

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

FINDING OF EMERGENCY

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:

This emergency rulemaking is necessary to avoid the imminent shutdown of the Veterinary Medical Board's (Board) licensing and 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 threatens 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 projections show that the Board is on the verge of insolvency now, and indicate that the Board will be completely insolvent in Fiscal Year (FY) 2020-2021.

The Board started the current fiscal year with a dangerously-low balance in its Contingent Fund. If the Board's monthly revenue drops more than expected, or there is an unexpected rise in its monthly expenses, the fund will be depleted. Accordingly, the Board is currently at risk of being unable to pay for critical expenses.

Moreover, the Board's projected insolvency would lead to the Board ceasing all regulatory activity, including disciplinary case proceedings at the Attorney General's Office (AG). The Board would be forced to cancel all disciplinary hearings with the Office of Administrative Hearings, which are scheduled eight to 10 months in advance. This would prevent 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 additional staffing to adequately address the significant enforcement increase, 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 continues to pay its bills, complies with its mandated

fund condition reserves, can request additional spending authority for enforcement activities, and maintain the Board's solvency.

The Board filed an emergency fee increase in 2018 and subsequently filed a regular rulemaking, effective in April 2019, to conservatively raise fees in an attempt to address the Board's inadequate revenue and imminent insolvency. The Board intended to raise fees again in two years to the statutory maximum. However, the prior fee increase failed to meet the Board's expectations--it did not adequately address the decreasing fund nor bring in the anticipated revenue. In addition, the fee increase proved even more inadequate due to abrupt and significant AG rate increases, an increase in enforcement workload, and a decrease in anticipated revenue. The Board must now raise fees on an emergency basis because of the immediate risk that the Board will be insolvent and unable to pay critical expenses. The regular rulemaking process is insufficient to meet the Board's immediate needs. The regular process can take up to 12 months to complete, and while this would address the Board's long-term budget needs, it does not address the Board's immediate needs.

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 mandates the Board maintain a fund condition reserve of not less than three months and no more than 10 months. The reserve ensures that the Board has adequate funds on hand to account for unexpected revenue drops or pay for unanticipated expenses. Indeed, boards and bureaus within the Department of Consumer Affairs typically maintain a reserve fund balance of approximately six months to be able to respond to unanticipated revenue fluctuations and costs, such as decreases in licensing populations (and the associated revenue drop), litigation expenses, and increases in enforcement costs. (See BPC sections 3145 [Optometry Board maintains up to a six-month reserve]; 3775, subd. (d) [Respiratory Care Board maintains six-month reserve]; 7138.1 [Contractors State License Board maintains six-month reserve].) The Board started its 2019-2020 fiscal year last July with a dangerously-low reserve balance of \$469,000. At that time, it equated to approximately one month in reserve, and the fund only deteriorated further during the subsequent months.

Since FY 2014-2015, Board revenue has not kept pace with its authorized expenditures, thereby creating a structural imbalance where the Board's Contingent Fund is declining. Each year, the Board's revenues 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.

Despite the recent fee increase in 2018, the Board dropped below its statutorily mandated floor of not less than three months of annual authorized expenditures in FY 2017-2018, and it will be completely insolvent in FY 2020-2021.

The Board previously noted the last fee schedule increase was needed due to 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 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 BreEZe database costs.*
- *Increases 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.”*

In addition, the Board explained that costs attributed to personnel, the Division of Investigation, AG and other general costs continued to climb, while increased enforcement workload contributed to higher expenditures specific to the Division of Investigation, AG, and Office of Administrative Hearings.

The Board provided the following detailed reasons for the increased fees, which continue to support the Board’s need for more revenue:

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 BreZE 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.

The CAP audit report only recommended what was needed to maintain the status quo at the time. The report did not evaluate whether additional revenue would be needed to cover future expenditure increases, such as AG rate increases, intradepartmental increases (pro-rata), or additional staffing costs.

The report presented two implementation options: "a one-time increase to meet existing operations costs and reserve needs, or a tiered approach where the fees are phased in over a

two-year period.” Board staff recommended the latter, so licensees would be less impacted with the gradual increase rather than a one-time increase to the statutory caps. With this option, the Board needed to pursue another increase within two years. After careful deliberation, the Board agreed with the staff recommendation and pursued rulemaking in order to increase existing fees.

At the Board’s December 11, 2017 meeting, Board staff presented the need to pursue emergency rulemaking in order for the fees to take effect immediately (stating that a regular rulemaking could take up to 12 months to effectuate). The Board agreed and approved pursuing emergency rulemaking. The new fees took effect in March 2018. Since then, however, the Board’s fund continued to deteriorate.

Decrease in Anticipated Revenue

In addition to the continuous decrease in anticipated revenue from the VACSP noted above, the Board is currently collecting less revenue in several line items than previously anticipated. Most notably, the Board is no longer collecting revenue from California registered veterinary technician (RVT) examination fees. After a thorough review of the California RVT examination, the existing statute, the occupational analysis, an analysis from American Association of Veterinary State Boards, and input from stakeholders, the Board unapproved the examination at its April 2019 Board meeting. Since the exam is no longer required, the Board will not be collecting that revenue. While the Board is saving roughly \$50,000 in annual expenditures to develop and implement the exam, the Board is generating roughly \$180,000 less annual revenue than previously projected.

The Board also regularly experiences uneven month-to-month revenue fluctuations. The chart below illustrates the type of revenue fluctuations the Board experienced in the last fiscal year.

Monthly Revenue FY 2018-2019

Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
\$368,284	\$423,315	\$325,006	\$451,692	\$345,664	\$342,946	\$386,655	\$360,346	\$687,805	\$676,618	\$642,993	\$670,348

As the chart shows, the Board experienced month-to-month revenue decreases last fiscal year as large as \$106,028. If such revenue drops were to occur in consecutive months this year, the Board’s entire budget reserve would be nearly exhausted and it risks not being able to pay its bills.

2019 AG Rate Increase

In a June 28, 2019 client notification letter distributed on July 3, 2019, the AG’s office notified the Department of Consumer Affairs of significant rate increases effective July 1, 2019. The new rates are as follows:

- Attorney services from \$170 to \$220, resulting in a 30% increase
- Paralegal services from \$120 to \$205, resulting in a 71% increase

In a subsequent letter, dated July 12, 2019, the AG's office clarified the new rate increases would take effect on September 1, 2019. Based on this increase, the Board is projected to be completely insolvent in FY 2020-2021.

As with the Board's revenue, its expenditures are subject to significant month-to-month fluctuation. The charts below show the Board's AG and OAH monthly costs for the 2018-2019 fiscal year.

Monthly AG Costs FY 2018-2019

Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
\$45,962	\$69,887	\$81,037	\$57,645	\$72,335	\$49,161	\$61,682	\$43,205	\$67,415	\$51,806	\$63,543	\$41,687

Monthly OAH Costs FY 2018-2019

Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
\$4,500	\$6,570	\$26,530	\$31,760	\$12,190	\$5,630	\$24,450	\$28,620	\$13,740	\$42,370	\$31,390	\$5,870

As shown in the above charts, the Board experiences month-to-month cost fluctuations as large as \$23,925 in AG costs, and \$28,630 in OAH costs. Moreover, due to the AG's increased rate, a monthly AG cost of \$23,925 at the former rate of \$170 per hour would now equate to a cost increase of \$30,962 at the AG's new \$220 rate.

If the Board were to experience the same substantial cost increases that it previously experienced in consecutive months, or in combination with a low revenue month, or if other unexpected costs arise, the Board's current budget reserve would be depleted, the Board could not pay its bills, and the Board would need to immediately cease enforcement activity and paying for other critical expenses.

Significant Need for Increased Enforcement Staff

The last Board enforcement staff increase was based on increased workload through FY 2013-2014. Since that time, complaints submitted to the Board have increased by 83% (through FY 2018-2019). The Board currently has four enforcement analysts and over 1,900 pending cases. Each enforcement analyst has over 475 cases, which is unmanageable and inadequate for effective consumer protection. The only way to adequately protect the public is to increase staff to properly manage the increased workload. The Board cannot, however, afford to hire additional enforcement staff without additional revenue to pay for them.

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 (dated September 30, 2019)
- 2) Projected Budget – Projected Fund Condition with fee schedule increase – effective July 1, 2020 (dated October 17, 2019).

The Status Quo Fund Condition statement reflects the current status of the Board’s fund condition without a fee increase. It includes increased AG costs based on the 2019 AG rate increase. The Projected Fund Condition statement reflects the projected status of the Board’s fund condition with the proposed fee increase. It assumes the fee increase will be effective July 1, 2020. As shown on this statement, the fee increase will eliminate the Board’s current structural imbalance and maintain a healthy reserve of three to 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 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	\$150.00	\$350.00
California State Board Exam	\$235.00	\$350.00
Initial License - Veterinary	\$350.00	\$500.00
Biennial Renewal - Veterinary	\$350.00	\$500.00
Temporary License - Veterinary	\$175.00	\$250.00
Application Review - University	\$125.00	\$350.00
Initial License - University	\$290.00	\$500.00
Biennial Renewal – University	\$290.00	\$500.00
Delinquent Renewal - Veterinary	\$35.00	\$50.00
Application Review – Veterinary Technician	\$150.00	\$350.00
Initial Registration - Veterinary Technician	\$160.00	\$350.00
Biennial Renewal - Veterinary Technician	\$160.00	\$350.00
Delinquent Renewal - Veterinary Technician	\$35.00	\$50.00

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 applicants and licensees for violations of the Veterinary Medicine Practice Act (Act). The Board is fully funded by application and licensing fees, and 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 Office of Administrative Hearings expenditures, continued high BreEZe database system administration costs, recent significant AG rate increases, decreases in anticipated revenue, and the need to hire additional enforcement staff, the Board's Contingent Fund is below the mandated three-month reserve for annual expenditures and will be insolvent in FY 2020-2021. The Board's current revenues are unable to bridge the shortfall between yearly revenues and expenditures.

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. The regular rulemaking process can take up to 12 months to complete and would only then begin generating additional needed revenue. Absent emergency regulations, the Board would need to restrict its core operations, including slowing its ability to process applications, reducing the inspection of veterinary premises, curtailing investigations, and limiting 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:

- June 28, 2019 AG client notification letter
- July 12, 2019 AG clarification letter
- Fund Condition Statements –
 - Projected Budget - Status Quo Fund Condition
 - Projected Budget - Proposed Fund Condition - Fee increase effective July 1, 2020

- October 9-11, 2019 Board Meeting Agenda; Relevant Meeting Materials; Draft Meeting Minutes

AUTHORITY AND REFERENCE:

Pursuant to the authority vested in BPC section 4808, and to implement BPC sections 4842.5 and 4905, 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 \$2,298,270 additional revenue per Fiscal Year ongoing.

Costs/Savings in Federal Funding to the State: None

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: Since there is no increase to veterinary premises (hospitals), there is no anticipated economic impact on businesses. The proposal may impact costs of businesses if those businesses pay the costs of application, licensing, or renewal fees for its veterinarian or RVT employees.

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, specifically, veterinarians and veterinary technicians. The proposal may impact private businesses if those businesses pay the costs of application, licensing, or renewal fees for its veterinarian or RVT employees.

Specific annual applicant and licensee cost impacts ongoing are shown in Table 2 below:

Table 2. Cost Impact - Applicant and License Population

Revenue Category	Population	Fee Increase Amount	Annual Increase Amount
Application Review - Veterinary	786	\$200.00	\$157,200

California State Board Exam	671	\$115.00	\$77,165
Initial License - Veterinary	634	\$150.00	\$95,100
Biennial Renewal - Veterinary	6,200	\$150.00	\$930,000
Temporary License - Veterinary	82	\$75.00	\$6,150
Application Review - University	75	\$225.00	\$16,875
Initial License - University	63	\$210.00	\$13,230
Biennial Renewal – University	5	\$210.00	\$1,050
Delinquent Renewal - Veterinary	225	\$15.00	\$3,375
		Total	
Application Review – Veterinary Technician	914	\$200.00	\$182,800
Initial Registration - Veterinary Technician	675	\$190.00	\$128,250
Biennial Renewal - Veterinary Technician	3,600	\$190.00	\$684,000
Delinquent Renewal - Veterinary Technician	205	\$15.00	\$3,075
		Total	\$2,298,270

Effect on Housing Costs: None