

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

**Implementation of AB 2138
Text as approved by Board at the April 5, 2019 public meeting**

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 or Division 1.5 (commencing with Section 475) 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 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.
- (6) Any act involving sexual misconduct as defined in Business and Professions Code section 726(a).

Note: Authority cited: Sections 481, 493, and 2558, Business and Professions Code. Reference: Sections 141, 480, 481, 488, 490, 493, 726, 2555.1, 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 was convicted of a crime, or petition for reinstatement under Section 11522 of the code, if the applicant completed the criminal sentence at issue without a violation of parole or probation, then the board shall consider whether the applicant has made a showing of rehabilitation. 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 crimes.
- (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 and fitness to practice the profession.

(b) If subdivision (a) is inapplicable, or the board determines that the applicant did not make a showing of rehabilitation based on the criteria in subdivision (a), or when considering a petition for reinstatement under Section 11522 of the code, the board shall apply the following criteria in evaluating whether the applicant made a showing of rehabilitation and is presently eligible for a registration:

- (a) (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (b) (2) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration 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) or crime(s) referred to in subdivision (b)(a1) or (b)(2b).
- (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 482 and 2558, Business and Professions Code.
Reference: Sections 480, 481, 482, 488, 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, if the registrant completed the criminal sentence at issue without a violation of parole or probation, then 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. In making this determination, the board shall consider the following criteria:

- (1) The circumstances, nature, and gravity of the crimes.
- (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 and fitness to practice the profession.

(b) If subdivision (a) is inapplicable, or the board determines that the registrant did not make a showing of rehabilitation based on the criteria in subdivision (a), the board shall apply the following criteria in evaluating whether the registrant made a showing of rehabilitation:

- ~~(a)~~ (1) Nature and severity of the act(s) or offense-crime(s).
- ~~(b)~~ (2) Total criminal record.
- ~~(c)~~ (3) Extent of time that has elapsed since commission of the act(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 482 and 2558, Business and Professions Code.

Reference: Sections 141, 480, 481, 482, 488, 493, 2555.1, and 2556, 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) When considering the denial of a license under Section 480 of the Code on the grounds that the applicant was convicted of a crime, if the applicant completed the criminal sentence at issue without a violation of parole or probation, then the board shall consider whether the applicant has made a showing of rehabilitation. 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:~~

- (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 and fitness to practice the profession.

(c) If subdivision (b) is inapplicable, or the board determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (b), then the board shall apply the following criteria in evaluating whether the applicant made the showing of rehabilitation and is presently eligible for a license:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration 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 (c)(1) or (c)(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) The criteria in subdivision (b)(1) through (b)(4), as applicable.
- (5-6) Evidence, if any, of rehabilitation submitted by the applicant.

(c-d) When considering the suspension or revocation of a license on the grounds that the licensee has been convicted of a crime, if the licensee completed the criminal sentence at issue without a violation of parole or probation, then the board shall consider whether the licensee has made a showing or rehabilitation. 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:~~

- (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 licensee 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 licensee's rehabilitation and fitness to practice the profession.

(e) If subdivision (d) is inapplicable, or the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivision (d), the board shall apply the following criteria in evaluating whether the licensee made a showing of rehabilitation and is presently eligible for a licensee:

- (1) Nature and severity of the act(s) or ~~offense~~ crime(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or ~~offense~~ crime(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) The criteria in subdivision (d)(1) through (4), as applicable.
- ~~(5)~~ If applicable, evidence of ~~expungement~~ dismissal proceedings pursuant to Section 1203.4 of the Penal Code.
- ~~(7)~~ 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 subdivision ~~(e-e)~~.

Note: Authority cited: Sections ~~482, 3023,~~ 3025, ~~3025.1,~~ 3056, and 3057, Business and Professions Code. Reference: Sections ~~141, 475,~~ 480, 481, 482, ~~488, 493,~~ 3056, and 3057, 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 or Division 1.5 (commencing with Section 475) 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 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 493 and 3025, Business and Professions Code.
Reference: Sections 141, 475, 480, 481, and 482, 490, 493, and 726 Business and Professions Code, and Section 11160, Penal Code.