

**BOARD OF REGISTERED NURSING  
INITIAL STATEMENT OF REASONS**

**Hearing Date:** November 9, 2009

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

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

**Specific Purpose of Amendment:**

The Board is proposing to increase fees as detailed in the following table. The fees increase applies to renewal of licenses and certificates that expire after July 1, 2010, and to all other specified fees effective July 1, 2010. The increase in fees is necessary to enable the Board to more effectively protect consumers through enhancement of the Board's enforcement functions, and to maintain a minimum four (4) month fund reserve for the next three (3) years. The proposal also adds clinical nurse specialist's fee information to the regulation, and makes minor technical and grammatical changes.

FEES	EXISTING	PROPOSED
Application fee for licensure by examination	\$75	\$150
Application fee for licensure by endorsement	\$50	\$100
Biennial license renewal fee*	\$75	\$150
Penalty fee for failure to timely renew a license	\$37	\$75
Penalty fee for check returned unpaid	\$15	\$30
Interim permit fee	\$30	\$50
Temporary license fee	\$30	\$50
Biennial nurse-midwife certificate renewal fee	\$50	\$75
Penalty fee for failure to timely renew a nurse-midwife certificate	\$25	\$37
Biennial nurse-anesthetist certificate renewal fee	\$50	\$75
Penalty fee for failure to timely renew a nurse-anesthetist certificate	\$25	\$37
Application fee for clinical nurse specialist certificate**	\$75	\$75
Biennial clinical nurse specialist certificate renewal fee**	\$50	\$75
Penalty fee for failure to timely renew a clinical nurse specialist certificate**	\$25	\$37

\*With the proposed fee increase, registered nurses will pay \$160 at the time of license renewal. The fee includes a \$10 assessment for the RN Education Fund.

\*\*Clinical nurse specialist fees are based on statute, and are not included in existing regulations.

**Factual Basis/Rationale:**

Pursuant to Business and Professions (B&P) Code, Sections 2815 and 2838.2, the Board has statutory authority to assess fees, including those in the above table. The revenue generated from these fees is placed in the Board of Registered Nursing Fund, and is utilized by the Board to perform the duties and functions authorized by the Nursing Practice Act (NPA). The existing fees are set at the minimum level of the range established in statute, and became operative July 1, 1991.

The Board's highest priority is consumer protection. The primary methods by which the Board achieves this goal include: investigating complaints against registered nurses and disciplining licensees for violation of the 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. The Board's ability to perform these essential functions in an effective, efficient, and timely manner is compromised by several major factors, including insufficient staff and inadequate funds to pay for additional staff. The Board estimates revenues from the proposed increase in fees will be approximately \$16,800,000 annually. Approximately \$13,508,000 will be used to enhance the Board's enforcement functions and to augment staff.

On July 27, 2009, a comprehensive report on the status of the Board's Enforcement Program was presented at an informational hearing convened by the Department of Consumer Affairs. The Board reported that the average time from initial receipt of a complaint to final disposition was 3.4 years in fiscal year (FY) 2008/09; the average was over three (3) years for the preceding five (5) years. During the complaint to disposition period, the licensee is generally able to practice as a registered nurse. The public, including registered nurse employers, do not have access to information pertaining to cases, until the licensee is served an accusation, i.e., a legal document formally charging the licensee with violation(s) of the NPA. In FY 2008/09, the average time from initial complaint to accusation was two (2) years.

The enforcement process is complex, involving a number of steps and agencies. The Enforcement Program Report included the steps and timeline for an average enforcement case and a number of tables showing historical data for the Board's enforcement timeframes. It showed that delays occur within the Board; the Department of Consumer Affairs Division of Investigation (DOI), which uses sworn peace officers, and is responsible for investigating the Board's complex cases; and the Office of the Attorney General (AG), which is responsible for prosecuting Board cases. The Board identified administrative, procedural, and legal barriers that contributed to the prolonged timeframes, and has already taken steps to improve the enforcement process and decrease the timeframes. These include:

1. Reorganized the Enforcement and Probation Units.
2. Hired nine (9) Enforcement Unit and two (2) Probation Unit staff. Four of the positions are temporary.
3. Developed and implemented a standardized case tracking tool, enabling staff to better manage and monitor cases for case milestones.
4. Implemented a system for the electronic transmission of fingerprint records from the Department of Justice to the Board's licensing and applicant database systems, thus making data more readily available and decreasing the case processing time.
5. Holding regular meetings with DOI and AG to discuss backlogs and implement corrective actions.

The Board is exploring other strategies, including:

1. Obtain statutory authority to obtain relevant case records such as medical records, personnel records, controlled substance records, and internal investigation reports from health care facilities, without patient release form or subpoena. Seek statutory authority to fine licensees and facilities for failure to comply with requests for records.

2. Seek authority for mandatory information sharing between the Department of Health Services, the Department of Justice - Bureau of Medi-Cal Fraud & Elder Abuse, Child Protective Services, Adult Protective Services, and all law enforcement agencies.
3. Seek statutory change to conduct concurrent investigations for all complaints referred to the Diversion Program and suspend the practice of any Diversion Program participant who does not successfully complete the program until disciplinary action is taken.
4. Assume AG functions of serving accusations, preparing default decisions, some out-of-state discipline and conviction pleadings, and less complex petitions to revoke probation.

While the programmatic changes will help decrease the complaint to discipline time, it will not be significant. Understaffing in the Board's Enforcement Program is a significant contributing factor to the delayed resolution of complaints. The Enforcement Program currently consists of thirty-three (33) employees: twenty-one (21) in the Enforcement Unit; nine (9) in the Probation Unit; and three (3) in the Diversion Program. Eight (8) of these employees began January 1, 2009, and four (4) of the positions are two-year limited term positions. Each of the five (5) case analysts in the Enforcement Unit has 400 to 600 cases, and the Probation Unit case analysts each have 95 to 115 cases. The Diversion Program is contracted out, and the manager and analyst are responsible for monitoring the contractor. On average, there are 500 registered nurses participating in the Program monthly.

To address the staffing shortage, the Board is proposing to add sixty-three (63) positions to its Enforcement Program, funded by revenue generated from the increase in fees. The Department of Consumer Affairs is submitting a department-wide enforcement reform budget change proposal (BCP) for all healing arts boards. Through the BCP, the Board is requesting additional spending authority of \$13,508,000 for FY 2010/11, \$10,844,000 for FY 2011/12, and ongoing, and includes the sixty-three (63) positions. The new staff will: 1) augment the existing operation in the complaint intake unit; 2) staff the newly created investigative and expert witness units; 3) enhance Board monitoring of registered nurses who are in the Diversion Program or on probation; and 4) manage disciplinary cases. The Enforcement Unit analysts' case loads will average 150 and Probation Unit analysts will average 75. Staff will also perform functions and duties that are currently performed solely by the DOI or AG. This includes: obtaining records; conducting interviews; and preparing and serving all default decisions and accusations in select cases. Registered nurse staff will perform initial review of quality of care cases and serve as expert witnesses. The staff augmentation will expedite the Board, DOI, and AG processing of cases, and enable the Board to better protect consumers.

The remaining revenue generated from the increase in fees will be used to maintain a minimum four (4) month fund reserve for the next three (3) years. In FY 2010/11 this will be \$3,292,000. The Board has determined that four (4) months is a prudent reserve, and is well below the 24-month maximum statutory limit prescribed in B&P Code, Section 128.5. Board operating expenses have been increasing an average of \$1.4 million per year for the past three (3) years, and are projected to be the same in FY 2009/10. The Board's revenue increased only an average of \$320,000 per year during the same time frame. Analysis of the Board's fund condition shows that without a fees increase, the Board will be operating at a deficit by FY 2012/13, *even without an increase in staff*. The following table shows the prior, current and three (3) year projected fund reserve under three (3) conditions.

**RESERVE FUND**

<b>Fiscal Year</b>	<b>No Fee Increase No BCP</b>	<b>No Fee Increase Current BCP</b>	<b>Fee Increase Current BCP</b>
2008/09	9.4	9.4	9.4
2009/10	7.0	4.5	4.5
2010/11	4.9	-1.2	4.5
2011/12	1.7	-7.1	4.3
2012/13	-1.7		3.8

The fee increase, as shown above, is necessary to ensure adequate revenues to fund the increase in staff to enhance the Board’s Enforcement Program as proposed in the BCP, and to maintain the reserve fund.

The regulatory proposal also makes technical and grammatical changes. The existing regulation does not include the initial application, renewal, and penalty fee for late renewal for clinical nurse specialists. Authorization for these fees is found in B&P Code, Section 2838.2. The regulatory amendment adds these fees to the regulation for clarity and consistency, and adds the authorizing citation for the fees.

**Underlying Data**

Technical, theoretical or empirical studies or reports relied upon:

1. *Enforcement Report on the Board of Registered Nursing, July 27, 2009*
2. *Board of Registered Nursing Enforcement Process Report August 12, 2009*
3. Board Fund Condition

**Business Impact:**

This regulation will not have a significant economic impact on businesses. This initial determination is based on the following:

The regulatory proposal will impact only registered nurses and applicants for registered nurse licensure.

**Specific Technologies or Equipment:** This regulation does not mandate the use of specific technologies or equipment.

**Consideration of Alternatives:** The Board has determined that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be 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 proposal described in this Notice.