

**TITLE 16 DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF BEHAVIORAL SCIENCES
NOTICE OF PROPOSED CHANGES IN THE REGULATIONS**

NOTICE IS HEREBY GIVEN that the Board of Behavioral Sciences (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

**Board of Behavioral Sciences
1625 N. Market Blvd.
El Dorado Room, Suite 220
Sacramento, CA 95834
September 30, 2019
10:00am – 11:00am**

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office on **September 30, 2019** or must be received by the Board at the hearing.

The Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposal 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 modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person 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 sections 481, 482, 493, 4980.60, and 4990.20 of the Business and Professions Code, and to implement, interpret, or make specific sections 141, 475, 480, 481, 482, 488, 490, 493, and 4990.30 of the Business and Professions Code, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The Board is the regulatory entity under the Department of Consumer Affairs (DCA) tasked with regulating the practice of marriage and family therapists (LMFTs), licensed educational psychologists (LEPs), licensed clinical social workers (LCSWs) and licensed professional clinical counselors (LPCCs) in the State of California. The Board's highest priority is public protection when exercising its licensing, regulatory, and disciplinary functions.

Business and Professions Code (BPC) section 480 currently authorizes boards under DCA to deny an application for licensure based on a conviction for a crime or act substantially related to the licensed business or profession. In addition, BPC section 490 permits boards to suspend or revoke a license on the basis that the licensee was convicted of a substantially related crime.

BPC section 481 currently requires boards to develop criteria to help evaluate whether a crime or act was substantially related. BPC section 482 currently requires boards to develop criteria to evaluate the rehabilitation of a person when considering denying a license or suspending or revoking a license.

AB 2138 (Chiu, Chapter 995, Statutes of 2018) was signed into law in 2018, with the intent of removing some of the licensing and employment barriers that those with prior criminal

convictions or disciplinary actions often encounter if they can demonstrate rehabilitation. The bill makes the following changes, which become effective July 1, 2020:

- Amends BPC section 480 to prohibit a DCA board from denying a license to applicants based on a criminal conviction or the acts underlying a conviction if the applicant made a showing of rehabilitation.
- Amends BPC section 480 to allow a DCA board to deny a license, in relevant part, on the grounds the applicant was convicted of a crime or has been subject to formal discipline, if one of the following has been met:
 1. The conviction was in the past seven years and is substantially related to the qualifications, functions, or duties of the business or professions. (The seven-year limitations do not apply to convictions for a serious felony, as defined in Penal Code section 1192.7, or to certain specified sex offenses); or
 2. The applicant was released from incarceration within the last seven years for a crime that is substantially related to the qualifications, functions, or duties of the business or profession. (The seven-year limitations do not apply to convictions for a serious felony, as defined in Penal Code section 1192.7, or to certain specified sex offenses); or
 3. The applicant has been subject to formal discipline by a licensing board in or outside of California within the preceding seven years based on substantially related professional misconduct.
- Amends BPC section 481 to include more specific criteria that boards must use to determine whether a crime is substantially related to the qualifications, functions, or duties of the profession.
- Amends BPC section 482 to require boards to consider, when determining whether to deny, suspend, or revoke a license, whether an applicant or licensee has made a showing of rehabilitation, if the person has either completed the criminal sentence without a parole or probation violation, or if the person is rehabilitated based on the board's rehabilitation criteria.

The Board's current substantial relationship criteria, as well as its criteria for determining rehabilitation when considering denying, suspending, or revoking a license, are all in regulation. (CCR 16 sections 1812, 1813, and 1814). These sections need to be amended in order to meet the requirements of AB 2138. In addition, some technical clean-up amendments are needed elsewhere in regulations in order to ensure that the regulations are consistent with the changes in statute.

Overall, the objective and anticipated benefits of this proposal are to carry out the objective of AB 2138: to increase opportunities for those with prior convictions or disciplinary action to obtain licensure if evidence points to rehabilitation, which will in turn promote fairness and social equity by boosting their employment opportunities. Ensuring the regulations are consistent and follow the direction of statute also increases openness or transparency in government by ensuring the law is clear and that regulations and statutes are consistent with each other.

There is not an existing federal regulation or statute comparable to this proposal, as the Board's license types are regulated at the state level.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, the Board has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

INCORPORATION BY REFERENCE

The document entitled "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines" [Revised October 2015] has been incorporated by reference into section 1888.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: When evaluating the fiscal impact for AB 2138, the Board cited the need for one office technician position with an ongoing cost of \$78,000 per year in order to comply with the data collection requirements of the bill, which can be found in BPC section 480(g)). However, this regulation proposal does not pertain to the data collection requirements of AB 2138; it only pertains to the substantial relationship criteria and rehabilitation criteria.

The Board anticipates that by further defining substantial relationship and rehabilitation criteria for criminal convictions, Board staff may see some increased workload to research convictions and to substantiate that rehabilitation has been achieved, however, it is expected that this workload will be minor and absorbable.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. AB 2138 and the proposed regulation only affects Board licensees and applicants with past criminal convictions or disciplinary action and seeks to reduce barriers to their licensure if they can present evidence of rehabilitation. It does not impose more rigorous requirements on the licensure process. This bill and corresponding regulations could increase the pool of potential employees to businesses who are seeking to hire a Board licensee.

Cost Impacts on Representative Private Persons or Businesses:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The intent of AB 2138 is to reduce barriers to licensure for individuals with past convictions or disciplinary action.

Effect on Housing Costs: None

Effect on Small Businesses

The Board has determined that the proposed regulations may affect small businesses. It may increase the ability of some individuals with past convictions or disciplinary action to obtain a Board license where they previously could not. Having more licensees increases the pool of hireable candidates for small business looking to hire licensed mental health professionals.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses

The Board has determined that the proposed regulations may have an impact on the creation of jobs or new businesses or the expansion of businesses in the State of California, as follows:

- This regulatory proposal may create and will not eliminate jobs within the State of California. The proposal seeks to reduce barriers to licensure for applicants with criminal or disciplinary history if they can show evidence of rehabilitation. Therefore, some individuals who were previously unable to become licensed due to a criminal or disciplinary background now may be able to do so. This could lead to increased job opportunities for these individuals.
- The proposal may create some new businesses and will not eliminate existing businesses. If an individual who was previously able to become licensed due to past convictions or discipline is now able to do so, that person may decide once licensed to go into business for themselves. (Some Board licensees choose to run their own private practice to provide mental health services.)
- The proposal may expand certain types of businesses. If more individuals who were previously unable to obtain a license are now able to obtain one, there will be an increased pool of hireable licensees. Therefore, businesses may choose to hire more licensed mental health professionals.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The Board has determined that this regulatory proposal will benefit the health and welfare of California residents who seek the services of the Board's licensees, because it may increase the ability of some individuals to obtain a Board license where they previously could not. This will increase the supply of licensed mental health professionals, allowing greater access to those who seek mental health services. It may also benefit individuals who are now able to obtain a license when previously they were unable to, thus allowing them increased access to jobs and therefore reducing criminal recidivism.

The proposal will have no effect on worker safety or the State's environment.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

To date, the following options were considered by the Board and rejected:

1. Option 1: 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 historically rejected the view that compliant individuals are rehabilitated. "The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily prove anything but good sense." (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal App.3d 461, 473.) Therefore, this alternative was rejected, because the Board believes that reviewing each individual on the basis of multiple criteria better indicates rehabilitation and better ensures the public's health, safety, and welfare.
2. Option 2: Not adopt the regulations. This alternative was rejected because AB 2138 requires the Board to run regulations for its implementation.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in this Notice under Contact Person listed below, or by accessing the Board's website, www.bbs.ca.gov

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

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the Contact Person 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 Person named below (or by accessing the website listed below).

CONTACT PERSON

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

Name: Rosanne Helms
Address: Board of Behavioral Sciences
1625 North Market Blvd, Suite S200
Sacramento CA 95834
Telephone: 916-574-7897
Fax: 916-574-8626
Email: Rosanne.Helms@dca.ca.gov

The backup contact person is:

Name: Christy Berger
Address: Board of Behavioral Sciences
1625 North Market Blvd, Suite S200
Sacramento CA 95834
Telephone: 916-574-7817
Fax: 916-574-8626
Email: Christy.Berger@dca.ca.gov

WEBSITE ACCESS

Materials regarding this proposal can be found at www.bbs.ca.gov.