

# Veterinary Medical Board

1747 N. MARKET BOULEVARD, SUITE 230, SACRAMENTO, CA 95834  
TELEPHONE: 916-515-5220 FAX: 916-928-6849 | WWW.VMB.CA.GOV



## MEMORANDUM

<b>DATE</b>	August 6, 2018
<b>TO</b>	Veterinary Medical Board (Board)
<b>FROM</b>	Amanda Drummond, Administrative Programs Coordinator
<b>SUBJECT</b>	<b>Amend Section 2006, Article 1, Division 20, Title 16 of the California Code of Regulations (CCR) Regarding Board Disciplinary Guidelines</b>

### **Background:**

The proposed language to modify CCR section 2006 and the Veterinary Medical Board's (Board) Disciplinary Guidelines (incorporated into regulation by reference) were originally adopted by the Board in January of 2015. The Board adopted further amendments to CCR section 2006 and the Disciplinary Guidelines in July 2015, October 2015, January 2017, April 2017, and October 2017. Board staff is currently in the process of working with the Board's legal counsel on developing the rulemaking package so it can be submitted to the Department of Consumer Affairs (DCA) for pre-review.

While working on the package, the executive officer and legal counsel recommended additional revisions to the Disciplinary Guidelines to address issues that the Board's enforcement program is currently facing.

The proposed changes include the following:

- Clarify Board communication with respondents after the Board's decision and order are final. (See Proposed Disciplinary Guidelines, page 1, Introduction; page 14, Standard Terms and Conditions of Probation, Term No. 4, Cooperation with Board Staff.)
- Add missing disciplinary statutes regarding Registered Veterinary Technician (RVT) applicants, Veterinary Assistant Controlled Substance Permits (VACSP), and general Business and Professions Code sections. (See Table of Contents; Penalties by BPC section number.)
- Add standard order language to resolve Administrative Law Judge (ALJ) order issues. (See Table of Contents; page 13, Standard Orders 1 through 6.)
- Amend the Standard Terms and Conditions of Probation to provide better clarity and add an additional term for Changes of Employment or Address.
- Various other minor/technical changes.

**Attachments:**

- Proposed revisions to Board Disciplinary Guidelines (changes are denoted with strike through and underline)
- Revisions to CCR section 2006 reflecting proposed changes to Disciplinary Guidelines

**Title 16. Professional and Vocational Regulations  
Division 20. Veterinary Medical Board**

PROPOSED LANGUAGE

Changes to the existing regulation are shown in single underline for new text and ~~single-strikeout~~ for deleted text.

**Amend Section 2006 of Article 1 of Division 20 of Title 16 of the California Code of Regulations to read as follows:**

**§ 2006. Disciplinary Guidelines.**

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board shall consider the disciplinary guidelines entitled: "Veterinary Medical Board Disciplinary Guidelines, ~~July 2012~~ August 2018 Edition" which are hereby incorporated by reference. Deviation from these 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.

Note: Authority cited: Section 4808, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 141, ~~480~~, ~~490~~, 4830.5, 4830.7, ~~4836.2~~, 4836.5, 4837, 4839.5, ~~4842~~, 4855, 4856, 4857, 4875, 4876 and 4883, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

**Commented [WT1]:** Updated for latest Board approval.

**Deleted:** October 2017

**Commented [WT2]:** Adding general BPC authority to discipline for federal agency and foreign country license disciplinary actions.

**Commented [WT3]:** Adding new general BPC sections for application denial and license revocation/suspension, and VACSP-specific statutes to conform to new additions of these sections to the Guidelines.

# Disciplinary Guidelines

~~July 2012~~ **August 2018**

Commented [WT1]: Updated for potential new Board approval date

Deleted: October 2017

## Veterinary Medical Board



~~2005 Evergreen Street, 1747 N. Market Blvd., Suite 2250~~  
~~230 Sacramento, CA 95815-3831~~  
~~95834 (916) 263-2610~~  
~~515-5220~~  
~~www.vmb.ca.gov Susan M. Geranen~~  
~~www.vmb.ca.gov~~  
~~www.facebook.com/CA.VetMedBoard/~~  
~~twitter.com/vetmedboard~~

Jessica Siefert, Executive Officer

Commented [WT2]: Updated for new EO

Deleted: Annemarie Del Mugnaio

Revised 8/2018

Deleted: 11/2017

# DISCIPLINARY GUIDELINES

## VETERINARY MEDICAL BOARD

July 2012 ~~August 2018~~

~~Tom Kendall, DVM~~ Kathy Bowler, Public Member

~~Kim Williams,~~ Jennifer Loreda, RVT

~~Patti Aguiar, Public Member~~

~~Richard Johnson, DVM~~ Judie Mancuso, Public Member

Jaymie J. Noland, DVM

~~Linda Starr, Public Member~~ Mark T. Nunez, DVM

Richard Sullivan, DVM

Cheryl Waterhouse, DVM

Alana Yanez, Public Member

Special thanks to former Board President ~~Stephanie Ferguson~~ Tom Kendall, DVM

~~Susan M. Geranen~~ Jessica Sieferman  
Executive Officer

~~Sandra Monterrubio,~~  
Enforcement Program Manager

Commented [WT3]: Enforcement Manager changing; recommend deleting provision from Guidelines

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Commented [WT4]: Title doesn't make sense with the content of this section.

Commented [WT5]: Adding RVT applicants and general BPC denial/revocation re crimes

Commented [WT6]: Adding VACSP statute

Commented [WT7]: Moved for numerical order

Commented [WT8]: Adding VACSP statute

Commented [WT9]: Adding general BPC denial statute

Commented [WT10]: Adding VACSP statute

Commented [WT11]: Revised cite to 4839.5 to correct cite of 4836.5

Commented [WT12]: Adding VACSP statute

Commented [WT13]: Adding RVT application statute

Commented [WT14]: Adding RVT application statute

Commented [WT15]: BPC section 4883(n) only applies to state and territory disciplinary actions; adding general statute for federal and foreign country disciplinary actions.

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**Commented [WT16]:** It is unclear why the information on this page is necessary. Recommend deleting this page or add a title to clarify.

# Veterinary Medical Board

## Disciplinary Guidelines

### Introduction

The Veterinary Medical Board (Board) developed the Disciplinary Guidelines outlined in this manual for its Executive Officer, staff, legal counsel, administrative law judges, and other persons involved in the Board's enforcement process to be used for the purpose of creating judgment orders in formal disciplinary actions. These guidelines are published in regulations for the public and the profession so that the processes used by the Board to impose discipline are readily available and transparent.

The Board recognizes that each case is unique and that mitigating or aggravating circumstances in a particular case may necessitate variations. Therefore, the Board has developed minimum and maximum penalties to assist in determining the appropriate ~~penalty level of discipline~~. If an ~~accusation is sustained and an administrative law judge finds that a violation occurred but assesses~~ less than the minimum penalty ~~is assessed for that violation~~, the Board ~~requires information from~~ may request that the administrative law judge ~~fully explain the reasons and the circumstances for the deviation, that resulted in less than the minimum penalty being assessed~~. In addition, probationary conditions are divided into two categories, 1) standard terms and conditions that are used for all cases, and 2) optional terms and conditions that are used for specific violations and circumstances unique to a specific case.

The Board grants licenses to veterinarians, and registers grants registrations to veterinary premises and veterinary technicians, and issues veterinary assistant controlled substance permits. If there is action taken against both the individual ~~licensee~~ licensee and the premises permit, then the disciplinary order should reflect actions against ~~both~~ each. However, in some cases, minimum standard violations are so severe that it is necessary to take immediate action and ~~does suspend the license of~~ a facility. In these instances, the veterinary license and the premises permit may be disciplined separately, and the disciplinary order should reflect the separate action.

Because of the severity of cases resulting in ~~actions taken~~ by the Office of the Attorney General, the Board has established that the minimum penalty shall always include revocation or suspension with the revocation or suspension stayed and terms and conditions of probation imposed. The ~~imminent~~ threat of the revocation or suspension being reinstated helps to ~~insure~~ ensure compliance with the probationary terms and conditions. ~~It is the recommendation of the~~ The Board recommends that in any case involving a violation related to for alcohol or drug abuse related violations that, the minimum term of probation should be five years. ~~In and in addition, in any case involving a violation related to alcohol or drug abuse violations the mandatory terms and conditions listed specifically for this type of case shall be imposed.~~

~~In cases where the penalties deviate from the minimum to maximum range without explanation of the deviation, the Board may non-adopt the Proposed Decision and review the case itself.~~

A respondent may be represented by private counsel during enforcement proceedings, up to entry of a final disciplinary order. Following entry of the final order, including, but not limited to, while the Respondent is on probation, Board staff will only communicate directly with Respondent, and Respondent is required to communicate directly with Board staff.

Commented [WT17]: Added to clarify Board communication policy with respondent post-decision.



**PENALTIES BY BUSINESS AND PROFESSIONS CODE SECTION NUMBER**

<b>Section</b>	4883(a); 4837(b); <del>4842(d); 480(a)(1); 490</del>
<b>Violation</b>	Conviction of a crime substantially related to the qualifications, functions, or duties of veterinary medicine, surgery, or dentistry, in which case the record of the conviction shall be conclusive evidence.
<b>Maximum Penalty</b>	Revocation and a \$5,000 fine
<b>Minimum Penalty (as appropriate)</b>	Revocation and/or suspension stayed Two-year probation \$2,000 fine Standard terms and conditions Optional terms and conditions including but not limited to: Suspension Limitations on practice Supervised practice No ownership of a veterinary hospital or clinic No management of a veterinary hospital/no supervision of interns or residents Continuing education Psychological evaluation and/or treatment Medical evaluation and/or treatment Rehabilitation program Submit to drug testing Abstain from controlled substances/alcohol Community service Restitution Ethics training
<p>Maximum penalties should be considered if the criminal act caused or threatened harm to an animal or the public, if there have been limited or no efforts at rehabilitation, or if there were no mitigating circumstances at the time of the commission of the offense(s).</p> <p>Minimum penalties may be considered if there is evidence of an attempt(s) at self-initiated rehabilitation. Evidence of self-initiated rehabilitation includes, but is not limited to, pro bono services to nonprofit organizations or public agencies that improve the care and treatment of animals or improve generally society's interactions with animals. Self-initiated rehabilitation measures also include, but are not limited to, <del>when appropriate,</del> specific training in areas of weakness, full restitution to persons harmed by the licensee or registrant, <del>completion</del> <u>completion</u> of treatment or other conditions of probation ordered by the court, or full compliance with all laws since the date of the occurrence of the <del>criminal act</del> <u>crime</u>.</p>	

<b>Section</b>	4883(b); 4837(d)
<b>Violation</b>	Having professional connection with, or lending the licensee's or registrant's name to, any illegal practitioner of veterinary medicine and the various branches thereof.
<b>Maximum Penalty</b>	Revocation and a \$5,000 fine

<b>Minimum Penalty</b>	Revocation and/or suspension stayed Two-year probation Standard terms and conditions \$2,000 fine Optional terms and conditions including but not limited to: 30-day suspension for each offense No ownership of a veterinary hospital or clinic No management of a veterinary hospital/no supervision of interns or residents Ethics training
<p>Maximum penalties should be considered if the acts or omissions caused or threatened harm to an animal or client, or if there are prior violations of the same type of offense.</p> <p>Minimum penalties may be considered if the acts or omissions did not cause or threaten harm to an animal or cause detriment to a client.</p>	

<b>Section</b>	4883(c); <del>4836.2(c)(4); 4836.5; 4837(e); 4839.5</del>
<b>Title Violation</b>	Violation or attempt to violate, directly or indirectly, any of the provisions of the chapter
<b>Maximum Penalty</b>	Revocation and a \$5,000 fine
<b>Minimum Penalty</b>	Revocation and/or suspension stayed Two-year probation Standard terms and conditions \$1,000 fine Optional terms and conditions including but not limited to: Restitution Ethics training
<p>Maximum penalties should be considered if the actions were intended to subvert investigations by the Board or in any way hide or alter evidence that would or could be used in any criminal, civil, or administrative actions.</p> <p>Minimum penalties may be considered if the acts or omissions did not cause or threaten harm to an animal or cause detriment to a client.</p>	

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

Maximum penalties should be considered if the acts or omissions caused public exposure of reportable diseases (rabies, brucellosis or tuberculosis) or other hazardous diseases of zoonotic potential.

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

<b>Violation</b>	False or misleading advertising
<b>Maximum Penalty</b>	Revocation and/or suspension and a \$5,000 fine
<b>Minimum Penalty</b>	Revocation and/or suspension stayed Two-year probation <del>60</del> 30-day suspension Standard terms and conditions \$2,000 fine Optional terms and conditions including but not limited to: Restitution Ethics training

Maximum penalties should be considered if the advertising was deceptive, caused or threatened harm to an animal, or caused a client to be misled and suffer monetary damages. ~~One~~In that case, one of the probationary terms in that case should be restitution to any client damaged as a result of the violation. The more severe penalty should be considered when there are prior violations of the same type of offense.

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

<b>Section</b>	4883(g); <u>4836.2(c)(2), (3)</u> ; 4837(c)
<b>Violation</b>	Unprofessional conduct, that includes, but is not limited to, the following: (1) Conviction of a charge of violating any federal statutes or rules or any statute or rule of this state regulating dangerous drugs or controlled substances. (2)(A) The use of, or prescribing for, or administering to himself or herself, any controlled substance. (B)The use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages to the extent, or in any manner as to be dangerous or injurious to a person licensed or registered under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person so licensed or registered to conduct with safety the practice authorized by the license or registration. (C)The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. (3) A violation of any federal statute, rule, or regulation or any of the statutes, rules, or regulations of this state regulating dangerous drugs or controlled substances.
<b>Maximum Penalty</b>	Revocation and a \$5,000 fine

<b>Minimum Penalty</b>	Revocation and/or suspension stayed Two-year probation Standard terms and conditions \$5,000 fine Optional terms and conditions including but not limited to: 30-day suspension Supervised practice Psychological evaluation and/or treatment Medical evaluation and/or treatment Surrender DEA license/send proof of surrender to Board within 10 days of the effective date of the Decision. No ownership of a veterinary hospital or clinic No management of a veterinary hospital/no supervision of interns or residents Rehabilitation program Submit to drug testing Abstain from use of alcohol and drugs
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Maximum penalties should be considered if acts or omissions caused or threatened harm to an animal or a client; or if there are prior violations of the same type of offense.

Minimum penalties may be considered if acts or omissions did not cause harm to an animal, there are no prior violations of the same type of offense, and there is evidence of self-initiated rehabilitation.

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

[Business and Professions Code section 4836.2\(d\) prohibits issuance of a VACSP to any applicant with a state or federal felony controlled substance conviction.](#)

**Commented [WT18]:** Since the VACSP statute is being added, this provision should also be added to clarify that no permit can be issued if the applicant has a felony controlled substance conviction.

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

<b>Minimum Penalty (as appropriate)</b>	Written Public Reproval Revocation and/or suspension stayed Two-year probation Standard terms and conditions Optional terms and conditions including but not limited to: <u>30-day</u> Suspension Limitations on practice Supervised practice No ownership of a veterinary hospital or clinic No management of a veterinary hospital/no supervision of interns or residents Continuing education Psychological evaluation and/or treatment Medical evaluation and/or treatment Rehabilitation program Submit to drug testing Abstain from controlled substances/alcohol Community service/ Restitution Ethics training
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Maximum penalties should be considered if the acts or omissions caused substantial harm to an animal or a client, or if there are prior ~~actions against~~ violations of the licensee or registrant's same type of offense.

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

<b>Section</b>	4883(h)
<b>Violation</b>	Failure to keep the licensee's or registrant's premises and all equipment therein in clean and sanitary condition. (Requirements for sanitary conditions are also outlined in Sections 4853.5 and 4854 (practice sanitation standards).)
<b>Maximum Penalty</b>	Revocation or suspension of premises permit and a \$5,000 fine.
<b>Minimum Penalty</b>	Revocation and/or suspension stayed Two-year probation Standard terms and conditions Fine - not less than \$50 nor more than \$500 per day, not to exceed \$5,000 Optional terms and conditions including but not limited to: <del>A ten to thirty</del> <u>30-day</u> suspension or suspension until compliance with minimum standards of practice is achieved. Random hospital inspections

Maximum penalties should be considered if the acts or omissions caused or threatened harm to animals or the public, if there are prior actions and/or no attempt to remedy the violations, for example, unsanitary or hazardous workplace, improper sterilization of instruments, or improper husbandry practices, or if there are prior violations of a similar nature.

Minimum penalties may be considered ~~people~~ if the acts or omissions did not cause or threaten harm to animals or people, or remedial action has been taken to correct the deficiencies, ~~and there is remorse for the existing unsanitary conditions.~~

Note - A veterinary license and a premises permit can be disciplined separately.

<b>Section</b>	4883(i)
<b>Violation</b>	Negligence in the practice of veterinary medicine
<b>Maximum Penalty</b>	Revocation and a \$5,000 fine
<b>Minimum Penalty</b>	Revocation and/or suspension stayed Three-year probation Standard terms and conditions Fine - not less than \$50 nor more than \$500 per day, not to exceed \$5,000 Optional terms and conditions including but not limited to: <del>A ten to thirty</del> 30-day suspension or suspension until in-compliance with minimum standards of practice is achieved. Random hospital inspections
<p>Maximum penalties should be considered if the acts or omissions caused or threatened harm to animals or the public, if there are prior actions and/or no attempt to remedy the violations.</p> <p>Minimum penalties may be considered <del>people</del> if the acts or omissions did not cause or threaten harm to animals or people, remedial action has been taken to correct the deficiencies and there is remorse for the negligent acts.</p>	

<b>Section</b>	4883(i)
<b>Violation</b>	Incompetence in the practice of veterinary medicine
<b>Maximum Penalty</b>	Revocation and a \$5,000 fine
<b>Minimum Penalty</b>	Revocation and/ or suspension stayed Three-year probation Standard terms and conditions \$2,000 fine Optional terms and conditions including but not limited to: <del>90</del> 30-day suspension Supervised practice <del>Hospital inspections</del> Continuing education Clinical written examination Community service Restitution Ethics training
<p>Maximum penalties should be considered based on the following factors: if the acts or omissions caused harm to an animal or an animal has died, there are limited or no efforts at rehabilitation, or there are no mitigating circumstances at the time of the commission of the offense(s).</p> <p>Minimum penalties may be considered if the acts or omissions did not cause substantial harm to an animal, there is evidence of rehabilitation, and there are mitigating circumstances such as no prior discipline, remorse for the harm that occurred, cooperation with the Board's investigation, etc.</p>	

<b>Section</b>	4883(i) <del>480(a)(2)</del>
<b>Violation</b>	Fraud and/or <del>D</del> eception in the practice of veterinary medicine
<b>Maximum Penalty</b>	Revocation and a \$5,000 fine

<b>Minimum Penalty</b>	Revocation and/or suspension stayed Three-year probation Standard terms and conditions \$2,000 fine Optional terms and conditions including but not limited to: 90-day suspension Hospital inspections Supervised practice Clinical written examination Community service Restitution Ethics training
<p>Maximum penalties should be considered based on the following factors: if the acts or omissions caused harm to an animal or an animal has died, there is limited or no evidence of rehabilitation or no mitigating circumstances at the time of the commission of the offense(s).</p> <p>Minimum penalties may be considered if the acts or omissions did not cause substantial harm to an animal, there is evidence of rehabilitation and there are <del>mitigation</del>mitigating circumstances such as no prior discipline, remorse for the harm that occurred, cooperation with the Board's investigation, etc.</p>	

<b>Section</b>	4883(j); <del>4836.2(c)(4); 4836.5</del> <del>4839.5</del>
<b>Violation</b>	Aiding or abetting in acts which are in violation of any of the provisions of this chapter
<b>Maximum Penalty</b>	Revocation and a \$5,000 fine
<b>Minimum Penalty</b>	Revocation and/or suspension stayed Two-year probation Standard terms and conditions \$1,000 fine Optional terms and conditions including but not limited to: 30-day suspension Ethics training
<p>Maximum penalties should be considered if the acts or omissions caused or threatened harm to an animal or client and the acts were repeated after a prior violation of the same type of offense.</p> <p>Minimum penalties may be considered if the acts or omissions did not cause or threaten harm to an animal or cause detriment to a client, there were no prior actions, and there is evidence of remorse and an acknowledgement of the violation.</p>	

Commented [WT19]: Corrected this citation

<b>Section</b>	4883(k); <del>4836.2(c)(1); 4837(a); 4842(c)</del>
<b>Violation</b>	Fraud, misrepresentation, or deception in obtaining a license, <del>or</del> registration, <u>or</u> permit
<b>Maximum and Minimum Penalty</b>	Revocation and a \$5,000 fine
<p>Note - In this instance, the gravity of the offense warrants revocation in all cases since there was no legal basis for licensure in the first place.</p>	

<b>Section</b>	4883(l); <a href="#">4842(e)</a>
<b>Violation</b>	The revocation, suspension, or other discipline by another state or territory of a license, certificate, or registration to practice veterinary medicine or as a veterinary technician in that state or territory
<b>Maximum Penalty</b>	Revocation
<b>Minimum Penalty</b>	The penalty that would have been applicable to the violation if it had occurred in the State of California

<b>Section</b>	4883(m)
<b>Violation</b>	Cruelty to animals or conviction on a charge of cruelty to animals, or both
<b>Maximum Penalty</b>	Revocation and a \$5,000 fine.
<b>Minimum Penalty</b>	Revocation and/or suspension stayed Two-year probation Standard terms and conditions \$5,000 fine Optional terms and conditions including but not limited to: 300-day suspension Psychological evaluation and/or treatment Medical evaluation and/or treatment Continuing education Ethics training

Note - While the Board believes this violation is so severe that revocation is the only appropriate penalty, it recognizes that a lesser penalty may be appropriate where there are mitigating circumstances of a significant nature.

<b>Section</b>	4883(n); <a href="#">141</a>
<b>Violation</b>	Disciplinary actions taken by any <a href="#">federal, state, or territory</a> public agency <a href="#">or by another country for</a> <del>in any state or territory of</del> any act substantially related to the practice of veterinary medicine or the practice of a veterinary technician.
<b>Maximum Penalty</b>	Revocation and a \$5,000 fine
<b>Minimum Penalty</b>	Revocation and/or suspension stayed Two-year probation Standard terms and conditions \$2,000 fine Optional terms and conditions including but not limited to: 30-day suspension Continuing education

**Commented [WT20]:** BPC section 4883(n) only applies to state and territory disciplinary actions; adding general statute for federal and foreign country disciplinary actions.



Maximum penalties should be considered if the acts or omissions caused or threatened harm to an animal or the public, there is limited or no evidence of rehabilitation, and there were no mitigating circumstances at the time of the commission of the offense(s).

Minimum penalties may be considered if there is evidence of attempts at self-initiated rehabilitation taken prior to the filing of the accusation. Self-initiated rehabilitation measures include pro bono services to nonprofit organizations or public agencies that improve the care and treatment of animals or improve generally society's interactions with animals. Self-initiated rehabilitation measures also include, ~~when appropriate,~~ specific training in areas of weakness, full restitution to persons harmed by the licensee or registrant, ~~completion,~~ completion of treatment or other conditions of probation ordered by the court, and ~~full~~ compliance with all laws since the date of the occurrence of the violation.

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

Maximum penalties should be considered if the acts or omissions caused or threatened harm to the animal or the public, there was more than one offense, there is limited or no evidence of rehabilitation, and there were no mitigating circumstances at the time of the offense(s).

Minimum penalties may be considered if there is evidence of attempts at self-initiated rehabilitation. Self-initiated rehabilitation measures include pro bono services to nonprofit organizations or public agencies that improve the care and treatment of animals or improve generally society's interactions with animals. Self-initiated rehabilitation measures also include, ~~when appropriate,~~ specific training in areas of weakness, full restitution to persons harmed by the licensee or registrant, completion of treatment or other conditions of probation ordered by the court, and ~~full~~ compliance with all laws since the date of the occurrence of the violation.

<b>Section</b>	4855
<b>Violation</b>	Written Records
<b>Maximum Penalty</b>	Revocation and a \$5,000 fine
<b>Minimum Penalty</b>	Revocation and/ or suspension stayed Two-year probation Standard terms and conditions 30-day suspension \$1,000 fine Optional terms and conditions including but not limited to: <u>Supervised practice</u> Continuing education

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

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

<b>Section</b>	4856
<b>Violation</b>	Failure to permit the inspection of <del>Records</del> <u>records</u> or <del>Premises</del> <u>premises</u> by the Board
<b>Maximum Penalty</b>	Revocation and a \$5,000 fine
<b>Minimum Penalty</b>	Revocation and/or suspension stayed Two-year probation Standard terms and conditions \$1,000 fine Optional terms and conditions including but not limited to: 30-day suspension Ethics training

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

Minimum penalties may be considered when there are mitigating circumstances at the time of the request for records, where there is no deliberate attempt to prevent the Board from having access to the records, or when there are no prior ~~actions~~ violations of a similar nature.

<b>Section</b>	4857
<b>Violation</b>	Impermissible disclosure of information about animals and/or about clients
<b>Maximum Penalty</b>	Revocation and a \$5,000 fine
<b>Minimum Penalty</b>	Revocation and/or suspension stayed Two-year probation Standard terms and conditions \$1,000 fine Optional terms and conditions including but not limited to: 30-day suspension

Maximum penalties should be considered when there is a breach of ~~breaching~~ confidentiality, ~~puts the animals or clients in jeopardy.~~

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

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

<b>Section</b>	4830.5
<b>Violation</b>	Duty to report staged animal fighting
<b>Maximum Penalty</b>	Revocation and a \$5,000 fine
<b>Minimum Penalty</b>	Revocation and/or suspension stayed Two-year probation Standard terms and conditions \$1,000 fine Optional terms and conditions including but not limited to: 30-day suspension Continuing education Ethics training
Maximum penalties should be considered when an animal or animals have been killed or severely harmed.	
Minimum penalties may be considered on a case-by-case basis.	

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

<b>Section</b>	4836.5; 4837
<b>Violation</b>	Disciplinary proceedings against veterinarians and registered veterinary technicians
<b>Maximum Penalty</b>	Revocation and a \$5,000 fine
<b>Minimum Penalty</b>	Revocation and/or suspension stayed Two-year probation Standard terms and conditions \$1,000 fine Optional terms and conditions including but not limited to: 30-day suspension Continuing <del>Education</del> <u>education</u> Ethics training
Maximum penalties should be considered if the acts or omissions caused or threatened harm to an animal or client, or the acts were repeated after a prior violation of the same type of offense.	
Minimum penalties may be considered if the acts or omissions did not cause or threaten harm to an animal or client, or if there are no prior violations.	
<p>Note - The Practice Act is very specific on the authorized duties for RVTs that cannot be performed by unregistered assistants, veterinary controlled substance permit holders; therefore, these violations are more serious due to their blatant nature.</p>	

**Commented [DA21]:** Consider striking this language. Current language lacks clarity and is unnecessary.

**Standard Orders:** The following text may be used as the introductory paragraph in the disciplinary Order:

**1. License Revoked**

Respondent's license [registration or permit] is revoked.

**2. Revocation, Stayed, Probation**

However, the revocation is stayed, and Respondent is placed on probation for \_\_\_\_\_ years upon the following terms and conditions.

**3. License Suspension**

Respondent's license shall be suspended for [insert specific number of days, months]. See specific violation for recommended time of suspension.

**4. Application denied**

Respondent's license [registration or permit] application is denied.

**5. Application approved, license issued**

Respondent's license [registration or permit] application is approved, and upon completion of all prerequisites for licensure, the license [registration or permit] shall be issued to Respondent.

**6. Application granted, license issued, revoked, stayed, probation**

Respondent's license [registration or permit] application is approved, and upon completion of all prerequisites for licensure, the license [registration or permit] shall be issued to Respondent, and immediately revoked. However, the revocation is stayed, and Respondent shall be placed on probation for \_\_\_\_\_ years upon the following conditions.

**7. Application denied, probationary registration issued [RVTs only]**

Respondent's registration application is denied; however, the denial is stayed, and a probationary registration shall be issued to Respondent for a term of \_\_\_\_\_ years [no more than 3 years per BPC section 4845] on the following conditions. Upon completion of all terms and conditions of probation, and upon completion of all prerequisites for licensure, Respondent may be issued a permanent registration.

**8. Application for temporary veterinarian license granted, license issued, revoked, stayed, probation (veterinarians only)**

Respondent's application for a temporary veterinarian license is approved, and upon completion of all statutory and regulatory requirements for licensure, and all conditions precedent to licensure, a temporary veterinarian license shall be issued to Respondent. Failure to successfully complete all statutory and regulatory requirements within two (2) years from the effective date shall void this decision and it will have no effect. Upon issuance of a temporary veterinarian license, said license will be immediately revoked. The revocation will be stayed, and Respondent placed on \_\_\_\_\_ [insert number of years] years' probation (Probationary Term) on the following terms conditions. Any and all additional licenses or permits subsequently issued to Respondent during the Probationary Term shall be subject to any and all statutory and regulatory prerequisites and the specific terms and conditions specified below. The Probationary Term is cumulative and does not restart with the issuance of any additional license or permit.

## Standard Terms and Conditions of Probation (1-4415)

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

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

### 1. Obey all Laws

Respondent shall obey all federal and state laws and regulations substantially related to the practice of veterinary medicine. ~~Further, within~~ Within thirty (30) days of any arrest or, Respondent shall notify the Board. Within thirty (30) days of any conviction, Respondent shall report to the Board and provide proof of compliance with the terms and conditions of the court order including, but not limited to, probation and restitution requirements. ~~Respondent shall notify the Board of any change of name or address within thirty (30) days of the change.~~

### 2. Quarterly Reports and Interviews

Respondent shall report quarterly to the Board or its designee, under penalty of perjury, on forms provided by the Board, stating whether there has been compliance with all terms and conditions of probation. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's license, registration or permit. In addition, the Board at its discretion may request additional in-person reports of the probationary terms and conditions. If the final written quarterly report is not made as directed, the period of probation shall be extended until such time as the final report is received by the Board. ~~Respondent shall make available all patient records, hospital records, books, logs, and other documents. Any period(s) of delinquency in submission of reports as directed may be added to the Board, upon request, total period of probation.~~

Deleted: optometrist

### 3. Cooperation with Probation Surveillance—Interview with the Board

Within 30 days of the effective date of the Decision, Respondent shall appear in person for an interview with the Board or its designee to review the terms and conditions of probation. Thereafter, Respondent shall, upon reasonable request, report or appear in person as directed.

~~In~~ Respondent shall comply with the Board's probation surveillance program. All costs for probation monitoring and/or mandatory premises inspections shall be borne by Respondent. ~~addition, if Respondent fails to maintain compliance with terms and conditions of probation in any respect, subsequent in-person interviews may be required.~~

~~Probation monitoring costs are set at a rate of \$100 per month for the duration of the probation. Respondent shall notify the Board of any change of name or address or address of record within thirty (30) days of the change. Respondent shall notify the Board immediately in writing if Respondent leaves California to reside or practice in another state. Respondent shall notify the Board immediately upon return to California.~~

**4. Cooperation with Board Staff**  
Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of Respondent's compliance with the terms and conditions of his or her probation. ~~The Board will communicate directly with Respondent, and Respondent shall communicate directly with the Board.~~ Respondent shall make available all patient records, hospital records, books, logs, and other documents relating to the practice of veterinary medicine to the Board, upon request.

Commented [WT22]: To clarify Board/respondent communications will be direct, not via third-parties or respondent's agents.

~~Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its designee. Respondent is encouraged to contact the Board's probation monitoring program representative at any time he/she has a question or concern regarding his or her terms and conditions of probation.~~

Deleted: representative

**5. Probation Monitoring Costs**  
Probation monitoring costs are set at a rate of \$100 per month for the duration of the probation. These costs shall be payable to the Board on a schedule as directed by the Board or its designee.

**6. Changes of Employment or Address**  
Respondent shall notify the Board, and appointed probation monitor in writing, of any and all changes of employment, location, and address within fourteen (14) calendar days of such change. This includes, but is not limited to, applying for employment, termination or resignation from employment, change in employment status, and change in supervisors, administrators or directors. Respondent shall also notify his or her probation monitor AND the Board IN WRITING of any changes of residence or mailing address within fourteen (14) calendar days. P.O. Boxes are accepted for mailing purposes; however, Respondent must also provide his or her physical residence address as well.

Commented [WT23]: Need justification for requiring respondent to notify Board when applying for jobs.

**47. No Preceptorships or Supervision of Students, Interns, or Residents**  
Respondent shall not supervise a registered intern and shall not perform any of the duties of a preceptor students, interns, or residents.

**58 Notice to Employers**  
~~During the period of probation, Respondent shall notify all present and prospective employers of the decision in this case.~~ Decision and the terms, conditions, and restrictions imposed on Respondent by the decision in this case. Decision, as follows:

Within thirty (30) days of the effective date of this decision Decision and within fifteen (15) days of Respondent undertaking any new employment, Respondent shall cause his or her employer supervisor and/or managing licensee (licensee manager) to report to the Board in writing, acknowledging that the employer listed individual(s) has/have read the Accusation and decision in this case and understands Respondent's Decision, including the terms and conditions, of probation and restrictions imposed. It shall be Respondent's responsibility to ensure that his or her supervisor and/or licensee manager submit timely acknowledgment(s) to the Board.

Relief veterinarians shall notify employers immediately and require the supervisor and/or licensee manager to submit timely acknowledgement.

**69. Notice to Employees**

~~Respondent shall, upon~~ Upon or before the effective date of this ~~decision~~ Decision, Respondent shall post or circulate a notice which actually recites the ~~offenses~~ violations for which Respondent has been disciplined and the terms and conditions of probation, to all licensed, registered, or permitted veterinary employees, and to any ~~preceptor~~ students, residents, and interns ~~or extern~~ involved in his or her veterinary practice. Within fifteen (15) days of the effective date of this ~~decision~~ Decision, Respondent shall cause his or her employees to report to the Board in writing, acknowledging the employees have read the Accusation and ~~decision~~ Decision in the case and understand Respondent's terms and conditions of probation.

**7. Owners and Officers (Corporations or Partnerships): Knowledge of the Law**

~~Respondent shall provide, within thirty (30) days after the effective date of the decision, signed and dated statements from the owners, officers, or any owner or holder of ten percent (10%) or more of the interest in Respondent or Respondent's stock, stating said individuals have read and are familiar with federal and state laws and regulations governing the practice of veterinary medicine.~~

**8.10. Tolling of Probation**

~~If Respondent resides out of state upon~~ shall notify the Board or after effective date its designee in writing within fifteen (15) calendar days of any periods of the ~~decision~~, he or she must comply with the following conditions only: quarterly reports and interviews, tolling of probation, continuing education and cost ~~recovery~~ non-practice lasting more than thirty (30) calendar days and shall notify the Board or its designee within fifteen (15) calendar days of Respondent's return to practice. Any period of non-practice will result in the Respondent's probation being tolled. If Respondent returns to California he or she must comply or be subject to all probationary conditions for the period of probation.

Non-practice is defined as any period of time exceeding thirty (30) calendar days in which Respondent is not engaging in the practice of veterinary medicine in California. While tolled for residing/practicing outside of California, Respondent must comply with the following terms and conditions of probation: obey all laws, quarterly reports, interview with the Board, tolling of probation, maintain a current and active California license or registration, and cost recovery.

Non-practice is also defined as any period that Respondent, during probation, shall engage in the practice of veterinary medicine in California for a minimum of 24 hours per week for six (6) consecutive months or as determined by the Board. Should Respondent fail to engage in the practice of veterinary medicine in California as set forth above, the time outside of the practice shall for a minimum of 24 hours per week for six (6) consecutive months the duration of probation (except reasonable time away from work for vacations, illnesses, etc.) or as determined by the Board. While tolled for not meeting the hourly requirement, Respondent shall comply with all terms and conditions of this Decision.

Any period of tolling will not apply to the reduction of the probationary ~~terms~~ term.

**11. Maintain a Valid License**

At all times while on probation, Respondent shall maintain a current and active license with the Board, including any period during which suspension or probation is tolled. If Respondent's license, by operation of law or otherwise, expires, upon renewal, Respondent's license shall be subject to any and all terms of this probation not previously satisfied.

**9-12. Violation of Probation**

If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, or if the Attorney General's office has been requested to prepare any disciplinary action against Respondent's license, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. No petition for modification or termination of probation shall be considered while there is an accusation or petition to revoke probation pending against Respondent.

**13. License Surrender While on Probation/Suspension**

Following the effective date of this Decision, should Respondent cease to practice veterinary medicine due to retirement or health issues, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender his or her license to practice veterinary medicine to the Board for surrender. The Board or its designee has the discretion to grant the request for surrender or to take any other action it deems appropriate and reasonable. Upon formal acceptance of the license surrender, Respondent will no longer be subject to the terms and conditions of probation. The surrender constitutes a record of discipline and shall become a part of the Respondent's license history with the Board.

Respondent must relinquish his or her license to the Board within ten (10) days of receiving notification from the Board that the surrender has been accepted.

**40-14. Completion of Probation**

All costs for probation monitoring and/or mandatory premises inspections shall be borne by Respondent. Failure to pay all costs due shall result in an extension of probation until the matter is resolved and costs paid or a petition to revoke probation is filed. Upon successful completion of probation and all payment of fees due, Respondent's license will be fully restored.

**44-15. Cost Recovery and Payment of Fines**

Pursuant to Section 125.3 of the California Business and Professions Code, within thirty (30) days of the effective date of this ~~decision~~Decision, Respondent shall pay to the Board its enforcement costs including investigation, ~~hearing,~~ and ~~probationary monitoring~~prosecution, in the amount of \_\_\_\_\_ or in a Board-approved payment plan, within six (6) months before the end of the probation term. Cost recovery will not be tolled. ~~the Respondent shall make these payments as follows:\_\_\_\_\_.~~  
~~FAILURE TO PAY THIS AMOUNT TO THE BOARD BY THE STATED DEADLINE SHALL RESULT IN AUTOMATIC REVOCATION OF THE LICENSE FORTHWITH, WITHOUT FURTHER NOTICE OR AN OPPORTUNITY TO BE HEARD.~~



**Optional Terms and Conditions of Probation (1-2423)**

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

**1. Suspension – Individual License**

As part of probation, Respondent is suspended from the practice of veterinary medicine for \_\_\_\_\_, beginning the effective date of this ~~decision~~Decision. During ~~said~~the suspension, Respondent shall not enter any veterinary hospital which is registered by the Board unless seeking treatment for one's own animal. Additionally, Respondent shall not manage, administer, or be a consultant to any veterinary hospital or veterinarian during the period of actual suspension and shall not engage in any veterinary-related service or activity.

**2. Suspension – Premises**

As part of probation, Premises License Number \_\_\_\_\_, issued to Respondent \_\_\_\_\_, is suspended for \_\_\_\_\_, beginning the effective date of this ~~decision~~Decision. During ~~said~~the period of suspension, said premises may not be used by any party for any act constituting the practice of veterinary medicine, surgery, dentistry, and/or the various branches thereof.

**3. Posted Notice of Suspension**

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

**4. Limitation on Practice/Inspections**

- (A) During probation, Respondent is prohibited from practicing \_\_\_\_\_ (Type of practice)\_\_\_\_\_.
- (B) ~~During probation,~~ Respondent is prohibited from ~~the following:~~
  - 1. ~~Practicing~~ veterinary medicine from a location or mobile veterinary practice ~~that which~~ does not have a current premises permit issued by the Board; ~~and~~

**5. Inspections**

~~2-~~If Respondent is the owner or managing licensee of a veterinary ~~practice~~premises, the following probationary conditions apply:

~~(a)~~ (A) The location or mobile veterinary practice ~~must not only have~~shall hold a current premises permit issued by the Board, ~~but must also be subject to~~and Respondent shall make the practice or location available for inspections by a Board representative to determine whether the location or veterinary practice meets minimum standards for a veterinary ~~practice~~premises. The inspections will be conducted on an announced or unannounced basis and shall be held during normal business hours. The Board reserves the right to conduct these inspections on at least a quarterly basis during probation. Respondent shall pay the Board for the cost of each inspection, which is \$500. ~~If the veterinary practice has two consecutive non-compliant inspections, Respondent shall surrender the Premises Permit within ninety (90) days from the date of the second consecutive non-compliant inspection.~~

~~(b)~~ (B) As a condition precedent to any ~~P~~premises ~~P~~permit issued to Respondent as owner or managing licensee, the location or mobile veterinary practice for which application is made shall be inspected by a Board representative to determine whether the location or mobile veterinary practice meets minimum standards for a veterinary ~~practice~~premises. Respondent shall submit to the Board, along with any premises permit application, a \$500 inspection fee.

**56. Supervised Practice**

~~Respondent shall not practice only under the supervision of veterinary medicine until a veterinarian supervisor is approved by the Board. The supervision directed may be continuous supervision, substantial supervision, partial supervision, or supervision by daily review, as deemed necessary by the Board's designee. If the supervisor terminates or is otherwise no longer available, Respondent shall not practice until a new supervisor has been approved by the Board. All costs involved with practice supervision shall be borne by Respondent.~~

~~Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more proposed supervisors of Respondent's choice. Each supervisor shall have been licensed in California and have held a valid California license for at least five (5) years and not have ever been subject to any disciplinary action by the Board. The supervisor shall be independent, with no prior business or personal relationship with Respondent and the supervisor shall not be in a familiar relationship with or be an employee, partner, or associate of Respondent.~~

~~Upon approval by the Board and within thirty (30) days of the effective date of the decision, Respondent shall have his or her supervisor submit a report to the Board in writing stating the supervisor has read the decision in case number \_\_\_\_\_. Should Respondent change employment, Respondent shall have his or her new supervisor, within fifteen (15) days after employment commences, submit a report to the Board in writing stating the supervisor has read the decision in case number \_\_\_\_\_.~~

~~Respondent's supervisor shall file monthly reports with the Board. These reports shall be in a form designated by the Board and shall include a narrative section where the supervisor provides his or her conclusions and opinions concerning the issues described above and the basis for his or her opinions. Additionally, the supervisor shall maintain and submit with his or her monthly reports a log designating the patient charts reviewed, the date(s) of service reviewed, and the date upon which the review occurred.~~

The following terms of supervision apply to licensed veterinarians only:

The supervision shall be, as required by the Board or its designee, either direct or indirect.

Direct supervision is defined as the physical presence of the supervisor 100% of the time Respondent provides treatment or consultation to the animal patient.

Indirect supervision is defined as review and evaluation of patient records for those patients for whom Respondent provides treatment or consultation during the period of supervised practice. Levels of indirect supervision shall be established as follows:

Substantial – 75%

Moderate - 50%

Partial - 25%

The level of supervised practice may be modified as determined necessary by the Board or its designee. Respondent will not be eligible for a decrease in supervised practice until such time as: 1) Respondent has successfully completed at least 25% of the probationary term; 2) Respondent is deemed to be in full compliance with all terms and conditions of the probationary order; and 3) Respondent has consistently received favorable monthly supervised practice reports; and 4) the Board has received a written recommendation by the supervisor.

Respondent's supervisor shall, on a basis/frequency to be determined by the Board, review and evaluate all or a designated portion of patient records of those patients for whom Respondent provides treatment or consultation during the period of supervised practice. The supervisor shall review these records to assess: 1) the medical necessity and appropriateness of Respondent's treatment; 2) Respondent's compliance with community/minimum standards of practice in the diagnosis and treatment of animal patients; 3) Respondent's maintenance of necessary and appropriate treatment; 4) Respondent's maintenance of necessary and appropriate records and chart entries; and 5) Respondent's compliance with existing statutes and regulations governing the practice of veterinary

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

If Respondent is an employee rather than a veterinary hospital owner, the supervisor shall additionally notify the Board of the dates and locations of all employment of Respondent, during each month covered by his or her report.

**67. | No New Ownership**

Respondent shall not have any new legal or beneficial interest in any veterinary business, firm, partnership, or corporation ~~currently or hereinafter licensed or registered by~~ during the Board and shall not own any veterinary hospital duration of his or her probation.

**78. | No Management ~~or Administration~~**

Respondent shall not manage ~~or be the administrator of~~ any veterinary hospital during the duration of his or her probation.

**Continuing Education**

Within sixty (60) days of the effective date of this ~~decision~~ Decision, and on an annual basis thereafter, Respondent shall submit to the Board for its prior approval, an educational program or course related to Respondent's specific area(s) of weakness which shall not be less than \_\_\_\_\_ hours per year, for each year of probation. Upon successful completion of the course, Respondent shall provide proof to the Board. This program shall be in addition to the Continuing Education required of all licensees for licensure renewal. All costs shall be borne by Respondent.

**810. | Clinical Training**

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

**911. Clinical or Written Examination**

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

**4012. Psychological Evaluation**

Within thirty (30) days of the effective date of this Decision, ~~Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more psychotherapists of Respondent's choice. Upon approval, and within sixty (60) days of the effective date of this decision~~Decision, and on a periodic basis as may be required by the Board or its designee, Respondent shall undergo a psychiatric evaluation by a Board-appointed ~~approved~~ psychotherapist (psychiatrist or psychologist), to determine Respondent's ability to practice veterinary medicine safely. ~~the~~ The psychotherapist shall furnish a psychological report to the Board or its designee. All costs shall be borne by Respondent.

If the psychotherapist (psychiatrist or psychologist) recommends and the Board or its designee directs psychotherapeutic treatment, Respondent shall, within thirty (30) days of written notice of the need for psychotherapy, submit the name and qualification of one of more psychotherapists of Respondent's choice to the Board for its prior approval. Upon approval of the treating psychotherapist by the Board, Respondent shall undergo and continue psychotherapy until further notice from the Board. Respondent shall have the treating psychotherapist submit quarterly written reports to the Board. All costs shall be borne by Respondent.

ALTERNATIVE: PSYCHIATRIC EVALUATION AS A CONDITION PRECEDENT TO PRACTICE.

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

**4413. Psychotherapy**

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

If the treating psychotherapist finds that Respondent cannot practice safely or independently, the psychotherapist shall notify the Board within three (3) working days. Upon notification by the Board, Respondent shall immediately cease practice and shall not resume practice until notified by the Board or its designee that Respondent may do so. Respondent shall not thereafter engage in any practice for which a license issued by the Board is required until the Board or its designee has notified Respondent that he/she may resume practice. Respondent shall document compliance with this condition in the manner required by the Board.

**4214.**

Within thirty (30) days of the effective date of this ~~decision~~Decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more physicians of Respondent's choice. Upon approval and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo a medical evaluation by a Board appointed-approved physician, to determine Respondent's ability to practice veterinary medicine safely, ~~who~~ The physician shall furnish a medical report to the Board or its designee. If Respondent is required by the Board or its designee to undergo medical treatment, Respondent shall, within thirty (30) days of written notice from the Board, submit the name and qualifications of a physician of Respondent's choice to the Board for its prior approval. Upon approval of the treating physician by the Board, Respondent shall undergo and continue medical treatment until further notice from the Board. Respondent shall have the treating physician submit quarterly written reports to the Board. All costs shall be borne by Respondent.

If at any time an approved evaluating physician or Respondent's approved treating physician determines that Respondent is unable to practice safely or independently as a veterinarian, the evaluating or treating physician shall notify the Board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the Board or its designee of this determination, Respondent shall cease all practice and shall not resume practice until notified by the Board that practice may be resumed.

ALTERNATIVE: MEDICAL EVALUATION AS A CONDITION PRECEDENT TO PRACTICE.

As of the effective date of this ~~decision~~Decision, Respondent shall not engage in the practice of veterinary medicine until notified in writing by the Board of its determination that Respondent is medically fit to practice safely. If recommended by the physician and approved by the Board or its designee, Respondent shall be barred from practicing veterinary medicine until the treating physician recommends, in writing and stating the basis therefore, that Respondent can safely practice veterinary medicine, and the Board approves said recommendation.

Within thirty (30) days of the effective date of this ~~decision~~Decision, Respondent shall submit in writing a(n) alcohol/drug rehabilitation program in which Respondent shall participate (for the duration of probation/for one/for two years) to the Board for its prior approval. ~~In the quarterly written reports to the Board,~~ Respondent shall provide documentary evidence in the quarterly written reports to the Board of continuing satisfactory participation in this program. All costs shall be borne by Respondent.

Components of the treatment contract shall be relevant to the violation and to the Respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random biological fluid testing, abstinence from drugs and alcohol, use of worksite monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluation, and other appropriate rehabilitation or monitoring programs. All costs of participating in the program(s) shall be borne by the Respondent.

**16. Continuing Prevention and Support Groups**

Within thirty (30) days of the effective date of this Decision, Respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the Board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the Board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

**4417. Submit to Drug Testing**

Respondent shall immediately submit to drug testing, at Respondent's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and to Respondent's current employer.

Respondent shall make daily contact as directed by the Board or its designee to determine if he or she must submit to drug testing. Respondent shall submit his or her drug test on the same day that he or she is notified that a test is required.

Any confirmed positive test for alcohol or any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall result in a cease practice order resulting in a period of nonpractice/suspension from work by Respondent and may be a cause for revocation of probation. Respondent may not resume the practice of veterinary medicine in any form until notified by the Board in writing.

**4518. Abstain from Controlled Substances**

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in Business and Professions Code Section 4021~~the California Uniform Controlled Substances Act,~~ and dangerous drugs as defined in Section 4214~~of the Business and Professions Code Section 4022,~~ except for medication ~~when~~ lawfully prescribed to Respondent by a licensed practitioner for a bona fide illness. Upon request of the Board or its designee, Respondent shall submit to random provide documentation from the licensed practitioner that the prescription for the drug testing during the period of probation was legitimately issued and is a necessary part of Respondent's treatment.

**4619. Abstention from Alcohol Use**

Respondent shall abstain completely from the use of ~~alcoholic beverages~~ products or beverages containing alcohol.

**4720. Community Service**

Within sixty (60) days of the effective date of this ~~decision~~ Decision, Respondent shall submit a community service program to the Board for its prior approval. In this program, Respondent shall provide free services on a regular basis to a community or charitable facility or agency for at least \_\_\_\_\_ ( ) hours per \_\_\_\_\_ for the first \_\_\_\_\_ of probation. All services shall be subject to prior Board approval.

**4821. Fine**

Respondent shall pay to the Board a fine in the amount of \_\_\_\_\_ (not to exceed ~~five thousand dollars~~ \$5,000) pursuant to Business and Professions Code sections 4875 and 4883. Respondent shall make ~~aid~~ the payments as follows: \_\_\_\_\_.

~~Pursuant to Business and Professions Code Section 125.3, enforcement costs (investigative, legal, and expert review), up to the time of the hearing, can be recovered.~~

**1922. Restitution**

Respondent shall make restitution to any injured party in the amount of \_\_\_\_\_. Proof of compliance with this term shall be submitted to the Board within sixty (60) days of the effective date of this ~~decision~~ Decision.

Note – Name and address of injured party may be inserted in the body of this term.

**2023. Ethics Training**

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

**Definitions**

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

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

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

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

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

## **OVERVIEW GUIDE FOR DISCIPLINARY DECISIONS**

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

### **Accusation/Statement of Issues**

The principal responsibility of a licensing board is to protect the public. This is accomplished by determining whether a license should be issued and whether a disciplinary action should be taken against a license. The Administrative Procedure Act prescribes the process necessary to deny, suspend, or revoke a license. An action to suspend or revoke a license is initiated by the filing of an Accusation. An action to deny a license is initiated by a Statement of Issues.

In disciplinary matters, a Deputy Attorney General (DAG) acts as the Board's prosecutor and coordinates all necessary legal proceedings. If a case is referred to the Office of the Attorney General (OAG) and accepted for prosecution, the DAG assigned the matter will prepare a Statement of Issues or an Accusation. The person against whom the action is filed is called the Respondent.

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

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

### **Administrative Hearing Process**

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

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

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



## **Proposed Decision**

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

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

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

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

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

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

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

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

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

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

The Board can elect to return the non-adopted decision to the OAH if it feels that additional evidence is required before the Board can render its decision. In this instance, the case is returned to the OAH and

a new hearing date is scheduled. After the new hearing is complete, the ALJ, the same one as before or a new ALJ if the prior one is unavailable, will issue a new Proposed Decision and the Board will consider the Proposed Decision anew.

#### **Petition for Reconsideration**

A Respondent has a right to and may petition the Board before the effective date of the decision for reconsideration of the Board's decision.

If a Board does vote to reconsider its decision it is equivalent to not adopting a Proposed Decision and the steps listed above apply. If the 30-day time period lapses or the Board does not act on the petition, the request for reconsideration is deemed to be denied by operation of law, and the Board no longer has jurisdiction over the matter.

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

A Respondent has the right to request reconsideration and if denied, file a Writ to appeal a disciplinary action imposed by a Board.

A decision rendered by a Superior Court can be further appealed to the Court of Appeals and then to the Supreme Court by either the Board or the Respondent.

#### **Stipulated Agreement**

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

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

#### **Default Decisions—**

Default Decisions are rare; however, in some cases, the Respondent does not respond to an Accusation by returning the Notice of Defense, fails to return the Notice of Defense in a timely manner, or fails to appear at a scheduled hearing. There is a legal obligation to respond to an Accusation and to be present at a scheduled hearing. Failure to meet the legal obligations is grounds for a Default Decision whereby the discipline is imposed based on the Respondent's failure to respond. In these cases the Board need only demonstrate that it has served the Accusation on the licensee at the licensee's address of record. This is one reason it is imperative that licensees maintain a current address of record with the Board; failure to do so can have very serious consequences if the licensee becomes subject to an Accusation but has an old address of record on file with the Board because the Board has no legal obligation to make

~~any attempt to locate the licensee. Service of an Accusation by first class mail is all that is required to prove proper service.~~

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

### **Definitions**

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

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

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