

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: May 7, 2024
ATTENTION: Members, Medical Board of California
SUBJECT: Proposed Regulations for Fees for Petitions for Penalty Relief to add Title 16 California Code of Regulations (CCR) section 1352.3 (Fees for Petitions for Penalty Relief) and to amend 16 CCR section 1359 (Petitions for Reinstatement or Modification of Probation)
FROM: Kerrie Webb, Attorney III

REQUESTED ACTION:

After review and consideration of the proposed additions and amendments to the attached regulations relating to fees for petitions for penalty relief, decide whether to move forward with the proposed regulations, propose modifications to the text, or take some other action.

If the members wish to move forward with the proposed regulations, then make a motion to:

- 1) Approve the text;
- 2) Direct staff to prepare the necessary regulatory documents to submit to the Department of Consumer Affairs (DCA) and the Business, Consumer Services and Housing Agency (Agency);
- 3) Upon DCA and Agency approval, direct staff to submit the documents to the Office of Administrative Law (OAL) to notice the proposed regulatory language to add section 1352.3 and amend section 1359 of Title 16 of the California Code of Regulations; and
- 4) If no substantive adverse comments are received during the 45-day comment period, direct staff to finalize the rulemaking file and submit it to DCA and Agency, and upon approval, to the Office of Administrative Law, and to make any technical or non-substantive changes and adopt the text as noticed without returning to the Board.

BACKGROUND

Pursuant to [Business and Professions Code \(BPC\) section 2307](#), a disciplined licensee may petition the Board to seek reinstatement of a revoked or surrendered license or to have their probation modified or terminated early.

The process to evaluate and consider each petition currently involves unreimbursed Board, Attorney General's Office (AGO), and Office of Administrative Hearings (OAH) staff time and results in substantial costs to the Board. Based on current information and AGO and OAH costs relating to petitions for penalty relief between Fiscal Years 2021 and 2023, the following average costs apply:

Average cost for Board staff time to process a petition for modification or early termination of probation: \$1,949. (See Attachment 1).

Average cost for Board staff time to process a petition for reinstatement following a revocation or a stipulated surrender to settle a disciplinary action: \$3,738. (See Attachment 2).

Average cost for AGO to litigate a petition for penalty relief: \$12,780. (See Attachment 3).

Average cost of OAH to hold a hearing on a petition for penalty relief and issue a proposed decision: \$6,263. (See Attachment 3).

Total average cost for a petition for penalty relief to go to hearing: \$19,043. (See Attachment 3).

Between Fiscal Years 2021 and 2023, the litigation and hearing expenses alone cost the Board more than \$1.8 million. Significantly, those individuals who filed petitions for penalty relief with the Board have historically not had to bear any of these costs.

At the Board's request during its last sunset review, [Senate Bill \(SB\) 815 \(Roth, Chapter 294, Statutes of 2023\)](#) added [Business and Professions Code section 2307.5](#) to the Medical Practice Act, giving the Board the authority to establish a fee for petitions for penalty relief. Consequently, in light of this new authority, Board staff is proposing to add 16 CCR section 1352.3 (Fees for Petitions for Penalty Relief) to set the fees to cover the costs of processing, litigating, and hearing petitions for penalty relief, as well as to amend 16 CCR section 1359 (Petitions for Reinstatement or Modification of Probation) to reference the required fee and update the process relating to petitions for penalty relief. (See Attachment 4).

STAFF RECOMMENDATION:

Make and approve the motion indicated above under Requested Action in support of the proposed rulemaking language to add 16 CCR section 1352.3 (Fees for Petitions for Penalty Relief) and to amend 16 CCR section 1359 (Petitions for Reinstatement or Modification of Probation).

Attachment 1: Workload Chart for Petitions for Probation Modification and Early Termination

Attachment 2: Workload Chart for Petitions for Reinstatement

Attachment 3: AGO and OAH Expense Calculations

Attachment 4: Proposed Text - Fees for Petitions for Penalty

Medical Board of California Penalty Relief (Petitions for Modification and Early Termination) (SB 815, Chapter 294, Statutes of 2023) Fiscal Impact (Workload Costs)						
Workload Tasks	Per Petition	Minutes Per Petition	MST	Inspector I/II	AGPA	SSMII
Receive & process petition, create case record in IT system & license certification, download NPDB report, and refer to Probation Unit	1	30	30	-	-	-
Copy probation file, including search of electronic records to ensure file includes all documents	1	90	-	90	-	-
Review petition packet and probation file	1	240	-	-	240	-
Conduct interviews of probationers and doctors	1	60	-	-	60	-
Draft Petition for Penalty Relief Report	1	120	-	-	120	-
Prepare packet for management review	1	15	-	-	15	-
Review Petition for Penalty Relief Report & Packet	1	60	-	-	-	60
Update IT systems & tracking	1	10	-	-	10	-
Copy Petition for Penalty Relief Packet, prepare packet to ship & transmit to Attorney General	1	60	60	-	-	-
Receive & review Proposed Decision after hearing & download documents from OAH web site	1	30	-	-	30	-
Prepare & send packet to board members & update case record in IT system	1	30	-	-	30	-
Check system for Board Member votes	5	5	25	-	-	-
If held for discussion: Prepare panel packet and case summary sheet, scan & upload panel material & prepare panel outcome	1	60	-	-	60	-
If non-adopted & held for oral argument: Prepare panel outcome, order transcripts, send notice of non-adoption, notice of written argument & notice of oral argument, compile transcripts & exhibits, prepare administrative record & order hearing	1	180	-	-	180	-
Send final decision to stakeholder & update case record in IT system	1	60	-	-	60	-
Minutes per Classification			115	90	805	60
Hours by Classification			1.9	1.5	13.4	1
Costs by Classification			\$173	\$143	\$1,501	\$132
*Total Costs:			\$1,949			

MST: Management Services Technician @ \$91 per hr (includes DCA Distributed Administration)
 Inspector I/II @ \$95 per hr (includes DCA Distributed Administration)
 AGPA: Associate Governmental Program Analyst @ \$112 per hr (includes DCA Distributed Administration)
 SSMII: Staff Services Manager II @ \$132 per hr (includes DCA Distributed Administration)

Medical Board of California Penalty Relief (Petitions for Reinstatement) (SB 815, Chapter 294, Statutes of 2023) Fiscal Impact (Workload Costs)							
Workload Tasks	Per Petition	Minutes Per Petition	MST	AGPA	SI	SSMI	SSMII
Receive & process petition, create case record in IT system & license certification, download NPDB report, and refer to Probation Unit	1	30	30	-	-	-	-
Review Petition for Reinstatement/original discipline file	1	180	-	-	180	-	-
Contact & conduct interviews (letters of reference)	1	135	-	-	135	-	-
Verify information in the petition package/background investigation into rehabilitative efforts Petitioner has taken since losing license	1	180	-	-	180	-	-
Contact petitioner & conduct interview	1	165	-	-	165	-	-
Draft report detailing what Petitioner has done (rehabilitative efforts, work history, criminal history, etc.) since losing license and prepare memo to DAG	1	300	-	-	300	-	-
Prepare final transmittal packet, all final documents and materials, for management review	1	240	-	-	240	-	-
Update electronic systems & tracking	1	90	-	-	90	-	-
Management review and signature	1	60	-	-	-	60	-
Prepare & submit transmittal package to Attorney General	1	60	-	-	-	60	-
Receive & review Proposed Decision after hearing & download documents from OAH web site	1	30	-	30	-	-	-
Prepare & send packet to board members & update case record in IT system	1	30	-	30	-	-	-
Final management review for edits	1	30	-	-	-	-	30
Check system for Board Member votes	5	5	25	-	-	-	-
If held for discussion: Prepare panel packet and case summary sheet, scan & upload panel material & prepare panel outcome	1	60	-	60	-	-	-
If non-adopted & held for oral argument: Prepare panel outcome, order transcripts, send notice of non-adoption, notice of written argument & notice of oral argument, compile transcripts & exhibits, prepare administrative record & order hearing	1	180	-	180	-	-	-
Send final decision to stakeholder & update case record in IT system	1	60	-	60	-	-	-
Minutes per Classification			55	360	1,290	120	30
Hours by Classification			0.92	6	21.5	2	0.5
Costs by Classification			\$84	\$672	\$2,666	\$250	\$66
*Total Costs:					\$3,738		

MST: Management Services Technician @ \$91 per hr (includes DCA Distributed Administration)

AGPA: Associate Governmental Program Analyst @ \$112 per hr (includes DCA Distributed Administration)

SI: Special Investigator @ \$124 per hr (includes DCA Distributed Administration)

SSMI: Staff Services Manager I @ \$125 per hr (includes DCA Distributed Administration)

SSMII: Staff Services Manager II @ \$132 per hr (includes DCA Distributed Administration)

Attorney General Expense - PPR

07/01/2021 - 09/30/2023	
Total Cases Billed	99
Total Cost	\$ 1,265,253.46
Avg Cost Per Case AG	\$ 12,780.34

Office of Administrative Hearing Expense - PPR

07/01/2021 - 09/30/2023	
Total Cases Billed	88
Total Cost	\$ 551,166.75
Avg Cost Per Case OAH	\$ 6,263.26

Average Total Cost Per Case	\$ 19,043.60
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DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISION 13.

MEDICAL BOARD OF CALIFORNIA

PROPOSED REGULATORY LANGUAGE
Fees for Petitions for Penalty Relief

Legend: Added text is indicated with an underline.
Deleted text is indicated with a ~~single strikethrough~~.

Adopt Section 1352.3 in Article 15 of Chapter 1 of Division 13, of Title 16 of the California Code of Regulations and Amend Section 1359 of Article 3 of Chapter 2 of Division 13 to read as follows:

§ 1352.3. Fees for Petitions for Penalty Relief.

(a) The fee required to process a petition for modification or termination of probation is \$1,949.

(b) The fee required to adjudicate a petition for modification or termination of probation once the petition is accepted by the Board to be set for hearing as specified in Section 1359 is \$19,043.

(c) The fee required to process a petition for reinstatement of a revoked certificate or a certificate surrendered pursuant to a stipulation to settle a disciplinary action is \$3,738.

(d) The fee required to adjudicate a petition for reinstatement of a revoked certificate, or a certificate surrendered pursuant to a stipulation to settle a disciplinary action, once the petition is accepted by the Board to be set for hearing as specified in Section 1359 is \$19,043.

Note: Authority cited: Sections 2018 and 2307.5, Business and Professions Code.
Reference: Section 2307 and 2307.5, Business and Professions Code.

§ 1359. Petitions for Reinstatement or Modification of Probation.

(a) A petition for modification or termination of probation or a petition for reinstatement of a revoked ~~or surrendered~~ certificate shall be filed on a form provided by the ~~division~~ Board along with the applicable nonrefundable fee required by Section 1352.3 for processing the petition.

~~(b) Consideration shall be given to a petition for reinstatement of license or modification or termination of probation only when a formal request for such has been filed in the division's office in Sacramento at least thirty (30) days before a regular meeting of the division or appropriate medical quality review panel.~~

(b) Fees paid to the Board as required by this section shall be submitted in the form of a money order, certified check, cashiers' check, preprinted personal or company check, which shall clearly indicate the name of the petitioner to whom it applies. Processing of any petition shall commence only after the fee specified in subsection (a) has been received, the payment clears the petitioner's bank, and the funds are deposited in the Board's accounts within 30 days of the check or money order being deposited.

(c) If payment is made in accordance with subsection (b), the petition is not withdrawn by the petitioner or rejected by the Board for failing to meet the requirements set forth in Section 2307 of the Code or this section, and the petition is eligible to be set for hearing through the Office of Administrative Hearings (OAH), the petitioner shall be provided written notice that the Board has accepted the petition to be set for a hearing. Written notice shall include that: (1) the petition has been accepted by the Board to be set for a hearing, (2) the matter will be set for a petition hearing before an administrative law judge (ALJ) assigned by OAH upon payment to the Board of the applicable non-refundable fee for adjudication of the petition as set forth in Section 1352.3; and (3) payment must be made and cleared for deposit of funds with the Board within 90 days of the date the Board sent the written notification of acceptance of the petition to be set for hearing.

(d) Failure to comply with the requirements of this section shall result in the petition being rejected by the Board as incomplete. Written notice of such rejection and the reasons therefore shall be provided to the petitioner upon the Board's determination that the petitioner has not met the requirements of this section.

NOTE: Authority cited: Section 2018 and 2307.5, Business and Professions Code.
Reference: Section 2307 and 2307.5, Business and Professions Code.