

TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS

DIVISION 16. OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

(Notice Anticipated Publication Date Friday, March 13, 2020)

NOTICE OF PROPOSED RULEMAKING

The Osteopathic Medical Board of California (Board) proposes to take action to amend sections 1654, 1655, and 1657 of Article 12 of Division 16 of Title 16 of the California Code of Regulations (CCR) regarding substantial relationship and rehabilitation criteria, as described in the Informative Digest below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under "Contact Persons" in this Notice.

WRITTEN COMMENT PERIOD

Any interested person, or his/her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Please submit written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under "Contact Persons" in this Notice. The written comment period closes at **5:00 p.m. on Tuesday, April 28**. The Board will consider only comments received at the Board's office by that time. Written or oral comments also may be received by the Board at a hearing, if any is scheduled.

AVAILABILITY OF MODIFICATIONS

The Board, upon its own motion or at the insistence 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 modified proposal will be available for 15 days prior to its adoption from the persons designated in this Notice as the 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

Business and Professions Code (BPC) sections 481, 482, 2018, and 3600-1 authorize the Board to make the proposed amendments, which implement, interpret, and make specific BPC sections 141, 475, 480, 481, 482, 488, 490, and 493.

INFORMATIVE DIGEST

The Board licenses osteopathic physicians and surgeons who are health care practitioners that provide health care services. (BPC section 3600-5). Existing law (BPC sections 480 and 490) presently authorizes the Board to deny an application for licensure or discipline a licensee based on a conviction for a crime or act substantially related to the licensed business or profession. BPC section 481 authorizes the Board to develop criteria for determining whether a crime or act is substantially related to the qualifications, functions, or duties of the osteopathic profession. BPC section 482 requires the Board to develop criteria to evaluate an applicant's or licensee's rehabilitation when considering the denial of a license or discipline of a licensee. The Board has adopted regulations (16 CCR 1654, 1655, 1657) that set forth its substantial relationship criteria and rehabilitation criteria for crimes or acts considered substantially related to qualifications, functions, or duties of a licensee.

Effective July 1, 2020, pursuant to the provisions of Assembly Bill 2138 (Stats. 2018, ch. 995) (hereafter, AB 2138), the Board's existing authority to deny an applicant a license based upon a substantially related criminal conviction will significantly change. This proposal seeks to adopt regulations consistent with this recently enacted legislation and to more accurately reflect the Board's authority to consider denials and discipline.

Effective July 1, 2020, BPC section 481, subsection (b) will require the Board's substantial relationship criteria regulations to include all of the following:

- The nature and gravity of the offense.
- The number of years elapsed since the date of the offense.
- The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

The amended regulations will also address other changes to law enacted by AB 2138. These proposed regulations include references to "professional misconduct" as this will be considered a legal basis for denial under BPC section 480. The proposed language will also add references to discipline under BPC section 141 because substantially related acts that are the basis for discipline in another jurisdiction may be used to discipline a licensee under that section. The proposal would also add that substantially related crimes, professional misconduct, or acts would include violating other state or federal laws governing the practice of osteopathic medicine.

In addition, the Board proposes to add new rehabilitation criteria to help the Board consider whether an applicant or licensee made a "showing of rehabilitation" as required

by AB 2138. (BPC sections 480, 482, as added by AB 2138, sections 4, 9.) This proposal will also implement changes to how the Board considers rehabilitation evidence when considering denials or discipline.

Finally, the proposed regulation would make the rehabilitation criteria for reinstatement or modification of penalty consistent with the rehabilitation criteria for denials or discipline and makes other minor revisions.

Anticipated Benefits of the Proposed Regulation:

The proposed regulatory action would place applicants and licensees on notice that the Board is statutorily authorized to deny, suspend, or revoke a license because of professional misconduct and discipline taken by another licensing board or jurisdiction. The proposal would also make relevant parties (e.g., the Office of the Attorney General, Office of Administrative Hearings, respondents, and respondent's 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 osteopathic medicine.

AB 2138 was enacted to reduce licensing and employment barriers for people who are rehabilitated. The proposed regulatory action would further that goal by adopting criteria that would emphasize an applicant's or licensee's rehabilitative efforts and what would be needed to make a showing of rehabilitation. This may lead to fewer denials and an increase in the number of licensed osteopathic physicians and surgeons in the marketplace. Additional licensees may allow for more health care providers to treat increasing numbers of California consumers.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

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

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

1. Mandate on local agencies and school districts: None
2. Costs or savings to any state agencies: None
3. Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None

4. Other nondiscretionary costs or savings imposed on local agencies: None
5. Costs or savings in federal funding to the state: None
6. Cost impacts on representative private person or business: 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.
7. Statewide adverse economic impact directly affecting businesses and individuals: None
8. Significant effect on housing costs: None

Business Impact:

This regulation will not have a significant statewide adverse economic impact directly affecting businesses. This initial determination is based on the following facts:

The Board has approximately 11,234 licensees as of November 2019. During the 2016/2017 fiscal year the Board issued 910 licenses and denied 0, in fiscal year 2017/2018 the Board issued 891 licenses and denied 2, and in fiscal year 2018/2019 the Board issued 773 licenses and denied 0. Therefore, the Board has denied fewer than 1% of all applicants. The Board is unaware of how many potential applicants may have never applied due to their criminal histories.

Since the Board has denied fewer than 1% of all applicants this proposal will not have an adverse economic impact. AB 2138 was enacted to reduce licensing and employment barriers for people who have been convicted of a crime or due to acts underlying the conviction, who have a certificate of rehabilitation, were granted clemency, made a showing of rehabilitation, or the conviction was dismissed or expunged. These proposed amendments will further assist in that effort through adoption of standards designed to implement new substantial relationship and rehabilitation criteria. As a result, the Board anticipates that there may be fewer denials or disciplinary actions based upon criminal convictions and, therefore, no significant or statewide adverse economic impacts.

Effect on Small Business:

This regulation will not have a significant statewide effect on small businesses because the proposal is not of sufficient magnitude to expand businesses. This initial determination is based on the following facts:

Historically, the Board denied fewer than 1% of all applications. Even assuming the number of denials or discipline would decrease because of these proposed amendments,

the Board believes that this data demonstrates that the decrease would not be significant enough to expand businesses who hire osteopathic physicians and surgeons.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The proposed regulatory action will not create new business or eliminate existing businesses and will not affect the expansion of businesses currently doing business within the State of California because the proposal is not of sufficient magnitude to create or eliminate businesses. Historically, similar regulations adopted by the Board resulted in fewer than 1% of all applicants being denied. Even assuming the number of denials or discipline would decrease because of the proposed regulatory action, the Board believes that, while some jobs may be created for additional licensees, this data demonstrates that these regulations would not be significant enough to create or eliminate businesses who hire osteopathic physicians and surgeons.

This regulatory proposal will benefit the health and welfare of California residents because by implementing criteria that emphasize rehabilitative efforts, the proposal will create an opportunity for employment for people who have been convicted of a crime and are able to make a showing of rehabilitation. This may lead to an increase in osteopathic physicians and surgeons in the marketplace and, therefore, allow for more health care providers to treat increasing numbers of California consumers.

This regulatory proposal will not affect worker safety because the proposal does not involve worker safety. The proposal will amend existing regulations to add substantial relationship criteria and rehabilitation criteria that emphasize an applicant's or licensee's rehabilitative efforts, which may result in having fewer license denials or disciplinary actions based on substantially related crimes, acts, or professional misconduct.

This regulatory proposal will not affect the State's environment because the proposal does not involve environmental issues. The proposal will amend existing regulations to add substantial relationship criteria and rehabilitation criteria that emphasize an applicant's or licensee's rehabilitative efforts, which may result in having fewer license denials or disciplinary actions based on substantially related crimes, acts, or professional misconduct.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative the Board considered, or that has otherwise been identified and brought to its attention, 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 adopted regulations, 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 invites interested persons to submit written comments to the Board at 1300 National Drive, Suite 150, Sacramento, California 95834 during the written comment period. The Board further invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at hearing, if any is scheduled.

CONTACT PERSONS

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

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The backup contact person is:

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AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice of Proposed Action, the proposed Text of the regulations, the Initial Statement of Reasons, and other information upon which the rulemaking is based, including:

1. Board's May 16, 2019 meeting agenda,
2. Board's relevant meeting materials (Tab 6) from May 2019 Board meeting,
3. Board's May 16, 2019 approved meeting minutes,
4. Assembly Bill 2138 (as amended in Assembly April 2, 2018),
5. Assembly Bill 2138 (as amended in Senate June 20, 2018),
6. Assembly Bill 2138 (chapter 995, Statutes of 2018),

7. Senate Committee on Business, Professions and Economic Development Analysis, dated June 18, 2018, and
8. Assembly Floor Analysis, dated August 24, 2018.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this Notice.

If the Board makes modifications which are sufficiently related to the originally proposed text, the Board will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulation as revised.

Please send requests for copies of any modified regulations addressed to the individuals listed under “Contact Persons” in this Notice. The Board will accept written comments on the modified regulation for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons will be made available upon request. Please send requests addressed to the individuals listed under “Contact Persons” in this Notice.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at: www.ombc.ca.gov/bd_activity/laws_regs/proposed_regs.