

TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
Division 20. Veterinary Medical Board

Initial Statement of Reasons

Hearing Date: The Veterinary Medical Board (Board) has not scheduled a hearing on the proposed changes. However, a hearing will be scheduled upon request by any interested party if the request is received no later than 15 days prior to the close of the written comment period.

Subject Matter of Proposed Regulations: Fee Schedule

Sections Affected: Sections 2070 and 2071, Article 7, Division 20, Title 16 of the California Code of Regulations (CCR).

Background and Introduction:

The Board submitted an Emergency Rulemaking File to the Office of Administrative Law (OAL) in February of 2018, which was approved on March 5, 2018. The Board is now submitting the adopted regulation, rulemaking file, and certificate of compliance in accordance with the requirements of Government Code section 11346.1, subdivision (e).

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. The Board is a self-supporting, special fund agency that generates its revenues from fees charged for licensing and registration. In order to perform its regulatory, licensing, inspection, and disciplinary functions, the Board must generate sufficient revenues from fees associated with licensing and registration. The Board is also required to maintain a Fund Condition reserve of no less than three (3) months and no more than ten (10) months of annual authorized expenditures. (BPC section 4905(o).)

Beginning in Fiscal Year (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, which, in its current state, is declining and unable to subsidize the structural imbalance.

The Board's last fee schedule increase was effective in March 2012. At that time, the Board noted its need for increased fees were due to increased costs for services provided by the Division of Investigation (DOI) and Attorney General's Office (AG), personnel, 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 Office of Administrative Hearings (OAH).

As the Board's costs associated with performing its core functions have risen sharply, the Board is currently experiencing a severe fiscal imbalance. This proposal would increase fees associated with veterinarian licensure and premises permit and registered veterinary technician registrations so that the Board can continue to perform its core functions and properly protect the public.

Problem being addressed:

Typically, a board's revenue funds its total authorized expenditures for each Fiscal Year (FY)¹. The majority of the Board's revenue is generated by charging fees for certain services provided by the Board, including application review fees, examination fees, miscellaneous fees, initial license fees, and license renewal fees. This revenue funds Board operations that include staffing, examination development, administrative and licensing operations, veterinary hospital inspections, and enforcement operations. The Board does not receive General Fund monies to support its operations.

In addition to revenue generated to fund its expenditures, the Board collects revenue to deposit into a Contingent Fund. The Board's Contingent Fund is mandated by the BPC² and funds operations when authorized expenditures are higher than revenue generated by fees.

Not all Board operations generate revenue for expenditures. For example, enforcement operations account for more than 60% of the Board's overall expenditures; however, there is no directly correlated revenue generated to fund these expenditures. For licensing boards generally, licensing and renewal fees are charged at an appropriate level to fund licensing, administrative, and enforcement operations.

Currently, in FY 2017-2018, the Board has dropped below its Contingent Fund floor of no less than three months of annual authorized expenditures and is projected to be insolvent in FY 2018-2019 as reflected in the December 2017 memorandum to the Board. (See Tab 5.c.)

The Board's current structural imbalance is a byproduct of several factors, some within the Board's control and others outside of the Board's control. These factors include the following:

- Almost a 100% increase in consumer complaint volume and case processing from FY 2013-2014 to FY 2016-2017.
- Interdepartmental fee increases for services performed by the AG and OAH.
- Legislative mandates enacted by Senate Bill (SB) 304 (Lieu, Chapter 515, Statutes of 2013) to increase veterinary premises inspections to 20% of premises per year and to enact the Veterinary Assistant Controlled Substances Permit (VACSP) program.
- 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, 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.

To address the Board's structural imbalance and need for additional revenue, staff contracted with Capitol Accounting Partners (CAP) in December 2016 to conduct a comprehensive fee audit and report that included cost analysis of the Board's administrative, licensing, premises and enforcement programs as well as prepared fee and revenue projections. The CAP fee audit and

¹ The State Fiscal Year is July 1 through June 30.

² In accordance with BPC Section 4905, the Board's Contingent Fund shall not have less than 3 months or more than 10 months reserve of annual authorized expenditures in the Fund.

report was presented to the Board at its July 26, 2017 meeting. (Tab 5.b, Agenda Item 12) Additionally, staff researched other Department of Consumer Affairs (DCA) boards for fee equivalency within its applicant and licensing populations.

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 (Tab 5.b, Agenda Item 23.B, July Enforcement Report). 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 (using a provision in the Governor's budget to request and obtain mid-FY increases to AG and OAH appropriations) and obtain 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 \$900,000 in the current FY, whereas the Board has appropriated only \$560,000 for these expenditures. (Tab 5.b, Agenda Item 23.A, July Administrative/Budget Report) The Board is unable to redirect resources to fund the rising AG, OAH, and DOI costs as the Board will fully expend all appropriated funding for all other cost areas and is again seeking a mid-FY increase to AG and OAH appropriations

Without additional revenue provided by a fee schedule increase, the Board is severely limited in its ability to request a permanent increase to its AG and OAH appropriation, as there are inadequate funds in its Contingent Fund to support the adjustment. Consequently, absent additional AG and OAH spending authority, the Board would be forced to cease its disciplinary enforcement activities absent a fee increase. By ceasing disciplinary proceedings, the Board would be 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's office 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 be forced to cancel OAL hearings, that are scheduled 6-8 months in advance, and delay the adjudication of the most serious cases of consumer and animal harm, allowing dangerous practitioners to continue practicing veterinary medicine.

BreEZe Database Costs:

In FY 2011-2012, the 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 (Tab 5.b, Agenda Item 23.A, July Summary of Expenditures). There has been no additional revenue to offset expenditures for the new integrated database.

Increase in Authorized Staff Positions:

In FY 2014-2015, the Board was approved for an additional 11.0 staff (doubling the Board staffing size) for the Board's enforcement program, inspections program, and the new Veterinary Assistant Controlled Substances Permit (VACSP) program. The additional staff added a \$937,000

expenditure ongoing to be paid from the Board's Fund. (Tab 5.b, Agenda Item 23.A, July Administrative/Budget Report) 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 being 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 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 registration requirement is new to the industry and because many current veterinary assistants are uncertain and/or unaware of the VACSP registration requirement, VACSP registration revenue has been slower to materialize than projected, resulting in less revenue than anticipated in the first two years of the permit program.

Fee Audit:

The Capitol Accounting Partners (CAP) audit report (Tab 5.b, Agenda Item 12), completed by an independent contractor in December of 2016, confirmed the structural imbalance of the Board and the need for additional revenue. 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 Contingent Fund reserve of 3-10 months. The audit showed the Board's fees generate approximately \$4.3 million in revenues, leaving a structural imbalance 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.

Specific Purpose, Anticipated Benefit, and Factual Basis/Rationale:

Amend Section 2070 (Registration and Renewal Fees for Veterinarians) and 2071 (Application, Registration and Renewal Fees for Registered Veterinary Technicians) of Article 16 of Division 20 of Title 16 of the CCR

Purpose: The Board is proposing to amend CCR section 2070 and 2071 regarding application and renewal fees for veterinarians, veterinary technicians, and veterinary premises. Application and renewal fees generate Board revenue to support Board operating expenditures.

Amend Section 2070(a), (b), and (d) through (j), and Section 2070 (a) – (e)

The Board is currently operating with a structural imbalance, and there is a deficiency of revenues to fund ongoing expenditures. Additionally, the Board is not able to generate enough revenue to bolster its Contingent Fund as required in BPC Section 4905. Due to these factors, the Board is proposing to increase fees to a level that would fund its ongoing expenditures, as well as

complying with its statutorily mandated Contingent Fund.

Fee Increases

The Board is proposing to increase the fees listed in CCR sections 2070 and 2071 as reflected in Table 1 below:

Table 1. Fee Schedule

Revenue Category	Fees	
	CURRENT	NEW
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

Anticipated Benefits and Rationale

Based on the current Board fund condition, CAP audit report, and various staff research, it was determined that an all-inclusive fee increase was necessary to maintain the Board's structural solvency and increase the statutorily mandated Contingent Fund.

The Board fund condition, as prepared for the Board at its July 2017 Meeting³ (Tab 5.b, Agenda Item 23.A), reflects a structural imbalance between revenue and expenditures resulting in a revenue deficit of approximately \$1 million for FY 2016-2017. The Contingent Fund (see "Months in Reserve" on the fund condition, Tab 5.b, Agenda Item 23.A, page 5) reflects a diminishing reserve and is projected to fall below the mandated minimum of three months in future FYs at current revenue projections. As the structural imbalance continues in future FYs, the Board's

³ Fund condition is for FY 2016-2017, as of fiscal month 11 (May 2017)

Contingent Fund will decline to a level that would put the Board at risk of insolvency, severely impacting its mandate of consumer protection.

As captured in the CAP audit report, 45% of the Board’s revenue comes from initial application, licensing, and examination fees. Approximately 52% of revenue is generated by renewal fees, and 3% of miscellaneous transactions such as delinquency fees, duplicate license fees, and address fine fees. Enforcement operations were shown to be increasing and are a significant portion of the Board’s overall expenditure authority at greater than 60% of the Board’s overall expenditures.

The CAP audit report concludes and recommends that to be structurally solvent, the Board must generate at least \$5.3 million in revenue each year to fund its operational costs while maintaining a healthy reserve of 3-10 months in its Contingent Fund. As noted previously, the audit showed fees generate approximately \$4.3 million in revenue, leaving a shortfall of approximately \$1 million below the CAP audit report’s recommended revenue.

Board staff researched other DCA boards for fee equivalency with similar licensed professionals (see Table 2. below). The comparative analysis reflected that the Board’s current fees are largely below those fees of other similar licensed professionals.

Table 2. Similar Department Board Fees Structure - Licensees

	Veterinary Medical Board	Physical Therapy Board	Dental Board and Dental Hygiene Committee	Board of Psychology	Board of Pharmacy
License Type	Fee	Fee	Fee	Fee	Fee
Facility Location License	\$200	\$520	N/A	N/A	\$671
Doctor Level License	\$290	\$360	\$525	\$420	\$360
Technician Level License	\$140	\$140	\$160	N/A	\$140
Assistant Level License	\$50	N/A	\$70	\$40	N/A

Based on the Board Fund Condition, CAP audit report, and staff research, the Board proposes to increase only the fees that generate 97% of the Board’s revenue (45% revenue from initial application fees, licensing, and examination fees plus 52% revenue from renewal fees); the miscellaneous transaction fees are largely already at their statutory maximum and cannot be increased.

The Board’s proposal factors in the total workload volume of each fee. For example, renewal fees will always generate a larger percentage of revenue due to the exponentially larger number of renewal applications received versus initial eligibility applications, so the proposal increases renewal fees to cover the greater amount of work necessary to process those renewal applications. This methodology more equitably distributes the overall fee increase across applicants and licensees.

A breakdown of the percentage of increase in fees (e.g., initial application, licensing, examination, and renewal fees) affecting each licensing population, is as follows:

- 20% increase to veterinarian fees;
- 14% increase to registered veterinary technicians (RVTs) fees; and
- 100% increase to hospital premises fees.

The CAP audit report concluded that in order to be structurally solvent, the Board must generate \$5.3 million in revenue each year to fund its operational costs while maintaining a healthy reserve of 3-10 months in its Fund (Tab 5.b, Agenda Item 12). Currently, the Board's fees generate approximately \$4.3 million in revenue, thereby leaving a shortfall of approximately \$1 million below the CAP audit's recommended revenue. When the Board deliberated, they set the fee increase amounts per each category in order to meet the \$1 million in revenue shortage they were advised to raise to obtain fiscal stability.

The Board also considered the fee increases based on the ability of the individual applicant or licensee to absorb the increased costs. For example, the 100% hospital fee increase is based on the determination that veterinary hospital premises can absorb a larger fee increase due to the larger amounts of revenue that they generate, as opposed to an individual applicant or licensee. In addition, the Board chose a smaller increase to RVT fees because it would be more financially taxing and difficult for RVTs to absorb a higher fee increase than that of a veterinarian or a hospital premises based on their earning ability. Further, examination fees collected for the California RVT examination do not account for actual costs of development, preparation, and administration of the examination. Consideration of the lower salary levels of RVTs (as compared to veterinarians) has always been a factor in attempting to keep RVT licensure fees reasonable. However, the Board is no longer able to subsidize the operating expenses of the California RVT examination and must increase fees.

Additionally, the Board chose specific fee increases based on other similar Department board fees. The fees from boards with licensees similar to the Board reflected that the Board had one of the smaller fees per license type and consequently used the fee structure from other boards as a basis for modifying the proposed increase to Board fees. The Board opted not to increase the fees for veterinarians or RVTs to the statutory CAP to accommodate these licensees while still staying comfortably within the required Contingent Fund status. These proposed fee increases would resolve the structural imbalance of the Board, while maintaining compliance with BPC section 4905.

The Board has been able to operate within its existing budget by carefully monitoring expenditures and being conservative on purchases. However, due to the increasing costs outside the Board's control as noted above, the Board's budget analyst's projections over the next five years show the need for a fee increase. The Board is very aware of the current fiscal climate in California, and the proposed fee increases are designed to be as conservative as possible while creating a solvent Contingent Fund to ensure that the Board has funds to carry out its consumer protection mandate.

Amend Sections 2070 and 2071 – March 21, 2012 Licensing Period Deletion

Purpose:

The Board proposes to delete reference in CCR sections 2070 and 2071 to the March 1, 2012 licensing period effective date as that reference is now outdated. These regulations were approved under Emergency Rulemaking status and took effect upon approval by the OAL and

filing with the Secretary of State on March 5, 2018.

Anticipated Benefits and Rationale:

By removing the reference to the March 1, 2012 effective date in CCR section 2070 and 2071, the Board will be providing clarity and consistency to the sections because this reference is outdated and the proposed regulations have been approved by OAL effective March 5, 2018.

Amend Section 2070(d) and 2071(c) - Fees for License/Registration Less than One Year

Purpose:

The Board also proposes to remove reference in CCR sections 2070(d) and 2071(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.

Anticipated Benefits and Rationale:

By removing the reference to initial license fees issued for less than one year in CCR section 2070(d) and 2071(c), the Board will be providing clarity and consistency to the sections because the Board does not issue initial licenses for periods less than one year.

Underlying Data

- a) Memorandum to the Board – January 4, 2017 with attachments (Tab 5.a)
- b) Memorandum to the Board - July 10, 2017 with attached CAP audit report (Tab 5.b)
- c) Memorandum to the Board – July 2017 regarding Administrative/Budget Report (Tab 5.b)
- d) July 2017 Enforcement Report (Tab 5.b)
- e) Memorandum to the Board – December 11, 2017 with attachments (Tab 5.c)
- f) Minutes from the January 18 and 19, 2017 Veterinary Medical Board Meeting (Tab 5.a)
- g) Minutes from the July 26 and 27, 2017 Veterinary Medical Board Meeting (Tab 5.b)
- h) Minutes from the December 11, 2017 Veterinary Medical Board Teleconference (Tab 5.c)
- i) OAL Emergency Rulemaking File Approval, approved March 5, 2018 (Tab 5.d)

Business Impact

This regulation may have an economic impact on businesses, specifically, veterinary premises (hospitals). However, the Board has determined that the impact on veterinary premises will not be significantly adverse given the revenue generated annually by the premises in comparison to the cost of the permit. Additionally, Board staff researched other DCA boards for fee equivalency with similar licensed premises. The comparative analysis reflected that the Board's current fees are largely below those fees of other similar licensed facilities (Table 2. above).

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 3 below:

Table 3. 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

Economic Impact Assessment

The regulatory proposal will have the following effects:

The proposed rulemaking will not create businesses or jobs, or eliminate existing businesses or jobs within California because the proposed fees are anticipated to have minimal impact on businesses. The proposed rulemaking will not affect the expansion of businesses currently doing business within the state. The impact on businesses will be minimal and absorbable as this regulation specifically affects individual licensees and premises permit holders. This regulation may have an economic impact on private persons or businesses, specifically, veterinarian, veterinary technician, and veterinary premises applicants and licensees. The regulation would impose increased fees for the initial and renewal license and registration of veterinarians, veterinary technicians, and veterinary premises.

Specific annual applicant and licensee cost impacts ongoing are shown in Table 4 below.

Table 4. 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

The proposed regulations regarding fee schedules would resolve the Board's structural imbalance

which will allow the Board to continue with inspections and prosecuting individuals violating the Act through enforcement measures. By continuing these tasks, the Board will be protecting California consumers and their pets.

This regulatory proposal focuses on an increase in fee schedules in order to resolve the structural insolvency of the Board's Contingent Fund and does not affect worker safety.

This regulatory proposal focuses on an increase in fee schedules in order to resolve the structural insolvency of the Board's Contingent Fund and does not affect the state's environment.

Requirements for Specific Technologies or Equipment

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

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.