

DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. VETERINARY MEDICAL BOARD

NOTICE OF PROPOSED REGULATORY ACTION

Civil Penalties for Citations, 16 CCR § 2043

NOTICE IS HEREBY GIVEN

The Veterinary Medical Board (Board) is proposing to take the action described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under "Contact Person" in this notice.

WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, including those sent by mail, facsimile, or e-mail to the addresses listed under "Contact Person" in this Notice, must be **received by the Board at its office no later than Tuesday, October 4, 2022, by 5:00 p.m.** or must be received by the Board at the hearing, should one be scheduled.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 125.9, 4808 and 4875.4 of the Business and Professions Code (BPC), and to implement, interpret, or make specific BPC sections 12.5, 125.9, 148, 4826, 4846.5, 4875.2 and 4875.4, the Board is considering amending section 2043 of Article 5.5 of Division 20 of Title 16 of the California Code of Regulations (16 CCR).

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

BPC section 4800.1 mandates that the protection of the public shall be the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. BPC section 4808 authorizes the Board, in accordance with the Administrative Procedure Act (Government Code section 11400 et seq.), to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Veterinary Medicine Practice Act (Practice Act) (BPC section 4800, et seq.).

16 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.

This regulatory proposal will amend 16 CCR section 2043 to allow the Board to utilize citations and administrative fines in line with 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. It eliminates the Board's self-imposed limitation to violations by striking the language "while engaged in the practice of veterinary medicine" from the current regulation which will allow the Board to exercise the broader authority provided in BPC section 125.9 to issue citations for any violations of the Practice Act.

The proposal would also make minor grammatical and other technical clean-up changes to 16 CCR section 2043's introduction and subdivision (e) to help ensure greater comprehension of the Board's regulations and ensure consistency with how the monetary fine is represented in other subdivisions of this section.

ANTICIPATED BENEFITS OF PROPOSAL

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 citations provide a more appropriate level of enforcement action for minor violations occurring outside the actual practice of veterinary medicine.

This regulatory proposal benefits the health, safety and welfare of California residents and their animals, because it strengthens the Board enforcement mechanisms and allows the Board to resolve less egregious violations in a more effective and efficient manner.

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.

This regulatory proposal does not affect the state's environment.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing this regulatory proposal, the Board has conducted a search of any similar regulations on these topics and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: 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 costs of approximately \$37,582 per year and up to \$375,820 over a ten-year period.

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

The proposed regulations do not result in costs or savings in federal funding to the state. Please see the Initial Statement of Reasons for further information.

Nondiscretionary Costs/Savings to Local Agencies: None. While the Board provides licensure and regulates local animal hospitals, the Board does not anticipate issuing citations to these entities. As a result, the proposed regulations are not anticipated to result in a fiscal impact to local agencies.

Local Mandate: None

Cost to any Local Agency or School District for which Government Code Sections 17500–17630 Require Reimbursement: None

Business Impact Estimates: The Board has made the initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The following facts/relevant data were relied on in making the above determination:

- 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.
- 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. Please see the Initial Statement of Reasons for further information.

Cost Impact on Representative Private Person or Business: 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. 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.

Effect on Small Business: The Board has determined that the proposed regulations will not affect small businesses. 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 described in the Business Impact Estimates section above.

RESULTS OF ECONOMIC IMPACT ASSESSMENT / ANALYSIS:

Impact on Jobs / Businesses: The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses, or the elimination of jobs or existing businesses, or the expansion of businesses in 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 16 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.

Benefits of Regulation: The Board has determined that this regulatory proposal will have the following benefits to health and welfare of California residents, and worker safety:

- This regulatory proposal benefits the health and welfare of California residents and their animals, because it strengthens the Board's 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.

Business Reporting Requirements: The regulatory action does not require businesses to file a report with the Board.

Significant Effect on Housing Costs: None

CONSIDERATION OF ALTERNATIVES

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

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

AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this notice.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board at 1747 North Market Blvd., Suite 30, Sacramento, California 95834.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as

described in this Notice, or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal, with the modifications clearly indicated, will be available for review and written comment for 15 days prior to its adoption from the person designated in this Notice as the Contact Person and will be mailed to those persons who submit written, or provide oral testimony if a hearing is requested, related to this proposal or who have requested notification of any changes to the proposal.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the Final Statement of Reasons once it has been prepared by making a written request to the Contact Person named below or by accessing the website listed below.

CONTACT PERSONS

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

Name: Jeffrey Olguin
Address: Veterinary Medical Board
1747 North Market Blvd., Suite 230
Sacramento, CA 95834
Telephone No.: 916-282-6893
Fax No.: 916-928-6849
E-Mail Address: jeffrey.olguin@dca.ca.gov

The backup contact person is:

Name: Timothy Rodda
Address: Veterinary Medical Board
1747 North Market Blvd., Suite 230
Sacramento, CA 95834
Telephone No.: 916-318-6369
Fax No.: 916-928-6849
E-Mail Address: timothy.rodde@dca.ca.gov

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Actions, the Initial Statement of Reasons, and the text of the regulations can be accessed through the Board's website at https://www.vmb.ca.gov/laws_regs/proposed_regs.shtml.