

**Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs**

INITIAL STATEMENT OF REASONS

HEARING DATE: January 27, 2010

SUBJECT MATTER OF PROPOSED REGULATIONS: Applicant Fee Changes for the Vocational Nursing (VN) and Psychiatric Technicians (PT) Programs.

SECTIONS AFFECTED: Amend Title 16 California Code of Regulations as follows:

- Amend Section 2537 (Vocational Nursing Program)
- Amend Section 2590 (Psychiatric Technician Program)

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL: Following is a description of each proposed amendment and the factual basis for the action.

1. Amend Sections 2537 (VN) and 2590 (PT).

VN Program – Section 2537

Existing law, Business & Professions (B&P) Code, sections 2867 and 2871 authorize the board to charge application and re-examination fees. Existing law, section 2895, specifies the statutory fee ranges for those fees for the VN Program. Existing law, Government Code section 6157, authorizes a public agency to impose a reasonable charge for a returned check, not to exceed the actual costs incurred, to recover the public agency's processing and collection costs.

Specific Purpose: The Board is proposing the following amendments to Sections 2537 to reflect the following fee changes:

- Application Fees -- From \$75 to \$150
- Re-examination Fee -- From \$75 to \$150
- Dishonored Check Fee – From \$10 to \$25

All of the other fees will remain the same. The fee change is needed to ensure the fiscal solvency of the VN Program.

PT Program – Section 2590

Existing law, B&P Code, sections 4512 and 4548 authorize the board to charge application and re-examination fees. Existing law, section 4548, specifies the statutory fee ranges for those fees for the PT Program. Existing law, Government Code section 6157, authorizes a public agency to impose a reasonable charge for a returned check, not to exceed the actual costs incurred, to recover the public agency's processing and collection costs.

Specific Purpose: The Board is proposing the following amendments to Section 2590 to reflect the following fee changes:

- Application Fees -- From \$100 to \$150
- Re-examination Fee -- From \$100 to \$150
- Dishonored Check Fee – From \$10 to \$25

All of the other fees will remain the same in this regulatory proposal. The fee change is needed to ensure the fiscal solvency of the PT Program.

FACTUAL BASIS/RATIONALE: The Board is a “special fund agency” that is totally self-supporting. The Board derives all of its revenue from its applicants and licensees through the collection of examination, licensing and renewal fees.

The Board is a consumer protection agency. Both the Department of Consumer Affairs and the Legislature place a very high priority on assuring that regulatory agencies have fair, swift, and active licensing and enforcement programs. The Board’s Strategic Plan is in keeping with this primary directive.

The Board’s Strategic Plan outlines the policy framework for meeting the mission of enhanced consumer protection. The Board established six goals to achieve its mission, one of which is to ensure “the licensure of safe and competent practitioners by establishing minimum entry-level requirements for licensure and ensuring that licensure examinations are legally defensible, psychometrically sound, and consistent with current practice for licensed vocational nurses and psychiatric technicians.”

Dishonored Check Fee

The existing fee charged for submitting insufficient funds or fictitious check, draft or money order on any bank or depository for payment of any fee to the Board is \$10. This fee is no longer sufficient to cover the cost of processing a dishonored check. The Department of Consumer Affairs recently increased the dishonored check processing fee to \$25. However, because the Board’s dishonored check fee in its regulation, the Board must amend its regulations in order to be consistent with the DCA processing fee, and to cover the administrative cost of processing the dishonored checks.

The State Administrative Manual (SAM) Section 8043.1 and Section 6157 of the Government Code authorizes the State to assess a charge for dishonored checks. The California Civil Code Section 1719 states in part, that “any person who passes a check on insufficient funds shall be liable to the payee for the amount of the check and a surcharge payable to the payee for an amount not to exceed \$25 for the first check passed on insufficient funds and an amount not to exceed \$35 for each subsequent check to that payee passed on insufficient funds”.

Application and Re-Examination Fees

There are four methods of qualifying for the VN licensure examination, and three methods of qualifying for the PT licensure examination. The most common route is graduation from an accredited VN or PT Program. The other three methodologies require the Board to complete “equivalency” evaluations of the applicant’s education and experience. Many of the equivalency applicants submit educational transcripts and verification of work experience from outside of the United States. The administrative cost of processing the dishonored checks are well over \$25 but the figure is used for consistency with the Civil Code and the Department of Consumer Affairs.

During the past 5 years, the Board has received an increasing number of applications with fraudulent documents, including fraudulent educational transcripts, GED and high school diplomas, and verification of work experience that has been altered or forged.

For example:

- In 2004/2005, the Board received over 700 applications from Florida that submitted transcripts from Haiti and Jamaica. In reviewing the applications and collecting additional

information, it was discovered that the applicants had attended an exam review course in Florida, and the owner of the company had issued them fraudulent transcripts reflecting that they had graduated from nursing school in Haiti or Jamaica, and instructed them to indicate on their application for licensure, that they attended nursing school in one of those countries.

- From 2003 through 2006, the Board received over 400 applications with fraudulent transcripts from China, Hong Kong and Taiwan. In reviewing the documentation and collecting additional information from the applicants, it was discovered that the students were given an exam review course and instructed to indicate on their application for licensure that they attended nursing school in one of those countries.
- In 2009, the Board received over 125 applications from Texas for individuals attempting to qualify by paid work experience. In reviewing the applications and obtaining additional documentation, the Board discovered that the applicants worked for a Nursing Registry in Houston, Texas and the owner of the registry was falsifying the verification of work experience to indicate that the applicants had paid medical-surgical nursing experience, when in fact, they did not work for the hospitals listed on the forms submitted to the Board.
- The Board has had ongoing issues with “diploma mills” and online “schools” issuing fraudulent nursing education transcripts, high school diplomas and with verification of work experience forms that have been altered. This requires the Board to do extensive research into the validity of the documentation for every equivalency application received.

A typical equivalency evaluation requires at least 3-4 separate evaluations as the applicant is required to submit additional documentation. Because of the high incident of fraudulent documents, the Board must scrutinize each document and has implemented additional review measures to ensure that all documentation is true and correct. These additional procedures have increased the length of time and amount of work involved and the cost of processing each application.

A review of the historical workload statistics show that the number of applications evaluated and follow-up reviews conducted has increased by 83% since Fiscal Year 2003/04 caused largely by the additional review and follow-up required to combat the increasing amount of fraudulent documents being submitted.

UNDERLYING DATA:

- 1) Memorandum from DCA Cashiering Manager dated September 8, 2009, notifying Boards of the change in the DCA administrative fees for processing dishonored checks.
- 2) Memorandum from DCA Cashiering Manager dated October 20, 2009, clarifying that the administrative fee increase cannot be applied to those Boards that have fees set in their regulations.

BUSINESS IMPACT

The regulations will not have a significant adverse economic impact on businesses. .

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The regulatory proposal does not mandate the use of special technologies or equipment.

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.

(12/1/09)