

**State of California  
Office of Administrative Law**

**In re:**  
**Board of Optometry**

**Regulatory Action:**

**Title 16, California Code of Regulations**

**Amend sections: 1399.270, 1399.271,  
1399.272, 1516, 1517**

**NOTICE OF APPROVAL OF REGULATORY  
ACTION**

**Government Code Section 11349.3**

**OAL Matter Number: 2020-0915-01**

**OAL Matter Type: Regular (S)**

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This action by the Board of Optometry adopts criteria to be used in determining whether a crime, act, or professional misconduct is substantially related to the qualifications, functions, and duties of a licensee, or when an applicant or licensee has made a showing of rehabilitation related to a crime, act, or professional misconduct when considering denial, suspension, or revocation of a license or registration. The proposed amendments implement amendments to the Business and Professions Code made by Assembly Bill 2138 (Stats. 2018, ch. 995).

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on February 25, 2021.

Date: February 25, 2021



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Nicole C. Carrillo  
Attorney

For: Kenneth J. Pogue  
Director

Original: Shara Murphy, Executive Officer  
Copy: Marc Johnson

**REGULAR**

See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2020-0110-03	REGULATORY ACTION NUMBER 2020-0915-015	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

2020 SEP 15 P 2:24  
OFFICE OF ADMINISTRATIVE LAW

ENDORSED - FILED  
in the office of the Secretary of State  
of the State of California

FEB 25 2021

1:40 p.m.

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY  
DCA - State Board of Optometry

AGENCY FILE NUMBER (If any)

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Implementation of AB 2138	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if topics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT AMEND 1399.270, 1399.271, 1399.272, 1516 and 1517 REPEAL
TITLE(S) 16	

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)  
15 day: 5/25/20 - 6/9/20

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) <b>July 1, 2020 / on filing thereafter</b>
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input checked="" type="checkbox"/> Other (Specify) <b>Kimberly Kirchmeyer, Director, Department of Consumer Affairs</b>		

7. CONTACT PERSON

Marc Johnson	TELEPHONE NUMBER 916-267-3350 (cell)	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) marc.johnson@dca.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Shara Murphy</i>	DATE Aug 27, 2020
TYPED NAME AND TITLE OF SIGNATORY Shara Murphy, Executive Officer	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

FEB 25 2021

Office of Administrative Law

California State Board of Optometry  
Department of Consumer Affairs

ORDER OF ADOPTION

Proposed amendments to the regulatory language are shown in single underline for new text and ~~single strikethrough~~ for deleted text.

Title 16, Division 13.5, Article 7, Section 1399.270 is amended as follows:

§ 1399.270 Substantial Relationship Criteria.

(a) For the purpose of denial, suspension, or revocation of the registration of a dispensing optician pursuant to Section 141, Division 1.5 (commencing with Section 475), or Section 2555.1 of the code, a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions, and duties of a dispensing optician if, to a substantial degree, it evidences present or potential unfitness of a dispensing optician to perform the functions authorized by the his registration 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 following:~~

(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 elapsed since the date of the offense; and
- (3) The nature and duties of the registration type sought or held by the person.

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

- (a) (1) Any violation of the provisions of Article 6, Chapter 1, Division 2 of the code relating to dispensing opticians.
- (b) (2) Any violation of the provisions of Chapter 5.4, Division 2 of the code.
- (c) (3) Any violation of the provisions of Chapter 5.5, Division 2, of the code.
- (4) Any act involving theft, dishonesty, fraud, or deceit.
- (5) Any act involving assaultive or abusive conduct as defined in Penal Code section 11160(d).
- (6) Any act involving sexual misconduct as defined in Business and Professions Code section 726(a).

Note: Authority cited: Sections 481 and 2558, Business and Professions Code.  
Reference: Sections 141, 480, 481, 488, 490, 493, and 726 2555.4 and 2556, Business and Professions Code, and Section 11160, Penal Code.

**Title 16, Division 13.5, Article 7, Section 1399.271 is amended as follows:**

**§ 1399.271 Criteria for Denial and Reinstatement of Registration.**

(a) When considering the denial of a registration under Section 480 of the code on the ground that the applicant has been convicted of a crime, or petition for reinstatement under Section 11522 of the code, the Board shall consider whether the applicant has made a showing of rehabilitation if the applicant 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 division in evaluating the rehabilitation of the applicant and his or her present eligibility for registration, shall consider the following criteria:

- (1) The circumstances, nature, and gravity of the crime(s).
- (2) The length(s) of time that has elapsed since the criminal conduct and the completion of probation.
- (3) Whether the applicant is a repeat offender of the same or similar crime(s), and the total criminal record.
- (4) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.

(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 did not make a showing of rehabilitation based on the criteria in subdivision (a), the denial is based on professional misconduct, or when considering a petition for reinstatement under Section 11522 of the code, the Board shall apply the following criteria in evaluating the applicant's rehabilitation:

- (a) (1) The nature and severity gravity of the act(s), professional misconduct, or crime(s) under consideration as grounds for denial.
- (b) (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 which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.
- (c) (3) The time that has elapsed since commission of the act(s), professional misconduct, or crime(s) referred to in subdivision (a)(1) or (b)(2).
- (d) (4) In the case of a denial or revocation based upon the conviction of a crime, the criteria set forth in Section 1399.272. The criteria in subdivision (a)(1) through (a)(4), as applicable.
- (e) (5) Evidence, if any, of rehabilitation submitted by the applicant.

Note: Authority cited: Sections 481, 482 and 2558, Business and Professions Code.  
Reference: Sections 480, 481, 482, 488, and 493 2555.1, and 2556, Business and Professions Code.

**Title 16, Division 13.5, Article 7, Section 1399.272 is amended as follows:**

§ 1399.272. Rehabilitation Criteria for Suspensions and Revocations.

(a) When considering the suspension or revocation of a registration on the grounds that the registrant has been convicted of a crime, the Board division, in evaluating the rehabilitation of such person and his or her present eligibility for a registration, shall consider whether the registrant made a showing of rehabilitation if the registrant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Board shall consider the following criteria:

- (1) The circumstances, nature, and gravity of the crime(s).
- (2) The length(s) of time that has elapsed since the criminal conduct and the completion of probation.
- (3) Whether the registrant is a repeat offender of the same or similar crime(s), and the total criminal record.
- (4) The terms or conditions of parole or probation and the extent to which they bear on the registrant's rehabilitation.

(b) If the registrant has not completed the criminal sentence at issue without a violation of parole or probation, the Board determines that the registrant did not make the showing of rehabilitation based on the criteria in subdivision (a), the suspension or revocation is based on a disciplinary action as described in Section 141 of the code, or the suspension or revocation is based on one or more of the grounds specified in Sections 2555, 2555.1, 2559.3, or 2563 of the code, the Board shall apply the following criteria in evaluating the registrant's rehabilitation:

- (a) (1) Nature and severity gravity of the act(s), disciplinary action(s), or offense crime(s).
- (b) (2) Total criminal record.
- (c) (3) Extent of The time that has elapsed since commission of the act(s), disciplinary action(s), or offense crime(s).
- (d) (4) Whether the registrant has complied with any or all terms of parole, probation, restitution, or other sanctions lawfully imposed against the registrant.
- (5) The criteria in subdivision (a)(1) through (a)(4), as applicable.

(e) (6) If applicable, evidence of ~~expungement~~ dismissal proceedings pursuant to Section 1203.4 of the Penal Code.

(f) (7) Evidence, if any, of rehabilitation submitted by the registrant.

Note: Authority cited: Sections 481, 482 and 2558, Business and Professions Code.  
Reference: Sections 141, 481, 482, 488, 490, 493, 2555, 2555.1, and 2556 2559.3,  
and 2563, Business and Professions Code.

**Title 16, Division 13.5, Article 3, Section 1516 is amended 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.

(b) Denial of a license.

~~(b1)~~ When considering the denial of a license under Section 480 of the Code, on the grounds that the applicant has been convicted of a crime, the Board shall consider whether the applicant has made a showing of rehabilitation if the applicant 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 the applicant and his or her present eligibility for a license, will consider the following criteria:~~

(A) The circumstances, nature, and gravity of the crime(s).

(B) The length(s) of time that has elapsed since the criminal conduct and the completion of probation.

(C) Whether the applicant is a repeat offender of the same or similar crime(s), and the total criminal record.

(D) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.

(2) If the applicant has not completed the criminal sentence at issue without a violation of parole or probation, the Board determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (b)(1), the denial is based on professional misconduct, or the denial is based on one or more of the grounds specified in Sections 3091 or 3110 of the code, the Board shall apply the following criteria in evaluating the applicant's rehabilitation:

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

(B) (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 which also could be considered as grounds for denial under Section 480 of the Code.

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

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

(E) The criteria in subdivision (b)(1)(A) through (D), as applicable.

(5-E) Evidence, if any, of rehabilitation submitted by the applicant.

(c) Suspension or revocation of a license.

(e-1) When considering the suspension or revocation of a license on the grounds that the licensee has been convicted of a crime, the Board, shall consider whether the licensee has made a showing or rehabilitation if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Board shall consider the following criteria: in evaluating the rehabilitation of such person and his or her present eligibility for a license, will consider the following criteria:

(A) The circumstances, nature, and gravity of the crime(s).

(B) The length(s) of time that has elapsed since the criminal conduct and the completion of probation.

(C) Whether the licensee is a repeat offender of the same or similar crime(s), and the total criminal record.

(D) The terms or conditions of parole or probation and the extent to which they bear on the licensee's rehabilitation.

(2) If the licensee has not completed the criminal sentence at issue without a violation of parole or probation, the Board determines that the licensee did not make a showing of

rehabilitation based on the criteria in subdivision (c)(1), the suspension or revocation is based on a disciplinary action as described in Section 141 of the code, or the suspension or revocation is based on one or more of the grounds specified in Sections 3090.5, 3097, 3100, or 3110 of the code, the Board shall apply the following criteria in evaluating whether licensee's rehabilitation:

- (1A) Nature and ~~severity~~gravity of the act(s), disciplinary action(s), or ~~offense~~crime(s).
- (2B) Total criminal record.
- (3C) The time that has elapsed since commission of the act(s), disciplinary action(s), or ~~offense~~crime(s).
- (4D) Whether the licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee.
- (E) The criteria in subdivision (c)(1)(A) through (D), as applicable.
- (5F) If applicable, evidence of ~~expungement~~dismissal proceedings pursuant to Section 1203.4 of the Penal Code.
- (6G) Evidence, if any, of rehabilitation submitted by the licensee.

~~(d-f)~~ When considering a petition for reinstatement of a 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~~subdivision (c)(2).

Note: Authority cited: Sections ~~481, 482, 3023, 3025, 3025.1, 3056,~~ and 3057, Business and Professions Code. Reference: Sections 141, 475, 480, 481, 482, 488, 490, 493, 3056, and 3057, 3090.5, 3091, 3097, 3100, and 3110, Business and Professions Code; and Section 11522, Government Code.

**Title 16, Division 13.5, Article 3, Section 1517 is amended as follows:**

§ 1517. Substantial Relationship Criteria.

(a) For the purpose of denial, suspension, or revocation of the certificate of registration of an optometrist pursuant to Section 141, Division 1.5 (commencing with Section 475), or Section 3110 of the Code, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions, and duties of an optometrist if, to a substantial degree, it evidences present or potential unfitness of an optometrist to perform the functions authorized by his/her the certificate of registration 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 following:~~



(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 elapsed since the date of the offense; and
- (3) The nature and duties of an optometrist.

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

- (a) (1) Any violation of the provisions of Article 2, Chapter 1, Division 2 of the Code (Sections 525 et seq. of the Code).
- (b) (2) Any violation of the provisions of Article 6, Chapter 1, Division 2 of the Code (Sections 650 et. seq. of the Code) except Sections 651.4 and 654.
- (c) (3) Any violation of the provisions of Chapter 5.4, Division 2 of the Code (Sections 2540 et seq. of the Code).
- (d) (4) Any violation of the provisions of Chapter 7, Division 2 of the Code (Sections 3000 et seq. of the Code).
- (5) Any act involving theft, dishonesty, fraud, or deceit.
- (6) Any act involving assaultive or abusive conduct as defined in Penal Code section 11160.
- (7) Any act involving sexual misconduct as defined in Business Code section 726(a).

Note: Authority cited: Section 481 and 3025, Business and Professions Code.  
Reference: Sections 141, 475, 480, 481, and 482, 490, 493, 726, and 3110, Business and Professions Code, and Section 11160, Penal Code.