

RESPIRATORY CARE BOARD OF CALIFORNIA

Division 13.6 Respiratory Care Board of California

(Notice published May 29, 2020)

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Respiratory Care Board of California (Board) proposes to take the action to amend sections 1399.370 and 1399.372 of Article 7 of Division 13.6 of Title 16 of the California Code of Regulations (CCR) regarding Substantial Relationship, and Rehabilitation Criteria for Denials, Suspensions, or Revocations as described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under "Contact Persons" in this Notice.

WRITTEN COMMENT PERIOD

Any person or his/her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Please submit written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under "Contact Persons" in this Notice. The written comment period closes at **5:00 p.m. on Tuesday, July 14, 2020**. The Board will consider only comments received at the Board's office by that time. Written or oral comments also may be received by the Board at a hearing, if any is scheduled.

AVAILABILITY OF MODIFICATIONS

The Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the persons designated in this Notice as Contact Persons and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Business and Professions Code (BPC) section 3722, and to implement, interpret or make specific BPC sections 141, 475, 480, 481, 482, 488, 490, 492, 493, 3722, 3750, 3750.5, 3751, 3752, 3752.5, 3752.6, 3752.7, 3753, 3754.5, and 3755, the Board is considering changes to Article 7, Division 13.6 of Title 16 of the CCR.

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INFORMATIVE DIGEST

The Board licenses respiratory care practitioners and respiratory care practitioner applicants who are health care practitioners that provide health care services. Existing law (BPC sections 480 and 490) presently authorizes the Board to deny an application for licensure or discipline a licensee based on a conviction for a crime or act substantially related to the licensed business or profession. BPC section 481 authorizes the Board to develop criteria for determining whether a crime or act is substantially related to the qualifications, functions, or duties of respiratory care practice. BPC section 482 requires the Board to develop criteria to evaluate an applicant's or licensee's rehabilitation when considering the denial of a license or discipline of a licensee. The Board has adopted regulations (16 CCR 1399.370 and 1399.372) that set forth its substantial relationship criteria and rehabilitation criteria for crimes or acts considered substantially related to qualifications, functions, or duties of a licensee.

Effective July 1, 2020, pursuant to the provisions of Assembly Bill 2138 (Stats. 2018, ch. 995) (hereafter, AB 2138), the Board's existing authority to deny an applicant a license based upon a substantially related criminal conviction will significantly change. This proposal seeks to adopt regulations consistent with this recently enacted legislation and to more accurately reflect the Board's authority to consider denials and discipline.

Effective July 1, 2020, BPC section 481, subsection (b) will require the Board's substantial relationship criteria regulations to include all of the following:

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

The proposed regulatory amendments will also address other changes to law enacted by AB 2138. These proposed amendments include references to "professional misconduct" as this will be considered a legal basis for denial under BPC section 480. The proposed language will also add references to discipline under BPC section 141 because substantially related acts that are the basis for discipline in another jurisdiction may be used to discipline a licensee under that section. The proposed amendments also add that substantially related crimes, professional misconduct, or acts would include violating other state or federal laws governing the practice of respiratory care.

In addition, the Board proposes to add new rehabilitation criteria to help the Board consider whether an applicant or licensee made a "showing of rehabilitation" as required by AB 2138. (BPC sections 480, 482, as added by AB 2138, sections 4, 9.) The proposed amendments will also implement changes to how the Board considers rehabilitation evidence when considering denials or discipline.

Finally, the proposed regulation amends the rehabilitation criteria for reinstatement or modification of penalty consistent with the rehabilitation criteria for denials or discipline and makes other minor revisions.

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Anticipated Benefits of the Proposed Regulation:

The proposed regulatory action places applicants and licensees on notice that the Board is statutorily authorized to deny, suspend, or revoke a license because of professional misconduct and discipline taken by another licensing board or jurisdiction. The proposed amendments also make relevant parties (e.g., the Office of the Attorney General, Office of Administrative Hearings, respondents, and respondent's counsels) aware that when considering denial or discipline of applicants or licensees, the Board uses the listed criteria to determine whether the crime, act, or professional misconduct is substantially related to respiratory care practice.

AB 2138 was enacted to reduce licensing and employment barriers for people who are rehabilitated. The proposed regulatory action furthers that goal by adopting criteria that emphasizes an applicant's or licensee's rehabilitative efforts and what is needed to make a showing of rehabilitation. This may lead to fewer denials and an increase in the number of licensed respiratory care practitioners in the marketplace, allowing for more health care providers to treat increasing numbers of California consumers.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

During the process of developing these amendments, the Board conducted a search of any similar regulations on these topics and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

1. Mandate on local agencies and school districts: None
2. Costs or savings to any state agencies: None
3. Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None
4. Other nondiscretionary costs or savings imposed on local agencies: None
5. Costs or savings in federal funding to the state: None
6. Cost impacts on representative private person or business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
7. Statewide adverse economic impact directly affecting businesses and individuals: None
8. Significant effect on housing costs: None

Business Impact:

The regulatory amendments will not have a significant statewide adverse economic impact directly affecting businesses. This initial determination is based on the following facts:

The Board has approximately 23,600 licensees for the current fiscal year. During the 2016/2017 fiscal year the Board issued 1,105 licenses and denied 1, and in fiscal year 2017/2018 the Board issued 1,116 licenses and denied 0. Therefore, the Board has denied fewer than .01% of all applicants.

Since the Board has denied fewer than .01% of all applicants this proposal will not have an adverse economic impact. AB 2138 was enacted to reduce licensing and employment barriers for people who have been convicted of a crime or due to acts underlying the conviction, who have a certificate of rehabilitation, were granted clemency, made a showing of rehabilitation, or the conviction was dismissed or expunged. These proposed amendments will further assist in that effort through adoption of standards designed to implement new substantial relationship and rehabilitation criteria. As a result, the Board anticipates that there may be fewer denials or disciplinary actions based upon criminal convictions and, therefore, no significant or statewide adverse economic impacts.

Effect on Small Business:

This regulation will not have a significant statewide effect on small businesses because the proposal is not of sufficient magnitude to expand businesses. This initial determination is based on the following facts:

Historically, the Board denied fewer than 1% of all applications. Even assuming the number of denials or discipline would decrease because of these proposed amendments, the Board believes that this data demonstrates that the decrease would not be significant enough to expand businesses who hire respiratory care practitioners.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/New Businesses

The Board has determined that this regulatory proposal will not have any impact on the creation or elimination of jobs or create new businesses or eliminate existing businesses, and the expansion of businesses currently doing business within the State of California because the proposal is not of sufficient magnitude to create or eliminate businesses. Historically, the Board has denied fewer than 1% of all applicants. Even assuming the number of denials or discipline would decrease because of the proposed regulatory action, the Board believes that this data demonstrates that these regulations would not be significant enough to create or eliminate businesses that hire respiratory care practitioner (RCP) applicants and RCPs who have violated the Act, or employers who employ RCPs who are under investigation or on probation.

Effect on Small Business

The Board has determined that the proposed regulations will not significantly affect small

businesses in the State of California. These regulations only impact RCP applicants and licensees who have violated the Act, or employers who have RCPs in their employ who are under investigation or on probation.

Benefits of Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

This regulatory proposal will provide a very modest benefit to the health and welfare of California residents because by implementing criteria that emphasize rehabilitative efforts, the proposal will create an opportunity for employment for people who have been convicted of a crime and are able to make a showing of rehabilitation. This may lead to an increase in RCPs and RCP applicants in the marketplace and, therefore, allow for more health care providers to treat increasing numbers of California consumers. This proposed rulemaking is not anticipated to have an impact on worker safety or the State's environment as it does not involve worker safety or environmental issues.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative the Board considered, or that has otherwise been identified and brought to its attention, would either be more effective in carrying out the purpose for which the regulatory amendments are proposed or would be as effective and less burdensome to affected private persons than the regulatory amendments described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested persons may present written statements relevant to the above determinations to the Board at the address indicated under Contact Persons.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulation, and of the initial statement of reasons, including any document incorporated by reference, and all of the information upon which the proposal is based, may be obtained upon request to the Board at 3750 Rosin Court, Suite 100, Sacramento, CA 95834 or on the Board's website at www.rcb.ca.gov.

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

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the persons named below. You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below, or by accessing the website listed, on the following page.

CONTACT PERSONS

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Christine Molina
Address: 3750 Rosin Court, Suite 100
Sacramento, CA 95834
Telephone No.: (916) 999.2190
Fax No.: (916) 263.7311
E-Mail Address: rcbinfo@dca.ca.gov

The backup contact person is:

Name: Stephanie Nunez
Address: 3750 Rosin Court, Suite 100
Sacramento, CA 95834
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Website Access: Materials regarding this proposal can be found at www.rcb.ca.gov.