

TITLE 16. BOARD OF CHIROPRACTIC EXAMINERS

NOTICE OF PROPOSED RULEMAKING CONCERNING SUBSTANTIAL RELATIONSHIP CRITERIA AND CRITERIA FOR REHABILITATION

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

NOTICE IS HEREBY GIVEN that the Board of Chiropractic Examiners (hereafter "Board") is proposing to amend regulations described in the Informative Digest below. Any person interested in providing the Board with comments 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 address listed under Contact Person in this Notice, must be received by the Board of Chiropractic Examiners, at its office, by 5:00 p.m., Tuesday, March 23, 2021.

The Board does not intend to hold a hearing on this matter. If any interested party desires that a hearing be held, they must make the request, in writing, to the Board. The request must be received in the Board office no later than 15 days before the close of the written comment period.

The Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals 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 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 4(b), 4(c), 10(a), 10(b) of the Chiropractic Initiative Act of California Stats. 1923 p. lxxxviii, and to implement, interpret or make specific regulatory revisions as required in sections of 7.5, 480, 481, 482, 488, and 493 of, the Business and Professions Code (BPC), the Board is considering changes to Title 16, Division 4, of the California Code of Regulations as follows:

INFORMATIVE DIGEST

The Chiropractic Initiative Act, hereinafter referred to as 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. Additionally, in conformity with the intent of 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 7.5, 141, 475, 480, 481, 482, 488, 490, 492, and 493, relative to substantial relationship and rehabilitation criteria, the Board is proposing the following changes:

Add Section 316.5 to Article 2 of Division 4 of Title 16 of the CCR (Substantial Relationship Criteria):

The proposed regulation, for purposes of denial, suspension, or revocation of a license, will 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 offense; (2) the number of years elapsed since the date of the offense; and (3) the nature and duties of a person holding the license. The proposal will also add that substantially related crimes, professional misconduct or acts will include violating the laws of other state[s] or federal laws governing the practice of chiropractic.

Amend Section 326 to Article 2 of Division 4 of Title 16 of the CCR (Criteria for Rehabilitation)

The proposed regulation will clarify that the Board, when considering a license denial on the ground that the applicant or licensee was convicted of a crime, would have to determine whether the applicant or licensee made a showing of rehabilitation and is presently eligible for a license, if the applicant or licensee completed the criminal sentence without a violation of parole or probation. In making that determination, the proposal will require the Board to consider the nature and gravity of the crime, the length of the parole or probation period, the extent to which the parole or probation period was shortened or lengthened, and the reasons therefor, the terms or conditions of parole or probation and the extent to which they bear on the applicant's or licensee's rehabilitation, and the extent to which the terms or conditions of parole were modified, and why.

The proposal will also require a broader set of rehabilitation criteria to be considered for applicants and 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 the denial or discipline was based on something other than a conviction.

Add Section 327 to Article 2 of Division 4 of Title 16 of the CCR (Rehabilitation Criteria for Suspensions or Revocations)

The proposed regulation would clarify that the Board, when considering the discipline of a license on the ground that the applicant or licensee was convicted of a crime, would have to determine whether the applicant or licensee made a showing of rehabilitation and is presently

eligible for a license, and if the applicant or licensee completed the criminal sentence without a violation of parole or probation. In making that determination, the proposal will require the Board to consider the nature and gravity of the crime, the length of the parole or probation period, the extent to which the parole or probation period was shortened or lengthened, and the reasons therefor, the terms or conditions of parole or probation and the extent to which they bear on the applicant's or licensee's rehabilitation, and the extent to which the terms or conditions of parole were modified and why.

The proposal will require a broader set of rehabilitation criteria to be considered for applicants and 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 the suspension or revocation was based on something other than a conviction.

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, 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 and licensees in the Board's use of their criminal history. Further, by reducing barriers to licensure, the Board anticipates benefits to consumers who may have greater access to licensed health care 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 of these topics 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:

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.

Cost 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 will 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 following facts: By reducing barriers to licensure for applicants and licensees with criminal histories or license discipline, businesses may find a greater applicant pool from which to hire.

The Board has determined 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.

Business Reporting Requirements

The regulatory action does not require businesses to file a report with the Board.

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 the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

Although the total number of small businesses impacted is unknown, the Board has determined that this regulatory proposal will not have a significant adverse economic impact on small businesses. By reducing barriers to licensure for applicants and licensees with criminal history or license discipline, small businesses may find a greater applicant pool from which to hire.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have a significant 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.

Benefits of Regulation:

The Board has determined that this proposal may benefit individuals, who would have greater access to licensure, reduce criminal recidivism, and provide economic opportunity to California residents with a criminal history. The public may benefit from the proposal with increased access to licensed health care professionals, which may benefit the health and welfare of California's health care consumers. Chiropractic businesses may also benefit as they would

have a larger pool of licensed professionals from which to hire. The regulatory proposal does not affect worker safety or the state's environment.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative, which it considered to the regulation or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the present 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: To pursue a regulatory change that requires the Board to find rehabilitation if the applicant completed their 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 as to 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 the Board is interested in reducing the barriers to licensure for those who have criminal convictions but have shown themselves to be rehabilitated.

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, the Initial Statement of Reasons, and all the information, upon which the proposal is based, may be obtained upon written request from:

Kristin Walker, Assistant Executive Officer
901 P Street, Suite 142A
Sacramento, California 95814
(916) 263-5365
chiro.rulemaking@dca.ca.gov

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 that 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 web site, https://www.chiro.ca.gov/laws_regs/prop_regs.shtml.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Name: Kristin Walker, Assistant Executive Officer
Address: 901 P Street, Suite 142A
Sacramento, California 95814
Telephone: (916) 263-5365
Fax: (916) 327-0047
E-mail: chiro.rulemaking@dca.ca.gov

The backup contact person is:

Name: Dixie VanAllen, Licensing Manager
Address: 901 P Street, Suite 142A
Sacramento, CA 95814
Telephone: (916) 263-5329
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E-mail: chiro.rulemaking@dca.ca.gov

Web Site Address: Materials regarding this proposal can be found at www.chiro.ca.gov.