

Item: Consideration to Amend Section 1399.395 of Division 13.6 of Title 16 of the California Code of Regulations to Increase Fees

- Board Action:**
1. President calls the agenda item and it is presented by or as directed by the President.
 2. President asks for a motion:
 - to adopt language as presented;
 - to adopt a modified version of language as presented;
 - to reject language as presented, or
 - any other appropriate motion.
 3. President may request if there is a second to the motion, if not already made.
 4. Board member discussion/edits (if applicable).
 5. Inquire for public comment / Further Board discussion as applicable
 6. Repeat motion and vote: 1) aye, in favor, 2) no, not in favor, or 3) abstain

Item Summary

The Board is presented with proposed regulatory language that will in effect, raise the renewal and delinquent renewal fees as follows:

July 1, 2018	From \$250 to \$275
July 1, 2019	From \$275 to \$300
July 1, 2020	From \$300 to \$330

Impact in Favor of Proposal as Presented

The proposed fee increases address the Board's structural imbalance and are aimed at protecting the Fund from becoming insolvent. This proposal is designed to enable the Board to maintain its licensing, disciplinary, and oversight operations to protect California's consumers, while also ensuring any projected surpluses are within the reserve limits permitted by B&P section 3775.

An order in favor of this proposal will initiate the rulemaking process. The initial phase of the rulemaking process generally takes between 6-7 months to obtain public comment (at a hearing held by Board staff) and internal review before the regulation is returned to the Board (with all comments received) for modification or final approval. If the Board approves the final language at that point, the package is sent through another internal agency review and then to the Office of Administrative Law for review and approval/disapproval. The entire rulemaking process generally takes 12 months before a regulation becomes effective, provided there are no exceptions to the standard process.

Impact Not in Favor of Proposal

An order not in favor of this proposal will result in the Board moving further away from its mandate to maintain a six month reserve in its fund. Should this proposal be outright rejected, the Board's fund will fall below the 6 month reserve and subsequently be depleted in FY 19/20. If the final two proposed fee increases (7/1/19 and 7/1/20) are rejected, the Board's fund will be depleted in FY 20/21. If the final proposed increase (7/1/20) is rejected, the Board's fund will be depleted in FY 21/22. Significant staff resources are used each time the regulatory process is implemented. Further, the initiation of the rulemaking process must be in concert with Board meeting and implementation dates, as well as the Office of Administrative Law rules, to complete the process in one year. Otherwise, the process could take as long as 18 months.

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Statutes

Pursuant to the Respiratory Care Practice Act, it is incumbent upon the Board to fix the renewal fee so that the reserve balance in the Board's fund is equal to approximately 6 months.

Subdivision (d) of Section 3775 of the B&P provides,

“For any license term beginning on or after January 1, 1999, the renewal fee shall be established at two hundred thirty dollars (\$230). The board may increase the renewal fee, by regulation, to an amount not to exceed three hundred thirty dollars (\$330). The board shall fix the renewal fee so that, together with the estimated amount from revenue, the reserve balance in the board's contingent fund shall be equal to approximately six months of annual authorized expenditures. If the estimated reserve balance in the board's contingent fund will be greater than six months, the board shall reduce the renewal fee. In no case shall the fee in any year be more than 10 percent greater than the amount of the fee in the preceding year.”

Subdivision (e) of Section 3775 of the B&P provides,

“The delinquency fee shall be established by the board at not more than the following amounts:

- (1) If the license is renewed not more than two years from the date of its expiration, the delinquency fee shall be 100 percent of the renewal fee in effect at the time of renewal.
- (2) If the license is renewed after two years, but not more than three years, from the date of expiration of the license, the delinquency fee shall be 200 percent of the renewal fee in effect at the time of renewal.

Renewal Fees Charged by Other Health Boards*

BVNPT: Vocational Nurse	\$155.00
RN: Registered Nurse	\$190.00
RN: Nurse Practitioner Furnishing	\$ 42.00
RN: Registered Nurse Add On: Nurse Anesthetist	\$100.00
RN: Registered Nurse Add On: Nurse-Midwife	\$100.00
RN: Registered Nurse Add On: Clinical Nurse Specialist	\$100.00
RN: CE Provider/Course Approval	\$300.00
RCB: Respiratory Care Practitioner	\$230.00
BCE: Chiropractor	\$250.00
PTB: Physical Therapist	\$300.00
PTB: Physical Therapy Asst.	\$300.00
BVNPT: Psychiatric Technician	\$300.00
AB: Acupuncturist	\$325.00
OB: Osteopathic Physician and Surgeon	\$400.00
BOP: Psychologist	\$420.00
BOP: Optometrist	\$425.00
DBC: Dentists	\$525.00
MBC: Physician and Surgeon License	\$783.00
NMB: Naturopathic Doctor	\$800.00
BPM: Podiatrist	\$900.00

*Data Collected from 2016 Annual Report

Background

As discussed at prior board meetings, there are a number of factors contributing to the need for the proposed schedule of renewal fee increases.

The Fund balance provides specific information on the Board's current fund condition, as well as projections for future years. There are several factors that have contributed to the Fund's imbalance including the BreEZe system, staff benefits, and enforcement expenses, to name a few. In addition, the renewal and delinquent fees have remained unchanged since 2002, while the Consumer Price Index has increased over the years. The rate of inflation is calculated at 30.75 percent since 2002 and 58.00 percent since 1991 (*Source: The Bureau of Labor Statistics' Consumer Price Index Detailed Report Data for December 2015*).

Further, a review of the Board's Fund condition report demonstrates that while the overall revenue for the Board has increased by 43 percent between FY 2002/03 and FY 2015/16, Board expenditures have increased by 80 percent during the same time period.

The increase in revenue correlates directly to the increase in the number of applications received. In FY 02/03 the Board received 680 applications and had 15,202 licenses active. At its height in FY 12/13, the Board collected 1655 new applications and had 21,473 active licensees. Since that time, the number of new applications has dropped to 1275 in FY 15/16 with 23,215 active licensees. The number of new applications accounts for the increase in revenue over the last 15 years because these figures are tied to new application fees, initial licensure fees, and renewal fees.

It has been over 15 years since the Board has implemented a renewal fee increase. During this time, the Board has taken numerous actions to reduce expenditures discussed below.

Many of the increases in expenditures over the last fifteen years are tied to employee salaries and benefits, pro rata, and enforcement costs as follows:

- **Salaries and Benefits:** In 2002, the Board had 23 PYs with 22 positions staffed. Currently, the Board has 17.4 PYs and 18 positions staffed. Despite that the Board was able to reduce its staffing due to re-engineered processes, costs have increased. Expenditures in FY 02/03 for salaries and benefits was \$1,086,000 whereas expenditures in FY 15/16 were 1,613,000 (49% increase).
- **Pro Rata:** In FY 02/03 the Board was charged 403,000 in Pro Rata and in FY 15/16, the Board was charged \$783,000 (a 94% increase). Increases are attributed to general salary increases and benefit costs as well as costs for BreEZe. The Board does not control the amount or rates of Pro Rata expenses levied upon it by the State and the DCA for required services or availability of services.
- **Attorney General Expenses:** In FY 02/03, the Attorney General expenses charged to the Board were \$246,000. In FY 15/16, the Board was charged \$429,000 (74% increase). While the number can fluctuate each year, there have been significantly fewer cases sent to the AG each year for processing since FY 02/03 from an average of 112 to 70 as result of greater efficiencies achieved in-house. The Board monitors costs for each case closely and brings excessive costs to the attention of the Senior Attorney General which in many cases has resulted in a credit. But beyond this, the Board has little control on how many hours the AG charges or their hourly rates. Increases in salaries and benefits contribute to the additional expenses. It should be noted that the Board submitted a negative BCP in FY 03/04, reducing its budget allotment for the AG by \$132,000 as a means to keep costs in check.

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- Evidence and Witness – Costs associated with expert witnesses, court reporting fees, or other court fees has climbed from \$25,000 in FY 02/03 to \$50,000 in FY 15/16 (100% increase). This increase is attributed to the shift in enforcement cases the Board is seeing that require expert review.

All of the aforementioned expenditures have shown a steady increase each year for four years or greater.

Other costs that have contributed to additional expenditures in the last three years include a one-time cost of \$160,000 for a workforce study, and investigative and administrative hearing costs. In FY 15/16 the costs for investigation and administrative hearing costs were abnormally high. For example, for the last three fiscal years, the DOI has charged our Board \$0, \$0 and \$79,000. This number will fluctuate depending on whether the Board sends any cases to DOI. Administrative Hearings charged the Board \$90,000 in FY 15/16, but only charged \$45,000 the preceding year. This figure will fluctuate greatly as well depending on how many enforcement cases go to hearing. Expenses for postage and travel also increased \$3,000 and \$6,000 since FY 02/03.

Notwithstanding the increases in expenditures, the Board has taken a number of measures to increase efficiencies while reducing expenditures over the years including:

In 2001, the Board secured additional legislative authority that provided staff greater access and authority to retrieve records as part of an investigation. This legislative amendment increased the number of records that were provided to the RCB, without the use of a subpoena as part of investigation. At this time the Board was pursuing, but did not yet have authority to issue a subpoena. Nearly all investigations were now being performed in-house that resulted in significant cost savings and faster turn-around times. Only a small number of cases, usually those requiring a subpoena were referred to the Division of Investigation. Currently, only cases where a viable threat may be posed are forwarded to the Division of Investigation.

In 2002, the Board established “In-House Review and Penalty Determination” guidelines to address a large majority of the types of complaints received. The guidelines help provide consistency in the discipline imposed and prioritize the cases that should be referred to the Office of the Attorney General for formal discipline.

In 2002, and in concert with the establishment of the In-House Review and Penalty Determination guidelines, the RCB expanded its citation and fine program to provide an alternative “penalty” to formal discipline for various violations. A citation allows the RCB to establish a public record for consumer and employer awareness, as well as for use if any future violations were to occur. This measure provided greater efficiency and ensured the availability of funds to prosecute high priority complaints.

In 2003, the RCB contracted for services to perform random drug screenings. Drug tests were performed more often and an increase in positive drug tests came about. Productivity was significantly increased and there was a substantial savings in staff and travel expenditures.

In 2003, the Board established its own cost recovery database with regular monthly invoices. In nearly every decision, the respondent is ordered to repay the Board for its actual costs. In those cases where licenses are revoked or surrendered, respondents rarely make an effort to repay the RCB. In other cases where licenses were disciplined but remained valid, some delay payment. Until 2003, the RCB had tracked payments manually and never invoiced respondents. In 2003, RCB staff created a database providing

for automated monthly invoicing and tracking. The effort was successful in increasing the collection of outstanding costs, as well as providing for greater efficiency and record management. The database was later used to collect all outstanding fines as well.

In 2003, the RCB sought and gained legislative authority to release information for the purposes of contracting with a collection agency. In 2004, the RCB implemented its contract with a Collection Agency to collect outstanding cost recovery/fines. The RCB has recouped over \$210,000 since then. This is significant when added to existing recovery efforts, and that of the Intercept Program administered by the Franchise Tax Board.

In 2009, the Board obtained subpoena authority (and training). Since that time, the Board has referred anywhere from 0 to 5 cases to the Division of Investigation each year lending to additional savings.

In December 2009, Uniform Standards were established as required by SB 1441 (2008 statutes), to provide some consistency among Healing Arts Boards' and their methods for addressing substance using/abusing licensees. The Board completed the implementation of these standards in June 2012 with no additional staffing. Probationers went from being tested 16 times per year to as much as 52 times per year and several other probation monitoring techniques were strengthened (at no additional cost to the Board).

In 2010, the Board expanded its background checks to include an additional national database search on applicants. In addition, DCA established a means for boards to automate its fingerprint background reports.

In 2010 the Board was subject to restrictions placed on all State agencies and at the same time was an integral part of developing the Consumer Protection Enforcement Initiative (CPEI) and focused on increasing efficiencies with the overriding goal to complete the entire enforcement process for a licensee in less than 18 months. Again, the Board re-engineered its processes and shifted duties to ensure its highest priority of consumer protection was being carried out. To address enforcement workload, the board reevaluated the strengths of existing staff and reassigned duties accordingly. Some staff were provided additional training. The RCB altered its outreach campaign significantly, reducing it to a website and mailings. Resources that were slated to visit high schools and colleges were redirected to the Enforcement Program.

The Board has been very effective in retaining and cross training staff that has made it incredibly successful each time it re-engineers its processes to assume additional workload and meet (and often lead in the implementation of) new initiatives and mandates.

RESPIRATORY CARE BOARD
Department of Consumer Affairs
California Code of Regulations. Title 16. Division 13.6 Respiratory Care Board
Fee Increases

PROPOSED LANGUAGE

ARTICLE 9. FEES

Amend Section 1399.395 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

§ 1399.395. Fee Schedule.

The following schedule of fees is hereby adopted pursuant to sections 3775 and 3775.5 of the B&P:

(a) Application fee	\$300
(b) Examination fee	Actual cost
(c) Re-examination fee	Actual cost
(d) Renewal fee	\$250
(1) For licenses expiring on or after July 1, 2018, the renewal fee shall be	<u>\$275</u>
(2) For licenses expiring on or after July 1, 2019, the renewal fee shall be	<u>\$300</u>
(3) For licenses expiring on or after July 1, 2020, the renewal fee shall be	<u>\$330</u>
(e) Delinquency fee (not more than 2 years after expiration)	\$250
(1) For licenses expiring on or after July 1, 2018, the delinquency fee shall be	<u>\$275</u>
(2) For licenses expiring on or after July 1, 2019, the delinquency fee shall be	<u>\$300</u>
(3) For licenses expiring on or after July 1, 2020, the delinquency fee shall be	<u>\$330</u>
(f) Delinquency fee (after 2 years but not more than 3 years after expiration)	\$500
(1) For licenses expiring on or after July 1, 2018, the delinquency fee shall be	<u>\$550</u>
(2) For licenses expiring on or after July 1, 2019, the delinquency fee shall be	<u>\$600</u>
(3) For licenses expiring on or after July 1, 2020, the delinquency fee shall be	<u>\$660</u>
(g) Inactive license fee	\$250
(1) For licenses expiring on or after July 1, 2018, the inactive license fee shall be	<u>\$275</u>
(2) For licenses expiring on or after July 1, 2019, the inactive license fee shall be	<u>\$300</u>
(3) For licenses expiring on or after July 1, 2020, the inactive license fee shall be	<u>\$330</u>
(h) Duplicate license fee	\$25
(i) Endorsement fee	\$25

Note: Authority cited: Section 3722, Business and Professions Code. Reference: Sections 3775 and 3775.5, Business and Professions Code.

REVENUE

Revenue Category	2014/15 Actual	2015/16 Actual	2016/17 Projected	Projected Workload 2016/17	Current Fees 2015/16
Application (CA)	\$417,600	\$380,147	\$382,500	1,275	\$300
Application (Foreign)					
Application (O-O-S)					
Renewal	\$2,156,020	\$2,165,949	\$2,185,000	9,500	\$230
Delinquent Fees	\$63,480	\$85,630	\$82,340	350/4	\$230
Endorsement	\$13,350	\$13,125	\$13,750	525	\$25
Duplicate License	\$3,250	\$3,475	\$3,750	150	\$25
Cite and Fine	\$30,469	\$38,176	\$40,000	var	var
Miscellaneous	\$25,139	\$23,996	\$16,490	var	var
Total Revenue	\$2,709,308	\$2,710,498	\$2,723,830		

EXPENDITURES

Expenditure Items	2014/15 Actual	2015/16 Actual	2016/17 Projected	Actual Exp. thru 04/30/17	Budgeted 2016/17
Salary & Benefits	\$1,548,852	\$1,612,713	\$1,688,400	\$1,368,614	\$1,608,000
Training	\$380	\$275	\$3,000	\$1,446	\$12,000
Travel	\$17,316	\$29,906	\$35,000	\$26,374	\$42,000
Printing	\$19,431	\$51,155	\$25,000	\$16,232	\$28,000
Postage	\$22,464	\$28,603	\$25,000	\$15,921	\$41,000
Equipment	\$22,542	\$2,320	\$10,000	\$1,975	\$0
ProRata ¹	\$625,438	\$783,481	\$809,000	\$525,840	\$809,000
Fingerprints	\$6,341	\$7,695	\$6,000	\$4,459	\$55,000
All Other Fixed Expenses ²	\$314,458	\$387,013	\$235,000	\$268,537	\$565,000
Division of Investigation	\$0	\$78,674	\$8,000	\$6,670	\$8,000
Attorney General	\$410,020	\$428,872	\$425,000	\$341,192	\$462,000
Office of Admin Hearings	\$44,516	\$90,463	\$75,000	\$37,552	\$137,000
Court Reporter Services	\$4,000	\$12,475	\$10,000	\$1,385	\$0
Evidence and Witness	\$39,191	\$37,904	\$35,000	\$26,000	\$32,000
Total Expenditures	\$3,074,949	\$3,551,549	\$3,389,400	\$2,642,197	\$3,799,000

¹ ProRata includes departmental and central administrative services.

² All Other Fixed Expenses include general expenses, communications, facility operations, data processing maintenance, consultant and professional services, examinations and Teale Data Center.

FUND CONDITION

	Actual <u>2015/16</u>	<u>2016/17</u>	<u>2017/18</u>	<u>2018/19</u>	<u>2019/20</u>	<u>2020/21</u>
Beginning Reserve, July 1	\$2,432	\$1,795	\$1,267	\$826	\$551	\$442
Prior Year Adjustments	\$66					
Fee Increase \$20 eff. 7/1/17			\$190	\$190	\$190	\$190
Fee Increase \$25 eff. 7/1/18				\$238	\$238	\$238
Fee Increase \$25 eff. 7/1/19					\$238	\$238
Fee Increase \$30 eff. 7/1/20						\$285
Revenues	\$2,710	\$2,724	\$2,807	\$2,807	\$2,807	\$2,807
Total Revenues			\$2,997	\$3,235	\$3,473	\$3,758
TOTAL RESOURCES	\$5,208	\$4,519	\$4,264	\$4,061	\$4,024	\$4,200
Budget Expenditure	\$3,552	\$3,389	\$3,558	\$3,630	\$3,702	\$3,762
Disbursements (SCO)	\$5					
Reimbursements	(\$144)	(\$137)	(\$120)	(\$120)	(\$120)	(\$120)
TOTAL EXPENDITURES	\$3,413	\$3,252	\$3,438	\$3,510	\$3,582	\$3,642
RESERVE, JUNE 30	\$1,795	\$1,267	\$826	\$551	\$442	\$558
MONTHS IN RESERVE	6.6	4.4	2.8	1.8	1.5	1.8