make ~~said 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 (1-20)**

**NOTE:** In addition to the Standard Terms and Conditions, 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. During said suspension, respondent shall not enter any veterinary hospital which is licensed by the Board. Additionally, respondent

shall not manage, administer, or be a consultant to any veterinary hospital or any veterinarian during the period of actual suspension and shall not engage in any veterinary-related service or activity.

## 2. Suspension – premise license

As part of probation, Premises License Number \_\_\_\_\_, issued to respondent \_\_\_\_\_, is suspended for \_\_\_\_\_, beginning the effective date of this Decision. During said 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 (moved from standard terms)

If suspension is ordered, respondent shall post a notice of the Board's Order of Suspension, in a place clearly visible to the public. Said notice, provided by the Board, shall remain so 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 which does not have a current premises permit issued by the Board; and
2. If respondent is the Owner or Managing licensee of a veterinary practice, the following probationary conditions apply:

a) The location or mobile veterinary practice must not only have a current Premises Permit issued by the Board, but must also be subject to inspections by a Board representative to determine whether the location or veterinary practice meets minimum standards for a veterinary practice. 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 ~~\$250~~ \$500. If the veterinary practice has two consecutive ~~failed~~ non-compliant inspections, respondent shall surrender the Premises Permit within thirty (30) days from the date of the second consecutive ~~failed~~ non-compliant inspection.

b) As a condition precedent to any Premises 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. Respondent shall submit to the Board, along with any Premises Permit application, a ~~\$250~~ \$500 inspection fee.

## 5. Supervised practice

Respondent shall practice only under the supervision of a California licensed veterinarian who resides in California, and is approved by the Board prior to beginning the supervision. The supervision directed may be continuous supervision, substantial supervision, partial supervision, or supervision by daily review, as deemed necessary by the Board. All costs involved with practice supervision shall be borne by respondent.

Each supervisor shall have been licensed in California for at 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 professional relationship with Respondent and the supervisor shall not be in a familial relationship with or be an employee, partner or associate of Respondent.

Within thirty (30) days of the effective date of the Decision, respondent shall have his/her supervisor submit a report to the Board in writing stating the supervisor has read the Decision in Case Number \_\_\_\_\_. Should respondent change employment, respondent shall have his/her new supervisor, within fifteen (15) days after employment commences, submit a report to the Board in writing stating the supervisor has read the Decision in Case Number \_\_\_\_\_.

Respondent's practicing on a relief basis shall have his or her supervisor read the Decision in Case

Number \_\_\_\_ prior to commencing any practice and shall not practice as a solo practitioner at any time.

Respondent's supervisor shall, on a basis 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 shall 1) review these records to assess the medical necessity and appropriateness of respondent's treatment; 2) respondent's compliance with community standards of practice in the diagnosis and treatment of animal patients; 3) respondent's maintenance of necessary and appropriateness of respondent's treatment; 4) respondent's maintenance of necessary and appropriate records and chart entries; and 5) respondent's compliance with existing statutes and regulation governing the practice of veterinary medicine.

Respondent's supervisor shall, on a basis to be determined by the Board, file 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/her conclusions and opinions concerning the issues described above and the basis for his/her conclusions and opinions. Additionally, the supervisor shall maintain and submit with his/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 the employment of respondent.

#### **6. No ownership**

Respondent shall not have any legal or beneficial interest in any business, firm, partnership, or corporation currently or hereinafter licensed by the Board and shall not own any veterinary hospital.

#### **7. No management or administration**

Respondent shall not manage or be the administrator of any veterinary hospital.

#### **8. Continuing education**

Within sixty (60) days of the effective date of this 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 \_\_\_\_\_ 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. All costs shall be borne by respondent.

#### **9. Clinical or written exam**

Within sixty (60) days of the effective date of this Decision, or upon completion of the education course required above, or upon completion of the clinical training programs, respondent shall take and pass a (n) 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.

#### **10. Psychological evaluation**

Within thirty (30) days of the effective date of this 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 psychotherapist (psychiatrist or psychologist), to determine respondents' ability to practice veterinary medicine safely, who 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, 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 recommendation. All costs shall be borne by respondent.

**11. Psychotherapy**

Within thirty (30) days of the effective date of this Decision, respondent shall submit to the Board, for its prior approval, the name and qualifications of one of 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.

**12. Medical evaluation**

Within thirty (30) days of the effective date of this Decision, 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 physician, to determine respondents' ability to practice veterinary medicine safely, who 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.

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

As of the effective date of this 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.

**13. Rehabilitation program – alcohol and/or drugs**

Within thirty (30) days of the effective date of this 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 of continuing satisfactory participation in this program. All costs shall be borne by respondent.

**14. 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.

**15. 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, and dangerous drugs as defined in Section 4211 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bonafide illness. Respondent shall submit to random drug testing during period of probation.

**16. Abstain from alcohol use**

Respondent shall abstain completely from the use of alcoholic beverages and submit to random drug testing during period of probation.

**17. Community service**

Within sixty (60) days of the effective date of this 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 \_\_\_\_\_ (\_\_\_\_) hours per \_\_\_\_\_ for the first \_\_\_\_\_ of probation. All services shall be subject to prior Board approval.

**18. Fine**

Respondent shall pay to the Board a fine in the amount of \_\_\_\_\_ (not to exceed five thousand dollars) pursuant to Business and Professions Code sections 4875 and 4883. Respondent shall make said 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.

**19. Restitution**

Respondent shall make restitution to any injured party in the amount of \_\_\_\_\_. Proof of compliance with this term shall be submitted to the Board within sixty (60) days of the effective date of this decision. (Note: Name and address of injured party may be inserted in the body of this term.)

**20. Ethical training**

Respondent shall take ethical training courses for a minimum of \_\_\_\_\_ hours during the probationary period. Upon successful completion of the course, Respondent shall provide proof to the Board.

**21. DEA License (NEW)**

The Board shall report disciplinary action to the Drug Enforcement Agency and respondent shall surrender DEA license and send proof of surrender to Board within 10 days of effective date.

**NOTE: NEW LANGAUGE RELATIVE TO SB 1441:**

**TERMS AND CONDITIONS RELATIVE TO DISCIPLINE FOR DRUG AND ALCOHOL ABUSE (1-6)**

**Mandatory Terms and Conditions (1-4)**

**1. Suspension Pending Clinical Diagnostic Evaluation.**

Respondent's license is immediately suspended pending a clinical diagnostic evaluation to determine the extent of respondent's chemical dependency. The clinical diagnostic evaluation shall be conducted by an evaluator approved by the Board. While pending the evaluation and results, Respondent's license shall remain suspended. The suspension shall continue for the length of time necessary to complete the evaluation and for the Board to review the evaluation and determine if Respondent is currently fit to practice Veterinary Medicine. While awaiting the completion of the evaluation, respondent shall be subject to random biologic fluid testing at least twice a week. Regardless of the length of time to complete the evaluation, respondent's suspension shall not be lifted until respondent has obtained 30 days of negative biologic fluid tests. All costs shall be borne by respondent.

## **2. Authorization for Board to Communicate with Employees and Supervisors**

Respondent shall immediately submit to biologic fluid testing for controlled substances and/or alcohol. Tests shall be conducted by order of the Board or its designee by a testing facility approved by the Board. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and to respondent's current employer. The Administrative Law Judge shall determine the minimum frequency of testing for the first year and each subsequent year of probation thereafter based on the facts of the case, mitigating and aggravating circumstances, and on evidence of rehabilitation, within a range of 52 – 104 tests per year for the first year and 36 – 104 tests per year thereafter.

Nothing precludes the Board from increasing the number and/or frequency of testing based on information included in the clinical diagnostic evaluation, site monitor reports, failed tests, or other reasonable information pointing to a lack of sobriety or an increased threat of public harm.

## **3. Biological Drug and Alcohol Testing**

Respondent shall immediately submit to biologic fluid testing for controlled substances and/or alcohol. Tests shall be conducted by order of the Board or its designee by a testing facility approved by the Board. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and to respondent's current employer. The Administrative Law Judge shall determine the minimum frequency of testing for the first year and each subsequent year of probation thereafter based on the facts of the case, mitigating and aggravating circumstances, and on evidence of rehabilitation, within a range of 52 – 104 tests per year for the first year and 36 – 104 tests per year thereafter.

Nothing precludes the Board from increasing the number and/or frequency of testing based on information included in the clinical diagnostic evaluation, site monitor reports, failed tests, or other reasonable information pointing to a lack of sobriety or an increased threat of public harm.

## **4. Positive Results from Substance Tests**

Upon confirmed positive test for a controlled substance for which respondent does not possess a lawful prescription which is medically necessary to treat a medical condition or for alcohol when respondent is precluded from consuming alcohol, respondent's license shall immediately be suspended. Respondent shall undergo a clinical diagnostic evaluation. The clinical diagnostic evaluation shall be conducted by an evaluator approved by the Board. While pending the evaluation and results, Respondent's license shall remain suspended. Respondent's suspension shall not be lifted until respondent has obtained at least 30 days of negative biologic fluid tests.

Confirmed positive tests for controlled substances and/or alcohol constitute major violations of probation.

While confirmation of a presumptive positive test is being sought, respondent shall immediately cease practicing and leave work. The Board shall notify respondent's employer and work site monitor, if any. Respondent may not return to work until further instructed by the Board.

## **Optional Terms and Conditions (5-6)**

### **1. Group Support Meetings**

Respondent shall attend group support meetings as determined by his clinical diagnostic evaluation. Type and frequency of meetings shall be determined by the clinical diagnostician. Report of respondent's attendance at group meetings shall be made to the Board by the group meeting facilitator who shall have no financial, personal, or business relationship with the licensee within the year immediately preceding the commencement of group meetings and shall have at least three (3) years of experience in the treatment and rehabilitation of substances abuse and shall be licensed or certified by the state or other nationally certified organization. The report shall contain the date and location of the meeting, notation of respondent's attendance and participation level, and progress, if any. Unexcused absences shall be reported by the facilitator to the Board or its designee within 24 hours of the absence.

### 3. Worksite Monitor

Respondent's practice of Veterinary Medicine shall be subject to worksite monitoring. Respondent is required to complete all required consent forms and sign an agreement with the worksite monitor and the board allowing the Board to communicate with the worksite monitor.

The worksite monitor shall meet the following criteria:

- A. The worksite monitor shall not have financial, personal or familial relationship with the respondent. If it is impractical for anyone but the respondent's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a respondent's worksite monitor be an employee of the licensee.
- B. The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored as approved by the Board, be a person in a position of authority who is capable of monitoring the respondent at work.
- C. The worksite monitor shall have an active unrestricted California license with no disciplinary action within the last five (5) years.
- D. The worksite monitor shall sign a declaration that he or she has reviewed the terms and conditions of the respondent's disciplinary order and agrees to monitor the respondent as set forth by the Board.
- E. The worksite monitor must adhere to the following required methods of monitoring the respondent:
  - a. Face to face meetings with the respondent in the work environment on a frequent bases as determined by the Board with a minimum of once a week.
  - b. Interview other staff in the office regarding the respondent's behavior, if applicable.
  - c. Review respondent's work attendance
- F. Worksite Monitor shall report to the Board as follows:
  - a. Any suspected substance abuse must be verbally reported to the Board or its designee within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours, the verbal report must be within one (1) hours of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.
  - b. The worksite monitor shall complete and submit a written report monthly or as directed by the Board. The report shall include:
    - i. Respondent's name and license number
    - ii. Worksite monitor's name, license number and signature
    - iii. Worksite location
    - iv. Dates respondent had face to face meetings with monitor'
    - v. Staff interviewed, if applicable
    - vi. Attendance report
    - vii. Any change in behavior and/or personal habits
    - viii. Any indicators that can lead to suspected substance abuse

## **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 determine whether a license should be issued and whether a disciplinary action should be taken against a license. The Administrative Procedure Act (Government Code, Sections 11500 through 11528) 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 attorney and coordinates all necessary legal procedures. If a case is referred to the Office of the Attorney General and accepted for prosecution, the DAG assigned the matter will prepare a State of Issues or an Accusation. The person against who the action is filed is called the respondent.

Once drafted, the Statement of Issues or Accusation is forwarded to the Executive Officer for approval. Except where the preparation of administrative pleadings is voluminous and routine, the EO will normally review an Accusation of Statement of Issues for accuracy. Board staff will then assign a case number and the EO will sign it before returning it to the Attorney General's Office 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, since the law requires an opportunity for a hearing. 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 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 because it is an expensive procedure and may require any where from several days to several weeks of time.

### **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 voted upon by the board within 100 days of receipt or it becomes final as proposed by the ALJ.

It is critical for board members to remember that the only evidence upon which a decision may be based is the evidence presented at the hearing. Evidence received outside the hearing (e.g., through telephone calls, reputation in the professional community, letters, information from staff, etc.) may not be considered. The respondent's constitutional right to due process may be violated and the entire disciplinary action may be invalidated if the evidence is received outside the hearing. If board members receive such outside information, they must disqualify themselves from voting on the case and from participating in discussion regarding the final action on the case.

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 legally 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 or credibility of those witnesses, the board is the final decision maker. The board must consider the ALJ's narrative explanation in the Decision and how the Disciplinary Guidelines were applied. If the Decision is outside the Disciplinary Guidelines, did the ALJ explain to the satisfaction of the board, the mitigating circumstances that occurred 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.

See below for the parameters of action when a board decides to not adopt a Proposed Decision.

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

A board may choose not to adopt a Proposed Decision of an ALJ for several 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) either t.
- 2) The board disagrees with the ALJ's determination of the issue(s) in the case.
- 3) The board disagrees with the ALJ's findings and determination that no grounds for discipline exist.

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 oral or written arguments on the case to the board. The Board must render its own decision after reading the transcript and arguments with 100 days from the receipt of the transcript. Only that part of the Decision which the board disagrees should be rewritten. The Department's Legal Office or the DAG can prepare the board's decision. After promulgation, prompt service of the Decision should be made on the parties affected.

### **Petition for Reconsideration**

A respondent has a right to and may petition the board within 30 days of the date when the Board adopts decision and becomes effective. In this instance, the respondent will present a written argument to the board requesting dismissal of the charges or modification of the penalty. However, since board members usually discuss all aspects of the Proposed Decision and the penalty or penalties related to the violation(s) during the closed session in which the original decision was adopted, it is rare for a board to reconsider its own 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 and the board no longer has jurisdiction over the Order.

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

A respondent has the right to request the reconsideration and if denied, file a Writ to appeal a disciplinary action imposed by a board. A respondent also has the right to skip the request for reconsideration and go directly to filing an appeal – it is up to the discretion of the respondent and/or his or her attorney. The respondent would appeal by filing a writ of administrative mandamus in a Superior Court. This may include a request by the respondent for a stay or postponement of the board's Decision invoking disciplinary action. A court has the authority to uphold or set aside a Decision or return the case to the board with specific directions for further consideration.

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. Mitigating factors are any evidence that would show that respondent has improved and corrected the actions that led to the 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 will 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. In the case of a stipulation, the board has more latitude to modify its terms as a part of the negotiation process and to look beyond the mere contents of an Accusation, though it should 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.

Stipulations are strongly encouraged because they significantly reduce the time and money spent in prosecuting a disciplinary action. The basic costs per day just for a formal hearing are approximately \$1,600.

### **Default Decisions**

Default decisions are rare; however, in some cases, the respondent does not respond to an Accusation by returning the Notice of Defense or does not appear at a scheduled hearing. There are legal requirements for responding to an Accusation that include the obligation to respond to the Accusation and to be present at a scheduled hearing. Failure to meet the legal requirements in a disciplinary action is grounds for taking action through a Default decision whereby the discipline is imposed based on the respondent's failure to respond or meet legal requirements. In these cases the Board is obligated to make all reasonable attempts to establish contact with the respondent through the DAG and those attempts must be carefully documented for the records prior to issuing a Default Decision.

## **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 (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.

## **DISCIPLINARY PROVISIONS AND STANDARDS**

### **Business and Professions Code Sections**

#### **Penalties**

- 4883(a) Conviction of a crime substantially related to veterinary medicine
- 4883(b) Lending name to illegal practitioner
- 4883(c) Violation of the provisions of this chapter
- 4883(d) Fraud or dishonesty regarding biological tests
- 4883(e) Improper employment to demonstrate the use of biologics in animals
- 4883(f) False advertising
- 4883(g) Unprofessional conduct
- 4883(h) Failure to keep premises and equipment clean and sanitary
- 4883(i) Negligence
- 4883(i) Incompetence
- 4883(i) Fraud or deception
- 4883(j) Aiding or abetting in acts which are in violation of this chapter
- 4883(k) Fraud or misrepresentation in obtaining a license
- 4883(l) Discipline of license in another state or territory
- 4883(m) Cruelty to animals or conviction on a charge of cruelty to animals, or both
- 4883(n) Disciplinary action taken by other agencies that related  
to the practice of veterinary medicine
- 4883(o) Violation or the assisting or abetting violation of any Board regulations
- 4855 Written records
- 4856 Inspection of records and premises
- 4857 Record Confidentiality
- 4836 & 4836.5 Permitting unauthorized health care services  
by RVTs or unregistered assistants

#### **Probation Terms and Conditions**

Standard conditions of probation

Optional conditions

Mandatory and Optional Terms and Conditions for Cases involving Drug or Alcohol Violations

#### **Title 16, California Code of Regulations**

2030(a)-(h) Minimum Standards

2032.3 Recordkeeping

**CITATION AND FINE**

**Business and Professions Code, Chapter 11., Article 4.**

- 4875.2 Citation and Fine Authority
- 4875.4 Civil Penalties
- 4875.6 Contesting Citations

**MISDEMEANOR CITATION**

**Business and Professions Code, Chapter 11., Article 2.**

- 4831 Violations; Misdemeanors; Penalty
- 4830.5 Staged Animal Fight; Civil Liability

**OTHER PENALTIES, DISCIPLINARY AUTHORITY OR ALTERNATIVES**

**Business and Professions Code, Chapter 1.**

- 7.5 Conviction of a Crime
- 118 Withdrawal of Application or Surrender of License
- 125 Conspiracy with Unlicensed Persons
- 125.5 Injunction, Restitution, and Reimbursement
- 125.6 Unprofessional Conduct - Discrimination

**Business and Professions Code, Chapter 2.**

- 480 Grounds for Denial of Licensure

**Business and Professions Code, Chapter 3.**

- 490-493 Conviction of a Crime

**Business and Professions Code, Chapter 4.**

- 495 Public Repeval Procedures

**Business and Professions Code, Chapter 5.**

- 496-499 Examination Security