

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing has been scheduled for this proposed regulatory action.

Subject Matter of Proposed Regulations: Criminal Conviction Substantial Relationship and Rehabilitation Criteria

Sections Affected: Amend sections 1399.132, 1399.133, 1399.134 of Article 6 of Division 13.3 of Title 16, California Code of Regulations and sections 1399.156.1, 1399.156.2, and 1399.156.3 of Article 7 of Division 13.4 of Title 16, California Code of Regulations (CCR).

Problem Statement

The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board) is a state agency vested with the authority to regulate the practices of speech-language pathology, audiology, and hearing aid dispensing (Business and Professions Code section 2530.1). The Board's mandate and its mission is to protect the public (Business and Professions Code section 2531.02). The Board issues licenses for speech-language pathologists, speech-language pathology assistants, speech-language pathology aides, audiologists, dispensing audiologists, audiology aides, hearing aid dispensers, hearing aid dispenser trainees, and temporary hearing aid dispenser licenses. The first three sections proposed to be amended are in the division of the CCR that regulates Hearing Aid Dispensers, while the next three sections proposed to be amended are in the division concerning Speech-Language Pathology and Audiology. The second three sections proposed to be amended mirror the proposed language and supporting arguments of the first three sections.

Business and Professions Code section 141 currently authorizes the Board to discipline a licensee on the basis of substantially related acts that are the basis for out-of-state discipline. Business and Professions Code section 480 also authorizes the Board to deny a license application on the basis of substantially related professional misconduct resulting in formal discipline by a licensing board in or outside of California.

As required by Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), the Board must promulgate regulations by July 1, 2020 to implement, interpret, and make specific sections 480, 481, 482, 488, 493, 2533, and 2533.1 of the Business and Professions Code with respect to the substantial relationship and rehabilitation criteria.

The Legislature's intent in enacting AB 2138 is to diminish obstacles to licensing for people with convictions who are rehabilitated. (*Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1135.) Accordingly, the Legislature amended Business and

Professions Code section 480 to limit the Board's ability to use prior convictions or acts when denying licenses.

This regulatory proposal will make changes to existing regulations with respect to the substantial relationship and rehabilitation criteria to ensure the Board's licensing activities are consistent with the changes made by AB 2138.

A. Substantial Relationship

Effective July 1, 2020, the laws governing the Board's existing authority to deny an applicant for a license based upon substantially related criminal conviction(s) will change. The Board 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. Absent these circumstances, AB 2138 permits 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. AB 2138 also permits the Board to deny a license for substantially related professional misconduct that results in formal discipline by another licensing board.

Effective July 1, 2020, Business and Professions Code section 481 will require the Board to develop criteria, when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the professions it regulates. Business and Professions Code section 493 will also require the Board to determine whether a crime is substantially related to the qualifications, functions, or duties of the profession it regulates by using 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 the profession. 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 his or her 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, 1135.)

B. Rehabilitation Criteria

Effective July 1, 2020, Business and Professions Code section 482 will require the Board to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license. 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.6th 1119, 1135.)

This proposed action establishes the substantial relationship and rehabilitation criteria the Board will utilize.

Specific Purpose, Rationale, and Benefits

16 CCR 1399.132 and 1399.156.1 establish the criteria for determining when a crime is substantially related to the qualifications, functions, and duties of a licensee. Additionally, sections 1399.133 and 1399.156.2 establish the criteria for determining rehabilitation for the denial or reinstatement of a license. Sections 1399.134 and 1399.156.3 establish the criteria for determining rehabilitation for the suspension or revocation of a license.

Amend Section 1399.132 of Article 6 of Division 13.3 of Title 16 of the CCR (Hearing Aid Dispenser Regulations)

Subdivision 1399.132(a) is generally amended throughout this subdivision to apply not only to a hearing aid dispenser's license, but also to any license type. This change is necessary because the Board issues hearing aid dispenser's licenses, temporary licenses, and licenses for trainees. These regulations will apply to all applicants and licensees within the hearing aid dispensing profession. A reference to "his" is changed to "the" to make the regulations gender neutral.

Additionally, this subdivision is amended to include a reference to section 141 of the Business and Professions Code because substantially related acts that are the basis for discipline in an out-of-state jurisdiction may be used to discipline a licensee. This subdivision is also amended to include substantially related professional misconduct since the Board may consider such misconduct in denying a license under Business and Professions Code section 480. Finally, "such crimes or acts shall include, but not be limited to those involving the following" is removed to improve readability for subdivisions (b) and (c) that are added to this section.

This regulatory proposal seeks to implement, interpret, and make specific Business and Professions Code sections 141 and 480 by adding their relative provisions to the Board's substantial relationship criteria. The proposed changes to this regulation would provide clarity to applicants and licensees that discipline in an out-of-state jurisdiction and professional misconduct are grounds for license denial, suspension, or revocation.

Subdivision 1399.132(b) is added to include the three criteria specified by AB 2138 that the Board must consider when evaluating whether a crime is substantially related to the regulated profession including the nature and gravity of the offense, the number of years that have elapsed since the date of the offense, and the nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed. The proposed addition to the regulation is consistent with the changes made by AB 2138 and would provide clarity, transparency, and context to applicants and licensees by listing the

specific criteria the Board must consider when making the substantial relationship determinations applicable to criminal convictions.

Subdivision 1399.132(c) is added to include a non-exhaustive list of crimes, professional misconduct, or acts that are substantially related to the hearing aid dispensing profession. Subdivisions (c)(1) and (c)(2) are amended to clarify that an attempt to violate the specified provisions can be considered when denying a license on the basis of substantially related crimes, professional misconduct, and acts. This is because the willingness to violate the specified provisions, even when the violation was not completed but merely attempted, evidences bad judgment on the part of the licensee.

Business and Professions Code section 481 requires the Board to develop criteria to aid it, when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the professions regulated by the Board. The proposed addition to the regulation would provide clarity to applicants and licensees of the specific crimes, professional misconduct, and acts that are substantially related to the qualifications, functions, or duties of a Board licensee. The proposed changes to the regulation would also assist relevant parties to any administrative appeal arising from a license denial of the crimes, professional misconduct, and acts the Board has determined are substantially related to the regulated professions.

The Board has determined the following crimes, professional misconduct, and acts should be considered substantially related to the profession:

- Conviction or act involving fiscal or commercial dishonesty, fraud, deceit, or corruption related to money, items, documents, or personal information: This change is necessary because these acts show a lack of sound judgment and trustworthiness. Licensees provide services to vulnerable populations, such as the elderly and persons with disabilities, and are placed into a position of trust by these populations. Many licensees are responsible for billing their client's insurance and have access to important personal information and documents. Since the nature of the services provided by licensees generally involves a commercial transaction, the exchange of money, and access to sensitive information, the public should be protected from individuals who have engaged in these types of acts or crimes. Conduct involving fiscal dishonesty erodes trust that the services will be accurately billed to the appropriate parties. To enhance trust in the profession, then, acts or crimes involving fiscal dishonesty are deemed substantially related to the duties of licensure. For instance, a conviction for tax evasion / income tax fraud was considered related to the practice of medicine in *Windham v. Bd. of Med. Quality Assurance* (1980) 104 Cal. App. 3d 461; Medi-Cal fraud by a dentist was upheld as cause for revocation in *Hanna v. Dental Bd. of California* (2012) 212 Cal. App. 4th 759, citing a previous medical board action:

Convictions for Medi-Cal fraud are substantially related to a professional's fitness or capacity to practice her profession. (*Matanky v. Board of*

Medical Examiners (1978) 79 Cal.App.3d 293, 305–306, 144 Cal.Rptr. 826 (*Matanky*) [“Intentional dishonesty ... demonstrates a lack of moral character and satisfies a finding of unfitness to practice medicine”].) *Hanna*, 212 Cal. App. 4th 759, 765.

- Conviction or act involving grand theft or embezzlement: This change is necessary because these acts show a lack of sound judgment and trustworthiness. Licensees may have increased access to vulnerable populations, such as the elderly and persons with disabilities, and therefore have more opportunity to take advantage of these populations. Since the nature of the services provided by licensees generally involves the exchange of money, the public should be protected from individuals who have engaged in these types of acts or crimes. As indicated above, intentional dishonesty is seen as substantially related to healing arts professions.
- Conviction or act involving child abuse: This change is necessary because these acts show a lack of moral character and sound judgment. Licensees may have access to vulnerable populations such as children, and therefore convictions or acts involving child abuse are substantially related to the profession. These acts present a lack of fitness to safely practice and the public should be protected from individuals who have engaged in this particular type of behavior.
- Conviction or act regarding elder abuse: This change is necessary because these acts show a lack of moral character and sound judgment. Licensees may have access to vulnerable populations such as the elderly, and therefore convictions or acts involving elder abuse are substantially related to the profession. These acts present a lack of fitness to safely practice and the public should be protected from individuals who have engaged in this particular type of behavior.
- A conviction requiring a person to register as a sex offender pursuant to section 290 of the Penal Code: This change is necessary because these acts show a lack of moral character and sound judgment. Licensees frequently work with the public, including vulnerable populations such as the elderly, persons with disabilities, and children. The Board’s mandate is to ensure consumer protection. These acts present a lack of fitness to safely practice and the public should be protected from individuals who have engaged in this particular type of behavior.
- Conviction or act involving lewd conduct or sexual impropriety: This change is necessary because these acts show a lack of moral character and sound judgment. Licensees frequently work with the public, including vulnerable populations such as the elderly, persons with disabilities, and children. The Board’s mandate is to ensure consumer protection. These acts present a lack of fitness to safely practice and the public should be protected from individuals who have engaged in this particular type of behavior. In *Green v. Board of Dental Examiners* (1996), 47 Cal.App.4th 786, a dentist’s sexual conduct with patients was substantially related to his functions and duties as dentist and thus warranted disciplinary action. “Of course, nonconsensual sexual advances or touching has been upheld as a ground for discipline. [Citation.]” (*Id.* At 800-801.) Similar to a dentist’s office, licensees frequently work in small offices with unsuspecting populations.

- Conviction or act involving assault, battery, or other violence: This change is necessary because these acts show a lack of moral character and sound judgment. Licensees frequently work with the public, including vulnerable populations such as the elderly, persons with disabilities, and children. The Board's mandate is to ensure consumer protection. These acts present a lack of fitness to safely practice and the public should be protected from individuals who have engaged in these types of acts or crimes. As a healing art, governed in principle by the Hippocratic Oath to do no harm, the Board has determined that any conviction or act involving assault, battery, or other violence is substantially related to the covenant not to harm fellow persons.
- Conviction or act involving the use of drugs or alcohol to an extent or in a manner dangerous to the individual or the public: This change is necessary because using drugs or alcohol to an extent or in a manner dangerous to oneself or to the public shows a serious lack of judgment. (See *Weissbuch v. Board of Medical Examiners* (1974) 41 Cal.App.3d 924 ["...conviction of a doctor for violation of the laws regarding narcotics and dangerous drugs or a doctor's personal non-prescribed use of such substances evidences a sufficient danger to the public that sanctions should be imposed regardless of the availability of evidence that such conduct in fact impaired the doctor's professional skill."].) Licensees must exercise good judgment when fitting and selling hearing aids to the public. Further, convictions involving alcohol consumption reflect a lack of sound, professional and personal judgment. (See *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770 ["The court concluded that a nexus exists, given that driving under the influence "reflect[s] a lack of sound professional and personal judgment," threatens the safety of the public, and demonstrates both a disregard of the medical knowledge of the effects of alcohol and the legal prohibitions against drinking and driving."].)

Additionally, the Board, through prior adjudication of the substantial relationship test, has determined on a case-by-case basis that the convictions established in this regulation are related to the nature and duties of hearing aid dispensing, as conviction of the specified crimes demonstrate a present or potential lack of fitness to ethically and safely practice and provide services to consumers without additional safeguards imposed on a license through probationary terms and conditions. The addition of these specified crimes or acts ensures that the Board's consumer protection mandate is followed and makes it clear to the regulated public which crimes and acts are substantially related to the regulated profession.

**Amend Section 1399.133 of Article 6 of Division 13.3 of Title 16 of the CCR
(Hearing Aid Dispenser Regulations)**

Subdivision 1399.133(a) is amended to specify that the code being referenced is the Business and Professions Code. In order to improve readability, the following is being removed from this subdivision: "the Board, in evaluating the rehabilitation of the applicant and his or her present eligibility for licensing, shall consider the following criteria."

This subdivision is also amended to comply with AB 2138 which prohibits the Board from denying a license on the basis that the applicant was convicted of a crime if the applicant has made an adequate showing of rehabilitation. Business and Professions Code section 482, as amended by AB 2138, will require the Board to determine whether an applicant or licensee has made a showing of rehabilitation if the applicant or licensee completed the applicable criminal sentence without a violation of parole or probation or if the Board finds, after applying its rehabilitation criteria, that an applicant is rehabilitated.

In order to comply with AB 2138, the Board must revise this regulation to establish criteria for evaluating rehabilitation. Subdivision 1399.133(a) will require the Board to consider whether an applicant made an adequate showing of rehabilitation if the person completed the applicable criminal sentence without a parole or probation violation. In this circumstance, the Board would apply defined rehabilitation criteria focused on the applicant's parole or probation and whether successful completion of parole or probation sufficiently demonstrates the applicant's rehabilitation as follows:

- The nature and gravity of the crime(s): This change is necessary because this is the offense against which the applicant's rehabilitative efforts will be evaluated.
- The length of the applicable parole or probation: This change is necessary because the length of time the applicant served parole or probation without a violation is relevant to whether the applicant is rehabilitated and will comply with licensure requirements in the future.
- The extent to which the parole or probation period was shortened or lengthened and the reason(s) for the modification: This change is necessary because a parole or probation period can be shortened or lengthened for good or bad conduct and this may bear on whether the applicant is sufficiently rehabilitated.
- The terms and conditions of parole and probation and the extent to which they bear on the applicant's rehabilitation: This change is necessary because the actual parole or probation terms can inform the Board whether the applicant is rehabilitated.
- The extent to which the terms or conditions of parole or probation were modified and the reason(s) for any modification: This change is necessary because it may demonstrate whether the applicant may be willing to conform to the rules of licensure.

These changes will provide transparency and clarity to applicants who have completed their criminal sentence without a violation of parole or probation. Providing the defined list of rehabilitation criteria will help applicants understand the facts and documents to present to the Board to demonstrate their rehabilitation.

Subdivision 1399.133(b) is added to establish rehabilitation criteria the Board will use to evaluate an applicant's rehabilitation if the applicant did not comply with the terms of parole or probation, the Board determines the applicant did not make the showing of rehabilitation based on the criteria in subdivision 1399.133(a), or the Board is considering denying a license based on something other than a crime, such as professional

misconduct. All of the subdivision (b) criteria, except for (b)(5), were already in this regulatory section as criteria to evaluate rehabilitation. Subdivision 1399.133(b)(2) is amended to specify that both acts and crimes committed subsequent to the acts or crimes under consideration can be considered. This provides clarity and consistency with the rest of the rehabilitation criteria and is necessary to the Board's evaluation because evidence of subsequent misconduct tends to show an unwillingness to conform to the requirements of licensure and is relevant to the Board's evaluations. Subdivision 1399.133(b)(5) is added to authorize the Board to also consider the defined rehabilitation criteria established in subdivision 1399.133(a). This change is necessary to provide consistency within the regulations regarding the information the Board will use to determine rehabilitation and whether an applicant may be willing to comply with licensure requirements. It is also necessary to provide parity to applicants convicted of a crime being evaluated under subdivision (a) or (b).

These changes will provide transparency and clarity to applicants who have not completed their criminal sentence without a violation of parole or probation or otherwise do not qualify for consideration under subdivision 1399.133(a). Providing the list of criteria the Board will use to determine rehabilitation will help applicants understand the facts and documents to present to the Board to demonstrate their rehabilitation.

Amend Section 1399.134 of Article 6 of Division 13.3 of Title 16 of the CCR
(Hearing Aid Dispenser Regulations)

Subdivision 1399.134(a) is amended to improve readability by removing the following from this subdivision: "the Board, in evaluating the rehabilitation of such person and his present eligibility for a license or temporary license, will consider the following criteria."

This subdivision is also amended to comply with AB 2138 which requires the Board to develop criteria to evaluate the rehabilitation of a person when considering the suspension or revocation of a license. Business and Professions Code section 482, as amended by AB 2138, will require the Board to determine whether an applicant or licensee has made a showing of rehabilitation if the applicant or licensee completed the applicable criminal sentence without a violation of parole or probation or if the Board finds, after applying its rehabilitation criteria, that an applicant is rehabilitated.

Current regulations establish criteria for rehabilitation for denials and reinstatements and criteria for rehabilitation for suspensions and revocations. In order to create a consistent standard, the Board chose to make this subdivision consistent with the criteria used to evaluate the rehabilitation of an applicant when considering the denial or reinstatement of a license. Subdivision 1399.134(a) will require the Board to consider whether a licensee made an adequate showing of rehabilitation if the person completed the applicable criminal sentence without a parole or probation violation. In this circumstance, the Board would apply defined rehabilitation criteria focused on the licensee's parole or probation

and whether successful completion of parole or probation sufficiently demonstrates the licensee's rehabilitation as follows:

- The nature and gravity of the crime(s): This change is necessary because this is the offense against which the licensee's rehabilitative efforts will be evaluated.
- The length of the applicable parole or probation: This change is necessary because the length of time the licensee served parole or probation without a violation is relevant to whether the licensee is rehabilitated and will comply with licensure requirements in the future.
- The extent to which the parole or probation period was shortened or lengthened and the reason(s) for the modification: This change is necessary because a parole or probation period can be shortened or lengthened for good or bad conduct and this may bear on whether the licensee is sufficiently rehabilitated.
- The terms and conditions of parole and probation and the extent to which they bear on the licensee's rehabilitation: This change is necessary because the actual parole or probation terms can inform the Board whether the licensee is rehabilitated.
- The extent to which the terms or conditions of parole or probation were modified and the reason(s) for any modification: This change is necessary because it may demonstrate whether the licensee may be willing to conform to the rules of licensure.

These changes will provide transparency and clarity to licensees who have completed their criminal sentence without a violation of parole or probation. Providing the defined list of rehabilitation criteria will help licensees understand the information that will be used by the Board to determine rehabilitation.

Subdivision 1399.134(b) is added to establish rehabilitation criteria the Board will use to evaluate the licensee's rehabilitation if the licensee did not comply with the terms of parole or probation, the Board determines the licensee did not make an adequate showing of rehabilitation based on the criteria in subdivision 1399.134(a), or the Board's decision is based on something other than a crime, such as out-of-state discipline under BPC section 141. Subdivision 1399.134(b)(1) is amended to improve readability and provide clarity and consistency with the regulation by changing offense(s) to crime(s). Subdivision 1399.134(b)(2) is amended to improve readability. Subdivision 1399.134(b)(3) is amended to improve readability and provide clarity and consistency with the regulation by changing offense(s) to crime(s). Subdivision 1399.134(b)(5) is added to authorize the Board to also consider the defined rehabilitation criteria established in subdivision 1399.134(a). This change is necessary to provide consistency within the regulations regarding the information the Board will use to determine rehabilitation and whether a licensee may be willing to comply with licensure requirements in the future. It is also necessary to provide parity to licensees convicted of a crime being evaluated under subdivision (a) or (b). Subdivision 1399.134(b)(6) is amended to be consistent with the criminal procedure provisions in Penal Code section 1203.4.

These changes will provide transparency and clarity to licensees who have not completed their criminal sentence without a violation of parole or probation or otherwise do not qualify for consideration under subdivision 1399.134(a). Providing this criteria in regulation will help licensees understand the information that will be used by the Board to determine rehabilitation.

Amend Section 1399.156.1 of Article 7 of Division 13.4 of Title 16 of the CCR
(Speech-Language Pathology and Audiology Regulations)

Subdivision 1399.156.1(a) is amended to include a reference to section 141 of the Business and Professions Code because substantially related acts that are the basis for discipline in an out-of-state jurisdiction may be used to discipline a licensee. This subdivision is also amended to include substantially related professional misconduct since the Board may consider such misconduct in denying a license under Business and Professions Code section 480. Finally, “such crimes or acts shall include but not be limited to those involving the following” is removed to improve readability for subdivisions (b) and (c) that are added to this section.

This regulatory proposal seeks to implement, interpret, and make specific Business and Professions Code sections 141 and 480 by adding their relative provisions to the Board’s substantial relationship criteria. The proposed changes to this regulation would provide clarity to applicants and licensees that discipline in an out-of-state jurisdiction and professional misconduct are grounds for license denial, suspension, or revocation.

Subdivision 1399.156.1(b) is added to include the three criteria specified by AB 2138 that the Board must consider when evaluating whether a crime is substantially related to the regulated profession including the nature and gravity of the offense, the number of years that have elapsed since the date of the offense, and the nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed. The proposed addition to the regulation is consistent with the changes made by AB 2138 and would provide clarity, transparency, and context to applicants and licensees by listing the specific criteria the Board must consider when making the substantial relationship determinations applicable to criminal convictions.

Subdivision 1399.156.1(c) is added to include a non-exhaustive list of crimes, professional misconduct, or acts that are substantially related to the professions of speech-language pathology and audiology. Business and Professions Code section 481 requires the Board to develop criteria to aid it, when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the professions regulated by the Board. The proposed addition to the regulation would provide clarity to applicants and licensees of the specific crimes, professional misconduct, and acts that are substantially related to the qualifications, functions, or duties of a Board licensee. The proposed changes to the regulation would also assist relevant parties to any administrative appeal arising from a

license denial of the crimes, professional misconduct, and acts the Board has determined are substantially related to the regulated professions.

The Board has determined the following crimes, professional misconduct, and acts should be considered substantially related to the professions:

- Conviction or act involving fiscal or commercial dishonesty, fraud, deceit, or corruption related to money, items, documents, or personal information: This amendment to the existing language is necessary for the reasons discussed in the amendment of 16 CCR 1399.132 subdivision (c)(3), above.
- Conviction or act involving grand theft or embezzlement: See discussion of amending 16 CCR 1399.132 (c)(4), above.
- Conviction or act involving child abuse: See discussion of amending 16 CCR 1399.132 (c)(5), above.
- Conviction or act regarding elder abuse: See discussion of amending 16 CCR 1399.132 (c)(5), above.
- A conviction requiring a person to register as a sex offender pursuant to section 290 of the Penal Code: See discussion of amending 16 CCR 1399.132 (c)(7), above.
- Conviction or act involving lewd conduct or sexual impropriety: See discussion of amending 16 CCR 1399.132 (c)(8), above.
- Conviction or act involving assault, battery, or other violence: See discussion of amending 16 CCR 1399.132 (c)(9), above.
- Conviction or act involving the use of drugs or alcohol to an extent or in a manner dangerous to the individual or the public: See discussion of amending 16 CCR 1399.132 (c)(9), above.

Additionally, the Board, through prior adjudication of the substantial relationship test, has determined on a case-by-case basis that the convictions established in this regulation are related to the nature and duties of speech-language pathology and audiology, as conviction of the specified crimes demonstrate a present or potential lack of fitness to ethically and safely practice and provide services to consumers without additional safeguards imposed on a license through probationary terms and conditions. The addition of these specified crimes or acts ensures that the Board's consumer protection mandate is followed and makes it clear to the regulated public which crimes and acts are substantially related to the regulated professions.

Amend Section 1399.156.2 of Article 7 of Division 13.4 of Title 16 of the CCR
(Speech-Language Pathology and Audiology Regulations)

Subdivision 1399.156.2(a) is amended to specify that the code being referenced is the Business and Professions Code. The words "denial" and "reinstatement" in the heading of this section are being made plural to be consistent with section 1399.156.3 and sister sections 1399.133 and 1399.134 of the Hearing Aid Dispensers regulations discussed above. In order to improve readability, the following is being removed from this

subsection: “the Board, in evaluating the rehabilitation of the applicant and his or her present eligibility for a license, will consider the following criteria.”

This subsection is also amended to comply with AB 2138 which prohibits the Board from denying a license on the basis that the applicant was convicted of a crime if the applicant made an adequate showing of rehabilitation. Business and Professions Code section 482, as amended by AB 2138, will require the Board to determine whether an applicant has made a showing of rehabilitation if the applicant or licensee completed the applicable criminal sentence without a violation of parole or probation or if the Board finds, after applying its rehabilitation criteria, that an applicant is rehabilitated.

In order to comply with AB 2138, the Board must revise this regulation to establish criteria for evaluating rehabilitation. Subdivision 1399.156.2(a) will require the Board to consider whether an applicant made an adequate showing of rehabilitation if the person completed the applicable criminal sentence without a parole or probation violation. In this circumstance, the Board would apply defined rehabilitation criteria focused on the applicant’s parole or probation and whether successful completion of parole or probation sufficiently demonstrates the applicant’s rehabilitation as follows:

- The nature and gravity of the crime(s): This change is necessary because this is the offense against which the licensee’s rehabilitative efforts will be evaluated.
- The length of the applicable parole or probation: This change is necessary because the length of time the licensee served parole or probation without a violation is relevant to whether the licensee is rehabilitated and will comply with licensure requirements in the future.
- The extent to which the parole or probation period was shortened or lengthened and the reason(s) for the modification: This change is necessary because a parole or probation period can be shortened or lengthened for good or bad conduct and this may bear on whether the licensee is sufficiently rehabilitated.
- The terms and conditions of parole and probation and the extent to which they bear on the licensee’s rehabilitation: This change is necessary because the actual parole or probation terms can inform the Board whether the licensee is rehabilitated.
- The extent to which the terms or conditions of parole or probation were modified and the reason(s) for any modification: This change is necessary because it may demonstrate whether the licensee may be willing to conform to the rules of licensure.

These changes will provide transparency and clarity to applicants who have completed their criminal sentence without a violation of parole or probation. Providing the defined list of rehabilitation criteria will help applicants understand the facts and documents to present to the Board to demonstrate their rehabilitation.

Subdivision 1399.156.2(b) is added to establish rehabilitation criteria the Board will use to evaluate an applicant’s rehabilitation if the applicant did not comply with the terms

of parole or probation, the Board determines the applicant did not make the showing of rehabilitation based on the criteria in subsection 1399.156.2(a), or the Board is considering disciplining a licensee based on something other than a crime, such as an out-of-state discipline under BCP section 141. All of the subsection (b) criteria, except for (b)(5), were already in this regulatory section as criteria to evaluate rehabilitation. Subdivision 1399.156.2(b)(2) is amended to specify that both acts and crimes committed subsequent to the acts or crimes under consideration can be considered. This provides clarity and consistency with the rest of the rehabilitation criteria and is necessary to the Board's evaluation because evidence of subsequent misconduct tends to show an unwillingness to confirm to the requirements of licensure and is relevant to the Board's evaluation. This subsection is also amended to specify that the code being amended is the Business and Professions Code. Subdivision 1399.156.2(b)(5) is added to authorize the Board to also consider the defined rehabilitation criteria established in subsection 1399.156.2(a). This change is necessary to provide consistency within the regulations regarding the information the Board will use to determine rehabilitation and whether an applicant may be willing to comply with licensure requirements. It is also necessary to provide parity to licensees convicted of a crime being evaluated under subdivision (a) or (b).

These changes will provide transparency and clarity to applicants who have not completed their criminal sentence without a violation of parole or probation or otherwise do not qualify for consideration under subsection 1399.156(a). Providing the list of criteria the Board will use to determine rehabilitation will help applicants understand the facts and documents to present to the Board to demonstrate their rehabilitation.

Amend Section 1399.156.3 of Article 7 of Division 13.4 of Title 16 of the CCR
(Speech-Language Pathology and Audiology Regulations)

Subdivision 1399.156.3(a), as was done for subsection 1399.134, above, is amended to improve readability by removing the following from this subsection: "the Board, in evaluating the rehabilitation of such person and his or her eligibility for a license will consider the following criteria."

Every proposed amendment and addition to the text of 16 CCR 1399.156.3 exactly duplicates the changes proposed to be made to text of 16 CCR 1399.134, above. The necessity and supporting rationale for the proposed amendments and additions to 16 CCR 1399.156.3 is the same as the necessity and supporting rationale for the proposed amendments to 16 CCR 1399.134, discussed above.

Underlying Data

1. April 3, 2019 Memo to the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board regarding AB 2138 Regulations.
2. Meeting Minutes from Board Meeting held April 11-12, 2019.

Business Impact

The Board has made a determination that the proposed regulatory action will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. This determination is based on the intent of AB 2138, which is to reduce barriers to licensure for applicants and licensees with a criminal history or licensure discipline.

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 will only impact applicants and licensees with criminal histories or licensure discipline.

It will not create new business or eliminate existing businesses within the State of California because the regulations are aimed at reducing barriers to licensure and will only impact applicants and licensees with criminal histories or licensure discipline.

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 will only impact applicants and licensees with criminal histories or licensure discipline.

This regulatory proposal benefits the health and welfare of California residents by providing greater access to licensure, potentially reducing criminal recidivism and providing greater economic opportunity to California residents with a criminal history. It may also expand the number of licensees in California, potentially providing consumers greater access to speech and hearing services.

This regulatory proposal does not affect worker safety because the regulation does not relate to worker safety.

This regulatory proposal does not affect the state's environment because the regulation does not relate to the environment.

Specific Technologies or Equipment

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

Consideration of Alternatives

In accordance with Government Code section 11346.5(a)(13), the Board must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying

out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board considered alternative regulatory language that would allow the Board to determine if a crime is substantially related to the profession on a case-by-case basis. However, the Board determined this option may result in additional litigation to determine whether a crime is substantially related to the profession. The Board also considered regulatory language that would require the Board to find that there has been rehabilitation if the applicant or licensee completed the criminal sentence without a parole or probation violation. However, the Board decided the proposed text is more appropriate to consider on a case-by-case basis whether successful completion of parole or probation sufficiently demonstrates rehabilitation.

Any interested parties may submit comments to the Board in writing relevant to the above determinations at 2005 Evergreen St., Suite 2100, Sacramento, CA 95815.