

**California State Board of Optometry
Department of Consumer Affairs**

Notice of Regulatory Action Concerning the Implementation of AB 2138

NOTICE IS HEREBY GIVEN that the California State Board of Optometry (Board) is proposing to take the action described in the Informative Digest.

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 Person" in this Notice.

COMMENT PERIOD

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 no later than March 9, 2020**, or must be received by the Board at the hearing. Oral comments should be made at the hearing, if any.

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 person designated in this Notice as the 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 §§ 3021 and 3025 of the Business and Professions Code (BPC), and to implement, interpret, or make specific BPC §§ 141, 475, 480, 481, 482, 488, 490, 492, and 493 of said code, the Board is considering amending §§ 1399.270, 1399.271, 1399.272, 1516, and 1517 of Title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST

BPC §§ 3021 and 3025 authorizes the Board to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Optometry Practice Act (Act) and provisions relating to the practice of opticians. Additionally, as required under Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), the primary purpose of this proposal is to implement, interpret, and make specific the provisions of BPC sections 141, 475, 480, 481, 482, 488, 490, 492,

and 493 relative to substantial relationship and rehabilitation criteria.

Therefore, the Board is proposing the following changes:

Amend § 1399.270 of Article 7 of Division 13.5 of Title 16 of the CCR (Substantial Relationship Criteria):

The proposed regulation, for purposes of denial, suspension, or revocation of a license, would add professional misconduct and out-of-state discipline as grounds requiring the Board to consider the substantially related criteria, and require the Board, in making the substantial relationship determination for a crime, to 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 a person holding the license. 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 opticianry.

Amend § 1399.271 of Article 7 of Division 13.5 of Title 16 of the CCR (Criteria for Denial and Reinstatement of Registration):

The proposal specifies the following criteria for the Board to consider when making the determination that the applicant who has successfully completed the criminal sentence has made a showing of rehabilitation: (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; and (4) the terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation and the fitness to practice the profession. Additionally, the proposal uses the existing rehabilitation criteria with the addition of the criteria specified in CCR § 1399.271(a) and makes other minor revisions. Each of these criteria are designed to focus the Board's evaluation on facts and circumstances relevant to an applicant's rehabilitation, so that the Board knows the relevant criteria it must review to make the determination as to the applicant's rehabilitation.

Amend § 1399.272 of Article 7 of Division 13.5 of Title 16 of the CCR (Rehabilitation Criteria for Suspensions and Revocations):

This proposal specifies the following criteria for the Board to consider when making the determination that the registrant who has successfully completed the criminal sentence has made a showing of rehabilitation: (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; and (4) the terms or conditions of parole or probation and the extent to which they bear on the registrant's rehabilitation and the fitness to practice the profession. Further, the proposal uses the existing rehabilitation criteria with the addition of the criteria specified in CCR § 1399.272(a) and makes other minor revisions. Each of these criteria are designed to focus the Board's evaluation on facts and circumstances relevant to a registrant's rehabilitation, so that the Board knows the relevant criteria it must review to make the determination as to the registrant's rehabilitation.

Amend § 1516 of Article 3 of Division 15 of Title 16 of the CCR (Application Review and Criteria for Rehabilitation):

This proposal would specify the following criteria for the Board to consider when making the determination that the optometrist applicant who has successfully completed the criminal sentence has made a showing of rehabilitation: (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; and (4) the terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation and the fitness to practice the profession. Additionally, this proposal uses the existing rehabilitation criteria and makes other minor revisions. Each of these criteria are designed to focus the Board's evaluation on facts and circumstances relevant to an applicant's rehabilitation, so that the Board knows the relevant criteria it must review to make the determination as to the applicant's rehabilitation.

Amend § 1517 of Article 3 of Division 15 of Title 16 of the CCR (Substantial Relationship Criteria):

This proposal seeks to implement, interpret, and make specific BPC §§ 141 and 480 by adding their relative provisions to the Board's substantial relationship criteria regulation. Accordingly, the proposal is necessary to provide the appropriate notice to license applicants and licensees that discipline in an out-of-state jurisdiction and professional misconduct are grounds for license denial, suspension, or revocation, and implement the requirements of BPC §§ 141 and 480. Additionally, the proposed regulation lists each of these criteria for the Board to consider when making the substantial relationship determination and would specify that substantially related crimes, professional misconduct, and acts include violations of other state or federal laws governing the practice of optometry.

POLICY STATEMENT OVERVIEW/ANTICIPATED BENEFITS OF PROPOSAL

As specified in the legislative analyses of AB 2138, this proposal seeks to reduce barriers to licensure for individuals with prior criminal convictions, which may reduce recidivism and provide economic opportunity to California's residents. In addition, the proposal seeks to improve clarity, transparency, and consistency for applicants and licensees in the Board's use of their criminal histories. Further, by reducing barriers to licensure, the Board anticipates benefits to consumers who may have greater access to licensed professionals.

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 of these topics and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies:

The Board anticipates that there may be an increased cost of the state as a result of amending and adopting the sections identified in the regulatory proposal. By further defining the substantial relationship and rehabilitation criteria for criminal convictions, Board staff may see an increased but absorbable workload to research convictions and to substantiate that rehabilitation has been achieved.

Cost or Savings in Federal Funding to the State: None

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 businesses, including the ability of California businesses to compete with businesses in other states. The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Board estimates that there will be no increased costs for businesses or individuals to comply with the proposed regulations, as there would be fewer restrictions for individuals with criminal convictions to obtain licensure. As a result, the Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The proposed regulations may affect small businesses, by potentially increasing the available pool of licensed professionals in which to hire. This proposal seeks to reduce barriers to licensure for individuals with prior criminal convictions and thus increase opportunities for employment.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

Benefits of Regulation:

The Board has determined that this proposal may benefit individuals, who would have greater access to licensure, reduce criminal recidivism, and provide economic opportunity to California residents with a criminal history. The public may benefit from the proposal with increased access to licensed professionals, and optometry and optician businesses may benefit as they would have a larger pool of licensed professionals from which to hire. The regulatory proposal does not affect 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 be more effective in carrying out the purpose for which the action is proposed, 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.

The following alternatives were considered:

- Option 1: Do nothing, meaning the Board would not adopt the regulations. The Board opted not to pursue this option because per AB 2138, the Board is mandated to adopt proposed regulations by July 1, 2020.

Any interested person may submit comments to the Board in writing relevant to the above determinations at 2450 Del Paso Road, Suite 105, Sacramento, CA 95834.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the 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 any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board at 2450 Del Paso Road, Suite 105, Sacramento, CA 95834.

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

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the 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: Marc Johnson
Address: California State Board of Optometry
2450 Del Paso Road, Suite 105
Sacramento, CA 95834
Telephone No.: 916-575-7182
Fax No.: 916-575-7292
E-Mail Address: marc.johnson@dca.ca.gov

The backup contact person is:

Name: Shara Murphy, Executive Officer
Address: California State Board of Optometry
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Sacramento, CA 95834
Telephone No.: 916-575-7170
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Website Access: Materials regarding this proposal can be found here:
<https://www.optometry.ca.gov/lawsregs/propregs.shtml>