

**California State Board of Pharmacy  
Department of Consumer Affairs**

**Initial Statement of Reasons**

**Hearing Date:** No hearing has been scheduled for the proposed action.

**Subject Matter of Proposed Regulations:** Substantial Relationship and Rehabilitation Criteria.

**Sections Affected:** California Code of Regulations (CCR), Title 16, Division 17, Article 8, Sections 1769 and 1770.

**Background and Statement of the Problem:**

Statutory authority: The California State Board of Pharmacy (Board) is a state agency vested with the authority to regulate the pharmacy industry, including pharmacies, pharmacists, and pharmacy technicians. (Business and Professions Code (BPC) section 4000, et seq.) The Board's mandate and mission is to protect the public. (BPC, § 4001.1.) As part of this authority, the Board issues licenses to business and individuals that satisfy minimum requirements for licensure.

Substantial relationship criteria: In accordance with the statutory amendments implemented by Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), beginning July 1, 2020, BPC sections 481 and 493 will require the Board, when considering the denial, suspension, or revocation of a personal or facility license, including a registration, based on a crime, to determine whether the crime is substantially related to the qualifications, functions, or duties of a licensee, including a registrant, by using specified criteria, including the nature and gravity of the offense, the number of years elapsed since the date of the offense, and the nature and duties of a licensee. The substantial relationship requirement stems from the due process principle that a statute constitutionally can prohibit an individual from practicing a lawful profession only for reasons related to the individual's fitness or competence to practice. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 448; *Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1137-1138.)

**Rehabilitation criteria:** BPC section 482 requires the Board to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license pursuant to BPC section 480 or 490. Beginning July 1, 2020, BPC section 482 will require the Board, when considering the denial, suspension, or revocation of a license based on a crime, professional misconduct, or act pursuant to BPC section 480 or 490, to consider whether the applicant or licensee is rehabilitated based on either: (1) having completed their criminal sentence without violating parole or probation; or (2) the Board's standard criteria for evaluating rehabilitation. (BPC, § 482, as added by AB 2138, § 9.) In the context of professional licensing decisions, the courts have said that, “[r]ehabilitation . . . is a state of mind and the law

looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration.” (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058, internal punctuation omitted.) Additionally, the Legislature’s “clear intent” in enacting AB 2138 was “to reduce licensing and employment barriers for people who are rehabilitated.” (*Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1135.)

Related law and regulations:

BPC section 4301(l) provides that the conviction of a crime substantially related to the qualifications, functions and duties of a licensee under this chapter is considered unprofessional conduct.

16 CCR section 1769 establishes the criteria for determining rehabilitation of an applicant or licensee when considering denial, suspension, or petition for reinstatement of a license on the ground of a criminal conviction.

16 CCR section 1770 establishes the general criteria for determining when a crime is substantially related to the qualifications, functions and duties of a licensee.

Problem statement: In order to comply with the mandates of AB 2138, the Board proposes to amend sections 1769 and 1770 of Article 8 of Division 17 of Title 16 of the CCR to adhere to these mandates and revise its substantial relationship and rehabilitation criteria.

**SPECIFIC PURPOSE, ANTICIPATED BENEFIT, AND RATIONALE:**

**Amend 16 CCR Section 1770 (Substantial Relationship Criteria)**

**Section 1770, subdivision (a)**

Purpose: 16 CCR section 1770 establishes the criteria for determining whether a crime or act is substantially related to the qualifications, functions, and duties of a licensee and therefore grounds for denial, suspension, or revocation of a license pursuant to BPC sections 480 or 490. The purpose of amending 16 CCR section 1770, subdivision (a) is to expand the regulation to also require the Board to apply these criteria in its evaluation of a disciplinary action taken by another state, by any agency of the federal government, or by another country as described in BPC section 141, because the substantially related acts that are the basis for those disciplinary actions may be grounds for disciplining a licensee pursuant to BPC section 141. This subdivision would also be amended to require the Board to apply these criteria in its evaluation of “professional misconduct,” because, beginning July 1, 2020, the Board will be expressly authorized to deny licenses based on such misconduct under BPC section 480. (BPC, § 480, subd. (a)(2), as added by AB 2138, § 4.)

Anticipated Benefits: The proposed revisions to 16 CCR section 1770, subdivision (a) would provide clarity to applicants and licensees that the Board will apply the substantial relationship criteria in that section in its proceedings to deny, suspend, or revoke a license, as applicable, on the basis of professional misconduct pursuant to BPC section 480, as in effect beginning July 1, 2020, or a disciplinary action described in BPC section 141. The proposal would also provide clarity to relevant parties to any administrative appeal arising from a licensing decision (e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent's counsel) that when disciplining applicants or licensees for a criminal conviction, the Board is required to determine whether the act is substantially related to the practice of pharmacy using the listed criteria.

Rationale: BPC section 141 authorizes the Board to discipline a license on the basis of a disciplinary action taken by another state, by any agency of the federal government, or by another country for a substantially related act. Beginning July 1, 2020, BPC section 480 will authorize the Board to deny a license application on the basis of substantially related professional misconduct that results in formal discipline by a licensing board in or outside of California. (BPC, § 480, subd. (a)(2), as added by AB 2138, § 4.) The regulation seeks to implement, interpret, and make specific BPC sections 141 and 480 by adding their relative provisions to the Board's substantial relationship criteria regulation. Accordingly, the proposal is necessary to provide the appropriate notice to applicants and licensees that the substantial relationship criteria in 16 CCR section 1770 apply to determinations of whether disciplinary action taken by another state, by any agency of the federal government, or by another country, or professional misconduct, are grounds for license denial, suspension, or revocation, and to implement the requirements of BPC sections 141 and 480. The proposal is also necessary to consolidate into one regulation the criteria the Board will apply in evaluating whether a crime or other misconduct is substantially related to the qualifications, functions, and duties of a licensee.

### **Section 1770, subdivision (b)**

Purpose: The purpose of adding 16 CCR section 1770, subdivision (b) is to implement AB 2138, adding BPC sections 481 and 493, which, beginning July 1, 2020, will require each board, when considering the denial, suspension, or revocation of a license based on a crime, to determine whether the crime is substantially related to the qualifications, functions, or duties of the professions regulated by that board by using specified criteria. (BPC, § 481, subd. (b), as added by AB 2138, § 7; BPC, § 493, subd. (b), as added by AB 2138, § 13.) Those criteria are as follows: (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 the profession. (*Id.*)

Anticipated Benefits: The proposed revisions to 16 CCR section 1770, subdivision (b) would provide clarity and transparency to applicants and licensees by listing the specific criteria the Board must consider when making the substantial relationship determinations applicable to criminal convictions. The proposal would also make relevant parties to any administrative

appeal arising from a license denial (e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent's counsel) aware of the specific criteria used by the Board to determine whether a criminal conviction is substantially related to the qualifications, functions, and duties of a licensee.

Rationale: BPC section 480 presently authorizes the Board to deny an application for licensure based on a crime or act that is substantially related to the qualifications, functions, or duties of a licensee. (BPC, § 480, subd. (a)(3)(B).) Likewise, BPC section 490 authorizes the Board to suspend or revoke a license on the basis that the licensee was convicted of a crime substantially related to the qualifications, functions, or duties of a licensee. (BPC, § 490, subd. (a).) BPC section 481 requires the Board to develop criteria to help evaluate whether a crime or act was substantially related to the qualifications, functions, or duties of a licensee when considering the denial, suspension, or revocation of a license. The Board established the criteria via regulations.

The Legislature's intent in enacting AB 2138 was to reduce licensing and employment barriers for people who are rehabilitated. (*Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1135.) Accordingly, in AB 2138, the Legislature amended BPC section 480 to limit the boards' ability to use prior criminal convictions or acts when denying licenses. Beginning July 1, 2020, boards may not deny a license to an applicant because the applicant was convicted of a crime, or due to the acts underlying the conviction, if the applicant has a certificate of rehabilitation, was granted clemency, made a showing of rehabilitation, or the conviction was dismissed or expunged. (BPC, § 480, subds. (b) & (c), as added by AB 2138, § 4.)

Absent these circumstances, AB 2138 will permit the Board to deny a license when an applicant has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the regulated business or profession, and one of the following conditions exist:

- 1) the conviction occurred within the seven years preceding the application date, except that the seven-year limitation does not apply if the applicant was convicted of: (a) a serious felony under Penal Code section 1192.7; or (b) a registerable offense under Penal Code section 290, subdivision (d)(2) or (3)).
- 2) the applicant is presently incarcerated for the crime; or
- 3) the applicant was released from incarceration for the crime within the seven years preceding the application date, except that the seven-year limitation does not apply if the applicant was convicted of: (a) a serious felony under Penal Code section 1192.7; or (b) a registerable offense under Penal Code section 290, subdivision (d)(2) or (3)).

AB 2138 also specified three criteria that the Board must consider when evaluating whether a crime is "substantially related" to the regulated business or profession. The criteria "shall

include all of the following: (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 the profession in which the applicant seeks licensure or in which the licensee is licensed." (BPC, § 481, subd. (b), as added by AB 2138, § 7; see also BPC, § 493, subd. (b), as added by AB 2138, § 13.) Accordingly, the proposed regulation lists each of these criteria for the Board to consider when making the substantial relationship determination regarding a crime. This proposed addition is necessary to conform the regulation to statute, and to consolidate the Board's substantial relationship criteria in one place.

### **Section 1770, subdivision (c)**

Purpose: The purpose of adding 16 CCR section 1770, subdivision (c) is to provide clarity regarding the crimes, professional misconduct, or acts that are substantially related to the qualifications, functions, or duties of a licensee, and therefore grounds for denial, suspension, or revocation of a license. The list would include, but not be limited to, crimes, professional misconduct, or acts that violate, directly or indirectly, or aid, abet, or conspire to violate: (1) any law of California, or any other jurisdiction governing the practice of pharmacy; (2) the federal Controlled Substances Act or federal Controlled Substances Import and Export Act (Subchapters I and II, respectively, of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code) regulating controlled substances, or any law of California, or any other jurisdiction, relating to controlled substances or dangerous drugs; or (3) any provision of law of California, or any other jurisdiction, relating to government-provided or government-supported healthcare. The list would further include, but not be limited to, crimes, professional misconduct, or acts that involve: (1) dishonesty, fraud, deceit, or corruption related to money, items, documents, or personal information; or (2) a conviction for driving under the influence of drugs or alcohol.

Anticipated Benefits: The proposed revisions to 16 CCR section 1770, subdivision (c) would provide clarity to applicants and licensees on the specific crimes, professional misconduct, or acts that are substantially related to the qualifications, functions, or duties of a licensee. The proposal would also provide clarity to relevant parties to any administrative appeal arising from a license denial (e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent's counsel) that substantially related crimes, professional misconduct, and acts include the crimes, professional misconduct, and acts described in 16 CCR section 1770.

Rationale: The specific reasons for inclusion of the following crimes, professional misconduct, or acts on the list of crimes, professional misconduct, or acts that are substantially related to the qualifications, functions, or duties of a licensee are as follows:

(1) "[Crimes, professional misconduct, or acts which] [v]iolate or attempt to violate, directly or indirectly, or to aid, abet or conspire to violate, any provision of law of this state, or any other jurisdiction, governing the practice of pharmacy."

A violation of laws governing the practice of pharmacy bears a substantial relationship to the qualifications, functions, or duties of a licensee because a responsible licensee should have knowledge of, and comply with, laws applicable to the licensee's practice of pharmacy. A licensee who violates laws governing the practice of pharmacy has demonstrated a likelihood that the licensee will violate those laws in the future. (*Thorpe v. Board of Examiners* (1980) 104 Cal.App.3d 111, 116 ("[C]ertainly the willingness to violate the law which [a licensee] is licensed to administer for the public good makes them unfit to serve [citations].").)

This reasoning is supported by the existence of various laws that authorize the Board to deny, suspend, or revoke a license based on violation of laws governing the practice of pharmacy, including the following:

- BPC section 4301, subdivision (o), deeming as unprofessional conduct the following: "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 Pharmacy Law] or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency."
- BPC section 4304, authorizing the Board to deny, revoke, or suspend a license for "any violation of [the Pharmacy Law] or for any violation of [the Sherman Food, Drug, and Cosmetic Law (Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code)]."

These existing laws represent a legislative determination that a violation of laws governing the practice of pharmacy is substantially related to the qualifications, functions, or duties of a licensee. (See *Walker v. Physical Therapy Bd. of California* (2017) 16 Cal.App.5th 1219, 1231-1232; *Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1205-1206; *Medical Board v. Superior Court* (2003) 111 Cal.App.4th 163, 174; and *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 774-775.)

(2) "[Crimes, professional misconduct, or acts which] [v]iolate or attempt to violate, directly or indirectly, or to aid, abet or conspire to violate, any provision of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code [codifying the federal Controlled Substances Act and federal Controlled Substances Import and Export Act] regulating controlled substances or any law of this state, or any other jurisdiction, relating to controlled substances or dangerous drugs":

A violation of laws relating to controlled substances or dangerous drugs bears a substantial relationship to the qualifications, functions, or duties of a licensee because a licensee has unique access to controlled substances and dangerous drugs. (See *Weissbuch v. Board of Medical Examiners* (1974) 41 Cal.App.3d 924, 928 ("The doctor in the scheme of things literally has the 'keys to the safe' and thus occupies a unique position in our society.").) A licensee who violates the California Uniform Controlled Substances Act, the federal Controlled Substances Act and federal Controlled Substances Import and Export Act (Subchapters I and II, respectively, of Chapter 13 (commencing with section 801) of Title 21, United States Code), and other laws

relating to controlled substances and dangerous drugs has demonstrated a likelihood that the licensee will endanger the public by abusing that access. (See *Thorpe v. Board of Examiners* (1980) 104 Cal.App.3d 111, 115 (“Both [physicians and veterinarians] have a responsibility to the state and to the public generally to handle designated controlled substances with the utmost care. [Citations.]”).)

This reasoning is supported by the existence of various laws that authorize the Board to deny, suspend, or revoke a license based on violation of laws relating to controlled substances or dangerous drugs, including the following:

- BPC section 4301, subdivision (j), deeming as unprofessional conduct the following: “The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.”
- BPC section 4301, subdivision (l), deeming as “conclusive evidence of unprofessional conduct” the following: “The record of conviction of a violation of [the federal Controlled Substances Act and federal Controlled Substances Import and Export Act].”
- BPC section 4059.5(e), the violation of which is unprofessional conduct by operation of BPC section 4301, subdivision (o). (See *Walker v. Physical Therapy Bd. of California* (2017) 16 Cal.App.5th 1219, 1232.) BPC section 4059.5(e) requires transfer, sale, or delivery of a dangerous drug or dangerous device to be “in compliance with the laws of this state and of the United States and of the state or country to which the dangerous drugs or dangerous devices are to be transferred, sold, or delivered.”
- BPC section 4311, subdivision (b)(2)(B), requiring the Board to summarily suspend a license when the licensee is convicted of a felony committed under either of two specified circumstances relating to the licensee’s practice, where an element of the offense involves “[t]he illegal sale or possession for sale of or trafficking in any controlled substance.”

(3) “[Crimes, professional misconduct, or acts which] [v]iolate or attempt to violate, directly or indirectly, or to aid, abet or conspire to violate, any provision of law of this state, or any other jurisdiction, relating to government provided or government supported healthcare.”

A violation of laws relating to government provided or government supported healthcare is substantially related to the qualifications, functions, or duties of a licensee because a provider who, for example, incurs costs that are unnecessary or for services that are ineffective, or engages in intentional deception or misrepresentation resulting in the licensee’s or a third party’s unauthorized personal gain, has demonstrated a likelihood of abusing license privileges in similar ways that undermine the public purpose of the Pharmacy Law and other laws governing the practice of pharmacy. (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 470 (“[W]e find it difficult to compartmentalize dishonesty in such a way that a person who is willing to cheat his government out of \$65,000 in taxes may yet be considered honest in his dealings with his patients.”); see *Hanna v. Dental Bd. of California* (2012) 212 Cal.App.4th 759, 765 (“Convictions for Medi-Cal fraud are substantially related to a professional’s fitness or capacity to practice her profession. [Citation.]”).) Similarly, a licensee

who disregards the conditions of participation in a government provided or government supported healthcare program has demonstrated a likelihood of disregarding the conditions of Board licensure.

This reasoning is supported by the existence of various laws that authorize the Board to deny, suspend, or revoke a license based on violation of laws relating to government-provided or government-supported healthcare, including the following:

- BPC section 810, deeming as unprofessional conduct and grounds for suspension or revocation of a license various forms of insurance fraud, as specified, including Medi-Cal fraud.
- BPC section 4301, subdivision (m), deeming as unprofessional conduct “[t]he cash compromise of a charge of violation of ... [the Medi-Cal Law] relating to the Medi-Cal program.”
- BPC section 4301, subdivision (r), deeming as unprofessional conduct “[t]he selling, trading, transferring, or furnishing of drugs obtained pursuant to [the federal 340B Prime Vendor Program]” to a person the licensee knows or should know is not eligible to receive them.

(4) “[Crimes, professional misconduct, or acts which] [i]nvolve dishonesty, fraud, deceit, or corruption related to money, items, documents, or personal information.”

Crimes, professional misconduct, or acts involving dishonesty, fraud, deceit, or corruption are substantially related to the qualifications, functions, or duties of a licensee because acts that undermine the public trust of licensees which could have detrimental consequences to the public health. In addition, a licensee committing such acts has demonstrated “an inability or unwillingness to follow the law.” (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 771-772; see *Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293, 305 (“Intentional dishonesty, especially involving moral turpitude, demonstrates a lack of moral character and satisfies a finding of unfitness to practice medicine. [Citations.]”). The proposed regulation would specifically deem crimes, professional misconduct, or acts involving dishonesty, fraud, deceit, or corruption related to money, items, documents, or personal information to be substantially related to the qualifications, functions, or duties of a licensee because accurate recordkeeping, including accurate inventory of controlled substances and dangerous drugs, is central to the practice of pharmacy and the protection of the public, and a propensity for dishonesty, fraud, deceit, or corruption related to money, items, documents, or personal information indicates a likelihood that a person engaged in the practice of pharmacy may falsify those records for the purposes of personal gain, with disregard to the resulting harm to clients, customers, or patients.

This reasoning is supported by the existence of various laws that authorize the Board to deny, suspend, or revoke a license based on crimes, professional misconduct, or acts involving dishonesty, fraud, deceit, or corruption, including the following:

- BPC section 4301, subdivision (f), deeming as unprofessional conduct “[t]he commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.”
- BPC section 4301, subdivision (g), deeming as unprofessional conduct “[k]nowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.”
- BPC section 4311, subdivision (b)(2)(A), requiring the Board to summarily suspend a license when the licensee is convicted of a felony committed under either of two specified circumstances relating to the licensee’s practice, where an element of the offense involves “[t]he specific intent to deceive, defraud, steal, or make a false statement.”

See *Golde v. Fox* (1979) 98 Cal.App.3d 167, 176 (“Honesty and truthfulness are two qualities deemed by the Legislature to bear on one’s fitness and qualification to be a real estate licensee. If appellant’s offense reflects unfavorably on his honesty, it may be said to be substantially related to his qualifications.”).)

(5) “[Crimes, professional misconduct, or acts which] [i]nvolve a conviction for driving under the influence of drugs or alcohol.”

Crimes, professional misconduct, or acts which involve a conviction for driving under the influence of drugs or alcohol are substantially related to the qualifications, functions, or duties of a licensee because “driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy.” (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770.) Disregard for public safety disqualifies a licensee from the practice of pharmacy because it shows a likelihood that a licensee will not prioritize the safety of their clients, customers, or patients.

This reasoning is supported by the existence of various laws that authorize the Board to deny, suspend or revoke a license based on crimes, professional misconduct, or acts involving certain uses of drugs or alcohol, including the following:

- BPC section 4301, subdivision (h), deeming as unprofessional conduct the following: “The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.”

## **Amend 16 CCR Section 1769 (Criteria for Rehabilitation)**

**Replace the terms “eligible” and “eligibility” with the terms “fit” and “fitness” (throughout)**

The proposed regulation would replace the terms “eligible” and “eligibility” throughout 16 CCR 1769 with the terms “fit” and “fitness” because the Board, in determining whether to issue a license or discipline a license, can more accurately be said to undertake a determination of “fitness,” which connotes evaluation of a range of personal and professional characteristics, taken as a whole, than “eligibility,” which connotes evaluation of professional qualifications in isolation. “Fitness” encompasses eligibility.

### **Section 1769, subdivision (b)**

**Purpose:** The purpose of amending 16 CCR section 1769, subdivision (b) is to comply with the requirements of AB 2138, section 9, adding BPC section 482, subdivisions (a)(1) and (b)(1), which, beginning July 1, 2020, will require the Board, when considering the denial of a license based on a crime pursuant to BPC section 480, to consider whether the applicant has made a showing of rehabilitation based on their having completed the criminal sentence at issue without a violation of parole or probation. As AB 2138 does not prescribe new rehabilitation criteria that the Board must consider when evaluating an applicant in this category, the proposal also provides a special list of criteria for the Board to consider for these applicants. The list of criteria is narrow in scope and limited to considerations relevant to the crime and the criminal sentence, since AB 2138 requires the Board to consider rehabilitation in the narrow context of an applicant with a criminal conviction who completed the criminal sentence without a parole or probation violation.

**Anticipated Benefits:** The proposed revisions to 16 CCR section 1769, subdivision (b) would provide transparency and clarity to applicants with a criminal conviction who have completed their criminal sentence without a violation of parole or probation. Providing the special list of rehabilitation criteria would help those applicants understand the facts and documents to present to the Board to demonstrate their rehabilitation in denial proceedings. The proposal would also assist relevant parties to any administrative appeal arising from a license denial (e.g., the Deputy Attorney General, the Administrative Law Judge, and the applicant’s counsel) in advocating for or against, or deciding upon, applicants who have criminal convictions and completed parole or probation without a violation, by listing the special rehabilitation criteria applicable to those applicants.

**Rationale:** Existing law requires boards to develop criteria to evaluate the rehabilitation of an applicant when considering denying a license pursuant to BPC section 480, and to consider evidence of rehabilitation in making such decisions. (BPC, § 482.) Under existing law, a board may not deny an applicant a license based solely on a misdemeanor conviction, if the applicant meets the applicable requirements of the criteria of rehabilitation that the board develops. (BPC, § 480, subd. (b).)

Operative July 1, 2020, BPC section 480 will prohibit the Board from denying a license on the basis that the applicant was convicted of a crime (a misdemeanor or a felony), or on the basis of the facts underlying a criminal conviction, if the applicant “made a showing of rehabilitation pursuant to Section 482.” (BPC, § 480, subd. (b), as added by AB 2138, § 4.) In deciding whether to deny a license based on a criminal conviction, the Board must consider evidence of the applicant’s rehabilitation, pursuant to the process established in the Act, or its regulations, and as directed under BPC section 482. (BPC, § 481, subd. (c), as added by AB 2138, § 7; see also BPC, § 493, subd. (b)(2), as added by AB 2138, § 13 [“A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation”].)

To implement AB 2138, it is necessary for the Board to revise its regulations that establish criteria for evaluating rehabilitation when deciding whether to deny a license based on a criminal conviction. (BPC, § 482, subds. (a)(1) & (b), as added by AB 2138, § 9.) In particular, relevant to the proposed revisions to 16 CCR section 1769, subdivision (b), the Board must decide whether an applicant with a criminal conviction “made a showing of rehabilitation based on their having completed the criminal sentence at issue without a violation of parole or probation. (BPC, § 482, subds. (a)(1) & (b)(1), as added by AB 2138, § 9.)

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that the Board must consider when evaluating an applicant in this category. The extent to which a person complied with the terms of parole or probation is already a factor boards often consider when evaluating rehabilitation, and it is currently considered by the Board in evaluating rehabilitation. (16 CCR § 1769, subd. (a)(4).) But courts historically rejected the view that compliant applicants and licensees are, *per se*, rehabilitated: “The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily prove anything but good sense.” (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473; see also *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [“Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a[n] . . . applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole”].) Nonetheless, under AB 2138, the Board must now consider whether an applicant who complied with the terms of parole or probation made a showing of rehabilitation sufficient for licensure, even without considering other standard rehabilitation criteria.

Accordingly, the proposal specifies the following special criteria for the Board to consider when making the determination that the applicant with a criminal conviction who has successfully completed the criminal sentence without a violation of parole or probation has made a showing of rehabilitation: (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 criteria are necessary to assist the Board in evaluating rehabilitation. Because BPC section 482, subdivisions (a)(1) and (b)(1) will require the Board to evaluate rehabilitation in the narrow context of an applicant with a criminal conviction who completed the criminal sentence without violating parole or probation, each of these criteria are narrow in scope and would provide to the Board information specific to the applicant's criminal sentence and terms or conditions of parole or probation.

The rationale for each criterion is as follows:

**Nature and gravity of the crime:** The Board must consider the nature and gravity of the crime because this is the offense against which the applicant's rehabilitative efforts will be evaluated.

**Length of parole or probation period:** The Board will consider the length of the applicable parole or probation period because the length of time that the applicant served probation or parole without a violation is relevant to whether the applicant is rehabilitated and will comply with licensure requirements in the future. (See *In re Confletti* (1981) 29 Cal.3d 120, 124-125 ["a truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice"].)

**Modification of probation period:** The Board must consider the extent to which the parole or probation period was shortened or lengthened, and the reason for any change, because such periods can be shortened or lengthened for good or bad conduct, and this may bear on whether the applicant is sufficiently rehabilitated.

**Terms or conditions of parole or probation:** The Board must consider the terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation, because the actual parole or probation terms can inform the Board on whether the applicant is rehabilitated. For instance, in cases where an applicant was convicted of a crime involving alcohol, probation terms requiring the applicant to complete alcohol abuse treatment or participate in an alcohol abuse program would bear more heavily on the applicant's rehabilitation. (See *In re Billings* (1990) 50 Cal.3d 358, 368 ["An alcoholic's rehabilitation is almost universally predicated on a choice to confront his or her problem, followed by abstinence sustained through ongoing participation in a supportive program, such as Alcoholics Anonymous"].)

**Modification of terms and conditions:** The Board must consider the extent to which the terms or conditions of parole or probation were modified and the reason for modification, because this may be relevant to the Board's determination. For instance, if correctional authorities removed terms of parole or probation due to the applicant's good behavior, this would bear on the Board's evaluation of the applicant's rehabilitation and willingness to conform to the rules of licensure.

## **Section 1769, subdivision (c)**

Purpose: The purpose of amending 16 CCR section 1769, subdivision (c) is to comply with the requirements of AB 2138, section 9, adding BPC section 482, subdivisions (a)(1) and (b)(2), which, beginning July 1, 2020, will require the Board, when considering the denial of a license based on a crime, professional misconduct, or act pursuant to BPC section 480, to consider whether the applicant has made a showing of rehabilitation if: (1) the applicant has not completed the criminal sentence at issue without a violation of parole or probation; (2) the Board does not find that the applicant made a sufficient showing of rehabilitation based on the special criteria in 16 CCR section 1769, subdivision (b), discussed above; or (3) the application is subject to denial on a basis other than a crime, such as professional misconduct. (BPC, § 482, subds. (a)(1) & (b)(2), as added by AB 2138, § 9.)

As AB 2138 does not prescribe new rehabilitation criteria that the Board must consider when evaluating an applicant pursuant to BPC section 482, subdivisions (a)(1) and (b)(2), the proposal also provides a more comprehensive list of standard rehabilitation criteria for the Board to consider for these applicants, which is not limited to the applicable parole or probation. The list of criteria incorporates the special criteria from 16 CCR section 1769, subdivision (b), discussed above. The revised list of standard rehabilitation criteria also anticipates that the Board may be considering “act(s)” that are the basis for the denial, since the Board may be evaluating the rehabilitation of an applicant where the ground for denial involves professional misconduct or another act rather than a criminal conviction.

Anticipated Benefits: The proposed revisions to 16 CCR section 1769, subdivision (c) would provide transparency and clarity to applicants: (1) who have not completed their criminal sentence without a violation of parole or probation; (2) who have not made a sufficient showing of rehabilitation based on the special criteria in 16 CCR section 1769, subdivision (b), discussed above; or (3) whose application is subject to denial on a basis other than a crime. Providing the revised list of standard rehabilitation criteria would help those applicants understand the facts and documents to present to the Board to demonstrate their rehabilitation in denial proceedings. The proposal would also assist relevant parties to any administrative appeal arising from a license denial (e.g., the Deputy Attorney General, the Administrative Law Judge, and the applicant’s counsel) in advocating for or against, or deciding upon, those applicants by listing the standard rehabilitation criteria applicable to those applicants.

Rationale: Existing law requires boards to develop criteria to evaluate the rehabilitation of an applicant when considering denying a license pursuant to BPC section 480, and to consider evidence of rehabilitation in making such decisions. (BPC, § 482.) Under existing law, a board may not deny an applicant a license based solely on a misdemeanor conviction, if the applicant meets the applicable requirements of the criteria of rehabilitation that the board develops. (BPC, § 480, subd. (b).)

Operative July 1, 2020, BPC section 480 will prohibit the Board from denying a license on the basis that the applicant was convicted of a crime (a misdemeanor or a felony), or on the basis of the facts underlying a criminal conviction, if the applicant “made a showing of rehabilitation pursuant to Section 482.” (BPC, § 480, subd. (b), as added by AB 2138, § 4.) In deciding whether to deny a license based on a criminal conviction, the Board must consider evidence of the applicant’s rehabilitation, pursuant to the process established in the Act, or its regulations, and as directed under BPC section 482. (BPC, § 481, subd. (c), as added by AB 2138, § 7; see also BPC, § 493, subd. (b)(2), as added by AB 2138, § 13 [“A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation”].)

To implement AB 2138, it is necessary for the Board to revise its regulations that establish criteria for evaluating rehabilitation when deciding whether to deny a license based on a criminal conviction. (BPC, § 482, subds. (a)(1) & (b), as added by AB 2138, § 9.) In particular, relevant to the proposed revisions to 16 CCR section 1769, subdivision (c), the Board must decide whether an applicant or licensee who has not completed their completed their criminal sentence without a violation of parole or probation, who has not “made a showing of rehabilitation” based on the special criteria in 16 CCR section 1769, subdivision (b), discussed above, or whose application is subject to denial on a basis other than a crime, is rehabilitated based on the Board’s standard criteria for evaluating applicants’ rehabilitation. (BPC, § 482, subds. (a)(1) & (b)(2), as added by AB 2138, § 9.) Beginning July 1, 2020, AB 2138 will also expressly authorize the Board to deny a license based on professional misconduct. (BPC, § 480, subd. (a)(2), as added by AB 2138, § 4.) Accordingly, it is necessary to amend the regulation to account for denials on this ground.

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that the Board must consider when evaluating an applicant pursuant to BPC section 482, subdivisions (a)(1) and (b)(2). Accordingly, the proposal will revise the Board’s existing rehabilitation criteria by adding the criteria specified in 16 CCR section 1769, subdivision (b) and making other minor revisions. Each of these criteria are designed to focus the Board’s evaluation on facts and circumstances relevant to an applicant’s rehabilitation.

The rationale for each criterion is as follows:

**Nature and gravity of the crime or act:** The Board will consider the nature and gravity of the crime or act for the same reasons that this criterion is included among the special rehabilitation criteria in 16 CCR section 1769, subdivision (b), discussed above. This is the offense or misconduct against which the Board will judge the applicant’s rehabilitation. This is also already an existing regulatory criterion. The Board proposes to amend “severity” to “gravity” and “offense(s)” to “crime(s).” These are not substantive changes and would make the regulation internally consistent.

Evidence of subsequent acts or crimes: The Board will also consider evidence of acts or crimes committed after the act or crime that is the basis for denial. Such acts or crimes typically reflect additional misconduct by the applicant and bear on the Board's decision regarding whether the applicant is sufficiently rehabilitated to be licensed and conform to the requirements of licensure, because an applicant who has continued to engage in misconduct or commit crimes after the act or crime that is the basis for denial proceedings has demonstrated a potential for recidivism. This is also already an existing regulatory criterion. The Board would insert "or crime(s)" after "act(s)" the first place it appears to clarify that evidence of subsequent crimes may be considered as evidence of rehabilitation and for consistency with references to "act(s) or crime(s)" in the other paragraphs of this subdivision.

Time elapsed: The Board would consider the time that elapsed since commission of the prior crimes or misconduct. The passage of time bears on a person's rehabilitation and, accordingly, it is necessary to consider this criterion in evaluating rehabilitation. This criterion has not changed substantively from existing regulation. The Board proposes to amend "subdivision (1) or (2)" to read "paragraph (1) or (2)" (emphasis added). This change would correct a technical error in the existing regulation.

Compliance with sanctions: The Board will consider whether the applicant complied with parole, probation, restitution or other sanctions imposed on the applicant. This criterion is otherwise unchanged from existing regulation. The information embraced in this criterion bears on an applicant's rehabilitation in terms of the applicant's willingness to make amends for prior misconduct and willingness to conform to the rules of licensure. Accordingly, it is necessary for the Board to consider these elements to evaluate an applicant's reformation from prior misconduct.

Criteria from new subdivision (b): The Board will include the special rehabilitation criteria in 16 CCR section 1769, subdivision (b), discussed above, as part of its revised list of standard rehabilitation criteria. For applicants that completed their criminal sentence without a violation of parole or probation, the Board would first evaluate their fitness for licensure under the special criteria in 16 CCR section 1769, subdivision (b). If the applicant did not demonstrate sufficient rehabilitation under the special criteria in subdivision (b), the Board would apply all criteria in 16 CCR section 1769, subdivision (c), which incorporates the special criteria in subdivision (b), because the special criteria will remain relevant factors in an overall determination of whether the applicant made a showing of rehabilitation, for the reasons stated in this Initial Statement of Reasons under the heading "Section 1769, subdivision (b)," immediately above. For applicants with a criminal conviction that did not complete their criminal sentence without a violation of parole or probation, the Board would apply all of the standard criteria in subdivision (c), which incorporates the special criteria from subdivision (b), for the same reason.

Evidence of rehabilitation submitted by applicant: The Board would consider rehabilitation evidence the applicant submitted. The proposal would not change this criterion. Until July 1,

2020, the Board is required to consider such evidence under BPC section 482, subdivision (b). Beginning July 1, 2020, the Board will be required to consider such evidence under BPC section 481, subdivision (c). It is necessary to retain this requirement in order to consolidate the Board's rehabilitation criteria in one place. The proposal would amend this requirement to additionally specify that, among other evidence, the Board will consider rehabilitation evidence as provided in the Board's Disciplinary Guidelines. This amendment is necessary to ensure that the Board's evaluation of rehabilitation evidence in license denial proceedings is consistent with its evaluation of rehabilitation evidence in license suspension and revocation proceedings, which includes evaluation under the Board's Disciplinary Guidelines, as required by 16 CCR section 1760.

**Section 1769, subdivision (d), part 1:**

**"[T]he [B]oard will consider whether the licensee made a showing of rehabilitation and is presently fit for a license if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the [B]oard will consider the criteria in subdivisions (b)(1)-(5)."**

Purpose: The purpose of the first part of the Board's amendment to 16 CCR section 1769, subdivision (d) is to comply with the requirements of AB 2138, section 9, adding BPC section 482, subdivisions (a)(2) and (b)(1), which, beginning July 1, 2020, will require the Board, when considering the suspension or revocation of a license based on a crime pursuant to BPC section 490, to consider whether the licensee has made a showing of rehabilitation based on their having completed the criminal sentence at issue without a violation of parole or probation. As AB 2138 does not prescribe new rehabilitation criteria that the Board must consider when evaluating a licensee in that category, the proposal would follow the same approach, and require the Board to consider the same special rehabilitation criteria (the criteria in 16 CCR 1769, subdivision (b)(1)-(5), as amended by the proposal), as would apply to evaluation of an applicant in that category.

Anticipated Benefits: The first part of the Board's amendment to 16 CCR section 1769, subdivision (d) is intended to provide transparency and clarity to licensees with a criminal conviction who have completed their criminal sentence without a violation of parole or probation. Specifying criteria that the Board will use in determining whether a licensee in that category has made a showing of rehabilitation would help those licensees understand the facts and documents to present to the Board to demonstrate their rehabilitation in suspension or revocation proceedings. The proposal would also assist relevant parties to any administrative appeal arising from a license suspension or revocation (e.g., the Deputy Attorney General, the Administrative Law Judge, and the licensee's counsel) in advocating for or against, or deciding upon, licensees who have criminal convictions and completed parole or probation without a violation, by specifying the special rehabilitation criteria applicable to those licensees.

**Rationale:** Existing law requires boards to develop criteria to evaluate the rehabilitation of a licensee when considering suspending or revoking a license pursuant to BPC section 490, and to consider evidence of rehabilitation in making such decisions. (BPC, § 482.) Operative July 1, 2020, the Board must decide, when considering suspension or revocation of a license based on a crime pursuant to BPC section 490, whether the licensee has “made a showing of rehabilitation” based on their having completed the criminal sentence at issue without a violation of parole or probation. (BPC, § 482, subds. (a)(2) & (b)(1), as added by AB 2138, § 9.)

To implement AB 2138 and maintain consistency in how the Board evaluates rehabilitation evidence between license denial proceedings and license suspension or revocation proceedings, it is necessary for the Board to revise its regulations that establish criteria for evaluating rehabilitation when deciding whether to suspend or revoke a license based on a criminal conviction. (BPC, § 482, subds. (a)(2) & (b), as added by AB 2138, § 9.)

The proposal would require the Board, when considering the suspension or revocation of a license based on a crime, to consider the same special rehabilitation criteria when evaluating the rehabilitation of a licensee who has completed their criminal sentence without a violation of parole or probation pursuant to BPC section 482, subdivisions (a)(2) and (b)(1) as the proposal would require the Board to consider when evaluating the rehabilitation of an applicant in that category pursuant to BPC section 482, subdivisions (a)(1) and (b)(1).

The rationale for each criterion is provided under the heading “Section 1769, subdivision (b),” above.

#### **Section 1769, subdivision (d), part 2:**

**“If the [B]oard determines that the licensee did not make a showing of rehabilitation based on the criteria in subdivisions (b)(1)-(5), or if a licensee has not completed the criminal sentence at issue without a violation of parole or probation the [B]oard will consider the following criteria: ... .”**

**Purpose:** The purpose of the second part of the Board’s amendment to 16 CCR section 1769, subdivision (d) is to revise the standard rehabilitation criteria that, beginning July 1, 2020, BPC section 482, subdivisions (a)(2) and (b)(2) will require the Board to consider in suspension and revocation proceedings to conform with the revisions the proposal would make to the standard rehabilitation criteria that, beginning July 1, 2020, BPC section 482, subdivisions (a)(1) and (b)(2) will require the Board to consider in denial proceedings. Beginning July 1, 2020, BPC section 482, subdivisions (a)(2) and (b)(2), like subdivisions (a)(1) and (b)(2), will require the Board, when considering the suspension or revocation of a license based on a crime pursuant to BPC section 490, to consider whether a licensee has made a showing of rehabilitation if: (1) the Board determines that the licensee has not made a sufficient showing of rehabilitation based on the special criteria in 16 CCR section 1769, subdivision (b)(1)-(5); or (2) the licensee has not completed the criminal sentence at issue without a violation of parole or probation. (BPC, § 482, subds. (a)(2) & (b)(2), as added by AB 2138, § 9.)

As AB 2138 does not prescribe new rehabilitation criteria that the Board must consider when evaluating a licensee pursuant to BPC section 482, subdivisions (a)(2) and (b)(2), the proposal also seeks to provide a more comprehensive list of standard rehabilitation criteria for the Board to consider for these licensees, which is not limited to the person's parole or probation. The list of criteria is mostly unchanged from existing regulation. The list of criteria incorporates the special criteria from 16 CCR section 1769, subdivision (b)(1)-(5), discussed above. Thus, the proposal follows the same approach as 16 CCR section 1769, subdivision (c), discussed above.

**Anticipated Benefits:** The second part of the Board's amendment to 16 CCR section 1769, subdivision (d) would provide transparency and clarity to licensees who: (1) have not made a sufficient showing of rehabilitation based on the special criteria from 16 CCR section 1769, subdivision (b)(1)-(5), discussed above; or (2) have not completed their criminal sentence without a violation of parole or probation. Providing the revised list of standard rehabilitation criteria would help those licensees understand the facts and documents to present to the Board to demonstrate their rehabilitation in license suspension or revocation proceedings. The proposal would also assist relevant parties to any administrative appeal arising from a license suspension or revocation (e.g., the Deputy Attorney General, the Administrative Law Judge, and the licensee's counsel) in advocating for or against, or deciding upon, those licensees by listing rehabilitation criteria applicable to those licensees.

**Rationale:** Existing law requires boards to develop criteria to evaluate the rehabilitation of a licensee when considering suspending or revoking a license pursuant to BPC section 490, and to consider evidence of rehabilitation in making such decisions. (BPC, § 482.) Operative July 1, 2020, the Board must decide, when considering suspension or revocation of a license based on a crime pursuant to BPC section 490, whether a licensee who has not "made a showing of rehabilitation" based on the special criteria in 16 CCR section 1769, subdivision (b)(1)-(5), discussed above, or who has not completed their criminal sentence without a violation of parole or probation, has made a showing of rehabilitation based on the standard rehabilitation criteria developed by the Board. (BPC, § 482, subds. (a)(2) & (b)(2), as added by AB 2138, § 9.)

To implement AB 2138 and maintain consistency in how the Board evaluates rehabilitation between license denial proceedings and license suspension or revocation proceedings, it is necessary for the Board to revise its regulations that establish criteria for evaluating rehabilitation when deciding whether to suspend or revoke a license based on a criminal conviction. (BPC, § 482, subds. (a)(2) & (b), as added by AB 2138, § 9.)

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that the Board must consider when evaluating a licensee pursuant to BPC section 482, subdivisions (a)(2) and (b)(2). Accordingly, the proposal will revise the Board's existing rehabilitation criteria by adding the criteria specified in 16 CCR section 1769, subdivision (b)(1)-(5) and making other minor revisions. Each of these criteria are designed to focus the Board's evaluation on facts and circumstances relevant to a licensee's rehabilitation.

The rationale for each criterion is as follows:

Nature and gravity of the crime or act: The Board will consider the nature and gravity of the crime or act for the same reasons that this criterion is included among the special rehabilitation criteria in 16 CCR section 1769, subdivision (b)(1)-(5), discussed above. This is the offense or misconduct against which the Board will judge the licensee's rehabilitation. This is also already an existing regulatory criterion. The Board proposes to amend "severity" to "gravity." This is not a substantive change and would make the regulation internally consistent.

The total criminal record: The Board will also consider evidence of the licensee's total criminal record. This is an existing regulatory criterion. It is necessary for the Board to consider the licensee's total criminal record because additional prior or subsequent misconduct by the licensee is relevant to the Board's decision regarding whether the licensee is sufficiently rehabilitated to be licensed and the licensee's willingness to conform to the requirements of licensure.

Time elapsed: The Board would consider the time that elapsed since commission of the prior crimes or misconduct. The passage of time bears on a person's rehabilitation and, accordingly, it is necessary to consider this criterion in evaluating rehabilitation. This criterion has not changed substantively from existing regulation.

Compliance with sanctions: The Board will consider whether the licensee complied with parole, probation, restitution or other sanctions imposed on the licensee. This is an existing regulatory criterion. The information embraced in this criterion bears on a licensee's rehabilitation in terms of the licensee's willingness to make amends for prior misconduct and to conform to the rules of licensure. Accordingly, it is necessary for the Board to consider these elements to evaluate a licensee's reformation from prior misconduct.

Criteria from new subdivision (b)(1)-(5): The Board will include the special rehabilitation criteria in 16 CCR section 1769, subdivision (b)(1)-(5), discussed above, as part of its revised list of standard rehabilitation criteria. For licensees that completed their criminal sentence without a violation of parole or probation, the Board would first evaluate their fitness for licensure under the special criteria in 16 CCR section 1769, subdivision (b)(1)-(5). If the licensee did not demonstrate sufficient rehabilitation under the special criteria in subdivision (b)(1)-(5), the Board would apply all criteria in 16 CCR section 1769, subdivision (d), which incorporates the special criteria in subdivision (b)(1)-(5), because the special criteria will remain relevant factors in an overall determination of whether the applicant made a showing of rehabilitation, for the reasons stated in this Initial Statement of Reasons under the heading "Section 1769, subdivision (b)," immediately above. For licensees with a criminal conviction that did not complete their criminal sentence without a violation of parole or probation, the Board would apply all of the standard criteria in subdivision (d), which incorporates the special criteria from subdivision (b)(1)-(5), for the same reason.

Evidence of rehabilitation submitted by licensee: The Board would consider rehabilitation evidence the licensee submitted. This is an existing regulatory criterion. Until July 1, 2020, the Board is required to consider such evidence under BPC section 482, subdivision (b). Beginning July 1, 2020, the Board will be required to consider such evidence under BPC 481, subdivision (c). It is necessary to retain this requirement in order to maintain consistency between the Board's evaluation of rehabilitation in license denial proceedings and license suspension or revocation proceedings. This is not a substantive change and would make the regulation internally consistent. The proposal would amend this requirement to additionally specify that, among other evidence, the Board will consider rehabilitation evidence as provided in the Board's Disciplinary Guidelines. This amendment is necessary to clarify that the provisions of this regulation are intended to supplement, not supplant, evaluation of rehabilitation under the Board's Disciplinary Guidelines, as required by 16 CCR 1760.

#### **Underlying Data**

- Assembly Bill 2138 (Chiu, Chapter 995, Statutes of 2018)
- Relevant Meeting Materials and draft Meeting Minutes from Board of Pharmacy Meeting held May 7-8, 2019 (Meeting Materials (Enforcement Committee Pages 1, 10-12 and Attachment 6 and meeting handout), Minutes Pages (Pending))

#### **Business Impact**

The proposed regulations will not have a significant adverse economic impact on businesses as the regulations do not directly affect businesses. This initial determination is based on the purpose of AB 2138, which sought to reduce barriers to licensure for applicants and licensees with criminal histories or licensure discipline. It is also based on the lack of testimony at the Board's meeting that the regulation would impact businesses. The Board anticipates that the proposed regulations will impact businesses to the extent that individual applicants or licensees are able to be licensed or retain licensure under the proposal. The Board does not know how many applicants will gain or retain licensure but does not anticipate the number to significantly impact businesses.

#### **Economic Impact Assessment**

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the regulations are aimed at reducing barriers to licensure and make it easier for applicants and licensees with criminal histories or licensure discipline to obtain and maintain licensure.
- It will not create new businesses or eliminate existing business within the State of California because the regulations are aimed at reducing barriers to licensure and make it easier for applicants and licensees with criminal histories or licensure discipline to obtain and maintain licensure.

- It will not affect the expansion of businesses currently doing business within the State of California because the regulations are aimed at reducing barriers to licensure and make it easier for applicants and licensees with criminal histories or licensure discipline to obtain and maintain licensure.
- This regulatory proposal may benefit the health and welfare of Californians due to increased access to licensed professionals.
- This regulatory proposal does not affect worker safety because it establishes criteria, based upon recent statutory mandates for licensure following the applicant's or licensee's criminal conviction. It does not involve worker safety.
- This regulatory proposal does not affect the state's environment because it only regulates applicants and licensees and their qualifications for licensure following a criminal conviction or disciplinary action. It does not involve environmental issues.

### **Specific Technologies or Equipment**

This regulatory proposal does not mandate the use of specific technologies or equipment.

### **Consideration of Alternatives**

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the regulation is proposed or would be as effective or less burdensome to affected private persons than the proposed regulation, or equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives that were considered and the reason the alternative was rejected or adopted:

- Option 1: To pursue a regulatory change that requires the Board to find rehabilitation if the applicant or licensee completed the 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 of 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: To do nothing, meaning the Board would not adopt the regulations. The Board opted not to pursue this option because per AB 2138, the Board is mandated to adopt proposed regulations by July 1, 2020.

Any interested person may submit comments to the Board in writing relevant to the above determinations at 2720 Gateway Oaks., Suite 100, Sacramento, California 95833.