

BASIS STATEMENT AND RESPONSE TO COMMENTS

CHAPTER 10 ESTABLISHMENT OF LICENSE FEES

ADOPTED NOVEMBER 8, 2010

Basis Statement

Title 10 MRSA §8003(2-A)(D) authorizes the Director of the Office of Licensing and Registration (“OLR”) to set license fees for 31 professional and occupational licensing boards and the six regulatory functions within OLR. Section 8003(2-A)(D) directs OLR to establish fees at levels adequate to sustain the operations of its boards and regulatory functions on an ongoing basis. Conversely, the statutory criteria mandate fee reductions when ongoing and projected revenues significantly exceed current and anticipated program costs.

The proposed rule increases license fees for the following 9 professional and occupational licensing programs administered by OLR:

Board of Accountancy
Board of Counseling Professionals Licensure
Electricians’ Examining Board
State Board of Funeral Service
Board of Certification for Geologists and Soil Scientists

Board of Occupational Therapy Practice
Board of Licensure of Podiatric Medicine
Radiologic Technology Board of Examiners
State Board of Veterinary Medicine

The proposed rule decreases license fees for the following 6 programs:

State Board of Alcohol and Drug Counselors
Athletic Trainers regulatory function
Board of Chiropractic Licensure

Board of Complementary Health Care Providers
Board of Examiners in Physical Therapy
Transient Sellers regulatory function

The occupational and professional licensing fees set by OLR are determined solely by the budgetary needs of the regulatory program. Each licensing program within OLR must by law be financially self-sustaining. See 10 MRSA §8003(2-A)(B).¹ Financial self-

¹ The Director of the Office of Licensing and Registration has the duty...

“B. To prepare and administer, with the advice of the boards and commissions, budgets necessary to carry out the regulatory purposes of the boards and commissions. The Director of the Office of Licensing and Registration shall maintain one office budget that includes a separate account for each board or commission. The Director of the Office of Licensing and Registration has the authority to

sufficiency is also emphasized in the criteria for establishment of fees contained in 10 MRSA §8003(2-A)(D): “the costs, statutory requirements, enforcement requirements and fees and expenses of each board, commission or regulatory function.”

OLR monitors the revenue stream and expenses of each program on an ongoing basis. When budgetary projections indicate the likelihood of a deficit or an increase in cash over and above what is needed to sustain the program, OLR commences MAPA rulemaking proceedings to raise or lower fees for the affected programs accordingly. In the context of establishing fees, OLR has found that there is no factual basis on which to attempt to achieve parity. Assuming costs associated with two programs are the same, license fees for the larger licensee group will be lower than those of the smaller licensee pool.

INTRODUCTION:

Regulatory Costs of a Licensing Program

Many comments raise questions about how costs associated with each program and thus, the level of a license fee, is determined. The following describes the process used to determine program costs and will be referenced in response to comments, as appropriate.

The regulatory costs of each of the 37 programs housed within the Office of Licensing and Registration include three cost components: (1) costs incurred directly by a program; (2) personnel costs that are directly attributable to the program; and (3) shared administrative costs that an umbrella state agency incurs on behalf of the programs that comprise the Office.

(1) Costs Incurred by the Program

Each program has direct costs associated with its regulatory purpose, which include the costs associated with contracts for examination and exam administration, other contracts related to the program’s regulatory purpose, mailing costs, printing costs, insurance, board member per diem and travel costs, photocopies, hearing-related costs, on-line license renewal credit card charges and other direct costs. These actual expenses are assessed directly to that program.

(2) Personnel Costs Directly Attributable to the Program

The personnel costs for OLR employees (clerks, investigators, inspectors) who provide direct support to the program are assessed directly to that program and are included as part of the administrative assessment.

(3) Shared Administrative Costs

The shared administrative costs are for services that are required by all licensing programs to be active state agencies open and accessible to the public. The following benefit all programs and include costs of the Attorney General’s Office (legal service),

disapprove expenditures by boards and commissions that are not necessary to protect the public health and welfare or that would seriously jeopardize a board’s or commission’s fiscal well-being;”

office rent, phones, office equipment, computers and supplies, a percentage of costs of department staff who serve all programs (Director, Administrator, Complaint Office staff, etc.), information support services, technology costs and expenses charged by other state agencies for financial and human resource support services.

To distribute the costs in an equitable and efficient manner, the Department has determined that the costs should be based on the relative size and complexity of the program. Consistent with that decision the shared administrative costs are assessed as follows:

- One-third of the shared administrative costs is divided among the programs based upon their “fiscal” size (determined by the actual expenses incurred by that program for the most recent fiscal year).
- One-third is allocated among the programs based upon the number of total license records maintained by that program.
- One-third is equally divided among each of the 37 programs.

Governing Financial Management Principles for Dedicated Revenue Programs Within the Office of Licensing and Registration

1. State law requires dedicated revenue licensing programs to be financially self-supporting. These programs operate solely on dedicated revenue from license fees; they do not receive any general fund money. If a dedicated revenue program runs out of money and enters a deficit, funding to continue the program cannot be borrowed from another licensing program or from the general fund.
2. Each licensing program has a separate sub-account within OLR’s budget account into which that program’s license fees are deposited. The costs of a Maine licensing program are required by law to be borne by the licensees of that program. OLR licensing programs licensee pools range from a low of 87 (podiatry) to a high of 16,500 (barbers and cosmetologists).
3. To make sure licensing programs can respond to unanticipated expenses including the cost of enforcement cases and adjudicatory hearings, fees should be established at a level that allows 50% of one year of budgeted expenses to remain in the program sub-account at all times. This is a prudent fiscal target, not a requirement, but it ensures that there is sufficient cash on hand in the account to cover unanticipated program expenses, which may include expenses associated with deregulation of the profession.
4. License fees established for each program are based on the costs associated with the program. OLR does not take into consideration the relative earning potential of different categories of licensees. To establish fees on that basis of income levels would be unworkable and unfair.
5. License fees for the same profession in another state cannot be used as a basis for comparison to Maine licensing fees. A licensing program in another state may be a “general fund” program, it may be a free-standing program; it may be a

component of another department of that state's government or there may be no regulatory program at all.

6. Licensees may be under the misapprehension that costs of a program are limited to the costs associated with board meetings. In other words, if a board meets only four times per year, the program costs would be small in comparison to costs of a board that meets 12 times a year. The activity of a board during a board meeting is incidental to the actual costs of administering a regulatory program. These costs include the cost of dedicated program staff, cost of legal services provided by the Attorney General's Office, building rent, the cost of technology to make access to an electronic licensing data base available to the public and licensees at all times, access to an electronic license renewal portal, financial management services, and many other activities that state programs must pay for and maintain to be fully functioning, accessible, accountable and transparent to the public.
7. If a licensing program enters a deficit and becomes insolvent, a recommendation to the legislative oversight committee would be made to wind down the program and/ or deregulate the profession.
8. Fee increase recommendations are based on revenue and expenditure projections calculated using budgeted amounts.
9. Related or similar licensing programs are likely to have different fee levels. For example, if two licensing programs are identical in all respects and the only difference is the number of licensees in each program, the program with a high number of licensees will have a lower fee than the program with a comparatively small number of licensees. The licensees may have the same scope of practice and the same CE requirement, but the difference in the number of licensees who share in paying the program costs will make a difference in the fee levels for the two programs.
10. Licensing programs are monitored for indicators of decreases in revenue over time. When a trend of decreasing revenue is confirmed through monthly financial analysis, the fee rulemaking process is initiated in an effort to avoid a future deficit. Conversely, programs that have reversed the trend of decreasing revenue (after a fee increase) are monitored for purpose of a future fee reduction when the account reflects more than 50% of one year of expenses in the program account for three successive license cycles.
11. Program expenses are monitored and have been reduced over time. Licensing boards meet only when a full agenda has been compiled, reducing the cost of per diem and travel. There has been a reduction in the use of mailings to communicate with licensees which reduces the expense associated with postage, paper, and photocopying. Enhancements to the OLR website are designed to allow licensees and the public to access their license records, renew licenses on-line and access laws and rules and other regulatory information. Use

of an electronic document imaging and retrieval system has allowed the Office to dispose of filing cabinets and has eliminated the need for additional office space. This has permitted the Department to stay in its current space and extend the lease agreement for 10 years without an increase in lease expense. Staff levels in OLR are the same today as they have been since 1996. No new staff positions have been added. By reducing overall expenses, we have reduced all but the fixed costs associated with legal service, office space, and technology.

ATHLETIC TRAINERS REGULATORY FUNCTION

Ursula Vollkommer-Haley
Kate Anagnostis
Matthew Gerken
Michael Giordano

PJ Hubel
Gregory Jancaitis
Phil Mateja
Catherine O'Connor

Ricky Sirois
Steve Tosi
Michael Verville

- ◆ Commenters support the proposed reduction in the license fee for athletic trainers.
 - *Response: No response is necessary.*

BOARD OF COUNSELING PROFESSIONALS LICENSURE

Jennifer Waterman and Rich Lewis on behalf of Maine Clinical Counselors Association

- ◆ There is an unexplained disparity between the license fees for counselors and social workers. OLR has proposed to increase the biennial license fee for counselor licenses from \$200 to \$250. The biennial license fee for social worker licenses will remain unchanged at \$70. "For such comparable professional licenses, this discrepancy is difficult to understand or accept. Please explain the rationale behind such a disparity. Most importantly, we propose a decrease in Licensure fees for the 2 year Licensed Clinical Professional Counselor License to more similarly reflect that of the social work license."

- *Response: As explained in the Introduction of the Basis Statement, OLR analyzes the financial requirements of each licensing program individually.*

There are significant differences between the two programs that affect the license fees charged to social workers and counselors, respectively. There are almost 4 times as many licensed social workers as licensed counselors (5,357 active licensees vs. 1,358 active licensees). Yet, direct expenditures by both boards are similar (\$17,086 in FY2010 for social workers and \$15,327 in FY2010 for counselors). In other words, although the expenses may be similar, there are more social work licensees to share those costs than there are counselor licensees. So, assuming the costs associated with two programs are the same, license fees for the larger licensee group will be lower than those of the smaller licensee pool.

The fee increases for licensees of the Board of Counseling Professionals Licensure are adopted as proposed.

STATE BOARD OF FUNERAL SERVICE

Sally Belanger on behalf of Maine Funeral Directors Association (“MFDA”)

- ◆ The MFDA appreciates the State’s economic situation and is not taking a position of opposition on the proposed fee increases. Nonetheless, the increases may inflict a hardship on some practitioners due to low compensation for indigents’ funerals by municipalities and low reimbursements by the State Medical Examiner.
 - *Response: OLR acknowledges the economic pressures impacting practitioners of funeral service. The focus of this rulemaking proceeding, however, is generating sufficient revenues to support operation of the licensing program. The fee increases for licensees of the State Board of Funeral Service are adopted as proposed.*

BOARD OF CERTIFICATION FOR GEOLOGISTS AND SOIL SCIENTISTS

Thomas Eastler, Professor, University of Maine at Farmington

Mark Holden

Richard Behr, Department of Environmental Protection

Carol White

- ◆ License fees have increased from \$40 or \$45 at some time in the past to \$140 in 2000 and now to the proposed amount of \$200. This pattern of fee increases is excessive.
 - *Response: The focus of this rulemaking proceeding is generating sufficient revenues to support operation of the licensing program at the present time, not the amount of fees that may have been sufficient to support the program in the past. As the commenters acknowledge, license fees for this program have not been increased for 10 years. Additional response is provided in the Summary Response to Comments on pages 12, 13.*

Lawrence Fitzgerald on behalf of TRC Companies, Inc.

- ◆ The proposed fee increase from \$140 to \$200 follows another large increase imposed about 5 years ago. This seems excessive. “Has the board considered how to mitigate these impacts to business? For example, our firm employs 4 Maine C.G.’s. Would the board be able to reduce the renewal fee (or at least hold it flat) if all 4 of us renewed at the same time and paid with a single check? Otherwise I find the increase unreasonable.”
 - *Response: License fees for geologists were last changed in 2000, when the annual fee was increased from \$80 to \$140. Professional and*

occupational license fees are not established to benefit or disadvantage companies or firms that employ licensed professionals. Each license is issued to an individual based on meeting certain educational and experiential standards. A system that awarded firms a discounted fee for several licenses would be unfair to licensees who are self-employed. The current process of establishing license fees is fair to all licensees of a particular licensing program. Additional response is provided in the Summary Response to Comments pages 12,13.

Carol White

- ◆ As a consulting geologist, the commenter must be licensed in every state in which she practices. Due to layoffs and tight competitive bidding, it is difficult at present to keep a job as a geologist or stay in business as a consultant. A fee increase will only make this more difficult. And a laid-off geologist will still have to pay a license fee.
 - *Response: OLR acknowledges that the economic downturn has affected both small business owners and employees. The focus of this rulemaking proceeding, however, is generating sufficient revenues to support operation of the licensing program established by the Maine Legislature.*

Bruce Hunter, Environmental Hydrology Manager, Department of Environmental Protection

Mark Holden, Environmental Specialist III, Department of Environmental Protection

- ◆ “In these difficult economic times, [the proposed fee increase is] an added burden to those practicing their profession as well as paying bills. For instance, state workers have taken a 5% decrease in income for at least a two year period (via state shut down days).” [Holden]

“There are 16 certified geologists in our unit, including me. We are all civil servants dedicated to protecting the health of the people of Maine from contaminated drinking water and soil. These are people who have had to adjust to a 4% pay reduction for the past 15 months due to state layoff days. This situation will continue until June 30, 2011 at least and may go on after that. They are not happy to hear that they will have to pay \$200 a year to practice their profession; an increase of \$60 compared to last year.” [Hunter]

- Response: OLR acknowledges that state employees and many others have been adversely affected by the economic downturn. The focus of this rulemaking proceeding, however, is generating sufficient revenues to support operation of the licensing program. Additional response is provided in the Summary Response to Comments on pages 12, 13.

Robert Marvinney, Chair, Board of Certification for Geologists and Soil Scientists

Carol White

- ◆ Maine's license fees are among the highest in the country. "Among states with licensing of [geologists and soil scientists], Maine will rank third, only behind California and Texas, for highest cost. Many states comparable to Maine in terms of population and size of the regulated community have much lower fees, such as New Hampshire, which charges only \$75 for license renewals. I would argue that their program is more robust than Maine's since they require and manage a continuing education program. Their website has all the capabilities of Maine's and is certainly kept more up-to-date with meeting agenda and minutes. Why must Maine's program cost so much more?" [Marvinney] (A table entitled "Annual Renewal Fees by State" was included in Mr. Marvinney's comment.)

Response: See, Governing Financial Management Principles #5 on page 4.

John Peckenham, Director, Maine Water Resources Research Institute, University of Maine

- ◆ "[A] large number of Certified Geologists and Soil Scientists, like myself, are not full-time consultants generating income from direct employment. We are engaged in related technical activities but are certified for the good of the professional community and as a way to maintain high standards. If the fee goes too high, many of us will not renew. Instead we could take advantage of the law for occasional work. This would be unfortunate for everyone.

Response: The state's sole purpose in regulating professions and occupations is to protect the citizens of Maine. The state license allows an individual to practice his or her profession in whatever way the individual chooses. OLR recognizes that these individual practice decisions are made by each licensee. See also, Governing Financial Management Principles #4 on page 3.

Thomas Eastler, Professor, University of Maine at Farmington

Carol White

- ◆ Some OLR licensing programs and the State Board of Nursing have license fees in the range of \$50 - \$70. [Eastler] The proposed \$200 annual license fee for geologists is excessive when compared to the Board of Registration for Professional Engineers, which charges only \$40 per year. [White] "Are [fee] increases uniform and fair to professionals in the State? How do you determine what a fee should be for a professional? Based on how much money they make? Or based on the total number of professionals in the State, and divide that into the cost number of the entire program and come up with a fair number? Because, clearly, our number is nowhere near that." [Eastler]

Response: The state's sole purpose in regulating professions and occupations is to protect the citizens of Maine. The state license allows an individual to practice his or her profession in the manner chosen by the individual. OLR

recognizes that these individual practice decisions are made by each licensee. See also, Governing Financial Management Principles #4 on page 3.

Robert Marvinney, Chair, Board of Certification for Geologists and Soil Scientists

- ◆ Many licensees who do not practice in Maine have indicated that they will not renew their license because of the proposed increase, leaving fewer licensees to carry the financial burden of the program. It would make more sense to reduce license fees to encourage more participation in the program.
 - *Response: Whether or not to maintain a license is a personal decision for each licensee. However, the fee increase is necessary to support operation of the Maine licensing program.*

Robert Marvinney, Chair, Board of Certification for Geologists and Soil Scientists

Carol White

Thomas Eastler, Professor, University of Maine at Farmington

- ◆ OLR did not discuss the proposed fee increase with the Board of Certification for Geologists and Soil Scientists (“the board”) prior to the commencement of the rulemaking proceeding and did not notify licensees of the proposed fee increase. [Marvinney] “In the absence of communication, there is an absence of justification.” [Eastler]

Response: With the exception of one two-day meeting in June, the focus of which was a disciplinary hearing, the board has not met in 2 years. There was no opportunity to discuss the proposed fee increase at a board meeting. OLR advertised the proposed fee increase in five newspapers, sent copies of the notice and proposed rule to board members and persons on the board’s interested parties list, and posted a link to the notice and proposed rule on its home page. OLR does not have the funds or staff to mail individual copies of the notice and proposed rule to licensees of the 15 programs involved in this rulemaking proceeding. We encourage licensees of all programs to check the OLR website frequently to access information about the board’s process.

Bruce Hunter, Environmental Hydrology Manager, Department of Environmental Protection

Mark Woodruff, Geographic Information Systems Coordinator, Department of Environmental Protection

John Peckenham, Director, Maine Water Resources Research Institute, University of Maine

John Behr, Department of Environmental Protection

- ◆ OLR’s financial projections and budget analyses cast doubt on the need for a fee increase. From FY2008 to FY2010, revenue increased from \$40,560 to \$49,345

and expenditures decreased from \$54,541 to \$37,008, with a corresponding increase in cash balance. [Marvinney]

OLR's budget projections do not mirror the decreased expenditures from FY2008 to FY2010. Compared to the \$37,008 actual expenses for FY10, budgeted expenses for FY11 are \$64,690. "After that, expenditures are inflated 4-5% per year to FY 2014. Revenues are projected to decrease 3% to \$47,865." [Marvinney]

The board does not have a high level of activity. The board did not meet in 2009, and in 2010 assessed a licensee the costs of an adjudicatory hearing brought against him to reimburse the board for its expenses. [Marvinney]

"It is difficult to understand how a board with actual expenses in the range of \$5,500 are transformed to actual expenditures of \$37,008 for FY 2010 or \$54,541 in FY 08." ...Overhead expenses of \$32,000 to \$49,000 for a small board are hard to understand. When budgeted expenditures are projected to \$64,690 or more for 2011 and beyond it exceeds belief." For state agencies, overhead typically ranges from 15% to 20%. Overhead rates assigned to this board are 5.5 X total expenses for 2010 to 12.3 X expenses for 2008. Something is wrong here." [Marvinney]

"Cheryl Hersom explained to me that the license fees pay for the rent, program costs, computers, and staff time that the Office of Licensing and Registration (OLR) provide to the Board. However, I don't understand how Board expenses averaging \$5,339, test administration (for new applicants who already paid test and registration fees), collecting license fees, and mailing certificates leads to OLR costs ranging between \$31,338 and \$50,440...Why is a fee increase necessary when Board Expenses plus Transfers have decreased, while revenues and the cash balance increased?...Financial projections for FY 2011 to FY 2014 predict an increase in expenditures. Why are expenses projected to double from FY 2010 (\$37,008) to FY 2014 (\$74,177)?" [Woodruff]

"[T]here is no justification for the price change. This has the appearance of using certified professional[s] as hostages to increase state revenues. No fee increase can be substantiated in our current economic climate." [Peckenham]

Commenter Behr recently participated in a complaint investigation and adjudicatory hearing conducted by the board. Mr. Behr was told that the board had no money to hire an expert witness. Commenter Behr was also told that he needed to make arrangements for reproducing exhibits, and the Department of Environmental Protection paid over \$400 for reproductions. Commenter Behr wonders how this could occur when board revenues approach \$50,000, and finds it difficult to understand "how a Board that routinely ends each year with a cash balance is unable to find the funds to properly operate."

Response: During FY2009 and FY2010 OLR was able to realize savings related to shared administrative costs that reduced this program's shared costs that had been budgeted for those fiscal years. This resulted in a savings of \$6279 to the board in FY2009 and \$10,439 in FY2010. These savings reduced the FY2010 actual expenditures to the \$37,008 figure noted by the commenter. However, OLR cannot budget such a savings into financial projections for future years, because there is no assurance that similar savings will recur. To clarify, there was actually no increase in revenue from FY08 to FY10 as asserted by a commenter. The revenue amount for FY08 (\$40,560) was reduced by the general fund sweep for that fiscal year (\$8,034.62). The impact of the sweep applied to revenue is a required state accounting protocol. Additional response is provided in the Summary Response to Comments on pages 12, 13.

- *Response to Commenter Behr: Issues involving an adjudicatory proceeding are beyond the scope of this rulemaking proceeding.*

Mark Woodruff, Geographic Information Systems Coordinator, Department of Environmental Protection

"In the Revenue and Expense reports for FY 2008 through 2010, how has the money designated "Transfers" been spent in each year? Please provide an itemized list.

- *Response: Copies of the FY2008, FY2009 and FY2010 transfer analysis sheets for the Board of Certification for Geologists and Soil Scientists are attached.*

Thomas Eastler, Professor, University of Maine at Farmington

Bruce Hunter, Environmental Hydrology Manager, Department of Environmental Protection

Richard Behr, Department of Environmental Protection

Mark Woodruff, Department of Environmental Protection

- ◆ The commenters (correctly) understand that over a course of years \$18,508 has been moved from the board's account into the general fund. This practice "is a hidden tax to fund wasteful spending of state government without the knowledge or consent of licensees." [Eastler] "It is unethical and illegal to expect geologists and soil scientists to fund the general operations of state government." [Behr]

"Increasing revenue, declining costs and funds left over at the end of the year to be swept into the General Fund does not characterize a fund that needs a fee increase. As a matter of fact, the numbers justify a fee decrease. Then there won't be money left over to be swept into the General Fund...If there is money left over to sweep into the General Fund then there is sufficient money collected at the current rate to support the Board and there is no need for an increase. If you increase the fee, every penny of the increase will be swept to the General

Fund. If this money is going to the general fund it becomes a tax, not a fee. We already pay taxes.” [Marvinney]

“I believe that this practice does not meet the intent of the law defining the fees as ‘reasonable and necessary for their respective purposes.’” [Woodruff]

Response:

See, Summary Response to Comments #3 on pages 12, 13.

Thomas Eastler, Professor, University of Maine at Farmington

- ◆ We need an accounting of what it costs OLR to function. There should be a third-party audit of OLR.

Response: As a state agency, OLR is audited by the Department of Audit on a periodic basis. In addition, the budget of the Department as a whole and the five agencies that comprise it are reviewed biennially.

Robert Marvinney, Chair, Board of Certification for Geologists and Soil Scientists

- ◆ “In reviewing the budget projections provided by our Board administrator, which show a substantial balance in the account at this time, it is clear that there is more time to review the situation. The budget will not go negative for several years at the current renewal fee. This will allow time for the Department to work in a collaborative fashion with the Board members to develop possible solutions that do not involve simply fee increases. Areas that warrant further consideration are: 1) consolidating several small boards; 2) reviewing operating expenses and eliminating those that are not necessary; 3) time to understand that how other states are successfully providing comparable service at reduced cost; 4) time to review the efficacy of the current funding formula used by the Department to allocate administrative expenses to Boards and that has not undergone serious scrutiny in over ten years.

Response: OLR has already taken action with Legislative approval to merge programs, where appropriate. Two board mergers have already occurred. In addition, one board-based licensing program was eliminated entirely, and another board-based licensing program was converted into a regulatory function. OLR looks for cost-saving opportunities on an ongoing basis. See also, Summary Response to Comments below in response to other comments.

Summary Response to Comments:

The Department has reviewed all comments submitted by licensees of the Board of

Geologists and Soil Scientists in response to a proposed fee increase for initial and renewal licenses from \$140 to \$200 annually. We have weighed the concerns of commenters against the Department's statutory responsibility to ensure that OLR licensing programs are adequately funded through license fees to pay the costs associated with the regulatory program. The Legislature has been clear that one dedicated revenue program may not subsidize any other dedicated program. The introduction to this basis statement explains that 'regulatory costs' of each program includes direct costs as well as it's allocated portion of shared administrative costs.

Under these circumstances, and to give all interested parties ample opportunity to become fully aware of the licensing program's fiscal requirements, the Department agrees to reduce the size of the proposed fee increase for geologists and soil scientists from \$200 annually to \$170 annually beginning with the FY 11 license cycle (12/31/10) subject to the following caveats:

- 1) It is unlikely that a fee increase of \$30 annually effective in FY11 will be sufficient to avoid a temporary deficit in FY 2014 with an ongoing deficit projected in FY 15. It should be understood that the Department will monitor the revenue and expenditures of the program carefully to determine when another fee increase will be required to avoid the deficit.*

- 2) Licensees and interested parties will now have ample opportunity to explore the continued need for a state licensing program and to discuss alternatives to the existing program, including national certification or private certification in lieu of a state-issued license.*

- 3) Transfers to the general fund are accomplished by action of the Legislature in the context of a budget bill. OLR has no control over these transfers and cannot predict when they will occur. FY2003 to date, the Legislature has swept into the general fund a total of \$5,475,644 from the accounts of the OLR licensing programs. This included \$18,500 taken from the board's account, as shown in the table below:*

Transfers from Board of Certification for Geologists and Soil Scientists to General Fund								
2003	2004	2005	2006	2007	2008	2009	2010	Total
\$4,387	-	-	\$4,406	-	\$8,035	\$1,673	-	\$18,500

OLR cannot budget for sweeps which unquestionably impacts program revenue. Transfers from the program's account to the general fund do not relieve OLR of its statutory responsibility to keep each licensing program it administers in a positive cash balance for the foreseeable future.

BOARD OF OCCUPATIONAL THERAPY PRACTICE

Diane Sauter-Davis on behalf of Maine Occupational Therapy Association
 Nancy J. Fortin Beadling
 Jennifer St. Peter

- ◆ The proposed fee increases for occupational therapy practitioners are “preposterous...ill conceived and unbalanced. They are not incremental – these increases are off the charts. This is 10-60 times the typical cost of living increase in a year – or more.” [Sauter-Davis]

The proposed fees represent a 50% increase for occupational therapists (“OTs”), a 58% increase for occupational therapy assistants (“OTAs”), a 240% increase for temporary occupational therapists and a 300% increase for temporary occupational therapy assistants. Proportionately, this percentage is far greater than any other professional fees being raised. [Sauter-Davis]

Diane Sauter-Davis on behalf of Maine Occupational Therapy Association

Lisa Clark, University of Southern Maine/Lewiston-Auburn

Nancy McRae, Associate Professor, University of New England

Michelle McVay

Emily Theriault

Mary Thornton-Vogel

Darlene Breton

- ◆ Occupational therapy practitioners are facing financial pressures in addition to the proposed fee increases. Effective October 1, 2010, MaineCare reduced reimbursement by 10% across the board. “Unrelated to this, DHHS cut service fees by 10 percent as well as part of restructuring codes from local to federal. Concurrently, CDS has restructured its reimbursement to align more closely with Maine Care’s newly established rates. In an unrelated decision Anthem has determined that OT services in Maine will be reimbursed at a reduced rate (3.8% cut) effective December 1, 2010.” [Sauter-Davis]

Occupational therapists receive the lowest level of reimbursement of the rehabilitation specialties (physical therapy, speech therapy and occupational therapy) in the state. Moreover, physical therapists and speech therapists did not suffer the recent reduction in reimbursement experienced by occupational therapists. [Breton]

Lillian Bronson

Jacqueline Sniadecki

Susan Noyes Spear

Dennis Dow

Michelle McVay

Emily Theriault

Lorraine Robertson

Darlene Breton

- ◆ The proposed fee increases are burdensome when considered in addition to national certification fees. “My education is being paid for by this state and now I may have to move out of it in order to practice my new profession without paying exorbitant licensing fees on top of having to pay out money for AOTA membership, MeOTA membership, professional health and liability insurance, medical symposiums and conferences to earn CEU’s in order to retain certification by the NBCOT which I need in order to be licensed by the State of Maine, CEU’s in order to have a license to practice in Maine, and probably other fees and expenses that I haven’t even thought of yet.” [Dow]

The 36 CEUs required for license renewal in Maine is one of the highest in the United States and must be considered along with the 36 Professional Development Units required for ongoing certification by the National Board of Occupational Therapy. “Let me break down the costs I have paid in the last 2 years. I have paid \$500.00 to take the National Certification Test, Temporary licensure with criminal background check \$101.00, Permanent licensure \$130.00, NPDB/HIPB Self-Query \$18.00, \$240.00 for a MeOTA Conference for CEU’s, \$450.00 for the AOTA Conference for CEU’s, \$100.00 for MeOTA workshops and \$85.00 specialized Mental Health workshop. I also have paid \$80.00 to the Maine Occupational Therapy organization (2) years and \$150.00 to my American Occupational Therapy Organization (2) years. I also pay \$100.00 per year for Professional Liability insurance. So as you can see being a practitioner [OTA] we spend a lot of money already. [McVay]

“The Occupational Therapy license requires 36 Continuing Education Units from the state of Maine licensing board and 36 Professional Development Units through our National Board Certification in Occupational Therapy, that the practitioner has to pay for and it’s extra time in my work week, unpaid. Last licensing period, I spent \$2700 including the cost of hotels, flights, and rental cars for certain conferences that learned skills/topics are applied daily in my facility.” [Therault]

Completion of continuing education is expensive, especially for practitioners in rural areas of the state. “They are challenged to not only try to receive the educational opportunities specific to our profession regionally, but also the ability to pay for these educational credits. Many of these practitioners are not receiving the benefit of employer coverage of these expenses or courses.” [Breton]

Diane Sauter-Davis on behalf of Maine Occupational Therapy Association

Susan Spear

Lisa Clark, University of Southern Maine/Lewiston-Auburn

Michelle McVay

- ◆ In combination with the reimbursement cuts noted above, the proposed fee increases jeopardize practitioners’ ability to remain in the profession. “OT practitioners are reeling. Many are wondering how they can absorb the cuts; others

are looking at closing practices. All of us are concerned for our future.” [Sauter-Davis]

“Because of recent budget cuts, my work hours have been reduced, and I understand my job is at further potential risk after the first of next year.” [Spear]

“I personally know of several people who have had to cut back their private practices because of this, and/or to start to cut staff hours because of this slow erosion of trying to stay solvent and provide services to Maine’s poorest. [Clark]

“I currently work for a non-profit agency that does not pay for a my Licensing fees and very little for Continuing Education Units...Maine is currently one of the lowest paying states for Occupational Therapy. Many of my colleagues are only making \$16.00 an hour including myself.

Laurel Finlayson

Nancy J. Fortin Beadling

Shanna Towle

Cynthia Belanger

Steve Silcocks

George Pusey

Mary Miller

Becky Cirillo

Dennis Dow

Brittany Carter

Michelle McVay

Gina Fry

Jennifer St. Peter

Nancy Cormier

- ◆ “The proposed fee increases will be especially burdensome on new college graduates. “I am a student attending Kennebec Valley Community College and in the Occupational Therapy Assistant Program. I am due to graduate this May. Many people after graduating will have to apply for a temporary license. The temporary license is proposed to increase 300% percent which is unreasonable because it is a temporary license which will soon be traded in for a regular license. People would be paying for two licenses out of pocket. Coming straight from college people have loans to pay off. People may not have the funds to pay for the license. They need money to obtain their license before they can get a job.” [Finlayson]

“If this raise passes it will affect our new grads and perhaps drive them out of state. It is also a time of lost jobs and wages so there are minimal COTA jobs in Maine already.” [Beadling]

“As a future OTA, I will be looking to get my license and it is already expensive enough. If the fee is raised more, I will not be able to afford to be licensed in the state of Maine. I want to practice in Maine, but if it becomes so expensive to hold a license then I will have to look at what other states, like New Hampshire, can offer. I entered the OTA Program at KVCC with the hope and intent to work with Maine’s veterans. If this increase in licensing goes through then I should now start to research other states’ licensing fees. I know that it is not the intent for the state to drive away its students, but this licensing fee increase will do just that.” [Towle]

“As a student that will be graduating in the spring and looking at the average income dropping while the licensure fees are proposed to increase, I am concerned...I am concerned that graduates from this needed health care field will look out of state for work. We need to have incentives not deterrents for the citizens of Maine.” [Belanger]

Commenter Silcocks is a student at Husson University. He will get his degree and must find a job. The cuts in Maine will make things difficult and the proposed fee increases will make them worse.

Commenter Pusey is a student at Husson University. He is very nervous as to how the trend will continue in the future. In the current unstable economy, the proposed fee increases make staying in Maine less of an option. “We’re the future – don’t drive us away.”

“I am currently a student in the occupational therapy assistant program at Kennebec Valley Community College in Fairfield. The proposed fee increases will be a substantial barrier to being able to practice my profession in this state. My education is being funded largely through grants and scholarships paid for by the state of Maine and it would be unfortunate to use those resources and then be unable to afford to work here and contribute back to the tax base. My goal is to graduate and become a competent, dedicated professional who improves the lives of Maine citizens. I ask that you do not approve these increases as they are unfair and would make it more difficult for me to live and work in this great state.” [Miller]

Commenter Dow is 46 years old and worked in a variety of occupations. Following a layoff in 2009, he enrolled in the occupational therapy program at Kennebec Valley Community College and “has never been happier with a decision in my life.” There are both traditional and non-traditional students (such as himself) in the program. The proposed fee increases are prompting many of the people who were planning to practice in Maine, including Mr. Dow, to think of moving elsewhere.

“As a student and future Occupational Therapy practitioner I am asking for you not to approve a 300% increase in license fees for Occupational Therapy Assistants. I feel that this increase is unfair to us new graduates whose hopes

are to stay in Maine and serve our local communities. I can assure you that if this proposal is approved that I could be looking at working as an Occupational Therapy practitioner outside the state of Maine.” [Carter]

“By raising the rate by 58% for a license with no founded reason is unreasonable and 300% for a temp license that is only good for a total of 6 months is even more upsetting for new students...By raising the fees, I believe you are discouraging new practitioners to stay and practice Occupational Therapy in the state of Maine. This will lead to a shortage of practitioners of the state in years to come.” [McVay]

“Our profession is dedicated to improving the lives of all Mainers and I want to be part of that service but such increases will tax my resources to the limit to practice in this state.” [Fry]

“I am a student in the Occupational Therapy Assistant program at Kennebec Valley Community College...It is going to cost a substantial amount of money to obtain certification and licensure to practice in the state of Maine...I will need to get a temporary license to be able to work until I have successfully completed the NBCOT certification exam, which is extremely expensive. It is going to cost approximately in \$1000 in fees just to acquire the necessary certification and licensure to work. I then need to pay the licensure fees every year to maintain my license and also pay for continuing education credits. I do not understand why you would want to make it more difficult for new graduates that are trying to become professional and productive citizens of Maine.” [St. Peter]

Nancy Cormier

- ◆ Maine is now 50th on the Forbes’ best states for business and careers. Maine’s job growth is only expected to increase 1.3% annually over the next 5 years – one of the worst forecasts in the country. “How can we expect to attract good, high paying jobs that produce more state revenue, and also retain our highly trained and qualified professionals if we charge more for licensing and regulation that other surrounding states such as Massachusetts, New Hampshire, and Vermont? Maine needs to recruit qualified professionals such as Occupational Therapists to help boost our economy and fill vacant positions in rural areas of our state; not convince them to move to neighboring states by increasing their cost of doing business.”

Lillian Bronson

Lorraine Robertson

Darlene Breton

- ◆ The proposed fee increases are too extensive. In tough economic times it is important to encourage the working class and not continually increase their taxes and fees. [Bronson] “We work hard for the money we get and don’t need the state taking more of it.” [Robertson] “We are trying our best to meet the needs of Maine’s

ill, injured and disabled population...We are beginning to feel like we are the financial punching bag. We would appreciate it, if in these difficult financial times, you would kindly not raise our professional fees.” [Breton]

Diane Sauter-Davis on behalf of Maine Occupational Therapy Association

Susan Spear

Nancy J. Fortin Beadling

Michelle McVay

Emily Theriault

- ◆ The proposed fee increases will jeopardize service delivery to patients with disabling conditions or mental illness who depend on occupational therapy for the development of skills ranging from management of self-care to becoming employed. “I currently work in the mental health field providing occupational services to people who live in group homes who have come from the state hospital at one time or another. With the current financial situation of the state funding and cutbacks to services, several of these people will probably be under a new system, and have them live directly out in the community. As a practitioner I will be instrumental in the transition process and without it, it is doubtful they will transition successfully and repeat a cycle of homelessness, being arrested because of non-med compliant and no supports for help and probably being placed back in a state hospital that is already reaching maximum capacity. This is going to cost the state even more money per day for these people.” [McVay]

“...I chose to become an Occupational Therapy practitioner to be a part of a holistic profession that helps individuals increase functional engagement and participation in jobs of daily living, maximizing quality of life, from infants with developmental delays, to elders requiring professional guidance on modifications in their home to age in place; and everyone in between. Economically the cost of living is high, let alone, the cost to keep my license to work in this state is high. How are we going to keep Maine professionals working in Maine, living in Maine, and helping Maine people...? [Theriault]

Diane Sauter-Davis on behalf of Maine Occupational Therapy Association

- ◆ The proposed fee increases will not sustain the Board of Occupational Therapy Practice (“the board”) for the long term. “Based on recent reimbursement outcomes and the state of Maine’s limited funding stream there may be fewer OT practitioners to draw these fees from.”

Becky Cirillo

- ◆ “The lack of communication between the board and practitioners was amazing. We didn’t see this coming. It was very disappointing.”

Diane Sauter-Davis on behalf of Maine Occupational Therapy Association

Jacqueline Sniadecki

Susan Noyes Spear

Victoria Cote

Shanna Towle

Mary Miller

Becky Cirillo

Lisa Clark, University of Southern Maine/Lewiston-Auburn

Nancy McRae, Associate Professor, University of New England

Emily Theriault

Gina Fry

Mary Thornton-Vogel

Are the proposed fee increases evidence based? [Sauter-Davis] “If you can justify to me why such an increase is needed then I will be more than willing to pay it.” [Sniadecki] “It is not clear why this 50% increase in fees is being proposed now, or what data were used to determine both the need for an increase and the amount of the increase?” [Spear] “I oppose [the license fee increase] until information can be provided to determine the reasoning behind the increase in fees.” [Cote] “I would like to see the evidence behind the proposed increase to the licensing fees.” [Towle] “...No specific rationale has been presented for why [the proposed fee increases] are necessary.” [Miller] “How did we arrive here? How did we arrive at the proposed percentages of increase? Are they evidence based? [Clark] The lack of information made available to licensees about expenses left us not understanding why we are in the position today of having increases to our license fees. I don’t understand how the formula was calculated for making these increases. These increases are off the chart, they make no sense. There has been no cost accounting for any of these fees. We don’t know how to adjust expenses if we need to at all because we don’t know how the money is spent. Once these fees go up, they are not going to go back down. [Cirillo] “Why is this proposal being offered?” [McRae].

Nancy McRae, Associate Professor, University of New England

Mary Thornton-Vogel

- ◆ What will OT practitioners be getting for the extra fees?

Jacqueline Sniadecki

- ◆ “Can we change the renewal to every 3 years like NBCOT?”

Diane Sauter-Davis on behalf of Maine Occupational Therapy Association

Lisa Clark, University of Southern Maine/Lewiston-Auburn

Susan Spear
Emily Theriault
Nancy Cormier

- ◆ “What steps can we take to eliminate spending within our current structure?... Might we partner with NBCOT? All OTRs and COTAs must participate in this process at yet another cost to each practitioner. Would decreasing the number of continuing education credits decrease the staff obligation (therefore financial obligation) for the OT Practice Board? Is the OT Board of practice more labor intensive than others due to our licensing process? Has there been a determined, researched link that CEUs assure competency or are there other methods to support this?” [Sauter-Davis, Theriault]

Aligning the NBCOT continuing education requirements (36 hours every 3 years) with the board’s continuing education requirements (36 hours every 2 years) would result in greater efficiency for both licensees and board staff.

“I would like to propose that the state of Maine look at cutting costs through eliminating or decreasing the number of continuing education units (CEUs) needed by OTs. This would decrease the number of man hours needed for oversight and auditing, and would allow for the continuation of the current fee of \$80 for OT, and \$70 for OTA. Competency can be maintained through the National Board Certification in Occupational Therapy...” [Cormier]

Diane Sauter-Davis on behalf of Maine Occupational Therapy Association

- ◆ The Commissioner recently shared the board’s expenditure reports with our lobbyist. The reports are difficult to interpret. Until we can understand the cost calculation process in detail, and understand what costs are particular to occupational therapists, the proposed increase should be discontinued. “Our annual expenses may be able to be reduced by simply changing how the board does business and by changing the process of CEU discovery.”

Summary Response to Comments

The Department has reviewed all comments submitted by licensees of the Board of Occupational Therapy Licensure in response to a proposed fee increase for initial and renewal licenses from \$80 to \$120 biennially. It should be noted that OT license and renewal fees have not been increased in 20 years.

We have weighed the concerns of commenters against the Department’s statutory responsibility to ensure that OLR licensing programs are adequately funded through license fees to pay the costs associated with the regulatory program. The Legislature has been clear that one dedicated revenue program may not subsidize any other dedicated program. The introduction to this basis statement explains that ‘regulatory

costs' of each program includes direct costs as well as its allocated portion of shared administrative costs.

Under these circumstances, and to give all interested parties an opportunity to become fully aware of the fiscal requirements of this program, the Department proposes an alternative approach to this fee issue. The alternative is as follows:

The occupational therapy licensing program will be transitioned from a biennial cycle to an annual renewal cycle. However, the 3/31/11 renewal fee will remain at the current level of \$80 for occupational therapists, \$70 for occupational therapy assistants, \$25 for temporary occupational therapists and \$20 for temporary occupational assistants. The Board will determine how the annual license cycle will affect the continuing education requirement that spans the two-year license cycle and will initiate rulemaking to effectuate the details of an annual CE requirement. Licensees will be notified on the Board's website how the continuing education program will be administered. On 3/31/13, licenses will be renewed for one year and the annual fee will need to be set before that date to ensure that adequate revenue is generated by the annual fee to maintain the program's financial stability. Between the 2011 and 2013 renewal dates, the Department will carefully monitor revenues and expenditures to determine the fiscal solvency of the program moving forward.

The alternative proposal is subject to the following caveats:

- 1) The revenue currently generated by license fees is not sufficient to avoid a deficit in FY 2013. The Department will monitor the revenue and expenditures of the program carefully to determine the necessary annual fee to offset the projected deficit.
- 2) Licensees and interested parties will now have ample opportunity to explore the continued need for a state licensing program; the goals and objectives of a continuing education requirement and discuss alternatives to the existing program, including national certification or private certification in lieu of a state-issued license.
- 3) Transfers to the general fund are accomplished by action of the Legislature in the context of a budget bill. OLR has no control over these transfers and cannot predict when they will occur. From FY2003 to date the Legislature has swept into the general fund total of \$5,475,644 from the accounts of the OLR licensing programs. This included \$63,300 taken from the board's account, as shown in the table below:

Transfers from Board of Occupational Therapy Practice to General Fund								
2003	2004	2005	2006	2007	2008	2009	2010	Total
\$15,513	-	-	\$15,094	-	\$29,075	\$3,618	-	\$63,300

OLR cannot budget for sweeps which unquestionably impacts program revenue. Transfers from the program's account to the general fund do not relieve OLR of its

statutory responsibility to keep each licensing program it administers in a positive cash balance for the foreseeable future.

BOARD OF LICENSURE OF PODIATRIC MEDICINE

Edwin Bruno	Joseph Greco	M. Milza	Christopher Sacco
Adam Darcy	Keith Kendall	Nima Moghaddas	Robert Taylor
K. Paul Flanigan	Michele Kurlanski	Todd O'Brien	James Whipple
Steven Gershman	Shannon Meredith	Peter Ocampo	

- ◆ The commenters listed above are all licensed podiatrists. Commenters Bruno, Darcy, Flanigan, Gershman, Greco, Kendall, Meredith, Moghaddas, O'Brien, Ocampo, Sacco and Taylor separately submitted the form letter reproduced below. Commenter Whipple submitted a variation of the form letter. Commenter Kurlanski is president of the Maine Podiatric Medical Association and submitted a letter on behalf of the Association which is substantively almost the same as the form letter reproduced below. Commenter Meredith is chair of the Board of Licensure of Podiatric Medicine ("the board") and also submitted two letters, one of which was the form letter reproduced below.

"I am writing to voice my objection to the proposed increase in the podiatric licensing fees. The current licensing fee is one of the highest in New England and the second highest for professionals in the state. In New Hampshire, the podiatric licensing fee is \$57 per year. In Maine, medical doctors licensing fee is \$200 per year and osteopathic physicians licensing fee is \$350 per year. I understand that there is a complex formula for calculating each professional licensing fee; however, it appears that the formula is seriously flawed causing a significant disparity among physicians. In fact, while podiatrists' licensing fees are scheduled to increase, other practitioners' fees will be decreasing or staying the same.

"Many podiatrists, like me, are small business owners and the cost of operating our offices continue to rise. The fee increase is another cost of doing business and the complex formula places an extra burden on podiatrists. Moreover, the fee increase may deter podiatrists from coming to Maine and may prompt others to retire early. This increase also may be cost prohibitive for those who reduce their hours due to disability or illness. Access to quality foot and ankle care is crucial now more than ever considering our aging population and the epidemic in obesity and diabetes."

- *Response by issue:*

"One of the highest fees in New England" See, *Governing Financial Management Principles #5 on page 4.*

"Lower licensing fees for medical doctors and osteopathic physicians" – *OLR does not attempt to maintain parity between license fees charged by*

the OLR programs and license fees charged by licensing programs outside the Office.

“The formula for calculating fees is flawed, causing a significant disparity among physicians” –OLR has responsibility for adequately funding programs within it, including the Board of Chiropractic Licensure. See Introduction to Basis Statement which explains how license fees for OLR programs are calculated,page 3.

“While podiatrists’ licensing fees are scheduled to increase, other practitioners’ fees will be decreasing or staying the same.” – As discussed in the Introduction to the Basis Statement, each licensing program within OLR must by law be financially self-sustaining. OLR monitors the revenue stream and expenses of each program on an ongoing basis. When budgetary projections indicate the likelihood of a deficit or an unanticipated increase in revenue, OLR commences rulemaking proceedings to raise or lower fees for the affected programs accordingly. For example, license fees for podiatrists were lowered from \$600 to \$450 in 2007.

“Burden on small business” – Licenses are issued to individuals and fees are established to ensure that the licensing program is adequately funded. There is no intent to disadvantage or burden small businesses.

“Fee increase may deter podiatrists from coming to Maine, may prompt others to retire early, may be cost prohibitive to those with reduced practice hours” - These are personal decisions made by individual licensees. The focus of this rulemaking, however, is generating sufficient revenues to support operation of the licensing program.

“Need for access to quality foot and ankle care” – OLR does not question the need for or value of podiatric medical care for Maine’s citizens. The focus of this rulemaking proceeding, however, is generating sufficient revenues to support operation of the licensing program.

James Whipple

- ◆ “I understand there is a complex formula in Maine for calculating the licensing fee for the various professional groups. It is my opinion this formula is severely flawed because of our small numbers, while others such as chiropractors, who have large numbers pay a significantly lower licensing fee. It is unfair that podiatrists are being penalized for our small numbers and thus charged a much higher licensing fee.

Response: See, Governing Financial Management Principles #9,page 4.

Shannon Meredith, Board Chair

- ◆ “The Podiatry Board has not had any major activities lately, there hasn’t been any increase in hearings, meetings, or paperwork that we members are aware of and furthermore, we have about 83 licensed podiatrists which works out to a total of \$37,350.00 in which to run this Board, which only meets 3-4 times per year.

“I suggest you look internally to see if there is some way to cut costs in this Department. I cannot imagine that it takes more than 10-12 full time employee hours to run this Board which at \$15 per hour which would equal about \$9360.00 per annum for an employee.

“Please let the Governor know that our Board has been in the black for the past 5 years and we do not agree to being singled out for fees in excess of \$500 per year. This is absolutely ridiculous.”

∴ Shannon Meredith, Board Chair

- ◆ “I am in total opposition to this fee increase. I attend the Board meetings regularly and know that Governor Baldacci did an \$8000 SWEEP of our account last year, and now we get a FEE INCREASE? This is absolutely ludicrous.”

Response: See, Summary Response to Comments on pages 25,26.

Douglas O’Heir

- ◆ Podiatrists were treated unfairly over the past 2 decades with respect to investigative expenses by the Attorney General’s office incurred in connection with acts of a single podiatrist about 20 years ago. It was unfair for PFR to charge these expenses to the board, which resulted in an enormous fee increase. Board fees haven’t dropped much since that time. “If our current fee increase is to pay for similar investigations, then I’d say the process is flawed and discriminatory.”

Response: Effective October 25, 2000 OLR increased license fees for podiatrists from \$300 to \$600. The Response to Comments in that rulemaking proceeding acknowledged that the board’s negative cash balance at that time “is largely attributable to legal obligations to the Attorney General for investigation and representation in connection with specifically disciplinary matters in the mid-‘90s.” As noted above, by 2007 the board’s cash position had changed so that OLR was able to lower podiatrists’ license fees from \$600 to \$450. Factors that contributed to the 2000 fee increase are no longer present. However, current revenue projections are not sufficient to cover projected expenditures.

Summary Response to Comments:

The Department has reviewed all comments submitted by licensees of the Board of Podiatric Licensure in response to a proposed fee increase for initial and renewal licenses from \$450 to \$550 annually. We have weighed the concerns of commenters

against the Department's statutory responsibility to ensure OLR licensing programs are adequately funded through license fees to pay the costs associated with the regulatory program. The Legislature has been clear that one dedicated revenue program may not subsidize any other dedicated program. The Introduction to the Basis Statement explains that 'regulatory costs' of each program includes direct costs as well as its allocated portion of shared administrative costs.

Under these circumstances, and to give all licensees and interested parties an opportunity to become fully aware of the licensing program's fiscal requirements, the Department agrees to reduce the size of the proposed fee increase from \$450 to \$500, rather than \$550 annually, beginning with the FY 11 license cycle (6/30/11) and to reassess the fiscal condition of the program to determine the amount of the next cycle's fee in order to avoid a deficit in the future. This alternative proposal is subject to the following caveats:

- 1) There is no doubt that a fee increase of \$50 annually for one license cycle (FY11) will not be sufficient to avoid a deficit in FY 2014. It should be understood that the Department will monitor the revenue and expenditures of the program carefully to determine when the next fee increase will be implemented to avoid a program deficit.
- 2) Licensees and interested parties will now have ample opportunity to explore the continued need for a state licensing program and to discuss alternatives to the existing program, including the possibility of merging with another similar licensing program.
- 3) Transfers to the general fund are accomplished by action of the Legislature in the context of a budget bill. OLR has no control over these transfers and cannot predict when they will occur. FY2003 to date, the Legislature has swept into the general fund total of \$5,475,644 from the accounts of the OLR licensing programs. This included \$21,272 taken from the board's account, as shown in the table below:

Transfers from Board of Licensure of Podiatric Medicine to General Fund								
2003	2004	2005	2006	2007	2008	2009	2010	Total
\$1,785	-	-	\$6,068	-	\$11,535	\$1,884	-	\$21,272

OLR cannot budget for sweeps which unquestionably impacts program revenue. Transfers from the program's account to the general fund do not relieve OLR of its statutory responsibility to keep each licensing program it administers in a positive cash balance for the foreseeable future.

STATE BOARD OF VETERINARY MEDICINE

William Bell on behalf of Maine Veterinary Medical Association

- ◆ The Maine Veterinary Medical Association (“the Association”) objects to the proposed license fee increase for veterinary technicians. Although the Association provides educational opportunities and scholarship support to veterinary technicians, it is difficult for a veterinary practice to provide more than a meager entry-level salary to technicians. The proposed fee increase represents a financial barrier to licensure for technicians. “To a considerable extent, [the Association] has welcomed the Department’s cost-based approach to licensure fees. However, when a small sub-group of a profession, consisting of individuals with very modest earning power, is subject to a very large increase in their licensing fee, we ask that the formulaic approach be set aside or tempered. In this instance, we ask that the increase in veterinary technician license fees be substantially reduced from the proposed \$45 increase for a license which presently costs \$30.”

Summary Response to Comment:

The Department has reviewed the comment above and notes that in September, 1998, the license fee for veterinary technicians was \$50 annually, and was reduced to \$30 annually in August, 2001. It has remained at \$30 annually since 2001.

Under these circumstances, the Department proposes an alternative to the proposed increase. The veterinary technician license fee will be set at \$50 rather than \$75 annually subject to the following caveats:

1) The Legislature has been clear that one dedicated revenue program may not subsidize any other dedicated program. The introduction to this basis statement explains that ‘regulatory costs’ of each program includes direct costs as well as its allocated portion of shared administrative costs.

2) Cash flow projections for this program indicate that beginning in FY2013 the cash balance will begin to drop below the 50% threshold as described in paragraph #3 of the Governing Financial Management Principles on page 3 and will continue to decline.

3) It should be understood that the Department will monitor the revenue and expenditures of the program carefully to determine when the next fee increase will be implemented to avoid the deficit.

All other fee changes relating to the State Board of Veterinary Medicine are adopted as proposed.

* * *

Fee changes that are not specifically discussed in the Response to Comments are adopted as proposed.