AGENDA ITEM 16

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED:	January 26, 2009
DEPARTMENT:	Executive Office
SUBJECT:	Refund or credit of $22 licensing fees collected in FY 08-09, fees that funded the Diversion Program
STAFF CONTACT:	Kevin A. Schunke

REQUESTED ACTION: The Board should consider action in regards to $22 collected from half of the Board's licensing population; all of those who renewed or were initially license during Fiscal Year (FY) 08-09.

STAFF RECOMMENDATION: Staff recommends that the Board support Option #5, which is a proposal to "issue refunds" by actually lowering the license renewal fees. Although this option would not be completed until the summer of 2011, as the last licensees send in their renewal payments during FY 10-11, this option requires minimal staff work, causes the least confusion for licensees, and it is the only option with negligible implementation costs.

EXECUTIVE SUMMARY: Section 2435.2 of the Business and Professions Code states that the Board shall reduce license and renewal fees if the Diversion Program is eliminated. During 2008, the Board promulgated a rulemaking to implement this reduction in the fees; the effective date is proposed to be July 1, 2009. (This rulemaking still is being routed through DCA and OAL for review and approval; if approved, fees will be reduced by $22.)

Existing law establishes a biennial renewal cycle—half of the licensing population renews each year—this staff report applies to about 57,500 licensees (all of those who renewed or were given an initial license during FY 08-09).

During the public comment period for the aforementioned rulemaking, the California Medical Association (CMA) submitted comments. In summary, CMA contends that the Board did not move quickly enough to reduce the licensing and renewal fees in a time frame to match the date of the elimination of the diversion program. CMA took the position that the elimination of the diversion program took effect on July 1, 2008 and any money collected thereafter violates the law. Thus, that argument presumes that this income then equals an unfair revenue gain for the Board, money that should rightfully belong to licensees.

However, it must be noted that Business and Professions Code Section 2435.2 (the law requiring the reduction in fees if the diversion program is sunsetted) did not include any timeframe during which the fees must be reduced. The law, therefore, must have contemplated the need for a formal rulemaking process, which is well-known to take many months; this is particularly true in light of the fact that the Board could not have known whether the original diversion program would actually sunset or another program be created in its place, to be funded in whole or in part by the Board's fees. Lastly, the governing statute did not provide for a "penalty" for the failure to promptly reduce the fee.

Nevertheless, at the November, 2008 Board meeting, staff was directed by the Board to prepare a comprehensive evaluation and discussion of a possible credit or refund for those who paid a license fee in FY 08/09. Since that rulemaking is proposed to be effective on July 1, 2009, and the argument has been made the Board should have acted sooner, the Board could seek to refund $22 (same amount the fee will be reduced July 1, 2009) to each of the approximate 57,500 physicians who paid a license or renewal fee during FY 08-09, for a total of $1.265 million in refunds. This would cover those persons who paid fees after the date the law became effective and before the effective date of the fee reduction regulations.

The process for issuing such a plethora of refunds has never been previously addressed by any of the DCA regulatory boards. That notwithstanding, DCA has been working with the State Controller's Office (SCO) and with the Board to identify the most cost-efficient and least labor-intensive refund or credit process.

FISCAL CONSIDERATIONS:

The fiscal costs are detailed in the discussion of each option below.

PREVIOUS MBC AND/OR COMMITTEE ACTION:

Section 2435.2 of the Business and Professions Code states that the Board shall reduce license and renewal fees if the Diversion Program is eliminated. During 2008, the Board promulgated a rulemaking to implement this reduction in the fees; the effective date is proposed to be July 1, 2009. (This rulemaking still is being routed through DCA and OAL for review and approval.)

At the November, 2008 Board meeting, staff was directed to prepare an agenda item with a comprehensive evaluation and discussion of a possible credit or refund for those who paid a license fee in FY 08/09.

ALTERNATIVES:

Option #1:

An electronic file can be prepared by DCA to reference every person who was issued a license or renewed a license (and paid the applicable fee) in FY 08-09; this could be transmitted to the SCO. This then becomes a "claim" against the state and would be processed by the state's accounting system.

Due to the requirement of separation of duties (the Board processes payments [income] from licensees), the task of a global refund of monies to licensees must be handled by DCA and the SCO; it cannot be processed by Board staff internally.

It is estimated that there will be a one-time cost for initial set up of $48,000; implementation would take up to six months before the first check could be issued. Issuing the checks would take an additional two to three months.

This option, if the SCO agrees to accept this one-time workload, could be completed by the end of 2009 or early 2010, depending on the start date of the project. However, it is unlikely that the SCO will agree to take on this workload since it is only a one-time event.

Option #2:

The claims could be processed automatically at DCA. However, this process allows only 12 payees to be identified for each claim form. While this is done electronically, it would require producing an estimated 4,600 claims. Realistically, this could be achieved in smaller batches of up to 100 claims (1,200 payees) a week. The estimated timeframe to issue refunds to 57,500 licensees is approximately 46 weeks, or almost one year.

This process would cost about $30 to $35 to issue each check. It would cost more to issue the checks than the amount to be refunded. DCA would require the Board to cover the expense of staff and equipment for processing these refunds. DCA estimates a total one time cost in excess of $1.7 million (far beyond the $1.265 million to be refunded). This volume of workload would require DCA to increase both staffing and equipment, which would require the Board to prepare and submit a Budget Change Proposal for FY 10/11.

This option would span the entire FY and would be completed during the summer of 2011.

Option #3:

The claims could be processed manually at DCA and list 99 payees per claim as opposed to the 12 payees for an automated claim (see Option #2, above). It is unclear how the payee information would be provided. The claims and remittance advices would be hand-typed. Further, keying these transactions to the state's accounting system (CALSTARS) would be manual. Therefore, all steps in this option would be completely manual.

The estimated workload to manually produce over 500 claims requires additional resources not presently determined, but DCA has indicated it would entail an "army" of staff. This option would take about two years for completion.

As with Option #2, this process would cost more than twice as much as automated processing to issue each check and would experience a similar implementation timeline. It would cost more to issue the checks than the amount to be refunded.

These refunds would not begin until July 1, 2010, but could be completed by early-2011.

> ***For each of the previous options,*** *all costs must be paid by the Board. The up-front costs incurred would be for postage (in excess of $23,000). Further, the Board has been advised that the additional production costs (staffing, form and equipment supplies and usage, etc) would be recouped by DCA and/or the SCO by increasing the pro-rata charged the Board in future years. <u>It is important to recognize that all three options represent more than twice the volume of refunds processed annually for the entire DCA.</u>*

Option #4

Issuing a refund check of $22 at the time of renewal for all license renewals in FY 10-11, would capture most of the licensees to whom a license was issued in FY 08-09 or who renewed a license in that same FY. The system could be formatted to electronically issue a refund check once the licensee pays the renewal fee during FY 10-11. However, some licensees may move or cancel their license in the interim, thus requiring additional time for name verification in order to issue a refund to them.

This process would require only internal computer formatting and cashiering changes.

It is estimated that the production costs for this option would be $30 to $35 per check, even if most of the process is automated. (See Option #2 for estimated costs and implementation timeframes.) However, the Board still would have to pay postage costs; the costs related to forms, equipment, etc., would result in an increase in the pro-rata, albeit a bit less than the increase caused by the previous options.

This option would be completed during the summer of 2011, as the last renewals are processed.

Option #5

Internal programming changes to the renewal notices can be made by Board staff and changes to the on-line renewal process can be made by DCA staff. These modifications to the computer codes would ensure that the renewal fees in FY 10-11 are reduced by $22 for those impacted licensees and the renewal notices would be printed with the amount due. This internal process should cause less confusion and generate relatively few questions and phone calls from licensees, thus requiring limited staff resources. However, some licensees may move or cancel their license in the interim, thus requiring additional time to issue the credit which is due.

This is the <u>only option</u> which ensures that the licensees only pay that which is due, and it is the <u>only option</u> which relieves the Board, DCA, and/or SCO of having to issue any refund checks.

The option would be completed in the summer of 2011 when those impacted licensees actually pay their renewal fees.

Other than programming costs and staff time, the implementation costs would be negligible.

> ***Additional element of Option #4 and Option #5*** *-- An additional consideration related to both Option #4 and Option #5 is that some licensees may, in the interim, move out of state, retire from the medical profession, or for some other reason, not renew their license in FY 10-11. Staff has indicated that this would be only a minimal number of licensees, and these licensees would be identified by running an electronic report. These licensees would be issued checks on a manual basis, but the Board's technology staff believes that this number would be less than 1,250 persons spread over a 12-month period; thus, the workload and cost would be negligible.*

Option #6

Staff can place the responsibility of requesting a refund on each individual licensee who was licensed or renewed during FY 08-09. The Board could send out a letter to each of these 57,500 licensees, explaining why they are due a refund of $22; it would be the responsibility of the licensee to submit a refund request to the Board, asking that the refund be completed.

Because these would be received as individual requests for refunds, this would be handled internally by Board staff. Although it is expected that not all eligible licensees would make the effort to request such a small refund, many would.

This option would require a moderate amount of staff time. The costs (overtime by Board staff, postage, etc.) would have to be absorbed within the Board's existing budget. This option could be completed within three to twelve months, depending on how quickly the licensees request a refund and depending on how many make the request.

If this option is selected, an implementation timeline would need to be developed and letters could be mailed as soon as OAL approves the pending fee reduction regulation. However, implementation would be dependent upon staff time and resources being available; thus, if a freeze for hiring new staff or a freeze of overtime is instituted, this option could not be implemented.

Option #7

Do nothing. In an upcoming edition of the Board's *Newsletter*, staff would include an explanation of why a refund could have been offered but detailing the cumbersome and lengthy process which would be involved in issuing refunds or credits. The money would vest in the Board's reserves. Then, when fees again are recalculated and adjusted, that money would be taken into consideration. The inequity in this option is that the funds would be spread amongst all of the Board's licensees, not just the 57,500 who were licensed or renewed in FY 08-09 and paid the $22.