

**TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS  
DIVISION 20. VETERINARY MEDICAL BOARD**

**FINDING OF EMERGENCY**

**SUBJECT MATTER OF PROPOSED REGULATIONS:** Schedule of Fees

**SECTIONS AFFECTED:** Title 16, Division 20, California Code of Regulations (CCR) sections 2070 and 2071

**SPECIFIC FACTS SHOWING THE NEED FOR IMMEDIATE ACTION:**

The filing of this emergency rulemaking is necessary to avoid the imminent shutdown of the Veterinary Medical Board's (Board) enforcement activity, the impending insolvency of the Board, and the resulting serious harm to the public and their animals. The Board is experiencing significantly increased expenditures, a structural imbalance (between revenues and expenditures), and a rapidly declining Contingent Fund (i.e., "savings account") that will immediately impact the Board's ability to continue its enforcement efforts and severely limit 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 is threatened. Current FY 2017-2018 projections indicate the Board will over-expend its appropriated resources if major and critical consumer protection programs, such as enforcement and hospital inspection, are not curtailed. Ultimately, this would lead to the Board ceasing all disciplinary case proceedings as soon as March 2018 once it has expended its appropriation for those expenditures. By ceasing disciplinary proceedings, the Board will be unable to forward formal disciplinary complaints to the Division of Investigation for investigation and cases to the Attorney General's for discipline. Investigations and cases sent to the Division of Investigation and Attorney General's office include the most egregious violations of the Veterinary Medicine Practice Act that lead to license suspensions, probation, and license revocations. The Board will further be forced to cancel all Office of Administrative Law hearings, that are scheduled 6-8 months in advance, that delay the adjudication of the most serious cases of consumer and animal harm and allow dangerous practitioners to continue practicing veterinary medicine.

Additionally, without immediate action to increase and stabilize the Board's revenues, the Board will be unable to request an increase to its Attorney General and Office of Administrative Hearings appropriation, because State budgeting rules require stable revenue or a healthy Contingent Fund to support the request.

This emergency rulemaking to increase the Board's regulatory fee schedules will increase the Board's revenues to ensure that the Board complies with its mandated and prudential Fund

Condition reserves, allow it to request additional spending authority for enforcement activities, and maintain the Board's solvency.

The Board anticipated an increase to consumer complaints, obtained permanent appropriation authority to increase the Attorney General and Office of Administrative Hearings funding in FY 2017-2018, and was preparing to file a regular rulemaking, 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 Attorney General and Office of Administrative Hearings expenditures, the Board is unable to file regulations through the regular rulemaking process as they are anticipated to take 12 months to become effective.

### **Background:**

In accordance with Business and Professions Code (BPC) Section 4800.1, the Veterinary Medical Board's (Board) 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 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 Fiscal Year 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.

In current FY 2017-2018, the Board is 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 (see attached Memorandums to the Board).

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, 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 Attorney General and Office of Administrative Hearings.
- Legislative mandates 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 Division of Investigation, Office of Professional Examination Services, and BreZE 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, Division of Investigation, Attorney General, and other general costs. These costs have continued to climb; in addition, an increased enforcement workload has contributed to higher expenditures specific to the Division of Investigation, Attorney General, and Office of Administrative Hearings.

### **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 Division of Investigation, filing of formal discipline with the Attorney General, and conducting disciplinary hearings with the Office of Administrative Hearings.

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

Increases to the Board's Attorney General and Office of Administrative Hearings appropriation, however, have proven insufficient to fund the Board's growing workload and expenditures in FY 2017-2018 and beyond. For example, Attorney General expenditures are projected at more than \$840,000 in the current FY, whereas the Board is only appropriated \$560,000 for these expenditures. Attorney General expenditures are projected to be fully expended by March 2018 and the Board is unable to redirect resources to fund the rising Attorney General, Office of Administrative Hearings, and Division of Investigation costs as the Board will fully expend all appropriated funding for all other cost areas.

Without additional revenue provided by a fee schedule increase, the Board is severely limited in its ability to seek a mid-Fiscal Year increase to its Attorney General and Office of Administrative Hearings appropriation, similar to the Board's request and approval in FY 2016-2017, as there are inadequate funds in its Contingent Fund to support the adjustment. Consequently, the Board expects to exhaust its current enforcement appropriation as soon as March 2018, and will be forced to cease its disciplinary enforcement activities at that time, absent the proposed fee increase. By ceasing disciplinary proceedings, the Board will be unable to forward formal

disciplinary complaints to the Division of Investigation for investigation and cases to the Attorney General's for discipline. Investigations and cases sent to the Division of Investigation and Attorney General's office include the most egregious violations of the Veterinary Medicine Practice Act that lead to license suspensions, probation, and license revocations. The Board will further be forced to cancel all Office of Administrative Law hearings, that are scheduled 6-8 months in advance, that delay the adjudication of the most serious cases of consumer and animal harm and allow dangerous practitioners to continue practicing veterinary medicine.

### **BreEZe Database Costs:**

In FY 2011-2012, the Department of Consumer Affairs (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 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 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 Fiscal Year 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 this 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 registration 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 current status of the Board's Fund Condition, including the additional AG augmentation, and need for immediate additional revenue. The Projected Fund Condition with emergency fee schedule increase reflects a scenario by which the Board would actualize revenues from a March 1, 2018 fee increase and eliminate its current structural imbalance to maintain a healthy reserve of 3-10 months in its Contingent Fund.

### **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 increase fees as detailed in Table 1 below.

**Table 1. Fee Schedule**

Revenue Category	Fees	
	CURRENT	NEW
Application Review - Veterinary	\$125.00	\$150.00
California State Board Exam	\$200.00	\$235.00
Initial License - Veterinary	\$290.00	\$350.00
Biennial Renewal - Veterinary	\$290.00	\$350.00
Temporary License - Veterinary	\$150.00	\$175.00
Initial Registration - Veterinary Premise	\$200.00	\$400.00
Annual Registration - Veterinary Premise	\$200.00	\$400.00
Delinquent Renewal - Veterinary	\$25.00	\$35.00
Application Review – Veterinary Technician	\$125.00	\$150.00
California Veterinary Technician Exam	\$175.00	\$200.00
Initial Registration - Veterinary Technician	\$140.00	\$160.00
Biennial Renewal - Veterinary Technician	\$140.00	\$160.00
Delinquent Renewal - Veterinary Technician	\$25.00	\$35.00

The Board removed reference in CCR Section 2070 and 2071 to a March 1, 2012 effective date as these emergency regulations will take effect upon approval by the Office of Administrative Law and 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 Section 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.

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 Veterinary Medicine Practice Act (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 Attorney General and Office of Administrative Hearings 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 is currently in jeopardy of falling below a 3-month reserve for annual expenditures and ultimate insolvency. Current revenues are unable to bridge the over \$1 million shortfall between yearly revenues and expenditures. The Board is unable to redirect resources from other budgeted program areas as resources are not available for this purpose.

Immediate action to increase the regulatory fees collected by the Board is required. The increased fees will increase the Board's revenues and funding available to continue uninterrupted the Board's enforcement, premises inspections, and licensing operations.

The filing and emergency approval of these proposed regulations to increase regulatory fees will provide the Board with resources necessary to fund its operations and fulfill its mission of consumer protection. Filing proposed regulations through the regular rulemaking process is anticipated to take 12 months to effectuate and would then only begin generating additional needed revenue, which would require the Board to restrict its core operations including slowing its ability to process applications, reduce the inspection of veterinary premises, curtail investigations, and limit the Board's ability to adjudicate violations of the Act in an expedient manner. This restriction to the operational functions of the Board would threaten the Board's ability to achieve its mission and statutory mandate of consumer protection and would place the public in jeopardy of being harmed by allowing dangerous practitioners to continue practicing veterinary medicine.

#### **UNDERLYING DATA:**

- Memorandum to the Board – July 10, 2017 with attachments
- Memorandum to the Board – December 11, 2017 with attachments
- Fund Condition Statements –
  - Projected Budget - Status Quo Fund Condition – No fee increase with revised FY 2017-18 and FY 2018-19 revenues and \$500,000 current year Attorney General augmentation
  - Projected Budget - Proposed Fund Condition - Fee increase effective March 1, 2018, with \$500,000 current year Attorney General augmentation

#### **AUTHORITY AND REFERENCE:**

Pursuant to the authority vested sections 4808, 4842.5, and 4905 of the Business and Professions Code, the Board is proposing changes to section 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 Fiscal Year 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**

<b>Revenue Category</b>	<b>Population</b>	<b>Fee Increase Amount</b>	<b>Annual Increase Amount</b>
Initial Registration - Veterinary Premise	300	\$200	\$60,000
Annual Registration - Veterinary Premise	3,500	\$200	\$700,000

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, veterinary assistants, and veterinary premises applicants and licensees. The regulation would impose additional fees on the initial and renewal of veterinary, veterinary technician, veterinary assistants, and veterinary premises.

Specific annual applicant and licensee cost impacts ongoing are shown in Table 3 below:



**Table 3. Cost Impact - Applicant and License Population**

Application Review - Veterinary	700	\$25	\$17,500
California State Board Exam	700	\$35	\$24,500
Initial License - Veterinary	575	\$60	\$34,500
Biennial Renewal - Veterinary	6,175	\$60	\$370,500
Temporary License - Veterinary	25	\$25	\$625
Initial Registration - Veterinary Premise	300	\$200	\$60,000
Annual Registration - Veterinary Premise	3,500	\$200	\$700,000
Delinquent Renewal - Veterinary	250	\$10	\$2,500
		Total	\$1,210,125
Application 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