INITIAL STATEMENT OF REASONS

HEARING DATE
July 8, 2011

SUBJECT MATTER OF PROPOSED REGULATIONS
Disciplinary Guidelines, Citation and Fine, Fees and Various Regulatory Revisions

SECTIONS AFFECTED
1399.301, 1399.302, 1399.303, 1399.320, 1399.330, 1399.340, 1399.352.7, 1399.353, 1399.360, 1399.364, 1399.370, 1399.374, 1399.375, 1399.376, 1399.377, 1399.378, 1399.379, 1399.380, 1399.381, 1399.382, 1399.383, 1399.384, 1399.385, 1399.387, 1399.389, 1399.390, 1399.391, and 1399.395 of Division 13.6, Title 16 of the California Code of Regulations (CCR).

BACKGROUND
Business and Professions Code (B&P), section 3701 provides the Board's mandate is to "protect the public from the unauthorized and unqualified practice of respiratory care and from unprofessional conduct by persons licensed to practice respiratory care." B&P, section 3710.1 provides that "Protection of the public shall be the highest priority for the [Board] in exercising its licensing, regulatory, and disciplinary functions."

In effectuating our mandate, the Board is responsible for screening applicants to ensure education, criminal background checks, and competency requirements are met. Our Board is diligent in accessing a variety of resources to determine whether a new applicant possesses a criminal record or previous discipline history that may be grounds for denial of licensure. The Board also pursues investigations on complaints received from subsequent rap sheets, consumer complaints, or mandatory complaints. In addition to issuing administrative citations and fines, our office works closely with the Office of the Attorney General on some 100 cases, at any given time, to stipulate to terms and conditions of probation or proceed to hearing through the Office of Administrative Hearings for revocation of the license.

In 2009, media coverage of the Board of Registered Nursing, led to the Administration developing the Consumer Protection Enforcement Initiative that included innovative changes to increase the performance of all boards and bureaus under the Department of Consumer Affairs (DCA). As a result, SB 1111 was introduced in 2010 with numerous provisions to increase consumer protection and reduce processing times. While SB 1111 did not make it out of committee, other bills with specific and similar provisions were signed and boards continue to pursue similar improvements through other means. Many of the provisions in this package are connected to this movement and are aimed at streamlining processes, reducing processing times and increasing consumer protection.

Over the last couple of years, in response to the Administration's Job Creation Initiative, boards have also made efforts to improve its application processing times, and get applicants licensed and into the workforce; helping to stimulate the economy. The proposed amendments affecting the application process and the fee schedule are a direct result of this effort.

In addition, in 2008, as a result of SB 1441, the Substance Abuse Coordination Committee was formed to develop standards for discipline, where the cause for discipline is related to substance use. In April 2011, all of the standards were adopted. Many of the amendments made in the disciplinary guidelines, reflect these new standards.

At its May 11, 2010 and February 25, 2011 meetings, the Board reviewed this final regulation proposal in detail, and approved moving forward with the rulemaking package.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL

1399.301 (Amendment): Changes the Respiratory Care Board [Board] office address.

1399.302 (Amendment): Further clarifies "definitions" to enhancing reader clarity.

1399.303 (Amendment): Further clarifies "Delegation of Authority" and adds additional authority for the Board President or Executive Officer to prepare and file, proposed default decisions; adopt stipulated settlements where an action to revoke the license has been filed and the respondent agrees to surrender his or her license.

1399.320 (Amendment): Increases the length of time to submit and retain documentation required as part of the application process.

1399.330 (Amendment): Further clarifies causes that may prevent education requirements from being waived and that an application fee will not be refunded. Also adds additional criteria to recognize the education and experience, specific to military personnel, for consideration in waiving education requirements.

1399.340 (Repeal): Deletes the definition for "next available examination" in reference to failure of examinations.

1399.352.7 (Amendment): Codifies the Board's minimum requirements for an acceptable course in law and professional ethics, for consideration by the Board.

1399.353 (Amendment): Makes non-substantive changes to provide uniform acronyms throughout Division 13.6, Title 16 of the CCR.

1399.360 (Amendment): Further clarifies the tasks that may be performed or are prohibited from being performed by unlicensed personnel and those settings related to home care. Also provides that education and competency testing shall be conducted at least annually for unlicensed personnel.

1399.364 (Adopt): Provides that respiratory care practitioners may work under the orders of qualified and licensed practitioners who are authorized by the licensed health facility's medical staff, pursuant to an established protocol.

1399.370 (Amendment): Clarifies and adds criteria, which is substantially related to the practice of respiratory care.

1399.374 (Amendment): Clarifies the purpose of the Board's "Disciplinary Guidelines" and also provides reference to the updated and amended version that is incorporated as part of this rulemaking package.

1399.375 (Adopt): Provides that the Board may issue a notice to cease practice to any licensee placed on probation who has committed a "Major Violation" as identified in the Board's "Disciplinary Guidelines." Further provides the process for issuing the notice and the process for a probationer to file an appeal.

1399.377 (Adopt): Provides that employers must provide requested documentation within 10 business days, from the date requested by the Board or its representative.

1399.378 (Amendment): Renumbers this section (previously section **1399.384**) and makes non-substantive change to provide uniform acronyms throughout Division 13.6, Title 16 of the CCR.

1399.379 (Amendment): Renumbers this section (previously section **1399.385**) and makes non-substantive changes to provide uniform acronyms throughout Division 13.6, Title 16 of the CCR.

1399.380 (Amendment): Clarifies and updates the citation fine process and reduces the maximum time to pay fine from 365 to 120 days.

1399.381 (Repealed/Adopted): This section is completely repealed and replaced with similar language displaying the fine schedule and adding additional language explaining the methodology in how fines are applied.

1399.382 (Amendment): Renumbers this section (previously section 1399.376); reduces the time for the executive officer to hold a citation review from 240 to 60 calendar days; and provides additional language clarifying a cited person's right to request a hearing following the citation review.

1399.383 (Amendment): Renumbers this section (previously section 1399.382) and clarifies the citation and fine appeal process.

1399.384 (Adopt): Clarifies a cited person or employer's failure to request an appeal or appear for a citation review or hearing will result in the citation being deemed a final order (similar language has been struck out in section 1399.383).

1399.385 (Amend): Renumbers this section (previously section 1399.383) and makes few minor, non-substantive changes.

1399.387 (Repeal): This section previously related to citation and fines is being repealed.

1399.388 (Repeal): This section previously related to citation and fines is being repealed.

1399.389 (Repeal): This section previously related to citation and fines is being repealed.

1399.390 (Repeal): This section previously related to citation and fines is being repealed.

1399.391 (Repeal): This section previously related to citation and fines is being repealed.

1399.395 (Amendment): Eliminates a second path application fee and initial licensing fee, and increases the application fee.

FACTUAL BASIS/RATIONALE

1399.301: The proposed amendment reflects the correct zip code for the Board's office, which was recently changed by the US Postal Service.

1399.302: The proposed amendments provide reader clarity when interpreting definitions used throughout Division 13.6 of Title 16 of the CCR.

1399.303: The proposed amendments are intended to clarify the tasks authorized to be performed by the executive officer and Board president and increase processing times. Default decisions result from a respondent failing to appear for hearing and always order the discipline requested in the accusation or statement of issues. Currently, all default decisions are prepared by the Office of the Attorney General and can take several months to complete. In addition, stipulations where the licensee is surrendering his/her license must currently be forwarded to board members for vote, delaying processing by up to a month. In the history of the Board, a stipulated settlement including the surrender of a license, has never been non-adopted. Allowing the executive officer or board president to prepare and file default decisions and adopt stipulated settlements (for surrender of the license) will substantially increase processing times.

1399.320: The proposed amendments will allow applicants more flexibility in securing licensure more expeditiously. As part of the Board's application process, applicants are required to have various institutions submit "official" documentation directly to the board to verify certain education, background, competency and other requirements are met. By increasing the time frames for when documentation may be submitted to the Board, as well as, documentation retained by the Board, the applicant is afforded more flexibility in completing the application process, and in many cases, in a much more expeditious manner.

1399.330: The proposed amendments provide a broader explanation and understanding of reasons that may prevent an education requirement from being waived and eliminate expectations that an application fee will be returned if the education requirement is not waived. In addition, the proposed amendments include a new section to recognize military education and experience. After this section was adopted several years ago, the Board discovered that some military personnel did not qualify for a waiver, primarily because they never sought (or needed to seek) licensure in another state, yet were actively practicing with the military. This amendment will ensure military experience will also be recognized for consideration of waiving education requirements.

1399.340: The proposed repeal of this section is made, as it is no longer applicable. Several years ago, the examination process changed from being offered three times per year to computerized daily testing. Section 3739 of the B&P as referenced in this section, has been amended to reflect these changes and no longer references the "next available examination."

1399.352.7: The proposed amendments codify the Board's minimum requirements for an acceptable course in law and professional ethics, for consideration by the Board. Currently both the national and state associations provide a "board approved" ethics exam and meet all of the standards that are being proposed. Placing the requirements in regulation, provide clear expectations for course providers and firmer ground for the board to approve or not approve any future proposed or amended courses.

1399.353: The proposed amendments makes non-substantive changes in accordance with revisions made to section 1399.302 - Definitions.

1399.360: The proposed amendments clarify tasks that unlicensed personnel are permitted to perform and prohibited from performing and the settings in which these apply. In addition, the Board is proposing to add that education and competency testing for unlicensed personnel are performed at least annually, to ensure unlicensed personnel stay current with new technology and advancements.

1399.364: The proposed new language would allow respiratory care practitioners (RCPs) to work under the orders of qualified and licensed practitioners who are authorized by the licensed health facility's medical staff, pursuant to an established protocol. RCPs have historically worked only under the orders of a physician. However, in the past year, the Joint Commission and the Centers for Medicare and Medicaid Services (CMS) amended regulations which allow RCPs to take orders from non-physician practitioners, provided medical staff policies specify such and state law permits such. The proposed language is intended to clarify that therapists may take orders from non-physician practitioners pursuant to a protocol, which is defined in subdivision (e) of section 3702.

1399.370: The proposed amendments clarify and add criteria the Board has found to be substantially related to the practice. This criteria is often referenced as a basis for discipline. In some instances, a violation may either be an act (which does not nor has not yet result in a conviction) or a conviction itself. An act or a conviction itself must also be recognized as being substantially related to the practice. Absent a statute, the criteria listed in this section, codifies that these acts are substantially related to the practice; thereby, allowing the Board to pursue disciplinary action for such causes. It reduces the time and expense needed to have an expert consultant testify to the fact.

1399.374: The proposed amendments clarify the purpose of the Board's "Disciplinary Guidelines" and also provide reference to the updated and amended version that is incorporated as part of this rulemaking package. The proposed amendments to the "Disciplinary Guidelines," themselves, significantly strengthen the Board's probation program and consumer protection and are in part, a result of the standards developed in connection with SB 1441 (statutes of 2008).

1399.375: The proposed adoption of this section is based on SB 1172 (statutes of 2010) wherein section 315.4 is added to the B&P and provides that a board may adopt regulations authorizing it to order a licensee on probation to cease practice for major violations. This section further states that the order to cease practice is not governed by the Administrative Procedures Act.

1399.377: Section 3717 of the B&P provides the Board's authority to inspect and copy records relevant to an investigation. In order to improve investigative and response times, the Board is proposing to adopt this section that will establish a required response period (10 business days).

1399.378: The proposed amendments renumber this section (previously section **1399.384**) as part of an effort to streamline the regulations for the citation and fine process and make non-substantive changes in accordance with revisions made to section 1399.302 - Definitions.

1399.379: The proposed amendments renumber this section (previously section **1399.385**) as part of an effort to streamline the regulations for the citation and fine process and make non-substantive changes in accordance with revisions made to section 1399.302 - Definitions.

1399.380: The proposed amendments are part of the effort to streamline the regulations for the citation and fine process. This particular section also reduces the maximum time to pay fine from 365 to 120 days; thereby, also reducing overall enforcement processing times in accordance with the Consumer Protection Enforcement Initiative (CPEI).

1399.381: This section is completely repealed and replaced with similar language displaying the fine schedule and adding additional language explaining the methodology in how fines are applied. The majority of maximum fine amounts were increased based on previous amendments to section 125.9 of the B&P, raising the ceiling from $2,500 to $5,000. The methodology in applying fines is partly based on SB 1111 and will provide consistency and clarity.

1399.382: The proposed amendments renumber this section (previously section **1399.376**) and make other changes, as part of an effort to streamline the regulations for the citation and fine process and reduce overall enforcement processing times in accordance with the CPEI. This section also proposes to reduce the time for the executive officer to hold a citation review from 240 to 60 calendar days and provides additional language clarifying a cited person's right to request a hearing following the citation review.

1399.383: The proposed amendments renumber this section (previously section **1399.382**) as part of an effort to streamline the regulations for the citation and fine process and provide greater clarity of the citation and fine appeal process.

1399.384: The proposed amendments are part of an effort to streamline the regulations for the citation and fine process. Similar language has been struck out in section 1399.383.

1399.385: The proposed amendments renumber this section (previously section **1399.383**) as part of an effort to streamline the regulations for the citation and fine process and make few minor, non-substantive changes.

1399.387-1399.391: These sections are proposed for repeal. The language in these sections is related to the Board's citation and fine program which has either been found to be repetitive and repealed or has been reorganized. The regulations related to citation and fine program were all reviewed and edited for clarity.

1399.395: The proposed amendments are in support of the Administration's Job Creation Initiative and simplify the fee schedule. The Board is proposing to increase its application fee and at the same time eliminate its initial licensing fee which will reduce the time to issue a license by 28-60 days. The Board is also proposing to eliminate a second application fee that is used for foreign graduate applicants, as it believes the workload to process all applications is relatively the same, and this will help simplify its fee schedule

UNDERLYING DATA

As identified above, many of the proposed amendments are broadly based on the following:

- Disciplinary Guidelines, 2011 Edition
- Uniform Standards developed as a result of SB 1441 (statutes of 2008)
- Consumer Protection Enforcement Initiative proposed provisions - SB 1111 (statutes of 2010)
- New authority to issue "cease practice" orders - SB 1172 (statutes of 2010)
- Application Process Flowchart

BUSINESS IMPACT

These regulations will not have a significant adverse economic impact on businesses. These regulations only impact respiratory care practitioners (RCPs) and employers who have violated the Act or have RCPs in their employ, who are under investigation or on probation.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

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

CONSIDERATION OF ALTERNATIVES

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1. Not adopt the regulations. This alternative was rejected because the regulatory proposal is based on internal and/or external reviews of the application and enforcement processes and is necessary to improve operations.

2. Adopt the regulations. The Board determined that this alternative is the most feasible because the regulatory proposal provides significant increases in consumer protection and will provide reductions in overall enforcement and application processing times, in line with the CPEI and Job Creation Initiative.