

**State of California
Office of Administrative Law**

In re:
Medical Board of California

Regulatory Action:

Title 16, California Code of Regulations

Adopt sections:

Amend sections: 13004, 1309, 1355.3, 1360,
1360.1, 1360.2

Repeal sections: 1379.68, 1379.70, 1379.72

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

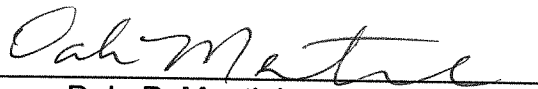
OAL Matter Number: 2020-0812-01

OAL Matter Type: Regular (S)

This action establishes criteria for the Medical Board of California (the Board) to consider in determining whether a crime, professional misconduct, or other act committed by an applicant or licensee is substantially related to the qualifications, functions, or duties of the licensed profession when deciding whether to deny, suspend, or revoke a license. The action also establishes criteria for the Board to consider in evaluating whether such applicant or licensee has been rehabilitated since a criminal conviction or other act leading to denial, suspension, or revocation of a license or when considering a petition for reinstatement of a suspended or revoked license.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 1/21/2021.

Date: January 21, 2021


Dale P. Mentink
Senior Attorney

For: Kenneth J. Pogue
Director

Original: William Prasifka, Executive
Director

Copy: Kerrie Webb

NOTICE PUBLICATION/REGULATIONS SUBMISSION

See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

REGULAR

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2019-1125-01	REGULATORY ACTION NUMBER 2020-0812-015	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

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OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

 AGENCY WITH RULEMAKING AUTHORITY
 Medical Board of California

AGENCY FILE NUMBER (if any)

ENDORSED - FILED
 in the office of the Secretary of State
 of the State of California

 JAN 21 2021
 2:30pm
A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Substantial Relationship and Rehab Criteria		TITLE(S) 16	FIRST SECTION AFFECTED 1309	2. REQUESTED PUBLICATION DATE December 6, 2019
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Kerrie Webb		TELEPHONE NUMBER (916) 263-2389	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2019, 49-2		PUBLICATION DATE 12/6/2019	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Same	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 1300.1 1355.3	per agency request 1/21/21
	AMEND 1309, 1360, 1360.1 and 1360.2	
	REPEAL 1379.68, 1379.70, and 1379.72	
TITLE(S) 16		

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input checked="" type="checkbox"/> Other (Specify) DCA		

7. CONTACT PERSON

Kerrie Webb	TELEPHONE NUMBER (916) 263-2389	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) kerrie.webb@mbc.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>William Prasifka</i>	DATE 8/11/20
TYPED NAME AND TITLE OF SIGNATORY William Prasifka, Executive Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JAN 21 2021

Office of Administrative Law

MEDICAL BOARD OF CALIFORNIA
SUBSTANTIAL RELATIONSHIP AND REHABILITATION CRITERIA
ORDER OF ADOPTION

1. Amend Section 1300.4, Chapter 1, Article 1, Division 13, of Title 16 of the California Code of Regulations to read as follows:

§ 1300.4. Definitions.

Unless the context otherwise requires, for the purpose of the regulations contained in this chapter:

- (a) "Academic year" means a period of education consisting of 45 quarter units, 30 semester units, or a duration deemed equivalent by the board.
- (b) "Board" means the Medical Board of California.
- (c) "Code" means the Business and Professions Code.
- (d) "Curriculum" means an organized set of courses or discrete modules of learning that are a prerequisite to the award of a degree or diploma.
- (e) "Division" means the Medical Board of California.
- (f) "Institution" means any medical school located outside the United States or Canada that offers a resident course of instruction leading to an M.D. degree.
- (g) "License" means license, certificate, or registration.
- (g~~h~~) "Quarter unit" means at least 10 hours of college or university level instruction during a 10-week or longer quarter plus a reasonable amount of time outside of instruction that the student must devote to preparation for the course.
- (h~~i~~) "Semester unit" means at least 15 hours of college or university level instruction during a 15-week or longer semester plus a reasonable period of time outside of instruction that the student must devote to preparation for the course.

Note: Authority cited: Section 2018, Business and Professions Code. Reference: Sections 23.7, 2018, 2089 and 2089.5, Business and Professions Code.

2. Amend Section 1309, Chapter 1, Article 2, Division 13, of Title 16 of the California Code of Regulations to read as follows:

§ 1309. Rehabilitation Criteria for Denial of Licensure.

- (a) When considering the denial of a license, certificate or permit under Section 480 of the code, the division, in evaluating the rehabilitation of the applicant and his or her present eligibility for a license, certificate or permit, on the ground that the applicant was convicted of a crime, the board shall consider whether the applicant made a showing of rehabilitation if the applicant completed the criminal sentence at issue without a violation

of parole or probation. In making this determination, the board shall consider the following criteria:

(a)(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.

(b) If the applicant has not completed the criminal sentence at issue without a violation of parole or probation, the board determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a), or the denial is based on professional misconduct, the board shall apply the following criteria in evaluating an applicant's rehabilitation:

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

(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 which also could be considered as grounds for denial under Section 480.

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

(d)(4) The extent to which the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

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

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

Note: Authority cited: Sections 481, 482 and 2018, Business and Professions Code.

Reference: Sections 141, 480, 481, 482, 488, 2221, and 3576, 2220-2317, Business and Professions Code.

3. Amend Section 1355.3, Chapter 2, Article 1, Division 13, of Title 16 of the California Code of Regulations to read as follows:

§ 1355.3. Definitions.

Unless the context otherwise requires, for the purpose of the regulations contained in this chapter,

(a) "Board" means the Medical Board of California.

(b) "Division" means the Medical Board of California, and

(c) "Code" means the Business and Professions Code.

(d) "License" means license, certificate, or registration.

Note: Authority cited: Section 2018, Business and Professions Code. Reference: Sections 23.7, 2004, 2018 and 2019, Business and Professions Code.

4. Amend Section 1360, Chapter 2, Article 3, Division 13, of Title 16 of the California Code of Regulations to read as follows:

§ 1360. Substantial Relationship Criteria.

(a) For the purposes of denial, suspension or revocation of a license, ~~certificate or permit~~ pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the code, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes, professional misconduct, or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of state or federal law governing the applicant's or licensee's professional practice. ~~Medical Practice Act.~~

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the board shall consider the following criteria:

(1) The nature and gravity of the crime;

(2) The number of years elapsed since the date of the crime; and

(3) The nature and duties of the profession.

Note: Authority cited: Sections 481, 493, and 2018, Business and Professions Code. Reference: Sections 141, 480, 475, 481, 490, 493, 2081, 2234, and 2236, 2305, 3576, and 3576.3, Business and Professions Code.

5. Amend Section 1360.1, Chapter 2, Article 3, Division 13, of Title 16 of the California Code of Regulations to read as follows:

§ 1360.1. Rehabilitation Criteria for Suspensions or Revocations.

(a) When considering the suspension or revocation of a license under Section 490 of the code, certificate or permit on the ground that a person holding a license, certificate or permit under the Medical Practice Act has been convicted of a crime, the division, in evaluating the rehabilitation of such person and his or her eligibility for a license, certificate or permit board shall consider whether the licensee 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) 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.
- (5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for the modification.

(b) If the licensee has not completed the criminal sentence at issue without a violation of parole or probation, the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivision (a), or the suspension or revocation is based on disciplinary action as described in Section 141 of the Code, the board shall apply the following criteria in evaluating the licensee's rehabilitation:

- ~~(a)(1)~~ The nature and severity/gravity of the act(s), professional misconduct, or offense(s)/crime(s).
- ~~(b)(2)~~ The total criminal record, or record of professional misconduct.
- ~~(c)(3)~~ The time that has elapsed since commission of the act(s), professional misconduct, or offense(s)/crime(s).
- ~~(d)(4)~~ Whether the licensee, certificate or permit holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.
- (5) The criteria in subdivisions (a)(1)-(5), as applicable.
- ~~(e)(6)~~ If applicable, evidence of expungement/dismissal proceedings pursuant to Section 1203.4 of the Penal Code.
- ~~(f)(7)~~ Evidence, if any, of rehabilitation submitted by the licensee, certificate or permit holder.

Note: Authority cited: Sections 482 and 2018, Business and Professions Code.
Reference: Sections 141, 480, 481, 482, 488, 490, 493, 2305, 2519, 3576, and 3576.3, Business and Professions Code.

6. Amend Section 1360.2, Chapter 2, Article 3, Division 13, of Title 16 of the California Code of Regulations to read as follows:

§ 1360.2. Rehabilitation Criteria for Petitions for Reinstatement.

When considering a petition for reinstatement of a license, ~~certificate or permit holder~~ pursuant to the provisions of Section 2307, 2522, or 3576.1 of the Business and Professions Code, or Section 11522 of the Government Code, as applicable, the division board or panel shall evaluate evidence of rehabilitation submitted by the petitioner as follows: considering the following criteria:

- (a) If the revocation was based in part on the conviction of a crime, the board shall consider whether the petitioner made a showing of rehabilitation if the 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 petitioner's rehabilitation.
- (5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for the modification.

(b) If the petitioner has not completed the criminal sentence at issue without a violation of parole or probation, the board determines that the petitioner did not make the showing of rehabilitation based on the criteria in subdivision (a), or the revocation was based on professional misconduct, the board shall apply the following criteria in evaluating the petitioner's rehabilitation:

- (a)(1) The nature and severitygravity of the act(s), professional misconduct, or crime(s) under consideration as grounds for denial.
- (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 which also could be considered as grounds for denial under Section 480.
- (c)(3) The time that has elapsed since commission of the act(s), professional misconduct, or crime(s) referred to in subsectionssubdivisions (a)(1) or (b)(2).
- (d)(4) In the case of a suspension or revocation based upon the conviction of a crime, the criteria set forth in Section 1360.1, subdivisions (b)(2), (b)(4), and (b)(6)subsections (b), (d) and (e).
- (5) The criteria in subdivisions (a)(1)-(5), as applicable.
- (e)(6) Evidence, if any, of rehabilitation submitted by the applicantpetitioner.

Note: Authority cited: Section 2018, Business and Professions Code. Reference: Sections 141, 480, 481, 482, 2307, 2522, and 3576.1, Business and Professions Code.

7. Repeal Section 1379.68, Chapter 4.3, Article 5, Division 13, of Title 16 of the California Code of Regulations:

Article 5. Enforcement

§ 1379.68. Substantial Relationship Criteria.

~~For the purpose of denial, suspension, or revocation of the registration of a polysomnography registrant pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act shall be considered substantially related to the qualifications, functions, and duties of a polysomnographic registrant if to a substantial degree it evidences present or potential unfitness of a polysomnographic registrant to perform the functions authorized by his or her registration in a manner consistent with the public~~

health, safety, or welfare. Such crimes or acts shall include, but not be limited to, those involving the following:

- (a) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of Chapter 7.8 of Division 2 of the Code.
- (b) Conviction of a crime involving fiscal dishonesty, or theft.
- (c) Battery or assault.
- (d) Sexual misconduct or abuse.
- (e) Conviction of a crime involving lewd conduct, prostitution or solicitation thereof, or pandering and/or indecent exposure, as defined by the Penal Code.

Note: Authority cited: Sections 481 and 2558, Business and Professions Code.

Reference: Sections 481, 2555.1, 2556 and 3576, Business and Professions Code.

8. Repeal Section 1379.70, Chapter 4.3, Article 5, Division 13, of Title 16 of the California Code of Regulations:

~~§ 1379.70. Criteria for Rehabilitation for Denial and Reinstatement.~~

~~When considering the denial of a registration under Section 480 of the Code, or a petition for reinstatement under Section 11522 of the Code, the board in evaluating the rehabilitation of the applicant and his or her present eligibility for registration, shall consider the following criteria:~~

- ~~(a) The nature and severity of the act(s) or crime(s) under consideration.~~
- ~~(b) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.~~
- ~~(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (a) or (b).~~
- ~~(d) The extent to which the applicant or petitioner has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against him or her.~~
- ~~(e) Evidence, if any, of rehabilitation submitted by the applicant or petitioner.~~

Note: Authority cited: Sections 482 and 2018, Business and Professions Code.

Reference: Sections 482 and 3576, Business and Professions Code.

9. Repeal Section 1379.72, Chapter 4.3, Article 5, Division 13, of Title 16 of the California Code of Regulations:

~~§ 1379.72. Rehabilitation Criteria for Suspensions and Revocations.~~

~~When considering the suspension or revocation of a registration on the grounds that the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his or her present eligibility for a registration, shall consider the following criteria:~~

- ~~(a) Nature and severity of the act(s) or offense(s).~~
- ~~(b) Total criminal record.~~
- ~~(c) Extent of time that has elapsed since commission of the act(s) or offense(s).~~
- ~~(d) Whether the registrant has complied with any or all terms of parole, probation, restitution or any other sanctions lawfully imposed against the registrant.~~
- ~~(e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.~~
- ~~(f) Evidence, if any, of rehabilitation submitted by the registrant.~~

~~Note: Authority cited: Section 482, Business and Professions Code. Reference: Sections 482 and 3576, Business and Professions Code.~~