

RESPIRATORY CARE BOARD OF CALIFORNIA
Department of Consumer Affairs
California Code of Regulations. Title 16. Division 13.6. Respiratory Care Board
Disciplinary Guidelines, Substantial Relationship and Rehabilitation Criteria, Driving
Record, Handling of Military Applications, and Sponsored Events

PROPOSED REGULATORY LANGUAGE

§ 1399.326. Driving Record.

The board ~~shall~~ may review the driving history for each applicant as part of its investigation prior to licensure.

Note: Authority cited: Section 3722, Business and Professions Code. Reference: Sections 3730 and 3732, Business and Professions Code.

§ 1399.329. Military Renewal Application Exemptions. Handling of Military and Spouse Applications

(a) Pursuant to subdivision (c) of section 114.3 of the B&P, the board shall prorate the renewal fee and the number of CE hours required in order for a licensee to engage in any activities requiring licensure, upon discharge from active duty service as a member of the United States Armed Forces or the California National Guard.

(b) The Board shall provide expedited handling of applications for licensure and renewal for military personnel and military spouses as provided in sections 114, 114.3, 115.4, and 115.5 of the B&P.

(c) Evidence of discharge from active duty or from the military may include an order issued by the U.S. Armed Forces on a DD Form 214 or the National Guard on form NGB-22.

Note: Authority cited: Sections 114.3, 115.4, 115.5 and 3722, Business and Professions Code. Reference: Section 114, 114.3, 114.5, 115, 115.4, 115.5, Business and Professions Code.

~~§ 1399.343. Definitions.~~

~~For the purposes of section 901 of the B&P:~~

~~(a) “Community based organization” means a public or private nonprofit organization that is representative of a community or a significant segment of a community, and is engaged in meeting human, educational, environmental, or public safety community needs.~~

~~(b) “Out of state practitioner” means a person who is not licensed in California to engage in the practice of respiratory care, but who holds a current valid license or certificate in good standing in another state, district, or territory of the United States to practice respiratory care.~~

Note: Authority cited: Sections 901 and 3722, Business and Professions Code. Reference: Section 901, Business and Professions Code.

~~§ 1399.344. Sponsoring Entity Registration and Recordkeeping Requirements.~~

~~(a) Registration. A sponsoring entity that wishes to provide, or arrange for the provision of, respiratory care services at a sponsored event under section 901 of the B&P shall register with the board not later than 90 calendar days prior to the date on which the sponsored event is scheduled to begin. A sponsoring entity shall register with the board by submitting to the board a completed "Registration of Sponsoring Entity under Business & Professions Code Section 901," Form 901-A (DCA/2016—revised), which is hereby incorporated by reference.~~

~~(b) Determination of Completeness of Form. The board may, by resolution, delegate to the Department of Consumer Affairs the authority to receive and process "Registration of Sponsoring Entity under Business & Professions Code Section 901," Form 901-A (DCA/2016—revised) on behalf of the board. The board or its delegatee shall inform the sponsoring entity in writing within 15 calendar days of receipt of the form that the form is either complete and the sponsoring entity is registered or that the form is deficient and what specific information or documentation is required to complete the form and be registered. The board or its delegatee shall reject the registration if all of the identified deficiencies have not been corrected at least 30 days prior to the commencement of the sponsored event.~~

~~(c) Recordkeeping Requirements. Regardless of where it is located, a sponsoring entity shall maintain at a physical location in California a copy of all records required by section 901 as well as a copy of the authorization for participation issued by the board to an out-of-state practitioner. The sponsoring entity shall maintain these records for a period of at least five years after the date on which a sponsored event ended. The records may be maintained in either paper or electronic form. The sponsoring entity shall notify the board at the time of registration as to the form in which it will maintain the records. In addition, the sponsoring entity shall keep a copy of all records required by section 901(g) of the B&P at the physical location of the sponsored event until that event has ended. These records shall be available for inspection and copying during the operating hours of the sponsored event upon request of any representative of the board.~~

~~(d) A sponsoring entity shall place a notice visible to patients at every station where patients are being seen by a respiratory care practitioner. The notice shall be in at least 48-point type in Arial font and shall include the following statement and information:~~

~~NOTICE~~

~~Respiratory Care Practitioners providing respiratory care services at this health fair are either licensed and regulated by the Respiratory Care Board of California or hold a current valid license from another state and have been authorized to provide respiratory care services in California only at this specific health fair.~~

~~Respiratory Care Board of California~~

~~(866) 375-0386~~

~~www.rcb.ca.gov~~

~~(e) Requirement for Prior Board Approval of Out-of-State Practitioner. A sponsoring entity shall not permit an out-of-state practitioner to participate in a sponsored event unless and until the sponsoring entity has received written approval of such practitioner from the board.~~

~~(f) Report. Within 15 calendar days after a sponsored event has concluded, the sponsoring entity shall file a report with the board summarizing the details of the sponsored event. This report may be in a form of the sponsoring entity's choosing, but shall include, at a minimum, the following information:~~

- ~~(1) The date(s) of the sponsored event;~~
- ~~(2) The location(s) of the sponsored event;~~
- ~~(3) The type(s) and general description of all respiratory care services provided at the sponsored event; and~~
- ~~(4) A list of each out-of-state practitioner granted authorization pursuant to this article who participated in the sponsored event, along with the license number of that practitioner.~~

Note: Authority cited: Sections 901 and 3722, Business and Professions Code. Reference: Section 901, Business and Professions Code.

~~§ 1399.345. Out-of-State Practitioner Authorization to Participate in Sponsored Event.~~

~~(a) Request for Authorization to Participate. An out-of-state practitioner (“applicant”) may request authorization from the board to participate in a sponsored event and provide such respiratory care services at the sponsored event as would be permitted if the applicant were licensed by the board to provide those services. Authorization must be obtained for each sponsored event in which the applicant seeks to participate.~~

~~(1) An applicant shall request authorization by submitting to the board a completed “Request for Authorization to Practice Without a California License at a Sponsored Free Health Care Event,” Form 901-RCB (RCB/2014), which is hereby incorporated by reference, accompanied by a non-refundable, non-transferable processing fee of \$25.~~

~~(2) The applicant also shall furnish either a full set of fingerprints or submit a Live Scan inquiry to establish the identity of the applicant and to permit the board to conduct a criminal history record check. The applicant shall pay any costs for furnishing the fingerprints and conducting the criminal history record check.~~

~~(b) Response to Request for Authorization to Participate. Within 20 calendar days of receiving a completed request for authorization, the board shall notify the sponsoring entity or local government entity whether that request is approved or denied.~~

~~(c) Denial of Request for Authorization to Participate.~~

~~(1) The board shall deny a request for authorization to participate if:~~

~~(A) The submitted form is incomplete and the applicant has not responded within 7 calendar days to the board's request for additional information; or~~

~~(B) The applicant has not completed a respiratory care program which complies with B&PC section 3740; or~~

~~(C) The applicant has failed to comply with a requirement of this article or has committed any act that would constitute grounds for denial of an application for licensure by the board; or~~

~~(D) The applicant does not possess a current valid active license in good standing. The term “good standing” means the applicant:~~

~~i. Has not been charged with an offense for any act substantially related to the practice for which the applicant is licensed by any public agency;~~

~~ii. Has not entered into any consent agreement or been subject to an administrative decision that contains conditions placed upon the applicant's professional conduct or practice, including any voluntary surrender of license;~~

iii. ~~Has not been the subject of an adverse judgment resulting from the practice for which the applicant is licensed that the board determines constitutes evidence of a pattern of negligence or incompetence.~~

~~(E) The board has been unable to obtain a timely report of the results of the criminal history check.~~

~~(2) The board may deny a request for authorization to participate if:~~

~~(A) The request is received less than 20 calendars days before the date on which the sponsored event will begin; or~~

~~(B) The applicant has been previously denied a request for authorization by the board to participate in a sponsored event; or~~

~~(C) The applicant has previously had an authorization to participate in a sponsored event terminated by the board.~~

~~(d) Appeal of Denial. An applicant requesting authorization to participate in a sponsored event may appeal the denial of such request by following the procedures set forth in B&P section 1399.346(d).~~

~~(e) An out of state practitioner who receives authorization to practice respiratory care at an event sponsored by a local government entity shall place a notice visible to patients at every station at which that person will be seeing patients. The notice shall be in at least 48 point type in Arial font and shall include the following statement and information:~~

~~NOTICE~~

~~I hold a current valid license to practice respiratory care in a state other than California. I have been authorized by the Respiratory Care Board of California to provide respiratory care services in California only at this specific health fair.~~

~~Respiratory Care Board of California~~

~~(866) 375-0386~~

~~www.rcb.ca.gov~~

~~Note: Authority cited: Sections 144, 901 and 3722, Business and Professions Code. Reference: Section 901, Business and Professions Code.~~

~~§ 1399.346. Termination of Authorization and Appeal.~~

~~(a) Grounds for Termination. The board may terminate an out of state practitioner's authorization to participate in a sponsored event for any of the following reasons:~~

~~(1) The out of state practitioner has failed to comply with any applicable provision of this article, or any applicable practice requirement or regulation of the board.~~

~~(2) The out of state practitioner has committed an act that would constitute grounds for discipline if done by a licensee of the board.~~

~~(3) The board has received a credible complaint indicating that the out of state practitioner is unfit to practice at the sponsored event or has otherwise endangered consumers of the practitioner's services.~~

~~(b) Notice of Termination. The board shall provide both the sponsoring entity or local government entity and the out of state practitioner with a written notice of the termination, including the basis for the termination. If the written notice is provided during a sponsored event,~~

~~the board may provide the notice to any representative of the sponsored event on the premises of the event.~~

~~(c) Consequences of Termination. An out of state practitioner shall immediately cease his or her participation in a sponsored event upon receipt of the written notice of termination. Termination of authority to participate in a sponsored event shall be deemed a disciplinary measure reportable to the national practitioner data banks. In addition, the board shall provide a copy of the written notice of termination to the licensing authority of each jurisdiction in which the out of state practitioner is licensed.~~

~~(d) Appeal of Termination. An out of state practitioner may appeal the board's decision to terminate an authorization in the manner provided by section 901(j)(2) of the B&P. The request for an appeal shall be considered a request for an informal hearing under the Administrative Procedure Act, Government Code section 11445.10-11445.60.~~

~~(e) Informal Conference Option. In addition to requesting a hearing, the out of state practitioner may request an informal conference with the executive officer regarding the reasons for the termination of authorization to participate. The executive officer shall, within 30 days from receipt of the request, hold an informal conference with the out of state practitioner. At the conclusion of the informal conference, the Executive Director or his/her designee may affirm or dismiss the termination of authorization to participate. The executive officer shall state in writing the reasons for his or her action and mail a copy of his or her findings and decision to the out of state practitioner within ten days from the date of the informal conference. The out of state practitioner does not waive his or her request for a hearing to contest a termination of authorization by requesting an informal conference. If the termination is dismissed after the informal conference, the request for a hearing shall be deemed to be withdrawn.~~

~~Note: Authority cited: Sections 901 and 3722, Business and Professions Code. Reference: Section 901, Business and Professions Code; and Section 11445.10 et seq., Government Code.~~

§ 1399.370. Substantial Relationship Criteria.

(a) For the purposes of denial, suspension, or revocation of a license pursuant to Section 141 or Division 1.5 (commencing with section 475) of the B&P , a crime, professional misconduct or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare.

(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 a **respiratory care practitioner person holding the license.**

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

(a₁) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the B&P.

(b₂) Commission of an act or conviction of a crime involving fraud, fiscal dishonesty theft, or larceny.

(e3) Commission of an act or conviction of a crime involving driving under the influence or reckless driving while under the influence.

(d4) Commission of an act or conviction of a crime involving harassment or stalking as defined by the Penal Code and/or Civil Code.

(e5) Commission of an act or conviction of a crime involving lewd conduct, prostitution or solicitation thereof, or pandering and/or indecent exposure, as defined by the Penal Code.

(f6) Commission of an act or conviction of a crime involving human trafficking, as defined by the Penal Code.

(g7) Commission of an act or conviction of a crime involving gross negligence in the care of an animal or any form of animal cruelty as defined by the B&P or Penal Code.

(h8) Failure to comply with a court order.

(i9) Commission of an act or conviction of a crime, involving verbally abusive conduct or unlawful possession of a firearm or weapon.

(10) Commission of an act or conviction of a crime, of neglect, endangerment, or abuse involving a person under 18 years of age or over 65 years of age, or a dependent adult, without regard to whether the person was a patient.

Note: Authority cited: Sections 480, 481, 493, and 3722, Business and Professions Code. Reference: Sections 141, 480, 481, 488, 490, 492, 493, 3750, 3750.5, 3752, 3752.5, 3752.6, 3752.7, 3754.5 and 3755, Business and Professions Code; and Sections 266, 288, 314, 646.9, 647, 1203.097, 11414, 13519.6 and 13519.7, Penal Code.

§ 1399.372. Rehabilitation Criteria for Denial, Suspensions or Revocations

(a) When considering the denial, petition for reinstatement, modification of probation, suspension or revocation of an RCP license, the board will consider the following criteria in evaluating the rehabilitation of such person and his or her eligibility for a license:

(a) The nature and severity of the act(s) or offense(s).

(b) The total criminal record.

(c) The time that has elapsed since the commission of the act(s) or offense(s).

(d) Compliance with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against such person.

(e) Evidence of any subsequent act(s) or crime(s) committed.

(f) Any other evidence of rehabilitation submitted that is acceptable to the board, including:

(1) Successful completion of respiratory care courses with a "C" or better, as determined by the institution;

(2) Active continued attendance or successful completion or rehabilitative programs such as 12-step recovery programs or psychotherapy counseling;

(3) Letters relating to the quality of practice signed under penalty of perjury from licensed health care providers responsible for the supervision of his/her work.

(g) Statements, letters, attestations of good moral character, or references relating to character, reputation, personality, marital/family status, or habits shall not be considered rehabilitation unless they relate to quality of practice as listed in section (f).

(a) When considering the denial of an RCP license, pursuant to section 480 of the B&P on the grounds that the applicant was convicted of a crime, the board shall consider whether the applicant made a showing of rehabilitation and is presently eligible for a license, if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board will consider the following criteria in evaluating the rehabilitation of such person and his or her eligibility for a license:

(1) The nature and gravity of the crime(s).

(2) 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 rehabilitation.

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

(b) If subdivision (a) is inapplicable, or the board determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a), the board shall apply the following criteria in evaluating an applicant's rehabilitation. The board shall find that the applicant made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the board finds that the applicant is rehabilitated:

(1) The nature and severity of the act(s) or crimes(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 B&P.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in paragraph (1) or (2).

(4) Whether 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 (a)(1)-(5), as applicable.

(6) Evidence, if any, of rehabilitation submitted by the Applicant.

(c) When considering the petition for reinstatement, modification of probation, suspension or revocation of an RCP license on the ground that the licensee was convicted of a crime, the board shall consider whether the licensee made a showing of rehabilitation and is presently eligible for a license, 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:

(1) The nature and gravity of the crime(s).

(2) 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 rehabilitation.

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

(d) If subdivision (c) is inapplicable, or the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivision (c), the board shall apply the following criteria in evaluating a licensee's rehabilitation. The board shall find that the licensee made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the board finds that the licensee is rehabilitated:

(1) The nature and severity of the act(s) or crimes(s).

(2) The total criminal record

(3) The time that has elapsed since commission of the act(s) or crime(s).

(4) Compliance with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against such person.

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

(6) If applicable, evidence of dismissal proceedings pursuant to section 1203.4 of the Penal Code.

(7) Evidence of any subsequent act(s) or crime(s) committed.

(8) Any other evidence of rehabilitation submitted that is acceptable to the board, including:

(i) Successful completion of respiratory care courses with a "C" or better, as determined by the institution;

(ii) Active continued attendance or successful completion or rehabilitative programs such as 12-step recovery programs or psychotherapy counseling;

(iii) Letters relating to the quality of practice signed under penalty of perjury from licensed health care providers responsible for the supervision of his/her work.

(9) Statements, letters, attestations of good moral character, or references relating to character, reputation, personality, marital/family status, or habits shall not be considered rehabilitation unless they relate to quality of practice as listed in section (f).

Note: Authority cited: Sections 482 and 3722, Business and Professions Code. Reference: Sections 475, 480, 481, 482, 488, 490, 493, 3750, 3751 and 3753, Business and Professions Code.

§ 1399.372.1 . Rehabilitation Criteria for Denials of Applications for Crimes Substantially Related to the Duties and Qualifications of a Licensee.

(a) When considering the denial of an RCP license pursuant to section 480 of the B&P on the ground that the applicant was convicted of a crime, the board shall consider whether the applicant made a showing of rehabilitation and is presently eligible for a license, if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board will consider the following criteria in evaluating the rehabilitation of such person and his or her eligibility for a license:

(1) The nature and gravity of the crime(s).

(2) 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 rehabilitation.~~

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

~~(b) If subdivision (a) is inapplicable, or the board determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a), the board shall apply the following criteria in evaluating an applicant's rehabilitation. The board shall find that the applicant made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the board finds that the applicant is rehabilitated:~~

~~(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 B&P.~~

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

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

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

~~Note: Authority cited: Sections 482 and 3722, Business and Professions Code. Reference: Sections 482, 3750, 3751 and 3753, Business and Professions Code.~~

§ 1399.374. Disciplinary Guidelines.

In reaching a decision on the disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.), determining terms and conditions of probation, or consequences for non compliance of ordered probation, the board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines" [2011 2020 Edition] which are hereby incorporated by reference. Deviation from these standards, guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems.

Note: Authority cited: Section 3722, Business and Professions Code; and Sections 11400.20 and 11400.21, Government Code. Reference: Sections 315, 3718 and 3750, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.