

**TITLE 16. DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
INITIAL STATEMENT OF REASONS**

HEARING DATE: No hearing has been scheduled for this proposed action.

SUBJECT MATTER OF PROPOSED REGULATIONS: Substantial Relationship Criteria and Criteria for Evaluating Rehabilitation

SECTION(S) AFFECTED: California Code of Regulations Title 16, Division 10, Chapter 1, Article 5, Sections 1019 and 1020 (hereafter "Sections 1019 and 1020").

PROBLEM STATEMENT/ANTICIPATED BENEFITS:

The Dental Board of California (Board) regulates approximately 82,000 licensees; consisting of 35,000 dentists (DDS), 30,000 registered dental assistants (RDA), and 1,700 registered dental assistants in extended functions (RDAEF). In addition, the Board has the responsibility for setting the duties and functions of approximately 50,000 unlicensed dental assistants. The Board's highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions. The primary methods by which the Board achieves this goal are: issuing licenses to eligible applicants; investigating complaints against licensees and disciplining licensees for violations of the Dental Practice Act; monitoring licensees whose licenses have been placed on probation; and managing the Diversion Program for licensees whose practice may be impaired due to abuse of dangerous drugs or alcohol.

As required by Assembly Bill (AB) 2138 (Chapter 995, Statutes of 2018), the Board must promulgate regulations by July 1, 2020 to implement, interpret, and make specific Business and Professions Code (BPC) Sections 7.5, 141, 480, 481, 482, 488, 493, 1614, and 1670.1 with respect to the substantial relationship of a crime and rehabilitation criteria.

The Legislature's intent in enacting AB 2138 is to diminish obstacles to licensing for people with convictions who are rehabilitated. (*Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1135.) Accordingly, the Legislature amended BPC Section 480 to limit the Board's ability to use prior convictions or acts when denying licenses.

This regulatory proposal will make changes to existing regulations with respect to the substantial relationship of a crime and rehabilitation criteria to ensure the Board's licensing activities are consistent with the changes brought forth by AB 2138.

A. Criminal Conviction Substantial Relationship

Effective July 1, 2020, the laws governing the Board's existing authority to deny an applicant for a license based upon substantially related criminal conviction(s) will change. The Board may not deny a license to an applicant because the applicant was convicted of a crime, or due to the acts underlying the conviction, if the applicant has a certificate of rehabilitation, was granted clemency, made a showing of rehabilitation, or the conviction was dismissed or expunged.

Absent these circumstances, AB 2138 permits the Board to deny a license when an applicant has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the regulated business or profession.

Effective July 1, 2020, Business and Professions Code Section 481 will require the Board to develop criteria, when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the professions it regulates. Business and Professions Code Section 493 will also require the Board to determine whether a crime is substantially related to the qualifications, functions, or duties of the profession it regulates by using criteria, including the nature and gravity of the offense, the number of years elapsed since the date of the offense, and the nature and duties of the profession. The substantial relationship requirement stems from the due process principle that a statute constitutionally can prohibit an individual from practicing a lawful profession only for reasons related to his or her fitness or competence to practice. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 448; *Moustafa v. Board of Registered Nursing*, supra, 29 Cal.App.5th at p. 1135.)

B. Rehabilitation Criteria

Effective July 1, 2020, Business and Professions Code Section 482 will require the Board to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license. In the context of professional licensing decisions, the courts have said that, "[r]ehabilitation . . . is a state of mind and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058, internal punctuation omitted.)

FACTUAL BASIS/RATIONALE:

BPC Section 1614 authorizes the Board to adopt, amend, and repeal regulations that may be necessary to enable it to carry out the provisions of its practice act. The Legislature's intent in enacting AB 2138 was to reduce licensing and employment barriers for persons who are rehabilitated.

At the Board's February 7-8, 2019, and August 15-16, 2019, meetings, members discussed: (1) how existing law authorizes the Board to deny, suspend, or revoke a license or to take disciplinary action against a licensee if the licensee or applicant has been convicted of a substantially related crime; and (2) how AB 2138 proposed to create new standards for how the Board would be authorized to deny an applicant based upon a crime or act substantially related to dentistry. The amended law would revise and recast existing provisions to authorize the Board to deny based upon a substantially related crime only if certain criteria are met.

Beginning July 1, 2020, the Board may not deny a license to an applicant because the applicant was convicted of a crime, or due to the acts underlying the conviction, if the applicant has a certificate of rehabilitation, was granted clemency, made a showing of rehabilitation, or the conviction was dismissed or expunged. Absent these circumstances, AB 2138 will permit the Board to deny a license when an applicant has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the regulated business or profession, and one of the following conditions exist:

- (1) the conviction occurred within the seven years preceding the application date, except that the seven-year limitation does not apply if the applicant was convicted of: (a) a serious felony under Penal Code Section 1192.7; (b) a registerable offense under Penal Code Section 290, subdivision (d)(2) or (3); or, (c) a felony financial crime that is directly and adversely related to the fiduciary qualifications, functions, or duties of a specified business or profession regulated by the Accountancy Board, Professional Fiduciaries Bureau, Contractors State License Board, Bureau of Security and Investigative Services, and Cemetery and Funeral Bureau;
- (2) the applicant is presently incarcerated for the crime; or,
- (3) the applicant was released from incarceration for the crime within the seven years preceding the application date, except that the seven-year limitation does not apply if the applicant was convicted of: (a) a serious felony under Penal

Code Section 1192.7; (b) a registerable offense under Penal Code Section 290, subdivision (d)(2) or (3); or, (c) a felony financial crime that is directly and adversely related to the fiduciary qualifications, functions, or duties of specified businesses or professions regulated by the Accountancy Board, Professional Fiduciaries Bureau, Contractors State License Board, Bureau of Security and Investigative Services, and Cemetery and Funeral Bureau.

At the Board's February 7-8, 2019, and August 15-16, 2019, meetings, members discussed and approved proposed changes to California Code of Regulations, Title 16, Sections 1019 and 1020, to implement changes to Business and Professions Code Sections 480, 481, and 493. The proposed language incorporates the substantial relationship criteria as set forth in Business and Professions Code Sections 481 and 493, effective July 1, 2020. It also expands the current regulation to include discipline under Business and Professions Code Section 141 because substantially related acts that are the basis for discipline in another jurisdiction may be used to discipline a licensee under this section.

The proposed language adds references to "professional misconduct" as this may be considered a legal basis for denial under Business and Professions Code Section 480, subsection (b), which will become effective July 1, 2020, per AB 2138. This proposal will also update the regulations to more accurately reflect the Board's authority to evaluate rehabilitation evidence for all applicants and licensees where the Board is considering denial, discipline or reinstatement or modification of penalties for a licensee.

Amend Section 1019 – Substantial Relationship Criteria

Specifically, the Board proposes the adoption of the following amendments to Section 1019 for the following reasons:

- (1) Add new subsection; amend subsection (a) to add section 141 of the Business and Professions Code and "professional misconduct" as specified within Business and Professions Code section 480.

This proposal would create a new subsection (a) for better organization and grouping of similar concepts within the regulatory proposal.

Existing law at BPC Section 141 authorizes the Board to discipline a licensee for discipline taken by another state, a federal agency, or a country ("foreign jurisdiction")

for any act “substantially related” to the practice regulated by the California license. In addition, effective July 1, 2020, BPC Section 480 will authorize the Board to deny a license on the basis that the applicant was subject to formal discipline by a licensing Board located in or outside California for “professional misconduct” under specified conditions.

This proposal would add references to BPC Section 141 (discipline by a foreign jurisdiction) and “professional misconduct” to the Board’s substantial relationship criteria regulation to more accurately reflect the Board’s authority to discipline or deny on these bases.

The Board’s existing substantial relationship criteria regulation sets forth what crimes or acts the Board believes are logically connected to a licensee’s fitness or competence to practice the profession or to the qualifications, functions, or duties of the licensee. The current standard specifies that a crime or act is considered substantially related “if to a substantial degree it evidences present or potential unfitness of a person to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare.”

In the Board’s experience, this existing standard would be equally relevant when considering crimes, acts committed by a licensee in a foreign jurisdiction, or professional misconduct committed by an applicant before another licensing board. As a result, these proposed changes are necessary to give proper notice to those affected applicants and licensees of what standard the Board will use in evaluating what professional misconduct or acts the Board considers “substantially related,” and that could be a basis for license denial, suspension, or revocation by this Board pursuant to BPC Sections 141, 480, or 490.

- (2) Delete the sentence “Such crimes or acts shall include, but are not limited to, the following:”

This proposal would repeal this existing language in subsection (a) that introduces the list of specific crimes or acts the Board considers substantially related to the profession. The Board proposes to replace this language with the language described below in section (4).

- (3) Add a new subsection: “(b) In making the substantial relationship determination required under subdivision (a) for a crime, the board shall consider the following criteria:

- (1) The nature and gravity of the offense;
- (2) The number of years elapsed since the date of the offense; and
- (3) The nature and duties of a dentist or dental auxiliary.”

Current law specifies that each board shall develop criteria for determining whether a crime is substantially related to a specific business or profession. AB 2138 mandates that there are three criteria that boards must consider when evaluating whether a crime is “substantially related” to the regulated business or profession. The criteria “shall include all of the following: (1) The nature and gravity of the offense[s]; (2) The number of years elapsed since the date of the offense[s]; and,] (3) The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.” (BPC § 481(b), as added by AB 2138, § 7; see also BPC § 493(b), as added by AB 2138, § 13.).

Since BPC Sections 481 and 493 require the Board to use these three criteria in evaluating whether a crime is substantially related to the qualifications, functions, or duties of the profession, the Board is proposing to amend its current substantial relationship regulation to include all three items listed in subsections (b)(1)-(3). The addition of these criteria to subsection (b) will also permit the Board to provide notice to interested parties of all the Board’s criteria for evaluating whether a crime is substantially related to the qualifications, functions, or duties of the profession in one convenient location.

- (4) Add a new subsection: "(c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, the following:"

This language replaces the existing language described in section (2), above, that introduces the list of specific crimes or acts the Board considers substantially related to the profession. The Board proposes to adopt this language for clarity and readability. The Board also proposes to renumber the list of specific crimes to accurately reflect California Code of Regulations style.

Amend Section 1020 – Application Review and Criteria for Evaluating Rehabilitation

Specifically, the Board proposes the adoption of the following amendments to Section 1020 for the following reasons:

- (1) Amend subsection (b) to add “on the ground that the applicant was convicted of a crime, the board shall consider whether the applicant made a showing of rehabilitation and is presently eligible for a license, if the applicant completed the criminal sentence at issue without a violation of parole or probation.”

Existing law requires boards to develop criteria to evaluate the rehabilitation of an applicant or licensee when considering the denial or discipline of a license based on a conviction and to consider evidence of rehabilitation in making such decisions. (BPC § 482.) However, beginning July 1, 2020, BPC Section 480 will prohibit the Board from denying a license on the basis that the applicant was convicted of a crime (a misdemeanor or felony), or on the basis of the facts underlying a conviction, if the applicant “made a showing of rehabilitation pursuant to Section 482.”

In deciding whether to deny a license based on a conviction, the Board must consider evidence of the applicant’s rehabilitation, pursuant to the process established in the Board’s practice act, or its regulations, and as directed under Business and Professions Code Section 482. (§ 481(c), as added by Statutes 2018, Chapter 995, § 7; see also BPC § 493(b)(2), as added by Statutes 2018, Chapter 995, § 13 [“A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation”].)

The foregoing changes in law necessitate revision of the Board’s regulations that establish criteria for evaluating rehabilitation, when deciding whether to deny, suspend, or revoke a license based on a conviction. Specifically, revisions to Business and Professions Code Section 482 require the Board to consider whether an applicant or licensee “made a showing of rehabilitation,” if the applicant or licensee:

- (a) completed the criminal sentence at issue without a violation of parole or probation; or,
- (b) the board finds, after applying its rehabilitation criteria, that the applicant is rehabilitated.

Current regulations do not explicitly require the Board to consider whether the applicant made a showing of rehabilitation if the individual completed the criminal sentence at issue without a violation of parole or probation. Since Business and Professions Code Section 482 will explicitly require the Board to consider whether under those circumstances the applicant has made a showing of rehabilitation for licensing purposes, the Board is adding this new requirement to this subsection to provide adequate notice to applicants that this new requirement must be considered by the Board prior to considering denial. The addition of this text at the beginning of

this subsection also allows the Board to clearly distinguish between this criteria and other criteria that the Board may use in considering denials based upon other statutory authority.

- (2) Add language to subsection (b) and add new subsections (b)(1)-(5):
“(b) . . . In making this determination, the board shall consider the following criteria:
- (1) The nature and gravity of the crime(s).
 - (2) The length(s) of the applicable parole or probation period(s).
 - (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
 - (4) The terms or conditions of parole or probation and the extent to which they bear on the applicant’s rehabilitation.
 - (5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

This subsection is added to comply with AB 2138 which prohibits the Board from denying a license on the basis that the applicant was convicted of a crime if the applicant made a showing of rehabilitation. BPC Section 482, as amended by AB 2138, will require the Board to determine whether an applicant or licensee has made a showing of rehabilitation if the applicant or licensee completed the applicable criminal sentence without a violation of parole or probation or if the Board finds, after applying its rehabilitation criteria, that an applicant is rehabilitated.

In order to comply with AB 2138, the Board must revise this regulation to establish criteria for evaluating rehabilitation. Subsection (b) will require the Board to consider whether an applicant made a showing of rehabilitation if the person completed the applicable criminal sentence without a parole or probation violation. In this circumstance, the Board would apply defined rehabilitation criteria focused on the applicant’s parole or probation and whether successful completion of parole or probation sufficiently demonstrates the applicant’s rehabilitation as follows:

- The nature and gravity of the crime(s). This change is necessary because this is the offense against which the applicant’s rehabilitative efforts will be evaluated.
- The length of the applicable parole or probation. This change is necessary because the length of time the applicant served parole or probation without a violation is relevant to whether the applicant is rehabilitated and will comply with licensure requirements in the future.

- The extent to which the parole or probation period was shortened or lengthened and the reason(s) for the modification. This change is necessary because a parole or probation period can be shortened or lengthened for good or bad conduct and this may bear on whether the applicant is sufficiently rehabilitated.
- The terms and conditions of parole and probation and the extent to which they bear on the applicant's rehabilitation. This change is necessary because the actual parole or probation terms can inform the Board whether the applicant is rehabilitated.
- The extent to which the terms or conditions of parole or probation were modified and the reason(s) for any modification. This change is necessary because it may demonstrate whether the applicant may be willing to conform to the rules of licensure.

These changes will provide transparency and clarity to applicants who have completed their criminal sentence without a violation of parole or probation. Providing the defined list of rehabilitation criteria will help applicants understand the facts and documents to present to the Board to demonstrate their rehabilitation.

- (3) Delete from subsection (b) “, the Board, in evaluating the rehabilitation of the applicant and his or her present eligibility for a license, will consider the following criteria:”

For greater readability of the regulation and to accommodate further amendments to this section, the Board proposes to delete this existing text. This language is also redundant of language in new subsection (b).

- (4) Add a new subsection: “(c) If subdivision (b) is inapplicable, or the board determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (b), the board shall apply the following criteria in evaluating an applicant’s rehabilitation. The board shall find that the applicant made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the board finds that the applicant is rehabilitated:”

In addition to the authority to deny based upon criminal convictions, in deciding whether to deny a license, the Board will be authorized to deny a license based upon professional misconduct (BPC § 480(b), as added by AB 2138 § 4), and will retain authority to deny based upon unprofessional conduct grounds as defined in Business and Professions Code Section 1670.1. As a result, the Board’s rehabilitation criteria

must also include consideration of rehabilitation evidence for other types of conduct, other than criminal convictions, that may constitute grounds for denial.

In addition to considering rehabilitation when an applicant completes a criminal sentence without a violation of probation or parole, AB 2138 requires the Board to consider whether an applicant made a showing of rehabilitation, if the Board finds, in applying its rehabilitation criteria, that the applicant is rehabilitated. (BPC § 482(b), operative July 1, 2020.) This proposal would permit the Board to consider its existing rehabilitation criteria in evaluating whether an applicant made a showing of rehabilitation when either the grounds for denial do not involve a crime, or the showing of rehabilitation was not made under subsection (b).

In the Board's experience, these existing standards will continue to be useful when considering denials based upon crimes, unprofessional conduct, or professional misconduct committed by an applicant before another licensing board. These standards are needed to provide the Board with a fair, balanced, and thoughtful approach to evaluating whether sufficient rehabilitative efforts have been made to satisfy the Board that the applicant is presently eligible for a license. As a result, these proposed changes are necessary to give the Board discretion to analyze rehabilitation evidence using these criteria when considering a denial, and to give proper notice to those affected applicants of what standards the Board will use in evaluating whether a "showing of rehabilitation" has been made.

(5) In subsection (c)(1), delete the word "severity" and insert the word "gravity".

This change is made to add consistency with other parts of the regulation and is not otherwise a substantive change.

(6) In subsection (c)(2) insert the words "or crime(s)" and delete "which could also be considered as grounds for denial".

This proposal would add the word "crime(s)" to more accurately identify the criminal conduct that would be the legal basis for the Board's discipline or petition decision. In addition, the phrase "which could also be considered as grounds for denial" is being deleted as unnecessary surplusage.

- (7) In subsection (c)(3), delete the word “subdivision” and insert “paragraph”.

This non-substantive change more accurately reflects the organization of this subsection.

- (8) In subsection (c)(4), delete the phrase “The extent to which” and insert “Whether”.

This non-substantive change is made for clarity and readability.

- (9) Add new subsection (c)(5): “The criteria in subdivision (b)(1)-(5), as applicable.” and renumber existing subsection (c)(5) as (c)(6).

This proposal would add authority to consider the rehabilitation criteria that the Board is proposing for licensees who have completed parole or probation without further violation in subsection (b)(1)-(5) to the criteria in subsection (c), where appropriate. This will allow the Board greater discretion and further opportunities to assess whether a licensee who has not made a showing under subsection (b) can make a showing using the criteria in both subsections. In addition, allowing the Board to use the same criteria for criminal convictions furthers the public policy objectives of AB 2138 in requiring the Board to use new criteria that would allow more opportunities for all applicants or licensees to make a showing of rehabilitation.

- (10) Renumber current subsection (c) as subsection (d), and to add “shall consider whether the licensee made a showing of rehabilitation and is presently eligible for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation.”

This proposal would renumber this subsection for better organization and grouping of similar concepts within the regulatory proposal.

Existing law requires boards to develop criteria to evaluate the rehabilitation of a licensee when considering the discipline of a license based on a conviction, and to consider evidence of rehabilitation in making such decisions. (BPC § 482.) In deciding whether to discipline a license based on a conviction, the Board must consider evidence of the licensee’s rehabilitation, pursuant to the process established in the Board’s practice act, or its regulations, and as directed under Business and Professions Code Section 482.

However, beginning July 1, 2020, BPC Section 482(b) will require the Board to consider whether an applicant or licensee “made a showing of rehabilitation,” if the applicant or licensee completed the criminal sentence at issue without a violation of parole or probation, or the Board finds, in applying its rehabilitation criteria, that the applicant is rehabilitated. (BPC § 482(b), as added by Statutes 2018, Chapter 995, § 9.)

The foregoing changes in law necessitate revision to the Board’s regulations that establish criteria for evaluating rehabilitation, when deciding whether to suspend, or revoke a license based on a conviction.

Current regulations do not explicitly require the Board to consider whether a licensee made a showing of rehabilitation if the individual completed the criminal sentence at issue without a violation of parole or probation. Since BPC Section 482 will explicitly require the Board to consider whether, under those circumstances, the licensee has made a showing of rehabilitation when considering suspension or revocation of a license (discipline) and to ensure uniformity in how the Board evaluates applicants and licensees, the Board is adding this new requirement to this section to provide adequate notice to licensees that this new requirement must be considered by the Board prior to considering discipline and fitness for a license. The addition of this text at the beginning of this section also allows the Board to clearly distinguish between this criteria and other criteria that the Board may use in considering discipline based upon other statutory authority.

- (11) Delete from subsection (d) “in evaluating the rehabilitation of such person and his present eligibility for a license will”

For greater readability of the regulation and to accommodate further amendments to this section, the Board proposes to delete this existing text.

- (12) Add to new subsection (d):
“In making this determination, the board shall [consider the following criteria:]
(1) the nature and gravity of the crime(s).
(2) the length(s) of the applicable parole or probation period(s).
(3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
(4) The terms or conditions of parole or probation and the extent to which they bear on the applicant’s rehabilitation.

(5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.”

This subsection is also amended to comply with AB 2138 which requires the Board to develop criteria to evaluate the rehabilitation of a person when considering the suspension or revocation of a license and to establish uniformity in how the Board evaluates applicants and licensees. BPC section 482, as amended by AB 2138, will require the Board to determine whether an applicant or licensee has made a showing of rehabilitation if the applicant or licensee completed the applicable criminal sentence without a violation of parole or probation or if the Board finds, after applying its rehabilitation criteria, that an applicant is rehabilitated.

Current regulations establish criteria for rehabilitation for suspensions and revocations. The Legislature’s intent in enacting AB 2138 was to reduce licensing and employment barriers for persons who are rehabilitated. In order to create a consistent standard, the Board chose to make this subsection consistent with the criteria used to evaluate the rehabilitation of an applicant when considering the denial or reinstatement of a license. This subsection will require the Board to consider whether a licensee made a showing of rehabilitation if the person completed the applicable criminal sentence without a parole or probation violation. In this circumstance, the Board would apply defined rehabilitation criteria focused on the licensee’s parole or probation and whether successful completion of parole or probation sufficiently demonstrates the licensee’s rehabilitation as follows:

- The nature and gravity of the crime(s). This change is necessary because this is the offense against which the licensee’s rehabilitative efforts will be evaluated.
- The length of the applicable parole or probation. This change is necessary because the length of time the licensee served parole or probation without a violation is relevant to whether the licensee is rehabilitated and will comply with licensure requirements in the future.
- The extent to which the parole or probation period was shortened or lengthened and the reason(s) for the modification. This change is necessary because a parole or probation period can be shortened or lengthened for good or bad conduct and this may bear on whether the licensee is sufficiently rehabilitated.
- The terms and conditions of parole and probation and the extent to which they bear on the licensee’s rehabilitation. This change is necessary because the actual parole or probation terms can inform the Board whether the licensee is rehabilitated.

- The extent to which the terms or conditions of parole or probation were modified and the reason(s) for any modification. This change is necessary because it may demonstrate whether the licensee may be willing to conform to the rules of licensure.

These changes will provide transparency and clarity to licensees who have completed their criminal sentence without a violation of parole or probation. Providing the defined list of rehabilitation criteria will help licensees understand the information that will be used by the Board to determine rehabilitation.

(13) Add a new subsection “(e) If subdivision (d) is inapplicable, or the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivision (d), the board shall apply the following criteria in evaluating a licensee’s rehabilitation. The board shall find that the licensee made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the board finds that the licensee is rehabilitated.”

In addition to the authority to discipline based upon criminal convictions, the Board will retain authority to discipline based upon substantially related acts in a foreign jurisdiction as set forth in BPC Section 141, and on unprofessional conduct grounds as defined in BPC Section 1670.1. As a result, the Board’s rehabilitation criteria must also include consideration of rehabilitation evidence for other types of conduct, other than criminal convictions, that may constitute grounds for discipline.

In addition to considering rehabilitation when a licensee completes a criminal sentence without a violation of probation or parole, AB 2138 requires the Board to consider whether an applicant or licensee made a showing of rehabilitation, if the Board finds, in applying its rehabilitation criteria, that the applicant is rehabilitated. (Business and Professions Code Section 482(b)(2), operative July 1, 2020.) This proposal would permit the Board to consider its current rehabilitation criteria in evaluating whether a licensee made a showing of rehabilitation when either the grounds for discipline do not involve a crime, or the showing of rehabilitation was not made under subsection (d) of this section.

In the Board’s experience, these existing standards will continue to be useful when considering discipline based upon crimes, unprofessional conduct, or substantially related acts committed by a licensee before a foreign licensing body. These standards are needed to provide the Board with a fair, balanced, and thoughtful approach to

evaluating whether sufficient rehabilitative efforts have been made to satisfy the Board that the licensee is presently fit for a license. As a result, these proposed changes are necessary to give the Board discretion to analyze rehabilitation evidence using these criteria when considering discipline, and to give proper notice to those affected licensees of what standards the Board will use in evaluating whether a “showing of rehabilitation” has been made.

(14) In subsection (e)(1), delete the word “severity” and insert the word “gravity”.

This change is made to add consistency with other parts of the regulation.

(15) Amend subsections (e)(1) and (e)(3) to delete “offense(s)” and add “crime(s)”.

This proposal would strike the word “offense(s)” from the existing regulation and replace it with “crime(s)” to more accurately identify the criminal conduct that would be the legal basis for the Board’s discipline or petition decision. This will help avoid applicant or licensee confusion regarding what “offense(s)” might mean and what might be considered in evaluating a petition applicant’s or licensee’s showing of rehabilitation.

(16) In subsection (e)(5), delete the word “expungement” and insert the word “dismissal”.

This proposal would delete a reference to “expungement” in this subsection and replace it with the word “dismissal.” The Board determined that the language should be updated to reflect more accurately the actions that a court could take under Section 1203.4 of the Penal Code. Under this provision, a criminal defendant may “petition the court to withdraw his or her plea of guilty or nolo contendere and enter a plea of not guilty; or, if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusatory pleading against the defendant...”

The word “expungement” would be deleted and replaced with the word “dismissal.” This change is necessary to more accurately describe to affected parties the actions that a criminal court could take under Penal Code Section 1203.4, and to help avoid licensee or petitioner confusion regarding what evidence the Board might consider in evaluating rehabilitation.

- (17) Add subsection (e)(6): “The criteria in subdivision (d)(1)-(5), as applicable,” and renumber existing subsection (e)(6) as (e)(7).”

This proposal would add authority to consider the rehabilitation criteria that the Board is proposing for licensees who have completed parole or probation without further violation in subsection (d)(1)-(5) to the criteria in subsection (e), where appropriate. This will allow the Board greater discretion and further opportunities to assess whether a licensee who has not made a showing under subsection (d) can make a showing using the criteria in both subsections. Also, allowing the Board to use the same criteria for criminal convictions furthers the public policy objectives of AB 2138 in requiring the Board to use new criteria that would allow more opportunities for all applicants or licensees to make a showing of rehabilitation.

- (18) Renumber existing subsection (d) as subsection (f) and correct the cross-reference from subsection (c) to subsection (e).

This change is made for readability, clarity, and to correct the numbering based on the other changes described above.

UNDERLYING DATA:

1. February 7-8, 2019, Dental Board Meeting Minutes.
2. August 15-16, 2019, Dental Board Meeting Minutes Excerpt, Agenda Item 20(a).
3. AB 2138 (Chiu), Chapter 995 of the Statutes of 2018.

BUSINESS IMPACT:

The Board has made the initial determination that the proposed regulation would not have a significant, statewide adverse economic impact directly affecting business, including the inability of California businesses to compete with businesses in other States because the regulations pertain to the Board’s enforcement of the Dental Practice Act and its regulations. This determination is based on the fact that the proposal only affects persons who have previous criminal offenses on their record. For example, the application for licensure of a person with a prior conviction or criminal record may be denied.

A business owned by a licensee that will potentially employ persons with a prior conviction or criminal record may be impacted, as these applications will no longer be disqualified because of AB 2138. This may open the pool of applicants, allowing

businesses a greater selection of candidates to hire. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore, the number or percentage of businesses that may be impacted cannot be predicted.

Fiscal Impact on Individuals

This proposal would not have a fiscal impact on dentists or dental auxiliaries seeking licensure or renewal. The only costs associated are the costs associated with completing the application, which would occur regardless of this regulatory proposal, and should be minimal, thereby not having a significant fiscal impact.

Fiscal Impact on the Board

This regulatory proposal will not have a fiscal impact on the Board because this rulemaking applies to the licensing process as it applies to those with prior criminal convictions. This regulatory proposal may increase the number of licensees; therefore, the impact cannot be identified at this time.

ECONOMIC IMPACT ASSESSMENT:

This regulatory proposal will have the following effects:

- It may have impacts on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the state of California. Specifically, the proposal may create jobs, new businesses, and expand businesses to the extent that potential licensees were not able to apply previously because of license barriers and now can.
- It will not create new business or eliminate existing businesses within the State of California because the regulation pertains to the application process for initial licensure and renewal.
- It will not affect the expansion of businesses currently doing business within the state of California because the regulations are aimed at reducing barriers to licensure and make it easier for license applicants and licensees with criminal histories or licensure discipline to obtain and maintain licensure.
- This regulatory proposal does not affect the health and welfare of California residents because the proposed regulation pertains to the Board's licensing process.

- This regulatory proposal does not affect worker safety because the regulations pertain to the Board's licensing process.
- This regulatory proposal does not affect the state's environment because the regulations pertain to the Board's licensing process, and this proposal is not relevant to the State's environment.

The Board anticipates no more than one initial RDA or RDAEF license will be approved per year as a result of the proposed regulations.

Any workload and costs to process the initial and renewal applications will likely be absorbed within existing resources. The Board further anticipates any enforcement-related workload and costs to be minor and absorbable within existing resources.

The Board estimates minimal increased license fee revenue of no more than \$120 per year for initial licenses and no more than \$1,000 per year resulting from the proposed regulations for both initial licenses and biennial renewals on an ongoing basis.

The Board anticipates costs to implement AB 2138, the legislation upon which this regulatory proposal is based, would include workload to obtain criminal history information either from the applicant directly or by obtaining the information from county courthouses. Staff will be required to contact the counties for this information, as well as paying any associated costs for such documents.

The Board anticipates costs of \$110,000 in 2020-21 and \$102,000 annually thereafter to fund 1.0 Office Technician position to help to implement the provisions of AB 2138. As a result, the Board may be required to request additional resources through the annual budget process for additional staff to accommodate increased workload resulting from enactment of laws affecting the compliance, review, and investigations of applicants' and licensees' fitness or eligibility for licensure.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

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

CONSIDERATION OF ALTERNATIVES:

Alternative No. 1: Do not seek a regulatory change.

Rejected: The Board's highest priority is the protection of the public while exercising its licensing, regulatory, and disciplinary functions. These proposed regulatory changes are mandated by statute, and the Board must complete this regulatory proposal to be in effect by July 1, 2020.