

**Board of Pharmacy**  
**Initial Statement of Reasons**

Subject Matter of Proposed Regulation: Fee Schedule

Sections Affected: Amend § 1745 of Article 5 of Division 17 of Title 16 Cal.Code Reg.

Specific Purpose of the Proposed Changes:

The Board of Pharmacy proposes to amend Section 1749 of Division 17 of Title 16 of the California Code of Regulations. The purpose for amending the regulations is to allow the board to raise fees to the statutory maximums specified in the relevant Business and Professions Code section to address a structural imbalance in the board's budget.

Factual Basis/Rationale:

Business and Professions Code section 4005 generally authorizes the board to amend rules and regulations pertaining to the practice of pharmacy and the administration of Chapter 9, Division 2.

Business and Professions Code section 122 allows the board to charge a fee for the processing and issuance of a duplicate copy of any certification of licensure or other form evidencing licensure or renewal of licensure.

Business and Professions Code section 163.5 establishes the criteria to determine the delinquency fee for any licensee within the Department of Consumer Affairs.

Business and Professions Code section 4400 establishes the statutory minimum and maximum fee schedule for application, renewal and other fees for additional board applicants and licensees.

Business and Professions Code section 4406 specifies that all fees collected on behalf of the board shall be credited to the Pharmacy Board Contingent Fund.

California Code of Regulations section 1749 establishes the fee schedule for application, renewal and other fees for board licensees and applicants.

Problem

Business and Professions Code 4400(p) directs that the board shall seek to maintain a reserve in its fund equal to approximately one year's expenditure. The fund balance for the board provides specific information on the board's current fund as well as projections for future years.

A review of the board's fund condition report (provided as underlying data in this rulemaking file) demonstrates that overall revenue for the board has increased by \$4,066,259 (54.9%), yet expenditures have increased by \$5,763,111 (63.78%) since FY 2007/2008. This creates a structural imbalance that is unsustainable without a fee increase. To emphasize this point, it is estimated that absent a fee increase, the board's fund condition will be reduced to a two and one half month reserve by the end of fiscal year 2014/15 and will be in a deficit of four months by the end of fiscal year 2016/17. A fund simply cannot go into a negative balance. That is the equivalent of an individual writing a check when there is no money in their checking account and no money forthcoming. The board can only spend up to the amount of cash that is in its fund which supports the need for this regulation.

There are several factors that have attributed to this structural imbalance, including the costs the board incurs to deliver its services. A comparison of detailed expenditures between FY 2007/08 and FY 2012/13 reveal an overall increase in expenditures of 63.78%. More specifically, the board's personnel expenditures have increased from \$4.8M to a projected \$8.3M; a 72% increase. Additionally, the board has experienced a significant increase in the amount of pro rata assessed for both department services as well as statewide services. Specifically, since fiscal year 2007/08 pro rata services have increased from \$1.2M to a projected \$2.4M in fiscal year 2012/13; a 93% increase. A third area in which the board has seen tremendous growth is in its enforcement related costs which have increased from about \$1.1M to a projected \$2.3M this fiscal year; a 102% increase. Eliminating personnel services or enforcement costs is not an option as that would have a significant impact in several areas of the board operations including issuing licenses as well as regulating licensees and taking appropriate enforcement and disciplinary actions against errant licensees. Further, prorata costs are determined by control agencies. The board lacks the ability to negotiate savings in this area, which further supports the need for this fee increase.

#### Determination of Fees

In 2008, the board commissioned an independent review of its fee structure. The board contracted with Sjoberg Evanshenk Consulting, Inc. to serve as the experts that possessed the special skills and knowledge to perform this independent audit. The scope of the independent audit included four objectives:

1. Perform an analysis of the board's fee structure to determine if fee levels were appropriate for the recovery of the actual cost of conducting board programs.
2. Assess and reveal any subsidy, surplus, or cross subsidies between licensure groups, e.g., individuals and facilities.
3. Projection of fees and revenues and related costs for the next five years
4. Assess activity and workload data for each staff person to determine an hourly cost or cost per unit for various board activities and services.

The fee audit provided the unit cost to deliver services as well as the basis for determining the manner in which the costs were allocated. In addition, the experts provided funding models for the board to consider effectuating the necessary changes in its budget to ensure its financial solvency. The board considered these findings and established appropriate fees based upon the unit costs and recommendations from these experts. The results of this audit provided the framework for the current fee structure used by the board. Specifically this audit detailed the estimated costs of the services as well as provided the basis for determining the manner in which the costs were allocated.

Based upon the findings of the fee audit, in 2009, the board was successful in its pursuit of a legislative change to recast its statutory fee structure, establishing new statutory minimum and maximum fees. These fees took effect in January 2010. (At that time, only six of the board's fees were actually impacted.)

A more direct application of the expenditure increases detailed previously and its impact to the costs to deliver services specifically to licensing fees was prepared. This was done using the allocation model developed by the experts and updating it with the current expenditures. This provides for a direct comparison and reveals increases in the costs to deliver almost all services. More specifically, information provided below details some of the largest licensing categories for the board and the fees that include the 2007/08 unit cost and the 2012/13 unit costs. A complete comparison chart is provided in the underlying data contained within this rulemaking.

Pharmacist Exam: \$218.98 (2007/08) to \$297.23 (2012/13) 35.73% increase  
Pharmacist License: \$130.75 (2007/08) to \$168.23 (2012/13) 28.67% increase  
Pharmacist Renewal: \$139.28 (2007/08) to \$199.19 (2012/13) 43.01% increase

Pharmacy Application: \$343.28 (2007/08) to \$362.13 (2012/13) 5.49% increase  
Pharmacy Renewal: \$70.76 (2007/08) to \$118.85 (2012/13) 67.96% increase

Pharmacy Technician Application: \$123.49 (2007/08) to \$175.11 (2012/13) 41.80% increase  
Pharmacy Technician Renewal: \$152.95 (2007/08) to \$185.42 (2012/13) 21.23% increase

The demonstrated increase in the unit costs to deliver services further underscores both the need to secure a fee increase as well as provides additional substantiation of the costs to deliver the actual services.

**Underlying Data**

Relevant meeting materials and minutes from the April 24-25, 2013 Board Meeting.

Analysis of Fund Condition with current fees.

Analysis of Fund Condition with proposed fee increase effective 07/01/2014.

Estimated Workload and Revenue with current fees.

Estimated Workload and Revenue with proposed fee increase effective 07/01/2014.

Independent Review of the Board's Fee Structure (Prepared by Sjoberg Evashenk)

Updated Fee Assessments based upon Fee Audit

Economic Impact Analysis

**Business Impact**

The board does not believe that this regulation will have a significant adverse economic impact on businesses. This assessment is based upon the absence of testimony or comment to the board during board discussions about this regulation proposal.

**Specific Technologies or Equipment**

This regulation does not mandate the use of specific technologies or equipment.

**Consideration of Alternatives**

The only alternative to this proposal is to keep fees at their current level. However as evidenced by the Analysis of the Fund Condition, this would create a significant deficit for the board and would prevent the board from fulfilling its consumer protection mandate as the board would no longer be able to perform many of the services required by law.

There is no reasonable alternative that would be either more affective 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 repeal of the regulation.

\*Information is based upon projections through the end of the fiscal year.