



Veterinary Medical Board Enforcement Program

Veterinary Medical Board

Enforcement Overview

- Enforcement Team:
 - 1 Manager, 2 Intake Technicians, 4 Analysts
- 1,000+ Complaints Annually
- Filed roughly 80 Disciplinary Actions (17/18)
- Issued 25 Citations (17/18)
- Roughly 1,300 Pending

Enforcement Overview

- Complaint Sources:

- Consumers
- Profession
- Convictions
- Other Government Agencies
- Unlicensed Individuals



- Jurisdiction Determined at Intake

Complain Investigations

- Desk investigation - Gather Records, Statements, etc.
 - Field investigation – Inspections, Witness Interviews, Undercover etc.
 - Subject Matter Expert Review
- Staff Recommendations:
 - Closed, no violation or insufficient evidence
 - Letters of Education/Correction
 - Citation and Fine
 - Referral to the Attorney General’s Office for Disciplinary action against the license

Citation and Fine

- Minor incidents of negligence, incompetence, fraud, or deception
- Record keeping violations
- Minor issues involving sanitation
- Operating veterinary facility with expired premise permit
- Practicing with expired veterinary license
- Failure to display license
- Failure to provide records to client upon request
- Failure to respond to the Board with requested information
- Unlicensed Activity
- Failure to update your address of record

Citation and Fine

- **Citation Classifications** (CCR § 2043):

- Class “A” (\$250-\$3,000):
 - Violation did not and/or could not cause patient death or harm
- Class “B” (\$1,000-\$4,000)
 - Violation did cause harm or could cause patient death or harm
- Class “C” (\$2,000-\$5,000)
 - Violation caused patient death or serious harm, endangered the health or safety of another person or animal, multiple violations
 - Unlicensed Practice

- **Considerations:**

- Nature and severity
- Willful
- History of same or similar nature.
- Cooperation
- Mitigated or attempted to mitigate any damage or injury
- Other matters as justice may require

Formal Discipline

- Deny, Revoke, or Suspend (BPC § 4883 (a-r))
 - Criminal convictions – substantially related
 - Fraud, deception, negligence or incompetence
 - Fraud, misrepresentation, or deception in obtaining a license
 - Using dangerous drugs or alcohol in a dangerous or injurious manner
 - Major and/or repeated violations
 - Cruelty to animals

Substantially Related

“A veterinarian, like a physician, holds a position that requires honesty, trustworthiness, and compliance with the laws and regulations governing the responsibilities of the profession. A veterinarian serves on the front line of animal patient care' and is routinely charged with exercising independent judgement and discretion in making important health care decisions that can significantly impact a patient's health.

A veterinarian must always act in a manner that reflects responsibility and good judgement in order to maintain the integrity of the profession, promote public confidence in the profession, and function efficiently in all aspects of patient care.”

Formal Disciplinary Action

- Rehabilitation Criteria (CCR § 2041)
 - Nature and severity
 - Subsequent acts
 - Time elapsed
 - Compliance with parole, probation, restitution, etc.
 - Rehabilitation evidence submitted by applicant

Veterinary Medical Board

Formal Discipline

- Governed by the Administrative Procedures Act
- Due Process
 - Notice
 - Opportunity to be heard
- Deputy Attorney General represents Executive Officer (“Complainant”)
- Licensee/Applicant (“Respondent”) may or may not be represented.

Formal Discipline

Burden of Proof:

- Initial Applications:
 - Applicant – establish fitness for licensure by a preponderance of the evidence
- Revoking/Suspending a License
 - Complainant – clear and convincing evidence

Formal Discipline

Possible Outcomes:

- Stipulated Settlement or Administrative Law Judge
 - Probation, Surrender, Public Reprimand, or Revocation

Board Ultimately Decides

- Could adopt, reject, counter, or remand back to ALJ

Veterinary Medical Board

Public Information

- Complaints are NOT public information.
- Citations are public for five years from the date the citation is satisfied.
- Disciplinary action is public indefinitely.
- Board is mandated to post actions on the internet related to its licensees. **(BPC § 27)**

SEARCH FILTERS

BOARD/BUREAU (+ MORE) (CLEAR)

Veterinary Medical Board

LICENSE TYPE (+ MORE) (CLEAR)

Veterinarian

Additional Office Permit

Advanced Practice Pharmacist

Agricultural Engineer

Alarm Company Branch

Alarm Company Employee

LICENSE STATUS (+ MORE) (CLEAR)

Active (302)



ADAM, MIKE

LICENSE NUMBER: [6337](#) LICENSE TYPE: VETERINARIAN

LICENSE STATUS: CURRENT EXPIRATION DATE: DECEMBER 31, 2019

SECONDARY STATUS: N/A

CITY: YORBA LINDA STATE: CALIFORNIA COUNTY: ORANGE ZIP: 92886

MORE DETAIL



ADAM, MIKE DVM (PREVIOUS NAME)

LICENSE NUMBER: [6337](#) LICENSE TYPE: VETERINARIAN

LICENSE STATUS: CURRENT EXPIRATION DATE: DECEMBER 31, 2019

SECONDARY STATUS: N/A

CITY: YORBA LINDA STATE: CALIFORNIA COUNTY: ORANGE ZIP: 92886

MORE DETAIL



ADAMS, GARY N DVM (PREVIOUS NAME)

LICENSE NUMBER: [13023](#) LICENSE TYPE: VETERINARIAN

LICENSE STATUS: CURRENT EXPIRATION DATE: JUNE 30, 2020

SECONDARY STATUS: N/A

CITY: SANTA MONICA STATE: CALIFORNIA COUNTY: LOS ANGELES ZIP: 90402

MORE DETAIL





Discussion Questions

Veterinary Medical Board

Questions

- Web address: *vmb.ca.gov*
- Phone: 916-515-5220
- Address: 1747 North Market Boulevard, Suite 230
 - Sacramento, CA 95834
- Join the Board's email list for updates on Board meetings and other Board information
- Also find the Board on Twitter and Facebook!

California Veterinary Medical Board



THANK YOU!

Protection of the public shall be the highest priority for the Veterinary Medical Board. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

Business & Professions Code Section 4800.1



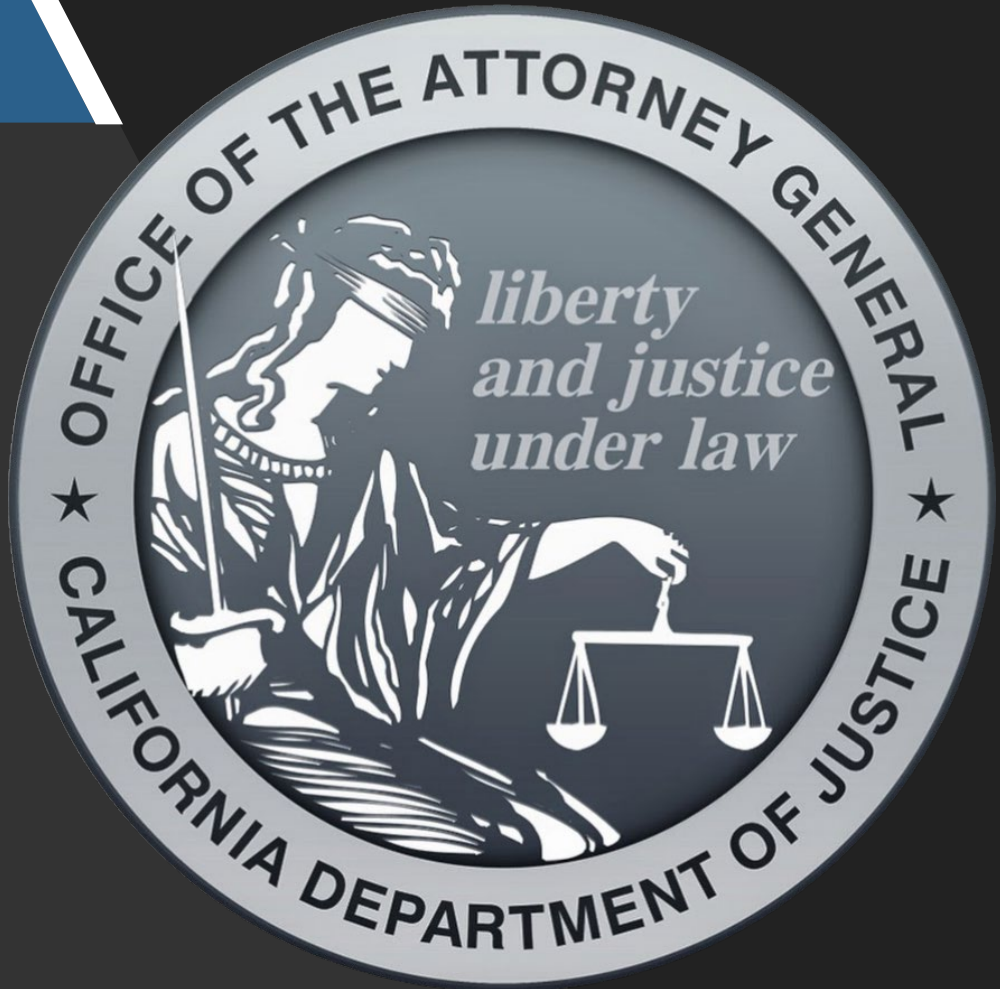
OFFICE OF

THE ATTORNEY GENERAL

AND THEIR ROLE IN

THE DISCIPLINARY PROCESS

Presented by: Deputy Attorney General
Karen R. Denvir



The Office of the Attorney General represents state agencies and employees in judicial and other proceedings.

(Gov. Code, § 1040)



AGO's Mission

It is our duty to serve our state and work honorably every day to fulfill California's promise. The Attorney General and Department of Justice employees provide leadership, information and education in partnership with state and local governments and the people of California to:

- ▶ *Enforce and apply all of our laws fairly and impartially.*
- ▶ *Ensure justice, safety and liberty for everyone.*
- ▶ *Encourage economic prosperity, equal opportunity and tolerance.*
- ▶ *Safeguard California's human, natural and financial resources for this and future generations.*



“

Licensing Section Mission

To Protect Integrity in Business and Professions

Enforcement of licensing laws:

- ▶ Removes the bad apple.
- ▶ Deters others from similar bad conduct.
- ▶ Promotes public confidence in licensed professionals.



”

Licensing Section Clients

- ▶ Mostly Department of Consumer Affairs Agencies
 - ▶ Health Care – About 60 %
 - ▶ dentists, chiropractors, nurses, pharmacies and pharmacists, marriage & family therapists, social workers, optometrists, psychiatric technicians, veterinarians
 - ▶ Non-Health Care – About 40 %
 - ▶ accountants, architects, athletic commission, auto repair shops, contractors, cosmetologists, Bureau of Private Post-Secondary Education

Receipt of File from Agency

- ▶ The case is received and initially reviewed: SDAG
 - ▶ Expedite file?
 - ▶ Dependent on type and timing of case at issue
 - ▶ Agency: e-mail request for representation for time -sensitive matters (copy all SDAGs in the AGO location handling matter)
 - ▶ Matter Type
 - ▶ Accusation
 - ▶ Statement of Issues
 - ▶ Petition to Revoke Probation
 - ▶ Request for Interim Suspension Order
 - ▶ Request for PC 23 recommendation (criminal court)
 - ▶ 820 Petition
 - ▶ Other
 - ▶ Statute of limitations?

7 Receipt of File from Agency (Cont.)

- ▶ Appropriate geographical location: Determine which AGO location will handle case
 - ▶ Factors:
 - ▶ Respondent's area of residence
 - ▶ Location where events occurred – primary witnesses
 - ▶ Case assigned to DAG
 - ▶ Some cases also assigned to paralegal for pleading preparation
 - ▶ Based on DAG caseload, liaison duties, experience
 - ▶ Case file opened in ProLaw
 - ▶ Assignment letter to client
 - ▶ File transfer to assigned DAG

Initial Analysis by Assigned DAG

- ▶ Agency Cover Letter
 - ▶ Possible violations, documents enclosed
- ▶ Statute of Limitations
 - ▶ Applicable?
 - ▶ Include in Agency Transmittal Letter
- ▶ Jurisdictional Issues?
 - ▶ Unlicensed
- ▶ Review License Information
 - ▶ Certified License History
 - ▶ Prior Discipline?
- ▶ Identify any associated respondents, cases, licenses
 - ▶ Consolidate?

Review of Investigative File/Evidence

- ▶ Investigative Report
 - ▶ Documentary Evidence List
 - ▶ Provided as Identified?
 - ▶ Witness List
 - ▶ Complete?
 - ▶ Declarations?
 - ▶ Certified records
 - ▶ Critical documents/information missing?
 - ▶ Certified records?
 - ▶ Criminal Convictions
 - ▶ Police Reports (see *Lake v. Reed* (1997) 16 Cal. 4th 448)
 - ▶ Disciplinary action by other/out of state agency
 - ▶ Board records
 - ▶ License history, prior discipline, prior citations

Review of Investigative File/Evidence (Cont.)

- ▶ Medical records to support standard of care, records violations
 - ▶ Foundational declarations
 - ▶ Custodian of records
 - ▶ Photographs/Video
 - ▶ Applicable?
 - ▶ Include in Agency Transmittal Letter
 - ▶ Social Media
 - ▶ With foundational declaration

Review of Investigative File/Evidence (Cont.)

▶ Witnesses

- ▶ Witness interviews
- ▶ Witness declarations
- ▶ Contact information for witnesses
 - ▶ Updates
- ▶ Experts (to follow)

▶ Respondent

- ▶ Respondent interview
 - ▶ Exploration of respondent's defenses
 - ▶ Admissions
 - ▶ Ask the question!

Expert Witnesses

▶ EXPERT

- ▶ Person with special knowledge, skill, experience, training or education sufficient to qualify him or her as an expert on the subject to which his or her testimony relates

▶ EXPERT NECESSARY?

- ▶ In matters where the case requires an opinion or information on an issue that is sufficiently beyond common experience such that the opinion or information will assist the trier of fact (the ALJ)
 - ▶ For cases where possible violation of standards of care or practice/trade standards are at issue
 - ▶ Example: Failure by veterinarian to properly diagnose and treat condition of animal

Expert Witnesses (Cont.)

- ▶ Need current curriculum vitae (C.V.) for expert
 - ▶ Contact information with file?

- ▶ Agency letter sent to expert regarding assignment
 - ▶ Applicable?

- ▶ Written opinion from expert

Expert Witnesses (Cont.)

EXPERT OPINION REVIEW: Issues

- ▶ Finds no violation, deviation from standard of care, yet case is transferred to AGO
 - ▶ Expert not experienced/qualified in specific area at issue in the case
 - ▶ Has the expert reviewed all evidence?
 - ▶ Opinion not supported by available evidence
 - ▶ Admissible evidence must support opinion, cannot be based on assumptions, suspicion
 - ▶ Inconsistencies in opinion

Expert Witnesses (Cont.)

Can expert opinion problems be resolved?

- ▶ Clarification by expert
 - ▶ Your communications with the expert are discoverable!

- ▶ Another expert opinion?

- ▶ Must provide all opinions in discovery

Options After File Review

Can expert opinion problems be resolved?

- ▶ Return file to agency for further investigation or expert review
- ▶ Decline to prosecute, return to agency with analysis
- ▶ If able to Identify pertinent statutory/regulatory violations supported by evidence provided. . .

...proceed to pleading preparation

Pleading Preparation

Accusation/SOI

- ▶ Jurisdictional paragraph
 - ▶ License history/Application history
 - ▶ Relevant statutes and regulations
 - ▶ Charging paragraphs
 - ▶ Causes for Discipline/Denial
 - ▶ Unnecessary detail (it was a dark and stormy night!)
 - ▶ Variation between offices/DAGs
 - ▶ Difference between pleading facts necessary to charges and pleading the evidence!

Pleading Preparation (Cont.)

Other

- ▶ Variations between Investigation Report and Accusation
 - ▶ DAG considers violations cited by agency, but independently determines what violations are appropriate and supported by the evidence
 - ▶ DAG may identify violations not listed and may find that some listed are not viable
 - ▶ Revisions to pleading prior to filing
 - ▶ Amendments to pleading after filing

Service and Response to Accusation/SOI/Other Pleading

The accusation or other pleading is served on the respondent's address of record and possibly on any other address that is identified by the agency or the AG's office .

Notice of Defense

- ▶ Respondent must file a Notice of Defense (NOD) within 15 days after service of the pleading (Govt. Code section 11506)
 - ▶ Request for a hearing
 - ▶ Statement of Issues – applicant already requested a hearing
 - ▶ May withdraw Request for Hearing
 - ▶ Failure to file a NOD: Default Decision
 - ▶ If no NOD filed, agency may proceed by default for failure to file NOD
 - ▶ Relief for good cause if requested within 7 days of service of Default Decision
 - ▶ Receipt of NOD
 - ▶ Check for notification of representation by counsel on form

Request to Set for Hearing

- ▶ A request to set for hearing is submitted to OAH
 - ▶ Parties are required to meet and confer
 - ▶ Dates coordinated with respondent/respondent's counsel
 - ▶ Factors
 - ▶ OAH calendar
 - ▶ Open dates for DAG and respondent/opposing counsel
 - ▶ Key witness availability
 - ▶ Trial setting conference
 - ▶ Length of hearing is estimated
 - ▶ Depends on number of witnesses, estimate to put on case in chief, estimate for defense
 - ▶ Venue (location of hearing)

Hearing Date Received from OAH

- ▶ Notice of Hearing served



- ▶ Prehearing and Settlement Conference

Discovery

- ▶ Govt. Code section 11507.6 provides the exclusive right to and method of discovery in administrative proceedings (Govt. Code section 11507.5)
 - ▶ Parties entitled to obtain information upon written request made to the other party prior to the hearing
 - ▶ Within 30 days of service by the agency of the initial pleading or
 - ▶ Within 15 days after service of an additional pleading
 - ▶ Subpoenas
 - ▶ May be used to compel production of documents at reasonable time and place or at a hearing (*subpoena duces tecum*)
 - ▶ May be used to compel attendance at a hearing
 - ▶ Written notice to witness to attend (Govt. Code section 11450.50)
 - ▶ Person served may object to subpoena/SDT
 - ▶ Motion to Quash
 - ▶ Motion for Protective Order

Hearing

- ▶ Respondent's Failure to Appear
 - ▶ Default Decision
- ▶ Administrative Law Judge
 - ▶ Testimony at Hearing
 - ▶ Relevant, necessary
 - ▶ Record of Hearing
 - ▶ Court reporter

Standard of Proof

- ▶ Accusations
 - ▶ Burden on Complainant to a Clear and Convincing Standard
 - ▶ Professional versus vocational license
 - ▶ *See Ettinger v. Board of Medical Quality Assurance (1982) 136 Cal.App. 3d 853*
 - ▶ *Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair (2011) 201 Cal.App. 4th 911*
 - ▶ Statement of Issues
 - ▶ Burden of Applicant to Preponderance of Evidence Standard
 - ▶ Other
 - ▶ Citation; Petition to Revoke; ISO = Preponderance of Evidence Standard

Post Hearing

Proposed Decision

▶ Timing

- ▶ Due to agency within 30 days after submission of case
 - ▶ 30 days after submission to agency, PD becomes public record pursuant to Govt. Code section 11517©(1) (does not mean it is adopted)
 - ▶ No prejudice to rights of agency if not within time limit
 - ▶ *See Ettinger v. Board of Medical Quality Assurance (1982) 136 Cal.App. 3d 853*
 - ▶ *Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair (2011) 201 Cal.App. 4th 911*
- ▶ Adoption/ Non-Adoption
 - ▶ Argument on non-adoption
 - ▶ Correct technical, clerical errors

Reconsideration

Final Decision

Case Closure

Writ

Settlement

- ▶ Timing
 - ▶ Factors affecting
- ▶ Agency Offer of Settlement
 - ▶ Sometimes contingent on additional information
 - ▶ Evidence of rehabilitation/ mitigation
 - ▶ Agency requirement prior to offer to respondent
- ▶ Other Factors

Settlement (Cont.)

- ▶ Negotiations with Respondent
 - ▶ Cost recovery
 - ▶ Standard Terms
 - ▶ Optional Terms – tailored to violations
 - ▶ Sometimes unique terms. Settlement can encompass any terms that are not against public policy/law.

- ▶ Proposed Stipulation in Settlement
 - ▶ Agency approval of draft stipulation
 - ▶ Acceptance
 - ▶ Board may ultimately reject despite coordination with agency staff

 - ▶ Hearing

Settlement (Cont.)

- ▶ Reasons to Settle
 - ▶ Risk Avoidance
 - ▶ Avoidance of Time/Expense
 - ▶ Prompt Restitution to Victim
 - ▶ Prompt Reimbursement of Expenses
 - ▶ Stipulations are Good
 - ▶ Trump Card/Client has Last Word

30 Cost Recovery Business and Professions Code section 125.3

- ▶ Allows the Board to request the ALJ to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.
- ▶ OAH Rule 1042– proof of reasonable costs may be made by declaration with specific and sufficient facts to support costs actually incurred and their reasonableness.
- ▶ Cost declaration must include tasks, time spent on each task, how costs calculated, if any bills or invoices – submit copy.
- ▶ If costs are an estimate, must explain why actual cost information is not available.

Cost Recovery cont.

- ▶ Zuckerman factors (2002) 29 Cal.4th 32.:
- ▶ *(a) whether Respondent has been successful at hearing in getting the charges dismissed or reduced;*
- ▶ *(b) Respondent's subjective good faith belief in the merits of his or her position;*
- ▶ *(c) Whether Respondent has raised colorable challenge to the proposed discipline;*
- ▶ *(d) The financial ability of Respondent to pay*
- ▶ *(e) Whether the scope of the investigation was appropriate in light of the alleged misconduct.*