

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

FINAL STATEMENT OF REASONS

Hearing Date(s): April 19, 2016, April 20, 2016, April 26, 2016, April 29, 2016, and May 14, 2016.

Subject Matter of Proposed Regulations: Fees

Sections Affected: Title 16, Division 39, California Code of Regulations (CCR), Section 4130

Updated Information:

The Initial Statement of Reasons is included in the file describing the reason, rationale, and necessity of this proposed action.

During the rulemaking process, on July 6, 2016 the Board made available modifications to the initially proposed language. The Board proposes adding a new Article 4 entitled "Fees" and move Section 4130 from Article 3.5 to the newly added Article 4. Additional changes to the text include:

- Subsections (b) and (c) specifies that the initial license fees for occupational therapists and occupational therapy assistants shall be prorated and consistent with the biennial renewal fee, as specified, and the specific dollar amount of the initial license fee has been removed. In the future if the renewal fees are increased then the Board will not need to amend the initial license fees as it will be prorated according to the biennial renewal fees.
- Subsection (e) establishes a two-step increase in the biennial renewal fee. The proposal would increase the biennial renewal fee for occupational therapists from \$220 to \$270 for licenses that expire on or after January 1, 2021. This was necessary as the initial renewal fee did not provide sufficient revenue.
- Subsection (f) establishes a two-step increase in the biennial renewal fee. The proposal would increase the biennial renewal fee for occupational therapists from \$180 to \$210 for licenses that expire on or after January 1, 2021. This was necessary as the initial renewal fee did not provide sufficient revenue.
- Subsection (h) clarifies that the biennial renewal fee for an inactive license will be the same as the biennial renewal fee for an active license, consistent with statutory requirements.
- The language original proposed to be added to as subsection (k) and (l) establishing fees for license verifications or endorsements and dishonored checks have been removed because they are not necessary; establishing these fees in regulation would be duplicative of other statutory provisions.

On August 3, 2016, the Board noticed and made available an Addendum to the Initial Statement of Reasons and Documents Added to the File. The Addendum to the Initial Statement of Reasons updated the Purpose and Finding of Necessity for the proposed changes related to this action. The Documents Added to the File included three Fund Conditions to make transparent the projections of the Board's Fund Condition.

Fund Condition #1 showed projections of increased revenue based on the fee increases set forth in Proposed Text. Find Condition #2 showed projections based on the fee increases set forth in the Proposed Text and additional revenue resulting from the inactive biennial renewal fee being increased to be consistent the active biennial renewal fee. Fund Condition #3 showed revenue projections resulting from the fees set forth in the Modified Text, including the two-step increase in the biennial renewal fees for occupational therapists and occupational therapy assistant as well as making the inactive biennial renewal fee consistent with the active biennial renewal fee pursuant to Business and Professions Code Section 462. The biennial renewal fee increases proposed in the initial Proposed Text and the Modified text are all less than the pre-2007 *annual* renewal fee of \$150; there has not been an increase to renewal fees since the Board's 2001 inception.

The Board affected a minor technical change to the Order of Adoption. The change was made in section 4130(a), to add an updated revision date to the Initial Application for Licensure (Form ILA, Revised 1/2016) form which is incorporated by reference. The revision date was changed from 'Rev 1/2016' to 'Rev 7/2016' to update the revision date with a recently approved rulemaking file.

The underlying reasons the Board is seeking this proposed action has not changed.

In addition, the Board affected an edit in section 4130(g) in the final rulemaking review process. Proposed language to set the delinquent renewal fee to one hundred dollars (\$100) is being struck because it conflicts with Business and Professions Code section 163.5 that establishes delinquent renewal fees shall be fifty percent of a renewal fee. Therefore, existing language setting the delinquent fee at one-half of a renewal fee will be maintained.

Local Mandate: None

Business Impact/Finding of Necessity:

The proposed regulation does not have a significant adverse economic impact on business in California. The primary benefit of this proposed action is to ensure the Board remains fiscally solvent to administer, regulate, and enforce the Occupational Therapy Practice Act and to carry out its mission to protect the health, safety, and welfare of California consumers.

The proposed regulatory action impacts individuals who will be applying for licensure and the practitioners who will be renewing their licenses. The increase in fees is necessary as the Board is a self-funded agency and as such, must charge fees to support its operations. Thus, the proposed fee increases will ensure the revenue collected is more closely aligned with annual expenditures.

The Board's 2016-17 budget (and on-going) was significantly increased due to staffing augmentations authorized by Budget Change Proposals 1110-019 and 1110-020 and increases in a variety of operating expenses, such as, printing, postage, communications, departmental pro-rata, information services, equipment, and staff salaries and benefits, etc.

Consideration of Alternatives:

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which it was proposed or 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.

If the Board were to take no action the Board's Fund Condition would no longer support Board operations.

Summary of Public Comments Received During Public Hearings:

The Board received five comments during the Public Hearing held April 19, 2016:

Comment 1: An occupational therapy assistant (OTA) commented that the new graduates, who have a lot of school-related debt, applying for a license, should not have to pay more money for a limited permit. She also feels like the renewal fees should be the same for OTs and OTAs.

Board Response: The Board rejected this comment. The proposed increase to the Limited Permit fee is \$25. The Board appreciates the commenter's selfless point of view regarding renewal fees but feels it is important to recognize the wage disparity between occupational therapists and occupational therapy assistants in proposing these fee increases.

Comment 2: An occupational therapist suggested that the fee for a limited permit should be eliminated somewhat the way PT licensing board does. An applicant should pay for the initial license and the limited permit should be covered in that fee. The OT feels like this would justify the increase in renewal fees rather than paying the extra fee for a limited permit and paying again for the actual license.

Board Response: The Board rejected this comment. The fee for an application for licensure is set in statute at \$50 and applicants for licensure should not be required pay for a Limited Permit if they do not practice after graduation. Limited permits are optional, not mandatory.

Comment 3: An occupational therapist proposed the delinquent fee to be increased to \$150 as there is no excuse for OTs OTAs to be delinquent in their license renewals.

Board Response: The Board rejected this comment. The Board appreciates the commenter's input but feels the proposed delinquent fee is sufficient to deter licensees from renewing late. Moreover, delinquent fees are not a reliable revenue source.

Comment 4: An occupational therapist suggested it would seem to be fair to establish a probation monitoring fee as an additional income source for the Board when a licensee violates a law or regulation and ends up on probation.

Board Response: The Board rejected this comment because implementation of the suggestion would require legislative action. The Board has asked the Executive Officer to look into this matter further. The Board appreciates the commenter's input.

Comment 5: An occupational therapist supported the proposed fee increases indicating fees have not been raised since the Board's inception and the proposed increase of \$35 seems reasonable to cover the budget through 2021.

Board Response: The Board accepted this comment and appreciates the commenter's input.

The Board received one comment during the Public Hearing held April 29, 2016:

Comment: Lynette Beadles, an occupational therapist, supported the proposal for raising the fee for licensure which will allow the Board to continue to be solvent.

Board Response: The Board accepted this comment and appreciates Ms. Beadles input.

There were no public comments received during Hearings held April 20, 2016, April 26, 2016, or May 14, 2016.

Summary of Public Comments Received During 45-day Comment Period:

The Board received two (2) public comments on the proposed regulatory action during the 45-day comment period:

1. Lisane Drouin, occupational therapist, email dated March 26, 2016, expressed her concern over the \$70 proposed increase in fees and proposed a smaller increase of maybe \$15 to \$20 per year rather than a 46.67 % increase in the biennial renewal fee.

Board Response: The Board rejected the comment. The Board appreciates Ms. Drouin's input but her suggestion of an increase of \$15 to \$20 would not address long term funding and fiscal solvency of Board.

2. **American Occupational Therapy Association (AOTA)**, correspondence dated May 9, 2016, expressed concern about the proposed 47% increase to occupational therapist licensing fees and 20% increase to occupational therapy assistant license fees. AOTA reported the fee increases will impede practitioners from remaining active in the profession and thereby affect the availability of qualified therapists to provide needed services to consumers. AOTA asked for more detailed information on the declining budget reserve reported in the Notice.

Board Response: The Board rejected this comment. The fee increases that have been proposed are designed to address the declining budget reserve that was reported in the Initial Statement of Reasons. Detailed information regarding the Board's fund condition was made available in Board meeting agenda materials for its February 18 & 19, 2016, meeting and also available at the five public hearings that were held regarding this proposed action.

Summary of Public Comments Received During first 15-day Comment Period:

The Board received two (2) public comments on the proposed regulatory action during the first 15-day comment period:

1. **Occupational Therapy Association of California (OTAC)**, correspondence dated July 22, 2016, expressed concern about the size of the proposed increases in licensing fees and the newly proposed modified language that would make the inactive renewal fee equal to the biennial renewal fee and institute a second fee increase in in 2021. OTAC reported this proposed action could negatively impact occupational therapy practitioners in California, especially the part-time workforce that would perceive this as a major barrier to continued practice. OTAC asked the Board to provide clear detailed information pertaining to the projected Budget Reserve decline that serves as the basis for seeking the fee increases. OTAC indicated they support the need to increase fees in a general sense, but are apprehensive how the increased fees may impact state and national association memberships. OTAC encouraged development of a strategy to measure and evaluate workflow and customer service improvements resulting from fee increases.

Board Response: The Board rejected this comment. Pursuant to OTAC's request the Board made available clear and detailed budget information regarding the projected budget reserve decline. On August 3, 2016, the Board made available an Addendum to the Initial Statement of Reasons and added documents to the rulemaking record to provide more transparency and detail regarding its reason and rationale for initially proposing and modifying language pertaining to this proposed action. Documents added to the file identify projected expenditures, revenue, and the Board's Fund Condition based on three different fee increase scenarios that were considered. The Board has chosen scenario number three to provide for long term financial stability.

2. **American Occupational Therapy Association (AOTA)**, correspondence dated July 22, 2016, expressed concern over high increase of licensing fees. AOTA continues to believe that this increase is significant and may be burdensome to practitioners in California. In a previous comment letter, AOTA requested information regarding the budget, but did not receive that information. AOTA requested that if there is a recent and significant change in the budget revenues versus expenditures, AOTA would like to see more detailed information included in the Final Statement of Reasons to explain the fee increases. AOTA requested and proposed more modest fee increases in licensing fees.

Board Response: The Board rejected this comment. Pursuant to AOTA's request the Board made available clear and detailed budget information regarding the projected Budget Reserve decline. On August 3, 2016, the Board made available an Addendum to the Initial Statement of Reasons and added documents to the rulemaking record to provide more transparency and detail regarding its reason and rationale for initially proposing and modifying language pertaining to this proposed action. Documents added to the file identify projected expenditures, revenue, and the Board's Fund Condition based on three different fee increase scenarios that

were considered. The Board has chosen scenario number three to provide for long term financial stability.

Summary of Public Comments Received During Second 15-day Comment Period:

The Board received one written comment during the second 15-day comment period:

Julia Evans, an occupational therapist, correspondence dated August 5, 2016, expressed her concern over almost 50% increase in the fee. She mentioned that many therapists do not have companies that provide financial assistance so the increase in fees should be modest and \$70 increase is too much.

Board Response: The Board rejected this comment. The Board appreciates Ms. Evans taking time to provide comment on this matter. Documents added to the rulemaking file support that the proposed fee increases are necessary for the Board to maintain fiscal solvency into the future.

Public Comments Received Outside Comment Periods:

The Board received three (3) comments on the proposed regulatory action outside comment period.

1. **Occupational Therapy Association of California (OTAC)**, correspondence dated May 18, 2016, was delivered to the Board at its May 19, 2016, meeting for discussion of agenda item #5 regarding this proposed action. OTAC stated it was concerned about the amount of the increase in licensing fees and the impact it may have on practitioners and the public. OTAC requested more information relative to the Budget Reserve. OTAC indicated if fee increases are necessary they should be incremental and reasonable to ensure practitioners can continue to meet the demand for care.

Board Response: The Board rejected this comment. The fee increases that have been proposed are designed to address the declining budget reserve that was reported in the Initial Statement of Reasons. Detailed information regarding the Board's fund condition was made available in Board meeting agenda materials for its February 18 & 19, 2016, meeting and also available at the five public hearings that were held regarding this proposed action.

2. **Valerie Adams**, an occupational therapist, correspondence dated July 23, 2016, expressed her displeasure regarding a huge increase in the license renewal fees. She was also not clear why the Board needs a huge increase instead of a smaller increase.

Board Response: The Board rejected this comment. The Board made data and information available regarding the necessity and amount of the proposed fee increases.

3. **Grace Chin**, a per diem occupational therapist, correspondence dated July 31, 2016, was concerned about the amount of the proposed fee increase along with membership fees she pays to some of the occupational therapy associations to get professional support.

Board Response: The Board rejected this comment. The Board made data and information available regarding the necessity and amount of the proposed fee increases. As a special fund agency, the Board is responsible to ensure that it has the funding necessary to carry out its mission to regulate the practice of occupational therapy and protect the public.