

**State of California
Office of Administrative Law**

In re:
Board of Psychology

Regulatory Action:

Title 16, California Code of Regulations

Amend sections: 1394, 1395, 1395.1

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2020-0827-01

OAL Matter Type: Regular (S)

This action by the Board of Psychology 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. 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 8, 2021.

Date: February 8, 2021



**Nicole C. Carrillo
Attorney**

**For: Kenneth J. Pogue
Director**

**Original: Antonette Sorrick, Executive
Officer**

Copy: Jason Glasspiegel

REGULAR

NOTICE PUBLICATION/REGULATION SUBMISSION (reverse)

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS: **2-2020-0127-02** NOTICE FILE NUMBER: **2020-0827-015** REGULATORY ACTION NUMBER: **2020-0827-015** EMERGENCY NUMBER: **15**

FILED - FILED
Office of the Secretary of State
State of California

FEB 09 2021
1:23pm

For use by Office of Administrative Law (OAL) only

RECEIVED DATE: JAN 27 '20 PUBLICATION DATE: FEB 14 '20 Office of Administrative Law NOTICE	RECEIVED By Office of Administrative Law at 1:08 pm, Aug 27, 2020 REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY
California Board of Psychology

AGENCY FILE NUMBER (If any)

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

1. SUBJECT OF NOTICE AB 2138 - Substantial Relationship Criteria, etc.		TITLE(S) 16	FIRST SECTION AFFECTED 1394	2. REQUESTED PUBLICATION DATE February 14, 2020
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Jason Glasspiegel		TELEPHONE NUMBER (916) 574-7137
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2020, 07-2		FAX NUMBER (Optional) (916) 574-8672
		PUBLICATION DATE 2/14/20		

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)
AB 2138 - Substantial Relationship Criteria, Rehabilitation Criteria

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) Individually. Attach additional sheet if needed.)	ADOPT
	AMEND 1394, 1395, 1395.1
TITLE(S) 16	REPEAL

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"/> Resubmission of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmission 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)

March 24, 2020 - April 7, 2020

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

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) Effective on filing with Secretary of State §100 Changes Without Regulatory Effect Effective other (Specify) **July 1, 2020 or effective on filing thereafter**

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660) Fair Political Practices Commission State Fire Marshal

Other (Specify) **Kimberly Kirchmeyer, Director, Department of Consumer Affairs**

7. CONTACT PERSON

Name: Jason Glasspiegel	TELEPHONE NUMBER: (916) 574-7137	FAX NUMBER (Optional): (916) 574-8080	E-MAIL ADDRESS (Optional): jason.glasspiegel@dca.ca.gov
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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.

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

FEB 08 2021

Office of Administrative Law

SIGNATURE OF AGENCY HEAD OR DESIGNEE: **Antonette Sorrick** Digitally signed by Antonette Sorrick Date: 2020.08.27 10:58:11 -07'00'

DATE: **8/27/2020**

TYPED NAME AND TITLE OF SIGNATORY: **Antonette Sorrick, Executive Officer**

Title 16. Board of Psychology Order of Adoption

Proposed new text is shown as underlined.
Proposed deleted text is shown struck-through.

1. Amend Section 1394 of Article 7 of Division 13.1 of Title 16 of the California Code of Regulations to read:

§ 1394. Substantial Relationship Criteria.

(a) For the purposes of denial, suspension, or revocation of a license or registration pursuant to section 141 or Division 1.5 (commencing with Section 475) of the Code, or sections 2960 or 2960.6 of the Code, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions, or duties of a person holding a license or registration under the Psychology Licensing Law (Chapter 6.6 of Division 2 of the Code), if to a substantial degree it evidences present or potential unfitness of a person holding a license or registration to perform the functions authorized by his or her the license or registration, or 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 profession in which the applicant seeks licensure or in which the licensee is licensed.

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

- (a)(1) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of that law the Psychology Licensing Law.
- (b)(2) Conviction of a crime or act involving fiscal dishonesty.
- (3) Conviction or act involving child abuse.
- (4) A conviction requiring a person to register as a sex offender pursuant to section 290 of the Penal Code.
- (5) Conviction or act involving lewd conduct or sexual impropriety.
- (6) Conviction or act involving assault, battery, or other violence.
- (7) Conviction or act involving the use of drugs or alcohol to an extent or in a manner dangerous to the individual or the public.
- (8) Conviction or act involving harassment, trespass, or stalking.

Note: Authority cited: Sections 481 and 2930, Business and Professions Code.
Reference: Sections 141, 480, 481, 490, 493, 2960, 2960.6, and 2963, and 2964.3
Business and Professions Code.

2. Amend Section 1395 of Article 7 of Division 13.1 of Title 16 of the California Code of Regulations to read:

§ 1395. Rehabilitation Criteria for Denials and Reinstatements.

(a) When considering the denial of a license or registration under sections 480, 2960, or 2960.6 of the Code, or a petition for reinstatement or modification of penalty under section 11522 of the Government Code 2962 of the Code, on the ground(s) that the applicant or petitioner has been convicted of a crime, the Board in evaluating shall consider whether the applicant or petitioner made a showing of rehabilitation of the applicant and his or her present eligibility for a license or registration if the person completed the criminal sentence without a violation of parole or probation. In making this determination, the Board shall will consider the following criteria in (1) through (5), as available:

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

(2) The reason for granting and the length(s) of the applicable parole or probation period(s).

(3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.

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

(5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

(b) If the applicant or petitioner has not completed the criminal sentence without a violation of parole or probation, the Board determines that the applicant or petitioner did not make a showing of rehabilitation based on the criteria in subdivision (a), the denial is, or the surrender or revocation was, based upon professional misconduct, or the denial is, or the surrender or revocation was, based on one or more grounds under sections 2960 or 2960.6 of the Code, the Board shall apply the following criteria in evaluating an applicant's or petitioner's rehabilitation:

(2)(1) 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 or that were grounds for surrender or revocation, which also could be considered as grounds for denial under section 480 of the Code.

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

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

(4) The criteria in subdivision (a)(1)-(5), as applicable.

(5) Evidence, if any, of rehabilitation submitted by the applicant or petitioner demonstrating that he or she has a mature, measured appreciation of the gravity of the misconduct, and remorse for the harm caused, and showing a course of conduct that

convinces and assures the Board that the public will be safe if the person is permitted to be licensed or registered to practice psychology.

Note: Authority cited: Sections 481, 482 and 2930, Business and Professions Code. Reference: Sections 480, 481, 482, 488, 493, 2960, 2960.6, 2962 and 2963, Business and Professions Code.

3. Amend Section 1395.1 of Article 7 of Division 13.1 of Title 16 of the California Code of Regulations to read:

§ 1395.1. Rehabilitation Criteria for Suspensions or Revocations.

(a) When considering the suspension or revocation of a license or registration on the ground that a person holding a license or registration under the Psychology Licensing Law (Chapter 6.6 of Division 2 of the Code) has been convicted of a crime, the Board in evaluating the shall consider whether the licensee or registrant has made a showing of rehabilitation of such if the person and his or her eligibility for a license or registration completed the criminal sentence without a violation of parole or probation. In making this determination, the Board shall use will consider the following criteria in (1) through (5), as available:

- (1) Nature and severity-gravity of the act(s) or offense(s) crime(s).
- (2) The reason for granting and the length(s) of the applicable parole or probation period(s).
- (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (4) The terms or conditions of parole or probation and the extent to which they bear on the licensee's or registrant's rehabilitation.
- (5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

(b) If the licensee or registrant has not completed the criminal sentence at issue without a violation of parole or probation, the suspension or revocation is based on a disciplinary action as described in section 141 of the Code, the suspension or revocation was based one or more of the grounds specified in sections 2960 or 2960.6 of the Code, or the Board determines that the licensee or registrant did not make a showing of rehabilitation based on the criteria in subdivision (a), the Board shall apply the following criteria in evaluating the licensee's or registrant's rehabilitation:

- (2)(1) Total criminal record and/or record of discipline or other enforcement action, including the nature and gravity of the act(s), disciplinary action(s), or crime(s) underlying the discipline or enforcement action.

~~(3)~~(2) The time that has elapsed since commission of the act(s), disciplinary action(s), or offense(s) crime(s).

~~(4)~~(3) Whether the licensee or ~~registration holder~~ registrant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against such person.

~~(5)~~(4) If applicable, evidence of ~~expungement~~ dismissal proceedings pursuant to section 1203.4 of the Penal Code.

(5) The criteria in subdivision (a)(1)-(5), as applicable.

(6) Evidence, if any, of rehabilitation submitted by the licensee or ~~registration holder~~ registrant demonstrating that he or she has a mature, measured appreciation of the gravity of the misconduct, and remorse for the harm caused, and showing a demonstrated course of conduct by the licensee or registrant that convinces and assures the Board that the public will be safe if the person is permitted to remain licensed or registered to practice psychology.

Note: Authority cited: Sections 481, 482 and 2930, Business and Professions Code. Reference: Sections 141, 481, 482, 490, 2960, 2960.6 and 2963, Business and Professions Code.