

**NOTICE OF TELECONFERENCE
ENFORCEMENT COMMITTEE MEETING**

April 19, 2019

1:30 p.m. until completion of business

One or more Committee Members will participate in this Meeting at the teleconference sites listed below. Each teleconference location is accessible to the public and the public will be given an opportunity to address the Enforcement Committee at each teleconference location. The public teleconference sites for this meeting are as follows:

Teleconference Meeting Locations:

Board of Chiropractic Examiners

901 P Street, Suite 142A
Sacramento, CA 95814
(916) 263-5355

Sergio Azzolino, D.C., Chair

Azzolino Chiropractic Neurology &
Integrative Wellness
1545 Broadway Street., Suite 1A
San Francisco, CA 94109
(415) 563-3800

David Paris, D.C.

VA Health Administration in Redding
760 Cypress Avenue,
Redding, CA 96001
(530) 244-8806

Frank Ruffino, Public Member

Board of Chiropractic Examiners
901 P Street, Suite 142A
Sacramento, CA 95814
(916) 263-5355

AGENDA

- 1. Call to Order**
- 2. Approval of Minutes**
October 10, 2018
- 3. Review, Discussion and Possible Action on the Election of Committee Chair**
- 4. Review, Discussion and Possible Action regarding the Expert Witness Program**
- 5. Review, Discussion and Possible Action on the manner in which Enforcement Committee Statistical Information is presented at Board meetings.**
- 6. Review, Discussion and Possible Action regarding Chapter 570, Statutes of 2018 (SB 1448 – Probation Status: Disclosure)**

7. Review, Discussion and Possible Action regarding Chapter 995, Statutes of 2018 (AB 2138 – Denial of Application: Revocation or Suspension Licensure: Criminal Conviction)

8. Public Comment

Note: The Committee may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda of a future meeting. [Government Code Sections 11125, 122507(a).] Public comment is encouraged; however, if time constraints mandate, comments may be limited at the discretion of the Chair.

9. Future Agenda Items; Items not on the Agenda

Note: The Board may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda of a future meeting. [Government Code Sections 11125.]

10. Adjournment

Meetings of the Board of Chiropractic Examiners' Committee are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. Public comments will be taken on agenda items at the time the specific item is raised. The Board's Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

The meeting facilities are accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting the Board at (916) 263-5355 ext. 5362 or e-mail chiro.info@dca.ca.gov or send a written request to the Board of Chiropractic Examiners, 901 P Street, Suite 142A, Sacramento, CA 95814. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.



Agenda Item 2
April 19, 2019

Approval of Minutes

Purpose of the item

The Committee will review and approve the minutes of the previous Committee meeting.

Action(s) requested

The Committee will be asked to make a motion to approve the October 10th, 2018, Committee meeting minutes.

Background

N/A

Recommendation(s)

N/A

Next Step

N/A

Attachment(s)

- Committee meeting minutes from October 10, 2018.



**Board of Chiropractic Examiners
TELECONFERENCE MEETING MINUTES
Enforcement Committee
October 10, 2018**

Teleconference Meeting Locations:

901 P Street, Suite 142A
Sacramento, CA 95814
(916) 263-5355
(Board Staff)

Sergio Azzolino, D.C., Chair
Azzolino Chiropractic Neurology
& Integrative Wellness
1545 Broadway St., Suite 1A
San Francisco, CA 94109
(415) 563-3800

Frank Ruffino, Public Member
Rancho San Diego Branch Library
1555 Via Rancho San Diego
El Cajon, CA 92019
(619) 660-5370

Committee Members Present

Sergio Azzolino, D.C., Chair
Frank Ruffino, Public Member

Staff Present

Marcus McCarther, Assistant Executive Officer
Andreia McMillen, Policy Analyst
Kenneth Swenson, Attorney III

Call to Order

Dr. Azzolino called the meeting to order at 12:32 p.m.

Roll Call

Mr. Ruffino called the roll. All Committee Members were present at the locations listed on the agenda.

Approval of Minutes

MOTION: DR. AZZOLINO MOVED TO APPROVE THE MINUTES OF THE FEBRUARY 8, 2018 AND MAY 31, 2018 MEETINGS.

VOTE (1-0) (DR. AZZOLINO – AYE, MR. RUFFINO – ABSTAIN)

DISCUSSION:

As a recently appointed member of the Enforcement Committee, Mr. Ruffino stated that he would like to abstain from approving the minutes because he did not participate in the aforementioned meetings.

Dr. Azzolino approved the minutes of the February 8, 2018 and May 31, 2018 Enforcement Committee meetings.

Review, Discussion and Possible Action regarding the Standardized Training and Evaluation of Subject Matter Experts

Mr. McCarther referred to the 1-page document enumerating expert witness qualifications and explained the purpose of this document is to inform applicants of minimum criteria required by the Board's Enforcement Expert Witness Program. He asked whether the requirements listed in the document are suitable.

Dr. Azzolino and Mr. Ruffino had no objections.

Mr. McCarther stated that staff made changes to the Expert Witness Application and will propose recommendations for consideration during this meeting.

Mr. McCarther referred to *Section 1 – Applicant Information* of the application and noted that recent changes capture various types of practice settings such as private, multi-disciplinary and hospital.

Dr. Azzolino questioned the necessity to include hospitals under Section 1. He explained that it is not typical for licensees to practice chiropractic at hospitals in California.

Mr. McCarther clarified that there are some licensees practicing at VA hospitals.

Dr. Azzolino stated that, in addition to including multi-disciplinary settings, it would be beneficial to also add group practices as they are specific to the integration of certain practices such as MD-DC groups.

Mr. McCarther agreed with the recommendation.

M. McCarther referred to *Section 2 – Professional Qualifications* and inquired whether the Committee would have any discretion in the evaluation of applicants who may not necessarily meet the minimum monthly practice hour requirement but exceed the minimum year requirement of licensed professional experience.

Mr. Swenson clarified that the program's guidelines are not regulations and the qualifications of an expert can be determined on a case by case basis. The Board is not bound by the content in the expert witness program description.

Mr. McCarther inquired if the Committee had any objections regarding the following question: "Have you had disciplinary action against your Qualified Medical Evaluator appointment?"

Dr. Azzolino and Mr. Ruffino had no objections.

Mr. McCarther referred to *Section 3 – Court Expert Witness Experience* and stated that staff made revisions to include the appropriate terminology for an expert testifying in court as a retained witness and not as treating provider.

Dr. Azzolino and Mr. Ruffino had no objections.

Mr. McCarther referred to *Section 5 – Academic Appointments* and inquired if the Committee found the following question suitable: “Have you had disciplinary action against your academic appointment?”.

Dr. Azzolino and Mr. Ruffino had no objections.

Mr. McCarther referred to *Section 6 – Peer Reviewed Publications* and explained that staff revised the following requirement “Please list all published peer reviewed journals which you have written”.

Dr. Azzolino stated that it would be appropriate to state “Please list all articles and/or peer reviewed journals you have authorship in”.

Mr. McCarther referred to *Section 7 – Disciplinary Information* and inquired if the Committee had any reservations about the disciplinary questions in this section.

Dr. Azzolino and Mr. Ruffino had no objections.

Mr. McCarther referred to *Section 8 – Personal Summary/Writing Sample* and shared that a statement of qualifications requirement has been added to this section.

Additionally, he suggested including the following questions: “Why do you want to be an Expert Witness for the California Board of Chiropractic Examiners? How does your experience qualify you to serve as an Expert for the Board?” Mr. McCarther explained that these questions allow applicants to demonstrate their knowledge, highlight pertinent professional experience and showcase their writing skills.

Mr. McCarther inquired if the questions help capture an applicant’s ability to demonstrate effective writing.

Dr. Azzolino and Mr. Frank agreed with Mr. McCarther’s recommendation.

Mr. Swenson suggested that it would be clear if the questions are numbered so they can be addressed in the same 1-page typed document.

Mr. McCarther referred to *Section 9 – Professional References* and explained that it would be appropriate for applicants to identify either a medical or legal contact as opposed to relying on a personal reference. He added that the Committee will be able to make informed decisions based on professional references.

Mr. McCarther inquired if the Committee had any objections regarding the requirement of professional references.

Dr. Azzolino and Mr. Ruffino had no objections.

**MOTION: DR. AZZOLINO MOVED TO APPROVE THE CHANGES TO THE ENFORCEMENT
EXPERT WITNESS APPLICATION AND THE 1-PAGE DOCUMENT ENUMERATING
QUALIFICATION REQUIREMENTS AS PER DISCUSSION.
SECOND: MR. RUFFINO SECONDED THE MOTION.
VOTE: 2-0 (DR. AZZOLINO – AYE, MR. RUFFINO – AYE)
MOTION CARRIED**

Public Comments for Items not on the Agenda

N/A

Future Agenda Items

Mr. Swenson suggested discussing Assembly Bill 2138 (Low, Licensing Boards: Denial of Application: Revocation or Suspension Licensure: Criminal Conviction) at a future meeting.

Adjournment

Mr. McCarther adjourned this meeting at 12:55 p.m.



Agenda Item 3
April 19, 2019

Review, Discussion and Possible Action on the Election of Committee Chair

Purpose of the item

The Committee will review the Board Member Administrative Procedure Manual (BMAPM) and discuss the appointment of Committee Chairs.

Action(s) requested

N/A

Background

Annually, the Board completes a comprehensive review of the BMAPM. The BMAPM was created to serve as a reference guide regarding the functions of the Board and its committees, roles of Board members and general information on operating procedures, administration and staff policies.

Following the August 9th, 2018 Board meeting, the Board completed a comprehensive review of the BMAPM and approved revisions to the section on Committee Appointments referring to the selection of Committee Chairs.

Recommendation(s)

N/A

Next Step

N/A

Attachment(s)

- Board Member Administrative Procedure Manual

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

Committee Appointments (Board Policy)

The composition of the committees ~~and the appointment of the Members~~ shall be determined by the Board Chair in consultation with the Vice Chair and the EO. The Chair should attempt to refrain from serving on multiple committees unless no other Board Member is available to serve.

Committee members shall appoint the Chair of their respective committee. If a disagreement arises, the Committee members shall consult with the Board Chair, the Vice Chair and the EO.

All conversations must be consistent with Bagley Keene Open Meeting Act restrictions which mandate that no more than two Board Members can actively discuss Board business.

Standing Committees (Board Policy)

The Board has three standing committees:

1. ~~Licensing, Continuing Education and Public Relations~~ Committee

The Committee proposes policies and standards regarding chiropractic colleges, doctors of chiropractic, satellite offices, corporation registration, and continuing education providers and courses. ~~The Committee also develops strategies to communicate with the public through various forms of media.~~

2. Enforcement and Scope of Practice Committee

The Committee proposes regulations, policies, and standards to ensure compliance with chiropractic law and regulations. The Committee continuously seeks ways to improve the Board's enforcement activities.

3. Government and Public Affairs Committee ~~and Strategic Planning~~ Committee

The Committee proposes and reviews policies, procedures, to address audit and sunset review deficiencies.

The Committee works directly with the ~~Executive Officer~~ EO and staff to monitor budget expenditures, trends, and the contingent fund levels.

~~The Committee shall monitor individual line item expenditure and look for anomalies with a three-year pattern for purposes of preparing a budget change proposal to correct either an under or over expenditure.~~

The committee will review and recommend positions on legislative bills that affect the Board. The guidelines for identifying, tracking, analyzing,

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

taking positions on proposed legislation are set forth in the Board's BGE "Legislative Bill Tracking" manual.

The Committee develops strategies to communicate with the public through various forms of media.

The Committee oversees all administrative issues regarding Board BGE operations.

The Committee develops draft strategic plans and monitors the Board's progress in achieving goal and objectives. The Board must develop a strategic plan in the year of the Joint Sunset Review Oversight Hearings ~~once every three years~~. The Committee must report progress on the strategic plan annually beginning in 2013.

Committee Meetings (Board Policy)

Each of these committees is comprised of at least two Board Members. Staff provides technical and administrative input and support. The committees are an important venue for ensuring that staff and Board Members share information and perspectives in crafting and implementing the Board's objectives and goals.

The Board's committees allow Board Members, the public, stakeholders and staff to discuss and conduct problem solving on issues related to the Board's objective and goals.

The committees are charged with coordinating Board efforts to reach the Board's objective and goals and achieving positive results on its performance measures.

The committee Chair will work with the EO Executive Officer and the ~~Board Chair~~ to set the committee's goals and meeting agendas. The committee Chair coordinates the committee's work, ensures progress toward the Board's priorities, and presents reports at each meeting.

During any public committee meeting, comments from the public are encouraged, and the meetings themselves are frequently public forums on specific issues before a committee. Committees shall comply with the Bagley-Keene Open Meeting Act.



**Agenda Item 4
April 19, 2019**

Review, Discussion and Possible Action regarding the Expert Witness Program

Purpose of the item

The Committee will receive an update on the Board's Enforcement Expert Witness Program.

Action(s) requested

N/A

Background

Following the completion and approval of the 2014-2017 BCE Strategic Plan, the Board developed standards to evaluate expert consultants and defined their responsibilities to establish consistency among expert consultant reports. Following modifications to the Expert Witness Program, questions remained regarding the efficacy of the program.

The program's existing deficiencies in the training materials and the recruitment process have been ongoing topics of discussion at Committee meetings and staff will provide an update on the progress towards meeting the program's objectives.

Recommendation(s)

N/A

Next Step

N/A

Attachment(s)

N/A



**Agenda Item 5
April 19, 2019**

**Review, Discussion and Possible Action on the manner in which Enforcement
Statistical Information is presented at Board meetings**

Purpose of the item

The Committee will review and discuss alternatives to existing enforcement data presented at Board meetings.

Action(s) requested

N/A

Background

Following the completion and approval of the 2017-2019 Strategic Plan, the Board developed action item 2.1.2 directing the Committee to revise enforcement materials, if necessary.

At the July 19, 2017 Committee meeting, members expressed interest in reviewing and discussing enforcement statistical data regularly in an effort to enhance transparency and improve the manner in which enforcement data is presented at Board meetings.

The Committee will review the existing data and determine if there is a need to present statistical information more effectively and better inform stakeholders and the public of the Board's progress towards meeting its enforcement goals.

Recommendation(s)

N/A

Next Step

N/A

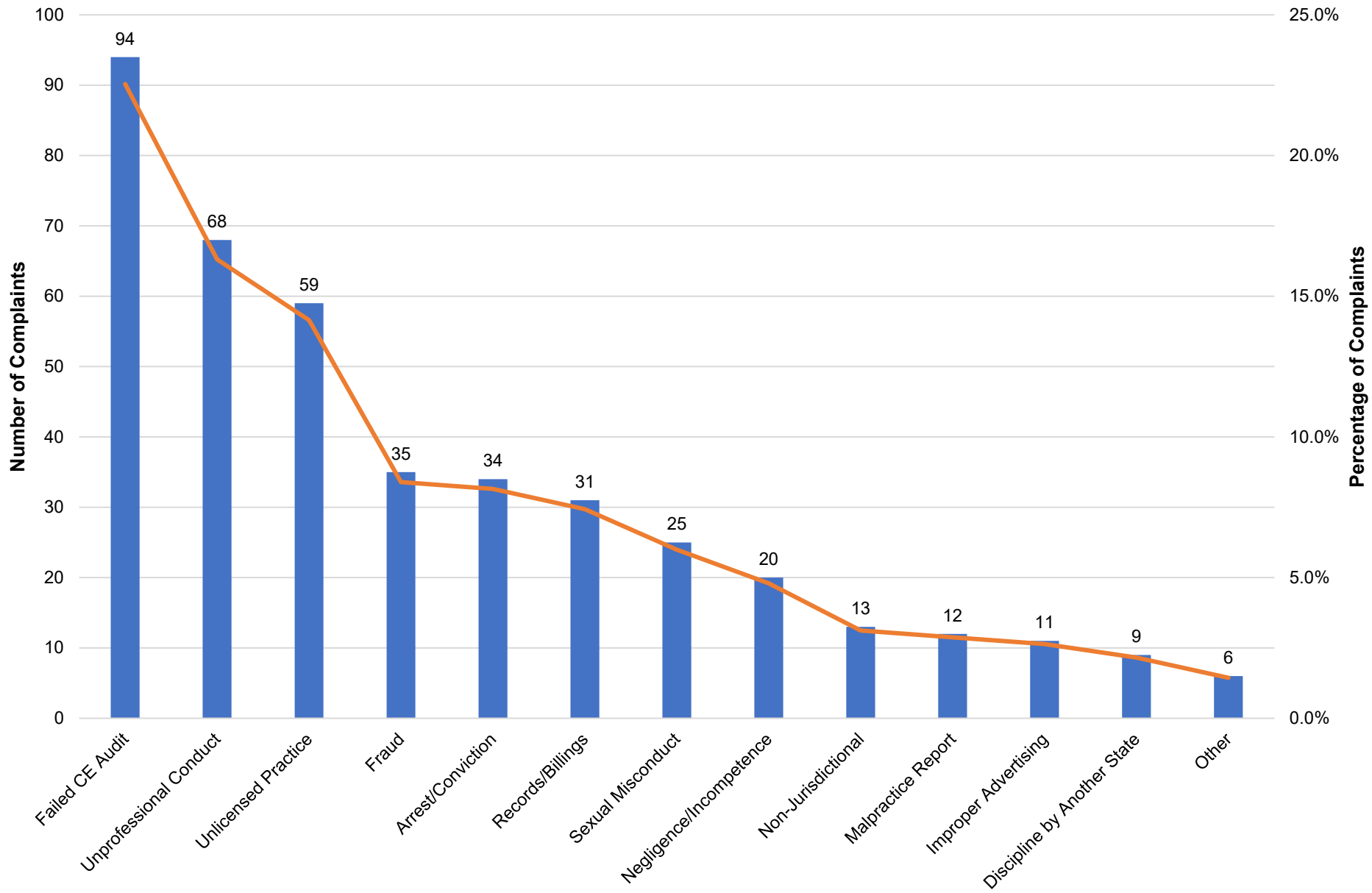
Attachment(s)

- Enforcement Statistics Table (FY 2014/15 – 2018/19)
- Complaints Received Chart (July 1, 2018 – March 31, 2019)
- Accusations Filed Chart (July 1, 2018 – March 31, 2019)
- Enforcement Actions (January – March 2019)

**BOARD OF CHIROPRACTIC EXAMINERS
ENFORCEMENT STATISTICS**

FISCAL YEAR	14/15	15/16	16/17	17/18	18/19*
<u>COMPLAINTS</u>					
Received	557	581	490	479	417
Pending	270	232	183	235	470
Closed with Insufficient Evidence	57	127	79	72	44
Closed with No Violation	100	97	75	75	35
Closed with Merit	220	235	184	214	43
Letter of Admonishment	3	4	4	17	44
Citations Issued	16	17	26	25	24
Total Fines Assessed	\$12,400	\$11,600	\$36,900	\$24,650	\$17,800
<u>ACCUSATIONS</u>					
Filed	22	31	35	34	18
Pending	64	66	65	55	40
Revoked	9	3	10	9	12
Revocation Stayed: Probation	7	13	11	15	10
Rev. Stayed: Suspension and Probation	2	4	5	1	0
Voluntary Surrender of License	8	9	14	9	12
Dismissed/Withdrawn	3	2	6	0	2
<u>STATEMENTS OF ISSUES</u>					
Filed	2	0	1	2	0
Denied	1	0	0	0	0
Probationary License	2	1	0	0	0
Withdrawn	1	0	0	0	0
Granted	1	0	0	0	0
<u>PETITIONS FOR RECONSIDERATION</u>					
Filed	0	1	0	0	0
Granted	0	0	0	0	0
Denied	0	1	0	0	0
<u>PETITIONS FOR REINSTATEMENT OF LICENSE</u>					
Filed	8	7	6	6	3
Granted	1	0	0	0	0
Denied	4	7	3	3	4
<u>PETITIONS FOR EARLY TERMINATION OF PROBATION</u>					
Filed	4	8	3	2	0
Granted	0	1	0	0	0
Denied	5	2	2	5	1
<u>PETITIONS FOR MODIFICATION OF PROBATION</u>					
Filed	2	3	0	1	0
Granted	1	1	0	1	0
Denied	1	0	0	0	0
<u>PETITIONS BY BOARD TO REVOKE PROBATION</u>					
Filed	5	8	5	6	7
Revoked	2	3	10	9	4
<u>PROBATION CASES</u>					
Active	123	104	92	90	85

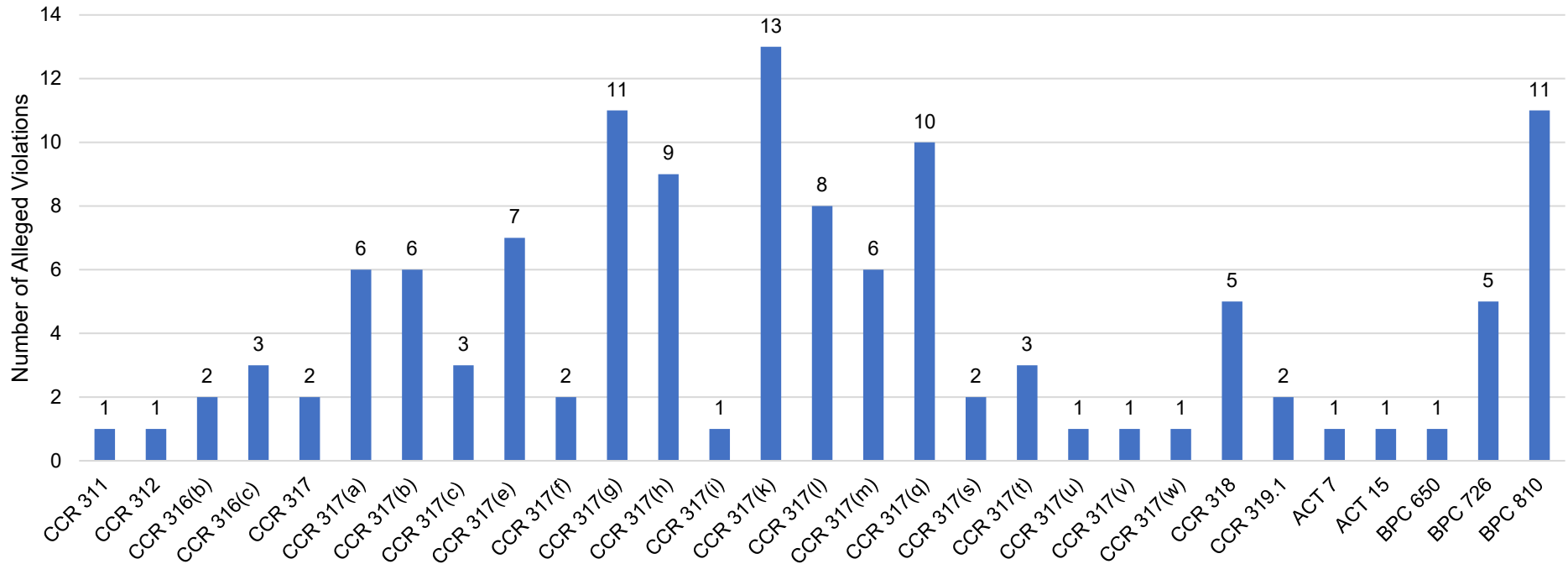
Complaints Received July 1, 2018 - March 31, 2019



Accusations Filed July 1, 2018 - March 31, 2019

Number of Accusations Filed: 18

Total Alleged Violations: 125



Violation Codes/Descriptions

CCR 311 – Advertisements
 CCR 312 – Illegal Practice
 CCR 316(b) – Sexual Misconduct on Premises
 CCR 316(c) – Sexual Misconduct/Relations
 CCR 317 – Unprofessional Conduct
 CCR 317(a) – Gross Negligence
 CCR 317(b) – Repeated Negligent Acts
 CCR 317(c) – Incompetence
 CCR 317(e) – Conduct Endangering Public
 CCR 317(f) – Administer to Oneself Drugs/Alcohol
 CCR 317(g) – Conviction of Crime Related to Chiropractic
 CCR 317(h) – Conviction of Crime Involving Moral Turpitude
 CCR 317(i) – Conviction of Crime Involving Drugs/Alcohol
 CCR 317(k) – Moral Turpitude/Corruption/Etc.
 CCR 317(l) – False Representation

CCR 317(m) – Violation of Act/Regulations
 CCR 317(q) – Fraud/Misrepresentation
 CCR 317(s) – Employment/Use of Cappers or Steerers
 CCR 317(t) – Offer/Receive Compensation for Referral
 CCR 317(u) – Participate in Illegal Referral Service
 CCR 317(v) – Waiving Deductible or Co-Pay
 CCR 317(w) – Fail to Refer Patient to Physician/Surgeon/Etc.
 CCR 318 – Chiropractic Patient Records/Accountable Billing
 CCR 319.1 – Informed Consent
 ACT 7 – Unauthorized Practice of Medicine
 ACT 15 – Noncompliance with and Violations of Act
 BPC 650 – Receipt of Compensation for Referrals
 BPC 726 – Sexual Abuse/Misconduct/Relations
 BPC 810 – Insurance Fraud



JANUARY 2019

ACCUSATIONS FILED

Name and City	License No.	Date Filed	Alleged Violation
Foli, Michael J. Fallbrook, CA	DC 17135	1/3/2019	Sexual misconduct with a patient; committed multiple sexual acts of misconduct with a patient at chiropractic place of business; unprofessional conduct/commission of acts involving moral turpitude and dishonesty; unprofessional conduct/ endangering the health, welfare or safety of patients; unprofessional conduct/gross negligence; unprofessional conduct/ repeated negligent acts.

STATEMENT OF ISSUES

Name and City	License No.	Date Filed	Action	Effective Date	Violations
No Data to Report					

DISCIPLINARY ACTIONS

Name and City	License No.	Action	Effective Date	Violations
Zorich, Thomas J. Roseville, CA	DC 20052	Revoked	1/6/2019	Failure to comply with the Board's probation compliance monitoring program.
Ngo, Anthony LC San Francisco, CA	DC 27497	Stipulated Surrender	1/19/2019	Failure to comply with the terms and conditions of probation; failure to abstain from the use of drugs while on probation with the Board; failure to participate in drug and alcohol testing and positive test results while on probation with the Board.

REINSTATEMENT OF LICENSE

Name and City	License No.	Date Filed	Action	Effective Date	Violations
No Data to Report					

FINAL CITATIONS ISSUED

Name and City	License No.	Fine Amount	Date Issued	Violations
No Data to Report				

PETITION FOR REINSTATEMENT

Name and City	License No.	Revocation Date	Action
Haberman, Arthur J. Temecula, CA	DC 14619	11/7/2003	Petition denied effective 1/27/2019
Martello, Daniel M. San Francisco, CA	DC 17901	6/3/1995	Petition denied effective 1/27/2019

PETITION FOR EARLY TERMINATION OF PROBATION

Name and City	License No.	Probation End Date	Action
No Data to Report			

PETITION FOR MODIFICATION OF PROBATION

Name and City	License No.	Probation End Date	Action
No Data to Report			



FEBRUARY 2019

ACCUSATIONS FILED

Name and City	License No.	Date Filed	Alleged Violation(s)
Darrow, Benjamin Daly City, CA	DC 28884	2/6/2019	Unprofessional conduct; unprofessional conduct: commission of acts involving dishonesty in the course of activities as a license holder; unprofessional conduct: knowingly making or signing false documents; unprofessional conduct: participation in acts of fraud; unprofessional conduct: inaccurate billing; unprofessional conduct: knowing preparation of writings made to support a false insurance claim; insurance fraud; unauthorized practice of medicine.

STATEMENT OF ISSUES

No Data to Report

DISCIPLINARY ACTIONS

Name and City	License No.	Action	Effective Date	Violation(s)
Elchami, Tarek San Diego, CA	DC 27051	Revoked, Stayed, 4 Years' Probation	2/2/2019	Unprofessional conduct: substantially related conviction; unprofessional conduct: conviction of offense involving dishonesty; unprofessional conduct: commission of an act involving dishonesty; unprofessional conduct: knowingly making or signing any document relating to the practice of chiropractic which falsely represents the existence or nonexistence of facts; unprofessional conduct: participation in any act of fraud or misrepresentation; insurance fraud.

DISCIPLINARY ACTIONS (Continued)

Name and City	License No.	Action	Effective Date	Violation(s)
Garcia, Timothy Oxnard, CA	DC 20192	Revoked, Stayed, 3 Years' Probation	2/27/2019	Unprofessional conduct: endangering the health, welfare, or safety of the public; unprofessional conduct: conviction of a crime substantially related to the duties, functions, and qualifications of a chiropractor.
Milman, Michael Los Angeles, CA	DC 30154	Revoked	2/28/2019	Unprofessional conduct: conviction of a substantially related crime; unprofessional conduct: conviction involving moral turpitude, dishonesty, physical violence, or corruption; unprofessional conduct: acts involving moral turpitude, dishonesty, and/or corruption; unprofessional conduct: fraud or misrepresentation; unprofessional conduct: violating any provisions of the Act or board regulations.

FINAL CITATIONS

No Data to Report

LICENSE REINSTATEMENTS

No Data to Report

PETITIONS FOR REINSTATEMENT

No Data to Report

PETITIONS FOR EARLY TERMINATION OF PROBATION

No Data to Report

PETITIONS FOR MODIFICATION OF PROBATION

No Data to Report



MARCH 2019

ACCUSATIONS FILED

Name and City	License No.	Date Filed	Alleged Violation(s)
Poon, Susan Rancho Santa Margarita, CA	DC 22259	3/7/2019	Unprofessional conduct: repeated acts of negligence; unprofessional conduct: incompetence; moral turpitude, dishonesty, corruption; knowingly making or signing any document relating to practice which falsely represents the facts; participation in act of fraud or misrepresentation; entering into agreement to waive deductible or co-payment amount; accountable billings; informed consent; insurance fraud; receipt of compensation for referrals; failure to comply with the terms and conditions of probation.
Rigler, Steven San Diego, CA	DC 17802	3/20/2019	Criminal conviction for conspiracy to commit honest services mail fraud; conviction of offenses/acts involving moral turpitude, dishonesty, or corruption; knowingly making or signing any document which falsely represents the facts; unprofessional conduct: fraud, use of cappers, illegal rebates; unprofessional conduct; unprofessional conduct: gross negligence; unprofessional conduct: repeated negligent acts; unprofessional conduct: inadequate records.

STATEMENT OF ISSUES

No Data to Report

DISCIPLINARY ACTIONS

Name and City	License No.	Action	Effective Date	Violation(s)
Forster, Joseph San Clemente, CA	DC 30638	Revoked	3/10/2019	Failure to comply with the board's probation compliance monitoring program; failure to comply with the tolling provision.

DISCIPLINARY ACTIONS (Continued)

Name and City	License No.	Action	Effective Date	Violation(s)
Nguyen, David Westminster, CA	DC 22241	Stipulated Surrender	3/13/2019	Convicted of crimes substantially related to the qualifications, functions, and duties of a chiropractor; conviction of offenses/acts involving moral turpitude; knowingly making or signing any document which falsely represents the facts; conspiring to violate provisions of the Act; fraud; illegal referral of patients for compensation; insurance fraud.
Nwoga, Ekechi Aiken, SC	DC 30405	Stipulated Surrender	3/21/2019	Failure to comply with the terms and conditions of probation; failure to practice in California.
Sherf, John Sherman Oaks, CA	DC 31222	Stipulated Surrender	3/23/2019	Conviction of a substantially related crime; conviction involving moral turpitude; acts involving moral turpitude; violating and/or abetting violation of the Act; knowingly make/sign any document to falsely represent facts; participation in act of fraud or misrepresentation; failure to obey all laws; failure to submit quarterly reports; failure to pass ethics and boundaries examination; failure to comply with the board's probation monitoring.
Roth, Michael Ventura, CA	DC 16839	Stipulated Surrender	3/24/2019	Unprofessional conduct: moral turpitude and dishonesty; sexual conduct with patients; unprofessional conduct: sexual acts and erotic behavior at place of business; unprofessional conduct: endanger the health, welfare, and safety of patients; unprofessional conduct: violation of Act and board regulations.
Hau, Spencer Cupertino, CA	DC 32692	Stipulated Surrender	3/29/2019	Sexual relations on premises; sexual relations with patient; unprofessional conduct: endangering the health, welfare, or safety of the public; unprofessional conduct.

FINAL CITATIONS

Name and City	License No.	Fine Amount	Date Final	Violation(s)
Sottile, Danielle Tehachapi, CA	DC 22172	\$3,000	3/13/2019	Unprofessional conduct: endangering the public; unprofessional conduct: failure to refer patient to physician.
Orpelli, Aaron Los Angeles, CA	DC 24545	\$1,000	3/16/2019	Patient records: required content; accountable billings; informed consent.
Rothman, Yariv Santa Monica, CA (Two citations issued)	DC 25498	\$500 \$500	3/21/2019 3/21/2019	Patient records: required content; failure to ensure accurate billings. Patient records: required content; failure to ensure accurate billings.

LICENSE REINSTATEMENTS

No Data to Report

PETITIONS FOR REINSTATEMENT

No Data to Report

PETITIONS FOR EARLY TERMINATION OF PROBATION

No Data to Report

PETITIONS FOR MODIFICATION OF PROBATION

No Data to Report



**Agenda Item 6
April 19, 2019**

**Review, Discussion and Possible Action regarding Chapter 570, Statutes of 2018
(SB 1448 – Probation Status: Disclosure)**

Purpose of the item

The Committee will review and discuss draft language to initiate the rulemaking process to implement SB 1448 (Hill) regarding Probation Status: Disclosure.

Action(s) requested

The Committee will be asked to make a motion to approve the language provided in the draft document titled “Probation Status Disclosure”.

Background

Senate Bill (SB) 1448, was signed by Governor Edmund Brown on September 19, 2018, and will become operative July 1, 2019. This legislation requires licensees of the Board of Chiropractic Examiners and various other healing arts programs to make a separate disclosure to their patients if licensees have been placed on probation related to their professional license on or after July 1, 2019.

- **Specifically, SB 1448 requires:**
 - A licensee to provide a disclosure to patients and obtain a signed copy of that disclosure from each patient, the patient’s guardian or health care surrogate prior to their first visit.
- **A licensee shall not be required to provide a disclosure if any of the following applies:**
 - 1. The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.
 - 2. The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.
 - 3. The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.
 - 4. The licensee does not have a direct treatment relationship with the patient.
- **On and after July 1, 2019, the board shall provide the following information with respect to licensees on probation and licensees practicing under probationary licenses in plain view on the licensee’s profile page on the board’s website:**
 - 1. The causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.

2. For probation imposed by an adjudicated decision of the board, the causes for probation stated in the final probationary order.
3. The causes by which the probationary license was imposed.
4. The length of the probation and end date.
5. All practice restrictions placed on the license by the board.

Recommendation(s)

Staff asks the Committee to recommend to the full Board a motion to approve the regulatory language as proposed or with amendments and commence the rulemaking process to add Section 308.1 Probation Status Disclosure pursuant to Probationary Orders Effective July 1, 2019 to the California Code of Regulations (CCR).

Additionally, staff asks the Committee to recommend to the full Board a motion to delegate authority to the Executive Officer to make non-substantive changes to the proposed language in the rulemaking file.

Next Step

N/A

Attachment(s)

- Draft language for CCR Section 308.1 Probation Status Disclosure pursuant to Probationary Orders Effective July 1, 2019.
- Patient Notification of Probation Status form
- Notice to Licensees
- SB 1448 text

Title 16. Board of Chiropractic Examiners

Draft Language for SB 1448

1. **Add Section 308.1 to Article 1 of Division 4 of Title 16 of the California Code of Regulations to read:**

§308.1 Probation Status Disclosure Pursuant to Probationary Orders Effective July 1, 2019

(a) It shall be the duty of every licensee placed upon probation by the board, on or after July 1, 2019, to provide to each patient, the patient's legal guardian or health care surrogate the form entitled "Patient Notification of Probation Status" (Proposed date), which is hereby incorporated, to disclose the following information:

- (1) The licensee's probation status;
- (2) The length of the probation, including the probation end date;
- (3) The term(s) and condition(s) of probation, including all practice restrictions placed upon the licensee by the board;
- (4) The board's telephone number;
- (5) A brief explanation of how the patient can find further information about probationary conditions or causes for probation on the Board's website, on the Licensing Details Page.

(b) Each licensee required to provide a disclosure pursuant to subdivision (a) shall obtain a separate signed copy of the "Patient Notification of Probation Status" form from each patient, the patient's guardian or health care surrogate.

(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if any of the following applies:

- (1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to paragraph (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy
- (2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.
- (3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.
- (4) The licensee does not have a direct treatment relationship with the patient.

(d) On and after July 1, 2019, the board shall provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee's profile page on the board's online license information Internet Web site.

- (1) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.
- (2) For probation imposed by an adjudicated decision of the board the causes for probation stated in the final probationary order.
- (3) For a licensee granted a probationary license, the causes by which the probationary license was imposed.
- (4) The length of the probation and end date.

(5) All practice restrictions placed on the license by the board.

Note: Authority cited: Sections 1000-4(b), Section 1000-10(a), Section 1000-10 (b), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii). Reference: Section 1007, Business and Professions Code.

DRAFT



PATIENT NOTIFICATION OF PROBATION STATUS

The licensed chiropractor, named below, has been placed on probation with the Board of Chiropractic Examiners (Board). Conditions of probation require the licensed chiropractor to notify you of his or her probationary status.

Chiropractor's Name: John Doe License Number: DC -12345

Probationary Period: year(s).

Effective Date Term of Probation: From to .

The following terms and conditions, including practice restriction(s), placed on the licensed chiropractor by the Board may affect your treatment:

- ✓ Dr. Doe D.C. must have a third-party chaperone while consulting, examining and/or treating female patients.

The Section Below is to be Completed by the Patient

- ✓ I acknowledge that the licensed chiropractor has notified me regarding his or her current probationary status, the length of the probation and the end date, and all practice restrictions placed on the licensed chiropractor by the Board.
- ✓ I understand that any additional information regarding the licensed chiropractor's probationary term(s) and condition(s), causes for probation alleged in an Accusation, a Statement of Issues or the legal conclusions of an Administrative Law Judge can be accessed through the Board's website, on the Licensing Details page (<https://www.chiro.ca.gov/licensees/index.shtml>)
- ✓ Please print and sign your name below. If you are the patient's responsible party (legal guardian or health care surrogate), you may print and sign your name on behalf of the patient.

Print Name: _____

Signature: _____ Date: _____

The Section Below is to be Completed by the Licensed Chiropractor

I hereby certify that the information provided is true and complete.

Print Name: _____

Signature: _____



NOTICE TO LICENSEES

DATE

CHIROPRACTOR'S NAME, D.C.

ADDRESS

RE: Senate Bill 1448 – Probation Status Disclosure

Dear Dr. _____,

On September 19, 2018, SB 1448 (*Hill – Healing Arts Licensees: Probation Status: Disclosure*), known as the “Patients Right to Know Act of 2018”, was signed into law and will require specified health care professionals, including licensed chiropractors, who have been placed on probation on or after July 1, 2019 to disclose their probationary status to all patients.

Effective **July 1, 2019**, SB 1448 requires licensees of the Board of Chiropractic Examiners (Board) to provide the following information on a written separate disclosure to patients:

- The licensee's probation status
- The length of the probation, including the probation end date
- The term(s) and condition(s) of probation, including but not limited to all practice restrictions placed on the licensee by the Board
- The Board's telephone number and a brief explanation of how the patient can find further information about probationary conditions or causes for probation on the Board's website, on the Licensing Details Page.

Furthermore, SB 1448 requires licensees to obtain a signed copy of a written disclosure from each patient prior to their first visit.

To assist licensees in complying with the provisions of SB 1448, the Board will develop a Patient Notification form. However, licensees are not required to use the Board's form and may develop their own disclosure form when this law takes effect.

If you have any questions or concerns, my contact information is below.

Sincerely,

NAME

Associate Probation Monitor

Enforcement Unit

(916) 263-5355 ext. xxxx

Name@dca.ca.gov

Enclosure

Senate Bill No. 1448

CHAPTER 570

An act to add Sections 1007, 2228.1, 2228.5, 2459.4, 3663.5, and 4962 to the Business and Professions Code, relating to healing arts.

[Approved by Governor September 19, 2018. Filed with
Secretary of State September 19, 2018.]

legislative counsel's digest

SB 1448, Hill. Healing arts licensees: probation status: disclosure.

Existing law, the Medical Practice Act, establishes the Medical Board of California for the licensing, regulation, and discipline of physicians and surgeons. Existing law establishes the California Board of Podiatric Medicine within the Medical Board of California for the licensing, regulation, and discipline of podiatrists. Existing law, the Osteopathic Act, enacted by an initiative measure, establishes the Osteopathic Medical Board of California for the licensing and regulation of osteopathic physicians and surgeons and requires the Osteopathic Medical Board of California to enforce specified provisions of the Medical Practice Act with respect to its licensees. Existing law, the Naturopathic Doctors Act, establishes the Naturopathic Medicine Committee within the Osteopathic Medical Board of California for the licensing and regulation of naturopathic doctors. Existing law, the Chiropractic Act, enacted by an initiative measure, establishes the State Board of Chiropractic Examiners for the licensing and regulation of chiropractors. Existing law, the Acupuncture Licensure Act, establishes the Acupuncture Board for the licensing and regulation of acupuncturists. Existing law authorizes each of these regulatory entities to discipline its licensee by placing her or him on probation, as specified.

This bill, on and after July 1, 2019, would require the California Board of Podiatric Medicine, the Naturopathic Medicine Committee, the State Board of Chiropractic Examiners, and the Acupuncture Board to require a licensee to provide a separate disclosure, as specified, to a patient or a patient's guardian or health care surrogate before the patient's first visit if the licensee is on probation pursuant to a probationary order made on and after July 1, 2019. The bill, on and after July 1, 2019, would require the Medical Board of California and the Osteopathic Medical Board of California to require a licensee to provide a separate disclosure, as specified, to a patient or a patient's guardian or health care surrogate before the patient's first visit if the licensee is on probation pursuant to a probationary order made on and after July 1, 2019, under specified circumstances. The bill would also require the California Board of Podiatric Medicine, the Naturopathic Medicine Committee, the State Board of Chiropractic Examiners, the Acupuncture Board, the Medical Board of California, and the Osteopathic Medical Board

of California to provide specified information relating to licensees on probation on the regulatory entity's online license information Internet Web site.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known, and may be cited, as the Patient's Right to Know Act of 2018.

SEC. 2. Section 1007 is added to the Business and Professions Code, to read:

1007. (a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the board, the board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's online license information Internet Web site, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019.

(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if any of the following applies:

(1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.

(2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.

(3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

(4) The licensee does not have a direct treatment relationship with the patient.

(d) On and after July 1, 2019, the board shall provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee's profile page on the board's online license information Internet Web site.

(1) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.

(2) For probation imposed by an adjudicated decision of the board, the causes for probation stated in the final probationary order.

- (3) For a licensee granted a probationary license, the causes by which the probationary license was imposed.
- (4) The length of the probation and end date.
- (5) All practice restrictions placed on the license by the board.
- (e) “Board” for purposes of this section means the State Board of Chiropractic Examiners.

SEC. 3. Section 2228.1 is added to the Business and Professions Code, to read:

2228.1. (a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board shall require a licensee to provide a separate disclosure that includes the licensee’s probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the board, the board’s telephone number, and an explanation of how the patient can find further information on the licensee’s probation on the licensee’s profile page on the board’s online license information Internet Web site, to a patient or the patient’s guardian or health care surrogate before the patient’s first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019, in any of the following circumstances:

(1) A final adjudication by the board following an administrative hearing or admitted findings or prima facie showing in a stipulated settlement establishing any of the following:

- (A) The commission of any act of sexual abuse, misconduct, or relations with a patient or client as defined in Section 726 or 729.
- (B) Drug or alcohol abuse directly resulting in harm to patients or the extent that such use impairs the ability of the licensee to practice safely.
- (C) Criminal conviction directly involving harm to patient health.
- (D) Inappropriate prescribing resulting in harm to patients and a probationary period of five years or more.

(2) An accusation or statement of issues alleged that the licensee committed any of the acts described in subparagraphs (A) to (D), inclusive, of paragraph (1), and a stipulated settlement based upon a nolo contendere or other similar compromise that does not include any prima facie showing or admission of guilt or fact but does include an express acknowledgment that the disclosure requirements of this section would serve to protect the public interest.

(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient’s guardian or health care surrogate, a separate, signed copy of that disclosure.

(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if any of the following applies:

- (1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.
- (2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.

(3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

(4) The licensee does not have a direct treatment relationship with the patient.

(d) On and after July 1, 2019, the board shall provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee's profile page on the board's online license information Internet Web site.

(1) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.

(2) For probation imposed by an adjudicated decision of the board, the causes for probation stated in the final probationary order.

(3) For a licensee granted a probationary license, the causes by which the probationary license was imposed.

(4) The length of the probation and end date.

(5) All practice restrictions placed on the license by the board.

(e) Section 2314 shall not apply to this section.

SEC. 4. Section 2228.5 is added to the Business and Professions Code, to read:

2228.5. (a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the board, the board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's online license information Internet Web site, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019.

(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if any of the following applies:

(1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.

(2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.

(3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

(4) The licensee does not have a direct treatment relationship with the patient.

(d) On and after July 1, 2019, the board shall provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee’s profile page on the board’s online license information Internet Web site.

(1) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.

(2) For probation imposed by an adjudicated decision of the board, the causes for probation stated in the final probationary order.

(3) For a licensee granted a probationary license, the causes by which the probationary license was imposed.

(4) The length of the probation and end date.

(5) All practice restrictions placed on the license by the board.

(e) Section 2314 shall not apply to this section.

(f) For purposes of this section:

(1) “Board” means the California Board of Podiatric Medicine.

(2) “Licensee” means a person licensed by the California Board of Podiatric Medicine.

SEC. 5. Section 2459.4 is added to the Business and Professions Code, to read:

2459.4. (a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board shall require a licensee to provide a separate disclosure that includes the licensee’s probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the board, the board’s telephone number, and an explanation of how the patient can find further information on the licensee’s probation on the licensee’s profile page on the board’s online license information Internet Web site, to a patient or the patient’s guardian or health care surrogate before the patient’s first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019, in any of the following circumstances:

(1) A final adjudication by the board following an administrative hearing or admitted findings or prima facie showing in a stipulated settlement establishing any of the following:

(A) The commission of any act of sexual abuse, misconduct, or relations with a patient or client as defined in Section 726 or 729.

(B) Drug or alcohol abuse directly resulting in harm to patients or the extent that such use impairs the ability of the licensee to practice safely.

(C) Criminal conviction directly involving harm to patient health.

(D) Inappropriate prescribing resulting in harm to patients and a probationary period of five years or more.

(2) An accusation or statement of issues alleged that the licensee committed any of the acts described in subparagraphs (A) to (D), inclusive, of paragraph (1), and a stipulated settlement based upon a nolo contendere or other similar compromise that does not include any prima facie showing or admission of guilt or fact but does include an express acknowledgment

that the disclosure requirements of this section would serve to protect the public interest.

(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if any of the following applies:

(1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.

(2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.

(3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

(4) The licensee does not have a direct treatment relationship with the patient.

(d) On and after July 1, 2019, the board shall provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee's profile page on the board's online license information Internet Web site.

(1) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.

(2) For probation imposed by an adjudicated decision of the board, the causes for probation stated in the final probationary order.

(3) For a licensee granted a probationary license, the causes by which the probationary license was imposed.

(4) The length of the probation and end date.

(5) All practice restrictions placed on the license by the board.

(e) A violation of this section shall not be punishable as a crime.

(f) For purposes of this section:

(1) "Board" means the Osteopathic Medical Board of California.

(2) "Licensee" means a person licensed by the Osteopathic Medical Board of California.

SEC. 6. Section 3663.5 is added to the Business and Professions Code, to read:

3663.5. (a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the committee shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the committee, the committee's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the committee's online license information Internet Web site, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary

order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019.

(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if any of the following applies:

(1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.

(2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.

(3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

(4) The licensee does not have a direct treatment relationship with the patient.

(d) On and after July 1, 2019, the committee shall provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee's profile page on the committee's online license information Internet Web site.

(1) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.

(2) For probation imposed by an adjudicated decision of the committee, the causes for probation stated in the final probationary order.

(3) For a licensee granted a probationary license, the causes by which the probationary license was imposed.

(4) The length of the probation and end date.

(5) All practice restrictions placed on the license by the committee.

(e) A violation of this section shall not be punishable as a crime.

SEC. 7. Section 4962 is added to the Business and Professions Code, to read:

4962. (a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the board, the board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's online license information Internet Web site, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019.

(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient’s guardian or health care surrogate, a separate, signed copy of that disclosure.

(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if any of the following applies:

(1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.

(2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.

(3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

(4) The licensee does not have a direct treatment relationship with the patient.

(d) On and after July 1, 2019, the board shall provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee’s profile page on the board’s online license information Internet Web site.

(1) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.

(2) For probation imposed by an adjudicated decision of the board, the causes for probation stated in the final probationary order.

(3) For a licensee granted a probationary license, the causes by which the probationary license was imposed.

(4) The length of the probation and end date.

(5) All practice restrictions placed on the license by the board.

(e) A violation of this section shall not be punishable as a crime.



**Agenda Item 7
April 19, 2019**

**Review, Discussion and Possible Action regarding Chapter 995, Statutes of 2018
(AB 2138 – Denial of Application: Revocation or Suspension Licensure: Criminal
Conviction)**

Purpose of the item

The Committee will review and discuss draft language to initiate the rulemaking process to implement AB 2138 (Low) regarding Licensing Boards: Denial of Application to the denial, revocation or suspension of licensure: Criminal conviction.

Action(s) requested

The Committee will be asked to make a motion to approve the language provided in the drafts titled “Substantial Relationship Criteria” and “Rehabilitation Criteria for Denials and Reinstatements, as well as the proposed language for Rehabilitation Criteria for Suspensions or Revocations”.

Background

Assembly Bill (AB) 2138, was signed by Governor Edmund Brown on September 30, 2018, and will become operative July 1, 2020. This legislation amends various provisions of the Business and Professions Code (BPC) relating to the Board’s ability to deny, suspend and revoke a license in relation to criminal history based on a conviction or acts underlying a conviction for a crime. This legislative mandate requires the Board to develop criteria to deny, suspend or revoke a license based on qualifications and functions substantially related to the chiropractic profession. Additionally, the provisions of this mandate revise requirements related to the criteria of rehabilitation that the Board must consider when evaluating the denial of an application, a petition for reinstatement, or a petition for early termination of probation.

- **AB 2138 defines a conviction** pursuant to Section 7.5 of the BPC.

- **AB 2138 authorizes the Board to deny an application for licensure based on the following criteria:**
 - The conviction is substantially related to the qualifications, functions, or duties of the practice of chiropractic and was within seven years from the date of application of application to the Board.
 - The seven-year limitation does not apply to a conviction of serious felony as defined in Penal Code Section 1192.7 or one that requires registration as a tier 1 or tier 2 sex offender pursuant to paragraph (2) or (3) of subdivision (d) of Section 290 of the Penal Code.
 - The applicant was convicted of a felony financial crime directly related to fiduciary responsibilities.

- The applicant was subjected to formal discipline by a licensing board in or outside of California, within the preceding seven years from the date of application for professional misconduct that would be cause for discipline before the Board, and the professional misconduct was substantially related to the practice of chiropractic.
 - The applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.
- **AB 2138 prohibits the denial of an application for licensure:**
 - When the basis for the disciplinary action by another board or jurisdiction was a conviction that has been dismissed or expunged within the preceding seven years.
 - On the basis that an applicant has been convicted of a crime or based on acts underlying a conviction for a crime if he or she has obtained a certificate of rehabilitation pursuant to the Penal Code.
 - Based on any conviction, or based on the acts underlying the conviction, that has been dismissed pursuant the Penal Code.
 - Based on an arrest that resulted in a disposition other than a conviction, including an arrest that resulted in an infraction, citation, or juvenile adjudication.
 - Based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had it been disclosed.
- **AB 2138 requires the Board to notify an applicant who is being denied licensure due to their conviction history of the following:**
 - The denial or disqualification of licensure.
 - Any existing procedure the Board has for the applicant to challenge the decision or to request reconsideration.
 - That the applicant has the right to appeal the Board's decision.
 - The processes for the applicant to request a copy of his or her complete conviction history and question the accuracy and or completeness of the records pursuant to Sections 11122 to 11127 of the Penal Code.
- **AB 2138 requires the Board to develop criteria to define whether a crime is substantially related to the qualifications, functions, or duties of the chiropractic profession. These substantial relationship criteria are used to determine whether a Board will deny, revoke, or discipline a license for conviction of a crime.**
- **AB 2138 requires the Board to implement new criteria regarding the rehabilitation to determine whether to deny, revoke, or discipline a license.**
- **AB 2138 requires the Board to post on its website a summary of the criteria used to consider whether a crime is substantially related to the qualifications, functions, or duties of the chiropractic profession.**

- **AB 2138 requires each board to retain the number of applications received for each license and the number of applications requiring inquiries regarding criminal history.**
- **AB 2138 requires the Board to, annually, make available to the public through the Board's website and through a report submitted to the Legislature deidentified information collected.**

Recommendation(s)

To have regulations in place by July 1, 2020, the Board needs to adopt regulatory language at the May 21st, 2019 Board meeting to meet the expedited regulation review process proposed by the Department of Consumer Affairs (DCA).

Staff asks the Committee to recommend to the full Board a motion to *approve the regulatory language as proposed or with amendments and commence the rulemaking process to add Sections 316.5 Substantial Relationship Criteria, 327 Rehabilitation Criteria for Suspensions or Revocations to the California Code of Regulations (CCR) and amend Section 326 ~~Criteria for Rehabilitation~~ Rehabilitation Criteria for Denials and Reinstatements.*

Additionally, staff asks the Committee to recommend to the full Board a motion to delegate authority to the Executive Officer to make non-substantive changes to the proposed language in the rulemaking file.

This language is what Board staff, in coordination with DCA and some healing arts professions, have developed as options for the Board to consider in relation to the substantial Relationship Criteria and Relationship Criteria.

Next Step

N/A

Attachment(s)

- Draft language for CCR Section 316.5 Substantial Relationship Criteria
- Draft language for CCR Section 326 Rehabilitation Criteria for Denials and Reinstatements
- Draft language for CCR Section 327 Rehabilitation Criteria for Suspensions or Revocations
- AB 2138 text

Title 16. Board of Chiropractic Examiners

Draft AB 2138 Compliance Language

1. Add Section 316.5 to Article 2 of Division 4 of Title 16 of the California Code of Regulations to read:

§ 316.5 Substantial Relationship Criteria

(a) For the purposes of the denial, suspension or revocation of a license pursuant to section 141 or Division 1.5 (commencing with section 475) of the Business and Professions code, a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions or duties of a licensee, if to a substantial degree it evidences present or potential unfitness of a person holding such a license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare.

(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 licensee or applicant [or the license type sought or held by the person].

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

- (1) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of the Chiropractic Initiative Act or other state or federal laws governing the practice of chiropractic.
- (2) Conviction of child abuse, as defined in sections 270-273.75 of the Penal Code.
- (3) A conviction requiring a person to register as a sex offender pursuant to section 290 of the Penal code.
- (4) Any crime, professional misconduct, or act involving the sale, gift, administration, or furnishing of narcotics or dangerous drugs or dangerous devices, as defined in Section 4022 of the Business and Professions Code.
- (5) Conviction for assault and, battery or other violence.
- (6) Conviction of a crime involving lewd conduct or sexual impropriety.
- (7) Conviction of a crime involving fiscal dishonesty.
- (8) Conviction for driving under the influence of drugs or alcohol.

Note: Authority cited: Sections 1000-4(b), Section 1000-10(a), Section 1000-10 (b), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii). Reference: Sections 141, 480, 481, 482, 488, 493, Business and Professions Code.

2. Amend Section 326 of Article 3 of Division 4 of Title 16 of the California Code of Regulations to read:

§ 326 ~~Criteria for Rehabilitation.~~ Rehabilitation Criteria for Denials and Reinstatements.

~~(a) When considering the denial of a license, the Board, in evaluating the rehabilitation of the applicant and his or her present eligibility for a license, will consider the following criteria:~~

~~(1) The nature and severity of the act(s) or offense(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.~~

~~(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).~~

~~(4) Whether 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.~~

When considering the denial of a license under section 480 of the Business and Professions Code or granting a petition for reinstatement under section 1003 of the Code, pursuant to subdivision (c) of Section 10 of the Chiropractic Act, the Board shall evaluate whether the applicant or petitioner has made a showing of rehabilitation and has established present fitness for a license.

(a) Where the denial is, or the surrender or revocation was, in part on the ground(s) that the applicant or petitioner was convicted of a crime, the Board shall find that the applicant or petitioner has made a showing of rehabilitation if the person completed the criminal sentence without a violation of parole or probation.

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

~~(1) Nature and severity of the act(s) or offense(s).~~

~~(2) Total criminal record.~~

~~(3) The time that has elapsed since the commission of the act(s) or offense(s).~~

~~(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.~~

~~(5) Evidence, if any, of rehabilitation submitted by the licensee.~~

(b) Where the denial is, or the surrender or revocation was not based on a conviction, or the Board determines that the applicant or petitioner did not make a showing of rehabilitation based on the criteria in subdivision (a), the Board shall apply the following criteria in evaluating an applicant's or petitioner's rehabilitation:

(1) The nature and severity of the crime(s) or professional misconduct.

(2) Evidence of any act(s) committed subsequent to the crime(s) that are the grounds for denial, or that were grounds for surrender or revocation, which could also be considered as grounds for denial under Business and Professions Code 480, and the time that has elapsed between them.

(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 extent to which the applicant or petitioner has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant or petitioner.

(5) The terms or conditions of parole or probation and the extent to which they bear on the applicant's or petitioner's rehabilitation.

(6) The reason for granting and the length(s) of applicable parole or probation period(s).

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

(8) Evidence, if any, of rehabilitation submitted by the applicant or petitioner demonstrating that the applicant or petitioner has a mature, measured appreciation of the gravity of the misconduct and remorse for the harm caused. Evidence should also show a demonstrated course of conduct by the applicant or petitioner that convinces and assures the Board that the public will be safe if the person is permitted to be licensed to practice chiropractic.

Note: Authority cited: Sections 1000-4(b), Section 1000-10(a), Section 1000-10 (b), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii). Reference: Sections 141, 480, 481, 482, 488, 493, Business and Professions Code.

3. Add Section 327 to Article 3 of Division 4 of Title 16 of the California Code of Regulations to read:

§ 327 Rehabilitation Criteria for Suspensions or Revocations

When considering the discipline of a chiropractic license, the board shall evaluate whether the licensee has made a showing of rehabilitation and is presently fit for a license.

(a) Where the basis for discipline is the conviction of a crime or unprofessional conduct, the board shall consider whether the licensee has made a showing of rehabilitation only if the person completed the criminal sentence without a violation of parole or probation. In making this determination, the Board shall consider the following criteria:

(1) Nature and severity of the crime(s) or unprofessional conduct.

(2) The reason for granting and 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 licensee's rehabilitation.

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

(b) Where the basis for discipline is not based on a conviction, or the Board determines that the licensee did not make a showing of rehabilitation based on the criteria in subdivision (a), the Board shall apply the following criteria in evaluating the licensee's rehabilitation:

(1) Total criminal record and/or record of discipline or other enforcement action.

(2) The time that has elapsed since commission of the crime(s) or unprofessional conduct.

(3) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.

(4) If applicable, evidence of dismissal proceedings pursuant to section 1203.4 of the Penal Code.

(5) The criteria in subdivision (a)(1)-(5), as applicable.

(6) Evidence, if any, of rehabilitation submitted by the licensee demonstrating that the licensee has a mature, measured appreciation of the gravity of the misconduct and remorse for the harm caused. Evidence should also show a demonstrated course of conduct by the licensee that convinces and assures the Board that the public will be safe if the person is permitted to remain licensed to practice chiropractic.

Note: Authority cited: Sections 1000-4(b), Section 1000-10(a), Section 1000-10 (b), Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii). Reference: Sections 141, 480, 481, 482, 488, 493, Business and Professions Code.

Assembly Bill No. 2138

CHAPTER 995

An act to amend, repeal, and add Sections 7.5, 480, 481, 482, 488, 493, and 11345.2 of, and to add Section 480.2 to, the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 30, 2018. Filed with
Secretary of State September 30, 2018.]

legislative counsel's digest

AB 2138, Chiu. Licensing boards: denial of application: revocation or suspension of licensure: criminal conviction.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to deny, suspend, or revoke a license or take disciplinary action against a licensee on the grounds that the applicant or licensee has, among other things, been convicted of a crime, as specified. Existing law provides that a person shall not be denied a license solely on the basis that the person has been convicted of a felony if he or she has obtained a certificate of rehabilitation or that the person has been convicted of a misdemeanor if he or she has met applicable requirements of rehabilitation developed by the board, as specified. Existing law also prohibits a person from being denied a license solely on the basis of a conviction that has been dismissed, as specified. Existing law requires a board to develop criteria to aid it 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 business or profession the board regulates and requires a board to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license.

This bill would revise and recast those provisions to instead authorize a board to, among other things, deny, revoke, or suspend a license on the grounds that the applicant or licensee has been subject to formal discipline, as specified, or convicted of a crime only if the applicant or licensee has been convicted of a crime within the preceding 7 years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or if the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding 7 years, except as specified. The bill would prohibit a board from

denying a person a license based on the conviction of a crime, or on the basis of acts underlying a conviction, as defined, for a crime, if the conviction has been dismissed or expunged, if the person has provided evidence of rehabilitation, if the person has been granted clemency or a pardon, or if an arrest resulted in a disposition other than a conviction.

The bill would require the board to develop criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession. The bill would require a board to consider whether a person has made a showing of rehabilitation if certain conditions are met. The bill would require a board to follow certain procedures when requesting or acting on an applicant's or licensee's criminal history information. The bill would also require a board to annually submit a report to the Legislature and post the report on its Internet Web site containing specified deidentified information regarding actions taken by a board based on an applicant or licensee's criminal history information.

Existing law authorizes a board to deny a license on the grounds that an applicant knowingly made a false statement of fact that is required to be revealed in the application for licensure.

This bill would prohibit a board from denying a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had the fact been disclosed.

Existing law authorizes a board, after a specified hearing requested by an applicant for licensure to take various actions in relation to denying or granting the applicant the license.

This bill would revise and recast those provisions to eliminate some of the more specific options that the board may take in these circumstances.

This bill would clarify that the existing above-described provisions continue to apply to the State Athletic Commission, the Bureau for Private Postsecondary Education, and the California Horse Racing Board.

This bill would also make necessary conforming changes.

This bill would make these provisions operative on July 1, 2020.

The people of the State of California do enact as follows:

SECTION 1. Section 7.5 of the Business and Professions Code is amended to read:

7.5. (a) A conviction within the meaning of this code means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) of Section 480.

Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

(b) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 2. Section 7.5 is added to the Business and Professions Code, to read:

7.5. (a) A conviction within the meaning of this code means a judgment following a plea or verdict of guilty or a plea of nolo contendere or finding of guilt. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence. However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) or (c) of Section 480.

(b) (1) Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

(2) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

- (A) The State Athletic Commission.
- (B) The Bureau for Private Postsecondary Education.
- (C) The California Horse Racing Board.

(c) Except as provided in subdivision (b), this section controls over and supersedes the definition of conviction contained within individual practice acts under this code.

(d) This section shall become operative on July 1, 2020.

SEC. 3. Section 480 of the Business and Professions Code is amended to read:

480. (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.

(e) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 4. Section 480 is added to the Business and Professions Code, to read:

480. (a) Notwithstanding any other provision of this code, a board may deny a license regulated by this code on the grounds that the applicant has been convicted of a crime or has been subject to formal discipline only if either of the following conditions are met:

(1) The applicant has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding seven years from the date of application. However, the preceding seven-year limitation shall not apply in either of the following situations:

(A) The applicant was convicted of a serious felony, as defined in Section 1192.7 of the Penal Code or a crime for which registration is required pursuant to paragraph (2) or (3) of subdivision (d) of Section 290 of the Penal Code.

(B) The applicant was convicted of a financial crime currently classified as a felony that is directly and adversely related to the fiduciary qualifications, functions, or duties of the business or profession for which the application is made, pursuant to regulations adopted by the board, and for which the applicant is seeking licensure under any of the following:

- (i) Chapter 1 (commencing with Section 5000) of Division 3.
- (ii) Chapter 6 (commencing with Section 6500) of Division 3.

- (iii) Chapter 9 (commencing with Section 7000) of Division 3.
- (iv) Chapter 11.3 (commencing with Section 7512) of Division 3.
- (v) Licensure as a funeral director or cemetery manager under Chapter 12 (commencing with Section 7600) of Division 3.
- (vi) Division 4 (commencing with Section 10000).

(2) The applicant has been subjected to formal discipline by a licensing board in or outside California within the preceding seven years from the date of application based on professional misconduct that would have been cause for discipline before the board for which the present application is made and that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made. However, prior disciplinary action by a licensing board within the preceding seven years shall not be the basis for denial of a license if the basis for that disciplinary action was a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code or a comparable dismissal or expungement.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis that he or she has been convicted of a crime, or on the basis of acts underlying a conviction for a crime, if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation pursuant to Section 482.

(c) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code, or a comparable dismissal or expungement. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code shall provide proof of the dismissal if it is not reflected on the report furnished by the Department of Justice.

(d) Notwithstanding any other provision of this code, a board shall not deny a license on the basis of an arrest that resulted in a disposition other than a conviction, including an arrest that resulted in an infraction, citation, or a juvenile adjudication.

(e) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license. A board shall not deny a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had it been disclosed.

(f) A board shall follow the following procedures in requesting or acting on an applicant's criminal history information:

(1) A board issuing a license pursuant to Chapter 3 (commencing with Section 5500), Chapter 3.5 (commencing with Section 5615), Chapter 10 (commencing with Section 7301), Chapter 20 (commencing with Section 9800), or Chapter 20.3 (commencing with Section 9880), of Division 3, or Chapter 3 (commencing with Section 19000) or Chapter 3.1 (commencing

with Section 19225) of Division 8 may require applicants for licensure under those chapters to disclose criminal conviction history on an application for licensure.

(2) Except as provided in paragraph (1), a board shall not require an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history. However, a board may request mitigating information from an applicant regarding the applicant's criminal history for purposes of determining substantial relation or demonstrating evidence of rehabilitation, provided that the applicant is informed that disclosure is voluntary and that the applicant's decision not to disclose any information shall not be a factor in a board's decision to grant or deny an application for licensure.

(3) If a board decides to deny an application for licensure based solely or in part on the applicant's conviction history, the board shall notify the applicant in writing of all of the following:

(A) The denial or disqualification of licensure.

(B) Any existing procedure the board has for the applicant to challenge the decision or to request reconsideration.

(C) That the applicant has the right to appeal the board's decision.

(D) The processes for the applicant to request a copy of his or her complete conviction history and question the accuracy or completeness of the record pursuant to Sections 11122 to 11127 of the Penal Code.

(g) (1) For a minimum of three years, each board under this code shall retain application forms and other documents submitted by an applicant, any notice provided to an applicant, all other communications received from and provided to an applicant, and criminal history reports of an applicant.

(2) Each board under this code shall retain the number of applications received for each license and the number of applications requiring inquiries regarding criminal history. In addition, each licensing authority shall retain all of the following information:

(A) The number of applicants with a criminal record who received notice of denial or disqualification of licensure.

(B) The number of applicants with a criminal record who provided evidence of mitigation or rehabilitation.

(C) The number of applicants with a criminal record who appealed any denial or disqualification of licensure.

(D) The final disposition and demographic information, consisting of voluntarily provided information on race or gender, of any applicant described in subparagraph (A), (B), or (C).

(3) (A) Each board under this code shall annually make available to the public through the board's Internet Web site and through a report submitted to the appropriate policy committees of the Legislature deidentified information collected pursuant to this subdivision. Each board shall ensure confidentiality of the individual applicants.

(B) A report pursuant to subparagraph (A) shall be submitted in compliance with Section 9795 of the Government Code.

(h) “Conviction” as used in this section shall have the same meaning as defined in Section 7.5.

(i) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

- (1) The State Athletic Commission.
- (2) The Bureau for Private Postsecondary Education.
- (3) The California Horse Racing Board.

(j) This section shall become operative on July 1, 2020.

SEC. 5. Section 480.2 is added to the Business and Professions Code, to read:

480.2. (a) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license regulated by it on the grounds that the applicant has one of the following:

- (1) Been convicted of a crime.
- (2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.
- (3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board to evaluate the rehabilitation of a person when considering the denial of a license under paragraph (1) of subdivision (f).

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license by the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

(d) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license regulated by it on the ground that the applicant knowingly made a false

statement of fact that is required to be revealed in the application for the license.

(e) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(f) (1) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall develop criteria to evaluate the rehabilitation of a person either when:

(A) Considering the denial of a license under this section.

(B) Considering suspension or revocation of a license under Section 490.

(2) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

(g) Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may take any of the following actions:

(1) Grant the license effective upon completion of all licensing requirements by the applicant.

(2) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(3) Deny the license.

(4) Take other action in relation to denying or granting the license as the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board, in its discretion, may deem proper.

(h) Notwithstanding any other law, in a proceeding conducted by the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

(i) Notwithstanding Section 7.5, a conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the Bureau for Private Postsecondary

Education, the State Athletic Commission, or the California Horse Racing Board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(j) This section shall become operative on July 1, 2020.

SEC. 6. Section 481 of the Business and Professions Code is amended to read:

481. (a) Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(b) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 7. Section 481 is added to the Business and Professions Code, to read:

481. (a) Each board under this code shall develop criteria to aid it, 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 business or profession it regulates.

(b) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession a board regulates shall include all of the following:

(1) The nature and gravity of the offense.

(2) The number of years elapsed since the date of the offense.

(3) The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

(c) A board shall not deny a license based in whole or in part on a conviction without considering evidence of rehabilitation submitted by an applicant pursuant to any process established in the practice act or regulations of the particular board and as directed by Section 482.

(d) Each board shall post on its Internet Web site a summary of the criteria used to consider whether a crime is considered to be substantially related to the qualifications, functions, or duties of the business or profession it regulates consistent with this section.

(e) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(f) This section shall become operative on July 1, 2020.

SEC. 8. Section 482 of the Business and Professions Code is amended to read:

482. (a) Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(1) Considering the denial of a license by the board under Section 480;
or

(2) Considering suspension or revocation of a license under Section 490.

(b) Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

(c) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 9. Section 482 is added to the Business and Professions Code, to read:

482. (a) Each board under this code shall develop criteria to evaluate the rehabilitation of a person when doing either of the following:

(1) Considering the denial of a license by the board under Section 480.

(2) Considering suspension or revocation of a license under Section 490.

(b) Each board shall consider whether an applicant or licensee has made a showing of rehabilitation if either of the following are met:

(1) The applicant or licensee has completed the criminal sentence at issue without a violation of parole or probation.

(2) The board, applying its criteria for rehabilitation, finds that the applicant is rehabilitated.

(c) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(d) This section shall become operative on July 1, 2020.

SEC. 10. Section 488 of the Business and Professions Code is amended to read:

488. (a) Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the board may take any of the following actions:

(1) Grant the license effective upon completion of all licensing requirements by the applicant.

(2) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(3) Deny the license.

(4) Take other action in relation to denying or granting the license as the board in its discretion may deem proper.

(b) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 11. Section 488 is added to the Business and Professions Code, to read:

488. (a) Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the board may take any of the following actions:

(1) Grant the license effective upon completion of all licensing requirements by the applicant.

(2) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(3) Deny the license.

(4) Take other action in relation to denying or granting the license as the board in its discretion may deem proper.

(b) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(c) This section shall become operative on July 1, 2020.

SEC. 12. Section 493 of the Business and Professions Code is amended to read:

493. (a) Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

(b) As used in this section, “license” includes “certificate,” “permit,” “authority,” and “registration.”

(c) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 13. Section 493 is added to the Business and Professions Code, to read:

493. (a) Notwithstanding any other law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact.

(b) (1) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates shall include all of the following:

(A) The nature and gravity of the offense.

- (B) The number of years elapsed since the date of the offense.
- (C) The nature and duties of the profession.
- (2) A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation.
- (c) As used in this section, “license” includes “certificate,” “permit,” “authority,” and “registration.”
- (d) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:
 - (1) The State Athletic Commission.
 - (2) The Bureau for Private Postsecondary Education.
 - (3) The California Horse Racing Board.
- (e) This section shall become operative on July 1, 2020.

SEC. 14. Section 11345.2 of the Business and Professions Code is amended to read:

11345.2. (a) An individual shall not act as a controlling person for a registrant if any of the following apply:

(1) The individual has entered a plea of guilty or no contest to, or been convicted of, a felony. Notwithstanding subdivision (c) of Section 480, if the individual’s felony conviction has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code, the bureau may allow the individual to act as a controlling person.

(2) The individual has had a license or certificate to act as an appraiser or to engage in activities related to the transfer of real property refused, denied, canceled, or revoked in this state or any other state.

(b) Any individual who acts as a controlling person of an appraisal management company and who enters a plea of guilty or no contest to, or is convicted of, a felony, or who has a license or certificate as an appraiser refused, denied, canceled, or revoked in any other state shall report that fact or cause that fact to be reported to the office, in writing, within 10 days of the date he or she has knowledge of that fact.

(c) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 15. Section 11345.2 is added to the Business and Professions Code, to read:

11345.2. (a) An individual shall not act as a controlling person for a registrant if any of the following apply:

(1) The individual has entered a plea of guilty or no contest to, or been convicted of, a felony. If the individual’s felony conviction has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code, the bureau may allow the individual to act as a controlling person.

(2) The individual has had a license or certificate to act as an appraiser or to engage in activities related to the transfer of real property refused, denied, canceled, or revoked in this state or any other state.

(b) Any individual who acts as a controlling person of an appraisal management company and who enters a plea of guilty or no contest to, or is convicted of, a felony, or who has a license or certificate as an appraiser

refused, denied, canceled, or revoked in any other state shall report that fact or cause that fact to be reported to the office, in writing, within 10 days of the date he or she has knowledge of that fact.

(c) This section shall become operative on July 1, 2020.

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