

**Title 16. Professional and Vocational Regulations
Division 20. Veterinary Medical Board**

Final Statement of Reasons

Hearing Date: None

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).

Updated Information:

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

The regulatory Fee Schedule proposal was submitted as an emergency regulation, approved by the Office of Administrative Law (OAL) and went into effect on March 5, 2018. Per Government Code section 11346.1(e), the Veterinary Medical Board (Board) is required to submit a regular notice and comment period and full rulemaking file (known as a Certificate of Compliance) within 180-days from the effective date of the emergency regulation. The Board can re-adopt the emergency regulation through two 90-day extensions if additional time is needed past the initial 180-days.

On August 1, 2018, OAL approved a 90-day re-adoption of the emergency regulations and on October 16, 2018, OAL approved a second 90-day re-adoption of the emergency regulations.

The Certificate of Compliance for the fee schedule action was noticed by OAL on October 12, 2018, which began the 45-day comment period. The 45-day comment period closed on November 26, 2018. The Board received a total of seven (7) unique comments from five (5) responses: one (1) response was received during the initial emergency comment period, two (2) responses were received during the first re-adoption of the emergency regulations comment period, and two (2) responses were received during the Certificate of Compliance comment period. At the November 14, 2018 Board meeting, Board staff presented the comments received to the Board for their consideration and review and provided recommended responses to each comment. The Board made minor amendments to the provided comments and approved them for submission to OAL with the final statement of reasons.

Board staff aggregated the comments received and has provided responses and reasoning behind the responses below. As of Fiscal Year (FY) 2017-2018 – the last complete FY reported – increased fees enacted through the emergency rulemaking action are having a positive effect on the Board's Fund Condition Status and showing a positive trend relative to its Contingent Fund and the Board's Fund Balance over the next several FYs.

Following the approval of the emergency rulemaking, 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. Per Business and Professions Code (BPC) section 4905, the Board is required to maintain a reserve of no less than three (3) months and no more than ten (10) months of annual authorized expenditures. The January 10, 2017 Analysis of Fund Condition (see Tab F.1, page 9) reflected that, without a fee increase, the Board would be -0.8 months in reserve in FY 2019-2020. As identified in the

July 10, 2018 Analysis of Fund Condition (see Tab F.6), which reflects changes to the Board following the implementation of the fee increase, the Board will have 6.2 months of reserve for FY 2019-2020, thus remaining in compliance with BPC 4905. However, without permanent implementation of these regulations, the Board will not be able to maintain solvency.

Local Mandate: A mandate is not imposed on local agencies or school districts.

Small Business Impact:

The Board has determined that the proposed regulations may affect small businesses. This regulation may have an economic impact on businesses, specifically, veterinary premises (hospitals). The regulation would impose increased fees on the initial and annual renewal registration of veterinary premises. No alternatives were proposed to lessen the adverse economic impact on small businesses. Typically, a board's revenue funds its total authorized expenditures for each FY. 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. Due to the financial instability the Board was facing, and the only means of rectifying that instability was by generating additional revenue, the only reasonable option was to adopt the proposed fee increase.

Specific annual veterinary premises cost impacts ongoing are shown in Table 1:

Table 1: 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

The anticipated benefits of this regulatory proposal are:

By increasing licensing and registration fees, this proposal would generate sufficient funds for the Board to resolve its fiscal imbalance. In turn, the Board will be able to appropriate additional funds toward inspections and enforcement, which will protect California consumers and their pets by ensuring that licensees are complying with the Veterinary Medicine Practice Act (VMPA) and allowing for the prosecution of those licensees that are violating the VMPA. In addition to this, by amending sections 2070 and 2071, the Board will be complying with BPC section 4905, which requires the Board to maintain a reserve of no less than three (3) months and no more than ten (10) months of annual authorized expenditures.

Consideration of Alternatives:

The Board determined that no reasonable alternative to the proposal would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Board does not receive General Fund monies to support its operations. If the Board reduces its annual expenditures to mitigate the structural fund imbalance, the Board would be forced to cut

mission critical functions, which will jeopardize the public safety of California consumers. Based on the Board fund condition, the Capital Accounting Partners (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 fund reserve. Due to the financial instability the Board is facing, and the only means of rectifying that instability is by generating additional revenue, the only reasonable option is to adopt the proposed fee increase.

Objections or Recommendations/Responses:

The following recommendations and/or objections were made regarding the proposed action.

Emergency Regulation Comment (Comment period 02/21 – 02/28/2018)

- Summary of comment one (1):

The Board is not meeting projected numbers of veterinary assistant controlled substance permit (VACSP) applicants as originally anticipated, and there is a lack of revenue from the VACSP program because of this shortfall.

The Board should raise VACSP fees due to the lack of applicants projected.

- Board response to comment one (1):

Reject the comment. While the number of VACSP applicants has not met anticipated volume, this is not necessarily due to a Board overestimation. The veterinary assistant profession appears to have been slower to adopt the new license than was anticipated, but the Board continues to see a high rate of VACSP application submissions since the program was implemented. Additionally, per Business and Professions Code (BPC) section 4836.2, the VACSP fee is already at the statutory cap and can only be increased with a legislative bill and subsequent filing of regulations.

- Summary of comment two (2):

High costs for registered veterinary technician (RVT) applicants are due to Office of Professional Examination Services (OPES) examination development and the Board could reduce costs for RVTs by asking the American Association of Veterinary State Boards (AAVSB) to include California-specific law questions in the national examination and provide a California mail out exam.

- Board response to comment two (2):

Reject the comment. The Board found that the proposed fee provides sufficient funds to administer the VMPA. Prior to the fee increase, examination fees collected for the California RVT examination were not accounting for actual costs of development, preparation, and administration of the examination, as was illustrated in the independent fee audit conducted by the Board. Additionally, consideration of the RVT salary levels (as compared to veterinarians) has always been a factor in attempting to keep RVT fees reasonable.

OPES recommended the Board maintain authority of the RVT examination due to examination security and to ensure a psychometrically sound examination and therefore does not recommend AAVSB administer the California veterinary technician examination.

- Summary of comment three (3):
High costs for the RVT examination and application presents barriers of entry to RVT candidate and a further increase of fees would cause RVTs to opt out of taking the examinations.
- Board response to comment three (3):
Reject the comment. The Board found that the proposed fee provides sufficient funds to administer the VMPA. The Board reviewed other similar Department fees for comparison. The fees from boards with licensees similar to the Board reflected that the Board had one of the smaller fees per license type and the proposed fee increases were not out of line with other similar professions.

In accordance with 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. 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 Contingent Fund reserve of no less than three (3) months and no more than ten (10) months of annual authorized expenditures, pursuant to BPC section BPC section 4905(o).

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, 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). Further, the Board conducted an independent fee audit that showed the need to increase fees to account for these continued rising costs.

As the Board's costs associated with performing its core functions have risen sharply, the Board is currently experiencing a severe fiscal imbalance. This proposed fee increase would increase fees associated with veterinarian licensure, premises permits, and registered veterinary technician registrations so that the Board can continue to perform its core functions and properly protect the public. These proposed fee increases would resolve the structural imbalance of the Board, while maintaining compliance with BPC section 4905(o).

The Board 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. A portion of the total \$600 RVTs fee is not only due to Board fees but includes fees to take the Veterinary Technician National Examination (VTNE). The AAVSB mandates the cost of the VTNE and sets the fee, which is not under the Board's control.

- Summary of comment four (4):
Premises have a greater means of bearing the additional costs associated with a fee increase than RVTs. Increasing costs of premise permits by an additional \$12 annually would generate the same amount of revenue as the proposed RVT fee increase.
- Board response to comment four (4):
Reject the comment. The Board is unable to further increase veterinary premises fees as they are already at their \$400 statutory cap and may only be increased with a legislative bill and subsequent filing of regulations.

Re-Adoption of Emergency Regulation Comments (Comment period 07/26 – 08/01/2018)

- Comment five (5):
“Is the budget shortfall actually due to insufficient revenue or is it due to mismanagement?”
- Board response to comment five (5):
Reject the comment. In accordance with 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, pursuant to BPC section BPC section 4905(o).

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, 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 DOI and 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 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 proposed fee increase would increase fees associated with veterinarian licensure, premises permits,

and registered veterinary technician registrations so that the Board can continue to perform its core functions and properly protect the public.

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 SB 304 (Lieu, Chapter 515, Statutes of 2013) to increase veterinary premises inspections to 20% of premises per year and to enact the 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.

- Summary of comment six (6):

A fee increase would cause a barrier to licensure for RVTs and reduce consumer protection due to RVTs opting out of taking the examination. The Board should reduce staff in lieu of raising fees.

- Board response to comment six (6):

Reject the comment. In accordance with 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, pursuant to BPC section BPC section 4905(o).

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, 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 DOI and 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 OAH.

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

To address the Board's structural imbalance and need for additional revenue, staff contracted with Capitol Accounting Partners (CAP) 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. Additionally, staff researched other Department of Consumer Affairs (DCA) boards for fee equivalency within its applicant and licensing populations.

The CAP audit report 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.

The Board's fee increase for RVTs is a 14% rise in fees, while veterinarian increase is 20% and premises permits are 100%. The Board considered RVT salary when determining the fee increase, but due to the increased costs facing the Board, predominantly as a result of the dramatic complaint increase and associated costs, the Board must increase fees for licensure because fees generate 97% of the Board's revenue (45% revenue from initial application fees, licensing, and examination fees plus 52% revenue from renewal fees) and the Board was facing a shortfall of approximately \$1 million to meet the Contingent Fund minimums as mandated by BPC section 4905(o).

At the October 2013 Board meeting, the Board reviewed the October 2013 draft of the "Workload, Staffing and Organizational Assessment" (contracted with CPR HR Consulting) workload analysis which stated, "The data for existing workload supported the conclusion that the personnel years authorized for VMB are not sufficient to perform the existing workload in either Enforcement or Administration/Licensing units. Due to this existing staffing shortage, some work is not being done at all, is delayed, or backlogs are growing. Comparisons to other DCA Boards substantiate that VMB's existing workforce is leaner than sister boards and customer service is negatively impacted." Due to the workload analysis findings, the Board submitted a budget change proposal for FY 14-15 which authorized 11 additional staff to the Board; 5 limited term licensing staff, 4 permanent and limited-term enforcement staff, and 2 permanent inspection staff. The limited-term positions were authorized for two FYs and following the term expirations, an additional workload analysis was conducted which identified that there was sufficient

staff to handle work volume, and in FY 16-17 the Board eliminated 2.5 limited-term positions.

Certificate of Compliance Comments (Comment period 10/12 – 11/26/2018)

- Summary of comment seven (7):
Small veterinary practices face difficulties affording the premise fee increase as compared to a large veterinary practice and the Board should base premise permit fee amounts based on the size of the practice.
- Board response to comment seven (7):
Reject the comment. The Board chose to increase the premise permit fees to the statutory cap of \$400 based on the CAP fee audit, review of similar licenses, and the veterinary premises ability to absorb the fee increase. The Board was tasked with addressing its structural imbalance and did so while taking into the consideration individual license types and their ability to absorb additional fees.

Further, the Board does not have a means to track the size of a veterinary premises based on employment figures. A premise may report it has a certain number of employees; however, this can change on a daily basis and the Board has no reasonable means of tracking or ensuring the practice provides accurate information.