

## Title 16. Board of Chiropractic Examiners

### PROPOSED AB 2138 COMPLIANCE LANGUAGE

<b>Legend:</b> Added text is indicated with an <u>underline</u> . Deleted text is indicated by <del>strikeout</del> .
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#### 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, 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 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 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 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.
- (c) For purposes of subsection (a), a substantially related crime, professional misconduct, or act shall include, but is 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 of California, these regulations and/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.

*Note: Authority cited: Sections 4(b), 10(a), 10 (b), Chiropractic Initiative Act of California, Stats. 1923, p. lxxxviii and Business and Professions Code Sections 480 and 490. 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, Reinstatements, and Reissuance of a License.**

- (a) 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 or restoration of a license pursuant to subdivision (c) of Section 10 of the Chiropractic Initiative Act of California, on the ground that the applicant or petitioner has been convicted of a crime, the Board shall evaluate whether the applicant or petitioner made a showing of rehabilitation if the applicant or petitioner completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Board shall consider the following criteria:
  - (1) The nature and gravity of the crime(s).
  - (2) The length(s) of the applicable parole or probation period(s).
  - (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
  - (4) The terms or conditions of parole or probation and the extent to which they bear on the applicant's or petitioner's rehabilitation.
  - (5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.
  
- (b) If the applicant or petitioner has not completed the criminal sentence at issue without a violation of parole or probation, or the board determines that the applicant or petitioner did not make the showing of rehabilitation based on the criteria in subsection (a), or the denial is based on professional misconduct, or the denial is based on one or more of the grounds specified in Section 10(b) of the Chiropractic Initiative Act of California, the board shall apply the following criteria in evaluating an applicant's or petitioner's rehabilitation:
  - (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.

(c) When considering a petition for reinstatement of a license, under the provisions of section 1003 of the Business and Professions Code or restoration of a license pursuant to subdivision (c) of Section 10 of the Chiropractic Initiative Act of California, the Board shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in subsection (a) of this section.

~~(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: Chiropractic Initiative Act of California~~

- ~~(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.~~

~~(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.~~

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. 4xxxviii) and Business and Professions Code Section 482.-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.**

(a) When considering the suspension or revocation of a chiropractic license under section 490 of the Business and Professions Code on the ground that the person holding the license has been convicted of a crime, the board shall evaluate whether the licensee has made a showing of rehabilitation if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Board shall consider the following criteria:

- (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.

(b) If the licensee has not completed the criminal sentence without a violation of parole or probation, or the Board determines that the licensee did not make a showing of rehabilitation based on the criteria in subsection (a), or the suspension or revocation is based upon a disciplinary action as described in section 141 of the code, or the suspension or revocation is based upon one or more of the grounds specified in section 10(b) of the Chiropractic Initiative Act of California, the Board shall apply the following criteria in evaluating the licensee's rehabilitation:

- (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.

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