

Disciplinary Guidelines

~~May 2002~~ July 2012

Veterinary Medical Board
~~Registered Veterinary Technician Committee~~



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DISCIPLINARY GUIDELINES

VETERINARY MEDICAL BOARD

~~May 2002~~ July 2012

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TABLE OF CONTENTS

DISCIPLINARY PROVISIONS AND STANDARDS

Business and Professions Code Sections

Introduction	1
4883(a); 4837(b) Conviction of a crime substantially related to veterinary medicine.....	2
4883(b); 4837 (d) Lending name to illegal practitioner	2
4883(c); 4837(e); 4836.5 Violation of the provisions of this chapter.....	3
4883(d)(e) Fraud or dishonesty regarding biological tests; <u>Improper employment to demonstrate the use of biologics in animals</u>	3
4883(f) False advertising	4
4883(g); 4837(c) Unprofessional conduct - <u>drugs</u>	5
<u>4883(g); 4837(c) General unprofessional conduct</u>	6
4883(h) Failure to keep premises and equipment clean and sanitary	7
4883(i) Negligence.....	7
<u>4883(i) Incompetence</u>	8
4883(i) Fraud or deception	8
4883(j); 4839.5 Aiding or abetting in acts which are in violation of this chapter	9
4883(k); 4837(a) Fraud or misrepresentation in obtaining a license.....	9
4883(l) Discipline of license in another state or territory	10
4883(m) Cruelty to animals or conviction on a charge of cruelty to animals, or both	10
4883(n) Disciplinary action taken by other agencies that relate to the practice of veterinary medicine	10
4883(o) Violation or the assisting or abetting violation of any Board regulations	11
4855 Written records.....	11
4856 Inspection of records and premises	12
4857 Record Confidentiality.....	12
4830.5 Dog injury or death in <u>Duty to report staged animal fighting</u>	13
<u>4830.7 Duty to report animal abuse or cruelty</u>	13
4836 & 4836.5; 4837 Permitting unauthorized health care services by RVTs or unregistered assistants <u>Disciplinary proceedings against veterinarians and RVTs</u>	13

Probation Terms and Conditions

Standard <u>terms and conditions</u> of probation	15
Optional <u>terms and conditions of probation</u>	17
<u>Overview guide for disciplinary decisions</u>	17

Title 16, California Code of Regulations

2030(a)-(h) Minimum Standards

2032.3 Recordkeeping

CITATION AND FINING

Business and Professions Code, Chapter 11., Article 4.

4875.2 Citation and Fine Authority

4875.4 Civil Penalties

4875.6 Contesting Citations

MISDEMEANOR CITATION

Business and Professions Code, Chapter 11., Article 2.

4831 Violations; Misdemeanors; Penalty

4830.5 Staged Animal Fight; Civil Liability

OTHER PENALTIES, DISCIPLINARY AUTHORITY OR ALTERNATIVES

Business and Professions Code, Chapter 1.

7.5 Conviction of a Crime

118 Withdrawal of Application or Surrender of License

125 Conspiracy with Unlicensed Persons

125.5 Injunction, Restitution, and Reimbursement

125.6 Unprofessional Conduct - Discrimination

Business and Professions Code, Chapter 2.

480 Grounds for Denial of Licensure

Business and Professions Code, Chapter 3.

490-493 Conviction of a Crime

Business and Professions Code, Chapter 4.

495 Public Repeal Procedures

Business and Professions Code, Chapter 5.

496-499 Examination Security

Veterinary Medical Board

Disciplinary Guidelines

Introduction

The Veterinary Medical Board (VMB Board) developed the Disciplinary Guidelines outlined in this manual ~~to be used as a tool by~~ for its Executive Officer, staff, legal counsel, administrative law judges, and other persons involved in the VMB's 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 VMB Board recognizes that each case is unique and that mitigating or aggravating circumstances in a particular case may necessitate variations. Therefore, the VMB Board has developed minimum and maximum penalties to assist in determining the appropriate penalty. If an accusation is sustained and less than the minimum penalty is assessed, the Board ~~would appreciate~~ requires information from the administrative law judge on the circumstances 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 appear in that are used for all cases, and 2) optional terms and conditions that are used to address for specific violations and circumstances unique to a specific case.

~~Licenses are issued for both~~ The Board licenses veterinarians and registers veterinary hospitals premises and veterinary technicians. If there is action taken against both the ~~personal~~ individual license and the premises permit licenses, then the disciplinary order should reflect actions against both. However, in some cases, minimum standard violations are so severe that it is necessary to take immediate action and close ~~down~~ a facility. In these instances, ~~the premises permit and the veterinary license and the premises permit~~ may be disciplined separately, and the disciplinary order should reflect separate action.

Because of the severity of cases resulting in action by the Office of the Attorney General, the VMB 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. ~~In the majority of cases, the revocation is stayed and specific probationary terms and conditions are imposed.~~ The imminent threat of the revocation or suspension being reinstated ~~is incentive for~~ helps to insure compliance with the probationary terms and conditions. It is the recommendation of the Board that in any case involving a violation related to alcohol or drug abuse violations that the minimum term of probation should be five years. 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 cases shall be imposed.

In cases where the penalties deviate from the minimum to maximum range ~~and there is no~~ without explanation of the deviation, the VMB Board ~~has the option of~~ may non-adopting the ~~Proposed~~ Decision and reviewing the case itself.

PENALTIES BY BUSINESS AND PROFESSIONS CODE SECTION NUMBER

Section	4883(a); <u>4837(b)</u>
Title Violation	<u>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.</u>
Maximum Penalty	Revocation and <u>a</u> \$5,000 fine
Minimum Penalty (as appropriate)	Sixty-day suspension and \$2,000 fine <u>Revocation and/or suspension stayed</u> <u>Two-year probation</u> <u>\$2,000 fine</u> <u>Standard terms and conditions</u> <u>Optional terms and conditions including but not limited to:</u> <u>Suspension</u> <u>Limitations on practice</u> <u>Supervised practice</u> <u>No ownership of a veterinary hospital or clinic</u> <u>No management of a veterinary hospital/no supervision of interns or residents</u> <u>Continuing education</u> <u>Psychological evaluation and/or treatment</u> <u>Medical evaluation and/or treatment</u> <u>Rehabilitation program</u> <u>Submit to drug testing</u> <u>Abstain from controlled substances/alcohol</u> <u>Community service</u> <u>Restitution</u> <u>Ethics training</u>

DESCRIPTION

~~More severe penalties are appropriate if the~~ Maximum penalties should be considered if the criminal act caused or threatened harm to an animal or the public or life of an animal, there was more than one offense, if there have been no limited or very few no rehabilitation efforts at rehabilitation, there were or if there were no mitigating circumstance at the time of the commission of the offense(s).

~~Less severe penalties are appropriate if some measures have been taken that are an attempt at self-~~ Minimum penalties may be considered if there is evidence of an attempt(s) at self-initiated rehabilitation. Evidence of self-rehabilitation initiated rehabilitation measures 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 in any way. Self-rehabilitation initiated rehabilitation measures also include, but are not limited to, when appropriate, specific training in areas of weakness, full restitution to persons harmed by the respondent licensee or registrant, completions of treatment or other conditions of probation ordered by the court, and or full compliance with all laws since the date of the occurrence of the criminal act.

Section	4883(b); <u>4837(d)</u>
Title Violation	<u>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.</u>
Maximum Penalty	Revocation and <u>a</u> \$5,000 fine

Minimum Penalty	<u>Thirty-day suspension for each offense and \$500 fine</u> <u>Revocation and/or suspension stayed</u> <u>Two-year probation</u> <u>Standard terms and conditions</u> <u>\$2,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>30-day suspension for each offense</u> <u>No ownership, of a veterinary hospital or clinic</u> <u>No management of a veterinary hospital/no supervision of interns or residents</u> <u>Ethics training</u>
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DESCRIPTION
~~More severe Maximum penalties should be considered~~ are appropriate if the acts or omissions caused or threatened harm to an animal or client, endanger the life of an animal or the clients were threatened in any way and were repeated after a previous violation regarding the same type of offense or if there are prior violations of the same type of offense.

~~Less severe penalties are appropriate~~ Minimum penalties may be considered if the life of an animal was not threatened in any way and clients have not suffered any detriment as a result of the activities the acts or omissions did not cause or threaten harm to an animal or cause detriment to a client.

Section	4883(c); 4837(e); 4839.5
Title Violation	Violation <u>or attempt to violate, directly or indirectly, any of the provisions of the chapter</u>
Maximum Penalty	Revocation and <u>a \$5,000 fine</u>
Minimum Penalty	Thirty-day suspension and \$1,000 fine <u>Revocation and/or suspension stayed</u> <u>Two-year probation</u> <u>Standard terms and conditions</u> <u>\$1,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>Restitution</u> <u>Ethics training</u>

DESCRIPTION
~~More severe penalties are appropriate only when it is proven that~~ Maximum penalties should be considered if the respondent's actions were intended to subvert investigations by the Board or in any way hide or alter evidence which that would or could be used in any criminal, civil, or administrative actions.

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.

Section	4883(d)(e)
Title Violation	Fraud or dishonesty regarding in applying, treating, or reporting on tuberculin or other biological tests. <u>Employment of anyone but a veterinarian licensed in the State to demonstrate the use of biologics in the treatment of animals.</u>
Maximum Penalty	Revocation <u>or suspension</u> and <u>a \$5,000 fine</u>

Minimum Penalty	<p>Thirty-day suspension, no stay, for each occurrence and \$1,000 fine</p> <p><u>Revocation and/or suspension stayed</u></p> <p><u>Two-year probation</u></p> <p><u>Standard terms and conditions</u></p> <p><u>\$5,000 fine</u></p> <p><u>Optional terms and conditions including but not limited to:</u></p> <p><u>30-day suspension of license and/or premises permit</u></p> <p><u>Continuing education</u></p> <p><u>Community service</u></p>
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DESCRIPTION

~~Any violations which could allow Maximum penalties include those cases where there is 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 known to be of hazard to the public would be considered a severe violation.~~

~~Less severe Minimum penalties are appropriate if the life of an animal was not threatened in any way by the action or omission of the respondent, and the clients didn't suffer detriment as a result of the activity may be considered if the acts or omissions did not cause or threaten harm to an animal or cause detriment to a client.~~

Section	4883 (e)
Title	Improper employment to demonstrate the use of biologics in animals
Maximum Penalty	<p>Sixty-day suspension and \$2,000 fine. Conditions of probation must include at least the following:</p> <p>Pass an examination of the relevant requirements; practice only under the direct supervision of a California-licensed veterinarian when performing the treatment(s) that were the subject of the action.</p>
Minimum Penalty	Thirty-day suspension

Section	4883(f)
Title Violation	False or misleading advertising
Maximum Penalty	Sixty-day suspension, for each violation <u>Revocation and/or suspension</u> and a \$5,000 fine
Minimum Penalty	<p>Thirty-day suspension and \$1,000 fine</p> <p><u>Revocation and/or suspension stayed</u></p> <p><u>Two-year probation</u></p> <p><u>60 day suspension</u></p> <p><u>Standard terms and conditions</u></p> <p><u>\$2,000 fine</u></p> <p><u>Optional terms and conditions including but not limited to:</u></p> <p><u>Restitution</u></p> <p><u>Ethics training</u></p>

DESCRIPTION

The more severe penalty Maximum penalties should be imposed ~~considered~~ if the advertising ~~in fact~~ deceived was deceptive, caused or threatened harm to an animal, or caused a client thereby to be defrauded misled and suffer monetary damages or physical harm to an animal. 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 ~~would be appropriate~~ should be considered when ~~the violation continued after a violation~~ 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.

Section	4883(g); 4837(c)
Title Violation	<p>Unprofessional conduct, that includes, but is not limited to the following:</p> <p><u>(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.</u></p> <p><u>(2)(A) The use of, or prescribing for, or administering to himself or herself, any controlled substance.</u></p> <p><u>(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.</u></p> <p><u>(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.</u></p> <p><u>(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.</u></p>
<i>(1) Alcohol and/or Drug Violations</i>	
Maximum Penalty	Revocation and a <u>\$5,000 fine</u>
Minimum Penalty	<p><u>Suspension</u></p> <p><u>Revocation and/or suspension stayed</u></p> <p><u>Two-year probation</u></p> <p><u>Standard terms and conditions</u></p> <p><u>\$5,000 fine</u></p> <p><u>Optional terms and conditions including but not limited to:</u></p> <p><u>30-day suspension</u></p> <p><u>Supervised practice</u></p> <p><u>Psychological evaluation and/or treatment</u></p> <p><u>Medical evaluation and/or treatment</u></p> <p><u>Surrender DEA license/send proof of surrender to Board within 10 days of the effective date of the decision.</u></p> <p><u>No ownership, of a veterinary hospital or clinic</u></p> <p><u>No management of a veterinary hospital/no supervision of interns or residents</u></p> <p><u>Rehabilitation program</u></p> <p><u>Submit to drug testing</u></p> <p><u>Abstain from use of alcohol and drugs</u></p>

DESCRIPTION
Maximum penalties should be considered if acts or omissions caused or threatened harm to an animal or a client.

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 respondent 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), and the limitation of practice or practice under the supervision of a California licensed veterinarian as applicable on the facts of the case. Note: in any violation related to alcohol or drug violations the Board requires a minimum of five years probation.

(2) Other Unprofessional Conduct Violations

Maximum	Revocation and \$5,000 fine if there is animal harm or harm to other persons
Minimum	Thirty-day suspension and \$500 fine

DESCRIPTION
 Other unprofessional violations include but are not limited to:
 deviations from good standards of practice not otherwise addressed in the code.

Section	4883(g)
Violation	General unprofessional conduct
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty (as appropriate)	<u>Written Public Reproval</u> <u>Revocation and/or suspension stayed</u> <u>Two-year probation</u> <u>Standard terms and conditions</u> <u>Optional terms and conditions including but not limited to:</u> <u>Suspension</u> <u>Limitations on practice</u> <u>Supervised practice</u> <u>No ownership of a veterinary hospital or clinic</u> <u>No management of a veterinary hospital/no supervision of interns or residents</u> <u>Continuing education</u> <u>Psychological evaluation and/or treatment</u> <u>Medical evaluation and/or treatment</u> <u>Rehabilitation program</u> <u>Submit to drug testing</u> <u>Abstain from controlled substances/alcohol</u> <u>Community service/</u> <u>Restitution</u> <u>Ethics training</u>

Maximum penalties should be considered if the acts or omissions caused substantial harm to an animal or a client, or there are prior actions against the licensee or registrant.

Minimum penalties may be considered if there are no prior actions, 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 if there is evidence of a self-initiated rehabilitation.

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

DESCRIPTION

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.

Minimum penalties may be considered people 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 existing unsanitary conditions.

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

Section	4883(i)
Title Violation	<u>Negligence, and incompetence in the practice of veterinary medicine</u>
Maximum Penalty	<u>Revocation, no stay, and a \$5,000 fine for each violation</u>

Minimum Penalty	<p>Thirty day suspension with a \$2,000 fine for each offense and probationary terms to include formal classes or other appropriate training in the area(s) of weakness with an examination in the areas of species practice.</p> <p>Practice under the supervision of a California licensed veterinarian for at least one year after the termination of the period of suspension. Level of supervision to be determined by the Board. The more severe penalty would be appropriate when the life of an animal was directly threatened by the respondent's conduct.</p> <p><u>Revocation and/or suspension stayed</u> <u>Three-year probation</u> <u>Standard terms and conditions</u> <u>Fine - not less than \$50 nor more than \$500 per day, not to exceed \$5,000</u> <u>Optional terms and conditions including but not limited to:</u> <u>A ten- to thirty-day suspension or suspension until in compliance with minimum standards of practice is achieved.</u> <u>Random hospital inspections</u></p>
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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.

Minimum penalties may be considered people 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.

Section	4883(i)
Violation	<u>Incompetence in the practice of veterinary medicine</u>
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	<p><u>Revocation and/ or suspension stayed</u> <u>Three-year probation</u> <u>Standard terms and conditions</u> <u>\$2,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>90-day suspension</u> <u>Supervised practice/</u> <u>Hospital inspections</u> <u>Continuing education</u> <u>Clinical written examination</u> <u>Community service</u> <u>Restitution</u> <u>Ethics training</u></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).

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 did occur, cooperation with the Board's investigation, etc.

Section	4883(i)
Title Violation	Fraud and/or Deception <u>in the practice of veterinary medicine</u>

Maximum Penalty	Revocation, no stay , and a \$5,000 fine for each violation
Minimum Penalty	90-day suspension with probation. \$2,000 fine for each violation. Ethics training, community service and restitution. <u>Revocation and/or suspension stayed</u> <u>Three-year probation</u> <u>Standard terms and conditions</u> <u>\$2,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>90-day suspension</u> <u>Hospital inspections</u> <u>Supervised practice</u> <u>Clinical written examination</u> <u>Community service</u> <u>Restitution</u> <u>Ethics training</u>

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).

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 mitigation circumstances such as no prior discipline, remorse for the harm that occurred, cooperation with the Board's investigation, etc.

Section	4883(j); <u>4839.5</u>
Title Violation	Aiding or abetting in acts which are in of violation of <u>any of the provisions of this chapter</u>
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	Thirty-day suspension for each offense and \$500 fine <u>Revocation and/or suspension stayed</u> <u>Two-year probation</u> <u>Standard terms and conditions</u> <u>\$1,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>30-day suspension</u> <u>Ethics training</u>

Description

~~More severe penalties are appropriate if~~ Maximum penalties should be considered if the acts or omissions endanger the life of an animal or the clients were threatened in any way caused or threatened harm to an animal or client and the acts were repeated after a previous prior violation regarding of the same type of offense.

~~Less severe penalties are appropriate if~~ Minimum penalties may be considered the life of an animal was not threatened in any way and no clients have suffered any detriment as a result of the activities. 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.

Section	4883(k); <u>4837(a)</u>
Title Violation	Fraud, or misrepresentation, <u>or deception</u> in obtaining a license <u>or registration</u>

Maximum and Minimum Penalty	Revocation and a \$5,000 fine
<u>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.</u>	

Section	4883(l)
Title Violation	<u>The revocation, suspension, or other discipline of license in 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</u>
Maximum Penalty	Revocation
Minimum Penalty	The penalty <u>that would have been</u> applicable to the violation if it had occurred in the State of California

Section	4883(m)
Title Violation	Cruelty to animals or conviction on a charge of cruelty to animals, or both
Maximum Penalty	Revocation, no stay. This crime is considered by the Board to be so severe that revocation is the only appropriate penalty, together with and a \$5,000 fine.
Minimum Penalty	<u>Revocation and/or suspension stayed</u> <u>Two-year probation</u> <u>Standard terms and conditions</u> <u>\$5,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>30-day suspension</u> <u>Psychological evaluation and/or treatment</u> <u>Medical evaluation and/or treatment</u> <u>Continuing education</u> <u>Ethics training</u>
<u>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.</u>	

Section	4883(n)
Title Violation	<u>Disciplinary actions taken by any other public agencies in any state or territory of any act substantially that related to the practice of veterinary medicine or the practice of a veterinary technician</u>
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	Sixty-day suspension and \$2,000 fine <u>Revocation and/or suspension stayed</u> <u>Two-year probation</u> <u>Standard terms and conditions</u> <u>\$2,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>30-day suspension</u> <u>Continuing education</u>

DESCRIPTION

~~More severe Maximum penalties are appropriate if the criminal should be considered when the act threatened the life of an animal if the acts or omissions caused or threatened harm to an animal or the public, there was more than one offense, there have been no or very few rehabilitation efforts is limited or no evidence of rehabilitation, and there were no mitigating circumstances at the time of the commission of the offense(s).~~

~~Less severe Minimum penalties are appropriate if some measures have been may be considered if there is evidence of attempts at self-initiated rehabilitation taken prior to the filing of the accusation that are an attempt at self-rehabilitation accusation. Self-rehabilitation 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 in any way. Self-rehabilitation initiated rehabilitation measures also include, when appropriate, specific training in areas of weakness, full restitution to persons harmed by the respondent licensee or registrant, completions 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 eriminal act violation.~~

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

DESCRIPTION

~~More severe Maximum penalties are appropriate if the criminal should be considered act-threatened the life of an animal if the acts or omissions caused or threatened harm to the animal or the public, there was more than one offense, there have been very few is limited or no evidence of rehabilitation efforts, and there were no mitigating circumstances at the time of the offense(s).~~

~~Less severe Minimum penalties are appropriate if some may be considered measures have been taken prior to the filing of the accusation that are an if there is evidence of attempts at self-rehabilitation initiated rehabilitation. Self-rehabilitation 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 in any way. Self-rehabilitation initiated rehabilitation measures also include, when appropriate, specific training in areas of weakness, full restitution to persons harmed by the respondent 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 eriminal act violation.~~

Section	4855
Title Violation	Written Records
Maximum Penalty	Revocation and a \$5,000-00 fine

Minimum Penalty	Sixty-day suspension and \$2,000.00 fine <u>Revocation and/ or suspension stayed</u> <u>Two-year probation</u> <u>Standard terms and conditions</u> <u>30-day suspension</u> <u>\$1,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>Continuing education</u>
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Maximum penalties should be considered when there are 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.

Section	4856
Title Violation	<u>Failure to permit the inspection of Records and Premises or Premises by the Board</u>
Maximum Penalty	Revocation and a \$5,000.00 fine
Minimum Penalty	Sixty-day suspension and \$2,000.00 fine <u>Revocation and/or suspension stayed</u> <u>Two-year probation</u> <u>Standard terms and conditions</u> <u>\$1,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>30-day suspension</u> <u>Ethics training</u>

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.

Section	4857
Title Violation	Record Confidentiality <u>Impermissible disclosure of information about animals and/or about clients</u>
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	Thirty-day suspension and \$500 fine <u>Revocation and/or suspension stayed</u> <u>Two-year probation</u> <u>Standard terms and conditions</u> <u>\$1,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>30-day suspension</u>

Maximum penalties should be considered when 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

Section	4830.5
Title Violation	Dog injury or death <u>Duty to report staged animal fighting</u>
Maximum Penalty	Revocation and a \$5,000 fine
Minimum Penalty	Thirty-day suspension for each occurrence and \$1,000 fine <u>Revocation and/or suspension stayed</u> <u>Two-year probation</u> <u>Standard terms and conditions</u> <u>\$1,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>30-day suspension</u> <u>Continuing Education</u> <u>Ethics training</u>

DESCRIPTION

~~Less severe penalty is appropriate only if the life of an animal is in no way threatened by the failure to report and if the violation did not continue after a previous violation regarding the same offense.~~

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.

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

Section	4836 & 4836.5; <u>4837</u>
Title Violation	Permitting unauthorized health care services by RVTs or unregistered assistants. <u>Disciplinary proceedings against veterinarians and registered veterinary technicians</u>
Maximum Penalty	<u>Revocation and a \$5,000 fine</u>

Minimum Penalty	<p> Thirty-day suspension for each occurrence and \$500 fine <u>Revocation and/or suspension stayed</u> <u>Two-year probation</u> <u>Standard terms and conditions</u> <u>\$1,000 fine</u> <u>Optional terms and conditions including but not limited to:</u> <u>30-day suspension</u> <u>Continuing Education</u> <u>Ethics training</u> </p>
<p>DESCRIPTION</p> <p>More severe penalties are appropriate if <u>Maximum penalties should be considered if the acts or omissions caused or threatened harm to an animal or client, endanger the life of an animal or the clients were threatened in any way and or the acts were repeated after a previous prior violation regarding of the same type of offense.</u></p> <p>Less severe penalties are appropriate only <u>Minimum penalties may be considered when the life of an animal or the clients were not threatened if the acts or omissions did not cause or threaten harm to an animal or client, or if the violation did not continues after a previous violation regarding the same offense there are no prior violations.</u></p> <p><u>Note - The Practice Act is very specific on the authorized duties for RVTs that cannot be performed by unregistered assistants; therefore, these violations are more serious due to their blatant nature.</u></p>	

STANDARD TERMS AND CONDITIONS OF PROBATION (1-11)

The Board recommends a one- to five-year probation, as appropriate, ~~to most~~ 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 thirty (30) days of any arrest or 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.

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. 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 to the Board, upon request.

3. Cooperation with Probation Surveillance

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. 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. No Preceptorships or Supervision of Interns

Respondent shall not supervise a registered intern and shall not perform any of the duties of a preceptor.

5. Notice to Employers

Respondent shall notify all present and prospective employers of the ~~D~~decision in this case and the terms, conditions, and restrictions imposed on ~~r~~Respondent by the ~~D~~decision in this case. Within thirty (30) days of the effective date of this ~~D~~decision and within fifteen (15) days of ~~r~~Respondent undertaking new employment, ~~r~~Respondent shall cause his/ or her employer to report to the Board in writing, acknowledging the employer has read the Accusation and ~~D~~decision in this case and understands ~~r~~Respondent's terms and conditions of probation. Relief veterinarians shall notify employers immediately.

6. Notice to Employees

Respondent shall, upon or before the effective date of this ~~D~~decision, post or circulate a notice which actually recites the offenses for which ~~r~~Respondent has been disciplined and the terms and conditions of probation, to all registered veterinary ~~and animal health technician~~ employees, and to any preceptor, intern or extern involved in his/ or her veterinary practice. Within fifteen (15) days of the effective date of this ~~D~~decision, ~~r~~Respondent shall cause his/her employees to report to the Board in writing, acknowledging the employees have read the Accusation and ~~D~~decision in the case and understand ~~r~~Respondent's terms and conditions of probation. ~~Relief veterinarians notify employees immediately.~~

7.	Owners and Officers (Corporations or Partnerships): Knowledge of the Law
Respondent shall provide, within thirty (30) days after the effective date of the D decision, signed and dated statements from the owners, officers, or any owner or holder of ten percent (10%) or more of the interest in r Respondent or r 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.	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. Said notice, provided by the Board, shall remain so posted during the entire period of actual suspension.	
98.	Tolling of Probation
If r Respondent resides out of state upon <u>or after</u> effective date 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. If r Respondent returns to California he or she must comply or be subject to all probationary conditions for the period of probation.	
Respondent, during probation, shall engage in the practice of v veterinary M medicine in California for a minimum of 24 hours per week for six (6) consecutive months or as determined by the Board. Should r Respondent fail to engage in the practice of v veterinary M medicine in California as set forth above, the time outside of the practice shall not apply to reduction of the probationary terms.	
109.	Violation of Probation
If r Respondent violates probation in any respect, the Board, after giving r 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 r Respondent during probation, or if the Attorney General's office has been requested to prepare any disciplinary action against r 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.	
110.	Completion of Probation
<u>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. Upon successful completion of probation and all payment of all fees due, rRespondent's license will be fully restored.</u>	
121.	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, r Respondent shall pay to the Board its enforcement costs including investigation, hearing, and probationary monitoring in the amount of _____ or the r Respondent shall make said 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 (1-21)

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. Actual Suspension – Individual License

As part of probation, ~~¶~~Respondent is suspended from the practice of veterinary medicine for _____, beginning the effective date of this ~~D~~decision. During said suspension, ~~¶~~Respondent shall not enter any veterinary hospital which is ~~licensed~~ registered by the Board. Additionally, ~~¶~~Respondent shall not manage, administer, or be a consultant to any veterinary hospital or ~~any~~ veterinarian during the period of actual suspension and shall not engage in any veterinary-related service or activity.

2. Actual Suspension – Premises

As part of probation, Premises License Number _____, issued to ~~¶~~Respondent _____, is suspended for _____, beginning the effective date of this ~~D~~decision. During said 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.

34. Limitation on Practice/Inspections

(A) During probation, ~~¶~~Respondent is prohibited from ~~P~~practicing _____ (Type of practice)

(B) During probation, ~~¶~~Respondent is prohibited from the following:

1. Practicing veterinary medicine from a location or mobile veterinary practice which does not have a current premises permit issued by the Board; and
2. If ~~¶~~Respondent is the ~~O~~wner or ~~M~~anaging licensee of a veterinary practice, the following probationary conditions apply:

(a) The location or mobile veterinary practice must not only have a current ~~P~~remises ~~P~~ermit issued by the Board, but must also be subject to inspections by a Board representative to determine whether the location or veterinary practice meets minimum standards for a veterinary practice. 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 ~~\$250~~\$500. If the veterinary practice has two consecutive ~~failed~~ non-compliant inspections, ~~¶~~Respondent shall surrender the Premises Permit within ninety (90) days from the date of the second consecutive ~~failed~~ non-compliant inspection.

(b) As a condition precedent to any Premises Permit issued to ~~¶~~Respondent as Owner or ~~M~~anaging ~~L~~icensee, 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. Respondent shall submit to the Board, along with any ~~P~~remises ~~P~~ermit application, a ~~\$250~~\$500 inspection fee.

45. Supervised Practice

Respondent shall practice only under the supervision of a veterinarian 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. All costs involved with practice supervision shall be borne by Respondent.

Each supervisor shall have been licensed in California 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 familial relationship with or be an employee, partner, or associate of Respondent.

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/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, on a basis 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 standards of practice in the diagnosis and treatment of animal patients; 3) Respondent's maintenance of necessary and appropriateness of respondent's 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 medicine.

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.

56.	No Ownership
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Respondent shall not have any legal or beneficial interest in any business, firm, partnership, or corporation currently or hereinafter licensed or registered by the Board and shall not own any veterinary hospital.

67.	No Management or Administration
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Respondent shall not manage or be the administrator of any veterinary hospital.

78.	Continuing Education
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Within sixty (60) days of the effective date of this 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. All costs shall be borne by Respondent.

8.	Clinical Training
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Within sixty (60) days of the effective date of this ~~D~~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.

9. Clinical or Written Examination

Within sixty (60) days of the effective date of this ~~D~~decision, or upon completion of the education course required above, or upon completion of the clinical training programs, Respondent shall take and pass a ~~n~~ 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.

10. Psychological Evaluation

Within thirty (30) days of the effective date of this ~~D~~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 psychotherapist (psychiatrist or psychologist), to determine Respondent's ability to practice veterinary medicine safely, who 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 ~~D~~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 recommendation. All costs shall be borne by Respondent.

11. Psychotherapy

Within thirty (30) days of the effective date of this ~~D~~decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one ~~of~~ 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.

12. Medical Evaluation

Within thirty (30) days of the effective date of this Ddecision, and on a periodic basis thereafter as may be required by the Board or its designee, rRespondent shall undergo a medical evaluation by a Board appointed physician, to determine rRespondent's ability to practice veterinary medicine safely, who shall furnish a medical report to the Board or its designee. If rRespondent is required by the Board or its designee to undergo medical treatment, rRespondent shall, within thirty (30) days of written notice from the Board, submit the name and qualifications of a physician of rRespondent's choice to the Board for its prior approval. Upon approval of the treating physician by the Board, rRespondent 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 rRespondent.

ALTERNATIVE: MEDICAL EVALUATION AS A CONDITION PRECEDENT TO PRACTICE.

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

13.	Rehabilitation Program – Alcohol or Drug
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Within thirty (30) days of the effective date of this Ddecision, rRespondent shall submit in writing a(n) alcohol/drug rehabilitation program in which rRespondent 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, rRespondent shall provide documentary evidence of continuing satisfactory participation in this program. All costs shall be borne by rRespondent.

14.	Submit Biological Fluid Samples to Drug Testing
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Respondent shall immediately submit to ~~biological fluid~~ drug testing, at rRespondent'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 rRespondent's current employer.

15.	Abstain from Controlled Substances
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Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4211 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness. Respondent shall submit to random drug testing during the period of probation.

16.	Abstention from Alcohol Use
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Respondent shall abstain completely from the use of alcoholic beverages.

17.	Community Service
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Within sixty (60) days of the effective date of this Ddecision, rRespondent shall submit a community service program to the Board for its prior approval. In this program rRespondent 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.

18.	Fine
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Respondent shall pay to the Board a fine in the amount of _____ (not to exceed five thousand dollars) pursuant to Business and Professions Code sections 4875 and 4883. Respondent shall make said 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.

19.	Restitution
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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.

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

20.	Ethics Training
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Respondent shall ~~take ethical training courses~~ submit to the Board for its prior approval, an ethics training course for a minimum of _____ hours during the probationary period. Upon successful completion of the course, Respondent shall provide proof to the Board. All costs shall be borne by Respondent.

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

A 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.

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

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

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.