

## BOARD OF OPTOMETRY

### SECOND MODIFIED TEXT

Changes to the originally proposed language are shown in bold and in double underline for new text and in bold and double strikeout for deleted text.

Amend Section 1516 and add Section 1582 in Division 15 of Title 16 of the California Code of Regulations as follows:

#### **§ 1516. Application Review and Criteria for Rehabilitation.**

(a) In addition to any other requirements for licensure, whenever it **reasonably** appears that an applicant may be unable to practice optometry safely because his or her ability to practice may be impaired due to mental or physical illness affecting competency, the Board, may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the Board. The applicant shall pay the full cost of the examination. An applicant's failure to comply with the requirement shall render his or her application incomplete. If after receiving the report of the evaluation the Board determines that the applicant is unable to safely practice, the Board may deny the application. The report of the evaluation shall be made available to the applicant.

~~(a)~~(b) When considering the denial of a ~~certificate of registration license~~ under Section 480 of the Code, the Board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a ~~certificate of registration license~~, will consider the following criteria:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

~~(b)~~(c) When considering the suspension or revocation of a ~~certificate of registration license~~ on the grounds that the ~~registrant licensee~~ has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/or her present eligibility for a license, will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).

- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

~~(e)~~(d) When considering a petition for reinstatement of a ~~certificate of registration~~ license under Section 11522 of the Government Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria of rehabilitation specified in subsection (c).

Note: Authority cited: Sections 3023, ~~3023.1 and~~ 3025, 3025.1 and 3025.2, Business and Professions Code. Reference: Sections 475, 480, 481, ~~and 482,~~ and 3056 Business and Professions Code; and Section 11522, Government Code.

### **1582. Unprofessional Conduct.**

In addition to the conduct described in Section 3110 of the Code, "unprofessional conduct" also includes, but is not limited to the following:

(a) Failure to cooperate and participate in any Board investigation pending against the licensee. This includes, but is not limited to, failure to respond to a Board request for information or evidence within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the information within this time period for good cause. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(b) Failure to report to the Board, within 30 days, any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(3) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military that is related to the practice of optometry.

(c) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the Board.

NOTE: Authority cited: Sections 3090 and 3110, Business and Professions Code. Reference: Sections 480, 3010.1, 3010.5, 3024, and 3025, Business and Professions Code.