

TITLE 16. MEDICAL BOARD OF CALIFORNIA
NOTICE OF PROPOSED REGULATORY ACTION

**Amend Title 16 California Code of Regulations
Sections 1309, 1360, 1360.1 and 1360.2**

**Repeal Title 16 California Code of Regulations
Sections 1379.68, 1379.70, 1379.72**

NOTICE IS HEREBY GIVEN that the Medical Board of California (Board) is proposing to take the action described in the Informative Digest.

Public Hearing

The Board has not scheduled a public hearing on this proposed action. The Board will, however, hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under Contact Person in this notice.

Comment Period

Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this notice, must be received by the Board at its office no later than January 20, 2020, or at the hearing, if applicable.

Availability of Modifications

The Board may, after considering all timely and relevant comments, adopt the proposed regulations substantially as described in this notice, or may modify the proposed regulations if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this notice as the contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference

Pursuant to the authority vested by sections 481, 482, and 2018 of the Business and Professions Code (BPC), and to implement, interpret or make specific sections 141, 480, 481, 482, 488, and 493 of said code, the Board is considering amendments to sections 1309, 1360, 1360.1, and 1360.2, and is considering repealing sections 1379.68, 1379.70, and 1379.72 of division 13 of title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST

BPC section 2018 authorizes the Board to adopt, amend, or repeal regulations as may be necessary to enable it to carry into effect the provisions of law relating to the practice of medicine. Additionally, as required under Assembly Bill (AB) 2138 Chiu, Chapter 995, Statutes of 2018), the primary purpose of this proposal is to implement, interpret, and make specific the provisions of BPC sections 141, 475, 480, 481, 482, 488, 490, 492, and 493 relative to substantial relationship and rehabilitation criteria. Accordingly, the Board is proposing the following changes:

Amend 16 CCR section 1309 (Rehabilitation Criteria for Denial of Licensure)

Existing law under 16 CCR section 1309 sets forth the rehabilitation criteria the Board shall consider when deciding whether to deny a license.

This rulemaking proposes to amend this section to clarify that when the Board is deciding whether to deny the application of a person on the ground that the applicant was convicted of a crime, the Board will be required to consider whether the applicant made a showing of rehabilitation and is presently eligible for a license if the applicant completed the criminal sentence at issue without a violation of parole or probation, and requires the Board consider the following criteria: (1) The nature and gravity of the crime(s); (2) The length(s) of the applicable parole or probation period(s); (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified; (4) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation; and (5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

The proposal would require a broader set of rehabilitation criteria to be considered for applicants who had not completed the criminal sentence without a violation of parole or probation, did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or when denial was being considered based on something other than a conviction.

Additionally, this proposal would make minor clarifying changes, remove extraneous language, and correct terms.

Amend 16 CCR section 1360 (Substantial Relationship Criteria)

Existing law under 16 CCR section 1360 sets forth the criteria the Board shall consider when deciding whether a crime or act is substantially related to the qualifications, functions, or duties of a licensee when determining whether to deny, suspend, or revoke a license.

This proposed rulemaking, for purposes of denial, suspension, or revocation of a license, would add professional misconduct and out-of-state discipline as grounds

requiring the Board to consider the substantially related criteria, and require the Board, in making the substantial relationship determination for a crime, to consider the following criteria: (1) The nature and gravity of the crime; (2) The number of years elapsed since the date of the crime; and (3) The nature and duties of a licensee.

The proposal would also add that substantially related crimes, professional misconduct, or acts would include violating any provision of state or federal law governing the applicant's or licensee's professional practice.

Additionally, this rulemaking proposes minor technical and clarifying changes to make this section applicable to all individuals licensed and regulated by the Board, and proposes to remove extraneous language.

Amend 16 CCR section 1360.1 (Rehabilitation Criteria for Suspensions or Revocations)

Existing law under 16 CCR section 1360.1 sets forth the rehabilitation criteria the Board shall consider when deciding whether to suspend or revoke a license.

This rulemaking proposes to amend this section to clarify that when the Board is deciding whether to suspend or revoke a license on the ground that the licensee was convicted of a crime, the Board will be required to consider whether the licensee made a showing of rehabilitation and is presently eligible for a license if the licensee completed the criminal sentence at issue without a violation of parole or probation, and requires the Board to 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 licensee's rehabilitation; and (5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

The proposal would require a broader set of rehabilitation criteria to be considered for licensees who had not completed the criminal sentence without a violation of parole or probation, did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or when discipline was being considered based on something other than a conviction.

Additionally, this rulemaking proposes minor technical and clarifying changes to make this section applicable to all individuals licensed and regulated by the Board, and proposes to remove extraneous language.

Amend 16 CCR section 1360.2 (Rehabilitation Criteria for Petitions for Reinstatement)

Existing law under 16 CCR section 1360.2 sets forth the rehabilitation criteria the Board shall consider when making a decision on a petition for reinstatement of a license.

This rulemaking proposes to amend this section to clarify that when the Board is deciding whether to reinstate a license that was revoked based in part on the ground that the petitioner was convicted of a crime, the Board will be required to consider whether the petitioner made a showing of rehabilitation and is presently eligible for a license if the petitioner completed the criminal sentence at issue without a violation of parole or probation, and requires the Board 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 petitioner rehabilitation; and (5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

The proposal would require a broader set of rehabilitation criteria to be considered for petitioners who had not completed the criminal sentence without a violation of parole or probation, did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or when discipline was being considered based on something other than a conviction.

Additionally, this rulemaking proposes minor technical changes and clarifying changes to make this section applicable to all individuals licensed and regulated by the Board, and proposes to remove extraneous language.

Repeal 16 CCR section 1379.68 (Substantial Relationship Criteria)

Existing law under 16 CCR section 1379.68 sets forth the criteria the Board shall consider when deciding whether a crime or act is substantially related to the qualifications, functions, or duties of a licensee when determining whether to deny, suspend, or revoke the registration of a polysomnography applicant or registrant.

This rulemaking proposes to repeal this section, so that all of the Board's applicants and licensees, including polysomnography registrants, are governed by the same regulation to determine substantial relationship criteria, which would be 16 CCR section 1360. Polysomnography registrants are the only allied health care professional under the Board with a separate section addressing this topic. This proposed rulemaking will streamline the Board's regulations so that 16 CCR section 1360 applies to all health care professionals licensed and regulated by the Board.

Repeal 16 CCR section 1379.70 (Criteria for Rehabilitation for Denial and Reinstatement)

Existing law under 16 CCR section 1379.70 sets forth the rehabilitation criteria the Board must consider when making a decision on an application or petition for reinstatement of a polysomnography registration.

This rulemaking proposes to repeal this section, so that all of the Board's applicants and petitioners for reinstatement, including polysomnography registrants, are governed by the same regulations to determine whether the individual has demonstrated rehabilitation, which would be 16 CCR section 1309 and 1360.2. Polysomnography registrants are the only allied health care professional under the Board with a separate section addressing these topics. This proposed rulemaking will streamline the Board's regulations so that 16 CCR sections 1309 and 1360.2 applies to all health care professionals licensed and regulated by the Board.

Repeal 16 CCR section 1379.72 (Rehabilitation Criteria for Suspensions and Revocations)

Existing law under 16 CCR section 1379.72 sets forth the rehabilitation criteria the Board must consider when making a decision on a suspension or revocation of a polysomnography registration.

This rulemaking proposes to repeal this section, so that all of the Board's licensees, including polysomnography registrants, are governed by the same regulation to determine whether the individual has demonstrated rehabilitation when the Board is considering the suspension or revocation of a license, which would be 16 CCR section 1360.1. Polysomnography registrants are the only allied health care professional under the Board with a separate section addressing this topic. This proposed rulemaking will streamline the Board's regulations so that 16 CCR section 1360.1 applies to all health care professionals licensed and regulated by the Board.

Policy Statement Overview/Anticipated Benefits of Proposal

As specified in the legislative analyses of AB 2138, this proposal seeks to reduce barriers to licensure for individuals with prior criminal convictions who can demonstrate rehabilitation, which may reduce recidivism and provide economic opportunity to California's residents. In addition, the proposal seeks to improve clarity, transparency, and consistency for applicants, licensees, and petitioners in the Board's use of their criminal histories. Further, by reducing barriers to licensure, consumers may have greater access to licensed professionals.

Consistency and Compatibility with Existing State Regulations

During the process of developing these regulations and amendments, the Board has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State

Agencies: The Board anticipates there may be minor costs to the Board as a result

of this proposed rulemaking and amending its policies and procedures for consistency with the proposed changes. The Board, however, already reviews evidence of rehabilitation when making licensing and disciplinary decisions, so these costs are anticipated to be absorbable.

Costs or Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None.

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

This initial determination is based on the fact that the proposed amendments impact few medical professionals, and the amendments are consistent with the review mandated by AB 2138. Moreover, the Board already reviews evidence of rehabilitation in a manner that is similar to the changes provided for in the proposed amendments.

Cost Impact on Representative Private Person or Business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with this proposed rulemaking, as there would be fewer restrictions for individuals with criminal convictions to obtain or maintain licensure.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Board has determined that this rulemaking proposal will not likely have an effect on small businesses, since few medical professionals will be impacted. Moreover, the Board already reviews evidence of rehabilitation in a manner that is similar to the changes provided for in the proposed amendments. Nonetheless, small businesses may have a greater pool of licensed professionals to choose from as barriers to licensure are reduced.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The Board has made an initial determination that this regulatory proposal will not

have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

The Board has made this initial determination because few medical professionals will be impacted. Moreover, the Board already reviews evidence of rehabilitation in a manner that is similar to the changes provided for in the proposed amendments.

Benefits of Regulation:

Per the legislative analyses of AB 2138, this proposal seeks to reduce barriers for individuals convicted of a crime to obtain or maintain their professional licenses when they have been rehabilitated and are presently eligible for a license. This may benefit individuals with criminal histories, who would have greater access to licensure, and may reduce recidivism. The public may benefit from the proposed rulemaking by gaining increased access to medical providers, which may benefit the health and welfare of California patients. This proposal does not affect worker safety in California nor the state's environment.

CONSIDERATION OF ALTERNATIVES

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

The following alternatives were considered:

- Option 1: Pursue a regulatory change that requires the Board to find rehabilitation if the applicant completed the terms of their criminal probation or parole without a violation. Courts give little weight to the fact that an individual 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. Consequently, the Board believes that reviewing each individual on the basis of multiple criteria is the better indicator on 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 not pursue regulatory changes. The Board rejected this option because the Board is mandated to make regulatory changes consistent with AB 2138 by July 1, 2020.

Any interested person may submit comments to the Board in writing relevant to the above determinations directed to the contact person identified below.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, any document incorporated by reference, the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the person designated as the contact person below, or by accessing the Board's website at:

[http://www.mbc.ca.gov/About Us/Laws/Proposed Regulations](http://www.mbc.ca.gov/About_Us/Laws/Proposed_Regulations).

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

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The backup contact person is:

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Website Access: Materials regarding this proposal can be found at
[http://www.mbc.ca.gov/About Us/Laws/Proposed Regulations](http://www.mbc.ca.gov/About_Us/Laws/Proposed_Regulations).