

**TITLE 16. DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS**

ORDER OF ADOPTION

Adopt Article 4.6 in Chapter 1 of Division 10 of Title 16 of the California Code of Regulations to read:

ARTICLE 4.6
Unprofessional Conduct

§ 1018.05 Unprofessional Conduct Defined.

In addition to those acts detailed in Business and Professions Code Sections 1680, 1681 and 1682, the following shall also constitute unprofessional conduct:

(a) Failure to provide records requested by the Board within 15 days of the date of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause. For the purposes of this section, "good cause" includes physical inability to access the records in the time allowed due to illness or travel.

(b) Failure to report to the Board, within 30 days, any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(3) Any disciplinary action taken by another professional licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(4) For the purposes of this section, "conviction" means a plea or verdict of guilty or a conviction following a plea of nolo contendere or "no contest" and any conviction that has been set aside or deferred pursuant to Sections 1000 or 1203.4 of the Penal Code, including infractions, misdemeanors, and felonies. "Conviction" does not include traffic infractions with a fine of less than one thousand dollars (\$1,000) unless the infraction involved alcohol or controlled substances.

Note: Authority cited: Section 1614, Business and Professions Code. Reference: Sections 1670, 1670.1, 1680, and 1684.1 Business and Professions Code.

Amend Section 1020 of Division 10 of Title 16 of the California Code of Regulations to read:

§ 1020. Application Review and Criteria for Evaluating Rehabilitation.

(a)(1) In addition to any other requirements for licensure, when considering the approval of an application, the Board or its designee may require an applicant to be examined by one or more physicians and surgeons or psychologists designated by the Board if it appears that the applicant may be unable to safely practice due to mental illness or physical illness affecting competency. An applicant's failure to comply with the examination requirement shall render his or her application incomplete. The report of the examiners shall be made available to the applicant. The Board shall pay the full cost of such examination. If after receiving the report of evaluation, the Board determines that the applicant is unable to safely practice, the Board may deny the application, or may issue the applicant a license that is placed on probation with terms and conditions. If the Board issues a license on probation, the probationary order shall include an order that the license be revoked, stayed and placed on probation for the entire term of probation. In issuing a license on probation, the Board may consider any or all of the following terms and conditions:

(i) Requiring the licensee to obtain additional training or pass an examination upon completion of training, or both. The examination may be written, oral, or both, and may be a practical or clinical examination or both, at the option of the Board;

(ii) Requiring the licensee to submit to a mental or physical examination, or psychotherapy during the term of probation under the terms and conditions provided for in the "Dental Board of California Disciplinary Guidelines With Model Language" revised 08/30/2010, incorporated by reference at Section 1018; or,

(iii) Restricting or limiting the extent, scope or type of practice of the licensee.

(2) If the Board determines, pursuant to proceedings conducted under this subdivision, that there is insufficient evidence to bring an action against the applicant, then all Board records of the proceedings, including the order for the examination, investigative reports, if any, and the report of the physicians and surgeons or psychologists, shall be kept confidential. If no further proceedings are conducted to determine the applicant's fitness to practice during a period of five years from the date of the determination by the Board of the proceedings pursuant to this subdivision, then the Board shall purge and destroy all records pertaining to the proceedings. If new proceedings are instituted during the five-year period against the applicant by the Board, the records, including the report of the physicians and surgeons or psychologists, may be used in the proceedings

and shall be available to the applicant pursuant to the provisions of Section 11507.6 of the Government Code.

~~(a)~~(b) When considering the denial of a license under Section 480 of the Code, the ~~b~~Board in evaluating the rehabilitation of the applicant and his present eligibility for a license, will consider the following criteria:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

~~(b)~~(c) When considering the suspension or revocation of a license on the grounds of conviction of a crime, the ~~b~~Board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) The nature and severity of the act(s) or offense(s);
- (2) Total criminal record;
- (3) The time that has elapsed since commission of the act(s) or offense(s);
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee;
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code;
- (6) Evidence, if any of rehabilitation submitted by the licensee.

~~(c)~~(d) When considering a petition for reinstatement of a license, the ~~b~~Board shall evaluate evidence of rehabilitation, considering those criteria of rehabilitation listed in subsection ~~(b)~~(c).

Note: Authority cited: Sections 482 and 1614, Business and Professions Code.
Reference: Sections 480, 482, and 820, Business and Professions Code; Section 11519, Government Code.