

## **BOARD OF REGISTERED NURSING FINDING OF EMERGENCY**

### **Amend Title 16 California Code of Regulations Section 1417.**

The Board of Registered Nursing (Board) hereby specifically finds that adoption of emergency regulations to increase certain fees necessary for the immediate preservation of public health and safety, and general welfare of the citizens of California.

### **Specific Facts Showing the Need for Immediate Action**

This emergency rulemaking is necessitated by the rapidly declining fund reserves related to greater than anticipated enforcement costs and the previously unknown but now identified impact of additional I.T. costs related to the Department of Consumer Affairs (Department) BreEZe system. Because of the short turnaround time between when the Board became aware of these increased costs and impending insolvency, pursuit of a regular rulemaking is not a viable option. Without an emergency fee increase, the Board would be forced to shut down all but the most critical operational and enforcement activities. Failure to adequately regulate nurses will lead to public harm as consumers may be treated by individuals who are incompetent or grossly negligent. For example, two nurses were caring for a disabled elderly woman in her residence with speech difficulty. The nurses committed sexual misconduct by engaging in lewd sexual acts in front of the patient. If the Board is unable to take disciplinary action these nurses could still practice instead of having their licenses revoked. In addition, if the Board runs low on funds to pay the Attorney General's office, the Board may be forced to slow down case transmittals to the Attorney General's office for prosecution to stay within the budget. This could lead to nurses who would otherwise be going through the discipline process to remain practicing with unrestricted licenses, which could result in public harm. Without access to qualified registered nurses, the public health, safety, and welfare is at risk because consumers may be exposed to inadequate and unsafe treatment that could cause serious harm, necessitating the current requested immediate action. Further, the funds insolvency will create a barrier for licensure for those nurses seeking employment. These delays would ultimately reduce the number of nurses in the workforce, and the revenue the Board collects.

The Board's highest priority is consumer protection. The primary methods by which the Board achieves this goal include: ensuring applicants meet the education and training requirements for licensure, investigating complaints against registered nurses and disciplining licensees for violation of the Nursing Practice Act (NPA); monitoring nurses whose licenses have been placed on probation; and managing a Diversion Program for registered nurses, whose practice may be impaired due to chemical dependency or mental illness.

Due to the declining fund balance, the Board began an independent fee study earlier this year to determine at what level the Board should increase the statutory cap on existing fees. Based on the results of the fee study, the Board plans to pursue statutory fee increases and implementation via the legislative process. It was initially anticipated this statutory fee increase could be implemented by January 1, 2017, which in conjunction with repayment of outstanding general fund loans would ensure solvency for the fund. However, in the third quarter of FY 2014-15, the Board learned of several budgetary issues that would contribute to fund insolvency in April 2017. The Board requested an Attorney General (AG) and Office of Administrative Hearings (OAH) augmentation in February 2015 due to greater than anticipated increases in enforcement costs. In May 2015 the Board learned that there would be a one-time cost to BreEZe in FY 2015-

16 which resulted in an augmentation to the Board in the amount of \$485,000. This was due to increased contract costs related to a two-month delivery schedule extension and resulting need for contract re-negotiations with the project vendor. Additionally, in May 2015 the Board was informed that BreEZe costs would increase by \$2.28 million in FY 2015-16, and 2.58 million in FY 2016-17.

In May 2015 it was clear that the AG/OAH augmentation was not sufficient, and the Board would require additional redirection of costs to this line item in addition to the budget augmentation of \$2.9 million. The Board is not adequately budgeted for AG costs. The AG costs for 2014/15 totaled \$8,166,324 and the budget allocation was \$5,865,747; this is an annual deficit that adds to the Boards already structurally unsound budget that is headed for insolvency.

Currently the Board of Registered Nursing's fund is projected to go insolvent in April of 2017, however this estimated date of insolvency should not be seen as a deadline for when new fees should become effective. The Board currently has a structural deficit of approximately \$9 million, meaning that the Board collects \$9 million less in revenue than what it is projected to expend each year. This fee increase is only estimated to bring in an additional \$4.8 million on an annual basis, which would only address half of the existing structural deficit. Once these regulations are in place the Board will need to pursue a legislative change to increase their statutory fee caps and set new fees immediately upon the bill's passage. This regulation will serve to push out the potential insolvency date of the Board by a little over one year. If the Emergency regulation is approved, it is very likely that the fees could be updated in the BreEZe system prior to the Release 2 launch, enabling the Board to start collecting the higher fees effective January of 2016.

The Board must request a system change through the Department of Consumer Affairs, Change Control Board (CCB) to update the BreEZe system in order to begin collecting the new fee and to update all online and paper renewal verbiage regarding the new fee increase. The Boards renewal notices are mailed to licensee's four (4) months in advance of license expiration. The department is in process of system testing in preparation for deployment of Release 2 (R2) boards into live production. The request for changes must be submitted to the DCA's CCB for review and programming determination. The CCB will not approve the scheduling of additional changes to the system unless an approved fee increase regulation is included with the request. System changes are not completed upon request; they are completed only at specific times of the year. All system changes require programing and testing prior to deployment into live production. September 2015 is the last release of system changes prior to the R2 launch scheduled for December 2015. If the regulation is not approved by the end of August 2015 then, the Board must wait until after April 2016 before additional changes to the system will be accepted and implemented. If the Emergency regulation is not approved, the Board will continue with the regular rule making process, but given the estimated timeline for approval of the regulation under this process, the change to the BreEZe system will not be made until well after the Release 2 launch, delaying the effective date of the new fees by at least seven months at best.

The approval of the emergency fee regulation will provide the Board with the resources necessary to continue to conduct business at a sufficient level and pursue the statutory fee increase needed to fully address their fund's structural imbalance.

I have attached two cash flow analyses that detail these two scenarios. With the fees effective January 2016 (via emergency regulations), the Board is estimated to go insolvent by June of 2018. With the fees effective in August of 2016 (via normal regulations), the Board's insolvency date would move up to April of 2016. While the change in the insolvency date between the two scenarios is only two months, the net change to the fund balance between the two scenarios is approximately \$3 million. The Board will benefit greatly from having this new revenue sooner than later to allow the Board to continue operations and alleviate cash flow issues.

The Board is solely funded by its licensing fees and, therefore, without adequate resources, the Board would be unable to operate, license, and seek appropriate discipline for those guilty of violating the NPA and endangering the public with continued practice or continue licensure activities.

### **AUTHORITY AND REFERENCE CITATIONS**

Authority Cited: Section 2715, Business and Professions Code. Reference: Sections 163.5, 2815, 2815.5, 2815.7, 2816, 2830.7, 2831, 2833, 2836.1, 2836.3 and 2838.2, Business and Professions Code.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

#### Amend Section 1417.

Existing laws authorize the Board to charge fees for initial licensure and certification applications; temporary licenses, interim permits; license and certificate renewals; delinquent renewals; and returned checks. The Board is a self-supporting, special fund agency that generates its revenue from licensing fees. The Board is proposing to increase fees as detailed in the table below.

<b>Fees</b>	<b>Existing</b>	<b>Proposed</b>
Biennial license renewal fee*	\$140	\$160
Penalty fee for failure to timely renew a license	\$65	\$75
Application fee for continuing education provider approval	\$200	\$300
Biennial continuing education provider approval renewal fee	\$200	\$300
Penalty fee for failure to renew a continuing education provider	\$100	\$150
Fee for processing endorsement papers to other states	\$60	\$100
Certified copy of a school transcript	\$30	\$50
Duplicate license fee	\$30	\$50
Fee for evaluation of qualifications to use the title "nurse-practitioner"	\$75	\$150
Application fee for certificate as a nurse-midwife	\$75	\$150
Biennial nurse-midwife certificate renewal fee	\$75	\$100
Penalty fee for failure to timely renew a nurse-midwife certificate	\$37	\$50
Fee for application for nurse-midwife equivalency examination	\$100	\$200
Application fee for nurse-anesthetist certificate	\$75	\$150
Biennial nurse-anesthetist certificate renewal fee	\$75	\$100
Penalty fee for failure to timely renew a nurse-anesthetist certificate	\$37	\$50
Application fee for public health nurse certificate	\$75	\$150
Application fee for clinical nurse specialist certificate	\$75	\$150
Biennial clinical nurse specialist certificate renewal fee	\$75	\$100

Penalty fee for failure to timely renew a clinical nurse specialist certificate \$37 \$50

\*With the proposed fee increase, registered nurses will pay \$160 at the time of license renewal. This fee includes a \$10 assessment for the RN Education Fund administered by the Office of Statewide Health Planning and Development and is not revenue to the Board.

## **FISCAL IMPACT ESTIMATES**

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Cost/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

Business Impact: The Board has determined that the fee increase will have an impact on approximately 1,400 businesses requesting Continuing Education Provider (CEP) renewals, with \$140,000 in revenue (1,400 providers x \$100 increase in renewal fees). Additionally, we estimate that approximately 240 CEP initial applications will be received each year, with \$24,000 in revenue to the Board (240 providers x \$100 increase in initial application fees). However, the Board does not consider this to be a significant adverse statewide economic impact affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New 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.

Cost Impact on Representative Private Person or Business:

The proposed fee increase affects individuals and some small businesses (CEPs). The affected individuals are the approximately 4,795 applicants for advanced practice certificates, 182,000 registered nurses renewing their licenses biennially, and renewal of 3,070 various Board-issued certificates.

The affected small businesses are approximately 1,400 CEP biennial renewals, and approximately 240 CEP applications annually. The cost impact on the individuals varies dependent on the type of application, i.e., initial certification, renewal of a license, or renewal of certificate. The increase in fee range from \$10.00 to \$100.00 and is detailed in the above table. The Board estimates revenues will increase approximately \$2,447,000 in FY 2015-16 and \$4,894,000 in FY 2016-17 and ongoing from the fee increases.

Effect on Housing Costs: None