

Disciplinary Guidelines

~~May 2002~~ April June 2012

Veterinary Medical Board
~~Registered Veterinary Technician Committee~~



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DISCIPLINARY GUIDELINES

VETERINARY MEDICAL BOARD

~~May 2002~~ ~~April~~ June 2012

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Veterinary Medical Board

Disciplinary Guidelines

Introduction

The Veterinary Medical Board (VMB Board) developed the Disciplinary Guidelines outlined in this manual ~~to be used as a tool by~~ for its Executive Officer, staff, legal counsel, administrative law judges, and other persons involved in the VMB's 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 VMB Board recognizes that each case is unique and that mitigating or aggravating circumstances in a particular case may necessitate variations. Therefore, the VMB 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 ~~would appreciate~~ 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 ~~two three two~~ two categories, 1) standard terms and conditions that appear in that are used for all cases, and and 2) optional terms and conditions that are used to address for specific violations and circumstances unique to a specific case, ~~and 3) mandatory and options terms and conditions for any case in which drugs or alcohol abuse caused or played a role in the violation.~~

~~Licenses are issued for both~~ The Board licenses veterinarians and registers veterinary hospitals premises and veterinary technicians. If there is action taken against both the personal individual license and the premises permit licenses 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 and the premises permit~~ 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 VMB Board has established that the minimum penalty shall always include revocation or suspension with the revocation, or suspension stayed and terms and conditions of probation imposed. ~~In the majority of cases, the revocation is stayed and specific probationary terms and conditions are imposed.~~ The imminent threat of the revocation or suspension being reinstated ~~is incentive for~~ helps to insure ensure 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 shall 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~~ without explanation of the deviation, the VMB Board has the option of may non-adopting the Proposed ~~Decision and reviewing~~ the case itself.

PENALTIES BY BUSINESS AND PROFESSIONS CODE SECTION NUMBER

Section	4883(a); 4837(b)
Title Violation	Conviction of a crime substantially related to <u>the qualifications, functions, or duties of veterinary medicine, surgery, or dentistry, in which case the record of the conviction shall be conclusive evidence.</u>
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty (as appropriate)	<p>Sixty-day suspension and \$2,000 fine <u>Revocation and/or suspension stayed</u> <u>Two-year probation</u> <u>Standard terms of Probation and conditions</u> <u>\$2,000 fine</u> <u>Optional terms and conditions including but not limited to:</u></p> <ul style="list-style-type: none"> <u>Suspension</u> <u>Limitations on practice</u> <u>Supervised practice</u> <u>No ownership of a veterinary hospital or clinic</u> <u>No management of a veterinary hospital/no supervision of interns or residents</u> <u>Continuing education</u> <u>Psychological Eevaluation and/or treatment</u> <u>Medical evaluation and/or treatment</u> <u>Rehabilitation program</u> <u>Submit to drug testing</u> <u>Abstain from controlled substances/alcohol</u> <u>Community service</u> <u>Restitution</u> <u>Ethical training</u>

DESCRIPTION

~~More severe penalties are appropriate if the Maximum penalties may should be considered when if the criminal act caused or threatened harm to an animal or the public or life of an animal, there was more than one offense, if there have been were no very few limited or very few no rehabilitation efforts at rehabilitation, and there were or if there were no mitigating circumstance at the time of the commission of the offense(s).~~

~~Less severe penalties are appropriate if some measures have been taken that are an attempt at self-~~
Minimum penalties may be considered when if there is evidence of an attempt(s) at self-initiated rehabilitation. Evidence of self-rehabilitation initiated rehabilitation measures includes, but is not limited to, pro bono services to nonprofit organizations or public agencies that improve the care and treatment of animals or improve generally society's interactions with animals in any way. Self-rehabilitation 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 licensee or registrant, completions of treatment or other conditions of probation ordered by the court, and or full compliance with all laws since the date of the occurrence of the criminal act.

Section	4883(b); 4837(d)
Title Violation	For H <u>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.</u>
Maximum Penalty	Revocation and a \$5,000 fine

Minimum Penalty	Thirty-day suspension for each offense and \$500 fine Revocation and/or suspension stayed Three-years probation Standard terms of probation and conditions \$2,000 fine Optional terms and conditions including but not limited to: 30-day suspension for each offense No ownership of a veterinary hospital or clinic No management or administration of staff or hospital duties of a veterinary hospital/no supervision of interns or residents Ethics training
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DESCRIPTION

~~More severe Maximum penalties should be considered are appropriate if the acts or omissions caused or threatened harm to an animal or client, 1) endanger the life of an animal or, 2) the clients were threatened in any way and, 3) were repeated after a previous violation regarding the same type of offense or if there are prior violations of the same type of offense.~~

~~Less severe penalties are appropriate Minimum penalties should may be considered if the life of an animal was not threatened in any way and clients have did not suffered any detriment as a result of the activities the acts or omissions did not cause or threaten harm to an animal or cause detriment to a client.~~

Section	4883(c); 4837(e); 4839.5
Title Violation	Violation <u>or attempting to violate, directly or indirectly, any of the provisions of the chapter</u>
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	Thirty-day suspension and \$1,000 fine Revocation and/or suspension stayed Three-year probation Standard terms and conditions \$1,000 fine Optional terms and conditions including but not limited to: Restitution Ethics course training

DESCRIPTION

~~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.~~

~~More severe penalties are appropriate only when it is proven that Maximum penalties should be considered when if the respondent's actions were intended to subvert investigations by the Board or in any way hide or alter evidence which that would or could be used in any criminal, civil, or administrative actions.~~

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

Section	4883(d) (e)
Title Violation	Fraud or dishonesty regarding in applying, treating, or reporting on tuberculin or other biological tests. Employment of anyone but a veterinarian licensed in the State to demonstrate the use of biologics in the treatment of animals.

Maximum Penalty	Revocation <u>or suspension</u> and a <u>\$5,000 fine</u>
Minimum Penalty	Thirty-day suspension, no stay, for each occurrence and \$1,000 fine <u>Revocation and/or suspension stayed</u> <u>Two-year probation</u> <u>Standard terms and conditions</u> <u>\$5,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>30-day suspension of license and/or premises permit</u> <u>Continuing education</u> <u>Community Sservice</u>
DESCRIPTION	
<p>Any violations which could allow <u>Maximum penalties include those cases where there is should be considered if the acts or omissions caused public exposure of reportable diseases (rabies, brucellosis or tuberculosis) or other hazardous diseases of zoonotic potential known to be of hazard to the public would be considered a severe violation.</u></p> <p><u>Less severe Minimum penalties are appropriate if the life of an animal was not threatened in any way by the action or omission of the respondent, and the clients didn't suffer detriment as a result of the activities may be considered if the acts or omissions did not cause or threaten harm to an animal or cause detriment to a client.</u></p>	

Section	4883(e)
Title	Improper employment to demonstrate the use of biologics in animals
Maximum Penalty	Sixty-day suspension and \$2,000 fine. Conditions of probation must include at least the following: Pass an examination of the relevant requirements; practice only under the direct supervision of a California-licensed veterinarian when performing the treatment(s) that were the subject of the action.
Minimum Penalty	Thirty-day suspension

Section	<u>4883(e)</u>
Title	<u>Employment of anyone but a veterinarian licensed in the State to demonstrate the use of biologics in the treatment of animals.</u>
Maximum Penalty	<u>Revocation or suspension and a \$5,000 fine</u>
Minimum Penalty	<u>Revocation or suspension stayed</u> <u>Two-year probation</u> <u>Standard terms and conditions</u> <u>\$5,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>30-day suspension of license and/or premises permit</u> <u>Continuing education</u> <u>Community service</u>

Section	4883(f)
Title Violation	False <u>or misleading advertising</u>
Maximum Penalty	Sixty-day suspension, for each violation <u>Revocation and/or suspension and a \$5,000 fine</u>

Minimum Penalty	Thirty-day suspension and \$1,000 fine Revocation and/or suspension stayed Two-year probation 60-day suspension Standard terms and conditions \$2,000 fine Optional terms and conditions including but not limited to: Restitution Ethics course training
<p>DESCRIPTION</p> <p>The more severe penalty <u>Maximum penalties</u> should be <u>imposed</u> considered if the advertising in fact <u>deceived</u> <u>was deceptive</u>, <u>caused or threatened harm to an animal</u>, or caused a client <u>thereby</u> to be <u>defrauded</u> <u>misled</u> and suffer monetary damages <u>or physical harm to an animal</u>. <u>One of the probationary terms in that case should be restitution to any client damaged as a result of the violation</u>.</p> <p>The more severe penalty <u>would be appropriate</u> should be considered when the violation continued after a violation there are prior violations of the same type of offense.</p> <p>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 may be considered if the acts or omissions did not cause or threaten harm to an animal or cause detriment to a client.</p>	

Section	4883(g); 4837(c)
Title Violation	<p>Unprofessional conduct, that includes, but is not limited to the following:</p> <p><u>(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.</u></p> <p><u>(2)(A) The use of, or prescribing for, or administering to himself or herself, any controlled substance.</u></p> <p><u>(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.</u></p> <p><u>(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.</u></p> <p><u>(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.</u></p>
<i>(1) Alcohol and/or Drug Violations</i>	
Maximum Penalty	Revocation and a \$5,000 fine

Minimum Penalty	<u>Suspension</u> <u>Revocation and/or suspension stayed</u> <u>Five-year probation</u> <u>Standard terms and conditions</u> <u>\$5,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>30-day suspension</u> <u>Supervised practice</u> <u>Psychological evaluation and/or treatment</u> <u>Medical evaluation and/or treatment</u> <u>Surrender DEA license/send proof of surrender to Board within 10 days of the effective date of the decision.</u> <u>Supervised practice</u> <u>No ownership of a veterinary hospital or clinic</u> <u>No management or administration of staff or hospital duties of a veterinary hospital/no supervision of interns or residents</u> <u>Rehabilitation program</u> <u>Submit to biological sample drug testing</u> <u>Abstain from use of alcohol and drugs/controlled substances</u> <u>Abstain from alcohol</u>
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DESCRIPTION
~~Maximum penalties should be considered when there is harm to either clients or animals or great potential for harm if acts or omissions caused or threatened harm to an animal or a client.~~

~~Minimum penalties should be considered when there has been no direct harm, if acts or omissions did not cause harm to an animal, there are no prior actions violations of the same type of offense, and there is evidence that respondent is making an attempt(s) at rehabilitation of self-initiated rehabilitation.~~

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

(2) Other Unprofessional Conduct Violations

Maximum	Revocation and \$5,000 fine if there is animal harm or harm to other persons
Minimum	Thirty-day suspension and \$500 fine

DESCRIPTION
Other unprofessional violations include but are not limited to:
deviations from good standards of practice not otherwise addressed in the code.

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

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

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

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

DESCRIPTION

~~Maximum penalties should be considered when there is harm to animals or people or a viable threat of harm to animals and/or people if the acts or omissions caused or threatened harm to animals or the public, if there are prior actions and/or no attempt to remedy the violations, for example, exposed electrical wires, animal carcasses not properly stored, etc. unsanitary or hazardous workplace, improper sterilization of instruments, or improper husbandry practices.~~

~~Minimum penalties should may be considered when there is no harm or threat of harm to animals and/or people if the acts or omissions did not cause or threaten harm to animals or people, remedial action has been taken to correct the deficiencies, and there is remorse for the existing sloppy and/or dirty unsanitary conditions.~~

~~Please Note - A veterinary license and a premises permit can be disciplined separately. In the most severe cases, the Board may seek and Interim Suspension Order to shut premises down immediately while proceeding with formal discipline.~~

Section	4883(i)
Title Violation	<u>Negligence, and incompetence in the practice of veterinary medicine</u>
Maximum Penalty	<u>Revocation, no stay, and a \$5,000 fine for each violation</u>
Minimum Penalty	<p>Thirty day suspension with a \$2,000 fine for each offense and probationary terms to include formal classes or other appropriate training in the area(s) of weakness with an examination in the areas of species practice.</p> <p>Practice under the supervision of a California licensed veterinarian for at least one year after the termination of the period of suspension. Level of supervision to be determined by the Board. The more severe penalty would be appropriate when the life of an animal was directly threatened by the respondent's conduct.</p> <p><u>Revocation and/or suspension stayed</u> <u>One-year probation</u> <u>Standard terms and conditions</u> <u>Fine - not less than \$50 nor more than \$500 per day, not to exceed \$5,000</u> <u>Optional terms and conditions including but not limited to:</u> <u>Random hospital inspections</u> <u>A ten- to thirty-day suspension or suspension until in compliance with minimum standards of practice is achieved.</u> <u>Announced or unannounced premises inspection</u></p>

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

~~Minimum penalties should may be considered when there is no harm or threat of harm to animals and/or people if the acts or omissions did not cause or threaten harm to animals or people, remedial action has been taken to correct the deficiencies and there is remorse for the existing sloppy and/or dirty conditions negligent acts.~~

Section	4883(i)
Violation	<u>Incompetence in the practice of veterinary medicine</u>
Maximum Penalty	<u>Revocation and a \$5,000 fine</u>

<u>Minimum Penalty</u>	<u>Revocation and/ or suspension stayed</u> <u>One-year probation</u> <u>Standard terms and conditions</u> <u>\$2,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>90-day suspension</u> <u>Supervised practice/</u> <u>Random hospital inspections</u> <u>Announced or unannounced premises</u> <u>inspection</u> <u>Clinical written examination</u> <u>Continuing education</u> <u>Clinical written examination</u> <u>Ethics training</u> <u>Community service</u> <u>Restitution</u> <u>Ethics training</u>
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Maximum penalties should be considered based on the following factors: when there is substantial harm if the acts or omissions caused harm to an animal or an animal has died, and/or there is very few are limited or no efforts at rehabilitation, and or there are no mitigating circumstances at the time of the commission of the offense(s).

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

<u>Section</u>	4883(i)
<u>Title Violation</u>	Fraud and/or Deception <u>in the practice of veterinary medicine</u>
<u>Maximum Penalty</u>	Revocation, no stay, and a \$5,000 fine for each violation
<u>Minimum Penalty</u>	90-day suspension with probation. \$2,000 fine for each violation. Ethics training, community service and restitution. <u>Revocation and/or suspension stayed</u> <u>One-year probation</u> <u>\$2,000 fine</u> <u>Standard terms and conditions</u> <u>\$2,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>90-day suspension</u> <u>Supervised practice</u> <u>Hospital inspections</u> <u>Supervised practice</u> <u>Clinical written examination</u> <u>Ethics training,</u> <u>Community service and</u> <u>Restitution</u> <u>Ethics training</u>

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

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

Section	4883(j); 4839.5
Title Violation	Aiding or abetting in acts which are in of violation of <u>any of the provisions of this chapter</u>
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	Thirty-day suspension for each offense and \$500 fine <u>Revocation and/or suspension stayed</u> Three <u>One-year probation</u> <u>\$1,000 fine</u> <u>Standard terms and conditions</u> <u>\$1,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>Ethics training</u> <u>30-day suspension</u> <u>Ethics training</u>

Description
~~More severe penalties are appropriate if~~ Maximum penalties should be considered when if the acts or omissions endanger the life of an animal or the clients were threatened in any way caused or threatened harm to an animal or client and the acts were repeated after a previous prior violation regarding of the same type of offense.

~~Less severe penalties are appropriate if~~ Minimum penalties should may be considered when the life of an animal was not threatened, in any way and no clients have suffered any detriment loss as a result of the activities. if the acts or omissions did not cause or threaten harm to an animal or cause detriment to a client, there were no prior actions, and there is evidence of remorse and an acknowledgement of the violation.

Section	4883(k); 4837(a)
Title Violation	The employment of <u>Fraud, or misrepresentation, or deception in obtaining a license or registration</u>
Maximum and Minimum Penalty	Revocation and a \$5,000 fine

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

Section	4883(l)
Title Violation	<u>The revocation, suspension, or other Ddiscipline of license in-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</u>

Maximum Penalty	Revocation
Minimum Penalty	The penalty <u>that would have been</u> applicable to the violation if it had <u>it</u> occurred in the State of California

Section	4883(m)
Title Violation	Cruelty to animals or conviction on a charge of cruelty to animals, or both
Maximum Penalty	Revocation, no stay. This crime is considered by the Board to be so severe that revocation is the only appropriate penalty, together with <u>and</u> a \$5,000 fine.
Minimum Penalty	Revocation and/or suspension stayed <u>Five-year probation</u> <u>\$5,000 fine</u> <u>Standard terms and conditions</u> <u>\$5,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>Thirty 30-day suspension</u> <u>Psychological evaluation and/or treatment</u> <u>Medical evaluation and/or treatment</u> <u>Continuing education</u> <u>Ethics training</u>

~~Note - While the Board believes this crime violation 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 a lesser penalty may be appropriate where there are mitigating circumstances.~~

Section	4883(n)
Title Violation	Disciplinary actions <u>taken by any other public agencies in any state or territory of any act substantially that related to the practice of veterinary medicine or the practice of a veterinary technician</u>
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	Sixty-day suspension and \$2,000 fine <u>Revocation and/or suspension stayed</u> <u>One-year probation</u> <u>\$2,000 fine</u> <u>Standard terms and conditions</u> <u>\$2,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>30-day suspension</u> <u>Continuing education</u>

DESCRIPTION

More severe Maximum penalties are appropriate if the criminal should be considered when the act threatened the life of an animal or the public if the acts or omissions caused or threatened harm to an animal or the public, there was more than one offense, there have been no or very few rehabilitation efforts is limited or no evidence of rehabilitation, and there were no mitigating circumstances at the time of the commission of the offense(s).

Less severe Minimum penalties are appropriate if some measures have been should may be considered when if there is evidence of attempts at self-initiated rehabilitation are taken prior to the filing of the accusation that are an attempt at self-rehabilitation accusation. Self-rehabilitation initiated rehabilitation measures include pro bono services to nonprofit organizations or public agencies that improve the care and treatment of animals or improve generally generally society's interactions with animals in any way. Self-rehabilitation initiated rehabilitation measures also include, when appropriate, specific training in areas of weakness, full restitution to persons harmed by the respondent licensee or registrant, 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 violation.

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

DESCRIPTION

More severe Maximum penalties are appropriate if the criminal should be considered when the act threatened the life public or of an animal if the acts or omissions caused or threatened harm to the animal or the public, there was more than one offense, there have been very few is limited or no evidence of rehabilitation efforts, and there were no mitigating circumstances at the time of the offense(s).

Less severe Minimum penalties are appropriate if some should may be considered when measures have been taken prior to the filing of the accusation that are an if there is evidence of attempts at self-rehabilitation initiated rehabilitation. Self-rehabilitation initiated rehabilitation measures include pro bono services to nonprofit organizations or public agencies that improve the care and treatment of animals or improve generally generally society's interactions with animals in any way. Self-rehabilitation initiated rehabilitation measures also include, when appropriate, specific training in areas of weakness, full restitution to persons harmed by the respondent licensee or registrant, 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 violation.

Section	4855
Title <u>Violation</u>	Written Records
Maximum Penalty	Revocation and a \$5,000.00 fine
Minimum Penalty	Sixty-day suspension and \$2,000.00 fine <u>Revocation and/or suspension stayed</u> <u>One-year probation</u> <u>Standard terms and conditions</u> <u>30-day suspension</u> <u>\$1,000 fine</u> 30-day suspension Standard terms and conditions <u>Optional terms and conditions including but not limited to:</u> <u>Continuing education</u>
<p><u>Maximum penalties should be considered when there are a lack of records or omissions and/or alterations that constitute negligence.</u></p> <p><u>Minimum penalties should may be considered when there is evidence of carelessness and corrective measures have been implemented to correct the process whereby the records were created.</u></p> <p><u>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.</u></p> <p><u>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.</u></p>	

Section	4856
Title <u>Violation</u>	Failure to permit the inspection of Records and Premises by Board; Inspection of Equipment and Drugs or Premises by the Board
Maximum Penalty	Revocation and a \$5,000.00 fine
Minimum Penalty	Sixty-day suspension and \$2,000.00 fine <u>Revocation and/or suspension/ stayed</u> <u>One-year probation</u> <u>\$1,000 fine</u> <u>Standard terms and conditions</u> <u>\$1,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>30-day suspension</u> <u>Ethics course training</u>

Maximum penalties should be considered ~~when~~ if there is a deliberate attempt to prevent access to the Board, prior discipline of the managing licensee or the premises, or no mitigating circumstances at the time of the refusal.

Minimum penalties ~~should~~ may be considered when there are mitigating circumstances at the time of the request for records, where there is no deliberate attempt to prevent the Board from having access to the records or when there are no prior 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
Title Violation	Record Confidentiality Impermissible Limits on disclosure of information about animals and/or about clients responsible for them
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	Thirty-day suspension and \$500 fine <u>Revocation and/or suspension stayed</u> <u>One-year probation</u> \$1,000 fine <u>Standard terms and conditions</u> <u>\$1,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>30-day suspension</u>

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

Minimum penalties ~~should~~ may 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
Title Violation	Dog injury or death <u>Report of animal abuse or cruelty</u> <u>Duty to report staged animal fighting</u>
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	Thirty-day suspension for each occurrence and \$1,000 fine <u>Revocation and/or suspension stayed</u> <u>One-year probation</u> \$1,000 fine <u>Standard terms and conditions</u> <u>\$1,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>30-day suspension</u> <u>Continuing Eeducation</u> <u>Ethics training</u>

DESCRIPTION
 Less severe penalty is appropriate only if the life of an animal is in no way threatened by the failure to report and if the violation did not continue after a previous violation regarding the same offense.

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

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

Section	<u>4830.7</u>
Violation	<u>Duty to report animal abuse or cruelty; Immunity from civil liability</u>
Maximum Penalty	<u>Revocation and a \$5,000 fine</u>
Minimum Penalty	<u>Considered on a case-by-case basis</u>

Section	<u>4836 & 4836.5 & 4837</u>
Title Violation	<u>Permitting unauthorized health care services by RVTs or unregistered assistants. Disciplinary proceedings against veterinarians and registered veterinary technicians</u>
Maximum Penalty	<u>Revocation and a \$5,000 fine</u>
Minimum Penalty	<u>Thirty-day suspension for each occurrence and \$500 fine</u> <u>Revocation and/or suspension/ stayed</u> <u>One-year probation</u> <u>\$1,000 fine</u> <u>Standard terms and conditions</u> <u>\$1,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>30-day suspension</u> <u>Continuing Education</u> <u>Ethics training</u>

DESCRIPTION
 More severe penalties are appropriate if Maximum penalties should be considered when if the acts or omissions caused or threatened harm to an animal or client, endanger the life of an animal or the clients were threatened in any way and or the acts were repeated after a previous prior violation regarding of the same type of offense.

~~Less severe penalties are appropriate only Minimum penalties should may be considered when the life of an animal or the clients were not threatened if the acts or omissions did not cause or threaten harm to an animal or client, or if the violation did not continues after a previous violation regarding the same offense 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 (1-11)

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

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

1.	Obey all Laws
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Respondent shall obey all federal and state laws and regulations substantially related to the practice of veterinary medicine. Further, within thirty (30) days of any arrest or conviction, Respondent shall report any arrest and/or conviction to the Board upon renewal of license and provide 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
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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
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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 or address of record within thirty (30) days of the change. Respondent shall notify the Board immediately in writing if Respondent leaves California to reside or practice in another state. Respondent shall notify the Board immediately upon return to California.

4.	No Preceptorships or Supervision of Interns
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Respondent shall not supervise a registered intern and shall not perform any of the duties of a preceptor.

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

6.	Notice to Employees
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Respondent shall, upon or before the effective date of this ~~D~~decision, post or circulate a notice which actually recites the offenses for which ~~R~~Respondent has been disciplined and the terms and conditions of probation, to all registered veterinary ~~and animal health technician~~ employees, and to any preceptor, intern or extern involved in his/ or her veterinary practice. Within fifteen (15) days of the effective date of this ~~D~~decision, ~~R~~Respondent shall cause his/her employees to report to the Board in writing, acknowledging the employees have read the Accusation and ~~D~~decision in the case and understand ~~R~~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 (30) days after the effective date of the ~~D~~decision, signed and dated statements from the owners, officers, or any owner or holder of ten percent (10%) or more of the interest in ~~R~~Respondent or ~~R~~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. Posted Notice of Suspension

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

98. Tolling of Probation

If ~~R~~Respondent resides out of state upon or after effective date of the decision, he or she must comply with the following conditions only: quarterly reports and interviews, tolling of probation, continuing education and cost recovery. If ~~R~~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 ~~v~~veterinary ~~m~~medicine in California for a minimum of 24 hours per week for six (6) consecutive months or as determined by the Board. Should ~~R~~Respondent fail to engage in the practice of ~~v~~veterinary ~~m~~medicine in California as set forth above, the time outside of the practice shall not apply to reduction of the probationary terms.

109. Violation of Probation

If ~~R~~Respondent violates probation in any respect, the Board, after giving ~~R~~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 ~~R~~Respondent during probation, or if the Attorney General's office has been requested to prepare any disciplinary action against ~~R~~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.

110. 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 extension of probation until the matter is resolved and costs paid. Upon successful completion of probation and all payment of all fees due, ~~R~~Respondent's license will be fully restored.~~

121. 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, ~~R~~Respondent shall pay to the Board its enforcement costs including investigation, hearing, and probationary monitoring in the amount of _____ or the ~~R~~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 (1-21)

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

1. Actual Suspension – Individual License

As part of probation, ~~#~~Respondent is suspended from the practice of veterinary medicine for _____, beginning the effective date of this ~~D~~Decision. During said suspension, ~~#~~Respondent shall not enter any veterinary hospital which is ~~licensed~~ registered 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. Actual Suspension – Premises

As part of probation, Premises ~~License~~ Premise Number _____, issued to ~~#~~Respondent _____, is suspended for _____, beginning the effective date of this ~~D~~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

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 The~~ notice, provided by the Board, shall remain ~~so~~ posted during the entire period of actual suspension.

34. Limitation on Practice/Inspections

(A) During probation, ~~#~~Respondent is prohibited from ~~P~~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 ~~O~~Wner or ~~M~~Managing licensee of a veterinary practice, the following probationary conditions apply:

(a) The location or mobile veterinary practice must not only have a current ~~P~~premises ~~P~~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 ninety (90) 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 ~~M~~Managing ~~L~~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 ~~P~~premises ~~P~~permit application, a ~~\$250~~\$500 inspection fee.

45. Supervised Practice

Respondent shall practice only under the supervision of a veterinarian approved by the Board. The supervision directed may be continuous supervision, substantial supervision, partial supervision, or supervision by daily review, as deemed necessary by the Board. All costs involved with practice supervision shall be borne by ~~R~~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 personal 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 ~~D~~decision, ~~R~~Respondent shall have his/ or her supervisor submit a report to the Board in writing stating the supervisor has read the ~~D~~decision in ~~C~~case ~~N~~number _____. Should ~~R~~Respondent change employment, ~~R~~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 ~~D~~decision in ~~C~~case ~~N~~number _____.

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 ~~R~~Respondent provides treatment or consultation during the period of supervised practice. The supervisor shall ~~+~~ review these records to assess 1) the medical necessity and appropriateness of ~~R~~Respondent's treatment; 2) ~~R~~Respondent's compliance with community standards of practice in the diagnosis and treatment of animal patients; 3) ~~R~~Respondent's maintenance of necessary and appropriate ~~ness of respondent's~~ treatment; 4) ~~R~~Respondent's maintenance of necessary and appropriate records and chart entries; and 5) ~~R~~Respondent's compliance with existing statutes and regulation governing the practice of veterinary medicine.

Respondent's supervisor shall file monthly reports with the Board. These reports shall be in a form designated by the Board and shall include a narrative section where the supervisor provides his/ or her conclusions and opinions concerning the issues described above and the basis for his/ or her conclusions and opinions. Additionally, the supervisor shall maintain and submit with his/ or her monthly reports a log designating the patient charts reviewed, the date(s) of service reviewed, and the date upon which the review occurred. If the supervisor terminates or is otherwise no longer available, Respondent shall not practice until a new supervisor has been approved by the Board.

56. No Ownership

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

67. No Management or Administration

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

78. Continuing Education

Within sixty (60) days of the effective date of this ~~D~~decision, and on an annual basis thereafter, ~~R~~Respondent shall submit to the Board, for its prior approval, an educational program or course related to ~~R~~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 of completion to the Board. This program shall be in addition to the Continuing Education required of all licensees. All costs shall be borne by ~~R~~Respondent.

89. Clinical Training

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

910. Clinical or Written Examination

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

110. Psychological Evaluation

Within thirty (30) days of the effective date of this ~~D~~decision, and on a periodic basis as may be required by the Board or its designee, ~~R~~espondent shall undergo a psychiatric evaluation by a Board-appointed psychotherapist (psychiatrist or psychologist), to determine ~~R~~espondent's ability to practice veterinary medicine safely, who shall furnish a psychological report to the Board or its designee. All costs shall be borne by ~~R~~espondent.

If the psychotherapist (psychiatrist or psychologist) recommends and the Board or its designee directs psychotherapeutic treatment, ~~R~~espondent shall, within thirty (30) days of written notice of the need for psychotherapy, submit the name and qualification of one ~~of~~ or more psychotherapists of ~~R~~espondent's choice to the Board for its prior approval. Upon approval of the treating psychotherapist by the Board, ~~R~~espondent 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 ~~R~~espondent.

ALTERNATIVE: PSYCHIATRIC EVALUATION AS A CONDITION PRECEDENT TO PRACTICE.

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

124. Psychotherapy

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

132.	Medical Evaluation
<p>Within thirty (30) days of the effective date of this Ddecision, and on a periodic basis thereafter as may be required by the Board or its designee, #<u>R</u>espondent shall undergo a medical evaluation by a Board-appointed physician, to determine #<u>R</u>espondent's ability to practice veterinary medicine safely, who shall furnish a medical report to the Board or its designee. If #<u>R</u>espondent is required by the Board or its designee to undergo medical treatment, #<u>R</u>espondent shall, within thirty (30) days of written notice from the Board, submit the name and qualifications of a physician of #<u>R</u>espondent's choice to the Board for its prior approval. Upon approval of the treating physician by the Board, #<u>R</u>espondent 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 #<u>R</u>espondent.</p> <p>ALTERNATIVE: MEDICAL EVALUATION AS A CONDITION PRECEDENT TO PRACTICE.</p> <p>As of the effective date of this Ddecision, #<u>R</u>espondent shall not engage in the practice of veterinary medicine until notified in writing by the Board of its determination that #<u>R</u>espondent is medically fit to practice safely. If recommended by the physician and approved by the Board or its designee, #<u>R</u>espondent shall be barred from practicing veterinary medicine until the treating physician recommends, in writing and stating the basis therefore, that #<u>R</u>espondent can safely practice veterinary medicine, and the Board approves said recommendation.</p>	
143.	Rehabilitation Program – Alcohol or Drug
<p>Within thirty (30) days of the effective date of this Ddecision, #<u>R</u>espondent shall submit in writing a(n) alcohol/drug rehabilitation program in which #<u>R</u>espondent 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, #<u>R</u>espondent shall provide documentary evidence of continuing satisfactory participation in this program. All costs shall be borne by #<u>R</u>espondent.</p>	
154.	Submit Biological Fluid Samples to Drug Testing
<p>Respondent shall immediately submit to biological fluid drug testing, at #<u>R</u>espondent'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 #<u>R</u>espondent's current employer.</p>	
165.	Abstain from Controlled Substances
<p>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 bona fide illness. <u>Respondent shall submit to random drug testing during the period of probation.</u></p>	
176.	Abstention Abstain from Alcohol Use
<p>Respondent shall <u>completely</u> abstain completely from the use of alcoholic beverages <u>and submit to random drug testing during period of probation.</u></p>	
187.	Community Service
<p>Within sixty (60) days of the effective date of this Ddecision, #<u>R</u>espondent shall submit a community service program to the Board for its prior approval. In this program #<u>R</u>espondent 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.</p>	
198.	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.

4920. 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.

2021. ~~Ethics~~ Training

Respondent shall ~~take ethical training courses~~ submit to the Board for its prior approval, an ~~ethics~~ training course for a minimum of _____ hours during the probationary period. Upon successful completion of the course, Respondent shall provide proof to the Board. All costs shall be borne by ~~Respondent.~~

OVERVIEW GUIDE FOR DISCIPLINARY DECISIONS

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

Accusation/Statement of Issues

The principal responsibility of a licensing board is to protect the public. This is accomplished by determining whether a license should be issued and whether a disciplinary action should be taken against a license. The Administrative Procedure Act (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 prosecutor and coordinates all necessary legal proceedings. If a case is referred to the Office of the Attorney General (OAG) and accepted for prosecution, the DAG assigned the matter will prepare a Statement of Issues or an Accusation. The person against whom the action is filed is called the Respondent.

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

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

Administrative Hearing Process

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

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

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

Proposed Decision

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

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

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

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

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

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

Non-Adopt - Rejecting a Decision

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

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

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

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

Petition for Reconsideration

A #Respondent has a right to and may petition the bBoard before the effective date of the decision for reconsideration of the Board's decision. In this instance, the respondent will present a written argument to the board requesting dismissal of the charges or modification of the penalty. [Too much information, licensees and the public are not entitled to this information].

If a bBoard 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 bBoard does not act on the petition, the request for reconsideration is deemed to be denied by operation of law and the bBoard no longer has jurisdiction over the matter.

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 bBoard. 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. [too much information constituting legal advice]

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 bBoard or the #Respondent.

Stipulated Agreement

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

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

Default Decisions

Default eDecisions are rare; however, in some cases, the #Respondent does not respond to an Accusation by returning the Notice of Defense, fails to return the Notice of Defense in a timely manner, or fails to appear at a scheduled hearing. There is a legal obligation to respond to an Accusation and to be present at a scheduled hearing. Failure to meet the legal obligations in a disciplinary action is grounds for taking action through a Default eDecision whereby the discipline is imposed based on the #Respondent's failure to respond. In these cases the Board need only demonstrate that it has served the Accusation on the licensee at the licensee's address of record. This is one reason it is imperative that licensees maintain a current address of record with the Board; failure to do so can have very serious consequences if the licensee becomes subject to an Accusation but has an old address of

record on file with the Board because the Board has no legal obligation to make any attempt to locate the licensee. Service of an Accusation by first class mail is all that is required to prove proper service.

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

Definitions

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

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

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

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

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

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 Employers and Supervisors

~~Respondent shall, within 10 days of the effective date of this decision, provide to the Board, or its designee, the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors. Further, respondent shall give specific written authorization for the Board or its designee to directly communicate in any form with the employers and supervisors of respondent.~~

~~Respondent shall notify the Board or its designee within 10 days of any change in employment or supervision and shall concurrently provide updated authorization to communicate with any new employer or supervisor.~~

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)

5. 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.~~

~~**6. 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.~~

6. 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~~