

California Code of Regulations
Title 16. Professional and Vocational Regulations
Division 16. Osteopathic Medical Board of California

ORDER OF ADOPTION

(APPROVED BY THE BOARD SEPTEMBER 10, 2020)

Article 12. Substantial Relationship and Rehabilitation Criteria; Petitions for Modification of Penalty or Reinstatement.

§ 1654. SUBSTANTIAL RELATIONSHIP CRITERIA.

(a) For purposes of denial, suspension, or revocation of a certificate pursuant to Section 141 or Code Division 1.5 (commencing with Code Section 475), a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a certificate under the Osteopathic Act, if to a substantial degree, it evidences present or potential unfitness of a person holding the certificate to perform the functions of a physician and surgeon in a manner consistent with the public health, safety, or welfare. ~~Such crimes or acts shall include but not be limited to those involving the violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of, or conspiring to violate any provision or term of the Osteopathic Act or the Medical Practice Act or the conviction of a crime involving fiscal dishonesty.~~

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the Board shall consider the following criteria:

- (1) The nature and gravity of the offense;
- (2) The number of years that have elapsed since the date of the offense;
- (3) How the offense relates to the nature and duties of a physician and surgeon.

(c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, the following:

- (1) Any violation of Article 6, Chapter 1, Division 2 of the Code;
- (2) Any violation of the provisions of the Osteopathic Act or the Medical Practice Act.

Note: Authority cited: ~~Osteopathic Act (Initiative Measure, Stats.1923, p. xciii), Section 4; and Sections 141, 480, 481, 2018, and 3600-1, Business and Professions Code.~~

Reference: Sections 480, 481, 490, and 493, Business and Professions Code.

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§ 1655. REHABILITATION CRITERIA FOR DENIAL, SUSPENSION OR REVOCATION.

(a) When considering the denial of a certificate on the grounds recommended by Code Section 480 or the suspension or revocation of a certificate on the grounds enumerated by Code Section 490 or on the grounds that the person has been convicted of a crime, the Board shall consider whether the applicant or certificate holder made a showing of rehabilitation and if the applicant or certificate holder completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Board shall consider the following criteria:~~the board in evaluating the rehabilitation of such person and the eligibility for a certificate or permit, will consider the following criteria:~~

- (1) The nature~~Nature~~ and gravity~~severity~~ of the crime~~acts or offense~~(s).
- (2) The length(s) of the applicable parole or probation period(s)~~Total criminal record.~~
- (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified~~Time elapsed since commission of the act(s) or offense(s).~~
- (4) The terms or conditions of parole or probation and the extent to which they bear on the applicant's or certificate holder's rehabilitation~~Whether the certificate or permit holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.~~
- (5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.~~If applicable, evidence of expungement proceedings pursuant to Penal Code Section 1203.4.~~
- (6) ~~Evidence, if any, of rehabilitation submitted by the certificate or permit holder.~~

(b) If the applicant has not completed the criminal sentence at issue without a violation of parole or probation, the Board determines that the applicant or certificate holder did not make the showing of rehabilitation based on the criteria in subdivision (a), the denial is based on professional misconduct, or the denial is based on one or more grounds specified in section 3600.2 of the Code, the Board shall apply the following criteria in evaluating the applicant or certificate holder's rehabilitation:

(1) The nature and gravity of the act(s), professional misconduct, or crime(s) under consideration as grounds for denial or discipline.

(2) Evidence of any act(s), professional misconduct, or crime(s) committed subsequent to the act(s), professional misconduct, or crime(s) under consideration as grounds for denial or discipline.

(3) The time that has elapsed since commission of the act(s), professional misconduct, or crime(s) referred to in subdivision (1) or (2).

(4) Whether the applicant or certificate holder has complied with any terms of probation, parole, restitution, or any other sanctions lawfully imposed against them.

(5) The criteria in subdivision (a)(1)-(5), as applicable.

(6) Evidence, if any, of rehabilitation submitted by the applicant or certificate holder.

Note: Authority cited: ~~Osteopathic Act (Initiative Measure, Stats. 1923, p. xciii), Section 4;~~ and Sections 481, 482, 2018, and 3600-1, Business and Professions Code.

Reference: Sections 141, 475, 480, 481, 482, 488, 490, 493, and 3600-2, Business and Professions Code.

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§ 1657. REHABILITATION CRITERIA FOR PETITION FOR REINSTATEMENT OR MODIFICATION OF PENALTY.

(a) When considering a petition for reinstatement or a petition for modification of penalty, the Board, in evaluating the rehabilitation of the applicant and his or her present eligibility for a certificate or permit, may consider all activities of the petitioner since the disciplinary action was taken and shall also consider the following criteria:

(1) The nature and ~~gravity~~severity of the act(s), professional misconduct, or crime(s) for which the petitioner was disciplined.

(2) Evidence of any act(s) or crime(s) committed subsequent to act(s), professional misconduct, or crime(s) for which the petitioner was disciplined which also could be considered as grounds for denial under ~~Code Section 480~~ of the Business and Professions Code.

(3) The time that has elapsed since commission of the act(s), professional misconduct, or crime(s) referred to in subdivision (1) or (2) above.

~~(4) Whether~~The extent to which the petitioner has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed.

(5) Petitioner's activity during the time the certificate was in good standing.

(6) Evidence, if any, of the rehabilitation submitted by the petitioner.

(7) Petitioner's professional ability and general reputation for truth.

Note: Authority cited: ~~Osteopathic Act (Initiative Measure, Stats. 1923, p. xciii), Section 4; and Sections 482, 2018, and 3600-1~~, Business and Professions Code. Reference: Sections 141, 481, 482, 488, 490, 493, and 2307, Business and Professions Code.