

TITLE 16 - SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD

NOTICE IS HEREBY GIVEN that the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board) is proposing to take the action described in the Informative Digest below.

Public Hearing and Written Comment Period: No public hearing has been scheduled on the proposed action. However, any interested person or such person's duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code section 11346.8. Written comments, including those sent by mail or e-mail to the addresses listed under Contact Persons in this Notice, must be received by the Board at its office no later than April 20, 2020.

Availability of Changed or Modified Text: The Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any proposal with changes sufficiently related to the original text will be available for 15 days prior to its adoption from the persons designated in this Notice as contact persons and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Business and Professions Code sections 482, 493, 2531.06 and 2531.95, to implement, interpret or make specific sections 141, 475, 480, 481, 482, 488, 490, and 493 of the Business and Professions Code, the Board is considering changes to Division 13.3 and Division 13.4 of Title 16 of the California Code of Regulations as outlined below.

INFORMATIVE DIGEST

The Board is authorized by Business and Professions Code sections 2531.06 and 2531.95 to adopt regulations necessary to implement the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Licensure Act. Section 141 provides for discipline of licenses based on discipline in another jurisdiction. Additionally, as required by Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), the Board must promulgate regulations to implement, interpret, and make specific sections 475, 480, 481, 482, 488, 490, 493, 2533, and 2533.1 of the Business and Professions Code with respect to the substantial relationship of a crime and other misconduct, and rehabilitation criteria.

The following substantive changes are being proposed:

Section 1399.132

The regulatory proposal sets out the substantial relationship criteria for crimes and acts related to the profession of hearing aid dispensing. The proposed regulation would add professional misconduct and discipline in a foreign jurisdiction to the substantial

relationship criteria to be considered when denying, suspending, or revoking a license. In making the substantial relationship determination, the regulatory proposal would require the Board to consider (1) the nature and gravity of the offense; (2) the number of years elapsed since the date of the offense; and (3) the nature and duties of a person holding the license. The proposed regulation would also specify crimes, professional misconduct, and acts that are substantially related to the hearing aid dispensing profession.

Section 1399.133

The regulatory proposal sets forth the criteria to evaluate rehabilitation for the denial or reinstatement of a license for the profession of hearing aid dispensing. The proposed regulation would clarify that the Board, when making a determination on an application where the applicant has been convicted of a crime, would have to decide whether the applicant made a showing of rehabilitation and is presently eligible for a license. If the applicant completed the criminal sentence without a violation of parole or probation, then this regulatory proposal would require the Board to consider the nature and gravity of the crime, the length of the parole or probation period, the extent to which the parole or probation period was shortened or lengthened, and the reasons therefor, the terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation, and the extent to which the terms or conditions of parole were modified, and why. The regulation would require a broader set of rehabilitation criteria to be considered for applicants who had not completed the criminal sentence without a violation of parole or probation, did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or when the denial was based on something other than a conviction.

Section 1399.134

The regulatory proposal sets forth the criteria to evaluate rehabilitation for the suspension or revocation of a license for the profession of hearing aid dispensing. The proposed regulation would clarify that the Board, when considering the suspension or revocation of a license based on the conviction of a crime, would have to use specific criteria to determine whether the licensee made a showing of rehabilitation and is presently eligible for an unrestricted license. If the licensee completed the criminal sentence without a violation of parole or probation, then this regulatory proposal would require the Board to consider the nature and gravity of the crime, the length of the parole or probation period, the extent to which the parole or probation period was shortened or lengthened, and the reasons therefor, the terms or conditions of parole or probation and the extent to which they bear on the licensee's rehabilitation, and the extent to which the terms or conditions of parole were modified, and why. The regulation would require a broader set of rehabilitation criteria to be considered for licensees who had not completed the criminal sentence without a violation of parole or probation, who did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or when the Board is considering something other than a crime, such as out-of-state discipline.

Section 1399.156.1

The regulatory proposal sets forth the substantial relationship criteria for crimes and acts related to the professions of speech-language pathology and audiology. The proposed regulation would add professional misconduct and discipline in a foreign jurisdiction to the substantial relationship criteria to be considered when denying, suspending, or revoking a license. In making the substantial relationship determination, the regulatory proposal would require the Board to consider (1) the nature and gravity of the offense; (2) the number of years elapsed since the date of the offense; and (3) the nature and duties of a person holding the license. The proposed regulation would also specify crimes, professional misconduct, and acts that are substantially related to the speech-language pathology and audiology professions.

Section 1399.156.2

The regulatory proposal sets forth the criteria to evaluate rehabilitation for the denial or reinstatement of a license for the professions of speech-language pathology and audiology. The proposed regulation would clarify that the Board, when making a determination on an application where the applicant has been convicted of a crime, would have to decide whether the applicant made a showing of rehabilitation and is presently eligible for a license. If the applicant completed the criminal sentence without a violation of parole or probation, then this regulatory proposal would require the Board to consider the nature and gravity of the crime, the length of the parole or probation period, the extent to which the parole or probation period was shortened or lengthened, and the reasons therefor, the terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation, and the extent to which the terms or conditions of parole were modified, and why. The regulation would require a broader set of rehabilitation criteria to be considered for applicants who had not completed the criminal sentence without a violation of parole or probation, did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or when the denial was based on something other than a conviction. The regulatory proposals also changes terms in the title of this section to be plural to be consistent with other regulations.

Section 1399.156.3

The regulatory proposal sets forth the criteria to evaluate rehabilitation for the suspension or revocation of a license for the professions of speech-language pathology and audiology. The proposed regulation would clarify that the Board, when considering the suspension or revocation of a license based on the conviction of a crime, would have to use specific criteria to determine whether the licensee made a showing of rehabilitation and is presently eligible for an unrestricted license. If the licensee completed the criminal sentence without a violation of parole or probation, then this regulatory proposal would require the Board to consider the nature and gravity of the crime, the length of the parole or probation period, the extent to which the parole or probation period was shortened or lengthened, and the reasons therefor, the terms or conditions of parole or probation and the extent to which they bear on the licensee's rehabilitation, and the extent to which the terms or conditions of parole were modified, and why. The regulation would require a broader set of rehabilitation

criteria to be considered for licensees who had not completed the criminal sentence without a violation of parole or probation, who did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or when the Board is considering something other than a crime, such as out-of-state discipline.

POLICY STATEMENT OVERVIEW

The Board is responsible for licensing and regulating the professions of speech-language pathology, audiology, and hearing aid dispensing. The broad objective of this regulatory proposal is to ensure that the Board's licensing activities are consistent with the changes brought forth by AB 2138. The intent of AB 2138 is to reduce barriers to licensure for individuals with prior criminal convictions. In addition, this regulatory proposal seeks to improve clarity, transparency, and consistency for applicants and licensees in the Board's use of their criminal histories.

ANTICIPATED BENEFITS OF PROPOSAL

This regulatory proposal may benefit individuals, who would have greater access to licensure, reduce criminal recidivism, and provide economic opportunity to California residents with a criminal history. It may also increase the number of licensees in California, potentially providing consumers greater access to speech and hearing services.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS:

After conducting a review for any regulations that would relate to or affect this area, the Board evaluated this regulatory proposal and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies: The Board anticipates there may be an increased cost to the State as a result of amending the sections identified in this regulatory proposal. By redefining the substantial relationship and rehabilitation criteria for criminal convictions, Board staff will likely see an increased workload to research convictions and to substantiate that rehabilitation has been achieved. Given the small number of applicants and licensees involved, these costs are predicted to be minor and absorbable.

Cost/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Section 17500-17630 Requires Reimbursement: None.

Business Impact: The Board has made an initial determination that this regulatory proposal would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Representative Private Persons or Business: None.

Effect on Housing Costs: None.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Effect on Small Business: The Board has determined that this regulatory proposal will not impact small businesses in the State of California because the intent of AB 2138 is to reduce barriers to licensure for applicants and licensees with a criminal history or licensure discipline.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: This proposal may benefit individuals, who would have greater access to licensure, reduce criminal recidivism, and provide economic opportunity to California residents with a criminal history. The public may benefit from the proposal with increased access to licensed professionals, which may benefit the health and welfare of Californians. This proposal would not have an impact on the state's environment nor on worker safety, since regulations address neither.

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. While 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 the Board rejected granting a blanket approval. The Board decided that the proposed text provides a more appropriate framework with which to consider on a case-by-

case basis whether successful completion of parole or probation sufficiently demonstrates rehabilitation.

The Board invites interested parties to present written statements or arguments with respect to the above determinations during the written comment period to the Board at 2005 Evergreen Street, Suite 2100, Sacramento, CA 95815.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF THE PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all the information upon which the proposal is based, may be obtained upon request from the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board at 2005 Evergreen Street, Suite 2100, Sacramento, CA 95815.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the persons named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact persons named below or by accessing the website listed below.

CONTACT PERSONS

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name:	Cherise Burns, Assistant Executive Officer
Address:	2005 Evergreen Street, Suite 2100 Sacramento, CA 95815
Telephone No.:	(916) 561-8779
E-Mail Address:	SpeechandHearingRegulations@dca.ca.gov

The backup contact person is:

Name:	Paul Sanchez, Executive Officer
Address:	2005 Evergreen Street, Suite 2100 Sacramento, CA 95815
Telephone No.:	(916) 263-2909
E-Mail Address:	SpeechandHearingRegulations@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.speechandhearing.ca.gov/board_activity/lawsregs/proposed_regulations.shtml