



MEMORANDUM

DATE	March 14, 2024
TO	Board Members California Board of Naturopathic Medicine
FROM	Rebecca Mitchell, Executive Officer
SUBJECT	Agenda Item 8: Discussion and Possible Action to Initiate a Rulemaking and to Amend Title 16, California Code of Regulations Section 4240 Regarding Fees

Background

In 2018, it was identified that the Board had a structural imbalance in its Naturopathic Doctor's Fund ("Fund"), which would mean that the Board was projected to run out of revenue to meet its operational needs. 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. SB 1480 amended the Board's fee structure to maintain the operation of the Board and restore funds in its reserve by increasing the application, initial licensing, and renewal fees, and establishing a fee for a certified license verification.

The Department of Consumer Affairs Budget Office (Budget Office) has since identified that the fees enacted by the 2018 legislation 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 and recommends increasing the Board's application, initial licensing, and renewal fees to help address costs.

Applicable Fiduciary Requirements for Fund Solvency

Regulations Counsel provides the following information regarding the Board's fiduciary responsibilities.

The Board is authorized pursuant to California's Budget Act (Senate Bill (SB) 501 (Ch. 12, Stats. 2023) and the Department of Finance to spend money ("expenditures") and incur monetary obligations for specific purposes, for example, to pay for personnel and Attorney General costs ("budgetary appropriation"). A budgetary appropriation for a specific

purpose is usually limited by the amount and time during which it may be expended (e.g., the current fiscal year), and the Board's ability to spend money is strictly tied to that appropriation.

Board members, through their Executive Officer, are responsible for ensuring that the Board remains solvent and does not attempt to incur expenditures in excess of the Board's legally authorized budgetary appropriation. California law imposes on state officers, including Board members, the following responsibilities and corresponding liability for failing to meet those responsibilities.

Government Code section 13320 requires every state agency, including the Board, to submit to the Department of Finance:

a complete and detailed budget at such time and in such form as may be prescribed by the department, setting forth all proposed expenditures and estimated revenues for the ensuing fiscal year.

Government Code section 13324 provides:

Every person who incurs any expenditure in excess of the allotments or other provisions of the fiscal year budget as approved by the department or as subsequently changed by or with the approval of the department, is ***liable both personally and on his official bond for the amount of the excess expenditures.*** (Emphasis added.)

Section 32.00 of the Budget Act provides, in pertinent part:

(a) **The officers of the various departments, boards, commissions, and institutions, for whose benefit and support appropriations are made in this act, are expressly forbidden to make any expenditures in excess of these appropriations.** Any indebtedness attempted to be created against the state in violation of this section shall be null and void, and shall not be allowed by the Controller nor paid out of any state appropriation.

(b) **Any member of a department, board, commission, or institution who shall vote for any expenditure, or create any indebtedness against the state in excess of the respective appropriations made by this act shall be liable both personally and on the member's official bond for the amount of the indebtedness,** to be recovered in any court of competent jurisdiction by the person or persons, firm, or corporation to which the indebtedness is owing. . . .

(c) Neither subdivision (a) nor (b) applies to the expenditure of moneys to fund continuous appropriations, including appropriations made in the California

Constitution, and federal laws mandating the expenditure of funds. (Emphasis added.)

Regulations Counsel advises that these legal authorities impose upon the Board and its Executive Officer a responsibility to ensure the Board does not vote for or authorize the spending of money in excess of the amounts authorized by the Budget Act, or for unauthorized purposes.

Current Fund Condition Summary

Despite the fee increases in 2019, the Board's Fund suffers continued structural imbalance and faces insolvency as early as July 2026. The attached document entitled "CA Board of Naturopathic Medicine Fund Analysis of Fund Condition (Status Quo)" demonstrates the Fund Condition without the proposed fee increases. The attached document "CA Board of Naturopathic Medicine Fund Analysis of Fund Condition (Fee Increase to Statutory Caps Effective 1/1/25)" demonstrates the Board's Fund Condition with the proposed fee increases (see Attachment 3).

Review of Recent Action and Current Recommendation

The Budget Office has advised the Board to commence rulemaking to implement the full statutory provisions of Senate Bill 1480 (Hill) to increase naturopathic doctor application, initial license, and renewal fees to the statutory caps set forth in Business and Professions Code section 3680. This increase would address the Board's structural imbalance and impending insolvency in the short term if fee increases are adopted by January 1, 2025.

The proposed text increasing these fees to the statutory maximum for Section 4240 of Title 16 of the California Code of Regulations is included for your review and consideration at Attachment 1. This proposal would:

- (1) Amend subsection (a) to increase the application fee for a doctor of naturopathic medicine license from \$400 to \$600.
- (2) Amend subsection (b) to increase the initial license fee from \$800 to \$1,200 and amend the existing table (with formatting added for the convenience of the reader) to prorate the license fee according to the applicant's birth month using the proposed \$1,200 fee and in accordance with 16 CCR Section 4222.
- (3) Amend subsection (c) to increase the renewal fee for a license from \$800 to \$1,200.
- (4) Restate the revised fees already set forth in statute at Business and Professions Code section 3680 at subsections (d), (f) and (g) for a late renewal fee for a license (currently

set by BPC section 3680 at \$225), the fee for a duplicate or replacement license (currently set by BPC section 3680 at \$38), and the fee for a certified license verification (currently set by BPC section 3680 at \$30). Although already listed in Business and Professions Code section 3680, these fee items are being listed in the Board's regulations for greater notice and the convenience of the regulated public by providing all licensing fees in one convenient location.

Data to support fee increases

Board staff recently completed desk audits. The outcome of the desk audits confirmed that the actual costs to process and administer the Board's application, initial licensing fee, and renewals exceeds the current fees charged for these categories as well as the statutory maximum. The attached document "Workload Cost Analysis" (Attachment 2) outlines the Board's current actual costs to process each application, initial license, or renewal.

Considering the foregoing, I am requesting that action be taken to address the pending structural imbalance for the Board's Fund through consideration of approval of Option 1 with an effective on filing date (which means the regulations would go into effect on the date approved by the Office of Administrative Law rather than quarterly).

Action Requested: It is requested that the Board review all attachments and consider one of the following options:

Option 1 [If the Board considers the proposed text acceptable as presented in the meeting materials, the Board may take the following action]:

Approve the proposed regulatory text and changes to 16 CCR 4240 as provided in Attachment 1 to the materials and direct staff to submit all approved text to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review. If no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for a hearing if requested. If no adverse comments are received during the 45-day comment period and no hearing is requested, authorize the Executive Officer to take all steps necessary to complete the rulemaking and adopt the proposed regulations at 16 CCR section 4240 as noticed with an effective on filing date.

Option 2 [If the Board would like to make changes to the proposed text, the Board may take the following action]:

Approve the proposed regulatory text and changes to 16 CCR section 4240 as provided in Attachment 1 to the materials but with the changes approved at this meeting, and direct

staff to submit all approved text to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review. If no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for a hearing if requested. If no adverse comments are received during the 45-day comment period and no hearing is requested, authorize the Executive Officer to take all steps necessary to complete the rulemaking and adopt the proposed regulations at 16 CCR 4240 as amended and approved at this meeting.

Attachments:

1. Proposed Regulatory Text for Amendments to 16 CCR section 4240 in Division 40 of the Board's Regulations
2. Workload Cost Analysis for ND Application, Initial License and License Renewal
3. "CA Board of Naturopathic Medicine Fund Analysis of Fund Condition" (Status Quo and Fee Increase to Statutory Caps Effective 1/1/25)