

**FINDING OF EMERGENCY
RE-ADOPTION OF EMERGENCY REGULATIONS
(Government Code Section 11346.1, subdivision (b);
California Code of Regulations, Title 1, Section 50)**

SUBJECT MATTER OF PROPOSED REGULATIONS: Fee Schedule

SECTIONS AFFECTED: California Code of Regulations (CCR), title 16, division 20, article 7, sections 2070 and 2071

SPECIFIC FACTS SHOWING THE NEED FOR IMMEDIATE ACTION:

The findings of emergency regulations for the proposed rulemaking package was originally approved by the Office of Administrative Law (OAL) on March 5, 2018. Since the approval of the emergency regulations, the Veterinary Medical Board (Board) has been working diligently to submit the certificate of compliance through the standard rulemaking process in order to obtain approval by OAL within the 180-day certification period as prescribed by the Administrative Procedure Act. The Board submitted the certificate of compliance to the Department of Consumer Affairs (DCA) on April 27, 2018 for their initial review process. Since the submission of the certificate of compliance, the Board has been working closely with DCA to expedite the process.

On August 1, 2018, OAL approved the re-adoption of emergency regulations, which went into effect on September 5, 2018, and granted a 90-day extension for the certificate of compliance. The 90-day extension pushed the due date of submission of the certificate of compliance to OAL back to December 4, 2018. The Board has been monitoring the certificate of compliance as it moves through DCA and California Business, Consumer Services and Housing Agency (Agency) approval process, and the Board has been making every effort to assist in moving the package through the various departments. However, the package is not moving as fast as anticipated. On October 12, 2018, the package will be noticed by OAL, and the 45-day comment period will begin. The 45-day comment period will close on November 26, 2018. Based on this timeline, the Board will not be able to respond to comments, prepare a final rulemaking package, have it submitted through DCA for a final review and returned to OAL prior to the December 4, 2018 deadline. As a result, the Board is requesting a second re-adoption of emergency regulations that would grant an additional 90-day extension in order to allow additional time for the Board to complete the final rulemaking package steps.

The initial filing of the emergency rulemaking for the Fee Schedule was necessary to avoid the imminent shutdown of the Board's enforcement activity, the impending insolvency of the Board, and the resulting of serious harm to the public and their animals. Prior to the adoption of the emergency regulations, the Board was experiencing significantly increased expenditures, a

structural imbalance (between revenues and expenditures), and a rapidly declining Contingent Fund (i.e., "savings account") that was impacting the Board's ability to continue its enforcement efforts and severely limiting the performance of its core licensing, examination, and inspection functions.

Due to factors beyond the Board's control that have increased Board expenditures while not adequately increasing revenues as outlined below, the Board's core mission of consumer protection has been threatened. Prior Fiscal Year (FY) 2017-2018 projections indicated that the Board would over-expend its appropriated resources if major and critical consumer protection programs, such as enforcement and hospital inspection, were not curtailed. By ceasing disciplinary proceedings, the Board would be unable to forward formal disciplinary complaints to the Division of Investigation (DOI) for investigation and cases to the Office of the Attorney General (AG) for discipline. Investigations and cases sent to the DOI and AG include the most egregious violations of the Veterinary Medicine Practice Act (Act) that lead to license suspensions, probation, and license revocations. The Board would further have been forced to cancel all hearings with the Office of Administrative Hearings (OAH) that are scheduled six to eight months in advance, and delay the adjudication of the most serious cases of consumer and animal harm, allowing dangerous individuals to continue practicing veterinary medicine.

Additionally, without the emergency regulation approval to increase and stabilize the Board's revenues, the Board would have been unable to request an increase to its AG and OAH appropriation, because State budgeting rules require stable revenue or a healthy Contingent Fund to support the request.

The emergency rulemaking to increase the Board's regulatory fee schedules increased the Board's revenues to ensure that the Board complies with its mandated and prudential Fund Condition reserves, and, as of March 5, 2018, allowed the Board to request additional spending authority for enforcement activities and maintain solvency. Because of the adoption of the emergency regulations, the Board has been able to resolve some of the insolvency it was facing and has been able to continue processing disciplinary case proceedings, which otherwise would have ceased as of March 2018. However, this increase is only temporary, and the emergency still exists. Without permanent implementation of these regulations, the Board will not be able to maintain solvency.

The Board has seen an increase to consumer complaints and anticipates complaints to continue to increase throughout the FY. The Board has obtained permanent appropriation authority to increase the AG and OAH funding in FY 2017-2018; however, the recent dramatic increase in consumer complaint activity has proven the funding inadequate and insolvency imminent. Because of these abrupt increases in Board expenditures within the last six months, particularly to AG and OAH expenditures, the Board determined it was not feasible to file regulations through the regular rulemaking process as they were anticipated to take 12 months to become effective. It is because of the imminent need of funds that the Board originally filed the emergency rulemaking for a fee increase and why the Board has filed the certificate of completion request to make the fee increase permanent. The Board is now filing for a re-

adoption of the emergency regulations because an emergency still exists within the Board, and due to circumstances beyond the Board's control, additional time is needed for the completion certificate to be processed through the DCA divisions and Agency in order to make the emergency regulations permanent.

Background:

In accordance with Business and Professions Code (BPC) section 4800.1, the Board's highest priority is protection of the public in exercising its regulatory, licensing, inspection, and disciplinary functions. Additionally, BPC section 4905 reflects a legislative goal that the Board maintain a Fund Condition reserve of not less than three (3) months and requires the Board to maintain a reserve of no more than ten (10) months of annual authorized expenditures.

Beginning in FY 2014-2015, Board revenue has not kept pace with its authorized expenditures, thereby creating a structural imbalance where the Board's Contingent Fund (i.e., "savings account") is declining. That is, the Board's revenues, on a FY basis, are less than its expenditures creating a budget deficit. In order to make up for the operating budget deficit, the Board subsidizes its structural imbalance via funds from its Contingent Fund.

Without the emergency regulations for fee increase, the Board was projected to drop below its Contingent Fund floor of *not less than three months of annual authorized expenditures* and suffer ultimate insolvency in late-FY 2018-2019. The Board does not have a current Fund Condition Statement to testify to the current financial status of the Board, particularly due to the difficulty of the FISCAL system to provide budget updates, but the Board does estimate that they are in a better financial status due to the implementation of the emergency regulations. Approximately 3,500 premises permits were due to expire in May of 2018, and with the implementation of the new fees effective March 5, 2018, the Board was able to capture the increased fees and estimates an additional \$700,000 in revenue. The Board is still in a continued state of emergency, and unless the implemented fee increase is maintained, the Board will have expenses that exceed its revenue, and the Board will be in a state of insolvency (see Tabs E.3 and E.4). In addition to this, the fee increase has provided additional funds needed to implement the requirements of Senate Bill (SB) 304 (Lieu, Chapter 515, Statutes of 2013), which mandated a 20% hospital premises inspection rate. Without those funds, the Board would not be able to meet this requirement. It is because of this that the Board is still in a state of emergency, and a re-adoption of the emergency regulations is imperative.

The Board's structural imbalance prior to the fee increase is a byproduct of several factors, some within the Board's control and others outside of the Board's control, including, but not limited to:

- Almost a 100% increase in consumer complaint volume and case processing from FY 2013-2014 to FY 2016-2017.
- Interdepartmental fee increases for the AG and OAH.

- Legislative mandates enacted by SB 304 (Lieu, Chapter 515, Statutes of 2013) to enact the Veterinary Assistant Controlled Substance Permit (VACSP) program. SB 1480 (Hill, Chapter 571, Statutes of 2018) increases veterinary premises inspections to 20% of premises per year and will require hiring of three additional staff to the Board to manage increased workload, which would be directly funded by the increased fees.
- Revenues from the VACSP program have materialized at a slower rate than projected leading to a deficiency in needed revenue from the program.
- Increases to Personnel Services including general salary increases negotiated by the State and mandated health care and retirement contributions.
- Intradepartmental increases in pro rata including the DOI, Office of Professional Examination Services (OPES), and BreEZe database costs.
- Increase in Subject Matter Expert and Hospital Inspector contracted compensation.
- Increases in authorized staff positions from 12.8 in FY 2013-2014 to 23.8 in FY 2014-2015 and ongoing for the enforcement, premises inspection, and VACSP programs.

The Board's last fee schedule increase was effective in March of 2012. At that time, the Board noted its need for increased fees were due to increased costs to personnel, DOI, AG, and other general costs. These costs have continued to climb; in addition, an increased enforcement workload has contributed to higher expenditures specific to the DOI, AG, and OAH.

Consumer Complaint Volume:

Between FY 2012-2013 and FY 2016-2017, the Board has seen a 100% increase in consumer complaints submitted annually against Board licensees from approximately 450 complaints filed in FY 2012-2013 to over 1,000 complaints submitted in FY 2016-2017. These additional consumer complaints have directly led to increased expenditures for investigations by the DOI, filing of formal discipline with the AG, and conducting disciplinary hearings with the OAH.

The additional expenditures required the Board to request and obtain (using a provision in the Governor's budget) a mid-FY 2016-2017 increase of an additional \$324,000 to its AG and OAH appropriation. Additionally, the Board was approved for a permanent appropriation increase of \$176,000 beginning in FY 2017-2018 and ongoing to its AG and OAH appropriation in an attempt to satisfy increased expenditures and workload.

Increases to the Board's AG and OAH appropriation, however, have proven insufficient to fund the Board's growing workload and expenditures in FY 2017-2018 and beyond. For example, AG expenditures are projected at more than \$840,000 in the current FY, whereas the Board is only appropriated \$560,000 for these expenditures. Without the fee increase, the AG expenditures were projected to be fully expended by March 2018, and the Board was unable to redirect resources to fund the rising AG, OAH, and DOI costs. Consequently, the Board would have fully expended all appropriated funding for all other cost areas. The Board requested, and was approved, for a mid-FY increase to its AG and OAH appropriation due to increased revenues obtained from the emergency filing for a fee increase.

Without the additional revenue provided by the fee schedule increase, the Board was severely limited in its ability to seek a mid-FY increase to its AG and OAH appropriation, similar to the Board's request and approval in FY 2016-2017, as there were inadequate funds in its Contingent Fund to support the adjustment. Consequently, the Board was expected to exhaust its current enforcement appropriation by March 2018, and be forced to cease its disciplinary enforcement activities at that time. By ceasing disciplinary proceedings, the Board would have been unable to forward formal disciplinary complaints to the DOI for investigation and cases to the AG for discipline. Investigations and cases sent to the DOI and AG include the most egregious violations of the Act that lead to license suspensions, probation, and license revocations. The Board would further have been forced to cancel all hearings with the OAH, that are scheduled six to eight months in advance, which would delay the adjudication of the most serious cases of consumer and animal harm and allow dangerous practitioners to continue practicing veterinary medicine. Any interruption to additional revenues through its emergency fee increase would severely impact the Board's ability to conduct operations including the Board's ability to continue its enforcement operations. The emergency rulemaking to increase the Board's regulatory fee schedules increased the Board's revenues to ensure that the Board complies with its mandated and prudential Fund Condition reserves, and, as of March 5, 2018, allowed it to request additional spending authority for enforcement activities, and maintain the Board's solvency. Because of the adoption of the emergency regulations, the Board has been able to resolve some of the insolvency it was facing and has been able to continue processing disciplinary case proceedings, which otherwise would have ceased as of March 2018. However, this increase is only temporary, and the emergency still exists. Without permanent implementation of these regulations, the Board will not be able to maintain solvency.

BreEZe Database Costs:

In FY 2011-2012, DCA contracted with an information technology vendor to provide all boards and bureaus within DCA a new integrated licensing, inspections, and enforcement database, BreEZe. BreEZe costs are paid by each board or bureau using the database. Through FY 2016-2017, BreEZe program costs to the Board have been approximately \$795,000 with an additional \$675,000 in project costs projected through FY 2019-2020. There has been no additional revenue to offset expenditures for the new integrated database. The extent of total BreEZe costs to the Board was unanticipated, as project costs early in the project life-cycle were unknown and have increased considerably from initial projections.

Increase in Authorized Staff Positions:

In FY 2014-2015, the Board was approved for an additional 11.0 staff (that doubled the Board staffing size) for the Board's enforcement program, inspections program, and the new VACSP program. The additional staff added a \$937,000 expenditure ongoing to be paid from the Board's Fund. To fund a part of this expenditure, the Board projected additional revenue from VACSP program fees upon implementation of the new license and, at the time, the Board's

Fund Condition was healthy with no additional revenue necessary to fund the additional staff. However, the Board was unable to begin accepting VACSP applications until October of 2016 due to the timeline to promulgate regulations and the delayed implementation of the new BreEZe database project. By the time VACSP applications were accepted and program revenues were beginning to be collected in October of 2016, the Board's Contingent Fund had shrunk to approximately four (4) months of annual authorized expenditures.

VACSP Program Revenue:

The VACSP program has been registering veterinary assistants at a slower pace than projected, which has further reduced revenue estimates. The Board previously anticipated that approximately 10,000 veterinary assistants working in the State would register with the Board over a two-year period beginning in FY 2016-17. However, because the VACSP requirement is new to the industry and because many current veterinary assistants are uncertain and/or unaware of the VACSP requirement, VACSP revenue has been slower to materialize than projected therefore resulting in less revenue than anticipated.

Fee Audit:

To assess the extent of the Board's structural imbalance and need for additional revenue, staff contracted with Capitol Accounting Partners (CAP) in December of 2016 to conduct a comprehensive fee audit and report that included a cost analysis of the Board's Administrative, Licensing, Premises and Enforcement programs as well as prepare fee and revenue projections and recommendations (see attached Tab A, *Capitol Accounting Partners Audit Report*). The CAP audit report recommended that to be structurally solvent, the Board must immediately generate at least \$5.3 million in total revenue each FY to fund its operational costs and maintain the mandatory healthy reserve of 3-10 months in its Contingent Fund. Currently, the Board's fees generate approximately \$4.3 million in revenues, leaving a shortfall of approximately \$1 million. The Board's fee schedule increase proposal focuses on fees that generate 97% of the Board's revenue by drawing from fee categories with a larger volume of fees as opposed to smaller fee sources where the impact to the fee, and, ultimately, the number of individual applicants or licensees, must be greater to make up the requisite revenue. Specific fees were calculated based on total additional revenue required to maintain fund solvency, the Board's fee audit, a review of each licensee's ability to absorb an increase to individual fees, and comparative analysis of similar professional fees.

Fund Condition Statements:

With the re-adoption of the emergency regulation proposal, the Board is providing two additional Fund Condition Statements as follows:

- 1) Projected Budget - Status Quo Fund Condition – no fee increases with updated FY 2017-18 and FY 2018-19 revenue estimates which display lower VACSP revenues.
- 2) Projected Budget – Projected Fund Condition with Emergency Fee Schedule Increase – effective March 1, 2018.

The Status Quo Fund Condition without a fee increase reflects the Board’s Fund Condition prior to the emergency fee schedule increase and continued need for immediate additional revenue.

The Projected Fund Condition with emergency fee schedule increase reflects a scenario in which the Board has actualized revenues from the March 2018 fee increase and elimination of the structural imbalance to maintain a healthy reserve of 3-10 months in the Board’s Contingent Fund. This shows that the emergency regulations implementation is needed and effective in resolving the Board’s insolvency.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Amend California Code of Regulations, title 16, division 20, article 7 (CCR), sections 2070 and 2071.

Existing laws authorize the Board to charge fees for eligibility application, examination, initial licensure application, temporary licenses, license renewals, and delinquent renewals. The Board is a self-supporting, special fund agency that generates its revenue from initial application and licensing fees. The Board is proposing to maintain its increase to fees as detailed in Table 1 below.

Table 1. Fee Schedule

Revenue Category	Fees	
	BEFORE 3/5/18 EMERGENCY REGULATIONS	AFTER 3/5/18 EMERGENCY REGULATIONS
Section 2070 - Registration and Renewal Fees for Veterinarians		
Application Eligibility Review	\$125.00	\$150.00
California State Board Exam	\$200.00	\$235.00
Initial License	\$290.00	\$350.00
Biennial Renewal	\$290.00	\$350.00
Temporary License	\$150.00	\$175.00
Delinquent Renewal	\$25.00	\$35.00
Section 2070 - Registration and Renewal Fees for Veterinary Premises		
Initial Registration	\$200.00	\$400.00
Annual Renewal Registration	\$200.00	\$400.00
Delinquent Renewal	\$25.00	\$35.00

Section 2071 - Application, Registration, and Renewal Fees for Registered Veterinary Technicians		
Application Eligibility Review	\$125.00	\$150.00
California Veterinary Technician Exam	\$175.00	\$200.00
Initial Registration	\$140.00	\$160.00
Biennial Renewal	\$140.00	\$160.00
Delinquent Renewal	\$25.00	\$35.00

The Board removed reference in CCR sections 2070 and 2071 to a March 1, 2012 effective date, as these emergency regulations would take effect upon approval by OAL on the Board's requested effective date as noted on the Notice Publication/Regulations Submission form (STD. 400 [Rev. 01-2013]).

The Board removed reference in CCR sections 2070, subdivision (d), and 2071, subdivision (c), to initial license fees issued for less than one year because the Board does not issue initial licenses for periods less than one year. The Board issues initial licenses for a minimum one-year period, and not more than two years. The Board elected to issue initial licenses for at least one year in order to expedite and streamline issuance of initial licenses that were causing confusion to applicants who were unsure of which initial license fee to pay upon application for their initial license.

After conducting a review for any regulations that would relate to or affect this area, the Board evaluated this regulatory proposal and found it is not inconsistent or incompatible with existing regulations.

PURPOSE, ANTICIPATED BENEFIT, AND RATIONALE:

The Board's highest priority is consumer protection. The Board achieves this important priority by ensuring applicants meet education and training requirements for licensure, inspecting veterinary premises, investigating complaints against applicants and licensees, and disciplining of applicants and licensees for violations of the Act. The Board is fully funded by application and licensing fees and therefore without adequate financial resources, the Board is unable to operate at a capacity that fulfills its highest priority of consumer protection.

Due to recent dramatic increases in consumer complaint volume that has led to higher AG and OAH expenditures, continued high BreEZe database system administration costs, and recent increases to personnel expenditures due to a focus on elimination of Board staff vacancies, the Board's Contingent Fund was in jeopardy of falling below a 3-month reserve for annual expenditures and ultimate insolvency. Revenues prior to the adoption of the emergency regulations were unable to bridge the over \$1 million shortfall between yearly revenues and expenditures. The Board was unable to redirect resources from other budgeted program areas as resources were not available for this purpose.

Immediate action to increase the regulatory fees collected by the Board was required, and the re-adoption of these emergency regulations is necessary in order to allow sufficient time for the certificate of compliance to be completed, due to the length of time needed for the package go through the 45-day public notice period, proceed through DCA for a final review and be submitted to OAI. The Board has taken the necessary steps to expedite the process of ensuring the certificate of compliance would be to OAL within the 180-day certification period, but due to circumstances beyond the control of the Board, a re-adoption is needed to ensure that the certificate can be timely completed and the regulations be made permanent. The increased fees have increased the Board's revenues and made funding available to continue the Board's enforcement, premises inspections, and licensing operations, but the fee increase provided in the March 5, 2018 emergency regulations must continue past the initial 180 days in order to provide time for the completion certificate to be noticed by OAL and make the regulations permanent to stabilize the Fund Condition.

The filing and approval of the re-adoption of fee schedule emergency regulations to increase the regulatory fees will continue to provide the Board with resources necessary to fund its operations and fulfill its mission of consumer protection. Any restriction to the Board's ability to collect increased fees would dramatically affect Board operational functions, threaten the Board's ability to achieve its mission and statutory mandate of consumer protection, and place the public in jeopardy of being harmed by allowing dangerous practitioners to continue practicing veterinary medicine.

UNDERLYING DATA:

1. Initial Emergency Regulatory Rulemaking File
2. Notice of Approval of Emergency Regulatory Action for Fee Schedule, effective March 5, 2018
3. Notice of Approval of Re-Adoption of Emergency Regulatory Action for Fee Schedule, effective September 5, 2018
4. Projected Budget – Status Quo Fund Condition
5. Projected Budget – Projected Fund Condition with emergency fee schedule increase – effective March 1, 2018

AUTHORITY AND REFERENCE:

Pursuant to the authority vested in sections 4808, 4842.5, and 4905 of the Business and Professions Code, the Board is proposing changes to sections 2070 and 2071 of article 7 of division 20 of title 16 of the California Code of Regulations.

FISCAL IMPACT ESTIMATES:

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: The anticipated additional revenue from the proposed fee increase will increase the Board’s revenue from current to approximately \$1,340,000 additional revenue per FY ongoing.

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: This regulation may have an economic impact on businesses, specifically, veterinary premises (hospitals). The regulation would impose additional fees on the initial and renewal registration of veterinary premises.

Specific annual veterinary premises cost impacts ongoing are shown in Table 2 below:

Table 2. Cost Impact – Veterinary Premises

Revenue Category	Population	Fee Increase Amount	Annual Increase Amount
Initial Registration - Veterinary Premises	300	\$200	\$60,000
Annual Registration - Veterinary Premises	3,500	\$200	\$700,000
Delinquent Renewal – Veterinary Premises	125	\$10	\$1,250

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant 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 of Representative Private Person or Business: This regulation may have an economic impact on private persons or businesses, specifically, veterinary, veterinary technician, and veterinary premises applicants and licensees. The regulation would impose increased fees on the initial and renewal of veterinary, veterinary technician, and veterinary premises licenses. Specific annual applicant and licensee cost impacts ongoing are shown in Table 3 below:

Table 3. Cost Impact - Applicant and License Population

Revenue Category	Population	Fee Increase Amount	Annual Increase Amount
Application Eligibility Review - Veterinarian	700	\$25	\$17,500
California State Board Exam	700	\$35	\$24,500
Initial License - Veterinarian	575	\$60	\$34,500
Biennial Renewal - Veterinarian	6,175	\$60	\$370,500
Temporary License - Veterinarian	25	\$25	\$625
Initial Registration - Veterinary Premises	300	\$200	\$60,000
Annual Registration - Veterinary Premises	3,500	\$200	\$700,000
Delinquent Renewal - Veterinarian	250	\$10	\$2,500
Delinquent Renewal – Veterinary Premises	125	\$10	\$1,250
		Total	\$1,211,375
Application Eligibility Review – Veterinary Technician	970	\$25	\$24,250
California Veterinary Technician Exam	970	\$25	\$24,250
Initial Registration - Veterinary Technician	615	\$20	\$12,300
Biennial Renewal - Veterinary Technician	3,275	\$20	\$65,500
Delinquent Renewal - Veterinary Technician	250	\$10	\$2,500
		Total	\$128,800

Effect on Housing Costs: None