

# **REGISTRAR'S SUBMISSION PACKAGE**

## **BOARD OF MEDICINE**

**18 VAC 85-20-10 et seq. *Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic and Physician Acupuncture***

**18 VAC 85-31-10 et seq. *Regulations Governing the Practice of Physical Therapy***

**18 VAC 85-40-10 et seq. *Regulations Governing the Practice of Respiratory Care Practitioners***

**18 VAC 85-50-10 et seq. *Regulations Governing the Practice of Physician Assistants***

**18 VAC 85-80-10 et seq. *Regulations Governing the Licensure of Occupational Therapists***

**18 VAC 85-101-10 et seq. *Regulations Governing the Licensure of Radiologic Technologist Practitioners***

**18 VAC 85-110-10 et seq. *Regulations Governing the Practice of Licensed Acupuncturists***

### **Analysis of Proposed Amendments to Regulation**

#### **1. Basis of Regulation:**

Chapter 24 of Title 54.1 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary and the authority to levy and collect fees that are sufficient to cover all expenses for the administration of a regulatory program.

#### **2. Statement of Purpose:**

The purpose of the proposed amendments is to establish fees sufficient to cover the administrative and disciplinary activities of the Board of Medicine. Without adequate funding, the licensing of practitioners licensed by the Board and approval of candidates to sit for examinations could be delayed. In addition, sufficient funding is essential to carry out the investigative and disciplinary activities of the Board in order to protect the public health, safety and welfare.

#### **3. Substance of Regulations:**

Amendment to **18 VAC 85-20-22** are proposed as follows:

- Fees for application for licensure in medicine, osteopathy and podiatry have increased from \$200 to \$215 and now include \$75 for application processing and credential review, the cost of approximately half of a biennial renewal and license (\$120), the cost of approving a candidate to sit for an examination, and the cost of the wall certificate. The fee for application for licensure in chiropractic has decreased from \$200 to \$195 and now includes \$75 for application processing and credential review, the cost of approximately half of a biennial renewal and license (\$110), and the cost of the wall certificate.

- The fee for a temporary permit to practice medicine (no longer than 3 months) is increased from \$25 to \$30.
- The application fee for a limited professorial or fellow license is decreased from \$125 to \$55; the annual renewal is increased from \$25 to \$35. An additional fee of \$15 is charged for a late renewal.
- The application fee for a limited license as a resident or intern is set at \$55; the annual renewal is increased from \$10 to \$35. An additional fee of \$15 is charged for a late renewal.
- The proposed fee of \$15 (decreased from \$25) to produce a duplicate wall certificate would make the process and fee uniform for all boards within the Department. The cost for producing and sending a duplicate license has been reduced, so the proposed fee decreases from \$10 to \$5 and reflects the actual cost.
- The proposed biennial renewal fee increases from \$125 to \$240 for licensure in medicine, osteopathy and podiatry and reflects the cost of the administrative and disciplinary activities of the Board of Medicine and the allocated costs of the Department plus the estimated cost of the physician profiling system (\$25). Since chiropractors are not yet included in the physician profiling requirements, the biennial renewal fee for licensure is \$215.
- Proposed regulations would establish a late fee of \$85 for a licensee in medicine, osteopathy or podiatry and \$75 for a licensee in chiropractic who renews the expired license within the biennium (approximately 35% of the biennial renewal).
- For reinstatement following revocation or pursuant to § 54.1-2921, the applicant would pay a \$2000 to offset the additional disciplinary cost for a investigations, administrative proceedings, and a reinstatement hearing.
- The application fee for licensure to practice acupuncture is reduced from \$100 to \$55; the biennial renewal fee would increase from \$50 to \$70.
- If the license is allowed to lapse beyond the biennium, it would require reinstatement with an application review fee and payment of the late fee and biennial renewal fee for a combined total of \$290 for licensure in medicine, osteopathy and podiatry and \$270 for licensure in chiropractic.
- The cost of verifying a license to another jurisdiction or providing a letter of good standing would continue to be set at \$10.
- The fee for sending all or part of a transcript or certification of grades would continue to be \$25.

- The proposed fee of \$25 is estimated to be the actual administrative costs for processing and collecting on a returned check; it is proposed to be the same fee for all boards within the Department.

### **18 VAC 85-31-10 et seq. Regulations Governing the Practice of Physical Therapy**

Amendments to **18 VAC 85-31-160** are proposed as follows:

- Fees for application for licensure as a physical therapist would increase from \$100 to \$140 and for physical therapist assistant from \$100 to \$105. The fee now includes \$50 for application processing and credential review, the cost of approximately half of a biennial renewal and license (\$70 for a PT and \$35 for a PTA), the cost of approving a candidate to sit for an examination (\$10), and the cost of the wall certificate (\$10).
- The fee for licensure by endorsement would be identical to those for licensure by examination (increased from \$125 to \$140 for a PT and decreased from \$125 to \$105 for a PTA).
- The proposed biennial renewal fee increases from \$100 to \$135 for licensure in physical therapy and reflects the cost of the administrative and disciplinary activities of the Board of Medicine and the allocated costs of the Department. The biennial renewal fee for a physical therapist assistant would remain at \$70.
- Proposed regulations would establish a late fee of \$50 for a physical therapist and \$25 for a physical therapist assistant who renews the expired license within the biennium (approximately 35% of the biennial renewal).
- If the license is allowed to lapse beyond the biennium, it would require reinstatement with an application review fee (\$60), payment of the late fee and one-half the biennial renewal fee for a combined total of \$180 for licensure as a physical therapist and \$120 for licensure as a physical therapist assistant.
- Other fees set forth in regulations would be identical to those assessed to other licensees of the Board of Medicine and are determined by the actual costs to the Board for the particular activity or function. They include:
  - \$15 for producing a duplicate wall certificate
  - \$5 for producing and sending a duplicate license
  - \$2000 for reinstatement of a license pursuant to § 54.1-2921
  - \$25 for processing and collecting on a returned check
  - \$10 for verifying a license to another jurisdiction
  - \$25 for sending all or part of a transcript or certification of grades

### **18 VAC 85-40-10 et seq. Regulations Governing the Practice of Respiratory Care Practitioners**

Amendments to **18 VAC 85-40-80** are proposed as follows:

- The fee for application for licensure as a respiratory care practitioner would increase from \$100 to \$130 and would now include \$50 for application processing and credential review, the cost of approximately half of a biennial renewal and license (\$70), and the cost of the wall certificate (\$10).
- The proposed biennial renewal fee increases from \$50 to \$135 and reflects the cost of the administrative and disciplinary activities of the Board of Medicine and the allocated costs of the Department. The biennial renewal fee is consistent with similar practitioners licensed by the Board.
- Proposed regulations would establish a late fee of \$50 for a respiratory care practitioner who renews the expired license within the biennium (approximately 35% of the biennial renewal).
- If the license is allowed to lapse beyond the biennium, it would require reinstatement with an application review fee (\$60), payment of the late fee and one-half the biennial renewal fee for a combined total of \$180.
- Other fees set forth in regulations would be identical to those assessed to other licensees of the Board of Medicine and are determined by the actual costs to the Board for the particular activity or function. They include:
  - \$15 for producing a duplicate wall certificate
  - \$5 for producing and sending a duplicate license
  - \$2000 for reinstatement of a license pursuant to § 54.1-2921
  - \$25 for processing and collecting on a returned check
  - \$10 for verifying a license to another jurisdiction
  - \$25 for sending all or part of a transcript or certification of grades

### **18 VAC 85-50-10 et seq. Regulations Governing the Practice of Physician Assistants**

Amendments to **18 VAC 85-50-170** are proposed as follows:

- The fee for application for licensure as a physician assistant would increase from \$100 to \$130 and would now include \$50 for application processing and credential review, the cost of approximately half of a biennial renewal and license (\$70), and the cost of the wall certificate (\$10).
- The proposed biennial renewal fee increases from \$80 to \$135 and reflects the cost of the administrative and disciplinary activities of the Board of Medicine and the allocated costs of the Department. The biennial renewal fee is consistent with similar practitioners licensed by the Board.

- Proposed regulations would establish a late fee of \$50 for a physician assistant who renews the expired license within the biennium (approximately 35% of the biennial renewal).
- A fee of \$15 is proposed for the processing and approval of a new protocol required whenever a physician assistant changes employment or accepts different responsibilities with his supervising physician.
- Other fees set forth in regulations would be identical to those assessed to other licensees of the Board of Medicine and are determined by the actual costs to the Board for the particular activity or function. They include:
  - \$15 for producing a duplicate wall certificate
  - \$5 for producing and sending a duplicate license
  - \$2000 for reinstatement of a license pursuant to § 54.1-2921
  - \$25 for processing and collecting on a returned check
  - \$10 for verifying a license to another jurisdiction

### **18 VAC 85-80-10 et seq. Regulations Governing the Practice of Occupational Therapy**

Amendments to **18 VAC 85-80-120** are proposed as follows:

- The fee for an application for licensure as an occupational therapist would increase from \$100 to \$130 and would now include \$50 for application processing and credential review, the cost of approximately half of a biennial renewal and license (\$70), and the cost of the wall certificate (\$10).
- The fee for reinstatement of a licensed lapsed from two years or more would increase from \$150 to \$180 and would include approximately half of the biennial renewal fee (\$70), the late fee (\$50), and a \$60 review fee.
- The proposed biennial renewal fee increases from \$85 to \$135 and reflects the cost of the administrative and disciplinary activities of the Board of Medicine and the allocated costs of the Department. The biennial renewal fee is consistent with similar practitioners licensed by the Board.
- Proposed regulations would establish a late fee of \$50 for an occupational therapist who renews the expired license within the biennium (approximately 35% of the biennial renewal).
- Other fees set forth in regulations would be identical to those assessed to other licensees of the Board of Medicine and are determined by the actual costs to the Board for the particular activity or function. They include:
  - \$15 for producing a duplicate wall certificate
  - \$5 for producing and sending a duplicate license

\$2000 for reinstatement of a license pursuant to § 54.1-2921  
\$25 for processing and collecting on a returned check  
\$10 for verifying a license to another jurisdiction

### **18 VAC 85-101-10 et seq. Regulations Governing the Licensure of Radiologic Technologist Practitioners**

Amendments to **18 VAC 85-101-160** are proposed as follows:

- Fees for application for licensure as a radiologic technologist would increase from \$100 to \$130 and for a radiologic technologist-limited from \$50 to \$90. The fee would now include \$50 for application processing and credential review, the cost of approximately half of a biennial renewal and license (\$70 for a radiologic technologist and \$35 for a radiologic technologist-limited), and the cost of the wall certificate (\$10).
- The proposed biennial renewal fee increases from \$75 to \$135 for licensure as a radiologic technologist and from \$25 to \$70 for a radiologic technologist-limited and reflects the cost of the administrative and disciplinary activities of the Board of Medicine and the allocated costs of the Department.
- Proposed regulations would establish a late fee of \$50 for a radiologic technologist and \$25 for a radiologic technologist-limited who renews the expired license within the biennium (approximately 35% of the biennial renewal).
- If the license is allowed to lapse beyond the biennium, it would require reinstatement with an application review fee (\$60), payment of the late fee (\$50) and approximately half the biennial renewal fee (\$70) for a combined total of \$180 for licensure as a radiologic technologist and \$120 for licensure as a radiologic technologist-limited.
- The application fee for a traineeship in as a radiologic technologist would be \$25.
- Other fees set forth in regulations would be identical to those assessed to other licensees of the Board of Medicine and are determined by the actual costs to the Board for the particular activity or function. They include:
  - \$15 for producing a duplicate wall certificate
  - \$5 for producing and sending a duplicate license
  - \$2000 for reinstatement of a license pursuant to § 54.1-2921
  - \$25 for processing and collecting on a returned check
  - \$10 for verifying a license to another jurisdiction
  - \$25 for sending all or part of a transcript or certification of grades

### **18 VAC 85-110-10 et seq. Regulations Governing the Practice of Licensed Acupuncturists**

Amendments to **18 VAC 85-110-35** are proposed as follows:

- The fee for an application for licensure as an occupational therapist would decrease from \$150 to \$130 and would now include \$50 for application processing and credential review, the cost of approximately half of a biennial renewal and license (\$70), and the cost of the wall certificate (\$10).
- The proposed biennial renewal fee increases from \$85 to \$135 and reflects the cost of the administrative and disciplinary activities of the Board of Medicine and the allocated costs of the Department. The biennial renewal fee is consistent with similar practitioners licensed by the Board.
- Proposed regulations would establish a late fee of \$50 for a licensed acupuncturist who renews the expired license within the biennium (approximately 35% of the biennial renewal).
- The fee for reinstatement of a licensed lapsed from two years or more would decrease from \$200 to \$180 and would include approximately half of the biennial renewal fee (\$70), the late fee (\$50), and a \$60 review fee.
- Other fees set forth in regulations would be identical to those assessed to other licensees of the Board of Medicine and are determined by the actual costs to the Board for the particular activity or function. They include:
  - \$15 for producing a duplicate wall certificate
  - \$5 for producing and sending a duplicate license
  - \$2000 for reinstatement of a license pursuant to § 54.1-2921
  - \$25 for processing and collecting on a returned check
  - \$10 for verifying a license to another jurisdiction

#### **4. Issues of the Regulations**

Prior to consideration of amendments to regulations by the Board of Medicine, the Department of Health Professions set forth a set of principles by which all boards would be guided in the development of regulations. The “Principles for Fee Development” are intended to provide structure, consistency, and equity for all professionals regulated within the Department. In consideration of various alternatives and issues surrounding the adoption of fees, the Principles served to guide the Board in the development of an appropriate and necessary fee.

Based on the Principles, the Board of Medicine established certain policies to be applied in the development of its proposed fees. According to its policy, certain occupations regulated by the Board were grouped according to the amount of Board resources consumed by those occupations, as determined by rates of complaints and disciplinary cases, personnel required for licensing, discipline and other activities, and other allocated costs. It was agreed that the practitioners of medicine, osteopathy, podiatry and chiropractic should be grouped as occupation category #1; practitioners of physical therapy, occupational therapy, respiratory therapy, radiologic technology, and licensed acupuncturists and physician assistants should be grouped as occupation category #2. Exceptions were made for

persons who had restricted or limited licensure and who practiced under supervision rather than as independent professionals. Therefore, persons holding licensure as interns, residents, limited professorial licenses or fellows, physical therapist assistants or radiologic technologists-limited were categorized differently from fully licensed practitioners. The secondary license of physician acupuncturist was also recognized as an exception since persons who hold that license must also hold an active license as a doctor of medicine, osteopathy, podiatry or chiropractic.

### **ISSUE 1: Proration of initial licensure fees based on timing within the renewal cycle an applicant is initially licensed.**

It is unknown at the time of application for initial licensure when or if the applicant will qualify. Applicants may be delayed or ineligible because they fail to subsequently submit required information (such as transcripts or verification from other states), do not meet substantive requirements (education, experience, moral character, etc.) or fail to pass an examination. While most candidates are eventually found eligible, it is impossible to predict when or if any given candidate will be licensed.

Therefore, in order to prorate an initial 'license fee' for the current period of licensure it would require the assessment, after the determination of eligibility, of each newly qualified candidate (estimated to be 5100 per year, including licensure in all categories by examination and endorsement). To accomplish this, the Department would need to incur a cost to program automated systems to generate assessments in various occupational categories. In addition to generating the assessment, the agency will be required to receive and account for the additional payment. This task could possibly be contracted out, as we do with a number of lock box transactions. All exceptions to lock box transactions however, are handled in-house, which is an activity that would result in additional administrative costs.

Prorating of fees would have negative impact on prompt licensing of nurses. It is likely that it would add a minimum of 14 days and likely average 21 days to the time it will take to issue a license after approval (the period to generate an assessment, mailing out, writing of a check, return mail, and accounting for the fee). In many cases a candidate is legally prohibited from employment until the license is in hand. Therefore, the equity that may be achieved by prorating fees will not be of sufficient value to lead to its implementation. During the two to three weeks of delay, the applicant could have been working with a license issued promptly upon approval by the Board. The additional income earned during that period would far exceed the small amount of the initial licensure fee that might have been saved by a system of proration.

### **Advantages and disadvantages to the licensees**

As is stated above, the advantage of not prorating fees is that initial licensure can occur in a more timely manner. For those who are applying for licensure by examination, the license is issued as soon as examination results are forwarded to the board, usually within one or two working days. For those applying for licensure by endorsement, a license is typically issued within one or two days of receipt of all verifying documentation. All practitioners newly licensed by the Board of Medicine receive at least one half of a biennial renewal cycle, which is the amount included in the initial application and licensure fee. Therefore, there would be no advantage to prorating the initial licensure fee.



## **ISSUE 2. Uniformity in renewal and application fees across similar professions.**

As is stated in the Principles, renewal fees for all occupations regulated by a board should be consistent across occupations unless there is clear evidence to indicate otherwise. Doctors of medicine, osteopathy, podiatry and chiropractic proportionally account for similar administrative costs for the Board of Medicine, so those four professions are categorized as Occupation Category #1. Within Category #1, there is an exception for the physician profiling system which is limited to physicians and podiatrists. Therefore, the estimated profiling cost of \$25 per practitioner per biennium is not assessed to the biennial renewal of a chiropractor. Otherwise, the professions are similar in the allocated cost of personnel, data processing and other administrative functions, in their rate of discipline, and in their participation in the Health Practitioner Intervention Program (HPIP). Likewise, the amount of work entailed in application processing and credential review is similar for all four professions, but there is an additional costs for approving medical and osteopathic doctors and podiatrists to sit for the national examination. The candidates for examination in chiropractic are approved by the National Board of Chiropractic Examiners.

Since the process for approval and amount of credential review is much less detailed, the application fee for persons who have a limited license is set at a different rate. Applicants for limited professorial or fellow license or as a resident or intern would pay \$55 or approximately \$20 for application processing and all of the first one-year renewal cycle (\$35). The fee for a temporary permit to practice medicine, which lasts up to three months, is set at \$30; that is an amount equivalent to the renewal for fully licensed practitioners who pay \$240 for 24 months of licensure. Physician acupuncturists would pay \$70 per biennium for their license, which is equivalent to other limited licenses issued by the Board.

Other professions licensed by the Board which have similar rates of discipline and administrative expenditures would also have similar fees set in the proposed regulations. Current regulations are inconsistent in the fee structure for radiologic technologists, licensed acupuncturists, physical therapists, occupational therapists, physician assistants and respiratory care practitioners. Proposed regulations would categorize all those professions as Occupation Category #2 and set identical renewal fees based on a percentage of 56% of the renewal fee for Occupation #1. The percentage was calculated on the percentage of total board cost which is attributable only to Occupation #1, primarily the disciplinary expenditures of the board. Within Category #2, there are two unique fees - an additional \$10 in the application fee for physical therapists, since there is an additional process for approving candidates to sit for the examination; and a \$15 fee for review and approval of a practice protocol submitted by a physician assistant when he has a change in his employment status or responsibilities.

Two professions, radiologic technologist-limited and physical therapist assistant are categorized as Occupation Category #3 because they are limited in their scope of practice and must practice under the supervision of fully licensed persons. The Board determined that a lesser renewal fee was appropriate and equitable for those two professions. Again, there is an additional \$10 for an application from a physical therapist assistant to cover the cost of approving the applicant to sit for the examination.

### **Advantages and disadvantages to the licensees**

Most practitioners licensed by the Board of Medicine will experience increased renewal fees under the proposed regulations. While that is a disadvantage to the licensees, the alternative of reduced services for the Board would be unacceptable to applicants, licensees and the general public. As a specially funded agency, renewal fees pay the vast majority of the expenses of Board operations, which include investigation of complaints, adjudication of disciplinary cases, review and approval of applicants, verification of licensure and education to other jurisdictions and entities, and communications with licensees about current practice and regulation.

### **ISSUE 3. Establishment of fees for renewing an expired license versus reinstating a lapsed license.**

Currently, all Board regulations require a late fee for renewal of an expired license, and most of the regulations provide that the fee is cumulative for as long as the license is lapsed. For a practitioner who chooses not to practice in Virginia for a period of time (for whatever reason), the accumulation of late fees in addition to the reinstatement fee may become excessive. In the Principles, there is a distinction made between those who are expired (have failed to renew within one renewal cycle) and those who are lapsed (have failed to renew beyond one renewal cycle). The appropriate late fee for an expired license should be set at no more than 35% of the renewal fee; the current renewal fee must also be paid. Since a reinstatement application is required for a licensee to reinstate a lapsed license, the reinstatement fee should include the current renewal fee, the late fee, and a credential review fee.

Reinstatement of a license which has been revoked or for which reinstatement following suspension has been denied necessitates additional costs of a pre-hearing investigation (approximately 15 to 20 hours), preparation of legal documents (5 to 10 hours of time by a legal assistant) and a hearing before the Board (including per diem for members, travel expenses, and time for the office of the Attorney General). The proposed fee of \$2000 for reinstatement of such a license was determined by a calculation of the actual cost, which the Board believes should be paid by the applicant and not supported by renewal fees from other licensees.

### **Advantages and disadvantages to the licensees**

There is an advantage to having consistency in the Board's policy on payment of late fees and reinstatement fees. Currently, some regulations state that the fees are cumulative for as long as the license is lapsed and others do not. Reinstatement fees range from \$50 for a radiologic technologist to \$225 for a physical therapist; yet they are categorized in Occupation #2 and have similar costs to the board.

For those licensees who are late in paying a renewal fee (approximately 700 each year), there will be an increased cost. For some licensees, the cost of reinstating a license beyond the two-year renewal cycle will increase, while for others the cost will decrease. Doctors of medicine, osteopathy, and podiatry currently pay \$250 for reinstatement; under proposed regulations, they

would pay \$290. Physical therapist assistants currently pay \$225; under proposed regulations, they would pay \$120.

For those who seek reinstatement after revocation (approximately 8 per year), the cost will increase substantially from \$750 to \$2000.

#### **ISSUE 4. Uniformity among boards for setting miscellaneous fees.**

In setting proposed fees for miscellaneous activities of the Board, the Principles call for uniformity among boards and regulated entities. Such activities as replacement of a duplicate license, duplicate certificate, or processing and collecting on a bad check are similar for all boards and should be based on cost estimates provided by the Deputy Director for Finance of the Department.

#### **Advantages and disadvantages to the licensees**

The advantage of proposed regulations is that all persons licensed or certified by a board under the Department of Health Professions will consistently pay a fee for miscellaneous activities determined by actual costs for that activity. There will not be inconsistent fees for licensees regulated under different boards. For licensees of the Board of Medicine, the fee for a duplicate license will be reduced from \$10 to \$5; the fee for a duplicate wall certificate will be reduced from \$25 to \$15. The fee for a returned check will be established in regulation at \$25.

#### **Advantage or disadvantages to the public**

Fee increases proposed by the Board of Medicine should have no disadvantage to the consuming public. There is no projection of a reduction in the number of applicants for licensure or the number of licensed persons available to provide medical services to the public. For example, an increase in the biennial renewal fee will result in an additional \$57.50 per year for a doctor's license.

There would be considerable disadvantages to the public if the Board of Medicine took no action to address its deficit and increase fees to cover its expenses. The only alternative currently available under the Code of Virginia would be a reduction in services and staff, which would result in delays in licensing applicants who would be unable to work and delays in approval or disapproval of candidates to sit for examinations. Potentially, the most serious consequence would be a reduction in or reprioritization of the investigation of complaints against doctors and other licensees. In addition, there may be delays in adjudicating cases of substandard care, abuse or other violations, resulting in potential danger to the patients who are often the most sick and vulnerable consumers in the Commonwealth.

#### **Advantages or disadvantage to the agency:**

As is stated above, the consequence of not increasing fees of the Board of Medicine would be a reduction in services and staff, resulting in delays in licensing and reductions in the cases investigated and brought through administrative proceedings to a hearing before the Board. The Board of Medicine and the Department of Health Professions are solely funded by the fees charged to applicants and licensees. If higher fees are not adopted, the agency would have to cut its staff, both within the Board

of Medicine and within other divisions of the Department of Health Professions since 29% of the costs of the agency is dependent on revenues from the Board of Medicine.

## **5. Estimated Fiscal Impact of the Regulations**

### **I. Fiscal Impact Prepared by the Agency:**

#### **Number of entities affected by this regulation:**

The number of regulated entities (as of May 3, 1999) who would be affected by these regulations is:

|                                   |        |
|-----------------------------------|--------|
| Medicine and osteopathy           | 27,059 |
| Osteopathy                        | 756    |
| Podiatry                          | 498    |
| Chiropractic                      | 1,488  |
| Physician acupuncture             | 232    |
| Interns and residents             | 2,208  |
| Limited professorial              | 28     |
| Physical therapists               | 3,601  |
| Physical therapist assistants     | 1,277  |
| Respiratory care practitioners    | 2,706  |
| Physician assistants              | 498    |
| Occupational therapists           | 1,801  |
| Radiological technologists        | 1,826  |
| Radiological technologist-limited | 1,057  |
| Licensed acupuncturists           | 58     |

#### **Projected cost to the agency:**

The agency will incur some costs (approximately \$5000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

#### **Projected costs to the affected entities:**

For most applicants and regulated entities, the costs of acquiring and maintaining licensure will increase. Doctors of medicine, osteopathy and podiatry will pay an additional \$115 every two years to maintain a license to engage in active practice. Chiropractors will pay an additional \$90 every two years. Residents and interns will have an annual increase in licensure renewal of \$25. Other professions will see increases in biennial renewal as follows: Physical therapists - \$35; respiratory care practitioners - \$85; physician assistants - \$55; occupational therapists - \$50; radiologic technologists - \$60; and radiologic technologist-limited - \$45. Physical therapist assistants have no increase proposed

in their biennial renewal fee. Under the Board's proposal, renewal fees for similar professions would be identical, rather than disparate and inconsistent as they are now.

Applicants for licensure (either by endorsement or examination) would pay a fee to have their application processed and credentials reviewed for licensure qualification. Once approved, they are licensed for at least one half of the biennium and receive a calligraphied wall certificate at no charge. Proposed regulations would include the costs of a license and a wall certificate in that initial application fee.

For practitioners who are late sending in their biennial renewal but do renew an expired license within two years, the cost will increase and will be approximately 35% of their biennial renewal. For those whose license is lapsed beyond two years, a reinstatement application and fee will be required as well as payment of the late fee and an amount equal to approximately one-half the biennial renewal.

Miscellaneous costs, such as replacement of a duplicate license or wall certificate, verification of a license or transcript, and returned check charges are uniformly proposed at amounts consistent with the actual costs incurred by the Department for those activities.

#### **Citizen input in development of regulation:**

The Notice of Intended Regulatory Action was published on April 12, 1999 and subsequently sent to approximately 210 persons and organizations on the Public Participation Guidelines Mailing List of the Board. The deadline for comment was May 12, 1999 and there was no comment received.

In addition, the two citizen members of the Board of Medicine participated in the discussions about fees and concurred with the fee proposal adopted by the Board.

#### **Localities affected:**

There are no localities in the Commonwealth affected by these amended regulations.

## **II. Fiscal Impact Prepared by the Department of Planning and Budget: (To be attached)**

## **III. Agency Response:**

### **c. Source of the legal authority to promulgate the contemplated regulation.**

**Regulations of the Board of Medicine** were promulgated under the general authority of Title 54.1 of the Code of Virginia.

**Chapter 24** establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations and levy fees.

*§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:*

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
- 8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
- 9. To take appropriate disciplinary action for violations of applicable law and regulations.*
- 10. To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the*

*practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*

11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

The proposed regulation is mandated by § 54.1-113; however the Board must exercise some discretion in the amount and type of fees which will be increased in order to comply with the statute.

*§ 54.1-113. Regulatory boards to adjust fees.--Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.*

#### **d. Letter of assurance from the office of the Attorney General.**

See attached.

#### **e. Summary of Public Comment received in response to the Notice of Intended Regulatory Action.**

The Notice of Intended Regulatory Action was published on April 12, 1999 and subsequently sent to the Public Participation Guidelines Mailing List of the Board. The deadline for comment was May 12, 1999 and there was no comment received.

## **f. Changes to existing regulations.**

### **18 VAC 85-20-10 et seq. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic and Physician Acupuncture**

Amendments to section **18 VAC 85-20-22** are proposed as follows:

- Fees for application for licensure in medicine, osteopathy and podiatry have increased from \$200 to \$215 and now includes \$75 for application processing and credential review, the cost of approximately half of a biennial renewal and license (\$120), the cost of approving a candidate to sit for an examination, and the cost of the wall certificate. The fee for application for licensure in chiropractic has decreased from \$200 to \$195 and now includes \$75 for application processing and credential review, the cost of approximately half of a biennial renewal and license (\$110), and the cost of the wall certificate.
- The fee for a temporary permit (no longer than 3 months) to practice medicine is increased from \$25 to \$30.
- The application fee for a limited professorial or fellow license is decreased from \$125 to \$55; the annual renewal is increased from \$25 to \$35. An additional fee of \$15 is charged for a late renewal.
- The application fee for a limited license as a resident or intern is set at \$55; the annual renewal is increased from \$10 to \$35. An additional fee of \$15 is charged for a late renewal.
- The proposed fee of \$15 (decreased from \$25) to produce a duplicate wall certificate would make the process and fee uniform for all boards within the Department. The cost for producing and sending a duplicate license has been reduced, so the proposed fee decreases from \$10 to \$5 and reflects the actual cost.
- The proposed biennial renewal fee increases from \$125 to \$240 for licensure in medicine, osteopathy and podiatry and reflects the cost of the administrative and disciplinary activities of the Board of Medicine and the allocated costs of the Department plus the estimated cost of the physician profiling system (\$25). Since chiropractors are not yet included in the physician profiling requirements, the biennial renewal fee for licensure is \$215.
- Proposed regulations would establish a late fee of \$85 for a licensee in medicine, osteopathy or podiatry and \$75 for a licensee in chiropractic who renews the expired license within the biennium (approximately 35% of the biennial renewal).



- For reinstatement following revocation or pursuant to § 54.1-2921, the applicant would pay a \$2000 to offset the additional disciplinary cost for a investigations, administrative proceedings, and a reinstatement hearing.
- The application fee for licensure to practice acupuncture is reduced from \$100 to \$55; the biennial renewal fee would increase from \$50 to \$70.
- If the license is allowed to lapse beyond the biennium, it would require reinstatement with an application review fee (\$85), payment of the late fee, and one-half the biennial renewal fee for a combined total of \$290 for licensure in medicine, osteopathy and podiatry and \$270 for licensure in chiropractic.
- The cost of verifying a license to another jurisdiction would continue to be set at \$10.
- The fee for sending all or part of a transcript or certification of grades would continue to be \$25.
- The proposed fee of \$25 is estimated to be the actual administrative costs for processing and collecting on a returned check; it is proposed to be the same fee for all boards within the Department.

### **18 VAC 85-31-10 et seq. Regulations Governing the Practice of Physical Therapy**

Amendments to **18 VAC 85-31-160** are proposed as follows:

- Fees for application for licensure as a physical therapist would increase from \$100 to \$140 and for physical therapist assistant from \$100 to \$105. The fee now includes \$50 for application processing and credential review, the cost of approximately half of a biennial renewal and license (\$70 for a PT and \$35 for a PTA), the cost of approving a candidate to sit for an examination (\$10), and the cost of the wall certificate (\$10).
- The fee for licensure by endorsement would be identical to those for licensure by examination (increased from \$125 to \$140 for a PT and decreased from \$125 to \$105 for a PTA).
- The proposed biennial renewal fee increases from \$100 to \$135 for licensure in physical therapy and reflects the cost of the administrative and disciplinary activities of the Board of Medicine and the allocated costs of the Department. The biennial renewal fee for a physical therapist assistant would remain at \$70.
- Proposed regulations would establish a late fee of \$50 for a physical therapist and \$25 for a physical therapist assistant who renews the expired license within the biennium (approximately 35% of the biennial renewal).

- If the license is allowed to lapse beyond the biennium, it would require reinstatement with an application review fee (\$60), payment of the late fee and one-half the biennial renewal fee for a combined total of \$180 for licensure as a physical therapist and \$120 for licensure as a physical therapist assistant.
- Other fees set forth in regulations would be identical to those assessed to other licensees of the Board of Medicine and are determined by the actual costs to the Board for the particular activity or function. They include:
  - \$15 for producing a duplicate wall certificate
  - \$5 for producing and sending a duplicate license
  - \$2000 for reinstatement of a license pursuant to § 54.1-2921
  - \$25 for processing and collecting on a returned check
  - \$10 for verifying a license to another jurisdiction
  - \$25 for sending all or part of a transcript or certification of grades

**18 VAC 85-40-10 et seq. Regulations Governing the Practice of Respiratory Care Practitioners**

Amendments to **18 VAC 85-40-80** are proposed as follows:

- The fee for application for licensure as a respiratory care practitioner would increase from \$100 to \$130 and would now include \$50 for application processing and credential review, the cost of approximately half of a biennial renewal and license (\$70), and the cost of the wall certificate (\$10).
- The proposed biennial renewal fee increases from \$50 to \$135 and reflects the cost of the administrative and disciplinary activities of the Board of Medicine and the allocated costs of the Department. The biennial renewal fee is consistent with similar practitioners licensed by the Board.
- Proposed regulations would establish a late fee of \$50 for a respiratory care practitioner who renews the expired license within the biennium (approximately 35% of the biennial renewal).
- If the license is allowed to lapse beyond the biennium, it would require reinstatement with an application review fee (\$60), payment of the late fee and one-half the biennial renewal fee for a combined total of \$180.
- Other fees set forth in regulations would be identical to those assessed to other licensees of the Board of Medicine and are determined by the actual costs to the Board for the particular activity or function. They include:
  - \$15 for producing a duplicate wall certificate
  - \$5 for producing and sending a duplicate license
  - \$2000 for reinstatement of a license pursuant to § 54.1-2921
  - \$25 for processing and collecting on a returned check
  - \$10 for verifying a license to another jurisdiction

\$25 for sending all or part of a transcript or certification of grades

### **18 VAC 85-50-10 et seq. Regulations Governing the Practice of Physician Assistants**

Amendments to **18 VAC 85-50-170** are proposed as follows:

- The fee for application for licensure as a physician assistant would increase from \$100 to \$130 and would now include \$50 for application processing and credential review, the cost of approximately half of a biennial renewal and license (\$70), and the cost of the wall certificate (\$10).
- The proposed biennial renewal fee increases from \$80 to \$135 and reflects the cost of the administrative and disciplinary activities of the Board of Medicine and the allocated costs of the Department. The biennial renewal fee is consistent with similar practitioners licensed by the Board.
- Proposed regulations would establish a late fee of \$50 for a physician assistant who renews the expired license within the biennium (approximately 35% of the biennial renewal).
- A fee of \$15 is proposed for the processing and approval of a new protocol required whenever a physician assistant changes employment or accepts different responsibilities with his supervising physician.
- Other fees set forth in regulations would be identical to those assessed to other licensees of the Board of Medicine and are determined by the actual costs to the Board for the particular activity or function. They include:
  - \$15 for producing a duplicate wall certificate
  - \$5 for producing and sending a duplicate license
  - \$2000 for reinstatement of a license pursuant to § 54.1-2921
  - \$25 for processing and collecting on a returned check
  - \$10 for verifying a license to another jurisdiction

### **18 VAC 85-80-10 et seq. Regulations Governing the Practice of Occupational Therapy**

Amendments to **18 VAC 85-80-120** are proposed as follows:

- The fee for an application for licensure as an occupational therapist would increase from \$100 to \$130 and would now include \$50 for application processing and credential review, the cost of approximately half of a biennial renewal and license (\$70), and the cost of the wall certificate (\$10).
- The fee for reinstatement of a licensed lapsed from two years or more would increase from \$150 to \$180 and would include approximately half of the biennial renewal fee (\$70), the late fee (\$50), and a \$60 review fee.

- The proposed biennial renewal fee increases from \$85 to \$135 and reflects the cost of the administrative and disciplinary activities of the Board of Medicine and the allocated costs of the Department. The biennial renewal fee is consistent with similar practitioners licensed by the Board.
- Proposed regulations would establish a late fee of \$50 for an occupational therapist who renews the expired license within the biennium (approximately 35% of the biennial renewal).
- Other fees set forth in regulations would be identical to those assessed to other licensees of the Board of Medicine and are determined by the actual costs to the Board for the particular activity or function. They include:
  - \$15 for producing a duplicate wall certificate
  - \$5 for producing and sending a duplicate license
  - \$2000 for reinstatement of a license pursuant to § 54.1-2921
  - \$25 for processing and collecting on a returned check
  - \$10 for verifying a license to another jurisdiction

### **18 VAC 85-101-10 et seq. Regulations Governing the Licensure of Radiologic Technologist Practitioners**

Amendments to **18 VAC 85-101-160** are proposed as follows:

- Fees for application for licensure as a radiologic technologist would increase from \$100 to \$130 and for a radiologic technologist-limited from \$50 to \$90. The fee would now include \$50 for application processing and credential review, the cost of approximately half of a biennial renewal and license (\$70 for a radiologic technologist and \$35 for a radiologic technologist-limited), and the cost of the wall certificate (\$10).
- The proposed biennial renewal fee increases from \$75 to \$135 for licensure as a radiologic technologist and from \$25 to \$70 for a radiologic technologist-limited and reflects the cost of the administrative and disciplinary activities of the Board of Medicine and the allocated costs of the Department.
- Proposed regulations would establish a late fee of \$50 for a radiologic technologist and \$25 for a radiologic technologist-limited who renews the expired license within the biennium (approximately 35% of the biennial renewal).
- If the license is allowed to lapse beyond the biennium, it would require reinstatement with an application review fee (\$60), payment of the late fee (\$50) and approximately half the biennial renewal fee (\$70) for a combined total of \$180 for licensure as a radiologic technologist and \$120 for licensure as a radiologic technologist-limited.
- The application fee for a traineeship in as a radiologic technologist would be \$25.

- Other fees set forth in regulations would be identical to those assessed to other licensees of the Board of Medicine and are determined by the actual costs to the Board for the particular activity or function. They include:

- \$15 for producing a duplicate wall certificate
- \$5 for producing and sending a duplicate license
- \$2000 for reinstatement of a license pursuant to § 54.1-2921
- \$25 for processing and collecting on a returned check
- \$10 for verifying a license to another jurisdiction
- \$25 for sending all or part of a transcript or certification of grades

**18 VAC 85-110-10 et seq. Regulations Governing the Practice of Licensed Acupuncturists**

Amendments to **18 VAC 85-110-35** are proposed as follows:

- The fee for an application for licensure as an occupational therapist would decrease from \$150 to \$130 and would now include \$50 for application processing and credential review, the cost of approximately half of a biennial renewal and license (\$70), and the cost of the wall certificate (\$10).
- The proposed biennial renewal fee increases from \$85 to \$135 and reflects the cost of the administrative and disciplinary activities of the Board of Medicine and the allocated costs of the Department. The biennial renewal fee is consistent with similar practitioners licensed by the Board.
- Proposed regulations would establish a late fee of \$50 for a licensed acupuncturist who renews the expired license within the biennium (approximately 35% of the biennial renewal).
- The fee for reinstatement of a licensed lapsed from two years or more would decrease from \$200 to \$180 and would include approximately half of the biennial renewal fee (\$70), the late fee (\$50), and a \$60 review fee.
- Other fees set forth in regulations would be identical to those assessed to other licensees of the Board of Medicine and are determined by the actual costs to the Board for the particular activity or function. They include:

- \$15 for producing a duplicate wall certificate
- \$5 for producing and sending a duplicate license
- \$2000 for reinstatement of a license pursuant to § 54.1-2921
- \$25 for processing and collecting on a returned check
- \$10 for verifying a license to another jurisdiction

**g. Statement of reasoning for the regulations.**

The Virginia Board of Medicine needs to increase their fees to cover expenses for essential functions of licensing, investigation of complaints against doctors, interns and residents and other practitioners licensed by the Board, adjudication of disciplinary cases, and the approval of candidates and administration of examinations.

In its earlier projection of the deficit within the Board of Medicine, the Department had anticipated that the deficit would be \$861,956 or 9.3% of the total budget by the end of the 2002 biennium. In its latest analysis of funding and expenditures under the current fee structure for programs under the Board of Medicine, the following deficit has been projected:

| <b><u>FY Ending</u></b> | <b><u>Board</u></b> | <b><u>Amount</u></b> | <b><u>Percent</u></b> |
|-------------------------|---------------------|----------------------|-----------------------|
| 6/30/02                 | Medicine            | -\$3,776,553         | -36.8%                |

Two factors have contributed to a greater than projected increase in the deficit and make the need for a fee increase even more urgent: (1) there has been a sharp increase in the number of doctors being enrolled in the Health Practitioner Intervention Program. The Medical Society of Virginia, which operated a volunteer peer assistance program, has discontinued its program and turned over all the participants to the HPIP program funded by the Board. Usage of HPIP services by persons regulated under the Board of Medicine is anticipated to continue to escalate over the next two biennia; and (2) the percentage of change in the number of licensees and the accompanying revenue originally projected by the Finance Office for the next two biennia did not project for the impact of inactive licensure. The number of regulants was projected with current fees which did not account for a reduced fee for approximately 10% of licensees in categories with inactive licensure.

§ 54.1-113 of the Code of Virginia requires that at the end of each biennium, an analysis of revenues and expenditures of each regulatory board shall be performed. It is necessary that each board have sufficient revenue to cover its expenditures. It is projected that by the close of the 2002 fiscal year, the Board of Medicine with its current fee structure would incur a deficit of \$3,776,553 or approximately 36.8% of its total budget, and that the deficit will continue to escalate. Since the fees from licensees will no longer generate sufficient funds to pay operating expenses for the Board, consideration of a fee increase is essential.

Despite the efficiencies and reductions in staff (MEL from 132 to 120) which the Department and the Board have undertaken in the past five years, funding from fees has failed to keep up with expenditures.

### **Biennial Renewal Fees for regulants of the Board of Medicine**

| <b>Occupation</b>                                       | <b>Current fee</b> | <b>FY '98</b> | <b>FY '96</b> |
|---|--------------------|---------------|---------------|
| Doctors of medicine, osteopathy, podiatry, chiropractic | <b>\$125</b>       | <b>\$125</b>  | <b>\$125</b>  |
| Interns and residents                                   | <b>\$10</b>        | <b>\$10</b>   | <b>\$10</b>   |
| Physical therapist                                      | <b>\$100</b>       | <b>\$100</b>  | <b>\$125</b>  |
| Physical therapist assistant                            | <b>\$70</b>        | <b>\$70</b>   | <b>\$80</b>   |

|                               |      |      |      |
|-------------------------------|------|------|------|
| Physician assistant           | \$80 | \$80 | \$80 |
| Respiratory care practitioner | \$50 | \$50 | \$50 |
| Occupational therapist        | \$85 | \$85 | \$85 |
| Radiologic technologist       | \$75 | \$75 | \$80 |
| Licensed acupuncturist        | \$85 | \$85 | \$85 |

**Renewal fees for doctors and for interns and residents have not increased since 1990. Renewal fees for physical therapists and physical therapists assistants were decreased in 1998.**

**Necessity of Amending Current Regulations Prior to January of 2000 or the Next Renewal**

Physicians licensed by the Board of Medicine renew their licenses every even year (2000) in their birth month. **Therefore, it is essential to have an increased fee in place before January 31, 2000 - which is the date on which the licenses begin to expire - in order to prevent a significant deficit from occurring by the time licenses are again renewed in the year 2002.**

If the fee increase is not effective before the 2000 renewal cycle, the deficit is projected to be \$3,776,553 by the end of the 2000-2002 biennium.

**Need for Fee Increases**

Fee increases are related to increased need for funds for staff pay and related benefit increases included in the Governor’s budget and for the general costs of doing business beyond the department’s control (Y2K compliance, the health practitioner intervention program, installation of new computer system, etc.)

For the Board of Medicine, significant new costs will be associated with the implementation of the physician profile system, required by SB 660 of the 1998 General Assembly and SB 975 which added the podiatrists to the required system for public disclosure of data in 1999. Estimates from the Fiscal Impact Statement prepared by the Department of Planning and Budget in 1998 were that the system would cost at least \$350,000 (the figure was closer to \$500,000 for a similar system in Massachusetts) to initiate and \$250,000 per year to sustain. At that time, it was recognized in the FIS that renewal fees for physicians would probably need to be increased by at least \$25, just to cover the expenditures for the profiling system.

Fee increases for licensees regulated by the Board of Medicine are necessary in order for the Board and the Department to continue performing essential functions of licensing new physicians and other practitioners of the healing arts and of protecting the public from continued practice by incompetent or unethical practitioners.

**h. Alternatives considered.**

**Prior to the publication of a Notice of Intended Regulatory Action to increase fees of the Board, the agency considered three possible solutions to the deficits in the Board of Medicine. They were:**

**1. General Fund Support.** To permit General Fund support, the *Code of Virginia* would need to be amended to allow such funding as the *Code* restricts board revenue to fees.

**2. Reduction in department/board operations and staff .** In order to prevent deficit spending, the department would basically need to lay off staff to reduce expenses associated with operations. The net result being a delay in the performance of or the elimination of investigations and discipline, license renewals, and approvals for examinations. Delays in licensing and investigation could place the general population at health risk as persons who should not be practicing would continue to practice, and the supply of doctors and other licensed practitioners needed for the health system would be delayed or curtailed. It is believed that these consequences would not be acceptable to the administration, the General Assembly, or to the general public.

**3. Increase fees through the promulgation of regulations.** An alternative is to seek the revenue from licensees and applicants to fully fund appropriated expenditures. Costs of services will be paid by patients who use the services of providers, but licensure fees represent a miniscule percentage of the over-all costs of health care. However, failure to fully fund the services through fees will have a detrimental affect on quality.

**It was the recommendation of the Department that the Board of Medicine adopt the third alternative and seek to increase some of its fees.**

Prior to consideration of amendments to regulations by the Board of Medicine, the Department of Health Professions set forth a set of principles by which all boards would be guided in the development of regulations. The “Principles for Fee Development” are intended to provide structure, consistency, and equity for all professionals regulated within the Department. In consideration of various alternatives and issues surrounding the adoption of fees, the Principles served to guide the Board in the development of an appropriate and necessary fee.

Based on the Principles, the Board of Medicine established certain policies to be applied in the development of its proposed fees. According to its policy, certain occupations regulated by the Board were grouped according to the amount of Board resources consumed by those occupations, as determined by rates of complaints and disciplinary cases, personnel required for licensing, discipline and other activities, and other allocated costs. It was agreed that the practitioners of medicine, osteopathy, podiatry and chiropractic should be grouped as occupation category #1; practitioners of physical therapy, occupational therapy, respiratory therapy, radiologic technology, and licensed acupuncturists and physician assistants should be grouped as occupation category #2. Exceptions were made for persons who had restricted or limited licensure and who practiced under supervision rather than as independent professionals. Therefore, persons holding licensure as interns, residents, limited professorial licenses or fellows, physical therapist assistants or radiologic technologists-limited were categorized differently from fully licensed practitioners. The secondary license of physician acupuncturist was also recognized as an exception since persons who hold that license must also hold an active license as a doctor of medicine, osteopathy, podiatry or chiropractic.

**During the development of a fee proposal, the Board considered the following issues and alternatives:**



## **ISSUE 1: Proration of initial licensure fees based on timing within the renewal cycle an applicant is initially licensed.**

It is unknown at the time of application for initial licensure when or if the applicant will qualify. Applicants may be delayed or ineligible because they fail to subsequently submit required information (such as transcripts or verification from other states), do not meet substantive requirements (education, experience, moral character, etc.) or fail to pass an examination. While most candidates are eventually found eligible, it is impossible to predict when or if any given candidate will be licensed.

Therefore, in order to prorate an initial 'license fee' for the current period of licensure it would require the assessment, after the determination of eligibility, of each newly qualified candidate (estimated to be 5100 per year, including licensure in all categories by examination and endorsement). To accomplish this, the Department would need to incur a cost to program automated systems to generate assessments in various occupational categories. In addition to generating the assessment, the agency will be required to receive and account for the additional payment. This task could possibly be contracted out, as we do with a number of lock box transactions. All exceptions to lock box transactions however, are handled in-house, which is an activity that would result in additional administrative costs.

Prorating of fees would have negative impact on prompt licensing of nurses. It is likely that it would add a minimum of 14 days and likely average 21 days to the time it will take to issue a license after approval (the period to generate an assessment, mailing out, writing of a check, return mail, and accounting for the fee). In many cases a candidate is legally prohibited from employment until the license is in hand. Therefore, the equity that may be achieved by prorating fees will not be of sufficient value to lead to its implementation. During the two to three weeks of delay, the applicant could have been working with a license issued promptly upon approval by the Board. The additional income earned during that period would far exceed the small amount of the initial licensure fee that might have been saved by a system of proration.

### **Advantages and disadvantages to the licensees**

As is stated above, the advantage of not prorating fees is that initial licensure can occur in a more timely manner. For those who are applying for licensure by examination, the license is issued as soon as examination results are forwarded to the board, usually within one or two working days. For those applying for licensure by endorsement, a license is typically issued within one or two days of receipt of all verifying documentation. All practitioners newly licensed by the Board of Medicine receive at least one half of a biennial renewal cycle, which is the amount included in the initial application and licensure fee. Therefore, there would be no advantage to prorating the initial licensure fee.

## **ISSUE 2. Uniformity in renewal and application fees across similar professions.**

As is stated in the Principles, renewal fees for all occupations regulated by a board should be consistent across occupations unless there is clear evidence to indicate otherwise. Doctors of medicine, osteopathy, podiatry and chiropractic proportionally account for similar administrative

costs for the Board of Medicine, so those four professions are categorized as Occupation Category #1. Within Category #1, there is an exception for the physician profiling system which is limited to physicians and podiatrists. Therefore, the estimated profiling cost of \$25 per practitioner per biennium is not assessed to the biennial renewal of a chiropractor. Otherwise, the professions are similar in the allocated cost of personnel, data processing and other administrative functions, in their rate of discipline, and in their participation in the Health Practitioner Intervention Program (HPIP). Likewise, the amount of work entailed in application processing and credential review is similar for all four professions, but there is an additional cost for approving medical and osteopathic doctors and podiatrists to sit for the national examination. The candidates for examination in chiropractic are approved by the National Board of Chiropractic Examiners.

Since the process for approval and amount of credential review is much less detailed, the application fee for persons who have a limited license is set at a different rate. Applicants for limited professorial or fellow license or as a resident or intern would pay \$55 or approximately \$20 for application processing and all of the first one-year renewal cycle (\$35). The fee for a temporary permit to practice medicine, which lasts up to three months, is set at \$30; that is an amount equivalent to the renewal for fully licensed practitioners who pay \$240 for 24 months of licensure. Physician acupuncturists would pay \$70 per biennium for their license, which is equivalent to other limited licenses issued by the Board.

Other professions licensed by the Board which have similar rates of discipline and administrative expenditures would also have similar fees set in the proposed regulations. Current regulations are inconsistent in the fee structure for radiologic technologists, licensed acupuncturists, physical therapists, occupational therapists, physician assistants and respiratory care practitioners. Proposed regulations would categorize all those professions as Occupation Category #2 and set identical renewal fees based on a percentage of 56% of the renewal fee for Occupation #1. The percentage was calculated on the percentage of total board cost which is attributable only to Occupation #1, primarily the disciplinary expenditures of the board. Within Category #2, there are two unique fees - an additional \$10 in the application fee for physical therapists, since there is an additional process for approving candidates to sit for the examination; and a \$15 fee for review and approval of a practice protocol submitted by a physician assistant when he has a change in his employment status or responsibilities.

Two professions, radiologic technologist-limited and physical therapist assistant are categorized as Occupation Category #3 because they are limited in their scope of practice and must practice under the supervision of fully licensed persons. The Board determined that a lesser renewal fee was appropriate and equitable for those two professions. Again, there is an additional \$10 for an application from a physical therapist assistant to cover the cost of approving the applicant to sit for the examination.

### **Advantages and disadvantages to the licensees**

Most practitioners licensed by the Board of Medicine will experience increased renewal fees under the proposed regulations. While that is a disadvantage to the licensees, the alternative of reduced services for the Board would be unacceptable to applicants, licensees and the general public. As a specially funded agency, renewal fees pay the vast majority of the expenses of Board

operations, which include investigation of complaints, adjudication of disciplinary cases, review and approval of applicants, verification of licensure and education to other jurisdictions and entities, and communications with licensees about current practice and regulation.

### **ISSUE 3. Establishment of fees for renewing an expired license versus reinstating a lapsed license.**

Currently, all Board regulations require a late fee for renewal of an expired license, and most of the regulations provide that the fee is cumulative for as long as the license is lapsed. For a practitioner who chooses not to practice in Virginia for a period of time (for whatever reason), the accumulation of late fees in addition to the reinstatement fee may become excessive. In the Principles, there is a distinction made between those who are expired (have failed to renew within one renewal cycle) and those who are lapsed (have failed to renew beyond one renewal cycle). The appropriate late fee for an expired license should be set at no more than 35% of the renewal fee; the current renewal fee must also be paid. Since a reinstatement application is required for a licensee to reinstate a lapsed license, the reinstatement fee should include the current renewal fee, the late fee, and a credential review fee.

Reinstatement of a license which has been revoked or for which reinstatement following suspension has been denied necessitates additional costs of a pre-hearing investigation (approximately 15 to 20 hours), preparation of legal documents (5 to 10 hours of time by a legal assistant) and a hearing before the Board (including per diem for members, travel expenses, and time for the office of the Attorney General). The proposed fee of \$2000 for reinstatement of such a license was determined by a calculation of the actual cost, which the Board believes should be paid by the applicant and not supported by renewal fees from other licensees.

#### **Advantages and disadvantages to the licensees**

There is an advantage to having consistency in the Board's policy on payment of late fees and reinstatement fees. Currently, some regulations state that the fees are cumulative for as long as the license is lapsed and others do not. Reinstatement fees range from \$50 for a radiologic technologist to \$225 for a physical therapist; yet they are categorized in occupation #2 and have similar costs to the board.

For those licensees who are late in paying a renewal fee (approximately 700 each year), there will be an increased cost. For some licensees, the cost of reinstating a license beyond the two-year renewal cycle will increase, while for others the cost will decrease. Doctors of medicine, osteopathy, and podiatry currently pay \$250 for reinstatement; under proposed regulations, they would pay \$290. Physical therapist assistants currently pay \$225; under proposed regulations, they would pay \$120.

For those who seek reinstatement after revocation (approximately 8 per year), the cost will increase substantially from \$750 to \$2000.

### **ISSUE 4. Uniformity among boards for setting miscellaneous fees.**

In setting proposed fees for miscellaneous activities of the Board, the Principles call for uniformity among boards and regulated entities. Such activities as replacement of a duplicate license, duplicate certificate, or processing and collecting on a bad check are similar for all boards and should be based on cost estimates provided by the Deputy Director for Finance of the Department.

### **Advantages and disadvantages to the licensees**

The advantage of proposed regulations is that all persons licensed or certified by a board under the Department of Health Professions will consistently pay a fee for miscellaneous activities determined by actual costs for that activity. There will not be inconsistent fees for licensees regulated under different boards. For licensees of the Board of Medicine, the fee for a duplicate license will be reduced from \$10 to \$5; the fee for a duplicate wall certificate will be reduced from \$25 to \$15. The fee for a returned check will be established in regulation at \$25.

### **Advantage or disadvantages to the public**

Fee increases proposed by the Board of Medicine should have no disadvantage to the consuming public. There is no projection of a reduction in the number of applicants for licensure or the number of licensed persons available to provide medical services to the public. For example, an increase in the biennial renewal fee will result in an additional \$57.50 per year for a doctor's license.

There would be considerable disadvantages to the public if the Board of Medicine took no action to address its deficit and increase fees to cover its expenses. The only alternative currently available under the Code of Virginia would be a reduction in services and staff, which would result in delays in licensing applicants who would be unable to work and delays in approval or disapproval of candidates to sit for examinations. Potentially, the most serious consequence would be a reduction in or reprioritization of the investigation of complaints against doctors and other licensees. In addition, there may be delays in adjudicating cases of substandard care, abuse or other violations, resulting in potential danger to the patients who are often the most sick and vulnerable consumers in the Commonwealth.

### **Advantages or disadvantage to the agency:**

As is stated above, the consequence of not increasing fees of the Board of Medicine would be a reduction in services and staff, resulting in delays in licensing and reductions in the cases investigated and brought through administrative proceedings to a hearing before the Board. The Board of Medicine and the Department of Health Professions are solely funded by the fees charged to applicants and licensees. If higher fees are not adopted, the agency would have to cut its staff, both within the Board of Medicine and within other divisions of the Department of Health Professions since 29% of the costs of the agency is dependent on revenues from the Board of Medicine.

### **Adoption of fee proposal for licensees of the Board of Medicine**

Prior to its adoption of proposed regulations, the Board discussed the "Principles for Fee Development" prepared by staff of the Department and reviewed the policies for applying those Principles to fees of the Board. It then considered three proposals prepared by the Finance Office

of the Department, all of which follow the Principles for fee development but increase fees at a differing rate.

Given its statutory responsibility to levy fees sufficient to meet expenses of the Board, proposal #2 was adopted as the most reasonable, responsible and least burdensome. Proposal #1 would bring in sufficient revenue for the next biennium but would be insufficient to fund the Board's operations by the close of the 2004 biennium. The Board found that unacceptable. Proposal #3 would eliminate the deficit by the end of the 2000-02 biennium but would result in extraordinary increases for persons with limited or restricted licenses (for example, biennial renewal for a radiologic technologist-limited would increase from \$25 to \$130). The Board found that alternative unacceptable because the fee increases would be excessive for persons who do not have independent practices and whose source of income is limited.

Proposal #2 is acceptable to the Department, which depends on the revenue of the Board of Medicine for 29% of its allocated costs. Revenues of the Board would be sufficient to cover its costs during the next biennium and would continue to suffice through 2004. Should expenses for additional disciplinary personnel or additional reporting requirements cause the budget to grow faster than anticipated, the Board would need to reexamine its revenues during the 2002-2004 biennium.

Therefore, the Board unanimously adopted the fee structure reflected in proposal #2 and proposed the necessary amendments to its regulations.

#### **i. Statement of clarity.**

Prior to the adoption of proposed regulations by the Board, the Deputy Director of the Department of Health Professions along with other members of the staff developed a set of Principles by which boards would be guided in the development of fees mandated by the Code of Virginia. The purpose of the Principles was to provide guidance for clarity, reasonableness and consistency among boards and among professions regulated within a single board. The clarity and reasonableness of the language that was adopted had the approval of the licensees and citizen members of the Board of Medicine and the Assistant Attorney General who worked with the Board on regulatory language.

#### **j. Schedule for review of regulation.**

The proposed amendments to these regulations will be reviewed following publication in the Register and the 60-day public comment period. If there are any oral or written comments received, the Board will consider revisions to the proposal prior to adoption of final regulations.

Public Participation Guidelines of the Board of Medicine (18 VAC 85-10-10 et seq.) require a thorough review of regulations each biennium. In addition, § 54.1-113 of the Code of Virginia requires a review of the fee structure at the close of each biennium. Therefore, the Board will review this regulation in 2001-02 and will recommend amendments as necessary.

Any review which indicates that the Board is accumulating a surplus in funds in excess of 10% of revenue over budget would result in proposed regulations to reduce fees. That action could be expedited under an exemption from the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

In addition, the Board receives public comment at each of its meetings and will consider any request for amendments. Petitions for rule-making also receive a response from the Board during the mandatory 180 days in accordance with its Public Participation Guidelines.

## **k. Anticipated Regulatory Impact**

### **Projected cost to the state to implement and enforce:**

#### (i) Fund source:

As a special fund agency, the Board of Medicine must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of approval of candidates for examination, administration of licensing, investigation of complaints, and disciplinary hearings.

#### (ii) Budget activity by program or subprogram:

The program of the Board of Medicine is funded by revenue from its licensees. There is no change required in the budget of the Commonwealth as a result of this program.

#### (iii) One-time versus ongoing expenditures:

The agency will incur some costs (approximately \$5000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities.

The ongoing expenditures of the Board for its administrative and disciplinary functions are addressed in the proposed regulations with fees set according to principles for consistency and equity. There would be no additional costs for the administration of proposed regulations.

### **Projected cost on localities:**

There are no projected costs to localities.

### **Description of entities that are likely to be affected by regulation:**

The entities that are likely to be affected by these regulations would be the practitioners listed below who hold a license in Virginia and persons who would be applying for licensure.

### **Estimate of number of entities to be affected:**

The number of regulated entities (as of May 3, 1999) who would be affected by these regulations is:

|                                   |        |
|-----------------------------------|--------|
| Medicine and osteopathy           | 27,059 |
| Osteopathy                        | 756    |
| Podiatry                          | 498    |
| Chiropractic                      | 1,488  |
| Physician acupuncture             | 232    |
| Interns and residents             | 2,208  |
| Limited professorial              | 28     |
| Physical therapists               | 3,601  |
| Physical therapist assistants     | 1,277  |
| Respiratory care practitioners    | 2,706  |
| Physician assistants              | 498    |
| Occupational therapists           | 1,801  |
| Radiological technologists        | 1,826  |
| Radiological technologist-limited | 1,057  |
| Licensed acupuncturists           | 58     |

**Projected costs to the affected entities:**

For most applicants and regulated entities, the costs of acquiring and maintaining licensure will increase. Doctors of medicine, osteopathy and podiatry will pay an additional \$115 every two years to maintain a license to engage in active practice. Chiropractors will pay an additional \$90 every two years. Residents and interns will have an annual increase in licensure renewal of \$25. Other professions will see increases in biennial renewal as follows: Physical therapists - \$35; respiratory care practitioners - \$85; physician assistants - \$55; occupational therapists - \$50; radiologic technologists - \$60; and radiologic technologist-limited - \$45. Physical therapist assistants have no increase proposed in their biennial renewal fee. Under the Board's proposal, renewal fees for similar professions would be identical, rather than disparate and inconsistent as they are now.

Applicants for licensure (either by endorsement or examination) would pay a fee to have their application processed and credentials reviewed for licensure qualification. Once approved, they are licensed for at least one half of the biennium and receive a calligraphied wall certificate at no charge. Proposed regulations would include the costs of a license and a wall certificate in that initial application fee.

For practitioners who are late sending in their biennial renewal but do renew an expired license within two years, the cost will increase and will be approximately 35% of their biennial renewal. For those whose license is lapsed beyond two years, a reinstatement application and fee will be required as well as payment of the late fee and an amount equal to approximately one-half the biennial renewal.

Miscellaneous costs, such as replacement of a duplicate license or wall certificate, verification of a license or transcript, and returned check charges are uniformly proposed at amounts consistent with the actual costs incurred by the Department for those activities.