



Item: Discussion and Possible Action Regarding Comments Received During the 45-day Comment Period for the Board's Proposed Rulemaking to Amend California Code of Regulations, Title 16, Sections 1399.370 and 1399.372 Relating to Substantial Relationship and Rehabilitation Criteria

Item Summary: At its June 7, 2019 meeting, the Respiratory Care Board (Board) approved regulatory language to implement AB 2138 (Chiu, Chapter 995, Statutes of 2018). The Board noticed the regulation proposal on May 29, 2020, and gave the public forty-five (45) days to provide public comment ending on July 14, 2020. No public hearing was requested or conducted. However, on July 14, 2020 public comment was received via email from Faride Perez-Aucar of Root and Rebound Reentry Advocates and Vinuta Naik, of Community Legal Services of East Palo Alto, commenting on the Board's implementation of Assembly Bill 2138. Following is a memo from Karen Halbo, DCA Regulatory Counsel recommending proposed responses to the comments received.

- Board Action:**
1. President calls the agenda item and it is presented by or as directed by the President.
 2. President requests motion on public comments received.

Option 1 (if the members agree with the proposed responses): Direct staff to reject the proposed comments, provide the responses to the comments as indicated in the meeting materials and complete the regulatory process as authorized by motion at the Board's June 7, 2019, meeting.

Option 2: (if the members have any edits to the proposed responses or wish to accept any comments or make any text changes): Direct staff to accept the following comments and make the following edits to the text: [identify comments to accept and text to change here], but otherwise reject the comments as set forth in the meeting materials.

If edits to the responses are made, direct staff to take all steps necessary to complete the rulemaking process, including sending out the modified text with these changes for an additional 15-day comment period. If after the 15-day public comment period, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulation, and adopt the proposed regulation as described in the modified text notice.

- any other appropriate motion.
 3. President may request if there is a second to the motion, if not already made.
 4. Board member discussion/edits (if applicable).
 5. Inquire for public comment / further Board discussion as applicable.



LEGAL AFFAIRS DIVISION
1625 N. Market Blvd., Suite S 309, Sacramento, CA 95834
P (916) 574-8220 F (916) 574-8623 | www.dca.ca.gov



MEMORANDUM

DATE	August 3, 2020
TO	Respiratory Care Board of California Members
FROM	Karen Halbo, Attorney III, Legal Affairs Division, DCA
SUBJECT	Proposed Responses to Public Comment letter from Root & Rebound and CLSEPA dated July 14, 2020 Regarding Proposed Amendments to Title 16, California Code of Regulations sections 1399.370 and 1399.372 (AB 2138 Implementation)

Background

At its June 7, 2019 meeting, the Respiratory Care Board (Board) approved regulatory language to implement AB 2138 (Chiu, Chapter 995, Statutes of 2018). Key provisions of that bill, which became effective on July 1, 2020, are:

1. Only permits a board to deny a license on grounds that an applicant has been convicted of a crime or has been subject to formal discipline if either of these are met (Business and Professions Code (BPC), § 480, subd. (a)):
2. The conviction was within 7 years of the date of the application and is substantially related to the qualifications, functions, or duties of the profession. The 7-year limit does not apply to convictions for a serious felony (defined in Penal Code, § 1192.7), or for those who must register as a sex offender as described in Penal Code section 290, subdivisions (d)(2) or (3).
3. The applicant has been subject to formal discipline by a licensing board within the past 7 years for professional misconduct that would have been cause for disciplinary action by the board and is substantially related to the profession. (The prior disciplinary action cannot be used to deny if it was based on a dismissed or expunged conviction.)
4. Prohibits a board from requiring that an applicant for licensure disclose information about his or her criminal history. However, a board is permitted to request it for the purpose of determining substantial relationship or evidence of rehabilitation. In such a case, the applicant must be informed that the disclosure is voluntary and failure to disclose will not be a factor in a board's decision to grant or deny an application. (BPC, § 480, subd. (f)(2).)

5. Requires each board to develop criteria to determine whether a crime is substantially related to the qualifications, functions, or duties of the profession.

These criteria are required to be considered when considering the denial, suspension, or revocation of a license. By law, boards are required to adopt regulations that include all of the following criteria (BPC, § 481):

1. The nature and gravity of the offense.
 2. The number of years elapsed since the date of the offense.
 3. The nature and duties of the profession in which the applicant seeks licensure or is licensed.
6. Prohibits a board from denying a license based on a conviction without considering evidence of rehabilitation. (BPC, § 481)
 7. Requires each board to develop criteria to evaluate rehabilitation when considering denying, suspending, or revoking a license. A showing of rehabilitation shall be considered if the applicant or licensee has been completed their criminal sentence without a violation of parole or probation, or if the board finds its criteria for rehabilitation has been met. (BPC, § 482)

To successfully adopt, amend or repeal a regulation, the Board is required to meet the following standards in the Administrative Procedure Act (APA): (1) necessity, (2) authority, (3) clarity, (4) consistency, (5) reference, and (6) nonduplication. (Gov. Code, § 11349.1)

Status of the Regulation Proposal

The Board noticed the regulation proposal on May 29, 2020, and gave the public forty-five (45) days to provide public comment ending on July 14, 2020. No public hearing was requested or conducted. A public comment was received on July 14, 2020 (see **Attachment A**).

Summary of Comments Received and Proposed Responses

Faride Perez-Aucar of Root and Rebound Reentry Advocates and Vinuta Naik, of Community Legal Services of East Palo Alto, submitted a letter commenting on the Board's implementation of Assembly Bill 2138, dated July 14, 2020 ("the letter" attached hereto as **Attachment A**). Perez-Aucar and Naik submitted all comments below on behalf of their respective organizations and A New Way of Life Reentry Project, Californians for Safety and Justice, Center for Employment Opportunities, Center for Living and Learning, Criminal Justice Clinic, UC Irvine School of Law, Drug Policy Alliance, East Bay Community Law Center, Legal Aid at Work, Legal Aid Foundation of Los Angeles, Legal Services for Prisoners with Children, All of Us or None, Los Angeles Regional Reentry Project, National Association of Social Workers, California Chapter,

National Employment Law Project, REDF, The Record Clearance Project, San Jose State University, Rubicon Programs, and Underground Scholars Initiative. Below is a summary of each comment and a recommended response. The responses were prepared in consultation with, and based upon, direction given by the Board's Executive Officer.

1. Initial Comment: General Statement/ Purpose of the Letter

Summary: The letter states that the organizations supporting the letter believe the proposal should go further in order to fully implement the intention and spirit of the AB 2138 text. They believe there is a lack of clarity in the licensure process for individuals who have been impacted by the criminal justice system, coupled with the limited number of organizations that support low-income and indigent people seeking occupational licensure, leads many to give up. They believe the proposed regulations leave gaps and fail to implement Business and Professions Code (BPC) sections 480, 481, 482, and 493 and fall short of the intent of the bill to combat discrimination against people with records who have demonstrated rehabilitation and are seeking a professional career.

Proposed Response: The Board rejects these comments about the general purpose of the proposed regulatory changes. The purpose of the proposed regulations is to clarify substantial relationship criteria and criteria for rehabilitation, as required by AB 2138 (BPC § 481). In particular, consistent with the requirements enacted by AB 2138, these regulations would adopt all of the following criteria, which would assist the Board with a balanced approach to evaluating an applicant's eligibility for licensure:

1. The nature and gravity of the offense.
2. The number of years elapsed since the date of the offense.
3. The nature and duties of the profession in which the applicant seeks licensure or is licensed.

Further, clarifying how to determine whether a crime is substantially related and clarifying the factors that will be considered when evaluating rehabilitation should assist applicants and licensees with demonstrating their rehabilitation.

2. Specific Complaints re: Subdivision 1388.370(c)

Summary: In response to the specific objection that the subdivision 1399.370(c) would deem certain listed violations of statutes to be substantially related to the qualifications, functions, or duties of an respiratory care practitioner without requiring the Board to evaluate those crimes on an individual basis using the three criteria listed in BPC section 481, the amendments made by AB 2138 to BPC section 481 only require boards to consider the listed criteria “when considering the denial, suspension, or revocation of a license,” and do not preclude a board from determining outside of that context that certain violations necessarily bear a substantial relationship to the qualifications, functions, or duties of the regulated profession, and do not, therefore, need to be considered on an individual basis. Although the substantial relationship criteria listed in BPC section 481 offers safeguards against arbitrary or inconsistent determinations, rulemaking proceedings under the California Administrative Procedure Act are subject to separate safeguards against that possibility, including notice and comment procedures. Section 1399.370 would deem the violations of statute set out in subdivision 1399.370(c) to be substantially related to the qualifications, functions, or duties of a respiratory care practitioner to ensure greater consistency in Board substantial relationship determinations; to save the Board duplicative determinations in the case of violations that are necessarily grounds for denying, suspending, or revoking a license for the reasons stated in the Initial Statement of Reasons; and to save applicants and licensees who have been convicted of those crimes the time and resources they may otherwise expend debating the existence of a substantial relationship, so that they may focus on providing evidence of rehabilitation.

The Board has chosen to not reiterate various subdivisions of BPC section 480 in proposed section 1399.370, to avoid duplicating statutory language, as is further discussed in the response to Comment #2, below.

In response to the specific objection that proposed subdivision 1399.372(c) relies too much on law enforcement reports and determination of an applicant’s progress, this mischaracterizes the two-step guidance concerning rehabilitation these regulations provide the Board, which is further discussed in the response to Comment #5, below.

4. Specific Complaint re: Subdivision 1399.372(c)

Summary: The letter says subdivision 1399.372(c) relies too much on law enforcement reports and determinations to determine rehabilitation, and refers to Comment 5 in the letter.

Proposed Response: In response to the specific objection that proposed subdivision 1399.372(c) relies too much on law enforcement reports and determination of an applicant's progress, the Board finds this mischaracterizes the two-step guidance concerning rehabilitation these regulations provide the Board, which is further discussed in the response to Comment #5, below.

5. Specific Complaint re: Subdivision 1399.372(d)(9)

Summary: The letter says the list of materials not to be submitted to the Board in subdivision 1399.372(d)(9) excludes from the Board's consideration valuable information as to why an applicant is in a different situation from the situation they were in when they committed the crime, and this prevents the Board from fully understanding an applicant's rehabilitation. The Board wishes to point out that the commentator incorrectly asserts that this section applies to applicants, and it does not. Under subdivision 1399.372 (b)(6), the applicant can submit evidence of rehabilitation without the enumerated restrictions that are applied in subdivision 1399.372(d)(9).

Proposed Response: In response to the specific objection, the Board would like to point out that subdivision 1399.372(d)(9) is, word for word, already set out in the Board's regulation concerning the rehabilitation criteria for petitions for reinstatement, modification of probation, and for suspension or revocation of an existing Respiratory Care Practitioner license. When the existing regulation was adopted, the Board determined certain evidence of rehabilitation was simply not relevant and therefore not helpful to the Board's decision about a licensee unless that evidence related to the quality of practice as listed in the now renumbered subdivision 1399.372(d)(8)(iii). In making such determinations over the years since that subdivision was added in 1997, the Board has not found reason to change its previous determination concerning what materials are relevant to the Board's determination. It is only when the Board considers a petition for reinstatement, modification of probation, suspension, or revocation of a license on the grounds of a criminal conviction, and the Board has reached the determination that the licensee or applicant did not make a showing of rehabilitation under the criteria set out in subdivision (c), or the licensee or applicant did not complete the criminal sentence at issue without a violation of parole or probation does the Board's list of irrelevant material in subdivision 1399.372(d)(9) impact the Board's determination. In this proposed rulemaking, the Board has chosen to continue to provide licensees with clarity about what materials are actually persuasive and relevant to the Board's determination

6. Comment #1

Summary: The letter says the proposed regulations should include the 7-year washout period for consideration of convictions or discipline which are not considered serious felonies under the Penal Code § 1192.7. (See BPC, § 480, subd. (a).)

Proposed Response: The Board rejects this comment. The seven-year period during which a board can deny a license for a conviction or formal discipline is fully described in BPC section 480, subdivision (a)(1). As this is already included in statute, adding this provision is duplicative of section 480 and therefore it is not necessary to repeat it in the regulations.

6. Comment #2

Summary: The letter asks that proposed regulations should provide that a person with a criminal history shall not be denied a license if the applicant has obtained a Certificate of Rehabilitation, dismissal per Penal Code section 1203.4, 1203.4a, 1203.41 or 1263.42, or an arrest which led to an infraction/citation or a disposition other than conviction, or juvenile adjudication. (See BPC, § 480, subd. (b) – (d).)

Proposed Response: The Board rejects this comment. BPC section 480, subdivision (c) already clearly states that a license may not be denied based on a conviction, or its underlying acts, if it has been dismissed or expunged pursuant to Penal Code sections 1203.4, 1203.4a, 1203.41, or 1203.42. In addition, BPC section 480, subdivision (b) prohibits license denial if the applicant has obtained a certificate of rehabilitation, was granted clemency or a pardon, or has made a showing of rehabilitation per BPC section 482. BPC section 480, subdivision (d) prohibits license denial based on arrest that resulted in something other than a conviction, such as an infraction, citation, or juvenile adjudication. As noted above, Business and Professions Code section 480, subdivisions (b), (c), and (d) explicitly prohibit denial of a license in those specific circumstances. Since these provisions are already specifically covered in statute, adding them again in regulation would be duplicative. Therefore, it is not necessary to repeat them in regulations.

7. Comment #3

Summary: The letter states that the regulations fail to include that the Board shall not require an applicant to disclose any information or documentation regarding the applicant's criminal history. (See BPC, § 480, subd. (f)(2).)

Proposed Response: The Board rejects this comment. Business and Professions Code section 480, subdivision (f)(2) already covers this in detail. It would therefore be duplicative of the statute and not necessary to repeat this in the regulations.

8. Comment #4

Summary: The letter states that the regulations fail to include that the Board must notify the applicant in writing if the applicant is denied or disqualified from licensure. The letter states the Board must have procedures in place for the applicant to challenge a decision or to request re-consideration, and that the applicant has a right to appeal the Board's decision and the process of requesting a complete conviction history. (See BPC, § 480, subd(f)(3).)

Proposed Response: The Board rejects this comment. Business and Professions Code sections 480(f)(3), 485 through 487, and the California Administrative Procedure Act commencing at Government Code sections 11500 and following already contains these requirements, including requirements for providing the legal and factual basis for the denial, service of the denial on the applicant, and notice to the applicant regarding the opportunity to request a hearing to challenge the decision. It would therefore be duplicative of these statutes and not necessary to repeat this in the regulations.

9. Comment #5

Summary: The letter states that the intent of AB 2138 was not to incorporate mere probation or parole reports into the occupational licensing determinations. The letter states that merely looking to law enforcement will not adequately show how an applicant would do on the job. The letter further says rehabilitation can and does take many forms that extend beyond mere law enforcement supervision. The letter recommends that the Board provide examples of evidence of mitigating circumstances and rehabilitation efforts to better define rehabilitation and to assist both the Board and licensing applicants.

Proposed Response: The Board rejects this comment. Business and Professions Code section 482 requires boards to develop criteria to evaluate rehabilitation and to consider whether an applicant or licensee has made a showing of rehabilitation if either the criminal sentence has been completed without violation of probation or parole, or if the Board otherwise finds the applicant rehabilitated.

Therefore, sections 1399.370 and 1399.372 of the proposal would provide two-step rehabilitation guidance for the Board in complying with this law:

- First, the Board must determine if the completion of the criminal sentence with no violations constitutes rehabilitation. Consistent with the direction in AB 2138, to consider rehabilitation if an applicant completes the criminal sentence at issue without a violation of parole or probation, specific criteria are being added to sections 1399.370 and 1399.372 to help the Board determine whether sentence completion demonstrates rehabilitation. Criteria the Board is proposing include length of the parole or probation, whether it was shortened or lengthened and the reasons, and any modifications to the parole or probation that may have been made. This represents the first step and includes probation or parole reports, because these are an indication of how well compliance was achieved. However, if the Board does not find rehabilitation based solely on sentence completion, there is still a second step that must be considered. An applicant can show rehabilitation as proposed in subdivision (b) of the regulations.
- The second step, if rehabilitation is not demonstrated solely based on the sentence completion, is that the Board must consider certain other criteria to evaluate rehabilitation. This includes nature and severity of the crime, time elapsed since the crime, evidence of any subsequent crimes or conduct, compliance with probation or parole, and evidence of rehabilitation submitted by the applicant or licensee. A general category permitting submission of any rehabilitation evidence allows an applicant to demonstrate volunteer or charity work, furthered education, successful employment, or any other activities that they choose to submit to be considered by the Board. The Board can and already does give serious consideration to these factors when considering whether an applicant is rehabilitated.

There are many possible ways of showing rehabilitation, and many unique scenarios of mitigating circumstances. Attempting to specifically list some but not others may be limiting or misleading to the applicant and the staff of the Board. In addition, the circumstances of each enforcement case are unique and what is sufficient evidence of rehabilitation for one case may not suffice for another or may not be relevant for all types of crimes (e.g., attendance at Alcoholics Anonymous is a common demonstration of rehabilitation for alcohol-related crimes but is not a good example of rehabilitation for a crime where alcohol was not involved). The Board believes that the regulation adequately addresses the rehabilitation issues while allowing an applicant

to provide evidence that specifically addresses their rehabilitative efforts relative to a crime or conduct on a case-by-case basis.

10. Comment #6

Summary: The letter states that the regulations fail to mention requirements to obtain statistical information on the number of applicants with a criminal record who apply and receive notice of denial or disqualification of licensure, provided evidence of mitigation or rehabilitation, and the final disposition of the application, and demographic information. (See BPC, § 480, subd. (g)(1), (2).)

Proposed Response: The Board rejects this comment. These requirements are already stated in statute (BPC, § 480, subd. (g)(1) and (2)). It would therefore be duplicative of the statute and not necessary to repeat this in the regulations.

Recommendation

The members should review the proposed responses and consider whether to accept or reject any of these comments. After review, the Board may consider any of the following actions:

Option No. 1 (If the members agree with the proposed responses): Direct staff to reject the proposed comments, provide the responses to the comments as indicated in the meeting materials and complete the regulatory process as authorized by motion at the Board's June 7, 2019, meeting.

Option No. 2: (If the members have any edits to the proposed responses or wish to accept any comments or make any text changes):

Direct staff to accept the following comments and make the following edits to the text:

[identify comments to accept and text to change here], but otherwise reject the comments as set forth in the meeting materials.

In addition, direct staff to take all steps necessary to complete the rulemaking process, including sending out the modified text with these changes for an additional 15-day comment period. If after the 15-day public comment period, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulation, and adopt the proposed regulation as described in the modified text notice.



July 14, 2020

Via Email

California Department of Consumer Affairs
Respiratory Care Board
ATTN: Christine Molina and Stephanie Nunez
3750 Rosin Court, Suite 100
Sacramento, CA 95834
Email: rcbinfo@dca.ca.gov

**RE: Comments in Response to Dept. of Consumer Affairs, Respiratory Care Board
Regulatory Action Concerning the Implementation of AB 2138, Proposal to Amend Sections
1399.370 and 1399.372 of Article 7 of Division 13.6 of Title 16 of the California Code of
Regulations**

Dear Christine Molina and Stephanie Nunez:

Thank you for the opportunity to submit comments to the Department of Consumer Affairs (“DCA”), Respiratory Care Board (“Board”) regarding proposed regulations to implement AB 2138.

Assembly Bill 2138 was authored by Assemblymembers David Chiu and Evan Low to help formerly incarcerated people have a fair chance at obtaining occupational licensure. AB 2138 was sponsored by the Anti-Recidivism Coalition, East Bay Community Law Center, Legal Services for Prisoners with Children, Root & Rebound and supported by a coalition of 50 organizations. Thanks to the passage of AB 2138 in 2018, the roughly 1 in 3 California adults or 8 million Californians with arrest or conviction records will face fewer barriers to employment and will help to fill the much needed occupational employment gaps in the State.

Formerly incarcerated workers strive to obtain permanent, stable, and living wage jobs; however around 30% of jobs require licensure, clearance, or oversight by a governing body. This oversight, while intended to protect public safety, disproportionately impacts people of color, low-income, and indigent communities of people. These communities have been disproportionately impacted by over-policing and over-criminalization resulting in contacts with law enforcement that bar these applicants from later obtaining the licensure they require to pursue employment under DCA’s regulation. Moreover, applicants have been deterred by the lengthy process, lack of clarity, and obstacles to obtaining licensure – problems that AB 2138 seeks to rectify to offer a fair chance to all people.

However, across the state of California, there are only a handful of organizations that support low-income and indigent people seeking occupational licensure. Licensure applicants look for help answering questions about general eligibility, the initial application, appeals, probationary and restricted licenses, and license revocations or suspensions. The lack of clarity in this process and lack of low-cost or free service providers, leads many people facing differing levels of adversity to give up entirely. We believe that our direct experience with clients who are undergoing this difficult process, along with our involvement in the drafting and passage of AB 2138, makes us equipped to understand the proper implementation of this bill.

The undersigned organizations commend the Board for its action to implement AB 2138 and thereby reduce discrimination against people of color in California, who are disproportionately denied job opportunities because of occupational licensing-related conviction background checks. We support amendments to Sections 1399.370 and 1399.372 of Article 7 of Division 13.6 of Title 16 of the California Code of Regulations to reflect the passage of Assembly Bill 2138, Chiu, but believe the proposed amendments should be clarified and go further in order to fully implement the intention and spirit of the AB 2138 text.

The proposed regulations leave some gaps in the regulatory scheme under the changes to CA Business and Professions Code sections 480, 481, 482, and 493 as modified by AB 2138. These proposed regulations fail to meet and implement CA B&P Code sections 480, 481, 482, and 493 and are not, as currently written, valid. The proposed regulations also fall short of the intent of the bill, which includes combating discrimination against people with records that have demonstrated rehabilitation and seek to establish themselves professionally.

Specifically, the proposed regulations do not comply with AB 2138 as follows:

- Section 1399.370(c) states that certain violations are substantially related regardless of the time that has passed or the nature and gravity of the offense in contravention of AB 2138 Business and Professions Code section 481. AB 2138 allows the Board discretion to determine which crimes are substantially related on an individual basis.
- Moreover, section 1399.370(c) fails to note that a board may deny a license only if the criminal / formal disciplinary history occurred within the preceding seven years from the date of application. See Business and Professions Code section 480(a).
- Moreover, section 1399.370(c) fails to note that criminal history that resulted in the applicant obtaining a Certificate of Rehabilitation, pardon, dismissal per Penal Code section 1203.4 *et seq.*, or an arrest that resulted in a disposition other than a conviction **shall** not be denied a license. See Business and Professions Code section 480(b)-(d).
- Section 1399.372, as written, relies too heavily on law enforcement's reports and determination of the applicant's progress (e.g., in considering the circumstances of an applicant's parole or probation period). Rehabilitation can and does take many forms that the current language does not fully embrace. Please see number 5 below for examples of rehabilitation to expand the proposed regulations.

- Section 1399.372(d)(9) explicitly disqualifies the consideration of “statements, letters, attestations of good moral character, or references relating to character, reputation, personality, marital / family status, or habits”. This excludes valuable information that can demonstrate why an applicant is in a different situation from the situation when they committed the crime in question. Such limitations prevent the board from fully understanding an applicant’s rehabilitation.

Further, we urge the Board to incorporate the full extent of AB 2138 by including the following provisions:

1. The proposed regulations should include the 7 year washout period for consideration of convictions or discipline which are not statutorily considered serious felonies under the Cal. Penal Code. 1192.7. See Cal Business and Professions Code section 480(a).
2. The proposed regulations should provide that a person with a criminal history **shall not** be denied a license if the applicant has obtained a Certificate of Rehabilitation, dismissal per Penal Code section 1203.4, 1203.4a, 1203.41, or 1203.42, or an arrest which led to an infraction/citation or a disposition other than a conviction, or juvenile adjudication. See Cal Business and Professions Code section 480(b)-(d).
3. The proposed regulations should include that the board shall not require an applicant to disclose any information or documentation regarding the applicant’s criminal history. See Cal Business and Professions Code section 480(f)(2).
4. The proposed regulations should include that the board shall notify the applicant in writing if the applicant is denied or disqualified from licensure. The Board must provide procedures describing the process for the applicant to challenge the decision or to request reconsideration, that the applicant has a right to appeal the board’s decision, and the process of requesting a complete conviction history. See Cal Business and Professions Code section 480(f)(3).
5. The intent of AB 2138 was not to incorporate mere probation or parole reports into the occupational licensing determinations. Merely looking to law enforcement will not adequately show how an applicant would do on the job. Rather, rehabilitation can and does take many forms that extend beyond mere law enforcement supervision. To better define rehabilitation, we recommend that the board provide examples of evidence of mitigating circumstances and rehabilitation efforts to assist both the Board and licensing applicants.

For instance, the Board should consider adding the following rehabilitation criteria:

- Volunteer service;
- Successful employment in a related field;
- A history of work experience in an employment social enterprise;
- Unpaid work in the community;
- Furthered education;
- Abstinence from controlled substances and/or alcohol;
- Stability of family life, fulfillment of parental and familial responsibilities;
- New and different social and business relationships from those which existed at the time of the underlying charges at issue;
- Change in attitude of the applicant as evidenced by:
 - Personal testimony,
 - Evidence of rehabilitation submitted by the applicant,
 - Evidence from family, friends, and/or other persons familiar with the applicant's previous behavior patterns and subsequent attitude and behavioral changes, and;
- Other markers of rehabilitation.

6. The proposed regulations fail to include any mention of requirements to obtain statistical information on the number of applicants with a criminal record who apply and receive notice of denial/disqualification of licensure, provided evidence of mitigation or rehabilitation, the final disposition of the application, and demographic information. See Cal Business and Professions Code section 480(g).

Adequate implementation of the changes to California Business and Professions Code sections 480, 481, 482, and 493 will go a long way toward restoring hope and opportunity for the nearly 1 in 3 California adults or 8 million Californians who have an arrest or conviction record. Thank you for your consideration.

If you have any questions regarding the content of these comments, please contact Faride Perez-Aucar (Root and Rebound) or Vinuta Naik (Community Legal Services in East Palo Alto).

Sincerely,

/s/ Faride Perez-Aucar

/s/ Vinuta Naik

Faride Perez-Aucar
510-279-4662

fperez@rootandrebound.org

Vinuta Naik
650-326-6440

vnaik@clsepa.org

Organizations:

A New Way of Life Reentry Project
Californians for Safety and Justice
Center for Employment Opportunities
Center for Living and Learning
Community Legal Services in East Palo Alto
Criminal Justice Clinic, UC Irvine School of Law
Drug Policy Alliance
East Bay Community Law Center
Legal Aid at Work
Legal Aid Foundation of Los Angeles
Legal Services for Prisoners with Children, All of Us or None
Los Angeles Regional Reentry Project
National Association of Social Workers, California Chapter
National Employment Law Project
REDF
The Record Clearance Project, San Jose State University
Root and Rebound
Rubicon Programs
Underground Scholars Initiative

California Code of Regulations
Title 16. Professional and Vocational Regulations
Division 13.6. Respiratory Care Board

PROPOSED LANGUAGE

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

Amend section 1399.370 to read:

§ 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. ~~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 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.

(c3) 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 481 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.~~

**California Code of Regulations
Title 16. Professional and Vocational Regulations
Division 13.6. Respiratory Care Board**

PROPOSED LANGUAGE

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

Amend section 1399.372 to read:

§ 1399.372. Rehabilitation Criteria for Denials, 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 fit 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 fitness 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 fit 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 fit 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 fit 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 (d)(8)(iii).

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.