

**Board of Chiropractic Examiners
Initial Statement of Reasons**

Hearing Date: No hearing has been scheduled for the proposed action.

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

Background and Statement of the Problem:

The Board of Chiropractic Examiners (Board) currently regulates approximately 13,000 Doctors of Chiropractic. The Board's highest priority is protection of the public when exercising its licensing, regulatory, and enforcement functions. The primary methods by which the Board achieves this goal are: issuing licenses to eligible applicants; investigating complaints against licensees and disciplining licensees for violating provisions of the laws, regulations, and the Chiropractic Initiative Act (Act) that govern the practice of chiropractic; and monitoring licensees who have been placed on probation.

The Act, section 4(b), authorizes the Board to adopt regulations as they may deem proper and necessary for the performance of its work, the effective enforcement and administration of this act, the establishment of educational requirements for license renewal, and the protection of the public. The Act, section 10(a), authorizes the Board to, by rule or regulation, adopt, amend, or repeal the rules of professional conduct appropriate to the establishment and maintenance of a high standard of professional service and the protection of the public. Finally, the Act, section 10(b), authorizes the Board to refuse to grant, or suspend or revoke, a license to practice chiropractic in this state, or place the licensee upon probation or issue a reprimand to the licensee for violation of the rules and regulations adopted by the Board in accordance with this Act, or for any cause specified in this Act.

Statutory Changes made by Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018) attempt to mitigate the broad discretion DCA Boards and Bureaus have to deny applications for licensure or suspend or revoke a license. The author and bill sponsors, in expressing need for the bill, state that "One of the reasons for high rates of recidivism is an inability of prior offenders to secure gainful employment upon reentry." According to the author of AB 2138:

"California has among the highest recidivism rates in the nation, with many low-level criminal offenders committing new crimes within a year of release. These

factors play a significant role in the prison and jail overcrowding crisis that the Legislature has spent the past decade attempting to address. One of the root causes of high recidivism rates is the inability of prior offenders to secure gainful employment upon reentry. Nearly 30% of California jobs require licensure, certification, or clearance by an oversight board or agency for approximately 1,773 different occupations. All too often, qualified people are denied occupational licenses or have licenses revoked or suspended on the basis of prior arrests or convictions, many of which are old, unrelated to the job, or have been judicially dismissed. Alleviating barriers to occupational licensing is just one way California can reduce recidivism and provide economic opportunity to all its residents.”

The Board seeks, in this regulatory proposal, to align with the policies of reducing barriers to licensure.

Anticipated Benefits from this Regulatory Action:

Current law enables boards to disqualify applicants based on crimes that are "substantially related" to the profession and applicants are often unaware of what misconduct will render them ineligible for licensure. The Assembly Committee on Business and Professions has expressed concern that there is a "serious lack of clarity for applicants as to what 'substantially related' means and this determination is often left to the discretion of individual boards."

According to the Assembly Committee on Business and Professions Committee, “this proposal would improve economic opportunity for those with criminal convictions by increasing access to professional licensure. Applicants are presumed eligible if they meet certain qualifications and if there is nothing to disqualify them. Currently, an applicant's criminal history is disclosed at the time of the application and this proposal would not exclude or delay its consideration. This proposal would restrict the Board from asking an applicant to disclose information regarding a criminal conviction until the Board has determined the applicant meets the minimum requirements for licensure.”

According to the author, “the intent of this and other postconviction reentry policies is to provide those convicted of crimes with economic opportunity following release, which in turn reduces criminal recidivism, improves public safety, and curbs over-incarceration.”

Add 16 CCR 316.5 (a) and (b) Substantial Relationship Criteria.

This proposal will add California Code of Regulations (CCR), Title 16, Division 4, section 316.5 (a), where, for purposes of a denial, suspension or revocation of a license related to a crime, professional misconduct, or act, pursuant to section 141 or Division 1.5 (commencing with section 475) of the Business and Professions code and section 10 of the Act, are considered substantially related to the qualifications, functions and/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, the license can be denied, suspended or revoked.

This proposal will add 16 CCR 316.5 (b), which will enumerate the criteria for the Board to make the substantial relationship determination required under subdivision (a) for a crime.

This proposal will also add 16 CCR 316.5 (c) that will enumerate what is considered a substantially related crime, professional misconduct, or acts under subdivision (a).

Factual Basis:

Adding CCR 316.5 (a) will expand the regulation to include discipline under Business and Professions Code (BPC) section 141, because the substantially related acts that are the basis for discipline in an out-of-state jurisdiction may be used to discipline a licensee under BPC section 141. This subsection will also include substantially related “professional misconduct,” since the Board may consider such misconduct in denying licenses under BPC section 480.

Prior to July 1, 2020, BPC section 480 authorized the Board to deny an application for licensure based on a conviction for a crime or act substantially related to the licensed business or profession. (BPC, § 480, subd. (a)(3)(B).) Likewise, section 490 authorizes the Board to suspend or revoke a license on the basis that the licensee was convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession. (BPC, § 490, subd. (a).) BPC section 481 requires the Board to develop criteria to help evaluate whether a crime was substantially related to the regulated business or profession, and, here, the Board seeks to establish these criteria via the proposed regulations.

AB 2138 amends BPC section 480 to limit the boards’ ability to use prior convictions or acts when denying licenses. Beginning July 1, 2020, boards may not deny a license to an applicant merely because the applicant was convicted of a crime, or due to the acts underlying the conviction, if the applicant has a certificate of rehabilitation, was granted clemency, made a showing of rehabilitation, or the conviction was dismissed or expunged. (BPC, § 480, subds., (b) & (c), as added by AB 2138, § 4.)

Absent these circumstances, AB 2138 will permit boards to deny a license when an applicant has been convicted of a crime, if the crime is substantially related to the qualifications, functions, and/or duties of the regulated business or profession, and one of the following conditions exist:

- 1) the conviction occurred within the seven years preceding the application date, except that the seven-year limitation does not apply if the applicant was

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

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

Additionally, AB 2138 amends BPC section 481 to require boards to develop criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession that includes: 1) 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.

Adding 16 CCR 316.5 is necessary to conform the regulation to the statute, to establish the criteria for the Board to make a substantial relationship determination, and establish what is considered a substantially related crime, professional misconduct, or act(s).

Anticipated Benefit:

The proposed addition of 16 CCR 316.5 (a) will also provide clarity and transparency to license applicants and licensees by listing the specific criteria that the Board must consider when making the substantial relationship determinations applicable to criminal convictions.

The proposed addition of 16 CCR 316.5 (b) will provide clarity to license applicants and licensees of the specific crimes, professional misconduct, or acts that are substantially related to the qualifications, functions, or duties of a Board licensee. And, the proposal will make relevant parties to any administrative appeal arising from a license denial

(e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent's counsel) aware of the specific criteria used by the Board to determine whether a criminal conviction is substantially related to the practice of chiropractic.

Rationale:

In reviewing each of the forgoing items, the Board uses the following rationale for this inclusion:

- 16 CCR 316.5 (a): For the purposes of the denial, suspension or revocation of a license pursuant to section 141, Division 1.5 (commencing with section 475) of the Business and Professions code, or a violation of section 10 (b) of the Chiropractic Initiative Act of California, a crime, professional misconduct, or act shall be 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 a license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare.

BPC section 141 authorizes the Board to discipline a licensee on the basis of substantially related out-of-state discipline. Beginning July 1, 2020, BPC section 480 also authorizes the Board to deny a license application on the basis of substantially related formal discipline, by a licensing board, in or outside of California. The regulation seeks to implement, interpret, and make specific BPC sections 141 and 480 by adding their relative provisions to the Board's substantial relationship criteria regulation, and by providing a specific test to assist the Board in taking action against a potential or existing licensee.

Accordingly, the proposal is necessary to provide the appropriate notice to license applicants and licensees that discipline in an out-of-state jurisdiction and/or professional misconduct are grounds for license denial, suspension, or revocation, and implement the requirements of BPC sections 141 and 480. The proposal is also necessary to consolidate into one regulation the criteria the Board will apply in evaluating whether a crime, act or professional misconduct that is substantially related to the licensed profession.

- 16 CCR 316.5 (b): In making the substantial relationship determination required under subdivision (a) for a crime, the board shall consider all of the following criteria: (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 a chiropractor.

AB 2138 specifies three criteria that boards must consider when evaluating whether a crime is substantially related to the regulated business or profession. The criteria 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 [; and] (3) The nature and

duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.” (BPC, § 481 subd. (b), as added by AB 2138, § 7, § 493, subd. (b), as added by AB 2138, §13.).

Accordingly, the proposed regulation lists each of the three criteria the Board must consider when making the substantial relationship determination. This proposed addition is necessary to conform the regulation to statute and consolidate the Board’s substantial relationship criteria in one place.

Add 16 CCR 316.5 (c) Substantial Relationship Criteria.

The Board proposes adding 16 CCR 316.5 (c) to the Substantial Relationship Criteria and include a list of specific crimes, acts, and/or professional misconduct as follows:

- (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 a crime or act of child abuse, as defined in sections 270 through 273.75 of the Penal Code or dependent adult or elder abuse.
- (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, battery or other violence, including, but not limited to, those violations listed in subsection (d) of Penal Code 11160.
- (6) Conviction of a crime involving lewd conduct or sexual impropriety, as defined in Business and Professions Code 726.
- (7) Conviction of a crime or act involving fiscal dishonesty, theft, fraud or deceit.
- (8) Conviction or act involving the use of drugs or alcohol to an extent or in a manner dangerous to the individual or the public.

The purpose of adding 16 CCR 316.5 (c), is to provide an understanding that the Board will consider certain crimes, professional misconduct, or acts to be substantially related to the qualifications, functions, or duties of a licensee.

Anticipated Benefit: The proposed addition of 16 CCR 316.5 (c), will provide clarity to applicants and licensees of the specific crimes, professional misconduct, or acts that the Board considers to be substantially related to the qualifications, functions, or duties of a Chiropractic professional. The proposal will also make aware relevant parties to any administrative appeal arising from a license denial or revocation (e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent’s counsel) that substantially related crimes, professional misconduct, and acts can include the listed crimes, professional misconduct, or acts listed in this regulation.

Rationale:

In reviewing each of the forgoing items, the Board uses the following rationale for this inclusion:

- 16 CCR 316.5 (c)(1): Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision the Chiropractic Initiative Act of California, and/or other state or federal laws governing the practice of chiropractic.

Practitioners of the chiropractic profession must obey all of the laws and regulations related to the profession, not only established under the Act, but all other laws and regulations of other states and the United States related to chiropractic care. These laws are intrinsically tied to the profession, thus a violation (or attempt) is “substantially related” to the duties and functions of a licensee.

- 16 CCR 316.5 (c)(2): Conviction of a crime or act involving child abuse, as defined in sections 270-273.75 of the Penal Code or dependent adult or elder abuse.

Under the proposed addition, 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 the present or potential unfitness of a licensee to perform the functions authorized and/or mandated by the license.

Chiropractic services may be performed on vulnerable populations including children. A chiropractor occupies a position of trust over these individuals, and touches patients to perform chiropractic services. These categories of patients are particularly susceptible, based on their ages and dependency, and must be protected. Given these circumstances, the Board has determined that any conviction or act of child abuse should be considered substantially related to the qualifications, functions, or duties performed by chiropractors.

- 16 CCR 316.5 (c)(3): Conviction requiring a person to register as a sex offender pursuant to section 290 of the Penal Code.

16 CCR 316 (c) presently provides that any act of sexual contact, abuse or sexual relations are prohibited and shall result in the discipline of a license. Further, section 290 of the Penal Code specifies acts by which a person must register as a sex offender. Therefore, the Board deems such acts to be directly related to the duties of licensure. In addition, a court of appeal has held that a dentist’s sexual conduct with patients was substantially related to his functions and duties as a dentist and warranted disciplinary action. (*Green v. Board of Dental Examiners* (1996) 47 Cal.App.4th 786, 800-01 [“During the times he found the women most

vulnerable, Green incorporated erotic and manipulative touching of intimate parts of their bodies into the treatments. He then violated the patients' trust and exceeded the scope of their consent for treatment by seducing them into a sexual relationship.”].)

Similarly, chiropractic services can be performed in a private room or a patient's home, where the consumer entrusts the chiropractor with certain types of examination, with intimate parts of the patient's body, including the touching of the same. Given these circumstances, the Board has determined that sex offenses, requiring a person to register as a sex offender, should be considered substantially related to the qualifications, functions, or duties performed by chiropractors.

- 16 CCR 316.5 (c)(4): Conviction of a 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.

Under the proposed addition, 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 the present or potential unfitness of a licensee to perform the functions authorized and/or mandated by the license.

An individual doing any of these crimes, acts or professional misconduct related to the illegal sale, gift, administration or furnishing of narcotics or dangerous drugs or devices are deemed, by the Board, to be acts that are contrary to the practice of chiropractic in California. Adding “conviction” more closely follows due process rights accorded to individuals, as required under AB 2138.

- 16 CCR 316.5 (c)(5): Conviction of a crime or act involving assault, battery, or other violence including, but not limited to, those violations listed in subsection (d) of Penal Code section 11160.

Under the proposed addition, assault, battery, or other violence shall be considered substantially related to the qualifications, functions or duties of a licensee if, to a substantial degree, it evidences the present or potential unfitness of a licensee to perform the functions authorized and/or mandated by the license. This amendment adds language to include the specific offenses of “assault” and “battery.” Section 11160(d) of the Penal Code further defines the terms “assaultive or abusive conduct” to include various types of assault and battery as offenses.

Chiropractic services may be performed on vulnerable populations. A chiropractor occupies a position of trust over these individuals and touches patients to perform services. Given these circumstances, the Board has determined that any conviction or act involving assault, battery, or other violence listed in subsection

(d) of Penal Code 11160 should be considered substantially related to the qualifications, functions, or duties performed by chiropractors.

- 16 CCR 316.5 (c)(6): Conviction for a crime or act involving lewd conduct or sexual impropriety, as defined in BPC section 726.

Under the proposed addition, acts of sexual contact and acts or convictions of sexual offenses shall result in the revocation of a license. Therefore, the Board deems such acts to be directly related to the duties of licensure. In addition, a court of appeal has held that a dentist's sexual conduct with patients was substantially related to his functions and duties as a dentist and warranted disciplinary action. (*Green v. Board of Dental Examiners* (1996) 47 Cal.App.4th 786, 800-01 ["During the times he found the women most vulnerable, Green incorporated erotic and manipulative touching of intimate parts of their bodies into the treatments. He then violated the patients' trust and exceeded the scope of their consent for treatment by seducing them into a sexual relationship."].)

Similarly, chiropractic services can be performed in a private room or a patient's home, where the consumer patient entrusts the chiropractor with certain types of examination with intimate parts of the patient's body. Given these circumstances, the Board has determined that any conviction or act of lewd conduct or sexual impropriety should be considered substantially related to the qualifications, functions, or duties performed by chiropractors.

- 16 CCR 316.5 (c)(7): Conviction of a crime or act involving fiscal dishonesty, theft, fraud or deceit.

Under this addition, the conviction of a crime involving fiscal dishonesty to categories of conduct will be considered substantially related to the qualifications, functions or duties of a chiropractor.

Chiropractic services may be performed on vulnerable populations. A chiropractor occupies a position of trust over these individuals and has access to property of others, including property of vulnerable patients. (*Moustafa v. Board of Registered Nursing, supra*, at p. 1140.) In addition, elder or dependent adult abuse includes financial abuse. (Welf. & Instns. Code, § 15610.30, subd. (a).)

Chiropractors may also be involved in billing government entities or insurance companies. Reporting of accurate services is a duty required by licentiates. Conduct involving fiscal dishonesty, such as fraud or deceit, like the current regulatory-listed conviction for fiscal dishonesty, erodes trust that the services will be accurately billed to the appropriate parties. To enhance trust in the profession, then, crimes involving fiscal dishonesty, such as fraud or deceit, should be considered substantially related to the duties of licensure. For instance, a

conviction for tax evasion / income tax fraud was considered related to the practice of medicine in *Windham v. Bd. of Med. Quality Assurance* (1980) 104 Cal. App. 3d 461; Medi-Cal fraud by a dentist was upheld as cause for revocation in *Hanna v. Dental Bd. of California* (2012) 212 Cal. App. 4th 759, 765, citing a previous Medical Board action which held that convictions for Medi-Cal fraud are substantially related to a professional's fitness or capacity to practice her profession. (*Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293, 305–306, 144 Cal.Rptr. 826 (*Matanky*) [“Intentional dishonesty ... demonstrates a lack of moral character and satisfies a finding of unfitness to practice medicine”].)

Given these circumstances, the Board has determined that a crime or act involving fiscal dishonesty, such as theft, fraud, or deceit, should be considered substantially related to the qualifications, functions, or duties provided by a chiropractor.

- 16 CCR 316.5 (c)(8): Conviction of a crime or act involving the use of drugs or alcohol to an extent or in a manner dangerous to the individual or the public.

Although specifically related to registered nurses and not chiropractors, in BPC Section 2762, the Legislature has determined that unprofessional conduct includes the use of alcoholic beverages in a manner dangerous or injurious to himself or herself. (Bus. & Prof. Code, § 2762, subd. (b).) In *Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, for example, the court of appeal held that a nurse’s single conviction of driving with a blood alcohol of .08 or higher related to the practice of his profession and demonstrated an unfitness to practice that profession. The court held that

...there is a nexus or logical relationship between the professional fitness of a registered nurse and the alcohol-related misconduct defined by section 2762, subdivisions (b) and (c). In light of this nexus, section 2762 comports with due process and supplies a basis for discipline even in the absence of a finding of professional unfitness in a particular case. The ALJ’s finding that Sulla’s conduct was not substantially related to his professional qualifications for purposes of the allegations under sections 490 and 2761, subdivision (f) cannot be used to circumvent the conclusive presumption that the conduct described by section 2762 amounts to unprofessional conduct.

(*Id.*, pp. 1204-05; see also, *Watson v. Superior Court* (2009) 176 Cal.App.4th 1407, 1421 [“[W]hile there must be a nexus or ‘logical connection’ between the type of misconduct that forms the basis for physician discipline and the ability of the physician to practice medicine, that nexus is established for constitutional purposes if the conduct enumerated, here the use of alcohol to the extent, or in such manner as to be dangerous or injurious to the licensee, or to any other person or to the public, is logically connected to a physician’s fitness to practice medicine.”]; *Krain v. Med. Bd.* (1999) 71 Cal.App.4th 1416, 1424 [whether a

conviction is “substantially related” to professional qualifications is question of law, not fact].)

The dangerous use of alcohol has also been found substantially related to the duties and functions of other healing arts professionals, such as doctors and physical therapists. In *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, the court concluded that driving under the influence “reflect[s] a lack of sound professional and personal judgment,” threatens the safety of the public, and demonstrates both a disregard of the medical knowledge of the effects of alcohol and the legal prohibitions against drinking and driving. This is true for doctors and other medical professionals. In *Walker v. Physical Therapy Bd. of California* (2017), 16 Cal. App. 5th 1219, 1229, the court cited *Watson, supra*, to hold that the Legislature had made an implied finding that the use of alcohol in a dangerous manner was *de facto* unprofessional conduct that substantially related to the physician's fitness to practice medicine.

Given these circumstances and the similarities between chiropractors, registered nurses and other healing arts professionals, the Board has determined that any conviction of using drugs or alcohol to an extent dangerous to the individual or to the public, specifically such as driving a motor vehicle while under the influence of drugs and/or alcohol, should be considered substantially related to the qualifications, functions, or duties performed by chiropractors.

Amend 16 CCR 326 Criteria for Rehabilitation to Rehabilitation Criteria for Denials, Reinstatements, and Reissuance of a License

This proposal will amend the title of 16 CCR 326 from Criteria for Rehabilitation to Rehabilitation Criteria for Denials, Reinstatements, and Reissuance of a License.

This proposal will remove 16 CCR 326 (a)(1) through (5) and add new criteria under 16 CCR 326 (a)(1) through (5), which will require the Board to evaluate whether the applicant or petitioner has made a showing of rehabilitation and has established present fitness for a license when considering the denial or granting the reinstatement of a license.

Additionally, this proposal will remove 16 CCR 326 (b)(1) through (5) and add a new criteria under 16 CCR 326 (b)(1) through (6), that will require the Board to evaluate an applicant's or petitioner's rehabilitation when: (1) the applicant or petitioner did not complete the criminal sentence without a violation of parole or probation; (2) the Board found that the applicant or petitioner did not make a showing of rehabilitation based on the criteria in subdivision (a); or (3) the denial is based on professional misconduct or any act or crime specified in section 10(b) of the Chiropractic Initiative Act of California.

Factual Basis:

BPC Section 482 requires boards to develop criteria to evaluate the rehabilitation of an applicant when considering denying a license under BPC Section 480 or suspending or revoking a license under BPC Section 490. Additionally, Boards are required to consider all competent evidence of rehabilitation furnished by the applicant or licensee.

AB 2138 has amended BPC Section 482 (b) to require boards to consider whether an applicant or licensee has made a showing of rehabilitation when the applicant or licensee has completed the criminal sentence at issue without a violation of parole or probation, or the Board finds that the applicant is rehabilitated.

Amending 16 CCR 326 is necessary to conform the regulation to statute, and to establish the criteria for the Board to evaluate the rehabilitation of an applicant of licensee.

Anticipated Benefit:

The proposed amendments to 16 CCR 326 (a) will provide transparency and clarity to license applicants who have completed their criminal sentence without a violation of parole or probation. The list of criteria is narrow in scope and limited to considerations relevant to the crime and the criminal sentence, since AB 2138 requires the Board to consider rehabilitation in the narrow context of an applicant who completed the criminal sentence without a parole or probation violation. This proposal is also intended to provide predictability in the application process and uniformity of rehabilitation criteria with other boards under the Department of Consumer Affairs (DCA).

The proposed revisions to 16 CCR 326 (b) will provide transparency and clarity to license applicants who have not completed their criminal sentence without a violation of parole or probation, have been disciplined based on professional misconduct, or otherwise do not qualify for consideration under subsection (a). Providing the list of rehabilitation criteria will help license applicants understand the facts and documents to present to the Board to demonstrate their rehabilitation. The proposal will also assist relevant parties to any administrative appeal arising from a license denial (e.g., the Deputy Attorney General, the Administrative Law Judge, and the applicant's counsel) in advocating for or against, or deciding upon, applicants who have criminal convictions and completed parole or probation without a violation, by listing rehabilitation criteria applicable to the applicant.

Rationale:

Prior to July 1, 2020, BPC section 482 required boards to develop criteria to evaluate the rehabilitation of an applicant when considering denying or disciplining a license based on a conviction, and to consider evidence of rehabilitation in making such

decisions. Furthermore, BPC 480 prohibited a board from denying a license based solely on a misdemeanor conviction, if the applicant met the applicable requirements of the criteria of rehabilitation that the board developed.

Operative July 1, 2020, BPC section 480 prohibits the Board from denying a license on the basis that the applicant was convicted of a crime (a misdemeanor or felony), or on the basis of the facts underlying a conviction, if the applicant “made a showing of rehabilitation pursuant to Section 482.” (BPC, § 480, subd. (b), as added by AB 2138, § 4.)

While current regulation 16 CCR 325 already refers to BPC section 480 regarding the issuance of a license, the Board must consider evidence of the applicant’s rehabilitation, pursuant to the process established in the Act, or its regulations, and as directed under BPC section 482. (BPC, § 481, subd. (c), as added by AB 2138, § 7; see also BPC, § 493, subd. (b)(2), as added by AB 2138, § 13 [“A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation”].)

To implement the policies and goals of AB 2138, it is necessary for the Board to revise its regulations that establish criteria for evaluating rehabilitation, when deciding whether to deny a license based on a criminal conviction. (BPC, § 482, subd. (a), as added by AB 2138, § 9.) The Board must also decide whether an applicant “made a showing of rehabilitation,” if the applicant or licensee completed the criminal sentence at issue without a violation of parole or probation. (BPC, § 482, subd. (b), as added by AB 2138, § 9.)

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that the Board must consider when denying a license. The extent to which a person complied with the terms of parole or probation is already a factor boards often consider when evaluating rehabilitation, and it is currently considered by the Board in evaluating rehabilitation. (16 CCR § 326 (a)(4).)

But courts historically rejected the view that compliant applicants and licensees are, *per se*, rehabilitated: “The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily prove anything but good sense.” (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473; see also *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [“Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a[n] . . . applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole”].) Nonetheless, under AB 2138, the Board must now consider whether an applicant who complied with the terms of parole or probation made a showing of rehabilitation sufficient for licensure.

Building upon the currently existing regulation, 326 (a)(1) through (5) specifies the following criteria for the Board to consider when making the determination that the applicant has made a showing of rehabilitation if the applicant successfully completed the criminal sentence without a violation of parole or probation:

- (1) The nature and gravity of the crime(s).
- (2) The length(s) of the applicable parole or probation period(s).
- (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (4) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.
- (5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

These criteria are necessary to assist the Board in evaluating rehabilitation, since the purpose of evaluating an applicant's rehabilitation is to determine whether the applicant is sufficiently reformed to be licensed. AB 2138 requires the Board to evaluate rehabilitation in the narrow context of an applicant who completed the criminal sentence without violating parole or probation. Each of these criteria are narrow in scope and will provide to the Board information specific to the applicant's criminal sentence and terms or conditions of parole or probation, so that the Board knows the relevant criteria it must consider to make the determination as to the applicant's rehabilitation. In addition, to provide uniformity with other DCA boards, the proposed criteria were adopted by the Board pursuant to DCA's recommended rehabilitation criteria.

In reviewing rehabilitation criteria in 326 (a)(1) through (5) when making the determination that an applicant has successfully completed the criminal sentence, the Board uses the following rationale for this inclusion:

- 16 CCR 326 (a)(1): The nature and gravity of the crime(s).

Under this subsection, the Board will now consider the nature and gravity of the crime, because this is the offense against which the applicant's rehabilitative efforts will be evaluated in these specific instances.

- 16 CCR 326 (a)(2): The length(s) of the applicable parole or probation period(s).

The Board will consider the length of the applicable parole or probation period, because the length of time that the applicant served probation or parole without a violation is relevant to whether the applicant is rehabilitated and will comply with licensure requirements in the future. (See, *In re Conflenti* (1981) 29 Cal.3d 120, 124-125 ["a truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice"].)

- 16 CCR 326 (a)(3): The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.

The Board will consider the extent to which the parole or probation period was shortened or lengthened, and the reason for any change, because such periods can be shortened or lengthened for good or bad conduct, and this may bear on whether the applicant is sufficiently rehabilitated.

- 16 CCR 326 (a)(4): The terms or conditions of parole or probation and the extent to which they bear on the applicant's or petitioner's rehabilitation.

The Board will also consider the terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation, because the actual parole or probation terms can inform the Board on whether the applicant is rehabilitated. For instance, in cases where an applicant was convicted of a crime involving alcohol, probation terms requiring the applicant to complete alcohol abuse treatment or participate in an alcohol abuse program would bear more heavily on the applicant's rehabilitation. (See *In re Billings* (1990) 50 Cal.3d 358, 368 ["An alcoholic's rehabilitation is almost universally predicated on a choice to confront his or her problem, followed by abstinence sustained through ongoing participation in a supportive program, such as Alcoholics Anonymous"].)

- 16 CCR 326 (a)(5): The extent to which the terms or conditions of parole or probation were modified and the reason(s) for modification.

The Board will further consider the extent to which the terms or conditions of parole or probation were modified and the reason for modification, because this may be relevant to the Board's determination. For instance, if correctional authorities removed terms of parole or probation due to the applicant's good behavior, this will bear on the Board's evaluation of the applicant's rehabilitation and willingness to conform to the rules of licensure.

Additionally, this regulatory proposal will add 16 CCR 326 (b) (1) through (5) to specify the following criteria when the Board determines that the denial was based on professional misconduct, the applicant has not completed the criminal sentence without a violation of parole or probation, or the applicant has not made a showing of rehabilitation based on the criteria in subdivision (a):

(1) The nature and gravity of the act(s), professional misconduct, or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s), professional misconduct, or crime(s) committed subsequent to the act(s), professional misconduct, or crime(s) under consideration as grounds for denial.

(3) The time that has elapsed since commission of the act(s), professional misconduct, or crime(s) referred to in subparagraphs (1) or (2).

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

(5) The criteria in subsection (a)(1) through (5), as applicable.

(6) Evidence, if any, of rehabilitation submitted by the applicant or petitioner.

In reviewing each of the forgoing items, the Board uses the following rationale for this inclusion:

- 16 CCR 326 (b)(1): The nature and gravity of the act(s), professional misconduct, or crime(s) under consideration as grounds for denial.

The Board will consider the nature and gravity of the act, professional misconduct or a crime against an applicant because this is the offense against which the applicant's rehabilitative efforts will be evaluated in these specific instances. This criterion has not changed substantively from existing regulation.

- 16 CCR 326 (b)(2): Evidence of any act(s), professional misconduct, or crime(s) committed subsequent to the act(s), professional misconduct, or crime(s) under consideration as grounds for denial.

The Board will consider evidence of any act(s), professional misconduct, or crimes committed subsequent to the act(s), professional misconduct, or crime(s) as grounds for denial. It is necessary to consider such evidence because subsequent misconduct by the applicant is relevant to the Board's decision regarding whether an applicant is sufficiently rehabilitated to be licensed. Additionally, it is relevant for the Board to determine whether an applicant has demonstrated a pattern of behavior involving repeated misdemeanor convictions or non-serious offenses. For instance, in cases where an applicant was convicted of a crime involving alcohol (i.e. DUI) more than once in a short period of time, absent any aggravating factors, the pattern of behavior would bear more heavily on an applicant's rehabilitation. Such pattern may be indicative of an applicant's unfitness to practice.

- 16 CCR 326 (b)(3): The time that has elapsed since commission of the act(s), professional misconduct, or crime(s) referred to in subparagraphs (1) or (2).

The Board will consider the time that has elapsed since the commission of the act(s), professional misconduct or crime(s) referred in paragraphs (1) or (2) because the length of time that the applicant has gone without a violation is relevant to whether the applicant is rehabilitated and will comply with licensure requirements in the future. (See, *In re Conflenti* (1981) 29 Cal.3d 120, 124-125 ["a truer indication of rehabilitation will be presented if petitioner can demonstrate

by his sustained conduct over an extended period of time that he is once again fit to practice”].) This criterion has not changed from existing regulation.

- 16 CCR 326 (b)(4): Whether the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

The Board will also consider whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant. The information specified in this criterion is already a factor boards often consider when evaluating rehabilitation, and it is currently considered by the Board in evaluating rehabilitation. (16 CCR § 326, subd. (a)(4)).

Complying with such terms will bear on an applicant’s rehabilitation in terms of the applicant’s willingness to make amends from prior misconduct and willingness to conform to the rules of licensure. Accordingly, it is necessary for the Board to consider these elements to evaluate an applicant’s reformation from prior misconduct.

- 16 CCR 326 (b)(5): The criteria in 16 CCR 326 (a)(1) through (5), as applicable.

16 CCR 326 (a)(1) through (5) specifies the following criteria for the Board to consider when making the determination that the applicant who has successfully completed the criminal sentence has made a showing of rehabilitation:

(1) the nature and gravity of the crime(s).

(2) the length(s) of the applicable parole or probation period(s).

(3) the extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.

(4) the terms or conditions of parole or probation and the extent to which they bear on the applicant’s rehabilitation.

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

The Board will consider the criteria in CCR 326 (a)(1) through (5), as applicable. This is necessary to ensure that all applicants convicted of a crime have the opportunity to be evaluated under the same set of rehabilitation criteria. For applicants that completed their criminal parole or probation without a violation, the Board would first evaluate their eligibility for licensure under the criteria in subsection (a). If the applicant did not demonstrate sufficient rehabilitation under the criteria in subsection (a), the Board would apply the broader criteria in subsection (b). For applicants that did not complete their criminal parole or probation without a violation, the Board would apply the criteria in subsection (b), which incorporates the criteria from subsection (a). This way, similarly-situated

applicants (those being considered for denial based on a conviction) have the benefit of the same set of criteria.

- 16 CCR 326 (b)(6): Evidence, if any, of rehabilitation submitted by the applicant or petitioner.

The Board will consider evidence, if any, of rehabilitation submitted by the applicant or petitioner. This is already an existing regulatory criterion (16 CCR § 326 subd. (a)(5)). The applicant has the burden of demonstrating any rehabilitative or corrective measures they have taken since the revocation or disciplinary action occurred. The Board will determine whether the applicant has the necessary qualifications and skills to safely engage in the practice of chiropractic within the scope of current law and accepted standards of practice. It is necessary to retain this requirement in order to consolidate the Board's rehabilitation criteria in one place.

Add 16 CCR 327 Rehabilitation Criteria for Suspensions or Revocations

This proposal will add 16 CCR 327, which will require the Board, when considering whether to suspend or revoke (discipline) a chiropractic license, to evaluate whether the licensee has made a showing of rehabilitation and is presently fit for a license.

This proposal will add 16 CCR 327 (a), which will, in circumstances where the basis for discipline is the conviction of a crime, require the Board to 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.

This proposal will add 16 CCR 327 (a) (1) through (5), which enumerate criteria for evaluating a licensee's rehabilitation.

This proposal will also add 16 CCR 327 (b), which will establish criteria to evaluate a licensee's rehabilitation when: (1) the Board determines that the licensee did not complete the criminal sentence without a violation of parole or probation; (2) the Board found that the licensee did not make a showing of rehabilitation based on the criteria in subdivision (a); or (3) the suspension or revocation of a license was based upon substantially related out-of-state discipline or any act or crime specified in section 10(b) of the Chiropractic Initiative Act of California.

This proposal will also add 16 CCR 327 (b), paragraphs 1-7, which enumerate criteria for evaluating a licensee's rehabilitation.

Factual Basis

Prior to July 1, 2020, BPC Section 482 required boards to develop criteria to evaluate the rehabilitation when considering suspending or revoking a license under BPC Section 490. Additionally, Boards are required to consider all competent evidence of rehabilitation furnished by the licensee.

AB 2138 amended BPC Section 482(b) to require consideration of whether an applicant or licensee has made a showing of rehabilitation when the applicant or licensee has completed the criminal sentence at issue without a violation of parole or probation or the Board finds that the applicant is rehabilitated.

Adding 16 CCR 327 is necessary to conform the regulation to statute and to establish the criteria for the Board to evaluate the rehabilitation of an applicant or licensee who is being considered for discipline by the Board.

Anticipated Benefit

The proposed addition of 16 CCR 327, subsection (a) will provide transparency and clarity to licensees who have completed the criminal sentence without a violation of parole or probation by defining the criteria the Board must consider when making the determination on whether to discipline a chiropractic license. The proposal will also make relevant parties to any administrative appeal arising from a license denial (e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent's counsel) aware that substantially related crimes, professional misconduct, and acts include violations of other state or federal laws governing the practice of chiropractic.

The proposed addition of 16 CCR, 327, subsection (b), will provide transparency and clarity to licensees who have not completed their criminal sentence without a violation of parole or probation or otherwise do not qualify for consideration under subsection (a). Providing the list of rehabilitation criteria will help licensees understand the facts and documents to present to the Board to demonstrate their rehabilitation for each of the reasons set forth above.

Rationale:

BPC section 482 requires boards to develop criteria to evaluate the rehabilitation when considering suspending or revoking a license based on the conviction of a crime, and to consider evidence of rehabilitation in making such decisions. (BPC, § 482 as amended by Stats. 2018, Ch. 995, Sec. 8. (AB 2138)).

Operative July 1, 2020, BPC section 482 requires the Board to evaluate whether a licensee has made a showing of rehabilitation when the licensee has completed the criminal sentence at issue without a violation of parole or probation, or the Board finds the applicant is rehabilitated. (BPC, § 482 as repealed and by Stats. 2018, Ch. 995, Sec. 9. (AB 2138)).

To implement the policies and goals of AB 2138, it is necessary for the Board to revise existing regulations that establish criteria for evaluating rehabilitation, when deciding whether to suspend or revoke a license based on a criminal conviction. (BPC, § 482, subd. (a), as added by AB 2138, § 9.) The Board must also consider whether a licensee “made a showing of rehabilitation,” if the licensee completed the criminal sentence at issue without a violation of parole or probation. (BPC, § 482, subd. (b), as added by AB 2138, § 9.)

This proposal will add 16 CCR 327 (a)(1) through (5) to specify the following criteria for the Board to consider when making the determination that the licensee has made a showing of rehabilitation if the licensee successfully completed the criminal sentence without a violation of probation or parole:

- (1) Nature and gravity of the crime(s).
- (2) The length(s) of the applicable parole or probation period(s).
- (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (4) The terms or conditions of parole or probation and the extent to which they bear on the licensee’s rehabilitation.
- (5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

In reviewing the forgoing criteria, the Board uses the following rationale for this inclusion:

- 16 CCR 327 (a)(1): Nature and gravity of the crime(s).

The Board will consider the nature and gravity of the crime, because this is the offense against which the licensee’s rehabilitative efforts will be evaluated in these specific instances. This criterion has not changed substantively from existing regulation. (16 CCR § 326, subd. (b)(1)).

- 16 CCR 327 (a)(2): The length(s) of the applicable parole or probation period(s).

The Board will now consider the length of the applicable parole or probation period because the length of time that the licensee served probation or parole without a violation is relevant to whether the licensee is rehabilitated and will comply with licensure requirements in the future. (See, In re Conflenti (1981) 29

Cal.3d 120, 124-125 [“a truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice”].)

- 16 CCR 327 (a)(3): The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.

The Board will consider the extent to which the parole or probation period was shortened or lengthened, and the reason for any change, because such periods can be shortened or lengthened for good or bad conduct, and this may bear on whether the licensee is sufficiently rehabilitated.

- 16 CCR 327 (a)(4): The terms or conditions of parole or probation and the extent to which they bear on the licensee’s rehabilitation.

The Board will also consider the terms or conditions of parole or probation and the extent to which they bear on the licensee’s rehabilitation because the actual parole or probation terms can inform the Board on whether the licensee is rehabilitated. For instance, in cases where a licensee was convicted of a crime involving alcohol, probation terms requiring the licensee to complete alcohol abuse treatment or participate in an alcohol abuse program would bear more heavily on the licensee’s rehabilitation. (See *In re Billings* (1990) 50 Cal.3d 358, 368 [“An alcoholic’s rehabilitation is almost universally predicated on a choice to confront his or her problem, followed by abstinence sustained through ongoing participation in a supportive program, such as Alcoholics Anonymous”].)

- 16 CCR 327 (a)(5): The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

The Board will further consider the extent to which the terms or conditions of parole or probation were modified and the reason for modification because this may be relevant to the Board’s determination. For instance, if correctional authorities removed terms of parole or probation due to the licensee’s good behavior, this will bear on the Board’s evaluation of the licensee’s rehabilitation and willingness to conform to the rules of licensure.

These criteria are necessary to assist the Board in evaluating rehabilitation, since the purpose of evaluating a licensee’s rehabilitation is to determine whether the licensee is sufficiently reformed to be licensed. AB 2138 requires the Board to evaluate rehabilitation in the narrow context of a licensee who completed the criminal sentence without violating parole or probation. Each of these criteria are narrow in scope and will provide to the Board information specific to the licensee’s criminal sentence and terms or conditions of parole or probation, so that the Board knows the relevant criteria it must consider to make the determination as to the licensee’s rehabilitation. In addition, to

provide uniformity with other DCA boards, the proposed criteria were adopted by the Board pursuant to DCA's recommended rehabilitation criteria.

This proposal will also add 16 CCR 327 (b), to specify the following criteria for the Board to consider when making the determination that a licensee has been disciplined by another state or jurisdiction, the licensee has not made a showing of rehabilitation based on criteria in subdivision (a), or the licensee has not completed the criminal sentence without a violation of parole or probation:

- (1) Nature and gravity of the act(s), disciplinary action(s), or crime(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s), disciplinary action(s), or crime(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of dismissal proceedings pursuant to section 1203.4 of the Penal Code.
- (6) The criteria in subsection (a)(1) through (5), as applicable.
- (7) Evidence, if any, of rehabilitation submitted by the licensee.

In reviewing the forgoing criteria, the Board uses the following rationale for this inclusion:

- 16 CCR 327 (b)(1): Nature and gravity of the act(s), disciplinary action(s), or crime(s).

The Board will consider the nature and gravity of the act, disciplinary action or crime because this is the offense or disciplinary action against which the licensee's rehabilitative efforts will be evaluated in these specific instances.

- 16 CCR 327 (b)(2): Total criminal record.

The Board will consider the total criminal record because additional prior or subsequent misconduct by the licensee is relevant to the Board's decision regarding whether a licensee is sufficiently rehabilitated to be licensed. Additionally, it is relevant for the Board to determine whether a licensee has demonstrated a pattern of behavior involving repeated misdemeanor convictions or non-serious offenses. For instance, in cases where a licensee was convicted of a crime involving alcohol (i.e. DUI) more than once in a short period of time, absent any aggravating factors, the pattern of behavior would bear more heavily on the licensee's rehabilitation. Such pattern may be indicative of a licensee's unfitness to practice. This criterion has not changed from existing regulation. (16 CCR § 326, subd. (b)(2)).

- 16 CCR 327 (b)(3): The time that has elapsed since commission of the act(s), disciplinary action(s), or crime(s).

The Board will consider the time that has elapsed since the commission of the act, disciplinary action or crime because the length of time that the licensee has gone without a violation is relevant to whether the licensee is rehabilitated and will comply with licensure requirements in the future. (See, *In re Conflenti* (1981) 29 Cal.3d 120, 124-125 [“a truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice”].) This criterion has not changed from existing regulation.

- 16 CCR 327 (b)(4): Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

The Board will also consider whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee. The information specified in this criterion is already a factor boards often consider when evaluating rehabilitation, and it is currently considered by the Board in evaluating rehabilitation. (16 CCR § 326, subd. (b)(4)).

Complying with such terms will bear on a licensee’s rehabilitation in terms of the licensee’s willingness to make amends from prior misconduct and willingness to conform to the rules of licensure. Accordingly, it is necessary for the Board to consider these elements to evaluate a licensee’s reformation from prior misconduct.

- 16 CCR 327 (b)(5): If applicable, evidence of dismissal proceedings pursuant to section 1203.4 of the Penal Code.

The Board will further consider evidence of dismissal proceedings pursuant to section 1203.4 of the Penal Code because it is relevant to determine whether a licensee has been judicially dismissed and met all applicable requirements of rehabilitation criteria developed by the Board. This will allow the Board to make an informed decision when considering disciplinary action against a licensee.

- 16 CCR 327 (b)(6): The criteria in subsection (a)(1) through (5), as applicable.

16 CCR 327 (a)(1) through (5) specifies the following criteria for the Board to consider when making the determination that the licensee who has successfully completed the criminal sentence has made a showing of rehabilitation:

(1) the nature and gravity of the crime(s).

- (2) the length(s) of the applicable parole or probation period(s).
- (3) the extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (4) the terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.
- (5) the extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

The Board will now consider the criteria in CCR 327 subsection (a)(1) through (5), as applicable. This is necessary to ensure that all licensees convicted of a crime have the opportunity to be evaluated under the same set of rehabilitation criteria. For licensees that completed their criminal parole or probation without a violation, the Board would first evaluate their eligibility for licensure under the criteria in subsection (a). If the licensee did not demonstrate sufficient rehabilitation under the criteria in subsection (a), the Board would apply the broader criteria in subsection (b). For licensees that did not complete their criminal parole or probation without a violation, the Board would apply the criteria in subsection (b), which incorporates the criteria from subsection (a). This way, similarly-situated licensees (those being considered for suspension or revocation based on a conviction) have the benefit of the same set of criteria.

- 16 CCR 327 (b)(7): Evidence, if any, of rehabilitation submitted by the licensee.

The Board will consider evidence, if any, of rehabilitation submitted by the licensee. This is already an existing regulatory criterion (16 CCR § 326 subd. (b)(5)). The licensee has the burden of demonstrating any rehabilitative or corrective measures they have taken since the revocation or disciplinary action occurred. The Board will determine whether the licensee has the necessary qualifications and skills to safely engage in the practice of chiropractic within the scope of current law and accepted standards of practice. It is necessary to retain this requirement in order to consolidate the Board's rehabilitation criteria in one place.

Underlying Data

- Assembly Bill 2138 (Chiu, Chapter 995, Statutes of 2018)
- May 21, 2019, Board of Chiropractic Examiners Meeting Minutes
- AB 2138 (Chiu) Licensing boards: denial of application: revocation or suspension of licensure: criminal conviction – Fact Sheet (Undated) (From Author's Office)

Businesses Impact:

The proposed regulations will not have a significant adverse economic impact on businesses, as the regulations do not directly affect businesses. The Board concludes

that the proposal is unlikely to create or eliminate any jobs for the profession, the proposal will not create new businesses or eliminate existing businesses, and the proposal is unlikely to significantly impact the “expansion of businesses”.

This initial determination is based on the purpose of AB 2138, which sought to reduce barriers to licensure for applicants and licensees with criminal histories or license discipline. The author of AB 2138 (Chiu) believes that the current “regulatory structure places impediments and restrictions upon their ability to obtain employment.” The Board anticipates that the proposed regulations will impact businesses to the extent that individual applicants or licensees are able to be licensed or retain licensure under the proposal.

Because the Board historically denies less than one initial application per year, no increase in the number of new initial licensees approved per year is anticipated. resulting from the proposed regulations. As a result, the proposed regulations are not anticipated to have a significant impact on businesses in California.

Economic Impact Assessment/Analysis:

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the regulations are aimed at reducing barriers to licensure and make it easier for license applicants and licensees with criminal histories and/or licensure discipline to obtain and maintain licensure.
- It will not create a significant number of new businesses or eliminate existing business within the State of California because the regulations are aimed at reducing barriers to licensure and make it easier for license applicants and licensees with criminal histories or licensure discipline to obtain and maintain licensure.
- It will not affect the expansion of businesses currently doing business within the State of California, because the regulations are aimed at reducing barriers to licensure and make it easier for license applicants and licensees with criminal histories or licensure discipline to obtain and maintain licensure.
- This regulatory proposal benefits the health and welfare of California residents because it may increase their access to licensed professionals providing chiropractic care.

- This regulatory proposal does not affect worker safety because it establishes criteria, based upon recent statutory mandates for licensure following the applicant's or licensee's criminal conviction, to potentially increase the number of licensed professionals providing chiropractic care in California. It does not involve worker safety.
- This regulatory proposal does not affect the state's environment because it only regulates applicants and licensees and their qualifications for licensure following a criminal conviction or disciplinary action. It does not involve environmental issues.
- This regulatory proposal does not affect housing, since its purpose is to license more qualified health care providers and not provide more housing.

To the extent license 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. Chiropractic - Initial Licenses (Denied) Per Year				
2019	2018	2017	2016	Ave.
1	0	0	0	0.25

Specific Technologies or Equipment:

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

Consideration of Alternatives:

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the regulation is proposed or would be as effective or less burdensome to affected private persons than the proposed regulation, or equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

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

- Option 1: To 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.

- Option 2: Do nothing, meaning the Board would not adopt the regulations. The Board opted not to pursue this option because of the policy goals of AB 2138.

Fiscal Impact Assessment/Analysis:

Because the Board historically denies less than one initial application per year, no increase in the number of initial applications approved per year is anticipated. As a result, the proposed regulations are not anticipated to increase licensing and/or enforcement costs related to any expansion of the licensee population.

Any interested person may submit comments to the Board, in writing during the comment period outlined above, relevant to the above determinations at Board of Chiropractic Examiners, 901 P Street, Suite 142A, Sacramento, California 95814.

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