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FEB 07 2023

AL 1:52 O'Clock P M.

By: *Jheri Stagnaro*
Deputy Secretary of State

OAL FILE NUMBERS	NOTICE FILE NUMBER Z- 2022-0809-02	REGULATORY ACTION NUMBER 2022-1222-025	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

AGENCY WITH RULEMAKING AUTHORITY

Veterinary Medical Board, Department of Consumer Affairs

AGENCY FILE NUMBER (If any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Civil Penalties for Citations		TITLE(S) 16	FIRST SECTION AFFECTED 2043	2. REQUESTED PUBLICATION DATE August 19, 2022
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Jeffrey Olguin		TELEPHONE NUMBER (916) 282-6893
FAX NUMBER (Optional) (916) 928-6849		NOTICE REGISTER NUMBER 2022, 33-Z		PUBLICATION DATE 8/19/2022
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Civil Penalties for Citations		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)		
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)				
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT			
	AMEND	2043		
TITLE(S) 16	REPEAL			
3. TYPE OF FILING				
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)	
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only	
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) 10/26/2022 - 11/10/2022				
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)				
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)	
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY				
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal		
<input checked="" type="checkbox"/> Other (Specify) Kimberly Kirchmeyer, Director, Department of Consumer Affairs <i>Jheri Stagnaro</i>				
7. CONTACT PERSON Jeffrey Olguin	TELEPHONE NUMBER (916) 282-6893	FAX NUMBER (Optional) (916) 928-6849	E-MAIL ADDRESS (Optional) jeffrey.olguin@dca.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

Jheri Stagnaro

DATE

12/15/2022

TYPED NAME AND TITLE OF SIGNATORY

Jessica Sieferman, Executive Officer, Veterinary Medical Board

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ENDORSED APPROVED

FEB 07 2023

Office of Administrative Law

DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. VETERINARY MEDICAL BOARD

FINAL STATEMENT OF REASONS

Civil Penalties for Citations

SUBJECT MATTER OF PROPOSED REGULATIONS

Civil Penalties for Citations.

SECTIONS AFFECTED

California Code of Regulations (CCR) Title 16, Division 20: Article 5.5, Section 2043¹

UPDATED INFORMATION

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

The 45-day public comment period began on August 19, 2022 and ended on October 4, 2022. The Veterinary Medical Board (Board) did not hold a hearing. By the close of the comment period on October 4, 2022, the Board had received public comments from the California Veterinary Medical Association (CVMA), Rodney Ferry, DVM, and Timothy Metzger, DVM. At the October 19–20, 2022, Board meeting, the Board also heard public comments on the rulemaking, which urged the Board to adopt proposed modifications to the text.

Modified Text

The proposed modifications adopted by the Board were made to CCR 2043 subsection (a) as follows [additions are in blue bolded text and deletion is in double strikethrough]:

- (a) Class "A" violations involve a person who, ~~while engaged in the practice of veterinary medicine,~~ has violated a statute or regulation **substantially related** ~~relating~~ to the practice of veterinary medicine but has not caused either death or harm to an animal patient and has not presented a substantial probability that death or serious harm to an animal patient could result from the violation. A class "A" violation is subject to a civil penalty in an amount not less than two hundred and fifty dollars (\$250) and not exceeding three thousand dollars (\$3,000) for each citation.

The change was made for the following reasons:

¹ All CCR references are to Title 16 unless otherwise noted.

- Adding the wording “substantially related” would ensure that violations subject to a citation would be substantially related to the California Veterinary Medicine Practice Act (Practice Act).
- Minor violations of the law that go beyond the scope of the Practice Act would have to be determined by the Board’s Executive Officer to be linked and substantially related to the practice of veterinary medicine.

In addition, only subsection (a) was considered as Class "A" violations only involve minor violations. Subsections (b) and (c) were not considered for the additional language as violations of these sections involve harm to an animal patient or even death, which would be substantially related to the practice of veterinary medicine. In addition, multiple violations of subsection (a), which would result in a Class "B" violation would automatically be considered “substantially related” violations.

15-Day Notice of Modified Text

On October 19, 2022, the Board approved the modifications to the proposed language described above and delegated to the Executive Officer the authority to adopt the proposed modified text, as written, if no adverse comments were received and delegated to the Executive Officer the authority to make any technical or non-substantive changes that may be required in completing the rulemaking file.

The Board issued a 15-day Notice of Modified Text on October 26, 2022 to make these changes, and that public comment period closed on November 10, 2022.

During the 15-day public comment period, the Board did not receive any public comments.

LOCAL MANDATE

A local mandate is not imposed on local agencies or school districts.

FISCAL IMPACT

The proposed regulations do not result in a fiscal impact to the state in the form of federal funding or any cost or savings to any state agency. The modifications do not change the fines for violations, but provide the Board with the ability to incentivize licensees to comply with the requirements under the Practice Act even for violations that do not occur “while engaged in the practice of veterinary medicine,” such as failure to complete the continuing education requirement. The proposed regulations, as modified, provide an avenue for licensees to correct minor violations of the Practice Act without having to go through a formal disciplinary process, which will save costs to licensees, including lost wages, and costs to the Board, including the costs associated with the Office of Attorney General and hiring Office of Administrative Law Judges.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative to the regulatory proposal would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

No such alternatives have been proposed, and none were identified by the Board or otherwise brought to the Board's attention.

SUMMARY OF COMMENTS AND RESPONSES

45-Day Comment Period

Summary of Public Comment One (1)

Concerns with open-ended and ambiguous scope, lack of staff training, and too much discretion in a very small group of individuals and support over amendments to deter illegal veterinary practice in California.

Letter from CVMA, September 12, 2022

The CVMA raises concerns that, by striking “while engaged in the practice,” licensees will not understand where the Board’s authority ends and begins and seeks clarification on the intent of the expansion. Specifically, CVMA asks if the intent is to allow the Board to levy civil penalties based on criminal and civil violations outside the context of veterinary practice. CVMA states that the scope of the Board’s power to issue citations “needs to be significantly clarified so that the licensees will be placed on clear, reasonable [sic] notice of what categories of conduct may be subject to citation and fine.”

In addition, CVMA is concerned Board staff does not have the training to assess whether a civil or criminal violation occurring outside “the practice of veterinary medicine” is related to the practice, and that the proposed amendments “vest too much discretion in a very small group of individuals.”

While CVMA objects to the proposed amendments to 16 CCR section 2043, subsections (a)–(c), they request the Board consider making the following changes identified in italics:

“Class ‘___’ violations involve a person who, ~~while engaged in the practice of veterinary medicine,~~ has violated a statute or regulation *substantially* relating to the practice of veterinary medicine *and included in the Veterinary Medicine Practice Act...*”

The CVMA is in full support of the Board’s changes to subsection (e) to deter illegal veterinary practices in California.

Board Response to Public Comment One (1)

As stated in its ISR, BPC sections 125.9, 148 and 4875.2 provide the Board statutory authority to issue citations for violations of any sections of the Board's licensing act or regulations adopted by the Board. In addition, BPC section 4883, subdivision (a) authorizes the Board to assess a fine for criminal convictions substantially related to the qualifications, functions, or duties of veterinary medicine. Striking "while engaged in the practice" does not expand the scope of the Board's authority to issue citations beyond what the Legislature has already authorized in statute. Citations cannot be issued for violations outside the scope provided by the Legislature. Therefore, adding "*and included in the Veterinary Medicine Practice Act...*" is unnecessary.

The concerns regarding the lack of training and too much discretion are unwarranted, as the Board's EO already has the discretion to initiate disciplinary action for any Practice Act violation, including substantially related criminal convictions. (16 CCR section 2003). The Board's EO and staff regularly depend on BPC sections 125.9, 148, 4875.2, and 4883 and 16 CCR sections 2040 and 2043 when determining the appropriate course of action for consumer protection. To claim the Board's EO and staff do not have adequate training to assess criminal convictions and that striking "while engaging in the practice" provides too much discretion to issue a citation, which is a much lower enforcement action than disciplining a licensee, is illogical.

After careful consideration of CVMA's written public comment and discussion during the October 19–20 Board meeting, the Board amended the previously adopted text to add "substantially related." The Board is appreciative of the CVMA's support to the proposed changes in subsection (e).

Summary of Public Comment Two (2)

Proposed amendments leave too much to interpretation.

Email from Rodney Ferry, DVM, August 22, 2022

Dr. Ferry states that he is not opposed to the intent of the changes. However, he raises a concern that removing "while engaged in the practice of veterinary medicine" in subsection (c) and not adding the clause "has violated a statute or regulation relating to the practice of veterinary medicine..." that is contained in subsection (a) and (b) (1) and (2) leaves too much to interpretation. As an example, Dr. Ferry states the Board "could make euthanasia of a patient a class 'C' violation."

Board Response to Public Comment Two (2)

The Board can only issue citations for statute or regulation violations. (BPC sections 125.9, 148, 4875.2, and 4883). If a statute or regulation violation does not occur, no citation would be issued. Therefore, adding the language recommended by Dr. Ferry is unnecessary and duplicative.

Summary of Public Comment Three (3)

Expressed opposition to all Board fines.

Email from Timothy Metzger, DVM, September 6, 2022

Dr. Metzger states, “Sounds like VMB is running out of money again. Can go crazy with fines to support their life style. They can fine a person who can not afford to fight them. At least one good thing that, big corp has is the money and lawyers to bankrupt them.”

Board Response to Public Comment Three (3)

Dr. Metzger appears to oppose all board fines and does not reference this specific rulemaking. However, it should be noted that citations are not used to generate revenue or act as a form of cost recovery for investigations. As noted in the Initial Statement of Reasons, citations and administrative fines are used as an enforcement tool to incentivize compliance with applicable statutes and regulations. They are often used when violations warrant more than an educational letter but do not rise to the level of formal discipline.

15-Day Notice of Modified Text

There were no comments received during the 15-day public comment period.