

Court Reporters Board
FINAL STATEMENT OF REASONS

Effective Date

The Court Reporters Board (Board) requests that this regulatory proposal become effective upon filing to align as closely as possible with the statutory implementation date of July 1, 2020, in Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018). AB 2138 changed a policy of automatic denials of licensure for individuals with criminal convictions. These regulations make clear the Board’s statutory commitment to providing an opportunity for a “second chance” and explain how the Board will individually examine each licensure, renewal, or reinstatement decision for individuals with a criminal conviction. Further, they clarify to the public how the Board will decide which convictions are substantially related to licensure. These regulations would benefit all Californians, both those given a “second chance” for licensure and those that could employ or receive services from them. Further, allowing for licensure and employment could potentially reduce recidivism as well as provide Californians with greater choices in licensees. Therefore, it would be of public benefit to hasten the effective date of these regulations.

Subject Matter of Proposed Regulations: Substantial Relationship and Criteria for Rehabilitation

Sections Affected: California Code of Regulations (CCR), Title 16, Division 24, Article 8, Sections 2470 and 2471.

Updated Information

The Informative Digest and Initial Statement of Reasons are included in the rulemaking file and incorporated as though set forth herein.

The information contained therein is updated as follows:

Modifications were made to the originally approved and noticed text. Below is a description of the modifications that were made to the text.

Section 2470

- A. Insertion in subdivision (a) of “,” after 141, and deletion of “or.”

Because the Board is proposing to add the Business and Professions Code (BPC) sections enumerated in B., *infra*, it proposes to add a comma after “141, and eliminate “or” since the amendment outlined in B. creates an additional list item.

B. Insertion in subdivision (a) of “or Section 8025.”

The cited section refers to grounds for denial and discipline listed in the Board’s practice act for “substantially related” offenses. It is proposed to be added here so that references to substantial relationship are addressed together in one regulation. This amendment will add clarity to this subdivision.

Section 2471

A. Insertion in new subdivision (a) of “Denial of a certificate.”

The Board proposes to add this heading because it lends greater organization and clarity to the regulation.

B. Re-numbering of subdivision (a)(1)-(5) to (1)(A)-(E).

The Board proposes this re-numbering as a result of the creation of new subdivision (a).

C. Deletion in re-numbered subdivision (a)(1) of “was” and insertion of “has been.”

The Board proposes to delete “was” and replace it with “has been” because “has been” is used to refer to something which started in the past and is still continued in the present tense. “Was,” on the other hand, is used to refer to some action which was going on at some time in the past. The Board prefers to use “has been” to include the present tense so the relevant time period for a conviction includes up to the present.

D. Deletion in subdivision (a)(1) of “and is presently eligible for a certificate.”

The Board proposes to delete this phrase from subdivision (a)(1) of section 2471 because “eligible” could be seen as referring to other eligibility requirements for licensure, rather than referring to fitness or suitability for licensure. Deletion of this phrase will clarify the regulation.

E. Insertion in re-numbered subdivision (a)(2) of “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)(1), the denial is based on professional misconduct, or the denial is based on one or more of the grounds specified in Sections 8025 or 8025.1 of the code, the board shall apply the following criteria in evaluating an applicant’s rehabilitation,” and deletion of “If subdivision (a) is inapplicable, or the board determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a), the board shall apply the following criteria in evaluating an applicant’s rehabilitation. The board shall find that the applicant made a showing of rehabilitation and is presently eligible for a certificate if, after considering the following criteria, the board finds that the applicant is rehabilitated”:

The original text of subdivision (a)(2) was unclear in specifying the circumstances when the regulation would apply. Instead of catch-all language, the Board proposes to delete the former preface to the regulation and enumerate each specific instance of when subdivision (a)(1) would not apply, and proposes to include all of the specified categories.

The Board proposes to cite BPC sections 8025 and 8025.1 since they are in the Board's practice act and authorize the Board to deny a license. This would make the regulation inclusive of all of the instances in which the Board could deny a license.

F. Insertion in subdivision (a)(2)(A)-(C) of "professional misconduct."

The addition of "professional misconduct" to subdivision (a)(2)(A) through (C) is made necessary by the addition of "professional misconduct" in subdivision (a)(2).

G. Deletion in subdivision (a)(2)(B) of "under Section 480 of the Code."

Because the Board proposes to add "professional misconduct" to subdivision (a)(2), that necessitates the removal of this phrase because the amended subdivision now encompasses more than crimes and acts enumerated in section 480.

H. Insertion in subdivision (a)(2)(C) of "s" after "subdivision" and re-numbering of subdivisions (1) and (2) to subdivisions (A) and (B).

The Board proposes to pluralize "subdivision" because subdivision (a)(2)(C) cites multiple subdivisions and to re-number the list cited therein because of the re-numbering of subdivision (a)(2).

I. Insertion in subdivision (a)(2)(E) of "s" after "subdivision" and re-numbering of (a)(1) through (5) to subdivisions (a)(1)(A) through (E).

The Board proposes to pluralize "subdivision" because subdivision (a)(2)(E) cites multiple subdivisions and to re-number the list cited therein because of the re-numbering of subdivision (a)(2).

J. Deletion in subdivision (a)(2)(E) of "-" and insertion of "through."

The Board proposes this amendment to lend greater clarity to the subdivision.

K. Insertion in re-numbered subdivision (b) of "Suspension or revocation of a certificate."

The Board proposes to add this heading because it lends greater organization and clarity to the regulation.

L. Re-numbering of subdivision (b)(1)-(6) to (2)(A)-(E).

The Board proposes this re-numbering as a result of the creation of new subdivision (a).

M. Re-numbering of former subdivision (c)(1)-(6) to (1)(A)-(F).

The re-numbering of this subdivision has been necessitated by the re-numbering of the regulation's subdivisions.

N. Deletion in subdivision (b)(1) of "and is presently eligible for a certificate."

The Board proposes to delete this phrase from subdivision (b)(1) of section 2471 because "eligible" could be seen as referring to other eligibility requirements for licensure, rather than referring to fitness or suitability for licensure. Deletion of this phrase will clarify the regulation.

O. Re-numbering of former subdivision (d)(1)-(7) to (2)(A)-(G).

The re-numbering of this subdivision has been necessitated by the re-numbering of the regulation's subdivisions.

P. Insertion in subdivision (b)(2) "If the certificate holder has not completed the criminal sentence at issue without a violation of parole or probation, the board determines that the certificate holder did not make the showing of rehabilitation based on the criteria in subdivision (b)(1), the suspension or revocation is based on a disciplinary action as described in Section 141 of the code, or the suspension or revocation is based on one or more of the grounds specified in Sections 8025 or 8025.1 of the code, the board shall apply the following criteria in evaluating the certificate holder's rehabilitation," and deletion of "If subdivision (c1) is inapplicable, or the board determines that the certificate holder did not make the showing of rehabilitation based on the criteria in subdivision (c), the board shall apply the following criteria in evaluating the certified person's rehabilitation. The board shall find that the certificate holder made a showing of rehabilitation and is presently eligible for certification if, after considering the following criteria, the board finds that the applicant is rehabilitated:"

The original text of subdivision (b)(2) was unclear in specifying the circumstances when the regulation would apply. Instead of catch-all language, the Board proposes to delete the former preface to the regulation and enumerate each specific instance of when subdivision (b)(1) would not apply, and now proposes to include all of the specified categories.

The Board proposes to cite BPC sections 8025 and 8025.1 since they are in the Board's practice act and authorize the Board to discipline a license. This would make the regulation inclusive of all of the instances in which the Board could discipline a license.

Q. Insertion in subdivision (b)(2)(A) and (b)(2)(C) of “disciplinary action(s).”

The addition of “disciplinary action(s)” to subdivision (b)(2)(A) and (b)(2)(C) is made necessary by the addition of “disciplinary action” in subdivision (b)(2).

R. Insertion in subdivision (b)(2)(E) of “s” after “subdivision,” re-numbering of (c)(1)-(5) to (b)(1)(A)-(E), and deletion of “-“ and insertion of “through.”

The Board proposes to pluralize “subdivision” because subdivision (b)(2)(E) cites multiple subdivisions and to re-number the list cited therein because of the re-numbering of subdivision (b)(2).

The Board proposes the third amendment to lend greater clarity to the subdivision.

S. Re-numbering of subdivision (e) to (c) and amendment of “subsection” to “subdivision.”

The Board proposes this amendment based on the re-numbering of the subdivisions of the regulation and to make the subdivision consistent with the regulation’s other uses of the term “subdivision.”

T. Insertion in Note of Reference section 8025.1.

The Board proposes to add this section to the Reference section of the regulation because the regulation, as modified, implements, interprets and/or makes specific this additional BPC section.

The Board provided 15 days’ notice of these modifications to the public for comment. No comments were received.

Local Mandate

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

Objections or Recommendations/Responses

The Board did not receive any comments.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulations or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Nonduplication Statement - 1 CCR § 12

As stated throughout the Initial and Final Statements of Reasons, the proposed regulations partially duplicate or overlap several state statutes amended by the passage of AB 2138. In particular, AB 2138 amended Business and Professions Code sections 480 (grounds upon which a board can deny a license for applicants convicted of a crime or subject to formal discipline by a licensing board), 481 (the criteria boards can apply in determining if a crime bears a substantial relationship to the qualifications, functions or duties of the profession a board regulates), 482 (the rehabilitation criteria a board must consider when considering the denial, suspension or revocation of a license due to conviction of a crime), and 493 (the evidentiary effect of a conviction and criteria for determining if a crime has a substantial relationship to the profession). By repeating key language from these statutes within these regulations, the steps the Board will take, and the reasoning it will apply, the regulations become significantly clearer, and will better guide Board members, parties, administrative law judges, attorneys, and individuals with criminal convictions.

The changes made by AB 2138 and these regulations are directly applicable to individuals convicted of a crime who seek licensure, and to licensees who are convicted of a crime. As these regulations implement, interpret, and make specific how the laws amended by AB 2138 will be enforced by the Board, some duplication or overlap is necessary to ensure that the steps the Board must follow and the reasoning the Board must apply is clear and consistent with statute. The partial duplication or overlap with the statutes amended by AB 2138 are thus necessary to effectively implement the new standards in a way that satisfies the “clarity” standard of Government Code section 11349.1, subdivision (a)(3).

Economic Impact

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 this regulatory proposal.

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

Fiscal Impact

The Board indicates the proposed regulations are not anticipated to result in a fiscal impact to the state

Because the Board historically denies a minimal number (less than one) of initial license applications 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.