

Board of Chiropractic Examiners Final Statement of Reasons

Subject Matter of Proposed Regulations: Licensing boards: denial of application: revocation or suspension of licensure: criminal conviction

Sections affected: California Code of Regulations (CCR), Title 16, Division 4, Sections 316.5, 326, and 327

Request for Effective Date on Filing:

The Board of Chiropractic Examiners (Board) requests that this regulatory proposal become effective upon filing to align as closely as possible with the statutory implementation date of July 1, 2020, in AB 2138. AB 2138 changed a policy of automatic denials of licensure for individuals with criminal convictions. These regulations make clear the Board's statutory commitment to providing an opportunity for a "second chance" and explain how the Board will individually examine each licensure, renewal, or reinstatement decision for individuals with a criminal conviction. Further, they clarify to the public how the Board will decide which convictions are substantially related to licensure. These regulations would benefit all Californians, both those given a "second chance" for licensure and those that could employ or receive services from them. Further, allowing for licensure and employment could potentially reduce recidivism as well as provide Californians with greater choices in licensees. Therefore, it would be of public benefit to hasten the effective date of these regulations.

Updated Information:

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

The 45-day comment period began on February 5, 2021 and was to end on March 23, 2021. The Board extended the comment period to March 29, 2021 to allow proper notification of rulemaking action to all interested parties. The Board's notice indicated that the Board did not intend to hold a hearing on the matter, unless requested. No public hearing was requested, and no public comments were received during the comment period.

At the April 22, 2021 Board meeting, the Board adopted the approved regulatory language as a final Order of Adoption.

On page 25 of the Initial Statement of Reasons, the paragraph beginning, "Because the Board historically denies," needs to be revised. The phrase "resulting from the proposed regulations." is not necessary and should be deleted.

Additionally, the regulatory text was revised to reflect the deletion of CCR 326(c). This is considered a non-substantive change because CCR 326(c) is duplicative of CCR 326(a).

Determination and Impact:

Local Mandate: A mandate is not imposed on local agencies or school districts.

Small Business Impact:

The Board has determined that this rulemaking proposal will not likely have a significant impact on small businesses.

The Board currently regulates approximately 12,600 licensees, all of whom have been issued a license to practice Chiropractic in California and the majority are operating as small businesses. A small increase may result by reducing barriers to licensure for applicants and licensees with criminal history or license discipline.

Economic Impact:

To the extent applicants and licensees were convicted of a crime or were previously disciplined, the proposed regulations could impact individual licensees by authorizing individuals with criminal convictions to obtain licensure by the Board, if they have met the rehabilitative criteria, and the criminal convictions are substantially related, as established in the regulatory proposal.

However, because the Board historically denies less than one initial application per year, as specified, the Board does not anticipate an increase in the number of new initial licensees resulting from the proposed regulations.

Consideration of Alternatives:

The Board has determined that no alternative it considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective or less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Set forth below are the alternatives that were considered and the reason the alternative was rejected or adopted:

1. Do not seek a regulatory change. The Board rejected this option because the Board is mandated to make regulatory changes consistent with AB 2138.

2. Pursue a regulatory change that requires the Board to find rehabilitation if the applicant or licensee completed the terms of their criminal probation or parole. Courts give little weight to the fact that an applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole since they are under the direct supervision of correctional authorities and are required to behave in an exemplary fashion. As such, the Board believes that reviewing each individual on the basis of multiple criteria is the better indicator whether individuals are rehabilitated and not a danger to the public's health, safety, and welfare. For these reasons, the Board rejected this option.

No other alternatives have been proposed or otherwise brought to the Board's attention.

Summary of Objections or Recommendations/Responses:

There were no objections or recommendations regarding the proposed action received during the 45-day comment period.

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