

# BOARD OF REGISTERED NURSING FINAL STATEMENT OF REASONS

**Hearing Date:** November 9, 2009

**Subject Matter of Proposed Regulations:** Fees Increase

**Section Affected:** Title 16, Division 14, Section 1417

## **Updated Information**

The Initial Statement of Reasons (ISOR) is included in the file. As a result of modifications to the regulatory proposal, the information contained therein is updated as follows:

1. The effective date of the proposed regulation was changed to January 1, 2011, for all fee increases. In the initial proposal, fee increases applied to renewal of licenses and certificates that expired after July 1, 2010, and to all other fees effective July 1, 2010. Additionally, the proposed license renewal fee was decreased from \$150 to \$130, and the penalty fee for late license renewal was decreased from \$75 to \$65.
2. The increased fees were projected to generate approximately \$16.8M annually with \$13.508M for Enforcement Program enhancements, including the addition of 63 positions. The proposed modifications will generate approximately \$5.9M for the 6-month period in fiscal year 10/11, and \$12.3M in FY 11/12 and ongoing; 37 positions will be added. Approximately \$4.1M of the revenues generated from the increased fees will be expended annually for Enforcement Program enhancements detailed in the ISOR.
3. Two documents were added to the rulemaking file: "Fees Increases Modification – January 13, 2010" and "Justification for Increased Fees Modification – 6/10/10."

## **Public Agency Impact**

Fiscal impact on public agencies is corrected to read: The regulatory proposal will have an impact on public agencies that reimburse registered nurses for license and certificate renewal fees. The number of public agencies affected and the impact on each of the affected agencies was not determined. The impact will be dependent on the number of registered nurses employed by the agency who renew licenses or certificates each year.

## **Local Mandate**

A mandate is not imposed on local agencies or school districts.

## **Small Business Impact**

This action will not have a significant adverse economic impact on small businesses.

## **Consideration of Alternatives**

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the board/bureau/commission/program would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

### **Objections or Recommendations/Responses to Initial Regulatory Proposal**

1. One person submitted an e-mail supporting the proposed increased fees. Six individuals submitted e-mails opposing increases in fees because: the increases would have a personal adverse economic impact (5); doubling the fees was too much (4); and/or that current funds should be better managed (2).

**Response:** The proposed increased fees are necessary for the Board to perform its public protection mandate, and to function in an effective, efficient, and timely manner. Documentation was provided in both the ISOR and 15-day notice clearly demonstrating that the increased fees are necessary for the Board to remain solvent and to maintain an acceptable reserve fund. In the absence of increased fees, the Board projects that it will become insolvent in FY11/12.

2. Representatives from four nursing organizations (American Nurses Association-California, California Nurses Association, SEIU-Nurse Alliance of California, United Nurses Association of California) and one individual testified at the hearing; all are opposed to the fees increases. Each testified to the lack of justification for the fee increases in light of mandatory furloughs, recent budget and staffing cuts, and borrowing of money from RN Nurse Fund to augment the General Fund. They are opposed to any fee increase without strict assurances that additional revenue generated by increased fees are fully protected, and not put to use for other causes. They also stated that the Board, as a special fund consumer protection agency, should be exempt from furloughs, as well as any broad and sweeping budget and staffing cuts made by Administration.

**Response:** As previously stated, the increased fees are necessary for the Board to remain solvent, and to maintain an acceptable reserve fund. The Board recognizes and understands the concerns; however, the issues raised are beyond the Board's control. The issue of furloughs, particularly for special fund agencies, is the subject of litigation. Under current law, all money in the RN Fund is to be used to carry out the provisions of Nursing Practice Act. (B&P Code, Section 2814) However, the Legislature has enacted legislation authorizing loans from the RN Fund to the General Fund, under specified conditions. (Statutes of 2008, Ch.268, Item 1110-011-0761) There is no guarantee that similar legislation will not be passed again.

3. Commenter recommended that all late renewal penalty fees be the same.

**Response:** Consistent with authority granted by statute, Board policy sets the penalty fee for late renewals at 50% of the regular renewal fee. (B&P Code, Sections 2815(e), 2815.5(c), 2838.2(d), 2830.7(c).

4. SEIU commented that the proposed increases would have a fiscal impact on public agencies because some public agencies reimburse registered nurses for cost of license renewal.

**Response:** The Updated Informative Digest reflects the potential impact on public agencies.

### **Objections or Recommendations/Responses to First Modified Text**

1. California Hospital Association (CHA) supports the concept of raising fees, but wants assurances that any new funds would be spent only to increase efficiency of BRN's investigative program and related activities including enforcement of the Nursing Practice Act. Without such assurances, the Association cannot support increased fees. CHA further stated that the Executive Officer's salary is an issue that must be addressed, and recommended conducting a study of salaries of comparable positions.

2. Association of California Nurse Leaders (ACNL) has serious reservations about the proposed modifications. ACNL must be assured that new fees are spent to increase efficiency and create comparable salaries for Board staff, i.e., EO. The Board should: be exempt from furloughs; have access to its own investigators and legal staff to prioritize and streamline the investigative process; and undertake a salary survey to determine appropriate EO salary.

3. Commenter submitted response to initial regulatory proposal, and is still opposed; did not provide other comments.

**Response:** The comments about increasing the Executive Officer's salary are not relevant to the proposed modifications. The other comments were addressed in responses 1 and 2 in the preceding section.

**Objections or Recommendations/Responses to Second Modified Text and Adding Document to Rulemaking File**

Notice was given of proposal to modify text and to add a document, "Fees Increases Modification January 13, 2010," to the rulemaking file. The public comment period was from January 20, 2010, to February 5, 2010; no objections or recommendations were received during this period.

**Objections or Recommendations/Responses to Adding Second Document Added Rulemaking Record**

Notice was given of proposal to add a document, "Justification for Increased Fees Modification – 6/10/10," to the rulemaking file. The public comment period was from July 14, 2010, to July 30, 2010; no objections or recommendations were received during this period.