

**TITLE 16, VETERINARY MEDICAL BOARD
NOTICE OF PROPOSED REGULATORY ACTION CONCERNING
DISCIPLINARY GUIDELINES, § 2006**

NOTICE IS HEREBY GIVEN that the Veterinary Medical Board (Board) is proposing to take the action described in the Informative Digest. No public hearing on the proposed regulations is scheduled; however, if any interested person requests that a hearing be held on these regulations, the Board will schedule a hearing.

COMMENT PERIOD

Written comments, including those sent by mail, facsimile, or email to the addresses listed under “Contact Person” in this Notice, must be **received by the Board at its office no later than August 31, 2020**, or must be received by the Board at the hearing, if any.

AVAILABILITY OF MODIFICATIONS

The Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for fifteen (15) days prior to its adoption from the person designated in this Notice as a Contact Person and will be mailed or emailed to those persons who submit written or oral testimony related to this proposal, or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE CITATIONS

Pursuant to the authority vested by sections 4808 and 4845, subdivision (d), of the Business and Professions Code (BPC), and section 11400.20 of the Government Code (GC), and to implement, interpret, or make specific BPC sections 141, 480, 490, 4830.5, 4830.7, 4836.2, 4836.5, 4837, 4839.5, 4842, 4845, 4845.5, 4855, 4856, 4857, 4875, 4876, 4883, and 4886 and GC sections 11400.20 and 11425.50, subdivision (e), the Board is considering changes to section 2006 of article 1 of division 20 of title 16 of the California Code of Regulations (CCR)¹ as follows:

INFORMATIVE DIGEST

BPC section 4800.1 mandates that the protection of the public shall be the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. BPC section 4808 authorizes the Board, in accordance with the Administrative Procedure Act (GC section 11400 et seq.), to adopt,

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

amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Veterinary Medicine Practice Act (Act) (BPC section 4800, et seq.).

CCR section 2006 requires the Board, in reaching a decision on a disciplinary action under the Administrative Procedure Act, to consider the Disciplinary Guidelines entitled: "Veterinary Medical Board Disciplinary Guidelines, July 2012 Edition," (Disciplinary Guidelines), which are incorporated by reference. Deviation from the Disciplinary Guidelines, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems; and rehabilitation.

The Board has determined that, in order to better protect the public from licensees who have committed one or more violations of the BPC or the CCR, conform the Disciplinary Guidelines to recent statutory changes, and provide clarity to probationers of the terms of probation, the Board needs to make certain changes to its Disciplinary Guidelines.

The Board is proposing the following changes:

- Amend Section 2006 of Article 1 of Division 20 of Title 16 of the CCR
The existing regulation references the *Veterinary Medical Board Disciplinary Guidelines, July 2012 Edition*. This regulatory proposal will update that regulatory reference to reflect a new revision date of November 2018. It is necessary to incorporate the updated Disciplinary Guidelines by reference due to the size of the document. The proposal would also update the authority and reference sections of the regulation to add relevant BPC and GC sections.
- Amend the Disciplinary Guidelines that are incorporated by reference in Section 2006 of Article 1 of Division 20 of Title 16 of the CCR
The proposed amendments to the Disciplinary Guidelines are as follows:
 - Update the Cover Page of the Disciplinary Guidelines
This proposal would update the Cover Page to reflect the current revision date of November 2018, the current mailing address of the Board, the Board's website address and social media information, and the name of the current Executive Officer.
 - Delete the Board Members and Management Page of the Disciplinary Guidelines
This proposal would delete the Board Members and Management Page as the Board Member terms expire and new Board members are appointed more frequently than the Disciplinary Guidelines can be revised.
 - Update the Table of Contents of the Disciplinary Guidelines
This proposal would conform the Table of Contents to reflect the minor and/or substantive revisions made to the body of the Disciplinary Guidelines.
 - Delete the untitled table of authorities and references

- Amend the Introduction of the Disciplinary Guidelines
This proposal would amend the Introduction to clarify the circumstances under which the Board may require an Administrative Law Judge to explain his or her reasoning and make minor and technical changes for clarity. The Introduction would also be amended to clarify for probationers that the Board will communicate directly with him or her and requires direct communication from the probationer after entry of the final disciplinary order. This revision is necessary to improve communication and Board efficiency in disciplinary matters.
- Update the “Penalties By Business and Professions Code Section Number” Section of the Disciplinary Guidelines
This proposal would amend the “Penalties by Business and Professions Code Section Number” section to incorporate all of the relevant BPC sections, including the section regarding disciplinary actions relative to the new veterinary assistant controlled substance permit (VACSP). These amendments are necessary to provide license applicants, licensees, the Attorney General’s (AG) Office, Board staff, and Administrative Law Judges (ALJs) with the correct code sections for which the listed maximum and minimum terms apply. In addition, the amendments to this section make minor and technical corrections to the minimum and maximum terms and incorporate mandatory terms under statute.
- Add “Standard Orders” Section
The amendments also add eight new standard orders that are necessary to inform ALJs of the disciplinary order language to be used with each license type issued by the Board, including probationary registrations and permits, which are separate from a permanent registration or permit issued, revoked, and placed on probation.
- Update the “Standard Terms and Conditions of Probation” Section of the Disciplinary Guidelines
This proposal would create six new Standard Terms and Conditions of Probation: “Interview with the Board,” “Cooperation with Board Staff,” “Probation Monitoring Costs,” “Changes of Employment or Address”, “Maintain a Valid License,” and “License Surrender While on Probation/Suspension.” This proposal would also clarify the tolling process, remove outdated information, and make minor changes to existing terms and conditions for accuracy, clarity, ease of reading, and to correct minor spelling, capitalization, and typographical errors.
- Update the “Optional Terms and Conditions of Probation” Section of the Disciplinary Guidelines
This proposal would divide the requirements of “Limitation on Practice/Inspections” into two separate sections -- “Limitation on Practice” and “Inspections” -- and further clarify each term. This proposal would also create a new Optional Term and Condition of Probation, “Continuing Prevention and Support Groups,” and clarify and expand on the conditions of direct and indirect supervised practice, rehabilitation programs, and drug testing. The remainder of

the proposed changes are minor changes proposed for accuracy, clarity, ease of reading, and to correct minor spelling, capitalization, and typographical errors.

- Update the “Definitions” Section of the Disciplinary Guidelines
This proposal would clarify the definitions of terms used throughout the Disciplinary Guidelines.
- Delete the “Overview Guide for Disciplinary Guidelines” Section of the Disciplinary Guidelines
This proposal would remove the “Overview Guide for Disciplinary Guidelines” section in its entirety as the Board has determined that section is more appropriately located in the instructive manual distributed to Board members.

POLICY STATEMENT OVERVIEW/ANTICIPATED BENEFITS OF PROPOSAL

The proposed amendments make the Disciplinary Guidelines consistent with current law and the current probationary environment, clarify the terms and conditions of probation to reduce the likelihood of misinterpretation, and strengthen consumer protection.

The Board anticipates that the updated Disciplinary Guidelines will be a more useful tool for the Board, applicants and licensees, ALJs, legal counsel, and the public by providing a more accurate overview of the Board’s processes in formal disciplinary actions. The updated Disciplinary Guidelines will also serve as an educational and guidance tool for the ALJs who administer hearings for the Board. These judges will benefit from greater exposition of the various nuances of the Board’s enforcement provisions. The regulatory proposal will improve the consistency of penalties for violations of the Act and its regulations.

This regulatory proposal promotes the fairness and standardization of cases requiring formal discipline by clarifying the conditions under which licensees and applicants shall be subject to varying levels of discipline and terms of probation.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, the Board has conducted a search of any similar regulations on this topic and has concluded that this proposed regulatory action is neither inconsistent nor incompatible with existing state regulations.

INCORPORATION BY REFERENCE

Veterinary Medical Board Disciplinary Guidelines, November 2018.

FISCAL IMPACT ESTIMATES

The proposal does not change the fines for violations but provides a more accurate overview of the Board’s processes in formal disciplinary actions, which will provide greater clarity to licensees, consumers, the Board, the Office of Attorney General, and the Office of

Administrative Law Judges by outlining relevant and transparent standards directly related to violations outlined in law. The Board will be required to ensure compliance with the proposed regulations. Any increased workload and costs are anticipated to be minor and absorbable within existing resources.

Fiscal Impact on Public Agencies, Including Costs or Savings to State Agencies: None.

Cost or savings in federal funding to the state: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500-17630 Require Reimbursement: None.

Business Impact: The Board has made the initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that the proposed amendments to the Disciplinary Guidelines and their corresponding regulation, CCR section 2006, would only impact a small number of licensed veterinarians, registered veterinary technicians (RVTs), veterinary assistant controlled substance permit (VACSP) holders, applicants for licensure, and registered veterinary premises that are subject to discipline, and this proposal updates the existing Disciplinary Guidelines that already apply to all licenses, registrations, and permits issued by the Board.

Cost Impact on Representative Private Person or Business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The Board has made the initial determination that the revised Disciplinary Guidelines will have no more of a cost impact on representative private persons or businesses than the current version of the Disciplinary Guidelines. The representative private persons or directly affected businesses are veterinarians, RVTs, VACSP holders, and registered veterinary premises that are subject to discipline.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS:

The Board has made an initial determination that the proposed regulatory action would have no effect on small businesses. This initial determination is based on the fact that the proposed amendments to the Disciplinary Guidelines and their corresponding regulation, CCR section 2006, would only impact a small number of licensed veterinarians, RVTs, VACSP holders, applicants for licensure, and registered veterinary premises that are subject to discipline, and this proposal updates the existing Disciplinary Guidelines that already apply to all licenses, registrations, and permits issued by the Board.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

The Board has made the initial determination that this regulatory proposal would have the following impact:

- It is not likely to create or eliminate jobs within the State of California. This initial determination is based on the fact that the proposed amendments to the Disciplinary Guidelines and their corresponding regulation, CCR section 2006, would only impact a small number of licensed veterinarians, RVTs, VACSP holders, applicants for licensure, and registered veterinary premises that are subject to discipline, and this proposal updates the existing Disciplinary Guidelines that already apply to all licenses, registrations, and permits issued by the Board.
- It is not likely to create new businesses or eliminate existing businesses within the State of California. This initial determination is based on the fact that the proposed amendments to the Disciplinary Guidelines and their corresponding regulation, CCR section 2006, would only impact a small number of licensed veterinarians, RVTs, VACSP holders, applicants for licensure, and registered veterinary premises that are subject to discipline, and this proposal updates the existing Disciplinary Guidelines that already apply to all licenses, registrations, and permits issued by the Board.
- It would not likely affect the expansion of businesses currently doing business within the State of California. This initial determination is based on the fact that the proposed amendments to the Disciplinary Guidelines and their corresponding regulation, CCR section 2006, would only impact a small number of licensed veterinarians, RVTs, VACSP holders, applicants for licensure, and registered veterinary premises that are subject to discipline, and this proposal updates the existing Disciplinary Guidelines that already apply to all licenses, registrations, and permits issued by the Board.

Benefits of Regulation

The Board has determined that this regulatory proposal would:

- Benefit the health and welfare of California residents and their animals because the proposal updates and clarifies the terms and conditions of probation for veterinarians, RVTs, VACSP holders, and premises registration holders subject to discipline, and makes the Disciplinary Guidelines consistent with current law. This, in turn, provides increased protection to the health and welfare of the public by ensuring the Board's recommendations for discipline are consistent and relevant to the current state of the practice of veterinary medicine.
- Not have a significant impact on worker safety because the proposal would simply make the Disciplinary Guidelines consistent with current law, reflect the changes that have occurred in the probationary environment since the last update, clarify terms and conditions of probation, and improve consumer protection.
- Not have an impact on the state's environment because the proposed amendments to the Disciplinary Guidelines would simply make them consistent with current law, reflect

the changes that have occurred in the probationary environment since the last update, clarify terms and conditions of probation, and improve consumer protection.

CONSIDERATION OF ALTERNATIVES

In accordance with GC section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may submit comments to the Board in writing relevant to the above determinations at 1747 North Market Blvd., Suite 230, Sacramento, California 95834.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an Initial Statement of Reasons setting forth the reasons for the proposed action and has made available all information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, all documents incorporated by reference, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board at 1747 North Market Blvd., Suite 230, Sacramento, California 95834, or by accessing the Board's website at www.vmb.ca.gov/laws_regs/proposed_regs.shtml.

AVAILABILITY AND LOCATION OF FINAL STATEMENT OF REASONS AND RULEMAKING FILE

Copies of all information upon which the regulations are based are contained in the rulemaking file, which is also available for public inspection by contacting the person named below. You may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to the Contact Person named below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name:	Justin Sotelo
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The backup contact person is:

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WEBSITE ACCESS

Materials regarding this proposal can be found at:
www.vmb.ca.gov/laws_regs/proposed_regs.shtml.