

## MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: January 31, 2025  
ATTENTION: Members, Medical Board of California  
SUBJECT: Fees for Petitions for Penalty Relief - Discussion and Possible Action on Proposed Rulemaking and Proposed Responses to Public Comments Received During the 45-Day Comment Period on Originally Noticed Regulatory Text 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)  
FROM: Kerrie Webb, Attorney III

### REQUESTED ACTION:

1. Consider and approve the proposed responses to written comments received on the originally noticed text for the proposed rulemaking on 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)
2. Consider the modified regulatory text for 16 CCR section 1352.3 and 1359 and entertain a motion to approve the modified regulatory text as well as direct staff to take all steps necessary to complete the rulemaking process. This includes preparing modified text for an additional 15-day comment period, which incorporates amendments discussed at this meeting. If after the 15-day public comment period, the board does not receive any comments providing objections or adverse recommendation specifically directed at the proposed action or to the procedures followed by the board in proposing or adopting the action, then the Board authorizes the Executive Officer to make any non-substantive changes to the proposed regulations and the rulemaking file and adopt the proposed regulations as described in the modified text notice.

### 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.

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, which shall not exceed the Board's reasonable costs to process and adjudicate a petition submitted pursuant to Section 2307.

The Board determined that the following average costs apply:

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

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.

Total average cost for a petition for penalty relief to go to hearing: \$19,043 (AGO costs of \$12,780 + OAH costs of \$6,263).

At its May 23-24, 2024 Board meeting, the Board considered and approved proposed text 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 for petitions for penalty relief. (See Attachment 1).

Pursuant to the Administrative Procedure Act, Board staff noticed the proposed text on November 15, 2024, for the 45-day public comment period, and extended the comment period to January 6, 2025. The Board did not receive a timely request for a hearing but did receive nine (9) written comments. A summary of the written comments and oral testimony, along with the proposed responses, are provided for your review and consideration as Attachment 2. Further, please see Attachment 3 for the actual written comments.

The main concern raised in the comments related to the large upfront fee required to proceed through the petition process, including the requirement to pay \$19,043 to have the matter referred to the AGO and be set for hearing. To address concerns that the large upfront fee will pose a barrier for otherwise qualified individuals from being able to seek reinstatement or modification or early termination of their probation, Board staff developed modified text for the Board to consider. (See Attachment 4).

The modified text proposes to have petitioners seeking modification or early termination of their probation pay an initial fee of \$1,242 to cover Board staff time to review and process the petition to the point of referring it to the AGO. (See Attachment 5). Petitioners seeking reinstatement would pay an initial fee of \$2,962 to cover Board staff time to review and process the petition to the point of referring it to the AGO. (See Attachment 6).

Further, under the proposed modified text, if the matter goes to hearing, the ALJ will determine the remaining fee to cover the reasonable costs for the AGO and OAH costs up to \$22,000, less the initial fee paid. (See Attachment 7).

Additionally, pursuant to the proposed modified text, the ALJ will be authorized to consider the petitioner's ability to pay the remaining fee with or without entering into a payment plan with the Board, as well as the reasonableness of the fee. The finding on the fee will be included in a proposed decision for the Board's consideration, and the Board may approve, reduce, or eliminate the remaining fee award. The Board may increase the fee award based on the evidence, but only in a decision after non-adoption of the ALJ's proposed decision.

The Board will be authorized under the proposed modified text to take action to enforce the order to pay costs via administrative action or via any other action allowed by law.

The proposed modified text also clarifies that sections requiring payment of fees and notice thereof shall apply only to petitions for penalty relief on disciplinary decisions ordered after the effective date of the rulemaking.

**STAFF RECOMMENDATION:**

Make and approve the motion indicated above under Requested Action.

**Attachment 1:** Fees for Petitions for Penalty Relief – Originally Noticed Text

**Attachment 2:** Summary of written comments and proposed responses regarding the proposed rulemaking on Fees for Petitions for Penalty Relief

**Attachment 3:** Copies of the written comments received regarding the proposed rulemaking on Fees for Petitions for Penalty Relief

**Attachment 4:** Proposed modified text for Fees for Petitions for Penalty Relief

**Attachment 5:** Workload Chart for Initial Costs for Petitions for Modification and Early Termination of Probation

**Attachment 6:** Workload Chart for Initial Costs for Petitions for Reinstatement

**Attachment 7:** AGO and OAH Expense Calculations

# **ATTACHMENT 1**

**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**

<b>Legend:</b> Added text is indicated with an <u>underline</u> . Deleted text is indicated with a <del>single-strikethrough</del> .
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**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 account 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.

# **ATTACHMENT 2**

# MEDICAL BOARD OF CALIFORNIA

## Fees for Petitions for Penalty Relief

### Summary of Public Comments Received During the 45-Day Comment Period and Proposed Responses Regarding the Proposed Regulatory Text to Adopt Section 1352.3 and Amend Section 1359 of Title 16 of The California Code of Regulations.

#### Written Comment from Amelia F. Burroughs, with Burroughs Law Group, dated December 17, 2024

**Comment 1:** Ms. Burroughs commented that the proposed fee violates due process, prevents most physician she works with from being able to petition for penalty relief, and exceeds the Board's reasonable costs to process and adjudicate a petition. Ms. Burroughs indicated that because the proposed regulation does not take into consideration a petitioner's ability to pay, the fees are punitive, and are inconsistent with the purpose of licensing discipline. She further indicated that Board staff put in minimal time into reviewing petitions, and a typical hearing does not exceed half a day. Ms. Burroughs also pointed out that many of her clients entered into probationary terms with the understanding that they would be able to petition for penalty relief, but that the new petition fee adds an additional burden that was not contemplated. She encouraged the Board to withdraw the proposed regulation, consider public comments, connect with stakeholders, and explore options that would not be unreasonably burdensome to applicants.

**Response to Comment 1:** Board staff have reviewed this comment and do not agree that the proposed fees, as authorized by statute and calculated to offset the Board's regulatory burden, violate constitutional protections. Government agencies may impose fees in the amount necessary to cover the reasonable costs of providing services. *American Coatings Assn., Inc. v. State Air Resources Bd.* (2021) 62 Cal. App. 5th 1111, 1125; *California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal. 4th 421, 437.

Nonetheless, to address the commenter's concerns that individuals who qualify for penalty relief may not be able to petition due to the requirement to pay costs up front, Board staff recommend modifying the language proposed under 16 CCR section 1352.3 to require the petitioner to pay an initial fee of \$1,242 for staff to process a petition for modification or termination of probation, and \$2,962 for staff to process a petition for reinstatement of a revoked certificate or a certificate surrendered pursuant to a stipulation to settle a disciplinary action. Board staff further recommend that the remaining fee to pay for the services of the Attorney General's Office (AGO) and the Office of Administrative Hearings (OAH) be determined by the administrative law judge (ALJ), who shall consider evidence of the petitioner's ability to pay the remaining fee, with or without entering into payment plan, as well as the reasonableness of the fee. Board staff proposed a cap of \$22,000 less the initial fee already paid. Under the modified proposal, the Board may approve, reduce, or eliminate the remaining fee



award proposed by the ALJ. The Board may also increase the award consistent with the evidence in a decision after non-adoption.

Additionally, Board staff recommend modifying the language proposed under 16 CCR section 1359 to, among other things, require the petitioner to be put on notice that the ALJ may include an order for the Board's consideration and approval for the petitioner to pay the remaining fee to cover the reasonable costs to process and adjudicate the petition up to \$22,000, less the initial fee already paid; that the petitioner may submit evidence regarding their ability to pay the remaining fee or challenge the reasonableness of the remaining fee; and that the petitioner may be ordered to pay the remaining fee regardless of whether their petition is granted or denied.

The proposed initial fees are based on the average amount of time it takes for Board staff to process a petition for penalty relief. Under this modified proposal, the initial fee would represent the average cost for Board staff to process the petition for penalty relief to point of transferring the file to the AGO. The cost for the staff time involved once a proposed decision is received is not included, since under this proposal, the ALJ would determine the remaining fee based on the AGO and OAH costs and would not include future costs.

Additionally, to address the concern that the fee would be applied to licensees currently on probation who did not contemplate having to pay a fee to petition for early termination, Board staff recommend clarifying that fees proposed in this rulemaking shall apply only to petitions for penalty relief on disciplinary decisions ordered after the effective date of this rulemaking.

**Written Comment from Beth Avery, Fair Chance Program Director, National Employment Law Project (NELP), dated December 20, 2024**

**Comment 2:** NELP commented that a common cause for probation or revocation of a license is an arrest or conviction record, and that licensing authorities may impose disproportionately harsh or unfair penalties. NELP further stated that just like there are circumstances where revocation or probation are appropriate, there are circumstances where it is appropriate to modify or terminate probation or grant reinstatement of a revoked or surrendered certificate, which should not be hindered by financial privilege. NELP also indicated that the proposed fees create significant financial barriers for many petitioners and appear to exceed the reasonable cost of considering a petition. NELP requested the Board reject the proposed fees and consider less burdensome alternatives.

**Response to Comment 2:** Board staff have reviewed this comment and recommend modifying the language consistent with the Response to Comment 1.

**Written Comment from Adam G. Slote, with Slote, Links & Boreman, PC, dated December 31, 2024**

**Comment 3:** Mr. Slote commented that he opposes the adoption of the proposed rulemaking because it would deny penalty relief to individuals who lack the wealth to pay a fee in excess of \$20,000. Mr. Slote further indicated that the proposed fee exceeds the Board's reasonable costs to process and adjudicate a petition and would effectively condition the exercise of a statutory right on income or wealth in violation of due process. He also indicated that the fees would violate the state's core value of advancing equity by foreclosing opportunities to rehabilitated individuals.

Mr. Slote stated that the workload for penalty relief cases is almost always lower than for accusation cases involving the standard of care. He advised that in a recent case, the administrative law judge (ALJ) determined that reasonable investigation and prosecution costs for a one-patient matter did not exceed \$25,000, and this case involved three days of hearing, hundreds of pages of medical records, and testimony of three experts. He further stated that it would be unreasonable to set a flat fee for all petition cases in an amount higher than the Board would recover upon presenting its actual costs to an ALJ.

Mr. Slote also commented that there is a more cost-effective alternative provided for under Business and Professions Code (BPC) section 2307(d), which indicates that the petition may be heard by a panel of the Board. He further stated that the Board of Registered Nursing (BRN) has a long history of hearing petitions at its board meetings and alleged that this avoids the expense of the Office of Administrative Hearings.

Mr. Slote asked the Board to withdraw the proposed regulation 16 CCR section 1352.3, consider public comments, connect with stakeholders, and explore pathways that would not be unreasonably burdensome to applicants.

**Response to Comment 3:** Board staff have reviewed this comment and recommend modifying the language consistent with the Response to Comment 1.

Regarding the comment that the original fee proposed exceeds the Board's reasonable costs to process and adjudicate a petition, the proposed fee was based on the average costs for staff to process petitions for penalty relief, and the average costs paid by the Board to cover AGO and OAH costs for such petitions.

Regarding the comment that BPC section 2307(d) provides for a more cost-effective alternative by having a panel of the Board hear the petitions for penalty relief, exercising this option would still involve having an ALJ sit with the Board to rule on motions and objections and the admissibility of evidence. Additionally, this option would create additional costs associated with petitions for penalty relief, since the Board would have to pay for travel costs for Board members and staff from out of the area, and for Board member per diems. Further, Board staff have learned that the BRN no longer hears their own petitions for penalty relief, and all hearings are held through OAH.

Regardless, Board staff believe that the concerns raised will be addressed by the proposed modified text.

**Written Comment from Jael Myrick, Program Director, Clean Slate Unit, East Bay Community Law Center (EBCLC), dated January 2, 2025**

**Comment 4:** EBCLC commented that they are strongly opposed to the fee proposed for petitions for reinstatement, because it will create significant financial barriers for applicants seeking to rebuild their careers, particularly those with low incomes. EBCLC indicated that the proposed fee effectively denies individuals the opportunity to pursue reinstatement, which should not be contingent on financial privilege. They also contend that the proposed fee far exceeds the reasonable cost of considering petitions and having a hearing, so the proposed fee imposes an undue burden without justification. They commented that the proposal infringes on applicants' due process rights. They indicated that the Board's Notice does not set forth a compelling interest to justify the deprivations, and that it does not suggest that less burdensome alternatives were considered. EBCLC requested the Board to reject the proposal so that all applicants may have a fair opportunity to petition for reinstatement regardless of their financial situation.

**Response to Comment 4:** Board staff have reviewed this comment and recommend modifying the language consistent with the Response to Comment 1.

Regarding the comment that the Board's notice does not suggest less burdensome alternatives were considered, the purpose of the public comment period is to invite alternative proposals for consideration by the Board.

**Written Comment from Stephanie Lin, Associate Supervising Attorney, and Justin Small, Staff Attorney, with Neighborhood Legal Services of Los Angeles County (NLSLA), dated January 6, 2025**

**Comment 5:** NLSLA commented that the proposed fee for reinstatement will create significant financial barriers for applicants seeking to rebuild their livelihoods, particularly those with low incomes. NLSLA indicated that the proposed fee effectively denies individuals the opportunity to pursue reinstatement, and based on the individual's revocation, they may not have had opportunities to save up to be able pay for the proposed fees for reinstatement. which should not be contingent on financial privilege. They also contend that the proposed fee infringes on due process and equal protection rights for those who cannot afford the fee. NLSLA further states that the proposed fee far exceeds the reasonable cost of considering petitions, so the proposed fee imposes an undue burden without justification. They indicated that the Board's Notice does not set forth a compelling interest to justify the deprivations, and that it does not suggest that less burdensome alternatives were considered.

**Response to Comment 5:** Board staff have reviewed this comment and recommend modifying the language consistent with the Response to Comment 1, and incorporate the response included in Response to Comment 4.

**Written Comment from Clarissa Woo Hermosillo, Director of Economic Justice Project, ACLU of Southern California, dated January 6, 2025**

**Comment 6:** ACLU of Southern California expressed strong opposition to the proposed fee for reinstatement and asked that the Board hold a hearing to address the potential impacts of the proposed rule. They commented that the proposed fee for reinstatement will create significant financial barriers for applicants seeking to rebuild their livelihoods, particularly those with low incomes. They indicated that the Board must consider how the proposed fees will impact lower-income applicants, and that access to a fair process for reinstatement should not be contingent upon financial privilege. ACLU of Southern California also stated that the proposed fee far exceeds the reasonable cost of considering petitions, so the proposed fee imposes an undue burden without justification and infringes on due process and equal protection rights. They indicated that the Board's Notice does not set forth a compelling interest to justify the deprivations, and that it does not suggest that less burdensome alternatives were considered. They asked the Board to reject the proposal so that all applicants may have a fair opportunity to petition for reinstatement regardless of their financial situation.

**Response to Comment 6:** Board staff have reviewed this comment and recommend modifying the language consistent with the Response to Comment 1, and incorporate the response included in Response to Comment 4.

Regarding the request for a hearing, this request was untimely, and no hearing is required.

**Written Comment from Sonja Tonnesen-Casalegno, Esq., Policy & Legal Director, Communities United for Restorative Youth Justice (CURYJ), dated January 6, 2025**

**Comment 7:** CURYJ commented that they opposed the adoption of the proposed regulation, 16 CCR section 1352.3, and that the proposed fee for reinstatement will create significant financial barriers for applicants seeking to rebuild their livelihoods, particularly those with low incomes. They commented that the proposed fee will effectively deny individuals the opportunity to pursue reinstatement and return to their professions. They indicated that the Board must consider how the proposed fees will impact lower-income applicants, and that access to a fair process for reinstatement should not be contingent upon financial privilege. CURYJ indicated that the proposed rulemaking would not only harm physicians who have lost their license, but would also affect physician assistants, physical therapy aids, respiratory care therapists, and others, and that many of these professional roles are filled by women of color. They indicated that limiting access to reinstatement based on financial ability would harm the public's access to providers of color. CURYJ stated that the proposed fee infringes on

due process and equal protection rights. They indicated that the Board's Notice does not set forth a compelling interest to justify the deprivations, and that it does not suggest that less burdensome alternatives were considered with public input.

CURYJ also commented that there is a less expensive option provided for under Business and Professions Code section 2307(d), which indicates that the petition may be heard by a panel of the Board. They further represented that the Board of Registered Nursing has a long history of hearing petitions at its board meetings, and alleged that this avoids the expense of the Office of Administrative Hearings.

They asked the Board to reject the proposal so that all applicants may have a fair opportunity to petition for reinstatement regardless of their financial situation.

**Response to Comment 7:** Board staff have reviewed this comment and recommend modifying the language consistent with the Response to Comment 1, and incorporate the responses included in Response to Comments 3 and 4.

Regarding the comment that the proposed rulemaking would affect physician assistants, physical therapy aids, respiratory care therapists, and others, the commenter did not provide information relating to what they meant by this comment. The proposed rulemaking only applies to medical doctors who file a petition for penalty relief with the Board

**Written Comment from Vivian Cho, Managing Civil Litigation Attorney, Open Door Legal (ODL), dated January 6, 2025**

**Comment 8:** ODL expressed strong opposition to the proposed fee for petitions for reinstatement. They requested that the Board hold a hearing to address the potential impact of the proposed rule. ODL indicated that the proposed fee for reinstatement will create significant financial barriers for applicants seeking to rebuild their livelihoods, particularly those with low incomes. They commented that the proposed fee will effectively deny individuals the opportunity to pursue reinstatement and return to their professions. They indicated that the Board must consider how the proposed fees will impact lower-income applicants, and that access to a fair process for reinstatement should not be contingent upon financial privilege. ODL also stated that the proposed fee far exceeds the reasonable cost of considering petitions, suggesting that the proposed fee imposes an undue burden without justification and infringes on due process and equal protection rights. They indicated that the Board's Notice does not set forth a compelling interest to justify the deprivations, and that it does not suggest that less burdensome alternatives were considered. They asked the Board to reject the proposal so that all applicants may have a fair opportunity to petition for reinstatement regardless of their financial situation.

**Response to Comment 8:** Board staff have reviewed this comment and recommend modifying the language consistent with the Response to Comment 1, and incorporate the response included in Response to Comment 4.

Regarding the request for a hearing, this request was untimely, and no hearing is required.

**Written Comment from Lucas Evensen, Associate Director, Strategic Engagement, California Medical Association (CMA), dated January 6, 2025**

**Comment 9:** CMA commented that they opposed the Board's proposal at a cost of over \$20,000 to petition for early termination of probation and over \$22,000 to petition to reinstate a license. They stated that the proposed fee places a severe burden on individuals who, based on the nature of their disciplined status, often face financial and career challenges. They indicated that for many the proposed fee will effectively deny access to the relief mechanism established under Business and Professions Code section 2307. CMA further commented that there is no provision to alleviate the burden created by the fee, such as waivers, sliding scales or payment plans, and that the Board seems to be seeking to generate as much revenue as possible while ignoring other considerations. They stated that the proposal effectively punishes all petitioners rather than seeking to address inefficiencies in the petition review process. CMA commented that the proposed fee conflicts with the public interest by discouraging rehabilitated physicians from returning to practice, when there is a significant physician workforce shortage. They stated that the proposal undermines confidence in the Board's commitment to fairness and rehabilitation.

CMA indicated that the proposal would include physicians who were put on probation or lost their license due to impairment as a result of a health issue. The Board has recognized that it lacks the appropriate supports that other states have for these physicians, but this proposal would impose even more barriers to physicians' recovery prior to establishing supports. CMA further stated that consideration should be given to individuals seeking penalty relief when they were disciplined for something outside of their control, such as a health condition.

CMA additionally stated that they believe there is a middle ground between charging petitioners no fee and charging the full costs to process and adjudicate petitions. CMA advised that they opposed the proposed regulations and asked the Board to withdraw the rulemaking or revise the proposal so that the fee does not create an unreasonable barrier to qualified individuals.

**Response to Comment 9:** Board staff have reviewed this comment and recommend modifying the language consistent with the Response to Comment 1.

# **ATTACHMENT 3**



**Agenda Item 9**  
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December 17, 2024

**VIA EMAIL ONLY**

Ms. Alexandria Schembra  
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Medical Board of California  
2005 Evergreen Street, Ste. 1200  
Sacramento, CA 95815  
E-Mail:regulations@mbc.ca.gov

Re: Comments on Proposed Regulation - 16 CCR 1352.3

Members of the Board:

I represent clients in rural Northern California counties in administrative law matters. I actively represent physicians before the Medical Board of California, including petitions for penalty relief. I oppose the adoption of 16 CCR section 1352.3, primarily because it violates due process. A petition fee in excess of \$19,000 prevents most physicians with whom I work, largely rural primary care providers who are not wealthy and do not earn high incomes, from petitioning for penalty relief. Additionally, in my experience, the proposed fees exceed “the board's reasonable costs to process and adjudicate a petition....” Bus. & Prof. Code, § 2307.5(b).

The proposed fees effectively condition the exercise of a statutory right on income or wealth, which is a violation of due process. See *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32. And, because the proposed fees exceed the reasonable costs to process and adjudicate a petition for penalty relief and do not take into consideration a petitioner's ability to pay, the fees are punitive in nature, which is antithetical to the purpose of licensing discipline. *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786; *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 768.

Petitions for penalty relief are typically three-page applications with a narrative statement, and two letters of support from doctors. On occasion, a petitioner will provide limited documentation evidencing rehabilitation. The Board's review of the application includes an eligibility review



Ms. Alexandria Schembra  
Public Affairs Manager  
Medical Board of California  
December 17, 2024  
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and the referral of the petition to an investigator to verify the application letters of support by telephoning the letter writers. There is minimal time put into the eligibility review and initial confirmation of support by letter writers. The Board often takes the better part of a year to refer

the matter to a Deputy Attorney General (“DAG”) and to set a hearing. Hearings are fairly limited, with DAG's providing opening statements, cross-examination of the petitioner, cross-examination of any of the petitioner's rehabilitation witnesses, and closing statements. A typical hearing does not exceed a half-day.

Finally, many of my clients entered into probationary terms with the understanding that they would be able to petition for penalty relief after some period of time. The new petition fee essentially adds another burden to their probation that was not included in the original calculus about how a probationary term would affect their livelihoods.

For the reasons detailed above, the Board should withdraw proposed 16 CCR 1352.3, consider comments from the public, connect with stakeholders, and explore pathways that would not be unreasonably burdensome to applicants.

Sincerely,



Amelia F. Burroughs

AB/jg



**Rebecca Dixon**  
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Chief Executive Officer  
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December 20, 2024

Alexandria Schembra  
Medical Board of California  
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Via email: [regulations@mbc.ca.gov](mailto:regulations@mbc.ca.gov)

**Subject: Comment in Response to Proposed Regulatory Action  
Concerning Fees for Petitions for Penalty Relief (16 CCR §§ 1352.3, 1359)**

Dear Ms. Schembra and Members of the Medical Board of California:

Thank you for the opportunity to submit comments in response to the Medical Board of California's proposed regulatory action concerning fees for petitions for penalty relief. On behalf of the National Employment Law Project (NELP), I write to express concern about the proposed changes to Title 16 of the California Code of Regulations (adoption of 16 CCR § 1352.3 and changes to 16 CCR § 1359).

Founded in 1969, NELP has been at the forefront of the fight for workers' rights, striving to create a just and inclusive economy. Our mission is to address the challenges faced by low-wage workers and those in marginalized communities. NELP's "fair chance" program focuses on policies to reduce barriers to employment faced by workers with arrest and conviction records.<sup>1</sup> NELP is one of the nation's leading authorities on "fair chance licensing" policies and has worked closely with advocates and policymakers throughout California and the country to help craft strong laws that expand access to good jobs by people with records.<sup>2</sup>

People with arrest or conviction records need and deserve reliable access to income through safe, good-paying, stable jobs. Unfortunately, because of the stigma of a record, many people with records struggle to find employment. This bias also perpetuates systemic racism because Black, Latinx, and Indigenous people are disproportionately penalized by the criminal legal system and are therefore more likely than other racial and ethnic groups to have records.

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<sup>1</sup> For more information, please visit <https://www.nelp.org/explore-the-issues/workers-with-records/>.

<sup>2</sup> For more information, please visit <https://www.nelp.org/explore-the-issues/workers-with-records/fair-chance-licensing/>.

Access to quality careers by people with records is often blocked by overly broad exclusions to occupational licenses or certifications, including through vague “good moral character” requirements. Creating fairer pathways for people with records to join and re-join licensed professions is therefore an important step toward achieving economic security for the roughly eight million Californians with an arrest or conviction record.

One common cause for probation or revocation of a professional license is an arrest or conviction record. Just as the criminal legal system frequently imposes draconian sentences, the stigma of a record often results in disproportionately harsh or unfair penalties to be imposed through the discretion of licensing authorities. There will, of course, be circumstances in which probation or revocation of a medical certificate is appropriate, but there will also be circumstances in which it is appropriate to modify or terminate probation or grant reinstatement of a revoked or surrendered certificate. Wealth or financial privilege should not determine someone’s access to appropriate relief and the ability to earn a living through work in the profession for which they have trained.

Many individuals struggle with financial instability after losing their occupational certification. Petition fees of \$1,949 or \$3,738 and a \$19,043 hearing fee would, therefore, create significant financial barriers for many petitioners seeking to rebuild their careers and livelihoods. Moreover, those high fees appear to exceed the reasonable cost of considering a petition, making the financial obstacle to fair process unnecessarily steep.

For the reasons stated above, NELP strongly urges the Board to reject the exorbitant petition and hearing fees recently proposed by regulation and to more fully consider less burdensome alternatives. Thank you for the opportunity to comment on the proposed regulation.

Respectfully submitted,



Beth Avery  
Fair Chance Program Director

National Employment Law Project  
2030 Addison Street, Suite 420  
Berkeley, California 94704

SLOTE  
LINKS  
& BOREMAN, PC

50 California Street, 34<sup>th</sup> Floor  
San Francisco, CA 94111  
Phone: 415-393-8001  
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Adam G. Slote  
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●  
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(Of Counsel)  
bo@slotelaw.com

●  
Stephen M. Boreman  
(Of Counsel)  
steve@slotelaw.com

●  
Marglyn E. Paseka  
margie@slotelaw.com

December 31, 2024

Via E-Mail: [regulations@mbc.ca.gov](mailto:regulations@mbc.ca.gov)

Ms. Alexandria Schembra  
Public Affairs Manager  
Medical Board of California  
2005 Evergreen Street, Ste. 1200  
Sacramento, CA 95815

RE: Comments on Proposed Regulation - 16 CCR § 1352.3

Members of the Board:

I am an administrative law attorney and actively represent physicians in matters before the Medical Board, including petitions for penalty relief. I also provide advice and training to attorneys on the collateral consequences of criminal convictions on professional licenses. Since 2009, I have served as the annual update author of California Criminal Procedure and Practice, Chapter 53: "Effect of Criminal Conviction on Professional Licenses" (CEB 2009-2024). I oppose the adoption of 16 CCR section 1352.3 because it would deny penalty relief to Californians who lack the wealth to pay an application fee in excess of \$20,000. Moreover, the proposed fees would exceed "the board's reasonable costs to process and adjudicate a petition . . ." and encourage inefficiency. (Bus. & Prof. Code, § 2307.5, subd. (b).) Finally, the proposed regulation fails to consider that Business and Professions code section 2307 provides for a less expensive alternative – that a "petition may be heard by a panel of the board." (Bus. & Prof. Code, § 2307, subd. (d).)

**Application and hearing fees in excess of \$20,000 would  
deny the opportunity for relief to those who lack high income or wealth**

Every applicant for reinstatement initially lost their license by revocation, surrender or violation of probation. Each of these applicants also lost their income from the practice of medicine. Most applicants for early termination or modification of probation seek relief because of loss of income from the collateral consequences of probation on employment, credentialing, and participation in payer networks. Therefore, the people who need penalty relief the most would be the least likely to be able to afford the fees.

# **SLOTE, LINKS & BOREMAN, PC**

*Attorneys at Law*

Ms. Alexandria Schembra  
 Medical Board of California  
 December 31, 2024  
 Page 2

The proposed fees are extreme in comparison to California’s median income. According to the Federal Reserve Bank of St. Louis, California’s median income for 2023 was \$89,870.<sup>1</sup> Most Californians could not afford to pay \$20,000 in after-tax income. Thus, the proposed fees would effectively condition the exercise of a statutory right on income or wealth which violates due process. (See *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.) And legality aside, the fees would violate the state’s core value of advancing equity by foreclosing opportunities to rehabilitated Californians.<sup>2</sup>

## **The proposed fees exceed the reasonable costs to process and adjudicate a petition for penalty relief**

Business and Professions Code section 2307.5 provides that the “fee established shall not exceed the board's reasonable costs to process and adjudicate a petition . . . .” (Bus. & Prof. Code, § 2307.5, subd. (b).) As explained below, it is apparent to experienced practitioners that petitions for penalty relief are the Board’s least expensive actions under the APA.

In petition cases, the applicant submits a three page application with a narrative statement, and two letters of support from doctors. Sometimes petitioners attach other documents to show rehabilitation. The Board reviews the application for eligibility (i.e., the applicant is not currently on criminal court probation, etc.), reviews the applicant’s DOJ rap sheet and refers the file to an investigator to verify the application letters of support by telephoning the applicant and letter writers. The telephone calls typically take several minutes.

The Board often takes about nine months to complete this process and refer the file to a Deputy Attorney General (DAG) to set a hearing. The petitioner’s counsel often identifies character witnesses and submits additional documents to show rehabilitation. At hearing, the DAG will usually present the following exhibits:

1. Certificate of License Status
2. Decision & Order and Accusation from the case leading to revocation
3. Applicant’s Petition
4. Certified Probation Records if applicable
5. Notice of Hearing

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<sup>1</sup> <https://fred.stlouisfed.org/series/MEHOINUSCAA646N>

<sup>2</sup> <https://www.govops.ca.gov/what-we-do/vision-mission-and-goals/>

**SLOTE, LINKS & BOREMAN, PC**

*Attorneys at Law*

Ms. Alexandria Schembra  
Medical Board of California  
December 31, 2024  
Page 3

After short opening statements, the applicant presents evidence of rehabilitation subject to cross examination by the DAG and the parties make closing arguments. The time for typical hearings ranges from four hours to one day.

Petition cases are less expensive than Accusation cases because they typically do not require the following steps:

1. Investigation of patient complaint or facility report – NOT APPLICABLE
2. Investigation interview with investigator, district medical consultant and licensee – NOT APPLICABLE
3. Referral to independent expert physician on standard of care – NOT APPLICABLE
4. Preparation of comprehensive investigation report with exhibits – NOT APPLICABLE
5. DAG review of investigation report and exhibits, and preparation of discovery file for defense – NOT APPLICABLE
6. DAG exhibit preparation for documents to prove the Accusation – NOT APPLICABLE
7. DAG expert witness preparation – NOT APPLICABLE

DAGs do review the petition documents, the prior decision and Accusation and prepare an opening statement, cross examination questions for the applicant and character witnesses and, sometimes, experts called for the applicant. They also prepare a closing argument and spend a significant amount of time preparing their cases. To be fair, there are also cases where a petitioner's counsel may draw the hearing out over multiple days. But, even so, the workload is almost always much lower for petition cases than for Accusation cases involving the standard of care.

In Accusation cases, the Board presents its cost of prosecution at the end of the administrative hearing and the Administrative Law Judge (ALJ) determines whether the costs are reasonable. In one of my cases last year, the ALJ determined “[a] reasonable prosecution cost for this one-patient matter does not exceed \$25,000.”<sup>3</sup> The case involved the standard of care for an unsuccessful surgery. There were three days of hearing, hundreds of pages of medical records, and three experts testified. The amount of \$25,000 also covered the investigation and preparation of the Accusation.

It would be unreasonable to set a flat fee for all petition cases in an amount higher than the Board would recover upon presenting its actual costs to an ALJ.

---

<sup>3</sup> Upon request, we will provide this filed decision to the Board.

**SLOTE, LINKS & BOREMAN, PC**

*Attorneys at Law*

Ms. Alexandria Schembra  
Medical Board of California  
December 31, 2024  
Page 4

**The proposed regulation fails to consider the statutory option to reduce expenses  
by appointing panels to hear petition cases at quarterly meetings**

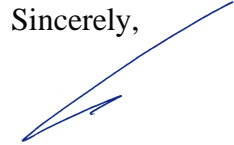
The proposed regulation fails to consider that Business and Professions code section 2307 provides for a less expensive option – that a “petition may be heard by a panel of the board.” (Bus. & Prof. Code, § 2307, subd. (d).) The Board of Registered Nursing has a long history of hearing petition cases at its board meetings and the process avoids the expense of the Office of Administrative Hearings. While the Board has the discretion to select a more expensive hearing procedure, the expense of this decision should not be borne by applicants.

**Conclusion**

The Board should withdraw proposed regulation 16 CCR § 1352.3, consider comments from the public, reach out to stakeholders and explore pathways that would not be unreasonably burdensome to applicants.

Thank you for your consideration.

Sincerely,



Adam G. Slote



January 2, 2025

Alexandria Schembra  
Medical Board of California  
2005 Evergreen Street, Ste. 1200  
Sacramento, CA 95815  
Telephone No.: (916) 263-2466  
Fax No.: (916) 263-2387

**RE: TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS DIVISION  
13.  
MEDICAL BOARD OF CALIFORNIA NOTICE OF PROPOSED REGULATORY  
ACTION CONCERNING: Fees for Petitions for Penalty Relief**

Dear Ms. Schembra and Medical Board of California,

I am writing on behalf of The East Bay Community Law Center (EBCLC) to comment on the Medical Board of California's Notice of Proposed Regulatory Action concerning "Fees for Petitions for Penalty Relief." EBCLC is writing to express strong opposition to the proposed regulation imposing a \$3,738 application fee and a \$19,043 hearing fee for individuals petitioning for reinstatement of their occupational licenses under Government Code section 11522.

EBCLC is a woman of color led and woman of color centered organization. We believe that when we invest in the vision, strategies, and solutions of women of color, we center dignity, uplift families, and advance systems-change work that transforms all communities. In the Clean Slate Unit, we support clients who are going through the licensure process for a variety of boards in California.

This proposal will create significant financial barriers for applicants seeking to rebuild their careers and livelihoods, particularly for those with low incomes. Many of these individuals already struggle with financial instability after losing their licenses, and the proposed fees effectively deny them the opportunity to pursue reinstatement and return to their professions.

The Medical Board must consider how these fees will impact lower-income applicants. Access to a fair process for reinstatement should not be contingent on wealth or financial privilege. Furthermore, the proposed fee structure far exceeds the reasonable cost of considering a petition for reinstatement, suggesting it imposes an undue burden without justification.

The new policy thus raises serious constitutional concerns for applicants who cannot afford the exorbitant proposed fees. It imposes an obstacle to filing a petition and receiving a hearing, infringing on applicants' due process rights. And it creates two classes of people- those who can afford to pay to have their petition reviewed and those who cannot- contravening equal protection guarantees. The





Board's Notice does not set forth a compelling interest that would justify these deprivations, nor does it suggest alternative less burdensome alternatives were considered.

Thank you for considering these comments. I respectfully request the Board to reject the proposed fee structure to ensure that all applicants, regardless of their financial situation, have a fair opportunity to petition for reinstatement.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jael Myrick", written over a horizontal line.

Jael Myrick  
Program Director, Clean Slate Unit  
East Bay Community Law Center



Neighborhood Legal Services  
of Los Angeles County

January 6, 2025

Medical Board of California  
2005 Evergreen Street, Ste. 1200  
Sacramento, CA 95815  
Telephone No.: (916) 263-2466  
Fax No.: (916) 263-2387  
E-Mail Address: regulations@mbc.ca.gov

**Re: NLSLA Letter Commenting on TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS DIVISION 13. MEDICAL BOARD OF CALIFORNIA NOTICE OF PROPOSED REGULATORY ACTION CONCERNING: Fees for Petitions for Penalty Relief**

To the Members of the Medical Board of California,

Neighborhood Legal Services of Los Angeles County (NLSLA) is pleased to offer the following comment on the Medical Board of California's Notice of Proposed Regulatory Action concerning "Fees for Petitions for Penalty Relief." NLSLA is an LSC-funded organization that provides free legal aid to low-income individuals and families in the Los Angeles County area. Each year, NLSLA provides representation to hundreds of Los Angeles residents in a variety of administrative hearings including matters related to the reinstatement of occupational licenses. In particular, our practice area, the Clean Slate Initiatives team, assists individuals with barriers associated with reentering the community after incarceration. We represent individuals seeking the reinstatement of their occupation license revoked as a result of their criminal record. Many of our clients have spent years or decades rebuilding their lives, and the culmination of their re-entry efforts is seeking reinstatement to a profession that meant a great deal to them.

The proposed regulation imposes a \$3,738 application fee and a \$19,043 hearing fee for individuals petitioning for reinstatement of their occupational licenses under Government Code section 11522. This proposal will create significant financial barriers for applicants seeking to rebuild their careers and livelihoods, particularly for those with low incomes. Many of these individuals already struggle with financial instability after losing their licenses, and the proposed fees effectively deny them the opportunity to pursue reinstatement and return to their professions. The record that may have resulted in the revocation of the occupational license also creates a barrier to other

Neighborhood Legal Services of Los Angeles County | [www.nlsla.org](http://www.nlsla.org) | Toll-Free Telephone: (800) 433-6251

**GLENDALE OFFICE**  
Administrative Offices  
1104 E. Chevy Chase Dr.  
Glendale, CA 91205

**EL MONTE OFFICE**  
3629 Santa Anita Ave.  
#109  
El Monte, CA 91731

**PACOIMA OFFICE**  
13327 Van Nuys Blvd.  
Pacoima, CA 91331

**WELLNESS CENTER**  
Historic General Hospital  
1200 N. State St., #1008  
Los Angeles, CA 90033

**A PROJECT FUNDED BY**

**LSC** America's Partner  
for Equal Justice  
LEGAL SERVICES CORPORATION

**BRD 9-26**

employment opportunities that could be utilized to save up to pay for the application and hearing fees.

The new policy thus raises serious constitutional concerns for applicants who cannot afford the exorbitant proposed fees. It imposes an obstacle to filing a petition and receiving a hearing, infringing on applicants' due process rights. And it creates two classes of people- those who can afford to pay to have their petition reviewed and those who cannot- contravening equal protection guarantees. Access to a fair process for reinstatement should not be contingent on wealth or financial privilege. Furthermore, the proposed fee structure far exceeds the reasonable cost of considering a petition for reinstatement, suggesting it imposes an undue burden without justification. The Board's Notice does not set forth a compelling interest that would justify these deprivations, nor does it suggest less-burdensome alternatives were considered.

Please do not hesitate to contact us if you have any questions regarding our suggestions or would like further comment on any revisions to proposed regulations.

Sincerely,



Stephanie Lin  
NLSLA Associate Supervising Attorney  
StephanieLin@nlsla.org



Justin Small  
NLSLA Staff Attorney  
JustinSmall@nlsla.org



January 6, 2025

Alexandria Schembra  
Medical Board of California  
2005 Evergreen Street, Ste. 1200  
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Telephone No.: (916) 263-2466  
Fax No.: (916) 263-2387  
E-Mail Address: [regulations@mbc.ca.gov](mailto:regulations@mbc.ca.gov)

**RE: TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS DIVISION 13.  
MEDICAL BOARD OF CALIFORNIA NOTICE OF PROPOSED REGULATORY  
ACTION CONCERNING: Fees for Petitions for Penalty Relief**

Dear Ms. Schembra and Medical Board of California,

I am writing on behalf of the ACLU of Southern California to comment on the Medical Board of California's Notice of Proposed Regulatory Action concerning "Fees for Petitions for Penalty Relief." ACLU of Southern California is writing to express strong opposition to the proposed regulation imposing a \$3,738 application fee and a \$19,043 hearing fee for individuals petitioning for reinstatement of their occupational licenses. We request the Board at minimum hold a hearing to address the potential impacts of the proposed rule.

This proposal will create significant financial barriers for applicants seeking to rebuild their careers and livelihoods, particularly for those with low incomes. Many of these individuals already struggle with financial instability after losing their licenses, and the proposed fees effectively deny them the opportunity to pursue reinstatement and return to their professions.

The Medical Board must consider how these fees will impact lower-income applicants. Access to a fair process for reinstatement should not be contingent on wealth or financial privilege. Furthermore, the proposed fee structure far exceeds the reasonable cost of considering a petition for reinstatement, suggesting it imposes an undue burden without justification.

The new policy thus raises serious constitutional concerns for applicants who cannot afford the exorbitant proposed fees. It imposes an obstacle to filing a petition and receiving a hearing, infringing on applicants' due process rights. And it creates two classes of people- those who can afford to pay to have their petition reviewed and those who cannot- contravening equal protection guarantees. The Board's Notice does not set forth a compelling interest that would justify these deprivations, nor does it suggest alternative less burdensome alternatives were considered.

Thank you for considering these comments. I respectfully request the Board to reject the proposed fee structure to ensure that all applicants, regardless of their financial situation, have a fair opportunity to petition for reinstatement.

Sincerely,



Clarissa Woo Hermosillo  
Director of Economic Justice Project  
ACLU of Southern California

Adrienna Wong  
Sr. Staff Attorney  
ACLU of Southern California

CC:

Kerrie Webb  
Telephone Number: (916) 263-2389  
Fax Number: (916) 263-2387

January 6, 2025

Alexandria Schembra  
Medical Board of California  
2005 Evergreen Street, Ste. 1200  
Sacramento, CA 95815  
Telephone: (916) 263-2466  
Fax.: (916) 263-2387  
Sent via Email to: [regulations@mbc.ca.gov](mailto:regulations@mbc.ca.gov)



**RE: Public Comment on Proposed Regulation to 16 CCR § 1352.3**

Dear Ms. Schembra and the Medical Board of California,

I write on behalf of Communities United for Restorative Youth Justice (CURYJ) to **oppose** the adoption of the newly proposed 16 CCR § 1352.3, and the Medical Board of California's plan to increase reinstatement fees as described in its Notice of Proposed Regulatory Action concerning "Fees for Petitions for Penalty Relief." CURYJ is a 501(c)(3) community-based nonprofit whose mission is to unlock the leadership of young people to dream beyond bars. We look to young people to lead the way in transforming our communities by investing in their healing, aspirations, and activism. We work majority with low-income Black, Indigenous, Latine/x, and other People of Color most harmed by mass incarceration and criminalization.

CURYJ opposes the proposed regulation imposing a \$3,738 application fee and a \$19,043 hearing fee on individuals petitioning for reinstatement of their occupational licenses under Business and Professions Code § 2307. We request the Board reject this proposed regulation.

**Proposed Reinstatement Fees Particularly Harmful to Low-Income Applicants,  
Disproportionately Affecting Women and People of Color**

This proposal will create significant financial barriers for applicants seeking to rebuild their careers and livelihoods, particularly for those with low incomes. Many of these individuals already struggle with financial instability after losing their licenses, and the proposed fees effectively deny them the opportunity to pursue reinstatement and return to their professions.

The Medical Board must consider how these fees will impact lower-income applicants. Access to a fair process for reinstatement should not be contingent on wealth or financial privilege. The proposed regulation would not only harm physicians who have lost their license, it would also affect physician assistants, physical therapy aids, respiratory care therapists, and so on. From our experience working with communities negatively and hyper-impacted by the criminal justice system and mass incarceration, women of color fill many of these professional roles, and

limiting their access to reinstatement based on financial ability would deeply harm the public's access to providers of color and women of color, who are so desperately needed in health care to provide high-quality care to patients.

**Exorbitant Fees Deprive Applicants of Due Process and Equal Protection**

This proposed regulation further raises constitutional concerns for applicants who cannot afford exorbitant fees. It imposes an obstacle to filing a petition and receiving a hearing, infringing on applicants' due process rights. It further divides Californians into those who *can* afford to pay to have their petition reviewed and those who *cannot*, contravening equal protection guarantees. The Board's Notice does not set forth a compelling interest that would justify these deprivations, nor does it suggest alternative less burdensome alternatives were fully and transparently considered with public input.

**Alternative Options are Available. Costs Should Not Be Borne By Applicants**

Finally, the proposed regulation fails to consider that Business and Professions code section 2307 provides for a less expensive option – that a “petition may be heard by a panel of the board.” (Bus. & Prof. Code, § 2307, subd. (d).) The Board of Registered Nursing has a long history of hearing petition cases at its board meetings and the process avoids the expense of the Office of Administrative Hearings. While the Board has the discretion to select a more expensive hearing procedure, the expense of this decision should not be borne by applicants.

Thank you for considering these comments. We ask the Board to reject the proposed fee structure and instead take steps to ensure that all applicants, regardless of their financial situation or background, have a fair and equitable opportunity to petition for reinstatement.

Respectfully,



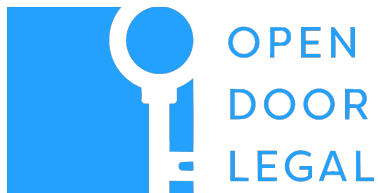
Sonja Tonnesen-Casalegno, Esq.

Policy & Legal Director

Communities United for Restorative Youth Justice

Telephone: (510) 485-9583

Email: [sonja@curyj.org](mailto:sonja@curyj.org)



January 6, 2025.

Alexandria Schembra  
Medical Board of California  
2005 Evergreen Street, Ste. 1200  
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E-Mail Address: [regulations@mbc.ca.gov](mailto:regulations@mbc.ca.gov)

RE: TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS  
DIVISION 13.  
MEDICAL BOARD OF CALIFORNIA NOTICE OF PROPOSED  
REGULATORY ACTION CONCERNING: Fees for Petitions for Penalty  
Relief

Dear Ms. Schembra and Medical Board of California,

I am writing on behalf of Open Door Legal to comment on the Medical Board of California's Notice of Proposed Regulatory Action concerning "Fees for Petitions for Penalty Relief." Open Door Legal is writing to express strong opposition to the proposed regulation imposing a \$3,738 application fee and a \$19,043 hearing fee for individuals petitioning for reinstatement of their occupational licenses under Business and Professions Code section 2307. We request the Board at minimum hold a hearing to address the potential impacts of the proposed rule.

This proposal will create significant financial barriers for applicants seeking to rebuild their careers and livelihoods, particularly for those with low incomes. Many of these individuals already struggle with financial instability after losing their licenses, and the proposed fees effectively deny them the opportunity to pursue reinstatement and return to their professions.

The Medical Board must consider how these fees will impact lower-income applicants. Access to a fair process for reinstatement should not be contingent on wealth or financial privilege. Furthermore, the

60 Ocean Avenue, San Francisco, CA 94112  
[vivianc@opendoorlegal.org](mailto:vivianc@opendoorlegal.org)  
(415) 906-0578

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proposed fee structure far exceeds the reasonable cost of considering a petition for reinstatement, suggesting it imposes an undue burden without justification.

The new policy thus raises serious constitutional concerns for applicants who cannot afford the exorbitant proposed fees. It imposes an obstacle to filing a petition and receiving a hearing, infringing on applicants' due process rights. And it creates two classes of people- those who can afford to pay to have their petition reviewed and those who cannot- contravening equal protection guarantees. The Board's Notice does not set forth a compelling interest that would justify these deprivations, nor does it suggest alternative less burdensome alternatives were considered.

Thank you for considering these comments. I respectfully request the Board to reject the proposed fee structure to ensure that all applicants, regardless of their financial situation, have a fair opportunity to petition for reinstatement.

Sincerely,

A handwritten signature in black ink, appearing to read "Vivian Cho", with a stylized, cursive script.

Vivian Cho  
Managing Civil Litigation Attorney  
Open Door Legal  
60 Ocean Avenue,  
San Francisco, CA 94112  
(415)906-0578



January 06, 2025

Alexandria Schembra  
Medical Board of California  
2005 Evergreen Street, Suite 1200  
Sacramento, CA 95815  
[regulations@mbc.ca.gov](mailto:regulations@mbc.ca.gov)

*Sent via e-mail*

RE: Proposed Regulatory Language: Fees for Petitions for Penalty Relief

Dear Ms. Schembra:

On behalf of its over 50,000 medical student and physician members, the California Medical Association (CMA) submits the following comments on the Medical Board of California's (Board's) proposed regulations related to Fees for Petitions for Penalty Relief. The Board's proposed regulations establish fees for petitions for penalty relief pursuant to BPC section 2307.5. CMA opposes the Board's proposal to establish these fees at a cost of over \$20,000 to petition for early termination of probation and over \$22,000 fee to petition to reinstate a license.

A fee this high to petition for penalty relief places a severe burden on individuals who, by nature of their status as disciplined professionals, often face financial and career challenges. For many, these fees will be prohibitive, effectively denying access to relief mechanisms established by the Legislature in Business and Professions Code Section 2307. Additionally, no provision is offered which seeks to alleviate the burden created by this fee such as fee waivers, sliding scales, or payment plans. Instead, the Board seems to have simply opted to identify the highest amount it believed it had the legal authority to set fees at and ignore all other considerations to generate as much revenue as possible.

Further, the Board suggests in its initial statement of reasons that imposing these steep fees will "incentivize petitioners to focus on their rehabilitation efforts" and reduce premature filings. This argument unfairly assumes bad faith on the part of petitioners. Regardless, the Board also already has mechanisms to reject inadequate petitions without resorting to punitive fees. This argument is also inapplicable to individuals seeking to reinstate their license, which can only be accomplished

through a petition for penalty relief; these individuals would have no alternative but to pay nearly \$23,000 for the chance to return to practice.

The Board's current proposal effectively punishes all petitioners rather than attempting to address inefficiencies in the petition review process. Contrary to the Board's assertion, the proposed fees also conflict with the public interest by discouraging rehabilitated professionals from returning to practice. California already faces significant physician workforce shortages, particularly in underserved areas. By creating extreme financial barriers to reinstatement, the Board risks delaying or preventing qualified physicians from resuming their roles, thereby exacerbating workforce challenges. Furthermore, the proposal undermines confidence in the Board's commitment to fairness and rehabilitation, replacing it with a perception of revenue generation at the expense of equity.

At this time, the proposal would still include physicians who have been put on probation or surrendered their licenses due to impairment as a result of a health condition. As established in Board meetings throughout the year, California lacks the appropriate systems and supports other states have for these physicians. Yet, the Board is now proposing to impose even more barriers to physicians' recovery or self-improvement prior to establishing said supports. Further consideration should be given to physicians seeking penalty relief when they were disciplined for something outside of their control, such as a health condition.

CMA believes there is a middle ground between charging petitioners no fee and requiring that they pay the Board's full costs to process and adjudicate petitions. For this reason, CMA opposes these proposed regulations and asks the Board to either withdraw this rulemaking action or revise the proposed text so that the fee does not create an unreasonable barrier to qualified physicians seeking an unrestricted license.

CMA thanks the Board for taking the time to review and consider our comment. If any further information is needed, please do not hesitate to contact me at [levensen@cmadocs.org](mailto:levensen@cmadocs.org)

Sincerely,

*Lucas Evensen*

Lucas Evensen  
Associate Director, Strategic Engagement  
California Medical Association



# **ATTACHMENT 4**

**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**

Proposed changes to the current regulation language are shown by ~~strikethrough~~ for deleted language and underline for added language.

Modified changes to the proposed regulation language are shown by ~~double strikethrough~~ for deleted language and double underline for added language.

**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) "Petitions for penalty relief" include petitions for modification or termination of probation and petitions for reinstatement of a revoked certificate or a certificate surrendered pursuant to a stipulation to settle a disciplinary action. ~~The fee required to process a petition for modification or termination of probation is \$1,949.~~

(b) The ~~initial~~ fee required to process a petition for modification or termination of probation is \$1,242. ~~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 ~~initial~~ 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 \$2,962. ~~3,738.~~

(d) The remaining fee required to cover the reasonable costs to process and adjudicate a petition for penalty relief shall be proposed by an administrative law judge (ALJ) from the Office of Administrative Hearings (OAH) and approved by the Board. The maximum fee that may be proposed by the ALJ and approved by the Board is \$22,000, less the initial fee already paid. The Board may remand the matter back to an ALJ for a finding on the fee where the proposed decision fails to make a finding on the fee. The Board may approve, reduce, or eliminate the remaining fee award. The Board may increase the fee award based on the evidence, but only in a decision after non-adoption of the ALJ's proposed decision. ~~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.~~

(e) When determining the remaining fee, a certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the designee for the Office of the Attorney General (OAG) and OAH for their agency's respective services shall be prima facie evidence of a reasonable fee to impose to pay for processing and adjudicating the petition for penalty relief. It shall include the AGO and OAH costs for reviewing, preparing for, and participating in the hearing on the petition for penalty relief. The fee shall not include the ALJ or OAH cost for preparing and transmitting the proposed decision to the Board after the hearing. The ALJ and Board shall consider evidence of the petitioner's ability to pay the remaining fee, with or without entering into a payment plan with the Board, as well as the reasonableness of the fee. Granting or denying a petition for penalty relief shall not be the sole basis for reducing or denying the fee.

(f) Where the Board orders a petitioner to pay a fee for penalty relief and timely payment is not made as directed in the Board's decision or pursuant to a payment plan approved by the Board or its designee, the Board may pursue administrative action against the individual for unprofessional conduct, enforce the order for payment in any appropriate court, and take any other action allowed by law.

(g) In any action for recovery of the fee, proof of the Board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment. If the petitioner was permitted to enter into a payment plan approved by the Board or the Board's designee, a certified copy of the signed payment plan shall be conclusive evidence of the terms.

(h) This section shall apply only to petitions for penalty relief on disciplinary decisions ordered after the effective date of this section.

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 Penalty Relief ~~Reinstatement or Modification of Probation.~~**

(a) A petition for penalty relief as defined under Section 1352.3, subdivision (a) ~~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 initial nonrefundable fee required by Section 1352.3, subdivision (b) or (c), for processing the petition for penalty relief.

~~(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 applicable initial fee specified in Section 1352.3, subdivision (b) or (c) subsection (a) has been received, the payment clears the petitioner's bank, and the funds are deposited in the Board's account within 30 days of the check or money order being deposited.

~~(c) If payment is made in accordance with subsection subdivision (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 proposed decision issued by the ALJ may include an order for the Board's consideration and approval for the petitioner to pay the remaining fee to cover the reasonable costs to process and adjudicate a petition for penalty relief up to \$22,000, less the initial fee already paid; (3) at the hearing on the petition, the petitioner may submit evidence regarding their ability to pay the remaining fee or challenge the reasonableness of the remaining fee being requested; and (4) the petitioner may be ordered to pay the remaining fee regardless of whether their petition is granted or denied. Additionally, the Board shall include a copy of Section 1352.3 with the notice. 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.

(e) The provisions of this section requiring payment of fees and notice thereof shall apply only to petitions for penalty relief on disciplinary decisions ordered after the effective date 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.

# **ATTACHMENT 5**



<b>Medical Board of California</b> <b>Initial Costs for Petitions for Modification and Early Termination</b> <b>(SB 815, Chapter 294, Statutes of 2023)</b> <b>Fiscal Impact (Workload Costs)</b>						
<b>Workload Tasks</b>	<b>Per Petition</b>	<b>Minutes Per Petition</b>	<b>MST</b>	<b>Inspector I/II</b>	<b>AGPA</b>	<b>SSMII</b>
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	-	-	-
<b>Minutes per Classification</b>			<b>90</b>	<b>90</b>	<b>445</b>	<b>60</b>
<b>Hours by Classification</b>			<b>1.5</b>	<b>1.5</b>	<b>7.4</b>	<b>1</b>
<b>Costs by Classification</b>			<b>\$137</b>	<b>\$143</b>	<b>\$831</b>	<b>\$132</b>
<b>*Total Costs:</b>			<b>\$1,242</b>			

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)

# **ATTACHMENT 6**

<b>Medical Board of California</b> <b>Initial Costs for Petitions for Reinstatement (SB 815, Chapter 294, Statutes of 2023)</b> <b>Fiscal Impact (Workload Costs)</b>					
<b>Workload Tasks</b>	<b>Per Petition</b>	<b>Minutes Per Petition</b>	<b>MST</b>	<b>SI</b>	<b>SSMI</b>
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
<b>Minutes per Classification</b>			<b>30</b>	<b>1,290</b>	<b>120</b>
<b>Hours by Classification</b>			<b>0.5</b>	<b>21.5</b>	<b>2</b>
<b>Costs by Classification</b>			<b>\$46</b>	<b>\$2,666</b>	<b>\$250</b>
<b>*Total Costs:</b>			<b>\$2,962</b>		

**MST: Management Services Technician @ \$91 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)**

# **ATTACHMENT 7**

**Attorney General Expense - PPR**

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

**Office of Administrative Hearing Expense - PPR**

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

<b>Average Total Cost Per Case</b>	<b>\$</b>	<b>19,043.60</b>
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