

**BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC  
TECHNICIANS**

**FINAL STATEMENT OF REASONS**

**Hearing Date:** January 27, 2010

**Subject Matter of Proposed Regulations:**

Applicant and Dishonored Check Fee Changes

**Sections Affected:**

Amend Section 2537 (Vocational Nursing)  
Amend Section 2590 (Psychiatric Technicians)

**Updated Information**

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

On January 27, 2010, a public hearing was conducted at the Board of Vocational Nursing and Psychiatric Technicians (Board), 2535 Capitol Oaks Drive, Suite 205, Sacramento, California. Seven people attended the hearing and five people testified. In addition, the Board received written testimony from three individuals.

On February 18, 2010, the Board adopted the regulatory proposal to amend Division 25 of Title 16, California Code of Regulations, sections 2537 and 2590 effective July 1, 2010. The Board gave the Executive Officer the authority to make non-substantive changes as required by the Department of Consumer Affairs (DCA) Director and the Office of Administrative Law.

On May 20, 2010, the Board adopted the regulatory report advising it that the fee regulations would not be effective July 1, 2010 and that **“if the regulatory fee change was approved and effective October 1, 2010, the Vocational Nursing Program would remain solvent through Fiscal Year 2012/13. Conversely, even if a fee change was approved for the Psychiatric Technician Program, a “statutory” fee increase would also be required to avoid a fund deficit in FY 2011/12.”**

The Board was provided with the following information and given individual fund conditions for each scenario.

<b>Table – Fund Condition (Months in Reserve*)</b>				
<b>Program</b>	<b>2009/10</b>	<b>2010/11</b>	<b>2011/12</b>	<b>2012/13</b>
<b>VN Program:</b>				
A. Without Fee Change	4.4	0.6	<b>-2.5</b> (-\$2,035,000)	<b>-4.2</b> (-\$3,540,000)
B. With “Regulatory” Fee Change eff. 7/1/2010	4.4	2.0	0.7	0.4
C. With “Regulatory” Fee Change eff. 10/1/2010	4.4	1.7	0.3	0.0
<b>PT Program:</b>				
A. Without Fee Change	5.7	0.9	<b>-3.2</b> (-\$594,000)	<b>-5.8</b> (-\$1,108,000)
B. With “Regulatory” Fee Change eff. 7/1/2010	5.7	1.2	<b>-2.5</b> (-\$468,000)	<b>-4.8</b> (-\$919,000)
C. With “Regulatory” Fee Change eff. 10/1/2010	5.7	1.1	<b>-2.6</b> (-\$484,000)	<b>-4.9</b> (-\$935,000)
*Months in Reserve = Equates to the amount of money which is projected to remain in the fund account after annual expenditures. The amount of money is then converted to the equivalent number of operating months that is projected for the next fiscal year.				

Accordingly, on May 20, 2010, the Board adopted the following recommendations:

1. **Continue to pursue the approval of the Board’s fee regulation proposal.**
2. Continue to seek an author for a statutory fee range change proposal.
3. Take immediate steps in FY 2010/11 to reduce its overall expenditures.

Consequently, this fee regulation proposal noted herein now reflects an October 1, 2010 effective date.

**Local Mandate**

A mandate is not imposed on local agencies or school districts related to the regulations.

**Business Impact & Finding of Necessity**

The regulations will not have a significant adverse economic impact on businesses. The Board hereby finds that it is necessary for the public

health, safety, and welfare of the people of California that this regulation apply to businesses.

### **Consideration of Alternatives**

No reasonable alternative to the regulations would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

### **Summary of Comments & Responses**

On January 27, 2010, the following comments were received at the regulation hearing regarding the proposed action:

1. **American Career College, Orange County, Asma Khan, Director** – Ms. Khan submitted oral testimony in support of the Board's fee change proposal. Ms. Khan stated that American Career College has always supported the Board in its mission to protect the public and although the fees will be increased, will continue to pay their students' fees. She inquired as to whether the Board will hire new staff because she is concerned with the processing time on education-related issues.

Ms. Khan also submitted written testimony in a letter dated January 27, 2010, reaffirming her support of the Board's fee change proposal.

**The Board accepted her comments. Her inquiry regarding the staff needed for education-related issues was forwarded to the Board's Education Division for a response.**

2. **American Nurses Association, California (ANA/C), Tricia Hunter** – Ms. Hunter stated that ANA/C opposes the fee increases for licensed vocational nurses (LVNs) while there are furloughs for employees in a special funded Board. Additionally, she stated that although she supports the Board's programs and Board Members, the Board should be allowed to spend its monies on required activities.

**These comments were rejected as the issue of employee furloughs is not relevant to the proposed fee change. The fee changes are needed to ensure the fiscal solvency of the VN and PT Programs.**

3. **California Nurses Association (CNA), Lydia Bourne** – Ms. Bourne stated that CNA opposes the fee increase for LVNs. She indicated that there is no legal reason for the Board's employees to be furloughed.

She also stated that the furloughs are compromising the licenses from being processed during a critical time period and impacts the enforcement process. She is concerned that with the 15% pay cut on employee wages, the Board will not be able to attract appropriate and skilled staff.

**These comments were rejected as the issue of employee furloughs and pay cuts are not relevant to the proposed fee change. The fee changes are needed to ensure the fiscal solvency of the VN and PT Programs.**

4. **California Association of Psychiatric Technicians (CAPT), Ann Lyles** – Ms. Lyles stated that CAPT opposes the fee increases for PTs. She indicated that the PT license is currently the most expensive to maintain and increasing the PT license application fee by 50% could potentially price the PT field out of existence. Additionally, she noted that since the majority of PT applications are submitted by California accredited schools, the fraudulent transcripts are not submitted by PT applicants.

**These comments were rejected because the Board is totally self-supporting and all of its revenue is derived from collection of fees from applicants and licensees.**

**The PT application and re-examination application fees (collectively “application fees”) have not changed since January 1, 2000. Therefore, it has been over ten years since the last fee change. The fee structure is based upon the Board’s expenditure requirements and the number of applicants and licensees regulated. Currently, there are only about 1,200 applications received annually for the PT examination**

**A quick survey of other Department of Consumer Affairs’ boards reveal that the application fees charged by other boards range from \$75 to \$250. Based upon the lack of economies of scale, the small population of PT applicants (including re-examination applicants), must absorb all the board’s costs related to examination development, occupational analyses, subject matter experts, computerized testing administration and the staff to evaluate and process the work which includes the Board’s Nursing Education Consultants to oversee the examination development processes. The proposed application fees of \$150 are fully justified. The rationale for the fee change is expanded upon in the Board’s response to CAPT President, Tony Myers.**

**The Board does acknowledge, however, that the majority of PT applications are submitted by California accredited schools and that the fraudulent transcripts are not typically submitted by PT applicants.**

- 5. CAPT, Tony Myers, President – Mr. Myers stated that CAPT opposes the fee increases for PTs. He stated that the Initial Statement of Reasons did not provide sufficient reason for the fee change. Most of the examples cited related to VNs and not PTs. Furthermore, the Board needs to explain the necessity to increase the re-examination fees as the procedures are much simpler than a full evaluation. Mr. Myers indicated that CAPT has no problem with the proposed dishonored check fee.**

**These comments were rejected because the Board is totally self-supporting and all of its revenue is derived from collection of fees from applicants and licensees. The fee changes are needed to ensure the fiscal solvency of the VN and PT Programs.**

**As stated in the Board's response to Ann Lyles, based upon economies of scale, the small population of PT applicants must be able to cover the costs related to examination development, occupational analyses, subject matter experts, computerized testing administration and the staff to evaluate and process the work.**

**In the current fiscal year, 2009/10, approximately 15% of the PT Program's expenditure authority is dedicated to examination and licensing. This equates to about \$330,000. Therefore, \$330,000 divided by the annual volume of applicants, approximately 1,200, equals \$275 per applicant. Accordingly, the Board should actually charge \$275 for the examination and re-examination costs but is only proposing to charge \$150 as this is the statutory maximum.**

**There is not a significant difference between the costs associated with initial applications versus re-examination applications. Examination development and computerized examination administration are the major cost factors. The staff review of the application is only a minor portion of the cost it takes to process an application.**

6. **High Desert Medical College, Inc., Agnieszka Sibbitt, Director** – A letter, dated January 26, 2010, was received and indicated her support of the fee change for both Sections 2537 and 2590. No comments were provided.

**The Board accepted her comments.**

7. **John Weaver, PT Licensee** – A letter, dated January 18, 2010, was received. Mr. Weaver stated that he is a retired PT and could not afford to maintain his license. The cost of continuing education, fingerprinting, professional liability insurance and the \$300 license renewal fee was too costly and prohibitive.

**These comments were rejected as “license renewal” fees and continuing education requirements were not relevant to the proposed fee change.**

(5/24/2010)