

**TITLE 16. MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
FEES FOR PETITIONS FOR PENALTY RELIEF  
INITIAL STATEMENT OF REASONS**

**Hearing Date:** No hearing has been scheduled for the proposed action.

**Subject Matter of Proposed Regulations:** Fees for Petitions for Penalty Relief

**Section(s) 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.

**Background and Statement of the Problem:**

Pursuant to Business and Professions Code (BPC) section 2307, a disciplined licensee may petition the Medical Board of California (Board) to seek reinstatement of a revoked or surrendered license or to have their probation modified or terminated early. Collectively, such petitions are referred to herein as “petitions for penalty relief.”

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

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

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

Average cost for AGO to litigate a petition for penalty relief: \$12,780.

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

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

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

At the Board's request during its last sunset review, Senate Bill 815 (Roth, Chapter 294, Statutes of 2023) added Business and Professions Code section 2307.5 to the Medical Practice Act, giving the Board the authority to establish a fee for petitions for penalty relief.

On May 24, 2024, the Board reviewed and approved proposed text to establish fees for petitions for penalty relief as authorized by BPC section 2307.5, and authorized Board staff to move forward with this proposed rulemaking.

**Anticipated benefits from this regulatory action:**

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.

**Specific purpose of, and rationale for, each adoption, amendment, or repeal:**

**1. Adopt 16 CCR section 1352.3**

Existing law under BPC section 2307.5 authorizes the Board to establish a fee to be paid by a person seeking a license reinstatement or modification of penalty pursuant to BPC section 2037, which shall not exceed the Board's reasonable costs to process and adjudicate such petition.

Purpose: This proposed rulemaking will add 16 CCR section 1352.3 to establish reasonable fees to process and adjudicate petitions for penalty relief.

Under section 1352.3, subdivision (a), this proposed rulemaking sets forth the fee required to process a petition for modification or termination of probation as \$1,949.

Under section 1352.3, subdivision (b), this proposed rulemaking sets forth the fee required to adjudicate a petition for modification or termination of probation once the petition is accepted by the Board to be set for hearing as \$19,043.

Under section 1352.3, subdivision (c), this proposed rulemaking sets forth the fee required to process a petition for reinstatement of a revoked certificate, or a certificate surrendered pursuant to a stipulation to settle a disciplinary action as \$3,738.

Under section 1352.3, subdivision (d) this proposed rulemaking sets forth the fee required to adjudicate a petition for reinstatement of a revoked certificate, or a certificate surrendered pursuant to a stipulation to settle a disciplinary action once the petition is accepted by the Board to be set for hearing as \$19,043.

Anticipated Benefit: The Board anticipates that this rulemaking 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.

Rationale: This proposed rulemaking is necessary to add section 1352.3, subdivision (a) to set forth the fee required to process a petition for modification or termination of probation as \$1,949. This fee was determined based on the average amount of time it takes for staff to complete the required tasks to process such petitions, multiplied by the hourly rate for each staff position involved in the tasks.

This proposed rulemaking is necessary to add section 1352.3, subdivision (b) to set forth the fee required to adjudicate a petition for modification or termination of probation once accepted by the Board to be set for hearing as specified in 16 CCR section 1359, as \$19,043. This fee was determined based on the average cost to adjudicate petitions for penalty relief between July 1, 2021, and September 30, 2023, and includes AGO and OAH costs. As indicated in the proposed language, this fee would only be required if the petition for penalty relief is accepted by the Board to be set for a hearing. Consequently, if the Board determines during processing that the petition for penalty relief will not be set for hearing, this fee will not be required. This subdivision also refers to 16 CCR section 1359 for instructions on when and how the fee is to be paid, as discussed below.

This proposed rulemaking is necessary to add section 1352.3, subdivision (c) to set forth the fee required to process a petition for reinstatement of a revoked certificate or a certificate surrendered pursuant to a stipulation to settle a disciplinary action as \$3,738. This fee was determined based on the average amount of time it takes for staff to complete the required tasks to process such petitions, multiplied by the hourly rate for each staff position involved in the tasks.

This proposed rulemaking is necessary to add section 1352.3, subdivision (d) to set forth the fee required to adjudicate a petition for reinstatement of a revoked certificate or a certificate surrendered pursuant to a stipulation to settle a disciplinary action once accepted by the Board to be set for hearing as specified in 16 CCR section 1359, as \$19,043. This fee was determined based on the average cost to adjudicate petitions for penalty relief between July 1, 2021, and September 30, 2023, and includes AGO and OAH costs. As indicated in the proposed language, this fee would only be required if the petition for penalty relief is accepted by the Board to be set for a hearing. Consequently, if the Board determines during processing that the petition for penalty relief will not be set for hearing, this fee will not be required. This subdivision also refers to 16 CCR section 1359 for instructions on when and how the fee is to be paid, as discussed below.

## 2. Amend 16 CCR section 1359

Existing law indicates under subdivision (a) that a petition for modification or termination of probation or a petition for reinstatement of a revoked certificate shall be filed on a form provided by the division. It also provides under subdivision (b) that consideration shall be given to such a petition only when a formal request has been filed in the division's office in Sacramento at least 30 days prior to a regular meeting of the division or appropriate medical quality review panel.

This rulemaking proposes to amend subdivision (a) of section 1359 to clarify that it also applies to surrendered certificates requiring a petition for reinstatement pursuant to BPC section 2307, and that petitions for modification or termination of probation or a petition for reinstatement of a revoked or surrendered certificate shall be accompanied by the applicable nonrefundable fee required by section 1352.3 for processing the petition. This rulemaking also proposes to strike the term "division," which is an antiquated term no longer applicable to the Board's current structure.

This rulemaking proposes to amend subdivision (b) of section 1359 to strike old language regarding when consideration is given to a petition for penalty relief, as it is not relevant to the Board's current process. Subdivision (b) is amended to set forth that the fees for petitions for penalty relief shall be paid by money order, certified check, cashiers check, preprinted personal or company check, and shall indicate the name of the petitioner to whom it applies. This subdivision also indicates that the processing of a petition shall commence only after 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.

This rulemaking proposes to add subdivision (c) to section 1359 to indicate that if the required payment is made, and the petition is not withdrawn by the petitioner or rejected by the Board for failing to meet the requirements under BPC section 2307, and the petition is eligible to be set for hearing with OAH, then the Board shall provide written notice to the petitioner that 1) the Board has accepted the petition to be set for a hearing; 2) it will be set for a petition hearing before an administrative law judge assigned by OAH upon payment to the Board of the applicable nonrefundable fee for adjudication as set forth in 16 CCR section 1352.3; and 3) payment must be made and cleared for deposit of funds with the Board within 90 days of the date the Board sent the written notification of acceptance of the petition to be set for hearing.

This rulemaking proposes to add subdivision (d) to section 1359 to indicate that failure to comply with the requirements of this section shall result in the petition being rejected as incomplete, and states that the Board shall provide written notice of such rejection to the petitioner and the reasons therefore.

**Anticipated Benefit:** The Board anticipates that this rulemaking will clarify for interested parties that section 1359 applies to surrendered certificates, and that petitions for penalty relief must be accompanied by the nonrefundable fee required by 16 CCR section 1352.3. This rulemaking will also provide clarity on the types of payments the Board will

accept and the required timing of payments to process petitions for penalty relief. Additionally, this rulemaking will provide clarity to interested parties on the notice the Board will send out in response to accepting a petition for penalty relief to be set for a hearing, and the consequences to the petitioner for failing to comply with the requirements of this section.

Rationale: This proposed rulemaking is necessary to amend section 1359, subdivision (a), to clarify that it applies to petitions for reinstatement of a revoked or surrendered certificate, as well as to petitions for modification or termination of probation. This change is necessary because BPC section 2307, subdivision (a), indicates that an individual whose certificate has been surrendered while under investigation or while charges are pending may petition the Board for reinstatement.

Further, this proposed rulemaking is necessary to amend section 1359, subdivision (a), to strike the term “division” which is an antiquated term that no longer applies to the Board. The Board no longer has “divisions,” and each use of this term is deemed to refer to the Board. (BPC section 2002.)

Additionally, this proposed rulemaking is necessary to amend section 1359, subdivision (a), to advise interested parties that petitions for penalty relief must be accompanied by the applicable nonrefundable fee required by 16 CCR section 1352.3 for processing the petition. It is necessary that the fee be nonrefundable because the purpose of this fee is to compensate the Board for staff time in processing the petition for penalty relief. Permitting refunds after Board staff have started processing the petition will defeat the purpose of the bill and cost the Board staff time and financial resources.

This proposed rulemaking is necessary to amend section 1359, subdivision (b), to strike the existing text, since this language is no longer relevant to the Board’s process. Petitions for penalty relief may be filed at any time with the Board and do not have to be filed at least 30 days before a regular meeting of the “division” to be considered.

This proposed rulemaking is necessary to amend section 1359, subdivision (b), to add text to indicate that the fees required by this section shall be submitted in the form of a money order, certified check, cashier’s check, preprinted personal or company check, so that petitioners know how to submit the required fees in a manner that will be accepted by the Board. These payment methods were chosen since they are easily processed by the Board and do not subject the Board to additional transaction fees. The proposed text requires the payment method to clearly indicate the name of the petitioner to whom it applies so that the Board may credit the petitioner appropriately.

Further, section 1359, subdivision (b), would be amended under this rulemaking to indicate that the Board will begin processing the petition only after the required fee has been received, clears the petitioner’s bank, and the funds are deposited with the Board’s account within 30 days of the check or money order being deposited. This language is necessary to make it clear to interested parties that the Board will not begin working on processing the petition until it confirms the payment has cleared to avoid beginning work on a petition where the required fee will ultimately not be paid. Additionally, this

amendment is necessary to put a limit of 30 days for the payment to clear to avoid keeping a petition pending beyond a reasonable time of 30 days, so the Board may make accurate assessments of pending workloads.

This proposed rulemaking is necessary to add section 1359, subdivision (c), to inform interested parties that if the required payment is made, and the petition is not withdrawn by the petitioner or rejected by the Board for failing to meet the requirements of BPC section 2307, and the petition is eligible to be set for hearing through OAH, then the Board shall provide the petitioner written notice that 1) the Board has accepted the petition to be set for a hearing; 2) it will be set for a petition hearing before an administrative law judge assigned by OAH upon payment to the Board of the applicable nonrefundable fee for adjudication as set forth in 16 CCR section 1352.3; and 3) payment must be made and cleared for deposit of funds with the Board within 90 days of the date the Board sent the written notification of acceptance of the petition to be set for hearing.

This proposed text is necessary to inform petitioners that they will receive a written notice from the Board when their petition for penalty relief has been processed by Board staff and is ready to be set for a hearing with OAH, and that the petitioner will have 90 days for the payment to cover adjudication costs to clear the bank and be deposited in the Board's account. The Board determined that 90 days was an appropriate time for petitioners to be able to have the adjudication costs clear their bank and be deposited into the Board's account, while avoiding keeping a petition pending beyond three months for someone who does not intend to proceed to the adjudication phase for their petition for penalty relief. This will assist the Board, the AGO, and OAH in managing workloads.

This proposed rulemaking is necessary to add section 1359, subdivision (d), to advise interested parties that the failure to comply with the requirements of section 1359 will result in the petition being rejected as incomplete. The proposed text is necessary to require the Board to provide written notice to the petitioner if the Board rejects their petition as noncompliant and reasons therefore. This information will be important to the petitioner in case they choose to submit a new petition for penalty relief.

### **Underlying Data**

- May 23-24 2024 Board meeting agenda, relevant meeting materials, and relevant meeting minutes.

**Fiscal Impact:**

Based on historical data, the Board receives approximately 54 petitions to modify and 12 petitions of reinstatement per year. The Board is currently incurring workload and costs without receiving any financial reimbursements.

Under this proposal, the Board estimates revenues of approximately \$1.4 million per year and up to \$14 million over a ten-year period as follows:

<b>Medical Board of California Penalty Relief - Fiscal Impact (Revenues)</b>			
<b>Type</b>	<b>Events/Yr</b>	<b>Fee Amt</b>	<b>Revenues</b>
<b>Modify</b>	<b>54</b>	<b>\$20,992</b>	<b>\$1,133,568</b>
<b>Reinstatement</b>	<b>12</b>	<b>\$22,781</b>	<b>\$265,778</b>
<b>Total Revenues:</b>			<b>\$1,399,346</b>

The regulations do not result in costs or savings in federal funding to the state.

**Business Impact:**

The Board has made the initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

This initial 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 proposed rulemaking. Additionally, not every individual who has faced such discipline chooses to file a petition for penalty relief.

Based on historical data, the Board receives approximately 54 petitions to modify and 12 petitions of reinstatement per year.

Individuals opting to submit a petition of penalty relief will be required to pay fees to the Board, which would result in costs of approximately \$1.4 million per year and up to \$14 million over a ten-year period as follows:

<b>Medical Board of California Penalty Relief - Economic Impact (Costs)</b>			
<b>Type</b>	<b>Events/Yr</b>	<b>Fee Amt</b>	<b>Revenues</b>
<b>Modify</b>	<b>54</b>	<b>\$20,992</b>	<b>\$1,133,568</b>
<b>Reinstatement</b>	<b>12</b>	<b>\$22,781</b>	<b>\$265,778</b>
<b>Total Revenues:</b>			<b>\$1,399,346</b>

## **Economic Impact Assessment:**

This Board has determined that this regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because 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 proposed rulemaking. Additionally, not every individual who has faced such discipline chooses to file a petition for penalty relief.
- It will not create new business or eliminate existing businesses within the State of California because 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 proposed rulemaking. Additionally, not every individual who has faced such discipline chooses to file a petition for penalty relief.
- It will not affect the expansion of businesses currently doing business within the State of California because 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 proposed rulemaking. Additionally, not every individual who has faced such discipline chooses to file a petition for penalty relief.
- This regulatory proposal benefits the health and welfare of California residents because by updating and clarifying the regulations for petitions for penalty relief to remove outdated language and add a fee to process and adjudicate such petitions as described above, which will preserve the Board's time and financial resources.
- This regulatory proposal does not affect worker safety because it does not involve worker safety.
- This regulatory proposal does not affect the state's environment because it does not involve the environment.

## **Specific Technologies or Equipment:**

This regulation does not mandate the use of specific technologies or equipment.



**Consideration of Alternatives:**

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

No such alternatives have been proposed, however, the Board welcomes comments from the public.

**Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:**

No such alternatives have been proposed, however, the Board welcomes comments from the public.