

TITLE 16. Board of Vocational Nursing and Psychiatric Technicians

NOTICE IS HEREBY GIVEN that the Board of Vocational Nursing and Psychiatric Technicians (Board) is proposing to amend California Code of Regulations (CCR), Title 16, Division 25, Chapters 1 and 2, as described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING Any interested person may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held on March 16, 2022, at 10:00 a.m. via WebEx at:

To participate via Computer/Tablet/Smartphone:

<https://dca-meetings.webex.com/dca-meetings/j.php?MTID=mc629d2fea6a2ce632d11f53977ce435e>

If joining using the link above
Event number: 2487 003 3680
Event password: BVNPT03162022

If joining by phone
+1-415-655-0001 US Toll
Access code: 2487 003 3680
Passcode: 28678031

Representatives of the Board will preside at the hearing. The Board requests, but does not require, persons who wish to speak to please register before the hearing. Prehearing registration may be completed by providing your name and contact information by e-mail to BVNPT.Rulemaking@dca.ca.gov from 8:00 a.m. until the hearing commences. Registered persons will be heard in the order of their registration.

WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, including those sent by mail, facsimile, or e-mail to the addresses listed under "Contact Person" in this Notice, must be **received** by the Board at its office no later than Tuesday, March 15, 2022, by 5:00 p.m.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The Board may, after considering all timely and relevant comments, adopt the proposed regulations substantially as described in this Notice, or may modify the proposed regulations if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as the Contact Person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

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Authority and Reference: Section 2854 of the Business and Professions Code (BPC) authorizes the Board to adopt regulations pertaining to Vocational Nursing. The proposed regulations implement, interpret, and make specific sections 2892.6, 2892.7, and 2895 of the BPC.

Section 4504 of the BPC authorizes the Board to adopt regulations pertaining to Psychiatric Technicians. The proposed regulations implement, interpret, and make specific sections 4510, 4518, 4518.1, 4544, 4545, and 4548 of the BPC.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board is a self-supporting, special fund agency that obtains its revenues from the licensing fees of Licensed Vocational Nurses (LVNs) and Psychiatric Technicians (PTs), and Continuing Education (CE) provider fees. The Board serves and regulates approximately 133,200 Vocational Nurses and 11,700 Psychiatric Technicians. The Board protects consumers from unprofessional and unsafe licensed LVNs and PTs; public protection is the Board's highest priority in its licensing, regulatory and disciplinary functions.

Under existing law, the Board is specifically authorized to collect fees to support its functions. The fees are intended to be sufficient to cover the cost of the Board's regulatory services. BPC sections 2892 - 2892.7, 2895, 2895.5, 4518, 4518.1, 4544 - 4545.3, and 4548 establish the Board's fee collection authority and the statutory minimum and maximum fee schedule for applications for the initial license types, applications for renewal and other fees for Board applicants, licensees, and education providers.

In April of 2020, the Department of Consumer Affairs (DCA) completed an analysis of the Board's fund condition and fee structure. This analysis, initiated at the request of Board staff, was to determine the sustainability of the fund and to ensure that the Board was collecting sufficient revenue to fully recover its cost of regulating individuals and businesses within its jurisdiction.

The analysis found that the current level of fees was not adequate to keep the Board's fund solvent and that fees needed to be adjusted to reflect the actual cost to the Board to process and service each license type. An analysis was once again conducted by DCA's Budget Office in August of 2020, concluding that although legislatively authorized fee increases were implemented on January 1, 2019, the reserve funds are not adequate to sustain Board budget expenditures beyond the 2022-23 Budget Year.

In October 2021, the Board staff completed an analysis of the Board's fee structure. This analysis was initiated to ensure that the Board was collecting sufficient revenue to fully reimburse the Board for the actual cost of processing VN and PT license applications, renewals, CE provider applications and renewals, and all other services authorized by statute. The goal of the analysis was to identify the Board's actual

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budgetary need to process each initial and renewal application the Board is required to process. The Board's only sources of revenues are fees charged for each of the licenses and education provider approvals it issues. The Board also has a mandate to be fully self-supporting, so it is vital that the fees charged to licensees and education providers fully represent the Board's administrative costs. The data indicated that the full cost of fee-based services the Board provides is not adequately represented in the current fee structure, and without exception, the costs exceed the maximum fee authorized by statute. It is estimated that by the end of Fiscal Year (FY) 2022-23, the Board's reserve fund will be negative.

The Board proposes to amend Section 2537 and 2537.1 of Article 6 of Chapter 1 of Division 25 of Title 16, and Section 2590 and 2590.1 of Chapter 2 of Article 6 of Division 25 of Title 16 of the CCR to increase license application, license renewal, and CE or education course provider application and renewal fees to address a structural imbalance within the Board's budget and to pursue a reserve in the Board's fund consistent with its mission that "Protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

The objective of this proposed regulation is to increase the Board's fees enough to meet its projected expenditures beginning in FY 2022-23 in order to maintain the Board's mission of protection of the public. The Department of Consumer Affairs (DCA) provides budgetary and fiscal administrative support to the Board. According to the DCA, current Board expenditures necessary to administer its regulatory functions exceed the amount of funds collected from applicant, licensees, and CE program providers. This proposal will increase the Board's application, renewal, and other fees to ensure that the Board will be able to continue to meet its consumer protection mandate by allowing the Board to continue its licensing and enforcement responsibilities. This regulatory proposal seeks to make amendments to the Board's fee schedules, which will help to reduce the Board's structural budget imbalance and to maintain a sufficient fund balance reserve until the Board can increase statutory fee levels to completely eliminate the structural imbalance.

The Board is proposing the following changes:

Amend 16 CCR section 2537 (LVN applicant and licensee fees)

The Board proposes to amend 16 CCR 2537 to increase the fees charged to LVN applicants, and licensees in an amount necessary to help recover costs that have negatively impacted the Board's operating budget. The proposed amendments to section 2537 would increase the Board's fees, as follows:

- (a) For application for licensure by examination by applicants who have successfully completed the prescribed course of study in a California approved vocational nursing program, the fee would increase from \$220 to \$300.

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- (b) For application for licensure by examination by applicants who are qualified to take the examination by methods other than that specified in section 2537 (a), the fee would increase from \$250 to \$330.
- (c) For application for licensure by endorsement, the fee would increase from \$220 to \$300.
- (e) For re-examination for licensure after the first exam attempt, the fee would increase from \$220 to \$300.
- (f) The biennial renewal fee would increase from \$220 to \$300.
- (g) The delinquency fee for failure to pay the biennial renewal fee would increase from \$110 to \$150.
- (h) The initial license fee would be increased to an amount equal to the biennial renewal fee (from \$220 to \$300).
- (i) The fee to be paid for an interim permit would increase from \$20 to \$50.

Amend 16 CCR section 2537.1 (LVN CE program provider fees)

The Board proposes to amend 16 CCR 2537.1 to increase the fees charged to LVN CE or educational course providers in an amount necessary to help recover costs that have negatively impacted the Board’s operating budget. The proposed amendments to section 2537.1 would increase the Board’s fees, as follows:

- (a) The application fee for any provider of a course in continuing education would increase from \$150 to \$250.
- (b) The biennial renewal fee for any provider of a course in continuing education would increase from \$150 to \$250.
- (c) The fee to be paid upon filing of an application from any provider of a course in Intravenous Therapy would increase from \$150 to \$250.
- (d) The biennial renewal fee for any provider of a course in Intravenous Therapy would increase from \$150 to \$250.
- (e) The fee to be paid upon filing of an application from any provider of a course in Blood Withdrawal would increase from \$150 to \$250.
- (f) The biennial renewal fee for any provider of a course in Blood Withdrawal would increase from \$150 to \$250.
- (g) The fee to be paid upon filing of an application from any provider of a course in Intravenous Therapy with Blood Withdrawal would increase from \$150 to \$250.
- (h) The biennial renewal fee for any provider of a course in Intravenous Therapy with Blood Withdrawal would increase from \$150 to \$250.

Amend 16 CCR section 2590 (PT applicant and licensee fees)

The purpose of amending 16 CCR 2590 is to increase the fees charged to PT applicants, and licensees in an amount necessary to help recover costs that have negatively impacted the Board’s operating budget. The proposed amendments to section 2590 would increase the Board’s fees, as follows:

- (a) The fee to be paid upon the filing of an application for licensure by examination by applicants who have successfully completed the prescribed

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course of study in a California approved school for preparation of psychiatric technicians would increase from \$265 to \$345.

(b) The fee to be paid upon the filing of an application for licensure by examination by applicants qualified to take the examination by methods other than that specified in Section 2590 (a) would increase from \$295 to \$375.

(c) The fee to be paid upon the filing of an application for licensure by endorsement would increase from \$220 to \$300.

(e) The fee to be paid for any re-examination for licensure after the first attempt would increase from \$265 to \$345.

(f) The biennial renewal fee to be paid upon the filing of an application for renewal would increase from \$220 to \$300.

(g) The delinquency fee for failure to pay the biennial renewal fee within the prescribed time would increase from \$110 to \$150.

(h) The initial license fee would be increased to an amount equal to the biennial renewal fee (from \$220 to \$300).

(i) The fee to be paid for an interim permit would increase from \$20 to \$50.

(j) The fee to be paid for a duplicate license or wall certificate would increase from \$20 to \$50.

(k) The fee to be paid for processing endorsement verification of licensure papers to other states would increase from \$20 to \$50.

(l) The fee to be paid for post-licensure certification in blood withdrawal would increase from \$20 to \$50.

Amend 16 CCR section 2590.1 (PT CE program provider fees).

The purpose of amending 16 CCR 2590.1 is to increase the fees charged to CE or educational course program providers in an amount necessary to help recover costs that have negatively impacted the Board's operating budget. The proposed amendments to section 2590.1 would increase the Board's fees, as follows:

(a) The fee to be paid upon filing of an application for any provider of a course in continuing education would increase from \$150 to \$250.

(b) The biennial renewal fee for any provider of a course in continuing education would increase from \$150 to \$250.

(c) The fee to be paid upon filing of an application from any provider of a course in Blood Withdrawal would increase from \$150 to \$250.

(d) The biennial renewal fee for any provider of a course in Blood Withdrawal would increase from \$150 to \$250.

Other amendments to the proposed text:

Subdivision (e) of sections 2537 and 2590 is amended to add "re" so it reads "re-examination" and "attempt" after the word "first" to clarify that that this fee applies to the re-taking of the same examination type, and for the reason of a failed examination.

This regulatory proposal also adds BPC section 2895 to the reference section cited in the Note at the end of the proposed text for section 2537, to more accurately reflect the

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statutory provisions being implemented and to more properly identify the source of the fee schedule authority for the Vocational Nursing Practice Act.

ANTICIPATED BENEFITS OF PROPOSAL

California residents would benefit from the proposed regulation because the fee increases will enable the Board to continue regulating the practice of LVNs, PTs, and prelicensure and CE providers; the fees will support the Board’s daily functions, including the enforcement program. The Board protects consumers by investigating complaints against LVNs and PTs and by disciplining licensees for violations of the Vocational Nursing Practice Act and Psychiatric Technicians Law through its enforcement program. The enforcement program also monitors licensees who have been placed on probation. The Board’s highest priority is consumer protection, and the proposed revisions to Title 16 CCR sections 2537, 2537.1, 2590, and 2590.1 will allow the Board to continue its important consumer-focused functions.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, the Board conducted a search of similar regulations on this topic and concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

FISCAL IMPACT AND RELATED ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The proposed regulations are anticipated to increase the Board’s revenues by approximately \$6.5 million per year and up to \$64,908,950 million over a ten-year period. Since the Board already performs the workload associated with these programs and fees, the Board does not anticipate any additional workload or costs to implement the proposed regulations.

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, the Board’s licensees and applicants. This determination is based upon the following facts. The regulation would increase fees for increase the fees charged to LVN and PT license applicants, LVN and PT licensees, and LVN and PT, CE and educational course or continuing education program (CE) providers. To the extent these applicants apply for licensure or licensees opt to renew their licenses and provider

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approvals, the proposed regulations will impact them.

However, the proposed regulations will not have a significant statewide adverse economic impact on businesses, including the ability to compete with other businesses in California, because the fee increases are considered to be very minor compared to the income of most applicants and licensees in these professions. This proposal represents a \$25-80 increase for licensing, permit, renewal, verification, and delinquency fees and an additional \$100 increase for application and renewal for CE or educational course or program providers. Further, as the regulations do not materially increase the amount of fees charged to CE program providers, any financial impact on the businesses should be minor and offset by CE course fees. Please see the Initial Statement of Reasons for further detail.

Cost Impact on Representative Private Person or Business: The regulation would increase fees for increase the fees charged to LVN and PT license applicants, LVN and PT licensees, and LVN and PT, CE and educational course or continuing education program (CE) providers. To the extent these applicants apply for licensure or licensees opt to renew their licenses and provider approvals, the proposed regulations will impact them. Initial costs for an individual are estimated between \$25-100.

The proposed regulations are anticipated to result in an economic impact to applicants and licensees ranging from approximately \$25 to \$100 per year over a ten-year period. The total cost for the regulation over its lifetime is estimated to be \$64,908,950.

Please see the Initial Statement of Reasons for further detail.

Results of the Economic Impact Assessment:

Impact on Jobs/ 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 because these costs are considered minor compared to the income of most applicants and licensees in these professions and for the businesses who offer CE programs approved by the Board.

Benefits of the Proposed Action: Protection of the public is the Board's highest priority in exercising its licensing, regulatory and disciplinary functions. The Board ensures that only qualified persons are licensed vocational nurses and psychiatric technicians by enforcing education requirements, standards of practice, and by educating consumers of their rights. This regulatory proposal will benefit the health and welfare of California residents because the proposal will increase the Board's revenue and funding available to continue the Board's enforcement, investigative, licensing, examination, and public outreach operations. The proposal is not anticipated to benefit worker safety or the state's environment.

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BUSINESS REPORTING REQUIREMENTS

The regulatory action does not require businesses to file a report with the Board.

EFFECT ON SMALL BUSINESS

While the Board does not have nor does it maintain data to define if any of its licensees are a “small business” as defined in Government Code section 11342.610, the Board has made an initial determination that any adverse economic impact will not be significant for small businesses, because the increased expense to any business, small or otherwise, is not more than \$100 per year.

EFFECT ON HOUSING COSTS

The Board has determined that the proposed regulations will not affect housing costs in the State of California.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed; as effective and less burdensome to affected private persons than the proposal described in this Notice; or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may submit comments to the Board in writing relevant to the above determinations at 2535 Capitol Oaks Drive, Suite 205, Sacramento, California 95833.

AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

The Board has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the Initial Statement of Reasons, and all the information upon which the proposal is based, may be obtained upon request from the person designated in the Notice under “Contact Person,” with the Board of Vocational Nursing and Psychiatric Technicians, at 2535 Capitol Oaks Drive, Suite 205, Sacramento, California 95833.

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AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the Final Statement of Reasons, once it has been prepared, by making a written request to the contact person, named below, or by accessing the Board’s website at www.bvnpt.ca.gov.

CONTACT PERSONS

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Doris Pires
Board of Vocational Nursing and Psychiatric Technicians
Address: 2535 Capitol Oaks Drive, Suite 205
Sacramento, CA 95833
Telephone: (916) 263-7864
E-Mail Address: BVNPT.Rulemaking@dca.ca.gov

The backup contact person is:

Name: Candace Raney
Board of Vocational Nursing and Psychiatric Technicians
Address: 2535 Capitol Oaks Drive, Suite 205
Sacramento, CA 95833
E-Mail Address: BVNPT.Rulemaking@dca.ca.gov

E-Mail: Please submit any comments by e-mail to: BVNPT.Rulemaking@dca.ca.gov.

Website Access: Materials regarding this proposal can be found at https://www.bvnpt.ca.gov/about_us/bvnpt_regulations.shtml.

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