

TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS

DIVISION 13.

Department of Consumer Affairs

Medical Board of California

FEES FOR PETITIONS FOR PENALTY RELIEF

Final Statement of Reasons

Subject Matter of Proposed Regulations Fees for Petitions for Penalty Relief

Sections Affected

- Adopt section 1352.3 in Article 15 of Chapter 1 of Division 13, of Title 16 of the California Code of Regulations (CCR):
- Amend section 1359 in Article 3 of Chapter 2 of Division 13 of Title 16 of the CCR.

Updated Information

The Initial Statement of Reasons is included in the rulemaking file. The information contained therein is updated as follows.

The 45-day public comment period began on November 15, 2024, and, pursuant to an extension, ended on January 6, 2025. The Medical Board of California (Board) did not receive a timely request for a hearing during the comment period, and no hearing was held.

During the 45-day public comment period, the Board received nine comments. At the February 13, 2025 Board meeting, the Board reviewed the comments received and voted to approve the Modified Text to address concerns raised by stakeholders.

The 15-day public comment period on the Modified Text began on March 13, 2025, and ended on April 1, 2025. The Board received two comments on the Modified Text. At the August 21, 2025 Board meeting, the Board reviewed the comments and voted to approve the Second Modified Text to address concerns raised by stakeholders. The Board further authorized the executive director to proceed with the rulemaking process so long as the Board did not receive any adverse comments specifically directed at the changes noticed in the Second Modified Text or to the procedures followed by the Board in proposing or adopting the action. The Board also authorized the executive director to make any technical or non-substantive changes to the language that may be necessary, along with the authority to adopt the text without returning to the Board, if no adverse comments were received.

The second 15-day public comment period began on September 2, 2025, and ended on September 17, 2025. No public comments were received during this period.

Overview of Changes:

The Board made the substantive changes to the originally noticed text in response to stakeholder comments expressing concern that requiring petitioners to pay in excess of \$20,000 up front to have their petition processed and set for hearing would be a financial barrier to individuals who are rehabilitated from being able to pursue penalty relief.

In response to those concerns, the Board approved text which would require individuals seeking reinstatement to submit \$2,962 along with their petition, and individuals seeking to modify or terminate their probation early to submit \$1,242 with their petition, to start the initial review. These fees represent the cost to the Board up to the time the petition is referred to the Office of the Attorney General (OAG).

The remaining fee to pay for the services of the OAG and the Office of Administrative Hearings (OAH) will 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 a payment plan, as well as the reasonableness of the fee.

This proposal includes 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 proposed by the ALJ, and may also increase the award up to the cap consistent with the evidence in a decision after non-adoption.

Under this modified text, the Board will provide notice to the petitioner when the petition has been accepted by the Board to be set for hearing to advise them, among other things, that the decision on their petition may require them to pay the fee up to \$22,000, less the amount already paid; they may challenge the amount of the remaining fee being requested, proposed, or determined based on the reasonableness of the amount and their ability to pay; and that they may request a payment plan if they are required to pay costs. This notice will assist the petitioner in making an informed decision on whether to go to hearing and in preparing to address the matter of costs at and after the hearing.

The Board also incorporated a form by reference for petitioners to use when filing their petition which will assist them in filing a complete petition and will also put them on notice regarding the fees.

Detailed Description of Changes and Rationale

The final changes to the regulatory text from the Initial Statement of Reasons are described below.

Section 1352.3

1352.3(a): This subdivision was amended to define “petitions for penalty relief” and to strike the reference to the fee.

Rationale: These amendments are necessary to define the term “petitions for penalty relief” to ensure consistent application of the regulation and to clarify the types of petitions subject to the fee provisions. The reference to the fee was removed to avoid redundancy, as the specific fees are detailed in subsequent subdivisions.

1352.3(b): This subdivision was amended to indicate that the initial nonrefundable fee required to process a petition for modification or termination of probation is \$1,242, and to strike the previously proposed remaining fee of \$19,043.

Rationale: These amendments are necessary to reduce the initial nonrefundable fee for processing a petition for modification or termination of probation to \$1,242, reflecting the average cost to the Board to process such petitions up to the point of referral to the Office of the Attorney General (OAG). This change responds to public concerns about financial barriers to accessing the petition process. To streamline the process, the Board made a policy decision to not include the processing costs for staff work after petitions are referred to the OAG, since most staff work on petitions is completed before referral to the OAG.

1352.3(c): This subdivision was amended to indicate that the initial nonrefundable fee required to process a petition for reinstatement is \$2,962, and to strike the text setting this fee at \$3,738.

Rationale: These amendments are necessary to reduce the initial nonrefundable fee for processing a petition for reinstatement to \$2,962, which represents the average cost to the Board to process such petitions prior to referral to the OAG. This change was made in response to stakeholder feedback regarding financial barriers to accessing the petition process. To streamline the process, the Board made a policy decision to not include the processing costs for staff work after petitions are referred to the OAG, since most staff work on petitions is completed before referral to the OAG.

1352.3(d): This subdivision was amended to indicate that 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 ordered 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 up to \$22,000, less the initial fee already paid, based on the evidence in a decision after non-adoption of the ALJ's proposed decision. This subdivision was further amended to strike the previously proposed remaining fee of \$19,043 to adjudicate a petition for reinstatement.

Rationale: These amendments are necessary to eliminate the previously proposed flat adjudication fee and instead authorize an ALJ to propose a remaining fee based on actual or estimated costs, subject to Board approval. The amendments establish a maximum fee of \$22,000, less the initial fee already paid, and provide the Board with discretion to approve, reduce, eliminate, or increase the proposed fee based on the evidence. These changes were made to address stakeholder concerns about fairness and the ability of petitioners to pay. The Board determined that the \$22,000 cap was appropriate, because this figure is sufficient to cover the average cost to process and adjudicate petitions for penalty relief. Additionally, providing a cap puts petitioners on notice regarding the highest amount they can expect to pay.

1352.3(e): This subdivision was added to indicate that 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 a designee for the OAG and OAH for their agency's respective services shall be prima facie evidence of a reasonable fee to impose to cover the costs for processing and adjudicating the petition for penalty relief; the remaining fee shall include the OAG and OAH costs for reviewing, preparing for, and participating in the hearing on the petition for penalty relief; the fee to be paid by the petitioner shall not include the ALJ or OAH cost for preparing and transmitting the proposed decision to the Board after the hearing; when determining the amount of the remaining fee pursuant to subdivision (d), 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; the ALJ and Board may reduce or waive the remaining fee where financial hardship is demonstrated; and granting or denying a petition for penalty relief shall not be the sole basis for reducing or waiving the fee.

Rationale: These amendments are necessary to establish the evidentiary basis for determining the remaining fee and to ensure that the fee reflects actual or estimated costs incurred by the OAG and the OAH. The amendments also require the ALJ and Board to consider the petitioner's ability to pay and allow for reduction or waiver of the fee in cases of financial hardship. These provisions were added in response to stakeholder concerns about fairness and access to relief for low-income petitioners.

1352.3(f): This subdivision was added to indicate that 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 an approved payment plan, the Board may pursue administrative action against the individual for unprofessional conduct, enforce the order for payment in court, or take any other action allowed by law.

Rationale: These amendments are necessary to clarify the Board’s authority to enforce payment of the fee for penalty relief. The amendments authorize the Board to take administrative or legal action if a petitioner fails to pay the ordered fee, thereby supporting compliance and the integrity of the adjudication process.

1352.3(g): This subdivision was added to indicate that 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, and if the petitioner was permitted to enter into a payment plan approved by the Board or its designee, a certified copy of the signed payment plan shall be conclusive evidence of the terms.

Rationale: These amendments are necessary to establish that a certified copy of the Board’s decision or an approved payment plan constitutes conclusive evidence of the petitioner’s fee obligation and its terms. This provision facilitates enforcement and provides clarity for both the Board and petitioners.

1352.3(h): This subdivision was added to indicate that this section shall apply only to petitions for penalty relief on disciplinary decisions ordered after the effective date of this section.

Rationale: These amendments are necessary to clarify that the fee requirements apply only to petitions for penalty relief related to disciplinary decisions ordered after the effective date of the regulation. This change was made in response to public comments expressing concern that applying the fee to decisions that became effective prior to this fee authority would be unfair to individuals who were not subject to such costs when their discipline was imposed.

Section 1359

Title Amendment: The title of section 1359 was amended to read “Petitions for Penalty Relief,” and to strike “Reinstatement or Modification of Probation” to clarify that this section applies to all petitions for penalty relief.

Rationale: These amendments are necessary to update the title of section 1359 to reflect the full scope of petitions covered by the regulation and to align with the terminology used in section 1352.3.

1359(a): This subdivision was amended to indicate that a petition for penalty relief as defined under section 1352.3 subdivision (a) shall be filed by mail or other courier service on a form provided by the Board (Petition for Penalty Relief, Form PPR-1, New (08/2025)), which is incorporated by reference; and the petitioner shall complete the form and provide the required documentation under penalty of perjury, along with the applicable initial nonrefundable fee required by Section 1352.3, subdivision (b) or (c) for processing the petition for penalty relief.

Rationale: These amendments are necessary to require that petitions be submitted using a standardized form (Form PPR-1, New 08/2025), which is incorporated by reference, and to ensure that the form is completed under penalty of perjury and accompanied by the applicable initial nonrefundable fee. These changes promote consistency, completeness, and transparency in the petition process.

Petition for Penalty Relief (Form PPR-1, New 08/2025)

Purpose of the Form:

This form is required to initiate a petition for penalty relief pursuant to Business and Professions Code sections 2307 and 2307.5. It standardizes the information submitted by petitioners and ensures the Board receives the necessary documentation to evaluate eligibility for reinstatement or modification/termination of probation.

Instructions

Description: Provides instructions to petitioners on how to complete the form, provides a list of items to include with the form, explains how to submit the form, and provides contact information for the Board to answer questions.

Rationale: Providing instructions for completing and submitting the form, the list of items petitioners must include with the form, and contact information for the Board are necessary to assist petitioners to successfully submit petitions for penalty relief.

Section I – Type of Petition

Description: The petitioner must indicate whether they are seeking reinstatement of a revoked or surrendered license, termination of probation, or modification of probation.

Rationale: This information is necessary to identify the specific type of relief being requested so that the Board can apply the appropriate legal and procedural standards to the petition, as well as the appropriate fee. This section also allows petitioners to request termination and modification of probation in the alternative, which supports efficiency and clarity in adjudication.

Section II – Personal Information

Description: Collects the petitioner's full name, contact information, current or prior California physician's and surgeon's license number, and driver's license information.

Rationale: This information is necessary to verify the identity of the petitioner, ensure accurate record matching, and facilitate communication throughout the petition process. The inclusion of a current or prior license number helps the Board locate the relevant disciplinary history.

Section III – Attorney Information

Description: Asks whether the petitioner will be represented by an attorney and, if so, requests the attorney's contact information.

Rationale: This information is necessary to ensure that the Board can communicate directly with legal counsel when applicable.

Section IV – Medical Practice Background

Description: Requests information about the petitioner’s years in practice, specialty, board certification, current field and type of practice, and hospital privileges.

Rationale: This information is necessary to provide the Board with context regarding the petitioner’s professional background, which is relevant to assessing rehabilitation, current competence, and readiness to return to practice.

Section V – Employment History (Past 5 Years)

Description: Requires a detailed employment history including employer contact information, job title, and duties.

Rationale: This information is necessary to evaluate the petitioner’s recent work history, which may demonstrate rehabilitation, professional responsibility, and continued engagement in the healthcare field.

Section VI – Disciplinary History

Description: Asks about prior disciplinary actions, license surrenders, license denials, actions pertaining to hospital staff privileges, and malpractice claims.

Rationale: This information is necessary to provide a complete picture of the petitioner’s disciplinary history and to assess whether the petitioner has demonstrated rehabilitation and compliance since the last disciplinary action.

Section VII – Criminal History

Description: Inquires about criminal probation, charges, convictions, and sex offender registration.

Rationale: This information is necessary to assess the petitioner’s criminal background, which may impact their eligibility for reinstatement or termination or modification of probation. This information is also relevant to public protection and the petitioner’s rehabilitation.

Section VIII – Practice Impairment or Limitations

Description: Asks whether the petitioner currently suffers from any condition that impairs their ability to practice medicine safely.

Rationale: This information is necessary to ensure that the petitioner is currently fit to practice and does not pose a risk to patient safety. This section also allows the Board to consider whether additional conditions may be necessary if relief is granted.

Section IX – Required Initial Fee

Description: Requires submission of a nonrefundable initial fee of \$2,962 (reinstatement) or \$1,242 (termination/modification of probation).

Rationale: This information is necessary to recover the Board's initial reasonable costs for processing petitions, as authorized by Business and Professions Code section 2307.5.

Section X – Narrative Statement, Supportive Documents, and CV

Description: Requires a narrative statement addressing the basis for the petition, rehabilitative efforts, and any affirmative responses in Sections VI–VIII. Also requires a current CV and supporting documentation.

Rationale: This information is necessary to allow the petitioner to present a comprehensive case for penalty relief. The narrative provides critical context for evaluating rehabilitation, insight, and readiness to return to practice or to terminate or modify the terms of probation. The CV and supporting documents help substantiate claims made in the narrative statement.

Section XI – Letters of Recommendation

Description: Requires at least two letters of recommendation from licensed physicians or surgeons who are familiar with the petitioner's conduct since discipline was imposed.

Rationale: This information is necessary to comply with Business and Professions Code (BPC) section 2307(c) and to provide independent, professional assessments of the petitioner's rehabilitation and current character. The verification requirement ensures the authenticity of the recommendations.

Section XII – Fingerprints

Description: Requires submission of fingerprints for reinstatement petitions, either via Live Scan (California residents) or fingerprint cards (non-residents).

Rationale: This information is necessary to conduct a criminal background check as part of the reinstatement process, consistent with the Board's public protection mandate and statutory requirements under BPC section 144.

Section XIII – Declaration

Description: Requires the petitioner to sign under penalty of perjury affirming the truthfulness of the information provided.

Rationale: This information is necessary to ensure the integrity of the petition process and to hold petitioners accountable for the accuracy of their submissions.

1359(b): This subdivision was amended to indicate that the processing of any petition shall commence only after the applicable initial fee specified in Section 1352.3, subdivision (b) or (c) 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. Additionally, the reference to "subsection (a)" was struck to accommodate the changes to Section 1352.3 described above.

Rationale: These amendments are necessary to clarify that the Board will not begin processing a petition until the initial fee has been received, cleared the petitioner's bank, and been deposited in the Board's account within 30 days. This ensures that the Board does not expend resources on petitions for which payment is not secured.

1359(c): This subdivision was amended to replace the word "made" with "received" in reference to payments, and to replace the word "subsection" with "subdivision" for consistency. Additionally, this subdivision was amended to indicate that the written notice to be sent to the petitioner shall include the fact that the proposed decisions 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; the petitioner may submit evidence at the hearing on the petition regarding their ability to pay the remaining fee or may challenge the amount of the remaining fee being requested, proposed, or determined, based on the reasonableness of the amount; the petitioner may be ordered to pay the remaining fee regardless of whether their petition is granted or denied; and if the petitioner is ordered to pay all or a portion of the remaining fee, the petitioner may request a payment plan. This subdivision was further amended to require the Board to include a copy of Section 1352.3 with the notice. Additionally, the originally noticed text under subdivision (c)(2) was struck as no longer relevant in light of the modified text.

Rationale: These amendments are necessary to enhance the notice provided to petitioners when their petition is accepted for hearing. The amendments require the Board to inform petitioners that the ALJ may propose a remaining fee up to \$22,000, less the initial fee; that petitioners may submit evidence regarding their ability to pay or challenge the reasonableness of the fee; that the fee may be imposed regardless of the petition's outcome; and that petitioners may request a payment plan. These changes were made in response to public comments requesting greater transparency and procedural fairness.

1359(e): This subdivision was added to indicate 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.

Rationale: These amendments are necessary to clarify that the fee and notice requirements apply only to petitions for penalty relief related to disciplinary decisions ordered after the effective date of the regulation. This change was made in response to public comments expressing concern that applying the fee to decisions that became effective prior to this fee authority would be unfair to individuals who were not subject to such costs when their discipline was imposed.

Additionally, the Board made non-substantive, clarifying changes throughout the document to correct grammar, punctuation, numbering, and use of terms, as necessary.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact

While the Board does not have nor maintain data to determine whether any of its licensees are “small businesses” as defined in Government Code section 11342.610, the Board determined that the proposed regulatory action will not have any adverse economic impact on small businesses. This determination is based on the fact that individuals who have been compliant with the law and have not had their license revoked, have not surrendered their license to settle a disciplinary action, and have not had their license placed on probation will not be impacted by this rulemaking. Additionally, not every individual who is disciplined chooses to file a petition for penalty relief.

Anticipated Benefits

The Board has determined that this regulatory proposal will further its mission of consumer protection by preserving the Board’s time and financial resources through establishing a fee to be paid by individuals seeking to reinstate their license or to modify or terminate their order of probation early. Requiring a fee will incentivize petitioners to focus on their rehabilitation efforts and to avoid filing petitions for penalty relief prematurely. Additionally, this proposed rulemaking will improve clarity of the Board’s regulations relating to petitions for penalty relief by eliminating old language that is no longer applicable to the Board’s structure and process.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board as part of public comments received or at the Board’s meetings would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The following alternatives were considered by the Board and rejected or accepted as discussed herein:

Option 1: The Board considered not implementing the proposed regulations. The Board rejected this option, because the Legislature authorized the Board to set a fee to cover the reasonable costs to process and adjudicate petitions for penalty relief, and because processing and adjudicating such petitions costs the Board an average of over \$20,000 per petition. Not implementing this proposal would prevent the Board from recovering costs associated with such petitions.

Option 2: The Board considered hearing petitions for penalty relief itself as permitted pursuant to BPC section 2307(d), rather than referring them all to OAH for a hearing. The Board rejected this option because there would not be a cost savings gained under this option, since an ALJ would still be required to sit with a panel of the Board to rule on motions and objections and the admissibility of evidence. Further, 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 to attend such hearings.

Option 3: The Board considered restructuring how fees would be imposed to reduce the financial barrier to petitioners who may be unable to pay all costs up front before a hearing on their petition was set. This alternative would require an initial fee to cover Board staff time in processing petitions for penalty relief and to have the remaining fee up to \$22,000, less the initial fee, determined by an ALJ, who could factor in the reasonableness of the costs incurred by the OAG and OAH in processing and adjudicating the petition, as well as the ability of the petitioner to pay the costs. The Board accepted this alternative and modified the originally noticed text accordingly.

Objections or Recommendations/Responses

45-Day Public Comment Period

The following recommendation and/or objections were made regarding the proposed action:

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: The Board did 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, the Board voted to modify 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, as these fees represent the average cost to the Board to process such petitions. The Board determined that the remaining fee to pay for the services of the OAG and the OAH would be determined by the ALJ, who shall consider evidence of the petitioner's ability to pay the remaining fee, with or without entering into a payment plan, as well as the reasonableness of the fee. The Board further determined that there would be 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, the Board voted to modify the language proposed under 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.

Finally, 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, the Board voted to modify the text under sections 1352.3 and 1359 to specify that fees for petitions for penalty relief will only be imposed 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: In response to this and similar comments, the Board voted to modify the text 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 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: In response to this and similar comments, the Board voted to modify the text consistent with the Response to Comment 1.

The Board rejected the comment that the original fee proposed exceeded the Board's reasonable costs to process and adjudicate a petition, as the Board determined that 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 OAG and OAH costs for such petitions.

The Board rejected 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, because exercising this option would still involve having an ALJ sit with the Board to rule on motions and objections and the admissibility of evidence. Further, 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. Additionally, the Board learned that the BRN no longer hears their own petitions for penalty relief, and all hearings are held through OAH.

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: In response to this and similar comments, the Board voted to modify the text consistent with the Response to Comment 1.

The Board rejected the request for a hearing as untimely.

Regarding the comment that the Board's notice does not suggest less burdensome alternatives were considered, the Board determined that the purpose of the public comment period was 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 to 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: In response to this and similar comments, the Board voted to modify the text consistent with the Response to Comment 1 and incorporated its 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: In response to this and similar comments, the Board voted to modify the text consistent with the Response to Comment 1 and incorporated its Response to Comment 4.

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 aides, 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: In response to this and similar comments, the Board voted to modify the text consistent with the Response to Comment 1 and incorporated its Responses 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 Board rejected this comment as 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: In response to this and similar comments, the Board voted to modify the text consistent with the Response to Comment 1 and incorporated its Response to Comment 4.

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: In response to this and similar comments, the Board voted to modify the text consistent with the Response to Comment 1.

15-Day Modified Text Public Comment Period

The following comments were made regarding the modified text proposal:

Written Comment from Stephanie Lin, Associate Supervising Attorney, and Justin Small, Staff Attorney, with Neighborhood Legal Services of Los Angeles County (NLSLA), dated March 28, 2025

Comment 1: NLSLA commented that they welcomed the modified text of the proposed regulations, and in particular they welcomed the reduction of the proposed initial fees for processing petitions for modification or termination of probation and petitions for

reinstatement. They indicated that they wished to provide further comment on the proposed modifications to sections 1352.3(e) and 1359(c) and request clarification on what evidence would be relevant in considering a petitioner's ability to pay the remaining fees. As an example, they commented that the Advisory Committee comments on California Rule of Court 4.335 (which governs ability to pay determinations for infraction-level offenses) offers the following:

"In determining the defendant's ability to pay, the court should take into account factors including: (1) receipt of public benefits under Supplemental Security Income (SSI), State Supplementary Payment (SSP), California Work Opportunity and Responsibility to Kids (CalWORKS), Federal Tribal Temporary Assistance for Needy Families (Tribal TANF), Supplemental Nutrition Assistance Program, California Food Assistance Program, County Relief, General Relief (GR), General Assistance (GA), Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (CAPI), In Home Supportive Services (IHSS), or Medi-Cal; and (2) a monthly income of 125 percent or less of the current poverty guidelines, updated periodically in the Federal Register by the U.S. Department of Health and Human Services under 42 U.S.C. § 9902(2)."

As another example, NLSLA stated that Government Code section 68632 provides that court fee waivers shall be granted to those receiving certain government benefits and to anyone whose income is 200% or less of the federal poverty line.

NLSLA commented that they do not believe the regulations should limit the ways inability to pay can be shown, but they believe that it would be helpful to the petitioners, the Board, and administrative law judges to have guidance on the meaning of "inability to pay."

Response to Comment 1: The Board rejected the comment, as the suggested change was not necessary. The proposed text indicates under section 1352.3(e) that 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. The proposed text offers a broad opportunity for the petitioner to demonstrate financial hardship in paying further fees relating to their petition for penalty relief, and the petitioner is in the best position to determine what evidence to provide to the ALJ and Board regarding their ability to pay the fee.

Written Comment from Lucas Evensen, Associate Director, Strategic Engagement, California Medical Association (CMA), dated April 1, 2025

Comment 2: CMA commented that they appreciated the Board's efforts to address some of their comments made on the originally proposed text. They indicated that they are still concerned that the potential fee would still impose a severe burden and make seeking penalty relief cost prohibitive for some individuals. CMA made the following specific suggestions to the modified text:

1. Clarification of the Applicability of the \$22,000 Cap (§ 1352.3(d))

CMA suggests modifying section 1352.3(d) to make it clear that the \$22,000 maximum fee applies to Board decisions after non-adoption:

(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, **or that may be otherwise determined or ordered pursuant to this section,** 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, **up to the maximum fee described in this subdivision,** based on the evidence, but only in a decision after non-adoption of the ALJ's proposed decision.

Response to Comment 2.1: The Board approved modified text in response to CMA's comments as follows:

(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, **or that may be otherwise determined or ordered pursuant to this section,** 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, **up to \$22,000, less the initial fee already paid,** based on the evidence, but only in a decision after non-adoption of the ALJ's proposed decision.

2. Clarification of Flexibility to Reduce or Eliminate Fee Based on Ability to Pay (§ 1352.3(e))

CMA recommends clarifying that the factors described in section 1352.3(e) are considered for the purpose of determining the appropriate fee pursuant to section 1352.3(d), and recommends specifying that a petitioner's existing cost recovery obligations shall be taken into account when determining their ability to pay:

(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. **When determining the amount of the remaining fee pursuant to subdivision (d), The 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. **In considering a petitioner's ability to pay, the ALJ and Board shall also take into account any outstanding cost recovery obligations of the petitioner. The ALJ and Board may reduce or waive the remaining fee where financial hardship is demonstrated.** Granting or denying a petition for penalty relief shall not be the sole basis for reducing or denying the fee.

Response to Comment 2.2: The Board approved modified text in response to CMA's comments, as follows:

(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 cover the costs of for~~ processing and adjudicating the petition for penalty relief. It shall include the OAG and OAH costs for reviewing, preparing for, and participating in the hearing on the petition for penalty relief. The fee **to be paid by the petitioner** shall not include the ALJ or OAH cost for preparing and transmitting the proposed decision to the Board after the hearing. **When determining the amount of the remaining fee pursuant to subdivision (d), The 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. **The ALJ and Board may reduce or waive the remaining fee where financial hardship is demonstrated.** Granting or denying a petition for penalty relief shall not be the sole basis for reducing or ~~denying~~ **waiving** the fee.

The Board rejected the comment requesting that outstanding cost recovery be specifically identified as a ground for a reduction or waiver of the fee, because the proposed text offers a broad opportunity for the petitioner to demonstrate financial hardship in paying further fees relating to their petition for penalty relief, and the petitioner is in the best position to determine what evidence to provide to the ALJ and Board regarding their ability to pay the fee.

3. Petitioner's Ability to Challenge Remaining Fee (§§ 1359(c)(3), 1352.3(e))

CMA commented that they support informing petitioners of the ability to provide evidence that could result in a reduced or waived fee, and suggested clarifying language to sections 1352.3(e) and 1359(c), as follows:

§ 1359(c) [...] (3) ~~at the hearing on the petition,~~ the petitioner may submit, at the hearing on the petition, evidence regarding their ability to pay the remaining fee, or may challenge the ~~reasonableness amount~~ of the remaining fee being requested, proposed, or determined, based on the reasonableness of the amount or ability to pay; and (4) [...].

§ 1352.3(e) [...] Granting or denying a petition for penalty relief shall not be the sole basis for reducing or denying the fee. A petitioner may challenge the amount of the fee amount proposed by the ALJ or otherwise determined by the Board, based on the reasonableness of the amount or the petitioner's ability to pay.

Response to Comment 2.3: The Board approved modified text in response to CMA's comments, as follows:

§ 1359(c) [...] (3) ~~at the hearing on the petition,~~ the petitioner may submit evidence at the hearing on the petition regarding their ability to pay the remaining fee or may challenge the ~~reasonableness amount~~ of the remaining fee being requested, proposed, or determined, based on the reasonableness of the amount; and (4) [...].

The Board rejected the request to include language that the petitioner may challenge the remaining fee based on their ability to pay, because this section already indicates that they may submit evidence regarding their ability to pay and section 1352.3(e) already includes proposed modified text stating that, "The ALJ and Board may reduce or waive the remaining fee where financial hardship is demonstrated."

4. Disclosure of Availability of Payment Plans to Petitioners (§ 1359(c))

CMA recommended disclosing the availability of payment plans to petitioners by adding the language indicated below to section 1359(c):

(c) [...]; ~~and~~ (4) the petitioner may be ordered to pay the remaining fee regardless of whether their petition is granted or denied; and (5) payment plans are available upon the petitioner's request. Additionally, the Board shall include a copy of Section [1352.3] with the notice.

Response to Comment 2.4: The Board approved modified text in response to CMA's comments, as follows:

(c) [...]; **and (5) if petitioner is ordered to pay all or a portion of the remaining fee, petitioner may request a payment plan.** Additionally, the Board shall include a copy of Section 1352.3 with the notice.

5. Conforming Revisions to the Board's Petition for Penalty Relief Form (DG-39C) and Form Instructions (DG-39A) (§ 1359(a))

CMA commented that the current language of existing section 1359 states that a petition for modification or termination of probation or for reinstatement of a certificate "shall be filed on a form provided by" the Board. (16 CCR § 1359(a).) Similar language remains in the Board's proposed amendments to section 1359(a).

CMA stated that requiring use of a prescriptive form constitutes a "rule, regulation, order, or standard of general application" that must be adopted in accordance with the Administrative Procedure Act. CMA commented that to the extent use of the form (DG-39C) is required to initiate a petition for penalty relief, the Board should modify and adopt the form as part of this rulemaking action and incorporate the form by reference in regulation. CMA further indicated that if use of the form is not mandatory or exempted from the APA pursuant to another statute, they request that the Board share any proposed revisions for stakeholder input as soon as possible to ensure that a revised form is available by the effective date of these proposed regulations, if approved.

Response to Comment 2.5: The Board approved modified text in response to CMA's comments, and the modified text incorporates the required form (PPR-1 New (08/2025)) by reference.

15-Day Second Modified Text Public Comment Period

There were no objections or recommendations regarding the proposed action during the 15-day public comment period.

Incorporation by Reference

The Board has incorporated the form by reference into 16 CCR section 1359(a) for petitioners to use when filing a petition for penalty relief: Petition for Penalty Relief, Form PPR-1, New (08/2025)

The incorporation by reference method was used because it would be impractical and cumbersome to publish the contents of the multi-page form in the CCR. The form is intended to assist petitioners, attorneys, Board staff, administrative law judges, and others involved in the process of filing and considering petitions for

penalty relief. If the contents of the form were incorporated into the CCR, it would increase the size of Division 13 and may cause confusion to the user. The form was made available to the public and posted on the Board's website.