



MEMORANDUM

DATE	October 9, 2023
TO	Veterinary Medical Board (Board)
FROM	Leah Shufelt, RVT, Chair Multidisciplinary Advisory Committee (MDC)
SUBJECT	Agenda Item 5.D. Recommendation on Legislative Proposal to Amend Business and Professions Code (BPC) Section 4875.1 Regarding Complaint Prioritization

This memorandum provides updates regarding Board events since the July Board meeting, and includes a legislative proposal for the Board’s consideration.

Quarterly Expert Round Table

The Board contracts with California licensed veterinarians to serve as Subject Matter Experts (SMEs). These SMEs review standard of care related complaints and complaint-related materials to determine if the standard of care was followed. In cases where egregious departures of the standard of care occurred and discipline is warranted, those SMEs may testify at hearings before Administrative Law Judges of the Office of Administrative Hearings.

On May 25 and August 24, 2023, the Board held its second and third Quarterly SME Round Table events. The purpose of these meetings is to provide a forum for SMEs to ask general case questions, discuss review procedures, and open a dialogue on clinical care opinions in an organic environment.

The meetings began with Board management review of the current landscape of the Board’s enforcement program and the challenges it is facing. SMEs were presented with statistics showing the large number of cases in queue for review by SMEs and were asked to reach out to colleagues who might be a good fit to join the Board’s SME program.

Meetings are also an opportunity for representatives from the Attorney General’s Office and the Board’s Continuous Improvement Team to provide feedback and suggestions to Board SMEs.

May 25 Round Table

At the May 25 event, the Board’s consultant, Dr. Jeni Goedken, provided an overview of her approach to analyzing cases as a SME. During this presentation, Dr. Goedken went over some of the following points:

- Preliminary review of case charts and taking notes

- Reviewing complaints and complaint-related materials submitted by the individual who submitted a complaint to the Board and the respondent while checking for discrepancies
- Knowing your audience
- Constructing a summary outline
- Avoiding legal terms
- Using footnotes and references
- Identifying a lack of knowledge

In addition to the overview of Dr. Goedken's process, she provided several hypothetical case examples for the group to review and provided some examples of how she would approach the analysis of these situations.

August 24 Round Table

The August 24 event provided a demo of the SME review process, covering the start to finish events of assigning a case to an SME through payment. The intention was to provide clarification of the process and the expectations of Board staff, the Deputy Attorney General (DAG) assigned to the case, etc. During this presentation, SMEs were provided examples of the emails and documents seen throughout their review of a case.

In addition, Board staff showed sample reports submitted by SMEs, demonstrating good formatting and clear opinions. During this portion, staff covered the following important reminders:

- Ordering violations by egregiousness
- Parsing out multiple potential causes from one act
- Proofreading
- Seeing a case all the way through
- Communicating case concerns to staff/management early
- Expressing comfort level with violations
- Reaching out to management about process/payment issues

Further, Jeff Pollard, DVM, provided the SMEs with a few hypothetical situations for them to determine whether a violation had occurred. This was the catalyst for additional discussion about violations found by the SME and the discretion of the Executive Officer on initiating enforcement action against a licensee.

The SMEs asked the Board for additional feedback specifically relating to case outcomes, so that they may know if there will be additional future tasks assigned, the possibility of a hearing, or if the case had been closed. Based on this feedback, Board staff is now communicating outcomes with the SMEs.

Complaint Prioritization Review

Business and Professions Code (BPC) section [4875.1](#) (Attachment 1) requires the Board to prioritize its investigative and prosecutorial resources by handling certain cases on a high priority basis, as listed. In late 2020, the Board developed a Strategic Plan. Objective 1.4, Analyze effectiveness of current complaint prioritization defined in BPC section 4875.1, still requires completion. Objective 1.4 is broken down into two subsections:

- 1.4.1: Create data report over last couple fiscal years of where complaints fall within the complaint prioritization.
- 1.4.2: Draft memo to present potential recommendations to the Board.

The Board's Enforcement Unit, as required by Objective 1.4.1., provided the Subcommittee with a data report showing where complaints fall within the complaint prioritization list mandated by BPC section 4875.1 (Attachment 2). The Subcommittee and the Enforcement managers met on June 28 and September 21, 2023, to discuss the data report, review BPC section 4875.1, review how other healing arts boards prioritize complaints, and discuss possible recommendations for changes. In addition to this information, the Board's Executive Officer polled other American Association of Veterinary State Boards (AAVSB) members to determine if any of those states had statutes or regulations dictating complaint prioritization.

BPC Section 4875.1

As noted above, BPC section 4875.1 requires the Board to prioritize its investigative and prosecutorial resources according to a list of allegations. Specifically, it requires the highest priority be given to cases involving *"negligence or incompetence that involves death or serious bodily injury to an animal patient, such that the veterinarian or registered veterinary technician represents a danger to the public."* There are seven additional specified allegations that are ranked in BPC 4875.1, subdivision (a); however, unlicensed practice is not specifically listed in this section.

BPC Section 4875.1, Subdivision (a)(1)

"Negligence or incompetence that involves death or serious bodily injury to an animal patient, such that the veterinarian or registered veterinary technician represents a danger to the public." In the Subcommittee's review, they learned the majority of complaints with any allegation of negligence or incompetence were being grouped into BPC 4875.1, subdivision (a)(1), because the majority of complaints submitted allege death or serious injury, as most consumers paint a picture of a high priority case due to misunderstanding of what may have happened and/or the desire for prioritization of their complaint. In addition, "serious bodily injury" is not defined. This places around half of all complaints submitted into the top priority, and after further investigation and/or review by an expert, it is determined the complaint is not truly a priority 1 complaint.

"Serious bodily injury" leaves much open for interpretation, and the Subcommittee believes a definition of "serious bodily injury" would be helpful. Serious bodily injury has been defined elsewhere as "loss of limb or bodily function," and the Subcommittee agrees this is an adequate definition for consumer protection.

The phrase, "such that the veterinarian or registered veterinary technician represents a danger to the public" is overly broad, and the Subcommittee agrees that additional language is needed to further clarify the intent of BPC section 4875.1 and improve case prioritization.

The Subcommittee also discussed adding a question about whether death occurred to the Complaint Intake Form in BreEZe, to more easily sort cases into "Priority 1" versus "other," but no consensus was reached.

BPC Section 4875.1, Subdivision (b)

When considering the addition of allegations to the Board's priority list, it should be noted that BPC 4875.1, subdivision (b), states that "*the board may prioritize cases involving an allegation of conduct that is not described in subdivision (a).*" However, "[t]hose cases prioritized shall not be assigned a priority equal to or higher than the priorities established in subdivision (a)."

Other Healing Arts Boards Within DCA

Most other California healing arts boards do not have a specific statute prioritizing complaints. Instead, as required by BPC section 328, they utilize the Department of Consumer Affairs Complaint Prioritization & Referral Guidelines (Attachment 3), or a variation of these guidelines. These guidelines establish the types of complaints that must be referred to the Department of Investigations (DOI) to investigate and the types of complaints that are retained by the health care boards for investigation. The Medical Board of California and the Podiatric Medicine Board of California are exempt from using those guidelines. (BPC, § 328, subd. (b).) The Veterinary Medical Board prioritizes complaints pursuant to BPC section 4875.1.

Other AAVSB Member Boards

The AAVSB member boards that responded to the Committee's poll had no statutes or regulations outlining complaint prioritization.

Summary

When initially evaluating this Strategic Plan Objective, the Subcommittee first considered whether the current complaint prioritization was adequate. The Subcommittee determined that consumer protection was inadequate using the parameters outlined in BPC section 4875.1, since almost half of the complaints received are being prioritized as "Priority 1."

After determining the need for some change in the prioritization system, there are two options moving forward: repeal or amend BPC section 4875.1.

Repealing BPC section 4875.1 would mandate the Board to follow BPC section 328, which would require the Board to use DOI for most complaints. Previously, DOI was used extensively - adding cost and time to complaint processing. Now, the Board rarely utilizes DOI, as most investigations are performed in-house utilizing analysts and SMEs. The Subcommittee determined that repealing BPC section 4875.1 would lead to significantly increased costs and decreased efficiency.

After a full review of options, the Subcommittee recommends amending BPC section 4875.1 to streamline the complaint process and improve consumer and animal protection.

Subcommittee Recommendation

The Subcommittee recommends BPC section 4875.1 be amended as follows:

1. Amend subdivision (a)(1), to add "immediate" in front of "danger" and add "an animal patient or the public and animal health and safety" to mirror subdivision (a)(8), as follows:

“(1) Negligence or incompetence that involves death or serious bodily injury to an animal patient, such that the veterinarian or registered veterinary technician represents an immediate danger to an animal patient or the public and animal health and safety.”

2. Add a subdivision to BPC section 4875.1 to define “serious bodily injury,” as follows:

“(d) For purposes of this section, ‘serious bodily injury’ means loss of limb(s) and/or body part(s) and/or loss or impairment of bodily function(s)”

3. Amend subdivision (a) to add unlicensed practice to the priority list. However, the Subcommittee would like input from the MDC on where it should fall under the priority list.

Action Requested

The MDC will discuss this item during their October 17, 2023 meeting. If the MDC agrees with the subcommittee, the MDC will recommend to the Board entertain a motion to approve submission of the attached legislative proposal to amend BPC section 4875.1 regarding complaint prioritization.

Attachments

1. BPC Section 4875.1
2. Enforcement Unit Data Report on Complaints by Violation Type
3. Department of Consumer Affairs Complaint Prioritization & Referral Guidelines (Rev. 12/2017)
4. Legislative Proposal Amending BPC Section 4875.1

**Business and Professions Code
Division 2. Healing Arts
Chapter 11. Veterinary Medicine
Article 4. Revocation and Suspension**

4875.1.

(a) In order to ensure that its resources are maximized for the protection of the public, the board shall prioritize its investigative and prosecutorial resources to ensure that veterinarians and registered veterinary technicians representing the greatest threat of harm are identified and disciplined expeditiously. Cases involving any of the following allegations shall be handled on a priority basis, as follows, with the highest priority being given to cases in paragraph (1):

(1) Negligence or incompetence that involves death or serious bodily injury to an animal patient, such that the veterinarian or registered veterinary technician represents a danger to the public.

(2) Cruelty to animals.

(3) A conviction or convictions for a criminal charge or charges or being subject to a felony criminal proceeding without consideration of the outcome of the proceeding.

(4) Practicing veterinary medicine while under the influence of drugs or alcohol.

(5) Drug or alcohol abuse by a veterinarian or registered veterinary technician involving death or serious bodily injury to an animal patient or to the public.

(6) Self-prescribing of any dangerous drug, as defined in Section 4022, or any controlled substance, as defined in Section 4021.

(7) Repeated acts of excessive prescribing, furnishing, or administering of controlled substances, as defined in Section 4021, or repeated acts of prescribing, dispensing, or furnishing of controlled substances, as defined in Section 4021, without having first established a veterinarian-client-patient relationship pursuant to Section 2032.1 of Title 16 of the California Code of Regulations.

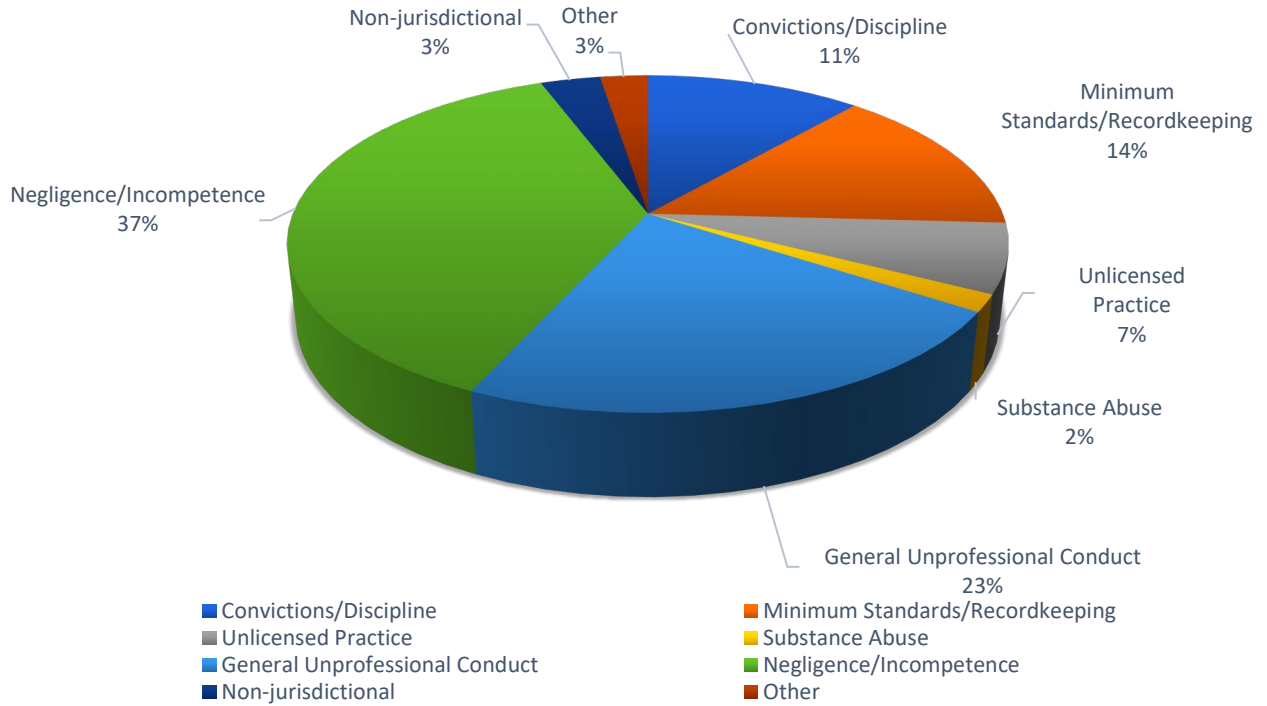
(8) Extreme departures from minimum sanitary conditions such that there is a threat to an animal patient or the public and animal health and safety, only if the case has already been subject to Section 494 and board action.

(b) The board may prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).

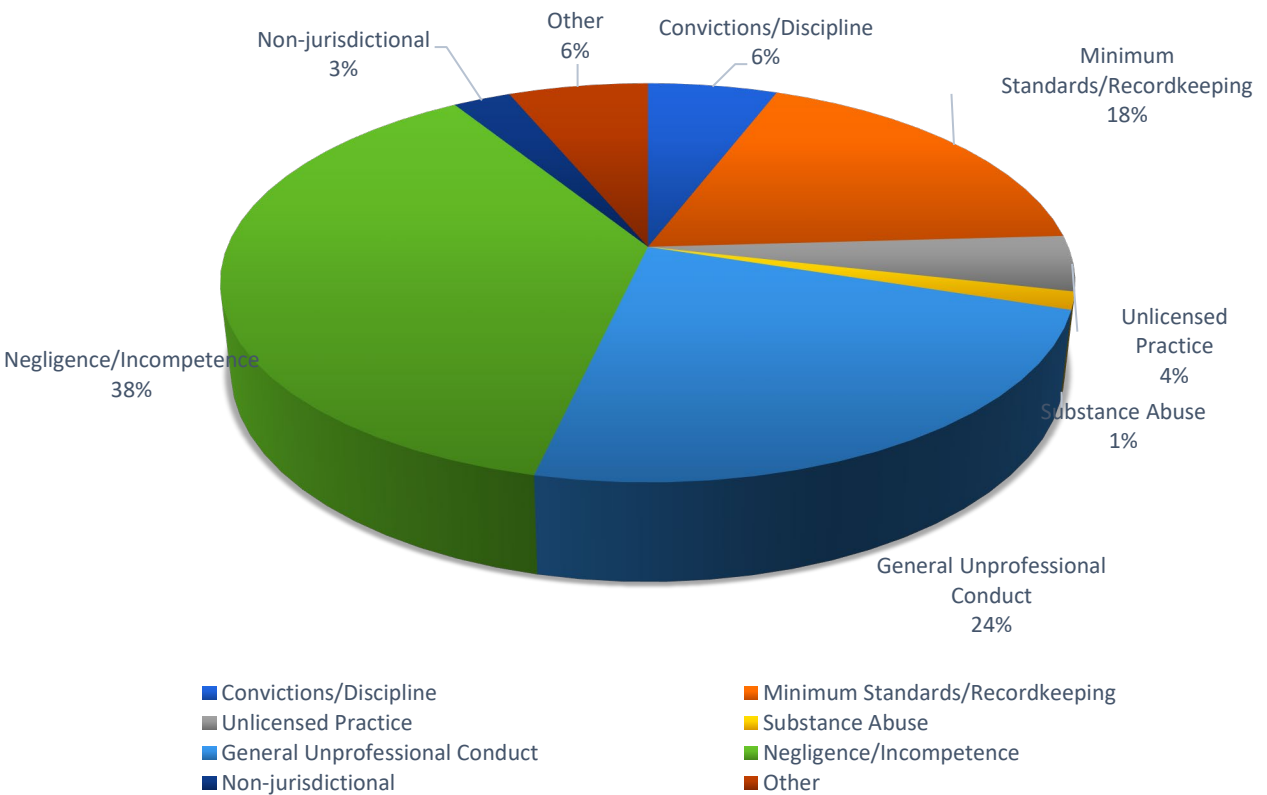
(c) The board shall annually report and make publicly available the number of disciplinary actions that are taken in each priority category specified in subdivisions (a) and (b).

(Added by Stats. 2008, Ch. 529, Sec. 12. Effective January 1, 2009.)

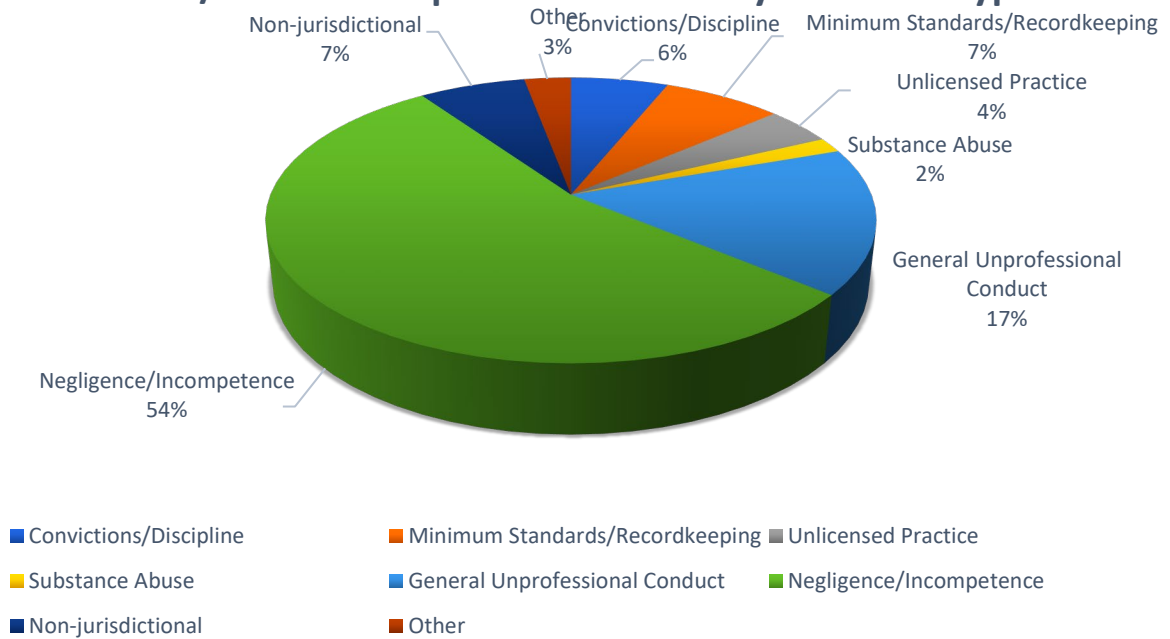
FY 22/23 YTD Complaints Received by Violation Type



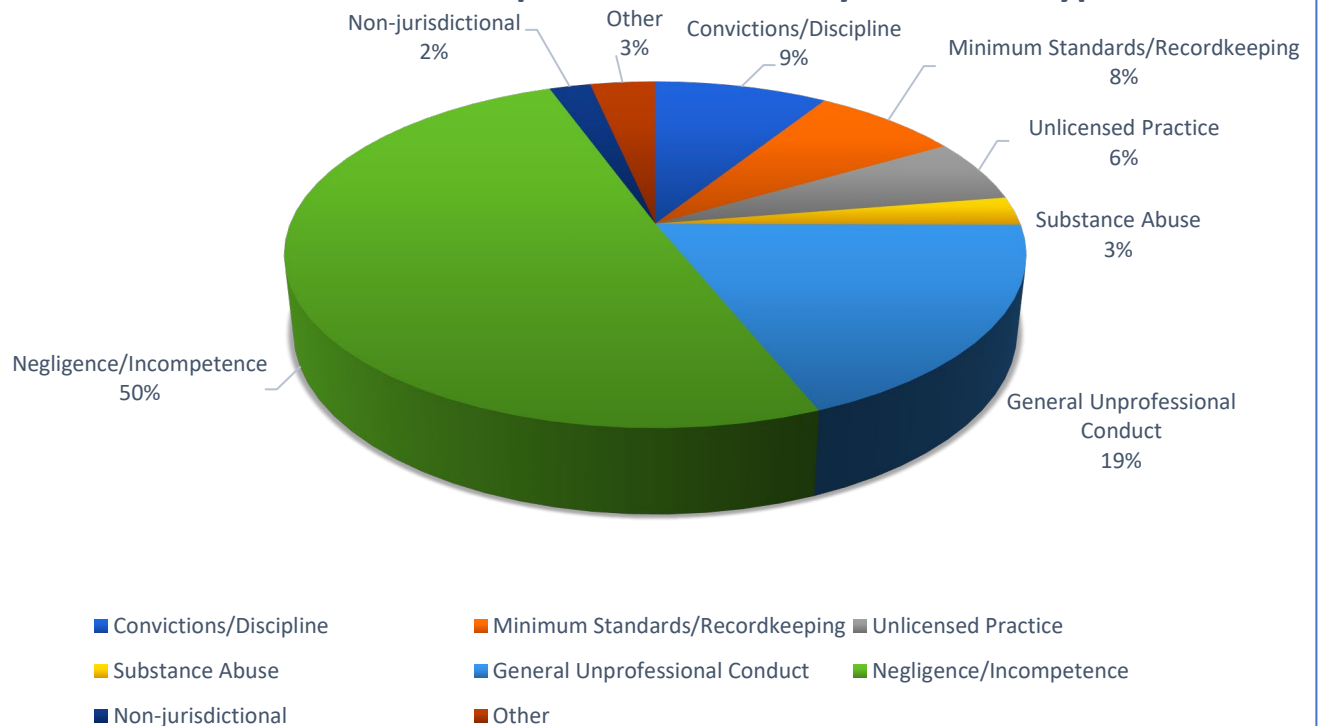
FY 21/22 YTD Complaints Received by Violation Type



FY 20/21 YTD Complaints Received by Violation Type



FY 19/20 YTD Complaints Received by Violation Type



CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS

COMPLAINT PRIORITIZATION & REFERRAL GUIDELINES*

COMPLAINTS IN CATEGORIES 1 & 2 ARE REFERRED TO DIVISION OF INVESTIGATION

CATEGORY 1 • URGENT

- Acts of serious patient/consumer harm, great bodily injury, or death
- Mental or physical impairment of licensee with potential for public harm
- Practicing while under the influence of drugs/alcohol
- Repeated allegations of drug/alcohol abuse

Narcotic/prescription drug theft; drug diversion; other unlawful possession
 Sexual misconduct with a patient
 Physical/mental abuse of a patient
 Over-prescribing
 Gross negligence/incompetence resulting in serious harm/injury
 Media/politically sensitive cases

CATEGORY 2 • HIGH

- Prescribing/dispensing without authority
- Unlicensed practice/unlicensed activity
- Aiding and abetting unlicensed activity
- Criminal violations including but not limited to prescription forgery, selling or using fraudulent documents and/or transcripts, possession of narcotics, major financial fraud, financial elder abuse, insurance fraud, etc.

Exam subversion where exam is compromised
 Mandatory peer review reporting (B&P 805)
 Law enforcement standby/security (subject to staff availability)

COMPLAINTS IN CATEGORIES 3 & 4 ARE INVESTIGATED BY BOARD/BUREAU STAFF

CATEGORY 3 • ROUTINE

- General unprofessional conduct and/or general negligence/incompetence resulting in no injury or minor harm/injury (non-intentional act, non-life threatening)
- Subsequent arrest notifications (no immediate public threat)
- Exam subversion (individual cheating where exam is not compromised)
- Medical malpractice reporting (B&P 801) cases unless evaluated as category 1 or 2

Serving subpoenas for hearings and for records (non DOI investigations)
 Patient abandonment
 False/misleading advertising (not related to unlicensed activity or criminal activity)
 Applicant misconduct

CATEGORY 4 • ROUTINE

- Unsanitary conditions
- Project abandonment
- Failure to release medical records
- Recordkeeping violations
- Continuing education violations
- Declaration and record collection (e.g., licensee statements, medical records, arrest and conviction records, employment records)

Complaints of offensive behavior or language (e.g., poor bedside manner, rude, abrupt, etc.)
 Quality-of-service complaints
 Complaints against licensee on probation that do not meet category 1 or 2
 Anonymous complaints unless Board is able to corroborate that it meets category 1 or 2
 Non-jurisdictional issues

*Complaint prioritization is statutory for some clients and supersedes these Guidelines. See Business and Professions Code sections 2220.05 (Medical Board/Board of Podiatric Medicine) and 4875.1 (Veterinary Medical Board).

Legislative Proposal
Business and Professions Code
Division 2. Healing Arts
Chapter 11. Veterinary Medicine
Article 4. Revocation and Suspension

4875.1.

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(b) The board may prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).

(c) The board shall annually report and make publicly available the number of disciplinary actions that are taken in each priority category specified in subdivisions (a) and (b).

[\(d\) For purposes of this section, 'serious bodily injury' means loss of limb\(s\) and/or body part\(s\) and/or loss or impairment of bodily function\(s\).](#)

(Added by Stats. 2008, Ch. 529, Sec. 12. Effective January 1, 2009.)