

**State of California
Office of Administrative Law**

In re:
Board of Chiropractic Examiners

Regulatory Action:

Title 16, California Code of Regulations

Adopt section: 316.5, 327
Amend sections: 326

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

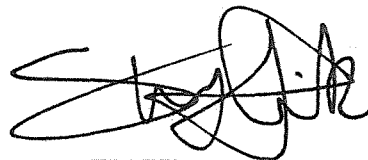
OAL Matter Number: 2021-0719-01

OAL Matter Type: Regular (S)

In this regular rulemaking, the Board of Chiropractic Examiners (the "Board") is amending criteria to be used in determining whether a crime, act, or professional misconduct is substantially related to the qualifications, functions, or duties of a licensed chiropractor. The Board is also amending criteria to be used in determining whether an applicant or licensee has made a showing of rehabilitation related to a crime, act, or professional misconduct when considering denial, reinstatement, or reissuance of a license. Lastly, the Board is adopting criteria to be used in considering whether a crime, professional misconduct or act is substantially related to the qualifications, functions, or duties of a licensed chiropractor. These changes implement amendments to the Business and Professions Code made by Assembly Bill 2138 (Stats. 2018, ch. 995).

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 11/22/2021.

Date: November 22, 2021



Steven J. Escobar
Senior Attorney

Original: Robert Puleo, Executive Officer
Copy: Kristin Walker

For: Kenneth J. Pogue
Director

REGULAR

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z- 2021-0121-01	REGULATORY ACTION NUMBER 2021-0719-015	EMERGENCY NUMBER 5
For use by Office of Administrative Law (OAL) only		OFFICE OF ADMIN. LAW 2021 JUL 19 PM 3:53	
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Board of Chiropractic Examiners			AGENCY FILE NUMBER (If any)

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

NOV 22 2021

Received at
1:14pm

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2021, No. 6-2	PUBLICATION DATE 2/5/2021	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Denial of application, revocation or suspension of licensure: Criminal		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
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 316.5 and 327	
		AMEND 326	
TITLE(S) 16		REPEAL	
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)	
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 checked="" type="checkbox"/> Other (Specify) Department of Consumer Affairs Director. Kimberly Kirchmeve		<input type="checkbox"/> State Fire Marshal	
7. CONTACT PERSON Kristin Walker	TELEPHONE NUMBER (916) 263-5365	FAX NUMBER (Optional) (916)327-0047	E-MAIL ADDRESS (Optional) kristin.walker@dca.ca.gov

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>Robert Puleo</i>	DATE 07/16/2021
TYPED NAME AND TITLE OF SIGNATORY Robert Puleo, Executive Officer, Board of Chiropractic Examiners	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

NOV 22 2021

Office of Administrative Law

TITLE 16, BOARD OF CHIROPRACTIC EXAMINERS

Order of Adoption

(Approved by Board April 22, 2021)

§ 316.5 Substantial Relationship Criteria.

- (a) For the purposes of the denial, suspension or revocation of a license pursuant to Section 141 of the Business and Professions Code, 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 subdivision (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 subdivision (d) of Section 11160 of the Penal Code.

- (6) Conviction of a crime involving lewd conduct or sexual impropriety, as defined in Section 726 of the Business and Professions Code.
- (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) and 10(b), Chiropractic Initiative Act of California, Stats. 1923, p. lxxxviii; and Section 481, Business and Professions Code. Reference: Section 141, 480, 481, 488, 490 and 493, Business and Professions Code.

§ 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 Business and Professions 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 consider 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 subdivision (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 subdivision (a)(1) through (5), as applicable.
- (6) Evidence, if any, of rehabilitation submitted by the applicant or petitioner.

~~(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:~~

- ~~(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 4000-4(b) and 4000-10, Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. lxxxviii); and Section 481, Business and Professions Code. Reference: Sections 4000-4(b) and 4000-10, Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. lxxxviii); and Section 1003, Business and Professions Code.

§ 327 Rehabilitation Criteria for Suspensions or Revocations.

(a) When considering the suspension or revocation of a 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 consider 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 subdivision (a), or the suspension or revocation is based upon a disciplinary action as described in Section 141 of the Business and Professions 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 subdivision (a)(1) through (5), as applicable.
- (7) Evidence, if any, of rehabilitation submitted by the licensee.

Note: Authority cited: Sections 4(b), 10(a) and 10(b), Chiropractic Initiative Act of California, Stats. 1923, p. lxxxviii; and Sections 481 and 482, Business and Professions Code. Reference: Section 10, Chiropractic Initiative Act of California, Stats. 1923, p. lxxxviii; and Sections 141, 480, 481, 482, 488, 490 and 493, Business and Professions Code.