

**RESPIRATORY CARE BOARD OF CALIFORNIA**  
**Department of Consumer Affairs**  
**California Code of Regulations. Title 16. Division 13.6. Respiratory Care Board**  
**Fee Increase – July 1, 2017**

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## **INITIAL STATEMENT OF REASONS**

Subject Matter of Proposed Regulation: Biennial Renewal and Delinquent Fee Increase

Sections Affected: Section 1399.395 of Division 13.6, Title 16 of the California Code of Regulations (CCR).

### **Specific Purpose of the Proposed Changes**

The Respiratory Care Board of California (Board) proposes to amend Section 1399.395 of Division 13.6 of Title 16 of the CCR. The purpose for amending the regulation is to allow the Board to raise fees to address structural imbalances in the Board's budget. This proposed regulatory action is anticipated to go into effect on July 1, 2017.

Business and Professions Code (B & PC) section 3722 authorizes the Board to adopt regulations, including amending rules and regulations as necessary, to effectuate the administration of Division 2, Chapter 8.3 of the B & PC (commencing with Section 3700).

B & PC section 3775 authorizes the Board to increase the renewal fee by regulation, and establishes the statutory maximum fee for biennial license renewal, as well as other fees for the Board's respiratory care practitioner licensees. Additionally, B & PC section 3775 establishes the criteria to determine the delinquency fees for licenses that are not renewed prior to their expiration date.

The renewal and delinquency fees have remained the same since 2002. In this proposed rulemaking, the Board seeks to amend Title 16 of the CCR, section 1399.395 to increase its renewal and delinquent fees as detailed below. These fee increases will apply to licenses that expire after July 1, 2017.

<b>FEE</b>	<b>EXISTING</b>	<b>PROPOSED</b>
Biennial Renewal Fee	\$230	\$250
Delinquent Fee	\$230	\$250
Delinquent Fee > 2 years	\$460	\$500
Inactive License Fee	\$230	\$250

The proposed fee increases intend to address the Board's structural imbalance and will protect the Respiratory Care Board Fund (Fund) from becoming insolvent as projected in FY 17/18. Analysis of the Board's Fund Balance measured by Months in Reserve projects that at the end of the current fiscal year 2016/17, a 2.4 month reserve will exist. However, the reserve is projected to steadily decline in the following fiscal years to the point where there will be a -4.0 month deficit at the conclusion of FY 2018/19. Correcting the Board's structural imbalance is vital to the Board's solvency and will be unattainable without a renewal fee increase.

### Impact to Renewal

The proposed fee increase will equate to \$20 biennially for active and inactive licensed respiratory care practitioners.

### Impact to Delinquent Fees

Pursuant to B & PC section 3775, and in response to the implementation of the proposed renewal fee increase, the delinquency fees imposed on practitioners who fail to timely renew their license prior to expiration will also increase. Upon expiration, if renewed not more than two years from the date of expiration, a delinquency fee shall be 100 percent of the renewal fee in effect at the time of renewal. However, if the license is renewed after two years, but not more than three years from the date of the expiration of the license, the delinquency fee shall be 200 percent of the renewal fee in effect at the time of renewal. Depending on when the renewal is paid by the practitioner, the increase to the delinquent fee equates to either \$20 or \$40.

### Problem Being Addressed

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 (See, The Bureau of Labor Statistics' Consumer Price Index Detailed Report Data for December 2015 – Table 24).

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.

The increase in expenditures over the last fifteen years is 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 reengineered 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. Though 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.

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 we send 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 to 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 our own 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 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 reengineered 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.

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.

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.

**Anticipated benefits from this regulatory action:**

The proposed fee increases address the Board's structural imbalance and is 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 & PC section 3775.

**Factual Basis/Rationale**

Currently, B & PC section 3775 provides a statutory ceiling of \$330 for license renewal. The renewal fee was last increased by regulation in 2002 (15 years ago). The demonstrated increase in costs is a fraction of the amount of inflation on the United States dollar's 30.75 percent increase since 2002 and 58.00 percent increase since 1994.

Current budget projections show the Board's Fund balance as measured in Months in Reserve, will steadily decline to the point where there will be a -4.0 month deficit by the end of FY 2018/19. Therefore, the Board proposes to increase fees to preserve its fiscal solvency.

### **Underlying Data**

As identified above, the increase in fees is based on the following materials, including the Fee Increase (Item 2) and RCB's BreEZe Project Costs (Item 3) noted below, which were presented for the Board's consideration during the October 7, 2016 Board meeting:

1. Consumer Price Index – Table 24 (December 2015)
2. Fee Increase – Fiscal Review
3. RCB's BreEZe Project Costs – 2011/12 through 2022/23
4. RCB Historical Expenditures

### **Business Impact**

The proposed amendments to section 1399.395 will not have a significant adverse economic impact on businesses as the fee increases only impact individual respiratory care practitioners (RCPs).

### **Economic Impact Assessment**

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the regulation does not make any changes or provide for any new provisions that would affect the creation or elimination of jobs.
- It will not create new business or eliminate existing businesses within the State of California because the regulation does not make any changes or provide for any new provisions that would result in the creation or elimination of new businesses.
- It will not result in expansion of any businesses currently doing business within the State of California because the regulation does not make any changes or provide for new provisions that would directly affect the expansion of any businesses.
- This regulatory proposal will benefit the health and welfare of California residents because this proposal ensures the Board will remain fiscally solvent to administer and enforce the provisions of the Respiratory Care Practice Act, in the interests of consumer protection.
- This regulatory proposal does not affect worker safety because this proposal is specific to fee increases and it is not anticipated to impact current business practices or registration trends affecting worker safety.
- This regulatory proposal does not affect the state's environmental safety because it is specific to an increase in fees and is not anticipated to impact current business practices that may affect the state's environment.

### **Specific Technologies or Equipment**

This regulation 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.

The Board is restricted by subdivision (d), section 3775 of the Business and Professions Code to increasing its renewal fee to 10% of the fee currently charged. The Board currently charges \$230, so the most the Board could increase its fee is \$23. The Board chose to increase its fee by \$20 to establish an even \$250 amount. The Board suspects it will return the following year for an additional \$25 fee increase as section 3775 of the B&P also requires the Board to increase its fee so that it has a six month reserve.

Any proposal for a fee increase of less than \$20 would greatly jeopardize the Board fund's condition next fiscal year with having less than a one month fund reserve. Keeping fees at the current levels would prevent the Board from fulfilling its consumer protection mandate because it would no longer have the available funds to perform many of the services required by law by the end of FY 17/18.