

**DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. VETERINARY MEDICAL BOARD**

INITIAL STATEMENT OF REASONS

Civil Penalties for Citations

HEARING DATE

No hearing has been scheduled for the proposed action.

SUBJECT MATTER OF PROPOSED REGULATIONS

Civil Penalties for Citations.

SECTIONS AFFECTED

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

BACKGROUND AND PROBLEM STATEMENT

Business and Professions Code (BPC) section 4800.1 mandates that the protection of the public shall be the highest priority of the Veterinary Medical Board (Board) in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. The Board enforces the Veterinary Medicine Practice Act (Practice Act – BPC sections 4800 and following) and oversees veterinarian licensees, veterinary technician registrants, veterinary premises, and veterinary assistant-controlled substance permit holders. BPC sections 4808 and 4875.4 authorize the Board to promulgate regulations reasonably necessary to carry out the provisions of the Practice Act and to adopt regulations covering the assessment of civil penalties under Article 4 of the Practice Act.

Citations and administrative fines are used as an enforcement tool to incentivize compliance with applicable statutes and regulations. They are often used when violations warrant more than an educational letter but do not rise to the level of formal discipline.

BPC section 125.9 allows the Board to establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the Board where the licensee is in “violation of the applicable licensing act or any regulation adopted [by the Board] pursuant thereto”. BPC section 148 allows the Board to develop a similar system for issuing a citation and administrative fine to an unlicensed person “who is acting in the

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

capacity of a licensee or registrant under the jurisdiction [of the Board].” BPC section 4875.2 provides the Board with similar citation and fine authority specific to the Practice Act and the Executive Officer’s authority to issue, upon completion of an investigation and based upon probable cause, a citation to a veterinarian, a registered veterinary technician, or an unlicensed person who has violated provisions of the Practice Act.

Existing regulation at CCR section 2043 sets out the Board’s system for issuing citations and administrative fines for violations of the Practice Act. As written, CCR section 2043 limits the Board’s authority to issue a citation and assess an administrative fine to a violation that occurs “while engaged in the practice of veterinary medicine.”

On January 30, 2020, the Board discussed concerns raised by its Executive Officer that CCR section 2043 hinders the Board’s ability to carry out its consumer protection mandate. Many violations may occur while not engaged in practice. For example, if a respondent fails to provide medical records for the diagnosis and treatment of animals to the Board (a violation of BPC section 4856), it could be argued the respondent was not “engaged in the practice” when failing to respond to the Board’s request. Similarly, if the Board conducted a continuing education (CE) audit pursuant to BPC section 4846.5 (e) and determined the licensee did not complete the required CE hours and falsely indicated during renewal that he/she had complied with the CE requirement, it could be argued that the violation did not occur “while engaged in the practice of veterinary medicine.”

In addition, many substantially related criminal convictions (violation of BPC sections 4836.2, 4837, or 4883) occur while licensees, registrants, or permit holders are not engaged in the practice of veterinary medicine. A DUI, for example, is considered substantially related to the practice. However, many situations may not rise to the level of formal discipline. In these situations, the Board should have the authority to issue a citation in order to incentivize future compliance and not be limited to either closing the case with no action or pursuing formal discipline.

If the Board takes no action for minor violations, such as violations related to CE, failing to provide medical records, or minor criminal convictions, there is no incentive to comply in the future. There is also no incentive for other licensees to comply when they discover the Board does not take any action when violations occur. If, lacking the ability to issue a citation, the Board decides to take disciplinary action, the enforcement costs will significantly increase for the Board and, ultimately, the Respondent, and it will take considerably more time to resolve.

Since the governing statutes referenced above do not limit the Board’s authority to issue citations and levy administrative fines to only violations occurring “while engaged in the practice of veterinary medicine,” and many violations of the Practice Act can occur while not physically practicing on an animal at the time of the violation, the Board approved the regulatory proposal to strike this phrase from CCR section 2043 on January 30, 2020. The proposal would also make minor grammatical and technical changes to CCR section 2043’s introduction and subdivision (e) as described below.

Problem Being Addressed

CCR section 2043 hinders the Board's ability to fulfill its consumer protection mandate by unnecessarily limiting its citation and fine authority to violations occurring "while engaged in the practice." Many violations occur outside of actual practice, but the current language forces the Board to either close cases with clear violations and take no action or pursue disciplinary action.

This proposed regulatory action is intended to address that problem by removing this limiting language from existing regulation and thereby enhancing the Board's enforcement mechanisms and consumer protection by incentivizing compliance for less egregious violations.

SPECIFIC PURPOSE, ANTICIPATED BENEFITS, AND FACTUAL BASIS/RATIONALE

Amend Section 2043 of Article 5.5 of Division 20 of Title 16 of the CCR: Civil Penalties for Citation.

Purpose

The purpose of amending CCR section 2043 subdivisions (a), (b), and (c) to remove the phrase, "while engaged in the practice of veterinary medicine" is to allow the Board to utilize citations and administrative fines for their intended purpose: as an enforcement tool to incentivize compliance when violations warrant more than an educational letter but do not rise to the level of formal discipline.

Anticipated Benefit

This regulatory proposal will enhance consumer protection by allowing the Board to issue citations for minor violations instead of limiting the Board's options to either closing cases with no action when clear violations occurred or pursuing formal discipline. Citations are less time consuming and less costly for the Board and impacted licensees, and they provide a more appropriate level of enforcement action for minor violations occurring outside the actual practice of veterinary medicine.

Rationale

The proposal is necessary to remove the Board-imposed limitation and revert to the existing statutory authority, pursuant to BPC section 125.9, which is granted to all boards, bureaus, and commissions within the Department of Consumer Affairs. Removing the limitation to violations only occurring "while engaged in the practice," enhances consumer protection by allowing the Board to take more swift and appropriate action for less egregious violations.

Purpose for Technical/Grammatical Changes

The Board proposes to make other grammatical, or other technical clean-up changes to this section for easier comprehension. In the introduction the Board proposes to strike the word “the” and replace it with “a” so that the second sentence of the introduction would read: “The classification of a citation shall be as follows:..”

In subdivision (e), the Board proposes to make the following changes to this subdivision:

- Add the words “in an amount”;
- Strike the words “more than” and replace it with “exceeding” (adding a “t” to “no” so that it reads “not exceeding”); and,
- Add the words “for each citation”.

The resulting subdivision would read as follows:

Notwithstanding the foregoing, in all situations involving unlicensed persons practicing veterinary medicine, the citation shall be a class “C” violation, and the civil penalty shall be in an amount no less than two thousand dollars (\$2,000) and not exceeding five thousand dollars (\$5,000) for each citation as defined in subsection (c) above.

Anticipated Benefit

Adding clarifying text as noted above will help ensure greater comprehension of the Board’s regulations and helps ensure consistency with how the monetary fine is represented in other subdivisions of this section.

Rationale

BPC section 148 authorizes the Board to issue citations for unlicensed activity consistent with the citation system authorized by BPC section 125.9, which caps issuance of citations to a \$5,000 fine per investigation or inspection with respect to the violation. These proposed revisions would help clarify that ceiling consistent with those provisions of law as “not exceeding” \$5,000 for each citation. This proposal would also make the other grammatical changes noted above for easier comprehension.

UNDERLYING DATA

1. January 30, 2020 Board Agenda; Relevant Meeting Materials; and Meeting Minutes
2. Veterinary Medical Board Workload Calculations and Totals
3. Veterinary Medical Board Cites & Fines Economic & Fiscal Impacts

BUSINESS IMPACT

The Board has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses including the inability of California businesses to compete with businesses in other states.

This initial determination is based on the following facts/evidence/documents/testimony or other evidence:

- The regulations will only impact a small number of licensed veterinarians, registered veterinary technicians, and veterinary assistant-controlled substances permit holders for minor violations of the Practice Act as follows. There are approximately 15,400 veterinarians, 10,200 registered veterinary technicians, 9,000 veterinary assistant-controlled substance permit holders, and 4,200 premises registrations. The Board receives roughly 1,300 enforcement complaints and 160 conviction notifications per year. This proposal would only impact a small amount of those licensees who have had a complaint filed against them and the Board found minor violations that warrant more action than an educational letter but less action than formal discipline. The Board does not anticipate the creation or elimination of businesses as a result of the proposal.

The Board anticipates approximately 50 additional citations will be issued per year as a result of the proposed regulations with an average fine amount of \$750 per citation, which would result in costs of approximately \$37,500 per year and up to \$375,000 over a ten-year period as follows:

Veterinary Medical Board Citations & Fines - Economic Impact												
		Years Ongoing										
Item	Fine Amt	1	2	3	4	5	6	7	8	9	10	Total
		50	50	50	50	50	50	50	50	50	50	500
Citation & Fine	\$750	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$375,000
Total Costs:		\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$375,000

The Board further anticipates approximately 5 individuals receiving a citation will appeal the action and 2 individuals will proceed with formal disciplinary action. The Board does not have a cost estimate related to an individual appealing a citation or proceeding with formal discipline at this time.

Economic Impact Analysis

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the proposed regulation will only impact a small number of licensees who commit minor violations of the Practice Act. In those cases, the licensees may be required to pay administrative fines, pursuant to CCR section 2043. However, the fines assessed would be far less than the cost associated with defending disciplinary actions.

- The proposal will not create new businesses or eliminate existing businesses within the State of California because the proposed regulation will only impact a small number of licensees who commit minor violations of the Practice Act. In those cases, the licensees may be required to pay administrative fines, pursuant to CCR section 2043. However, the fines assessed would be far less than the cost associated with defending disciplinary actions. While disciplinary actions may eliminate existing businesses, this proposal provides an alternative enforcement mechanism in the form of a citation and fine.
- The proposal will not affect the expansion of businesses currently doing business within the State of California because the proposed regulation will only impact a small number of licensees who commit minor violations of the Practice Act. In those cases, the licensees may be required to pay administrative fines, pursuant to CCR section 2043. However, the fines assessed would be far less than the cost associated with defending disciplinary actions. While disciplinary actions may prohibit the expansion of businesses currently doing business, this proposal provides an alternative enforcement mechanism in the form of a citation and fine.
- This regulatory proposal benefits the health, safety and welfare of California residents and their animals, because it strengthens the Board enforcement mechanisms, which will lead to more swift, effective, and efficient action. It will also incentivize compliance for minor violations of the Practice Act.
- This regulatory proposal may improve worker safety as it would allow the Board to issue citations and fines for less egregious violations, many of which were created to promote worker safety, such as specific radiation safety protocols, equipment, and training. It will also incentivize premises owners and managing licensees to follow the proper safety protocols that may take place while not engaged in the practice of veterinary medicine, including radiation education and training requirements for workers.
- This regulatory proposal does not affect the state's environment because it focuses on a specific enforcement mechanism for minor violations of the Practice Act.

FISCAL IMPACT

The Board anticipates annual workload and costs related to issuing approximately 50 additional citations per year, 5 appeals per year, and 2 cases per year requiring formal discipline with total annual costs of approximately \$37,582 per year and up to \$375,820 over a ten-year period as follows:

Citations

Citation Workload					
Job Class	Events	Hours Per	Total Hours	Costs Per Unit	Total Costs
AGPA*	50	2	100	\$136	\$6,800
SSM I**	50	1	50	\$77	\$3,850
EO***	50	0.5	25	\$47	\$2,350
Totals:				\$260	\$13,000

Appeals

Appeals Workload					
Job Class	Events	Hours Per	Total Hours	Costs Per Unit	Total Costs
AGPA*	5	3	15	\$204	\$1,020
SSM I**	5	1	5	\$77	\$385
EO***	5	1	5	\$94	\$470
Totals:				\$375	\$1,875

Formal Discipline

Formal Discipline Workload					
Job Class/Item	Events	Hours Per	Total Hours	Costs Per Unit	Total Costs
AGPA*	2	1	2	\$68	\$136
SSM I**	2	0.5	1.0	\$39	\$77
EO***	2	0.5	1.0	\$47	\$94
Attorney General	2	N/A	N/A	\$10,000	\$20,000
Court Reporters	2	N/A	N/A	\$1,200	\$2,400
Totals:				\$11,354	\$22,707

Total Annual Workload and Costs

Item	Costs Per Unit	Total Costs
Citation Workload	\$260	\$13,000
Appeals Workload	\$375	\$1,875
Formal Discipline Workload	\$11,354	\$22,707
Total Costs Per Year:		\$37,582

*AGPA - Associate Governmental Program Analyst (\$68/hr.)

**SSMI - Staff Services Manager I (\$77/hr.)

***EO - Executive Officer (\$94/hrs.)

The Board estimates citation and fine revenues of approximately \$37,500 per year and up to \$375,000 over a ten-year period as follows:

Veterinary Medical Board Citations & Fines - Fiscal Impact (Revenues)												
Item	Fine Amt	Years Ongoing										Total
		1	2	3	4	5	6	7	8	9	10	
Citation & Fine	\$750	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$375,000
Total Revenues:		\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$37,500	\$375,000

Requirements for Specific Technologies or Equipment

This regulatory proposal does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

No such alternatives have been proposed, however, the Board welcomes comments from the public.