

**SPEECH-LANGUAGE PATHOLOGY, AUDIOLOGY,  
AND HEARING AID DISPENSERS BOARD  
FINAL STATEMENT OF REASONS**

**Request for Early Effective Date:** The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board) requests that this regulatory proposal become effective upon filing to align as closely as possible with the statutory implementation date of July 1, 2020, in Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018). These regulations explain how the Board will individually examine each licensure, renewal, or reinstatement decision for individuals with a criminal conviction. Further, they clarify to the public how the Board will decide which convictions are substantially related to licensure. It would benefit all Californians to hasten the promulgation of these regulations, which encourage individuals with criminal convictions to pursue licensure and employment and which could potentially provide Californians with greater choices in licensees.

**Hearing Date:** No public hearing was requested or held.

**Subject Matter of Proposed Regulations:** Substantial Relationship Criteria, and Criteria for Rehabilitation - Denials and Reinstatements.

**Sections Affected:** 1399.132, 1399.133, 1399.134, 1399.156.1, 1399.156.2, and 1399.156.3 of Title 16 of the California Code of Regulations (16 CCR)

**Updated Information**

The Initial Statement of Reasons is included in the rulemaking file. The information contained therein is updated as follows:

On April 20, 2020 the Board received a public comment letter from Faride Perez-Aucar of Root & Rebound and Vinuta Naik, of Community Legal Services of East Palo Alto indicating their organizations, along with A New Way of Life Reentry Project, Center for Employment Opportunities, Center for Living and Learning, East Bay Community Law Center, Legal Aid at Work, Legal Services for Prisoners with Children, All of Us or None, Los Angeles Regional Reentry Project, National Association of Social Workers, California Chapter, REDF, The Record Clearance Project, San Jose State University, and Rubicon Programs (all listed at the end of the letter) approved of the Board amending 16 CCR sections 1399.132, 1399.133, 1399.134, 1399.156.1, 1399.156.2. and 1399.156.3 to reflect the passage of Assembly Bill 2138 but believe the proposed regulations do not go far enough to fully implement the intention and spirit of the AB 2138 changes.

On June 30, 2020 the Board held a teleconference meeting to discuss the April 20, 2020 letter submitted by Faride Perez-Aucar of Root & Rebound and Vinuta Naik of Community Legal Services of East Palo Alto on behalf of their organizations and the other organizations. The

Board rejected the comments submitted in the April 20, 2020 letter from Ms. Perez-Aucar, Ms. Naik and the other organizations for the reasons described in the Objections or Recommendations/Responses section below.

During the June 30, 2020 teleconference meeting the Board also modified the proposed regulatory text as follows:

16 CCR section 1399.132:

1. Subdivision (a):
  - a. Removed the phrase “Business and Professions” modifying “Code” as unnecessary (17 CCR section 1399.102 defines for this Division that “Code” means “Business and Professions Code”).
  - b. Corrected punctuation and added references to Business and Professions Code (BPC) sections 2533 and 2533.1. BPC section 2533 authorizes the Board to deny, revoke, or suspend a license for enumerated reasons, including a criminal conviction substantially related to the qualifications, functions, or duties of a speech-language pathologist, audiologist, or hearing aid dispenser, as the case may be. BPC section 2533.1 defines what constitutes a criminal conviction.
2. Subdivision (b)(1) through (3): Made technical punctuation corrections.
3. Subdivision (c)(2): Removed the phrase “Business and Professions” modifying “Code” as unnecessary.

16 CCR section 1399.133:

1. Subdivision (a): Removed the phrase “Business and Professions” modifying Code” as unnecessary, and revised the phrase “the applicant was convicted of a crime” to instead read “the applicant has been convicted of a crime” to conform the proposed regulation to the language used in BCP section 480, subdivision (a), as added by AB 2138.
2. Subdivision (b):
  - a. Revised the subsection to clarify that this subsection sets forth the rehabilitation criteria the Board will apply to: applicants with a criminal conviction who have not completed the criminal sentence without a violation of parole or probation; applicants with a criminal conviction who did not make a showing of rehabilitation under subsection (a)(1); proceedings in which the denial is based on professional misconduct (as that term is used under new BPC section 480); and proceedings in which the denial is based on one or more grounds as specified in Article 4, Chapter 5.3, Division 2 of the BPC (which encompasses BPC section

2533 described above, BPC section 2533.1 that defines what constitutes conviction, BPC section 2533.2 that establishes the applicability of Administrative Procedure Act, BPC section 2533.3 that establishes the penalty for violation, BPC section 2533.4 that allows the Board to obtain an injunction against violations, and BPC section 2533.5 that allows the Board to prosecute a person for violation of the chapter and establishes the Board will hear and decide such matters).

- b. Struck “and is presently eligible for a license” because the meaning of the term “presently” is potentially unclear to the regulated public and the phrase was determined to be unnecessary given the other clarifying modifications to the proposal.
- c. Subdivision (b)(1) and (2):
  - i. Added “professional misconduct” for consistent use with the term as used under new BPC section 480, and to differentiate “professional misconduct” as a ground for denial separate from other “acts” that are grounds for denial provided under BPC section 2533.
  - ii. Struck the phrase “Business and Professions” modifying “Code” as unnecessary.

#### 16 CCR section 1399.134:

- 1. Subdivision (b): Revised the subsection to clarify that this subsection sets forth the rehabilitation criteria the Board will apply to: applicants with a criminal conviction who have not completed the criminal sentence without a violation of probation; licensees that the Board determines did not make a showing of rehabilitation, a suspension or revocation of a license based on disciplinary action described in BPC section 141, or a suspension or revocation of a license based on one or more grounds specified in Article 4 of Chapter 5.3 of Division 2 of the Code (described above).
- 2. Subdivision (b)(1)&(3): Added “disciplinary action(s)” for consistent use of the term disciplinary action under BPC section 141 and to differentiate “disciplinary action” as a ground for revocation or suspension provided under BPC section 141, from other “acts” that are grounds for revocation or suspension under Article 4 of Chapter 5.3 of Division 2 of the BPC.

#### 16 CCR section 1399.156.1:

- 1. Subdivision (a):
  - a. Removed the phrase “Business and Professions Code” which was mistakenly added in the Proposed Text and later removed within the Proposed Modification

of Text (17 CCR section 1399.102 defines for this Division that “Code” means “the Business and Professions Code”).

- b. Corrected punctuation and added references to Business and Professions Code (BPC) sections 2533 and 2533.1. BPC section 2533 authorizes the Board to deny, revoke, or suspend a license for enumerated reasons, including a criminal conviction substantially related to the qualifications, functions, or duties of a speech-language pathologist, audiologist, or hearing aid dispenser, as the case may be. BPC section 2533.1 defines what constitutes a criminal conviction.
- c. Struck “his or her” and replaced the phrase with “the” for consistency with preferences for non-gendered language in Department of Consumer Affairs regulations.

- 2. Subdivision (b)(1) through (3): Made technical punctuation corrections.

16 CCR section 1399.156.2:

- 1. Subdivision (a): Removed the phrase “Business and Professions Code” which was mistakenly added in the Proposed Text and later removed within the Proposed Modification of Text (17 CCR section 1399.102 defines for this Division that “Code” means “the Business and Professions Code”).and revised the phrase “the applicant was convicted of a crime” to instead read “the applicant has been convicted of a crime” to conform the proposed regulation to the language used in BCP section 480, subdivision (a), as added by AB 2138.
- 2. Subdivision (b):
  - a. Revised the subsection to clarify that this subsection sets forth the rehabilitation criteria the Board will apply to: applicants with a criminal conviction who have not completed the criminal sentence without a violation of parole or probation; applicants with a criminal conviction who did not make a showing of rehabilitation under subsection (a)(1); proceedings in which the denial is based on professional misconduct (as that term is used under new BPC section 480); and proceedings in which the denial is based on one or more grounds as specified in Article 4, Chapter 5.3, Division 2 of the BPC (which encompasses BPC section 2533 described above, BPC section 2533.1 that defines what constitutes conviction, BPC section 2533.2 that establishes the applicability of Administrative Procedure Act, BPC section 2533.3 that establishes the penalty for violation, BPC section 2533.4 that allows the Board to obtain an injunction against violations, and BPC section 2533.5 that allows the Board to prosecute a person for violation of the chapter and establishes the Board will hear and decide such matters).

- b. Struck “and is presently eligible for a license” because the meaning of the term “presently” was potentially unclear to the regulated public and the phrase was determined to be unnecessary given the other clarifying modifications to the proposal.
3. Subdivision (b)(1),(2),&(3): Added “professional misconduct” for consistent use with the term as used under new BPC section 480, and to differentiate “professional misconduct” as a ground for denial separate from other “acts” that are grounds for denial provided under BPC section 2533.
4. Subdivision (b)(2): Struck the phrase “Business and Professions Code.”

16 CCR section 1399.156.3:

1. Subdivision (b): Revised the subsection to clarify that this subsection sets forth the rehabilitation criteria the Board will apply to applicants with a criminal conviction who have not completed the criminal sentence without a violation of probation, or for licensees that the Board determines that did not make a showing of rehabilitation, a suspension or revocation based on disciplinary action described in BPC section 141, or a suspension or revocation based on one or more grounds specified in Article 4 of Chapter 5.3 of Division 2 of the Code.
2. Subdivision (b)(1)&(3): Added “disciplinary action(s)” for consistent use of the term disciplinary action under BPC section 141 and to differentiate “disciplinary action” as a ground for revocation or suspension provided under BPC section 141, from other “acts” that are grounds for revocation or suspension under Article 4 of Chapter 5.3 of Division 2 of the BPC.

On June 30, 2020, the Board reviewed and approved the modifications to the proposed regulatory text. On July 6, 2020, the Board issued a 15-day notice of availability of modified text, and the comment period closed on July 21, 2020. No comments were received concerning the modifications to the proposed text.

**Local Mandate**

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

**Small Business Impact**

This Board has determined that the proposed regulations would have no significant statewide adverse economic impact directly affecting small businesses since few Speech-Language Pathologists, Audiologists, and Hearing Aid Dispensers will be impacted. Moreover, the Board already reviews evidence of rehabilitation in a manner that is similar to the changes provided for in the proposed amendments. Nonetheless, small businesses may have a greater pool of licensed professionals to choose from as barriers to licensure are reduced. This determination is based on the following facts or evidence/documents/testimony:

To the extent license applicants and licensees were convicted of a crime or were previously disciplined, the proposed regulations could impact individual licensees by authorizing individuals with criminal convictions to obtain licensure by the Board, if their criminal convictions are not substantially related to the practice regulated by the Board, and the Board determines they have met the rehabilitative criteria, as established in the regulatory proposal.

### **Economic Impact**

To the extent license applicants and licensees were convicted of a crime or were previously disciplined, the proposed regulations could impact individual licensees by authorizing individuals with criminal convictions or professional misconduct disciplinary actions to obtain licensure by the Board, if they have met the rehabilitative criteria, and the criminal convictions or professional misconduct are substantially related as established in the regulatory proposal.

The Board estimates 2 initial license applications will be approved per year and be required to pay initial license fees of \$60 as follows:

Category	Applications Per Year	Fee Amount	Total Cost Per Year
Speech Pathology License	1	\$60	\$60
Audiology License	1	\$60	\$60
Total Costs:			\$120

Licensees will also be required to pay ongoing biennial renewal fees as follows:

Category	Applications Per Year	Fee Amount	Total Cost Per Year
Speech Pathology License	1	\$75	\$75
Audiology License	1	\$110	\$110
Total Costs:			\$185

The total economic impact is estimated to range from \$120 to \$860 per year and up to \$4,900 over a ten-year period as follows:

AB 2138 Impact - Estimates Number of Additional Registrants and Licensees Per Year													
Registration and License Type	Applicants Per Year	Fee Costs Per Year	Years Ongoing										
Speech Pathology			1	2	3	4	5	6	7	8	9	10	Total
Initial License	1	\$60	\$60	\$60	\$60	\$60	\$60	\$60	\$60	\$60	\$60	\$60	\$600
Biennial Renewal	Various	\$75	\$ -	\$ -	\$75	\$75	\$150	\$150	\$225	\$225	\$300	\$300	\$1,500
Total Speech Pathology Costs:			\$60	\$60	\$135	\$135	\$210	\$210	\$285	\$285	\$360	\$360	\$2,100
Audiology			1	2	3	4	5	6	7	8	9	10	
Initial License	1	\$60	\$60	\$60	\$60	\$60	\$60	\$60	\$60	\$60	\$60	\$60	\$600
Biennial Renewal	Various	\$110	\$ -	\$ -	\$110	\$110	\$220	\$220	\$330	\$330	\$440	\$440	\$2,200
Total Audiology Costs:			\$60	\$60	\$170	\$170	\$280	\$280	\$390	\$390	\$500	\$500	\$2,800
Total Costs:			\$120	\$120	\$305	\$305	\$490	\$490	\$675	\$675	\$860	\$860	\$4,900

## **Fiscal Impact**

The Board anticipates approximately two additional applicants will be provided licensure per year as a result of the proposed regulations. The Board indicates an Office Technician and a Staff Services Analyst will perform the initial licensing workload at a cost of approximately \$161 per application. Biennial renewal licensing workload will be performed by an Office Technician with total costs of approximately \$39 per application.

Initial registration and renewal workload and costs are estimated as follows:

AB 2138 Impact - Estimates Number of Additional Registrants and Licensees Per Year												
Registration and License Type	Applicants Per Year	Years Ongoing										
		1	2	3	4	5	6	7	8	9	10	Total
Initial License		2	2	2	2	2	2	2	2	2	2	20
Administrative Workload (17 minutes) - Office Technician*	2	\$46	\$46	\$46	\$46	\$46	\$46	\$46	\$46	\$46	\$46	\$460
Licensing Workload (87 minutes) - Staff Services Analyst**	2	\$277	\$277	\$277	\$277	\$277	\$277	\$277	\$277	\$277	\$277	\$2,767
Total Initial Costs:		\$323	\$323	\$323	\$323	\$323	\$323	\$323	\$323	\$323	\$323	\$3,226
Biennial License Renewal		-	-	2	2	4	4	6	6	8	8	40
Administrative Workload (12 minutes) - Office Technician*	Various	-	-	\$32	\$32	\$65	\$65	\$97	\$97	\$130	\$130	\$648
Enforcement-related costs per licensee	\$23	-	-	\$46	\$46	\$92	\$92	\$138	\$138	\$184	\$184	\$920
Total Renewal Costs:		-	-	\$78	\$78	\$157	\$157	\$235	\$235	\$314	\$314	\$1,568
Total Initial and Renewal Costs:		\$323	\$323	\$401	\$401	\$479	\$479	\$558	\$558	\$636	\$636	\$4,794

\*Office Technician (approximately \$81 per hour - includes DCA distributed costs)

\*\*Staff Services Analyst (approximately \$96 per hour - includes DCA distributed costs)

Enforcement Costs (\$760,448)/Licensee Population (33,118) = \$23 per licensee

This workload and costs are anticipated to be minor and absorbable within existing resources.

## **Anticipated Benefits of this Proposal**

The proposed amendments would place applicants and licensees on notice that the Board is statutorily authorized to deny, suspend, or revoke a license on the basis of professional misconduct and discipline taken by another licensing board or jurisdiction. The proposal would also make relevant parties (e.g., the Deputy Attorneys General, Administrative Law Judges, respondents, and respondents' counsels) aware that when considering denial or discipline of applicants or licensees, the Board uses the listed criteria to determine whether the crime, act, or professional misconduct is substantially related to the practice of speech-language pathology, audiology, or hearing aid dispensing. AB 2138 was enacted to reduce licensing and employment barriers for people who are rehabilitated. These proposed amendments would further that goal by adopting criteria that would emphasize an applicant's or licensee's rehabilitative efforts and what is needed to make a showing of rehabilitation. This may lead to fewer denials and an increase in the number of licensed speech-language pathology, audiology, and hearing aid dispensers in the marketplace. Thus, allowing for more health care providers to treat increasing numbers of California consumers. This proposal does not affect worker safety or the state's environment.

## **Consideration of Alternatives**

The Board has determined that no reasonable alternative to the regulatory proposal it considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the regulatory proposal, or would be more cost effective to affected private persons and 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 alternatives were 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 or licensee 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 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 per AB 2138, the Board is mandated to adopt proposed regulations by July 1, 2020.

### **Objections or Recommendations/Responses**

One comment letter, and no other objections or recommendations concerning the proposed amendment were received during the 45-day Notice period, and no comments, objections, or recommendations were received during the 15-day period for public comments on the modification of proposed text.

The comment letter received was considered by the Board, and responded to as follows:

### **Comment from Faride Perez-Aucar of Root & Rebound and Vinuta Naik, of Community Legal Services of East Palo Alto received July 14, 2020**

Faride Perez-Aucar of Root & Rebound and Vinuta Naik, of Community Legal Services of East Palo Alto submitted a letter commenting on the Board's implementation of Assembly Bill 2138, dated July 14, 2020. Perez-Aucar and Ms. Naik submitted their comments on behalf of their organizations, as well as A New Way of Life Reentry Project, Center for Employment Opportunities, Center for Living and Learning, East Bay Community Law Center, Legal Aid at Work, Legal Services for Prisoners with Children, All of Us or None, Los Angeles Regional Reentry Project, National Association of Social Workers, California Chapter, REDF, The Record Clearance Project, San Jose State University, and Rubicon Programs. Below is a summary of each comment and the Board's response.

### **Initial Comment: General Statement/ Purpose of the Letter**

**Summary:** The letter states that the organizations supporting the letter believe the proposal should go further in order to fully implement the intention and spirit of the AB 2138 text. They believe there is a lack of clarity in the licensure process for individuals who have been impacted by the criminal justice system that leads many of them to give up. They believe the proposed regulations leave gaps and fail to implement BPC Sections 480, 481, 482, and 493 and fall short of the intent of the bill to combat discrimination against people with records who have demonstrated rehabilitation and are seeking a professional career.

**Board's Response:** The Board rejects this comment. The purpose of the proposed regulations is to clarify substantial relationship criteria and criteria for rehabilitation, as required by BPC Section 481. In particular, consistent with the requirements enacted by AB 2138, these regulations would adopt all of the following criteria, which would assist the Board with a balanced approach to evaluating an applicant's eligibility for licensure:

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 the profession in which the applicant seeks licensure or is licensed. Further, clarifying how to determine whether a crime is substantially related and clarifying the factors that will be considered when evaluating rehabilitation should assist applicants and licensees with demonstrating their rehabilitation.

### **Comment #1**

**Summary:** The letter says the proposed regulations should include the 7-year washout period for consideration of convictions or discipline which are not considered serious felonies under the Penal Code Section 1192.7. (BPC Section 480(a))

**Board's Response:** The Board rejects this comment. The seven-year period during which a board can deny a license for a conviction or formal discipline is fully described in BPC section 480(a)(1). As this is already included in statute, adding this provision is duplicative of BPC section 480 and therefore it is not necessary to repeat it in the regulations.

### **Comment #2**

**Summary:** The letter asks that proposed regulations should provide that a person with a criminal history shall not be denied a license if the applicant has obtained a Certificate of Rehabilitation, dismissal per Penal Code section 1203.4, 1203.4a, 1203.41 or 1263.42, or an arrest which led to an infraction/citation or a disposition other than conviction, or juvenile adjudication. (BPC Section 480(b–d))

**Board's Response:** The Board rejects this comment. BPC section 480(c) already clearly states that a license may not be denied based on a conviction, or its underlying acts, if it has been dismissed or expunged pursuant to Penal Code sections 1203.4, 1203.4a, 1203.41, or 1203.42. In addition, BPC section 480(b) prohibits license denial if the applicant has obtained a certificate of rehabilitation, was granted clemency or a pardon, or has made a showing of rehabilitation per BPC section 482. BPC section 480(d) prohibits license denial based on arrest that resulted in something other than a conviction, such as an infraction, citation, or juvenile adjudication. As noted above, BPC section 480(b-d) explicitly prohibit denial of a license in those specific circumstances. Since these provisions are already specifically

covered in statute, adding them again in regulation would be duplicative. Therefore, it is not necessary to repeat them in regulations.

### **Comment #3**

**Summary:** The letter states that the regulations fail to include that the Board shall not require an applicant to disclose any information or documentation regarding the applicant's criminal history. (BPC Section 480(f)(2))

**Board's Response:** The Board rejects this comment. Business and Professions Code Section 480(f)(2) already covers this in detail. It would therefore be duplicative of the statute and not necessary to repeat this in the regulations.

### **Comment #4**

**Summary:** The letter states that the regulations fail to include that the Board must notify the applicant in writing if the applicant is denied or disqualified from licensure. The letter states the Board must have procedures in place for the applicant to challenge a decision or to request reconsideration, and that the applicant has a right to appeal the Board's decision and the process of requesting a complete conviction history. (BPC Section 480(f)(3))

**Board's Response:** The Board rejects this comment. Business and Professions Code Sections 480(f)(3), and 485 through 487, and the California Administrative Procedure Act commencing at Government Code Sections 11500 already contains these requirements, including requirements for providing the legal and factual basis for the denial, service of the denial on the applicant, and notice to the applicant regarding the opportunity to request a hearing to challenge the decision. It would therefore be duplicative of these statutes and not necessary to repeat this in the regulations.

### **Comment #5**

**Summary:** The letter states that the intent of AB 2138 was not to incorporate mere probation or parole reports into the occupational licensing determinations. The letter states that merely looking to law enforcement will not adequately show how an applicant would do on the job. The letter further says rehabilitation can and does take many forms that extend beyond mere law enforcement supervision. The letter recommends that the Board provide examples of evidence of mitigating circumstances and rehabilitation efforts to better define rehabilitation and to assist both the Board and licensing applicants.

**Board's Response:** The Board rejects this comment. Business and Professions Code Section 482 requires boards to develop criteria to evaluate rehabilitation and to consider whether an applicant or licensee has made a showing of rehabilitation if either the criminal sentence has been completed without violation of probation or parole, or if the board otherwise finds the applicant rehabilitated.

Therefore, sections 1399.133, 1399.134, 1399.156.2, and 1399.156.3 of the proposal would provide two-step rehabilitation guidance for the Board in complying with this law:

- First, the Board must determine if the completion of the criminal sentence with no violations constitutes rehabilitation. Consistent with the direction in AB 2138, to consider rehabilitation if an applicant completes the criminal sentence at issue without a violation

of parole or probation, specific criteria are being added to sections 1399.133, 1399.134, 1399.156.2, and 1399.156.3 to help the Board determine whether sentence completion demonstrates rehabilitation. Criteria the Board is proposing include length of the parole or probation, whether it was shortened or lengthened and the reasons, and any modifications to the parole or probation that may have been made. This represents the first step and includes probation or parole reports, because these are an indication of how well compliance was achieved. However, if the Board does not find rehabilitation based solely on sentence completion, there is still a second step that must be considered. An applicant can show rehabilitation as proposed in subdivision (b) of the regulations.

- The second step, if rehabilitation is not demonstrated solely based on the sentence completion, is that the Board must consider certain other criteria to evaluate rehabilitation. This includes nature and severity of the crime, time elapsed since the crime, evidence of any subsequent crimes or conduct, compliance with probation or parole, and evidence of rehabilitation submitted by the applicant or licensee. A general category permitting submission of any rehabilitation evidence allows an applicant to demonstrate volunteer or charity work, furthered education, successful employment, or any other activities that they choose to submit to be considered by the Board. The Board can and already does give serious consideration to these factors when considering whether an applicant or licensee is rehabilitated.

There are many possible ways of showing rehabilitation, and many unique scenarios of mitigating circumstances. Attempting to specifically list some but not others may be limiting or misleading to the applicant and to the staff of the Board. In addition, the circumstances of each enforcement case are unique and what is sufficient evidence of rehabilitation for one case may not suffice for another or may not be relevant for all types of crimes (e.g., attendance at Alcoholics Anonymous is a common demonstration of rehabilitation for alcohol-related crimes but is not a good example of rehabilitation for a crime where alcohol was not involved).

The Board believes that the proposed regulations adequately address the rehabilitation issues while allowing the applicant the flexibility to provide evidence that specifically addresses their rehabilitative efforts relative to a crime or misconduct on a case-by-case basis.

#### **Comment #6**

**Summary:** The letter states that the regulations fail to mention requirements to obtain statistical information on the number of applicants with a criminal record who apply and receive notice of denial or disqualification of licensure, provided evidence of mitigation or rehabilitation, and the final disposition of the application, and demographic information. (BPC Section 480(g)(1-2))

**Board's Response:** The Board rejects this comment. These requirements are already stated in statute (BPC Section 480(g)(1-2)). It would therefore be duplicative of the statute and not necessary to repeat this in the regulations.

#### **Finding of Necessity**

There are no reports required by this regulatory proposal.

### **Incorporation by Reference**

There are no documents incorporated by reference.

### **Nonduplication Statement - 1 CCR § 12**

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

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