



# MEMORANDUM

<b>DATE</b>	January 30, 2020
<b>TO</b>	Veterinary Medical Board
<b>FROM</b>	Jessica Sieferman, Executive Officer
<b>SUBJECT</b>	<b>Agenda Item 10E. Section 2043, Article 5.5, Division 20, Title 16, of CCR Regarding Civil Penalties for Citation</b>

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.

Business and Professions Code (BPC) section [125.9](#) allows the Board to issue a citation and an administrative fine for *any* “violation of the applicable licensing act or any regulation adopted [by the Board] pursuant thereto” and requires the Board to develop a system for issuing the citation pursuant to certain provisions. 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 capacity of a licensee or registrant under the jurisdiction [of the Board.]” BPC section 4875.2 provides citation requirements specific to the Veterinary Medicine Practice Act (Practice Act).

California Code of Regulations (CCR) section [2043](#) is the Board’s system for issuing citations and administrative fines for violations of the Practice Act. 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.”

However, many violations may occur while not engaged in practice. For example, if a respondent fails to provide medical records 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 audit pursuant to BPC section [4846.5](#) (e) and determined the licensee did not complete the required continuing education hours and falsely indicated during renewal that he/she had complied with this requirement, it could be argued that the violation did not occur “while engaged in the practice.”

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. 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.

Since the governing statutes do not limit the Board's authority to issue citations and levy administrative fines to violations occurring "while engaged in the practice," and many violations of the Practice Act can occur while not physically practicing on an animal at the time of the violation, it is recommended the Board consider striking this phrase from the regulation. The attached proposal also makes minor grammatical changes.

**Action Requested:**

Please review the attached regulatory proposal and consider approving the proposed language. If approved, please entertain a motion to approve the proposed regulatory changes, direct the Executive Officer to take all steps necessary to initiate the rulemaking process, authorize the Executive Officer to make any technical or non-substantive changes to the rulemaking package, notice the proposed text for a 45-day comment period and, if no adverse comments are received during the 45-day comment period and no hearing is requested, adopt the proposed regulatory changes, as modified.

Attachments:

1. Regulatory proposal to amend CCR section 2043

**California Code of Regulations  
Title 16. Professional and Vocational Regulations  
Division 20. Veterinary Medical Board**

PROPOSED LANGUAGE

Proposed amendments to the regulatory language are shown in ~~single strikethrough~~ for deleted text and single underline for text additions.

Amend Section 2043 of Article 5.5 of Division 20 of Title 16 of the California Code of Regulations to read as follows:

Article 5.5. Citations.

§ 2043. Civil Penalties for Citation.

When the executive officer determines that a violation has occurred and issues a citation to a licensee or an unlicensed person, that citation shall include its classification and may include an assessment of a civil penalty. The classification of a ~~the~~ citation shall be as follows:

(a) Class "A" violations involve a person who, ~~while engaged in the practice of veterinary medicine,~~ has violated a statute or regulation relating to the practice of veterinary medicine but has not caused either death or harm to an animal patient and has not presented a substantial probability that death or serious harm to an animal patient could result from the violation. A class "A" violation is subject to a civil penalty in an amount not less than two hundred and fifty dollars (\$250) and not exceeding three thousand dollars (\$3,000) for each citation.

(b) Class "B" violations involve a person who, ~~while engaged in the practice of veterinary medicine,~~ has violated a statute or regulation relating to the practice of veterinary medicine and either (1) has caused harm to an animal patient, or (2) has presented a substantial probability that death or serious harm to an animal patient could result from the violation, or (3) has committed a violation which meets the criteria for a class "A" violation and has two or more prior citations for a class "A" violation within the 5-year period immediately preceding the act serving as the basis for the citation. However, the increase in the civil penalty required by this subsection shall not be due and payable unless and until the actions to enforce the previous citations have been terminated in favor of the board. A class "B" violation is subject to a civil penalty in an amount not less than one thousand dollars (\$1,000) and not exceeding four thousand dollars (\$4,000) for each citation.

(c) Class "C" violations involve a person who, ~~while engaged in the practice of veterinary medicine:~~ (1) has caused death or serious harm to an animal patient, or (2) has committed a violation that has endangered the health or safety of another person or animal, or (3) has committed multiple violations that show a willful disregard of the law, or (4) has committed a violation that meets the criteria for a class "B" violation within the 5-year period immediately preceding the act serving as the basis for the citation. However, the increase in the civil penalty required in this subsection shall not be due and payable unless and until the actions to enforce the previous citations have been terminated in favor of the board. A class "C" violation is subject to a civil penalty in an amount not less than two thousand dollars (\$2,000) and not exceeding five thousand dollars (\$5,000) for each citation.

(d) In assessing the amount of a civil penalty, the executive officer shall consider the following criteria:

- (1) The nature and severity of the violation.
- (2) Evidence that the violation was willful.
- (3) History of violations of the same or similar nature.
- (4) The extent to which the cited person has cooperated with the board's investigations.
- (5) The extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by his or her violation.
- (6) Such other matters as justice may require.

(e) 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 more than~~ five thousand dollars (\$5,000) for each citation as defined in subsection (c) above.

(f) Every citation that is issued pursuant to this article shall be considered a public document. Citations that have been resolved, by payment of the civil penalty or compliance with the order of abatement, shall be purged five (5) years from the date of resolution, unless the licensee is subject to formal discipline within five (5) years immediately following the citation order, at which time the citation may become part of the permanent enforcement record. A citation that has been withdrawn or dismissed shall be purged immediately upon withdrawal or dismissal.

(g) An order of abatement issued pursuant to section 4875.2 of the Code shall fix a reasonable time for abatement of the violation. An order of abatement may require any or all of the following:

- (1) That the individual to whom the citation was issued demonstrate how future compliance with the laws and regulations related to the violation for which the citation was issued will be accomplished. The demonstration may include, but is not limited to, submission of a written corrective action plan.
- (2) That the individual to whom the citation was issued take a course offered by a ~~B~~board-approved provider, related to the violation for which the citation was issued. Any courses taken to satisfy the order of abatement shall be individually approved by the ~~B~~board and in addition to those required as continuing education for license renewal.

Note: Authority cited: Sections 125.9, 4808 and 4875.4, Business and Professions Code.  
Reference: Sections 12.5, 125.9, 148, 4826, 4846.5, 4875.2 and 4875.4, Business and Professions Code.