

**BEFORE THE
VETERINARY MEDICAL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Citation against:

GABRIELE GROSS, Respondent.

Case No. 4602017000366

Citation No. 2021-6

OAH No. 2022010709

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Veterinary Medical Board Department of Consumer Affairs as its Decision in the above-entitled matter.

This Decision shall become effective on April 27, 2023.

It is so ORDERED on March 28, 2023.

Signature on file

Christina Bradbury, DVM, President
Veterinary Medical Board
Department of Consumer Affairs
State of California

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CORRECTED PROPOSED DECISION

Julie Cabos-Owen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on November 2, 3, and 4, 2022. Artin DerOhanian, Deputy Attorney General (DAG), represented Jessica Sieferman (Complainant), Executive Officer of the Veterinary Medical Board (Board). Gabriele Gross (Respondent) represented herself.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on November 4, 2022.

The ALJ issued a Proposed Decision on December 2, 2022. On December 16, 2022, the Board made a request for corrections to the Proposed Decision, pursuant to

California Code of Regulations, title 1, section 1048. The following technical and minor corrections were requested:

- Correction to Violation Finding. The Citation did not allege a violation of subdivision (g) of Business and Professions Code section 4826. Accordingly, the Proposed Decision should be corrected as follows:

1. Page 34, paragraph 9, second line, remove and replace "subdivisions" with "subdivision" and strike "and (g)."

2. Page 35, paragraph 9, lines 2-4, strike "by using 'words, letters, or titles in such connection or under such circumstances as to induce the belief that the person using them is engaged in the practice of veterinary medicine.'"

- Corrections to Names. The full names of the originating consumer complainant, subject matter expert, and investigator should be corrected to reference only their initials.

- Correction to Practice Act Title. All references to the "Veterinary Practice Act" should be replaced with "Veterinary Medicine Practice Act" in accordance with Business and Professions Code section 4811.

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The correction request was served on Respondent and the DAG. No opposition was filed. The Board's request was granted, and the requested changes were made and incorporated in a Corrected Proposed Decision, issued January 6, 2023.

On February 9, 2023, the Board made a second request for corrections to the Corrected Proposed Decision, pursuant to California Code of Regulations, title 1, section 1048. The following technical and minor corrections were requested: "The paragraph numbering sequence is incorrect following paragraph 21 on page 9, as number 22 was omitted. Once the numbering sequence is corrected, all referenced factual findings following paragraph 21 should be adjusted accordingly."

The second correction request was served on Respondent and the DAG. No opposition was filed. The Board's second correct request is granted, and the requested changes were made herein.

FACTUAL FINDINGS

Jurisdiction

1. The Board has never issued Respondent a veterinarian license.
2. On May 10, 2021, Complainant issued Citation Number 2021-6 (Citation) to Respondent, charging violations of Business and Professions Code sections 4825 and 4826, subdivisions (a) and (b). The Citation included an order of abatement and assessed civil penalties totaling \$5,000.00.
3. The Citation was issued by Complainant in her official capacity as Executive Officer of the Board. Respondent timely appealed the Citation and requested a hearing on this matter.

Investigation and Undercover Operation

COMPLAINT AND PRELIMINARY INVESTIGATION

4. Respondent underwent training in veterinary medicine in Germany where she obtained certification as a veterinarian in about 1988, and a Ph.D. in veterinary medicine in 1989. She discontinued the practice of veterinary medicine many years ago, and she studied equine nutrition extensively. She now provides nutritional counseling to horse owners.

5. On November 3, 2016, the Board received a complaint from G.M., D.V.M., alleging Respondent, working with a company called "Equolution," was practicing veterinary medicine without a license by offering treatment for equines suffering from Cushing's disease. Equine Cushing's disease, also known as Pituitary Pars Intermedia Dysfunction (PPID), is an endocrine disorder that commonly results in delayed coat shedding and loss of muscle, among other things.

6. On November 22, 2016, the Board sent Respondent a letter informing her of the alleged violations and seeking her explanation.

7. On December 16, 2016, Respondent sent the Board a letter in response, stating in pertinent part:

I take these allegations seriously and I also highly respect that you are doing your job. This said, I firmly state that I am not engaging in nor have I ever engaged in the practice of veterinary medicine in violation of the regulatory guidelines set forth in the California Veterinary Medicine Practice Act. I believe there has been a misunderstanding

and I am more than willing to educate the person who filed the complaint about what I do and how we could possibly collaborate in the future.

More information: I am the founder of a trademarked concept called Equolution®. Equolution® is a new approach in Equine Healthcare which is different from Veterinary Medicine and does not include the practice of same, does not "diagnose" or "treat." The company Equolution LLC has acquired the rights for products and technology, and I am the operating manager for this company. Equolution LLC offers products and services for horse owners as well as for Veterinarians.

Equolution LLC works world-wide. It may recommend or employ licensed Veterinarian for Veterinary practice if our team members come across a client with need for Veterinary treatment. Equolution LLC might also employ unlicensed Veterinarians for education and marketing in different US states and different countries. I am engaged with Equolution LLC as a consultant for horse owners with the task to present and educate for Equolution products and services. If in the past I have come across a customer with a need for Veterinary service, I have referred the customer to a licensed Veterinarian. I am NOT employed by Equolution in the intent to engage in the practice of Veterinary Medicine.

Equolution LLC provides a liability disclosure. This document is acknowledged and signed by every Equolution LLC client in respect to the business and professions code section 4825-4831[.]

(Exhibit 3, pp. A39-A40.)

8. The Department of Consumer Affairs, Division of Investigation (DOI) assigned Investigator T.C. to conduct the investigation into G.M.'s allegations.

9. T.C. obtained California Secretary of State documents for Equolution LLC, filed in 2014. The corporate documents designated Respondent as Chief Executive Officer and agent for service of process.

10. During the investigation, T.C. obtained an owner's authorization to borrow their horse, Dontessa, for an undercover operation. T.C. also received written authorization from an Orange County Deputy District Attorney to conduct surreptitious recordings of Respondent during the undercover operation.

11. On August 16, 2017, T.C. sent Respondent an email using an undercover email account and her undercover name, Cristina Nelson. T.C. informed Respondent she had adopted a horse diagnosed with PPID that was taking prescription Prascend. T.C. told Respondent she was concerned about the long-term effects of the medication and, while researching this topic, came across the Equolution website. T.C. asked if Respondent would meet with her and Dontessa to discuss alternatives.

12. Respondent sent T.C. an email agreeing to meet T.C. and Dontessa at Sycamore Stables on September 5, 2017. Respondent asked T.C. to email her any

laboratory reports, and she would send T.C. forms to fill out beforehand to make better use of their time at the meeting.

13. T.C. obtained a laboratory report from G.M. showing blood chemistry levels of another horse diagnosed with PPID. The horse's name and breed on the report were altered to reflect the name and breed of the undercover equine, Dontessa. The laboratory report's endocrinology panel readings indicated the horse's adrenocorticotrophic hormone (ACTH) was 59.1, with a reference interval of 9-35; insulin was 4.17, with a reference interval of 10-40; leptin was 3.13, with a reference level of 1-10; and thyroxine (T4) was .699, with a reference level of 1-3.

14. The laboratory report indicated the horse's ACTH was above the reference interval. The laboratory report contained a section entitled "Test Interpretations," which explained: "ACTH: In Equine Cushing's Disease ([PPID]), the concentration of ACTH is greater than the reference values above. The higher the ACTH concentration is, the more likely the diagnosis of PPID. [1] Equine plasma concentrations of ACTH are affected by stress, exercise, and some drugs." (Exhibit 3, p. A89.)

15. The laboratory report indicated the horse's insulin level was well below the reference interval, and her leptin level was below the reference level. The Test Interpretations section explained:

High insulin concentrations may also be caused by grain meals, . . . PPID, and illness. If elevated insulin, may be due to [PPID/Cushing's], then ACTH baseline, TRH response: ACTH, or dexamethasone suppression test are recommended. When alternate explanations for

hyperinsulinemia [high insulin levels] are considered (e.g., pre-test grain meal, PPID, pain or other sources of stress), a leptin test may aid in the diagnosis of [Equine Metabolic Syndrome (EMS)], because leptin is often elevated in EMS and less affected by the other factors that modulate insulin.

(Exhibit 3, p. A89.)

16. The laboratory report indicated the horse's T4 level was below the reference interval. The Test Interpretations section explained, "The concentration of T4 is low or undetectable in hypothyroid animals." (Exhibit 3, p. A89.)

17. T.C. sent Respondent a copy of the altered laboratory report.

18. The laboratory findings were for another horse. The evidence did not establish the undercover horse, Dontessa, had been diagnosed with PPID/Cushing's.

UNDERCOVER MEETING AND AUDIO RECORDING

19. On September 5, 2017, T.C. met Respondent in front of Dontessa's stall at Sycamore Stables. T.C. posed as the daughter of Dontessa's owner. Respondent was joined by an assistant.

20. Prior to meeting, Respondent sent T.C. a liability waiver that T.C. signed affirming she read and understood the document. The waiver specifically stated:

I am seeking the education and counsel of Equolution LLC as performed by it's [*sic*] crew members and associates, so I myself can be more knowing in preventing and detecting problems in my animal's health, nutrition and performance.

I declare that I am receiving solely education and counsel from one or more Equolution LLC crew members. By choosing the Equolution LLC approach, I reserve my right as an animal owner to practice veterinary medicine as a bona fide owner of my own animals. This right also applies to my assistants, helpers, trainers, grooms, feed personnel and other employees.

I acknowledge that the Equolution LLC crew does NOT engage in the practice of veterinary medicine, veterinary surgery, or veterinary dentistry. In particular, Equolution' LLC crew members do NOT:

- diagnose disease
- prescribe or administer a drug, medicine, appliance, application, or treatment of whatever nature for the prevention, cure or relief of a wound, fracture, bodily injury, or disease of the animal
- perform surgical or dental operations
- perform any manual procedure for the diagnosis of pregnancy, sterility, or infertility on domestic pets, livestock or equine
- use any words, letters or titles in such connection or under such circumstances as to induce the belief that

he/she is engaged in the practice of veterinary medicine, veterinary surgery, or veterinary dentistry.

(Exhibits 3, p. A99; V.)

21. T.C. audiotaped the September 5, 2017 undercover meeting. The two-hour undercover audio recording was admitted as evidence (Exhibit 4). The events of September 5, 2017, memorialized in Exhibit 4, are summarized in Factual Findings 22 through 58. (All quotations are from Exhibit 4, unless otherwise noted.)

22. As general summary of the audio recording: T.C. told Respondent she was looking for a nutritional alternative to the horse's long-term use of the PPID medication, Prascend. (Prascend is the brand name for pergolide used by both humans and horses. Prascend is the brand approved for use in horses.) Throughout the two-hour meeting, Respondent spent much of the time noting what she felt were the horse's nutritional deficiencies, explaining the horse's nutritional needs, recommending supplements, and noting at length what nutritional help each supplement would provide and what changes in the horse to expect. Respondent repeatedly noted she was "not diagnosing" and "not practicing veterinary medicine." At times, Respondent delved into her veterinary knowledge which she intertwined with her discussion of nutrition. Respondent apparently used her veterinary training when she entered the horse's stall to physically examine her. Respondent made nutritional and medical observations when commenting on the color of the horse's gums and eyes and the sensitivity of her abdomen. Respondent then crossed into a non-nutritional examination when she used a stethoscope to auscultate the horse's chest to listen for a heart murmur. A couple times during the meeting, Respondent commented on the horse's purported Cushing's diagnosis and the fabricated laboratory report, understandably confused by the diagnosis and lab report since the undercover horse

did not appear to have Cushing's. Nevertheless, as requested by T.C., Respondent offered a nutritional alternative to address any Cushing's symptoms. The noteworthy portions of the meeting are detailed below.

23. At the beginning of the meeting, Respondent asked T.C. about Dontessa's history and how T.C. heard about Respondent. T.C. informed Respondent she was looking for an alternative to the Prascend the horse had been taking. T.C. explained: "I'm really big on fitness and nutrition and . . . everything starts in your gut. [I'm] looking at the long-term effects of [Dontessa] being on a medication, any medication, I want to see what else. . . is available to her[.] I'm concerned, and [I was] doing my own research and coming across . . . some of the articles that you have published [and your] website and the testimonials[.] I want to see what you have to offer."

24. To assess Dontessa's needs, Respondent stated she wanted "to see how [Dontessa] is acting and how she is eating," and she obtained information about Dontessa's exercise schedule. Respondent recommended Dontessa be given more exercise to help with her "critical" level of energy and her demonstrated anxiety.

25. Respondent and T.C. discussed the horse's anxiety and talked about Dontessa's physical exhaustion. Respondent stated, "I would like to eliminate this. I would like to get her physical energy restored. Her thyroid is running low as I see that on the blood results. . . . I can also see it when I put my hand on her on her thyroid gland." Respondent explained, "So how do I do this? I do everything . . . nutritional. And I'm going to do a give you a nutritional program and I'm going to tell you what I see." Respondent emphasized, "I'm not diagnosing, I'm just assessing the current situation which we're going to transform."

26. Respondent further explained what her service would provide, stating. "OK, so here's how this works. She shows certain endocrine and metabolic picture to me and to bring this into balance . . . I give you a program of maybe five to six things. . . for the next three months." Respondent opined Dontessa would "bounce back really quickly. Respondent again stressed Dontessa needed to be given more exercise, and she noted, Dontessa was "chubby." Respondent explained the reason Dontessa was craving food was not for the calories but for the nutrients. Respondent predicted what would happen with her recommended nutritional program. "Once you start on the program, she's going to leave hay. She's not going to eat as much. She's going to get more muscular. She's going to add top line. She's going to lose hay belly. . . . I'm going to remove her metabolic and endocrine tendencies and at the same time she's going to be more muscular and more able . . . to cope with life, riding, be less anxious and be more manageable."

27. Respondent began to review the Patient History form T.C. had completed before the meeting. (Exhibit 3, pp. A95-A98.) Because T.C. failed to fill in the name of a veterinarian, Respondent asked who that was. T.C. informed her it was "Dr. [Mark] Secor." Respondent remarked, "Mark knows me very well. We get along very well. We are friends So he knows my program." Respondent also asked about the trainer, and she explained, "Usually. I only need the veterinarian[,] chiropractor, and the trainer because they want to be informed."

28. Respondent and T.C. began talking about Dontessa's recent injury and her rehabilitation. Respondent commented, "See. That's what I'm saying[.] We need to up her thyroid. Balance the metabolic issues, build her muscle, get her physically stronger. That also helps them relax, because when they have in their mind, they can't

perform up to the level that they ask. They get very stressed out. So we're going to give her some more horsepower in the body, and we're going to Zen zone the mind."

29. Respondent explained to T.C. her program would nutritionally address "the source" of all the horse's symptoms "where regular veterinary medicine just . . . has one Band-Aid for each symptom. [For example:] This for inflammation. This for allergies. . . . We're just going to go deep down where it all converges into the one common denominator. . . . And then by itself it will adjust. But that's just the time factor. There's no instant fixing to this." Respondent noted "the difference between my work and a regular veterinarian is that I'm going to give you the To Do List. . . . so you are basically your horse's own veterinarian. I show you how to do it." Respondent explained they would be in contact by text or by phone frequently at first and tapering to text or email updates after a few weeks.

30. After again explaining the overall changes T.C. would see in the horse, Respondent addressed the reason T.C. sought her expertise: the nutritional alternative to long-term use of the medication, Prascend. In her commentary about replacing Prascend, Respondent offhandedly noted her disagreement with the Cushing's diagnosis. Specifically, Respondent stated, "For the condition she has been diagnosed, which I think was misdiagnosed, no offense against Mark Secor, but she's coping immensely well with the medication [Prascend] that she's getting. . . . Nevertheless, I want to off it. [I] want to replace it with something that addresses more than just forcing the ACTH levels down." Respondent noted "ACTH is a stress hormone level. So, if any anytime a horse gets stressed, the ACTH goes up. But nowadays. [They prescribe Prascend, and] there's tremendous side effects." Respondent informed T.C. she had seen many other horses incorrectly diagnosed with Cushing's that presented with symptoms that "looked like Cushing's, but it isn't." Respondent pointed out Cushing's

is "a tumor in the brain. I most likely cannot do anything about that." However, Respondent insisted Dontessa was "not that case."

31. Respondent's spontaneous commentary about Cushing's appeared prompted by her confusion about Dontessa's purported diagnosis when the horse did not present as an animal with that condition.

32. Respondent continued reading through the Patient Information form, noting the horse's skin sensitivity and her self-injury after falling asleep standing in her stall and collapsing. Respondent started to explain the possible cause of the fall as Dontessa being "overly tired and she doesn't sleep well that night." T.C. interrupted and asked, "But could that be related to endocrinal stuff?" Respondent responded "Uh, yeah. Yeah. It's all the same. And she just can't sleep at night."

33. Respondent again turned to the patient information sheet, reading rapidly what T.C. had written. "'Good amount of energy but lazy. Topline underdeveloped. Lethargic as result of meds?'" (Ex. 4; Ex. 3 p. A98.) Respondent then commented to herself about the horse's reported symptoms, "That's also adrenal fatigue involvement. Yeah. She's lethargic out of the endocrine under function. So. . ." T.C. interrupted to say she brought money for Respondent.

34. Later in the conversation, T.C. asked Respondent how she became involved in her field of expertise. Respondent related how she used to practice veterinary medicine, but she was not happy. She recalled, "There was a point when I decided I'm not going to practice veterinary medicine anymore. It's all nutrition. . . . It's all educational."

35. Respondent then entered Dontessa's stall and began examining the horse. Respondent asked her assistant, Peyton, to write down what she said. Peyton's

role resembled a transcriber taking a physician's dictation during an examination to enter notes in a medical record. None of what Peyton transcribed was submitted into evidence, and it is unclear what documentation Respondent was dictating.

36. Respondent apparently palpated the horse's thyroid and stated "So thyroid is not too big. Ah, here it is. So [addressing Peyton], so put 'enlarged thyroid' where you see thyroid [on the form]. Then put 'parotis filled both sides.'"

37. Respondent apparently looked at the horse's gums, and she dictated "Gums pale purple." Addressing T.C., Respondent noted "The gums on certain mineral imbalances that play a role in endocrine and metabolic conditions. [We] see that in the color of the gums what's going on. Most likely when they are anemic . . . in California, it's not because of a lack of iron is most likely an iron overload, which is the opposite, and a copper deficiency, which is because there's . . . a copper deficiency in the soil and in the hay. . . . There's an anemia that is a copper-related to copper deficiency."

38. Respondent apparently turned to the horse's abdomen. She stated, "So I'm going to do an ulcer test. So, what I do is I'm going to use acupressure . . . points to test the stomach. So, I put my hand, my flat hand. . . Apply a little bit of pressure, she doesn't react. . . . Prascend makes the stomach upset. There's a second pressure point. . . . A little shaking there. Yeah, I would say on a scale from zero to five, she's at about three. I am not going to recommend ulcer treatment right now. Once we stop the Prascend, that's gonna solve itself."

39. Respondent then examined the horse's lymph nodes. She dictated, "So lymph node . . . Small. . . . so three out of five."

40. Respondent examined the horse's eyes and dictated, "The eyes. Say 'yellowish sclera.' Then under 'comments' put down 'recommend liver detox.'"

41. Respondent also dictated, "And then also put under 'comments,' 'cresty neck.' [Cresty neck is an overabundance of fat along the top of the neckline.] And put under 'comments,' 'iron overload question mark,' also put under comments 'oval fat deposit behind shoulder.'" Respondent pointed out to T.C., "See this here? . . . that's a sign for iron overload. So that's very common for iron overload."

42. Respondent then described how she was taking the horse's blood pressure. "OK, let's see your blood pressure. . . And by this I'm testing how fast the blood fills the vein. . . . Yeah, reduced blood pressure." Respondent dictated, "Say 'low blood pressure.'" Respondent explained to T.C. that the low blood pressure was also a sign for low thyroid. She noted, "The blood pressure, the thyroid is responsible for speeding everything up in the body. Digestion and blood pressure and everything. So if a thyroid is low, everything is lower like body temperature, they grow thicker, thicker coat and longer coat earlier which looks like Cushings. But it isn't."

43. Respondent then auscultated the horse's chest using a stethoscope. She explained "I'm going to listen. . . to her heart, because long-term pergolide can produce heart murmurs. This is why they took it off the human market. . . . And I had quite a few that have a heart murmur. So that develops over years. I'll do a clinical anyways. But . . .she doesn't strike me from what you're saying, but I'll listen anyway. Sounds very good from this side. This side is good too, so all good."

44. Respondent later explained to T.C., "It helps me to see what the vet did. Does the elevated ACTH matter for me? No, it doesn't matter to me. I can see clinically what it's going on here." Respondent opined Dontessa had "low adrenal function, low thyroid function, . . .low in copper, high in iron. Probably low in calcium. Some toxicity in some form because I saw the yellowish [eyes]."

45. After the examination, Respondent explained her recommended program at length, including recommended feed amounts and schedule, recommended supplements, the reasons for her recommended feed and supplements, how to administer the feed and supplements. Respondent explained some of the recommended supplements were for specific reasons including metabolic and endocrine reasons, gastrointestinal absorption boosters, probiotics, enzymes, vitamins, and minerals. Respondent wrote out her recommendations on a form that she later gave to T.C. (recommendation form).

46. The Equolotion logo was at the top of the recommendation form, and under that was the abbreviation "Rx," which is a known abbreviation for "prescription." Below that was a section entitled "Veterinary Recommendations." (Exhibit 3, p. A103.) The word "Veterinary" was crossed out, and the word "feed" was handwritten above it. (*Ibid.*) Respondent's recommended feed included: alfalfa hay, Triple Crown Balancer feed, soybean meal, apple cider vinegar, and sea salt. Below the feed recommendations was a section entitled "Equolotion Formulas," with the word "Equolotion" crossed out. (*Ibid.*) Respondent's recommended formulas/supplements were: "Daily GI combo," "Esprit" (an herbal formula for horses showing signs of PPID or metabolic issues); "Calico;" "Iodoral (iodine tablets);" and optional "Grand Calm" at night for better sleep. (*Ibid.*) Respondent also wrote in the notes section, "Prascend: If desired, start reducing after 2 weeks on full program. Email me!" (*Ibid.*)

47. Respondent gave T.C. calorie charts on which she noted how many calories she thought the horse needed. Respondent also noted the changes T.C. would expect to see in the horse, including "leaving hay" within days, becoming calmer and less anxious within weeks, heel growth in months, more muscular energy, coat

improvement, and more muscle with "less belly." Respondent wrote out these expectations on a form that she later gave to T.C.

48. Respondent told T.C. to look at the Equolution website. Respondent noted, "This is my website. I carry a few formulas that are developed because nobody else has them and the feed industry wasn't really willing to cooperate for reasonable prices with me on that. So, I found manufacturers. . . because I wanted them to be affordable at the clinical potency[.]"

49. In explaining how her recommended program would help Dontessa, Respondent noted copper "is an important tendon protectant" that would help the horse's heel growth as well as for "metabolic and endocrine" issues. Respondent recommended filtered water which would "eliminate toxins because that's not good for the endocrine system." Respondent explained, "The thyroid needs iodine, and when you put . . . chloride in [the water], it dries the little bit of iodine." Respondent noted the Triple Crown Balancer was low in starch because Dontessa had to lose weight, but it was high in protein to build muscle and to help reduce cravings.

50. Respondent explained "we're going to try to boost her thyroid naturally by resetting her metabolism. So . . . I'm basically modifying the metabolic response that she is showing right now. Right now, her metabolism is very low, thyroid is very low. So when I add the amino acid . . . and when I add the salt and when I add the adrenal booster and the natural thyroid booster, I'm expecting her to physically jump start at the same time . . . [and] mentally calm her."

51. Respondent stressed the importance of administering the Iodoral. She insisted, "This is one of the most important factors. If doesn't work, we have to put her on thyroid medication."

52. Respondent noted some horses did not like to eat the Iodoral tablets, and she suggested ways to get the horse to take the tablets, including with applesauce, apple pieces, or carrots. T.C. expressed concern about giving the horse apples because of "the glycemic stuff (i.e., sugar content)" of those snacks. Respondent explained, "She doesn't have any sugar problems at all, actually, as far as these measurements here go (apparently looking at the lab report). . . . Glucose was perfectly normal 95. Maximum can be 113."

53. Respondent then glanced further at the lab report and commented offhandedly: "[The] ACTH was stress-related high. This is not Cushing's for me. Insulin perfectly normal [and] is actually low. Do you see that her insulin is really too low? She not at all a danger for insulin resistance. Her T4, her thyroid hormone, is really low. Normal is 1-3 and she is at 0.6. That's the real problem here. And that is going to adjust. This is a sign of adrenal fatigue"

54. Respondent told T.C., "After she's on the whole program for two weeks we want to start tapering off the Prascend. . . . After two weeks, I would I hope you guys taper off the Prascend. Because sometimes if she doesn't eat all [the recommended feed and supplements] . . . it might be that the Prascend is taking her appetite. Also, the Prascend produced a lot of absorption issues, and that's why she's craving. . . . So it would be the better, the earlier we get off [the Prascend], the better it is. . . . Usually, I like her to have her . . . on the Esprit, which is the replacer for the Prascend, a week so it can . . . build up in her system."

55. T.C. asked Respondent how to taper the medication if the horse only took one tablet a day. Respondent told T.C. she would send her a tapering schedule. Respondent noted, "Some [veterinarians] stop cold turkey. I don't' think that's good."

56. Respondent noted the horse's ACTH and thyroid levels should be "normal. . . within two months." She told T.C., "So I will take, probably take a blood test on, Let's take a blood test. . . . follow up in 90 days."

57. At the end of their meeting, Respondent provided T.C. with her business card which stated on the front: "Dr. 'Gabriele' Gross, Ph.D., Holistic Equine Veterinarian." (Exhibit 3, p. A108.) The back of her business card contained the following: "Doctor of Veterinary Medicine 1987;" "Ph.D. Pharmacy & Pharmacology 1989;" and "Equine Nutritionist, Herbalist and Trainer 21+ Years." (*Ibid.*)

58. Respondent also provided T.C. with a flyer that contained the following:

Metabolic Conditions? Senior horse? Hoof problems? Is your horse getting enough nutrition? Find out, to get your custom feed program: Hoof and heel growth[;] Cushing's (PPID)[;] Thyroid Diseases[;] Metabolic conditions[;] Insulin resistance[;] Anti-aging[;] Muscle building.

If your horse shows any of the following, it needs a new feed program. Anxiety[;] Coat Issues[;] Cushing's (PPID)[;] Craves Food (always)[;] Eats Dirt & Licks Hands[;] Girthy[;] Lack of Energy[;] Lack of Topline[;] Losing Weight[;] Muscle Problems[;] Hoof Problems[;] Metabolic Issues

Ask Dr. Gabi Gross, PhD, DVM, Independent Equine Nutritionist & Veterinarian

(Exhibit 3, p. A109.)

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59. Under the circumstances, where Respondent was examining Dontessa and dictating her medical findings, and Respondent used the words “veterinarian” and “Doctor of Veterinary Medicine” on her business card and flyer, without clarifying she was not a licensed veterinarian in California, Respondent represented herself as engaged in the practice of veterinary medicine. (See Legal Conclusions 7 and 9.)

Post-Undercover Events

RESPONDENT OCTOBER 2017 INTERVIEW

60. On October 10, 2017, T.C. interviewed Respondent and kept an audio recording of that interview with Respondent’s permission. The one-hour audio recording was admitted as evidence (Exhibit 5). Pertinent portions of the interview are set forth in Factual Findings 61 through 67. (All quotations are from Exhibit 5, unless otherwise noted.)

61. Respondent denied “examining” Dontessa. Respondent admitted she “put hands” on Dontessa, but she insisted she was acting as a nutritional consultant. Respondent pointed out a trainer can put hands on a horse and does not need to be a licensed veterinarian. This comparison is not persuasive, since there was no evidence that trainers use a stethoscope, palpate the animal, or assess various physical manifestations (e.g., enlarged thyroid, stomach sensitivity, heart murmur) to determine the horse’s medical ailments before recommending treatment.

62. Respondent also correctly pointed out that “every owner can treat their own horse,” and that does not constitute the practice of veterinary medicine. She insisted an owner “can have their own stethoscope” and use it on their own horse. This argument is not applicable to the case at hand because T.C., as the purported owner’s daughter, did not have her own stethoscope. Respondent, not T.C., conducted the

auscultation with the stethoscope. Additionally, Respondent admitted she used the stethoscope “for safety,” “to listen for heart murmurs to help veterinarians and owners because horses on pergolide (i.e., Prascend) could have a heart murmur.” Respondent insisted, if she heard a heart murmur, she would recommend the owner consult their veterinarian. Regardless of any referral to a veterinarian, Respondent was not performing the stethoscope auscultation for purposes of nutritional recommendations.

63. Respondent insisted she did not diagnose Dontessa, and she pointed out she did not write a diagnosis on the recommendation form. Respondent acknowledged she and T.C. “talked about Cushing’s,” and she recommended a follow-up blood test to reevaluate for Cushing’s “because there was nothing that [she] saw that [indicated the] horse showed symptoms of Cushing’s.” Respondent explained she commented about Dontessa being “misdiagnosed” because “a Cushing’s horse looks a certain way.” Respondent admitted she used her combined expertise as a consultant, a veterinarian, and a Ph.D. in Pharmacy and Pharmacology when reading the lab report aloud and making comments and nutritional recommendations. It is conceivable that an equine nutritional consultant, without practicing veterinary medicine, would read a previously provided lab report to note ACTH, insulin, and thyroid levels in making nutritional recommendations. Since Dontessa did not appear to have Cushing’s, it is understandable that Respondent was confused by Dontessa’s diagnosis and laboratory report (high ACTH with low insulin) and made an offhand comment.

64. Respondent denied recommending “treatment” or “drugs” for Dontessa. She explained, “I took a look at her muscles and her appearance and recommended natural detox. [I] found out the horse’s feed program and gave recommendations for calorie requirements, supplements, [and] formulas available on the Internet from different sources [which the owner could buy if desired].” Respondent accurately

pointed out that T.C. told Respondent she said wanted to discontinue Prascend and asked for her nutritional recommendations. Respondent asserted she was not practicing veterinary medicine by merely agreeing with Dontessa's owner that discontinuation of the medication was a good idea. Respondent's assertion is reasonable, particularly given that T.C.'s stated desire to discontinue medicating her horse was the impetus for Respondent's nutritional consultation.

65. Respondent insisted she does not intend to practice veterinary medicine in California. Instead, she wants to work with veterinarians and owners to best serve horses' nutritional needs and provide nutritional recommendations "in a qualified way." Respondent noted T.C. did not contact her for veterinary services but for nutritional services.

66. Respondent noted she was trying to comply with the law by making owners read and sign the liability release which indicates she does not practice veterinary medicine. While this document demonstrates her attempts to comply with the law, it that does not automatically exempt all her actions if they, in fact, cross the line into the practice of veterinary medicine.

67. Respondent acknowledged the "misunderstandings [she] produced," and stated she never intended to give the impression she practices veterinary medicine in California. Respondent stated she wanted to cooperate with Board, and she is "happy to be reminded to be in my place." However, she wants to continue nutritional counseling and educating others. She offered to discontinue using "DVM" if that is confusing and to immediately inform new clients that she does not practice veterinary medicine "so there is no confusion."

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2018 FILING AND DISMISSAL OF CRIMINAL CASE

68. On February 8, 2018, the Orange County District Attorney's office filed a criminal complaint against Respondent, alleging she engaged in the unlicensed practice of veterinary medicine on June 30, 2017, August 16, 2017, September 5, 2017, and January 23, 2018. At the October 24, 2018 arraignment, the case was dismissed on the People's motion.

2021 CITATION ISSUED

69. Complainant issued the Citation on May 10, 2021.

Respondent's Alleged Violations – Expert Opinions

70. At hearing, Complainant offered the testimony of B.M.P., D.V.M., to establish whether Respondent was engaged in the practice of veterinary medicine on September 5, 2017. Dr. B.M.P. obtained her veterinary medicine degree in 1978, and she practiced small animal veterinary medicine for over 40 years. She has been a consultant for the Board since 2010.

71. Dr. B.M.P. was qualified to testify as an expert about what constitutes the practice of veterinary medicine in this case. Her testimony was generally credible, and any discounting of her testimony is based its content and the bases for her opinions, as set forth more fully below.

72. Dr. B.M.P. reviewed the investigation report and attachments, and she listened to the September 5, 2017 undercover audio recording and the October 2017 interview recording. She provided an expert report setting forth her opinions. That report was admitted into evidence at the hearing (Exhibit 6), and she testified in general conformity with her report.

73. In rendering her opinions, Dr. B.M.P. looked to the Veterinary Medicine Practice Act which defined the practice of veterinary medicine as when a person “[d]iagnoses or prescribes a drug, medicine, appliance, application, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of animals.” (Bus. & Prof. Code, § 4826, subd. (b).) Dr. B.M.P. also looked to Business and Professions Code section 4825.1, subdivision (a), which defined “diagnosis” as “the act or process of identifying or determining the health status of an animal through examination and the opinion derived from that examination.” Since the Veterinary Medicine Practice Act does not define “examination,” Dr. B.M.P. defined “examination” as “what veterinarians typically do.” Dr. B.M.P. testified that examination includes the hands-on and visual examination of all organ systems of animal and information obtained from that examination.

74. In her report and her testimony, Dr. B.M.P. opined Respondent engaged in the practice of veterinary medicine by diagnosing and prescribing treatments for Dontessa.

DIAGNOSING – DETERMINING HEALTH STATUS ON EXAMINATION

75. Dr. B.M.P. opined Respondent engaged in diagnosing when she commented on the lab report’s T4 results, specifically when Respondent stated Dontessa’s “thyroid is running low,” while looking at the lab report. Dr. B.M.P. opined evaluating diagnostic blood tests regarding the thyroid gland is a diagnostic procedure leading to the diagnosis of low thyroid function. She further opined an individual without veterinary training would not understand the significance of test results. This opinion is not persuasive. The evidence showed Respondent’s reading of the lab report did not require veterinary training. The laboratory report specifically

indicated the horse's T4 level was below the reference interval, and the Test Interpretations section explained that T4 is low in hypothyroid animals.

76. Dr. B.M.P. also opined Respondent engaged in diagnosing Dontessa when Respondent observed that Dontessa had an "endocrine and metabolic pattern." Dr. B.M.P. opined that making the determination that an animal shows endocrine and/or metabolic problems constitutes "determining the health status of the animal" and is diagnosing. This is not persuasive. Respondent was commenting on the laboratory report as a nutritional consultant, and she was not making any specific determination of health status after examination since she had not yet examined the horse.

77. Dr. B.M.P. opined Respondent engaged in diagnosis when she commented Dontessa had a "cresty neck" and fat deposits. Dr. B.M.P. opined that evaluating a horse and determining a medical status is practicing veterinary medicine. This is not persuasive. Respondent's comments did not rise to level of examination and determination of health status but were observations of the horse's musculature and appearance for nutritional purposes.

78. Dr. B.M.P. also opined that Respondent diagnosed Dontessa by stating, "I think she was misdiagnosed." Dr. B.M.P. maintained "this comment is not only contradicting the diagnosis of another veterinarian but is diagnosing Dontessa as not having the previously diagnosed condition based upon her evaluation." Dr. B.M.P. opined Respondent's comment was a finding that the horse was healthy, "which is a diagnosis in itself." This opinion is not persuasive. While addressing T.C.'s request for nutritional alternatives to long-term use of Prascend, Respondent offhandedly noted her disagreement with the Cushing's diagnosis, stating, "For the condition she has been diagnosed, which I think was misdiagnosed, no offense against Mark Secor, but

she's coping immensely well with the medication [Prascend] that she's getting." This offhanded comment does not constitute a determination of health status after examination since she had not yet examined Dontessa. The same analysis applies to Respondent's later extemporaneous comment when glancing at the lab report, "This is not Cushing's for me." This musing was apparently prompted by Respondent's understandable confusion over a lab report that did not match the presentation of the undercover horse. Respondent's reflective comment does not constitute a determination of health status after examination.

79. Dr. B.M.P. credibly opined that Respondent engaged in examination and diagnosing when she entered Dontessa's stall and began conducting a hands-on and visual examination while dictating her findings to her assistant.

80. Respondent's examination included placing her hand on the horse's thyroid and commenting it was enlarged. Dr. B.M.P. credibly opined that palpation of the thyroid gland is a diagnostic procedure, and an individual without veterinary training would not know how to palpate the thyroid in a horse.

81. Respondent examination and diagnosis included palpating acupuncture points to assess Dontessa's stomach for sensitivity or reaction and determine whether the horse had stomach issues or sensitivity to Prascend.

82. Respondent's examination and diagnosing of Dontessa included checking the horse's gums, noting they were pale, and commenting this indicated possible iron overload and copper deficiency. Respondent also examined and diagnosed Dontessa when she noted the horse's yellow sclera/eyes and commented this was due to possible liver overload.

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83. Respondent examined and diagnosed Dontessa when Respondent felt and assessed her lymph nodes as "normal." Evaluating lymph nodes and determining they are normal constitutes diagnosing.

84. Respondent examined and diagnosed Dontessa when she felt the horse's pulse and stated she had low blood pressure. Making the determination of low blood pressure after examination constitutes a diagnosis.

85. Respondent examined and assessed Dontessa's cardiovascular system using a stethoscope to auscultate Dontessa's heart to check for heart murmurs. Respondent determined the status of the heart as "sound[ing] very good." This examination and determination of the status of the heart constitutes diagnosing.

PRESCRIBING TREATMENT

86. Dr. B.M.P. opined that Respondent prescribed treatment by recommending the feed and supplements because Respondent stated she was going to address Dontessa's metabolic and endocrine "tendencies."

87. Dr. B.M.P. also opined that Respondent prescribed treatment when she provided an alternative nutritional program to the Prascend because this is "changing treatment" based on her diagnosis that the horse did not have Cushing's. As noted above, Respondent's musings were not a "diagnosis" that Dontessa did not have Cushing's. Additionally, Respondent did not independently make the determination to eliminate the Prascend, nor were her recommendations based on her opinion that Dontessa did not have Cushing's. Instead, T.C. sought Respondent's recommendation for nutritional alternatives to the Prascend, and Respondent informed her of a natural supplement, Esprit, that "addresses more than forcing the ACTH levels down," along with a full nutritional program.

88. In rendering her opinion regarding whether Respondent engaged in "prescribing," Dr. B.M.P. pointed out the notation of "Rx" at the top of the recommendation form, and she noted "Rx" is used in the medical community to mean "prescription." However, the "Rx" notation does not, in itself, establish whether Respondent was actually "prescribing" treatment, just as the liability waiver's denial of practicing veterinary medicine does not establish whether Respondent actually engaged in the practice of veterinary medicine.

89. Dr. B.M.P. admitted the feed recommendations of alfalfa, Triple Crown Balancer, and soybean meal are not drugs since they are "food." She also admitted that apple cider vinegar and sea salt are not drugs in the "way [they are] typically used." However, Dr. B.M.P. insisted the recommended supplements of Daily GI Combo, Calico, Iodoral tablets, and Grand Calm constituted "drugs" and were intended for "treatment" to affect the functioning of Dontessa's body. She noted the definition of "prescribing" includes "treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of animals." She noted the definition of "drug" at Business and Professions Code section 4025, subdivision (c), is broad and includes "articles (other than food) intended to affect the structure or any function of the body of humans or other animals."

90. In rendering her opinion that Respondent prescribed treatment, Dr. B.M.P. explained the supplements constituted a "a treatment to treat a specific problem [Respondent] has diagnosed, and that is practice of veterinary medicine." Dr. B.M.P. also admitted Respondent's recommendations would not constitute prescribing if they were made without Respondent's diagnosing of low thyroid function.

91. Dr. B.M.P. admitted that Respondent's recommended supplements, including the Esprit supplement to naturally address Cushing's, can be purchased at

stores by owners, and that if a store clerk recommended the supplements, this would not constitute the practice of veterinary medicine.

92. Dr. B.M.P. admitted not all nutritional counseling constitutes the practice of veterinary medicine. Dr. B.M.P. acknowledged her opinion on whether a nutritional counselor engages in the practice of veterinary medicine "depend[s] on whether the individual is actually examining and diagnosing the animal." She opined that, if an individual conducts an examination and comes to a "conclusion that is different" from a prior veterinarian's, this is an examination, diagnosis, and treatment recommendation, and not merely nutritional counseling. However, Dr. B.M.P. opined that, if a client asks the nutritional counselor for alternatives for a horse with Cushing's, and the nutritional counselor simply recommends a supplement "without doing their own diagnosis," that does not constitute the practice of veterinary medicine. Dr. B.M.P. admitted a nutritional counselor would not need a veterinary license if they provided recommendations without examining and diagnosing the animal or if their counseling is offered for a client's horse "with a certain disease process." However, Dr. B.M.P. opined a license would be required when a nutritionist "examines the animal and comes to their own conclusions about the problems with the animal and then provides nutritional counseling." For example, Dr. B.M.P. opined that if a person is told a horse has Cushing's, pets the horse, says it is overweight, and then recommends supplement, this person did not examine and diagnose the horse, and the owner can choose to purchase the supplement. Dr. B.M.P. opined the nutritional counselor may "share information, but not information that comes from an examination of the animal and subsequent diagnosis."

93. Dr. B.M.P. apparently looks to the examination and diagnosis as the triggering actions for her opinion that Respondent engaged in the unlicensed practice

of veterinary medicine, i.e., “prescribing,” in making her nutritional recommendations. In doing so, Dr. B.M.P. conflates Respondent’s hands-on examination and her supplement recommendations to arrive at her opinion that Respondent engaged in prescribing. This muddling of two separate issues – diagnosing and prescribing – is contrary to the statutory language and not persuasive.

94. Viewing Respondent’s recommendations, separate from her examination and diagnosis, the evidence established she recommended the feed and supplements for dietary and nutritional purposes, in response to an “owner’s” request for an alternative to Cushing’s medicine, and the owner had the option to purchase all or none of the recommended items. The evidence did not establish that Respondent’s recommendations rise to level of “prescribing.”

Respondent Testimony

95. Respondent testified at the administrative hearing, and her testimony conformed to her statements in the October 2017 interview. Respondent presented as a sincere witness.

96. Expounding on her interview statements, Respondent further explained her confusion when observing Dontessa and reviewing the lab report for another horse diagnosed with Cushing’s. Respondent testified the horse “came with a diagnosis,” but “the problem was that the horse presented was a healthy horse, and the lab report was [for] another horse [diagnosed with PPID], and these two things did not match.” Respondent noted “a Cushing’s horse usually presents with a significant appearance.” Respondent explained, “I am a scientist” who was “presented with confusing circumstances” and was trying “to solve this conflict and figure out how best to serve the consumer.” Respondent looked at the report and the horse and “did not

know what to do next” because the consumer asked Respondent to recommend a customized nutritional program for a horse with a specific condition. The consumer also wanted to discontinue the medication for that condition due to possible side effects and was looking for alternative solutions. Respondent explained that the wrong nutritional program for a horse with a specific condition could be harmful to the animal. Respondent had to choose whether to recommend a nutritional program based on how the horse looked or based on the laboratory report.

97. Respondent’s actions are complicated by her inability to disregard her veterinary training and to separate it from nutritional issues when providing nutritional consulting. Respondent admitted she made some of her observations on examination due to her training as a veterinarian. However, she noted this is what “makes [her] so good” as a nutritionist and as a consumer educator. She insisted she was acting in her capacity as a nutritionist and educator when she provided T.C. with nutritional recommendations and made observations.

98. Respondent does not seek to circumvent the Veterinary Medicine Practice Act but, instead, to work within its constraints. Respondent assured the Board she has “carefully studied the Veterinary [Medicine] Practice Act and did [her] best to comply with the law in the scope of [her] job as a nutritionist.” However, she is stymied by the law’s imprecise language. Respondent pointed out the statutes governing what constitutes the practice of veterinary medicine are vague and do not provide guidance for what she can and cannot do. For example, she noted the statute defines diagnosis as requiring an “examination,” but does not define what constitutes an examination. This leaves room for interpretation and the need for an expert witness to opine on whether certain actions constitute the practice of veterinary medicine. Respondent pointed out that, even after a full hearing with expert testimony, she still does not

know “what to do exactly, and what not to do” to comply with the order of abatement to “cease and desist from violating [Business and Professions Code] sections 4825 and 4826, subdivisions (a) and (b).” (Exhibit 1, p. A3.)

99. Respondent noted she has been cooperative and willingly submitted to an interview. Respondent reported the Equolution website has been “taken down,” and she has “distanced” and “withdrew” herself from the website.

100. Respondent assured the Board she had no intent to violate the Veterinary Medicine Practice Act or to practice veterinary medicine without a license. She wants to know how she can improve and “do things right.” She is “always open for constructive feedback and criticism.”

Character Evidence

101. Respondent has the support of several clients who testified and submitted letters on her behalf attesting to the great value of Respondent’s nutritional services and confirming she did not represent herself to them as a veterinarian.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code sections 125.9, 148, and 4875.2, and California Code of Regulations, title 16 (CCR), section 2043, the Executive Officer of the Board may issue citations containing orders of abatement and/or administrative fines against a Board licensee or to an unlicensed person who has committed any acts or omissions in violation of the Veterinary Medicine Practice Act.

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2. In this citation proceeding, Complainant bears the burden of proving the cited violations by a preponderance of the evidence. (*Owen v. Sands* (2009) 176 Cal. App. 4th 985, 994.)

3. Business and Professions Code section 125.9, subdivision (b)(1), states, "Citations shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated." In administrative cases, due process requires the charging document to "set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his or her defense. . . . It shall [also] specify the statutes and rules that the respondent is alleged to have violated[.]" (Gov. Code, § 11503; *Smith v. State Bd. of Pharmacy* (1995) 37 Cal.App.4th 229.)

4. Respondent argued that the Citation does not specify her violation with particularity such that she could understand what her violations were and how to refrain from further violations. However, the Citation states in ordinary and concise language the acts with which Respondent is being charged. Specifically, the Citation alleges in September 2017, Respondent "represented herself as providing veterinary services requiring a veterinarian license such as examining, diagnosing, and recommending treatment for an equine patient" and was "interpreting and providing opinion on blood tests, examining, assessing health, diagnosing, and prescribing treatment, for an equine patient." (Exhibit 1, p. A2.) Additionally, since Respondent participated in the October 2017 interview discussing at length the September 2017 undercover operation, she was aware of the violations with which she was being charged.

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5. Respondent also argued that since the Citation was issued in May 2021, over three years after the alleged violations occurred, this “case is stale.” Respondent is apparently raising a laches defense. However, the doctrine of laches would apply only if there was a delay that results in prejudice. (*In re Marriage of Modnick* (1983) 33 Cal.3d 897; *Conti v. Board of Civil Service Commissioners* (1969) 1 Cal.3d 351, 359.) In this case, the pertinent witnesses to the September 5, 2017 undercover operation (T.C. and Respondent) and the key evidence (undercover audio recording and documents exchanged that day) have remained accessible. Respondent has failed to establish she suffered prejudice from the three-year delay.

6. Business and Professions Code section 4825 provides, “It is unlawful for any person to practice veterinary medicine . . . in [California] unless at the time of so doing, such person holds a valid, unexpired, and unrevoked [Board-issued] license.”

7. Business and Professions Code section 4826 provides in pertinent part:

A person practices veterinary medicine . . . when the person does any one of the following:

(a) Represents oneself as engaged in the practice of veterinary medicine[.]

(b) Diagnoses or prescribes a drug, medicine, appliance, application, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of animals.

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8. Business and Professions Code section 4825.1, subdivision (a), defines "diagnosis" as "the act or process of identifying or determining the health status of an animal through examination and the opinion derived from that examination."

9. Cause exists, pursuant to Business and Professions Code sections 4825 and 4826, subdivision (a), to affirm Citation No. 2021-6, Item 1. On September 5, 2017, Respondent represented herself as engaged in the practice of veterinary medicine. Although Respondent indicated in the liability waiver and her oral statements that she was not practicing veterinary medicine, her examination of Dontessa and dictation of medical findings, along with her business card and flyer, created a contrary representation. (Factual Findings 19 through 59.)

10. Cause exists, pursuant to Business and Professions Code sections 4825 and 4826, subdivision (b), to affirm Citation No. 2021-6, Item 2. On September 5, 2017, Respondent engaged in diagnosing an equine patient by determining her health status through hands-on examination. However, Complainant did not establish Respondent engaged in prescribing "a drug, medicine, appliance, application, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of animals." (Factual Findings 19 through 67 and 70 through 100.)

11. Business and Professions Code section 125.9, subdivision (b) (3), provides in pertinent part, "In assessing a fine, the board . . . shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the licensee, and the history of previous violations."

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12. Business and Professions Code section 4875.4, provides, in pertinent part:

(a) The board shall . . . adopt regulations covering the assessment of civil penalties under this article which give due consideration to the appropriateness of the penalty with respect to the following factors:

(1) The gravity of the violation, including, but not limited to, whether the violation is minor.

(2) The good faith of the person being charged.

(3) The history of previous violations.

(b) In no event shall the civil penalty for each citation issued be assessed in an amount greater than five thousand dollars (\$5,000).

13. CCR section 2043, subdivision (d), provides:

In assessing the amount of a civil penalty, the executive officer shall consider the following criteria:

(1) The nature and severity of the violation.

(2) Evidence that the violation was willful.

(3) History of violations of the same or similar nature.

(4) The extent to which the cited person has cooperated with the board's investigations.

(5) The extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by his or her violation.

(6) Such other matters as justice may require.

14. CCR section 2043, subdivision (e), provides in pertinent part, "In all situations involving unlicensed persons practicing veterinary medicine, the citation shall be a class "C" violation, and the civil penalty shall be no less than two thousand dollars (\$2,000) and no more than five thousand dollars (\$5,000)."

15. Respondent does not have a prior history of sustained violations, and she did not intend to practice unlicensed veterinary medicine or to circumvent the Veterinary Medicine Practice Act. To the contrary, in Respondent's liability waiver and her statements to T.C., Respondent sought to emphasize that she did not intend to practice veterinary medicine. Given how broadly worded the statutes are, Respondent established she did not commit her violations knowingly, and took action to ensure compliance with the law.

16. Respondent's observing the horse's weight, musculature, coat, and activity did not constitute a diagnosis, nor did Respondent's commenting on the lab report or her confusion about Dontessa's alleged diagnosis given her contrary presentation. However, once Respondent began her examination and dictation of findings, she stepped over the line into the practice of veterinary medicine. There is no evidence Respondent caused any harm to Dontessa or to other horses she served. To the contrary, by all accounts Respondent provides an excellent service and, due to her veterinary training, she has created no danger to the animals she serves. Nevertheless, the law prohibiting unlicensed practice of veterinary medicine must be applied equally

to those with and without veterinary training, and the Veterinary Medicine Practice Act does not allow classes of unlicensed persons who have veterinary training to engage in diagnosing while proscribing all others from doing so.

17. Respondent cooperated with the Board's investigation and has removed herself from the Equolution website. Respondent seeks to operate within the boundaries of a very broad statute, and she welcomed any Board instruction on changes to her practices to comply with the law and with the order of abatement in order to avoid recurring violations.

18. The totality of the evidence calls for a reduction in the assessed civil penalty for each violation. CCR section 2043, subdivision (e), requires a minimum assessed civil penalty of \$2,000 for each violation. Consequently, the assessed civil penalty for Citation No. 2021-6, Items 1 and 2, will be reduced to \$2,000 for each item, and a total assessed civil penalty of \$4,000.

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ORDER

1. Citation No. 2021-6 is affirmed, with reduction to the amount of civil penalty and amendments to the wording of the order of abatement.
2. Within 30 days from the effective date of this Decision and Order, Respondent shall pay a civil penalty of \$4,000 to the Board.
3. Order of Abatement: Respondent shall cease and desist from violating Business and Professions Code sections 4825 and 4826, subdivisions (a) and (b), as clarified in this Decision, particularly at Factual Findings 59 and 81 to 85, and Legal Conclusions 9, 10, and 16.

DATE: 02/22/2023

Signature on file

JULIE CABOS-OWEN

Administrative Law Judge

Office of Administrative Hearings

**BEFORE THE
VETERINARY MEDICAL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Citation Against:

GABRIELE “GABI” GROSS

Respondent

Citation No. 2021-6

CITATION

Complainant alleges:

PARTIES

1. Jessica Sieferman (“Complainant”) brings this Citation solely in her official capacity as the Executive Officer of the Veterinary Medical Board (“Board”), Department of Consumer Affairs, State of California.
2. The Board’s records fail to reveal that Gabriele Gross (“Respondent”) has been issued a veterinarian license.

STATUTORY PROVISIONS

3. Business and Professions Code (BPC) sections 125.9, 148, and 4875.2 and California Code of Regulations (CCR), title 16, section 2043 authorize the Executive Officer of the Board to issue citations containing orders of abatement and/or administrative fines against a licensee of the Board, or to an unlicensed person, who has committed any acts or omissions in violation of the Veterinary Medicine Practice Act (Act).

4. BPC section 4825 provides that it is unlawful for any person to practice veterinary medicine or any branch thereof in this State unless at the time of so doing, such person holds a valid, unexpired, and unrevoked license as provided in the Act. A person practices veterinary medicine, surgery, and dentistry, and the various branches thereof, when he or she performs any act set forth in BPC section 4826, including representing himself or herself as engaged in the practice of veterinary medicine, veterinary surgery, or veterinary dentistry in any of its branches.

CAUSE FOR CITATION

5. On or about September 15, 2017, Respondent represented herself as providing veterinary services requiring a veterinarian license such as examining, diagnosing, and recommending treatment for an equine patient. The Board has not issued a license to practice veterinary medicine to Respondent. Such unlicensed conduct constitutes a violation of BPC sections 4825 and 4826, subdivision (a).
6. On or about September 15, 2017, Respondent was legally recorded interpreting and providing opinion on blood tests, examining, assessing health, diagnosing, and prescribing treatment, for an equine patient. Such unlicensed conduct constitutes a violation of BPC sections 4825 and 4826, subdivision (b).

DETERMINATION OF ISSUES **CAUSE OF ACTION**

7. Violations exist pursuant to BPC sections 4825 and 4826, subdivision (a) as set forth above in Paragraph 5. A cause of action thereby exists.
8. Violations exist pursuant to BPC sections 4825 and 4826, subdivision (b) as set forth above in Paragraph 6. A cause of action thereby exists.

PENALTY

9. In compliance with BPC sections 148 and 4875.2 and CCR, title 16, section 2043, it is determined that:

Respondent be cited for a Class "C" violation in the amount of \$2,500.00 for the Cause for Citation, based upon a determination that the above-described facts as set forth above in Paragraph 5 constitute violations of BPC sections 4825 and 4826, subdivision (a).

Respondent be cited for a Class "C" violation in the amount of \$2,500.00 for the Cause for Citation, based upon a determination that the above-described facts as set forth above in Paragraph 6 constitute violations of BPC sections 4825 and 4826, subdivision (b).

10. In compliance with BPC sections 125.9 and 4875.2, and CCR, title 16, section 2043,

subdivision (c), the total penalty for the above violations is \$5,000.

ORDER OF ABATEMENT

The Board hereby orders Respondent to cease and desist from violating BPC sections 4825 and 4826, subdivision (a) and (b).

May 10, 2021

DATE

Signature on file

JESSICA SIEFERMAN
Executive Officer
Veterinary Medical Board
Department of Consumer Affairs
State of California