

TITLE 16: CALIFORNIA BOARD OF NATUROPATHIC MEDICINE
FINAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Fees.

Sections Affected: Amend Title 16 California Code of Regulations (CCR) section 4240.

Updated Information

The Initial Statement of Reasons is included in this rulemaking file. The information contained therein accurately reflects the position of the California Board of Naturopathic Medicine (Board) regarding the amendment of the above section. The Initial Statement of Reasons (ISR) is updated as follows:

The proposed regulatory language, which the Board approved on March 28, 2024 was prepared, posted and opened for public comments beginning on August 9, 2024. The 45-day comment period was from August 9, 2024 to September 23, 2024. The Board received a total of two (2) written documents from four different individuals via email regarding the proposed action during the written comment period.

At its October 4, 2024 Board meeting, the Board considered the public comments in the record and moved to reject adverse comments and adopt the proposed public comment responses as recommended by staff. A summary of the comments and the Board's responses to those comments are provided below. The Board further moved to direct staff to take all steps necessary to complete the rulemaking process, authorize the Executive Officer to make any non-substantive changes to the proposed regulation and the rulemaking documents, and adopt the proposed regulations as noticed for 16 CCR section 4240.

In the Underlying Data portion of the Board's Initial Statement of Reasons, the Board incorrectly listed the relevant pages of its 2016 Oversight Review Report (Sunset Review Report) as pages 21-22 and 29-30. However, the relevant pages should have been listed as pages 36-40 of Section 3 of the report relating to "Fiscal Issues." The Board has included a full copy of the Sunset Review report in the rulemaking file to address this issue.

Local Mandate

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

Anticipated Benefits of the Proposal

The Board has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents:

These changes would raise application, initial license and renewal fees to the statutory maximums. California residents would benefit from the proposed regulation because the fee increases will enable the Board to carry out its statutory mandate of public protection by licensing, regulating, and disciplining NDs. Raising fees would help address a structural imbalance in the Board's budget, ensure the Board's regulated public is aware of the fees, and attempt to create a consistency between the Board's expenditures to regulate licensees and protect the public and the fees assessed for carrying out those functions. The Board's highest priority is consumer protection, and the proposed revisions will allow the Board to continue its important consumer-focused functions in the short term while the Board seeks legislative authority to increase statutory maximums for the fees it collects in the long term.

This regulatory proposal does not affect worker safety or the state's environment.

Consideration of Alternatives

The only alternatives identified or brought to the Board's attention were those raised by commenters and the reasons for rejecting those alternatives are set forth in the response to comments below. As a result, no reasonable alternative which was considered would be more effective in carrying out the purpose for which the regulation was proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Objections or Recommendations/Responses to Comments

45-Day Public Comment Period

(1) Comment letter sent via email on August 27, 2024 by Dr. Sonja Fung on behalf of Live Well Clinic and signed by Drs. Sonja Fung, Annissa Ceja, and Delaney Quick

Comment A: The commenter raises concerns with the proposed 150% increase in the biennial renewal fee for naturopathic doctors from \$800 to \$1,200. While the commenter understands and respects the Board's responsibility to secure adequate funding to perform its consumer protection mandate effectively, the commenter questions the magnitude of the increase and expresses that it raises significant concerns regarding the Board's current financial management and the justifications

provided for such a steep hike, especially as it considerably surpasses the current inflation rate.

The commenter further requests that the Board provide detailed financial transparency regarding its expenditures and the specific needs that have led to the proposal of such substantial fee increases and expresses that it is vital for the naturopathic medical community to have access to this information to fully understand and assess the impact of these changes.

Board's Response: The Board rejects this comment and makes no changes to the language of the regulation. The Board acknowledges the concerns that were raised but stresses that it would not be raising fees if reasonable alternatives were available to address the Board's impending fiscal problem. The Board's overarching responsibility is to protect consumers. It cannot do so if it is financially insolvent. The Board and Executive Officer must ensure that the Board remains solvent and does not attempt to incur expenditures in excess of the Board's legally authorized budgetary appropriation in violation of the law. (See Memo in the Meeting Materials, Attachment 3, regarding advice from the Board's Regulatory Counsel Kristy Schieldge, originally presented and discussed at the 03/28/2024 Board Meeting.)

The Department of Consumer Affairs Budget Office (Budget Office) has identified that the Board's current fees are no longer adequate to cover the Board's expenditures and do not address the increase in future operational costs. The Budget Office projects that the Board will deplete its existing reserve fund by Fiscal Year 2026-2027. Therefore, the Board's application, initial licensing, and renewal fees must be raised to help address costs, which are driven not just by inflation but by other factors including staff costs, Attorney General's office and litigation expenses that are beyond the Board's control.

With respect to the magnitude of the increase alleged, legislation was enacted pursuant to Senate Bill 1480 ("SB 1480" -- Chapter 571 of the Statutes of 2018) to authorize fee increases to help ensure that the Board was able to meet its operational needs. Effective January 1, 2019, the Board implemented the provisions of SB 1480 by administratively increasing the renewal fee to \$1,000, which is the fee that is currently in effect. As a result, this proposal would make an incremental increase to the current biennial renewal fee of \$200, which would not represent a 150 % increase.

The Board's seven-page Initial Statement of Reasons (available at https://www.naturopathic.ca.gov/laws/proposed_regulations.shtml), and its underlying data (available upon request) includes a detailed workload analysis of the costs associated with licensing functions and the Board's Fund Condition; all illustrate the need for the application, initial licensing and renewal fee increases. The Board's current operation costs exceed the revenue being collected and the Board is using its reserve

fund to meet its structural imbalance. Continuation of this practice without a fee increase will result in the Board becoming insolvent and unable to maintain its core regulatory functions and mission of consumer protection.

If this regulatory proposal is not adopted, the Board may need to restrict core operations, including slowing its ability to process applications, curtailing investigations, closing the office intermittently, and limiting the Board's ability to adjudicate violations of the laws it administers in an expedient manner. These restrictions to the operational functions of the Board could result in licensing backlogs and compromise the Board's ability to achieve its mission and statutory mandate of consumer protection.

Comment B: The commenter notes that when compared to the renewal fees required of medical doctors (MDs) in California, the proposed fees for naturopathic doctors seem disproportionately high. This discrepancy could potentially place an undue financial strain on practitioners within our field, affecting the economic viability of their practices.

Board's Response: The Board rejects this comment and makes no changes to the language of the regulation. The current biennial renewal fee for a physician and surgeon licensed by the Medical Board of California is \$1,194 as authorized by BPC sections 208, 2435, and 2435.1), representing a \$6 difference in fees assessed. Regardless, the purpose of the proposed regulations is to increase fees to eliminate the current structural imbalance, and to charge fees that more closely align with the actual costs associated with processing of applications and renewals for this Board and not based on any other Board's budget or fund condition status. Please see the response to Comment A noted above for further explanation.

Comment C: The commenter urges reconsideration of the Board's proposed fee structure and to consider alternative fiscal strategies that would lessen the financial impact on naturopathic practitioners while still allowing the Board to meet its operational and regulatory requirements, such as implementing incremental fee increases aligned more closely with inflation rates.

Board's Response: The Board rejects this comment and makes no changes to the language of the regulation. The Board's explanation for why these fee increases are necessary is provided in the Board's Initial Statement of Reasons, which includes the estimated business impacts, fiscal impacts to the Board, anticipated benefits, economic impact assessments and the rationales for each proposed change listed in the regulatory proposal. In short, the current level of fees is not adequate to keep the Board's fund solvent and fees need to be adjusted to reflect the actual cost to the Board to process and service the naturopathic doctor license.

Analyses conducted by DCA's Budget Office have concluded that although legislatively authorized fee increases were implemented on January 1, 2019, the reserve funds are

not adequate to sustain Board budget expenditures; the Board will deplete its existing reserve fund by Fiscal Year 2026-2027. The proposed revisions will allow the Board to continue operations and its important consumer-focused functions.

(2) Comment sent via email on September 5, 2024 by Jennifer Potter

Comment D: The commenter requests if it would be possible to break the payment of 1,200 into a few payments. The commenter states, “To be clear I'm not protesting the increase in fees. You all need to be able to work.” The commenter thanks the Board “for all that you do.”

Board's Response: The Board acknowledges the comment and appreciates the support. However, with respect to installment payments, the Board must recover full costs for each renewal cycle at the time of renewal to ensure fiscal solvency as noted in the responses to comments above. Therefore, the Board must reject the part of the comment requesting that the \$1,200 payment be broken into a few payments and will not be amending the proposed regulations in response to this comment.