

**Bureau of Real Estate Appraisers
Initial Statement of Reasons**

Subject Matter of Proposed Regulations: Substantial Relationship and Rehabilitation Criteria

Sections Affected: Amend Section 3722 and 3723 of Title 10 of the California Code of Regulations (CCR).

Background and Statement of the Problem:

In accordance with the statutory amendments implemented by Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), by July 1, 2020, BPC section 481 will require the Bureau to develop criteria, when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the professions it regulates. Further, BPC section 493 will require the Bureau to determine whether a crime is substantially related to the qualifications, functions, or duties of the profession it regulates by using criteria including the nature and gravity of the offense, the number of years elapsed since the date of the offense, and the nature and duties of the profession. In addition, BPC section 482 will require the Bureau to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license.

CCR section 3722 establishes the criteria for determining when a crime, professional misconduct, or act is substantially related to the qualifications, functions and duties of a licensee. CCR section 3723 establishes the criteria for determining rehabilitation of an applicant or licensee when considering denial, suspension, or revocation of a license. The Bureau proposes to amend these sections to comply with AB 2138.

Specific Purpose of Each Adoption, Amendment, or Repeal

Section 3722(a)

Purpose: This is necessary to expand the regulation to include discipline under BPC section 141 and Division 1.5 as AB 2138 requires. The regulation seeks to implement, interpret, and make specific BPC sections 141 and division 1.5 (primarily section 480) by adding their provisions to the Bureau's substantial relationship criteria.

Existing law, at BPC section 141, authorizes the Bureau to discipline a licensee for discipline taken by another state, a federal agency, or a country ("foreign jurisdiction") for any act "substantially related" to the practice regulated through California licensure. In addition, effective July 1, 2020, BPC section 480 authorizes this Bureau to deny a license on the basis that the applicant was subject to formal discipline by a licensing Bureau located in or outside California for "professional misconduct" under specified conditions. (See BPC, § 480, subd. (b), as added by AB 2138).

This proposal includes references to BPC section 141 (discipline by a foreign jurisdiction) and "professional misconduct" in the Bureau's proposed substantial relationship criteria regulation, to reflect the Bureau's authority to discipline or deny on these bases.

The proposed language also specifies that a crime, professional misconduct, or act is considered substantially related "if, to a substantial degree, it evidences present or potential unfitness of a person holding such a license to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare."

The purpose of connecting the licensee's crime, professional misconduct, or act to an evidenced unfitness related to performing functions consistent with the public's health, safety, or welfare is to identify the types of crimes, professional misconduct, or acts with which the Bureau is concerned. This is necessary because protection of the public is paramount and the Bureau cannot license those who are unfit for licensure.

Anticipated Benefit: The proposal would provide clarity to applicants and licensees when the Bureau is considering whether a crime, professional misconduct, or act is substantially related to the qualifications, functions or duties of a licensed appraiser.

Section 3722(b)

Purpose: This is necessary to implement AB 2138 and BPC section 481, which requires each bureau to develop criteria to aid it, when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the professions regulated by the bureaus. AB 2138 specified three criteria that bureaus must consider when evaluating whether a crime is "substantially related" to the regulated profession. The criteria shall include all of the following: (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. (BPC, § 481, subd. (b), as added by AB 2138, § 7; see also BPC, § 493, subd. (b), as added by AB 2138, § 13.) Accordingly, the proposed regulation lists each of these criteria for the Bureau to consider when making the substantial relationship determination. This proposed addition is necessary to conform the regulation to statute.

Anticipated Benefits: The proposed revisions would provide clarity and transparency to license applicants and licensees by listing the specific criteria the Bureau must consider when making the substantial relationship determinations.

Section 3722(c)

Purpose: This is necessary to clarify that crimes, professional misconduct, or acts that are substantially related to the qualifications, functions, or duties of a Bureau licensee include, but are not limited to, specific actions. The specific actions have not been amended, but the proposal makes minor revisions to this subsection to accommodate the revisions made to subsection (a). The existing subdivision (a) language was moved and incorporated within the new subdivision (a). The existing subdivision (b) was partially deleted, renumbered (12), and placed under the new subdivision (c). Some introductory language was deleted because it was no longer necessary

to include since it was placed under subdivision (c). Subdivision (c) states what acts are considered substantially related to the qualifications, functions, and duties of a licensee. Thus, there was no need to include similar language in a subsection of subdivision (c). Current subdivision (c) was deleted because it is not necessary to state what weight should be given to a substantially related crime or act.

Anticipated Benefits: The proposed revisions would provide clarity to applicants and licensees of the specific crimes, professional misconduct, or acts that are substantially related to the qualifications, functions, or duties of a Bureau licensee.

Section 3723(a)

Purpose: This is necessary to comply with the requirements of AB 2138, section 9, and BPC section 482, subdivision (b)(1), which requires the Bureau to consider whether an applicant has made a showing of rehabilitation if the applicant has completed the criminal sentence at issue without a violation of parole or probation. As AB 2138 does not prescribe new rehabilitation criteria, the proposal provides a specific list of criteria for the Bureau to consider for these applicants. The list of criteria is narrow in scope and limited to considerations relevant to the crime and the criminal sentence, since AB 2138 requires the Bureau to consider rehabilitation in the narrow context of an applicant who completed the criminal sentence without a parole or probation violation.

The Bureau must consider the nature and gravity of the crime because this is the offense against which the applicant's rehabilitative efforts will be evaluated. The Bureau will consider the length of the applicable parole or probation period, because the length of time that the applicant served probation or parole without a violation is relevant to whether the applicant is rehabilitated and will comply with licensure requirements in the future.

The Bureau must consider the length of the parole or probation as this is relevant to inform the Bureau on whether the applicant is rehabilitated.

The Bureau must consider the extent to which the parole or probation period was shortened or lengthened, and the reason for any change, because such periods can be shortened or lengthened for good or bad conduct, and this may bear on whether the applicant is sufficiently rehabilitated.

The Bureau must consider the terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation, because they give the Bureau standards against which to measure the applicant's rehabilitation.

The Bureau must consider the extent to which the terms or conditions of parole or probation were modified and the reason for modification, because this may be relevant to the Bureau's determination. For example, if probation was extended because of the individual's actions, this information may be relevant to the Bureau's determination because it shows that the person is having difficulty complying with terms of probation and a judge has extended the time period to give them more time to rehabilitate. Therefore, an extension would tend to undermine

rehabilitation. The criteria listed as (6)-(18) are in the current regulation. The proposed amendment moves and renumbers them.

Benefits: The proposed revisions would provide transparency and clarity to license applicants who have completed their criminal sentence without a violation of parole or probation. Providing the list of rehabilitation criteria would help license applicants understand the facts and documents to present to the Bureau to demonstrate their rehabilitation.

Section 3723(b)

Purpose: The proposal uses criteria specified in 10 CCR 3723, subsection (a) with some revisions. Each of these criteria are designed to focus the Bureau's evaluation on facts and circumstances relevant to an applicant's rehabilitation. As discussed more specifically below, this is necessary to enable the Bureau to judge the relevant criteria it must review when determining whether an applicant is rehabilitated.

It is necessary to consider the nature and gravity of the crime or act for the same reasons as discussed for subsection (a). This is the offense or misconduct against which the Bureau will judge the applicant's rehabilitation.

The Bureau will also consider evidence of acts or crimes committed after the act or crime that is the basis for denial. Such acts or crimes typically reflect additional misconduct by the applicant and bear on the Bureau's decision regarding whether the applicant is sufficiently rehabilitated to be licensed and conform to the requirements of licensure.

The Bureau will consider the time that elapsed since commission of the prior crimes or misconduct. This is an existing regulatory provision (3723(a)(1)) which is being moved to subsection (b). The passage of time bears on a person's rehabilitation and, accordingly, it is necessary to consider this criterion in evaluating rehabilitation. (See *In re Conflenti* (1981) 29 Cal.3d 120, 124-125 ["a truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice"].)

The Bureau will consider whether the applicant complied with parole, probation, restitution or other sanctions imposed on the applicant. These are existing regulatory provisions (3723(a)(2), (4), (6), and (9)) which are being moved and restructured for consistency to subsection (b). The information embraced in this consolidated criterion bears on an applicant's rehabilitation in terms of the applicant's willingness to make amends from prior misconduct and willingness to conform to the rules of licensure. For instance, in cases where an applicant was convicted of a crime involving alcohol, probation terms requiring the applicant to complete alcohol abuse treatment or participate in an alcohol abuse program would bear more heavily on the applicant's rehabilitation. (See *In re Billings* (1990) 50 Cal.3d 358, 368 ["An alcoholic's rehabilitation is almost universally predicated on a choice to confront his or her problem, followed by abstinence sustained through ongoing participation in a supportive program, such as Alcoholics Anonymous"].) Accordingly, it is necessary for the Bureau to consider these elements to evaluate an applicant's reformation from prior misconduct.

The Bureau needs to consider rehabilitation evidence the applicant submitted to ensure all evidence is considered which is necessary to best ensure due process and fairness to applicants. This is a restatement of the existing regulatory provision of this original subsection (b). This is also a statutory requirement in BPC section 481(c).

Finally, the Bureau needs to consider the criteria in subsection (a), as applicable. This allows the Bureau to consider subsection (a) criteria if it assists with the rehabilitation determination.

Anticipated Benefits: The proposal would provide transparency and clarity to license applicants who violated parole or probation or otherwise do not qualify for consideration under subsection (a). Providing the list of rehabilitation criteria would help license applicants understand the facts and documents to present to the Bureau to demonstrate their rehabilitation.

Section 3723(c)

Purpose: This is necessary to comply with the requirements of AB 2138, section 9, and BPC section 482, which requires the Bureau to consider whether a licensee has made a showing of rehabilitation if the licensee has completed the criminal sentence at issue without a violation of parole or probation. As AB 2138 does not prescribe new rehabilitation criteria, the proposal also seeks to provide a specific list of criteria for the Bureau to consider for these licensees. For uniformity purposes, the proposal follows a similar approach as subsection (b).

The Bureau will consider the nature and gravity of the crime or act for the same reasons as discussed for subsection (a). This is the offense or act against which the Bureau will judge the applicant's rehabilitation.

The Bureau will consider the time that elapsed since commission of the prior crime or act. As described in subsection (b), above, the passage of time bears on a person's rehabilitation and, accordingly, it is necessary to consider this criterion in evaluating rehabilitation.

The Bureau will consider the total history of acts or crimes. The totality of a person's actions is relevant to determine rehabilitation because rehabilitation needs to consider all the information. It is necessary for the Bureau to consider the licensee's total criminal record because additional prior or subsequent misconduct is relevant to the Bureau's decision regarding whether they are sufficiently rehabilitated to be licensed and the person's willingness to conform to the requirements of licensure. In addition, considering the total history includes considering the absence of further acts or crimes, which may be additional proof of rehabilitation.

The Bureau will consider whether the applicant complied with parole, probation, restitution or other sanctions imposed on the applicant. As described in subsection (b), above, the information embraced in these criteria bears on a licensee's rehabilitation in terms of the licensee's willingness to make amends from prior misconduct and willingness to conform to the rules of licensure. Accordingly, it is necessary for the Bureau to consider these elements to evaluate an applicant's reformation from prior misconduct.

The Bureau needs to consider rehabilitation evidence the applicant submitted to ensure all information is considered and to preserve fairness in licensing. This is also a statutory requirement in BPC section 481(c).

Finally, the Bureau needs to consider the criteria in subsection (a), as applicable. This allows the Bureau to consider subsection (a) criteria if it assists with the rehabilitation determination.

Anticipated Benefits: The proposal would provide transparency and clarity to licensees who are subject to suspension or revocation. Providing the list of rehabilitation criteria would help licensees understand the facts and documents to present to the Bureau to demonstrate their rehabilitation.

Underlying Data

The Bureau did not rely on any underlying data.

Business Impact

The Bureau has made the initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This is because the proposed amendments are limited to determining whether individuals qualify for a license or whether they have been rehabilitated. These changes will affect few individuals and will likely not result in a significant shift in more or less licensees for businesses to hire.

The Bureau licenses approximately 10,500 individual appraisers and 240 Appraisal Management Companies (AMCs). Licensees or the controlling persons of AMCs who have criminal convictions may be affected by this proposal if they meet the rehabilitation criteria and their criminal convictions are not substantially related to the qualifications, functions or duties of their licenses. The Bureau receives approximately 200 applications per year and denies approximately one application per year for issues related to criminal convictions.

Fiscal Year	Number of conviction related denials
2015/2016	1
2016/2017	2
2017/2018	0
2018/2019	1

This proposed regulation may minimally increase the pool of licensees and registrants for businesses to hire, since the Board will deny fewer applications for licensure.

Economic Impact Assessment

The regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the regulations are aimed at reducing barriers to licensure and make it easier for license applicants and licensees with criminal histories or licensure discipline to obtain and maintain licensure.
- It will not create new businesses or eliminate existing business within the State of California because the regulations are aimed at reducing barriers to licensure and make it easier for license applicants and licensees with criminal histories or licensure discipline to obtain and maintain licensure.
- It will not affect the expansion of businesses currently doing business within the State of California because the regulations are aimed at reducing barriers to licensure and make it easier for license applicants and licensees with criminal histories or licensure discipline to obtain and maintain licensure.
- This regulatory proposal benefits the health and welfare of California residents because it would increase their access to licensees.
- This regulatory proposal does not affect housing or worker safety because it establishes criteria, based upon recent statutory mandates for licensure following the applicant's or licensee's criminal conviction. It does not involve housing or worker safety.
- This regulatory proposal does not affect the state's environment because it only regulates license applicants and licensees and their qualifications for licensure following a criminal conviction or disciplinary action. It does not involve environmental issues.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

The Bureau rejected the following alternative. Do nothing, meaning the Bureau would not adopt the regulations. The Bureau opted not to pursue this option because per AB 2138, the Bureau is mandated to adopt proposed regulations by July 1, 2020.