



## MEMORANDUM

<b>DATE</b>	September 26, 2024
<b>TO</b>	Board Members
<b>FROM</b>	Rebecca Mitchell Executive Officer California Board of Naturopathic Medicine
<b>SUBJECT</b>	<b>Agenda Item 6: Discussion and Possible Action to Consider Comments Received During the 45-Day Public Comment Period and Proposed Responses Thereto for the Board's Rulemaking to Amend Title 16, California Code of Regulations (CCR) Sections 4240 – Fees</b>

The purpose of this memo is to provide background and recommendations to the Board regarding the comments received on the proposed rulemaking package and determine what responses to provide. The Board, its Executive Officer and staff genuinely appreciate the comments received from individuals and groups during the public comment period.

### **BACKGROUND**

The Board proposes to amend Section 4240 of Article 7 of Division 40 of Title 16 of the CCR to increase license application, initial license, and renewal fees to address a structural imbalance within the Board's budget and to maintain a sufficient fund balance reserve.

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 text of the proposed language, Notice of Proposed Action (Notice) and the Initial Statement of Reasons (ISOR) have been posted on the Board's website, and may be found here:

[https://www.naturopathic.ca.gov/laws/proposed\\_regulations.shtml](https://www.naturopathic.ca.gov/laws/proposed_regulations.shtml).

Per the Administrative Procedure Act, Government Code section 11346.4, the Board sent a public Notice of the proposed fee increases to interested parties and posted the notice to its website 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.

The summary of written comments received and the staff's recommended responses thereto, are provided below.

**(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 (Attachments 1a and 1b)**

**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.

Staff's Recommended 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 Attachment 3, Memo 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](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.

Staff's Recommended 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

(see <https://www.mbc.ca.gov/Licensing/Physicians-and-Surgeons/Renew/Current-status/Fees.aspx> 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.

Staff's Recommended 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 (Attachment 2)**

**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."

Staff's Recommended 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.

### **STAFF RECOMMENDATIONS**

Staff strongly recommends that the Board reject adverse comments as specified and provide the above-referenced staff recommended responses to the written comments received.

Option A (Recommended Motion): If the Board agrees with the staff recommendation above, the suggested motion is to direct the Executive Officer to proceed as recommended to reject adverse comments as specified and provide the responses to the comments as indicated in the staff's recommended responses provided in the Board meeting materials.

Option B (Alternate Motion): The Board may make an alternate motion, if the Board disagrees with the staff recommendation and wishes to either:

- (1) Suggest edits to the recommended responses,
- (2) Accept any specific comments and make corresponding changes in the proposal, or,
- (3) Make any other changes to the Board responses.

The suggested alternate motion in the instance is to direct the Executive Officer to accept the following comments and make the following edits to the text: [identify specific comments to accept or reject and text to change here], but otherwise proceed as recommended to reject adverse comments as specified and otherwise provide the responses to the comments as indicated in the staff's recommended responses provided in the Board meeting materials.

### **ATTACHMENTS**

1. Copies of email (Attachment 1a) and written comment letter (Attachment 1b) on behalf of Live Well Clinic
2. Copy of written comment via email by Jennifer Potter
3. March 14 2024 Board Meeting Memo